BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Joint Application of Missouri-American Water Company and DCM Land, LLC, for a Variance from the Company's Tariff Provisions Regarding the Extension of Company Mains	)))))	Case No. WE-2021-0390

THE OFFICE OF THE PUBLIC COUNSEL'S
RESPONSE TO FEBRUARY 4, 2022 FILINGS

COMES NOW the Office of the Public Counsel (the "OPC") and files its response to Missouri-American Water Company ("MAWC"); DCM Land, LLC ("DCM"); and the Staff of the Missouri Public Service Commission's (the "Staff") February 4, 2022 filings. (Docs. 31, 32, 33).[1] The OPC respectfully states as follow:

Neither MAWC nor DCM have cited to legal authority under which the Missouri Public Service Commission (the "Commission") may grant the variances MAWC and DCM requested in the Joint Application for Variance and Motion for Waiver (the "Joint Application"). (Doc. 1). Because no legal authority exists for the Commission to grant the requested variances, the Commission should reject the Joint Application filed in this matter.

The OPC begins by responding to MAWC and DCM's arguments regarding the effect of 20 CSR 4240-2.060(4) on the Supreme Court of Missouri's decision in *State ex rel. Kennedy v. Public Service Commission*, 42 S.W.2d 349 (Mo. 1931) (hereinafter "*Kennedy*"). The OPC then turns to DCM's arguments regarding the interpretation of the *Kennedy* decision and then to the arguments pertaining to the Territorial Agreement that exists between MAWC and Public Water District No. 2 of St. Charles County, Missouri ("PWD#2"). Next, the OPC briefly addresses DCM's arguments that good cause exists to grant the variances requested in the Joint Application.

[1] References to document numbers represent the document numbers assigned in the Electronic Filing Information System ("EFIS").

Finally,[2] the OPC concludes with setting forth two alternative procedures by which MAWC may request approval from the Commission to reach it and DCM's requested result.[3]

I. The Missouri Supreme Court's Decision in *Kennedy* is Not at Odds with 20 CSR 4240-2.060(4)

Although the Commission adopted the procedure to grant an application for a waiver or variance set forth in 20 CSR 4240-2.060(4) after the Missouri Supreme Court issued its decision in *Kennedy*, nothing suggests that the Commission sought to change the requirements set forth in *Kennedy* in adopting the rule. Rather, the Commission can harmonize the requirements of *Kennedy* with the procedure set forth in 20 CSR 4240-2.060(4).

In 1931, in *Kennedy*, the Missouri Supreme Court considered whether a provision in a water utility's line extension policy as set forth in its tariff, which allowed for the Commission to grant a variance from the general rules of the line extension policy, made the rule discriminatory or presented the opportunity for discrimination. *See Kennedy*, 42 S.W.2d at 350, 352–53. The *Kennedy* Court did not invalidate the line extension policy and, referencing the waiver provision, concluded that "[w]ithout some such provision in the rule the commission could not authorize the company to make an exception in the application of its approved rule." *Id.* at 353.

Section 386.250(6) of the Revised Statutes of Missouri gives the Commission the power to adopt rules regarding conditions for rendering public utility service and billing for public utility service. *See* RSMo. § 386.250(6) (2021). Specifically, the statute states:

> The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter: . . .

[2] The OPC's silence on any position raised in any other Parties' February 4, 2022 Response should not be construed as agreement with that position.

[3] The OPC submits these as examples of lawful procedures only. It does not concede that the Commission should allow MAWC to make any such variance from its tariff rules.

> (6) To the adoption of rules as are supported by evidence as to reasonableness and which prescribe the conditions of rendering public utility service, disconnecting or refusing to reconnect public utility service and billing for public utility service. All such proposed rules shall be filed with the secretary of state and published in the Missouri Register as provided in chapter 536, and a hearing shall be held at which affected parties may present evidence as to the reasonableness of any proposed rule[.]

Id. Later, the Commission adopted 20 CSR 4240-2.060(4), which sets forth the procedure by which a party could request a variance or waiver. *See* 20 CSR 4240-2.060(4). That rule states:

> (4) In addition to the requirements of section (1), applications for variances or waivers from commission rules and tariff provisions, as well as those statutory provisions which may be waived, shall contain information as follows:
>
> (A) Specific indication of the statute, rule, or tariff from which the variance or waiver is sought;
>
> (B) The reasons for the proposed variance or waiver and a complete justification setting out the good cause for granting the variance or waiver; and
>
> (C) The name of any public utility affected by the variance or waiver.

