FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio for an Increase in Electric Distribution Rates	)	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio for Tariff Approval	)	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio for Approval to Change Accounting Methods	)	Case No. 08-711-EL-AAM
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point	)	Case No. 06-718-EL-ATA

DIRECT TESTIMONY

OF

NEAL HENSLEY

SUBMITTED ON

BEHALF OF

THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

THE PUBLIC UTILITIES COMMISSION OF OHIO

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DIRECT TESTIMONY OF NEAL HENSLEY SUBMITTED ON BEHALF OF
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Q: PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

A: My Name is Neal Hensley. I am employed by Time Warner Cable ("TWC") as a Plant Line Maintenance Manager. My business address is 11252 Cornell Park Drive, Cincinnati, Ohio 45242.

Q: HOW LONG HAVE YOU WORKED IN THE CABLE INDUSTRY?

A: I have worked in the cable industry since the early 1980s, and have extensive experience with cable construction and plant maintenance issues. I began working in the cable industry as an installation contractor in 1981. In 1984, I was hired by TWC as an installer and service technician. In 1987, I was promoted to the position of Preventive Maintenance Technician. That position required me to perform preventative plant

maintenance on the cable system's coaxial cable, electronics and power supplies. In 1994, I was promoted to the position of Customer Service Technician Supervisor, in which I supervised the service technicians who work on the cable system's plant. In 1999, I was promoted to the position of Plant Line Maintenance Supervisor (Construction), in which I supervised the technicians who performed maintenance on the cable system plant. And in 2003, I was promoted to the position I currently hold, Plant Line Maintenance Manager. In that capacity, I manage the preventative maintenance department.

Q: WOULD IT BE REASONABLE FOR DUKE ENERGY OHIO TO REQUIRE A CABLE OPERATOR TO OBTAIN A PERMIT BEFORE OVERLASHING?

A: No. TWC has not historically been required to obtain permits in advance of overlashing its facilities on poles owned and maintained by Duke (which, throughout my testimony, I use to refer to Duke Energy Ohio and its predecessors-in-interest). TWC should not be now either.

Overlashing is a standard practice used in the cable industry that involves attaching a coaxial cable or light-weight fiber-optic wire to an already existing (or "host") attachment. This practice is critical for TWC and other cable operators because it allows them to quickly and inexpensively provide their customers with new and advanced communications services, such as broadband Internet access service. Overlashing also allows for timely replacement of bad cable that is causing service problems to existing customers.

Because an overlashed wire occupies the same one foot of space as the host attachment it

does not create any separation issues with other parties' attachments, and also does not create any ground clearance issues either. Also, because the overlashed wire is a thin, lightweight fiber optic line, or a coaxial cable of a similar size, overlashing does not impose any significant additional burden on a pole requiring pole loading studies. Indeed, TWC's standard practice is to remove unused (or "dead") cable from its existing attachments as it replaces existing lines or overlashes them with new fiber optic lines, which reduces the size of its cable "bundles" attached to the poles.

Under such circumstances, if Duke required it to obtain permits in advance of overlashing its existing facilities on the poles it would unnecessarily delay TWC from remedying bad cable to existing customers or extending service to its customers. Moreover, I understand that Duke does not require joint user telephone companies to obtain permits for their overlash projects. *See* Excerpts from Deposition Testimony of Ulrich Angleton, dated December 15, 2008 ("Angleton Dep."), at 45-46, attached hereto as Exhibit 1; Excerpts from Deposition of Teresa Brierly, dated December 15, 2008, at 19-28 ("Brierly Dep."), attached hereto as Exhibit 2; *see also* Duke Joint Use Agreements, attached hereto as Exhibit 3. Requiring TWC to do so thus would not only be discriminatory, but it would negatively impact TWC's ability to compete with telephone companies that provide the same or similar services as TWC. Permitting requirements for overlashing would impose on TWC delays in repairing bad cable and building its network and providing service that its competitors the telephone companies would not have to endure.

Q: WOULD IT BE REASONABLE FOR DUKE TO IMPOSE A SEPARATE CHARGE ON A CABLE OPERATOR FOR OVERLASHED WIRES?

A: No. As I explained earlier in my testimony, an overlashed fiber-optic wire occupies the same foot of space occupied by an existing attachment, does not impose any materially increased burden on the pole, and does not create any clearance or separation issues. Consequently, there is no basis for requiring a cable operator to pay any additional charge for an overlashed wire. Moreover, TWC does not pay any separate attachment charge for overlashing wires attached to poles owned by any other utility in Ohio.

Q: WOULD IT BE REASONABLE FOR DUKE TO REQUIRE CABLE OPERATORS TO OBTAIN PERMITS BEFORE ATTACHING TO DROP POLES?

A: No. Drop poles are poles that are used where it is necessary to maintain ground clearance, such as over a road, from a distribution line to the customer's premise. That is, a drop pole is used to string the service drop needed to connect the customer to TWC's cable system from the mainline distribution system over a road and then to the customer's home or business. Because these poles only carry service drops they also do not pose the same sort of safety issues as mainline distribution poles. Importantly, the voltage of the wires on these poles is much lower than that traveling over mainline distribution poles.

Duke has not historically required TWC to obtain a permit before attaching to drop poles. I am unaware that other utilities in Ohio historically have required TWC to obtain permits for attaching to drop poles. For these other utilities TWC provides notice to them of the attachments to drop poles after the fact.

There is a practical reason that TWC has not historically obtained permits before making attachments to drop poles. In designing and constructing its network, TWC only maps out attachments to mainline distribution poles. It cannot plan for attachments to drop poles, because it does not know where drop poles are located, or even which homes or businesses will take its services. TWC only learns of the need to use drop poles when the cable installer arrives at the customer's premises to hook up service.

Because TWC only attaches to drop poles when it arrives at a customer's premises to hook up service, it would seriously delay TWC in providing service to such customers if it had to obtain permission from Duke before making attachments to the drop poles necessary to serve them. TWC cannot run its business that way. The marketplace is competitive and if TWC cannot provide timely service to its customers, they will look to TWC's competitors for service instead.

I understand that joint user telephone companies also do not seek prior approval from Duke before making attachments to drop poles. *See* Angleton Dep. at 42-43, 46-47, 53-54, 71; Brierly Dep. at 27-28; Excerpts from Deposition of Donald Storck, Nov. 21, 2008 ("Storck Dep. 1"), at 98, attached hereto as Exhibit 4. Obviously, if TWC were held to a different requirement, its ability to compete with the telephone companies that now offer video and high speed internet services in direct competition with cable operators would be adversely impacted. These companies would be able to serve customers where an attachment to a drop pole is needed much faster than TWC.

