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IDAHO PUBLIC
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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA ROCKY MOUNTAIN POWER FOR APPROVAL OF CHANGES TO ITS ELECTRIC SERVICE SCHEDULES	CASE NO. PAC-E-10-07 COMMUNITY ACTION PARTNERSHIP ASSOCIATION'S POST-HEARING BRIEF

COMES NOW, the Community Action Partnership Association of Idaho ("CAPAI") and pursuant to verbal ruling issued by the Commission from the bench on December 2, 2010 in the above-captioned action, submits its post-hearing brief.

I. INTRODUCTION

Rocky Mountain Power Company ("Rocky Mountain" or "Company") filed its application, testimonies and exhibits in this case on May 28, 2010. The Company did not address a single low-income-specific matter in its direct case. In fact, the words "low-income" or any substitute thereof, were not even mentioned anywhere in Rocky Mountain's direct filing and the Company only addressed low-income issues through the cursory rebuttal of a single witness with no relevant exhibits. As explained below, this fact is ultimately the reason for CAPAI's request to file a post-hearing brief.

Though CAPAI addressed a number and variety of issues throughout this case, the scope of this brief is limited to Rocky Mountain's Low-Income Weatherization Assistance (LIWA) program.

II. ARGUMENT

A. Procedural Background

CAPAI has been a regular intervenor on behalf of low-income utility customers before this Commission since the turn of this century. During that time, CAPAI has intervened in numerous proceedings involving, among others, Rocky Mountain, Idaho Power, and AVISTA. CAPAI intervenes in nearly every electric utility general rate case in order to, among other things, make proposals regarding those utilities' low-income weatherization assistance ("LIWA") programs. Consequently, Rocky Mountain is keenly aware of CAPAI's mission, the types of proceedings it intervenes in and for what purposes, and the high likelihood that it will intervene in every electric utility general rate case.

Relevant to this case is Case No. PAC-E-06-10 in which a settlement agreement was reached, a result of which was that CAPAI would not propose any changes to Rocky Mountain's LIWA program for a period of two years, (commonly referred to as a "stay-out") for the purpose of addressing LIWA for a period of roughly two years from April 1, 2007 to March 31, 2009. This was obviously a settlement term sought by Rocky Mountain and CAPAI duly adhered to this provision.

Furthermore, unlike certain other DSM programs, LIWA is funded through general rates and is typically not subject to occasional DSM tariff rider filings. This is why LIWA funding is usually addressed during the course of general rate cases and in no other proceeding. Because the 2007 stay-out has expired and the Company's LIWA funding has not changed since July,

2005,[1] it should have seemed a virtual certainty to the Company that CAPAI would intervene in this case to address LIWA. In spite of that virtual certainty, Rocky Mountain chose to not even mention its low-income customers, let alone propose modifications to LIWA or explain why it is not doing so.

Finally, Rocky Mountain, along with the Commission and many others, have been made aware, through the many efforts undertaken by CAPAI, the Commission Staff, and the Commission itself through means such as the multi-utility, low-income proceeding conducted several years ago in which Rocky Mountain was a participant along with all of Idaho's electric utilities, of the disparity between the need of Idaho's low-income utility customers and resources available to meet that need, which has only worsened in the past few years as the entire nation's economy has struggled.

Because of Rocky Mountain's choice to omit addressing LIWA, CAPAI effectively carried the burden of raising any and all LIWA-related issues and proposing modifications to that program. While it is not terribly uncommon for non-utility parties to raise issues not addressed by the utility in a general rate case, it is peculiar for Rocky Mountain, under the circumstances just outlined, to not have even mentioned its LIWA program in this case. Regardless, it has created unique problems for CAPAI in this case under the Commission's procedure which is premised on the notion that the utility carries the burden of proof in every aspect in a general rate case and, consequently, it is almost always given the final word through a rebuttal case. Though this Commission has, on occasion, allowed what has been called "surrebuttal," such a procedural mechanism has usually been reserved for highly unusual circumstances.

CAPAI respectfully submits that, even though Rocky Mountain had no legal obligation to address LIWA in this case, had the Company at the very least responded to CAPAI's direct case

[1] when the Commission issued Order No. 29833 in case No. PAC-E-05-1

in a more thorough and forthright manner, both before and during hearing in this matter, the issues raised in this brief might not have arisen. This will be explained below.

