

STATE CORPORATION COMMISSION

JUN 05 2009

ADDITIONAL REBUTTAL TESTIMONY OF
DR. KRIS R. NIELSEN

 Docket
Room

ON BEHALF OF KANSAS CITY POWER & LIGHT (KCP&L) IN THE MATTER OF
THE APPLICATION OF KCP&L TO MODIFY ITS TARIFFS TO CONTINUE THE
IMPLEMENTATION OF ITS REGULATORY PLAN

DOCKET NO. 09-KCPE-246-RTS

- 1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.
- 2 A. My name is Dr. Kris R. Nielsen. My business address is 1750 Emerick Road, Cle Elum,
3 Washington 98922.
- 4 Q. HAVE YOU PREVIOUSLY SUBMITTED PREFILED TESTIMONY IN THIS
5 PROCEEDING?
- 6 A. Yes, I prefiled Rebuttal Testimony¹ on behalf of Kansas City Power & Light Company
7 (“KCP&L”) on February 23, 2009. In my previous testimony, I provided the Pegasus-
8 Global perspective of the overall assessment of KCP&L’s management process in
9 planning, executing, and controlling functional activities during the construction of Iatan
10 project, identified management strengths and positive actions that may have had an
11 impact on costs and/or schedule, and provided an overall determination of the
12 effectiveness of the construction management practices on the Iatan Unit 1 air quality
13 control system (“AQCS”) project (“Iatan 1 Project”).

¹ My testimony that was filed February 23, 2009 was incorrectly titled Direct Testimony. I will correct this error at the time of hearing when the testimony will be officially presented for admission into the record.

1 **Q. DR. NIELSEN, WHAT IS THE PURPOSE OF YOUR PRESENT TESTIMONY?**

2 **A.** I have been asked by KCP&L to evaluate the additional direct testimony filed on behalf
3 of the Kansas Corporation Commission (“Commission”) staff by their consultant, Walter
4 P. Drabinski and to identify any areas of disagreement.

5 **Q. COULD YOU IDENTIFY THE MAJOR AREAS OF THIS TESTIMONY?**

6 **A.** Yes. I will address Mr. Drabinski’s use of the term “avoidable costs” in his Additional
7 Direct Testimony, and his use of the R/O or Claims Log to evaluate prudence.

8

9 **I. “AVOIDABLE COSTS”**

10 **Q. DR. NIELSEN, HAVE YOU REVIEWED MR. DRABINSKI’S TESTIMONY**
11 **RECOMMENDING DISALLOWANCES CONTAINED IN HIS MAY 29, 2009**
12 **SUPPLEMENTAL TESTIMONY?**

13 **A.** Yes I have. Mr. Drabinski makes a number of corrections to the disallowances
14 recommended in his original testimony.

15 **Q. DO YOU AGREE WITH HIS CORRECTIONS?**

16 **A.** No. As with his Direct Testimony in this case, Mr. Drabinski’s Additional Direct
17 Testimony is based upon an incorrect application of the prudence standard that governs
18 the Iatan 1 Project. Mr. Drabinski has corrected portions of his Direct Testimony based
19 upon an audit of actual costs expended by KCP&L on the Iatan 1 Project. However, in
20 my Rebuttal Testimony, I noted that Mr. Drabinski, in his Direct Testimony, did not
21 identify any specific decision made by KCP&L’s management which he determined to be
22 unreasonable and/or imprudent, nor did Mr. Drabinski establish a nexus between any
23 management decision by KCP&L to any subsequent recommended disallowance.

1 Mr. Drabinski's Additional Direct Testimony further failed to cite to any imprudent
2 decisions, let alone allege an adverse outcome of such decisions.

