

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

DIRECT TESTIMONY OF

KENNETH M. ROBERTS

**ON BEHALF OF
KANSAS CITY POWER & LIGHT COMPANY**

**IN THE MATTER OF THE APPLICATION OF
KANSAS CITY POWER & LIGHT COMPANY
TO MODIFY ITS TARIFFS TO CONTINUE THE
IMPLEMENTATION OF ITS REGULATORY PLAN**

DOCKET NO. 09-KCPE-____-RTS

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

2 A: My name is Kenneth M. Roberts. My business address is 6600 Sears Tower, 233 South
3 Wacker Drive, 60606, Chicago, Illinois 60606.

4 **Q: By whom and in what capacity are you employed?**

5 A: I am an equity partner, co-chair of the Construction Law Group and a member of the
6 executive committee of the law firm Schiff Hardin, LLP (“Schiff”). Kansas City Power
7 & Light Company (“KCP&L” or the “Company”) engaged Schiff: (i) to help the
8 Company develop project control procedures to monitor the cost and schedule (“Project
9 Controls”) for the infrastructure projects contained in the Company’s Comprehensive
10 Energy Plan (“CEP”); (ii) to monitor the CEP’s progress and costs, including the review
11 and management of change order requests; (iii) to negotiate contracts with vendors; and
12 (iv) to resolve disputes with vendors that might arise.

1 **Q: Please describe your education, experience and employment history.**

2 A: I received my undergraduate degree, a Bachelor of General Studies, with honors,
3 concentrations in Business, Political Science, and Rhetorical Studies, in 1982 and my
4 juris doctor with distinction in 1985 from the University of Iowa. I have also attended
5 the Kellogg Management Institute, Kellogg Graduate School of Management of
6 Northwestern University (1999-2000) and The University of Chicago's Graduate School
7 of Business Management Institute (2007). I will co-teach a course during the fall of 2008
8 semester on project finance (focusing on risk analysis) at Northwestern University's
9 Graduate Engineering program. I am admitted to practice law in Illinois and Missouri, as
10 well as before the United States District Courts for the Northern and Central Districts of
11 Illinois and the Western Division of Missouri.

12 My legal practice is concentrated in the field of construction law, procurement,
13 and Project Controls/corporate governance in which I provide independent "eyes and
14 ears" to corporate boards and senior management, particularly on behalf of owners in the
15 energy industry, as to the status of large capital improvement projects. I have handled
16 matters in Brazil, Canada, Texas, Missouri, Kansas, New Jersey, Nevada, Pennsylvania,
17 Massachusetts, Maryland, Alaska, Florida, Illinois, Indiana, and Ohio. I engage in a
18 range of services from preparation and negotiation of contracts, project controls
19 monitoring and advice during on-going projects, negotiation of change orders and
20 contract additions, alternate dispute resolution through mediation and arbitration, and
21 when necessary, litigation. I also consult on a daily and ongoing basis with energy
22 companies' procurement and risk management departments concerning every aspect of
23 planned or ongoing construction projects and outages. The work I have performed for

1 energy companies involves all elements of power plant construction and technology,
2 including construction of air quality control systems (“AQCS”), low NOx burners, heat
3 recovery steam generators (“HRSGs”), selective catalyst reduction (“SCR”) systems,
4 precipitators, nuclear waste disposal and storage, coal handling systems, steam
5 generators, gas and steam turbines, boilers, control systems, and other operational and
6 environmental equipment. I also have an extensive background of representing owners,
7 contractors and architect/engineers in multi-faceted, complex disputes involving delays,
8 disruption and losses of efficiency; breaches of contracts for performance, scope of work
9 and payment; and complex multi-party insurance coverage issues. I work with and
10 manage a team that has extensive experience providing Project Controls (for tracking
11 budget and schedule) for owners and architect/engineers on a national basis and work
12 daily with the owner's project managers at the construction site.

13 **Q: Have you previously testified in a proceeding at the Kansas Corporation**
14 **Commission (“KCC”) or before any other utility regulatory agency?**

15 A: I have not previously testified at a proceeding before this Commission. I have offered
16 opinions and reports to multiple governmental and government-appointed officials on
17 behalf of clients, including the Pickering A Review Panel and Ontario Power Generation
18 Review Panel regarding the rehabilitation of the Pickering A nuclear units in Ontario,
19 Canada.

