

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

SEP 22 2011

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 10-KCPE-415-RTS
by
State Corporation Commission
of Kansas

**POST-HEARING BRIEF OF THE CITIZENS'
UTILITY RATEPAYER BOARD REGARDING KCPL'S
\$9 MILLION REVISED CLAIM FOR RATE CASE EXPENSE**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB"), and files its post-hearing brief regarding KCPL's \$9 million revised claim for rate case expense. In support of its post-hearing brief, CURB states as follows:

I. BACKGROUND

1. KCPL's claim for rate case expense in the record at the close of the hearing was \$2.1 million. The claim has now skyrocketed to over \$9 million, an increase of more than four times the amount included in KCPL's filing.¹ This reflects Mr. Downey's opinion that KCPL viewed this rate case as a "2 billion dollar bet the company investment," a bet that he "would have erred in terms of effort and cost in terms of spending in that area ... because there was so much at risk for the Company."² However, while KCPL was largely successful on the prudence issue, it was much less successful on other contested issues – obtaining only \$21.846 million, or 39.5%, of the \$55.2 million revenue requirement sought.³

2. The April 19, 2011 Prehearing Officer's Report and Recommendation directed KCPL to provide three levels of information for any rate case expense sought in this proceeding.⁴ On June 24, 2011, the Commission acknowledged and adopted the three levels of information required by the Prehearing Officer, including: "Third, detailed information is required for each timekeeper, including (i) the hourly rate charged for that timekeeper, (ii) the number of hours worked by that timekeeper, (iii) dates

¹ Crane Direct, p. 12.

² Tr. Vol. 16, pp. 3667-68, 3695, 3700 (emphasis added). Mr. Downey further stated it was "mission critical" to the Company to "explain, defend, and validate all the work we had done over the past 5 years..."

³ Tr. Vol. 16, p. 3684; Crane Direct, p. 16.

⁴ Prehearing Officer's Report and Recommendation, ¶ 4.

these hours were worked, and (iv) a description of the work performed on those dates by the timekeeper.”⁵ KCPL has failed to provide the required level 3 detailed information.

3. CURB incorporates by reference its August 15, 2011 Prehearing Brief. CURB further incorporates and asserts its ongoing objection to the Commission’s reliance on KCPL’s responses to Staff DRs 554 and 555.⁶

4. Because of the massive number of invoices⁷ and summary schedules involved with KCPL’s \$9 million revised case expense claim and the numerous issues surrounding those invoices and summary schedules, CURB’s summarized proposed findings of fact are lengthy and required much of the twenty pages authorized for post-hearing briefs.

II. ARGUMENT AND AUTHORITIES

5. As more fully discussed in CURB’s Pre-Hearing Brief, the following general legal standards and Commission policies are applicable to the recovery of rate case expense:

- The utility has the burden of proof to establish rate case expense is known and measurable,⁸ and the burden of proof to establish rate case expenses are prudently incurred by the utility.⁹
- The Commission has a long-standing policy of including fair and reasonable rate case expenses that are prudently incurred in costs to be borne by ratepayers,¹⁰ and the

⁵ Order Addressing Prehearing Officer’s Report and Recommendation Following Prehearing Conference on March 9, 2011, ¶ 7.

⁶ The Commission relied upon KCPL’s responses to DRs 554 and 554 despite the fact KCPL did not provide a revised claim in either its September 16, 2010 Post Hearing Brief or its October 22, 2010 Post Hearing Rebuttal Brief, nor did the Company file any further documentation on rate case costs in response to Mr. Weisensee’s cross-examination. KCP&L did not seek leave to reopen the record to introduce new evidence or amend its claim for rate case expense prior to the November 22, 2010 Order. Crane Direct, pp. 9-10. CURB has maintained its objection to the Commission’s reliance on and inclusion of the DR responses in the record.

⁷ There are 2,500 to 3,000 pages of invoices in KCPL Exh. 2 and KCPL’s responses to Staff DRs 554 and 555. Tr. Vol. 17, pp. 4132-33, 4149.

⁸ *Greely Gas Company v. State Corp. Comm’n*, 15 Kan. App.2d 285, 288, 807 P.2d 167 (1991); *Home Telephone Co. v. Kansas Corporation Comm’n*, 31 Kan. App.2d 1002, 1005, 76 P.3d 1071 (2003).

⁹ *Kansas Industrial Consumers v. Kansas Corporation Comm’n*, 36 Kan. App.2d 83, 111, 138 P.3d 338 (2006); *Home Telephone*, 31 Kan. App.2d at 1015.

¹⁰ November 22nd Order, p. 88, February 21st Order, ¶ 13, citing *In the Matter of the Application of Westar Energy, Inc.*, Docket 05-WSEE-981-RTS, Order on Reconsideration, February 13, 2006, ¶93; *Driscoll v. Edison Light & Power Co.*, 307 U.S. 104, 120-21 (1939) (“[T]he utility should be allowed its fair and proper expenses for presenting its side to the

responsibility to submit evidence setting out a complete record upon which this Commission can decide the issue of rate case expense lies with KCPL, not with Staff.¹¹

- The Commission's decision granting rate case expense must be supported by substantial competent evidence.¹²
 - The Commission has established a policy of requiring utilities to file actual, detailed information about the expenses incurred to recover rate case expense.¹³ The Commission's directive to KCPL to provide three levels of information for rate case expense claims provides clarity for this policy.
 - A utility is not entitled to recover every expense incurred by the Company in establishing rates,¹⁴ and the Commission is permitted to deny duplicative expenses.¹⁵
 - The Commission is considered an expert in reviewing rate case expense and in making the decision will draw from its knowledge, expertise, and experience in evaluating services rendered in this proceeding.¹⁶
 - In determining rate case expense, the Commission should balance the interest of all concerned parties, including investors vs. ratepayers, present ratepayers vs. future ratepayers, and the public interest.¹⁷
 - Under its statutory mandate, the Commission must establish "just and reasonable rates" that are both fair to the public and permit public utilities to provide sufficient service while maintaining a reasonable return on their investment.¹⁸
 - "Rate case expense must be not only prudently incurred but also a fair and reasonable amount to be borne by ratepayers."¹⁹
 - "Fees which are not supported by 'meticulous, contemporaneous time records' that show the specific tasks being billed should not be allowed."²⁰
 - Requiring shareholders to share some rate case expenses with ratepayers is appropriate in some situations.²¹
6. Each of the above general legal standards and Commission policies should be applied to

KCPL's revised rate case expense claim. CURB will focus primarily on three overriding legal principles

commission.").

¹¹ Order Addressing Prehearing Officer's Report and Recommendation Following Prehearing Conference on March 9, 2011, ¶ 20.

¹² *Home Telephone*, 31 Kan. App.2d at 1005.

¹³ November 22nd Order, p. 88; February 21st Order, ¶ 13; *In the Matter of the Audit and General Rate Investigation of Rural Telephone Company*, Docket 01-RRLT-083-AUD, Order Setting Revenue Requirements, June 26, 2001, ¶¶ 68-70.

