

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

IN THE MATTER OF THE INVESTIGATION ]  
INTO ATMOS ENERGY CORPORATION ]  
REGARDING THE FEBRUARY 2021 ] KCC DOCKET NO. 21-ATMG-333-GIG  
WINTER WEATHER EVENTS, AS ]  
CONTEMPLATED BY DOCKET NO. ]  
21-GIMX-303-MIS. ]

TESTIMONY IN SUPPORT OF SETTLEMENT AGREEMENT

JOSH FRANTZ

ON BEHALF OF

THE CITIZENS' UTILITY RATEPAYER BOARD

FEBRUARY 24, 2022

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

2 A. My name is Joshua (Josh) P. Frantz. My business address is 1500 SW Arrowhead Road,  
3 Topeka, Kansas 66604.

4  
5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by the Citizens' Utility Ratepayer Board (CURB) as a Senior Regulatory  
7 Analyst.

8  
9 **Q. Please describe your educational and professional background.**

10 A. I earned a Bachelor of Business Administration degree from Washburn University in  
11 Topeka, Kansas. My undergraduate majors were finance, marketing, and management.  
12 Additionally, I earned a Master of Business Administration degree, also from Washburn  
13 University.

14 From August 2015 through April 2019, I was employed by the Kansas Corporation  
15 Commission (KCC or "Commission"). I began my employment with the KCC in the  
16 Utilities division as a Senior Research Economist and was ultimately promoted to  
17 Managing Rate Analyst. I have served in my current position as Senior Regulatory Analyst  
18 with CURB since April 2019.

19  
20 **Q. Have you previously testified before the Commission?**

21 A. Yes. On behalf of CURB, I testified in Docket Nos. 19-ATMG-525-RTS, 21-WCNE-103-  
22 GIE, 21-BHCG-334-GIG, and 21-KGSG-332-GIG. During my prior employment as a

1 member of KCC Staff, I offered testimony in seven proceedings before the Commission as  
2 well as over thirty Report and Recommendations for the Commission's consideration. A  
3 list of those filings is available, upon request.  
4

5 **Q. What is the purpose of your testimony?**

6 A. My testimony supports the *Settlement Agreement* ("Agreement") filed within the *Joint*  
7 *Motion to Approve Settlement Agreement* ("Joint Motion") in Docket No. 21-ATMG-333-  
8 GIG ("Docket 21-333") on February 9, 2022, regarding Atmos Energy Corporation's  
9 ("Atmos" or "Company") *Plan to Minimize the Financial Effects of the 2021 Winter*  
10 *Weather Event* ("Financial Plan").  
11

12 **Q. Please provide a brief background of this proceeding.**

13 A. In mid-February 2021, Winter Storm Uri (also referred to as the "Weather Event") imposed  
14 extreme and unprecedented freezing weather conditions across the U.S. It caused  
15 widespread infrastructure and operational problems for facilities necessary for the  
16 production and delivery of natural gas, leading to sudden and sustained natural gas supply  
17 disruptions and substantially higher than normal wholesale natural gas prices.

18 In response to Winter Storm Uri, on February 15, 2021, the Commission issued its  
19 *Emergency Order* in Docket No. 21-GIMX-303-MIS ("Emergency Order"), which  
20 acknowledged the Governor's State of Disaster Emergency Proclamation, the higher-than-  
21 normal wholesale natural gas prices, and the potential for service reliability issues related

1 to prolonged cold weather.<sup>1</sup>

2 In its Emergency Order, the Commission ordered jurisdictional natural gas and  
3 electric utilities to do everything necessary to ensure continued provision of service.<sup>2</sup>  
4 Additionally, the Commission authorized jurisdictional natural gas and electric utilities to  
5 defer into a regulatory asset any extraordinary costs associated with ensuring that their  
6 customers, or the customers of interconnected Kansas utilities that are non-jurisdictional  
7 to the Commission, continued to receive utility service during Winter Storm Uri.<sup>3</sup> The  
8 Commission required the deferral accounts to be segregated by detailed cost category and  
9 to contain enough detail for the Commission to perform a subsequent review for prudence  
10 and reasonableness.<sup>4</sup> The Emergency Order also provided that the deferral is for  
11 accounting purposes only, and that decisions related to ratepayer recovery would be  
12 addressed in future proceedings.<sup>5</sup>

13 Soon after, the Commission opened company-specific dockets (with Docket 21-  
14 333 being assigned to Atmos) to document issues raised in the Commission's investigation  
15 of each major jurisdictional utility's reactions to and performance during Winter Storm  
16 Uri, as well as to record the eventual company-specific filings for financial impact plans.