3 **Q. WHAT IS THE APPROPRIATE PRUDENCY STANDARD?**

4 **A.** The accepted standard, stated generally, is set forth in my Rebuttal Testimony on page 17:

5 *Decisions are prudent if made in a reasonable manner in light of conditions and*
6 *circumstances which were known or reasonably should have been known when*
7 *the decision was made.*

8 **Q. HAS MR. DRABINSKI PROPOSED A SIMILAR STANDARD?**

9 **A.** Yes, he has. Mr. Drabinski's prudency test is set forth on page 18 of the Vantage Final
10 Report, attached to his Direct Testimony as WPD-1, and it states:

11 *As one example of applying this standard, Vantage asks whether a knowledgeable*
12 *person in the industry would have made the same or similar decision at that time*
13 *in history with the information and resources available at the time.*

14 While I agree with this formulation, I disagree with the manner in which Mr. Drabinski
15 has applied it in his analysis in this case. My Rebuttal Testimony addresses in detail the
16 shortcomings in Mr. Drabinski's analysis, so I will simply reaffirm those comments at
17 this time, rather than repeat them.

18 **Q. IS THERE ANYTHING NEW IN MR. DRABINSKI'S ADDITIONAL DIRECT**
19 **TESTIMONY REGARDING HIS PRUDENCY EVALUATION THAT YOU**
20 **BELIEVE NEEDS TO BE ADDRESSED FURTHER BY YOU IN THIS**
21 **REBUTTAL?**

22 **A.** Yes, it concerns his use of the term "avoidable costs" as a standard for supporting his
23 recommended disallowance.

1 **Q. ARE YOU FAMILIAR WITH THE TERM AVOIDABLE COSTS?**

2 **A.** Not in the context of evaluating the prudence of management decisions related to a public
3 utility construction project. As I indicated in my original testimony, I have participated
4 as an expert witness in 17 separate regulatory proceedings involving management
5 prudence. The term “Prudence” has become a commonly accepted term in regulatory
6 proceedings with a common definition. That definition is the one I described earlier – the
7 “zone of reasonableness” of management decisions based upon facts known at the time.

8 **Q. HOW IS MR. DRABINSKI EMPLOYING THE TERM “AVOIDABLE COSTS”**
9 **IN HIS ADDITIONAL DIRECT TESTIMONY?**

10 **A.** It is not clear to me exactly how Mr. Drabinski applies this term because he has not
11 related the term to his definition of “prudence” as set forth above, nor has he related the
12 term to the primary Kansas Statute addressing prudence (KSA 66-128g). KSA 66-128g
13 provides the Commission with a non-exclusive list of factors the Commission may
14 consider in making its overall determination of prudence. Overlaying these factors is the
15 concept set forth by Mr. Drabinski that to find imprudence, the Commission must ask
16 *“whether a knowledgeable person in the industry would have made the same or similar*
17 *decision at that time in history with the information and resources available at the time.”*
18 Mr. Drabinski did not incorporate this inquiry into his discussion of “avoidable costs”.

19 **Q. DR. NIELSEN, DO YOU BELIEVE THAT MR. DRABINSKI’S USE OF THE**
20 **TERM “AVOIDABLE COSTS” ASSISTS THE COMMISSION IN ITS**
21 **EVALUATION OF KCP&L’S PERORMANCE ON THE IATAN UNIT 1**
22 **CONSTRUCTION PROJECT?**

1 A. No, I do not. It is an ambiguous term without any commonly accepted meaning in the
2 context of the review of construction management. It provides no guidance to the
3 Commission or the parties in this proceeding. The term prudence, on the other hand, has
4 a commonly accepted meaning, has distinct elements which can be evaluated and applied
5 to a defined fact situation, and provides guidance both to the parties in a regulatory
6 proceeding and to the regulators who must evaluate management's performance. It is
7 unclear from Mr. Drabinski's Additional Direct testimony whether Mr. Drabinski
8 intended to use the term "avoidable costs" as a substitute for imprudence. Nevertheless,
9 Mr. Drabinski's testimony does not provide the Commission the necessary context or
10 authority for using this term as a "standard" for its review.