¹⁴ *Columbus Telephone Co. v. Kansas Corporation Comm'n*, 31 Kan. App. 2d 828, 835-36, 75 P.3d 257 (2003).

¹⁵ *Sheila A. v. Whiteman*, 259 Kan. 549, 568-69, 913 P.2d 181 (1996).

¹⁶ *Westar Energy v. Wittig*, 44 Kan. App.2d 182, 184, 235 P.3d 515 (2010). *See also, Johnson v. Westhoff Sand Co.*, 281 Kan. 930, 940, 135 P.3d 1127 (2006).

¹⁷ *Kansas Gas & Electric v. Kansas Corporation Comm'n*, 239 Kan. 483, 489-491, 720 P.2d 1063 (1986).

¹⁸ K.S.A. 66-101b; K.A.R. 82-1-231(a). *United Cities Gas Co. v. Brock Exploration Co.*, 995 F.Supp. 1284, 1293 (D. Kan. 1998).

¹⁹ January 6th Order, ¶ 75; February 21st Order, ¶ 23 (emphasis added).

²⁰ *Davis v. Miller*, 269 Kan. 732, 748-751, 7 P.3d 1223 (2000) (emphasis added).

²¹ November 22nd Order, p. 85.

in this post-hearing brief. The first principle is the Kansas Supreme Court's ruling with regard to attorneys fees: "Fees which are not supported by 'meticulous, contemporaneous time records' that show the specific tasks being billed should not be allowed."²² The second principle is the Commission's established policy of requiring utilities to file actual, detailed information about the expenses incurred to recover rate case expense,²³ as demonstrated by the Commission's directive to KCPL to provide three levels of information for its revised rate case expense claim.²⁴ The third principle, as the Commission has previously held in this docket, is that "Rate case expense must be not only prudently incurred but also a fair and reasonable amount to be borne by ratepayers;"²⁵

7. KCPL claims that it "has provided three levels of actual detailed information evidencing the massive rate case expense incurred in this proceeding in its prefiled testimony and schedules of KCP&L Witness John Weisensee."²⁶ To the contrary, the "summary schedules"²⁷ attached to Mr. Weisensee's direct testimony are not meticulous contemporaneous records and do not provide detailed information as required by the Supreme Court and this Commission, but are instead summary schedules categorized and summarized long after the services had been provided.

8. The actual invoices - over 2,500 pages of jumbled vague records - were aptly described by Chairman during the hearing as a "chaotic mess."²⁸ Mr. Weisensee was not even familiar with each rate case expense invoice and did not review each invoice,²⁹ and other than Mr. Rush and Mr. Weisensee

²² *Davis v. Miller*, 269 Kan. 732, 748-751, 7 P.3d 1223 (2000).

²³ November 22nd Order, p. 88; February 21st Order, ¶ 13; *In the Matter of the Audit and General Rate Investigation of Rural Telephone Company*, Docket 01-RRLT-083-AUD, Order Setting Revenue Requirements, June 26, 2001, ¶¶ 68-70.

²⁴ Prehearing Officer's Report and Recommendation, ¶ 4; Order Addressing Prehearing Officer's Report and Recommendation Following Prehearing Conference on March 9, 2011, ¶ 7.

²⁵ January 6th Order, ¶ 75; February 21st Order, ¶ 23 (emphasis added).

²⁶ Tr. Vol. 15, p. 3348.

²⁷ Weisensee Direct, p. 11; Tr. Vol. 15, pp. 3436-37 (Mr. Weisensee used the phrase "summary schedules" in his direct testimony, but describes them at the hearing as "our Level 3, so to speak, schedules.").

²⁸ Tr. Vol. 15, p. 3340.

²⁹ Weisensee Direct, p. 6; Tr. Vol. 15, pp. 3377-78.

being involved in “isolated reviews”, none of the individuals “responsible” for reviewing and approving invoices filed testimony on behalf of the Company.³⁰

9. The four-fold increase in the Company’s revised rate case expense claim - from \$2.1 million claimed when the record was closed - to the revised claim of over \$9 million in KCPL’s May 2011 testimony, is both alarming and unprecedented. The company utilized over 40 outside attorneys at six law firms charging over 14,000 hours and 45 consultants at eight consulting firms charging over 11,000 hours, with hourly rates that ranged up to \$855 per hour. The unrestrained use of these resources were in addition to KCPL’s internal in-house attorneys, accountants, analysts, administrative assistants, etc., the cost of which were included in the Company’s salary and wage claim.

10. In contrast, CURB fully litigated this case for a cost of \$188,051, using primarily one in-house attorney and three consultants (only two filed testimony). Staff, excluding Advisory Staff time and expense, spent \$1,128,267.50 using four in-house attorneys, one outside consultant, and in-house technical Staff. The Company spent over forty times what CURB spent, nearly 7 times what Staff spent, and over five times the combined amount incurred by CURB and Staff, including Advisory Staff time and expense.

11. The ultimate decision before the Commission is whether the \$9 million revised rate case expense claim by KCPL: (1) is supported by ‘meticulous, contemporaneous time records that show the specific tasks being billed (attorneys fees); (2) complies with the Commission’s established policy of requiring utilities to file actual, detailed information about the expenses incurred to recover rate case expense; and (3) results in a fair and reasonable rate case expense that should be borne by ratepayers to comply with the Commission’s mandate to establish just and reasonable rates charged to ratepayers. The answer is a resounding “no” to all three questions.

³⁰ Tr. Vol. 15, pp. 3379-80, 3408.

12. Each of the eight factors governing the reasonableness of attorney fees, Rule 1.5(a) of the Kansas Rules of Professional Conduct (KRPC)³¹ will need to be examined by the Commission, utilizing its knowledge, expertise, and experience in evaluating services rendered in this proceeding. Of particular importance is the “time and labor” component of factor (1) and the “experience, reputation, and ability” of the lawyer or lawyers performing the services component of factor (7), in light of the duplicative and excessive hours billed by both attorneys and consultants for KCPL in this proceeding.

13. KCPL is seeking to recover attorney fees stemming from over 14,000 hours for outside law firm personnel time billed to this case. The charges and services by the attorneys were not monitored or questioned, and there is no documentation of the alleged budget or the monthly meetings to monitor rate case costs.

14. KCPL has not provided the meticulous, contemporaneous time records directed by the Prehearing Officer, ordered by the Commission, and required by the Supreme Court. The chaotic mess of voluminous billing records submitted by KCPL is not easily analyzed under what has been described by some courts as a lodestar analysis.³² The lodestar analysis is determined by multiplying the number of hours productively spent by a reasonable hourly rate. When applying the lodestar approach, a court deducts “duplicative, unproductive, or excessive hours.”³³

15. Here, as in the *Family Winemakers* case, the task of applying the lodestar approach is extremely difficult, if not impossible, because the individual billing entries for a vast majority of the hours are voluminous and constitute “block billing.” “The term ‘block billing’ refers to the time-keeping method by which each lawyer and legal assistant enters the total daily time spent working on a case, rather

³¹ Kansas Supreme Court Rule 226, Kansas Rules of Professional Conduct (KRPC) 1.5 (2010 Kan. Ct. R. Annot. 458). It should be noted that KRPC 1.5 (c) states, “A lawyers fee shall be reasonable but a court determination that a fee is not reasonable shall not be presumptive evidence of a violation that requires discipline of the attorney.”

