

EXHIBIT NO. _____ (AML-12)
DOCKET NOS. UE-200115
COLSTRIP UNIT 4 SALE
WITNESS: AMANDA MARIE LEVIN

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

DOCKET NO. UE-200115

Complainant, v.

PUGET SOUND ENERGY,

Respondent.

**TWELFTH EXHIBIT TO THE
PREFILED RESPONSE TESTIMONY OF
AMANDA LEVIN
ON BEHALF OF
THE NATURAL RESOURCES DEFENSE COUNCIL**

October 2, 2020

**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

IN THE MATTER OF NorthWestern
Energy's Application for Approval of
Capacity Resource Acquisition

REGULATORY DIVISION

Docket No. 2019.12.101

**THE NORTHERN CHEYENNE TRIBE
INTERVENOR TESTIMONY FROM MR. WILLIAM WALKSALONG,
TRIBAL ADMINISTRATOR**

September 25, 2020

1 **Introduction**

2 The Northern Cheyenne Tribe (“Tribe”), a federally recognized Indian tribe located in
3 southeastern Montana, is an intervening party in this case. The Tribe’s Reservation’s northern
4 boundary is approximately 20 miles from the Colstrip Power Plant, and well over 100 Tribal
5 members work in either the power plant or associated mines. Tribal members also reside off-
6 Reservation in the NorthWestern Energy service area and are rate paying customers. The Tribe
7 sought and was granted intervention based on the interest of off-Reservation rate paying
8 members, as well as the economic and social impact of Colstrip Power Plant operations on the
9 Tribe and its members.

10 The Tribe was also an intervenor in a prior proceeding relating to ratemaking, Docket No.
11 2018.02.012. In the Final Order in that case, Order No. 7604u, the Commission stated that with
12 respect to issues raised by the Tribe “the Commission believes each issue has merit, the
13 Commission declines to address each request at this time.” Order No. 7604u, ¶ 342. The
14 Commission stated “of very recent note, NorthWestern announced it is seeking approval to
15 acquire Puget Sound’s 25% share in CU4,” ¶ 350, and that in the related proceedings “From the
16 Commission’s perspective, there is no doubt that in this new contested case docket, CU4 issues
17 such as retirement dates and stranded costs, remediation costs, and community transition funding
18 will require investigation,” ¶ 351.

19 Accordingly, the testimony from the Tribe focuses on issues of inter-generational equity,
20 remediation costs, and community transition funding related to operations and closure of Colstrip
21 Unit 4 and the use of associated transition. The direct testimony provided is from William
22 Walksalong, who is a Tribal member residing on the Reservation and the Tribal Administrator.

23

24

1 **Testimony**

2 **Q: Hello Mr. Walksalong, can you please inform the Montana Public Service Commission**
3 **who you are and what experience you have relative to this case?**

4 **Mr. Walksalong:** Yes. My name is William Walksalong, and I am a member of the Northern
5 Cheyenne Tribe. I am a resident of Lame Deer, Montana, on the Northern Cheyenne Tribe's
6 Reservation. I have been heavily involved in Tribal government since 1992. Prior to my current
7 position as the Tribal Administrator I have served as Tribal President, on the Tribal Council, and
8 in other positions. I am knowledgeable with respect to the Tribe's history, government,
9 membership, and conditions on the Reservation.

10 **Q: What is the purpose of your testimony?**

11 **Mr. Walksalong:** The purpose of my testimony is to provide background regarding the
12 Northern Cheyenne Tribe and its members, and information regarding the impacts to the
13 Northern Cheyenne Tribe and Tribal members from the operation, and potential closure, of the
14 Colstrip Unit 4. I also propose steps NorthWestern Energy should take to meet its obligation to
15 minimize and compensate for those impacts.

16 **Q: Can you please provide background information on the Tribe and the Reservation?**

17 **Mr. Walksalong:** The Northern Cheyenne Tribe has been a federally recognized Indian tribe
18 since the Friendship Treaty of 1825. The Tribe's ancestral homelands were first described on
19 "paper" in the Fort Laramie Treaty of 1851. On the northern boundary, they extend from the
20 Pemmican Mountains at the mouth of the Powder River in present-day Montana, east to the
21 confluence of the Missouri and Cannonball rivers in present-day North Dakota. The Rocky
22 Mountain Front marks the western boundary with Pike's Peak, known to the Northern Cheyenne
23 people as Stonehammer Mountain, in the southwestern corner. The Arkansas River forms the
24 southern boundary, and the confluence of the North and South Platte rivers are on the eastern

1 boundary. These homelands include all of the Powder River Basin in present-day Montana and
2 Wyoming.

