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Witness: William H. Downey
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Sponsoring Party: Kansas City Power & Light Company
KCP&L Greater Missouri Operations Company
Case No.: ER-2010-0355/ER-2010-0356
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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: ER-2010-0355/ER-2010-0356

REBUTTAL TESTIMONY

OF

WILLIAM H. DOWNEY

ON BEHALF OF

**KANSAS CITY POWER & LIGHT COMPANY
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

**Kansas City, Missouri
December 2010**

***** [REDACTED] *** Designates "Highly Confidential" Information
Has Been Removed.
Certain Schedules Attached To This Testimony Designated "(HC)"
Have Been Removed.
Pursuant To 4 CSR 240-2.135.**

REBUTTAL TESTIMONY

OF

WILLIAM H. DOWNEY

Case No. ER-2010-0355/ER-2010-0356

1 **Q: Are you the same William H. Downey who submitted Direct Testimony in this**
2 **proceeding?**

3 A: Yes, I am.

4 **Q: Did you testify as to your education, experience and employment history in your**
5 **previously filed testimony?**

6 A: Yes.

7 **Q: Has any of your testimony regarding your experience or employment history**
8 **changed?**

9 A: No.

10 **Q: What is the purpose of your Rebuttal Testimony?**

11 A: The purpose of my Rebuttal Testimony is to rebut the Missouri Public Commission
12 Staff's ("Staff") proposed disallowances regarding: (1) the costs associated with the May
13 23 3008 crane accident; and; (2) those related to the ALSTOM Unit 1 and Unit 2
14 Settlement Agreements. My Rebuttal Testimony will also address the Direct Testimony
15 of Mr. Walter P. Drabinski, Vantage Consulting, witness for the Missouri Retailer's
16 Association in regard to: (i) KCP&L Management's prudent decision-making and
17 corporate governance in the development and construction of the Iatan Unit 2 Project;
18 and (ii) KCP&L's prudent management of the Iatan Unit 2 Project.

1 **Q: Please summarize your Rebuttal Testimony.**

2 A: In my Direct Testimony, I discussed in some length the management processes KCP&L
3 put into place to manage this extraordinary undertaking. During construction, the Iatan
4 Project meant jobs for 4,000 people in the Kansas City region who worked over 5.5
5 million manhours. Now that Iatan Unit 2 is in-service, with the new controls on Iatan
6 Unit 1, our customers will have 1350 mw of reliable, clean and inexpensive baseload
7 power available for decades into the future. The Iatan Project lasted over 5 years and was
8 extremely complex. To successfully complete this Project required KCP&L's Senior
9 Management¹ and project management teams to have access to timely and accurate
10 information at all times so that we could make prudent decisions under all possible
11 circumstances.

12 In my testimony today, primarily in my rebuttal to Staff's disallowances, I will
13 show how the processes that our team put into place to obtain information, understand
14 that information and make reasonable and prudent decisions helped us in times when the
15 Iatan Project was going well and also helped us when we were confronted with mitigating
16 the effects of a tragedy. When ALSTOM's erection crane for the Iatan Unit 1 Project
17 collapsed on May 23, 2008, the prospects for a successful Iatan Project were in serious
18 jeopardy. KCP&L's senior and project management teams' immediate concerns focused
19 on insuring that the site was safe and secure and insuring the workers that despite this
20 unfortunate event, the Iatan Project would proceed. We then turned our attention to
21 managing the risk of the wrongful death litigation, the OSHA investigation, and
22 managing ALSTOM's recovery, including examining impacts to the schedule and

¹ "Senior Management" consists of the Chairman, the President, the Chief Operating Officer, the Chief Financial Officer and the Company's Vice Presidents.

1 monitoring ALSTOM's replacement of the crane and assessment of the damage to the
2 ductwork. Any one of these issues could have derailed the Iatan Project and led to a
3 significant increase in costs, a substantial delay to the Project Schedule, or both. Using
4 the many processes we had in place from the Iatan Project's outset, we took decisive and
5 immediate action to engage technical and legal experts to help us navigate through these
6 challenges and make informed decisions. The most noteworthy results were: (1) KCP&L
7 was not cited by OSHA; (2) KCP&L was dismissed from the litigation, and (3) there was
8 no delay to the Unit 2 Project. However, Staff now seeks to disallow what KCP&L
9 expended to successfully protect the Iatan Unit 1 and Iatan Unit 2 projects at a harrowing
10 time.

11 Also, I will address Staff's short-sightedness by its seeking to disallow the cost of
12 our settlement with ALSTOM on the Iatan Unit 1 Project, which I refer to as the
13 "ALSTOM Unit 1 Settlement Agreement." Staff is simply wrong that there was no
14 benefit to the ratepayers from this settlement. The ALSTOM Unit 1 Settlement
15 Agreement was an important global resolution of virtually all outstanding issues that had
16 arisen on the Iatan Unit 1 Project. KCP&L recognized that for good reasons, the tie-in
17 outage for the new Iatan Unit 1 equipment (the "Unit 1 Outage") had increased in
18 complexity and accomplishing the work in rational, cost-effective manner required
19 review and joint approval by all the stakeholders in this Project. KCP&L's commercial
20 strategy hinged on implementing the recommendations of a group called "Tiger Team"
21 that was made up of representatives from ALSTOM, KCP&L, Kiewit, Burns &
22 McDonnell and Schiff Hardin. The Tiger Team's sole purpose was to analyze the
23 schedule for the Unit 1 Outage and make its recommendations for the best way to

1 sequence and perform the work in order to ensure minimal interferences between
2 contractors. We were also concerned that an extended Unit 1 Outage would greatly
3 impact the progress on Iatan Unit 2. Based on the status of construction and the need to
4 shift the craft labor on the construction of Unit 2, ** [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] ** We then

8 developed a strategy based on the best information available to resolve the issues on Iatan
9 Unit 1, resulting in the Settlement Agreement with ALSTOM that Staff now recommends
10 the Commission disallow. The benefits of the ALSTOM Settlement Agreement were
11 immediately felt and led to the successful completion of Iatan Unit 1 without the kind of
12 commercial disputes that too often get in the way of projects getting completed on time
13 or on budget. The settlement was fair and equitable, successfully dealt with ALSTOM's
14 claims and allowed KCP&L to mitigate a significant portion of the Iatan Project's risk.
15 This agreement also allowed both ALSTOM and KCP&L to mitigate the schedule impact
16 from the crane incident and later discovery of latent defects in the existing Iatan Unit 1
17 economizer casing in a cooperative and beneficial manner.

18 With respect to Staff's recommended disallowance of ** [REDACTED] ** for
19 liquidated damages that had not yet accrued against ALSTOM, Staff offers no evidence
20 that these liquidated damages would have been owed to much less collected by KCP&L.
21 As Company witness Davis testifies, there was a significant delay arising from the latent
22 defect in the economizer casing and a further delay caused by damage sustained to the
23 Unit 1 turbine, and as a result, I have been advised that based on accepted legal standards

1 under these circumstances, KCP&L would not be able to enforce the liquidated damages
2 against ALSTOM.

3 I also rebut the Staff's position regarding the ALSTOM Unit 2 Settlement
4 Agreement. This agreement was the end product of a management strategy to align both
5 ALSTOM's and Kiewit's work in support of a realistic start-up sequence and schedule.

6 Our project controls metrics showed that ** [REDACTED]
7 [REDACTED]** and based on the sequencing of the remaining work, there were many areas that
8 ALSTOM and Kiewit would have to provide each other access and share space
9 cooperatively to avoid future delays, let alone attempt to recover the time lost.

10 ** [REDACTED]

11 [REDACTED]
12 [REDACTED]** KCP&L evaluated both cost and schedule concerns in
13 evaluating a path forward to align ALSTOM and Kiewit's milestones. The management
14 process leading to the ALSTOM Settlement Agreement included: (1) engaging in
15 analysis and gathering relevant data to identify the least cost option for getting the
16 contractors working together to support high probability completion dates; (2) conducting
17 site meetings, executive level discussions, and facilitated sessions to identify areas of
18 agreement, refine schedule sticking points; (3) ** [REDACTED]
19 [REDACTED]**; and (4) ultimately reaching agreement with both ALSTOM and Kiewit
20 to integrated Construction Turn-Over ("CTO") and Milestone Dates that put the Project
21 in a position to be successfully completed.

22 We have explained in great detail our decision making process and the financial
23 balancing that must be done to develop a strategy to resolve these types of issues. I

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1 believe that the Project was in a much better position based on the execution of these
2 Settlement Agreements.

3 In my testimony, I will also explain Schiff Hardin's role on the Iatan Projects
4 which encompassed oversight, project controls and on-site legal counsel. During the
5 early development phase of the Iatan Projects, I contacted Tom Maiman, my former boss
6 who has been responsible for several power plant construction projects during his 40-
7 years at Commonwealth Edison ("ComEd"). Mr. Maiman has, as the expression goes,
8 seen it all and done it all, including overseeing the construction of two nuclear stations
9 and many of ComEd/Exelon's current and former assets. Due to the fact that KCP&L had
10 not undertaken a construction program the size and complexity of the Comprehensive
11 Energy Project in thirty years, Mr. Maiman recommended I contact Schiff Hardin to
12 provide KCP&L with its expertise in utility construction. As a result, I invited Schiff
13 Hardin to make a proposal to the executive team regarding their qualifications and
14 experience. Based on that recommendation and Schiff's proposal, KCP&L hired Schiff
15 to provide legal advice and oversight. Over the course of the Iatan Projects, Schiff has
16 been an invaluable asset to the Iatan Projects, providing advice, information and counsel
17 on a variety of legal, construction and regulatory issues.

18 I also testify that Walter Drabinski's Direct Testimony has: (1) disregarded or
19 failed to consider the actual decisions and decision-making processes that KCP&L's
20 Senior Management employed during the Iatan Unit 2 Project for making critical
21 decisions; (2) based certain conclusions regarding KCP&L's management of the Iatan
22 Unit 2 Project on incorrect or incomplete facts; and (3) has not made a connection
23 between his recommended disallowances and any alleged imprudent actions or inactions

1 by KCP&L on the Project. Overall, Mr. Drabinski has agreed that KCP&L prudently
2 spent the vast majority of the dollars KCP&L expended on the Iatan Unit 2 Project. With
3 that said, I disagree with the amount and the reasoning Mr. Drabinski used in
4 recommending a \$231 million disallowance of the Iatan Unit 2 Project costs. The
5 conclusory nature of his testimony in support of this recommendation is not supported by
6 specific facts. Company witnesses Kenneth Roberts, Daniel Meyer and Kris Nielsen
7 testify as to Mr. Drabinski's approach and the lack of a link between the allegations he
8 states and his recommended disallowance.

9 Throughout the development of the Comprehensive Energy Plan ("CEP")
10 Projects, we have sought to be fully transparent with Staff. As Company witness Chris
11 Giles testifies, we have provided Staff and all interested parties to the Regulatory Plan
12 with reports each quarter, starting with the first quarter of 2006. Company witness Mr.
13 Forrest Archibald testifies that he has met with Staff on 24 separate occasions to provide
14 cost updates and explain our Cost Control System, not counting the 19 quarterly meetings
15 our team has attended. Our Project Team has met with Mr. Drabinski on 17 occasions
16 and provided thousands of pages of documents in an organized manner. However,
17 Mr. Drabinski has taken KCP&L's transparent reporting of the facts and used selected
18 information that unfairly characterizes KCP&L actions. Mr. Drabinski uses 20/20
19 hindsight to criticize KCP&L's management decisions while overlooking the methods,
20 processes and procedures that KCP&L developed and used to mitigate and avoid cost
21 increases and schedule delays on a very complex undertaking. I do not believe that Mr.
22 Drabinski has provided the Commission with an accurate portrayal of the oversight,
23 decision-making and management KCP&L used on the Iatan Unit 2 Project.

1 I also explain the components of KCP&L's decision making process and how
2 Drabinski misrepresents: (1) the available options and basis for KCP&L's decision
3 regarding the Project's contracting methodology; (2) the circumstances and basis for
4 KCP&L's decision to utilize Kiewit as the primary Balance of Plant ("BOP") contractor;
5 and (3) resolution of the Iatan Unit 2 schedule in mid-2009 by the ALSTOM Unit 2
6 Settlement Agreement and the Kiewit Unit 2 Contract Amendment. I also respond to
7 numerous misstatements and criticisms in Mr. Drabinski's testimony regarding KCP&L's
8 management of the Project.

9 **Q: Are you familiar with Staff's Report regarding the Construction Audit and**
10 **Prudence Review for the Iatan Construction Project for Costs Reported as Of June**
11 **30, 2010 ("Staff's Report")?**

12 A: Yes, I have reviewed it. My testimony in this case directly responds to Staff's general
13 allegations regarding KCP&L's management of the Project, as well as several of Staff's
14 proposed specific disallowances, including: 1) **** [REDACTED] **** for the May 23, 2008
15 Crane Incident; 2) **** [REDACTED] **** for KCP&L's Settlement Agreement with ALSTOM
16 regarding Unit 1; 3) the **[REDACTED] **** disallowance for KCP&L's Settlement
17 Agreement with ALSTOM regarding Unit 2; and 4) the \$8.4 million related to Schiff
18 Hardin's work on the Project. I believe that these were all prudent project costs, and
19 were not incurred due to the mismanagement or imprudence of KCP&L. I will discuss
20 these issues in the order that they are discussed by Staff in Staff's Report.

21 **KCP&L'S PRUDENT MANAGEMENT OF THE IATAN PROJECT**

22 **Q: Staff's Report, beginning on Page 21 discusses the Project Management History of**
23 **the Iatan Project. Do you agree with Staff's conclusions?**

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1 A: No I do not. Staff discusses three issues that it believes “made the risks of cost overruns
2 and schedule delays” high. The issues identified by staff are: 1) KCP&L’s decision to
3 “fast-track” the project; 2) relationship difficulties among the project team; and 3)
4 recitation of issues raised in the March 2007 Risk Assessment Report prepared by E&Y.
5 Not only does Staff fail to identify all of the correct facts and circumstances surrounding
6 these issues, it draws unsupported conclusions as to their potential impacts on the Iatan
7 Project. I believe that KCP&L was careful and prudent in its overall management of the
8 Iatan Project.

9 A: **Can you provide a summary of why you believe KCP&L prudently managed the**
10 **Iatan Project?**

11 A: Yes. I discuss in my Direct Testimony in this case and in ER-2009-0089 Docket (the
12 “0089 Docket”) how KCP&L established effective corporate governance for the Iatan
13 Unit 2 Project.

