

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas )  
City Power & Light Company for Approval ) Docket No. 09-KCPE-246-RTS  
to Make Certain Changes in its Charges for )  
Electric Service to Continue the )  
Implementation of Its Regulatory Plan. )

STATE CORPORATION COMMISSION

JUN 08 2009

 Docket Room

**CURB'S MOTION TO STRIKE PORTIONS OF  
ADDITIONAL TESTIMONY AND EXHIBITS OF CHRIS  
GILES AND JOHN WEISENSEE AND FOR EXPEDITED RULING**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB"), and files this motion to strike portions of the additional testimony and exhibits of Chris B. Giles and John P. Weisensee, prefiled with the Commission on May 5, 2009, on behalf of Kansas City Power & Light Company ("KCP&L"). Because the evidentiary hearing is scheduled to begin June 22, 2009, CURB requests an expedited ruling on its motion. In support of its motion, CURB states and alleges as follows:

1. CURB moves to strike all additional testimony and exhibits related to KCP&L's claim to recover estimated Iatan common costs, as this testimony does not comply with the parties' March 6, 2009, Joint Motion for Commission Approval of Amendments to Procedural Schedule ("Joint Motion") or the Commission's March 13, 2009, Revised Scheduling Order.<sup>1</sup>

2. CURB further moves to strike all additional direct testimony related to the proposal to create a regulatory asset for costs not included in plant-in-service in this rate case, as this testimony likewise does not comply with the Joint Motion or the Commission's March 13, 2009, Revised Scheduling Order.

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<sup>1</sup> Revised Scheduling Order Granting Parties' Joint Motion Filed March 6, 2009 ("Revised Scheduling Order"), ¶¶ 9-10.

## I. PROCEDURAL HISTORY

3. On September 5, 2007, KCP&L filed an application for a rate increase ("Application") in this docket pursuant to K.S.A. 66-117 and K.A.R. 82-1-231. KCP&L designated a 2007 Test Year including known and measurable changes to March 31, 2009. KCP&L's original filing designated March 31, 2009 as the plant-in-service date. In rebuttal testimony, KCP&L attempted to amend the plant-in-service date to July 4, 2009.

4. On November 14, 2008, the Commission issued a Scheduling Order, establishing the following schedule for this proceeding:

|                                |   |
|--------------------------------|---|
| February 3, 2009               | Staff and Intervener Testimony            |
| February 12, 2009              | Cross Testimony                           |
| February 23, 2009              | KCP&L Rebuttal & List of Contested Issues |
| March 3, 2009                  | Responses to KCP&L's Issue List           |
| March 3, 2009                  | Prehearing Conference                     |
| March 9-13, 16-20, 23-24, 2009 | Evidentiary Hearing                       |
| April 13, 2009                 | KCP&L and Empire Initial Brief            |
| April 30, 2009                 | Responsive Brief of Staff of Interveners  |
| May 11, 2009                   | KCP&L Reply Brief                         |
| June 15, 2009                  | Commission Order                          |

5. KCP&L filed its rebuttal testimony on February 23, 2009, which contained updates to the *budgeted* Iatan Unit 1 and common costs and to certain non-Iatan plant investment. The Iatan Unit 1 and Iatan common *budgeted* costs included costs through the in-service date of July 4, 2009. The non-Iatan plant update included costs through March 31, 2009. KCP&L's rebuttal also indicated that *additional* updated information regarding Iatan Unit 1 and Iatan common costs would be provided in a follow-up data request response. That additional information was not provided to the parties until February 25, 2009.