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

21 A: The purpose of my testimony is to identify for the KCC my understanding and
22 independent assessment of the “Project Controls,” that is, the processes and procedures
23 that KCP&L is using to track the cost and schedule for the construction and installation

1 of certain air quality control equipment on the Company's existing coal-fired generating
2 unit at the Iatan Generating Station ("Iatan 1"), which I will refer to as the "Iatan 1
3 Project."

4 **Q: What services are you and Schiff's Construction Group performing for KCP&L?**

5 A: Under my direction, Schiff has provided KCP&L with the services of its lawyers,
6 analysts, paralegals, and affiliated experts since August 2005. Schiff provides KCP&L
7 with: (i) assistance in its procurement of construction work, services, and materials;
8 (ii) independent review and reporting of the Project Controls for the CEP projects; and
9 (iii) counsel concerning disputes with vendors related to the construction of the CEP
10 projects.

11 **Q: Name the projects on which you have provided such services to KCP&L.**

12 A: Schiff has provided these services on each of the CEP projects, specifically the Spearville
13 Wind Project, the LaCygne Unit 1 SCR Retrofit, the construction of a second unit at the
14 Iatan Generating Station, as well as the Iatan 1 Project.

15 **Q: What is the method in which you provide information to KCP&L regarding the
16 CEP Projects?**

17 A: Under my direction, Schiff has reported to KCP&L's Executive Oversight Committee
18 and to senior management from time to time during the course of the planning and
19 construction of KCP&L's CEP Projects. Such reports have been in both oral and written
20 format. These reports generally include a summary of Schiff's independent view of the
21 CEP projects' schedule, budget, and procurement status and identification of key issues
22 that have the potential to affect or have affected progress. These reports also generally

1 include metrics that Schiff has developed to independently verify the CEP Project's then-
2 current status.

3 **Q: Are you familiar with the work that KCP&L is performing on the Iatan 1 Project**
4 **with respect to Project Controls?**

5 A: Yes. Since the inception of the Iatan 1 Project, my team and I have worked on a daily
6 basis with KCP&L's Project Controls team to review and verify the Company's Project
7 Controls methods and data produced by those methods.

8 **Q: Can you describe the methods that KCP&L is utilizing for Project Controls on the**
9 **Iatan 1 Project?**

10 A: KCP&L's Project Controls for the Iatan 1 Project include: (i) guidelines for establishing
11 the Iatan 1 Project's definition and scope; (ii) roles and responsibilities of individuals
12 who are charged with tracking the Iatan 1 Project's progress; (iii) guidelines for
13 establishing the Iatan 1 Project's contracting strategy and procurement plan; (iv) vendor
14 evaluation criteria and selection process; (v) contract terms; (vi) cost controls and change
15 order management and schedule controls and metrics used for same; (vii) corporate
16 governance guidelines; (viii) project governance guidelines; and (ix) other project-
17 specific guidelines.

18 **Q: Do you have an opinion regarding the processes and procedures KCP&L is utilizing**
19 **to track the Iatan 1 Project's budget and schedule?**

20 A: KCP&L's Project Controls for the Iatan 1 Project are consistent with industry best
21 practices.

1 **Q: Are you familiar with the process used for procuring goods, services, and materials**
2 **for the Iatan 1 Project?**

3 A: Yes. My team and I have participated in and provided oversight and legal advice
4 throughout the procurement process for the Iatan 1 Project. The contracts that my team
5 and I have helped KCP&L negotiate provide the Company with the necessary controls
6 for tracking the performance of each contractor's and materials supplier's work.