CAPAI chose not to seek special dispensation in this proceeding to alter the scheduling adopted by the Commission in order to file surrebuttal or seek special treatment such as the separate hearing afforded the Monsanto special contract issue. Instead, CAPAI moved forward with the belief that Rocky Mountain would thoroughly address the LIWA-related issues raised by CAPAI. Even if the Company did not necessarily agree with any aspect of CAPAI's case, the point is that CAPAI trusted the Company to at least make a good faith response. In CAPAI's opinion, this did not occur. As discussed below, the only response to CAPAI's position was the highly abbreviated rebuttal testimony of Ms. Barbara Coughlin who did not file direct testimony. Ms. Coughlin, whom other Company witnesses deferred to for all LIWA-related questions, holds the position of "Director, Customer, Regulatory Liason." *Testimony B.Coughlin, p. 1.*

B. <u>Burden of Proof</u>

If the Commission finds that as a legal matter Rocky Mountain carried the burden of proof on the LIWA-related issues raised by CAPAI, the Company clearly failed to do so. The Company put its entire case on through the rebuttal testimony of Ms. Coughlin. This is the first time that CAPAI knew exactly what Rocky Mountain's position on LIWA was and the evidence, or lack thereof, supporting that position. Even a cursory reading of Ms. Coughlin's testimony reveals that it simply challenges the issues raised and points made by CAPAI's witness, Teri Ottens through two highly specious points.

As stated, Ms. Coughlin's rebuttal testimony was quite spartan and without supporting exhibits. Only 2 of Ms. Coughlin's 26 pages of rebuttal testimony were related to LIWA. Only 8 substantive lines were even remotely related to LIWA funding. Ms. Coughlin confirmed this

fact herself during cross-examination. *See, Tr. p. 1069, lns. 19-24.* Interestingly, Rocky Mountain President Richard Walje identified Ms. Hunter as the Company witness with knowledge how Rocky Mountain's LIWA funding compares to other utilities such as AVISTA, but Ms. Hunter did not file testimony on this issue. Both she and the Company's legal counsel successfully deferred questions in this area to Ms. Coughlin. *See, e.g., Tr. p. 203, ln.2.* As shown below, Ms. Coughlin's testimony, devoid of relevant exhibits, is facially insufficient to support the Company's position.

Another troubling aspect to this case, particularly to the extent the Commission determines that it carries the burden of proof on LIWA-related issues, is the fact that because CAPAI had to effectively rely on cross-examination to rebut the Company's direct case, its ability to carry whatever burden of proof the Commission believes it has depended on the willingness of Company witnesses to cooperate in good faith and provide meaningful answers to relevant questions. On several occasions, when CAPAI attempted to elicit information from Company witnesses, Rocky Mountain objected that Ms. Coughlin was the only person at hearing who should be required to respond. *See, e.g., Tr. p. 205, lns. 4-7. [objecting to questions asked of Mr. Walje], p. 641, lns. 4-21 and p. 646, lns. 1-11 [objecting to questions asked of Ms. Hunter].* Counsel for CAPAI was also instructed by the Commission on occasion to defer certain LIWA-related questions to Ms. Coughlin. *Tr. p. 645, lns. 7-12.* In addition, both Mr. Walje and Ms. Hunter deferred many LIWA questions to Ms. Coughlin. *See, e.g., testimony of Carol Hunter, Tr. p. 644, lns. 1-4 and 19-21, etc.* When questioned how LIWA-related decisions are made for purposes of general rate cases, however, it became clear that the person who makes all significant decisions was not a witness to the case and unavailable for cross-examination. As confirmed by witnesses Walje, Hunter, and Coughlin, this person is Karen Gilmore. *See, e.g., Tr.*

p. 1075, lns. 14-20. It is not known to CAPAI if Ms. Gilmore was even present during the hearing.

Other witnesses, including Company President and Board of Directors member Richard Walje, did not know what Rocky Mountain's Idaho revenue requirement or gross operating revenues are, or other benchmarks to which the Company's current LIWA funding could logically be compared to assess whether it is reasonable. *Tr. pp. 205-206.* Mr. Walje concluded that he had "assumed" that an evaluation of what Rocky Mountain's LIWA position should be in this case had been performed by other Company personnel, though he could not identify a specific person who had made the decision. *Tr. p. 207, lns. 21-24.* Considering the dearth of information contained in Ms. Coughlin's testimony, and the fact that Ms. Gilmore who has ultimate authority over the Company's position on LIWA was unavailable for cross-examination, this made it impossible to extract from the Company how it makes its LIWA decisions, what benchmarks, indices, or other criteria it considers, and what future plans it has, if any, regarding LIWA.