14 After the approval of the Regulatory Plan that includes its Stipulation and
15 Agreement (Case No. EO-2005-0239, referred to as the “S&A”) issued on July 28, 2005
16 and effective on August 7, 2005, Executive Management began supplementing its
17 decision making process by forming a talented project management team and proper
18 oversight of the Comprehensive Energy Plan projects including Iatan Unit 2. I have
19 previously testified that “Senior Management recognized that it needed to adopt a
20 structured approach to the management of the contractors on the CEP Projects that
21 included heavy owner involvement. During the early CEP Project planning, KCP&L’s
22 Senior Management recognized that KCP&L did not at that time have all of the internal
23 resources experienced in construction management necessary to oversee projects of the

1 size and complexity that were contemplated in the CEP Projects.” See Downey Direct
2 Testimony at p. 3. We recognized that having a highly qualified construction
3 management team provides a critical link to information flow to Senior Management. As
4 a result, we took the following steps to increase KCP&L’s project management
5 capabilities, project leadership, management, and oversight on the Project including:

- 6 • The prudent management of the Iatan Project begins with the project team.
7 KCP&L took great pains to hire talented project management staff with
8 experience in large utility construction projects for the Iatan Project.
9 Company witnesses Brent Davis and Bob Bell discuss in detail KCP&L’s
10 ability to put together an experienced team in a challenging and highly
11 competitive economic environment where talent and experience were in
12 short supply. KCP&L performed internal Audits to help determine the
13 best organizational structure as well as what roles needed to be filled.
- 14 • Forming the EOC from its Senior Management ranks to provide oversight
15 from a management perspective. As I described in my prior testimony, the
16 purpose of the EOC is: (1) to inform KCP&L’s Senior Management of the
17 ongoing work on the CEP projects to ensure that our investments were
18 made wisely and prudently; and (2) to ensure that KCP&L’s Senior
19 Management contributed to the decision-making process and vetted the
20 ongoing activities of the CEP projects. (Downey Direct Testimony at
21 pp. 4-5.)
- 22 • Engaging external oversight from Schiff Hardin, LLP (“Schiff”), who,
23 among other key services, has: assisted with our procurement strategy and

1 contracting for the work on the Project; assisted in developing project
2 control metrics and processes for gauging progress; and provided reports
3 on the Project's progress independent from our project management team.
4 Additionally, one of Schiff's primary responsibilities in its oversight role
5 is to identify the risks and benefits of major decisions on the Iatan Project
6 in order to assist KCP&L in processing and thoroughly vetting those
7 issues. (Downey Direct Testimony at pp. 8-9)

- 8 • Assigning KCP&L's Internal Audit Department, as supplemented by Ernst
9 & Young ("E&Y"), to provide both Senior Management and the KCP&L
10 Board of Directors with oversight of the Iatan Project. Internal Audit's
11 focus was on the early evidence that the processes that were put into place
12 were effective, which allowed our project management team to increase its
13 effectiveness. (Downey Direct Testimony at p. 8)

14 The measures we took as a Company significantly strengthened our capabilities
15 for managing the CEP Projects which directly improved the quality of information that
16 the Senior Management received to support our decision making. In addition, I felt
17 strongly that we should instill in the CEP Projects many of the lessons learned by utilities
18 who engaged in the last utility construction boom of the 1970s and 1980s. Acting on
19 these lessons meant we needed to create a culture of transparency, continuous
20 improvement and self-disclosure. In my view, these are some of the qualities an
21 organization needs to develop to have sound processes and prudent management
22 techniques.

1 **Q: What was KCP&L decision-making process with respect to “fast-tracking” the**
2 **project.**

3 A: First, KCP&L’s decision to fast-track the project was tied into its overall contracting
4 strategy. As I will discuss later in my testimony, the pros and cons of KCP&L’s decision
5 to employ a multi-prime contracting strategy were carefully weighed and considered by
6 KCP&L given the circumstances known to us at the time. We sought out the advice of
7 our consultants including Schiff Hardin and Burns & McDonnell to choose a project
8 contracting strategy that had the best chance of success given the booming market at the
9 time. The prudence of our decision making is also discussed in detail by Company
10 witnesses Chris Giles and Kenneth Roberts. Both will discuss KCP&L’s analysis and
11 process for making this decision.

12 **Q: Staff quotes heavily from a report issued by GPE’s Internal Audit Group title “Risk**
13 **Assessment Report.” Do you believe this report documents KCP&L’s imprudent**
14 **management of the Iatan Project?**

15 A: No, I do not. The purpose of the Risk Assessment was so that KCP&L could identify
16 risks and employ strategies to mitigate or avoid those risks at an early stage in the Iatan
17 Project. It is only possible to fix problems if you know about them. This Risk
18 Assessment was performed at the very beginning of the construction of the project,
19 before ALSTOM, our most significant contractor, had even mobilized its construction
20 forces. In addition to misunderstanding the purpose and ignoring the timing of the Risk
21 Assessment, Staff most notably fails to determine whether KCP&L was successful in
22 mitigating or avoiding the issues raised in the Risk Assessment, or even if any of those
23 issues actually impacted the Iatan Project. Staff’s approach regarding this Risk

1 Assessment is tantamount to it finding a warning label on a bottle of pills and assuming
2 that all of the potential side effects listed actually occurred without ever confirming that
3 the patient was ever truly sick.

4 **Q: Staff alleges that there was a six month delay to the project in 2005. Do you agree?**

5 A: No. Throughout the second half of 2005, KCP&L was continuing with its development
6 of the Iatan Project, and hired Burns & McDonnell and Black & Veatch to develop
7 specifications and bid documents for the Project's major equipment, including the
8 Turbine, Boiler and AQCS equipment. KCP&L had gone out for bid on these three items
9 before the end of 2005. By the end of 2005, we had in place a strategic schedule that
10 allowed our team to organize and prioritize its work. This was critical in helping KCP&L
11 stay on its target schedule. The proof that the Iatan Project was not delayed is the fact
12 that each of the most important early milestones were successfully met each of the Iatan
13 Project's most important early milestones including turn-over of the major foundations
14 on time to ALSTOM and Kiewit. It took a lot of hard work and sophisticated systems
15 had to be developed and put into action to accurately track the work, but these challenges
16 were met.

17 **Q: Was there a "struggle between the Senior Director of Construction and the Project
18 Manager" that caused a delay of five months on the Iatan Project.**

19 A: No. Staff does not identify the issue or articulate how this could have caused a delay to
20 the project. In the first half of 2006, KCP&L continued to purchase the major long-lead
21 equipment for the Project and favorably negotiated the most important contract on the
22 Iatan Project with ALSTOM. We were also very fortunate to have Brent Davis available

1 at that time to join the Iatan Project. Brent's steady leadership has been a constant since
2 May of 2006.

3 **MAY 23, 2008 CRANE INCIDENT**

4 **Q: What is your understanding of Staff's recommended disallowance related to the**
5 **May 23, 2008 Crane Incident as discussed on page 41 of Staff's Report?**

6 A: It is my understanding that Staff has identified this as a proposed disallowance for Iatan
7 Unit 1 because the accident was caused by a subcontractor of the EPC contractor,
8 ALSTOM, who is responsible for the engineering, procurement of the Air Quality
9 Control System equipment on Unit 1 and 2 and the boiler on Unit 2. As a result, Staff
10 argues that KCP&L should seek reimbursement for those costs from ALSTOM.

11 **Q: Do you agree with Staff's assessment?**

12 A: No, I do not. KCP&L does agree that it was ALSTOM who was responsible for the
13 crane accident. As a result, KCP&L incurred those costs through no fault of its own, and
14 in fact worked hard in the aftermath of the accident to ensure that ALSTOM carefully
15 managed its work to mitigate the costs that it would incur as a result of this incident.
16 KCP&L has attempted to recoup these costs from ALSTOM, but so far, has been
17 unsuccessful.

18 **Q: In order to provide the Commission with some context, could you please describe**
19 **the May 23, 2008 Crane Incident?**

20 A: On May 23, 2008, one of the largest mobile cranes in the world, a Manitowoc 18000
21 crane, collapsed while performing an unloaded test lift on the Iatan project (the "Crane
22 Incident"). As a result of the collapse, one person was killed and others were injured.
23 ALSTOM's subcontractor was operating the crane at the time of the incident. The site

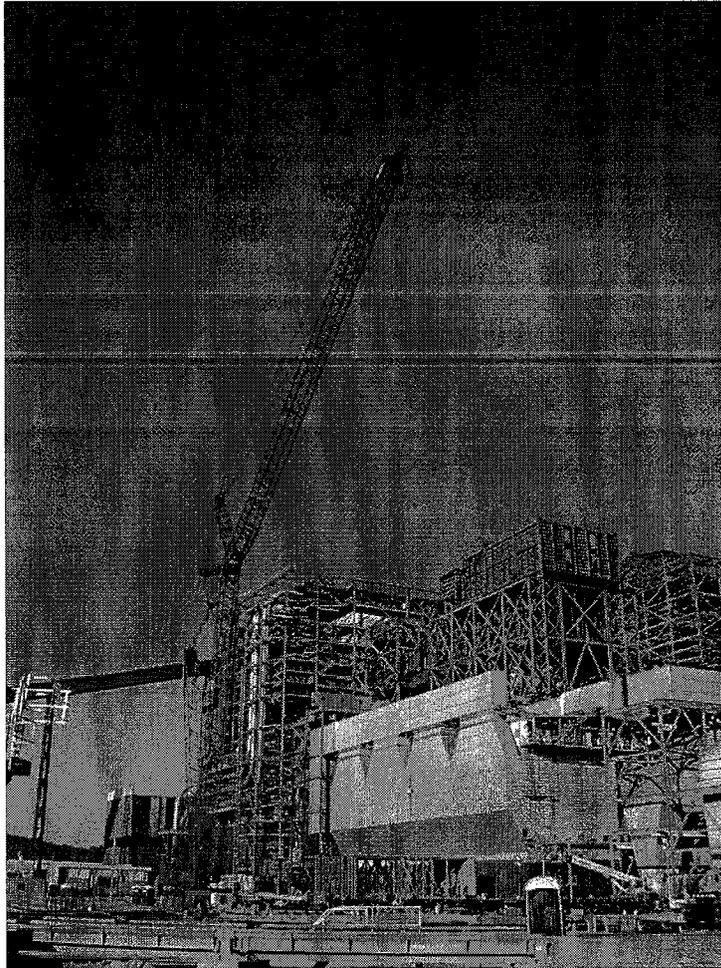
1 was evacuated and all construction work suspended in order to quarantine the area and
2 create an appropriate access, inspection, and preservation plan with ALSTOM, the crane
3 owner, the Occupational Safety and Health Administration (“OSHA”), and other
4 interested parties. Construction work at the Iatan site resumed on Tuesday, May 27,
5 2008, however, access to the quarantined area was not restored until after the crane was
6 dismantled and moved to a secure laydown yard on KCP&L’s property.

7 **Q: What work was ongoing at the time on the Iatan Project?**

8 A: This was a critical time in the Iatan Project. ALSTOM used this crane to erect ductwork
9 and supply materials needed for the new Iatan Unit 1 SCR, which it was installing.
10 ALSTOM’s work had fallen behind prior to the Crane Incident and it was in the process
11 of recovering when this tragedy occurred. At the same time, ALSTOM, Kiewit and the
12 other contractors were very busy on Iatan Unit 2. Though we were still negotiating the
13 financial terms of the Iatan Unit 1 Settlement Agreement, we had obtained ALSTOM’s
14 agreement to work to a rebaselined schedule that accounted for changes to the upcoming
15 Unit 1 Outage.

16 **Q: What was the location of the crane when it collapsed?**

17 A: Below is a picture of the crane only days prior to the Crane Incident. This picture
18 provides perspective of the mammoth size of the crane and its position adjacent to Iatan
19 Unit 1 at the time of the collapse. The crane was used to erect all of the new grey colored
20 steel in the picture below.



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Below is an overhead picture of the damaged crane taken after the incident. The crane was directly adjacent to Iatan Unit 1, which was in operation at the time. In fact, when the crane collapsed, it damaged some of the exterior casing to Iatan Unit 1's existing precipitator. The crane's boom fell on a large piece of ductwork that ALSTOM was preparing to install in the unit.



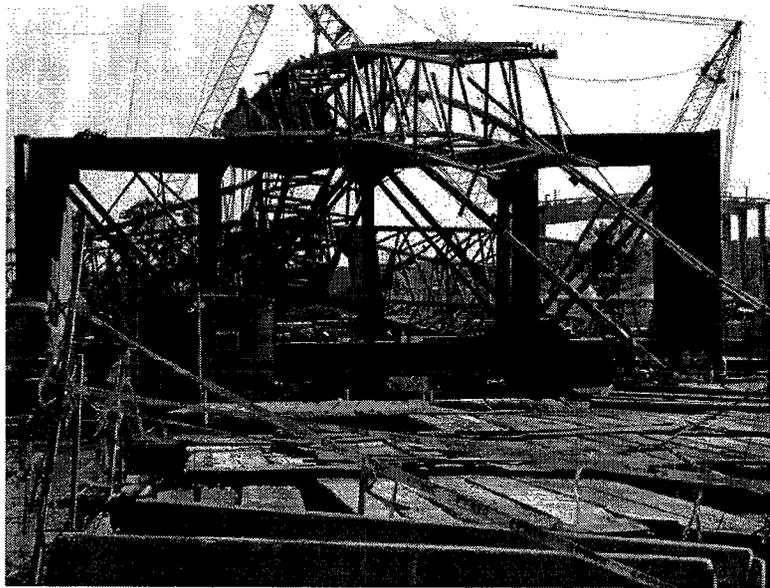
1

2 **Q: Please describe KCP&L's considerations in evaluating what management action to**
3 **take, including mitigating potential costs, after the Crane Incident.**

4 A: KCP&L's initial focus was fulfilling its obligation to addressing the immediate needs of
5 the interested parties in the investigation of the incident and related administrative and
6 legal actions, resuming construction as soon as practicable and mitigating construction
7 delays, and recovering any delays to the Project schedule that did occur. We also had to
8 take immediate steps to insure the workers that Iatan was a safe place to work. In its
9 evaluation, KCP&L was aware of several factors that had the potential to cause a
10 tremendous impact on the Iatan Unit 2 Project Schedule. The factors that could have
11 caused a delay to the Iatan Unit 2 Project include and influenced KCP&L's decision-
12 making included:

- 1 • Wrongful Death Litigation. The widow of the deceased worker retained legal
2 counsel almost immediately after the Crane Incident. Based on her subsequent
3 legal action and the potential for additional claims against KCP&L, KCP&L had a
4 legal obligation to preserve the “evidence” and provide all interested parties with
5 access to the accident site, the equipment, and relevant documents. The biggest
6 risk of delay arising from the Crane Incident was that a court would issue an
7 injunction either disrupting or halting work on the Site pending the completion of
8 litigation discovery. The likelihood of a party seeking an injunction to preserve
9 the accident site cannot accurately be predicted, but directly relates to any
10 interested party’s perception regarding KCP&L’s cooperativeness and
11 responsiveness to site access and other requests. KCP&L determined that a
12 proactive approach best served the project’s interests. KCP&L believed that if it
13 put together a coordinated and cooperative strategy that included all interested
14 parties, it could reduce the possibility of a party seeking to halt the project. An
15 injunction would have caused significant disruption and increased the chance
16 KCP&L would receive contractor delay or suspension claims, as well as
17 jeopardized the current Project schedule.
- 18 • OSHA Investigation. OSHA launched an investigation immediately after the
19 Crane Incident and KCP&L had a duty to cooperate with that investigation which
20 required providing OSHA representatives with access to the area. Depending on
21 the results of its investigation, OSHA had the authority to shut down work at the
22 Site pending corrective action.

