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Pasco County Board of County Commissioners

D. There is a total of 15 pages.

The document attached is Pasco County's Pasco County's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

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12/30/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water and wastewater rates in Alachua, Brevard, DeSoto, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

DOCKET NO. 100330-WS
ORDER NO. PSC-11-0256-PAA-WS

DATE: December 30, 2011

**PASCO COUNTY'S
POST-HEARING STATEMENT OF ISSUES
AND POSITIONS AND POST- HEARING BRIEF**

Pasco County ("Pasco"), by and through its undersigned counsel, files this Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

BASIC POSITION AND SUMMARY

Pasco County contends that the rate base, the net operating income (NOI), and the revenue requirement approved in Order No. PSC-11-0256-PAA-WS are overstated. Since the rate base, NOI, and the revenue requirement are overstated, the resulting rates are unjust and unreasonable. Moreover, the PAA Order approved rates that are unaffordable. Aqua's rates are some of the highest in the state and in Pasco County, and the low income customers it serves cannot afford the repeated increases. After Aqua raised its rates in 2009, records show water demand went down. This negatively impacted Aqua's revenues. This latest increase will again drive down water consumption, which in turn will lower revenues. This vicious cycle is not sustainable and will imperil the long-term viability of the neighborhoods Aqua serves.

The Commission's finding of marginal quality of service provided by Aqua Utilities Florida, Inc., (AUF or "Aqua") to its customers in the PAA Order should be set aside. Aqua's quality of service should be found to be unsatisfactory. Despite claims by Aqua of improvements, hundreds of customers still complain of poor water quality. The warning letters continue to come in from the regulatory agencies.

The operational conditions of Aqua's plants and facilities are unsatisfactory, as demonstrated by the numerous warning letters and consent orders issued by regulatory agencies. Aqua claims its environmental record is excellent. It makes this claim because it responds to issues that are raised by the agencies but the problem is Aqua waits for an agency to discover a problem before it will correct the problem. Rather be out front of the issues and regularly maintain and upgrade its systems, it waits for a problem to occur before spending money and time to address obvious issues which affect the environment. One example of this is the above ground effluent pipe at its Palm Terrace wastewater treatment plant. This pipe existed above ground, unsecured from damage for about 8 years, and not until after two breaks in the pipe did Aqua place the pipe underground. That corrective action, furthermore, did not come until after the Department of Environmental Protection (DEP) and Pasco County cited the pipe as a possible violation.

The Commission should lower Aqua's return on equity (ROE) by 100 basis points based on its far less than satisfactory quality of service. Pursuant to Sections 367.081 and 367.121, Florida Statutes, the Commission has the authority and duty to prescribe and fix just and reasonable rates and charges. Adjustment should be made to rate base, NOI, and revenue requirement to make the rates and charges just, reasonable and affordable for the customers of Aqua.

QUESTIONS OF FACT, QUESTIONS OF LAW AND QUESTIONS OF POLICY THAT ARE AT ISSUE AND PASCO'S POSITION ON EACH:

QUALITY OF SERVICE

Issue 1: What is AUF's quality of service?

Aqua's quality of service is unsatisfactory. In this and every rate case, the Commission shall make a determination of the quality of service provided by the utility. R 25-30.433(1), F.A.C. In making this determination, the Commission must evaluate three separate components of the utility's water and wastewater operations: (1) quality of the utility's product (water and

wastewater); (2) operational conditions of the utility's plant and facilities; and (3) the utility's attempt to address customer satisfaction. *Id.* Aqua's service remains unsatisfactory in all three areas.

Aqua's quality of water and wastewater

Rule 25-30.433(1), F.A.C., further states that "the testimony of utility's customers shall be considered." The extensive testimony at the New Port Richey service hearing clearly shows that the Aqua's water quality is poor. Of the 36 customers that testified at the hearing, 25 complained of poor water quality. (The transcript for the New Port Richey Service hearing is hereinafter referred to as "NPR" followed by the page number.) Scores more customers complained of poor quality, undrinkable, discolored, and malodorous water in the 759 petitions signed by the residents of Jasmine Lakes and Palm Terrace. See Ex. 26, bates #s 860-1640.

