

1 here in roughly an hour or so and resume in the
2 morning. Okay. Anything further before I administer
3 the oath?

4 (The witness was sworn.)

5 JUDGE PRIDGIN: Mr. Fischer, anything
6 before he stands cross?

7 MR. FISCHER: Yes, I have a little
8 direct.

9 DIRECT EXAMINATION

10 QUESTIONS BY MR. FISCHER:

11 Q. Please state your name and address for
12 the record.

13 A. Kris, K-r-i-s, Nielsen, N-i-e-l-s-e-n.
14 1750 Emmrick Road, Cle Elum, two words, C-l-e, E-l-u-m,
15 Washington 98922.

16 Q. Dr. Nielsen, are you the same Kris
17 Nielsen that caused to be filed in this case rebuttal
18 testimony that for your information has been marked as
19 Exhibit 46-HC and 46-NP?

20 A. Yes.

21 Q. Do you have any corrections that you need
22 to make to that testimony?

23 A. No.

24 Q. If I were to ask you the questions that
25 are contained in that testimony tonight, would your

Appendix
SS

1 answers be the same?

2 A. Yes.

3 Q. And are they true and accurate to the
4 best of your knowledge and belief?

5 A. To the best of my knowledge and belief.

6 Q. And are there some schedules attached to
7 that -- are attached to your testimony?

8 A. I don't know -- we got exhibits.

9 Q. Exhibits, okay. And do those exhibits
10 accurately depict what they're intended to show?

11 A. I think so.

12 Q. Okay.

13 MR. FISCHER: Judge, with that, I move
14 for the admission of 46-HC and 46-NP and tender the
15 witness for cross.

16 JUDGE PRIDGIN: 46-HC and 46-NP have been
17 offered. Any objections? Hearing none, they are
18 admitted.

19 (Exhibit Nos. 46-HC and 46-NP were
20 received into evidence.)

21 JUDGE PRIDGIN: Mr. Fischer, anything
22 further before he stands cross?

23 MR. FISCHER: No, sir.

24 JUDGE PRIDGIN: All right. Thank you.

25 Mr. Schwarz?

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CROSS-EXAMINATION

QUESTIONS BY MR. SCHWARZ:

Q. Good evening, sir.

A. Good evening.

Q. You testified on behalf of the company in Kansas in front of the Kansas Corporation Commission, did you not?

A. Yes, I did.

Q. Were you retained for both that case and this case at the same time?

A. Yes.

Q. And when were you retained?

A. It was late summer, early fall of 2008.

Q. Okay. What have been your -- what were your fees for testifying in Kansas?

A. I don't -- I didn't break my fees out separately.

Q. You didn't break your fees out separately as between Kansas and Missouri?

A. No, I didn't.

Q. Okay. How much were your fees altogether?

A. Oh, for the for two cases in Kansas, the Iatan 1 case in Missouri, the hearings in Missouri in April and this docket, plus doing the whole review, I

1 think they're about \$1.7 million.

2 Q. And I apologize, when I say "you,"

3 Pegasus is the one who --

4 A. Yes.

5 Q. -- does the bills?

6 A. Yes.

7 Q. And -- and Pegasus activities include

8 more than just yourself?

9 A. Yes.

10 Q. I didn't mean to imply that it was you

11 personally.

12 A. Well, I answered the whole company.

13 Q. Okay. How many days personally did you

14 spend on the Iatan site?

15 A. On the Iatan site? I think three.

16 MR. SCHWARZ: I don't think I have

17 anything further.

18 JUDGE PRIDGIN: Mr. Schwarz, thank you.

19 Mr. Mills?

20 CROSS-EXAMINATION

21 QUESTIONS BY MR. MILLS:

22 Q. Dr. Nielsen, I believe you just answered

23 that you testified in Kansas on behalf of the company;

24 is that correct?

25 A. Yes.

1 Q. Have you ever sponsored a prudence
2 disallowance on behalf of a consumer advocate?

3 A. Yes.

4 Q. And were you successful in that
5 disallowance?

6 A. They settled.

7 Q. So have you ever sponsored a disallowance
8 on behalf of a consumer advocate that was accepted by a
9 Commission?

10 A. No, I have not.

11 Q. Okay.

12 MR. MILLS: No further questions.

13 JUDGE PRIDGIN: Mr. Mills, thank you.

14 Ms. Kliethermes.

15 CROSS-EXAMINATION

16 QUESTIONS BY MS. KLIETHERMES:

17 Q. Thank you. Good evening, Mr. Nielsen.

18 A. Good evening.

19 Q. Did you find any imprudence at Iatan?

20 A. Yes.

21 Q. And what was that imprudence?

22 A. There was two instances of imprudence
23 that I quantified -- found and then quantified. The
24 WSI premium portions of overtime that were paid by
25 KCP&L, and then the expenses with respect to the aux

1 boiler, auxiliary boiler.