7 **Q: Do you have an opinion regarding that process?**

8 A: The Iatan 1 Project has procured the contracts consistent with industry best practices.

9 **Q: Describe the specific cost controls that KCP&L has implemented for the Iatan 1**
10 **Project.**

11 A: The Iatan 1 Project established a control budget estimate ("Control Budget Estimate").
12 The Control Budget Estimate was established in December 2006 at the point that the
13 Iatan 1 Project's engineering was approximately 25% complete. Schiff provided
14 oversight to the KCP&L Project team during the preparation of the Control Budget
15 Estimate. To my knowledge, the Control Budget Estimate included contingency for all
16 known or anticipated factors that could influence the Iatan 1 Project's cost at the time it
17 was prepared. To the best of my knowledge, it was known and acknowledged at the time
18 that the Control Budget Estimate was presented to the Executive Oversight Committee
19 that there would be a time at which it would be appropriate to reforecast the Iatan
20 Project's expected cost (the "Cost Reforecast"). Within the construction industry, it is
21 common and expected to conduct such Cost Reforecasts at numerous points that
22 generally correlate to the points in time at which engineering work is sufficiently mature,

1 at critical stages of procurement of materials and services, and at points where there are
2 substantive unplanned changes in the pace or scope of the work.

3 **Q: Describe your familiarity with the process KCP&L has used for verifying and**
4 **tracking the schedule status for the Iatan 1 Project.**

5 A: Schiff provided KCP&L with oversight regarding the development and maintenance of
6 the Iatan 1 Project's schedule. In general, the contracts utilized for procuring the work
7 and materials on the Iatan 1 Project include obligations on behalf of the performing
8 contractors/vendors to supply KCP&L with the information it needs to verify the work
9 and the progress of the work. With the exception of certain contractors' objections to
10 providing KCP&L with proprietary information, KCP&L has received the data necessary
11 to track the progress of vendors' work on a schedule and earned value basis.

12 **Q: How has Schiff verified the Iatan 1 Project's schedule status?**

13 A: Schiff has provided KCP&L with its independent view of each contractor's progress on
14 the Iatan 1 Project. Schiff has regularly produced metrics for the Iatan 1 Project's use
15 that identify each contractor's performance on both a schedule and earned value basis.
16 Schiff has also reviewed data produced by KCP&L and the performing contractors
17 regarding schedule performance.

18 **Q: Do you have an opinion regarding the Iatan 1 Project's change control process?**

19 A: Schiff is familiar with the Iatan 1 Project's change control process, and finds that it is
20 consistent with industry best practices.

21 **Q: What is the basis for your opinion?**

1 A: I have participated in meetings and provided both written and oral reports to KCP&L's
2 senior management, Executive Oversight Committee and project personnel. I have also
3 observed the reports that have been provided by the Iatan Project Team in these same
4 venues.

5 **Q: Are you familiar with the Cost Reforecast that KCP&L performed and completed**
6 **in the second quarter of 2008 for the Iatan 1 Project?**

7 A: Yes. At my direction, Schiff provided oversight during the preparation of KCP&L's Cost
8 Reforecast, which has culminated in the revised cost estimate that the Company is
9 currently using to track costs for the Iatan 1 Project.

10 **Q: What is your opinion of the process KCP&L employed in performing this Cost**
11 **Reforecast?**

12 A: Schiff concluded that the process KCP&L utilized for developing, testing, and
13 documenting the 2008 Cost Reforecast was consistent with industry best practices.

14 **Q: In your opinion, how effective has KCP&L's Project Controls been for purposes of**
15 **managing the challenges of the Iatan 1 Project in the current construction industry**
16 **environment?**

17 A: In my opinion, the Project Controls have worked quite well to monitor and manage the
18 costs and schedule challenges imposed by a particularly challenging market environment.
19 As intended, the Project Controls have timely notified KCP&L of future cost and
20 scheduling issues in a manner that has allowed the Company to be proactive in
21 addressing those issues, and thereby minimizing, mitigating and/or in some cases
22 eliminating their impact on the Iatan 1 Project. Although the cost of the Iatan 1 Project

1 has increased, in my opinion the Project Controls in place have allowed KCP&L to
2 mitigate those cost impacts in a prudent and cost effective manner. It is also my opinion
3 that the cost of the Iatan 1 Project would be significantly higher if KCP&L had
4 implemented less robust Project Controls or failed to implement and monitor the Project
5 Controls as well as it has.

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

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

