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Witness: Dr. Kris R. Nielsen  
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Sponsoring Party: Kansas City Power & Light Company  
Case No.: ER-2009-0089  
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**MISSOURI PUBLIC SERVICE COMMISSION**

**CASE NO.: ER-2009-0089**

**SURREBUTTAL TESTIMONY**

**OF**

**DR. KRIS R. NIELSEN**

**ON BEHALF OF**

**KANSAS CITY POWER & LIGHT COMPANY**

**Kansas City, Missouri  
April 2009**

**SURREBUTTAL TESTIMONY**

**OF**

**DR. KRIS R. NIELSEN**

**Case No. ER-2009-0089**

1 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

2 A. My name is Dr. Kris R. Nielsen. I am the President and Chairman of Pegasus Global  
3 Holdings, Inc. (Pegasus-Global) with offices at 1750 Emerick Road, Cle Elum,  
4 Washington 98922.

5 **Q. DR. NIELSEN, HAVE YOU PREVIOUSLY PROVIDED TESTIMONY IN THIS**  
6 **MATTER?**

7 A. Yes, I have. I provided Rebuttal Testimony on behalf of Kansas City Power & Light  
8 (“KCP&L”), which was filed in this matter on March 11, 2009.

9 **Q. WHAT IS THE PURPOSE OF THIS SURREBUTTAL TESTIMONY**  
10 **TESTIMONY?**

11 A. KCP&L has asked Pegasus-Global to review the Rebuttal Testimony filed by Jatinder  
12 Kumar on behalf of the National Nuclear Security Administration and the Federal  
13 Executive Agencies, particularly as it relates to the “in-service criteria” discussed by Mr.  
14 Kumar on page 6, line 15 through line 11, page 10 of his testimony.

15 **Q. DR. NIELSEN, HAVE YOU HAD THE OCCASION TO EXAMINE AND/OR**  
16 **TESTIFY REGARDING APPROPRIATE IN-SERVICE CRITERIA IN OTHER**  
17 **PROCEEDINGS BEFORE OTHER COMMISSIONS?**

1 A. Yes, I have, on numerous occasions as outlined in my previous testimony. The concept  
2 of “used and useful” is commonly used by Regulators in determining whether or not an  
3 asset should be included in a utility rate base. In this proceeding and all similar  
4 proceedings in which I have been involved, the regulatory agency has to decide when a  
5 utility asset, such as Iatan Unit 1, becomes used and useful – the “in-service date”.

6 **Q. DR. NIELSEN, ARE YOU FAMILIAR WITH THE CONTRACTUAL**  
7 **CONCEPTS OF “PROVISIONAL ACCEPTANCE” AND “FINAL**  
8 **COMPLETION” AND ARE THOSE TERMS DISCUSSED BY MR. KUMAR IN**  
9 **HIS TESTIMONY?**

10 A. Yes I am. Those terms are, widely and uniformly used in utility construction contracts  
11 and are not unique to the Alstom contract referred to by Mr. Kumar. Based on my  
12 experience, the contractor typically does not turn over full control of the plant until the  
13 stage referred to as “provisional acceptance.” Provisional Acceptance is defined slightly  
14 differently in different contracts, but normally, and in the specific Alstom contract, at  
15 provisional acceptance the owner is free to operate the plant. In fact, under the Alstom  
16 contract (Contract between Kansas City Power & Light Company and ALSTOM Power,  
17 Inc. Engineering, Procurement and Construction Services for Air Quality Control  
18 Systems and Selective Catalytic Reduction Systems at Iatan Generating Station Units 1  
19 and 2 and the Pulverized Coal-Fired Boiler at Iatan Generating Station Unit 2 hereinafter  
20 referred to as the ALSTOM Contract) KCP&L must issue the Iatan Unit 1 Provisional  
21 Acceptance Certificate after Alstom completes the successful demonstration of  
22 Provisional Acceptance (ALSTOM Contract, Exhibit E, section 1.5.1), Regarding Post-

1 Unit 1 Provisional Acceptance Responsibility the contract specifically  
2 provides:(ALSTOM Contract, Exhibit E, Section 1.5.5):

3 “From the date of issuance of the Unit 1 Provisional Acceptance  
4 Certificate, Owner shall take full responsibility for the operations,  
5 maintenance and protection of the Unit 1 AQC and SCR Systems,  
6 provided, however, the Contractor shall continue to have the obligation to:  
7 (a) complete the remaining work related to Unit 1; (b) complete the Work  
8 applicable to Unit 2; and (c) repair and replace Defects covered by Article  
9 15 during the Unit 1 Warranty Callback Period.”

