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Case No.: ER-2010-0355
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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: ER-2010-0355

REBUTTAL TESTIMONY

OF

CURTIS D. BLANC

ON BEHALF OF

KANSAS CITY POWER & LIGHT COMPANY

**Kansas City, Missouri
December 2010**

*Blanc
Rebuttal*

REBUTTAL TESTIMONY

OF

CURTIS D. BLANC

Case No. ER-2010-0355

1 **Q: Please state your name and business address.**

2 A: My name is Curtis D. Blanc. My business address is 1200 Main Street, Kansas City,
3 Missouri 64105.

4 **Q: Are you the same Curtis D. Blanc who prefiled Direct Testimony in this matter?**

5 A: Yes, I am.

6 **Q: What is the purpose of your testimony?**

7 A: The purpose of my testimony is to provide an overview of the Company's response to
8 Staff's November 3, 2010 Construction Audit and Prudence Review for the Iatan
9 Construction Project ("Iatan Report"), and in particular, the Company's response to
10 Staff's recommended prudence disallowance for the Iatan projects. I also explain the
11 unreasonableness of Staff's recommended return on equity ("ROE"), as provided in
12 Staff's November 10, 2010 Revenue Requirement Cost of Service Report ("COS
13 Report"). In addition, I respond to certain other recommended cost of service
14 adjustments, such as (i) Staff's proposal to dramatically reduce KCP&L's annual
15 depreciation expense, including Staff's proposal to depreciate Iatan 2 over 60 years;
16 (ii) the Industrial's recommendation to change the manner in which KCP&L gives off-
17 system sales margins to its customers; (iii) Staff's proposed treatment of certain
18 settlements related to the Hawthorn Generating Station; and (iv) Staff's adjustment to
19 certain advertising expenses related to KCP&L's Connections campaign. .

1 **STAFF'S IATAN REPORT**

2 **Q: How would you describe Staff's Iatan Report?**

3 A: Staff's Iatan Report, particularly with respect to Iatan 2, contains two very different and
4 distinct approaches to reviewing prudence. At one end of the spectrum, Staff conducts a
5 construction audit and prudence review, arriving at a recommended prudence
6 disallowance of \$37 million. Although KCP&L strenuously disagrees with Staff's
7 recommended disallowance, Staff appears to have attempted to follow the requisite two-
8 step process for a prudence review—first, to identify an imprudent act or decision, and
9 second, to quantify any impact that act or decision had on the cost of the project. In
10 Schedule 1-1 to Staff's Iatan Report, Staff identifies seventeen acts or decisions by
11 KCP&L concerning Iatan 2 that Staff believes were imprudent. Staff then attempts to
12 quantify the impact of those acts or decisions on the cost of Iatan 2.

13 At the other end of the spectrum, Staff recommends a wholly unsupported
14 prudence disallowance for Iatan 2 of more than \$93 million based upon nothing more
15 than the observation that it is in excess of the December 2006 control budget estimate
16 ("CBE") of \$1.685 billion. The sum of the proposed \$37 million and \$93 million
17 disallowances is how Staff arrives at its overall recommended prudence disallowance of
18 \$130 million for Iatan 2.

19 **Q: What is KCP&L's response to Staff's recommended prudence disallowance of**
20 **\$37 million for Iatan 2?**

21 A: KCP&L strongly disagrees with Staff's allegation that the seventeen acts or decisions by
22 KCP&L listed in Schedule 1-1 were imprudent or resulted in \$37 million in unnecessary
23 costs to Iatan 2, as described in the Rebuttal Testimony of the following Company
24 witnesses:

- 1 • William Downey, who speaks to KCP&L’s management of the Iatan projects,
2 executive oversight, and settlements reached with certain vendors, which Staff alleges
3 were imprudent;
- 4 • Chris Giles, who speaks to the regulatory history of the projects, including the
5 unprecedented transparency into the projects that resulted from the Regulatory Plan;
- 6 • Brent Davis, who speaks to KCP&L’s day-to-day management of the Iatan projects;
- 7 • Forrest Archibald, who speaks to the project’s cost control system;
- 8 • Bob Bell, who speaks to KCP&L’s management of the Iatan projects, both in the
9 context of his significant power plant construction experience, as well as what was
10 occurring in the industry while Iatan 2 was being built;
- 11 • Steve Jones, who speaks to procurement;
- 12 • Ken Roberts, who speaks to Staff’s incorrect application of the prudence standard, as
13 well as KCP&L’s management of the Iatan projects, including the Alstom settlement
14 payments, which Staff seeks to disallow;
- 15 • Daniel Meyer, who provides extensive testimony supporting KCP&L’s prudent
16 management of the project; and
- 17 • Kris Nielsen, an independent prudence expert, who reviewed the prudence of
18 KCP&L’s management of the project.

19 Although I testify later in this testimony to certain of the seventeen allegedly
20 imprudent decisions or acts, that is not the primary point of my testimony. The primary
21 point of my testimony with respect to Staff’s Iatan Report is to point out the inadequacy
22 of Staff’s recommended \$93 million “plug” disallowance for Iatan 2.

1 **Q: Why do you describe Staff's proposed prudence disallowance of \$93 million as a**
2 **"plug"?**

3 A: I call it a "plug" because it is not based on any alleged imprudent acts or decisions by
4 KCP&L, but rather is simply a mathematical computation.

5 **Q: Please explain.**

6 A: Staff's Iatan Report looks at actual costs incurred as of June 30, 2010 for Iatan 2, which
7 was approximately \$1.815 billion on a total project basis ("June 30, 2010 Actuals").
8 Staff then subtracts from that figure the CBE of \$1.685 billion to arrive at a
9 recommended prudence disallowance of \$130 million. Then, to avoid double counting
10 the impact of the seventeen allegedly imprudent acts or decisions referenced above, Staff
11 subtracts the \$37 million from the \$130 million to arrive at what I describe as the \$93
12 million "plug" disallowance.

13 **Q: How does Staff describe the \$93 million "plug" disallowance?**

14 A: In Schedule 1-1 to the Iatan Report, Staff describes its \$93 million recommended
15 prudence disallowance as a "Net Unidentified / Unexplained Cost Overrun adjustment."

16 **Q: Does Staff explain how it arrives at its "Net Unidentified/Unexplained Cost Overrun**
17 **adjustment"?**

18 A: Yes. In Note A to Schedule 1-1, Staff explains that it does the computation I describe
19 above. Staff begins with the \$130 million difference between the June 30, 2010 Actuals
20 and the December 2006 CBE, which Staff describes as the "Gross Unidentified /
21 Unexplained Cost Overrun adjustment," then subtracts its proposed disallowance of
22 \$37 million, which it describes as the "Staff disallowance adjustments" to arrive at the
23 \$93 million "Net Unidentified / Unexplained Cost Overrun adjustment."

1 **Q: Does KCP&L take issue with how Staff arrives at the \$93 million “Net Unidentified**
2 **/ Unexplained Cost Overrun adjustment”?**

3 A: Yes, we do. That figure is unsupported. It is not tied to any alleged imprudent acts or
4 decisions by KCP&L. It is inconsistent with the Commission’s prior handling of
5 construction audits and prudence reviews. It does not satisfy Staff’s initial burden of
6 proof to raise “serious doubt” concerning prudence. It also incorrectly presumes that any
7 money spent over a budgeted amount is imprudent.

8 If it was Staff’s intent simply to recommend to disallow every dollar spent above
9 the December 2006 CBE, it could have saved itself, KCP&L, and the Commission a lot
10 of time, trouble, and expense by saying so at some point prior to its November 3, 2010
11 Iatan Report. To my knowledge prior to its Iatan Report, Staff never explained to
12 KCP&L, or more importantly the Commission, its intent to adopt such a simplistic
13 approach. Had Staff done so, KCP&L would have disputed Staff’s approach as
14 inadequate at that time, and the Commission could have given Staff guidance as to
15 whether its approach was consistent with how the Commission intended Staff to conduct
16 its construction audit and prudence review of Iatan 2. Instead, the dispute has arisen
17 now—

- 18 • 5 ½ years after the Commission approved the Regulatory Plan, which contemplated
19 (i) the construction of Iatan 2, (ii) KCP&L’s development of a cost control system,
20 and (iii) the timing of this rate case;
- 21 • more than 4 years after construction began on Iatan 2;
- 22 • more than 4 years after KCP&L first presented its cost control system to the Staff;
- 23 • about 4 years after the CBE was established;

- 1 • about 4 years after KCP&L began reporting to Staff on a quarterly basis detailed
2 status updates for Iatan 2, including a cost report that compared current spending on
3 Iatan 2 to the CBE, which KCP&L subsequently began providing to Staff on a
4 monthly basis; and
- 5 • Only about 5 months before the Commission will issue an order determining what
6 amount of Iatan 2 KCP&L gets to include in its Missouri rates.