- 1 • Replacement Crane. ALSTOM had to find a replacement crane with large
2 enough lifting capacity and reach to complete its work on Iatan Unit 1.
3 ALSTOM's executives explained to me at the time that its original schedule was
4 built around being able to use the 18000 because of its extraordinary combination
5 of lifting capacity and its being able to reach high in the air. There are a limited
6 number of large, mobile cranes the size of the Manitowoc 18000 in the world, and
7 at the time of the incident, KCP&L and ALSTOM believed that most, if not all, of
8 the potential replacement Manitowoc 18000 cranes were currently engaged on
9 other construction projects. As a result, ALSTOM needed to find a crane that
10 had both the lifting capacity and reaching capability similar to the 18000 or create
11 a recovery plan that altered the size of the duct pieces to permit a smaller crane to
12 perform the lifts.
- 13 • Damaged Ductwork. As the pictures provided above show, the crane collapsed
14 on top of a piece of the steel ductwork needed for the SCR. Below is a picture of
15 the damaged ductwork with a large section of the boom still on top:



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2 Visual inspection of the duct prior to the removal of the crane revealed that the
3 duct has sustained damage, but the extent of the damage would not be known
4 until the crane was removed and metallurgical testing could be conducted. The
5 testing would evaluate the structural integrity of the duct and provide additional
6 information necessary to determine whether the damage could be repaired. If the
7 damage was too extensive, ALSTOM would have to obtain materials and
8 fabricate a replacement duct. Because of demand, steel was in short supply, and
9 obtaining replacement pieces could have caused a several month delay to
10 fabricate a replacement.

11 **Q: What management actions did KCP&L take based on the considerations above?**

12 A: In order to minimize the occurrence of the potential delays caused by the factors
13 described above, KCP&L took immediate action to engage both legal and technical
14 experts to develop a strategy to address all interested parties' concerns with the minimal
15 disruption to the construction work. This plan included engaging: (1) metallurgical
16 experts to develop a strategy to preserve important information from the scene including

1 3-D scans of the incident area and to draft a disassembly and removal plan to relocate
2 the crane pieces to a secure laydown area for further examination and inspection; (2)
3 multiple legal experts to draft and negotiate an information sharing agreement between
4 the interested parties, a protocol to catalogue the artifacts on the site, a schedule for each
5 party to have access to the crane and the site for inspections and manage any litigation
6 arising from the incident; and (3) additional security to the Crane incident site and the
7 laydown yard to preserve the integrity of the evidence and ensure no unauthorized access
8 to the equipment or artifacts.

9 **Q: What were the benefits of KCP&L's project management's actions?**

10 A: All delays or potential delays from the Crane Incident to the Iatan Project were
11 effectively mitigated. ALSTOM acted quickly to locate a replacement crane and repair
12 the damaged ductwork. ALSTOM and KCP&L worked on re-sequencing the Unit 1 pre-
13 Outage schedule that allowed ALSTOM to maintain its schedule without any financial
14 burden to KCP&L. Additionally, OSHA did not issue a citation to KCP&L for the Crane
15 Incident. KCP&L has been dismissed from the wrongful death litigation arising from the
16 Crane Incident. KCP&L is not currently involved in any action or proceeding alleging its
17 liability or wrongdoing associated with the Crane Incident.

18 **Q: Could the Crane Incident have caused a serious delay to the Iatan Projects?**

19 A: Absolutely. It cannot be disputed that the Crane Incident had the potential of both
20 derailing the Iatan Unit 1 Outage and jeopardizing the Unit 2 construction schedule. If
21 you had asked me in early June of 2008 whether the Iatan Project would be adversely
22 impacted as a result of the Crane Incident, I would have stated that there was a strong
23 possibility that the Project could face a very lengthy delay, along with contractor claims

1 for additional costs. KCP&L demonstrated decisive leadership by utilizing industry
2 experts to develop a plan and present accurate and timely information, appropriately
3 evaluated the potential courses of action, took immediate action to minimize and/or
4 mitigate any potential delay, and managed the recovery plan and the contractors to
5 recover the schedule. The schedule recovery from this incident demonstrates that
6 KCP&L had instituted the processes, procedures, and strong cooperative relationship
7 with the contractors to overcome one of the most challenging circumstances that can
8 occur on a construction project.

9 **Q: Did KCP&L inform the Staff of the incident and the activities KCP&L was**
10 **pursuing in order to mitigate the potential impacts and costs?**

11 A: Yes. I believe representatives from KCP&L including Curtis Blanc, Carl Churchman and
12 Brent Davis informed the staff of the incident the day it happened. Representatives from
13 Staff toured the site within a few days of the accident to see the damage. Additionally,
14 KCP&L informed the Staff of its activities in its Quarterly Reports and at each of its
15 Quarterly meetings. For example, in KCP&L's 2nd Quarterly Report for 2008, KCP&L
16 states:

17 *In order to assess the impact of the accident on the work, a scheduling*
18 *team, made up of representatives from ALSTOM, Kiewit, the Start-up and*
19 *Commissioning Team, and the Project Controls Team, conducted meetings*
20 *to determine the schedule impact to the Iatan Unit 1 2008 fall outage. This*
21 *team completed a comprehensive activity-by-activity review of the*
22 *remaining pre-outage and outage work to determine what, if any, impact*
23 *the incident would have on the outage start date, duration and labor*
24 *requirements. Upon completion, it was the scheduling team's*
25 *determination that all construction and outage milestone dates could be*
26 *maintained. There were two areas of concern identified relative to the*
27 *Iatan Unit 1 SCR construction: the replacement of the crane and fixing*
28 *damage to a piece of ductwork for the SCR that was on a fabrication table*
29 *in the area of the collapse. These concerns have now been mitigated.*

30 See KCP&L 2nd Quarter Report 2008, attached as Schedule WHD2010-4 at p. 25.

1 **Q: Did KCP&L incur the costs identified by Staff as a result of the Crane Incident?**

2 A: Yes. As of June 30, 2010, KCP&L incurred approximately ** [REDACTED] ** of
3 additional costs arising from the Crane Incident.

4 **Q: Please explain why you believe that the costs incurred by KCP&L due to the Crane
5 Incident were prudently incurred and not unreasonable?**

6 A: As I have explained, KCP&L's mitigation of the impacts of the Crane Incident was one
7 of our management's major successes on the Iatan Project and an example of our
8 management's ability to effectively and actively manage the contractors. Our
9 management team immediately took action and did everything in its power to minimize
10 the potential impact of this very unfortunate event, including preventing claims that could
11 have easily have been made by the contractors. ** [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] ** See Ken Roberts

16 Rebuttal Testimony, Docket Number 0089, p. 14, line 20 to p. 15, line 5. Without such

17 data, KCP&L might not have been able to defend against such a claim, the schedule may

18 not have been recovered, or both. ** [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

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[REDACTED]

[REDACTED] ** KCP&L agrees that to the extent it does recoup some of the costs it incurred related to the Crane Incident from ALSTOM, KCP&L will credit that money back to the cost of the plant.

JULY 18, 2008 ALSTOM UNIT 1 SETTLEMENT AGREEMENT

Q: What is your understanding with respect to Staff's proposed disallowance related to KCP&L's Settlement Agreement with ALSTOM related to Unit 1?

A: In the aggregate, Staff proposes a disallowance of ** [REDACTED] ** related to this Settlement Agreement. ** [REDACTED] ** is for the actual amount paid to ALSTOM under this Settlement Agreement and another ** [REDACTED] ** for liquidated damages that Staff argues KCP&L did not collect from ALSTOM. See Staff Construction Audit and Prudence Review Report (November 3, 2010) at p. 57, lines 22-28 and p. 59, lines 16-18. A copy of the Settlement Agreement is attached as Schedule WHD2010-5.

Q: Do you agree with Staff's assessment that it was not prudent for KCP&L to enter into this Settlement Agreement with ALSTOM?

A: No, I do not. This Settlement Agreement is part of KCP&L's active management strategy over its Contractors. KCP&L used this strategy to identify problems and commercial issues early and to resolve them in a manner that is the most beneficial to the Project. I believe that had we not entered into the Settlement Agreement with ALSTOM

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1 we would have been exposed to a much larger increase in the Iatan Unit 1 Project's costs,
2 the strong likelihood ALSTOM or another contractor would have delayed the Project, as
3 well as a deterioration of the relationship and cooperation between KCP&L and
4 ALSTOM that was necessary for a successful completion of the Iatan Project.

5 **Q: Please describe KCP&L's project team's active management of ALSTOM.**

6 A: As discussed by Company witness Brent Davis in pp. 20-24 of his Direct Testimony,
7 KCP&L's project management team aggressively managed ALSTOM's work on a daily
8 basis through the Plan of the Day meetings that held the contractors accountable for their
9 performance and required daily reporting of progress on key activities. The project
10 management team also held detailed, near-daily meetings with ALSTOM's project
11 management team to discuss earned value, productivity, completion of open tasks,
12 rework, and labor inefficiencies. Additionally, KCP&L initiated a weekly meeting with
13 the senior project management of ALSTOM, Kiewit, Burns & McDonnell and Kissick
14 ("Senior Management Meetings"). The purpose of the Senior Management Meetings was
15 to look ahead several weeks in the construction process to identify potential conflicts and
16 other construction issues and achieve timely resolution.

17 To the extent that KCP&L's project management team was unable to resolve
18 certain issues, KCP&L's Senior Management became involved with the major
19 contractors at an executive level to resolve commercial issues to ensure that such issues
20 could not disrupt the progress of the Project. This involvement included engaging the
21 services of Jonathan Marks, a nationally-renowned mediator to provide both an
22 assessment of the validity of the relative positions of the parties, advice as to the best path
23 forward to resolving the issue, and to act as a neutral party to aid the settlement process.

1 **Q: What is the purpose of KCP&L’s active management approach?**

2 A: Our main purpose in actively managing the contractors on the Project was to enforce the
3 negotiated contract terms with the vendors while maintaining the communication and
4 transparency necessary to coordinate the work and identify risks and mitigation strategies
5 as needed. KCP&L’s management and decision-making process is characterized by
6 gathering and analyzing data regarding the status of the Iatan Project from multiple
7 sources including: the project controls systems; the project leadership team personnel; the
8 contractor’s personnel; third party oversight groups; and market factors, if applicable.
9 When an issue with a contractor arose on the Iatan Projects, KCP&L evaluated not only
10 the circumstances of each individual issue and associated decision, but the impact that the
11 decision would have on the broader context of commercial strategies and the construction
12 progress of the overall Projects.

13 As anyone in the construction industry can confirm, while the contract terms may
14 provide certain “legal” protections, mere words on the page – no matter how
15 comprehensive, complete, and favorable to the owner – do not ensure the timely and
16 successful completion of a complex construction project, and the owner is always
17 responsible for the ultimate success or failure of the project. The value of strong contract
18 terms manifest themselves in two instances: (1) during the Iatan Project when engaged in
19 commercial negotiations or alternative dispute resolution setting like the Facilitations
20 KCP&L engaged in with Jonathan Marks; or (2) in litigation. The later setting, referring
21 the dispute to a third party neutral (whether arbitrator or judge), is a risky, time
22 consuming, and cost intensive course of action. A contract dispute can take years to
23 resolve and cost a significant amount of money in attorneys fees and related costs. More

1 importantly, if a dispute cannot be resolved by the project team, communication with the
2 contractors can become strained, deteriorate, and cease to exist, and the flow of
3 information from the contractors needed by the owner to verify their work and progress
4 can stop dead. In the event of a communication breakdown, the likelihood that disputes
5 regarding change orders, scope, warranty issues, punchlist items and other closeout issues
6 become cumbersome, contentious and difficult to resolve increases significantly.

7 Based on those considerations, KCP&L's management approach for the Iatan
8 Project has been based on fostering open communication with the contractors, holding
9 the contractors accountable for their performance and moving disputed issues to
10 resolution during the Project so that they do not fester and at a time when all of the facts
11 are fresh. The success of this approach has manifested itself in these settlements with
12 ALSTOM. As KCP&L's witnesses have testified, KCP&L engaged in two significant
13 dispute resolution processes with ALSTOM during the Project resulting in settlement
14 agreements addressing all disputed issues within in a given timeframe. These settlements
15 have been criticized by the Staff and form the basis of a large recommended disallowance
16 from the Iatan Project's costs. *See* Staff Construction Audit and Prudence Review Report
17 (November 3, 2010) ("Staff Report") at pp. 54-65. It is undisputed that there were
18 significant commercial issues giving rise to the facilitated sessions leading to the
19 ALSTOM Unit 1 Settlement Agreement. While the Staff has taken issue with the
20 increases to ALSTOM's contract price and incentive payments associated with those
21 settlements, the fact that KCP&L actively engaged in the following steps to manage
22 ALSTOM helped the Project be successful. These steps included: (1) timely commercial
23 responses through correspondence and other project documentation addressing the

1 disputed issues; (2) meetings of the project teams to attempt to resolve the disputed
2 issues; (3) executive level discussions including development of a strategy to pursue
3 global resolution of existing commercial issues; (4) formal facilitated meetings with one
4 of the best mediators in the country; and (5) ultimately, timely resolution of the disputed
5 issues that aligned the major contractors' interests with KCP&L's and put the Project in a
6 position to be successful. These steps and the effort KCP&L expended demonstrate that
7 KCP&L's philosophy of active management of the contractors was not merely a mission
8 statement, but an active and intensive process involving many layers of the project team
9 and corporate organization.

10 **Q: Describe the events and circumstances KCP&L considered in deciding to negotiate**
11 **the ALSTOM Unit 1 Settlement Agreement.**

12 A: KCP&L recognized that since it had entered into the Contract with ALSTOM at the end
13 of 2006, the complexity of the work on the Iatan Unit 1 Outage had increased
14 significantly as KCP&L recognized the opportunity to use this outage to optimize the
15 unit's performance and reduce future performance risk. The added Unit 1 Outage scope
16 included: (1) economizer surface area addition, necessary for the Unit 1 SCR installation;
17 (2) installation of turning vanes in the existing ductwork; (3) upgrades and replacement
18 of the DCS controls; (4) refurbishment of the submerged and dry flight conveyors; and
19 (5) addition of the low NOx burners. In addition, Tiger Team 1 was concerned about the
20 DCS change out, which creates added risk to the unit's start-up. These additions added to
21 the work ALSTOM had to complete within the time frame of the outage as well as added
22 to the general congestion in relatively tight spaces. During discussions with ALSTOM's
23 management over the Unit 1 Outage in February of 2008, it was apparent to all parties

1 that the planned Unit 1 Outage of fifty-six (56) days in duration, planned to begin on
2 September 19, 2008 would not be possible. *See* Downey Rebuttal Testimony, Docket
3 0089, at pp. 17-18. Accordingly, representatives of KCP&L, ALSTOM, Kiewit, and
4 Burns & McDonnell formed what was referred to as the “Tiger Team.” This team
5 engaged in a thorough review of the Iatan Unit 1’s project remaining work activities,
6 including all the remaining AQCS construction work as well as the plant outage upgrade
7 work required during the Unit 1 Outage. The Tiger Team ultimately recommended an
8 extension to the Unit 1 Outage to a duration of seventy-three (73) days and a delay to the
9 start of the Unit 1 Outage by approximately one month (the “Tiger Team Schedule”).
10 *See* Downey Rebuttal Testimony, Docket 0089, at pp. 17-18.

11 Additionally, despite the Project Team’s efforts, there were a number of open
12 commercial and technical issues that could not be resolved at the Project level. The
13 potential impacts from these unresolved issues were beginning to manifest themselves
14 and it was clear that we would not be able to resolve them without executive-level
15 involvement. The Quarterly Reports submitted to Staff from the 1st and 2nd quarter of
16 2008 reflect these discussions with ALSTOM’s management and our approach to these
17 issues. *See* Downey Rebuttal Testimony, Docket 0089, at p. 18. ** [REDACTED]
18 [REDACTED]** ALSTOM agreed to facilitate the commercial discussions of
19 these open issues with KCP&L in mid-April 2008 with Jonathan Marks, who is one of
20 the eminent mediator/arbitrators of construction disputes in the United States. *See*
21 Downey Rebuttal Testimony, Docket 0089, at pp. 18-19. That process ultimately
22 resulted in the ALSTOM Unit 1 Settlement Agreement.

