

Exhibit No.:
Issue: Alstom Settlement/Common plant
Witness: Chris B. Giles
Type of Exhibit: True-up Rebuttal Testimony
Sponsoring Party: Kansas City Power & Light Company
KCP&L Greater Missouri Operations Company
Case No.: ER-2010-0355/ER-2010-0356
Date Testimony Prepared: February 28, 2011

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: ER-2010-0355/ER-2010-0356

TRUE-UP REBUTTAL TESTIMONY

OF

CHRIS B. GILES

ON BEHALF OF

**KANSAS CITY POWER & LIGHT COMPANY
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

**Kansas City, Missouri
February 2011**

*** [REDACTED] *** Designates "Highly Confidential" Information
Has Been Removed
Pursuant To 4 CSR 240-2.135.

*Giles
True Up
NP*

TRUE-UP REBUTTAL TESTIMONY

OF

CHRIS B. GILES

Case No. ER-2010-0355/ER-2010-0356

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

2 A: My name is Chris B. Giles. My business address is 1200 Main Street, Kansas City,
3 Missouri, 64105.

4 **Q: Are you the same Chris B. Giles, who submitted Direct Testimony and Rebuttal**
5 **Testimony in this case on behalf of Kansas City Power & Light Company**
6 **(“KCP&L” or the “Company”) on or about June 4, 2010 and December 8, 2010,**
7 **respectively?**

8 A: Yes, I am.

9 **Q: What is the purpose of your True-up Rebuttal Testimony?**

10 A: My true-up testimony will respond to the True-up Direct Testimony of Mr. Charles
11 Hyneman regarding: (a) KCP&L’s settlement with ALSTOM on the Iatan Unit 2 Project;
12 (b) Common Plant Costs; and (c) Spearville 2 Wind Project.

13 **Q: Can you please summarize your testimony?**

14 A: Yes. Staff’s witness Mr. Hyneman has used the true-up case to file untimely testimony in
15 which he attempts to re-argue the prudence of KCP&L’s decision making on the Iatan
16 Project. This testimony is improper for a true-up case, and despite Mr. Hyneman’s
17 claims to the contrary, Mr. Hyneman does not allege any new facts or provide any

1 support for his positions that was not readily available months or even years prior to the
2 June 30, 2010 cut-off date.

3 Mr. Hyneman's position on the Iatan Unit 2 Settlement is identical to the
4 argument Staff articulated regarding alleged "forsaken" liquidated damages emanating
5 from the Iatan Unit 1 settlement with ALSTOM in its November 3, 2010 "Construction
6 Audit and Prudence Review – Iatan Construction Project for Costs Reported as of June
7 30, 2010," which I will refer to as "Staff's Report". Mr. Hyneman's position is nothing
8 more than idle speculation and hindsight, and not based on any understanding or
9 acknowledgement of the facts regarding the Iatan Project.

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 **RESPONSE TO HYNEMAN TRUE-UP TESTIMONY – IATAN UNIT 2 SETTLEMENT**

2 **Q: Have you read the True-up Direct Testimony of Staff witness Mr. Charles H.**
3 **Hyneman?**

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

5 **Q: What is your initial position regarding Mr. Hyneman’s testimony?**

6 **A:** As stated, Mr. Hyneman has presented as testimony in support of the true-up case
7 opinions that are inherently inappropriate for a true-up case. His conclusions are also
8 untimely and not factually based.

9 **Q: Mr. Hyneman alleges that, “The Staff updated its adjustment for the Iatan 2 Alstom**
10 **Settlement based on new information. The Alstom Unit 2 Settlement proposed**
11 **disallowance has increased from \$1 million to \$15 million.” (Hyneman True-up**
12 **Direct Testimony, p. 3, ll. 1-3). Do you agree?**