7 Staff's simplistic approach places the Commission in the untenable position of
8 having to make a decision concerning \$93 million in capital costs with little to no insight
9 from its Staff. As the Commission noted on page 5 of its order dated April 15, 2009 in
10 Case No. ER-2009-0089, "the Commission does not have the option to delay evaluating a
11 relevant issue or factor in a case setting rates."

12 Staff's simplistic approach also irresponsibly jeopardizes KCP&L's financial
13 integrity. Under accounting rules KCP&L would have to immediately write off its books
14 any portion of Iatan 2 costs that this Commission concludes cannot be included in the
15 Company's Missouri rates. To so cavalierly put a utility in the position of having to write
16 off such significant sums is irresponsible, particularly when that recommendation comes
17 from the Staff, who is supposed to balance the interests of KCP&L and its customers.

18 **Q: Do you have a similar concern with respect to Staff's audit of the Iatan 1 projects?**

19 **A:** Yes. With respect to the Iatan 1 project, Staff's recommended disallowance of \$69.7
20 million is similarly comprised of two audit methods. Staff recommends that \$51.3
21 million be disallowed based on eighteen allegedly imprudent acts or decisions by
22 KCP&L. Staff then adds to that a recommended "plug" disallowance of \$18.4 million.

1 Staff's "plug" disallowance for the Iatan 1 project suffers from the same flaws as Staff's
2 "plug" disallowance for Iatan 2, and should similarly be rejected.

3 **Q: Do you have any concerns about Staff's approach as the case progresses?**

4 A: Yes, I do. Since the \$93 million "plug" disallowance for Iatan 2 is based on the
5 difference between the June 30, 2010 Actuals and the December 2006 CBE, I am
6 concerned that when Staff updates its case for actual expenditures as of October 31, 2010,
7 it will simply subtract the December 2006 CBE from those actuals to arrive at a larger,
8 unsupported "plug." I do not believe that is what the Commission had in mind when it
9 established a deadline for its Staff to complete "all audit activity, of any type, involved
10 with the Iatan II generating facility, including any common plant shared between Iatan I
11 and II [by] January 30, 2011." Order Regarding Construction and Prudence Audits, File
12 Nos. ER-2010-0355 and ER-2010-0356 ("July 7, 2010 Order"), Ordering ¶ 9. If Staff
13 remains consistent in the true-up phase of this case and Iatan 2 ultimately costs what it is
14 presently projected to cost, the unsubstantiated "plug" component of Staff's proposed
15 disallowance could go from \$93 million to as much as \$226 million, which would
16 significantly exacerbate the issues I have described being concerned about.

17 **Q: Why do you believe the unsubstantiated "plug" component of Staff's proposed**
18 **disallowance could go from \$93 million to as much as \$226 million?**

19 A: The current cost estimate for Iatan 2 is \$1.948 billion. While that is a \$40 million
20 reduction from the most recent cost estimate of \$1.988 billion, it is \$263 million, or
21 \$15.6% more than the December 2006 CBE. If Staff sticks to its simplistic approach, and
22 if Iatan 2 ultimately costs \$1.948 billion, then I am concerned that Staff will simply
23 subtract the \$1.685 billion CBE from \$1.948 billion to arrive at a total recommended

1 disallowance of \$263 million. Then, to avoid double counting as it did in the Iatan
2 Report, Staff would subtract its proposed disallowance of \$37 million to arrive at a new
3 increased “plug” disallowance of \$226 million. Such a proposal would be absurd, but
4 unless Staff changes its methodology, I am concerned that is what Staff will ultimately
5 recommend.

6 **Q: Is Staff’s approach to the construction audit and prudence review of Iatan 2**
7 **consistent with what the Commission directed Staff to do?**

8 A: The methodology Staff used to arrive at its \$37 million recommended prudence
9 disallowance appears to be consistent with the Commission’s directive for Staff to
10 conduct a construction audit and prudence review of Iatan 2. However, I do not see how
11 Staff’s proposed \$93 million “plug” disallowance could be consistent with the
12 Commission’s directive. Simply subtracting the December 2006 CBE from the actual
13 dollars spent on the project at any given time could be done without doing any audit work
14 at all. That is not how I read the Commission’s orders, and I would not think that is what
15 the Commission had in mind.

16 **Q: How does Staff justify using the simplistic approach of subtracting the December**
17 **2006 CBE from the June 30, 2010 Actuals to arrive at its recommended**
18 **disallowance?**

19 A: Staff has two separate but related explanations as to why it believes it was appropriate to
20 take such a simplistic approach. First, Staff alleges that KCP&L “disregarded [its]
21 responsibility” under the Regulatory Plan to “develop and have a cost control system in
22 place that identifies and explains any cost overruns above the definitive estimate.” Iatan
23 Report, pp. 33-34. Second, Staff explains that it “considers KCP&L responses to be

1 nonresponsive to certain Staff Data Requests.” Iatan Report, p. 35. Instead, Staff claims
2 KCP&L “merely advises Staff how it can track budget variances.” Id.

3 **Q: Let’s take Staff’s explanations in turn. Do you agree that KCP&L “disregarded**
4 **[its] responsibility” under the Regulatory Plan to “develop and have a cost control**
5 **system in place that identifies and explains any cost overruns above the definitive**
6 **estimate?”**

7 A: No. As explained in the Rebuttal Testimony of KCP&L witness Forrest Archibald,
8 KCP&L satisfied its obligation under the Regulatory Plan by developing and having in
9 place a cost control system that identifies and explains cost overruns above the December
10 2006 CBE. Staff’s Iatan Report reads as though it expected the cost control system to be
11 a piece of paper that lists and explains every dollar spent over the December 2006 CBE.
12 That is an overly simplistic notion and does not accurately represent the purpose of a cost
13 control system, which is to manage the cost of a project, which KCP&L’s system
14 effectively did.

15 KCP&L’s cost control system is a complex and sophisticated system designed not
16 only to manage the review and payment of tens of thousands of invoices from hundreds
17 of vendors, but also to track cost and schedule trends to identify potential concerns on the
18 horizon before they have a chance to impact the project. That is what is necessary to
19 manage a multi-year, nearly \$2 billion construction project.

20 To my knowledge, no previous utility construction project in Missouri has had
21 such an elaborate, sophisticated, transparent cost control system in place as the one
22 KCP&L has used for the Iatan projects. If KCP&L’s cost control system is not adequate
23 for Staff to perform its audit of Iatan 2, it is not clear to me how Staff was able to audit

1 projects built prior to Iatan 2. In addition, it is my understanding that Staff has reached
2 out to other utilities in the state requesting that they implement cost control systems
3 similar to the one KCP&L used for the Iatan projects. That seems inconsistent with
4 Staff's argument here that KCP&L's system prevents it from doing its audit work.

5 My understanding from the discovery and hearings in Case No. EO-2010-0259 is
6 that Staff significantly changed its approach to construction audits and prudence reviews
7 part way through the construction of Iatan 2 by making the Services Division responsible
8 for conducting the audit, as opposed to the Operations Division, which had historically
9 been responsible for construction audits. Prior to the Iatan projects, Staff's construction
10 audits and prudence reviews were premised on an engineering review from the
11 Operations Division. Here, the engineers' review of the Iatan projects has been largely
12 cast aside as a "non dollar adjustment." Iatan Report, p. 28.

13 Staff's audit of the Iatan projects seems to be the exact opposite of what has
14 historically occurred. Before, the Operations Division, that is the engineers, audited the
15 project with support from the Services Division. For Iatan, the Services Division ran the
16 audit with limited coordination with or input from the engineers in the Operations
17 Division.

18 **Q: Did the Operations Division, *i.e.*, the engineers, audit Iatan 2?**

19 A: Yes. According to Staff's Iatan Report, the Operations Division reviewed "construction
20 project change orders associated with the project for the following:

- 21 • To understand the reason for the change at the point in time when the change order
22 was issued;

- 1 • To determine whether the change corrected an engineering-related problem, resulted
2 in a better design, or improved the operation or construction of the plant; and
- 3 • To determine whether the change resulted in a safety concern, caused unnecessary
4 construction, or caused unnecessary duplication of facilities or work.”