1 **Q: What were the primary drivers to KCP&L that you believe necessitated a**
2 **commercial settlement with ALSTOM on the Iatan Unit 1 Project?**

3 A: In order to answer that question, it is important to look at the settlement in the context of
4 the time period it was negotiated and understand the options that were available to
5 KCP&L at that critical juncture in 2008. First, KCP&L recognized the Tiger Team's
6 Schedule recommendations were based in large part on KCP&L's decision to add scope
7 to the Unit 1 Outage. KCP&L deemed this work to be necessary for the long term
8 operation of the plant, but also recognized that it would have an impact on ALSTOM that
9 would entitle ALSTOM to additional costs and time. Nonetheless, KCP&L knew, due to
10 the efforts of the Tiger Team, that implementation of the Tiger Team schedule was the
11 best plan for ensuring a successful outage and to ensure that ALSTOM did not impact the
12 work of other contractors. ** [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]**

22 It was also important for KCP&L, Burns & McDonnell, ALSTOM and Kiewit to
23 resolve whatever lingering commercial issues existed and provide a framework that

1 would lead to maximum cooperation during one of the most complex periods on the Iatan
2 Projects. This meant clearing the decks of any issue that could be used as leverage to
3 either slow down work or impact the parties' ability to effectively communicate with one
4 another. Finally, it was important that the parties reached an agreement as to the most
5 efficient way to complete the work on Iatan Unit 1 so that there would be minimal
6 impacts on Iatan Unit 2. KCP&L had previously identified that Resource availability was
7 the most profound risk on the Iatan Projects. For the Unit 1 Outage to be completed,
8 ALSTOM needed to use resources from Iatan Unit 2. As a result, the longer the Unit 1
9 Outage, the more impact it would have on ALSTOM on Iatan Unit 2, leading to a
10 cascading of increased costs to both projects.

11 **Q: How did KCP&L evaluate that the Settlement Agreement was worth **** [REDACTED]
12 [REDACTED]**?

13 A: As explained in KCP&L's 3rd Quarter Report for 2008, KCP&L's project team and Schiff
14 analyzed the value associated with all of the claims that were settled as a part of the
15 negotiations with ALSTOM. Additionally, KCP&L had to do a thorough review of its
16 exposure during the May 2008 Reforecast of the Iatan Unit 1 Project's budget. As
17 mentioned in the Staff Report, these evaluations are documented in Risk & Opportunity
18 ("R&O") items 367a, 367b and 367c. I have attached these R&O white papers as
19 Schedule WHD2010-6.

20 Our team started by evaluating ALSTOM's ** [REDACTED] **. As a part of
21 its evaluation, KCP&L understood that implementation of the Tiger Team Schedule was
22 a change to ALSTOM's contract which would require an extension of the outage
23 schedule by two weeks as well as require the resequencing of ALSTOM's work. This

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1 additional two weeks and resequencing would come at an additional cost to ALSTOM.

2 ** [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 [REDACTED] ** This amount would just be ALSTOM's cost for labor and
7 would not include extended costs for equipment or overhead. ** [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED] ** Based on this evaluation, KCP&L determined that proceeding with the
13 Tiger Team Schedule was KCP&L's least cost option with the greatest chance of success
14 for completing the work.

15 ALSTOM also agreed that the ** [REDACTED] ** would be in full satisfaction of its
16 ** [REDACTED] ** delay claim as well as resolution of several other delay claims and
17 unresolved technical issues. At a minimum, KCP&L would have to pay significant
18 attorneys fees and expenses if it had to defend against this large claim in Arbitration.
19 Therefore, simply calculating potential defense claims of \$5 million, increased the total
20 value of the settlement to ** [REDACTED] **. In addition to the ** [REDACTED] ** claim,
21 ALSTOM had been reserving its rights with respect to several other potential claims.
22 These included the following:

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• ** [REDACTED]

1 [REDACTED]

2 [REDACTED]**

3 In addition to ALSTOM's release of the specific claims associated with the
4 settlement, ALSTOM agreed ** [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]**

13 **Q: What is your response to Staff's proposed disallowance of the amount of the**
14 **ALSTOM Unit 1 Settlement Agreement?**

15 A: I disagree with Staff's conclusions in their entirety. First, as the basis for its
16 recommendation to reject the ** [REDACTED] ** payment, Staff states that it "is not
17 convinced that ALSTOM's claims against KCP&L were the fault of KCP&L's project
18 management, raising the question of KCP&L's prudence and whether KCP&L's
19 ratepayers should be responsible for these costs." See Staff's Report at p. 56, lines 19-22.
20 ALSTOM's ** [REDACTED] ** claim was a consideration but never the primary driving
21 factor for the ALSTOM Unit 1 Settlement. As I just explained, KCP&L was more
22 concerned about the Unit 1 Outage schedule and ensuring maximum cooperation for
23 coordination of the outage work. KCP&L needed ALSTOM's agreement to implement

1 the Tiger Team Schedule in order to accomplish this goal. Staff ignores all of the
2 information KCP&L provided to it as well as the evaluation we used in determining that
3 the Tiger Team Schedule was the most prudent success path for the Unit 1 Outage.
4 ALSTOM's agreement to satisfy its ** [REDACTED] ** was an
5 added bonus. Furthermore, Staff's analysis of the complex commercial issues underlying
6 the ALSTOM Unit 1 Settlement Agreement is superficial and the rejection of these costs
7 in their entirety is inappropriate. As I described, KCP&L used the management
8 processes we put in place at the Project's outset to first, examine what the best outcome
9 would be, and then whether resolution with ALSTOM was possible and on what terms.
10 At the end of this evaluation, KCP&L's decision to settle these issues with ALSTOM for
11 ** [REDACTED] ** was determined to be the best and least cost option for proceeding. Our
12 consideration of these decisions was well documented and thoroughly vetted at all
13 appropriate levels of the Company.

14 I note that Staff's proposed disallowance is partially based on concerns expressed
15 in KCP&L's own internal audit reports. See Staff's Report at pp. 57-59, 60-63. In its
16 Report, Staff misuses, mistakes and takes great liberties with the content and conclusions
17 of KCP&L's internal audit reports. The "Audit Reports" prepared by KCP&L's Internal
18 Audit Department, as supplemented by Ernst & Young ("E&Y"), provided both Senior
19 Management and the KCP&L Board of Directors with feedback regarding the
20 effectiveness of the processes that were put into place in order for the EOC and Senior
21 Management to engage in a dialogue with the Iatan project management team to mitigate
22 risk and increase the team's management effectiveness. Staff had the opportunity to
23 review all of the Audit Reports on the Project. It is important to note that the Audit

1 Reports contain both positive findings as well as areas for improvement. Staff has
2 chosen to merely selectively quote individual passages of our Audit Reports without
3 identifying: (1) whether or how KCP&L addressed these findings; (2) whether these
4 findings resulted in any specific impact to the Project; and (3) any linkage between these
5 findings and the recommended disallowance. Our process requires that management put
6 an action plan in place to respond to any unsatisfactory audit result. To date, KCP&L's
7 management has dispositioned each and every audit finding from our Internal Audit team
8 to the satisfaction of the Board of Directors' Audit Committee.

9 **Q: Do you agree with Staff's recommendation of an additional \$22 Million**
10 **disallowance due to KCP&L's decision not to assess liquidated damages against**
11 **ALSTOM?**

12 A: No. First, these are not costs that have been incurred by the Iatan Project, and as a result,
13 do not constitute an "imprudent spend" by KCP&L. Furthermore, Staff's reduction of
14 the Project costs in the amount of unasserted liquidated damages is highly speculative
15 and based upon the events that actually occurred on the project, highly unlikely. In
16 arriving at its conclusion, Staff has misread the documentation KCP&L developed
17 explaining the justification of the ALSTOM Unit 1 Settlement Agreement. During the
18 May 2008 Reforecast, KCP&L took into account the likelihood that it would be able to
19 collect liquidated damages from ALSTOM as a part of its overall evaluation of the
20 Settlement Agreement. This is reflected in KCP&L's R&O white papers for the May
21 2008 Reforecast. Furthermore, the calculated range of ** [REDACTED]

22 [REDACTED]

23 [REDACTED] ** See WHD2010-07

1 (emphasis added). This R&O did not calculate liquidated damages that were currently
2 owed KCP&L that KCP&L chose to waive; liquidated damages would not even begin to
3 accrue under the original agreement until mid-December 2008. This R&O provided
4 information regarding exposure if ALSTOM continued to trend in the same direction and
5 if there were no settlement.

6 It is also important to note that KCP&L did not waive its rights to liquidated
7 damages under the Unit 1 Settlement Agreement. ** [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]**

11 **Q: Do you believe that ALSTOM would have had a defense to the assessment of**
12 **liquidated damages?**

13 **A:** Yes, and the strongest defense was not known until the Unit 1 Outage was halfway
14 completed. As explained by Company Witness Davis, during the Unit 1 Outage, the
15 construction team discovered a latent defect in the economizer casing. This defect and
16 the necessary repairs impacted the duration of the Unit 1 Outage by thirty-two (32) days.
17 *See* Davis Rebuttal Testimony, 0089 Docket, at pp. 7-8; Davis Rebuttal Testimony at pp.
18 59-60. This means that even if ALSTOM had been behind in its work, the economizer
19 casing issue would be considered a “concurrent delay,” which would prohibit KCP&L
20 from collecting any damages for that period of time. Additionally, a vibration event with
21 the turbine generator caused an additional delay to start-up of the Unit. *See* Davis
22 Rebuttal Testimony, 0089 Docket, at pp. 9-10; Davis Rebuttal Testimony at pp. 60. It is

1 purely speculation on the part of the Staff as to the amount of liquidated damages, if any
2 KCP&L would have been able to collect from ALSTOM.

3 **Q: Is it credible to assert that the Project or KCP&L would be in a better position if**
4 **KCP&L did not enter into the Unit 1 Settlement Agreement?**

5 A: No. I do not believe that the Project or KCP&L could have achieved the results we did
6 had ALSTOM and KCP&L not reached the Unit 1 Settlement Agreement. There are
7 many issues that developed since the settlement that by themselves could have been
8 major issues. An example is the economizer cracking I just discussed. When this
9 problem was discovered, KCP&L used information from Project Controls systems to
10 assess the impact to the contractors. *See Roberts Rebuttal Testimony, Docket Number*
11 *0089, at p. 15, lines 6-14. Additionally, KCP&L communicated openly and immediately*
12 *with ALSTOM regarding the actual impact of the economizer cracking and the*
13 *workarounds to the schedule. Based on KCP&L's analysis and ALSTOM's cooperation,*
14 *KCP&L was able to mitigate both cost and schedule impacts by determining that such*
15 *impacts were isolated and ensuring that ALSTOM and the other contractors continued*
16 *working in all unaffected areas. See Roberts Rebuttal Testimony, Docket Number 0089,*
17 *at p. 15, lines 6-14; Churchman Rebuttal Testimony, Docket Number 0089, at pp. 6-7.*

18 I believe that ALSTOM would not have been nearly as open and cooperative in
19 the resolution of the challenges on Iatan Unit 2 that occurred during the first quarter of
20 2009 had we not settled the previously existing disputes. Furthermore, it is possible that
21 the Projects could have become mired in conflict, later transitioning from Iatan Unit 1 to
22 Iatan Unit 2, resulting in ALSTOM submitting a large claim at the end of the Iatan
23 Project. By resolving issues throughout the course of the Projects, KCP&L was able to

1 use its leverage to negotiate and receive concessions from ALSTOM that it would not
2 have otherwise received, to maintain cooperation throughout the Projects as well as
3 ensure that KCP&L was not surprised by a large claim at the end of the Projects.

4 **UNIT 2 ALSTOM SETTLEMENT**

5 **Q: What is your understanding with respect to Staff's proposed disallowance related to**
6 **KCP&L's Settlement Agreement with ALSTOM related to Unit 2?**

7 A: Staff argues that KCP&L should not be entitled to recover any amounts it paid to
8 ALSTOM under the Unit 2 Settlement Agreement. A copy of the "ALSTOM Unit 2
9 Settlement Agreement" is attached as Schedule WHD2010-7. Although only **
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17 **Q: Describe the circumstances leading to ALSTOM Unit 2 Settlement Agreement.**

18 A: As the Iatan Unit 1 Project's construction was completed in early 2009, our concerns
19 increased regarding the status of the Iatan Unit 2 Project. **
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1 [REDACTED]** Starting in January, 2009, KCP&L convened a series of meetings at which a
2 focused team began looking at optimizing the schedule for the remaining Iatan Unit 2
3 Project work. ** [REDACTED]

4 [REDACTED] **

5 **Q: What factors did KCP&L consider in evaluating a potential settlement agreement**
6 **with ALSTOM regarding the Unit 2 schedule?**

7 A: KCP&L considered and balanced both cost and schedule in creating a revised schedule
8 and fostering cooperation between the main contractors. We reviewed with the
9 contractors multiple options for revising schedule dates and sequencing events to recover
10 as much time as possible. ** [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
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1 [REDACTED]
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3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]**

8 Q: ** [REDACTED]
9 [REDACTED]**

10 A: KCP&L asked Kiewit to estimate the additional costs it would charge KCP&L to
11 maintain the original schedule assuming that ALSTOM did not agree to any adjustments.
12 Kiewit provided us with an estimate of ** [REDACTED] ** and Kiewit's management
13 expressed great uncertainty that even if we spent the additional money to fund a
14 significant acceleration effort whether it would even be possible to make the original
15 June 1, 2010 target date. It was therefore essential that KCP&L find a way to mitigate
16 this cost and find another approach to the Iatan Unit 2 in-service date.

17 Q: **Did KCP&L consider simply ordering ALSTOM and Kiewit to accelerate their
18 work?**

19 A: Yes, but the information prepared and analyzed by the KCP&L project controls team and
20 by Schiff's scheduling expert cast doubt that even if we ordered ALSTOM and Kiewit to
21 accelerate their work, it was not physically possible to meet the June 1, 2010 target date,
22 given the status of the Project at that time.

23 Q: **What did KCP&L management decide?**

1 A: ** [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

** The CTOs are the key interface points between Kiewit, ALSTOM and KCP&L related to the sequence of events for completing construction, start-up, and commissioning activities for Iatan Unit 2. The "CTO dates" were the dates for those key interface points. Thus, for the schedule of the work to be fully coordinated, the CTO dates required complete buy-in by all affected parties. In addition, the CTO dates had to logically fit within the sequence of major milestone dates in the schedule or those milestones could not be achieved. KCP&L utilized CTO dates to coordinate the completion, commissioning, and turnover of equipment between ALSTOM and Kiewit for Iatan Unit 1.