6. A flurry of motions were filed by CURB, the Hospital Intervenors, and Staff following the filing of KCP&L's rebuttal testimony on February 23, 2009, including requests to strike the testimony, restart the clock pursuant to K.S.A. 66-117, allow supplemental testimony and exhibits out of time, and to accept surrebuttal testimony. These requests related to the parties' positions that KCP&L's rebuttal testimony (1) included estimated and double-counted costs, (2) contained substantial increases to the filed claim, (3) constituted improper rebuttal testimony, (4) constituted a material change to KCP&L's application; and (5) resulted in a denial of due process to the parties. CURB will not include the details of each parties' claim here, but incorporates them by reference.<sup>2</sup>

7. On March 3, 2009, the Commission held oral arguments on the various Motions pending in the docket, including the Motions of the Hospital Intervenors, CURB, Staff and KCP&L referred to above. The Commission recessed the hearing to allow the parties an opportunity to explore a possible resolution of the issues raised by CURB, the Hospital Intervenors, Staff, and the Company. As a result of those discussions, the parties reached a compromise agreement which was later memorialized in the Joint Motion, filed March 6, 2009.

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<sup>2</sup> See: CURB's Motion For Expedited Order, February 25, 2009; Motion Of Hospital Intervenors For An Order Of The Kansas Corporation Commission That Kansas City Power & Light Company Has Amended Its Application For Rate Increase On February 23, 2009 And That Such Amendment Is Deemed A New Application And The 240 "Effective Date Of The Proposed Change In Rate Shall Be Deemed Commenced On February 23, 2009, February 26, 2009; Staff's Motion To File Supplemental Testimony With Exhibits Out Of Time And For Acceptance Of Surrebuttal Testimony, February 27, 2009; Amended Motion of Hospital Intervenors to Strike All Testimony with Regard to Common Costs for the Period March through July 2009 Related to IATAN I and IATAN II and Request of Hospital Intervenors to Proceed with Hearing in Accordance with the Scheduling Order of November 14, 2008, March 2, 2009; CURB Amended Motion for Expedited Order, March 2, 2009.

8. On March 4, 2009, the Commission reconvened its hearing on the pending Motions, at which time the signatory parties presented the Commission with a proposed amended procedural schedule for the Commission's consideration.

9. On March 6, 2009, the parties filed the Joint Motion which memorialized the compromise agreement.

10. On March 13, 2009, the Commission issued its Revised Scheduling Order Granting Parties' Joint Motion Filed March 6, 2009 ("Revised Scheduling Order"), which contained the following amended procedural schedule:

|                          |   |
|--------------------------|---|
| April 30, 2009           | Cut-Off for <i>Actual Costs</i> on Iatan Unit 1 and Iatan common costs to be included in this case as further defined in paragraph 10 |
| May 5, 2009 by Noon      | Direct Testimony of KCP&L on <i>Actual Costs</i>  |
| Now — May 22, 2009       | Staff and Interveners Perform Audit on <i>Actual Costs</i>  |
| May 29, 2009 by Noon     | Staff/Intervener Direct Testimony   |
| June 5, 2009 by Noon     | Rebuttal Testimony and Issues List of KCP&L   |
| June 11-12, 2009         | Staff and Interveners' Cross Answering Testimony  |
| June 16, 2009            | Settlement Discussions  |
| June 17, 2009            | Discovery Cut-Off   |
| By 9:00 AM               | Public Comment Cut-Off  |
| By Noon                  | Settlement Filing/Prehearing Motions  |
| 1:30 PM                  | Staff and Interveners' Response to KCP&L's Issues List  |
| June 22 — July 2, 2009   | Prehearing Conference   |
| July 13, 2009 by 3:00 PM | Evidentiary Hearing   |
| July 17, 2009 by 3:00 PM | Simultaneous Initial Briefs   |
| August 14, 2009          | Simultaneous Reply Briefs   |
|                          | Commission Order <sup>3</sup>   |

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<sup>3</sup> Revised Scheduling Order, ¶ 9 (emphasis added); *see also*, Joint Motion, ¶ 9.