³² *De Jesus Nazario v. Moris Rodriguez*, 554 F.3d 196, 207 (1st Cir. 1983); *Family Winemakers of California v. Jenkins*, 2011 WL 2312534, 2 (D. Mass).

³³ *Family Winemakers of California v. Jenkins*, 2011 WL 2312534, at 2.

than itemizing the time expended on specific tasks.”³⁴ The evidence demonstrates that nearly all the attorneys retained by KCPL utilized block billing, as did many of KCPL’s consultants.

16. Courts have the authority to reduce hours that are billed in block format because such a billing style makes it difficult, if not impossible, to ascertain how much time counsel expended on specified tasks to determine the reasonableness of the hours expended with respect to specific time entries.³⁵

17. The 10th Circuit Court of Appeals in *Robinson v. City of Edmond* noted:

In its decision, the district court quite appropriately expressed concern about the use of “block billing” practices. The use of billing practices that camouflage the work of a lawyer does naturally and quite correctly raise suspicions about whether all the work claimed was actually accomplished or whether it was necessary. This concern is particularly important in a situation where a party is seeking to have his opponent pay for his own lawyer’s work.³⁶

18. Here, like the cases cited above, it has not been possible to comb through KCPL’s billing documents with precision to identify and deduct unreasonable time.³⁷ In light of the record, or lack thereof, the Commission should limit the Company to the \$2.1 million rate case expense claim contained in its application as recommended by CURB. In the alternative, the Commission may be required to evaluate where feasible the amount of time spent by KCPL’s legal team of over 40 attorneys on particular aspects of the case, “rather than the time spent by any individual timekeeper, and extrapolating from that

³⁴ *Robinson v. City of Edmond*, 160 F.3d 1275, 1284 n. 9 (10th Cir. 1998); *Family Winemakers of California v. Jenkins*, 2011 WL 2312534, at 2; *HRPT Properties Trust v. Lingle*, 2011 WL 775905, 14 (D. Hawaii) (citations and quotation marks omitted).

³⁵ *HRPT Properties Trust v. Lingle*, 2011 WL 775905, at 14, citing *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 948, (9th Cir. 2007); *Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 971 (D.C. Cir. 2004) (reducing requested hours because counsel’s practice of block billing “lump[ed] together multiple tasks, making it impossible to evaluate their reasonableness.”); *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S.Ct. 1933, 76 L.Ed.2d 40, (1983) (holding that applicant should “maintain billing time records in a manner that will enable a reviewing court to identify distinct claims.”). See also *Seamands v. Sears Holding Corp.*, 2011 SL 884391, 11-12 (D. Kan) (court disallowed 30 percent of block-billed hours).

³⁶ *Robinson v. City of Edmond*, 160 F.3d at 1284 (10th Cir. 1998) (footnote omitted).

³⁷ *Family Winemakers of California v. Jenkins*, 2011 WL 2312534, at 3. See also, McClanahan Direct, p. 8; Harden Direct p. 4. There are 2,500 to 3,000 pages of invoices in KCPL Exh. 2 and KCPL’s responses to Staff DRs 554 and 555. Tr. Vol. 17, pp. 4132-33, 4149.

sample an overall measure of reasonable hours, always bearing in mind the lodestar principle of avoiding ‘duplicative, unproductive, or excessive hours.’”³⁸

19. Duplicative, unproductive, and excessive hours by over 40 KCPL attorneys are pervasive in the Company’s billing records, with numerous attorneys attending the same conferences and hearings, drafting, preparing, and reviewing the same testimony and pleadings, preparing the same witnesses for hearing, and researching the same legal issues. The use of block billing by KCPL’s 44 attorneys (and consultants) makes it impossible to ascertain the reasonableness of the hours expended on specific tasks.

20. In addition, many of the expenditures by the Company were unnecessary and duplicative, and possibly even unauthorized by the letter of engagement or contract (or lack thereof), such as the services of Schiff Hardin, Duane Morris, Pegasus, Morgan Lewis, Global Prairie, Communication Counsel of America, and NextSource.

21. CURB is not suggesting that KCPL can’t spend whatever it chooses to spend on rate case expense. However, if the Company chooses to gold-plate its rate case expense to guarantee the “2 billion dollar bet the company investment,” ratepayers should not be required to pay for the Company’s decision to spend extravagantly to protect shareholder interests. The Company’s \$7.7 million rate case expense share of the \$9 million claimed is not a “fair and reasonable amount to be borne by ratepayers.”

22. Accordingly, CURB recommends that the Commission limit KCPL to the \$2.1 million rate case expense contained in the record at the close of the evidentiary hearing. However, should the Commission decide to go further, it may be necessary for the Commission to impose “across-the-board reductions” similar to those made in the *HRPT Properties Trust* case,³⁹ or adopt the alternative recommendations made by CURB witness Andrea Crane.

³⁸ *Family Winemakers, citing, Torres-Rivera v. O’Neil Cancel*, 524 F.3d 331, 340 (1st Cir. 2008) (holding that when “time records ... are ill-suited for evaluative purposes” a court “may adjust those entries to achieve an equitable result”).

³⁹ *HRPT Properties Trust v. Lingle*, 2011 WL 775905 at 14.

23. CURB's recommendations include (1) limiting KCPL's recovery of rate case costs for the current docket to \$2.1 million, the amount claimed and in the record at the close of the hearing; (2) tying recovery of rate case costs in this case to the costs incurred by CURB and KCC Staff, permitting the Company to recover directly-incurred costs that are no greater than the costs incurred by CURB and KCC Staff and resulting in total recovery of \$2.846 million; (3) requiring a sharing of directly-incurred rate case costs between shareholders and ratepayers, subject to a cap on recovery of directly-incurred costs that is no more than twice the costs incurred by CURB and KCC Staff, resulting in total recovery of \$4.269 million, including CURB and KCC Staff costs of \$1.423 million, or (4) approving recovery of no more than \$4.913 million, as recommended by Mr. Smith, which includes \$3.49 million in costs incurred directly by the Company and \$1.423 million in costs incurred by CURB and KCC Staff. Both Mr. Smith and Ms. Crane further recommend that the portion of these costs relating to prudence at Iatan Unit 2 (\$1.896 million) should be amortized over 10 years and the remaining costs should be amortized over 4 years.

24. The KCC acknowledged in its November 22nd Order that "requiring shareholders to share some rate case expenses with ratepayers is appropriate in some situations,"⁴⁰ and the case at hand is ample evidence that companies like KCPL will continue their open checkbook policy as long as they are able to present those checks to ratepayers for full payment. The evidence in this case demonstrates there was no oversight on rate case expense. No written budget, no notes documenting monthly reviews, no oversight or authorizations for significant hourly rate increases, no oversight of duplicative work or charges for work unrelated to this docket.

