

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

DEC 15 2011

In the Matter of a General Investigation of )  
Energy-Efficiency Policies for Utility )  
Sponsored Energy-Efficiency Programs )

by  
State Corporation Commission  
of Kansas  
Docket No. 12-GIMX-337-GIV

**RESPONSE OF THE CITIZENS' UTILITY RATEPAYER BOARD  
TO STAFF'S PROPOSED LIST OF ISSUES FOR CONSIDERATION**

The Citizens' Utility Ratepayer Board ("CURB") submits the following comments and response to Staff's Proposed List of Issues for Consideration in This General Investigation

Docket:

**I. Introduction**

CURB supports finding ways to make cost-effective, economically-beneficial energy-efficiency programs available to consumers. Staff's list of proposed issues focuses solely on cost recovery for utilities and how to make energy-efficiency programs a profitable venture for utilities in Kansas.

CURB is concerned with the nature of the issues for consideration provided by Staff in this proceeding. Staff indicates that it has had difficulties in applying the Commission's policies from the 08-GIMX-441-GIV ("441 Docket") and 08-GIMX-442-GIV ("442 Docket") dockets, in light of new "economic and utility operational realities."<sup>1</sup> However, Staff never really discusses what these new economic and utility operational realities are. By "new" economic realities, CURB presumes that Staff is referring the downward economic trends that both Kansas and the United States have been experiencing since 2008. However, this downward economic trend, and its correlation to decreased energy consumption and rising utility rates were discussed at length

<sup>1</sup> KCC Docket 12-GIMX-337-GIV, *Order Opening Docket, Setting Prehearing Conference and Appointing Prehearing Officer*, Exhibit A at page 2.

and taken into consideration in the Commission's orders in the 441 and 442 Dockets. CURB further presumes that Staff's reference to new utility operational realities is that referring to the current status of some regulated electric utilities in Kansas that currently have excess capacity resources and are projected to have excess capacity resources nearly a decade into the future. If the reality that utilities have excess capacity for the next ten years or more has changed the game plan for energy-efficiency programs, then the Commission should focus its investigation on whether it makes sense for utilities to continue offering certain energy-efficiency programs at all.

The 441 and 442 Dockets were never intended to be a bright-line rule for utility sponsored energy-efficiency programs. Rather, they were intended to lay the "foundation for the Commission to continue to develop energy-efficiency policy as it delves further into these issues and educates itself."<sup>2</sup> Further, the Commission and many parties expressed their preference in the 441 and 442 Dockets to address these complex and technical issues on a "case-by-case" basis, which is exactly how the process has worked since the 441 and 442 dockets were closed. Utilities have resisted this case-by-case method of resolving these issues, instead choosing to withdraw their applications because they have been unwilling to allow the Commission to rule on their proposals on a "case-by-case" basis. If the purpose of this investigation is to provide the utilities the iron-clad guarantees they would prefer, then this investigation will not resolve unsettled issues of the 441 and 442 dockets, but will instead set out on another course altogether. In other words, if the fundamental problem with the 441 and 442 dockets is that the utilities want to offer energy-efficiency programs only if they are guaranteed cost recovery, decoupling, and performance incentives – which are precluded but also not guaranteed in the 441 or 442 dockets – then the problem is with the utilities, not with the 441 and 442 orders.

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<sup>2</sup> KCC Docket No. 10-WSEE-775-TAR, *Order Approving Partnership Between Efficiency Kansas and Westar's Simple Savings Program*, at ¶ 28.

No ratemaking process is intended to provide guaranteed revenues. The Commission has made it clear that it will consider providing incentives and alternative to traditional cost recovery methods, if it is presented with reasonable, economically-sound proposals. If the utilities aren't willing to have their proposals vetted by Staff and other parties, maybe it is the energy-efficiency proposal that isn't reasonable, not the Commission's orders in the 441 and 442 Dockets.