Id.

Both MAWC and DCM urge the Commission to conclude that the procedure set forth in 20 CSR 4240-2.060(4) overrides the Missouri Supreme Court's conclusion in *Kennedy* that the Commission could not grant a variance or waiver from the rules set forth in the utility's filed tariff absent a provision that allows for such a variance or waiver. (*See* MAWC Feb. 4, 2022 Resp. ¶ 8, Doc. 33; DCM Feb. 4, 2022 Resp. ¶ 8, Doc. 32). Aside from the fact that the statute and rule post-date the *Kennedy* Court's decision, neither MAWC nor DCM cite to any legal authority to support their position. (*See id.*).

However, the Commission need not adopt an interpretation that overrides the Supreme Court's decision in *Kennedy*. Rather, the Commission should harmonize the requirements of *Kennedy* and the procedure described in 20 CSR 4240-2.060(4) by adopting a two-step requirement. Specifically, first, if a utility's tariff includes a provision that allows for a variance

or waiver from the general rules described in the tariff, then, second, 20 CSR 4240-2.060(4) provides the procedure by which a utility may request Commission authority to allow such a variance or waiver. This interpretation harmonizes *Kennedy* with both RSMo. § 386.250(6) (2021) and 20 CSR 4240-2.060(4).[4]

II. *Kennedy* Does Not Support Granting the Requested Variances

The Missouri Supreme Court in *Kennedy* addressed a situation that shares some similarities with the case currently before the Commission. Throughout its February 4, 2022 Response, DCM asserts that *Kennedy* supports its position. However, as explained in the OPC's February 4, 2022 Response, the *Kennedy* case does not support granting the variances MAWC and DCM requested in the Joint Application.

In its February 4, 2022 Response, DCM points to two of the *Kennedy* Court's statements: (1) "[d]iscrimination is not unlawful unless arbitrary or unjust" and (2) "provision was designed only to afford the possibility of such relief [i.e., a different cost sharing ratio] where, because of exceptional conditions, there may be urgent need for such relief and it may be justly granted." (DCM Feb. 4, 2022 Resp. ¶ 6 (quoting *Kennedy*, 42 S.W.2d at 352–53)). DCM then states "[t]hat is exactly the conditions that exist, in this matter; and the *Kennedy* case, [], should be found to support the granting of the variances requested herein." (*Id.*). DCM also argues that

> To find that the Commission could only grant a variance or waiver if the specific tariff expressly states that it might be varied would both (i) create discrimination, by disallowing some of the public to obtain a variance if they demonstrate special circumstances, simply because the utility that serves their area did not request to include an express statement in its tariff; and (ii) be contrary to the purpose of allowing the Commission the authority to grant a variance—i.e., the recognition

[4] The OPC maintains the position, raised in its Application for Rehearing, that 20 CSR 4240-2.060(4) is a procedural rule as opposed to a substantive rule. (*See* Appl. Rehearing 8–10, Doc. 18). *Compare Declue v. Dir. of Revenue*, 945 S.W.2d 684, 686 (Mo. Ct. App. 1997) (defining procedural regulations as those that "establish the method of enforcing rights and carrying on the suit"), *with Declue*, 945 S.W.2d at 686 (describing substantive laws as those that "define the rights and duties giving rise to the cause of action by impairing vested rights acquired under existing law, creating new obligations, or imposing new duties.").

> that there may be exceptional conditions that create an urgent need for such relief, so that the relief may be justly granted.

(*Id.* ¶ 9; *see* ¶ 26).

In making these arguments, DCM takes the *Kennedy* Court's statements out of context and fails to recognize that the *Kennedy* Court made these statements in interpreting the specific variance provision at issue in that case.