2 Q. Is your testimony that all the
3 documentation that was available to Pegasus was
4 available to Staff?

5 A. I believe so.

6 Q. Do you have your rebuttal testimony with
7 you?

8 A. Yes.

9 Q. Would you turn to page 46?

10 A. Forty-six? Yes.

11 Q. Do you contend that you did a prudence
12 review or a prudence audit?

13 A. Prudence audit.

14 Q. And how do you distinguish those two?

15 A. I don't.

16 Q. Did you do that using the -- and I'll
17 refer to GAGAS. Do you know what that is?

18 A. Yes, ma'am.

19 Q. And what is GAGAS?

20 A. The government auditing -- let's see,
21 government -- I got it right here, government auditing
22 standards.

23 Q. And did you use the 2007 revision of
24 that?

25 A. Yes.

1 Q. And you did your review using GAGAS?

2 A. Yes.

3 Q. Does GAGAS define a "prudence audit?"

4 A. As I said before the Commission last
5 April, that prudence audits are -- are a function or
6 subset.

7 Q. I believe my question can be answered
8 with either a yes or a no.

9 A. Yes.

10 Q. GAGAS does define a "prudence audit?"

11 A. They define performance audits, which
12 prudence audits are a subset of performance audits.

13 Q. Does the word "prudence" appear anywhere
14 in GAGAS?

15 A. No.

16 Q. On page 46, you refer to a prudence audit
17 -- or I'm sorry, a prudence review or audit is a
18 category of performance audit.

19 A. Yes.

20 Q. Is that definition found anywhere in
21 GAGAS?

22 A. I believe so. Not -- by the very nature
23 of the definition of performance audit, it includes a
24 prudence audit.

25 Q. And where is that definition of

1 "performance audit" found?

2 A. As I footnoted on the bottom of that
3 page, you will find a series of quotes that I put in
4 this related to GAGAS, and I footnoted each of those
5 where it's found within GAGAS. That also comports with
6 GAGAS having been accepted by NARUC, which is the
7 National Association of Regulatory Commissioners.

8 Q. So your testimony is that a definition
9 that a prudence audit -- I'm sorry, I keep misreading,
10 that a prudence review or audit is a category of
11 performance audit. It is your testimony that that
12 definition is from GAGAS?

13 A. Yes.

14 MS. KLIETHERMES: May I approach?

15 JUDGE PRIDGIN: You may.

16 (Exhibit No. 273 was marked for
17 identification by the Court Reporter.)

18 BY MS. KLIETHERMES:

19 Q. Could you identify what I've just handed
20 you?

21 A. It looks like the 2007 revision of the
22 government auditing standards.

23 Q. Can you show me the word "prudence" in a
24 single instance in that document?

25 A. I said that it doesn't appear in this

1 document.

2 Q. But you just said that a definition that
3 a prudence audit is a -- I'm sorry, what was the word
4 again?

5 A. Performance audit.

6 Q. -- is a category of performance audits.

7 A. Yes.

8 Q. You just stated that that definition is
9 in GAGAS.

10 A. I don't believe I said it's in GAGAS. I
11 said if you take the definitions of performance audits
12 and compare them to the definitions of prudence audits,
13 they're a subset of performance audits.

14 Q. And can you point to a single
15 authoritative source that identifies that?

16 A. Yes.

17 Q. What would that source be?

18 A. As I said, NARUC -- let me start out by
19 saying that in 1984, NARUC commissioned my firm as part
20 of a study that they had done to define "prudence" and
21 the standards that should be applied to prudence. And
22 they recommended that GAGAS be accepted because GAGAS
23 has been in existence ever since then. Not the 2007
24 edition, but GAGAS standards, because we were judging
25 the performance of companies on behalf of utility

1 commissions and what would -- so they said that the
2 only standards that are existing are the yellow book
3 standards, or the GAGAS standards. And so based on the
4 study that we did for NARUC.

5 Q. So NARUC?

6 A. That's all -- that's one of the
7 authoritatives.

8 Q. Is there a NARUC publication that adopts
9 this finding?

10 A. Yes.

11 Q. And what is that publication?

12 A. I don't remember the name of the
13 publication, but it was done in the mid-80s, in the
14 hype of all of the nuclear prudence reviews.