Rather than requiring cable operators to obtain permits for attachments to drop poles in advance, a better approach is for them to permit such attachments after the fact. Indeed,

TWC and Duke's field engineering personnel have recently agreed that TWC would file applications to attach to drop poles after the fact. TWC has implemented new billing codes to be used by installers or service technicians that record whether a service drop has been attached to a drop pole when a work order is closed out.

Q: WOULD IT BE REASONABLE FOR DUKE TO COUNT CABLE OPERATOR ATTACHMENTS TO DROP POLES FOR RENTAL PURPOSES?

A: TWC does not object to Duke counting drop poles for rental purposes going forward, but existing attachments to drop poles should not be considered "unauthorized," especially since Duke has not historically required TWC to obtain permits for attachments to drop poles. Duke should only be allowed to assert that drop pole attachments are "unauthorized" after a system-wide audit is completed that establishes a baseline number of attachments by all parties, and a procedure for applying to attach to drop poles after the fact is firmly established.

Q: WOULD IT BE REASONABLE FOR DUKE TO BE ALLOWED TO CHARGE CABLE OPERATORS FOR RISERS OR POWER SUPPLIES PLACED ON POLES?

A: No. Risers are used to transfer communications and electric wires from aerial to underground construction (and vice versa) and power supplies provide power to cable facilities on the pole. Power supplies are located entirely in "unusable" space on a pole – that is, the space below the minimum grade level where electric or communications wires can be attached. Risers run through unusable space and portions of the usable space, but do not deny Duke any productive use of usable pole space. TWC's power supplies are a

source of revenue for Duke's commercial-grade electricity service.

Moreover, I understand that Duke also does not charge joint users for risers or power supplies. *See* Angleton Dep. at 45-46; Brierly Dep. at 19-28. Duke should not be allowed to charge cable operators either, as such a requirement would clearly be discriminatory and create an unlevel competitive playing field.

Q: DUKE WITNESS DONALD STORCK HAS RELIED ON A DUKE POLE ATTACHMENT AUDIT TO JUSTIFY UNAUTHORIZED ATTACHMENT AND SAFETY VIOLATION PENALTIES. ARE YOU FAMILIAR WITH THE PARTIAL AUDIT CONDUCTED BY DUKE OF TWC'S ATTACHMENTS TO ITS POLES IN 2005?

A: Yes. I was responsible for managing TWC's involvement in the project.

Q: DO YOU KNOW THE CIRCUMSTANCES PRECEDING DUKE'S 2005 PARTIAL AUDIT?

A: Yes. In 2005, Duke apparently formed a joint venture with Current Technologies ("Current") to launch a broadband over power line ("BPL") service, which would directly compete with other communications providers, including TWC. As Current built out its facilities on Duke's poles, it created many safety violations also involving TWC's existing facilities. It came to TWC's attention in fact that, as part of constructing its BPL system, Current was even physically moving TWC's attachments without any authority. TWC ultimately raised with Duke its grave concerns about Current's construction practices. Shortly thereafter, Duke commissioned a contractor to commence a sweeping

audit and "safety" inspection of TWC's plant, apparently in retribution for TWC's complaining about Current's unsafe practices in constructing a system to compete with TWC. To date, Duke has only completed approximately 20 percent of this audit and "safety" inspection.

Q: HOW WAS THE AUDIT PERFORMED?

A: The audit was a drive-by audit in which Duke's contractors simply identified conditions from their vehicles without getting out to take actual measurements or verify pole ownership. Duke has not undertaken a subsequent joint ride out with TWC personnel to address the situations indentified by Duke's contractor. A joint ride-out is necessary, however, both to determine which party is responsible for violations, and what the most efficient cure is. Indeed, in some cases, the party that is responsible for the violation may not be the party that can provide the most cost-effective cure.

Q: DID TWC DISCOVER ANY PROBLEMS WITH DUKE'S 2005 PARTIAL AUDIT?

A: Yes. As I discuss later in my testimony, through its own quality reviews of the audit's results, TWC uncovered profound problems that have called into serious question the reliability and usefulness of the audit. It also became clear that Duke was attempting to have TWC bear the full costs of parts of the inspection that benefited other attachers, including Duke.

Q: DID TWC UNCOVER ANY PROBLEMS WITH ALLEGED "UNAUTHORIZED" ATTACHMENTS DISCOVERED DURING THE 2005 AUDIT?

A: Yes. Duke asserted that, after surveying 20 percent of TWC's plant, TWC had placed thousands of "unauthorized" attachments on its poles. On its face, this immediately seemed implausible not only because TWC knew that it had been diligent in obtaining permits for mainline poles, but also because Duke had conducted a full audit only a few years earlier in 2000, and it had discovered relatively few unreported attachments by TWC then. And Duke had not claimed any penalties for those attachments at the time. The notion that TWC had made thousands of unauthorized attachments in just 20 percent of its network in the span of a few years was clearly wrong.

TWC later confirmed that it was. Based on its own random quality samples of the initial phase of the audit in Milford, Ohio as well as later audit phases 1-11, TWC has found that the findings of so-called "unauthorized" attachments by Duke's contractor are inaccurate and wholly unreliable. For starters, TWC found that 30 percent of the poles in a sample randomly selected by TWC were incorrectly identified as having "unauthorized" attachments made by TWC. Specifically, Duke's contractor counted the following as "unauthorized" attachments:

- Attachments to poles that Duke did not own;
- Attachments that were not made by TWC;
- Attachments that had associated permit applications submitted to Duke; and
- Phantom attachments that could not be found in the field;

TWC also learned that a serious methodological flaw – applying newly-minted standards retroactively to TWC's existing attachments – led to significant over-reporting of

"unauthorized" attachments. Thus, many of the attachments that Duke claimed were "unauthorized" resulted from Duke counting as separate attachments TWC's placement of risers, sidewalk guys, or power supplies in unusable pole space as separate attachments, or counting an additional attachment where TWC's attachment was more than a foot away from the telephone company's attachment, notwithstanding that Duke's joint users are allowed 3 feet of space on the poles. While Duke had never attempted to count attachments in this way in the past, this approach accounted for many of the "unauthorized" attachments that it asserted TWC had made to its poles.

Many of the "unauthorized" attachments that Duke discovered were service drops to customers' homes. As explained above, however, Duke had not required TWC to permit attachments to drop poles in the past. It is hardly appropriate for Duke to claim that these attachments are somehow "unauthorized" simply because it never before required them to be "authorized." Based on its review, TWC found that more than 60 percent of the attachments that Duke claimed were "unauthorized" were incorrectly labeled as such.