17 On September 14, 2021, Atmos filed its Financial Plan, as well as supporting  
18 testimonies, in this docket. Settlement discussions were held, beginning January 27, 2022,  
19 and, on February 9, 2022, a settlement agreement was filed.

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1 See *Emergency Order*, ¶1, Docket No. 21-GIMX-303-MIS (Feb. 15, 2021).

2 *Emergency Order*, ¶3, Docket No. 21-GIMX-303-MIS (Feb. 15, 2021).

3 *Emergency Order*, ¶4, Docket No. 21-GIMX-303-MIS (Feb. 15, 2021).

4 *Emergency Order*, ¶4, Docket No. 21-GIMX-303-MIS (Feb. 15, 2021).

5 *Emergency Order*, ¶4, Docket No. 21-GIMX-303-MIS (Feb. 15, 2021).

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**Q. Which parties have been granted intervention in this docket?**

A. CURB and the Kansas Attorney General's Office ("AG's Office") have been granted intervention in this docket.

**Q. Has a settlement agreement been reached regarding the Company's Financial Plan?**

A. Yes, an Agreement regarding the Company's Financial Plan was filed in this docket on February 9, 2022. Atmos, KCC Staff, and CURB (the "Signatories" or "Joint Movants") are signatories to the Agreement and the Kansas AG's Office has indicated it does not oppose the Agreement.

**Q. Please outline the key terms of the Agreement.**

A. The key terms of the Agreement can be summarized as follows:

Extraordinary Costs

- Atmos should be allowed to recover \$102,517,847 of qualified extraordinary costs incurred due to the Weather Event ("Extraordinary Costs"), subject to true-up and verification. A categorized list of these costs is included in Appendix A of the Agreement.

Securitization

- If approved to go forward with securitization, Atmos will apply for a Financing Order in a separate docket, pursuant to the applicable provisions contained in the Utility Financing and Securitization Act ("Act") passed by the Kansas Legislature in 2021.

1           The requested Financing Order would authorize the issuance of Securitized Utility  
2           Tariff Bonds (“Securitized Bonds”) to finance the Extraordinary Costs.

- 3           • Determination of certain details regarding the Securitized Bonds (e.g., the term of the  
4           bonds and how the surcharge will be applied among Atmos’s sales customers) will be  
5           deferred to the Financing Order proceeding.
- 6           • The Extraordinary Costs, including carrying charges, will be trued-up and verified as  
7           part of Atmos’s separate filing to obtain the Financing Order. Any reconciliation  
8           proposal shall also consider both the deferred tax liability associated with the  
9           extraordinary gas cost recoveries, as well as the corresponding and offsetting deferred  
10          tax asset associated with the net operating loss carryforward created by the  
11          Extraordinary Costs.
- 12          • If Atmos receives or recovers any payments as a result of any subsequent federal or  
13          state governmental relief in the form of profit disgorgement, civil suit relief, market  
14          manipulation findings, etc., resulting from the Weather Event, it shall pass those  
15          payments on to its customers through its Purchased Gas Adjustment (PGA), even if  
16          those payments may be received or recovered after the expiration of the Securitized  
17          Utility Tariff Charge.

#### 18          Carrying Charges

- 19          • Carrying charges applicable to the Extraordinary Costs will be calculated using a rate  
20          of 2.0% until the issuance of Securitized Bonds.

