

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Windstream Holdings, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-22312 (RDD)

(Jointly Administered)

**OBJECTION OF DUKE ENERGY TO PLAN SUPPLEMENT AND
DEBTORS' NOTICE OF (A) EXECUTORY CONTRACTS AND
UNEXPIRED LEASES TO BE ASSUMED BY THE DEBTORS
PURSUANT TO THE PLAN, (B) CURE AMOUNTS, IF ANY, AND
(C) RELATED PROCEDURES IN CONNECTION THEREWITH**

Duke Energy Indiana, LLC, Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Duke Energy Florida, LLC (collectively, "Duke Energy") hereby file this objection (the "Cure Objection"), by and through its undersigned counsel, to the *Notice of (A) Executory Contracts and Unexpired Leases to be Assumed by the Debtors Pursuant to the Plan, (B) Cure Amounts, if any, and (C) Related Procedures in Connection Therewith* (the "Cure Notice"), which was sent in accordance with and based on Exhibit A of the Plan Supplement filed on June 3, 2020 [Doc. 1973]. In support of the Cure Objection, Duke Energy respectfully represents as follows:

BACKGROUND FACTS

1. The Debtors in the above-captioned chapter 11 cases (the "Debtors"), filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on February

¹ The last four digits of Debtor Windstream Holdings, Inc.'s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.



25, 2019 (the “Petition Date”). Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

2. On May 14, 2020, the Debtors filed their *First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al. Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1812] (the “Plan”).

3. On June 3, 2020, the Debtors filed the Plan Supplement Notice, which attached the current version of the Cure Notice as Exhibit A, which is also Exhibit A to the Plan.

4. The Plan Supplement Notice provides that “the documents contained in the Plan Supplement are integral to, and are considered part of, the Plan” and that “[i]f the Plan is approved, the documents contained in the Plan Supplement will be approved by the Court pursuant to the Confirmation Order.”

5. The deadline for filing objections to the Plan, including the Plan Supplement, is June 17, 2020, but the Debtors extended such deadline for Duke Energy until July 2, 2020.

6. On June 10, 2020, the Debtors filed their *Notice of Filing of First Amended Plan Supplement* [Docket No. 2010], which attached the Rejected Executory Contract and Unexpired Lease List that is Exhibit B to the Plan (the “Rejected Contracts List”). No contracts related to Duke Energy are on the Rejected Contracts List.

7. Article V.A. of the Plan provides that “[o]n the Effective Date, except as otherwise provided herein, all Executory or Unexpired Leases not otherwise assumed or rejected will be deemed assumed by the applicable Reorganized Debtor.”

8. Page 160 of the Cure Notice,² beginning at reference 3626 and continuing through reference 3648 at page 161,³ includes 22 different contracts that purport to relate to Duke Energy. These include pole rental agreements and agreements related to the construction of fiber optic routes.

9. For many of the executory contracts included in the Cure Notice, Duke Energy and Windstream were not the original parties; instead the contracts have been assigned over time. The Cure Notice does not contain the names of the original parties to the contracts, dates, or any titles of the agreements, so identifying the exact executory contracts to be assumed is not possible. Further, while the Debtors have included some internal references for the contracts, the Debtors have not provided any ledger or other details that enable Duke Energy to identify and confirm the contracts being assumed.

10. Further, the Cure Notice states that the cure amount for all Duke Energy contracts is \$796,805.82, but it is not broken down by contract or by Duke Energy entity. There are over twenty potential contracts at issue that concern Duke Energy Indiana, LLC, Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Carolinas, LLC, Duke Energy Florida, LLC, and Duke Energy Progress, LLC, all of which are separate and distinct entities.

11. Attached as **Exhibit 1** to this Objection is a list of all executory contracts that Duke Energy believes it has with the Debtors (the “Contracts”). At this time, Duke Energy is unaware of any other executory contracts with the Debtors. Due to the lack of specificity and identifying information within the Cure Notice, Duke Energy cannot determine whether the Contracts on

² PACER assigned page 166 of Doc. 1973.

³ Reference 3,639 on page 161 of the Cure Notice identifies “Venturesum Corporation” as the contract counterparty. Venturesum Corporation contract is not a Duke Energy related entity and the listed contract is not a Duke Energy contract.

Exhibit 1 to this Objection are included within the 22 contracts listed by the Debtors within the Cure Notice as Duke Energy contracts.

12. Following the service of the Cure Notice, Duke Energy requested specific information as to the Debtors’ claimed cure amount. The Debtors provided partial information on June 15, 2020, listing many amounts as “in progress” which purportedly mean the amounts due under the executory contracts was still “under review,” “disputed,” or could not be located by the Debtors. The Debtors also have not yet identified which specific contracts are to be assumed.

13. Notwithstanding the foregoing, based on the information available to Duke Energy as of the date of this Objection, below is a chart of the Debtors’ alleged cure amount and Duke Energy’s record of the cure amounts owed on each of the executory contracts to be assumed.

Entity	Debtors’ Alleged Cure Amount	Duke Energy Cure Amount
Duke Energy Indiana	\$15,530	\$1,097,624.89
Duke Energy Ohio/ Duke Energy Kentucky	\$95.00	\$74,631.94
Duke Energy Progress	\$22,177.92	\$22,178
Duke Energy Carolinas	\$1,078,263	\$1,541,400
Duke Energy Florida	\$14,321	\$14,321

14. The cure amounts due to Duke Energy Progress, Duke Energy Carolinas, and Duke Energy Florida are for pole rental invoices due pursuant to the agreements between the Debtors and those Duke Energy entities. The agreement with Duke Energy Indiana, Duke Energy Kentucky, and Duke Energy Ohio relates to the use of fiber optic lines and is discussed in more detail below. A summary of the invoices due under each agreement is attached as **Exhibit 2.**

Duke Energy Progress, LLC and Duke Energy Florida, LLC

15. For Duke Energy Progress, LLC and Duke Energy Florida, LLC, it is not clear whether the Debtors and Duke Energy agree on exactly which executory contracts are to be

assumed. These Duke Energy entities are informed and believe that they do not dispute the cure amounts that have been provided by the Debtors since the filing of the Plan Supplement. For Duke Energy Progress, LLC, the Debtors stated that the cure amount is \$22,178. For Duke Energy Florida, LLC, the Debtors state that the cure amount is \$14,321.05. Duke Energy Progress, LLC and Duke Energy Florida, LLC agree with these cure amounts, though they have not been formally included in the Plan Supplement, but Duke Energy Progress and Duke Energy Carolinas request confirmation of the exact contracts to be assumed.

Duke Energy Indiana, Duke Energy Kentucky, and Duke Energy Ohio

16. For Duke Energy Indiana, Duke Energy Kentucky, and Duke Energy Ohio, the only agreement currently in effect between the parties is a Fiber Agreement dated October 1, 2000, a copy of which is attached as **Exhibit 3**. Duke Energy Indiana is the successor in interest to Cinergy Corp., which was the successor in interest to The Cincinnati Gas & Electric Company and The Union Light Heat & Power Company, each of which is a party to the Fiber Agreement. Duke Energy is now informed and believes that Windstream KDL, LLC is the successor in interest to Kentucky Data Link, the original counterparty to the Fiber Agreement.

17. Pursuant to its standard procedure and the Fiber Agreement, Duke Energy invoiced the Debtors for the amounts due under the Fiber Agreement, but to date, the Debtors have refused to pay the amounts owed on the invoices and now dispute Duke Energy's claimed cure amount without explanation. *See Exhibit 2*, which includes a summary of each invoice sent to the Debtors.)

OBJECTION

18. Section 365(b)(1) of the Bankruptcy Code provides as follows:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default.
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

19. Duke Energy does not oppose the Debtors' assumption of the Contracts, provided that (a) the Debtors are not seeking to assume only portions of any agreement, and (b) the Debtors pay the full cure amounts owed on each of the Contracts. It is well-established that a contract cannot be assumed in part or rejected in part. Rather, a debtor is required under Section 365 of the Bankruptcy Code to either reject the contract in full or assume the contract in full, which includes the benefits and burdens. *See, e.g., AGV Productions, Inc. v. Metro-Goldwyn-Mayer, Inc.*, 115 F.Supp.2d. 378, 391 (S.D.N.Y. 2000).

20. Further, the Debtors are obligated to pay the full prepetition and post-petition amounts owed on each contract in order for the contract to be assumed. "The cure of a default under an unexpired lease pursuant to 11 U.S.C. § 365 is more akin to a condition precedent to the assumption of a contract obligation than it is to a claim in bankruptcy. One of the purposes of Section 365 is to permit the debtors to continue in a beneficial contract; provided, however, that the other party to the contract is made whole at the time of the debtor's assumption of the contract." *In re Entm't, Inc.*, 223 B.R. 141, 151 (Bankr. N.D. Ill. 1998).