11
12 **II. USE OF THE R/O OR CLAIMS LOG TO EVALUATE PRUDENCE**

13 **Q. MR. NIELSEN, WHAT IS YOUR POSITION REGARDING MR. DRABINSKI'S**
14 **USE OF THE R/O LOG OR CLAIMS LOG TO EVALUATE PRUDENCE?**

15 A. I continue to disagree with Mr. Drabinski's use of a claim or identification of an issue
16 through the Risk & Opportunity Analysis Sheet ("R/O") log as the starting point in his
17 analysis. Starting with a claim is not a prudence review, it is a claims review and it relies
18 entirely on hindsight.

19 **Q. PLEASE EXPLAIN.**

20 A. Earlier I identified the commonly accepted test of prudence as being an examination of
21 management decisions to determine whether they fall within the zone of reasonableness.
22 The starting point is, therefore, the management decisions in question, not the end result
23 of a process that may or may not have been triggered by imprudent decisions. The major
24 problem with Mr. Drabinski's approach is that claims of all sorts commonly occur on any

1 construction project, regardless of its complexity and management decisions. Claims are
2 not, *per se*, a product of imprudent management decisions.

3 **Q. IS THERE ANY PARTICULAR ASPECT OF MR. DRABINSKI'S TESTIMONY**
4 **WHERE THE USE OF A CLAIM AS A STARTING POINT IS PARTICULARLY**
5 **TROUBLESOME?**

6 **A.** Yes, in Mr. Drabinski's analysis of the ALSTOM Settlement, he ignores the previously
7 filed direct testimony of a number of witnesses describing the complexity of this omnibus
8 settlement agreement and the many factors that went into its negotiation and execution.
9 He then takes the final settlement amount and arbitrarily assigns a percentage
10 disallowance without first establishing that KCP&L's Senior Management made any
11 imprudent decision. Because there was no finding of a specific imprudent decision in
12 this regard, Mr. Drabinski also could not establish a nexus between any alleged
13 imprudent decision by KCP&L to the percentage disallowance that he recommends.

14 **Q. ARE YOU AWARE THAT MR. DRABINSKI HAS RECALCULATED HIS**
15 **RECOMMENDED DISALLOWANCE RELATED TO THE ALSTOM**
16 **SETTLEMENT AGREEMENT?**

17 **A.** Yes.

18 **Q. DO YOU AGREE WITH HOW MR. DRABINSKI RECALCULATED THIS**
19 **RECOMMENDED DISALLOWANCE?**

20 **A.** No. As an initial matter, Mr. Drabinski did not modify the basis for his recommendation
21 for disallowance in his Additional Direct Testimony, he only changed the calculation of
22 the amount of the proposed disallowance. My previous testimony discusses why
23 Mr. Drabinski has previously failed to establish a proper basis for disallowance. In his
24 Additional Direct Testimony, Mr. Drabinski merely attempts to apply the same faulty
25 basis for justifying a recommended disallowance of a different portion of the ALSTOM

1 Settlement. The mere fact that Mr. Drabinski attempted to further breakdown his
2 calculation of this recommended disallowance does not cure the fact that he fails to
3 establish the necessary factual and legal basis for this proposed disallowance.

4 **Q. DOES THIS CONCLUDE YOUR ADDITIONAL REBUTTAL TESTIMONY?**

5 **A.** Yes, it does.

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas City)
Power & Light Company to Modify Its Tariffs to) Docket No. 09-KCPE-246-RTS
Continue the Implementation of Its Regulatory Plan)

AFFIDAVIT OF KRIS R. NIELSEN

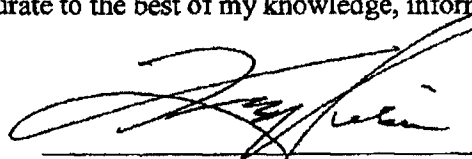
STATE OF Washington)
COUNTY OF Kititas) ss

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 ^{Additional} rebuttal Testimony on behalf of Kansas City Power & Light Company consisting of Seven (7) pages and Schedule(s) Ø - through Ø -, 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 4th day of June 2009.


Notary Public

My commission expires: July 1, 2012