11. The Commission noted in the Revised Scheduling Order that the Joint Motion further defined the cut-off for *actual costs* on Iatan 1 and Iatan common costs as follows:

10. KCP&L's Direct Testimony will only include testimony directly related to *actual costs for Iatan Unit 1 and Iatan common costs paid or approved for payment through April 30, 2009*, and directly related to the updated costs on non-Iatan plant through March 31, 2009, as addressed in KCP&L's rebuttal testimony. Such testimony will also detail the effects of these updated costs on KCP&L's requested overall increase. No costs incurred, invoiced, or approved for payment after April 30, 2009 may be included in KCP&L's Direct Testimony, and KCP&L may not increase its overall request above the original application for a \$71.6 million increase. KCP&L may not add to or otherwise materially change the costs presented in this docket related to the costs of Iatan Unit 1 up to, and included in, the May 5, 2009, Direct Testimony after such testimony has been filed because KCP&L agrees that the May 5, 2009, filing is their final position on the aforementioned costs upon which KCP&L will rely throughout the remainder of this docket. The inclusion of the updated costs for the non-Iatan plant may be contested by any party and those parties reserve the right to present their position in that regard in their Direct Testimony. KCP&L's ability to claim a traditional revenue requirement in excess of the amount contained in the Company's original Application or a CIAC less than the amount contained in the Company's original Application may be contested by CURB or interveners and those parties reserve the right to present their position in that regard in their Direct Testimony; however, this provision is not intended to affect Staff in either an enabling or preclusive manner. The parties also reserve the right to modify or otherwise change their revenue requirement adjustments, disallowances, and recommendations in light of and directly related to such updated Iatan Unit 1, common and non-Iatan plant costs.<sup>4</sup>

12. As evidence of the intent of the parties to limit KCP&L to actual costs, the Commission should note arguments made by KCP&L in support of its June 2, 2009, Motion to Strike Additional Testimony of Brian Kalcic and Donald Johnstone:

As noted above, *the Commission restricted KCP&L's additional direct testimony to the issues contained in ¶10 of its Order*. Additionally, the new schedule specifically states that April 30, 2009 is the "Cut-Off for *Actual Costs on Iatan Unit 1 and Iatan common costs* to be included in paragraph 10" with paragraph 10 being where the specifics of testimony for all parties is defined.<sup>5</sup>

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<sup>4</sup> Revised Scheduling Order, ¶ 10 (emphasis added). *See also*, Joint Motion, ¶ 10.

<sup>5</sup> KCP&L's Motion to Strike Additional Direct Testimony of Brian Kalcic and Donald Johnstone; Response to MUUG's Motion to File Additional Testimony; and Motion for Expedited Treatment ("KCP&L's Motion to Strike"), June 2, 2009,

...  
...the parties agree[d] to an extension of the procedural schedule in order to provide for additional testimony on *very narrow and discrete issues*.<sup>6</sup>

...  
...as *parties should not be able to file testimony unrelated to the issues that are directed by the Commission to be addressed*.”<sup>7</sup>

...  
”the *new procedural schedule was to address only matters related to the Iatan Unit 1 and Iatan common actual costs*.”<sup>8</sup>

13. Likewise, the additional direct testimony of KCP&L witness Chris B. Giles, filed May 5, 2009, also show the intent of the parties to limit KCP&L additional direct testimony to actual costs paid or approved for payment, where he states,

The primary goals of the amended procedural schedule were to: (1) provide an April 30, 2009 cut-off date for *actual costs on Iatan Unit 1 AQC equipment and Iatan common costs paid or approved for payment* to be included in this case; (2) allow Staff and interveners more time to perform an audit on the actual costs; and (3) provide for additional and rebuttal testimony regarding the actual costs.<sup>9</sup>

## **II. PORTIONS OF THE MAY 5, 2009 ADDITIONAL TESTIMONY OF CHRIS B. GILES AND JOHN P. WEISENSEE, AND RELATED EXHIBITS SHOULD BE STRICKEN FROM THE RECORD.**

14. As demonstrated above, the Joint Motion and the Revised Scheduling Order expressly provides that KCP&L’s May 5, 2009 additional testimony is only to include testimony directly related to *actual costs* for Iatan Unit 1 and Iatan common costs *paid or approved for payment* through April 30, 2009, and directly related to the updated costs on non-Iatan plant through March

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¶¶9 (emphasis added). Paragraph 10 of the Commission’s Order references “actual costs of Iatan Unit 1 and Iatan common costs.