10 The contractor may still have non-significant work to do after Provisional Acceptance,  
11 and there usually are additional tests to be run on the equipment after Provisional  
12 Acceptance (such as, Guaranteed Performance Tests) or the payment of liquidated  
13 damages for failure of the equipment to meet the Guaranteed Performance levels.  
14 However, at Provisional Acceptance the owner is in control of the equipment as the  
15 equipment is either in operation or capable of being operated.

16 Final Completion is defined as when the performance tests have been completed or  
17 liquidated damages paid, punch list items are completed, and all paper work, such as, as-  
18 built drawings, have been delivered,

19 **Q. DR. NIELSEN, ARE THERE TESTS THAT ARE TRADITIONALLY RUN**  
20 **PRIOR TO PROVISIONAL ACCEPTANCE?**

21 A. Always. There are a number of test runs, usually requiring that the equipment operate for  
22 a specific duration of time at specified performance parameters that have to be met before

1 the owner accepts the plant at provisional acceptance. The ALSTOM Contract is very  
2 specific regarding the test that must be performed and what constitutes acceptance.

3 **Q. DR. NIELSEN, BASED ON YOUR EXPERIENCE WHAT IS THE**  
4 **SIGNIFICANCE OF PROVISIONAL ACCEPTANCE FROM AN**  
5 **OPERATIONAL STANDPOINT?**

6 A. Once the owner accepts the plant at provisional acceptance, the owner is operating the  
7 plant and generating power. The power is not dumped into the ground; it is released to  
8 the grid and is available for transmission and distribution to the owner's customers.

9 **Q. DR. NIELSEN, ARE YOU FAMILIAR WITH THE IN-SERVICE CRITERIA**  
10 **THAT WILL BE UTILIZED IN MISSOURI IN THE IATAN UNIT 1**  
11 **PROCEEDING CURRENTLY PENDING?**

12 A. Yes, as I understand it, KCP&L has submitted "in-service criteria" to the Missouri  
13 Commission. Basically, the Missouri criteria is that all major construction work is  
14 complete and all pre-operational tests have been successfully completed.

15 **Q. DR. NIELSEN, IS THERE ANY DIFFERENCE BETWEEN THE MISSOURI**  
16 **STANDARD AND THE STANDARD YOU SET FORTH ABOVE REGARDING**  
17 **PROVISIONAL ACCEPTANCE?**

18 A. None. As I explained in my earlier testimony, the Missouri standard is met at the point in  
19 time when the owner, here KCP&L, provisionally accepts the work. Applying the  
20 Missouri standard to the provisional acceptance criteria in the Alstom contract the  
21 necessary pre-operational tests will have been completed, the equipment will be under the

1 control of KCP&L and the Unit is either producing or capable of producing electricity  
2 which will be fed to the grid and available for KCP&L customers.

3 **Q. ARE THE IN-SERVICE CRITERIA NEGOTIATED BY KCP&L WITH THE**  
4 **STAFF CONSISTENT WITH THE USE OF PROVISIONAL ACCEPTANCE?**

5 A. Yes. The In-Service Criteria, set forth in the Direct Testimony of Brent Davis, schedule  
6 BCD-2, are completely covered by the Provisional Acceptance criteria in the ALSTOM  
7 contact. The criteria that Mr. Davis presents are generally what are called for in the Iatan  
8 1 permits and provide assurance the plant is capable of operating in a safe and continuous  
9 manner, that is, Iatan 1 operating for 120 continuous hours at or above 80% design  
10 capacity. The permit criteria are met below the contractual guarantees. Additionally,  
11 Provisional Acceptance allows ALSTOM time to fine tune the equipment in order to  
12 meet the performance guarantees, which generally must be done while the plant is  
13 operating. If ALSTOM fails to meet the performance guarantees or timely meet them,  
14 the contract provides for liquated damages (as I discuss below), but can and does meet  
15 the permit criteria.

16 **Q. WHAT IS YOUR UNDERSTANDING OF MR. KUMAR'S TESTIMONY AS IT**  
17 **RELATES TO IN-SERVICE CRITERIA?**

18 A. My understanding is that Mr. Kumar is suggesting that the "operational contract  
19 guarantee" referred to in the Missouri criteria be interpreted to mean "final completion"  
20 under the terms of the Alstom contract.