5 Iatan Report, at p. 28. After reviewing 647 change orders, the Operations Division
6 ultimately concluded that it “found no engineering concerns with any of the Iatan 2 or
7 Iatan common plant change orders reviewed.” Iatan Report, at p. 29. Since many of the
8 expenditures in excess of the CBE relate to design changes or design maturation, as
9 explained in the Rebuttal Testimony of Forrest Archibald, the findings of the Operations
10 Division are contrary to Staff’s recommendation to disallow every expenditure in excess
11 of the CBE.

12 **Q: Does KCP&L’s cost control system fulfill its obligations in the Regulatory Plan?**

13 A: Absolutely. The Regulatory Plan obligated KCP&L to develop a “system” to identify
14 and explain costs incurred in excess of the December 2006 CBE. As Mr. Archibald
15 explains in his Rebuttal Testimony, KCP&L’s cost control system does just that. It might
16 not be on a single piece of paper, as Staff intimates it should be, but KCP&L’s cost
17 control system contains all the data one needs to identify and explain costs incurred in
18 excess of the CBE.

19 **Q: Are you surprised by the timing of Staff’s allegation that KCP&L “disregarded [its]
20 responsibility” under the Regulatory Plan to “develop and have a cost control
21 system in place that identifies and explains any cost overruns above the definitive
22 estimate”?**

1 A: Yes. Although Staff has requested and received on several occasions an explanation as to
2 how the cost control system works and how costs can be tracked through the system, to
3 my knowledge the November 3, 2010 Iatan Report is the first time Staff has told
4 KCP&L, or more importantly the Commission, that it believes KCP&L “disregarded,” or
5 somehow failed to satisfy its obligation in the Regulatory Plan to implement an adequate
6 cost control system. Staff briefly discussed KCP&L’s cost control system in its August
7 6, 2010 report for Iatan 1, but Staff did not claim that KCP&L had disregarded or
8 otherwise violated its commitments under the Regulatory Plan.

9 **Q: When did KCP&L first present its cost control system to Staff?**

10 A: KCP&L first presented its cost control system to Staff in July of 2006. KCP&L’s cost
11 control system has been the basis for the cost section of each quarterly CEP update report
12 provided to Staff since the fourth quarter of 2006. KCP&L has worked diligently to
13 answer Staff’s questions about how the cost control system works. I have personally
14 observed Mr. Archibald explain the system to members of the Staff on several occasions.
15 I do not understand why Staff would wait until now to say that KCP&L has not fulfilled
16 its obligations under the Regulatory Plan concerning the cost control system, especially
17 since Staff appears to believe it cannot complete its audit because the cost control system
18 is inadequate. Such a significant allegation should have been raised long before now, for
19 the Commission’s sake as well as the Company’s.

20 **Q: Turning to Staff’s second explanation, do you agree that KCP&L’s responses to**
21 **Staff data requests were nonresponsive because they “merely advise Staff how it can**
22 **track budget variances”?**

1 A: No. Consistent with what KCP&L has been explaining to Staff since it began its audit
2 work on Iatan 2, understanding how to “track budget variances” in the cost control
3 system is how Staff can use the system to identify and explain costs in excess of the CBE,
4 precisely what Staff claims to be unable to do. That is the point of the system from an
5 audit perspective. Staff’s request for “a list that shows the amount of each cost overrun
6 and an explanation of each cost overrun” supports my concern that Staff has an overly
7 simplistic understanding of what a cost control system is or does. Iatan Report, at p. 34
8 (emphasis added). Staff appears to want a single document, a “list” that “shows the
9 amount of each cost overrun and an explanation of each cost overrun” over the December
10 2006 CBE. No such list exists, nor could KCP&L easily create one for the Staff. More
11 importantly, that is not what a cost control system is or should be, and it does not reflect
12 KCP&L’s obligation under the Regulatory Plan. Furthermore, if such a list existed, there
13 would be little audit work for Staff to do. The Commission could read the list for itself
14 and make a determination as to whether the explanations provided by KCP&L justified
15 the costs comprising the list.

16 As recognized by Staff in the Iatan Report, KCP&L has consistently maintained
17 that although no such “list” exists, the cost control system contains all the necessary data
18 to identify and explain those expenditures. Iatan Report, at p. 34 (“KCP&L indicated that
19 its cost overruns are reported in its Cost Portfolio and the supporting documents of the
20 overruns were provided in previous responses to Staff Data Requests.”). Specifically, as
21 accurately quoted by Staff in its Iatan Report, KCP&L stated in response to Data Request
22 970 in Case No. EO-2010-0259:

23 all variances from the [CBE] are captured in, and reported from, the Cost
24 Control System. The System provides the detailed tracking process in the

1 Cost Portfolio, which includes the [CBE] as well as each budget change,
2 the Committed Costs, the Uncommitted Costs, the Current Forecast Total
3 Cost At Completion and the Actuals Including Accruals. These details are
4 maintained by Budget Line Item and the supporting documentation is
5 voluminous. There is not a single set of output documents resulting from
6 the process.

7 Utilizing the April 2010, Iatan 2 K(a) Cost Report, the Control Budget
8 Estimate (Column A) is \$1,685.0 billion. As of April 2010, the Actuals
9 Including Accruals (Column M) total \$1,782.4 billion. The justification
10 for the additional \$97.4 million is located within the documentation
11 previously provided to staff in multiple data requests. As discussed above,
12 the variance is explained within the documentation previously provided in
13 data requests such Contingency Logs, PO logs, Change Order logs,
14 Reforecast Presentations and supporting documentation, Budget Transfer
15 Logs, etcetera.

16 (a) The K Cost Reports are routinely provided in hard copy in the
17 Strategic Infrastructure Investment Status Reports on a quarterly basis and
18 has been provided in Microsoft Excel format in data requests question
19 series number 0622.

20 A drawing illustrating how to track variances is attached, "Example for
21 DR 0970 Rev 1.xls." Mr. Forrest Archibald has walked through the
22 portfolio in previous meetings and would be able to provide the assistance
23 again if requested.

24 Iatan Report, at p. 36.

25 **Q: When did KCP&L receive Data Request 970 and provide the response to quoted**
26 **above?**

27 **A:** KCP&L received Date Request 970 from Staff on July 13, 2010 and responded on July
28 30, 2010.

29 **Q: Does anything strike you about the timing of Staff's Data Request?**

30 **A:** Yes. July 13, 2010 strikes me as extremely late in the process to be asking such a
31 fundamental question, especially in light of the fact that Staff contends it was unable to
32 conduct its construction audit and prudence review based upon KCP&L's alleged

1 “nonresponsiveness” to this data request. I would think that the majority of Staff’s audit
2 work would have been completed by then.

3 **Q: Does KCP&L take issue with Staff’s explanation that KCP&L’s alleged**
4 **nonresponsiveness to a data request justifies Staff using such a simplistic approach?**

5 A: Yes, we do. Staff claims that because KCP&L did not provide a “list” of each dollar
6 spent over the CBE with an explanation for each expenditure, (i) KCP&L “disregarded”
7 its commitments in the Regulatory Plan and (ii) Staff is justified in simply proposing to
8 disallow all expenditures in excess of the December 2006 CBE. Staff’s position is
9 concerning and unreasonable for several reasons.

- 10 • First, the Regulatory Plan did not require KCP&L to create the “list” Staff now insists
11 it needs to complete its review of the Iatan projects.
- 12 • Second, prior to the November 3, 2010 Iatan Report, Staff did not inform KCP&L, or
13 more importantly the Commission, that KCP&L creating such a “list” was critical to
14 Staff’s audit work. Staff did not even ask for it until July of 2010.
- 15 • Third, the Commission went so far as to establish monthly status hearings to discuss
16 discovery issues to avoid problems like this from arising, making it even more
17 concerning that Staff would wait until its Iatan Report to allege that KCP&L’s failure
18 to provide the list in response to a data request prevented Staff from doing what the
19 Commission directed it to do.

20 With respect to this third point, in its July 7, 2010 Order, the Commission ordered
21 that “Any discovery disputes shall be taken up immediately at these [status] hearings.
22 Any discovery dispute not timely raised at the status hearings shall be deemed waived.”
23 Ordering ¶ 5. Staff never raised at a status hearing that KCP&L was nonresponsive to a

1 Staff data request by failing to provide the list Staff now says it needs. It would appear
2 that Staff has waived the right to make that argument now.