C. <u>Parity of LIWA Funding and Program Design</u>

To justify her position, Ms. Ottens calculated how much Rocky Mountain is funding LIWA on a per customer basis compared to Idaho Power and AVISTA. Ms. Ottens focused on AVISTA's LIWA funding and program design features noting that Idaho Power's current LIWA funding level is somewhat dated compared to Rocky Mountain and AVISTA, the latter of which recently increased its funding in Case No. AVU-E-10-01. In any event, Rocky Mountain's LIWA funding falls significantly below both Idaho Power and AVISTA.

According to Ms. Ottens' calculations, Rocky Mountain's per capita funding level is $2.64 while AVISTA's is $4.08.[2] The totality of the Company's response to Ms. Ottens's comparison of Rocky Mountain LIWA funding to AVISTA is contained in 8 lines of Ms. Coughlin's rebuttal testimony. *Tr at p. 1069, lns 23-24.* Ms. Coughlin testified:

> Q. Does the Company support Ms. Ottens recommendation to increase Low Income Weatherization Program funding to equal that of Avista?
>
> A. No. The Company's funding of the Low Income Weatherization Program (Schedule 21) cannot be directly compared with other utilities. For example, Avista provides both electric and natural gas service in portions of Idaho, and the company [Rocky Mountain] provides electric service only. A greater percentage of the Company's residential customers use natural gas as a heating source. Since the largest opportunity for energy savings is often related to heating efficiencies, it would be necessary to include funding from the natural gas supplier serving the Company's customers in a funding comparison.

Testimony of Coughlin at p. 24, ln.s 5-14.

The foregoing testimony is the entire rationale Rocky Mountain presents as to why its funding level should appropriately remain substantially below that of Idaho Power and AVISTA. Furthermore, this statement contains two factually inaccurate inferences. First, Ms. Coughlin infers that Ms. Ottens' calculations of AVISTA's LIWA funding relative to Rocky Mountain fails to account for the fact that Rocky Mountain has customers who use gas as their primary heat source. The inference is that it is unfair to compare Rocky Mountain to AVISTA because the latter is both an electric and gas utility, while Rocky Mountain only serves electric customers, some of whom use gas as their primary heat source. Thus, Ms. Coughlin's inference is that Ms. Ottens failed to compare apples to apples.

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[2] Ms. Ottens explained during the hearing that her testimony contained several misstatements. Ms. Ottens' direct testimony calculated AVISTA's funding level at $6.64 which included both gas and electric heat customers. Ms. Ottens explained on the stand that by eliminating AVISTA's gas customers, its per capita LIWA funding was $4.08, still nearly twice that of Rocky Mountain.

In reality, as explained above, Ms. Ottens compared Rocky Mountain's per capita funding level to the AVISTA funding level of electric customers only, excluding gas. This avoids the apples to oranges scenario that Rocky Mountain infers exists. This calculation shows that AVISTA's funding level is nearly twice that of Rocky Mountain.

The second inference created by Ms. Coughlin's testimony is that Rocky Mountain's LIWA customers use natural gas as their primary heat source and that it is unfair for the Company to increase its LIWA funding without somehow convincing the local natural gas supplier (Intermountain Gas) to fund a LIWA program. *Tr. at p.1072, lns. 14-19.* First, Ms. Coughlin fails to mention that Idaho Power is an electric-only utility as well, and Rocky Mountain's LIWA funding also falls below that utility.

Second, Ms. Coughlin conceded that she did not know whether the Commission had the legal authority to force Intermountain Gas to implement a LIWA-type program in Rocky Mountain's service territory. *Tr. p. 1073, ln. 4.*

Finally, and most significantly, Ms. Coughlin fails to point out that, pursuant to contract between Rocky Mountain and the Community Action Agencies within its service territory, LIWA recipients MUST use electricity as their primary heat source to qualify for benefits under the program. Thus, Ms. Coughlin has confused the record by raising a non-issue, inferring that Rocky Mountain has somehow been unfairly singled out for different treatment when the opposite is true.