1 **Q. DR. NIELSEN, DOES THE FINAL COMPLETION DATE HAVE ANY**  
2 **SIGNIFICANCE IN DETERMINING WHEN THE PLANT IS PUT IN**  
3 **OPERATION?**

4 A. No, none whatsoever. As I stated above, the plant is put into operation when the owner  
5 accepts control at provisional acceptance. There always will be additional tests that have  
6 to be done, additional insignificant “punch list” type work that will have to be completed  
7 after the provisional acceptance, and specified paperwork in order to satisfy the  
8 conditions for “final completion”. These tests and the punch list can, and usually do, take  
9 months to complete. However, during this entire period of time the plant is in the owner’s  
10 control and either in operation or capable of being operated.

11 **Q. DO YOU UNDERSTAND THAT MR. KUMAR EXPRESSED CONCERNS THAT**  
12 **THERE AREN’T ANY ASSURANCES THAT “FINAL COMPLETION WILL BE**  
13 **ACHIEVED WITHOUT FURTHER DIFFICULTIES” AFTER PROVISIONAL**  
14 **ACCEPTANCE AND THAT, THEREFORE, HE IS RECOMMENDING THAT**  
15 **THE PLANT NOT BE PLACED “IN SERVICE” UNTIL FINAL COMPLETION?**

16 A. Yes, I do understand his concern. However, I do not think that concern has any basis  
17 either in the reality of plant operations or under the terms of the Alstom contract. In  
18 determining whether the plant is used and useful the focus should be on whether the plant  
19 is operational. The plant is, as both a technical reality and as a contractual definition,  
20 operational when it is provisionally accepted. Mr. Kumar is correct that the contractor  
21 does have continued obligations to the owner after provisional acceptance. However, it  
22 makes no sense to delay operating the plant until the contractors meet all those

1 obligations. That is the purpose of liquidated damages. A prudent owner negotiates  
2 liquidated damages provisions in the contract in order to protect itself from contractor  
3 default, delay and performance guarantee problems after provisional acceptance. That is  
4 exactly what KCP&L did in this case – it negotiated liquidated damages provisions that  
5 provide comfort to Mr. Kumar and others who may have similar concerns regarding  
6 contractor performance issues that may arise after provisional acceptance.

7 **Q. DR. NIELSEN, BASED ON YOUR EXPERIENCE IN RATE AND PRUDENCE**  
8 **PROCEEDINGS IN MULTIPLE JURISDICTIONS, HAS ANY COMMISSION**  
9 **EVER ADOPTED THE “FINAL COMPLETION” STANDARD BEING**  
10 **ADVOCATED BY MR. KUMAR?**

11 A. No, not in my experience, and for good reason. If the final completion standard as  
12 proposed by Mr. Kumar was adopted, it is not only possible but highly probable that a  
13 plant could be completed, and under the owner’s control, in operation, producing  
14 electricity, but not be “used and useful” for rate making purposes for a period of months  
15 or, potentially, years while warranty and punch list items were being sorted out. During  
16 this entire period of time, electricity would be produced to the grid and available for the  
17 owner’s customer. Using provisional acceptance as the in-service criteria avoids this  
18 problem and accurately reflects technical reality – the plant is used and useful when it is  
19 under the owner’s control and is either in operation or capable of being operated.

20 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

21 A. Yes, it does.



**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Kansas City Power  
& Light Company for Approval to Make Certain )  
Changes in its Charges for Electric Service to ) Docket No. ER-2009-0089  
Continue the Implementation of its Regulatory Plan

**AFFIDAVIT OF KRIS R. NIELSEN**

**STATE OF Washington** )  
 ) ss  
**COUNTY OF Kittitas** )

Kris R. Nielsen, being first duly sworn on his oath, states:

1. My name is Kris Nielsen. I am Chairman and President for the firm of Pegasus-Global Holdings, Inc. Kansas City Power & Light Company engaged the services of Pegasus-Global Holdings, Inc. to provide certain services in connection with the Iatan construction projects.

2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Kansas City Power & Light Company consisting of seven (7) pages and no Exhibits(s) all of which having been prepared in written form for introduction into evidence in the above-captioned docket.

3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.

  
Kris R. Nielsen

Subscribed and sworn before me this 6th day of April 2009.

  
Notary Public

My commission expires: July 1, 2012