Finally, CURB recognizes that the Commission's Staff ("Staff") and Kansas City Power and Light ("KCPL") agree that this docket should address specific issues in order to avoid a prolonged proceeding.<sup>3</sup> However, the issues identified and developed by Staff, and presumably KCPL, are complex, highly-technical issues that have been discussed by numerous parties with the assistance of national experts, and carefully considered by the Commission since 2006. Staff's list of topics would limit consideration of new economic and operational realities on utility cost recovery methods and utility incentives for energy-efficiency programs, and not on consumers. If the Commission desires to adopt new policies regarding natural gas inclusion, performance incentives, and program cost recovery methods, policies which have cost implications for consumers, then the Commission should re-evaluate the underlying premises and approaches to energy-efficiency that were adopted in the 441 and 442 Dockets.

## **II. Additional Topics to be included on Staff's Proposed List of Issues**

CURB suggests that the following topics be included on Staff's proposed list of issues:

- What are the Commission's goals for energy-efficiency in the state of Kansas?
- If energy-efficiency is the least cost means of meeting future demand, why should consumers have to pay an incentive to make the utility provide it? Isn't it the

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<sup>3</sup> KCC Docket 12-GIMX-337-GIV, *Order Opening Docket, Setting Prehearing Conference and Appointing Prehearing Officer*, Exhibit A at page 3.

Commission's policy that the utility is obligated to provide sufficient and efficient service at the lowest reasonable cost?

- Should utilities to be required to offer energy-efficiency programs, or are energy-efficiency programs voluntary?
- If the Commission views energy-efficiency programs as voluntary, should the utility be required to utilize a cost-effective program once it is paid for and in place?
- Should a non-profit third-party administrator be used to supply energy-efficiency programs to all Kansans?
  - Would a non-profit third-party administration of energy-efficiency programs eliminate the necessity of addressing whether incentives are necessary?
  - Are there lost efficiencies when each utility has its own staff to create, implement, market, and monitor the same types of energy-efficiency programs as a neighboring utility offers?
  - How many employees should each utility be allowed to dedicate solely to energy-efficiency programs?
- If utilities are to be rewarded with incentives for performance, should there also be penalties for failure to perform?
  - Will penalties for failure to perform provide an incentive for utilities to offer the most cost-effective energy-efficiency programs?
  - Would penalties discourage utilities from offering marketing programs that don't provide real and tangible savings to consumers?

- Should consumers be required to pay today for savings that are projected many years into the future?
  - Should the utility be rewarded only at the time that verifiable savings actually occur?
  - What is the proper avoided-cost calculation? For example, if offering successful energy-efficiency programs allows the utility to delay the construction of a new generation plant for two years, is the proper avoided cost calculation the revenue requirement impact to consumers of the two year delay?
- Which of the five cost-benefit tests will the Commission place emphasis on when determining the benefits and costs of a proposed energy-efficiency program?

### **III. Comments on Staff's Proposed List of Issues**

CURB understands that this filing is not intended for arguments of the merits of Staff's issues, but rather to merely discuss which of the proposed issues should be considered during this Commission-ordered general investigation. However, the topics on Staff's proposed list are complex issues that have been debated for nearly five years: they cannot be answered simply with a "yes" or "no" response. Some additional comments are necessary to provide a context to these complex issues provided by Staff.

#### **1. Natural Gas Inclusion**

*"What should be done about Natural Gas Utilities and Energy Efficiency?"*

*"Should all proposals for Decoupling continue to have to be submitted in conjunction with EE proposals, or can a utility independently ask for Decoupling in a rate case?"*

The Commission's order in the 441 Docket permits all natural gas utilities to independently ask for decoupling in a rate case, or to submit a proposal for decoupling in conjunction with energy-efficiency proposals. The Commission's order is unambiguous and does not need further clarification.

During the 441 proceedings, decoupling was identified as a way to remove the throughput disincentive for utilities pursuing energy-efficiency programs. In the context of energy-efficiency programs, the Commission clearly stated that if a natural gas utility offers energy-efficiency programs, and the utility can show that these programs cause the utility to experience a loss of margin, the natural gas utility may seek a decoupling mechanism in conjunction with the energy-efficiency proposals.