21. Here, it is unclear what contracts the Debtors seek to assume through the Cure Notice. The list of contracts provided by the Debtors simply does not contain adequate information. Duke Energy began requesting information about which contracts the Debtors wanted to assume and the related cure amounts in June of 2019, but to date, the information has not been provided. The Debtors only gave Duke Energy two weeks to review the cure amount, and even then, the cure amount was not listed by contract or entity and the contracts were not identified. Updated and partial cure amounts were made available to Duke Energy on June 15, 2020, and many of the amounts owed under the Contracts are listed as “disputed” or “in review” by the Debtor with no explanation. Duke Energy is entitled to be given sufficient time and information to consider the Debtors’ proposed cure, and a full and complete opportunity to object.

22. If the Debtors want to assume and/or assign any of the Contracts with Duke Energy identified above, they must first pay to Duke Energy the cure amounts set forth above, plus any additional post-petition charges incurred by the Debtors under the applicable agreement(s) through the effective date of assumption.

23. Duke Energy reserves all of its rights to object to the Cure Notice with respect to any contract not identified by Duke Energy in Exhibit 1 or for which the Debtors have not provided a cure amount specific to that contract.

(Remainder of page intentionally left blank)

WHEREFORE, Duke Energy respectfully requests that the Court enter an Order (1) requiring the Debtors to identify each executory contract sought to be assumed with Duke Energy by title, date, and parties; (2) requiring the Debtors to assign a cure amount that the Debtors contend is owed to each executory contract sought to be assumed; (3) allowing Duke Energy, after identification of the executory contract and proposed cure amount, a reasonable time to assert applicable objections to the assumption by the Debtors; (4) requiring that the Debtors pay all unpaid prepetition and post-petition amounts accrued thereunder through the effective date of assumption, including the Cure Amounts set forth above; and granting such other and further relief as the Court deems just and proper.

Dated: July 1, 2020
New York, New York

**MONTGOMERY MCCRACKEN WALKER &
RHOADS LLP**

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on this 1st day of July, 2020 upon (a) all parties requesting service via ECF notification and (b) all parties identified in the Master Service List as of 6/18/2020 available at <http://www.kccllc.net/windstream/document/noticelist/1>.

/s/ Edward L. Schnitzer

Edward L. Schnitzer

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Exhibit 1

EXHIBIT 1

Debtor	Duke	Title	Date	Cure Amount	Parties
Windstream KDL, LLC	DEO	Fiber Agreement	10/1/2000	\$ 74,631.94	The Cincinnati Gas & Electric Company, PSI Energy, Inc., The Union Light Heat & Power Company, The Lawrenceburg Gas Company, the West Harrison Gas and Electric Company, a
Windstream KDL, LLC	DEK	Fiber Agreement	10/1/2000	\$ 74,631.94	The Cincinnati Gas & Electric Company, PSI Energy, Inc., The Union Light Heat & Power Company, The Lawrenceburg Gas Company, the West Harrison Gas and Electric Company, a
Windstream KDL, LLC	DEI	Fiber Agreement	10/1/2000	\$ 1,097,624.89	The Cincinnati Gas & Electric Company, PSI Energy, Inc., The Union Light Heat & Power Company, The Lawrenceburg Gas Company, the West Harrison Gas and Electric Company, a
Windstream Communications, LLC	DEP	Pole Attachment Agreement	10/4/2011	\$ 3,284.08	Carolina Power & Light n/k/a Duke Energy Progress and Windstream Communications, Inc.
Windstream Communications, LLC	DEP	Joint Use of Poles Agreement	12/1/1975	\$ 18,230.68	Carolina Power & Light Company n/k/a Duke Enregy Progress and Heins Telephone Company
Windstream Concord Telephone, LLC	DEP	Pole Agreement	10/1/1988	\$ 663.16	Carolina Power & Light n/k/a Duke Energy Progress and Concord Telephone Company
Windstream Communications, LLC	DEF	Joint Use Agreement	7/24/1989	\$ 14,321.00	Florida Power Company n/k/a Duke Energy Florida and Alltel Florida, Inc.
Windstream KDL, LLC	DEF	Pole Attachment Agreement	3/13/2013	\$ -	Florida Power Company n/k/a Duke Energy Florida and Windstream KDL, Inc.
Windstream Concord Telephone, LLC	DEC	Agreement Covering Joint Use of Poles	12/31/1986	\$ 331,547.89	Duke Power Company and The Concord Telephone Company
Windstream Communications, LLC	DEC	Agreement Covering Joint Use of Poles		\$ None	Duke Power Company and Alltel South Carolina, Inc.
Windstream Communications, LLC	DEC	Pole Attachment Agreement	2/4/2020	\$ 1,064,080.12	Duke Power and Alltel Communications, Inc.
Windstream Communications, LLC	DEC	Agreement Covering Joint Use of Poles	4/1/1982	\$ 124.55	Duke Power Company and Mid Carolina Telephone Company
Windstream Communications, LLC	DEC	Telecommunication Pole Attachment License Agreement	7/11/2013	\$ 34.32	Duke Energy Carolinas, LLC and Windstream KDL, Inc.
Windstream Communications, LLC	DEC	Agreement Covering Joint Use of Poles	12/15/1988	\$ 12,027.44	Duke Power Company and Lexington Telephone Company
Windstream Communications, LLC	DEC	Pole Attachment Agreement	7/22/1998	\$ 9,201.61	Duke Power and Lexcom Cable Services, Inc.
Windstream Communications, LLC	DEC	Pole Attachment Agreement	9/30/2004	\$ 112,122.28	Duke Power and CTC Exchange Services, Inc

Exhibit 2

**EXHIBIT 2
DUKE ENERGY INDIANA**

INVOICE DATE	INVOICE #	PRE OR POST BANKRUPTCY	TYPE OF INVOICE	CURRENT	Over 120 Days Late	GRAND TOTAL
DEI						
07-30-2016	P0955396002	PRE	PRE-ATTACH ENG		\$ 2,485.00	\$ 2,485.00
08-11-2016	P0939226001	PRE	PRE-ATTACH ENG		\$ 1,480.00	\$ 1,480.00
	P0970083901	PRE	PRE-ATTACH ENG		\$ 1,885.00	\$ 1,885.00
	P0979102501	PRE	PRE-ATTACH ENG		\$ 405.00	\$ 405.00
	P1045889501	PRE	PRE-ATTACH ENG		\$ 2,250.00	\$ 2,250.00
08-12-2016	P1045901801	PRE	PRE-ATTACH ENG		\$ 2,725.00	\$ 2,725.00
08-20-2016	P0974731801	PRE	PRE-ATTACH ENG		\$ 2,595.00	\$ 2,595.00
11-15-2016	P1160786501	PRE	MAKE READY TRUE UP		\$ 2,752.85	\$ 2,752.85
11-15-2016	P1160706101	PRE	MAKE READY TRUE UP		\$ 48,020.86	\$ 48,020.86
	P1160717901	PRE	MAKE READY TRUE UP		\$ 2,410.98	\$ 2,410.98
	P1160795501	PRE	MAKE READY TRUE UP		\$ 5,852.83	\$ 5,852.83
11-22-2016	P1160969801	PRE	MAKE READY TRUE UP		\$ 138,205.20	\$ 138,205.20
11-22-2016	P1160990501	PRE	MAKE READY TRUE UP		\$ 3,085.98	\$ 3,085.98
11-22-2016	P1160888601	PRE	MAKE READY TRUE UP		\$ 21,376.63	\$ 21,376.63
	P1160901201	PRE	MAKE READY TRUE UP		\$ 14,608.19	\$ 14,608.19
	P1160909801	PRE	MAKE READY TRUE UP		\$ 13,818.35	\$ 13,818.35
	P1160964901	PRE	MAKE READY TRUE UP		\$ 966.71	\$ 966.71
	P1160979101	PRE	MAKE READY TRUE UP		\$ 132,872.21	\$ 132,872.21
	P1160985601	PRE	MAKE READY TRUE UP		\$ 10,448.32	\$ 10,448.32
	P1160998201	PRE	MAKE READY TRUE UP		\$ 52,902.99	\$ 52,902.99
	P1161009701	PRE	MAKE READY TRUE UP		\$ 29,591.09	\$ 29,591.09
	P1161020301	PRE	MAKE READY TRUE UP		\$ 86,606.28	\$ 86,606.28
	P1161073501	PRE	MAKE READY TRUE UP		\$ 50,380.72	\$ 50,380.72
	P1161082901	PRE	MAKE READY TRUE UP		\$ 70,769.73	\$ 70,769.73
	P1161096501	PRE	MAKE READY TRUE UP		\$ 48,891.70	\$ 48,891.70
	P1161104301	PRE	MAKE READY TRUE UP		\$ 55,290.80	\$ 55,290.80
	P1161130301	PRE	MAKE READY TRUE UP		\$ 38,749.97	\$ 38,749.97
	P1161140101	PRE	MAKE READY TRUE UP		\$ 21,814.01	\$ 21,814.01
	P1161174301	PRE	MAKE READY TRUE UP		\$ 627.16	\$ 627.16
	P1161262401	PRE	MAKE READY TRUE UP		\$ 15,931.30	\$ 15,931.30
	P1161300201	PRE	MAKE READY TRUE UP		\$ 65,447.72	\$ 65,447.72
11-29-2016	P1161311201	PRE	MAKE READY TRUE UP		\$ 12,799.33	\$ 12,799.33
04-18-2017	P0703359901	PRE	PRE-ATTACH ENG		\$ 225.00	\$ 225.00
05-26-2017	P1100154303	PRE	POST INSPECTION		\$ 162.50	\$ 162.50
	P2139838901	PRE	PRE-ATTACH ENG		\$ 256.00	\$ 256.00
	P1183941803	PRE	POST INSPECTION		\$ 713.75	\$ 713.75
	P2075418901	PRE	PRE-ATTACH ENG		\$ 1,350.00	\$ 1,350.00
06-16-2017	P0704005501	PRE	PRE-ATTACH ENG		\$ 225.00	\$ 225.00
07-25-2017	P2091088101	PRE	PRE-ATTACH ENG		\$ 1,445.00	\$ 1,445.00