21

Other Provisions

- All penalty payments received by Atmos from marketers or transportation customers (identified in the confidential Appendix B of the Agreement) that are received prior to the filing of the separate application for a Financing Order will be used by Atmos to reduce the Extraordinary Costs to be recovered using the Securitized Bonds. All penalty amounts received after that filing will be credited by Atmos to its sales customers, annually, through the PGA/Annual Cost Adjustment (ACA).
- Provided it is allowable under the Act, any Atmos sales customer who intends on becoming an Atmos transportation customer during the period in which the Securitized Utility Tariff Charge is being recovered shall be required to pay Atmos a conversion fee prior to becoming a transportation customer. The conversion fee owed by the customer shall be based on the present value of the expected charges the customer would have paid as a sales customer over the remaining period in which the Securitized Utility Tariff Charge is being recovered. This conversion fee will be credited to Atmos's other sales customers, annually, through the PGA.
- Atmos agrees to meet with KCC Staff and CURB to discuss programs that Atmos has implemented in other states to assist low-income customers, in order to determine if those programs could be used to assist low-income customers in Kansas.

**Q. What criteria does the Commission generally consider when reviewing settlement agreements?**

**A.** The Commission has accepted settlement agreements if the following five criteria are met:

1 1) the agreement conforms with applicable law; 2) there was an opportunity for opposing  
2 parties to be heard on their reasons for opposition to the agreement; 3) the agreement is  
3 supported by substantial competent evidence; 4) the agreement results in just and  
4 reasonable rates or charges; and 5) the results of the agreement are in the public interest.<sup>6</sup>

5 However, in dockets with proposed *unanimous* settlement agreements, such as this  
6 Agreement, the Commission has approved settlement agreements on the basis of just the  
7 last three criteria. Since this Agreement is unanimous, I will now discuss those three  
8 criteria, in detail.

9  
10 **Q. Is the Agreement supported by substantial competent evidence?**

11 A. In my opinion, the Agreement is supported by substantial competent evidence in the record.  
12 The initial Application was supported by the direct testimony of several witnesses on behalf  
13 of the Company. There was extensive vetting of these matters through a multitude of data  
14 requests (“DRs”) and information sharing ahead of the settlement discussions. The  
15 Agreement is supported by my testimony and, I expect, will be supported by the testimony  
16 of the other Signatories.

17 To my knowledge, it is undisputed that Winter Storm Uri prompted health and  
18 safety concerns, sudden and sustained natural gas supply disruptions, and widespread  
19 infrastructure and operational failures at facilities that were necessary for the delivery of  
20 natural gas. This has already been acknowledged by the Commission.

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<sup>6</sup> See *Order Approving Contested Settlement Agreement*, ¶11, Docket No. 08-ATMG-280-RTS (May 12, 2012).



1 Through review of the facts contained in the Company's testimony and responses  
2 to the DRs in this docket, as well as discussions with the Company and KCC Staff, I believe  
3 the agreed-upon calculation of Extraordinary Costs is reasonably reflective of the  
4 extraordinary costs that were incurred by the Company to serve customers during February  
5 2021. Furthermore, I believe the agreed-upon application of carrying charges is reasonably  
6 reflective of the Company's costs associated with financing the Extraordinary Costs until  
7 the issuance of Securitized Bonds.

8  
9 **Q. Will the Agreement result in just and reasonable rates/charges?**

10 **A.** Yes, I believe approval of the Agreement would result in just and reasonable rates/charges.

11 I will discuss the reasonableness of specific provisions of the Agreement in detail:

12 Extraordinary Costs

13 Nearly every state in the Midwest is now facing unprecedented, extraordinary  
14 natural gas costs due to the effects of Winter Storm Uri. In Texas, highly publicized,  
15 widespread utility service disruptions even led to the loss of life. In the KCC's Emergency  
16 Order, all jurisdictional utilities were ordered to "do all things possible and necessary to  
17 ensure natural gas and electricity utility services continue to be provided to their customers  
18 in the State."<sup>7</sup> In spite of the volatility of the natural gas market conditions and other issues  
19 outside of the Company's control, Atmos was able to deliver reliable service to 99.99% of  
20 its Kansas customers for the full duration of the event.<sup>8</sup>

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<sup>7</sup> *Emergency Order*, pg. 3 §B, Docket No. 21-GIMX-303-MIS (Feb. 15, 2021).