25. In determining an appropriate amount for KCPL's rate case expenses, the Commission is considered an expert and should draw from its knowledge, expertise, and experience in evaluating

⁴⁰ November 22, 2010 Order, page 85.

services rendered in this proceeding.⁴¹ CURB respectfully urges asks the Commission to use its knowledge, expertise, and experience in evaluating the unreasonable, duplicative, and excessive rate case expense KCPL seeks to recover from its ratepayers.

III. PROPOSED FINDINGS OF FACTS.

26. CURB proposes the following summarized findings of fact in support with respect to the evidence presented at the hearing held on September 6-8, 2011.

A. **KCPL has not provided the detailed information (meticulous, contemporaneous time records) directed by the Prehearing Officer, ordered by the Commission, and required by the Supreme Court.**

27. Evidence demonstrating KCPL has not provided the required detailed information:

- KCPL's schedules and invoices contain only general descriptions without any detailed information regarding the work performed:
 - Weisensee summary schedules: contain no detailed description of work performed on any specific date and no description of specific tasks, but only general description using the seven categories the Company elected to use. Tr. Vol. 15, pp. 3436-38, 3440-44; Weisensee Direct, pp. 11-12, Schedules 11-29; McClanahan Direct, p. 6-7 (description of work general in nature, no information on individual issues [specific tasks] provided), Baldry Direct, p. 4.
 - Meyer Construction: (1) Weisensee summary schedule 15 contains no description of work or hourly rate; (2) invoices for charges of \$220,837.50 contain no description of the work performed by associates; (3) invoices for charges of \$239,895.00 contain no detailed descriptions of work performed by Mr. Meyer. Weisensee Direct, Schedules 15, p. 20 of 22; Tr. Vol. 15, pp. 3481-90, CURB Exh. 3.
 - Pegasus Global Holdings: Total charges by Pegasus charged to this docket are \$1,070,479.35. (1) invoices for charges of \$517,126.77 contain no detailed descriptions of the work performed, just nonspecific general descriptions such as - "Iatan 2, 2010 Rate Case"; (2) other invoices contain general descriptions such as, "Iatan 2, 2010 Rate Case – document analysis", "Iatan 2, 2010 Rate Case – project personnel interviews", "Iatan 2, 2010 Rate Case – document review", "Iatan 2, 2010 Rate Case – review documents", "Iatan 2, 2010 Rate Case – document review, cost reports, status reports", etc. Tr. Vol. 15, pp. 3490-93, CURB Exh. 4; Weisensee Direct, Schedule 22.
 - SNR Denton (Sonnenschein): invoices for charges of \$60,085.40 contain no detailed descriptions of the work performed, just nonspecific general descriptions of, "Work on

⁴¹ *Westar Energy v. Wittig*, 44 Kan. App.2d 182, 184, 235 P.3d 515 (2010). See also, *Johnson v. Westhoff Sand Co.*, 281 Kan. 930, 940, 135 P.3d 1127 (2006).

- Kansas and Missouri Regulatory matters.” Tr. Vol. 15, pp. 3493-3501; CURB Exh. 5, 6, and 7; Weisensee Direct, Schedule 16, p. 1 of 6.
- Management Application Consulting: (1) invoices for charges of \$103,708.69 contain no descriptions of the work performed on a daily basis, just hours worked, rate charged, and total amount charged; (2) invoice dated 9/30/10 for 31 hours of services totaling \$7,532.99 contain general descriptions of, “Review and study testimonies” and “Travel and hearings”. Tr. Vol. 15, pp. 3501-03; CURB Exh. 8; Weisensee Direct, Schedule 20.
 - Global Prairie: invoices for charges of \$47,438.76, no detailed information regarding the hours worked or hourly rates charged. Weisensee Direct, Schedule 13; Tr. Vol. 15, pp. 3505-11; CURB Exh. 9.
 - Black & Veatch: invoices for the \$94,269.79 charged to the 415 docket no detailed descriptions of the work performed, just nonspecific general descriptions of, “model development”, “project strategy and planning”, “data collection and review”. The invoices also state, “no detail provided with invoice”. Tr. Vol. 15, pp. 3509-10; CURB Exh. 10; KCPL Exh. 2, *Black_and_Veatch.pdf*; Weisensee Direct, Schedule 17; Smith Direct, p. 36; Harden Direct, p. 17-18.
 - J. Wilson & Associates (billed through Schiff Hardin): invoices for charges of \$208,388.22 do not contain detailed descriptions of the work performed each day, but instead just provide nonspecific general descriptions indicated below for the hours indicated:
 - “Continued development of graphic chart project history; as-built events with supporting documents; and electronically filed” (228 hours, \$11,400.00, 6-14-10 through 8-3-10).
 - “Development of as-built events and supporting documents” (592.5 hours, \$29,625.00, 4-5-10 through 8-31-10).
 - Other general descriptions repeated on consecutive days.
Weisensee Direct, Schedule 15; Tr. Vol. 15, pp. 3565-66; CURB Exh. 29; KCPL Exh. 2, *J_Wilson_and_Associates.pdf*, invoice dates 04/30/2010, 05/31/2010, 06/30/2010, 07/31/2010, 08/31/2010.
 - NextSource: (1) invoices included in the \$415,981.19 charged to the 415 docket contain no description other than the activity code “EX060”, which codes to the 415 docket rate case; (2) none of the 103 invoices include a description of the work performed or the tasks performed by the timekeeper on a daily basis. Tr. Vol. 17, pp. 4144-49; CURB Exh. 33; Weisensee Direct, Schedule 21; KCPL response to KCC Staff DR 554.
 - Financo: invoices for the \$79,874.18 charged to the 415 docket contain descriptions of, “ROE Testimony and exhibits,” “Rebuttal Testimony and exhibits”. Weisensee Direct, Schedule 18; KCPL Exh. 2, *FINANCO.pdf*, Invoice Dates 11/30/2009, 12/31/2009, 06/30/2010, 07/31/2010, 08/31/2010, 09/30/2010, 10/31/2010.
 - Siemens: invoices for the \$20,026.25 charged to the 415 docket contain no detail other than rate and charges. Weisensee Direct, Schedule 23; KCPL Exh. 2, *Siemens.pdf*, invoice dates 09/15/2009 and 10/20/2009.
 - Gannett Fleming: invoices for the \$44,346.49 charged to the 415 docket contain descriptions such as data assembly, life and salvage analysis, depreciation calculations, testimony, data requests. Weisensee Direct, Schedule 19; KCPL Exh. 2, *Gannett_Fleming.pdf*.