Q: DID TWC UNCOVER ANY PROBLEMS WITH ALLEGED "SAFETY" VIOLATIONS DISCOVERED DURING THE 2005 AUDIT?

A: Yes. Duke asserted that TWC created thousands of "safety" violations on its poles. But, based on TWC's own review, Duke's contractor's findings in phases 1 through 9 of the audit have proven to be seriously incorrect and misleading. The majority of alleged "safety" violations were not violations of any recognized safety code, could not properly be assigned to TWC, or resulted from Duke's attempt to unilaterally and retroactively hold TWC's pre-existing plant to newly-invented technical standards.

Many of the alleged safety violations were simply maintenance issues involving guys and anchors. Duke asserted that it was a safety violation for TWC not to have a guy and anchor on every pole where Duke had one. But Duke's new requirement is not based on any safety code. And some of the guying situations were places where TWC had attached its guys to Duke's anchors, a practice that I understand that Duke had apparently allowed in the past. Nevertheless, TWC has corrected all of these situations.

Duke's contractor also asserted that TWC had created "safety" violations by maintaining cable bundles that exceeded 2 inches in diameter. But this is not a violation of the NESC or another safety code. Moreover, most of the locations where TWC was cited for having cable bundles that exceed 2 inches in diameter were parts of its system constructed more than 20 years ago as dual cable, long before Duke had adopted any "2 inches diameter rule." In any event, even predating the audit, TWC has worked to reduce the size of its bundles in old plant, and is removing dead cable when overlashing new coaxial or fiber cable on its existing attachments.

Another group of alleged "safety" violations were situations where Duke asserted that TWC had not maintained enough clearance between its service drops and Duke's electric lines, midspan and at the building attachment. But Duke's contractors only performed a drive-by audit, and did not take actual measurements, so these claims are inherently unreliable. A Duke representative, Teresa Brierly, indeed agreed that these situations could not be confirmed without measurement. (Even if they were accurate, however, it would still be difficult to determine which party created the violation in each case.) Moreover, Duke identified these particular situations as "no violation – service drop" in the surveys that it provided to TWC.

Other "safety" violations alleged by Duke involved situations where there was not enough separation between TWC's attachments and street lights placed on a pole. However, Duke's field personnel have admitted to giving TWC permission to place its attachments near streetlight brackets. In any event, some of these situations can be cured by using a drip loop guard, as Duke's field personnel have recognized, and TWC has engaged a contractor to resolve these situations in this way. Almost all of the situations that can be corrected with drip loop guards have now been corrected.

Another group of alleged "safety" violations consisted of situations where TWC's facilities did not have sufficient separation (9 inches) from those of the telephone company at midspan. This amount of separation was only required by the NESC in 1997, and much of TWC's system was constructed long before then. Thus, under the NESC's "grandfathering" provision, any attachment made by TWC before 1997 does not need to meet the NESC's 9-inch separation rule.

Lastly, many of the "safety" violations claimed by Duke centered on allegations of insufficient separation between TWC's wires and Duke's electric lines. TWC reviewed a random sample of these alleged violations and determined that many of them were not violations at all, and that many of the actual violations had been created by Duke – not TWC. A Duke representative – Teresa Brierly – later surveyed these same poles and also concluded that many of them did not constitute safety violations. Many of the conditions surveyed by TWC also required action by Duke before they could be cured. Ms. Brierly in fact agreed that many of these violations were caused by Duke, not TWC.

In sum, the majority of the safety violations alleged by Duke were, for the reasons

outlined above, incorrectly charged to TWC.

Q: HAS DUKE CORRECTED ANY OF THE SAFETY VIOLATIONS THAT IT RECOGNIZED THAT IT HAD CREATED?

A: No. To the best of my knowledge, Duke has not corrected the violations it has agreed that it had created. Nor has it shared with TWC any timeline for doing so.

Q: HAS DUKE COOPERATED WITH TWC TO CURE VIOLATIONS FOUND DURING THE 2005 PARTIAL AUDIT?

A: No. As I noted earlier in my testimony, Duke has not undertaken a joint ride out to determine which party is responsible for safety violations and which party should cure them. In fact, Duke has largely refused even to accept responsibility for violations that it created or to assist TWC in resolving conditions that it is in the best position to fix. Duke has even refused to identify a timeframe for correcting its own violations.

Q: DID DUKE ATTEMPT TO IMPOSE ANY NEW TERMS AND CONDITIONS OUTSIDE THE TARIFF ON TWC IN THE CONTEXT OF ITS 2005 PARTIAL AUDIT?

A: Yes. In the context of the audit, Duke inappropriately and unreasonably applied new standards to TWC's existing attachments. Among other things, Duke has asserted that TWC's attachments must be located at or below 23'8" and any of its attachments above that height reside in space "borrowed" from Duke that it may reclaim at any time and for any reason.

Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes. Thank you.

Exhibit 1
Excerpts from Deposition Testimony of Ulrich Angleton, dated December 15, 2008

BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates.	)	Case No. 08-709-EL-AIR
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In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	)	Case No. 06-718-EL-ATA

DEPOSITION OF: ULRICH ANGLETON

December 15, 2008

12:35 p.m.

REPORTED BY:

Renee Rogers, Registered Professional Reporter

know it's a number of poles, but I can't tell you -- without -- without looking at the billing, I couldn't tell you.

Q But you have those records?

A Yes. We have those records.

Q So are those the only agreements between Cincinnati Bell and Duke?

A Yes.

Q Does Duke have records of all attachments by Cincinnati Bell to Duke's poles?

A Yes.

Q How much space is Cincinnati Bell generally entitled to on Cincinnati Gas & Electric's poles?

A The agreement stipulates three foot of space.

Q And how much space is Embarq generally entitled to when it attaches to Duke poles?

A Three foot of space.

Q And AT&T?

A Same, three foot.

Q Now, does Cincinnati Bell apply to Duke to attach to drop poles?

A Drop poles now are considered plan,

and have been for some time, and we do put -- they are put in the system.

Q Well, you say now considered plan. What do you mean by that?

A At one time there was a label put on drop poles. They were called CC poles because they weren't in line on a regular distribution line and they were not counted in the regular plan. Some years later they were added to the plan.

Q Okay. And does Cincinnati Bell apply to attach to drop poles now?

A They apply to attach to all poles in the JUR system.

Q And do they apply to attach to drop poles before they attach?

A That, I don't know. I would have to say -- I'll say I don't know.

Q Okay. How does the JUR system work?

A Whenever there's a proposal to attach to a pole -- JUR system is an electronic system that both Time Warner Cable, Cincinnati Bell Telephone, and other cable companies use to make a request to get on a pole, and it starts the ball rolling as far as the proposal, and drawings are attached.

any of Current's affiliates to Duke's poles?