15 Q: **How did KCP&L manage the process to revise the CTO dates, milestone dates, and obtain contractor buy-in to the revisions?**

17 A: Beginning on June 24, 2009, key representatives from KCP&L's Construction, Start-up and Project Controls teams met with key members of the teams from ALSTOM and Kiewit to work through the schedule and revise any CTO dates that both ALSTOM and Kiewit were unable to support. ** [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

** This process

1 confirmed that based on all the relevant considerations, the optimal date for Provisional

2 Acceptance was ** [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] **

6 **Q:** ** [REDACTED] **

7 **A:** ** [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

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23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]**
6 **Q:** ** [REDACTED]
7 [REDACTED]**
8 **A:** ** [REDACTED]
9 [REDACTED]**
10 **Q:** Please summarize the benefits of the ALSTOM Unit 2 Settlement Agreement.
11 **A:** In summary, the major benefits include: ** [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

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[REDACTED]

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[REDACTED] ** See Rebuttal Testimony of Forrest Archibald and Daniel Meyer.

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Q: Why was it necessary for KCP&L to involve itself in recovering the Iatan Unit 2 schedule if this is the contractors' responsibility?

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A: Because allowing the contractors to fight it out themselves would simply lead to more lost time on the schedule, more contractor claims and a Project where the commercial considerations could have caused the Project to spin out of control. Doing nothing would have been imprudent on the part of KCP&L. KCP&L is obligated to its customers and its shareholders to complete this Project in a reasonable and efficient manner and that means KCP&L has the ultimate responsibility for the Project's success. In our view, it would have been too great a risk to passively sit back and hope the contractors could recover. We recognized that active management of the contractors was the best possible success path. Furthermore, as Company Witnesses Kenneth Roberts and Kris Nielsen testify, blind enforcement of the contracts does not constitute prudent behavior.

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Q: Please summarize your view of the prudence KCP&L used in determining the ALSTOM Unit 2 Settlement Agreement was appropriate.

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A: The management process leading to the ALSTOM Settlement Agreement included: (1) engaging in analysis and gathering relevant data to identify the least cost option for getting the contractors working together to support high probability completion dates; (2) conducting site meetings, executive level discussions, and facilitated sessions to identify areas of agreement, refine schedule sticking points; (3) ** [REDACTED] [REDACTED] **; and (4) ultimately reach agreement with both ALSTOM and Kiewit to agreed CTO and Milestone Dates that put the Project in a position to be

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1 successfully completed. KCP&L has demonstrated active management of the contractors
2 to overcome major obstacles and the ALSTOM Unit 2 Settlement Agreement is an
3 example of that prudent management.

4 **Q: Staff states that as of June 30, 2010, KCP&L had only paid ALSTOM ****
5 **under the ALSTOM Unit 2 Settlement Agreement. Do you agree with that**
6 **statement?**

7 A: No. As of June 30, 2010, KCP&L had paid ALSTOM approximately ** in
8 incentive payments under the Unit 2 Settlement Agreement. KCP&L provided this
9 information to Staff in its response to Data Request 918R. In this Data Request, Staff
10 asks the following: "If KCPL paid Alstom for any bonus milestones reached, please
11 provide a copy of the invoice and documentation showing the approval process of the
12 invoice with all required signatures." KCP&L is required and does update its response to
13 this Data Request on a monthly basis. As a result, Staff was provided with this
14 information and should have been aware of the amount paid by KCP&L.

15 **Q: Do you believe the Commission should rule regarding the prudence of the entire**
16 **ALSTOM Unit 2 Settlement Agreement in this rate case?**

17 A: Yes. The Commission should not be confused by Staff's use of actual costs through the
18 cut-off. Staff fails to provide any analysis of the complex commercial issues underlying
19 the ALSTOM Unit 2 Settlement Agreement and its proposal to simply defer the issue in
20 its entirety to the true-up case is inappropriate, as the dollar amount is fixed at this time
21 and the prudence of our decision can be fully weighed by the Commission in this case.
22 By the time of the hearing, all of the bonus payments under this agreement will have been
23 earned by ALSTOM even if they have not been technically invoiced and paid. Even if

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1 Staff disagrees with the incentive payments made to ALSTOM, Staff cannot disagree that
2 **** [REDACTED] **** had
3 a value and a benefit to the Iatan Project and KCP&L's Missouri customers.
4 Additionally, the organized turnover of ALSTOM's systems to KCP&L's start-up
5 organization ensured that the start-up for Iatan Unit 2 exceeded expectations. I believe
6 that this was money well spent.

7 **SCHIFF HARDIN**

8 **Q: What is your understanding with respect to Staff's proposed disallowances related**
9 **to Schiff Hardin?**

10 **A:** Staff has four separate recommended disallowances related to Schiff Hardin, which is
11 summarized in the chart below:

Description	Unit 1	Unit 2
Expense Adjustment	(\$199,226)	(\$806,753)
Project Management Labor Rate Adjustment	(\$1,060,144)	(\$4,292,980)
Legal Services Rate Adjustment	(\$185,403)	(\$750,776)
Unsupported Charges (no invoices)	(\$216,994)	(\$2,537,236)
TOTAL	(\$1,661,767)	(\$8,387,745)

12
13 The purpose of my testimony is not to provide a complete response to each of these
14 proposed disallowance amounts, but to respond to specific allegations made by Staff in
15 regard to KCP&L's selection and management of Schiff's work on the Project. Company
16 witnesses Curtis Blanc and Kenneth Roberts will respond to other aspects of this
17 disallowance in their testimony, and Company witnesses Chris Giles, Brent Davis and
18 Robert Bell also testify regarding Schiff Hardin's role on the Iatan Project.

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1 **Q: Do you have any observations about Staff's proposed disallowances or audit of**
2 **Schiff Hardin's costs?**

3 A: My general observation is that Staff apparently spent an inordinate amount of time
4 examining Schiff Hardin. Staff's entire report is 103 pages, of which Staff spends 24
5 pages discussing Schiff Hardin, a contract that constitutes less than 1% of the entire Iatan
6 Project's Budget. Moreover, Staff's complaints about Schiff Hardin never once venture
7 into whether Schiff Hardin performed services of value to the Iatan Project; Staff's entire
8 focus was on how much Schiff Hardin was paid for its work. Staff's complaint that it
9 could not audit \$18 million of Iatan Unit 1 and \$93 million of Iatan Unit 2 costs when
10 juxtaposed against the amount of time Staff concentrated on Schiff Hardin's fees seems
11 strange and hollow. I do not know nor does Staff adequately explain why it chose to
12 target Schiff Hardin and other corporate expenses and not the Iatan Project itself.

13 **Q: On pages 67-70 of Staff's Report, Staff alleges that KCP&L violated its policies in**
14 **its selection and award of work to Schiff Hardin. Do you agree with this**
15 **assessment?**

16 A: I acknowledge that we could have done a better job of documenting how and why we
17 selected Schiff Hardin. However, the lack of pristine documentation does not mean that
18 we violated any of our processes and procedures or that our decision was a bad one.
19 Schiff Hardin came on board very early in the development phase of the Project, and we
20 had an evolving procedure for documenting our early project decisions related to
21 professional support. This does not change the fact that retaining Schiff Hardin was a
22 prudent decision on the part of KCP&L.

23 **Q: How did you first contact Schiff Hardin with respect to the Iatan Projects?**

1 A: I and other Company witnesses have testified to the fact that the CEP was an ambitious
2 program and KCP&L had not embarked on a new-build construction project for about 25
3 years. Staff cites to the transcript from the Kansas Corporation Commission hearings,
4 wherein I recounted the fact that I had reached out to Tom Maiman, my old boss from
5 Commonwealth Edison, who recommended Schiff. What the transcript does not fully
6 recount is the fact that Tom Maiman has over 40 years of experience in all aspects of the
7 electrical utility industry, including operations, maintenance and construction of
8 transmission, distribution and both nuclear and fossil generating facilities. While at
9 Commonwealth Edison (“ComEd”), he had risen through the ranks and held numerous
10 executive positions including Vice President (“VP”) of Corporate Engineering, VP of
11 Fossil Plant Operations, VP and Manager of Engineering and Construction, Senior VP of
12 Commercial Operations and Executive VP and CNO of Nuclear Operations. While he
13 was the VP and Manager of Engineering and Construction, Mr. Maiman oversaw the
14 construction of the Byron and Braidwood nuclear stations. During his time at ComEd,
15 Mr. Maiman was also was involved in several construction projects involving numerous
16 fossil fuel plants and as VP of Fossil Plant Operations, he led a program of multiple
17 rehabilitation projects of ComEd’s fossil fleet. Mr. Maiman knows how to run a large,
18 complex, multi-year construction project. He told me that it was important that I hire an
19 oversight team that has significant experience in project controls as well as legal and
20 commercial issues that can plague these types of project. Mr. Maiman stressed that it
21 was important to have an experienced oversight team in order to ensure that Senior
22 Management was receiving all of the relevant data it needed to make prudent decisions

1 regarding the Project. It was on his advice that I contacted Ken Roberts at Schiff Hardin
2 and asked him and his team to make a proposal to the KCP&L executive team.

3 **Q: Did KCP&L attempt to find other firms to provide the same services as Schiff**
4 **Hardin?**

5 A: Yes, however, we were unsuccessful. For the CEP projects, I believed it was important
6 for the oversight team to have both legal and project controls capabilities. This is
7 because information regarding costs and schedule will typically provide early warning
8 signs regarding potential commercial disputes. We did not find another team that could
9 provide the same integrated services as Schiff. I consider their team to have a rare
10 specialty.

11 **Q: Staff argues that Duane Morris provides the same services as Schiff. Do you agree?**

12 A: Duane Morris is a very good firm with a number of highly qualified individuals with
13 experience in construction. However, we believed that they were more law firm focused,
14 and could not provide the same project controls expertise as Schiff Hardin.

15 **Q: What else influenced your decision to hire Schiff?**

16 A: The fact that Tom Maiman recommended Schiff as strongly as he did was extremely
17 important. Due to the expertise necessary for this type of work, simply going with the
18 lowest cost law firm, one without a recommendation or without the reputation Schiff
19 Hardin has would not be a prudent decision in my opinion. Most people would not go to
20 a doctor, particularly a specialist, simply because he or she was the cheapest, and I don't
21 think that solely looking at cost is a good way of choosing a provider of legal services.

22 **Q: Do KCP&L's policies require that it request and receive bids for every contract?**

1 A: No. In fact, KCP&L's policy provides for awarding sole source work where
2 "professional or highly technical services are of a continuing nature." *See* Staff Report
3 on p. 68. Schiff's services fell into this category.

4 **Q: Were you aware of the work Schiff Hardin was performing on the Iatan Projects?**

5 A: Yes. I was in close contact on a daily or weekly basis with Ken Roberts to discuss
6 Schiff's activities. For most of the duration of the Iatan project, I attended weekly status
7 meetings where members of both my team and Schiff made presentations regarding the
8 Project's status and engaged in a discussion of major issues. Schiff has also presented at
9 each of the monthly EOC meetings since February of 2006. I testified extensively in my
10 Direct Testimony regarding Schiff's oversight role on the Iatan Project. *See* Downey
11 Direct Testimony at p. 8-9.

12 **Q: Can you please provide a summary of your Direct Testimony with respect to Schiff**
13 **Hardin's oversight role on the Iatan Projects?**

14 A: As I stated in my Direct Testimony, in the fall of 2005, after Schiff was brought in to
15 review the CEP Projects' schedules and procurement options, the Senior Management
16 team that ultimately composed the EOC had a number of important meetings. One
17 notable formal meeting of this group occurred on September 29, 2005 when the project
18 team and Schiff presented various contracting options for the CEP Projects. A second
19 important meeting of this group was held on November 23, 2005. *See* Downey Direct
20 Testimony at p. 4. Once the Executive Oversight Committee ("EOC") was formally
21 established, Schiff provided the EOC with an update on the CEP projects. Schiff
22 presented both written and verbal reports, as well as project tracking metrics. *See id.* at 3.

1 **Q: As a part of its oversight role, did Schiff provide assistance in helping KCP&L**
2 **develop the necessary management tools for the Iatan Projects?**

3 A: Yes. I previously testified in the 0089 Docket that our corporate policies and procedures
4 required updating for use on large construction projects. Therefore, from 2006 to 2007,
5 the CEP Project team had to develop several policies and procedures that would be used
6 exclusively on the Iatan, Spearville and La Cygne projects. Most notably, in July 2006,
7 with the assistance of Schiff Hardin, KCP&L created the Cost Control System which
8 governed the reporting processes that the CEP Projects would utilize, including schedule
9 and cost controls that were intended to provide information to senior management for
10 management purposes as well as to provide transparency to the Commission Staff and
11 other interested parties. Additional policies and procedures on which Schiff provided its
12 expertise and assistance included change management, invoices, requests for proposal
13 (“RFP”), bid evaluation, claim notification, safety, quality assurance and quality control,
14 and engineering management. In addition, the KCP&L legal department, with Schiff’s
15 assistance, developed form contracts for use in procurements of various types that could
16 be adapted to the specific requirements necessary for the CEP Projects.

17 **Q: Are there any other services that Schiff provides in its oversight role?**

18 A: Probably the most important role that Schiff provides on the Iatan Project is to help
19 KCP&L identify potential risks to the Project and to help KCP&L’s project management
20 team, Senior Management and EOC vet the various options based upon their experience
21 in deciding the best path forward. It was this expertise that ensured that KCP&L had all
22 of the relevant information in making the major decisions of the Project.

23 **Q: What is the general make-up of the Schiff Hardin Team?**

1 A: Schiff's team had a combination of lawyers and construction professionals who are
2 particularly skilled in providing construction and project management advice. Schiff's
3 team has wide and varied experience and has, in many ways, seen it all when it comes to
4 large, complex construction projects. Company witness Mr. Roberts describes the
5 members of Schiff Hardin's Project Controls team, all of whom played a critical role in
6 putting issues on the table for our management. Company witness Brent Davis testifies
7 regarding the day-to-day workings of the Schiff Hardin team in the field and how they
8 assisted the project management team with commercial and project controls issues.

9 **Q: How was the work divided between those two groups of people?**

10 A: Based upon my observations, the industry professionals performed the day-to-day project
11 controls and construction management functions while the attorneys provided legal
12 services. Ken Roberts oversaw both groups of people to ensure integration of their entire
13 team.

14 **Q: Do you believe that Schiff Hardin provided value to the Iatan Projects?**

15 A: Yes. Schiff Hardin provided immediate value in helping KCP&L determine the
16 appropriate contracting strategy and commercial plan for each of the CEP Projects. In
17 addition, Schiff lent its expertise in the industry in drafting and negotiating the Projects'
18 contracts. Schiff also provided day-to-day support in the field and identified risks that
19 could have added costs to the Projects. Finally, Schiff has been instrumental in resolving
20 commercial issues with the major contractors that could have significantly impacted the
21 schedule and budget of the Projects.

22 **RESPONSE TO WALTER DRABINSKI**

1 **Q: Are you familiar with the direct testimony that Mr. Walter P. Drabinski of Vantage**
2 **Consulting Inc. filed in this case on behalf of the Missouri Retailers Association?**

3 A: Yes, I am.

4 **Q: Do you have any general impressions of Mr. Drabinski's testimony?**

5 A: Yes. I believe that in his testimony, Mr. Drabinski has: (1) disregarded or failed to
6 consider the actual decisions and decision-making processes that KCP&L's Senior
7 Management employed during the Iatan Unit 2 Project for making critical decisions;
8 (2) based certain conclusions regarding KCP&L's management of the Iatan Unit 2
9 Project on incorrect or incomplete facts; and (3) has not made a connection between his
10 recommended disallowances and any alleged imprudent actions or inactions by KCP&L
11 on the Project. Overall, Mr. Drabinski has agreed that KCP&L prudently spent the vast
12 majority of the dollars KCP&L expended on the Iatan Unit 2 Project. With that said, I
13 disagree with the amount and the reasoning Mr. Drabinski used in recommending a \$231
14 million disallowance of the Iatan Unit 2 Project costs. The conclusory nature of his
15 testimony in support of this recommendation is not supported by specific facts. Company
16 witness Mr. Kenneth Roberts testifies as to Mr. Drabinski's approach and the lack of a
17 link between the allegations he states and his recommended disallowance.