3 The Tribe now occupies the Northern Cheyenne Reservation, which is composed of
4 approximately 444,000 acres of land in Big Horn County and Rosebud County, Montana. More
5 than 99 percent of lands within the Reservation are owned by the Tribe or its members and held
6 in trust by the United States. The Tribe also possesses off-Reservation trust lands, including
7 more than 500 acres along the Tongue River Reservoir in close proximity to the Decker and
8 Spring Creek coal mines in Montana. The Tribe has over 11,000 members, most of whom live on
9 or near the Reservation.

10 **Q: How was the Reservation established?**

11 **Mr. Walksalong:** The Northern Cheyenne people have a long and proud history of fighting for
12 their homelands in the Powder River Basin. This history is set forth in a report titled *The*
13 *Northern Cheyenne Tribe and Its Reservation* (Apr. 2002), as well as in the books *A History of*
14 *the Cheyenne People* by Tom Weist (1977) and *The Northern Cheyenne Indian Reservation,*
15 *1877-1900*, by Orlan J. Svingen (1993). I will provide a brief summary.

16 The Northern Cheyenne have been living in southeastern Montana since before contact
17 by white settlers. Beginning in the early 1800s, large numbers of settlers and gold seekers began
18 to move into southeast Montana. These early settlers and miners brought with them diseases that
19 ravaged large numbers of our people. They also brought European cattle, which began to disrupt
20 the grazing and migration patterns of the buffalo, which the Northern Cheyenne relied on for
21 subsistence and ceremonial purposes. These encroachments, which did not respect the territorial
22 and cultural interests of the Cheyenne and other Indian people, resulted in decades of war.

23 In the mid-1800s, there were numerous attempts to remove the Northern Cheyenne from
24 our homeland near the Tongue River and relocate them to other parts of the west. For example,

1 the 1851 Treaty of Fort Laramie anticipated the removal of the Cheyenne to lands south of the
2 North Platte River; however, following treaty execution, many Northern Cheyenne people
3 continued to live and hunt in their traditional homeland, leading to escalating conflict and
4 violence in the 1850s. In 1861, the U.S. government again attempted to relocate the Northern
5 Cheyenne to the south, but we refused to abandon our traditional hunting grounds and continued
6 to resist the commercial and military intrusions into their territories. Conflict continued into the
7 1870s, as the U.S. military sought to open the Cheyenne lands to settlers and gold miners, and
8 the Northern Cheyenne sought to protect their lands and traditions from encroachment. These
9 conflicts include the 1876 Battle at Little Big Horn, where the Northern Cheyenne allied with the
10 Sioux and Arapaho to defeat General George Armstrong Custer and the U.S. Seventh Cavalry.
11 They also include the Battle of the Tongue River in 1877 (also known as the Battle of Wolf
12 Mountain), where a group of Northern Cheyenne battled a detachment of the Fifth Infantry in the
13 project area, along the east bank of the Tongue River near the present-day location of Birney.

14 Following these conflicts, many Northern Cheyenne were forcibly relocated to the
15 Oklahoma Territory in 1878 as retribution for our resistance to non-Indian domination and our
16 participating in the Battle of the Little Bighorn. However, we (uniquely among all other tribes so
17 relocated) trekked back to our historic homeland in Montana. This journey came at great cost to
18 the Tribe – death, imprisonment, and other deprivations – as we were hounded along the way
19 by thousands of hostile military and settlers.

20 In 1878, following the relocation to Oklahoma, Chief Dull Knife and Chief Little Wolf
21 led bands of Northern Cheyenne on a long and arduous return trip from Oklahoma to their
22 traditional homeland. In the late 1870s and early 1880s, the Northern Cheyenne began to
23 reestablish themselves in areas near the Tongue River, settling on Lane Deer Creek, Muddy
24 Creek, Rosebud Creek, and the Tongue River between Otter Creek and Hanging Woman Creek.