As background, the *Kennedy* case originated when a group of residents sought to have the Commission "disapprove and abrogate" a water utility's line extension rules and to require the utility "to file a new rule under which the water company would be required to make at its own expense all extensions that would not become a burden upon the company and its consumers." *Kennedy*, 42 S.W.2d at 349–50. The utility's current tariff included a provision that allowed a variance from the general line extension rules. *Id.* at 350. Specifically, the provision stated, in full:

> In exceptional cases, where extensions are requested under conditions which may appear to warrant departure from the above rules, the cost of such extensions, if requested and desired by the company, shall be borne as may be approved by the Public Service Commission of Missouri.

Id. (quoting utility's tariff). As a part of their arguments, the residents argued that this provision "ma[de] the rule discriminatory, or at least ma[de] it possible for the company under the rule to discriminate between proposed consumers." *Id.* at 352.

In determining that the specific provision at issue did not result in unjust discrimination, the Missouri Supreme Court noted that "[d]iscrimination is not unlawful unless arbitrary or unjust." *Id.* (citations omitted). The *Kennedy* court then discussed the residents' proposed rule and the utility's current rule, including the variance provision, stating:

> Under a rule such as petitioners say ought to be adopted, the question of who should bear the cost would have to be determined by the commission in each case unless the parties agreed. True, under such rule an applicant for service could invoke action by the commission, while under the exception clause of the present rule only

> the company can do so. But that provision was designed only to afford the possibility of granting relief where, because of exceptional conditions, there may be urgent need for such relief and it may justly be granted. Without some such provision in the rule the commission could not authorize the company to make an exception in the application of its approved rule.

Id. at 352–53 (citations omitted).

Considering these statements in context shows that DCM's interpretation of *Kennedy* is incorrect. Although the statement discussing discrimination is a statement of general law, DCM fails to acknowledge that granting the variances requested in the Joint Application would result in discrimination between DCM and any other developer who did not obtain a variance from MAWC's line extension policy.[5] If the Commission denies the requested waivers all of MAWC's customers would presumably be treated equally. *See In re. Appl. of The Empire Dist. Elec. Co. & Ozark Elec. Coop. for Approval of a Written Territorial Agreement Designating the Boundaries of Exclusive Serv. Areas for Each Within Two Tracts of Land in Greene Cty. & Christian Cty., Mo.*, 2007 Mo. PSC LEXIS 148, *8–*9 (2007) (hereinafter "*Empire Appl.*") (denying the utility's request for a variance from its tariff and the Commission's rules in 20 CSR 4240-14.020 because the "proposal constitutes an undue preference for developers of a single subdivision" and "there seem[ed] to be insufficient justification for giving a special rate to the developer of this single subdivision").

Also, the *Kennedy* Court made the second statement to which DCM points the Commission's attention when it interpreted the specific variance provision at issue. *See Kennedy*, 42 S.W.2d at 352. The *Kennedy* Court did not conclude that under any circumstance exceptional conditions may create an urgent need for a variance. *See id.* at 353. Rather, after referring to the

[5] In its responses to the Commission's factual inquiries MAWC stated that with regard to the requested variance from PSC MO. No. 13, 1st Revised Sheet No. R 48, Rule 23A.2, "Developers were only able to recoup funds for those connections that occurred within the currently specified timeframe. However, no prior developer has requested a variance based on similar facts." (MAWC Feb. 4, 2022 Resp. App. A 2, Doc. 33).

specific variance provision at issue, which included that language, the court stated "[b]ut that provision was designed only to afford the possibility of granting relief where, because of exceptional conditions, there may be urgent need for such relief and it may justly be granted." *Id.* The *Kennedy* Court then concluded that "[w]ithout some such provision in the rule the commission could not authorize the company to make an exception in the application of its approved rule." *Id.*

Kennedy does not support granting the requested variances. Rather, as explained in the OPC's February 4, 2022 Response, *Kennedy* supports a finding that because MAWC's line extension policy, as included in its filed tariff does not include a provision allowing variances, the Commission has no authority to grant MAWC and DCM's requested variances.[6] (*See* OPC Feb. 4, 2022 Resp. 5–7, Doc. 30 (citing *Kennedy*, 42 S.W.2d at 353)).