13 **A:** No, I do not. This appears to be Mr. Hyneman’s attempt to re-argue the prudence of
14 KCP&L’s decision to enter into this Settlement Agreement under the auspices of the true-
15 up case. Mr. Hyneman’s allegation that the Iatan Unit 2 settlement agreement with
16 ALSTOM was “new information” is factually incorrect and untimely, and thus represents
17 improper testimony for true-up proceeding. Mr. Hyneman ignores even Staff’s Report, in
18 which Staff acknowledged, “approximately \$11 million additional costs have been
19 charged to the project after June 30, 2010. The Staff will address these costs in its true-
20 up Iatan 2 audit report.” See Staff’s Report, p. 65, ll 11-13. Moreover, Mr. Downey’s
21 Rebuttal Testimony, which was filed on December 8, 2010, noted that Staff was mistaken
22 in its November 3, 2010 report (“Staff’s Report”) when it stated that ALSTOM had
23 earned \$1 million under the terms of the Settlement Agreement as of the June 30, 2010

1 cut-off date. *Id.* p. 46. Mr. Downey correctly points out that as of June 30, 2010,
2 KCP&L had paid ALSTOM \$10 million and so informed Staff through its responses to
3 DR918R. *Id.* Mr. Downey testified that Staff's attempt to confuse the issue of the
4 ultimate amount KCP&L expected to pay ALSTOM under this agreement should be
5 rejected by the Commission:

6 The Commission should not be confused by Staff's use of actual
7 costs through the cut-off. Staff fails to provide any analysis of the
8 complex commercial issues underlying the ALSTOM Unit 2
9 Settlement Agreement and its proposal to simply defer the issue in
10 its entirety to the true-up case is inappropriate, as the dollar amount
11 is fixed at this time and the prudence of our decision can be fully
12 weighed by the Commission in this case. By the time of the
13 hearing, all of the bonus payments under this agreement will have
14 been earned by ALSTOM even if they have not been technically
15 invoiced and paid.

16 Downey Rebuttal Testimony, p. 46, ll. 17-23.

17 **Q:** Also on page 3 of his testimony, Mr. Hyneman alleges, "Since Alstom's performance
18 compared to contractual requirements were likely the cause of some if not most of
19 these incremental costs, KCPL should have assessed and collected these costs from
20 Alstom under the liquidated damages provision of the Alstom-KCPL contract.
21 KCPL decided not to make such an assessment. If Alstom's performance did not
22 meet its contract requirements and KCPL failed to protect itself from such
23 performance by taking advantage of its rights under its contract with Alstom,
24 KCPL was unreasonable / inappropriate in its conduct and should bear the costs
25 incurred." *See Hyneman True-up Direct Testimony, p. 3. Do you agree?*

26 **A:** Absolutely not. Mr. Hyneman's testimony is transparently based on speculation and
27 hindsight and reveals that Staff has not performed any analysis of KCP&L's prudence
28 regarding its decision to engage in the Settlement Agreement with ALSTOM. I note that

1 Mr. Hyneman also states, "If some or all of the delay in project completion was not the
2 fault of Alstom, KCPL should determine who was at fault and hold that entity (including
3 itself) responsible for these incremental Iatan Project costs." Hyneman True-up Direct
4 Testimony, p. 3, ll. 17-23. Mr. Hyneman clearly admits that he does not know the basis
5 of this agreement, or whether ALSTOM, KCP&L or anyone else for that matter was "at
6 fault."

7 The circumstances surrounding the ALSTOM Unit 2 Settlement Agreement are
8 discussed in detail by several KCP&L Company witnesses, including Mr. Downey, Mr.
9 Roberts and Dr. Nielsen. See Downey Rebuttal Testimony at pp. 39-47; Roberts Rebuttal
10 Testimony at pp. 12-18; and Nielsen Rebuttal Testimony at pp. 275-285.