3 **Q: Did KCP&L make available to Staff the type of information Staff was apparently**
4 **attempting to obtain on the “list” it requested?**

5 A: Yes. All of the information Staff needed to audit the construction project was available
6 in the cost control system. Staff’s dispute really seems to be with the format in which the
7 information was available. That is not a valid reason to reject the information. And it
8 does not justify the simplistic approach Staff seeks to adopt here.

9 **Q: Did the Kansas Staff require such a list to complete its review of the Iatan projects?**

10 A: No, the consultant hired by the KCC completed his review of the Iatan projects without
11 such a list. He was able to conduct his audit with the same information made available to
12 the Missouri Staff. I should also add that the Operations Division did its audit work
13 without such a list, as did Kris Nielsen and Daniel Meyer, who discuss their audit work in
14 their testimony in this case.

15 **Q: Is Staff’s rationale for its proposed Iatan 2 prudence disallowance consistent with**
16 **the Commission’s prior handling of construction audits and prudence reviews?**

17 A: No. As far as I am aware, Staff has never suggested and the Commission has certainly
18 never adopted an approach that would disallow every expenditure in excess of a project’s
19 control budget estimate. In Wolf Creek, for example, the control budget estimate for the
20 project was approximately \$1 billion. The plant ultimately cost nearly \$3 billion. To do
21 what Staff has done here, the Commission would have been asked to disallow nearly
22 \$2 billion in cost overruns. That would have been unreasonable, and it is not what
23 occurred.

1 In Wolf Creek, the Staff did a comprehensive construction audit and prudence
 2 review involving numerous witnesses covering numerous disciplines to arrive at a
 3 recommended prudence disallowance of approximately \$200 million—about 7% of total
 4 project costs and only about 11% of the excess costs above the control budget estimate.
 5 The primary basis for that recommendation was an engineering review.

6 It is worth taking a moment to compare the Wolf Creek project to Iatan 2. Wolf
 7 Creek was more than two years behind schedule and cost almost 200% more than its
 8 definitive estimate. By comparison, Iatan 2 satisfied its in-service criteria on August 26,
 9 2010, less than three months after the June 1, 2010 target date provided in the Regulatory
 10 Plan. In addition, Iatan 2 is forecasted to cost only about 15.6% more than the December
 11 2006 CBE. Despite these differences, Staff proposes to disallow a similar amount, as a
 12 percentage of total project costs, and a more severe disallowance as a percentage of the
 13 cost above the definitive estimate. The following table compares the cost, schedule, and
 14 ultimate ratemaking treatment of Wolf Creek to Staff's proposal for Iatan 2:

	Wolf Creek	Iatan 2
Definitive Estimate	\$1.033 billion	\$1.685 billion (December 2006 CBE)
Cost to Complete	\$2.9 billion	\$1.948 billion (current estimate)
Costs Above the Definitive Estimate	181%	15.6%
Schedule	> 2 years late	< 3 months after June 1, 2010 Regulatory Plan Target Date
Prudence Disallowance (in Dollars)	\$200 million	\$130 million (potentially \$263 million)
Disallowance (% of Cost to Complete)	7%	7% (potentially 14%)
Disallowance (% of Costs Above the Definitive Estimate)	11%	100%

15 I include assumptions of what Staff's proposed disallowance could be if it continues to
 16 seek to disallow every expenditure above the December 2006 CBE to illustrate that the

1 larger Staff's unsupported "plug" disallowance becomes, the more unreasonable Staff's
2 recommendation also becomes when compared to what the Commission did in Wolf
3 Creek.

4 Staff is proposing to treat the Iatan 2 project significantly worse than the
5 Commission treated the Wolf Creek project when Iatan 2 was essentially completed on
6 time and on budget compared to Wolf Creek's cost and schedule. Staff's approach here
7 is not only fundamentally different from the Commission's approach in Wolf Creek, but
8 it results in an outcome that on its face is unreasonable when compared to the
9 Commission's findings concerning Wolf Creek.

10 **Q: How should the Commission address the \$37 million and \$93 million prudence**
11 **disallowances recommended by Staff?**

12 A: Staff conducted a construction audit and prudence review of Iatan 2. The result of which
13 is a recommended prudence disallowance of \$37 million. The Commission should weigh
14 Staff's evidence concerning the seventeen items that comprise that proposed
15 disallowance against the Company's evidence concerning those items and make a
16 determination. The remainder of Staff's proposed \$130 million disallowance, that is, the
17 unsupported \$93 million "plug," is not the result of a construction audit and prudence
18 review and should be disregarded. Any attempts by Staff to subsequently increase its
19 "plug" disallowance should similarly be disregarded.

20 **Q: Did the KCC express an opinion about Iatan 2 costing more than the December**
21 **2006 CBE.**

22 A: Yes, in its recent order in KCP&L's companion Kansas rate case to this one, the KCC
23 found that "Given the magnitude of the project, the timeline under which the project was

1 constructed, and the range permitted for a definitive type of cost estimate, the
2 Commission finds that this factor does not indicate imprudence on the part of KCP&L.”
3 KCC Docket No. 10-KCPE-415-RTS, at p. 22 (Nov. 22, 2010) (citing AACE
4 International Recommended Practice No. 18R-97, p.6 (noting the range of accuracy for a
5 definitive estimate to be -5 to +15%)). It is also noteworthy that the KCC was looking at
6 a larger amount of excess above the CBE when it made that statement. At the time of the
7 Kansas hearings, the estimate to complete Iatan 2 was \$1.988 billion. That figure has
8 now been reduced to \$1.948 billion.

9 **Q: Did the KCC made any findings concerning the prudence of KCP&L’s management**
10 **of Iatan 2?**

11 A: Yes. In its November 22, 2010 order, the KCC found that KCP&L “built a strong and
12 credible case in defense that its actions were not imprudent.” The KCC had hired an
13 outside prudence consultant, Walter Drabinski of Vantage Consulting, a witness in this
14 case to conduct a construction audit and prudence review of the Iatan projects. In its
15 order, the KCC rejected its own expert’s analysis in part because it “hinges on a hindsight
16 analysis, which is clearly prohibited,” Kansas Order, at p. 15, and instead disallowed
17 \$20.4 million on a total project basis (\$5.1 million on a Kansas jurisdictional basis).

18 **SPECIFIC PROPOSED IATAN DISALLOWANCES**

19 **Q: You noted that you would speak to several of the allegedly imprudent acts or**
20 **decisions that comprise Staff’s proposed prudence disallowance of \$37 million.**
21 **Which of those will you speak to?**

22 A: Four of Staff’s seventeen allegedly imprudent acts or decisions concerning Iatan 2 relate
23 to Schiff Hardin. One relates to Cushman and Associates (“Cushman”). Staff also has a

1 proposed disallowance from the cost of the Iatan 1 project related to employee mileage
2 reimbursement, as well as companion proposed disallowances for Iatan 1 and Iatan 2
3 based upon an arbitrary sum for each unit to address the potential for what Staff describes
4 as “inappropriate” charges. In this portion of my testimony, I speak to those proposed
5 disallowances.

6 **Schiff Hardin’s Fees And Expenses Were Prudently Incurred**

7 **Q: Why does Staff seek to disallow Schiff Hardin fees and expenses?**

8 A: Although Staff dedicates 24 pages of the Iatan Report to Schiff Hardin (pages 65-89),
9 Staff’s criticisms boil down to the following:

- 10 (i) Schiff Hardin’s rates in Staff’s opinion are too high, and relatedly that Schiff
11 Hardin was not hired primarily to perform legal services in support of the Iatan
12 projects;
- 13 (ii) KCP&L should have solicited bids and undertaken a formal Request for Proposal
14 (“RFP”) process to select a provider of legal services for the Iatan projects;
- 15 (iii) KCP&L should have sent written approval to Schiff Hardin of changes in the
16 hourly rates of its lawyers; and
- 17 (iv) KCP&L should have required Schiff Hardin to submit with its invoices for legal
18 services a copy of every receipt for travel-related expenses.

19 Although I will respond to each of these criticisms specifically, my general observation is
20 that Staff’s criticisms are based on the incorrect notion that KCP&L should procure legal
21 services in the same manner it procures offices supplies or some other fungible
22 commodity. I disagree. KCP&L treats the procurement of legal and other professional

1 services differently. That is not only appropriate but it is in the best interest of KCP&L
2 and its customers.

3 **Q: If the Commission would find in favor of the Staff that a portion of Schiff Hardin's**
4 **fees and expenses should be disallowed, do you agree with the calculations made by**
5 **Staff to compute those disallowances?**

6 A: No, I do not. As I discuss below, the calculation of Staff's proposed disallowances
7 suffers from significant flaws.