III. The Territorial Agreement Places Cottleville Trails in MAWC's Service Territory, Therefore DCM's Arguments Regarding PWD#2's Cost of Service Are Irrelevant

Although agreeing that "this is not the case to challenge the Territorial Agreement," DCM makes several statements throughout its February 4, 2022 Response that take issue with the Territorial Agreement. (*See, e.g.*, DCM Feb. 4, 2022 Resp. ¶¶ 18–19, 23, 27, 29, 31). This is not the case for the Commission to consider DCM's challenges to the Territorial Agreement. Because the Territorial Agreement places Cottleville Trails' location within MAWC's exclusive service territory, PWD#2 cannot serve Cottleville Trails and its costs of service are irrelevant.

Section 247.172(1) of the Revised Statutes of Missouri allows public water supply districts, such as PWD#2, and water corporations subject to public service commission jurisdiction, such as

[6] In support of their positions that the Commission has the authority to grant the requested variances, both MAWC and DCM point out that the Commission has granted such waivers or variances from tariff provisions in the past. (*See* MAWC Feb. 4, 2022 Resp. ¶ 9; DCM Feb. 4, 2022 Resp. ¶ 10). However, "an administrative agency is not bound by *stare decisis*." *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003) (citations omitted). Further, the Commission has also denied a utility's request for a variance when it concluded that the request "constitutes an undue preference for developers of a single subdivision." *See Empire Appl.*, 2007 Mo. PSC LEXIS 148, at *8–*9.

MAWC, to enter into written territorial agreements in place of competing to sell and distribute water. *See* RSMo. § 247.172(1) (2001).[7] Specifically, the statute states "Competition to sell and distribute water, as between and among public water supply districts, water corporations subject to public service commission jurisdiction, and municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section." *Id.* The statute goes on to specify that "[s]uch territorial agreements shall specifically designate the boundaries of the water service area of each water supplier subject to the agreement." *Id.* § 247.172(2) (2001). In order for territorial agreements made pursuant to this statute to take effect, they must receive "approval of the public service commission by report and order." *Id.* § 247.172(3) (2001). The statute sets forth the process by which the Commission may approve a territorial agreement and states that the Commission "may approve the application if it shall after a hearing determine that approval of the territorial agreement in total is not detrimental to the public interest." *Id.* § 247.172(4) (2001).

As a part of the Stipulation of Facts, MAWC, DCM, the Staff, and the OPC (collectively, the "Parties") agreed that

> Cottleville Trails is located within the exclusive service area of MAWC in the Territorial Agreement between MAWC and [PWD#2] . . . that the Commission approved in Case No. WO-2001-441 on May 15, 2001, as amended by an Addendum to the Agreement approved by the Commission on November 15, 2011, in Case No. WO-2012-0088[].

[7] Because the Commission approved the Territorial Agreement in 2001, the OPC provides citations to RSMo. § 247.172 (2001). The OPC notes that the revisions to the statute since 2001 do not substantively affect the argument here. *Compare* RSMo. § 247.172 (2001), *with* RSMo. § 247.172 (2021). However, the OPC will draw the Commission's attention to three changes. First, sometime after 2001, the legislature created subsection 3 from a part of subsection 2, resulting in the subsection that requires commission approval before a territorial agreement becomes effective moving from subsection 3, in 2001, to subsection 4, in 2021. *Id.* Second, this change also resulted in the subsection requiring the Commission to find that a territorial agreement is "not detrimental to the public interest" moving from subsection 4, in 2001, to subsection 5, in 2021. *Id.* Finally, between 2001 and 2021, the legislature changed the statute to allow the Commission to approve a territorial agreement without a hearing if the parties submit a stipulation and agreement and agree to waive the hearing. *Compare* RSMo. § 247.172(4) (2001) (requiring the commission to hold an evidentiary hearing in all cases), *with* RSMo. § 247.172(5) (2021) (requiring the commission to hold an evidentiary hearing, unless all parties submit a stipulation and agreement and agree to waive the hearing).

(Stipulation of Facts ¶ 5, Doc. 13).