The list of speakers at the New Port Richey service hearing decrying the poor water quality included Senator Fasano, who said the water was "undrinkable" and "substandard." NPR 25 and 26. Representative Legg also appeared and joined in the comments of Senator Fasano. NPR 33. The complaints directly from the customers included: "the quality of the water has not improved . . . [it's] like urine in your bowl that leaves stains," (Jasmine Lakes residents, NPR 57-58, 100); "I've been there for 16 years and in that amount of time you can't drink the water," (Jasmine Lakes resident, NPR 61); "the water being not safe and it smells," (Jasmine Lakes resident, NPR 76); and "I have to buy water to drink. [My son] can't even drink this water. I don't even feed my pets this water." (Palm Terrace resident, NPR 70, this resident stated that there are particles in the water, NPR 69; see also NPR 95, Jasmine Lakes resident made similar complaints as well as Zephyr Shores residents, NPR 105, 108). There were many more water quality complaints of a similar nature from the residents of Jasmine Lakes, Palm Terrace and Zephyr Shores.

Another Jasmine Lakes resident brought to the hearing a jar of black water from her water heater. NPR 74. Ms. Bradley took a picture of the jar that was entered into the record as

part of Exhibit 28. NPR 75. This resident, Ms. Wittkamp, went on to state: “[t]his water dries to silver colored splotches wherever it drips in our sinks. If you use this water to mop your floors, it dries to a silver coating, so I buy water to do my cleaning. This water will blister the chrome on your faucets and showerheads. . . . I hate washing my hands in it, and I certainly don't use it to brush my teeth.” NPR 73.

Now Aqua says that it did make some water quality improvements in Zephyr Shores (R. Fox at NPR 12 line 15 – p.13 line 12); the complaints, however, continue and any water quality improvement appears to have been temporary. A Zephyr Shores resident, Dave Bussey, acknowledged that some efforts were made to address discoloration but the quality problems persist. NPR 125. These alleged improvements will require the constant maintenance and attention of Aqua's staff, something they have not shown the ability to do. Furthermore, there have been no such improvement efforts for Jasmine Lakes or Palm Terrace and none is planned, despite the numerous customer complaints. At the hearing, Aqua's response to the scores of water quality complaints from its Pasco County customers was to respond specifically to only a single complaint. See Luitweiler Supplemental Rebuttal Testimony p. 10. And why did Mr. Luitweiler only respond to one complaint? Because that is all his lawyers told him to do. TRN 1679. (Citations to the Technical Hearing transcript are hereinafter referred to as “TRN” followed by the page number.) Again, Aqua takes a short cut and provides the least costly, and clearly insufficient, response to a problem.

Operational conditions of Aqua's plant and facilities

The operational conditions of Aqua's plants and facilities are unsatisfactory. This is demonstrated by the numerous warning letters and consent orders issued by regulatory agencies. See testimony of various staff witnesses from DEP and DOH. Aqua suffered numerous exceedances of safe drinking water standards. See Ex. 204, DNV-9. Aqua's Wastewater Treatment Facilities (WWTF) also suffered numerous violations and non-compliance warnings that show that operational conditions are unsatisfactory. See Rebuttal

Testimony of Denise Vandiver for summary of the problems, TRN 1409 – 1413 and Ex. 205, DNV-10. For the Jasmine Lakes WWTF, Aqua was fined \$23,000 for maintenance issues and groundwater exceedances. TRN 441 (DEP witness Greenwell). The Palm Terrace WWTF received a warning letter which remains open and fines may be levied for several violations including the illegal discharge from the broken above ground effluent pipe. TRN 452 and 456.

Rather than take care of the issues and regularly maintain and upgrade its facilities, Aqua waits for a problem to occur before spending money and time to address obvious issues. One glaring example is the above ground effluent pipe at its Palm Terrace WWTF. This pipe existed above ground, unsecured from damage for about 8 years. See Ex. 143, JM-3, photos of the pipe. This pipe may have been a violation by itself but at best it “did not seem consistent with sound engineering practices.” TRN 456-57. And not until after two breaks in the pipe did Aqua place the pipe underground.¹ The breaks allowed thousands of gallons of effluent to spill into a stormwater pond. See Ex. 345, AUF’s response to Pasco’s interrogatories. This is an illegal discharge that still may lead to a fine from DEP. TRN 456. Aqua did not bury the pipe until after DEP and Pasco County cited the pipe as a possible violation.