- Duane Morris: invoices for the \$28,569.67 charged to the 415 docket contain generic descriptions such as “testimony preparation, document review”. Weisensee Direct, Schedule 12, p. 8; KCPL Exh. 2, *Duane_Morris.pdf*, subcontractor Charles W. Whitney, invoice date 09/08/2010.
- CCA: invoices for the \$102,997.45 charged to the 415 docket contain no information regarding hours worked or hourly rate charged. Weisensee Direct, Schedule 24; KCPL Exh. 2, *CCA.pdf*.
- Towers Watson: invoices for the \$19,939.00 charged to the 415 docket contain no detailed information regarding the worked performed on a daily basis. Weisensee Direct, Schedule 25; KCPL Exh. 2, *Towers_Watson.pdf*, page 1.
- Morgan Lewis: 05/25/2010 invoice for the \$10,690.52 charged to the 415 docket contains no information regarding hours worked, work performed, or hourly rates. KCPL Exh. 2, *Morgan_Lewis.pdf*, Invoice Date 05/25/2010; Weisensee Direct, Schedule 13.
- Steven Jones (billed through Schiff Hardin): invoices for the \$37,262.50 charged to the 415 docket contain no detailed information regarding the worked performed on a daily basis. KCPL Exh. 2, *Schiff_Hardin_July_1_2009_to_June_30_2010.pdf*, sub-contractor Steven Jones invoice nos. 2010-Schiff-002, and 2010-Schiff-003; Weisensee Direct, Schedule 13.
- KCPL travel expenses contain no detailed information:
 - Pegasus Global Holdings: invoices for \$12,464.68 in travel expenses charged to the 415 docket contain no description of the date or reason for travel expenses or any backup documentation. Tr. Vol. 15, pp. 3490-93, CURB Exh. 4.
 - SNR Denton (Sonnenschein): invoices for \$533.11 charged to the 415 docket contain no description of the date or reason for travel expenses or any backup documentation for travel expenses for Roger Steiner. Tr. Vol. 15, pp. 3493-3501; CURB Exh. 5.
 - Management Application Consulting: invoices for \$1,450.49 in travel expenses charged to the 415 docket contain no description of the date or reason for travel expenses or any backup documentation. Tr. Vol. 15, pp. 3501-05; CURB Exh. 8, pp. 2, 4.
 - Meyer Construction: invoices for \$27,398.07 in travel expenses charged to the 415 docket contain no detail supporting dates, purpose and information regarding the travel. KCPL Exh. 2, *Schiff_Hardin_July_1_2009_to_June_30_2010.pdf*, sub-contractor Meyer Construction Consulting invoice nos. KCPL-46-KA-UNIT 2, KCPL-45-KA-UNIT 2, and KCPL-44-KA-UNIT 2; Weisensee Direct, Schedule 15, p. 20; Tr. Vol. 15, pp. 3481-90; CURB Exh. 3.
 - Jim Wilson & Associates (billed through Schiff Hardin): invoices for \$2,487.56 in travel expenses charged to the 415 docket contain no description or backup documentation. Weisensee Direct, Schedules 15, p. 22; Tr. Vol. 15, pp. 3565-66, CURB Exh. 29; KCPL Exh. 2, *J_Wilson_and_Associates.pdf*, Invoice Dates 07/31/2010 and 08/31/2010.
 - Financo: invoices for the \$851.34 in travel expenses charged to the 415 docket contain no description or backup documentation. KCPL Exh. 2, *FINANCO.pdf*, Invoice Date 08/31/2010.
 - Duane Morris: invoices for \$5,413.50 in travel expenses charged to the 415 docket contain no description or backup documentation but say only, “travel away from home” or “travel – local”. KCPL Exh. 2, *Duane_Morris.pdf*, Invoice Dates 08/10/2009, 09/14/2009, 11/03/2009, 01/08/2010, 07/08/2010, 09/08/2010, 09/30/2010; Weisensee Direct, Schedule 15, p. 18.

- Steven Jones (billed through Schiff Hardin): invoice for travel expenses totaling \$2,919.03 states that reimbursable expenses are “attached on attached time and services sheet”, however there is nothing on attached sheet that accounts for reimbursable expenses. KCPL Exh. 2, *Schiff-Services_October_1_2010_to_January_31_2011.pdf*, subcontractor Steven Jones invoice nos. 2010-Schiff-007B, and 2010-Schiff-008; Weisensee Direct, Schedule 15, p. 17.

B. KCPL’s revised rate case expense claim contains expenses for work performed on other matters improperly charged to this docket that have been block billed.

28. Evidence of expenses for work on other matters improperly charged to this docket:

- SNR Denton (Sonnenschein): (1) Invoices contain no information to indicate how or why amounts were allocated to the Kansas 415 docket rate case, contrary to Mr. Weisensee Schedule 16; (2) invoices with block billed entries totaling \$684.00 that include work unrelated and improperly charged to the Kansas 415 docket. Tr. Vol. 15, pp. 3493-3501, 3557-58; CURB Exh. 5, 6, 7, and 25; Weisensee Direct, Schedule 16, p. 1 of 6.
- Morgan Lewis: invoice for \$961.44 billed to 415 docket rate case expense that KCPL admits should not have been billed, yet not removed in KCPL rebuttal testimony. Tr. Vol. 15, pp. 3536-37; CURB Exh. 20.
- Polsinelli: invoices totaling \$15,220.50 with block billed entries that include work unrelated and improperly charged to the Kansas 415 docket. Tr. Vol. 15, pp. 3537-3350; CURB Exh. 21, 22, 23; Smith Direct, pp. 28-30.
- Cafer: invoices with block billed entries totaling \$28,400 that include work unrelated and improperly charged to the Kansas 415 docket. Tr. Vol. 15, pp. 3550-3356, 3558-63; CURB Exh. 24, 26.
- Schiff Hardin: (1) invoices with block billed entries totaling \$7,095.00 that include work unrelated and improperly charged to the Kansas 415 docket; (2) invoice for \$4,015 from Randall Walker, expensed through Schiff Hardin, which Mr. Weisensee couldn’t identify; (3) invoice for 13.5 hours, or \$3,982, with notation saying “time split between jurisdiction”, yet entire 13.5 hours improperly billed to Kansas 415 docket rate case.. Tr. Vol. 15, pp. 3558-69; CURB Exh. 26, 27, 28.
- Financo: \$14,400.00 coding on invoice, which KCPL notes is correct, doesn’t include codes for KS Rate case expense. KCPL Exh. 2, *FINANCO*, Invoice Date 11/30/2009.

C. KCPL’s revised rate case expense claim contains expenses for duplicative work that have been block billed.

29. Evidence of rate case expense claimed for duplicative work in block billed entries:

- Block billed entries: KCPL witness John Weisensee admitted it would be impossible for the Commission to determine the exact amount of time spent by attorneys reviewing Drabinski testimony, etc., because many of those time entries are block billed entries. Tr. Vol. 15, pp. 3526-27, 3557.
- “Many examples of these potential duplicative efforts can be found.” McClanahan Direct, p. 8.