<sup>6</sup> Id., at ¶15.

<sup>7</sup> Id.

<sup>8</sup> Id., at ¶ 16 (emphasis added).

<sup>9</sup> Additional Direct Testimony of Chris B. Giles, May 5, 2009, p. 5, lines 15-20 (emphasis added).

31, 2009, as addressed in KCP&L's rebuttal testimony. However, KCP&L has chosen to include testimony that addresses issues and costs well beyond this express limitation.

**A. The Additional Testimony and Exhibits of Chris B. Giles and John P. Weisensee Related to IATAN Common Plant Should be Stricken From the Record.**

15. On May 5, 2009, KCP&L prefiled the Additional Direct Testimony of John P. Weisensee. In that testimony, Mr. Weisensee is asked how KCP&L determined the amount of “actual” Iatan common costs to include in this case:

Q: How did KCP&L determine the amount of *actual Iatan Common costs* to include in this case?

A: *To determine amounts paid or approved for payment for Iatan Common, a ratio of Iatan Unit 1 costs paid or approved for payment as of April 30, 2009 divided by total Iatan Unit 1 forecasted costs (the Control Budget) was calculated. As shown on Schedule JPW-9, Line C, this ratio indicates that 83% of the estimated costs for the project were paid or approved for payment as of April 30, 2009. Estimated Iatan Common tracked to the Unit 1 and Unit 2 project cost portfolios, \$114.1 million and \$268.9 million respectively, were then multiplied by the 83% ratio to determine the amount of paid or approved for payment Iatan common to include in this case. They are summed together on Line K of the schedule.*

Q: How did KCP&L determine the total actual costs for inclusion in this case?

A: *The \$402,812,641 of Iatan Unit 1 AQC actual costs includes a portion of Iatan Common costs that must be removed from this category and placed in the Iatan Common cost category. To determine this amount, KCP&L applied the 83% ratio against the \$114.1 million of Iatan Common costs included in the Control Budget for Iatan Unit 1 AQC [ $\$114.1 \text{ million} \times 83\% = \$94,940,967$ ; Line E of Schedule JPW-9], resulting in Iatan Unit 1 costs without Iatan Common in the amount of \$307,871,674 [ $\$402,812,641 - \$94,940,967$ ; Line F of Schedule JPW-9.] The additional Iatan Common costs included in the Iatan Unit 2 Control Budget in the amount of \$268,900,000 [ $\$383 \text{ million} - \$114.1 \text{ million}$ ] must also have the 83% ratio applied against it to get actual paid or approved for payment [ $\$268,900,000 \times 83\% = \$223,747,819$ ; Line J of Schedule JPW-9.]. This amount, \$223,747,819, is then added to \$94,940,967 for total actual Iatan Common costs of \$318,688,786 to be included in this case. (Line K of Schedule JPW-9).<sup>10</sup>*

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<sup>10</sup> Additional Direct Testimony of John P. Weisensee, May 5, 2009, p. 3, lines 5-23; p. 4, lines 1-7; Exhibits JPW-9, JPW-10, and JPW-11 (emphasis added).

16. On May 5, 2009, KCP&L also prefiled the Additional Direct Testimony of Chris B.

Giles. Mr. Giles' testimony includes the following:

Q: You mentioned the need for a regulatory asset for the remaining costs incurred for the Iatan Unit 1 AQC equipment and Iatan common costs but not included in this case. Please explain what this regulatory asset would include.