8 *The fees KCP&L paid Schiff Hardin for its work in support of the Iatan projects are*
9 *reasonable.*

10 **Q: Please respond to Staff's allegation that Schiff Hardin's rates were too high.**

11 A: Staff's proposal to disallow a portion of Schiff Hardin's fees on the basis that the hourly
12 rates charged by its lawyers and contractors are too high is flawed in several respects.
13 First, the comparisons Staff does, specifically the Laffey Matrix and the hourly rates of
14 Kansas City law firms, are not a reasonable benchmark against which to measure Schiff
15 Hardin's fees. Second, Staff's claim that only 20% of the work Schiff Hardin did in
16 support of the Iatan projects constituted legal services, is arbitrary, unsupported, and
17 incorrect. Third, Staff's claim that "the selection of Schiff was primarily influenced by
18 KCPL management's desire to be prepared to defend and protect itself from any charges
19 of unreasonable, inappropriate or imprudent decisions and not about conducting the day-
20 to-day project management work required to complete a significant construction project
21 on time and on budget" is similarly unsupported and incorrect. Iatan Report, at p. 73.
22 Schiff Hardin's role was to support KCP&L in its efforts to complete the Iatan projects
23 on time and on budget. Schiff Hardin fulfilled that role very well. Fourth, Staff's claim

1 that KCP&L could have demanded and Schiff Hardin would have accepted a discounted
2 fee arrangement is similarly arbitrary and unsupported.

3 **Q: What has KCP&L paid Schiff Hardin for its services in support of the Iatan**
4 **projects?**

5 A: KCP&L has paid Schiff Hardin approximately \$20 million for its work in support of the
6 Iatan projects.

7 **Q: Why were Schiff Hardin's fees and expenses prudently incurred in the context of**
8 **the Iatan projects?**

9 A: \$20 million is a significant amount of money. However, one must view it in context, that
10 is, the scope of the work performed, the value of that work, and what was at stake. As a
11 preliminary point, it is important to note that the fees paid to Schiff Hardin amount to less
12 than 1% of the cost of the Iatan projects. For the level and quality of the support Schiff
13 Hardin provided for the Iatan projects, 1% is a reasonable amount, as testified to by Bob
14 Bell and Daniel Meyer in their Rebuttal Testimony. In addition, as explained in the
15 testimony of William Downey, Schiff Hardin's support for the Iatan projects was
16 extensive, including legal services related to developing RFPs, contract negotiation,
17 contract administration, project controls, review and management of change orders and
18 claims, dispute avoidance, and dispute resolution, among other things—all over a several-
19 year period.

20 Moreover, one would be hard pressed to find a team as experienced and
21 knowledgeable as Schiff Hardin when it comes to large-scale construction projects such
22 as the Iatan projects. One also must consider what was at stake. Without highly
23 competent legal representation, the Iatan projects could have gotten bogged down in

1 vendor disputes, potentially including litigation. Although no one can prove what would
2 have happened had Schiff Hardin not been involved in the Iatan projects, it is clear that
3 the costs and delays associated with vendor disputes and litigation could easily have
4 surpassed the fees paid to Schiff Hardin. Staff fails to take any of these considerations
5 into account.

6 **Q: Why does Staff's rate comparison analysis fail to support its claim that Schiff**
7 **Hardin's rates were so high as to be imprudently incurred?**

8 A: Staff fails to acknowledge that an hour of one lawyer's time might legitimately be more
9 valuable than an hour of another lawyer's time based upon their respective knowledge
10 and experience. Schiff Hardin brought a tremendous amount of knowledge and
11 experience to the Iatan projects. Staff's hourly rate analysis fails to take that into
12 account.

13 The real question is not how Schiff Hardin's hourly rates compare to the Laffey
14 Matrix, which is not applicable here, or how Schiff Hardin's hourly rates compare to the
15 rates of other law firms that might or might not have been capable of doing the work
16 Schiff Hardin did in support of the Iatan projects. The real question is whether the
17 services KCP&L received from Schiff Hardin are worth the fees KCP&L paid, or put
18 another way, whether those fees were prudently incurred. The answer to that question is
19 an emphatic yes.

20 **Q: Do you agree with Staff's use of the Laffey Matrix or the rates of Kansas City area**
21 **law firms to measure the reasonableness of Schiff Hardin's hourly rates?**

22 A: No, I do not. The Laffey Matrix does not apply in cases such as this, and the rates
23 charged by Kansas City area law firms are not relevant. Neither is a proper baseline for

1 evaluating the reasonableness of Schiff Hardin's hourly rates for legal services relative to
2 the Iatan projects. Both approaches fail to take into consideration the unique nature of
3 the project and the significant experience and industry-specific knowledge that the Schiff
4 Hardin team possesses, all of which legitimately impact the hourly rate for legal services.

5 **Q: What is the Laffey Matrix?**

6 A: The Laffey Matrix represents the prevailing market rates for legal fees charged by federal
7 court litigators in the Washington, D.C. area on an hourly basis. It is based on the
8 number of years a lawyer has been able to practice as of a given year. Thus, for example,
9 the matrix provides an hourly rate for all lawyers that graduated from law school four
10 years ago as of 2008.

11 **Q: In what types of cases is the Laffey Matrix intended to be used?**

12 A: As indicated on the USAO website, the Laffey Matrix is intended to be used in cases
13 involving fee-shifting statutes, those limited instances in which the law allows the
14 prevailing party to shift the burden of its attorneys' fees to the losing party. The USAO
15 website identifies a few examples of such statutes, including the Civil Rights Act, the
16 Freedom of Information Act, and the Equal Access to Justice Act. It is my understanding
17 that the Laffey Matrix has been applied most frequently in civil rights cases. There is no
18 indication that the Laffey Matrix was intended to represent the prevailing market rates in
19 every State, without regard to the subject matter of the legal services at issue.

20 **Q: Has this Commission or any Missouri court applied the Laffey Matrix as Staff
21 proposes here?**

22 A: No. I am only aware of one Missouri case that even mentions the Laffey Matrix—*White*
23 *v. McKinley*, 2009 WL 813372 (W.D.Mo. 2009). The court did not endorse or approve

1 the Laffey Matrix but simply noted that it was one of the bases upon which the plaintiff
2 based its claim for attorneys fees. Notably, *White* is a civil rights case.

3 **Q: Has the Laffey Matrix been applied by other courts in the Eighth Circuit?**

4 A: Only in certain limited circumstances. I am only aware of a few references to it. District
5 courts in Minnesota, for example, have considered the Laffey Matrix and expressly
6 rejected it as “unpersuasive and of little value in determining a reasonable hourly rate.”
7 *Olson v. Kramer*, 2008 WL 1699605 (D. Minn. 2008). The *Olson* court criticized the
8 Laffey Matrix specifically for not distinguishing between the rates charged by lawyers
9 who specialize in one field of law versus another, which is one of the key matters at issue
10 here concerning the reasonableness of Schiff Hardin’s rates.

11 **Q: Why do you believe that the Laffey Matrix fails to take into consideration the nature
12 of an attorney’s experience?**

13 A: The USAO clarifies on its website that the years of experience reflected in the matrix
14 represents the number of years since a lawyer graduated from law school. In other
15 words, the hourly rate specified by the Laffey Matrix does not take into consideration the
16 actual experience that a lawyer may have acquired, but rather uses the lawyer’s law
17 school graduation data as a proxy for experience. So, for example, the Laffey Matrix
18 would recommend the same hourly rate an attorney who graduated from law school in
19 1975, regardless of whether the attorney had thirty-five years of experience in civil rights
20 litigation or whether the attorney had practiced for 5 years, left the practice of law for 25
21 years, and then decided to practice law again. The Laffey Matrix would recommend the
22 same hourly rate for any lawyer who graduated from law school in 1975, regardless of
23 whether the lawyer had successfully tried dozens of civil rights cases, had lost dozens of

1 cases, or had no trial experience at all. How qualified or effective the lawyer is simply
2 not a factor.