- Reviewing Walt Drabinski testimony, preparing for Drabinski cross-examination:
 - 12 attorneys reviewed Drabinski's testimony (per. Weisensee). Tr. Vol. 15, pp. 3523-26.
 - Cafer: invoices contain block billing entries for time reviewing Drabinski testimony for 47.5 hours, or \$14,325. Tr. Vol. 15, pp. 3520-26; CURB Exh. 15, p. 1.
 - Schiff Hardin: invoices contain block billing for approximately \$20,195 for services by 5 attorneys reading, reviewing, and conferring about Drabinski testimony. Tr. Vol. 15, pp. 3520-26; CURB Exh. 15, pp. 2-3.
 - Polsinelli: invoices contain block billing for approximately \$17,149.50 for services by 4 attorneys for "preparation of review of ... Drabinski's testimony", reviewing, analyzing, and conferring about Drabinski testimony. Tr. Vol. 15, pp. 3520-26; CURB Exh. 15, p. 6, 8.
 - Duane Morris: invoices contain block billing for approximately \$17,832.00 for services by 2 attorneys reviewing, analyzing, and conferring about Drabinski testimony. Tr. Vol. 15, pp. 3520-26; CURB Exh. 15, p. 4-5.
 - Duane Morris: invoices contain block billing for approximately \$54,320 (112 hours at \$485 per hour) containing services by two attorneys related to preparing for Walt Drabinski's cross-examination. Tr. Vol. 15, pp. 3514-17; CURB Exh. 11.
 - Charles Whitney: invoices contain block billing for approximately \$1,537.50 (4.1 hours at \$385 per hour) for services by 1 attorney for reviewing Drabinski testimony. Tr. Vol. 15, pp. 3520-26; CURB Exh. 15, p. 7.
- Researching prudence issue:
 - Duane Morris: invoices contain block billing for approximately \$11,051.00 for researching prudence issues. Tr. Vol. 15, pp. 3517-18; CURB Exh. 12.
 - Polsinelli: invoices contain block billing for approximately \$26,475.00 for researching prudence issues. Tr. Vol. 15, pp. 3518-19; CURB Exh. 13.
- Reviewing, identifying and marking confidential designations related to Drabinski testimony:
 - Polsinelli: invoices contain block billing for approximately \$24,011.25 for work on confidential designations related to Drabinski testimony. Tr. Vol. 15, pp. 3519-20; CURB Exh. 14.
 - Cafer: invoice containing block billing for approximately 17.25 hours or \$5,175.00 for work on confidential designations related to Drabinski testimony. Tr. Vol. 15, pp. 3520-26; CURB Exh. 15, p. 1.
- Drafting and preparing testimony for experienced employees and consultants of KCPL:
 - Schiff Hardin: invoices contain block billing entries for \$206,005.00 in attorney time drafting/preparing testimony of KCPL employees and consultants Carl Churchman, Ken Roberts, Chris Giles, Brent Davis, Steve Jones, Bill Downey, Dan Meyer, and Bob Bell. Tr. Vol. 15, pp. 3527-3530; CURB Exh. 16.
 - Schiff Hardin: invoices also contain block billing entries for \$82,118.75 in attorney time for reviewing and revising the testimony of KCPL employees and consultants. Tr. Vol. 15, pp. 3531-3532; CURB Exh. 17.
- Other duplication of services:
 - Schiff Hardin: invoices contain duplicative billing entries with identical narratives on the same days. Tr. Vol. 15, pp. 3532-3534; CURB Exh. 18.

- Polsinelli: invoices contain billing entries regarding time spent determining whether duplicative discovery had been issued to Mr. Drabinski. Tr. Vol. 15, pp. 3534-3536; CURB Exh. 19.
- SNR Denton (Sonnenschein): invoice for \$252.00 for attorney to attend hearing and advise another SNR Denton on status of case. Tr. Vol. 15, pp. 3557-58; CURB Exh. 25.
- SNR Denton (\$60,085), Duane Morris (\$346,665), Morgan Lewis (\$155,227), and Schiff Hardin (\$2,852,110): prudence responsibilities were duplicative. Smith Direct, pp. 21-28.

D. KCPL's rate case fees and expenses are excessive.

30. Evidence of excessive rate case fees and expenses:

- The level of rate case expense incurred by KCPL was excessive and unreasonable, with over 40 attorneys in six law firms charging over 14,379 hours for outside law firm personnel and 45 consultants at 8 consulting firms charging 11,349 hours, and costs for several individuals that were former employees of KCPL. Crane Direct, p. 15; Smith Direct, pp. 7-8, 17
- An illustrative example of the excessive and unreasonableness of the attorneys fees is contained in Attachment RCS-1, Schedule 2, showing the attorneys, hourly rates and charges, for the attorneys who were charging cost to KCPL that KCPL has included in its rate case expense claim for time during the hearings. During the first week of hearings, KCPL had at least 8 or 9 outside attorneys charging time to the case. On the evidentiary hearing days of August 16, 17, 18, 19 and 23, 2010, for example, KCPL's invoices show outside law firm attorneys charging over 100 hours per day, at hourly rates as high as \$660 per hour. For the hearing alone, KCPL incurred over \$381,000 of outside attorney fees for over one thousand hours. Smith Direct, p. 18, Attachment RCS-1, Schedule 2.
- Schiff Hardin alone earned \$2.881 million in fees and expenses that KCPL seeks to charge to Kansas ratepayers as rate case expenses, even more disturbing when considering the fact that in addition to rate case costs, Schiff Hardin was also paid approximately \$20 million in fees that were capitalized in the Iatan project and which will be recovered from ratepayers over the life of the project, with carrying costs. Crane Direct, p. 15; Smith Direct, pp. 15-16, 25-28.
- The company utilized over 40 outside attorneys charging over 14,000 hours and 45 consultants charging over 11,000 hours, with hourly rates that ranged up to \$855 per hour. Hardin Direct, SMH-2, pp. 1-3; Crane Direct, p. 15.
- Schiff Hardin invoices contain block billing entries for \$206,005.00 in attorney time drafting/preparing testimony of KCPL employees and consultants Carl Churchman, Ken Roberts, Chris Giles, Brent Davis, Steve Jones, Bill Downey, Dan Meyer, and Bob Bell. Tr. Vol. 15, pp. 3527-3530; CURB Exh. 16.
- Schiff Hardin invoices also contain block billing entries for \$82,118.75 in attorney time for reviewing and revising the testimony of KCPL employees and consultants. Tr. Vol. 15, pp. 3531-3532; CURB Exh. 17.
- The August 2010 invoices generally identified as "Hearing" category reflected in Weisensee's summary schedules, and are a good reflection of what the Company spent on the hearing. The August 2010 invoices total \$1,044,803.26. Tr. Vol. 15, pp. 3478-79; Weisensee Direct, Schedules 1-29.

- The September, October, and November 2010 invoices generally identified as “Post-Hearing” category reflected in Weisensee’s summary schedules, and are a good reflection of what the Company spent on the cost of drafting the Company’s post-hearing brief and findings of fact. The September, October, and November 2010 invoices total \$1,215,978.89. Tr. Vol. 15, pp. 3479-80; Weisensee Direct, Schedules 1-29.
- Financo: charges were excessive by \$25,874. Smith Direct, pp. 31-33.
- NextSource: charges were excessive and unnecessary by \$415,891. Smith Direct, pp. 33-34.
- Communications Counsel of America (CCA): charges were excessive and unnecessary (\$102,997). Smith Direct, pp. 34-35.
- Pegasus: charges were excessive by \$18,418. Harden Direct, p. 7-10; Smith Direct, p. 35.
- Hampton Inn: charges were excessive and unnecessary by \$18,029. Harden Direct, p. 16-17; Smith Direct, p. 37.
- KCPL employees: expenses were excessive by \$12,663. Harden Direct, p. 8; Smith Direct, p. 38.
- Cafer: hourly rate increase was excessive by \$149,650. Smith Direct, pp.19-20.