A No.

Q Do you know of any safety inspections involving Current or Current's affiliates?

A Any time an attachment is put on a pole, the process is to do a post inspection to make sure that that attachment is in compliance.

Q Other than the post-construction inspections, are you aware of any audits or surveys of Current's facilities?

A No.

Q Are you aware of complaints having been made by cable operators about the manner in which Current or CG&E was attaching Current's facilities to Duke's poles?

A No.

Q Do phone companies have power supplies on Duke's poles?

A They have terminal boxes generally mounted on their own poles. I'm sure there are some on Duke poles, but the intent is to keep them on telephone poles.

Q To the extent that they have terminal boxes on Duke's poles, do they pay a separate rental

rate for that?

A No.

Q Do phone companies have risers on Duke's poles?

A They do.

Q Do they pay a separate, additional rate for risers?

A No.

Q Now, you said that at one time drop poles had a designation of CC?

A That was current contact.

Q And so they were not included in the poles for terms of sharing arrangements; is that right?

A As far as I know.

Q As far as you know they were not?

A Yeah. That, I really don't know for sure.

Q Has Duke conducted any kind of an audit to identify all of Duke's drop poles to which the phone companies may be attached?

A I'm not aware of it.

Q When the phone companies were attaching to drop poles under the CC system, were

there records kept of those?

A That, I don't know.

Q You haven't seen any such records?

A I haven't seen any, no.

Q Does Duke intend to apply the new tariff charge in this proposed tariff to power supplies by cable operators?

A We looked at -- we're looking at doing them in the future, yes.

Q Okay. So the idea is that the tariff charge proposed to be $14.42 would apply to power supplies; is that right?

A Yes.

Q If a power supply -- let's consider a situation where a cable operator has an attachment on a pole, a horizontal attachment above minimum grade height, and it also has a power supply, and the power supply is, let's say, 25 inches long. What, under the tariff, would Duke intend to charge the cable operator for that pole? Do you know?

A That hasn't been determined.

Q It hasn't been determined whether there would be any charge?

A The thought is for every foot of space

Q Do you know how long this has been going on?
A I would have to estimate a number of years. I don't know.
Q You've been riding around Duke's outside plant Ohio for how many years?
A 13.
Q You weren't riding around prior to that?
A Yes, I was.
Q Looking at the plant?
A Yes. Yes.
Q You could see whether there is a drop attachment evident from riding around; isn't that true?
A Well, that's true if that's what you're looking for.
Q So you weren't necessarily looking for this before 13 years ago; is that right?
A That's right.
Q So you don't know whether cable operators were attached to Duke's drop poles prior to 13 years ago? You just didn't notice?
A Oh, I had -- yes, I noticed they were.

Q Okay. So some time prior to 13 years ago you know this has been taking place, right?
A Yes.
Q And do you think it's been evident to other people in Duke that cable companies have been attached to Duke's drop poles for a period of time?
A Yes.
Q And are you aware that cable operators have traditionally not applied to Duke before the fact to make attachments to drop poles?
A Since I'm not working in Ohio, I don't know what the application was. I would have to say they probably didn't. I don't know.
Q You weren't working in Ohio?
A No.
Q Now, are you aware of the fact that for many years cable companies in Ohio did not apply or provide notice to Duke of attaching to drop poles?
MS. WATTS: I'm going to note a continuing objection here to relevancy.
MR. GILLESPIE: Fine.
MS. WATTS: You can go ahead and answer.

all of its poles?

A I do not.

Q Do you know when and how the GIS coordinates for Duke's poles were determined?

A No, I don't.

Q So you don't know who performed that?

A No.

Q Or when?

A No, sir.

Q Do you know who would know?

A No, I don't. That's a completely different department.

Q It is? What department would that be?

A Here in Ohio, I don't know.

Q Do you know whether there's any reconciliation between the continuing property records and GIS mapping?

A I have no way of knowing that.

Q Do you know whether Duke has records of attachments to drop poles by any party?

A No.

Q So you don't know whether Duke has records of phone company attachments to drop poles?

A No.

Exhibit 2
Excerpts from Deposition of Teresa Brierly, dated December 15, 2008

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DEPOSITION OF: TERESA BRIERLY

December 15, 2008

3:05 p.m.

REPORTED BY:

Renee Rogers, Registered Professional Reporter

maintain under the agreement?

A Yes, I do.

Q What is it?

A 58-42 is the ratio. They're supposed to own 42 percent.

Q How long has that ratio been in effect?

A To the best of my recollection, that was amended two or three years ago.

Q Okay. And is there an effort by Duke to see that that ratio is maintained?

A Yes.

Q To the extent that Cincinnati Bell does not maintain 42 percent ownership, or ownership of 42 percent of the poles that are used, is there a rental rate that is charged for attachment to those poles?

A If we believe that the ratio is outside of the three percent allowable, we bring it back in to conformity.

Q So there's a three percent cushion?

A Yes.

Q How do you bring it back in to conformity?

A We purchase and sell poles to one another.

Q How do you determine what the price is of those poles that you purchase and sell?

A We utilize negotiated pricing tables.

Q And the purpose of these pricing tables is to determine what a reasonable cost is of the poles?

A Yes.

Q Are these pricing tables based on the cost of new poles, or older poles?

A Well, we negotiate the prices based on new poles, and then we have a deterioration factor.

Q And does the negotiated price of the new poles represent the loaded cost of the poles installed?

A Yes, it does.

Q Is it different for different size poles?

A Yes, it is.

Q Are there any other factors that are listed in the negotiating pricing tables other than the cost of the installed pole?

A Yes.

Q What else?

A We have cost of removal of poles, we have additional height prices in there for poles, we have anchor costs, we have costs from the Cincinnati Bell perspective for different tables. They have different costs associated with their doing business versus our cost to do business for different things.

Q So there would be a different cost for a Cincinnati Bell pole of a certain size than for a new pole of a certain size?

A No. We use the same cost for those.

Q I didn't understand then. What's the difference for the Cincinnati Bell cost of doing business?

A They might have to splice a terminal box. We don't have terminal boxes. We may have a charge of another kind that they don't have in their business, so we have tables.

Q Okay. So anchors are separately listed?

A Yes.

Q Does that include the guying cost as well with the anchor?

A No. It's just the cost of an anchor.

Q So the cost of the pole installed would generally cover guying costs, but the anchor would be separate; is that right?

A The cost of the pole is just the cost of the pole. There's no -- each company does their own guying and they pay for their own guying, and then if there's an anchor, whoever owns the anchor has the cost of the anchor.

Q Well, we're talking about poles that are already in the field, right?

A Yes.