3 **Q: Is it appropriate for the Commission to consider an attorney's degree of knowledge
4 and experience when evaluating the reasonableness of his or her hourly rate?**

5 A: Not only is it appropriate, it is critical. The simple fact is that not all lawyers are created
6 equal. An hour of one lawyer's time is legitimately worth more than an hour of another
7 lawyer's time based upon his or her knowledge and experience. That is particularly true
8 in specialized areas of the law such as large-scale construction. As explained above, the
9 Laffey Matrix as applied here by Staff would suggest that any lawyer that graduated in
10 1975 should charge the same rate for his or her services. That does not make sense and
11 does not reflect reality. Different lawyers charge different hourly rates, even if they
12 happened to graduate law school the same year. Supply and demand and how the market
13 values a particular lawyer's services based on his or her knowledge and experience has
14 significantly more to do with a given lawyer's rates than does the year he or she
15 graduated from law school.

16 **Q: Should the Commission determine the reasonableness of Schiff's hourly rates based
17 on the hourly rates charged by Kansas City law firms?**

18 A: No. In fact, the Missouri courts in the *White* case I previously mentioned, as well as in
19 *Hendrickson v. Branstad*, 934 F.2d 158 (8th Cir. 1991), found that when attorneys have
20 specialized skills, it is appropriate to compare the rates to those of non-local attorneys in
21 other states or nationwide, as the case may be. In *Hendrickson*, for example, the Eighth
22 Circuit held that the attorney's fees should be compared to other nationally prominent
23 federal civil rights counsel rather than local Iowa counsel. Even more applicable to the

1 present situation, the Missouri district court in *White* found that Chicago rates, rather than
2 Kansas City rates, were the proper baseline for determining reasonable attorney's fees
3 because that case involved unique circumstances (e.g., unsympathetic clients, difficult
4 facts, and allegations of conspiracy surrounding the alleged civil rights violations). In
5 light of those unique circumstances, the Court found that it was appropriate for the party
6 to seek legal services from attorneys in Chicago that specialize in difficult civil rights
7 cases and awarded attorneys fees based on Chicago rates.

8 **Q: Do you believe that there are unique circumstances on this project that would**
9 **justify legal fees higher than those charged by local law firms?**

10 A: Yes. The Iatan projects are among the largest and most complex construction projects
11 the region has seen for many years. Recognizing that fact, it would not have been
12 prudent for KCP&L to hire the least cost construction counsel or favor local counsel
13 without regard to their knowledge or experience. Simply put, there are not many firms in
14 the United States that have significant experience with projects as large and complex as
15 the Iatan projects.

16 KCP&L needed to seek out construction lawyers that possess the requisite skill,
17 knowledge and experience to handle the legal issues that arise during the construction of
18 a large coal-fired power generation facility, regardless of where they are based. KCP&L
19 recognized that it would need guidance from construction lawyers who know the issues,
20 know how to avoid them, know how to handle them when they arise, and know how to
21 maximize the returns and minimize the losses. Lawyers who know the industry and the
22 select number of qualified vendors on these projects can provide better guidance to a
23 project owner than lawyers who do not. Lawyers who are familiar with the obligations

1 and limitations imposed on regulated utilities can provide better counsel to a regulated
2 utility than those who do not. KCP&L recognized that and hired Schiff Hardin.

3 Schiff Hardin's team for the Iatan projects possesses the requisite skill,
4 knowledge and experience to handle a project as large and complex as the Iatan projects.
5 Few firms in the United States have significant experience with these types of projects.
6 Schiff Hardin also has specific experience and knowledge with respect to the vendors on
7 the Iatan projects. Under these circumstances, as the *White* court recognized, it is
8 appropriate for KCP&L to seek out lawyers who specialize in this type of work even if
9 their hourly rates are higher than other lawyers.

10 **Q: Staff's rationale for its Schiff Hardin disallowance aside, do you have any concerns**
11 **about how Staff attempted to quantify its disallowance?**

12 A: Yes, I do. Staff came up with what it believes to be reasonable hourly rates for legal and
13 non-legal services. Staff then concluded that only 20% of Schiff Hardin's work in
14 support of the Iatan projects was legal and that the rest—80% was non-legal. Finally,
15 Staff applied what it determined to be reasonable hourly rates to the ratios it developed
16 for Schiff Hardin's legal and non-legal work. As I discuss above, KCP&L disagrees with
17 Staff's attempt to develop proxy hourly rates. Here, I discuss the flaws in the ratios Staff
18 developed for Schiff Hardin's legal and non-legal work.

19 **Q: What rationale did Staff use to reduce the amounts billed for services provided that**
20 **they considered "non-legal"?**

21 A: Staff contended that 80% of the services provided by Schiff Hardin was for work that
22 could be considered "project control" and that such services could have been provided at
23 a lower cost by other qualified professional firms.

1 **Q: What rationale did Staff use to reduce the amounts billed for services provided that**
2 **they considered “legal”?**

3 A: Staff contended that only 20% of the services provided by Schiff Hardin were for work
4 that was legal in nature and that KCP&L did not consider the use of other qualified legal
5 firms, which might have charged lower hourly rates.

6 **Q: What issues do you have with Staff’s positions?**

7 A: Staff’s estimate of the breakdown of Schiff Hardin services between legal and non-legal
8 services is significantly misstated, with a disproportionate portion being assigned to the
9 non-legal category, which significantly overstates Staff’s recommended disallowance. In
10 addition, Staff calculates the reduction in hourly rates using assumptions that are not
11 supported by an analysis of the actual invoiced costs.

12 **Q: Why do you believe that Staff’s estimate of the breakdown of Schiff Hardin services**
13 **between legal and non-legal services is significantly misstated, with a**
14 **disproportionate portion being assigned to the non-legal category?**

15 A: KCP&L completed an analysis of invoices paid to Schiff Hardin from July 2007 through
16 April 2010, the period used by Staff in its August 6, 2010 Report. Although Staff’s
17 August 2010 Report focused solely on charges to the Iatan 1 AQCS project, KCP&L’s
18 analysis covered all charges to both the Iatan 1 and Iatan 2 projects. The results of this
19 analysis are shown in Schedule CDB2010-2.

20 **Q: What did this analysis show?**

21 A: For the period reviewed, labor costs for services provided totaled \$9.9 million for slightly
22 more than 36,000 hours. These amounts include services provided by Schiff Harden’s
23 subcontractors, the primary of which was J. Wilson & Associates, Inc. Based on the

1 information identified on the individual invoices, the hours incurred pertained to Iatan
2 Oversight (23%), Iatan Project Control (35%), Contracts (7%), Contract Administration
3 (33%) and other (1%). Of the hours identified as "project control", 79% were incurred
4 by J. Wilson & Associates.

5 **Q: How does this breakdown compare with Staff's breakdown?**

6 A: As discussed beginning on page 80 of its Report, Staff contended that only 20% of the
7 total costs incurred by Schiff Hardin, after excluding all out-of pocket costs, related to
8 legal services while 80% applied to non-legal services such as project controls.

9 KCP&L's analysis indicates that only 35% of the hours billed relate to project controls,
10 and that those hours were substantially incurred, *i.e.*, 79%, by J. Wilson and Associates.

11 **Q: Why is it significant that the majority of project control services were provided by**
12 **J. Wilson & Associates?**

13 A: As shown on the analysis, the average billing rate by J. Wilson & Associates over the
14 period reviewed was \$174 per hour. In Staff's disallowance workpapers, they assign the
15 project control work (estimated at 80%) to four specific Schiff Hardin employees,
16 computing a weighted billing rate of \$322 per hour. The weighted rate was calculated
17 using assumptions regarding the percent of time incurred by each individual multiplied
18 by that individual's 2009 billing rate. Staff compared the \$322/hour weighted billing rate
19 with the \$185/hour weighted billing rate of LogOn Consulting, an excess of \$137/hour,
20 and computing an adjusted rate of 58% ($\$185/\322). Staff applied this 58% adjusted rate
21 to 80% of the incurred costs, after eliminating the out-of pocket costs. This resulted in a
22 proposed disallowance of 42% or \$5,353,124 for both Iatan 1 AQCS and Iatan 2. In
23 actuality, if the \$174/hour weighted billing rate of J. Wilson & Associates was compared

1 with the \$185/hour weighted billing rate of LogOn Consulting, there would be no
2 recommended disallowance.

3 **Q: How would the total hours have been distributed if only the hours incurred by**
4 **Schiff Hardin personnel had been considered?**

5 A: If only hours incurred by Schiff Hardin personnel were considered, then the statistics
6 would reflect Iatan Oversight (32%), Iatan Project Control (10%), Contracts (10%),
7 Contract Administration (46%) and other (2%).