INVOICE DATE	INVOICE #	PRE OR POST BANKRUPTCY	TYPE OF INVOICE	CURRENT	Over 120 Days Late	GRAND TOTAL
07-27-2017	P2180678901	PRE	PRE-ATTACH ENG		\$ 3,800.00	\$ 3,800.00
07-28-2017	P2094374701	PRE	PRE-ATTACH ENG		\$ 990.00	\$ 990.00
	P2110517901	PRE	PRE-ATTACH ENG		\$ 1,940.00	\$ 1,940.00
08-22-2017	P2164668601	PRE	PRE-ATTACH ENG		\$ 460.00	\$ 460.00
09-12-2017	P2164422101	PRE	PRE-ATTACH ENG		\$ 725.00	\$ 725.00
10-03-2017	P2123752101	PRE	PRE-ATTACH ENG		\$ 1,360.00	\$ 1,360.00
	P2123839201	PRE	PRE-ATTACH ENG		\$ 1,450.00	\$ 1,450.00
	P2133584801	PRE	PRE-ATTACH ENG		\$ 1,765.00	\$ 1,765.00
	P2164719401	PRE	PRE-ATTACH ENG		\$ 855.00	\$ 855.00
10-17-2017	P2170960501	PRE	PRE-ATTACH ENG		\$ 235.00	\$ 235.00
10-27-2017	P2129227201	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
	P2159596501	PRE	PRE-ATTACH ENG		\$ 1,855.00	\$ 1,855.00
	P2170950901	PRE	PRE-ATTACH ENG		\$ 1,540.00	\$ 1,540.00
	P2170987701	PRE	PRE-ATTACH ENG		\$ 1,630.00	\$ 1,630.00
	P2215751901	PRE	PRE-ATTACH ENG		\$ 730.00	\$ 730.00
10-28-2017	P2118019401	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
	P2123667301	PRE	PRE-ATTACH ENG		\$ 1,810.00	\$ 1,810.00
	P2123696901	PRE	PRE-ATTACH ENG		\$ 1,585.00	\$ 1,585.00
	P2129821601	PRE	PRE-ATTACH ENG		\$ 1,495.00	\$ 1,495.00
	P2160556401	PRE	PRE-ATTACH ENG		\$ 1,855.00	\$ 1,855.00
	P2160918801	PRE	PRE-ATTACH ENG		\$ 910.00	\$ 910.00
	P2164664201	PRE	PRE-ATTACH ENG		\$ 1,855.00	\$ 1,855.00
	P2164697401	PRE	PRE-ATTACH ENG		\$ 1,305.00	\$ 1,305.00
	P2170829901	PRE	PRE-ATTACH ENG		\$ 775.00	\$ 775.00
	P2170952901	PRE	PRE-ATTACH ENG		\$ 865.00	\$ 865.00
	P2199012801	PRE	PRE-ATTACH ENG		\$ 1,585.00	\$ 1,585.00
	P2210738601	PRE	PRE-ATTACH ENG		\$ 865.00	\$ 865.00
	P2211041901	PRE	PRE-ATTACH ENG		\$ 685.00	\$ 685.00
10-29-2017	P2110734101	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
	P2133616901	PRE	PRE-ATTACH ENG		\$ 1,810.00	\$ 1,810.00
	P2146311901	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
	P2160784801	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
	P2160792901	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
	P2160796301	PRE	PRE-ATTACH ENG		\$ 1,855.00	\$ 1,855.00
	P2164618001	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
	P2200002201	PRE	PRE-ATTACH ENG		\$ 370.00	\$ 370.00
	P2210126001	PRE	PRE-ATTACH ENG		\$ 1,090.00	\$ 1,090.00
11-22-2017	P2639269701	PRE	POST INSPECTION		\$ 300.00	\$ 300.00
	P2639280701	PRE	POST INSPECTION		\$ 480.00	\$ 480.00
11-28-2017	P2089411401	PRE	PRE-ATTACH ENG		\$ 500.00	\$ 500.00
	P2125086101	PRE	PRE-ATTACH ENG		\$ 2,060.00	\$ 2,060.00
	P2146103901	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
	P2146324501	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00

Exhibit

INVOICE DATE	INVOICE #	PRE OR POST BANKRUPTCY	TYPE OF INVOICE	CURRENT	Over 120 Days Late	GRAND TOTAL
	P2201637201	PRE	PRE-ATTACH ENG		\$ 500.00	\$ 500.00
12-13-2017	P2664531901	PRE	POST INSPECTION		\$ 620.00	\$ 620.00
	P2664545001	PRE	POST INSPECTION		\$ 440.00	\$ 440.00
	P2664553801	PRE	POST INSPECTION		\$ 620.00	\$ 620.00
	P2664571201	PRE	POST INSPECTION		\$ 260.00	\$ 260.00
	P2664576901	PRE	POST INSPECTION		\$ 780.00	\$ 780.00
12-19-2017	P2109329801	PRE	PRE-ATTACH ENG		\$ 320.00	\$ 320.00
01-17-2018	P2697447801	PRE	POST INSPECTION		\$ 520.00	\$ 520.00
01-25-2018	P2220758501	PRE	PRE-ATTACH ENG		\$ 810.00	\$ 810.00
	P2226791801	PRE	PRE-ATTACH ENG		\$ 275.00	\$ 275.00
01-31-2018	P2146171601	PRE	PRE-ATTACH ENG		\$ 1,080.00	\$ 1,080.00
	P2198824601	PRE	PRE-ATTACH ENG		\$ 1,435.00	\$ 1,435.00
	P2235836801	PRE	PRE-ATTACH ENG		\$ 320.00	\$ 320.00
02-14-2018	P2118094101	PRE	PRE-ATTACH ENG		\$ 2,060.00	\$ 2,060.00
02-22-2018	P2164719402	PRE	POST INSPECTION		\$ 300.00	\$ 300.00
03-08-2018	P2146256701	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
	P2160807401	PRE	PRE-ATTACH ENG		\$ 765.00	\$ 765.00
	P2164610201	PRE	PRE-ATTACH ENG		\$ 1,980.00	\$ 1,980.00
	P2198849501	PRE	PRE-ATTACH ENG		\$ 640.00	\$ 640.00
	P2198985301	PRE	PRE-ATTACH ENG		\$ 595.00	\$ 595.00
	P2199296301	PRE	PRE-ATTACH ENG		\$ 955.00	\$ 955.00
	P2199307001	PRE	PRE-ATTACH ENG		\$ 860.00	\$ 860.00
	P2643503801	PRE	PRE-ATTACH ENG		\$ 1,630.00	\$ 1,630.00
	P2660716701	PRE	PRE-ATTACH ENG		\$ 1,720.00	\$ 1,720.00
04-03-2018	P2110422801	PRE	PRE-ATTACH ENG		\$ 815.00	\$ 815.00
	P2130180801	PRE	PRE-ATTACH ENG		\$ 275.00	\$ 275.00
	P2641617501	PRE	PRE-ATTACH ENG		\$ 1,670.00	\$ 1,670.00
04-17-2018	P2641812501	PRE	PRE-ATTACH ENG		\$ 145.00	\$ 145.00
	P2784435601	PRE	PRE-ATTACH ENG		\$ 235.00	\$ 235.00
05-17-2018	P2703090801	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
	P2703663401	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
	P2842959401	PRE	PRE-ATTACH ENG		\$ 1,900.00	\$ 1,900.00
06-19-2018	P2790394401	PRE	PRE-ATTACH ENG		\$ 550.00	\$ 550.00
	P2870849201	PRE	PRE-ATTACH ENG		\$ 820.00	\$ 820.00
06-20-2018	P2881066801	PRE	POST INSPECTION		\$ 425.00	\$ 425.00
06-21-2018	P2227400801	PRE	PRE-ATTACH ENG		\$ 1,035.00	\$ 1,035.00
07-26-2018	P2821539401	PRE	PRE-ATTACH ENG		\$ 510.00	\$ 510.00
	P2859717801	PRE	PRE-ATTACH ENG		\$ 460.00	\$ 460.00
	P2865416901	PRE	PRE-ATTACH ENG		\$ 1,950.00	\$ 1,950.00
	P2865751001	PRE	PRE-ATTACH ENG		\$ 150.00	\$ 150.00
	P2867873001	PRE	PRE-ATTACH ENG		\$ 1,805.00	\$ 1,805.00
	P2899670901	PRE	PRE-ATTACH ENG		\$ 235.00	\$ 235.00
08-14-2018	P2944674701	PRE	POST INSPECTION		\$ 465.00	\$ 465.00