Aqua's Environmental Compliance manager did not know of the pipe's existence until recently and Aqua failed to properly investigate the plant prior to the purchase. Mr. Luitweiler stated that this is something they would not necessarily discover in their due diligence prior to purchase. TRN 237-38 (incredibly, Luitweiler says maintaining an effluent pipe aboveground is not good engineering but not something they investigate, so how a plant is engineered is not a concern for Aqua?). He also stated that Aqua does not even do land surveys prior to purchasing systems. TRN 1673. This is irresponsible and confirms the lack of institutional control over its systems. This same irresponsibility led to Aqua's failure to have the legal authority to maintain a required overflow pipe on County property. TRN 1672. A simple land survey would have told Aqua about the easement issue as well as the above ground pipe but

¹That pipe may have broken more than two times. See Commissioner Mariano's May 24, 2011 testimony, Ex. 325, p. 125.

Aqua is more concerned about profits than good customer service and the operational conditions of its facilities. Aqua would rather spend a pound for a cure than for an ounce of prevention, and now this practice is costing its customers in higher rates.

Both “[t]he Jasmine Lakes WWTF, and Palm Terrace WWTF are out of compliance for maintenance issues.” TRN 441 (DEP testimony). One major problem at both plants is the improper management of sludge, a.k.a., “solids,” which is likely due to Aqua’s penchant for cutting costs while environmental compliance suffers. As explained by DEP Witness Greenwell, WWTF’s can save operational costs by playing games with sludge management. TRN 464-65. Jasmine Lakes showed solids in February and again in May. The Palm Terrace plant showed the same problems. As Mr. Greenwell stated:

. . . by not removing activated sludge, there's clearly economic benefits to that. So you're playing a game basically trying to manage that sludge age and minimize your wasting in an effort to minimize your cost.

TRN 464-65. These repeated sludge problems are at best a demonstration of an inability to properly operate the plants or at worst a deliberate attempt to minimize costs while skirting regulatory compliance.

Aqua’s attempt to address customer satisfaction

Aqua’s response to customer complaints is to tell the customers there are no problems. Despite 25 comments regarding poor quality, undrinkable, discolored, malodorous water at the New Port Richey service hearing, and scores more quality complaints in the written petitions (Ex. 26, bates #s 860-1640), Aqua responded with one paragraph of rebuttal testimony stating “no odor or water quality issues were found.” TRN 1655. Mr. Luitweiler also states that this info was given to the customer at the hearing. *Id.* Did they run out and sample the water during the service hearing? Of course, they provide no explanation as to when or where they investigated or sampled the water or how they could have determined there were no issues during the course of the service hearing. Yet, under cross examination Mr. Luitweiler admitted when they actually investigate the complaints, the poor water quality is the result of “valve operations or

main breaks.” TRN 1680. So they do have “issues” and they are, at least in part, likely the result of their own “valve operations.”

Water quality is largely a function of operational controls. If the utility manages water age and performs regular flushing, water quality can remain good. Water quality, however, will suffer if the utility inappropriately reduces its flushing program in an effort to cut costs. It is an economic game much like the wastewater treatment operations mentioned by Mr. Greenwell of DEP. TRN 464-65. Again, Aqua’s penchant for cutting costs and thereby not adequately operating its valves results in poor water quality. These tactics seem to indicate that water quality is secondary to cost cutting, and much like the above ground pipe, Aqua does not address the matter until someone complains. Based on Mr. Lutiweiler’s testimony, the flushing program is reactionary. “We have a flushing program there to address discolored water calls.” TRN 1680. Mr. Lutiweiler says that their flushing program prevents water age problems but customers still complain. This is also likely the reason that customers’ complaints about water quality increase as time passes after a few improvements were made to some systems. See Poucher testimony TRN 922-26.