<sup>8</sup> *Direct Testimony of Barton W. Armstrong*, pg. 18, Docket No. 21-ATMG-333-GIG (Sep. 14, 2021).

1           Annually, Atmos files Gas Purchase Reports (GPR) with the Commission in  
2           Docket No. 02-GRLG-364-GPR and presents the reports to KCC Staff and CURB for  
3           review before the winter season. The unprecedented weather, supply, demand, and pricing  
4           conditions that developed during the Weather Event could not reasonably have been  
5           anticipated at the time Atmos entered into its GPR-planned contracts, months in advance  
6           of the Weather Event. It is important to recognize that the plans in Atmos's GPR are  
7           designed to cover the entirety of the heating season, and, at the time of the Weather Event,  
8           there were nearly two months remaining in the season. Yet, during the Weather Event, for  
9           several days in succession, natural gas index prices vastly exceeded any previously  
10          fathomable price.

11           Atmos did not have any control over the market price of gas that was available  
12          during the Winter Event. Atmos competitively bids its supply contracts in advance of the  
13          winter months and these contract prices are tied to a market index. The unprecedented  
14          spike in natural gas index prices during the Weather Event has, understandably, lead to  
15          concerns over price gouging, profiteering and market manipulation. Duly, these concerns  
16          are being investigated by the Kansas AG's Office under its statutory and common law  
17          authority to enforce: (1) the Kansas Consumer Protection Act (KCPA), K.S.A. 50-623, et  
18          seq. and to protect consumers from suppliers who commit deceptive and unconscionable  
19          acts and practices; (2) K.S.A. 50-6,106 (the unconscionable act of profiteering from a  
20          disaster); and (3) the Kansas False Claims Act, K.S.A. 75-7501, et seq., which prohibits  
21          making a fraudulent claim upon the State government or any political subdivision of the

1 State.<sup>9</sup> Under the Agreement, any form of federal or state governmental relief in the form  
2 of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from  
3 the Weather Event, would be passed to customers through the PGA/ACA.

4 In a later phase of this docket, the Company, KCC Staff, and CURB will examine  
5 the lessons learned from the Weather Event and discuss how to better manage such a  
6 situation in the future (e.g., potential tariff revisions, process improvements, etc.).  
7 However, I do believe, when viewing Atmos's actions during the Weather Event without  
8 the lens of hindsight, the Company responded adequately to an unprecedented crisis.  
9 Therefore, the Extraordinary Costs should be considered to be prudently incurred.

#### 10 Securitization

11 The details regarding securitization of the Extraordinary Costs (e.g., term duration,  
12 interest rate, etc.) have not yet been thoroughly examined and finalized — that process will  
13 commence when the Company requests a Financial Order, assuming the Agreement is  
14 approved. Generally, though, I expect the securitization process will result in just and  
15 reasonable rates and I believe it is the most appropriate, low-cost path forward to finance  
16 the Extraordinary Costs incurred by Atmos. The initial projections for the Securitized  
17 Bond rates presented by Atmos, circa September 2021, indicate rates in the range of 1.88%  
18 for 10-year bonds to 2.36% for 15-year bonds.<sup>10</sup>

#### 19 Carrying Charges

20 There is no specific methodology identified in the Agreement detailing the

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<sup>9</sup> See *Petition to Intervene* of Kansas AG's Office, Docket No. 21-ATMG-333-GIG (Jul. 19, 2021).

<sup>10</sup> *Direct Testimony of Jason L. Schneider*, Exhibit JLS-3, Docket No. 21-ATMG-333-GIG (Sep. 14, 2021).

1 calculation of the negotiated carrying charge rate of 2.0% (reduced from the initially  
2 proposed 8.396%), so each party may have a different understanding of the concessions  
3 made to produce this result. I believe the rate of 2.0%, for the period starting when the  
4 Extraordinary Costs were incurred through the issuance of Securitized Bonds, is reasonably  
5 reflective of the short-term financing rates incurred by the Company to cover its  
6 Extraordinary Costs and, therefore, I support this provision of the Agreement.