8 **Q: Why is this significant?**

9 A: Staff contended that only 20% of the costs incurred by Schiff Hardin for Iatan projects
10 were legal in nature. KCP&L believes that it derived substantial benefit from having a
11 single construction law firm deliver the wide-range of required construction-related
12 services. Regardless, KCP&L believes that a substantially higher proportion of services
13 were legal in nature and could not have been completed equally well by non-lawyers. As
14 shown above, only 10% of services provided by Schiff Hardin related to project control.

15 **Q: How did Staff calculate the value of its proposed disallowance?**

16 A: As explained beginning on page 87 of the Iatan Report, Staff computed an estimated
17 weighted billing rate for four specific Schiff Hardin personnel, using assumptions
18 regarding the percent of time incurred by each individual multiplied by that individual's
19 2009 billing rate. This resulted in an assumed weighted billing rate of \$434 per hour.
20 Next, they computed comparable weighted billing rates for each person using the Laffey
21 Matrix, a listing of hourly rates for attorneys and paralegals of varying experience levels.
22 These comparable rates were reduced by 10% to apply an assumed volume discount that
23 Staff believed should have been negotiated for a project of this size. These two previous

1 steps resulted in a weighted billing rate of \$305 per hour. The \$305/hour represented
2 70% of the estimated Schiff Hardin weighted rate of \$434. The 70% was applied to the
3 20% of costs previously determined to be legal in nature to arrive at adjusted costs and a
4 30% proposed disallowance totaling \$936,179.

5 **Q: Do you agree with the method used to calculate this proposed disallowance?**

6 A: No. KCP&L believes that the rates paid to Schiff Hardin for services provided were
7 reasonable and appropriate. That being said, Staff used assumptions that were
8 inappropriate. The calculation of the weighted billing rate for Schiff Hardin was based
9 on only four lawyers and one paralegal. Additionally, the proportion of time for each of
10 these four individuals was estimated without supporting analysis. As indicated above, the
11 majority of the project control work was performed by J. Wilson & Associates. Only
12 2,700 of the 26,000 hours charged by Schiff Hardin personnel were for project control.
13 The remainder of the hours charged by the more than 17 people who charged time to the
14 project was for project oversight, contracts and contract administration. The actual
15 weighted hourly rate for the complete group of individuals was \$297/hour as opposed to
16 the \$434/hour weighted rate computed by Staff for the small subset of four people.

17 In addition, it would appear that Staff fundamentally misunderstands Schiff
18 Hardin's role. Staff's claim that "the selection of Schiff was primarily influenced by
19 KCPL management's desire to be prepared to defend and protect itself from any charges
20 of unreasonable, inappropriate or imprudence decisions and not about conducting the
21 day-to-day project management work required to complete a significant construction
22 project on time and on budget" is similarly unsupported and incorrect. Iatan Report, at p.
23 73. In fact, the exact opposite is true. Schiff Hardin's role was to support KCP&L in its

1 efforts to complete the Iatan projects on time and on budget. Schiff Hardin fulfilled that
2 role very well. It is not clear to me on what Staff bases its assertion.

3 **Q: How does this actual weighted rate/hour based on KCP&L's analysis of the actual**
4 **billed costs compare with the Staff's weighted rate/hour based on the Laffey**
5 **Matrix?**

6 A: The actual \$297/hour weighted rate for Schiff Hardin personnel is slightly less than the
7 \$305/hour rate calculated by Staff, even after applying a presumed volume discount to
8 the Laffey Matrix values. Consequently, such a comparison if done correctly would
9 result in no disallowance.

10 **Q: Do you have any other issues with how Staff calculated its proposed disallowance of**
11 **Schiff Hardin Costs?**

12 A: Yes. Staff disallowed \$2.8 million because they had not yet been provided copies of the
13 underlying invoices.

14 **Q: Do you agree with this proposed disallowance?**

15 A: No. The Company routinely accrues costs prior to the payment of the underlying
16 invoices. The amounts disallowed by Staff were accrued in June 2010, the Staff's cutoff
17 date, based on estimates received from Schiff Hardin of amounts not yet invoiced.
18 Subsequent to that time, all invoices disallowed by Staff have been received from and
19 paid to Schiff Hardin and have been provided to Staff.

1 *It was unnecessary and consistent with KCP&L policies not to solicit bids for the services*
2 *Schiff Hardin provided in support of the Iatan projects.*

3 **Q: Please respond to Staff's allegation that KCP&L should have solicited bids and**
4 **undertaken a formal RFP process to select a provider of legal services for the Iatan**
5 **projects.**

6 A: As a preliminary point, Staff's claim that KCP&L's decision not to solicit bids for this
7 work is a "violation of [KCP&L's] own procurement policies" is not correct. Iatan
8 Report, at p. 78. KCP&L's procurement policies authorize the Company to procure
9 professional or highly technical services without undertaking a formal RFP process. As I
10 discuss above, KCP&L recognized that the construction of the Iatan projects would be
11 challenging and complex. KCP&L recognized that it needed highly competent legal
12 counsel with knowledge and experience specific to projects similar to Iatan projects. One
13 would be hard pressed to find a team with as much expertise and experience in power
14 plant construction issues as Schiff Hardin.

15 The real question is whether Schiff Hardin's fees were reasonable in the context
16 of the facts and circumstances of their work in support of the Iatan projects. As I discuss
17 above, it was not only reasonable but prudent to hire Schiff Hardin even if other lawyers
18 could have been hired at a lower hourly rate. KCP&L was not required to solicit bids for
19 legal support for the Iatan projects and Staff's analysis fails to raise serious doubts that
20 imprudent costs were incurred as a result of KCP&L's decision to hire Schiff Hardin
21 without undertaking a formal RFP process.

1 *It was unnecessary and consistent with KCP&L's contract with Schiff Hardin not to*
2 *provide written approval of changes to Schiff Hardin's hourly rates.*

3 **Q: Please respond to Staff's allegation that KCP&L should have sent written approval**
4 **to Schiff Hardin of changes in its rates.**

5 A: As a preliminary point, Staff's claim that "KCPL intentionally decided not to enforce the
6 terms and conditions of its contract with Schiff that require rate increases to be approved
7 in advance" is not correct. Iatan Report, at p. 76. Staff's criticism is that KCP&L did not
8 provide written approval to Schiff Hardin in response to notifications of its changes in
9 rates. KCP&L's contract with Schiff Hardin did not require written approval of such
10 changes. In addition, my experience both at two large law firms and as in-house counsel
11 is that many lawyers change their hourly rates on an annual basis, and that while that is
12 always communicated to the client, I am not aware of it being a common practice for the
13 client to provide a written response to the lawyer "approving" the new rate. The more
14 common practice is to discuss the change with the client, and the client formally accepts
15 the change by paying the bill on which the new rates appear.

16 More to the point, the real question, which Staff's criticism does not really speak
17 to, is whether Schiff Hardin's fees were reasonable in the context of the facts and
18 circumstances of their work in support of the Iatan projects. As I discuss above, Schiff
19 Hardin's rates were reasonable and their fees were prudently incurred. The mechanism
20 by which KCP&L approved changes in hourly rates seems to have very little to do with
21 that.

1 *It was unnecessary and consistent with KCP&L's contract with Schiff Hardin not to*
2 *require Schiff Hardin to provide with its invoices a copy of the receipt for each expense.*

3 **Q: Please respond to Staff's allegation that KCP&L should have required Schiff**
4 **Hardin to submit with its invoices for legal services a copy of every receipt for**
5 **expenses.**

6 A: As a preliminary point, Staff's claim that KCPL failed to enforce the terms and
7 conditions of its contract with Schiff Hardin or violated its own procurement practices by
8 not requiring Schiff Hardin to provide copies of receipts with its invoices is not correct.
9 On this basis, Staff proposes to disallow 100% of Schiff Hardin's expenses. Staff's
10 recommendation is unreasonable and extreme. Staff is in essence saying that not a single
11 penny of Schiff Hardin's expenses should be recovered, not because they were imprudent
12 or excessive, but because Staff did not have receipts to look at. Again, the real question,
13 which Staff's allegations do not speak to, is whether Schiff Hardin's fees, including
14 expenses, were reasonable in the context of the facts and circumstances of their work in
15 support of the Iatan projects. As I discuss above, Schiff Hardin's fees, including
16 expenses, were reasonable and those costs were prudently incurred.