Exhibit

INVOICE DATE	INVOICE #	PRE OR POST BANKRUPTCY	TYPE OF INVOICE	CURRENT	Over 120 Days Late	GRAND TOTAL
08-16-2018	P2867889101	PRE	PRE-ATTACH ENG		\$ 1,980.00	\$ 1,980.00
09-08-2018	P2702960901	PRE	PRE-ATTACH ENG		\$ 1,035.00	\$ 1,035.00
10-03-2018	P2770713501	PRE	PRE-ATTACH ENG		\$ 1,045.00	\$ 1,045.00
11-28-2018	P2244511901	PRE	PRE-ATTACH ENG		\$ 2,100.00	\$ 2,100.00
12-18-2018	P3090756901	PRE	POST INSPECTION		\$ 25.00	\$ 25.00
01-23-2019	P3025292501	PRE	PRE-ATTACH ENG		\$ 375.00	\$ 375.00
04-16-2019	P3230569701	POST	PRE-ATTACH ENG		\$ 2,065.00	\$ 2,065.00
05-14-2019	P3262814601	POST	PRE-ATTACH ENG		\$ 1,500.00	\$ 1,500.00
09-06-2019	P3394397501	POST	POST INSPECTION		\$ 1,380.00	\$ 1,380.00
09-07-2019	P3394954101	POST	POST INSPECTION		\$ 1,060.00	\$ 1,060.00
09-28-2019	P3420021401	POST	POST INSPECTION		\$ 420.00	\$ 420.00
10-24-2019	P3450455401	POST	POST INSPECTION		\$ 458.75	\$ 458.75
	P3450553901	POST	POST INSPECTION		\$ 428.14	\$ 428.14
11-15-2019	P3473780201	POST	POST INSPECTION			\$ 1,255.00
12-20-2019	P3512571301	POST	POST INSPECTION			\$ 1,353.75
	P3512970401	POST	POST INSPECTION			\$ 2,097.90
	P3513174501	POST	POST INSPECTION			\$ 170.00
12-27-2019	P3517185901	POST	POST INSPECTION			\$ 2,593.75
02-15-2020	P3581891701	POST	POST INSPECTION			\$ 373.75
03-27-2020	P3568438701	POST	PRE-ATTACH ENG	\$ 640.00		\$ 640.00
	P3570229301	POST	PRE-ATTACH ENG	\$ 450.00		\$ 450.00

\$ 1,084,389.80

(Sub Total for Engineering, Post inspections & Make Ready True Up)

07-27-2018	30333371	PRE	POLE RENT	\$ 13,275.09		\$ 13,275.09
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(Sub Total of Pole Rent not Paid)

\$ 1,097,627.89

Grand Total Owed - DEI

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 Summary of Invoices Due Pg 5 of 9

DUKE ENERGY OHIO AND DUKE ENERGY KENTUCKY

DEO

INVOICE DATE	INVOICE #	PRE OR POST BANKRUPTCY	TYPE OF INVOICE	61--90 Days Late	Over 120 Days Late	GRAND TOTAL
06-13-2017	C2105323601	PRE	PRE-ATTACH ENG		\$ 1,775.00	\$ 1,775.00
	C2107331001	PRE	PRE-ATTACH ENG		\$ 2,670.00	\$ 2,670.00
02-13-2019	C3153931001	PRE	POST INSPECTION		\$ 20.00	\$ 20.00
09-20-2019	C3113757001	POST	PRE-ATTACH ENG		\$ 2,510.00	\$ 2,510.00
01-03-2020	C3481460001	POST	PRE-ATTACH ENG	\$ 1,345.00		\$ 1,345.00

\$ **8,320.00** (Subtotal owed for Engineering & Post Inspection)

DEO Attachment Inventory

09-23-2019	30333710-ADJ1	POST	POLE RENT - IN DISPUTE		\$ 49,668.03	\$ 49,668.03
	30334123	POST	INVENTORY COST - IN DISPUTE		\$ 10,528.65	\$ 10,528.65

\$ **60,196.68** (Subtotal for DEO Inventory Cost Owed)

DEO Pole Rent

01-31-2019	30333720-ADJ	PRE	Pole Rent		\$ 500.31	\$ 500.31
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DEK Attachment Inventory

05-07-2019	30333905	POST	INVENTORY COST		\$ 5,614.95	\$ 5,614.95
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DUKE ENERGY PROGRESS

Invoice Date	Invoice#	PRE OR POST BANKRUPTCY	Invoice Type	Invoice Amount	Payment	Balance	Name
12/3/2019	C44791	POST	Pole Rent	\$ 4,401.00	\$ 3,737.84	\$ 663.16	Windstream Communications
12/3/2019	C44798	POST	Pole Rent	\$ 18,288.64	\$ 15,004.56	\$ 3,284.08	Windstream Concord Telephone
12/3/2019	C44799	POST	Pole Rent	\$ 79,344.51	\$ 61,113.83	\$ 18,230.68	Windstream Alltel

\$22,177.92

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Summary of Invoices Due Pg 7 of 9