11 **Q: Mr. Hyneman also alleges, "Since Alstom did not obtain Provisional Acceptance of**
12 **Iatan Unit 2 until September 23, 2010 when it was required by contract to obtain**
13 **this project milestone on June 1, 2010. Because of this delay in project completion,**
14 **KCPL incurred costs and harm in the amount of approximately \$34,200,000."**
15 **(Hyneman True-up Direct Testimony, p. 3, ll. 12-15.) Do you agree that KCP&L**
16 **had an ability to assess liquidated damages against ALSTOM?**

17 **A:** No, I do not. Mr. Hyneman's testimony uses the identical argument that Staff advances
18 in Staff's Report regarding the "forsaken" liquidated damages on the Iatan Unit 1 Project,
19 and should be rejected for the same reasons KCP&L's witnesses have previously
20 articulated. Mr. Hyneman's argument represents nothing more than idle speculation and
21 hindsight.

1 **Q: Can you summarize the reasons why you believe Staff's position is faulty?**

2 A: It is mere hindsight to imply that KCP&L could have but did not assess liquidated
3 damages. Once KCP&L and ALSTOM agreed to modify the contract so that the
4 Provisional Acceptance date was modified to a later date, any discussion about what
5 KCP&L "could have" potentially collected under the original contractual date is highly
6 speculative. ALSTOM was not required to nor would it have any reason to attempt to
7 meet (much less spend additional money to meet) a contractual date that is no longer
8 valid. *See* Downey Rebuttal Testimony at p. 36-38; Davis Rebuttal Testimony at p. 58-
9 60; Roberts Rebuttal Testimony at p. 11-12; and Nielsen Rebuttal Testimony at p. 266,
10 ln. 11 to p. 268 ln. 16. Additionally, as noted, the parties agreed in principle to the dates
11 that ALSTOM needed to meet months before the final document was executed. *See*
12 Downey Rebuttal Testimony at pp. 42-43. At the time that ALSTOM's contractual
13 Provisional Acceptance date was relaxed, there were still several months left before the
14 contractual date and many things could have happened, including 1) intervening delays
15 that were not the fault of ALSTOM, or 2) ALSTOM could have accelerated its work to
16 meet either the original dates or any date in between the original date and the actual date.
17 At the time of the Unit 2 Settlement Agreement, no liquidated damages had accrue, and
18 as a result, KCP&L had no contractual right to collect such damages. There is no way to
19 know for sure what "would" have happened, and no ability of KCP&L to assess
20 liquidated damages on the basis of such speculation.

21 **Q: On page 5 of his True-up Direct Testimony, Mr. Hyneman cites to the Rebuttal**
22 **Testimony of Dr. Nielsen regarding the fixed-price nature of ALSTOM's contract.**

1 **Isn't it true that ALSTOM had a fixed-price agreement that KCP&L should not**
2 **have modified?**

3 A: No. KCP&L's witnesses, including Dr. Nielsen, thoroughly dispute such an argument.
4 Mr. Hyneman bases his opinion upon testimony of Dr. Nielsen, who states on page 232
5 of his Rebuttal testimony: "Under its Fixed Price EPC contract, Alstom was responsible
6 for these costs to recover delays unless the delays and inefficiencies were the result of
7 actions by KCP&L or a third party responsible to KCP&L." This quote, however is
8 taken out of context as Dr. Nielsen was explaining his reasoning behind the WSI
9 disallowance for specialty welding, not the ALSTOM Unit 2 Settlement Agreement. As
10 noted, Dr. Nielsen agrees that KCP&L made a prudent decision to enter into this
11 agreement. *See Nielsen Rebuttal Testimony at pp. 275-285.*

12 Moreover, Mr. Hyneman's position in page 5 of his True-up Testimony that under
13 a fixed-price contract, ALSTOM is "responsible for completing the contract work scope
14 and charging KCP&L no more than the firm fixed-price amount of the contract for that
15 work scope" is baseless. Mr. Hyneman's current position regarding fixed-price contracts
16 contradicts Staff's Report, in which Staff **agrees** with Mr. Roberts' testimony that "it is
17 not unreasonable for contract modifications or change orders to increase the price of a
18 firm fixed-price contract." Staff's Report, p. 64. Staff admits that there are "several
19 reasons why the cost of a firm fixed-price contract may be increased, such as increased
20 scope of work and delays imposed upon the firm fixed-price contractor through no fault
21 of its own." *Id.* As discussed, the reasons for the Settlement Agreement with ALSTOM
22 were legitimate changed circumstances to ALSTOM's fixed-price contract. *See Downey*
23 *Rebuttal Testimony at pp. 39-47; Roberts Rebuttal Testimony at pp. 12-18.*