17 **Q: Did KCP&L apply reasonableness checks before reimbursing Schiff Hardin for**
18 **these expenditures?**

19 A: Yes. Each invoice submitted by Schiff Hardin included a section itemizing expenses,
20 including the date incurred, description of the expenditure, person incurring the
21 expenditure, city in which incurred, and the amount. Descriptions included local travel,
22 telephone tolls, duplicating and binding, meals, and other travel expenses for
23 air/lodging/car rental/parking/taxi. A summary of expenses by type was also provided.
24 KCP&L reviewed both the itemized and summarized listings to verify the reasonableness

1 of the charges. KCP&L also requested and received from Schiff Hardin two months of
2 expense receipts, which KCP&L also provided to Staff. KCP&L audited those expense
3 receipts and found no irregularities or other causes of concern.

4 **Q: Is that consistent with your experience working at law firms?**

5 A: Yes. Consistent with what Schiff Hardin has done here, the bills of the law firms I have
6 worked for included a list or summary of expenses, but not the actual receipts for those
7 expenses. Like here, expenses usually account for a very small portion of the bill.

8 **Q: What portion of the fees KCP&L paid to Schiff Hardin is for the expenses Staff
9 seeks to disallow?**

10 A: About 6% of the fees paid to Schiff Hardin have been to reimburse the firm for expenses
11 it has paid out in support of its work on the Iatan projects.

12 **Cushman & Associates' Fees Were Prudently Incurred**

13 **Q: Does Staff recommend to adjust the per hour rate of any vendor other than Schiff
14 Hardin?**

15 A: Yes, Staff also proposes an adjustment based upon the allegation that the hourly rates of
16 Cushman & Associates ("Cushman") were too high. Cushman is a consulting firm hired
17 to assist KCP&L in the development of the Iatan Project Execution Plan. Staff again
18 attempts to benchmark one professional service provider's hourly rate against another
19 without taking into account that there could be legitimate reasons for differences in their
20 rates. Staff simply comes up with what it believes Cushman's rate should have been and
21 proposes to disallow anything paid in excess of that rate.

22 **Q: Do you agree with Staff's proposed disallowances?**

1 A: No. KCP&L determined that Cushman was the best qualified firm to perform the
2 services required because of its previous consulting assistance to KCP&L on the
3 Hawthorn 5 boiler rebuild project.

4 **Q: If the Commission were to find in favor of Staff's position that the rate paid to**
5 **Cushman was not reasonable, do you agree with Staff's calculation of the amount of**
6 **the proposed disallowance?**

7 A: No. I believe Staff's calculation is overstated for two reasons. First, Staff computed a
8 weighted hourly rate for Cushman estimating that higher priced services provided by Mr.
9 Cushman were 70% of the total engagement while the lower priced services provided by
10 Mr. Cushman's associate represented 30% of the total costs. An analysis of the actual
11 invoiced amounts for services provided indicates that costs were incurred with a 57% to
12 43% ratio. Second, because Mr. Cushman and his associate were billed on a fixed cost
13 per day rate, Staff had to translate the daily rate to an hourly rate for comparison with the
14 hourly rate of LogOn Consulting. They did this assuming an 8-hour work day. I believe
15 that it would be more realistic to assume that these consultants worked a minimum 10-
16 hour day. Both of these factors lead to the conclusion that Staff's calculation of its
17 proposed disallowance is overstated, assuming the Commission endorses the underlying
18 rationale for the disallowance.

19 **It Was Appropriate for KCP&L to Provide Mileage Reimbursement For Employees**
20 **Commuting To The Iatan Project Site**

21 **Q: Do you agree with Staff's recommendation to disallow \$59,136 from the Iatan 1**
22 **project for mileage reimbursement paid by KCP&L to workers traveling to the**
23 **Iatan project site?**

1 A: No, I do not. Staff's adjustment is comprised of two parts, both of which are problematic
2 for different reasons. First, Staff proposes to disallow \$51,113 of mileage
3 reimbursements because the Iatan project site was designated as the recipient employees'
4 primary work location. As KCP&L has explained to Staff, even though the Iatan project
5 site was designated as the employees' primary work location, the employees were
6 assigned to Iatan on a temporary basis during the construction and start up of the project.
7 It is appropriate to reimburse mileage costs for these temporary assignments because it is
8 more cost effective than relocating the employees for a five-year period. To require
9 employees to work at the Iatan project site on a temporary, five-year project without
10 compensation for mileage costs would not have been equitable and likely would have
11 been viewed as a deterrent to working on the Iatan projects.

12 The remainder of Staff's proposed disallowance (\$8,023) is derived by arbitrarily
13 disallowing 10% of all other employees' mileage reimbursements, i.e., those employees
14 who did not have the Iatan project site designated as their primary work location. Staff's
15 rationale for disallowing 10% is the potential for errors or miscoding of mileage
16 reimbursements. KCP&L has a process in place to review mileage reimbursements.
17 KCP&L supervisors review employee mileage reimbursements for reasonableness.
18 KCP&L recognizes that some errors may not be detected in such a review. However, it
19 would not be cost effective to audit each reimbursement of every individual employee's
20 mileage records to the degree Staff suggests is necessary.

The Commission Should Reject As Arbitrary And Unsupported Staff's Proposed Disallowance To Address "Inappropriate" Charges That Potentially Might Exist

Q: Do you agree with Staff's recommendation to disallow \$25,000 and \$75,000 for Iatan 1 and Iatan 2, respectively, for what Staff describes as "inappropriate" charges?

A: No, I do not. This adjustment is similar to the arbitrary proposed disallowance of mileage reimbursements. Obviously any project of this size and scope will have some errors in coding of charges. However, other than the specific ones Staff has brought to the Company's attention and KCP&L has corrected there is no basis for this adjustment. Staff arbitrarily chose \$25,000 and \$75,000 for Iatan 1 and Iatan 2, respectively, because that amount "should be adequate in the Staff's opinion" That is not the sound basis for a disallowance and disregards the requirement for Staff to identify an imprudent act or decision, then quantify its impact on the cost of the Iatan projects. It is not apparent that any more "inappropriate" charges exist than those Staff has identified and the Company has corrected. Staff's proposal to disallow potential "inappropriate" charges that might exist is arbitrary, unsupported and should be rejected.

[REDACTED]

12 Q: **Does that conclude your testimony?**

13 A: Yes, it does.

Analysis of Costs for Iatan 1 and Iatan 2 Billed by Schiff Hardin through April 2010

	Dollars (c) - Labor Only		Group 1 (a)		Group 2 (b)		Other Schiff-Hardin		Subtotal Schiff Hardin		J. Wilson & Assoc		Other	
	Hours	% of Total	Hours	% of Group	Hours	% of Group	Hours	% of Group	Hours	% of Group	Hours	% of Group	Hours	% of Group
Iatan Oversight	9,231	25%	2,321	36%	5,553	41%	378	6%	8,253	32%	0	0%	978.25	100%
Iatan Project Controls	12,755	34%	81	1%	1,502	11%	1,071	18%	2,654	10%	10,101	100%	0.00	0%
Contracts	2,577	7%	746	11%	1,704	13%	127	2%	2,577	10%	0	0%	0.00	0%
Contract Administration	11,982	32%	3,201	49%	4,631	34%	4,150	71%	11,982	46%	0	0%	0.00	0%
Kiewit & Boiler Tube	475	1%	155	2%	163	1%	158	3%	475	2%	0	0%	0.00	0%
	<u>37,019</u>	<u>100%</u>	<u>6,504</u>	<u>100%</u>	<u>13,552</u>	<u>100%</u>	<u>5,883</u>	<u>100%</u>	<u>25,940</u>	<u>100%</u>	<u>10,101</u>	<u>100%</u>	<u>978</u>	<u>100%</u>
Percent - Group 1 and 2 only			<u>32%</u>		<u>68%</u>									
Staff Assumption			<u>20%</u>		<u>80%</u>									
Percent- All Billed Hours			<u>18%</u>		<u>37%</u>		<u>16%</u>		<u>70%</u>		<u>27%</u>		<u>3%</u>	
Weighted cost per hour			<u>\$401</u>		<u>\$286</u>		<u>\$208</u>		<u>\$237</u>		<u>\$174</u>		<u>\$322</u>	
Staff Assumption			<u>\$434</u>		<u>\$322</u>									

- a) Per Staff Report, the individuals in this group were performing true "legal" work.
- b) Per Staff Report, the individuals in this group were performing "project control" rather than true "legal" work.
- c) Dollars reflect total amounts billed for direct labor, excluding expenses. Disbursements made by Schiff Hardin to its subcontractors were omitted from the analysis of Schiff Hardin costs and were reflected separately in the analysis based on invoices submitted to Schiff Hardin by the subcontractors. Costs and hours are for the total project before allocation to joint partners.