18 Throughout the development of the CEP Projects, we have sought to be fully
19 transparent with Staff. As Company witness Chris Giles testifies, we have provided Staff
20 and all interested parties to the Regulatory Plan with reports each quarter, starting with
21 the first quarter of 2006. Our Project Team has met with Mr. Drabinski on 17 occasions
22 and provided thousands of pages of documents. However, Mr. Drabinski has taken
23 KCP&L's transparent reporting of the facts and used selected information that unfairly

1 characterizes KCP&L. Mr. Drabinski uses 20/20 hindsight to criticize KCP&L's
2 management decisions while overlooking the methods, processes and procedures that
3 KCP&L developed and used to mitigate and avoid cost increases and schedule delays on
4 a very complex undertaking. I do not believe that Mr. Drabinski has provided the
5 Commission with an accurate portrayal of the oversight, decision-making and
6 management KCP&L used on the Iatan Unit 2 Project.

7 KCP&L'S KEY DECISIONS ON IATAN UNIT 2

8 **Q: What are the key decisions that you believe Mr. Drabinski failed to accurately assess**
9 **or portray in his Direct Testimony?**

10 A: There are several areas where Mr. Drabinski's analysis is flawed, though the most
11 significant topics include: (1) the decisions regarding the Project's contracting
12 methodology; (2) the decision to utilize Kiewit as the primary Balance of Plant ("BOP")
13 contractor; and (3) resolution of the Iatan Unit 2 schedule in mid-2009.

14 **Q: Mr. Drabinski appears to be saying in his assessment that KCP&L's Senior**
15 **Management made an imprudent decision by not contracting with a single vendor**
16 **for an EPC contract. Mr. Drabinski states: "KCP&L would have the Commission**
17 **believe that the decision to use a Multi-Prime approach was made in November**
18 **2005. In fact, by November 2005, having never considered a different approach,**
19 **KCP&L had no choice but to accept the Multi-Prime approach if it was to maintain**
20 **the possibility of meeting its completion date. The EPC approach was never**
21 **seriously considered, even in the 2004 PDR, in spite of the fact EPC was a widely**
22 **utilized project delivery methodology in the industry at the time." (Drabinski**

1 **Direct Testimony at p. 43.) Is it true that KCP&L “never seriously considered” an**
2 **EPC approach for the Iatan Unit 2 Project?**

3 A: No, it is certainly not true. In fact, Mr. Drabinski’s own testimony directly contradicts
4 this assertion, as he specifically testifies on pages 55 to 57, that KCP&L did in fact
5 consider EPC options before deciding on a hybrid multi-prime. The sequence of events,
6 the information that was prepared by Black & Veatch, Burns & McDonnell and Schiff,
7 and the information that KCP&L’s Executive Management team reviewed in making that
8 critical decision is addressed at length in my Direct Testimony in this case and is further
9 discussed in Company witness Chris Giles’ Rebuttal Testimony. In summary, on
10 February 1, 2005, we told our Board of Directors that an EPC contract for the Project was
11 being considered. (Giles Rebuttal Testimony at p. 5) Once the Regulatory Plan was
12 approved in August 2005, we asked Black & Veatch to begin preparation of the
13 specifications for the boiler and the turbine generator in order to preserve the option of an
14 EPC contract while beginning the major procurements. We believed one possibility was
15 to assign these contracts to a single EPC contractor. This way, we were not forced into a
16 particular contracting methodology. In October 2005, we asked both Black & Veatch
17 and Burns & McDonnell to provide us with proposed contracting scenarios which led to
18 the separate presentations each company made on November 7-8, 2005. On November
19 23, 2005, our Senior Management team reviewed and considered each of these scenarios
20 including multiple derivations of EPC contracts. Ultimately, we decided to proceed with
21 procuring the large equipment first while preserving a number of options including: (1)
22 bundling some or all of the work into either a full-wrap EPC; or (2) an EPC hybrid

1 approach, in which many of the major scopes of work would be in one contract, with the
2 remaining BOP work being procured by different vendors.

3 **Q: Why did KCP&L's Senior Management decide to procure the Project on an EPC**
4 **hybrid, multi-prime basis?**

5 A: The information we had available as of late 2005 to mid-2006 showed us that a multi-
6 prime, EPC hybrid model had the best chance of meeting KCP&L's schedule goals and
7 completing the Project at the least cost. Our selection process reflected recognition of the
8 market conditions and a thorough vetting of each contracting approach. Company
9 witness Mr. Giles testifies that the decision we made has been proven through our
10 modeling of Present Value of Revenue Requirements ("PVRR") to be the best alternative
11 for adding baseload power for our customers, and I agree with that testimony.

12 **Q: You are aware, though, that the price of the Iatan Unit 2 Project increased over**
13 **time?**

14 A: Yes, though as Company witness Mr. Giles testifies, at the time that Iatan Unit 2 was
15 developed and built, increases in costs were unavoidable. I believe that KCP&L has
16 utilized the information at hand to forecast the potential effects of the market to timely
17 inform Staff and our Board of Directors of those cost increases, and that we have
18 developed and implemented strategies that have allowed KCP&L to identify and mitigate
19 those impacts. We have transparently reported to our shareholders, the Commission
20 Staff, the analysts and our customers when we have recognized that the cost of the
21 Project was increasing and described the reasons for those increases. Company witness
22 Mr. Roberts testifies as to how the Iatan Unit 2 Project compares with other similar
23 projects during this timeframe.

1 **Q: Do you believe that the cost of the Iatan Unit 2 Project increased because of**
2 **KCP&L's Executive Management's decision to proceed by using a multi-prime,**
3 **EPC hybrid method?**

4 A: No. I believe that the decisions we made have resulted in Iatan Unit 2 being designed,
5 procured and constructed for the least cost possible during a time of extreme pricing
6 volatility and scarcity of available contractors to perform the work. KCP&L did not have
7 the option of entering into a fixed-price, full-wrap EPC contract prior to receiving
8 regulatory approval or buy-in from our partners. Mr. Drabinski's assertion that KCP&L
9 should have proceeded on an EPC basis at that time does not comport with options
10 available from 2005 to mid-2006. As Mr. Giles' Rebuttal Testimony explains, based on
11 the information we had received from two of the most prominent engineering firms in the
12 power market and from Schiff, as well as from discussions many of our team had with
13 our peers in the power and utility industry, the premium for EPC contracts at that time
14 was as much as 12% to 15% over a multi-prime. Moreover, it was clear that the appetite
15 for risk was waning among those few contractors who may have been willing to take on a
16 full-wrap EPC.

17 **Q: How did you know that the risk tolerance of the EPC contractors was diminishing**
18 **at that time?**

19 A: There were two factors that were reportedly causing the large EPC contractors to accept
20 less risk: (1) scarcity of labor and equipment created by the sheer number of new coal
21 plants that were being developed at that time; and (2) multiple large projects that were
22 underway at that time that had exposed a number of significant risks for performing this
23 type of project. We were finding that it was not even possible to find a contractor that

1 was interested in offering a full wrap EPC to the Iatan Project, much less take on any risk
2 that was associated with such a contract.

3 Concurrent with our finalizing the Regulatory Plan, in July 2005, the U.S.
4 Department of Energy reported that there were 124 proposed new coal plants that would
5 add 73 gigawatts of power to the grid and cost nearly \$100 billion. *See* Schedule
6 WHD2010-8. This scarcity in the marketplace was further confirmed by both Black &
7 Veatch and Burns & McDonnell when they made their respective presentations to our
8 team in early-November 2005. As noted in Company Witness Mr. Steven Jones' Direct
9 Testimony, in early 2006, Mr. Jones pulsed the marketplace among the large general
10 contractors who typically perform EPC work and found no significant interest from
11 vendors regarding Iatan and no interest whatsoever for bidding a fixed-price EPC. (Jones
12 Direct Testimony at pp.14-15.) At the time we were completing the bid phase of our
13 largest pieces of equipment, namely the boiler, air quality control systems ("AQCS") and
14 the turbine generator, TXU announced its plans to build 11 new coal plants. (*See*
15 Schedule WHD2010-9) The effects of market scarcity were widely known in the
16 industry through the remainder of 2006 and 2007. Company witness Mr. Roberts
17 identifies many of these market factors in his Direct Testimony in this case and in the
18 0089 Docket.

19 In addition, this new wave of large coal projects brought with it recognition of
20 problems that further reduced the contractors' risk tolerance. Most notable of those
21 projects was Council Bluffs Unit 4 ("CB4"), which has since been rededicated as Walter
22 Scott Unit 4. I believe that CB4 was the first of the large, supercritical coal plants built in
23 the United States in decades. Based on information we received from the industry in late

1 2005 and early 2006, which would have coincided with CB4's planned peak of
2 construction, CB4 was experiencing some significant problems with labor productivity
3 and availability. Schedule WHD2010-10 is a memorandum prepared by Company
4 witness Mr. Jones reflecting his conversation with Paula Nelson, a Vice President of
5 Washington Group International ("WGI"), one of the largest EPC-type contractors in the
6 utility construction business. ** [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 [REDACTED] ** (See Schedule WHD2010-10.) The following year, Kiewit provided us
14 with information showing that labor hours on the CB4 project had increased by over
15 225%. (See Schedule WHD2010-11.) Company witness Daniel Meyer addressed many
16 of the issues that were known to be facing the CB4 project at that time. While in the
17 case of CB4, the contractors, and not the owner, apparently absorbed the monetary losses
18 associated with CB4's labor issues, the problems at CB4 rippled through the industry and
19 made contractors much less receptive to accepting risks.

20 The EPC option that Black & Veatch offered to KCP&L in November 2005
21 strongly reflected the state of the market at that time. Black & Veatch would only have
22 agreed to take the Project provided that: (1) there was no competition for the award and
23 no competitive bidding process; (2) KCP&L would have released Black & Veatch to

1 immediately begin engineering; (3) Black & Veatch and Kiewit would work on an
2 estimate as the design matured and would not have it ready for discussion or vetting any
3 sooner than one year; and (4) Black & Veatch did not offer to enter into a fixed-price
4 EPC contract. This was not an EPC option that offered either cost or schedule certainty.
5 These conditions were unacceptable to KCP&L. We did not believe a sole-source, non-
6 competitive award for the entire Project scope was appropriate. We would have no
7 leverage to drive a good deal, and this made us very wary about the ultimate cost. Had
8 we chosen to follow that path, it would have been impossible for us to change directions
9 a year later if the pricing or the contractual terms were unfavorable.

10 **Q: You also take exception to Mr. Drabinski's testimony regarding KCP&L's decision**
11 **to contract with Kiewit. Please identify those parts of Mr. Drabinski's testimony**
12 **with which you disagree.**

13 A: Mr. Drabinski's allegations regarding how KCP&L's Executive Management team
14 decided to utilize Kiewit for the BOP work are incorrect and not based on what actually
15 happened. Mr. Drabinski alleges that "the initial contract to be paid to Kiewit was
16 artificially low and that the extraordinary increase in Kiewit's pay over time was
17 inevitable and foreseeable." (Drabinski Direct Testimony at p. 49.) Mr. Drabinski went
18 so far as to allege, ** [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] ** (Drabinski Direct Testimony at p. 159.)

1 Mr. Drabinski also testifies, “while the decision to hire Kiewit became inevitable,
2 the delay, from late 2005 to early 2006 ** [REDACTED]

3 [REDACTED]
4 [REDACTED]** (Drabinski Direct
5 Testimony at p. 48-49.) Mr. Drabinski further testifies, “** [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]** All costs associated with unreasonable project inefficiencies
9 should be excluded as imprudently incurred because such costs are due to actions that fell
10 below standards set by B&McD in its initial budget estimates and KCP&L’s CM desire.”
11 (Drabinski Direct Testimony at p. 116.) I take exception to these statements and his
12 supporting testimony and disagree with each of the conclusions Mr. Drabinski draws
13 from these erroneous assumptions.

14 **Q: Did KCP&L, as Mr. Drabinski alleges, ask Kiewit to reduce its proposed price after**
15 **the original submittal in exchange for agreeing to let Kiewit add those amounts back**
16 **into its contract when prices were tried up?**

17 A: No. That allegation is simply wrong.

18 **Q: Wasn’t Kiewit’s original estimate for the work ** [REDACTED]**, though the**
19 **contract amount was ** [REDACTED]**?**

20 A: Yes. Company witness Mr. Meyer testified in his Direct Testimony that: “On April 13,
21 2006, Kiewit submitted a price for work on both Iatan Unit 1 and Iatan Unit 2 to KCP&L
22 in the amount of about ** [REDACTED]

23 [REDACTED]

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[REDACTED] ** for the BOP construction work for both Iatan units.” (Meyer Direct Testimony, p. 42, line 22, to p. 43, line 4.) Mr. Meyer also recounts how through the five-month vetting process of Kiewit’s estimate, “Kiewit adjusted its original proposal of ** [REDACTED] **, and ultimately estimated the cost of the known BOP work at about ** [REDACTED] ** for both Unit 1 and Unit 2. The Unit 2 portion of Kiewit’s base contract was ** [REDACTED] **.” (Meyer Direct Testimony, p. 45, lines 10-13.)

Company witness Brent Davis similarly testified to the process that resulted in Kiewit reducing its estimate: “Kiewit’s original estimate included engineered materials and commodity items that KCP&L had already purchased or intended to purchase, so these were deleted from the cost estimate. In addition, as discrepancies (either additions or deletions) were found in the estimate during the vetting process, Kiewit adjusted its numbers accordingly.” (Davis Direct Testimony, p. 34, lines 19-22.)

Q: Please describe the reasons for KCP&L’s decision to award the BOP to Kiewit.

A: As is fully addressed in the Recommendation to Award Letter for General Contract for Construction Services (Jones Direct Testimony, Schedule SJ2010-3), the decision to change from our initial strategy and utilize Kiewit was made for a number of reasons, including:

** [REDACTED]

** (Schedule SJ2010-3.)

1 The full details behind our decision-making are discussed at great length in my Direct
2 Testimony on pages 18-29 as well as the Direct Testimony of Company witnesses Mr.
3 Davis, Mr. Jones, and Mr. Meyer.

4 **Q: What in Mr. Drabinski's testimony is incorrect regarding the basis for the decision**
5 **to utilize Kiewit?**

6 A: Mr. Drabinski implies that we had the ability to contract with Kiewit as the BOP
7 contractor in "late 2005" and that the decision to do so was delayed. That is not the case.
8 As Company witness Mr. Jones previously testified, when he contacted Kiewit in the
9 spring of 2006, Mr. Jones was told that Kiewit had a very limited window for committing
10 to performing Iatan Unit 2 and was not willing to bid the Project on a fixed-price basis.
11 (Jones Direct Testimony at p. 15-16.) Kiewit's unexpected actual interest in Iatan Unit 2
12 was first known to us in late December 2006, and only after a project that Kiewit had
13 started for another utility was cancelled. Company witness Mr. Davis testifies to the
14 circumstances of Kiewit approaching him at that time. Once Kiewit expressed its
15 interest, our team took careful steps to ensure that changing the direction at that point was
16 the most prudent possible decision. However, KCP&L was prepared to move forward
17 with its original plan in the event that it could not come to an agreement with Kiewit.