Q So the purpose here is so that if, for example, Cincinnati Bell falls below the three percent cushion and only owns 38 percent of the poles that are jointly used, then Cincinnati Bell would be required to purchase some poles from Duke, right?

A Yes.

Q To bring that percentage back in line, right?

A Yes.

Q And so those are poles that are already standing in the field, correct?

A Yes.

Q So to determine what that cost is, you use a table, right?
A Yes.
Q And what if there are three guys on that pole and three anchors?
A The guys bear no weight. It's just the poles and the anchors.
Q Okay. And do you know how those poles that are purchased from Cincinnati Bell -- most of those poles would be purchased by Cincinnati Bell from Duke, I assume; is that right? Or are they sometimes purchased the other way?
A It would be Bell purchasing poles.
Q And do you know how Duke treats that sale in its pole records?
A Could you be a little more specific?
Q Do you know how Duke accounts in its accounting records for the sale of that pole?
A I've never been a part of that process.
Q Now, Duke also has joint use arrangements with AT&T and Embarq, right?
A Yes.
Q And those arrangements are also based

on some expected proportional ownership?

MS. SPILLER: Again, note a continuing objection to these public utility contracts.

But go ahead, Teri.

A Would you repeat the question? I'm sorry.

THE COURT REPORTER: Question: And those arrangements are also based on some expected proportional ownership?

A Yes. I believe so.

Q To the extent that AT&T and Embarq have fallen behind the appropriate percentage of ownership, they pay a rental fee; is that right? Or do you not know that?

A I don't know.

Q So do you work with the joint use agreements?

A Yes.

Q Have you been asked by anyone to produce copies of the joint use agreements?

A No.

MR. GILLESPIE: I'm trying to avoid having to make a copy of all of these

agreements for exhibits.

I guess what I'll do is just try to be sure through interrogatories that we have them all.

Q Do you know whether Time Warner Cable or Adelphia historically applied for attachments to drop poles?

A Yes.

Q Did they?

A My answer is yes. But did they identify them specifically as drop poles? Any pole they were to get on, it was owned by Duke Energy regardless of whether it was a drop pole or not.

Q That's your understanding?

A That's my understanding.

Q Do you know whether Adelphia and Time Warner, as a general practice, applied for drop poles?

MS. SPILLER: I'm going to object to the form of those two companies referenced.

Go ahead, Teri.

A I know from my experience when I was a technician and I processed those requests, they did

on those requests ask permission if a drop pole was in the field to make attachment.

Q Do you know whether they did so before or after the attachment?

A Did they ask before --

Q Yeah.

A -- or after? My experience would have been before.

Q So in your experience Time Warner Cable applied before the fact to attach to drop poles?

A I feel like you're asking me did they do it on every pole, and my answer to that is I don't know.

Q I'm not asking you about every pole. I'm asking you did they, on a significant number of poles, apply before the fact?

A I can only tell you that Time Warner Cable did ask permission to attach to drop poles.

Q How far back?

A I started as a tech in 1987.

Q Do you know whether Time Warner or other cable companies are aware whether there is a drop pole that needs to be attached to before they

go out to sign up a customer?

A I don't know.

Q Do you know whether the phone companies, if they are not already attached to a drop pole of Duke's, applied to Duke for permission to attach to that drop pole before they attach?

A Are you asking me if I know of what they're supposed to know?

Q No. I'm not asking you what they're supposed to do. I'm asking you what they do, okay? I mean, you -- I understand that you may have a view as to what you think they're supposed to do. That's not what I'm asking you. I'm asking you about what actually happens in the field.

MS. SPILLER: Based upon what you know.

Q Yeah. Based on your knowledge. That's all I'm asking.

A My knowledge is that they're supposed to apply to me before attaching any attachment to any of our poles.

Q And that's your interpretation of what the cable companies are supposed to do also, right?

A My understanding is that if a

telephone company is on an existing pole and they want to get another attachment on that pole, they may do so within the space allowed them within the agreement.

So, no, Cincinnati Bell would not notify me every time they want to put an attachment on the pole. Yes, Time Warner should.

Q Okay. Now, I'm not asking you what you believe should be done. I'm just trying to get an understanding of what the parties actually do, okay?

Let me define what I mean by a drop pole. By drop pole I mean a pole that is off the distribution line that is used to help carry a service drop to the home, okay?

A Yes.

Q Now, my question has to do with if there is a Duke drop pole that, let's say, Cincinnati Bell is not already attached to, if Cincinnati Bell wants to attach to that drop pole to provide service to the customer, do you know whether Cincinnati Bell requests permission, files an application with Duke before doing so?

A I don't know.

Exhibit 3
Duke Joint Use Agreements

REVISED JOINT USE AGREEMENT
AMENDMENT 1962 ATTACHED

THIS AGREEMENT, made this 31st day of December, 1957, by and between The Cincinnati and Suburban Bell Telephone Company, hereinafter referred to as the "Telephone Company", and The Cincinnati Gas and Electric Company, hereinafter referred to as the "Power Company", each being a corporation organized and existing under the laws of the State of Ohio

WITNESSETH:

WHEREAS, under and pursuant to agreement made January 1, 1936 between The Power Company and The Telephone Company, the companies established joint use of their respective poles on a flat rental per pole basis; and

WHEREAS, it is desirable in all cases where joint use has been established and in all future cases, where joint use is agreed upon, for one party to use the other's pole upon a reciprocal or rent free basis; and

WHEREAS, it is desirable to make changes in said agreement to convert existing jointly used plant to such reciprocal basis; and

WHEREAS, it is desirable to make other changes in said agreement to correct personnel changes in the negotiation clause, due to organizational changes in the companies of both parties and further to provide for the setting up of an Operating Routine to adapt the general principles of said agreement to a day-by-day jointly used pole operation and to interpret the intent of certain sections of said agreement; and

WHEREAS, it is desirable to continue in force and effect other provisions of said agreement of January 1, 1936, as to which no change is now contemplated.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

DEPOSITION EXHIBIT
OCTA 15
12-15-08

SECTION I

GENERAL

ARTICLE ONE

SCOPE AND EFFECT

(a) This agreement is effective January 1, 1957 and supersedes said agreement of January 1, 1936 and all provisions thereof except those relating to accounting and payment of rentals and charges for use of poles before January 1, 1957.

