

STATEMENT OF CONSIDERATIONS

Request by Pegasus Technologies for an Advance Waiver of Domestic and Foreign Invention Rights under DOE Cooperative Agreement No. DE-FC26-05NT42389 W(A)-05-013, CH-1277

The Petitioner, Pegasus Technologies (Pegasus), will be awarded a cooperative agreement for the performance of work entitled, "Mercury Specie and Multi-Pollutant Control" under the above solicitation number. The purpose of the cooperative agreement will be to demonstrate on a large utility coal fired boiler the ability to affect and optimize mercury speciation and multi-pollutant control using non-intrusive advanced sensor and optimization technologies. The intent of this work is to demonstrate plant wide advanced control and optimization systems on a coal fired steam electric power plant to minimize emissions while maximizing the efficiency, and byproducts of the plant as an electricity producer.

The total estimated cost of the cooperative agreement is \$12,159,650, with the DOE share being \$6,079,480 or 50%, the remaining cost share of 50%, or \$6,080,171, will be provided by Pegasus. The period of performance is 54 months from November 2005.

In its response to questions 5 and 6 of the attached waiver petition, Pegasus has described its technical competence in the field of control systems for Power Utilities. It provides software and engineering services for implementing these systems to reduce emissions (NOx and CO), as well as improve efficiency (heat rate) of the unit. Pegasus' systems are implemented on a computer workstation that interfaces directly to the plant's distributed control system (DCS). By obtaining measured values from the plant in real-time, Pegasus' software is used to optimally determine plant inputs that are typically set by the plant operator. Pegasus supplies two software products for implementation of the control/optimization systems: NeuSIGHT®, and The Power Perfecter™, descriptions of which are provided in response to question 5 of Pegasus' waiver petition. Pegasus has installed over 55 advanced control and optimization systems throughout the world, and has developed extensive know-how in implementation of advanced control and optimization systems in the power industry. It holds exclusive rights to 58 U.S. patents and 77 foreign patents. A representative sample of the documents is attached to the waiver petition. Pegasus' response demonstrates its technical competency in the field of control systems for Power Utilities.

In its response to questions 9 and 10 of the attached waiver petition, Pegasus states that competition of methods and products within the market place exists from large distributed controls suppliers including Emerson (Westinghouse), Foxboro (Invensys), and Neuco. Other control methods being explored in this project have competing technologies from Alstom, ADA Technologies, URS, EPRI, and Enviroscrub. Pegasus states that because of the large number of competitors in this market place, the effect on competition would be small, and will not place Pegasus in a preferred or dominant position. Therefore grant of the waiver will have a positive effect on competition and market concentration.

The subject cooperative agreement will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12, wherein Pegasus has agreed to the provisions of 35 U.S.C §§ 202, 203, and 204. This waiver clause will also include a paragraph entitled U.S. Competitiveness, in which Pegasus agrees to substantial U. S. manufacture of subject inventions (attached hereto). Additionally, Pegasus agrees not to transfer subject inventions to any other entity unless that other entity agrees to these same requirements.

Considering the foregoing, it is believed that granting the waiver will provide the Petitioner with the necessary incentive to invest resources in the commercialization of the results of the agreement in a fashion which will make the agreement's benefits available to the public in the shortest practicable time. In addition, it would appear that grant of the above requested waiver would not result in an adverse effect on competition nor result in excessive market concentration. Therefore, in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver, as set forth above, be granted.

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Mark P. Dvorscak
Assistant Chief Counsel
Intellectual Property Law Division

Date: Aug 2, 2015

Based on the foregoing Statement of Considerations and the representations in the attached waiver petition, it is determined that the United States and the general public will best be served by a waiver of rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of this agreement, where through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered.

CONCURRENCE:

[Redacted signature area]

Victor Der, Director
Office of Clean Energy Systems
GTN, FE-22

Date: 9/14/05

APPROVAL:

[Redacted signature area]

Paul A. Gottlieb
Assistant General Counsel
for Technology Transfer and
Intellectual Property, GC-62

Date: 7-23-05

(t) U. S. COMPETITIVENESS The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.