1 Mr. Hyneman's allegations regarding ALSTOM's responsibilities under a fixed-
2 price contract are identical to the testimony of Mr. Walter Drabinski, the sole witness for
3 the Missouri Retailer's Association, in this case. Mr. Drabinski alleged that ALSTOM's
4 contract was "all-inclusive" and there should not have been any change orders to its
5 contract. *See* Drabinski Direct Testimony at pp. 147-48. Mr. Roberts responded to Mr.
6 Drabinski's baseless allegation:

7 As a result, Mr. Drabinski argues that there should not have been
8 any change orders. Mr. Drabinski is holding KCP&L to an
9 unreasonable and impossible standard, and it certainly does not
10 reflect the "industry standards." I have never heard of a
11 reasonably-priced lump-sum EPC contract for a project of this size
12 and complexity that did not involve change orders. When
13 preparing its bid, the EPC contractor makes certain assumptions
14 and builds those assumptions into its price. These include the
15 scope of its work, certain design elements, and even pricing
16 specific to a particular type of material or subcontractor. During
17 the bidding phase, the owner and the contractor attempt to identify
18 and discuss all assumptions made by the contractor in its bid;
19 however, issues always arise during the course of construction.

20 Roberts Supplemental Rebuttal Testimony, pp. 91-92.

21 Mr. Roberts concludes, "Based upon my experience, no contractor would
22 knowingly bid on a job that does not allow it flexibility to manage subsequent changes."
23 *See Id.*, p. 92. Mr. Robert Bell also stated that a fixed-price contract with no change
24 orders was a "virtual impossibility." *See* Bell Rebuttal Testimony at p. 9.

25 **Q: Mr. Hyneman alleges that KCP&L has "never explained the reasons why it did not**
26 **assess liquidated damages against ALSTOM." Hyneman True-up Direct**
27 **Testimony, p. 5, ll. 16-18. Do you agree?**

28 **A:** No. Once again, Mr. Hyneman applies nothing more than hindsight in support of his
29 testimony. For all of the foregoing reasons and based on the testimony of Mr. Roberts
30 and Dr. Nielsen, KCP&L did not have the right to assert liquidated damages against

1 ALSTOM. Therefore, there is no reason for KCP&L to explain why it didn't do
2 something that it had no basis to do. Furthermore, this statement ignores the testimony
3 submitted by KCP&L in this case with respect to both the Unit 1 and the Unit 2
4 Settlement Agreements, which has been on file with the Commission for several months.
5 That testimony explains the reasons behind the overall Settlement Agreements as well as
6 the reasons why KCP&L did not assess liquidated damages against ALSTOM in the Unit
7 1 Agreement—reasons that apply to Unit 2 as well.

8 **Q: Mr. Hyneman also argues that KCP&L absorbed additional project costs “because**
9 **liquidated damages are not penalties but represent an estimate of actual costs**
10 **incurred to the owner of a project when the project is not completed on time.” Do**
11 **you agree?**

12 **A:** No. As an initial point, Mr. Hyneman does not support this position either factually or
13 from an industry perspective, thus, he has no basis for providing this opinion. Using this
14 unsupported predicate, Mr. Hyneman then engages in further speculation, stating that, “**it**
15 **is logical to assume** that the Iatan 2 construction costs were increased by \$34,200,000
16 due to the project being completed on September 23, 2010 as opposed to June 1, 2010.”
17 Hyneman True-up Direct Testimony, p. 5, ll. 20-21, emphasis added. KCP&L has
18 provided Staff with all of the documents necessary for Staff to determine any aspect of
19 the Project's costs. Mr. Forrest Archibald testified at the Evidentiary Hearing that
20 KCP&L's cost control system is so robust that it allows any interested party to this matter
21 to track every dollar that KCP&L spent on the Iatan Project, regardless of whether the
22 costs were anticipated in the Control Budget Estimate or constitute a cost overrun to the
23 Control Budget Estimate: “Our system allows you to track through every dollar that's