7 Although the use of short-term debt and reflection of a carrying charge in this  
8 extraordinary circumstance will add costs for ratepayers, doing so allows ratepayers the  
9 opportunity to spread the financial impacts of the Weather Event over a longer period,  
10 reducing monthly bill impacts. The alternative proposals to the Agreement are to either  
11 recover the extraordinary costs through a separate rider over three years, as laid out in the  
12 initial Application, or to flow the costs through the Company's PGA, as typically done for  
13 such costs. Both alternatives would likely have shorter collection periods, but larger  
14 impacts on customers' bills each month. CURB views the Commission's decision to  
15 accept plans for mitigating the financial impact on ratepayers as an emphasis on the  
16 importance of easing the direct financial burden imposed by the Weather Event. To that  
17 end, including carrying charges allows access to financing instruments to extend collection  
18 periods.

19 Methodology aside, the lower carrying charge percentage agreed upon by the  
20 Signatories would drastically reduce the carrying charges over the aforementioned period  
21 from approx. \$9.47 million to approx. \$2.56 million, producing a savings of approx. \$7.21

1 million when compared to the Company's initial proposal.<sup>11</sup>

2 Because CURB has no filed position in response to the Company's initial proposal  
3 in this Docket, I will now address the Company's initial request for the application of a  
4 carrying charge rate at the weighted average cost of capital (WACC), approx. 8.4%, on the  
5 Extraordinary Costs. I believe that an application of Atmos's WACC would be  
6 inappropriate in this circumstance and would not be reasonably reflective of actual  
7 financing charges associated with the Extraordinary Costs. Allowance of an unreasonably  
8 high carrying charge could result in a windfall for the Company stemming from a  
9 disastrous event. Meanwhile, utility customers face severe financial consequences from  
10 the emergency Weather Event. To reiterate, I am supportive of the reduced carrying  
11 charges proposed in the Agreement, but I am strongly opposed to the Company's initial  
12 proposal to apply its WACC as the carrying charge for the Extraordinary Costs.

13  
14 **Q. Are the results of the Agreement in the public interest?**

15 A. Yes, I believe the Agreement is in the public interest. There is a wide range of  
16 representation among the parties: the Company; CURB, representing residential and small  
17 commercial customers; and KCC Staff, representing all interests including the public,  
18 generally.

19 Under the Agreement, the Company would recover the Extraordinary Costs it  
20 incurred to provide gas to customers during the Winter Event, plus the inclusion of

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<sup>11</sup> *Settlement Agreement*, ¶10, Docket No. 21-ATMG-333-GIG (Feb 9, 2022).

1 reasonable carrying charges until the issuance of Securitized Bonds. Furthermore,  
2 provisions of the Agreement provide customer protections in the form of potential future  
3 relief that could come through the investigations of the Kansas AG's Office, or other  
4 governmental agencies, into predatory pricing issues. Additionally, a provision of the  
5 Agreement ensures that individual customers will not be able to circumvent the Surcharge  
6 by switching from a sales class to transportation.

7 Lastly, Atmos has agreed to discuss with CURB and KCC Staff, in earnest, the  
8 potential implementation of programs to assist low-income customers. Low-income  
9 programs are ratemaking mechanisms which, generally, CURB supports and believes  
10 would be in the interest of the public, at large. It is well documented that energy burden  
11 (percentage of household income spent on energy costs) is a critical issue for low-income  
12 customers and any surcharges resulting from the Weather Event will further exacerbate the  
13 financial hardships faced by low-income households. Therefore, I believe this docket has  
14 provided a fitting forum for CURB to negotiate the inclusion of this provision into the  
15 Agreement. Although the provision in the Agreement regarding low-income programs is  
16 quite broad, I certainly believe it is a step in the right direction.

17  
18 **Q. Does the Agreement resolve all issues in this docket?**

19 A. No. I feel it is important to emphasize there are multiple phases of this docket. If this  
20 Agreement is approved, the details of securitization will be discussed in a subsequent  
21 phase. Additionally, another phase of this docket will explore potential revisions to tariff  
22 provisions and a discussion of lessons learned from the Weather Event.