1 Recognizing the importance of this area to our people, President Arthur signed an executive
2 order on November 16, 1884, establishing the Tongue River Indian Reservation, which at that
3 time did not include lands settled by the Northern Cheyenne on the Tongue River itself.
4 However, in 1900, President McKinley signed an executive order changing the name of our
5 Reservation to the “Northern Cheyenne Reservation” and extending the eastern boundary of our
6 Reservation to its current location on the Tongue River.

7 Despite establishment of the Reservation, Northern Cheyenne lands and culture remained
8 under threat throughout the 20th century. The early 1900s saw the forced acculturation of my
9 people through federal policies that prohibited or discouraged traditional cultural and religious
10 practices and sent Cheyenne children to boarding schools where they were forbidden to speak
11 their native language.

12 Through all of this hardship, the Cheyenne people have persevered. We are very proud
13 to live on our homelands, and we place a high priority on protecting our lands and waters.

14 **Q: Where do Tribal members work on or near the Reservation, and what are the**
15 **economic conditions?**

16 **Mr. Walksalong:** In general, the economy in our area has struggled. Rosebud County, where
17 most of the Reservation and the town of Colstrip are located, was recently designated an
18 “Economic Opportunity Zone” under the 2017 Tax Cuts and Jobs Act, in recognition of ongoing
19 unemployment and poverty. Big Horn County, where the remainder of the Reservation is
20 located, is also designated as an Economic Opportunity Zone.

21 Within Rosebud County, economic conditions on the Reservation are far worse than off-
22 Reservation. It is very challenging to find work on or near the Reservation. As part of
23 commenting on a proposed railroad near the Reservation, the Tribe commissioned a report from
24 Dr. Thomas Power, which he completed in 2015. While the data may have changed slightly

1 since that time, I believe the identified trends are largely accurate. In comparing on-Reservation
2 conditions to off-Reservation conditions in Rosebud County, Dr. Power noted that:

- 3 • The Northern Cheyenne population is much younger when compared with
4 surrounding areas. In Rosebud County, the median age on-Reservation is 23 and off-
5 Reservation is 43.
- 6 • The Northern Cheyenne population is much more densely populated. The non-
7 Reservation areas have 1.3 persons per square mile, while the Northern Cheyenne
8 Reservation has a population density of 6.8 persons per square mile.
- 9 • The Northern Cheyenne population is much poorer than the population in the
10 surrounding counties. On a per capita basis, in the predominantly white off-
11 Reservation population in Rosebud County, people have 109% higher income per
12 person than their predominantly American Indian neighbors on the Reservation:
13 \$12,559 on-Reservation versus \$26,271 off-Reservation.
- 14 • The unemployment rate on the Reservation is almost 14 times that found off the
15 Reservation in Rosebud County: 27% on-Reservation versus 2% off-Reservation.
16 This is despite the fact that the Northern Cheyenne is overall a well-educated group
17 when compared to Rosebud County and the United States as a whole.

18 As you can see from these figures, the economy on the Reservation faces challenging
19 circumstances and is fragile. These circumstances leave the Tribe and its members especially
20 vulnerable to changes at Colstrip Power Plant or the associated mines.

21 **Q: How has the Tribe been affected by the coronavirus pandemic?**

22 **Mr. Walksalong:** The Tribe has been severely affected. More than 130 Tribal members have
23 been infected, and at least 30 of those have died. There were infections at the Tribal government
24 building, which affected many of our leaders at a critical time. President Peña instituted stay-at-

1 home orders starting in March 2020, and the Tribe put into place protective measures such as
2 checkpoints and health screens for off-Reservation visitors.

3 The Tribe is vulnerable to the impacts of the virus given the prevalence of underlying
4 health conditions and shared living conditions of many members. The virus has exacerbated the
5 already challenging economic conditions described above.