Another example of Aqua’s failure to respond to complaints involves Boil Water Notices (BWN). Hundreds of customers complained of Aqua’s failures to adequately notify them of the need to boil water. See Mariano testimony, TRN 980-81 and Ex. 141, JM-1. Aqua has failed repeatedly to properly and fully inform its customers of required boil water orders in the Jasmine Lakes and Palm Terrace service areas. A survey completed this Spring by 340 customers from the Palm Terrace and Jasmine Lakes service area indicate that Aqua has been inconsistent in notifying customers of the need to boil water. See Exhibit 141, JM-1. According to the surveys, 137 customers stated that they never received any form of boil water notice; 78 received notice via letter size piece of paper and 92 received a door hanger. Only 17 received a phone call from Aqua.

And what was Aqua's response to these complaints? – it's not our fault. Mr. Luitweiler stated that there is no "fail-safe" way to deliver the notices. TRN 1628. But Aqua provided no indication that it even investigated the complaints. Aqua certainly made no attempts to improve its delivery of the BWNs. Mr. Luitweiler says that their notices can just blow away in the wind (TRN 1628) and there is nothing they are going to do about it. Again, the customers are wrong and they are just going to have to live with the status quo. The customers are not satisfied and Aqua is doing little if anything to correct the situation.

Over the last few years, the County has received numerous complaints from Aqua customers regarding poor quality service, poor water quality and exorbitant rates. The County intervened in this action to try to get some relief for the many frustrated customers. Aqua, at the technical hearing seemed to imply that there would not have been so many customers complaining but for the actions of the County and other interveners. The County did encourage the customers make their complaints known to the Commission, because although the County has received numerous, repeated complaints about Aqua, only the Commission can give the rate relief the customers need.

But Aqua itself also encouraged the customers to speak. At the New Port Richey service hearing, and probably all the hearings, Aqua's President stated:

Commissioners, I would like to thank you for the opportunity to speak briefly to our customers in Pasco County this morning, but more importantly to hear what they have to say. At the end of the day we are a service company and we value all customer input on the services that we provide. [NPR 11 lines 8-13.] I know a lot of you want to speak, and we are here to listen, so I just want to thank you for coming out and taking time out of your day to be here. I look forward to hearing what you have to say.

NPR 13 lines 21-24. With so many customers hurting from the high rates and poor water quality, they did not need any encouragement to voice their concerns. The customers need better water quality and customer service, but Aqua will not give it to them.

Issue 2: What, if any, additional actions should be taken by the Commission based on AUF's quality of service?

Pasco County adopts the position of the Office of Public Counsel as if fully set forth herein and the Commission should lower Aqua's return on equity (ROE) by 100 basis points because of its less than satisfactory quality of service.

Issues 3 – 19: Pasco County adopts the position of the Office of Public Counsel as if fully set forth herein.

Issue 20: Should any adjustments be made to Salaries and Wages – Employees expense?

For many reasons, wages and salaries should not be increased. Aqua's facilities continually fail to meet regulatory standards so its employees do not appear to be doing their jobs well and have not earned a raise. Furthermore, the economic climate does not support increased salaries. Particularly because state employees have seen their pay cut. NPR 28, Fasano testimony. Although Aqua claims it needs the increases to retain employees, they provided no evidence that they are having trouble with retention save a single, one sentence statement to a question under cross of examination of Troy Rendell. TRN 542. There is no evidence that their retention rates differ from other utilities. TRN 542. They also failed to present any evidence that their salaries are low for the locations in which their employees are located. The market study only looked at job description and not at geographic cost of living. TRN 542-43. With high unemployment in Florida (TRN 987), Aqua should have little problem finding qualified employees. Aqua provided no numbers or examples of employees that left due to low pay. In fact their confidential exhibit, the market study, showed several long-term employees that have stayed with Aqua despite low pay.

Issues 21 – 26: Pasco County adopts the position of the Office of Public Counsel as if fully set forth herein.

Issue 27-29. The rate band structure may be unfairly discriminatory to the customers of certain systems. Aqua's move toward uniform rates unfairly discriminates against the customers of certain systems in violation of section 367.081 (2)(a)1., Florida Statutes, and

Southern States Utilities v. Fla. Public Service Commission, 714 So.2d 1046 (Fla. 1st DCA 1998). Aqua would like the Commission to forget at what level the rates were back before the 2009 rate increase Aqua received, but reviewing those levels brings some perspective to the “rate shock” that its customers are experiencing with yet another rate increase just two years later. The rate shock comes largely due to the subsidy that numerous systems have to pay to support the more costly systems. In 2008, Staff witness Paul Stallcup testified that a subsidy that exceeds \$5.90 would be excessive. See Ex. 310 at 14. Despite that testimony the Commission chose a subsidy limit of \$12.50 that has been carried over to this rate case. TRN 1397. Understanding that the subsidy has been approved by the Commission and will not be changed, a look at the impact that it has on the customers is instructive of the unreasonableness of the latest requested increase.