However, the Commission recognized that decoupling involves broader considerations than the impact of energy-efficiency measures. The issue is maintaining revenue stability, which is a separate policy issue. In its order, the Commission indicated that "it will consider decoupling proposals from natural gas companies with concerns about revenue stability. Gas companies with such concerns are invited to make an application to the Commission, and the Commission will address each application on a case-by-case basis."<sup>4</sup> Therefore, the Commission set forth a clear policy for considering decoupling proposals, and did not create barriers to their approval.

## **2. Performance Incentives**

### **A. "Are demand response programs eligible for incentives?"**

CURB agrees that this is a topic that could use further Commission clarification. In its order in the 441 Docket, the Commission indicated that it favors the "implementation of DR

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<sup>4</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at ¶60.

programs as a means of mitigating the need of expensive new power generation.”<sup>5</sup> The Commission further recognized that “utilities may have more reason to independently pursue DR programs, such as to meet their duty of providing reliable power, for example, without the need for additional incentives or decoupling,” and went on to cite several examples of DR programs that have already been implemented to support its statements. The Commission concluded by stating that “decoupling and performance incentives may be less appropriate for these types of programs, and the Commission will take these differences into consideration when evaluating program proposals.”<sup>6</sup> The Commission’s order implies that demand response programs are not eligible for performance incentives, but stops short of denying performance incentives for demand response programs. CURB agrees that the Commission should clarify whether it intends to allow performance incentives for DR programs.

**B. “What type of incentive mechanism is appropriate?”**

The Commission’s order in the 441 Docket identified the shared savings performance incentive as the most appropriate. The Commission indicated in the 441 Docket that of the three types of performance incentives generally considered – performance target incentives, shared savings incentives, and rate of return (cost capitalization) incentives – that it “favors the shared benefit approach to performance incentives. This incentive mechanism provides for the sharing of some percentage of net benefits of an energy efficiency program with the utility.”<sup>7</sup>

The Commission further addressed other issues concerning performance incentive mechanisms in its order in the 441 Docket. The Commission stated that it “is reluctant to provide additional incentives, resulting in increased costs to customers, for energy efficiency programs.

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<sup>5</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at ¶10.

<sup>6</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at ¶10.

<sup>7</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at ¶99.

If energy efficiency inherently does not result in the same amount of ratebasing, or capitalized costs, that is simply reflective of the nature of the resource.”<sup>8</sup> However, despite the Commission’s reluctance to provide performance incentives, it did say that it would consider “proposals for shared savings performance incentive plans where tied to specific energy efficiency programs the Commission believes most desirable ...”<sup>9</sup>

CURB finds it troubling that Staff’s list of issues implies that the Commission’s order in the 441 regarding performance incentive mechanisms was somehow unfair or inequitable to the utilities. Staff provided the following topics on its list of topics for discussion in this proceeding:

*“Should the utilities be **forced** to prove savings before they get an incentive?*

*(emphasis added) or “(s)hould utilities be allowed to forecast savings and collect incentives before or as they are theoretically occurring?”*

While CURB recognizes these comments in this proceeding are not intended to provide argument for the proposed issues, there is an evident bias towards the utilities in the wording of this statement. CURB suggests that if this investigation is to consider whether utilities will be “**forced to prove savings**” before receiving a performance incentive, then the following issue must also be considered in conjunction in this proceeding:

*“Should ratepayers, in addition to paying 100% of energy-efficiency program costs, be **forced to pay** performance incentives now for the possibility of savings gained from energy-efficiency programs in the future, before the utility shows that its energy-efficiency program has actually resulted any savings?”*

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<sup>8</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at ¶94.

<sup>9</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at page 38.

C. *“How are savings to be estimated?”*

The Commission’s order regarding savings estimates is clear and does not require further clarification in this proceeding. In the 442 Docket, the Commission expressed “its strong preference for use of the standard and widely accepted DEER database until Kansas data can be developed. The Commission finds that DEER energy savings estimates should be used until the first EM&V review two years after the project is completed.”<sup>10</sup> These savings are presented by the utility to the Commission as part of the application for energy-efficiency program proposals, not as part of the verification of actual savings.