It is difficult to accept that the person identified by Rocky Mountain as having the most relevant knowledge of LIWA, and who was responsible for setting forth the Company's LIWA position in this case, would be unaware of whether the Company's LIWA program allows non-electric heat source customers to receive LIWA benefits, yet that is what Ms. Coughlin's rebuttal

testimony suggests. In fact, Ms. Coughlin admitted that she is aware of the LIWA contract between the Company and the two Community Action Agencies operating in Rocky Mountain's service territory. *Tr. p. 1070, lns. 19-21.*

Furthermore, the requirement that LIWA participants use electricity as their primary heat source is a contractual provision adamantly insisted upon by the Company. Not anticipating that Ms. Coughlin would allow the inaccurate inference contained in her rebuttal regarding heat source to remain on the record during the hearing, CAPAI hastily prepared and introduced its Exhibit No. 701 during the additional direct examination of Teri Ottens. Ms. Ottens identified Exhibit No. 701 as a copy of the contract executed by the Community Action Agencies in Rocky Mountain's service territory and the Company. That contract clearly states that LIWA recipients must use electricity as their primary heat source. This was the sole point of introducing Exhibit 701. It should be noted that, despite Ms. Coughlin's rebuttal testimony which confuses this fact, no party to this proceeding ever formally claimed that LIWA benefits are not limited to customers who rely primarily on electricity as a heat source.

On cross-examination, however, Staff's attorney asked Ms. Ottens to note that Exhibit No. 701 was not the signed copy. Though Staff accurately pointed out this technicality, Staff's relevant personnel are well aware that the LIWA program is only available to electric heat customers. This is an example of how allowing a utility to litigate solely through rebuttal can cause other parties' focus to become distracted or confused from salient facts. Regardless of whether she had ever seen the LIWA contract, Ms. Coughlin knew full well its heat source requirement and that the contract itself is inconsistent with her rebuttal testimony inferring that Rocky Mountain shouldn't be compared to AVISTA without including Intermountain Gas in

LIWA funding discussions because many of Rocky Mountain's customers use gas as a heat source.

In summary, LIWA is only available to Rocky Mountain's electric heat customers and Ms. Ottens compared the relative funding of only AVISTA's electric heat customers to Rocky Mountain's in calculating relative LIWA funding. Ms. Coughlin's protestations of unfairness are utterly without merit. CAPAI agrees that it would be ideal for Intermountain Gas to implement a LIWA program. The Commission is, of course, keenly aware of the legal limitations that differ between gas and electric public utilities. Regardless, to the best of CAPAI's knowledge, no other utility has ever used Intermountain's absence as an excuse for how their LIWA program is treated.

Thus, Rocky Mountain failed to offer a single legitimate reason why its LIWA funding level should continue to fall so far behind Idaho Power and AVISTA. Though Staff witness Beverly Barker offers alternative suggestions how best to calculate an appropriate LIWA funding level, she agrees that parity among utilities is a reasonable objective. Ms. Barker also agrees that there is a substantial disparity between the need for low-income weatherization in Rocky Mountain's Idaho service territory and available resources to meet that need and suggests that funding of $300,000.00 for Rocky Mountain would be appropriate.[3] *Rebuttal Testimony of Beverly Barker at p.6.*

Finally, regarding the disputed program design in which Rocky Mountain will fund only 75% of any given LIWA project, whereas Idaho Power currently funds 85% and AVISTA 100%, the Company doesn't even purport to offer any explanation why this particular program design feature should differ from other utilities.

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[3] Incidentally, no party to this proceeding has ever denied the disparity between the need for LIWA and existing LIWA resources.

D. Pending LIWA "Evaluation"

First, it should be noted that no party to this proceeding disputed that Rocky Mountain's LIWA program constitutes a prudent, cost-effective resource including Rocky Mountain itself. This fact was elicited from Company witnesses Walje, Hunter and Coughlin. *Tr. pp.204, ln.19, p. 638, ln. 5, and, p. 1076 ln. 19, respectively.*

The sole rationale offered by Rocky Mountain for deferring even considering increasing LIWA funding or otherwise modifying the program is that there is a pending evaluation of the cost-effectiveness of the program. *See, e.g., Rebuttal Testimony Barbara Coughlin, p. 25, lns. 14-16.* This rationale fails for numerous reasons.