E. KCPL failed to develop, monitor, and stay within a reasonable budget for rate case expense.

31. Evidence that KCPL failed to develop, monitor, and stay within a reasonable budget:

- KCPL claimed \$2,070,307, or roughly \$2.1 million for rate case expense in the 415 docket. The \$2.1 million represented the budgeted amount for rate case expense for the 2010 415 docket rate case. Tr. Vol. 15, pp. 3381-83; CURB Exh. 1.
- The \$2.1 million budget for rate case expense had no schedule of components, no documentation related to the development of the \$2.1 million or any components thereof, no notes kept with regard to meetings regarding the rate case expense budget, no notes of any notice or alarm that the budget was being exceeded to people up the chain of command, no schedule of when the budgeted costs were anticipated to be incurred, no documentation of managerial oversight, and no documentation that fees were ever challenged by KCPL. Tr. Vol. 15, pp. 3383-3392, 3401-02, 3412-13, 3691, 3694, 3716.
- Mr. Downey testified it was “mission critical” to the Company to “explain, defend, and validate all the work we had done over the past 5 years.” Mr. Downey described the 415 docket as a “2 billion dollar bet the company investment” and testified that “We’ve done two cases like this in 25 years and would I have erred in terms of effort and cost in terms of spending in that area? Yes, because there was so much at risk for the Company.” Tr. Vol. 15, pp. 3667-68, 3695, 3700.
- Throughout this proceeding, there has been no attempt to keep the parties informed about the level of rate case costs being incurred, why that level differed from the claim included in the filing, or why that level of cost was appropriate. Crane Direct, p. 18; Smith Direct, p. 7.
- The company assumed the 415 docket would be settled, even though significant issues including prudence for Iatan 1 and common costs, prudence for Iatan 2, a depreciation study, jurisdictional allocations, and a seasonal class cost of service. The team that developed the budget didn’t discuss the fact that the last rate case on a scale close to the Iatan 2 project, Wolf Creek, was fully litigated. Mr. Weisensee, a member of the team that developed the rate case expense budget, was present at the 246 docket settlement hearing when Staff counsel stated on two occasions that the 415 docket rate case was going to be a “knock down, drag out fight.” Mr. Weisensee doesn’t

recall any discussion where Staff indicated they thought the 415 docket rate case was likely to settle. Tr. Vol. 15, pp. 3385-92, 2431-32; Tr. Vol. 17, pp. 4063, 4158-59.

- Staff never gave any indication to KCPL that Staff was predisposed in any way to settle the 415 docket rate case rather than litigate the prudence issue. Tr. Vol. 17, pp. 4159.
- KCPL knew that the issue of prudence would be a significant issue in this case. As noted by Mr. Rush on page 5 of his testimony, "...the issue of KCP&L's prudent management of the environmental upgrades to Iatan Unit 1 and the Iatan common plant were deferred [from the prior case], by agreement of the parties and approval by the Commission." Given that these issues were raised in the prior case, it was reasonable to anticipate that they would also be raised in this case, along with the issue of prudence regarding Iatan Unit 2. In addition to prudence, KCP&L was well aware that issues regarding its new depreciation study and its class cost of service study were also likely to be issues in this case. In spite of this knowledge, KCP&L filed its case with estimated rate case costs of \$2.1 million. Crane Direct, p. 17.
- The depreciation study is a significant issue any time is required in a rate case. Tr. Vol. 15, p. 3430; Weisensee Rebuttal, p. 8.
- When the \$2.1 million budget was set it was based largely on the costs incurred in the Company's last rate case (246 docket) it included anticipated Staff and CURB costs (\$860,000 in 246 docket) and contemplated that Staff was contesting prudence. Tr. Vol. 15, pp. 3392-95, 3416-17; Weisensee Direct, p. 8.
- Despite claiming there was no documentation for developing the rate case \$2.1 million budget number, KCPL paid Duane Morris to review and analyze the Pegasus "projected budget and schedule" for rate case expense, and the Communications Counsel of America, Inc. ("CCA") engagement letter with Duane Morris states that KCPL and Duane Morris will pay CCA "for professional services rendered by Consultant per the terms of the October 19, 2009 Estimated Budget." Tr. Vol. 15, pp. 3398-3401; CURB Exh. 30; KCPL Exh. 1, p. 5 of 171.
- KCPL gave one NextSource employee, Chris Davidson, a 17% pay increase in March 2010, roughly in the middle of the rate case litigation. Tr. Vol. 15, p. 3423.
- KCPL gave one attorney, Ms. Glenda Cafer, an hourly rate increase from \$200 an hour to \$300 an hour, two months into the 415 docket rate case, even though the Company failed to provide a retention letter for Ms. Cafer prior to her announced \$100 per hour increase. Tr. Vol. 15, pp. 3446-2449.
- The retainer agreements provided by KCPL do not specify the tasks assigned to each of the six law firms, the engagement letter for the Cafer firm is after she worked on the rate case for two months, and there is no agreement for the Morgan Lewis Firm. KCPL Exhibit 1; Tr. Vol. 15, pp. 3335-36.
- None of the five Duane Morris attorneys paid by KCPL participated in the hearing or entered an appearance on behalf of KCPL, even though KCPL paid Duane Morris \$346,664.91 in fees and expenses at rates between \$210 to \$575 per hour. The Duane Morris engagement letter states the scope of the Duane Morris representation is "legal counsel with regards to the 2010 rate case matter," that the three primary lawyers will be Charles Whitney at \$575 per hour, Albert Bates at \$480 per hour, and Jennifer Cook, at \$430 per hour. Each of these hourly rates was increased without amending the engagement letter to authorize the increased rates. The engagement letter with Duane Morris likewise does not authorize Duane Morris to engage outside consultants on behalf of KCPL, including CCA and Pegasus. Tr. Vol. 15, pp. 3450-51, 3465-68, 3470-71; KCPL Exh. 1, p. 9, 128-136.