DUKE ENERGY CAROLINAS

INVOICE DATE	INVOICE #	CONTRACT TYPE	PRE OR POST BANKRUPTCY	TYPE OF INVOICE	ORIGINAL INVOICE	PAYMENTS	61--90 Days	Over 120 Days	Total Amount Owed
					AMOUNT	RECEIVED	31-60 Days Late	Late	
1/15/2019	JU-007640	CATV	PRE	Pole Rent 2019	\$8,577.81			\$8,577.81	\$8,577.81
7/30/2019	JU-008035	CATV	POST	Inventory Settlement	\$4,139.76	\$3,515.96		\$623.80	\$623.80
1/3/2020	JU-008181	CATV	POST	Pole Rent 2020	\$9,236.49		\$9,236.49		\$9,236.49
11/2/2017	N1045486403	CLEC	PRE	Post Inspection	\$220.00			\$220.00	\$220.00
1/29/2018	S2628098802	CLEC	PRE	Make Ready - ENG	\$465.00			\$465.00	\$465.00
1/10/2019	JU-007596	CLEC	PRE	Pole Rent 2019	\$1,102.08			\$1,102.08	\$1,102.08
1/10/2019	JU-007599	CLEC	PRE	Pole Rent 2019	\$99,265.92	\$84,308.04		14,957.88	\$14,957.88
1/16/2019	S2960113201	CLEC	PRE	Make Ready - ENG	\$705.00			\$705.00	\$705.00
2/2/2019	N3064118401	CLEC	PRE	Make Ready - ENG	\$195.00			\$195.00	\$195.00
2/26/2019	JU-007759	CLEC	POST	Post Inspection	\$120.00			\$120.00	\$120.00
4/19/2019	N1012921305	CLEC	POST	Post Inspection	\$340.00			\$340.00	\$340.00
1/6/2020	JU-008233	CLEC	POST	Pole Rent 2020	\$1,055.60		\$1,055.60		\$1,055.60
1/6/2020	JU-008236	CLEC	POST	Pole Rent 2020	\$95,079.40		\$95,079.40		\$95,079.40
12/6/2018	JU-007558	ILEC	PRE	Pole Rent 2018	\$301,785.20			\$301,785.20	\$301,785.20
12/6/2018	JU-007560	ILEC	PRE	Pole Rent 2018	\$40,634.36			\$40,634.36	\$40,634.36
12/6/2018	JU-007562	ILEC	PRE	Pole Rent 2018	\$209,043.57			\$209,043.57	\$209,043.57
12/6/2018	JU-007563	ILEC	PRE	Pole Rent 2018	\$120,772.42			\$120,772.42	\$120,772.42
12/6/2018	JU-007564	ILEC	PRE	Pole Rent 2018	\$100,134.55			\$100,134.55	\$100,134.55
12/5/2019	JU-008118	ILEC	POST	Pole Rent 2019	\$3,180.00	\$903.75		\$2,276.25	\$2,276.25
12/5/2019	JU-008092	ILEC	POST	Pole Rent 2019	\$90,892.97	\$70,638.86		\$20,254.11	\$20,254.11
12/5/2019	JU-008093	ILEC	POST	Pole Rent 2019	\$95,965.54	\$79,423.28		\$16,542.26	\$16,542.26
12/5/2019	JU-008112	ILEC	POST	Pole Rent 2019	\$227,796.74	\$188,585.13		\$39,211.61	\$39,211.61
12/5/2019	JU-008117	ILEC	POST	Pole Rent 2019	\$94,321.38	\$60,380.93		\$33,940.45	\$33,940.45
12/5/2019	JU-008113	ILEC	POST	Pole Rent 2019	\$38,273.54	\$30,510.88		\$7,762.66	\$7,762.66
12/5/2019	JU-008116	ILEC	POST	Pole Rent 2019	\$113,756.64	\$87,468.68		\$26,287.96	\$26,287.96
12/5/2019	JU-008115	ILEC	POST	Pole Rent 2019	\$196,895.86	\$164,972.34		\$31,923.52	\$31,923.52
12/5/2019	JU-008111	ILEC	POST	Pole Rent 2019	\$285,602.98	\$255,840.29		\$29,762.69	\$29,762.69
12/5/2019	JU-008091	ILEC	POST	Pole Rent 2019	\$78,664.12			\$78,664.12	\$78,664.12
12/9/2019	JU-008130	ILEC	POST	Pole Rent 2019	\$12,027.44			\$12,027.44	\$12,027.44
12/9/2019	JU-008129	ILEC	POST	Pole Rent 2019	\$337,606.44			\$337,606.44	\$337,606.44
1/15/2019	JU-007665	TELECOM	PRE	Pole Rent 2019	\$34.32			\$34.32	\$34.32
1/3/2020	JU-008206	TELECOM	POST	Pole Rent 2020	\$58.52		\$58.52		\$58.52
					\$2,567,948.65	\$1,026,548.14	\$105,430.01	\$636,259.51	\$799,710.99

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DUKE ENERGY FLORIDA

Customer ID	Customer Name	Invoice Number	Invoice Date	Invoice Amount	Amount Paid	Remaining Balance	Billing Cycle	Invoice Type
1744	Windstream Florida	F44817	12/30/2019	\$92,676.56	\$78,355.51	\$14,321.05	1/1/2019-12/31/2019	Pole Rent

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Summary of Invoices Due Pg 9 of 9

Exhibit 3

FIBER AGREEMENT

This Agreement is made as of this 1st day of October 2000, by and between **The Cincinnati Gas & Electric Company** ("CG&E"), an Ohio corporation, **PSI Energy, Inc.** ("PSP"), an Indiana corporation, **The Union Light Heat & Power Company** (ULH&P), a Kentucky corporation, **The Lawrenceburg Gas Company** ("LGC"), an Indiana corporation, **The West Harrison Gas And Electric Company** ("WHG&E"), an Indiana corporation, and **Kentucky Data Link, Inc.** ("KDL"), a Kentucky corporation. CG&E, PSI, ULG&P, LGC and WHG&E, are herein collectively called the "Operating Companies" and individually called an "Operating Company." The Operating Companies are subsidiaries of Cinergy Corp. ("Cinergy"), a Delaware corporation.

In consideration of the mutual covenants and terms and conditions contained in this Agreement, the parties agree as follows:

GENERAL AGREEMENTS AND UNDERSTANDINGS

1. The Operating Companies provide electricity and natural gas to customers in the states of Indiana, Ohio and Kentucky. In connection with those operations and throughout the above states, the Operating Companies own or control certain poles, towers, conduits and related facilities (collectively called "Utility Structures") and rights of way related to such Structures (the "Cinergy Service Territory"). The Operating Companies require dark fiber strands or Fiber Optic Capacity throughout the Cinergy Service Territory, for their internal intra-company communications in connection with the above described operations. KDL desires to install fiber optic routes on behalf of the Operating Companies throughout portions of the Cinergy Service Territory along Routes determined by KDL from time to time on the terms and conditions stated in this Agreement.
2. Fiber installed along a Route under this Agreement will be owned by the Operating Company(ies) that owns or controls the Utility Structures and rights of way along such Route (called the "Applicable Operating Company"); the Applicable Operating Company shall retain two (2) dark fiber strands, or Fiber Optic Capacity (as defined in the Glossary Section), along each such Route for its internal telecommunication and data transmission needs. Additionally, the Applicable Operating Company shall have the option of retaining more than two (2) dark fiber strands in accordance with Footnote 1 at the bottom of page 3 below. The Applicable Operating Company will lease unneeded dark fibers to KDL via an indefeasible right of use ("IRU") in consideration for KDL's construction, maintenance and repair of the Fiber along that Route.
3. KDL has entered into this Agreement in an effort to expand its telecommunications business throughout the states of Indiana, Ohio and Kentucky.
4. The Operating Companies have entered into this Agreement to implement their planning for their long-term telecommunications and data transmission needs for the safe, reliable, and efficient operation of their electric and gas systems.

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5. By working together on the Fiber Projects covered by this Agreement, the parties believe they can effect economies in the development of their desired fiber resources and in the continued operation and maintenance thereof.
6. Each defined term shall have the meaning ascribed to such term in the attached "Glossary of Terms."

PROJECT PLANNING

7. At such time that KDL desires to add a Fiber Project to this Agreement, it shall inform the Applicable Operating Company of such decision. The parties shall then work together, in good faith and in compliance with applicable laws, to schedule the timing of the installation of the Route(s) to be covered by such Fiber Project in a manner that will allow each to meet it's desired completion date for that Fiber Project. Further, the Applicable Operating Company shall diligently work to provide KDL with both (a) a reasonable estimate of the costs to perform any make ready work required for the contemplated Fiber Project and (b) the fiber count the Applicable Operating Company desires for that Fiber Project, subject to terms set forth in this Agreement. If the parties are able to agree on the timing schedule and make ready estimate, in accordance with the Operating Companies' Telecom Queuing Process, KDL shall provide the Applicable Operating Company with a Project Description for that Fiber Project. Unless otherwise agreed, the Project Description shall be in the form of Exhibit A attached hereto. Upon receipt of a signed Project Description from KDL, the Applicable Operating Company shall countersign and return a fully signed original of such Project Description to KDL unless there is a statutory, administrative or physical impediment. Each such Project Description will be added to this Agreement and shall be governed by the terms set forth herein. Prior existing Agreements may be governed by the terms and conditions of this Agreement, subject to the agreement of the parties hereto.

CONSTRUCTION

8. Engineering/Planning. The Operating Companies and KDL agree that KDL shall engineer and otherwise design each Route that is made a part of this Agreement in accordance with the Operating Companies' Guide for Installing Fiber Optic Cable. KDL shall be responsible for the costs incurred by it in connection with such efforts.
9. Make-Ready. The Applicable Operating Company shall diligently perform all make ready work along each Route that is made a part of this Agreement. KDL shall reimburse the applicable Operating Company for the cost of all such work.

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CINERGY LEGAL DEPT

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10. Construction and Installation. After the Applicable Operating Company performs the necessary make ready work, KDL, at its cost¹, shall have the Fiber constructed along the Route. All such work shall comply (i) with reasonable and customary construction practices and (ii) with the minimum requirements of applicable governmental regulations and codes, including, but not limited to, the National Electrical Code ("NEC") and National Electrical Safety Code ("NESC").