15 Q. Are you a project management
16 professional?

17 A. Yes, ma'am.

18 Q. Do you consider yourself an expert on
19 matters of accounting?

20 A. Cost accounting.

21 Q. Do you have your -- I'm sorry, what about
22 general accounting?

23 A. No.

24 Q. Do you consider yourself an expert on
25 matters of auditing?

1 A. Yes.

2 Q. Do you consider yourself -- pardon me.
3 Do you consider yourself an expert on matters of cost
4 engineering?

5 A. Yes.

6 Q. Do you consider yourself an expert on
7 matters of rate-making?

8 A. Rate-making? No.

9 Q. Are you an engineer?

10 A. Yes.

11 Q. Are you a licensed professional engineer?

12 A. No.

13 Q. What professional licenses do you hold?

14 A. I hold a law degree -- or a license from
15 the state of Virginia and a certification by the PMP
16 and as -- and I also hold a license from the Royal
17 Institution of Chartered Surveyors on the risk
18 management college, the project management college, and
19 forensic college.

20 Q. Are there any additional professional
21 certifications or registrations that you hold?

22 A. Yes. I'm also a professional engineer in
23 Japan, which licensed by the -- like in the British
24 system, the institution, the Japanese Society of Civil
25 Engineers is the licensing body; whereas in this

1 country, they're separately done by boards.

2 Q. You're not directly engaged by KCP&L, are
3 you?

4 A. No.

5 Q. What's the nature of your relationship to
6 KCP&L?

7 A. I was hired by the law firm that KCP&L
8 hired, Duane Morris, as their prudence counselor.

9 Q. So is it your testimony that you've been
10 engaged to perform a prudence audit for KCP&L?

11 A. Yes, as an independent prudence audit.

12 MS. KLIETHERMES: May I approach?

13 JUDGE PRIDGIN: You may.

14 (Exhibit No. 274-HC was marked for
15 identification by the Court Reporter.)

16 BY MS. KLIETHERMES:

17 Q. Could you identify the document I've
18 latently handed you?

19 A. Pegasus Consulting Agreement.

20 MS. KLIETHERMES: And do we need to go in
21 HC for this?

22 If we could go in-camera briefly, please.

23 JUDGE PRIDGIN: Just a moment.

24 (REPORTER'S NOTE: At this point, an
25 in-camera session was held, which is contained in

1 JUDGE PRIDGIN: All right. We are back
2 in public forum. 274-HC has been offered. Any
3 objections? Hearing none, 274-HC is admitted.

4 (Exhibit No. 274-HC was received into
5 evidence.)

6 KRIS NIELSEN testified as follows:

7 BY MS. KLIETHERMES:

8 Q. Did you look at all of the Iatan
9 construction project costs in the course of your audit?

10 A. I can't say that I looked at every cost.

11 Q. Did you look at the Schiff Hardin rates
12 for the project controls and project management service
13 when you were performing your audit?

14 A. Yes.

15 Q. In a typical prudence audit performed by
16 Pegasus, would you look at the rates for outside
17 consultants?

18 A. Just in passing.

19 Q. And you state that you did not perform a
20 construction audit for KCP&L, correct?

21 A. No, I did not.

22 Q. If you were performing a construction
23 audit, would you have looked at the rates for outside
24 consultants?

25 A. I could. A construction audit is defined

1 by the contractual terms and the scope, statement of
2 the audit. If the statement of the construction audit
3 was to look at those costs or all costs, I would have.

4 Q. Do you know whether you were required to
5 or whether anyone was required to on your behalf file
6 pleadings with the Commission to obtain access to
7 documents held by KCP&L for Pegasus's audit?

8 A. I don't understand the question.

9 Q. Did you have to seek -- were you able to
10 freely obtain any and all discovery you sought in the
11 course of this audit?

12 A. I had access to all of the documents that
13 were made available to both the Kansas and Missouri
14 Staff.

15 Q. So you never had to file a motion to
16 compel or have one filed on your behalf?

17 A. No.

18 Q. It's correct that you haven't produced a
19 report or review other than your rebuttal testimony?

20 A. That's not a report.

21 Q. Do you have an opinion whether a state
22 public service commission can lawfully disallow a
23 prudent expense if that expense is not a benefit to
24 retail ratepayers?

25 A. I didn't look at that.

1 Q. Do you believe that it is possible for
2 there to be a prudent expense that is not a benefit to
3 retail ratepayers?

4 A. It depends on many factors.

5 Q. I believe you said you have your
6 testimony with you?

7 A. Yes.

8 Q. Could you turn to Exhibit 2 to your
9 rebuttal testimony?

10 A. Exhibit 2. Yes.

11 Q. Bear with me while I get to Exhibit 2.
12 In Exhibit 2 under Heading A, do you describe power
13 projects in which you have done a -- an audit work?

14 A. This is representative of my non-nuclear
15 power plant experience, just like it says.

16 Q. What was the approximate year on the Red
17 Hills -- is that Massachusetts plants?

18 A. Mississippi.

19 Q. Mississippi, I'm sorry. Second grade was
20 a long time ago.

21 A. Red Hills was approximately 2001, 2002,
22 to 2006.

23 Q. What was the date on the McAdoo,
24 Pennsylvania plant?

25 A. About the mid-'80s.

1 Q. What was the date on the spurlock,
2 Kentucky, plant?

3 A. Oh, we did several jobs with regards to
4 spurlock. This is spurlock 1. This was the original
5 construction, so that would have been about 1982.