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**Q. Do you have any additional concerns you wish to discuss?**

A. Yes, I would like to express CURB's concerns regarding the approx. \$9.56 million of Negotiated Gas Penalties that are expected to be charged to Atmos by Kansas Gas Service (KGS). This penalty amount has been negotiated in Docket No. 21-KGSG-332-GIG ("Docket 21-332"), which is the Weather Event docket for KGS, and that settlement agreement is currently pending Commission approval.

As already mentioned, the Commission's February 15, 2021, Emergency Order required utilities to do everything necessary to ensure natural gas and electricity service continue to be provided to their customers in Kansas. The Commission Order was issued to safeguard the reliability, integrity, and continued functionality of the gas delivery system for the citizens of Kansas during the Weather Event. Atmos was not only obligated to protect its own system, but also to ensure that its actions would not potentially place the reliability of other utility systems in Kansas at risk.

In this docket, a portion of Atmos's Extraordinary Costs includes penalties expected to be charged by KGS to Atmos for Atmos's role as a transportation customer of KGS during the Weather Event. Atmos was short on its gas deliveries to KGS over the course of the Weather Event, and, under the proposed 21-332 settlement, the gas Atmos received from KGS is valued at a much lower price (via the penalty) than the market price Atmos would have likely paid had Atmos purchased gas from other sources. This is largely because the calculation of the Negotiated Gas Penalty includes gas purchased by KGS under its Gas Daily Daily (GDD) callable contracts. If the 21-332 settlement is approved,

1 Atmos sales customers will actually benefit from Atmos being short on its gas deliveries  
2 to KGS at a cost to KGS sales customers.

3 In the corresponding Evidentiary Hearing in Docket 21-332, CURB expressed its  
4 concerns regarding the methodology used to calculate the Negotiated Gas Penalty amounts.  
5 Although CURB did not oppose the settlement in Docket 21-332 nor the settlement in this  
6 case, it seems contrary to the concept of a penalty to reward a utility with a lower charge  
7 than had the utility complied with the pertinent tariff. For consistency, I believe it is  
8 appropriate for CURB to echo its concerns here, even though Atmos sales customers  
9 benefit from the settlement proposed in Docket 21-332.

10 Despite its concerns, CURB acknowledges that the circumstances of this event  
11 were unique and unprecedented for all gas and electric utilities in Kansas and hopes that in  
12 a later phase of this docket, the parties can determine how to better protect utility systems  
13 from the effects of future storms. Indeed, CURB looks forward to working with the parties  
14 in this docket, as well as parties in all of the other Weather Event dockets, to ensure these  
15 issues do not arise again.

16  
17 **Q. What is your final recommendation?**

18 A. I support the Agreement and believe it satisfies the Commission's established criteria for  
19 approval of a settlement agreement. Therefore, I recommend the Commission reject  
20 Atmos's initial proposed Financial Plan and, instead, approve the Agreement as filed.

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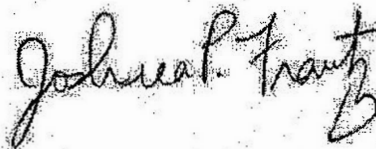
1 **Q. Does this conclude your testimony?**

2 A. Yes, it does.

**VERIFICATION**

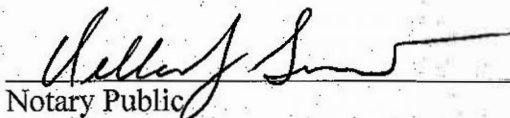
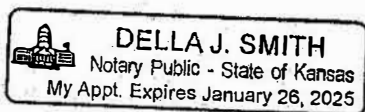
STATE OF KANSAS                    )  
  )  
COUNTY OF SHAWNEE            )        ss:

I, Josh Frantz, of lawful age and being first duly sworn upon my oath, state that I am a consultant for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.



\_\_\_\_\_  
Josh Frantz

SUBSCRIBED AND SWORN to before me this 24<sup>th</sup> day of February, 2022.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 01-26-2025.

## CERTIFICATE OF SERVICE

21-ATMG-333-GIG

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 24<sup>th</sup> day of February, 2022, to the following:

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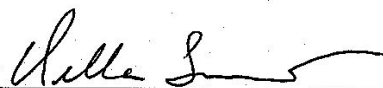
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