MAINTENANCE

11. Fiber. KDL shall, at its own expense, perform all maintenance required to keep the Fiber, including that fiber retained by the Operating Companies, in good working order, condition and repair, ordinary wear and tear excepted, throughout the useful life of the Fiber (and at its discretion, KDL may replace certain of the Fiber from time to time). KDL's maintenance shall be done in accordance with telecommunication industry standards. In the event maintenance is required on Fibers that are located in the Power Zone on Operating Company Utility Structures (distribution or transmission), unless otherwise required by law, such maintenance shall be coordinated by KDL, who will employ the Operating Company or a qualified contractor (such qualifications to be reasonably set by Operating Company) to perform such maintenance. KDL shall be responsible for the actual cost associated with such work².

- (a) KDL shall give at least two days' notice to the Applicable Operating Company before performing any non-emergency maintenance on any of the Fiber installed on that Operating Company's Utility Structures. For any emergency maintenance, KDL shall give the Applicable Operating Company at least one hour's notice. Such notice shall be given to the Applicable Operating Company at 1-800-262-3000

¹ The Applicable Operating Company may increase the number of fiber strands it retains (*i.e.* the fiber strands it does not lease to KDL) along a Route from two (2) fiber strands to that number of fiber strands, which equals five percent (5%) of the total number of strands KDL installs along that Route, rounded to the nearest even number (for example, if KDL installs a 96 count along a particular Route, the Applicable Operating Company may increase the number of fiber strands it retains along that Route to 4; if KDL installs a 144 count along a particular Route, the Applicable Operating Company may increase the number of fiber strands it retains along that Route to 8.). The election to increase such count shall be made prior to construction and reflected in the Project Description for that Fiber Project; and the Applicable Operating Company shall be responsible for its pro-rata share of Fiber costs related to such increased fiber count.

² If the Applicable Operating Company increases the number of fiber strands controlled by it along a Route above two (2), it shall reimburse KDL for the pro-rata share (based on the ratio of the number of such excess strands on the Route to the number of all strands on the Route) of KDL's reasonable out-of-pocket costs for maintenance and repair work related to such increased fiber count.

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- (b) KDL shall give at least two days' notice to the Applicable Operating Company before performing any non-emergency maintenance on any of the Fiber installed on that Operating Company's Utility Structures. For any emergency maintenance, KDL shall give the Applicable Operating Company at least one hour's notice. Such notice shall be given to the Applicable Operating Company at 1-800-262-3000
- (c) In the event emergency maintenance needs to be performed on the Applicable Operating Company's Utility Structures, that Operating Company reserves the right to commence and complete any such electric maintenance or restoration work prior to allowing KDL access to repair or maintain its Fiber. If requested by that Operating Company's personnel, KDL shall cease repair work and vacate the repair site until that Operating Company's maintenance and restoration procedures are complete.

12. Relocation. This Agreement is subject to the right of the Operating Company, without liability to KDL or its customers, to relocate, modify the geographic routing of, or to remove, replace or change, the location of any of its facilities in such a manner as will best enable the Operating Company, in its sole discretion, to fulfill its electric or gas service or other business requirements. When facilities are to be moved or replaced, the Operating Company will give KDL advanced written notice, where practical, of such move or replacement and cooperate with KDL in planning such move or replacement in order to preserve the connectivity and continuity of services of KDL and that of its customers. When Operating Company facilities are to be removed, the Operating Company shall give advance written notice to KDL of such removal so that KDL may make alternative arrangements for its facilities and equipment affected by such removal. KDL shall be responsible for its pro-rata share of any costs of relocation, modification of the geographic routing of, removal, replacement or change in the location of its facilities that affects KDL's facilities and related service, insofar as such changes are caused by KDL, such as attachment to an Operating Company supporting structures that must be upgraded to accommodate KDL's attachment or an upgrade of KDL's attachment to a supporting structure.

In the event that any relocation of Operating Company Utility Structures is necessitated by the lawful requirements of governmental authorities or a need to replace Operating Company Utility Structures that are, in the Operating Company's sole reasonable judgment, deteriorated or worn out, the Parties, if required to by law, shall share the cost, on a pro-rata basis, as reasonably determined by Operating Company, of restoring the facilities that the Parties physically share. If the parties are not, by law, required to share such costs, the Applicable Operating Company shall be responsible for any such costs. Nothing in this Agreement is meant to limit the right of either Party to seek compensation from any governmental authority for the costs of such relocation or replacement.

13. Operating Company Utility Structures. The Operating Companies shall, throughout the Term of this Agreement, at their expense maintain their Utility Structures in good working order, condition and repair.

INTERESTS/RIGHTS

14. Legal Title/Lease Arrangement. The Applicable Operating Company shall own all of the Fiber installed pursuant to this Agreement; and KDL shall automatically and without further action,

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have an indefeasible, fully paid-up (with no periodic lease payments), fully transferable lease on the portion of the Fiber controlled by it along the Routes (the "IRU Fibers"). This indefeasible right to use ("IRU") is an exclusive and irrevocable right, subject to termination only as provided herein, to use the IRU Fibers; provided that the grant of such IRU does not convey legal title to KDL in the IRU Fibers. On the lease commencement date, the Applicable Operating Company agrees that all of such Operating Company's rights and remedies under any manufacturer's or similar warranties that apply to the leased Fiber shall be automatically assigned to KDL. All right, title and interest in all of KDL's other facilities and associated equipment to be placed along the Route(s) (transmission hardware, etc.) shall at all times remain exclusively with KDL.

15. Rights/Restrictions.

- (a) The Fiber controlled by KDL may be used for any lawful purpose by KDL or any third party KDL allows to use such Fiber. KDL understands and agrees that such leasehold is subject to such restrictions and conditions as are, in the Operating Company's sole reasonable judgment, necessary to ensure the safety, reliability and operating efficiency of the Operating Company's electric and gas operations.
- (b) The Fiber controlled by the Applicable Operating Company is nontransferable except as specified in section 20 of this Agreement and may only be used by the Operating Companies for their own internal intra-company communications needs.

16. Liens and Encumbrances. So long as KDL is not in default under the Fiber Lease, PSI hereby agrees and covenants that it will not cause or permit an event of default to occur and continue under its Indenture dated September 1, 1939, as amended and supplemented (the "PSI Mortgage") such that the Trustee or the bondholders under the PSI Mortgage take possession of, foreclose upon, or sell the leased fibers free and clear of the rights of the Lessee under the Fiber Agreement.

So long as KDL is not in default under the Fiber Agreement, CG&E hereby agrees and covenants that it will not cause or permit a completed default to occur and continue under its First Mortgage dated as of August 1, 1936, as amended and supplemented (the "CG&E Mortgage") such that the Trustee or the bondholders under the CG&E Mortgage take possession of, foreclose upon, or sell the leased fibers free and clear of the rights of the Lessee under the Fiber Agreement.

The Operating Companies shall keep the Fiber leased to KDL, free from any and all liens and claims, except for the above referred to PSI mortgage and CG&E mortgage.

PSI represents to KDL that Section 7 of Article X of the PSI Mortgage provides that, so long as PSI is not in default thereunder, PSI may execute and deliver a lease or leases in the usual form for any of its non-utility property that the interest of the lessee or lessees under any such lease shall be free from the lien of the PSI Mortgage; and that upon the request of the Company the Trustee shall execute and deliver such documents as in the opinion of counsel may be necessary to free from the lien of the PSI Mortgage the interest of the lessee under any such lease, but the interest of PSI, as lessor under any such lease, shall be subject to the lien of the PSI Mortgage. PSI further represents that the term "opinion of counsel" is defined in the PSI Mortgage as an opinion in writing signed by counsel appointed by the Board of Directors of PSI and approved by the Trustee. As soon as

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practicable after the execution and delivery of the Fiber Agreement, PSI agrees to request the Trustee under the PSI Mortgage to execute and deliver such documents as in the opinion of counsel may be necessary to free from the lien of the PSI Mortgage the interest of the Lessee under the Fiber Agreement pursuant to Section 7 of Article X of the PSI Mortgage.

In connection with the sale of the leased fibers by KDL to CG&E, KDL shall retain a vendor's lien or purchase money mortgage lien on such leased fibers to secure CG&E's obligation to pay the purchase price of such lease Fibers as set forth in the Fiber Agreement, which lien shall exist on the date of acquisition of such leased fibers by CG&E and continue for the term of the Fiber agreement. CG&E agrees to execute and deliver and file such Uniform Commercial Code financing statements and other documents as shall be reasonably requested by KDL from time to time to perfect such lien.

17. Interconnection. At each end of a Route, and at the splice points designated in the applicable Project Description, each party shall be responsible for, and pay all costs associated with, installing equipment and facilities necessary in order to utilize fiber strands under its control and each shall also be responsible for, and pay all costs associated with, interconnecting its fiber strands to such equipment. All access to the Fiber shall be arranged through, and performed by, KDL or a KDL contractor, in accordance with section 11 of this Agreement.