(b) This agreement shall be in effect in the following described territory, to wit: Hamilton, Clermont, Butler and Warren Counties, Ohio, and any adjoining counties into which the parties may extend their operations, and shall cover all poles of each of the parties now existing or hereafter erected in the above territory when said poles are brought hereunder in accordance with the procedure hereinafter provided. Each party reserves the right to exclude from joint use (1) poles which, in the Owner's judgment are necessary for its own sole use; and (2) poles which carry or are intended by the Owner to carry, circuits of such a character that in the Owner's judgment the proper rendering of its service now or in the future makes joint use of such poles undesirable. It is also agreed that neither party will underbuild or overbuild a pole line owned or used by the other party without first giving to said party a thirty day written notice of such intention. If the said other party desires to form a joint line, it shall make arrangements under this agreement within the said thirty day period.

(c) The poles, stubs, anchors, guys, and other supports jointly used on the reciprocal or rent free basis by the parties hereto, shall be recorded in "Schedules" attached to and made a part of this agreement.

ARTICLE TWO

EXPLANATION OF TERMS

For the purpose of this agreement, the following terms, when used herein, shall have the following meanings:

(a) "Clearance Attachment" is an attachment, usually at a crossing, placed by one party on the other party's poles primarily for the purpose of obtaining standard clearance for wires, cables, and suspension strands from other wires, guys, cables, suspension strands, transformers, etc. Such attachments shall be considered as "Clearance Attachments", as defined above, only when it would be unnecessary for the party making such attachments to place poles in lieu of the poles contacted by such "Clearance Attachments", if the Owner's plant did not exist at that point.

(b) "Reciprocal Attachment" is an attachment placed by one party on the other party's pole, under circumstances other than those previously described for the "Clearance Attachment".

(c)"Power Attachment"shall be understood to be the attachment of any electric equipment, wires, cables and/or supports to a telephone pole,

(d)"Telephone Attachment"shall be understood to be the attachment of any telephone equipment, wires, cables and/or supports to a power pole.

(e) "Then Value In Place" means the value obtained by multiplying the reproduction cost of the pole or other item of plant by the per cent condition determined from field inspection.

(f)"Standard Joint Pole"is a 35' wood pole for rear property line construction and a 40' wood pole for street construction.

(g)"Standard Space"is the following described space on a joint pole.

(1) For the Power Company, the uppermost seven feet of the pole.

(2) For the Telephone Company, a space of three feet at a sufficient distance below the space of the Power Company to provide at all times the minimum clearance required by the specifications and at a sufficient height above the ground to provide the proper vertical clearance for the lowest horizontal run line wires or cables attached in such space.

The space assigned to each party is for its exclusive use, except in cases where the specifications permit certain attachments of one party to be located in or below the space assigned to the other party.

It is further agreed that the parties hereto shall cooperate in allocating the available space on new or existing poles in accordance with the requirements of each party in order to avoid the use of excess height of poles or the replacement of existing poles.

ARTICLE THREE

NEGOTIATIONS AND OPERATING ROUTINE

(a) The negotiations for the establishment and maintenance of jointly used lines shall be handled by the Chief Engineer of the Telephone Company and the Manager of the Electric Distribution Department of the Power Company or by their representatives. If the above named negotiators cannot agree in any particular case, the matter shall be referred to a Vice-President of each of the parties hereto.

(b) Since this agreement merely states definitions and general principles, an Operating Routine shall be jointly prepared by the parties hereto consisting of instructions for administering this agreement. The Operating Routine shall be approved by the Chief Engineer of the Telephone Company and the Manager of the Electric Distribution Department of the

Power Company. The Operating Routine shall be based on this agreement and shall give the detailed methods and procedures which will be followed in establishing, maintaining and discontinuing the joint use of poles. The Operating Routine may be changed at any time upon the approval of the Chief Engineer of the Telephone Company and the Manager of Electric Distribution Department of the Power Company, providing such changes do not conflict with the general principles of this agreement.

ARTICLE FOUR

SPECIFICATIONS

(a) The joint use of the poles covered by this agreement shall at all times be in conformity with the terms and provisions of Administrative Order No. 72, Public Utilities Commission of Ohio, except that such requirements, ordinances and lawful rulings of public authorities of any territory covered by this agreement, as are in excess of the specifications referred to above, shall govern as nearly as practical such joint use.

(b) The lowest permanent pole step on any jointly used pole shall be placed at a height of not less than six and one-half feet from the ground. Between this point and the ground, a lag screw to accommodate a detachable pole step of a type agreeable to both parties may be placed at a height of three and one-half feet from the ground.

(c) Any existing joint use construction of the parties hereto which does not conform to the said specifications shall be brought into conformity therewith, as follows:

1. Both parties hereto shall exercise due diligence in bringing into conformity with the specifications referred to above, as the occasion may arise, any existing joint use construction.

2. When any of the existing joint use construction of either party is reconstructed, or any changes are made in the arrangement or characteristics of their circuits or attachments, the new or changed parts shall be brought into conformity with said specifications.

3. The cost of bringing such joint use construction into conformity with said specifications shall be borne by the parties hereto in accordance with the terms of this agreement.

ARTICLE FIVE

LIABILITY AND DAMAGES

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for injury to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this agreement, or due to the proximity o

the wires and fixtures of the parties hereto attached to the jointly used poles covered by this agreement, the liability for such damages, as between the parties hereto, shall be as follows:

(a) Each party shall be liable for all damages for such injuries to persons or property caused solely by its negligence or solely by its failure to comply at any time with the specifications herein provided for; provided that construction temporarily exempted from the application of said specifications under the provisions of section (c) of Article Four shall not be deemed to be in violation of said specifications during the period of such exemption.

(b) Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

(c) Each party shall be liable for one-half (1/2) of all damages for such injuries to persons other than employees of either party, and for one-half (1/2) of all damages for such injuries to property not belonging to either party, that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

(d) Where, on account of injuries of the character described in the preceding paragraphs of this article, either party hereto shall make any payments to injured employees or to their relatives or representatives in conformity with (1) the provision of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment whether based on negligence on the part of the employer or not, or (2) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceding paragraphs (a) and (b) and shall be paid by the parties hereto accordingly.

(e) All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one-half (1/2) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

(f) In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, reasonable attorneys' fees, disbursements and other proper charges and expenditures.

(g) The liability of either party, or both parties, for damages arising out of the joint use of poles under this agreement, shall be finally determined by the parties hereto in accordance with the foregoing provisions of this article, and such determination shall not be dependent upon, nor governed by, the outcome of any litigation against either party or against both parties, either prior or subsequent to such final determination, except, however, where settlement has been made in accordance with paragraphs (c) and (f) of this article.

ARTICLE SIX

ATTACHMENTS OF OTHER PARTIES

If either of the parties hereto has, prior to the execution of this agreement, conferred upon others, not parties to this agreement, by contract or otherwise, rights or privileges to use any poles covered by this agreement, nothing herein contained shall be construed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges; it being expressly understood, however, that for the purpose of this agreement, the attachments of any such outside party shall be treated as attachments belonging to the grantor, and the rights, obligations and liabilities hereunder of the grantor in respect to such attachments shall be the same as if it were the actual owner thereof. Where municipal regulations require either party to allow the use of its poles for fire alarm, police or other like signal systems such use shall be permitted under the terms of this article.