18 **Q: What were the steps KCP&L took with respect to Kiewit's initial involvement?**

19 A: After Kiewit contacted Company witness Mr. Davis, Mr. Davis asked to convene an EOC
20 meeting to discuss the pros and cons of asking Kiewit to perform the estimate. That
21 meeting occurred on January 10, 2007. Company witness Davis testifies regarding this
22 meeting in his Direct Testimony. (Davis Direct Testimony, pp. 31-32.) At this meeting,
23 both the KCP&L Project Team and Schiff provided materials for our review. ** [REDACTED]

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** (See Schedule WHD2010-12.) The EOC approved having Kiewit prepare a project estimate at the January 10, 2007 meeting.

Q: What occurred next?

A: Kiewit presented its estimate to KCP&L in writing on April 13, 2007 and in person on April 16, 2007. The negotiations with Kiewit started in earnest in early May 2007 and were completed in October 2007. We signed a limited notice to proceed (“LNTP”) with Kiewit on June 8, 2007 that released them to perform certain limited scopes of work to maintain the critical path or reduce risk on future BOP performance. (See Schedule WHD2010-13.) This entire time, we preserved the option of reverting to the multi-prime method for BOP work. Not only did this ensure that we continued to procure equipment and material so that we continued to progress the schedule, but also that we preserved our negotiating leverage with Kiewit. The details of the vetting of Kiewit’s estimate and the negotiations of the contract are discussed in detail in my Direct Testimony and the testimony of Company witnesses Mr. Davis, Mr. Roberts, Mr. Jones and Mr. Meyer.

1 **Q: Was there any schedule or cost impact to the Project as a result of the time it took to**
2 **finalize the contract with Kiewit?**

3 A: No. As I just stated, we were moving forward with work on the critical path in parallel
4 with these negotiations pursuant to the LNTP.

5 **Q: Are there any other factors that you believe Mr. Drabinski overlooked that were**
6 **critical to the decision to contract with Kiewit?**

7 A: Yes. Mr. Drabinski apparently overlooked the risk Kiewit took for its labor productivity
8 in this contract. Mr. Drabinski's statements that ** [REDACTED]
9 [REDACTED] ** (Drabinski Direct Testimony
10 at p. 49) and that Kiewit "had a contract that provided them with reimbursement for their
11 inefficiency" (Drabinski Direct Testimony at p. 116) is not true. At the outset of the
12 negotiations with Kiewit, the EOC agreed that one condition for contracting with Kiewit
13 would have to be Kiewit accepting "skin-in-the-game" for its own performance. We
14 understood that Kiewit would not accept risk for work by others, though in areas such as
15 the turbine generator building, where its work would be essentially unencumbered by
16 other contractors, KCP&L expected Kiewit to accept responsibility for properly manning
17 the Project with qualified, productive workers necessary to maintain schedule. Kiewit
18 did accept this risk as part of the base contract. In fact, as Company witness Mr. Roberts
19 states in his Rebuttal Testimony, Kiewit absorbed its costs for non-productive work on
20 the turbine generator building and for delays it caused to the Project. As part of the Iatan
21 Unit 2 Contract Amendment that was executed by the parties in November 2009,
22 ** [REDACTED]
23 [REDACTED]

1 [REDACTED]

2 [REDACTED]**

3 KCP&L is not expecting its customers to pay for **[REDACTED]**; therefore, we
4 have not included those costs in our request to the Commission.

5 **Q: You are aware that the cost of the BOP work has risen sizably since the Control
6 Budget Estimate for the Project was approved in December 2006?**

7 A: Yes, I am aware that these costs have increased. Company witness Mr. Meyer addresses
8 the specific reasons why the Kiewit contract value has grown. At the time Kiewit
9 prepared its estimate for the Project, the design for the BOP was approximately 20-25%
10 complete. As Mr. Meyer testifies, the costs for the Kiewit contract have risen as a result
11 of the maturation of the Project's design, the impact of the marketplace, the finalization
12 of Kiewit's schedule and additional costs associated with the coordination of the work.
13 These changes in the price of Kiewit's work were allowed under the contract because
14 Kiewit would not assume the risk of the final cost for the BOP that was being designed at
15 that time. Nonetheless, KCP&L would have incurred these costs anyway because they
16 ultimately were the result of a completed Project design and KCP&L would have had to
17 pay them to any contractor or contractors KCP&L selected to perform the BOP work

18 **Q: Do you agree with Mr. Drabinski's testimony that the increase in Kiewit's contract
19 amount was the ** [REDACTED]**

20 [REDACTED]

21 [REDACTED]** (Drabinski Direct Testimony at p. 116.)

22 A: No, I do not. KCP&L had an aggressive plan and took substantive steps to advance the
23 critical path of the BOP work before Kiewit ever submitted its estimate for the work. In

1 my Direct Testimony and in the Direct and Rebuttal Testimony of Company witness Mr.
2 Giles, we discuss the following in detail: (1) the development of the strategic schedule in
3 late 2005 that confirmed the critical path work (design, procurement and construction)
4 that needed to proceed to preserve the in-service date; (2) that Burns & McDonnell was
5 given a release by the EOC in April 2006 to proceed with the design of foundations
6 coinciding with KCP&L awarding the boiler and air quality control system (“AQCS”) to
7 ALSTOM; (3) that the foundations required to maintain ALSTOM’s work on the critical
8 path were ultimately completed and turned-over to ALSTOM on-time, and the
9 underground piping, ductbank work, and the circulating water piping were all installed
10 months before the major ramp-up in the Project’s workforce; (4) as Company witness Mr.
11 Jones testifies, KCP&L’s plan to procure the engineered equipment resulted in KCP&L
12 placing orders for over \$1 billion on fixed-price contracts by the end of 2006, which
13 allowed for timely shipment and performance of virtually all of the Project’s critical
14 long-lead equipment and materials; and (5) that because of our robust early planning and
15 procurement efforts, we were able to significantly improve constructability of the AQCS
16 components by contracting with a vendor to erect the chimney in an extraordinarily
17 constrained market. When Kiewit emerged as an option for the BOP work, all of the
18 above had either been completed or were well underway. Company witness Mr. Roberts
19 identifies the benefits to the Project from these mitigation measures.

20 **Q: Are there other decisions that you believe Mr. Drabinski has mischaracterized in his**
21 **testimony?**

22 A: I believe that Mr. Drabinski has also mischaracterized the basis of the decisions we made
23 in negotiating the contract amendments with ALSTOM and Kiewit. With respect to

1 ALSTOM, Mr. Drabinski testifies that: “Control and oversight of the Alstom contract
2 was inadequate for much of the project. – While this was a fixed price contract, the poor
3 productivity of Alstom’s workforce created significant schedule delays and necessitated
4 significantly higher levels of responsibility than KCP&L’s [sic] anticipated.

5 ** [REDACTED]
6 [REDACTED]** (Drabinski Direct Testimony at p. 48.) That testimony is
7 incorrect.

8 Regarding Kiewit, Mr. Drabinski mischaracterizes the amount and the purpose of
9 the contract amendment the parties executed. Mr. Drabinski testifies: ** [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 [REDACTED]** (Drabinski Direct Testimony at p. 159.) On the
15 contrary, the Project was planned and engineered per industry standards and KCP&L’s
16 construction management team did in fact manage Kiewit’s work.

17 **Q: What was the reason for KCP&L entering into contract amendments with**
18 **ALSTOM and Kiewit on Iatan Unit 2 that increased these respective contracts?**

19 A: Earlier in my testimony, I discussed the reasons for the ALSTOM Unit 2 Settlement
20 Agreement at length. Regarding Kiewit, the primary benefit was Kiewit agreed to fix the
21 price of its work in the turbine building and take responsibility for managing the
22 installation of the completed design. We also were able to resolve a number of
23 outstanding change orders and quantity revisions at the same time.

1 **Q: Why was it necessary for KCP&L to involve itself if the contractors were**
2 **responsible for meeting schedule?**

3 A: As I previously testified, allowing the contractors to fight it out themselves would simply
4 lead to more lost time on the schedule, more contractor claims and a project where the
5 commercial considerations could have caused the Project to spin out of control. Doing
6 nothing would have been imprudent on the part of KCP&L. KCP&L is obligated to its
7 customers and its shareholders to be as active as necessary to complete this Project in a
8 reasonable and efficient manner. In our view, we would have taken too great a risk by
9 passively sitting back and hoping the contractors could recover. We recognized that
10 active management of the contractors was the best possible success path. Furthermore, as
11 Company Witness Roberts testifies, blind enforcement of the contracts does not
12 constitute prudent behavior.

13 **Q: Why didn't KCP&L order ALSTOM and Kiewit to accelerate their work?**

14 A: As I stated earlier, the information prepared and analyzed by the KCP&L project controls
15 team and by Schiff's scheduling expert cast doubt that even if we ordered ALSTOM and
16 Kiewit to accelerate their work, it was not physically possible to meet the June 1, 2010
17 target date, given the status of the Project at that time. Instead, KCP&L's Management
18 made the decision to engage the contractors in a discussion to determine the best possible
19 completion date for the lowest cost.

20 I testified at length in my Direct Testimony regarding the strategy that KCP&L
21 used for engaging the executives from ALSTOM and Kiewit in a dialogue to determine
22 the best possible schedule for the work given the facts known at the time. We requested
23 both Kiewit and ALSTOM to review the most likely dates for completion of their work

1 and the associated costs. We also wanted Kiewit to develop a cost projection for
2 completing its work, and to re-structure its contract so that Kiewit would have increased
3 risk for the final anticipated costs. In particular, we requested Kiewit's assessment at this
4 point of the project of the costs associated with meeting the original target for Provisional
5 Acceptance of June 1, 2010. As of the spring of 2009, Kiewit's team cautioned us that it
6 would take a massive acceleration effort to try to meet the June 1, 2010 target and that
7 there was an ever-lessening chance that the target date could actually be met.

8 **Q: How did Kiewit respond to this request?**

9 A. Kiewit's revised estimate at completion for the Iatan Unit 2 work was approximately
10 ** [REDACTED] ** for labor and productivity
11 losses if it were asked to maintain the June 1, 2010 target date. At that point, we
12 recognized that maintaining the June 1, 2010 target would not be in the best interests of
13 KCP&L's customers or the Iatan Unit 2 -Project itself.

14 **Q: How did KCP&L choose to proceed?**

15 A: We examined how to balance the projected Project cost with possible schedule outcomes.
16 We engaged ALSTOM's and Kiewit's executives in discussions regarding closure of
17 commercial issues and facilitated the re-baselining of the Project's schedule to
18 incorporate the mutually agreeable CTO dates. We also performed a reforecast of the
19 Project's costs, in which we modeled certain assumptions regarding the ultimate outcome
20 of the ongoing commercial discussions. The result of those discussions was to move the
21 Project's target in-service date from June 1, 2010 to August 1, 2010, which in turn would
22 decompress the schedule enough to reduce both ALSTOM's and Kiewit's costs. Further,
23 because ALSTOM and Kiewit were willing to buy-in to the same schedule dates, there

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1 would be an incentive for both to work together to meet key milestones. We
2 simultaneously negotiated with each contractor, resulting in the two agreements. (See
3 Schedules WHD2010-7 and WHD2010-14.)

4 **Q: In responding to Staff, you have previously summarized the benefits of the**
5 **ALSTOM Unit 2 Settlement Agreement. Please summarize the benefits of the**
6 **Kiewit contract amendment.**

7 A: The primary benefits from the amendment were: ** [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] **

19 **Q: Was KCP&L's management of the Kiewit contract or the Iatan Unit 2 Project in**
20 **general a cause of cost increases to Kiewit's work?**

21 A: No.

22 **Q: What is the basis for your answer?**

1 A: First, a significant portion of the increase in the Kiewit contract was due to the maturation
2 of the Iatan Unit 2 Project's design. As I stated previously, it was anticipated that there
3 would be changes to the contract value because the design was only 15 to 20% complete
4 for Kiewit's scope of work at the time it prepared its estimate in April 2007, and that
5 estimate was the basis for the contract. In addition, as Company witness Mr. Jones
6 testifies, Kiewit did not take pricing risk for permanent materials, labor escalation and
7 other costs that were part of the escalating, over-heated market in which the Project was
8 procured and built. Also, as the design matured, as Mr. Meyer testifies, the scope of the
9 work matured as well, and this resulted in optimization of the plant's design to enhance
10 future operations. Finally, we knew at the time of the contract that the final schedule for
11 the Iatan Unit 2 Project would need to be worked out over time as the design matured.
12 The Project Team considered and identified in the 2008 reforecast of the Iatan Unit 2
13 Project's costs the likely outcome of design maturation. Company witness Meyer notes
14 in his testimony that as of May 2008, we had identified a projected cost for the Kiewit
15 contract of ** [REDACTED] **. Considering that the current contract price
16 for Kiewit is projected to be less than what was predicted in May 2008, I believe that our
17 team has done an excellent job of managing the Kiewit contract.

18 **Q: Mr. Drabinski testifies that the costs added to the Project from the ALSTOM**
19 **Settlement Agreement (Schedule WHD2010-7) or the Kiewit Contract Amendment**
20 **for Unit 2 (Schedule WHD2010-14) were imprudent. Do you agree?**

21 A: No, I do not. As I have summarized above, in making his recommendation,
22 Mr. Drabinski has ignored the circumstances that resulted in KCP&L's Executive
23 Management's decisions from early-to-mid 2009 to engage in these agreements with

1 ALSTOM and Kiewit. An examination of the circumstances at the time reveals that our
2 management acted prudently concluding these agreements. Had we chosen to do nothing
3 and sit on our contractual rights, such inaction would have negatively impacted the cost
4 and schedule of the Project.

5 **KCP&L'S PRUDENT MANAGEMENT OF THE IATAN UNIT 2 PROJECT**

6 **Q: You stated earlier that Mr. Drabinski has mis-stated a number of key facts related**
7 **to KCP&L's management of the Iatan Unit 2 Project. Could you identify those?**

8 A: In addition to the facts that Mr. Drabinski disregards in direct association with
9 management's key decisions KCP&L made, there are numerous facts that Mr. Drabinski
10 has misinterpreted, mistaken or omitted throughout his testimony that lead him to other
11 incorrect conclusions regarding the management of the Iatan Unit 2 Project. Company
12 witnesses Mr. Giles, Mr. Davis, Mr. Roberts and Mr. Meyer rebut a number of the
13 erroneous assumptions that Mr. Drabinski makes in his testimony. In my rebuttal, I am
14 focusing on the following significant factual mistakes made by Mr. Drabinski:
15 (1) Mr. Drabinski states that KCP&L's Management's "decision to force a scheduled
16 completion date of June 2010 drove KCP&L to decide upon a Multi-Prime project
17 management approach" (Drabinski Direct Testimony at p. 38); (2) Mr. Drabinski claims
18 that we did not have a full complement of Project Team members at the outset, and that
19 we had turn-over in the management of the Project which led to imprudent actions that
20 should result in a disallowance of Project costs; (3) Mr. Drabinski makes numerous
21 claims regarding Burns & McDonnell's performance, including that not having a project-
22 specific contract in place with Burns & McDonnell resulted in additional costs to the
23 Project; (4) Mr. Drabinski claims that audits of the new processes we put in place were

1 not performed timely; and (5) Mr. Drabinski alleges that KCP&L's management delayed
2 implementing professional advice from Schiff, Burns & McDonnell and Black & Veatch.