GENERAL TERMS & CONDITIONS

18. Term. This Agreement shall become effective upon its execution and shall continue in effect for a term of ninety-nine (99) years. Thereafter, the Agreement shall automatically renew on a year to year basis, unless and until terminated by either party on six (6) months notice.

(a) Significant Regulatory Change. If an applicable legislature, Court of competent jurisdiction, or administrative agency alters or amends a statute, rule, or order such that it is economically unreasonable for the affected party to continue under this Agreement or any Fiber Project related to this Agreement, as applicable, and the parties are not able, after negotiating in good faith, to come to a mutually agreeable equitable solution, the affected party may immediately terminate this Agreement or the affected Fiber Project, as applicable, after providing the other party with notice of such altered or amended statute, rule, or order.

(b) Regulatory Changes not Applicable to 18 (a). If neither party exercises its rights pursuant to Section 18(a) of this Agreement then to the extent that utility costs directly assignable to transactions under this Agreement may change due to municipal ordinance, statute, rule, order, contract, or settlement and such costs are unrecoverable through rates, each party will assume its pro-rata share of such costs, as reasonably determined by Operating Company.

(c) Because substantially all of the moneys paid by KDL in connection with Fiber Project under this Agreement are paid for up front by KDL, the parties agree that, if any then existing Fiber Project terminates prior to the ninety-nine (99) year term, KDL shall have the right to purchase all Fiber controlled or leased by it in connection with such Fiber Project (ie excluding strands controlled by the Applicable Operating Company) at a cost of ten dollars (\$10) from the

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Operating Companies. Thereafter, KDL shall be allowed to benefit from any of the Operating Companies' pole attachment rights and rights-of-way, if any, that might extend to KDL in connection with such Fiber.

19. Taxes. Notwithstanding who has legal title to the Fiber, it is understood and agreed as between the parties that for accounting and federal and all applicable state and local tax purposes, KDL shall be treated as the owner of the fiber strands it controls; and the applicable Operating Company shall be treated as the owner of the fiber strands it controls.

20. Successors and Assigns.

(a) *Generally*. This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the parties hereto and their respective successors and permitted assigns. Unless otherwise set forth herein, neither of the parties may assign this Agreement to any other person or entity without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

(b) *Exceptions*. Notwithstanding the foregoing,

(i) the parties may assign this Agreement without the consent of the other party to any affiliate of such party, to the surviving entity into which such party may merge or consolidate, or to any entity to which the party transfers all, or substantially all, of its business and assets; and

(ii) KDL shall also have the right, without the consent of the Operating Companies, to assign or otherwise transfer this Agreement as collateral to any lender to KDL (or lender to any successor or assign of KDL); provided that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, except that any lender shall not incur any obligations under this Agreement, nor shall it be restricted from exercising any right of enforcement or foreclosure with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement.

21. Notices. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, and shall be deemed to have been duly given (a) on the date of personal delivery, (b) on the date of delivery to a nationally recognized overnight delivery service, (c) on the date of deposit in the U. S. mails, postage prepaid, by certified mail, return receipt requested, or (d) on the date of transmission by telephonic facsimile transmission, in each case addressed as follows, or to such other addresses or facsimile numbers as shall be designated from time-to-time by the parties pursuant to this paragraph 21:

If to KDL to:

If to the Operating Companies to:

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Kentucky Data Link, Inc.
1419 W. Lloyd Expressway, Suite 100
Evansville, Indiana 47710
Attention: John Greenbank
President
Fax: 812/461-3363

Cinergy Corp.
221 East Fourth Street
Cincinnati, OH 45202
Attention: Paul Kling
Manager T & D Engineering
Fax: 513/287-3698

With copy to:
Kentucky Data Link, Inc.
8829 Bond Street
Overland Park, KS 66214
Attention: Legal Department
Fax: (913) 492-1684

With copy to:
Cinergy Corp.
1000 East Main Street
Plainfield, IN 46168
Attention: Legal Department
Fax: (317) 838-1842

22. Force Majeure. In the event KDL or the Operating Companies are delayed in or prevented from performing any of its respective obligations under this Agreement due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, acts of insurrection, acts of civil or military authority, including orders and decisions by applicable administrative agencies, fires, floods or earthquakes, fiber cuts or other causes beyond the reasonable control of the party delayed, then such delay or nonperformance shall be excused. If any such delay or nonperformance due to the foregoing causes or events occurs or is anticipated, the party affected shall promptly notify the other party in writing of such event or expected event and the cause and estimated duration of such event. The party affected by such event shall, at no cost to the other party, exercise due diligence to shorten or avoid the delay or nonperformance and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay or nonperformance.
23. Limitation of Liability. NEITHER PARTY SHALL HAVE ANY RESPONSIBILITY, LIABILITY OR OBLIGATION TO THE OTHER OR THE OTHER'S AFFILIATES, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS OR PERMITTED ASSIGNS FOR ANY SPECIAL, INCIDENTAL CONSEQUENTIAL OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, COST OF REPLACEMENT SERVICES, LOSS OF CUSTOMERS OR AGENTS, LOSS OF USE, OR PENALTIES IMPOSED BY OTHERS, REGARDLESS OF ANY ACT OF OMISSION OR COMMISSION IN CONNECTION WITH OR UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY DEFECT IN, DELAY IN OR LOSS OF AVAILABILITY, OR FAILURE OF THE FIBER.
24. Indemnification.

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- (a) Operating Company shall defend, indemnify and hold harmless KDL and each of its officers, directors, employees and agents, from and against, and shall pay the full amount of, any loss, liability, claim, damages, expense, including costs of investigation and defense and reasonable attorney's fees, whether or not involving a third-party claim (collectively, Damages), arising, directly or indirectly, from Operating Company's acts or omissions in connection with this Agreement, except to the extent caused by KDL. Such indemnity shall apply regardless of whether the Damages result from any asserted or actual negligence or willful misconduct of, or breach of warranty by, KDL or any of its officers, directors, employees or agents. Such indemnity shall not apply, however, to the extent that KDL receives insurance proceeds in respect of any such Claim.
- (b) KDL shall defend, indemnify and hold harmless the Operating Company and each of its officers, directors, employees and agents, from and against, and shall pay the full amount of, any loss, liability, claim, damages, expense, including costs of investigation and defense and reasonable attorney's fees, whether or not involving a third-party claim (collectively, Damages), arising, directly or indirectly, from KDL's acts or omissions in connection with this Agreement, except to the extent caused by Operating Company. Such indemnity shall apply regardless of whether the Damages result from any asserted or actual negligence or willful misconduct of, or breach of warranty by, the Operating Company or any of its officers, directors, employees or agents. Such indemnity shall not apply, however, to the extent that Operating Company receives insurance proceeds in respect of any such Claim.
- (c) Procedure for Indemnification. Within 10 days after receipt by Indemnitee of written notice of any claim or the commencement of any action, suit, litigation or other proceeding against it (Proceeding) with respect to which it is eligible for indemnification hereunder, Indemnitee shall notify Indemnitor thereof. Failure to so notify Indemnitor shall not relieve Indemnitor of its indemnification obligation, unless Indemnitor establishes that defense thereof has been prejudiced by such failure. Thereafter, Indemnitor shall be entitled to participate in such Proceeding and, at its election upon notice to Indemnitee to assume the defense of such Proceeding. If Indemnitee has given timely notice to Indemnitor of the commencement of such Proceeding, but Indemnitor has not, within 10 days after receipt of such notice, given notice to such Indemnitee of its election to assume the defense thereof, Indemnitor shall be bound by any determination made in such Proceeding or any compromise or settlement made by Indemnitee. A claim for indemnification for any matter not involving a third-Party claim may be asserted by notice from Indemnitee to Indemnitor.

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25. Disclaimer. THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

26. Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which together shall constitute one and the same document.

27. Expenses. Except as otherwise expressly provided herein or therein, each party shall bear the costs and expenses incurred by it in negotiating, entering into and performing any of its obligations under this Agreement.

28. Headings. The headings of this Agreement are inserted for convenience only and shall not be deemed to be a part hereof.

29. Severability. If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby. If this Agreement shall be held to be unenforceable against either party, the enforceability of such agreement against the other party hereto shall not in any way be affected or impaired thereby.