First, as indicated by Company witness Coughlin, the evaluation is the tardy compliance by the Company with Commission Order No. 30239 in Case No. PAC-E-06-10. That Order was the result of a negotiated settlement agreement between CAPAI and Rocky Mountain.[4] Among other things, it prohibited CAPAI from proposing any changes to LIWA for two years.[5] In exchange, Rocky Mountain agreed to, among other things, complete an evaluation of LIWA after March 31, 2009 for possible future funding increases or program design changes. *See, Order No. 30239 at p. 3.* Order No. 30239 was issued February 8, 2007. Thus, Rocky Mountain has been aware of its Commission-ordered obligation to conduct a LIWA evaluation for nearly four years. Though Order No. 30239 states that the evaluation will be completed *after* March 31, 2009, the Company has had a substantial amount of time to prepare for and complete this study.

In spite of that settlement agreement, and nearly two years after it could and should have been completed, Rocky Mountain still has not completed the evaluation and it apparently will not be completed until the first part of next year, at the earliest. In fact, Rocky Mountain's own

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[4] This was confirmed by Ms. Coughlin during cross-examination. *Tr. p. 1081, ln. 9*
[5] From April 1, 2007 through March 31, 2009.

witnesses offer differing predictions of when the evaluation will be completed. Witness Hunter testified that it <u>might</u> be February or March of next year (*Tr. p. 646, lns 18-23)* though, as stated below, this is not guaranteed. Ms. Coughlin testified that she had been told the evaluation would be ready in February, 2011, but acknowledges that Ms. Hunter has greater involvement in monitoring the evaluation. As the rebuttal testimony of Staff witness Beverly Barker suggests, Staff believed the study would be completed by the end of this year. *Rebuttal Testimony of Beverly Barker, p. 7, lns. 8-10.* Given that the Company has failed to conduct the evaluation in the time frame ordered by this Commission and when expected by Staff, it is unreasonable to allow it to use whatever the evaluation might reveal as grounds for refusing to increase LIWA funding or otherwise modify the program.

Second, there seems to be a complete lack of knowledge on the part of the very Company witnesses either responsible for monitoring the study or who manage the LIWA program as to exactly what the evaluation will supposedly reveal and, more importantly, what Rocky Mountain intends to do with the evaluation if and when it is ever completed. For example, regarding whether the LIWA evaluation will take into account the need, available resources, impact on ratepayers, and other aspects of LIWA, Ms. Coughlin testified: "[t]he Cadmus evaluation I have not seen and I cannot speak to that." *Tr. p. 1079, lns. 2-3"*

Regarding what Rocky Mountain intends to do with the evaluation once it is completed, Ms. Coughlin testified:

> Q. All right. And has the Company made any commitment in terms of what it intends to do once it has that report [evaluation] in its hand?
>
> A. I believe that I stated in my testimony that it would be appropriate to review it with the parties once we have received it and that would be our intention: discussions at that point once we have the evaluation and have the appropriate information to entertain discussions.

Tr. pp. 1081-82.

Ms. Coughlin added that the evaluation would be included in Rocky Mountain's annual "DSM Report" but did not know when that report would be released. *Tr. p. 1082, ln. 24.* When pressed as to exactly what the Company intended to do with the evaluation, Ms. Coughlin testified under cross-examination that Rocky Mountain would "share the results of that if there is a strong group of stakeholders who want to look at those results" (*Tr. p. 646, lns. 12-14-Emphasis supplied).* Ms. Hunter also testified that the evaluation results would be included in Rocky Mountain's 2010 Annual Reports (*Tr. p. 646, lns. 9-11)* but conceded that the completion of the evaluation was far from guaranteed stating that it "will be available the end of February, first of March, provided that we have access to the data that we require from third parties." *Tr. p. 646, lns 21-23. (Emphasis supplied).* It is unclear what she means by needing "access to the data that we require from third parties" and whether this could significantly delay completion of the evaluation which the Company insists is a condition prerequisite to a LIWA funding increase or program design change. In spite of her uncertainty regarding the completion of the evaluation, Ms. Hunter testified that she is the person within the Company in charge of monitoring that evaluation. *Tr. p. 646, ln. 17.*

CAPAI submits that these types of statements are far from specific and offer no assurance when the evaluation will be completed, what it will reveal, what Rocky Mountain intends to do with the evaluation once it has it, when it will do it, and how the evaluation might affect Rocky Mountain's LIWA program. This poses simply too many layers of uncertainty.