6 Q. And if you can pronounce the --

7 A. Scherer.

8 Q. Thank you. In Georgia, what was the year
9 on that?

10 A. Well, there are four units of plant at
11 Scherer. They began in the late '80s and the fourth
12 unit was completed probably by 1994.

13 Q. All right. And the Ohio plants?

14 A. That would have been in the late '80s.

15 Q. And the Jeffrey, Kentucky plant?

16 A. It's the Jeffrey Energy Plant actually in
17 Kansas.

18 Q. Oh, I'm sorry, and what's the year on
19 that?

20 A. That was about 1989, 1990.

21 Q. All right. And I believe the heading on
22 that indicates that these are both coal- and
23 petroleum-fuelled plants?

24 A. They're representative of coal and
25 petroleum plants, yes, fuelled plants.

1 Q. Could you indicate which of those are
2 coal, of the U.S. plants?

3 A. All of those that you've listed, that you
4 asked me questions about.

5 Q. Could you identify which of those were
6 EPC? And first let me say, what does the term
7 "EPC" mean to you?

8 A. It's -- EPC contract is engineered,
9 procure, construct contract from a single source. If
10 it's for the whole plant or there can be components of
11 various plants that can be done on EPC.

12 Q. All right. Can you identify which of
13 these your review was of an EPC contract?

14 A. The Red Hills plant was Bechtel was the
15 EPCM on the project. Alstom was actually the boiler
16 manufacturer on that plant, and I think they had the
17 turbine, too.

18 Q. And is that the only one that was EPC?

19 A. No. The McAdoo plant was EPCM, although
20 there were fixed-priced EPC procurement of components;
21 Spurlock was a fixed-priced EPC contract. The four
22 units of plant Scherer were done -- two of them were
23 done, as I recall, as fixed-price EPC contracts. The
24 third and fourth units were multiprime. Jeffrey Energy
25 Center, I think that was a combination which had

1 components of the plant, fixed-priced EPC contracts and
2 the rest was multiprime.

3 Q. And what was the level of your engagement
4 again on the U.S. plants only?

5 A. Oh, the Red Hills plant, we were retained
6 by the utility.

7 Q. Let me clarify, when I say "your," your
8 personal as opposed to Pegasus.

9 A. I worked on all of these plants.

10 Q. I'm saying if there were other engineers
11 or other personnel involved, what was the level of your
12 personal involvement or engagement versus Pegasus in
13 general?

14 A. I was the project manager on all of these
15 plants --

16 Q. Okay.

17 A. -- for our work.

18 Q. If you could, turn to Exhibit 3.

19 JUDGE PRIDGIN: And Ms. Kliethermes, I
20 hate to interrupt, do you have an idea about how much
21 cross you have remaining?

22 MS. KLIETHERMES: I guess an hour.

23 JUDGE PRIDGIN: Okay. Because we're
24 approaching nine o'clock and it's going to be awhile
25 before Ms. Kliethermes ends, I would propose adjourning

1 for the evening until about 8:30 or so. Ms.
2 Kliethermes?

3 MS. KLIETHERMES: If I could -- this next
4 question is actually pretty simple and I think it would
5 benefit them to have the evening.

6 JUDGE PRIDGIN: Absolutely.

7 BY MS. KLIETHERMES:

8 Q. And this is a scribbled note from one of
9 our other counsel. On Exhibit 3, I'm told that it says
10 prudence reviews but the actual documents included in
11 the schedule are something different.

12 A. It's a complete listing of testimony and
13 depositions that I have given. The prudence matters
14 are contained therein, in which I've given testimony.

15 Q. Okay. And I was told, and I may have
16 misunderstood this, that you would be undertaking some
17 effort or your counsel would undertake some efforts to
18 correct that this is not a listing of only your
19 prudence reviews?

20 A. No, we went over, I think took a
21 half-hour to go through my prudence reviews in the
22 deposition. And Mr. Dottheim said at the conclusion
23 that that would be satisfactory, that if they wanted
24 something in addition, they would file a DR.

25 Q. Okay. So then for purposes of wrapping

1 this up, would it suffice to say that all of the
2 projects listed in your schedule -- or sorry, the
3 Exhibit 3 to your rebuttal testimony are not, in fact,
4 prudence reviews?

5 A. True.

6 MS. KLIETHERMES: We can finish there for
7 the evening.

8 JUDGE PRIDGIN: All right. Ms.
9 Kliethermes, thank you. Is there anything further from
10 counsel before we adjourn for the evening? All right.
11 Hearing nothing, we will stand in recess until 8:30
12 a.m. and Dr. Nielsen will retake the stand.

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