Staff also included the following question, presumably to be considered in conjunction with how savings are to be estimated:

*“Should the utility be forced to show a reduction in sales due to an energy efficiency program?”*

CURB doesn’t understand why Staff has included the issue of utilities being forced to show a reduction in sales due to an energy efficiency program. Providing estimates of savings occurs in the development and approval stage of energy-efficiency programs, which means the programs have not yet provided any reduction in utility sales. Providing evidence to support proposals is always a requirement in KCC proceedings: why is this issue meriting discussion in this docket? Further, once a program has been implemented, managed, and offered to consumers for two years, an EM&V would verify any actual savings gained by the energy-efficiency program and then compare actual savings to the estimated savings provided in the utility’s application.

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<sup>10</sup> KCC Docket No. 08-GIMX-442-GIV, *Order Following Collaborative on Benefit-Cost Testing and Evaluation, Measurement, and Verification*, at ¶ 88.

CURB recommends that this issue be further clarified before the merits of the topic are debated by parties in this proceeding. If Staff intended instead to ask whether energy-efficiency programs must provide reductions in sales to be approved, or whether utilities should be allowed to recover reductions in sales based on estimates, Staff's list should be revised to so state these questions. As it stands, this question is ambiguous and implies that requiring the utilities to provide evidence supporting a reduction in sales to obtain recovery from customers if "forcing" them to do something which any applicant before the Commission is required to do.

**D. *"Are incentives appropriate if programs are not large enough to warrant EM&V?"***

This question should be stricken from the list of topics. If an energy-efficiency program is so small that it is unnecessary to (1) verify that the program is doing what it is supposed to do, (2) measure the program effects and costs, (3) evaluate whether the program created the benefits it was designed to create, then why would the utility be rewarded performance incentives? Staff's proposed issue seems to suggest that it would be appropriate for ratepayers to pay financial incentives to the utility for simply offering an energy efficiency program, even if it provides no benefits. Such a policy would encourage utilities to offer small, non-cost-effective energy-efficiency programs, because the utility could avoid an EM&V and yet still receive a performance incentive based upon a hypothetical savings number that would never be verified.

This topic does not merit discussion in this proceeding. The Commission's Orders require that an EM&V proposal be included in a utility's application and the Commission has identified the types of programs that would be eligible for performance incentives. In its order in the 442 Docket that Commission stated that EM&V "constitutes an important aspect of program design, and the Commission will expect program proposals to include an EM&V plan for Commission

review and approval,”<sup>11</sup> and that “the Commission recognizes consistency in EM&V is important.”<sup>12</sup> In its order in the 441 Docket, the Commission clearly stated that it will consider performance incentives for an application involving energy efficiency program proposals that meet either or both of the following goals:

1. Proposals for programs that target low and fixed-income customers, and renters, and
2. Proposals that target new and existing residential housing and demonstrate a potential for long-term energy savings utilizing a comprehensive whole house concept.<sup>13</sup>

The Commission’s guidelines are clear and do not require any further clarification in this proceeding.

**E. “Can Performance Incentives be in conjunction with Lost Margin Recovery Mechanisms?”**

Before discussing whether or not this question should be further discussed by the parties in this proceeding, it is important to revisit the underlying premise of who energy-efficiency programs are intended to benefit. If ratepayers are required to pay the entire cost of an energy-efficiency program, and then pay the utility for the revenues that are lost because of the energy-efficiency program, and then pay the utility a bonus performance incentive for the energy-efficiency program, then who is really benefiting from the program?

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<sup>11</sup> KCC Docket No. 08-GIMX-442-GIV, *Order Setting Energy Efficiency Policy Goals, Determining a Benefit-Cost Test Framework, and Engaging a Collaborative Process to Develop Benefit-Cost Test Technical Matters and an Evaluation, Measurement, and Verification Scheme*, at ¶49.