30. Dispute Resolution. KDL and the Operating Companies plan to use due diligence to work together to implement this Agreement. However, the parties understand that unforeseen issues and conflicts may arise. It is the intention of the parties that this Agreement not terminate prior to the expiration of the Term. Rather, the parties acknowledge their desire to reach a working solution to such issues and conflicts by employing the following dispute resolution process:

- (a) To the extent that any issue of or relating to this Agreement cannot be reasonably resolved by KDL and the Operating Companies, a designated representative of each party shall meet promptly in an effort to resolve the dispute extrajudicially.
- (b) If the dispute is not resolved as a result of such meeting, the dispute shall be immediately referred in writing to the members of senior management of each party. The members of senior management shall meet to attempt to resolve the dispute within twenty (20) days after the meeting described in paragraph 30(a) above.
- (c) No less than ten (10) days prior to the meeting of senior managers, the parties shall exchange written statements of the issues in dispute, the facts and evidence supporting each side, and the name of the member of senior management designated and authorized to resolve the dispute.
- (d) If the good faith attempts to resolve the dispute as stated in paragraphs 30(a), (b) and (c) are unsuccessful, either party may start binding arbitration in Evansville, Indiana. The arbitration will be before a three-arbitrator panel. KDL will select one arbitrator to

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represent its interest, at its sole expense; and the Operating Companies will select one arbitrator to represent their collective interests. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either party may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication. No statements by, or communications between, the parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator. The decision(s) of a majority of the arbitrators shall be final and binding on the parties.

- (e) Notwithstanding the foregoing, either party may resort to a court by applying for interim relief if such party reasonably determines that such relief is necessary to prevent irreparable injury to it or to a third party.

31. Binding Agreement. This Agreement, including the attachments, embodies the entire agreement between the parties hereto and supersedes any prior or contemporaneous oral or written agreements between the parties, and once this Agreement has been executed, any amendments hereto must be made in writing and signed by both parties.

32. Governing Law. This Agreement shall be construed and enforced under and in accordance with the laws of the State in which the affected Operating Company resides, without regard to conflicts of laws principles.

33. Customer Information Disclosure. The Operating Companies and the KDL understand and agree that KDL shall not have access to, share or have the opportunity to obtain the Operating Companies' customer information except to the extent that is otherwise permitted to any telecommunications company under applicable state and federal law, rules and regulations, and tariffs, including law affecting the privacy and disclosure of customer information, as they exist today and as changed from time to time.

34. Confidentiality. In light of the competitive circumstances, including regulatory changes, in both the energy and telecommunications markets, the Parties understand and agree that they will be exchanging information and entering into agreements for the construction and lease of facilities, the disclosure of which is likely to harm their competitive positions in their respective markets. Therefore, they agree that the business information, materials, and business plans that they provide to or discuss with each other, along with the terms and conditions thereof are deemed to be confidential unless the disclosing Party indicates otherwise.

Each Party shall, during the term of this Agreement and thereafter, take all steps reasonably necessary to hold in trust and confidence and to protect from disclosure to the public or third parties information of the other that it knows or has reason to know is the trade secret or confidential information of the other.

Confidential information does not include:

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- (a) information that is now or hereafter becomes, through no act or omission of the Party receiving the information, generally known or available in the relevant industry or industries, or is now in or later enters the public domain through no act or omission of the Party receiving the information;
- (b) information that was acquired by the receiving Party prior to entering into this Agreement and without restrictions of the information's use and disclosure;
- (c) information that has been or is hereafter received by the receiving Party from a third party who has rightfully and lawfully disclosed the information to the receiving Party;
- (d) information that the receiving Party discloses pursuant to written permission of the Party whose confidential information is to be disclosed under such permission.


If a Party receives a request for disclosure of the confidential information of the other Party pursuant to lawful order, such as discovery requests or court or administrative agency order, that Party will give immediate notice to the other of such request and the Parties will cooperate to obtain a protective order or other lawful protection against disclosure of such confidential information in the public record or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and to become effective as of the date first written above.

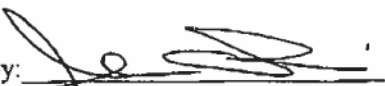
Kentucky Data Link, Inc.

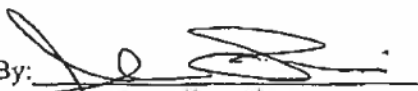
The Cincinnati Gas & Electric Company

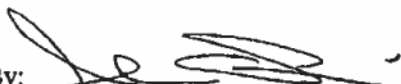
By: 
 Name: Albert E. Cinelli
 Title: Chairman


By: 
 Name: JOHN C. PROCARIO
 Title: VP & COO
 ENERGY DELIVERY BU
 The Union Light Heat & Power Company

PSI Energy, Inc.

By: 
 Name: JOHN C. PROCARIO
 Title: VP & COO
 ENERGY DELIVERY BU
 The Lawrenceburg Gas Company

By: 
 Name: JOHN C. PROCARIO
 Title: VP & COO
 ENERGY DELIVERY BU
 The West Harrison Gas and Electric Company

By: 
 Name: JOHN C. PROCARIO
 Title: VP & COO
 ENERGY DELIVERY BU

By: 
 Name: JOHN C. PROCARIO
 Title: VP & COO
 ENERGY DELIVERY BU

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GLOSSARY OF TERMS

"Agreement" means this Agreement and all extensions and modifications hereof, together with all addenda, attachments, appendices, exhibits and schedules.

"Fiber" means fiber cable, up to 144 single-mode fiber strands (or copper strands, as applicable) and attachment hardware to be installed on and between the Applicable Operating Company's Utility Structures pursuant to this Agreement.

"Fiber Optic Capacity" means on-net transmission capacity (1 T1, 1 DS3 or 1 OC3) between any two (2) KDL points-of-presence ("KDL POP") located along a specific Route described in a Project Description or located at an end of a Route described in a Project Description

"Fiber Projects" means those projects described in the Project Descriptions attached as Exhibit A.

"Power Zone" is that area of a standard utility pole above the Communications Zone and Neutral Zone in the proximity of electrical conductors.

"Project Descriptions" are the forms attached as Exhibit A that describe the Fiber Projects covered by this Agreement.

"Route" means a continuous path of Utility Structures, on and between which KDL installs Fiber pursuant to this Agreement.

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EXHIBIT A- PROJECT DESCRIPTIONS
PROJECT DESCRIPTION #

1. Project Defined.

Section 1

Fiber: KDL, at its cost, to install one (1) fiber optic cable or FOG Wire and related fiber strands, splices and terminations.

Route: _____

It is understood that the Fiber may, at KDL's discretion, be placed in the Power Zone along such Route. It is also understood that KDL will be allowed to place the Fiber in a position that will require the least amount of make ready work. (Approximately ____ miles).

Both parties will use best efforts to have Fiber described in this Section 1 installed on or before _____, 2 ____.

2. Applicable Operating Company Strands/KDL Strands Defined.

On the terms of the Agreement, the Applicable Operating Company will retain ____ of the single-mode fiber strands installed along the Route described in Section 1 above. On the terms of the Agreement, the Applicable Operating Company may elect two (2) fiber strands or that number of fiber strands, which equals five percent (5%) of the total number of strands KDL installs along that Route, rounded to the nearest even number (See Footnote 1 from Section 10 of the Agreement and Footnote 2 from Section 13 of the Agreement). Alternatively, the Applicable Operating Company may elect zero (0) fiber strands, in which case KDL would provide transmission capacity (1 T1, 1 DS3 or 1 OC3) between any two (2) of the following KDL points-of-presence ("KDL POP"): a KDL POP located along the

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Route described in Section 1 above or a KDL POP located at an end of the Route described in Section 1 above.

KDL will lease the fiber strands installed along this Route that are not retained by the Operating Company,.

3. **Special Terms.**

Ground Space (Optional at KDL's Discretion). The Applicable Operating Company hereby leases to KDL for fair market value of \$ _____, receipt of which is hereby acknowledged, and KDL hereby leases from such Company for fair market value of \$ _____, a _____ square foot portion of ground space on property already owned by such Company at an Operating Company's substation along with ingress and egress thereto, sufficient for KDL to construct up to a _____ square foot building and to locate certain equipment associated with the operation of its fiber optic network. The parties agree to use their best efforts to identify the exact ground space and to prepare, sign and file in the appropriate court office a Memorandum of said Lease within ninety (90) days of the date KDL first intends to use such ground space.

4. **Basic Agreement.** This Project Description is hereby incorporated in its entirety into the Agreement between The Cincinnati Gas & Electric Company, PSI Energy, Inc., The Union Light Heat & Power Company, The Lawrenceburg Gas Company, The West Harrison Gas And Electric Company, and Kentucky Data Link, Inc., and is effective as of this ____ day of ____ 2_____.

Kentucky Data Link, Inc.

The Applicable Operating Company

By: _____

By: _____