

Exhibit No.:
Issue: Iatan 1 In-Service Criteria
Witness: Kenneth M. Roberts
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Kansas City Power & Light Company
Case No.: ER-2009-0089
Date Testimony Prepared: April 7, 2009

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: ER-2009-0089

SURREBUTTAL TESTIMONY

OF

KENNETH M. ROBERTS

ON BEHALF OF

KANSAS CITY POWER & LIGHT COMPANY

**Kansas City, Missouri
April 2009**

SURREBUTTAL TESTIMONY

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KENNETH M. ROBERTS

Case No. ER-2009-0089

1 **Q: Are you the same Kenneth M. Roberts who has previously provided pre-filed**
2 **written testimony in this matter on behalf of Kansas City Power & Light Company**
3 **(“KCP&L” or the “Company”)?**

4 **A: Yes, I am.**

5 **Q: What is the purpose of your Surrebuttal Testimony?**

6 **A: The purpose of my Surrebuttal Testimony is to respond to Mr. Jatinder Kumar’s Rebuttal**
7 **Testimony filed on behalf of National Nuclear Security Administration and the Federal**
8 **Executive Agencies regarding the proper in-service criteria for Iatan Unit 1. In**
9 **particular, I would like to respond to Mr. Kumar’s statement that Iatan Unit 1 should be**
10 **considered in-service and used and useful only at the date when the Company issues a**
11 **final acceptance to ALSTOM Power, Inc. (“ALSTOM”). In other words, Mr. Kumar**
12 **believes that ALSTOM must be one hundred percent (100%) complete and ALSTOM has**
13 **met all of its obligations under its contract.**

14 **RESPONSE TO KUMAR**

15 **Q: Are you familiar with the Rebuttal Testimony of Mr. Kumar?**

16 **A: Yes.**

17 **Q: Are you familiar with both the in-service criteria for Iatan Unit 1 and the contract**
18 **between the Company and ALSTOM Power Inc. for the Iatan project?**

1 A: Yes. The in-service criteria were attached to Brent Davis' Direct Testimony in this case.
2 I have reviewed and am familiar with both his testimony on this topic and the agreed in-
3 service criteria.

4 **Q: What is the purpose of the in-service criteria?**

5 A: Under Missouri law, the Company cannot include a plant in rates until it is “fully
6 operational and used for service.” “In-service criteria” are requirements that demonstrate
7 the plant is useful by defining an agreed operational level of the key emissions equipment
8 or systems. When the Company achieves in-service criteria, the Company can include
9 the associated costs into the rate base with the approval of the Missouri Public Service
10 Commission. The Company's achievement of the in-service criteria also triggers
11 accounting changes including the transfer of costs from construction accounts to plant
12 accounts under FERC's Uniform System of Accounts and the point at which AFUDC
13 stops.

14 **Q: Do you have any responses to Mr. Kumar's opinions with respect to the in-service
15 criteria for Iatan Unit 1?**

16 A: Yes. I disagree with Mr. Kumar's opinion that Iatan Unit 1 should be considered in-
17 service and used and useful on the date that the Company issues a certificate of final
18 acceptance to ALSTOM.

19 **Q: Why do you disagree with Mr. Kumar's opinions?**

20 A: I have never seen a project where the in-service requirements are identical to the final
21 completion requirements in a contract. It is good commercial practice, as well as typical
22 in the construction industry, to specify more stringent commercial performance standards
23 in a construction contract (*i.e.*, what a contractor has to achieve to meet a certified final

1 acceptance) than the in-service criteria or air permit requirements.

2 **Q: Do the in-service criteria require that ALSTOM is one hundred percent (100%)**
3 **complete or have achieved final completion with all its Iatan Unit 1 work?**

4 A: No.

5 **Q: Do the in-service criteria require that ALSTOM achieve all performance guarantees**
6 **in its contract with the Company for the Iatan Unit 1?**

7 A: No. There are more numerous and more stringent requirements in the ALSTOM contract
8 than in the in-service criteria.

9 **Q: Why would the in-service criteria not be the same as the final contract obligations?**

10 A: It is beneficial to both the Company and to its customers to include contractual
11 requirements that exceed the permit requirements for the project to create a margin of
12 error or level of certainty that even if the equipment does not perform to the levels set
13 forth in the performance guarantees, the emission levels of the permit are still achieved.
14 The Company needs to have flexibility with respect to determining the appropriate
15 operational capacity of the Plant, which may include providing a longer period of time
16 for the contractor to meet certain performance guarantees contained within the contract.
17 Additionally, the Company needs flexibility to allow a lesser but still acceptable level of
18 performance and then to seek contract damages from the contractor in the event that the
19 original contract requirements are not met including performance guarantees.

20 Another reason why the in-service criteria are not the same as the final acceptance
21 requirements is that there may be commercial issues that do not effect the operation of
22 the plant and that may take a significant period of time to resolve before final acceptance
23 may be achieved. These commercial issues may include resolution of all punch list items

1 associated with the work, some of which are cosmetic or otherwise unrelated to the
2 operation of the plant, or commercial disputes that may require mediation, arbitration,
3 and/or litigation to ultimately resolve. It would be unrealistic for a Company to utilize
4 the final acceptance date as a requirement of the in-service criteria because the duration
5 of time necessary to achieve this milestone may extend well beyond the operation of the
6 plant at or beyond the air permit requirements. Once the plant meets the permit
7 requirements and the rate payers could receive the benefit of the new operating plant, that
8 is when the Company should be entitled to include these costs in the rate base.

9 **Q: Is there a disadvantage to KCP&L's customers for having in-service criteria that**
10 **does not require final acceptance of the ALSTOM contract?**

11 A: No. The ALSTOM contract contemplates the possibility that ALSTOM will not meet all
12 of the performance guarantees and may instead pay the Company liquidated damages.
13 KCP&L's customers will get the benefit of these liquidated damages in that it will reduce
14 the total cost of the ALSTOM contract which will reduce the total Contract Price, the cost
15 of which will be included in a rate case.

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

17 A: Yes, it does.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Kansas City)
Power & Light Company to Modify Its Tariff to) Case No. ER-2009-0089
Continue the Implementation of Its Regulatory Plan)

AFFIDAVIT OF KENNETH M. ROBERTS

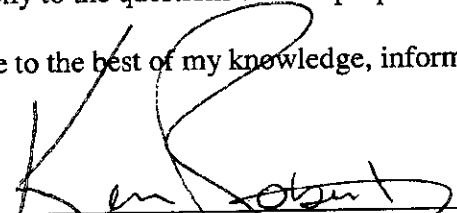
STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Kenneth M. Roberts, being first duly sworn on his oath, states:

1. My name is Kenneth M. Roberts. I work in Chicago, Illinois, and I am an Equity Partner at the law firm of Schiff Hardin LLP.

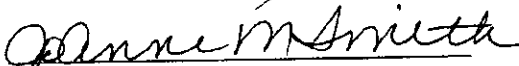
2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Kansas City Power & Light Company consisting of four (4) pages and ~~Schedule(s)~~ _____ through _____, having been prepared in written form for introduction into evidence in the above-captioned docket.

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.



Kenneth M. Roberts

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



Notary Public

My commission expires: 7/23/12