ARTICLE SEVEN

DEFAULTS

(a) If either party shall make default in any of its obligations under this contract and such default continue thirty (30) days after notice thereof in writing from the other party, all rights of the party in default hereunder shall be suspended, including its right to occupy jointly used poles, and if such default shall continue for a period of sixty (60) days after such suspension, the other party hereunder may forthwith terminate this agreement as far as concerns future granting of joint use.

(b) If either party shall make default in the performance of any work which it is obligated to do under this contract at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such payment within sixty (60) days upon presentation of bills therefor shall, at the election of the other party constitute a default under paragraph (a) of this article.

ARTICLE EIGHT

TERM OF AGREEMENT

Subject to the provisions of Article Seven, this agreement may be terminated, so far as concerns further granting of joint use by either party, after January 1, 1958 upon one (1) year's notice in writing to the other party, provided, that if not so terminated it shall continue in full force thereafter until terminated by either party at any time upon one (1) year's notice in writing to the other party as aforesaid, and provided further that notwithstanding such termination, this agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

ARTICLE NINE

ASSIGNMENT OF RIGHTS

Except as otherwise provided in this agreement, neither party hereto shall assign or otherwise dispose of this agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights of way covered by this agreement, to any firm, corporation, or individual, without the written consent of the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidated company, as the case may be, and provided further that subject to all of the terms and conditions of this agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased, and controlled by it, or associated or affiliated with it in interest, or connecting with it, the use of all or any part of the rights reserved hereunder or any pole covered by this agreement for the attachments used by such party, in the conduct of its said business; and for the purpose of this agreement all such attachments maintained on any such pole by the permission as aforesaid of either party hereto shall be considered as the attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this agreement in respect to such attachments, shall be the same as if it were the actual owner thereof.

ARTICLE TEN

WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE ELEVEN

EXISTING CONTRACTS

This agreement supersedes all existing agreements between the parties hereto for the joint use of poles within the territory covered by this agreement which are, by mutual consent, hereby abrogated and annulled.

ARTICLE TWELVE

SERVICES OF NOTICES

Wherever in this agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Power Company at its office at Fourth and Main Streets, Cincinnati, Ohio, or to The Telephone Company at its office at 225 East Fourth Street, Cincinnati, Ohio, as the case may be. In case of emergency, a written notice may be waived by mutual agreement of responsible agents of both parties. However, in all cases, verbal notices must be confirmed by written notices.

ARTICLE THIRTEEN

MARKING OF POLES

Each party may suitably mark all jointly used poles for identification purposes.

SECTION II

CONDITIONS GOVERNING THE ESTABLISHMENT OF JOINT USE ON A RECIPROCAL OR RENT FREE BASIS

ARTICLE ONE

PLACING, TRANSFERRING, OR REARRANGING ATTACHMENTS

(a) Whenever either party desires to reserve space on any pole of the other, for any attachments requiring space thereon, not then specifically reserved hereunder for its use, it shall make written application therefor, specifying in such notice the location of the pole in question, and the number and kind of attachments which it desires to place thereon and the character of the circuits to be used. Within ten (10) days after the receipt of such notice, the Owner shall notify the Applicant whether or not said pole is excluded from joint use. Upon receipt of notice from the Owner that said pole is not of those excluded, and after the completion of any transferring or rearranging which is then required in respect to attachments on said poles, including any necessary pole replacements, the Applicant shall have the right as Licensee hereunder to use said space for attachments and circuits of the character specified in said application in accordance with the terms of this agreement.

(b) Except as herein otherwise expressly provided, each party shall place, maintain, rearrange, transfer and remove its own attachments, (including any tree trimming or cutting incidental thereto) at its own expense and shall at all times perform such work promptly and in such a manner as not to interfere with the service of the other party.

ARTICLE TWO

ERECTING, REPLACING OR RELOCATING POLES

(a) Whenever any jointly used pole, or any poles about to be so used under the provisions of this agreement, is insufficient in length or strength for the proposed immediate additional attachments to be made thereon, the Owner shall promptly replace such pole with a new pole of the necessary length and strength, and make such other changes in the existing pole line in which such pole is included, as the conditions may then require. The cost of such replacement or changes shall be borne as hereinafter provided in this article.

(b) Whenever it is necessary to change the location of a jointly used pole, by reason of any state, municipal or other governmental requirements, or the requirements of a property owner, the Owner shall, before making such change in location, notify the Licensee, specifying the time of the relocation, and the Licensee shall, at the time so specified, transfer its attachments to the pole at the new location.

(c) Whenever either party hereto is about to erect new poles within the territory covered by this agreement, either as an additional pole line, as an extension of an existing pole line, or as the reconstruction of an existing pole line, it shall notify the other in writing at least ten (10) days before beginning the work (shorter notice, including verbal notice subsequently confirmed in writing may be given in cases of emergency) and shall submit with such notice its plans showing the proposed location and character of the new poles and the character of the circuits it will use thereon. The other party shall within five (5) days after the receipt of such notice, reply in writing to the party erecting the new poles, stating whether such other party does, or does not, desire space on the said poles, and if it does desire space thereon, the character of the circuits it desires to use, the size and number of wires or cables that will be erected and the amount of space it wishes to reserve. If such other party requests space on the new poles and if the character and number of circuits and attachments are such that the owner does not wish to exclude the poles from joint use, then poles suitable for the said joint use shall be erected in accordance with the provisions of paragraphs (d) and (e) of this article.

(d) In any case where the parties hereto shall conclude arrangements for the joint use hereunder of any new poles to be erected, or for replacing existing jointly used poles, the ownership of such poles shall be determined by mutual agreement, due regard being given to the desirability of avoiding mixed ownership in any given line, and such ownership of poles shall be so allocated that The Telephone Company shall at all times severally own forty-five (45) per cent of the total number of all poles jointly used by the parties, and The Power Company shall own the remainder or fifty-five (55) per cent of the total number of all poles jointly used by the parties. In the event of disagreement as to allocation of ownership of any pole, it shall be allocated to the party then owning a smaller number of poles than the ratio established herein, except that the Power Company shall always own any poles supporting conductors classed at 5000 volts or above.

(e) The costs of erecting new joint poles coming under this agreement, either as new pole lines, as extensions of existing pole lines or to replace existing poles, shall be borne by the parties as follows:

(1) A standard joint pole, or a joint pole shorter than standard, shall be erected at the sole expense of the Owner.