As testified by witnesses Hunter and Coughlin, the entity performing the LIWA evaluation is an organization known as "Cadmus" which PacifiCorp has used extensively over the years to perform numerous tasks [*Tr. pp. 643-645,-testimony of Carol Hunter*]. Witness

Brian Hedman who is a principal at Cadmus testified that until 2002, and for the preceding 20 years, he was DSM policy manager for PacifiCorp. Mr. Hedman testified that, based upon a review already performed by Cadmus, he has determined that all of Rocky Mountain's DSM programs, including LIWA, for the years 2008-2009 were prudent and cost effective. *See, Supplemental Testimony of Brian Hedman, p. 11.* Though this is generally consistent with the testimonies of Company witnesses Walje, Hunter and Coughlin with respect to LIWA, it further calls into question why the Company believes that no changes to LIWA can be justified until a cost-effectiveness evaluation is conducted for LIWA when its own witnesses all concur that it has already been evaluated, to some extent, and is a prudent and cost-effective DSM resource.

In fact, Ms. Coughlin cited cost-effectiveness as the primary reason why the evaluation must be completed before modifying LIWA. She testified during cross-examination:

> Q. ...I'm asking about the evaluation, that you condition a change to LIWA on that evaluation. What is it about the evaluation that is significant to you?
>
> A. <u>The cost-effectiveness test would be first and foremost</u> as to whether it's getting the results that were intended.

Tr. p. 1080, lns 2-7 [emphasis supplied]].

Thus, Rocky Mountain presented Mr. Hedman to testify that the DSM investment for which the Company seeks rate recovery in this case, including LIWA, was prudent and cost-effective, but that a cost-effectiveness evaluation for LIWA still must be completed before Rocky Mountain will increase its investment in that DSM resource. It is quite curious why, knowing nearly four years ago that a cost-effectiveness evaluation of LIWA would be conducted pursuant to Commission Order No. 30239, the Company had the same contractor who would perform that evaluation, simultaneously perform another evaluation assessing the cost-effectiveness of, among others, the LIWA program.

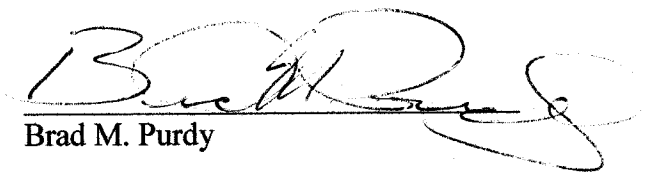
While CAPAI obviously agrees that Rocky Mountain should share the results of the evaluations with other parties and be willing to discuss it, the Company has not presented a single credible reason why, under these unusual circumstances, this increasingly stale and arguably redundant evaluation should hold up implementing changes to LIWA. The whole point for CAPAI when it negotiated the evaluation almost four years ago was that it would demonstrate a good faith commitment on the part of Rocky Mountain to consider the reasonableness of increasing its investment in LIWA and modifying or eliminating the 75/25% funding condition. In truth, it seems that the evaluation has simply been used as nothing more than a means to defer increasing LIWA funding or implementing program design changes.

Given the Company's track record, it is safe to assume that unless the Commission intervenes, Rocky Mountain's LIWA program will continue to languish and fall behind others into the foreseeable future.

III. CONCLUSION

CAPAI respectfully submits that the Commission order Rocky Mountain to increase is LIWA funding simultaneous with the effective date of whatever rates result from this proceeding and that the Company's 75/25% LIWA funding allocation be eliminated entirely.

DATED, this 21st day of December, 2010.



Brad M. Purdy

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 21st day of December, 2010, I served a copy of the foregoing document on the following by email and U.S. mail, first class postage.

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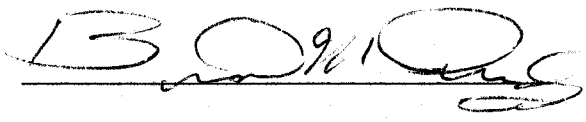

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