6 **Q: What has the Tribe's position been regarding coal development?**

7 **Mr. Walksalong:** In the Northern Cheyenne religion and culture, land is sacred, and people
8 should not open up the earth. As a result, the Tribe has generally opposed coal mining on its
9 lands. This opposition was solidified in the 1960's and 70's, when coal companies sought to
10 take advantage of the Tribe and gained undermarket leases on the Reservation. It took an act of
11 Congress and a U.S. Supreme Court case, *Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S.
12 649 (1976), to protect the Reservation from those leases. Since that time, the Tribe has actively
13 sought to ensure mining proposed near the Reservation follows all applicable laws, and that
14 project planners carefully consider impacts to the Tribe and its members.

15 While the Tribe has historically opposed coal development, the Tribe has also worked
16 closely with owners of the Colstrip Power Plant and associated mines. The Tribe has generally
17 supported operations so long as the owners and operators of the plant and mines follow
18 applicable laws and respect the Tribe's sovereignty. The Colstrip jobs most of all are central to
19 our economy.

20 **Q: How does the Tribe benefit from operation of the Colstrip Power Plant and associated
21 mines?**

22 **Mr. Walksalong:** Well over 100 Tribal members work at the power plant and the mines. I
23 think that this has been a good relationship – the Tribe provides high-quality, local workers, and
24 benefits from generally good union jobs with locally competitive wages. On the Reservation,

1 each job associated with the Colstrip Power Plant directly supports approximately ten members.
2 This means that the operation of the Power Plant directly benefits more than 1,000 Tribal
3 members (approximately ten percent of the on-Reservation population), and indirectly benefits
4 many more.

5 These jobs have enormous importance, because they are generally high-wage jobs with
6 good benefits, that up until recently, have been considered very reliable. Tribal members have
7 received training and certifications, which helps improve the Tribal workforce and provide more
8 opportunities. Plant and mine owners and operators also provide some scholarship opportunities
9 to Tribal members and funding to the Tribe's Department of Environmental Protection and
10 Natural Resources.

11 **Q: How does the Tribe benefit from the existence of the Colstrip Power Plant and**
12 **associated transmission?**

13 **Mr. Walksalong:** Given the Tribe's cultural beliefs and need for economic development, the
14 Tribe has prioritized development of renewable energy as a means to help provide jobs for Tribal
15 members and members of the surrounding community, to work toward Tribal energy
16 independence, and to help contribute to a cleaner environment.

17 The Tribe is committed to contributing to Montana's overall efforts to expand renewable
18 energy production and innovation. As detailed in the August 2020 Montana Climate Solutions
19 Plan, development of renewable energy and associated industries promises a strong future for
20 Tribal and other communities in Montana.¹ The Tribal Council has passed several resolutions
21 detailing and confirming its commitment to renewable energy, secured grant funds to develop a
22 solar project in the town of Busby, established a Sustainable Energy Subcommittee, hired a

¹ http://deq.mt.gov/Portals/112/DEQAdmin/Climate/2020-09-09_MontanaClimateSolutions_Final.pdf

1 Renewable Energy Manager, and is developing related coursework at Chief Dull Knife College.
2 The Tribe has also installed meteorological towers and is assessing potential for a wind energy
3 project. These efforts further the Tribe's and the broader community's interests in a sustainable
4 source of energy and a robust and sustainable economy.

5 The presence of Colstrip near the Reservation is absolutely critical to the Tribe's
6 renewable energy development goals, because it provides potential transmission to west coast
7 markets and reduces the amount of transmission line construction needed for a project. Project
8 developers have been attracted to the Tribe both because of abundant wind and solar resources
9 and proximity to Colstrip and associated transmission.

10 NorthWestern Energy's acquisition of Puget Sound Energy's transmission rights has
11 major implications for the Tribe's future, as it impacts the availability of transmission for
12 Montana generated renewable energy, including energy produced by the Tribe.

13 **Q: How is the Tribe adversely affected by coal mining and operation of the Colstrip Power**
14 **Plant?**

15 **Mr. Walksalong:** The Northern Cheyenne Reservation is surrounded by coal mines, including
16 the Western Energy (Rosebud) mine to the North and the Decker and Spring Creek mines to the
17 South. When these mines were under development, they promised opportunities for employment
18 and contracting in Northern Cheyenne reservation communities, but those opportunities never
19 fully materialized.