A: *Pursuant to the Joint Motion, KCP&L will only be allowed to include in this rate case actual costs paid or approved for payment through April 30, 2009 for Iatan Unit 1 and Iatan common costs. As detailed in Mr. Weisensee's Additional Direct Testimony, this accounts for only 83% of the Control Budget for the Unit 1 project. This percentage was also applied to the Iatan common cost included in the Unit 2 Control Budget, leaving an estimated \$126 million (total project basis) of the Unit 1 AQC and Iatan common costs until KCP&L's next rate case. ...*<sup>11</sup>

17. KCP&L witnesses are attempting to label as "actual costs" for Iatan common plant in service amounts that it has derived by applying "ratios" based on Iatan Unit 2 actual costs compared to Iatan Unit 2 forecasted costs (the Control Budget). Both Mr. Weisensee and Mr. Giles make this effort, an exercise in mental gymnastics lacking any credibility.<sup>12</sup> KCP&L has been given an additional two months to calculate the *actual costs* for Iatan common plant *paid or approved for payment* through April 30, 2009 (as agreed to in the Joint Motion), yet the Company is still unable to provide actual cost data – but instead again presents *ratios* based upon *estimations* of the Iatan common costs.

18. KCP&L has breached the agreement reached in March that "KCP&L's Direct Testimony will only include testimony directly related to "*actual costs* for Iatan Unit 1 and Iatan

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<sup>11</sup> Additional Direct Testimony of Chris B. Giles, May 5, 2009, p. 8, lines 20-26; p. 9, lines 1-3. (emphasis added).

<sup>12</sup> When asked whether the additional direct testimony being filed by KCP&L complies with the Joint Motion directives, Mr. Giles states that "KCP&L witness Mr. John Weisensee's Additional Direct Testimony sets forth the Iatan Unit 1 costs paid or approved for payment through April 30, 2009, the updated non-Iatan plant investment through March 31, 2009, and the effects of these costs on KCP&L's requested overall increase." Additional Direct Testimony of Chris B. Giles, May 5, 2009, p. 6, lines 11-16. Mr. Weisensee testifies at length about how KCP&L allegedly determined the amount of *actual Iatan common costs* to include in this case, yet references "ratios" and based upon "forecasted" or "Control Budget" calculations. Additional Direct Testimony of John P. Weisensee, May 5, 2009, p. 3, lines 5-23; p. 4, lines 1-12; p. 5, lines 1-6; Exhibits JPW-9, JPW-10, JPW-11.



*common costs paid or approved for payment through April 30, 2009.*” The Joint Motion states that The testimony and exhibits referencing Iatan common plant cost estimations derived from ratios is in direct contravention of the language of the March 6, 2009 Joint Motion *and* the Commission’s Revised Scheduling Order.

19. While KCP&L attempts to characterize its updated Iatan common costs as “actual costs,” it is more than evident the common cost amounts provided are nothing more than estimates derived from ratios. This is not what the parties agreed to in March in agreeing to give KCP&L additional time to submit actual costs of “*actual costs for Iatan Unit 1 and Iatan common costs paid or approved for payment through April 30, 2009.*”<sup>13</sup>

20. KCP&L has been given more than ample time to present verifiable evidence of the actual costs of Iatan common plant. The Company was allowed to postpone the filing beyond the date provided for in the regulatory plan. This proceeding was further delayed because of KCP&L’s failure to provide accurate, verifiable data on the common costs. Now, after that additional two month extension in the procedural schedule, the Company again submits estimations of costs rather than the actual costs, paid or approved to be paid, of the Iatan common plant. The time has come for KCP&L to be held accountable by this Commission. All additional testimony by KCP&L regarding Iatan common costs derived from ratios and estimates (Weisensee and Giles) and any additional direct testimony or additional rebuttal testimony regarding the estimated costs contained in Mr. Weisensee’s and Mr. Giles’ additional testimony should be stricken from the record.

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<sup>13</sup> Revised Scheduling Order, ¶ 10 (emphasis added). *See also*, Joint Motion, ¶ 10.

**A. The Additional Testimony of Chris B. Giles and John P. Weisensee Related to the Creation of a Regulatory Asset Should be Stricken From the Record.**

21. The May 5, 2009, additional direct testimony of Mr. Weisensee and Mr. Giles also addresses the creation of a regulatory asset for Iatan Unit 1 and Iatan common costs not included in plant-in-service in this rate case.<sup>14</sup> This additional direct testimony is not directly related to *actual costs* for Iatan Unit 1 and Iatan common costs *paid or approved for payment* through April 30, 2009, or directly related to the updated costs on non-Iatan plant through March 31, 2009, as addressed in KCP&L's rebuttal testimony.