<sup>12</sup> *Id.*, at ¶ 51.

<sup>13</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at ¶97.

Further, this issue should be eliminated from this list because the Commission's order in the 441 Docket addressed both performance incentive mechanisms and lost margin recovery mechanisms. Neither of these topics requires further discussion.

The Commission indicated that it "does not favor Lost Margin Recovery" because these mechanisms are too administratively burdensome and have "increased potential for expensive and time-consuming litigation arising from disputes."<sup>14</sup> The Commission later clarified in Docket No. 10-WSEE-775-TAR ("775 Docket") that while it indicated that it "does not favor" lost margin recovery mechanisms, that it did not say that it "will not consider" these forms of mechanisms.<sup>15</sup> The Commission further explained that it is "willing to consider varying forms of recovery tied to programs that the Commission believes will achieve its established goal of utilizing energy efficiency as a resource to achieve a balanced approach between traditional and alternative energy sources to meet Kansas energy needs."<sup>16</sup> Further, the Commission noted that "while Commission staff expertise is growing in this highly technical field, at this time the Commission does not have the depth of experience available to consider this method without reliance on outside firms."<sup>17</sup>

**F. "Should the recovery of lost revenue be allowed?"**

See CURB's response to Staff issue 3E. Based on the Commission's order in the 441 Docket and the further clarification provided by the Commission in the 775 Docket, this topic does not require further clarification in this proceeding.

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<sup>14</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at ¶97.

<sup>15</sup> KCC Docket No. 10-WSEE-775-TAR, *Order Approving Partnership Between Efficiency Kansas and Westar's Simple Savings Program*, at ¶27.

<sup>16</sup> KCC Docket No. 10-WSEE-775-TAR, *Order Approving Partnership Between Efficiency Kansas and Westar's Simple Savings Program*, at ¶ 27.

<sup>17</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at ¶68.

### 3. Program Cost Recovery

#### A. *“Should all of the utilities be granted a cost recovery rider like Westar?”*

The Commission’s order in the 441 Docket and its previous approval of utility energy-efficiency riders (“EER”) are clear. The topic of cost recovery does not require further investigation in this proceeding.

Further, CURB does not understand what Staff means by “like Westar”. Westar currently has an EER in effect. This rider allows Westar to recover costs spent on Commission approved energy-efficiency programs over a set period of time, usually one year. Westar accumulates energy-efficiency costs in a regulatory asset in accordance with the Commission’s order in the 441 Docket and then presents an application to the Commission and its Staff for approval of cost recovery of this deferred amount. KCP&L currently has the same type of cost recovery mechanism in place. Empire Electric recently filed its first EER using the Commission’s cost recovery guidelines established in the 441 Docket. Each of these three EERs are functionally the same – requiring the utility to first incur and track costs associated with Commission-approved energy-efficiency programs, then seek Commission approval for an EER, which would allow the utility to recover these costs on a per kWh method. Any utility is free to apply for an EER, so there is no need to discuss this issue.

#### B. *“Can forecasted data be used for program cost recovery or must it be actual data?”*

As stated above, the Commission has already established the energy-efficiency rider mechanism as an effective cost recovery method for energy-efficiency costs. The rider mechanism that was endorsed by the Commission in the 441 Docket and later approved for both

Westar and KCP&L, is “relatively clear and straight-forward.”<sup>18</sup> The Commission has further clarified that the energy-efficiency rider should be “implemented in a manner that maintains the Commission’s responsibility to review costs for prudence.”<sup>19</sup>

In the various energy-efficiency filings that have been filed with the Commission since the commencement of the 441 and 442 Orders, Staff has applied the Commission’s guidelines on historical cost recovery in each docket, and recommended the Commission deny utility applications that sought forward-looking cost recovery mechanisms that would allow them to recover estimated costs. The current cost recovery mechanisms that are in place for both Westar and KCP&L accomplish the Commission goals and meet the requirements set forth in the 441 Docket. This issue does not require further clarification in this proceeding.