20 Coal mining near the reservation impacts tribal communities. Air pollution from mine
21 activities impacts our Class I airshed. Runoff from mines impairs water quality. In particular,
22 runoff from the Decker Mine discharges into the Tongue River, which forms the eastern
23 boundary of the Reservation. Mining destroys habitat for sensitive species, including burrowing

1 owls, prairie dogs, prairie chicken, and sage grouse. Mining within Northern Cheyenne ancestral
2 homelands also destroys important cultural sites, including sites used for Cheyenne ceremonies.

3 Coal mining near the Reservation brings in workers, which has tended to produce off-
4 Reservation economic benefits while imposing social and economic costs on the Reservation.
5 Outside workers sometimes view the Reservation as a lawless zone and have brought crime,
6 trash, and illegal drugs onto the Reservation. This imposes a significant cost on the Tribal
7 government and harms the quality of life of the Tribe's members.

8 Operation of the Colstrip Power Plant impacts air quality on the Reservation. The Tribe
9 conducts on-going air quality monitoring. Particularly when scrubbers or other equipment fails,
10 pollutants are registered on the Reservation.

11 **Q: How does this history and context relate to the acquisition of Colstrip Unit 4 by**
12 **NorthWestern Energy?**

13 **Mr. Walksalong:** The power plant and associated mines have both positive and negative
14 impacts on the surrounding communities. Among those communities, the Tribe and its members
15 are disproportionately reliant on those benefits, and disproportionately harmed by the negative
16 impacts.

17 My understanding is that a big part of NorthWestern Energy's acquisition of Colstrip
18 Unit 4 is extension of the expected life of Colstrip Unit 4 and the overall Colstrip power plant.
19 Those considerations involve how to plan for potential closure and how to account for the costs
20 of operations, closure, and remediation. The determination of these issues will have an
21 enormous economic and social impact on the Tribe and its members. How NorthWestern
22 Energy approaches operation and potential closure of Colstrip Unit 4 depends on the conditions
23 attached to acquisition from Puget Sound Energy.

1 I am aware that in related rate-setting cases for Puget Sound Energy and Avista Corp.,
2 companies which also own shares of Colstrip Power Plant, there have been substantial
3 settlements that purport to compensate the affected communities for likely plant closure. Despite
4 the unique impacts of closure on the Tribe, the Tribe has been largely excluded from the bodies
5 that will distribute funds generated by these settlements. The Tribe has been shut out of those
6 processes and have had limited resources to dedicate to this endeavor. For example, despite the
7 Tribe's major stake in the future of the Colstrip plant and mine, we were not invited to be a
8 member of the Governor's Colstrip Community Impact Advisory Group.

9 **Q: What measures do you think NorthWestern Energy should take to further the public**
10 **interest in the acquisition and operation of Colstrip Unit 4?**

11 **Mr. Walksalong:** The Tribe sees these issues as relating to inter-generational equity, both for
12 ratepayers and the surrounding community. The overall goals are to ensure that operations at
13 Colstrip provide benefit to current and future generations, and that the risks created by
14 acquisition are not unfairly focused on future generations.

15 The Tribe is first focused on continued operations. In continued operations, we suggest a
16 specific plan to seek to employ as many Tribal members as possible. To the extent specialized
17 skills or new certifications are required, NorthWestern Energy should provide trainings to Tribal
18 members.

19 With respect to acquisition of transition, my understanding is that NorthWestern Energy
20 will acquire up to 185 MW of transmission capacity. "The CTS provides a means to export
21 potential renewable energy produced in Montana out of state to western service territories." *See*
22 *Docket No. 2019.12.101, NWE Application at MRC-10.* Given this potential, the public interest
23 would be best served by requiring NorthWestern Energy to dedicate a substantial and growing
24 portion of transmission capacity to transmission of Montana generated renewable energy. This

1 would be in keeping with the recognition in NorthWestern Energy’s materials that
2 “decarbonization is happening,” see Docket No. 2019.12.101, NWE Application, Exhibit B JL-5
3 at 6, and will help to ensure that the renewables market grows and buffers the impact of the
4 eventual decline of coal mining and coal-fired electricity generation. NorthWestern Energy
5 acknowledges that Montana is blessed with both abundant fossil fuels and renewable resources,
6 and using transmission capacity to transition toward renewable energy will help ensure the
7 continued existence of Colstrip in some capacity and jobs in the surrounding communities. This
8 is in the public interest because it will help to ensure that there is continued energy availability
9 and economic development into the foreseeable future.