1 spent from cradle to grave and understand where it was spent and wherever the overrun
2 occurred.” See Tr. 2166, ll. 22-25, to 2167, ll. 1. As with Staff’s unsupported argument
3 that KCP&L incurred “unexplained” cost overruns on the Iatan Project, had Staff merely
4 engaged in a review of KCP&L’s cost system, it would not have to “assume” why costs
5 increased as Mr. Hyneman does here.

6 **Q: Mr. Hyneman alleges that the Project was 114 days late based on ALSTOM meeting**
7 **substantial completion on September 23, 2010. Is this correct?**

8 A: No. This statement shows fully Mr. Hyneman's lack of understanding of the ALSTOM
9 Contract and general construction terms. ALSTOM’s has a Substantial Completion A
10 and a Substantial Completion B date in its Contract representing two separate milestones.
11 These are separate and distinct from the Provisional Acceptance Date, which appears to
12 be the date to which Mr. Hyneman is referring. The original target date for Provisional
13 Acceptance was June 1, 2010. The Unit 2 Settlement Agreement revised the date to
14 August, 1, 2010. Subsequent start-up, weather and contractor issues required a further
15 revision of this date to November 1, 2010. Various mitigation plans implemented by
16 KCP&L allowed the Project to achieve an in-service date on August 26, 2010.
17 Technically, KCP&L could have declared that ALSTOM had achieved Provisional
18 Acceptance on this date, but chose to rely on some technical language in the Contract so
19 that KCP&L could wait until after ALSTOM could show that the unit could be started up
20 with no problems after an extended outage. This was to ensure that there were no latent
21 problems in ALSTOM’s work before KCP&L released ALSTOM from liability for
22 liquidated damages. As a result, KCP&L considers the “commercial operation” date (the
23 definition on which Provisional Acceptance is based) of the Iatan Unit 2 plant to be

1 August 26, 2010, or 67 days earlier than ALSTOM's contractual date. It is important to
2 note that KCP&L has always targeted Provisional Acceptance for the Project in the
3 "Summer of 2010", which was achieved. KCP&L does not consider the Iatan Project to
4 have been "late."

5 **Q: Mr. Hyneman alleges that KCP&L has not explained "who was responsible for the**
6 **project being delayed by 114 days" and argues that some party, whether it's**
7 **ALSTOM, another contractor or KCP&L itself should be responsible for "these**
8 **costs." Hyneman True-up Direct Testimony, p. 6. Do you agree?**

9 **A:** No. This is further evidence of Mr. Hyneman both not understanding the complexity of
10 construction projects and simply ignoring the facts that were presented to Staff, including
11 the testimony cited above from Mr. Downey, Mr. Roberts, Mr. Davis and Dr. Nielsen
12 regarding the prudence of the decision behind the Settlement Agreement. In summary of
13 this testimony, KCP&L considered every option and made a prudent decision based on
14 the facts and circumstances known at the time and chose to extend the project's
15 completion date. In the 2009 Cost Reforecast, KCP&L's management took into account
16 the potential impact on the Project's costs, including lost potential power sales, and
17 KCP&L recognized that there was no party "at fault" and that the decision it made would
18 result in no change in the Project's overall cost. *See Meyer Rebuttal Testimony at pp. 56-*
19 *59.*

20 **Q: Mr. Hyneman further alleges that because ALSTOM did not meet the dates for**
21 **multiple milestones in the Settlement Agreement that it was not entitled to the bonus**
22 **payments enumerated in the Agreement. Do you agree with Mr. Hyneman's**
23 **assessment?**