- Only one of the four Morgan Lewis attorneys paid by KCPL participated in the hearing or entered an appearance on behalf of KCPL, even though KCPL paid Morgan Lewis \$155,227.07 in fees and expenses at rates from \$540 to \$855 per hour. There was no engagement letter or contract for services with the Morgan Lewis law firm. There was also no engagement letter or contract for services with the Global Prairie consulting firm hired by the Morgan Lewis law firm. Tr. Vol. 15, pp. 3451-52, 3510-11; KCPL Exh. 1.
- Only two of the twelve Polsinelli attorneys paid by KCPL participated in the hearing or entered an appearance on behalf of KCPL, even though KCPL paid Polsinelli \$1,534,116.85 in fees and expenses at rates from \$100 to \$400 per hour. The Polsinelli engagement letter only authorized Frank Caro, Anne Callenbach, and Brandon Kane to work on the case on behalf of KCPL, at hourly rates of \$200 and \$260. Mr. Weisensee was unaware of any amendment to the Polsinelli engagement letter to authorize more than Mr. Caro, Ms. Callenbach, and Mr. Kane to work on the 415 rate case docket, or any subsequent communication that authorized Polsinelli to increase Mr. Caro's hourly rate to the \$400 charged in this case. Tr. Vol. 15, pp. 3452-55; Weisensee Direct, Schedule 14, p. 1 of 16; KCPL Exh. 1, p. 137-38 (Polsinelli July 23, 2009 engagement letter).
- None of the four SNR Denton attorneys paid by KCPL participated in the hearing or entered an appearance on behalf of KCPL, even though KCPL paid SNR Denton \$59,365.00 in fees and expenses at rates between \$175 to \$485 per hour. Tr. Vol. 15, p. 3458.
- One of the 15 Schiff Hardin attorneys paid by KCPL testified on behalf of KCPL at the 2010 hearing, but none of the 15 Schiff Hardin attorneys paid by KCPL participated in the hearing as counsel or entered an appearance on behalf of KCPL, even though KCPL paid Schiff Hardin \$2,852,198 in fees and expenses at rates between \$195 to \$555 per hour (four charged rates of \$50, \$140, and \$150). Mr. Weisensee didn't know what role Mr. Wilson and his associates, Megan Witte and Beverly Moss, were in the rate case. The Schiff Hardin contract for legal services authorized hourly rates lower than the hourly rates charged by attorneys at Schiff Hardin for the 415 docket rate case, but KCPL provided no evidence that any annual adjustments were supplied to KCPL's general counsel and approved at least 30 days prior to the effective date of any such adjustment as required by the Schiff Hardin contract for legal services. The Schiff Hardin contract for legal services authorizes specified rates, yet Schiff Hardin charged the higher rates indicated below:

	Higher <u>Auth. Rate</u>	Unauthorized <u>Rate Charged</u>	Unauthorized <u>Increase</u>
Roberts	\$495	\$555	\$60
Montgomery	\$430	\$520	\$90
Okizaki	\$350	\$450	\$100
Gould	\$245	\$295	\$50
Wilson	\$250	\$300	\$50

Tr. Vol. 15, pp. 3471-74; KCPL Exh. 1, p. 143, 145-46 (Schiff Hardin January 17, 2007 contract for legal services); Weisensee Direct, Schedule 15.

- Prior to the evidentiary hearing being closed, KCPL did not submit any evidence to revise its rate case expense claim of \$2.1 million. Tr. Vol. 15, pp. 3435-36.

F. Rate case expenses incurred by Staff and CURB.

32. Evidence regarding rate case expense incurred by Staff and CURB:

- CURB, representing residential and small commercial customers, litigated this case for a cost of \$188,051, using primarily one in-house attorney and three consultants (only two filed testimony). The amount spent by KCP&L for directly-incurred costs was over forty times the amount spent by CURB, and over five times the amount spent by CURB and the KCC Staff combined, including KCC Advisory Counsel. Crane Direct, pp. 22-23; Weisensee Direct, Schedule 30.
- Staff litigated this case using four in-house attorneys, one outside consultant, and in-house technical Staff, for a cost of \$1,233,828.41 (which includes Advisory Staff costs of \$105,226). Weisensee Direct, Schedule 31, p. 1.
- Total CURB and Staff costs in the 246 rate case (that settled) were approximately \$860,000, around \$500,000 less than incurred by CURB and Staff in this docket. Tr. Vol. 15, p. 3394.

G. The public opposes KCPL's revised rate case expense claim.

33. Evidence the public opposes KCPL's revised rate case expense claim:

- On September 6, 2011, the KCC's Office of Public Affairs and Consumer Protection filed a summary report dated September 1, 2011, detailing 322 public comments opposing KCPL's request for recovery of additional legal expenses in this case, with zero comments in favor of granting the request. Because CURB understands additional comments opposing KCPL's request have been received by the KCC's Office of Public Affairs and Consumer Protection, CURB requests that the Commission direct that a supplemental report be filed in the record to be considered by the Commission. September 1, 2011 Summary Report of Public Comments from KCC's Office of Public Affairs and Consumer Protection, filed September 6, 2011.

H. CURB alternative recommendations.

34. CURB's alternative recommendations are described below:

- CURB witnesses make four alternative recommendations on how reasonable rate case expense should be determined by the Commission:
 - The KCC should limit recovery of rate case costs for the current docket to \$2.100 million, which is the amount claimed by KCP&L in its initial filing. Crane Direct, pp. 6, 16-24.
 - If the KCC decides to permit KCP&L to recover rate case costs that exceed its initial claim, then the KCC should tie recovery of rate case costs in this case to the costs incurred by CURB and KCC Staff, permitting the Company to recover directly-incurred costs that are no greater than the costs incurred by CURB and KCC Staff. This would result in total recovery of \$2.846 million. Crane Direct, pp. 6, 24-25.
 - In the alternative, in this case the KCC could adopt a policy of requiring a sharing of directly-incurred rate case costs between shareholders and ratepayers, subject to a reasonable maximum. If such a sharing mechanism is adopted, then I recommend a cap on recovery of directly-incurred costs that is no more than twice the costs incurred by CURB and KCC Staff. In this case, this methodology would result in total recovery of \$4.269 million, including CURB and KCC Staff costs of \$1.423 million. Crane Direct, pp. 7, 25-28.

- Finally, if KCC decides to base recovery on a review of individual invoices, then the KCC should approve recovery of no more than \$4.913 million, as recommended by Mr. Smith. Mr. Smith's recommendation includes \$3.490 million in costs incurred directly by the Company and \$1.423 million in costs incurred by CURB and KCC Staff. In addition, Mr. Smith and Ms. Crane recommend that the portion of these costs relating to prudence at Iatan Unit 2 (\$1.896 million) should be amortized over 10 years and the remaining costs should be amortized over 4 years. Crane Direct, pp. 7, 28-29; Smith Direct, pp. 19-41, Attachment RCS-1, Schedule 2, 3; Attachment RCS-2, Schedule 1, 2.
- Regardless of the KCC's decision in this case, Ms. Crane recommends that the KCC consider adopting a policy of requiring a sharing of rate case costs between shareholders and ratepayers and reexamine the way in which it has permitted utilities to claim and recover rate case costs in future cases before the KCC. Crane Direct, pp. 7, 26.

IV. CONCLUSION

35. WHEREFORE, CURB respectfully requests that the Commission issue an order in this proceeding in accordance to the principles and arguments set forth in this post-hearing brief and CURB's pre-filed testimony and pre-hearing brief.

Respectfully submitted,



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CERTIFICATE OF SERVICE

11-KCPE-581-PRE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, electronic service, or hand-delivered this 22nd day of September, 2011, to the following:

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A handwritten signature in cursive script, appearing to read "Della Smith", is written over a horizontal line.

Della Smith
Administrative Specialist