**C. *“How much cost must be incurred before the cost is significant enough for a rider?”***

CURB agrees that it would be useful for the Commission to further clarify and define how the significance test will be applied to utilities seeking energy-efficiency cost-recovery. According the Commission’s order in the 441 Docket, for a rider to be implemented, program costs should be “significant”. The Commission explained that “significant” simply means a “level of expense necessary to justify putting a rider on customers’ bills.”<sup>20</sup> The Commission further indicated that it may consider using ½% of base revenue as a useful measure. While the Commission did not quantify what is “significant” enough to warrant an EER, the Commission Staff later argued how the significance rule is to be applied. In the 775 Docket, CURB argued that Westar’s request for a shared savings mechanism did not meet the Commission’s ½%

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<sup>18</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at ¶29.

<sup>19</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at ¶32.

<sup>20</sup> KCC Docket No. 08-GIMX-441-GIV, *Final Order*, at ¶36.

significance test. Staff countered that Westar did not “propose to insert a new rider to recover lost margins in this docket, but would utilize the existing EER for recovery.”<sup>21</sup>

It seems relatively straightforward that the significance test referred to by Staff and the Commission in the 441 Docket refers to the threshold for initial approval of the creation of another line item on consumer’s bills. Once this rider has been established on consumers’ bills, the utility is no longer required to spend at least ½% of its base revenues on energy-efficiency programs in order to seek cost recovery. However, CURB believes it would be useful for the Commission to clearly state how it intended the significance test to be applied: as a threshold for utilities seeking initial approval of a rider for energy-efficiency program cost recovery.

**D. “Should riders be fixed or usage-based?”**

The method of cost-recovery – whether fixed or usage based – was not addressed by the Commission in either the 441 or 442 Dockets. However, the Commission approved both Westar’s and KCP&L’s energy-efficiency riders – which are usage-based, and allow for an annual true-up of actual recovered costs. As previously stated, the Commission has chosen to address many energy-efficiency topics on a case-by-case basis. The Commission did not address whether or not a rider should be fixed or usage-based presumably because it intended utilities to present cost-recovery applications that made the most sense for the utility. CURB sees no reason why this topic – which is new to both the 441 and 442 – should require further clarification in this proceeding.

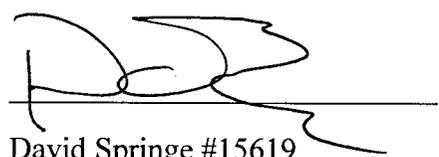
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<sup>21</sup> KCC Docket No. 10-WSEE-775-TAR, *Order Approving Partnership Between Efficiency Kansas and Westar’s Simple Savings Program*, at ¶22.

E. *“What is the Commission’s position regarding Lost Margin Recovery?”*

The parties are not able to answer this question. Only the Commission can state what its position is concerning lost revenue recovery mechanisms. The topic has previously been addressed by the Commission in the 441 Docket and then further clarified in the 775 Docket. It does not need further clarification in this proceeding. This question should be eliminated from the list.

Respectfully submitted,



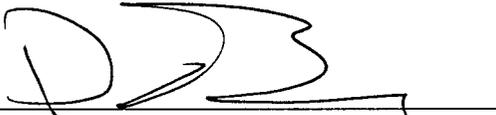
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VERIFICATION

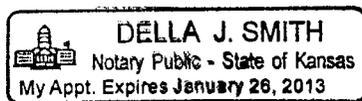
STATE OF KANSAS                    )  
COUNTY OF SHAWNEE            )    ss:

I, David Springe, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the Citizens' Utility Ratepayer Board, that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

  
\_\_\_\_\_  
David Springe

SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of December, 2011.



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

My Commission expires: 01-26-2013.

**CERTIFICATE OF SERVICE**

12-GIMX-337-GIV

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, electronic service or hand-delivered this 15<sup>th</sup> day of December, 2011, to the following:

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**CERTIFICATE OF SERVICE**

12-GIMX-337-GIV

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