By entering into the Territorial Agreement, MAWC and PWD#2 agreed to displace competition to sell and distribute water in Cottleville Trails' location and designated the boundaries of both MAWC and PWD#2's water service area.[8] *See* RSMo. §§ 247.172(1)–(2) (2001). The Territorial Agreement became effective upon the Commission's approval of it and its Addendum. *See id.* § 247.172(3) (2001); (Stipulation of Facts ¶ 5). Further, the Parties to this case agree that "Cottleville Trails is located within the exclusive service area of MAWC in the Territorial Agreement between MAWC and [PWD#2]." (Stipulation of Facts ¶ 5). Therefore, only MAWC can sell and distribute water to Cottleville Trails. *See* RSMo. §§ 247.172(1)–(2) (2001). DCM's statements in its February 4, 2022 Response that appear to challenge the Territorial Agreement in this case create a distraction only.[9]

IV. If the Commission Concludes that Legal Authority Exists that Allows it to Grant the Requested Variances, No Good Cause Exists to Grant Them

Although the OPC maintains that no legal authority exists for the Commission to grant the requested variances, the OPC will respond to DCM's good cause arguments. If the Commission concludes that it has the legal authority to grant the requested variances, no good cause exists to grant them.

[8] In its February 4, 2022 Response DCM states that "[t]he Cottleville Trails development is located within PWD[#]2's annexed area and, therefore, this section of PWD[#]2's territory is *within* MAWC's service territory." (DCM Feb. 4, 2022 Resp. ¶ 28 (emphasis in original)). This statement is puzzling. A territorial agreement entered into between a public water supply district and a water corporation must "specifically designate the boundaries of the water service area of each water supplier subject to the agreement." RSMo. § 247.172(2) (2001). Also, the Parties agree that "Cottleville Trails is located within the *exclusive* service area of MAWC in the Territorial Agreement between MAWC and [PWD#2]." (Stipulation of Facts ¶ 5 (emphasis added)). Therefore, only MAWC may provide water service to Cottleville Trails. *See* RSMo. §§ 247.172(1)–(3) (2001).

[9] For instance, DCM states that it "does not believe it is appropriate for utility service to be significantly higher cost, in order to protect monopolistic service territory of a public utility, when a significantly lower cost service alternative is ready and able to serve." (DCM Feb. 4, 2022 Resp. ¶ 19). However, this statement ignores that because of the Territorial Agreement, PWD#2 cannot serve Cottleville Trails. *See* RSMo. §§ 247.172(1)–(3) (2001).

In general, in its February 4, 2022 Response, DCM appears to rely on three principal good cause arguments: (1) PWD#2 offers a lower cost of service; (2) neither DCM nor its predecessor in interest received notice of the Territorial Agreement; and (3) discrimination would exist if the Commission does not grant the variances. The OPC will briefly respond to each argument in turn.

A. Because PWD#2 Cannot Provide Water Service to Cottleville Trails, its Cost of Service is Irrelevant

Because the Territorial Agreement places Cottleville Trails within MAWC's exclusive service area, DCM's arguments that PWD#2 offers a lower cost of service are irrelevant. (*See, e.g.,* DCM Feb. 4, 2022 ¶¶ 16, 27–32). The Commission has concluded that the Territorial Agreement "is not detrimental to the public interest" and approved it. *See* RSMo. § 247.172(4) (2001) (stating that "[t]he commission may approve the application if it shall after hearing determine that approval of the territorial agreement in total is not detrimental to the public interest."). Pursuant to the Territorial Agreement, PWD#2 cannot provide water service to Cottleville Trails. *See* RSMo. § 247.172(2) (requiring territorial agreements to "specifically designate the boundaries of the water service area of each water supplier subject to the agreement"). Further, the Parties agree that Cottleville Trails is located within the exclusive service area of MAWC in the Territorial Agreement between MAWC and PWD#2. (Stipulation of Facts ¶ 5). Therefore, PWD#2's cost of service does not affect whether good cause exists to grant a variance from MAWC's tariff.

B. DCM's Argument That It Should Have Received Notice of the Territorial Agreement is Irrelevant

Similarly, DCM's arguments relating to notice of the Territorial Agreement are red herrings. (*See, e.g.*, DCM Feb. 4, 2022 Resp. ¶¶ 27, 34–36). For instance, DCM argues that neither it nor "any of its predecessors in interest who owned the property sought to be developed ever received any direct notice of the application for or approval of the Territor[ial] Agreement; and

there is nothing in the records of the Recorder of Deeds to give notice of the existence of such agreement." (*Id.* ¶ 34).