10 NorthWestern Energy should also facilitate renewable development by committing to
11 aggressively purchase locally produced renewable energy. These measures would help to
12 jumpstart an industry that promises to provide sustainable jobs for the region into the future.

13 **Q: What measures do you think NorthWestern Energy should take to protect the public**
14 **interest from the impacts of eventual closure of Colstrip Power Plant and the associated**
15 **mines?**

16 **Mr. Walksalong:** This again is an issue of intergenerational equity. With respect to eventual
17 drawdown and eventual closure of Colstrip Unit 4, the most important principle is that
18 companies such as NorthWestern should not be allowed to benefit and profit from operation near
19 the Reservation, and then leave the Tribe and its members to bear the consequences of closure.
20 There must be adequate measures in place to ensure that the Tribe is not disadvantaged by
21 closure. If not, the Tribal economy will likely be devastated by dramatically increased
22 unemployment. Additionally, any struggles in Colstrip are also likely to spread to the
23 Reservation, and the Tribe will have to deal with the social consequences of unemployment. This
24 will lead to increased crime on the Reservation, and the Bureau of Indian Affairs law

1 enforcement is severely underfunded and has only a few officers working on our vast
2 Reservation. Additionally, we do not have a tax base to help fund law enforcement activities like
3 off-Reservation municipalities enjoy.

4 While the details require specific negotiation, a plan for closure must seek to do two
5 things: minimize impacts to Tribal members and compensate for the impacts that occur. To
6 minimize environmental impacts, NorthWestern Energy must commit to complete cleanup and
7 remediation of all affected resources, including soil contamination, groundwater contamination,
8 and impacts to surface waters from the power plant and associated mines. This commitment
9 must include setting aside adequate funds now, in the event of bankruptcy or a faster-than-
10 anticipated closure.

11 To minimize economic impacts, NorthWestern Energy should agree to prioritize Tribal
12 members, particularly those already employed at the power plant or the mine, in jobs associated
13 with closure and remediation. For many years, the owners of the Colstrip plant and mine have
14 by contract given employment preference to Tribal members and that should continue. My
15 understanding is that closure and remediation could take decades and involve ongoing
16 employment. This process should seek to employ as many Tribal members as possible. To the
17 extent specialized skills or new certifications are required, NorthWestern Energy should provide
18 trainings to Tribal members.

19 To compensate for the impacts of operations and closure, NorthWestern Energy should
20 provide funds for the Tribe to facilitate the transition to a new economy. The prior rate-setting
21 cases for Puget Sound Energy and Avista are helpful examples. Avista owns 15% of Unit 3 and
22 15% of Unit 4, and agreed to a settlement of \$4.5 million as part of its acquisition by Hydro One.
23 This amount is proportionate to a larger settlement of approximately \$10 million paid by Puget
24 Sound Energy. Because NorthWestern Energy will own between 42.5% and 55% of Unit 4

1 depending on Talen's potential acquisition, a greater overall ownership as Avista, an amount
2 greater than \$4.5 million is appropriate and a necessary amount for a settlement fund.

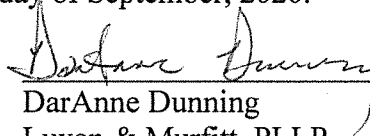
3 Because the Tribe has been largely excluded from prior settlement funds, and bears a
4 disproportionate impact from closure, the Tribe should either receive settlement funds directly
5 from NorthWestern Energy or be guaranteed controlling representation on the body that
6 distributes funds. While the Tribe would control these funds, based on past experience, I
7 anticipate they would be used for measures such as scholarships for Tribal members and startup
8 capital for businesses owned by the Tribe or its members.

9 I strongly believe that with appropriate planning and resources, a strong economy on the
10 Reservation will help fuel a strong economy in Rosebud County.

11 **Q: Thank you. Do you have any further thoughts?**

12 **Mr. Walksalong:** That completes my direct testimony in this matter.

13 Respectfully submitted on this 25th day of September, 2020.



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*On behalf of Intervenor, the Northern Cheyenne
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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2020, I served a true and accurate copy of the foregoing Testimony of William Walksalong by email to the following:

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