For the 84% of the Aqua customers in Pasco County, those of the Jasmine Lakes and Palm Terrace systems, the \$12.50 subsidy resulted in an 11% increase on average. This was calculated by using the standalone rate info from page 21 of Exhibit 310 and adding the \$12.50 subsidy. But this is not the full rate increase. You still need to add the pass-through rate increases, according to Mr. Stallcup. TRN 1400. When you do that, these customers saw rate increases of 13% for Jasmine Lakes and 19% for Palm Terrace, when comparing the full 2009 rate increase with the standalone rates of Ex. 310. These rate increases are roughly double the 7% increase that the court found acceptable in *Southern States*, 714 So.2d at 1052-53. This is certainly not a “modest deviation” as envisioned by the Court. *Id.* at 1053. The situation worsens when you look at the rate increase allowed by the PAA Order.

A comparison of the standalone rates with those of the PAA Order is a good illustration of rate shock, given that it has only been two years since the last rate increase. Looking at the use levels and rate data of Ex 310, page 21 and the PAA Order, you see the deviation greatly increases and the percentage goes well beyond the 7% allowed in *Southern States*. For the customers of Jasmine Lakes and Palm Terrace the rate increase is 30% over the standalone

rates. Comparing Aqua's proposed uniform rate against the standalone rates, the increase for Jasmine Lakes would be 51% and 35% for Palm Terrace. We understand that the PAA Order is designed to preserve the \$12.50 subsidy limit and part of the rate increase includes pass-through rate increases; however, the move from four rate bands to two increases the level of discrimination against certain systems, i.e., the difference between 51% and 35%. Mr. Rendell agreed that "[t]heir subsidy level goes up," with the stepped moves toward uniform rates. TRN 549. All these increases are hard to follow because as Mr. Rendell stated, "[t]here's been so many rate changes in the last couple of years." TRN 550. These increases are not consistent with *Southern States* and must not be approved.

We also understand that a move back to standalone rates is likely not practical at this point, but this discussion shows that any further rate increase, or a move to uniform rates, is unfairly discriminatory. Now Aqua will argue that despite the subsidization by some customers, other customers² receive a benefit in lower water bills.² Aqua witness Mr. Rendell admitted that systems like Jasmine Lakes, in current water rate band (WRB) one would see their water rates increase by 100% under the proposed uniform rates (57% under the PAA Order), but he countered that WRB 4 customers would see a decrease in water rates. TRN 547. That decrease is only 0.04%. Furthermore, every rate band would see an increase in sewer rates, 31% under uniform rates and 17% under the PAA Order. TRN 1046. The overall, system wide increase in water rates is 32% under uniform rates and 21% under the PAA Order. *Id*; see also, TRN 1836 (Rendell agreed with the size of the increase).

An additional cause of this discrimination is the mere whim of a non-responsive corporation from another state that either buys new systems without regard to the rate impact to its other customers or for the direct purpose of supporting its desire to move to uniform rates. By adding Breeze Hill and Peace River, which either had high rates or needed improvements

²But look at the testimony of Commissioner Mariano. NPR 42-43. Perhaps there are other reasons why certain systems need subsidization. Have those systems been maintained properly? If the failures of inefficiently run systems are covered by rate band subsidization, the utilities have no incentive to be efficient and cost-effective.

leading to cost increases (TRN 1530-31), the existing customers have to subsidize them. See Stallcup testimony, TRN 1404-05.