In its February 4, 2022 Response, DCM "agrees that this is not the case to challenge the Territorial Agreement." (*Id.* ¶ 18). If DCM seeks to raise a challenge to the validity of the Territorial Agreement based on any notice that it believes it should have received, it may do so in a separate case. *See* RSMo. § 247.172(7) (2021). However, it should not affect the Commission's consideration in this case. This case focuses on a request for a variance from MAWC's line extension policy and whether the Commission has the legal authority to grant such a variance. Whether DCM or its predecessors in interest received notice of the Territorial Agreement is not relevant to Commission's decision here.

C. <u>Discrimination Will Result if the Commission Grants the Requested Variances</u>

Finally, DCM appears to raise an argument that discrimination will result if the Commission does not grant the requested variances. As the basis for this argument, DCM points to the fact that it cannot take advantage of the more favorable line extension policy offered by PWD#2, while a developer operating in PWD#2's service territory could take advantage of it. (*See* DCM Feb. 4, 2022 Resp. ¶¶ 9, 23). This argument fails to recognize the discrimination that would occur amongst MAWC's customers if the Commission allowed MAWC to vary from its tariff rules for DCM only and not other developers who may seek to develop land within MAWC's service territory. Therefore, such a position cannot form the basis of any good cause to grant the requested variances. *Empire Appl.*, 2007 Mo. PSC LEXIS 148, at *8–*9 (denying the utility's request for a variance from its tariff and the Commission's rules in 20 CSR 4240-14.020 because the "proposal constitutes an undue preference for developers of a single subdivision" and "there

seem[ed] to be insufficient justification for giving a special rate to the developer of this single subdivision").

V. At Least Two Alternatives Provide Lawful Procedures By Which MAWC Could Request Commission Authority to Reach it and DCM's Requested Result

If MAWC wishes to grant DCM the requested variances, at least two lawful procedures exist by which it could request Commission authority to do so: (1) a modification to MAWC's line extension policy; and (2) an amendment to the Territorial Agreement that exists between MAWC and PWD#2. The OPC does not concede that the Commission should allow MAWC to amend its line extension policy, grant a variance requested under any proposed modification of that policy, or allow MAWC and PWD#2 to amend their Territorial Agreement. The OPC simply notes that these would be lawful *procedures* by which MAWC and DCM could request their relief.

First, MAWC could file proposed tariffs to modify its line extension policy by adding a provision, similar to that interpreted by the Supreme Court of Missouri in *Kennedy*. If the Commission approves MAWC's request for a modification, then MAWC could seek Commission approval to grant DCM a variance pursuant to the new provision. *See Kennedy*, 42 S.W.2d at 350, 352–53 (concluding that without a provision in the water company's tariff allowing for variances from the line extension policy, "the commission could not authorize the company to make an exception in the application of its approved rule.")

Second, MAWC and PWD#2 could request that the Commission amend the Territorial Agreement that exists between them. The Commission approved the Territorial Agreement in Case Number WO-2001-441 and an amendment to it in Case Number WO-2012-0088. (Stipulation of Facts ¶ 5). MAWC and PWD#2 could request an additional amendment to the Territorial Agreement to place Cottleville Trails in PWD#2's service area. This would presumably allow DCM to take advantage of PWD#2's line extension policy. *See* RSMo. §§ 247.172(1)–(2)

and (4) (2021) (recognizing that a public water supply district and a water corporation may enter into a territorial agreement to displace competition to sell and distribute water, that such territorial agreement "shall specifically designate the boundaries of the water service area of each water supplier subject to the agreement," and requiring the Commission's approval before any territorial agreement becomes effective).

However, no legal authority exists that allows the Commission to grant in this case the variances requested in the Joint Application.

VI. Conclusion

The OPC makes this filing to respond to MAWC and DCM's arguments in their February 4, 2022 filings. (Docs. 32, 33). The OPC maintains the position put forward in its Application for Rehearing (Doc. 18) and in its February 4, 2022 Response (Doc. 30) that no legal authority exists conferring on the Commission the authority to grant the variances MAWC and DCM requested in the Joint Application.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept these responses to MAWC and DCM's February 4, 2022 filings and deny the variances requested in the Joint Application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 14th day of February 2022.

/s/ Lindsay VanGerpen