1 A: No. Once again, Mr. Hyneman ignores the facts that KCP&L presented in this case. Mr.
2 Downey explained the reasons that the start-up of Iatan Unit 2 was impacted by poor
3 weather and contractor performance at the onset of 2010. See Downey Direct Testimony
4 p. 30-35. Mr. Bell summarized the actual impact on the major milestones in his Rebuttal
5 Testimony, as well as the risks associated with the start-up of Iatan Unit 2 and how
6 KCP&L effectively mitigated those risks. See Bell Rebuttal Testimony at p. 20-24.
7 These events were outside of ALSTOM's control; thus, ALSTOM was entitled to an
8 extension of the dates to which its bonus payments in the Settlement Agreement were
9 tied. It should be noted that KCP&L held the contractor responsible for the ALSTOM
10 delays, and executed two back charges in the amount of approximately \$4.975 million to
11 cover the costs of the delay to ALSTOM.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 **Q: Is there anything else notable regarding Mr. Hyneman's testimony?**

2 A: Staff's largest recommended disallowance is the alleged "unidentified" cost overruns to
3 the Iatan Project. Staff has simply updated these costs from its November Report, so that
4 these amounts, when added to the specific disallowance recommendations, add up to the
5 entire amount by which the Iatan Project has exceeded the Control Budget Estimate. As
6 in its prudence case, Staff alleged that KCP&L's Cost Control System fails to meet the
7 Regulatory Plan's requirements. We simply point the Commission to the volumes of
8 testimony by Company witnesses Curtis Blanc, Chris Giles, Forrest Archibald, Kris
9 Nielsen and Dan Meyer. I note that Mr. Hyneman utilized KCP&L's Cost Control
10 System including the "K Report" to identify the cost overrun he alleges occurred. Had
11 Staff utilized the Cost Control System regarding the cost overruns on the Iatan Project in
12 a similar fashion, its spurious claim that KCP&L has not identified cost overruns would
13 have been obviated by its own actions.

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

15 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 Tariffs to) Docket No. ER-2010-0355
Continue the Implementation of Its Regulatory Plan)

AFFIDAVIT OF CHRIS B. GILES

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

Chris B. Giles, being first duly sworn on his oath, states:

1. My name is Chris B. Giles. I work in Kansas City, Missouri, and I am currently a regulatory consultant to Kansas City Power & Light Company.

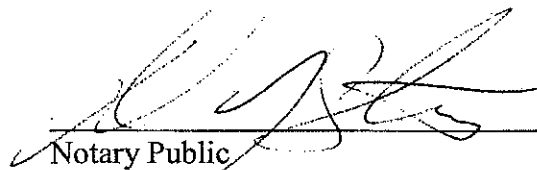
2. Attached hereto and made a part hereof for all purposes is my True-Up Rebuttal Testimony on behalf of Kansas City Power & Light Company consisting of fifteen
(15) pages, having been prepared in written form for introduction into evidence in the above-captioned docket.

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.



Chris B. Giles

Subscribed and sworn before me this 24th day of February, 2011.



Notary Public

My commission expires: May 24, 2014

DOHNA J. STOWAY Notary Public, Notary Seal State of Missouri Clay County Commission # 10889620 My Commission Expires May 23, 2014
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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of KCP&L Greater)
Missouri Operations Company to Modify Its) Docket No. ER-2010-0356
Electric Tariffs to Effectuate a Rate Increase)

AFFIDAVIT OF CHRIS B. GILES

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

Chris B. Giles, being first duly sworn on his oath, states:

1. My name is Chris B. Giles. I work in Kansas City, Missouri, and I am currently a regulatory consultant to Kansas City Power & Light Company.

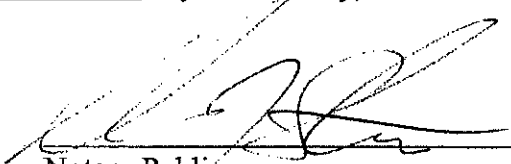
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3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge,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



Chris B. Giles

Subscribed and sworn before me this 24th day of February, 2011.



Notary Public

My commission expires: May 23, 2014