The move to two rate bands also seems precipitated by Aqua's random, arbitrary practice of buying unrelated systems. As explained on pages 101-102 of the PAA Order, trying to include two high cost systems, Breeze Hill and Peace River into the four rate band scheme proved to be "inappropriate" so the Staff devised the two rate band scheme. See PAA Order at 102. There is no relationship or interconnection between these two systems and the rest of AUF's inventory. They certainly do not share the same good water quality. The only similarity is these customers had the misfortune of having their standalone utility bought by Aqua and they have the same poor customer service. Band consolidation (from 4 to 2), or creating uniform rates,³ is not appropriate because these disparate systems have no uniformity in water quality, there is no interconnection and the rates become ever-increasingly discriminatory in violation of section 376.081, Florida Statutes.

Issues 30: Pasco County adopts the position of the Office of Public Counsel as if fully set forth herein.

Issue 31. The monthly rates should be set to avoid being unfairly discriminatory to the customers of certain systems to the benefit of others, as discussed above regarding Issues 27-29.

Issue 31A. The rates are not affordable for so many reasons, including that the rates are well beyond the ability of customers to pay. Numerous customers at the New Port Richey service hearing testified of their inability to pay Aqua's exorbitant rates. Ms. Jeanie Girdner, stated:

³ Aqua did not provide any evidence that moving to uniform rates will save money. Mr. Rendell stated "[w]e haven't quantified the actual cost savings to go into uniform rate." TRN 552. He did state that they will be able to spread future costs over all the customers to avoid rate shock, but he ignores the rate shock incurred in 2009 to go to rate banding and the rate shock that will be incurred in this current rate increase. For the current increase he admits that all sewer rates for every customer are going up 17% under the PAA Order and the overall water rate increase is 21%. TRN 1836.

I live in Jasmine Lakes. And I'm here to tell you that we are on a fixed income. Okay. Our car insurance went up, our house insurance went up. Our water bill is supposed to go up to 150 some dollars. How are we supposed to pay for that and our health insurance?

* * * *

I can't afford to water my lawn. I have to time myself when I go into the shower.

NPR 54. Another Jasmine Lakes resident stated:

I leased a house here recently, and, of course, I wasn't looking for my water bill to be higher than my electric bill. And, you know, to say that the bill is so high, that basically when my lease is up, I will be moving, because I cannot afford the bill.

NPR 113. There were similar comments about the impact of the high rates on real estate in Aqua's areas. Property owners are unable to rent houses due to Aqua's rates. NPR 80. Landlords have had to drop rent levels to keep tenants. NPR 148. This testimony is direct evidence of the downward spiral that Commissioner Mariano testified about. See TRN 983 and Ex. 26 p. 860 and others.

Raising rates to such high levels leads to less usage. Less usage means less revenue for the utility and that can lead to the need for another rate increase. The high rates mean people stop watering their lawns. Brown lawns and dead landscaping can depress real estate values. That coupled with the increased vacancy rates due to renters moving out because of high rates can lead to depressed neighborhoods. Vacant homes lead to even less usage and less revenues for the utility. See TRN 986-87.

Aqua admits that its high rates contribute to less water usage. TRN 144 (Szczygiel Testimony). The customers would agree and say that the poor water quality also leads to less usage. Aqua did try to explain that the installation of some 50 irrigation wells also contributed to the drop in demand. TRN 143. But 50 customers with new irrigation wells out of over 16,000 total customers do not explain the decline in usage. TRN 143. The decline, which Mr. Szczygiel described as "alarmingly" is clearly due to the exorbitant rates and poor water quality. TRN 143. The testimony of hundreds of customers confirms that fact.

Furthermore, the rates are not affordable because they are not in line with comparable systems, especially in Pasco County. The county rates are about 2.5 times less than Aqua's rates. See Ex. 353, Rendell Exhibit TR-9; see also Ex. 26 at p. 859. Although FGUA has some rates in Pasco County that are comparable to Aqua rates,⁴ it has many systems that are less than Aqua. FGUA rates are based on the cost of the system purchased. TRN 992. So when it buys a system that has high PSC approved rates, it is forced to maintain those rates.

Issue 39: Should this docket be closed?

The docket should remain open to continue the monitoring of AUF's quality of service.

Respectfully submitted this 30th day of December, 2011.

s/ Joseph D. Richards

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and regular U.S. mail to the following on this 30 day of December, 2011:

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⁴See Ex. 353, Rendell Exhibit TR-9; see also Ex. 26 at p. 859.

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