3 **Q: With respect to the first of the misstatements you identified above, did KCP&L's**
4 **Management ever decide to "force a scheduled completion date" for the Project?**

5 A: No. Mr. Drabinski alleges that "KCP&L Management made the decision to set a June
6 2010 completion date, despite the fact that approval for the project was a year later than
7 anticipated." (Drabinski Direct Testimony at p. 49.) In support of this statement,
8 Mr. Drabinski cites to the "2004 PDR schedule" which "called for the start of
9 construction in January 2005 and commercial operation in November 2009" which
10 Mr. Drabinski compares to what he claims are the Project's actual dates, in which,
11 "Actual constructions [*sic*] started in January 2006 and the commercial operation date
12 was accelerated to June 2010, or eight months later, compressing the schedule by four
13 months." (Drabinski Direct Testimony at p. 49.) First, KCP&L never adopted the very
14 preliminary set of milestones contained within the preliminary PDR prepared a full year
15 before the Project received approval as its "anticipated" schedule. Second, it is unclear
16 what dates Mr. Drabinski is attempting to compare. Burns & McDonnell did not suggest
17 in the PDR that construction could begin as early as January 2005, nor did any
18 construction on Iatan Unit 2 begin in January 2006.

19 In my Direct Testimony and the testimony of Company witnesses Mr. Giles and
20 Mr. Roberts, we discussed the deliberate steps taken in the fourth quarter of 2005 and the
21 first half of 2006 to vet and confirm that the Project could reasonably target June 1, 2010
22 for the in-service date. It is not true that KCP&L's Executive Management or Senior
23 Management "forced" this date on the Project.

1 **Q: Please identify the section of Mr. Drabinski's testimony related to turn-over of the**
2 **Project Team to which you take exception.**

3 A: Mr. Drabinski testifies that, "Until mid-2008, when Carl Churchman was appointed as
4 Vice President – Construction, there was a lack of direction, inadequate controls,
5 procedures and accountability." (Drabinski Direct Testimony at p. 44.) I disagree with
6 that statement and believe the facts, notably the resolution of the Iatan 1 rate proceedings
7 in both Kansas and Missouri, show Mr. Drabinski to be incorrect. Long before
8 Mr. Churchman was hired, the Project had processes and procedures and more than
9 adequate controls in place and those processes, procedures and controls were providing
10 the EOC with the information necessary for decision-making and tracking of the Project's
11 progress.

12 As I previously testified, in the third and fourth quarters of 2005, KCP&L's
13 Executive Management had taken a number of actions to increase the oversight of the
14 CEP Projects, including engaging Schiff and Internal Audit for oversight and establishing
15 the EOC. By the end of 2005, we had selected Burns & McDonnell as the Owner's
16 Engineer and its team was working with Schiff on the development of the strategic
17 schedule, which was a high-level depiction of the Project's planned milestones. This
18 same strategic schedule has been used since it was finalized in the first quarter of 2006 to
19 track the Project's progress against those milestones and report any variances not just
20 internally but to the Commissions' staffs as well. In July 2006, we provided the
21 Commissions' staffs with a guidance document entitled, "Cost Control System." (Jones
22 Direct Testimony, Schedule SJ2010-1.) Company witness Mr. Jones testifies that the
23 processes and procedures that were prepared on the basis of the guidelines discussed in

1 the Cost Control System meet or exceed industry standards. Based upon his experience,
2 the Cost Control System provided a starting framework for the project management tools
3 for KCP&L's project team and corporate management for a project of this size. (Jones
4 Direct Testimony at pp. 3-4.) Mr. Jones noted in his testimony that the Cost Control
5 System provides guidance with respect to the management of the CEP projects, including
6 the Iatan Unit 2 Project, by establishing processes for developing and tracking schedule,
7 project cost, earned value performance and cash flow. This information provides a basis
8 for KCP&L to predict future cost and schedule issues, among other key trends necessary
9 to manage a large utility construction project. (Jones Direct Testimony at p. 4.)

10 By the third quarter of 2006, the Project Team had instituted a procurement
11 schedule and, once the ALSTOM contract was executed on August 10, 2006, the Project
12 Controls team was in the process of developing an integrated project schedule with
13 ALSTOM's critical assistance. That schedule was baselined on April 9, 2007. The EOC
14 was getting regular reports regarding the Project's schedule status this entire time.

15 On December 5, 2006, the Project's Control Budget Estimate ("CBE") was
16 completed and provided to the Board of Directors. The CBE has been the basis for
17 comparing the Project's cost velocity and variances since that time. Procurement had
18 implemented the primary processes for cost control, the change management procedure
19 on October 25, 2006. At the same time, KCP&L's Project Team had in place controls for
20 monitoring change orders and potential changes. These were formalized in early 2007
21 into R&O tracking, which were reviewed by the EOC starting in July 2007.

22 Mr. David Price was hired on May 1, 2007 as the Vice President of Construction,
23 reporting to Steve Easley, Senior Vice President of Supply. Mr. Price further led the

1 establishment of processes and procedures, and identified areas within the Project Team
2 that needed further strengthening. On July 18, 2007, the Iatan Unit 2 Project Team under
3 Mr. Price's direction provided the EOC with an "Assessment of Key Risks" (See
4 Schedule WHD2010-15.) which summarized the Project Team's views of the key risks
5 facing the Project at that time and in the future. ** [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] ** This

10 document is replete with the type of information the EOC needed for its evaluation of the
11 status and the risks of the Project. When Mr. Price left the Company to return to his prior
12 employer, all of the progress made under Mr. Price continued through the time that
13 Mr. Churchman was with us and has continued. Changes in the role of the project
14 director or Vice President of Construction have had no negative impact on continuity of
15 the Project.

16 **Q: What is the basis for your statement?**

17 A: Because we have had processes and procedures in place and industry best practice project
18 controls, we have had all the information necessary at the EOC level to make key
19 decisions. Company witness Mr. Roberts testifies regarding the availability of key
20 information for our decision-making. (Roberts Direct Testimony at p. 24.)

21 **Q: Do you know of any key decisions that were delayed on the Project due to changes in**
22 **the Project's management team that resulted in KCP&L expending additional**
23 **costs?**

1 A: No, I don't believe there were any key decisions that were impacted. In fact, each time
2 we added new management personnel, my recollection is they hit the ground running and
3 were immediate assets. The three most prominent changes in the Project Team were
4 when: (1) Brent Davis was made Project Director in May 2006; (2) Dave Price was hired
5 as the VP of Construction; and (3) Carl Churchman was hired to succeed Mr. Price.
6 When Mr. Davis joined the Project, he seamlessly engaged in the ongoing negotiations
7 with ALSTOM and helped establish the Project Team on site. Mr. Price joined the
8 Project exactly two weeks after Kiewit had made its presentation on its BOP estimate,
9 and Mr. Price was able to lead the team through the vetting and negotiation of that
10 contract as well as the ratcheting up of the Project's procedures. After Mr. Price left and
11 before Mr. Churchman started, we were able to complete the re-baseline of the Iatan
12 Unit 1 schedule, negotiate the ultimate resolution of Unit 1 claims, and complete the 2008
13 Cost Reforecast. Mr. Churchman joined the Project in May of 2008 and immediately was
14 involved in resolving the Unit 1 Settlement Agreement with ALSTOM and recovering
15 the schedule after the tragic accident involving ALSTOM's erection crane that claimed a
16 worker's life. During each of these transitions, the EOC continued to receive and react to
17 the information that was produced by the Project's control systems. We never cancelled
18 an EOC meeting because of a vacancy, and, to my knowledge, never allowed a key
19 decision to wait.

20 In addition, it is worth noting that our process for authorizing expenditures
21 includes strict limits for our project-level personnel. The VP of Construction must seek
22 authorization for any expenditure above ** [REDACTED] **, and the Director of Construction
23 requires authorization for any amount above ** [REDACTED] **. Therefore, we have had

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1 controls in place that have limited the possibility of abuse and required transparency from
2 the Project Team to the EOC and members of Executive Management.

3 **Q: You are aware of the report that Mr. Drabinski cites from Strategic Talent**
4 **Solutions (“STS”) in his testimony?**

5 A: Yes, I am.

6 **Q: Doesn’t the STS report identify problems with the Iatan Unit 2 Project Team?**

7 A: Yes, the report identified a number of issues and that was the purpose of engaging STS.
8 As a direct result of the open and thorough vetting by the oversight team and our Project
9 Team, I recognized that there was some tension in the team, and I asked the consultant
10 who evaluates such issues for us to perform this assessment, which contains a number of
11 suggested improvements that we began implementing immediately. I believe that
12 engaging experts such as STS at a time when corrective actions could be taken with
13 limited or no consequences is good management.

14 **Q: What did you do in response to the conclusions reached in the STS report?**

15 A: The most notable action Executive Management took in response was hiring Mr. Price,
16 who came on board at the precise time we needed his leadership on the Kiewit contract
17 negotiations and completing the BOP engineering. In addition, the STS report led to a
18 number of team-building exercises that cleared the air and allowed the Project Team to
19 better function. Company witness Brent Davis discusses a number of changes that were
20 initiated at the Project-level following the release of the report. Throughout, the
21 processes needed and used in running the Project have remained largely the same and
22 have only been strengthened over time.

1 **Q: Another position that you believe Mr. Drabinski misstated relates to the timing of**
2 **the Burns & McDonnell contract. Why do you take exception to Mr. Drabinski's**
3 **position?**

4 A: Burns & McDonnell's performance was never impacted by its contractual relationship
5 with KCP&L. The fact that Burns & McDonnell was working under a General Services
6 Agreement and not a project-specific contract with KCP&L on Iatan Unit 2 until the first
7 quarter of 2007 had no effect on its performance. Burns & McDonnell started work on
8 the Project after our November 23, 2005 decision to utilize them as the Owner's Engineer
9 and performed all the work we asked of them in the period leading to the execution of the
10 contract.

11 **Q: Mr. Drabinski cites to reports from Schiff that ** [REDACTED]**
12 **[REDACTED] ** What**
13 **did KCP&L do in reaction to those reports?**

14 A: In 2006, Schiff identified risks that required action, and our management team responded.
15 Schiff did its job in highlighting concerns, and KCP&L and Burns & McDonnell
16 responded to those concerns. In my prior testimony and in the testimony of Company
17 witnesses Mr. Giles and Mr. Davis, we each noted key dates that Burns & McDonnell
18 had to meet to maintain schedule and actions we took to mitigate or alleviate schedule
19 pressure on engineering. The most important dates to KCP&L were facilitating
20 ALSTOM's construction of the Iatan Unit 2 boiler, which required Burns & McDonnell
21 to engineer and Kissick, our foundation contractor, to construct the foundations for the
22 boiler by August 15, 2007. We achieved that goal at no additional cost to the Project. As
23 Company witness Mr. Roberts testifies, Mr. Drabinski cannot establish any linkage

1 between his recommended disallowance and anything that KCP&L or Burns &
2 McDonnell did in order to maintain this or any other critical engineering milestone on the
3 Iatan Unit 2 Project. There were no additional costs that KCP&L paid to any vendor to
4 maintain the key Iatan Unit 2 dates for foundations.

5 **Q: With respect to Mr. Drabinski's testimony related to the audits KCP&L's Internal**
6 **Audit team performed with Ernst & Young's assistance, what did you find in**
7 **Mr. Drabinski's testimony to be factually incorrect?**

8 A: Mr. Drabinski makes a number of sweeping generalizations in connection with our audit
9 program, and many of his observations are based on an incorrect understanding of the
10 facts. As an example, Mr. Drabinski testifies: ** [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 [REDACTED]** (Drabinski Direct Testimony at p. 48.) Mr. Drabinski's conclusions are
16 not accurate. Company witness Mr. Roberts testifies that there was no delay to "major
17 cost and schedule control systems," and that the systems needed to manage the Project's
18 performance were in place at an appropriate time. Company witness Brent Davis
19 discusses the cost control measures that the Project Team took as the Project was getting
20 underway.

21 In addition, the audit program was not started as Mr. Drabinski contends, "after
22 major failings of management were discovered." Later, Mr. Drabinski testifies, "many of
23 the audits were not performed until problems arose. While some audits needed to be

1 performed later in the project, many clearly would have provided valuable feedback had
2 they been performed much earlier.” (Drabinski Direct Testimony at p. 119.)
3 Mr. Drabinski does not clarify which audits should have been performed “much earlier.”
4 To clarify, the audit program was started in 2006 as the Project Team was being
5 assembled. ** [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] ** (See Schedule WHD2010-16.) This

11 particular audit was initiated in the first quarter of 2007. It was not possible for Audit
12 Services to audit whether “costs are accurately captured and reported” before the
13 establishment of the Project’s Control Budget, which was approved on December 5,
14 2006.

15 In addition, I find in reviewing Mr. Drabinski’s testimony regarding the audit
16 program that he ignores Internal Audit’s positive findings and merely quotes select
17 passages of our Audit Reports without identifying: (1) whether or how KCP&L addressed
18 these findings; (2) whether these findings resulted in any specific impact to the Project;
19 and (3) any linkage between these findings and his recommended disallowance. To date,
20 KCP&L’s management has dispositioned each and every audit finding from our Internal
21 Audit team to the satisfaction of the Board of Directors’ Audit Committee.
22 Mr. Drabinski has taken findings out of context and without regard to how these audits

1 were ultimately closed by the Project Team. Company witnesses Mr. Davis and
2 Mr. Roberts further rebut Mr. Drabinski's use of these audit documents.

3 **Q: You mentioned that Mr. Drabinski was mistaken in claiming that KCP&L**
4 **Management delayed implementing professional advice?**

5 A: Yes. Mr. Drabinski claims that there were: "Delays in Implementing Professional
6 Advice. - Schiff Hardin, B&V and B&McD provided advice to the KCP&L Board of
7 Directors and Senior Management on the need to accelerate many elements of the project.
8 History shows that most key dates were missed because KCP&L did not take reasonable
9 steps to act on the advice of KCP&L's retained experts." (Drabinski Direct Testimony at
10 p. 45.) First, Mr. Drabinski has his dates and facts confused. As Company witness
11 Mr. Giles testifies, Mr. Drabinski is completely mistaken regarding the February 1, 2005
12 presentation that was made to the KCP&L Board of Directors regarding the status of the
13 Project at that time. (Giles Rebuttal Testimony at pp. 57.) That presentation was given
14 by KCP&L management to the Board of Directors. Schiff was hired by KCP&L six
15 months after this presentation was made. Next, Mr. Drabinski claims, "What the
16 evidence shows is that from early 2005 when approval of the CEP was imminent, until
17 mid-2007 when the crisis was finally identified and acted upon by senior management,
18 valuable time was lost." (Drabinski Direct Testimony at p. 72.) I have previously
19 testified regarding the numerous steps management immediately took based on the advice
20 each of these entities provided. Finally, Mr. Drabinski states that ** [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]** (Drabinski Direct Testimony at p. 74.) In

1 doing so, he overlooks the fact that by mid-April, we had procured the turbine generator,
2 executed a letter of intent with ALSTOM for approximately 40% of the contract work on
3 the entire project and released Burns & McDonnell to begin the BOP design work for the
4 critical foundations. Company witness Mr. Roberts testifies regarding how these and
5 other key events were responsible for keeping the Project on course.

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

7 **A: Yes, it does.**