22. KCP&L should be held to the agreement memorialized in the Joint Motion and accepted by the Commission in its Revised Scheduling Order. The testimony by Mr. Weisensee and Mr. Giles regarding a regulatory asset for costs not included in plant-in-service in this rate case should be stricken from the record.

**III. CONCLUSION**

23. WHEREFORE, CURB respectfully requests the Commission grant its motion for an expedited order striking portions of the additional testimony of Chris B. Giles and John P. Weisensee and related exhibits, including:

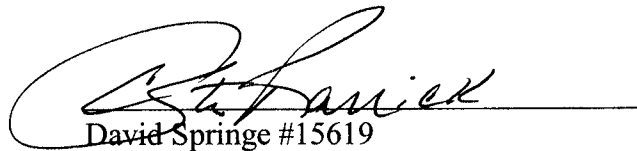
- Testimony related to Iatan Common Costs based on ratios and estimations:
  - Additional Direct Testimony of John P. Weisensee, May 5, 2009, p. 3, lines 5-23; p. 4, lines 1-12; p. 5, lines 1-6; Exhibits JPW-9, JPW-10, and JPW-11.
  - Additional Direct Testimony of Chris B. Giles, May 5, 2009, p. 6, lines 11-16; p. 8, lines 20-26; p. 9, lines 1-3.
- Testimony related to the creation of a regulatory asset for costs not included in plant-in-service in this rate case:

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<sup>14</sup> Additional Direct Testimony of John P. Weisensee, May 5, 2009, p. 5, lines 7-21; p. 6, lines 1-22; Exhibits JPW-9, JPW-10, and JPW-11. Additional Direct Testimony of Chris B. Giles, May 5, 2009, p. 2, lines 8-11; p. 8, lines 20-26; p. 9, lines 1-23; p. 10, lines 1-23; p. 11, lines 1-22; p. 12, lines 1-2.

- Additional Direct Testimony of John P. Weisensee, May 5, 2009, p. 5, lines 7-21; p. 6, lines 1-22; Exhibits JPW-9, JPW-10, and JPW-11.
- Additional Direct Testimony of Chris B. Giles, May 5, 2009, p. 2, lines 8-11; p. 8, lines 20-26; p. 9, lines 1-23; p. 10, lines 1-23; p. 11, lines 1-22; p. 12, lines 1-2.
- Any additional direct testimony and additional rebuttal testimony related to Mr. Weisensee's and Giles' proposal for a regulatory asset.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", is written over a horizontal line.

David Springe #15619

Niki Christopher #19311

C. Steven Rarrick #13127

Citizens' Utility Ratepayer Board

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**VERIFICATION**

STATE OF KANSAS                    )  
  )  
COUNTY OF SHAWNEE            )

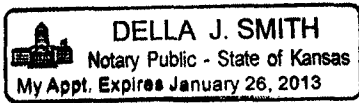
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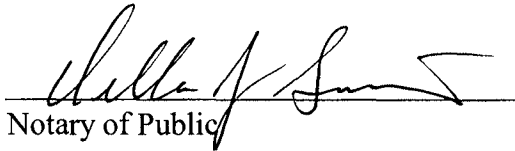
I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the above named petitioner; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

  
C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 8<sup>th</sup> day of June, 2009.



  
Notary of Public

My Commission expires: 01-26-2013.

**CERTIFICATE OF SERVICE**

09-KCPE-246-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, e-mailed, or hand-delivered this 8th day of June, 2009, to the following:

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09-KCPE-246-RTS

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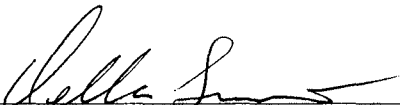
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