(2) A pole taller than the standard, the extra height of which is due wholly to the Owner's requirements, shall be erected at the sole expense of the Owner.

(3) In the case of a pole taller than standard, the extra height of which is due wholly to the Licensee's requirements, including tree trimming, the Licensee shall pay to the Owner a sum equal to the difference between the cost in place of such pole and the cost in place of a standard joint pole, the rest of the cost of erecting such pole to be borne by the Owner.

(f) In the case of a pole taller than standard, the extra height of which is due to the requirements of both parties, or to meet the requirements of public authorities or property owners, the cost of such extra height shall be divided equally between the two Companies. Any additional height requirements of such pole to meet the requirements of either party shall be at the sole expense of such party.

(f) If within three years of original date of setting of a pole, it is replaced with another pole solely because such original pole is not tall enough to provide adequately for the Licensee's requirements, and where such other pole, whether it carry transformers for the Licensee's use or not, had at the time of its erection, been pronounced by the Licensee as satisfactory and adequate for its requirements, the Licensee shall, upon erection of the new pole, pay to the Owner, in addition to any amounts payable because of excess height, a sum equal to the then value in place of the pole which is to be replaced less the net salvage value of said pole.

(g) Any payments made by the Licensee under the foregoing provisions of this article for poles taller than standard shall be for the purpose of equalizing valuations and shall not in any way affect the ownership of the poles.

(h) When replacing a jointly used pole carrying aerial cable terminals, underground connections or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied, unless special conditions make it necessary to set it in a different location.

ARTICLE THREE

PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

When either party desires to change the character of its circuits on jointly used poles, such party shall give thirty (30) days notice to the other party of such contemplated change and in the event that the party agrees to joint use with such changed circuits, then the joint use of such poles shall be continued with such changes in construction as may be required to meet the terms of the specifications for the character of circuits involved. In event, however, that the other party fails within fifteen (15) days from receipt of such notice to agree in writing to such change then both parties shall cooperate in accordance with the following plan:

(a) The parties hereto shall determine the most practical and economical method of effectively providing for separate lines and the party whose circuits are to be moved shall promptly carry out the necessary work.

(b) The cost of re-establishing such circuits in the new location as are necessary to furnish the same business facilities that existed in the joint use at the time such change was decided upon, shall be equitably apportioned between the parties hereto. In event of disagreement as to what constitutes an equitable apportionment of such cost, the Licensee shall bear the said net costs.

Unless otherwise agreed by the parties, ownership of any new line constructed under the foregoing provision in a new location shall vest in the party for whose use it is constructed. The net cost of establishing service in the new location shall be exclusive of any increased cost due to the substitution for the existing facilities of other facilities of a substantially new or improved type or of increased capacity, but shall include among other items the cost of the new pole line including rights of way, the cost of removing attachments from the old poles to the new location, and the cost of placing the attachments on the poles in the new location.

ARTICLE FOUR

RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

No guarantee is given by the Owner of permission from property owners, municipalities or others for the use of its poles by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may at any time upon written notice to the Licensee, require the Licensee to remove its attachments from the poles involved, and the Licensee shall, within thirty (30) days after receipt of said notice, remove its attachments from such poles at its sole expense. However, the parties hereto agree that the party securing right-of-way for a pole line on private property, for which arrangements have been made for joint use, shall obtain the said right-of-way for said pole line in the name of both parties.

ARTICLE FIVE

MAINTENANCE OF POLES AND ATTACHMENTS

(a) The Owner shall, at its own expense, maintain its jointly used poles in a safe and serviceable condition, so as to adequately support the wires, cables and appurtenances of both parties, and in accordance with the specifications and good practices and shall replace in accordance with this agreement, such of said poles as become defective. Each party shall, at its own expense, at all times keep all of its attachments in safe condition and thorough repair.

(b) Each party agrees that it will examine each jointly used pole before performing any work on its equipment on said pole, and if the pole is unsafe or unsound, and/or the equipment supported on said pole is not in accordance with the

specifications, it will take proper steps to correct said unsafe and unsound condition, or notify the other party hereto of such condition if the said condition is caused by the other party.

ARTICLE SIX

ABANDONMENT OF JOINTLY USED POLES

(a) If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, because of, or arising out of, the presence or condition of such pole or of any attachment thereon; and shall pay the Owner a sum equal to the then value in place of such abandoned pole or poles or such other equitable sum as may be agreed upon between the parties. Credit shall be allowed for any payments which the Licensee may have made under the provisions of Article Two, paragraph (e) when the pole was originally set.

(b) The Licensee may at any time abandon the use of a joint pole by giving due notice thereof in writing to the Owner and by removing therefrom any and all attachments it may have thereon.

ARTICLE SEVEN

MAINTENANCE OF POLE OWNERSHIP RATIO

(a) No rentals payable under Article Seven or any other article of Agreement of January 1, 1936, shall be paid or payable by either party to, or received or receivable by either party from the other for or on account of any pole usage extended after December 31, 1956.

(b) Subsequent to the date of December 31, 1956, each party to this agreement shall extend to the other the use of its poles on a reciprocal basis in accordance with the terms of this joint use agreement, the number of poles so extended by each party to be as included in approved statements required under paragraph (c) herein, in a ratio or allocation as agreed upon above in Section II, Article Two, paragraph (d). No rental shall be charged by either party for the use of such jointly used poles, the intention of this agreement being that the ownership of such poles is to be maintained on an equitable basis as herein set forth.

(c) As soon as possible following the first day of January and the first day of July, and not later than the following March 1 or September 1 respectively of each year, each party shall submit to the other a written statement in a form acceptable to such other party giving the number of poles of each party on which space was occupied or reserved for the attachments of the other party, and

each such statement when approved by the Chief Engineer for the Telephone Company and the Manager of the Electric Distribution Department for the Power Company or by their representatives, shall be used as the basis for determining the number of rent-free poles to be extended to the other party on a reciprocal basis as herein provided. Clearance attachments shall not be included in such written statements. Every such statement shall be deemed to be correct unless written notice of errors claimed to exist therein shall be given within thirty (30) days from the receipt of such statement to the party submitting the statement by the party to which the statement was submitted. In cases of dispute concerning the correctness of any such statement, a joint inspection of the pole or poles in dispute shall thereupon be made; such inspection to be begun within ten (10) days after the receipt of the notice of errors claimed to exist therein shall have been given as aforesaid, and to be completed within a reasonable time thereafter. A written report of such inspection, signed by the inspectors of both parties, shall be made and upon the approval of such report by both parties such statement shall, if shown incorrect, be corrected accordingly. If, as of January 1 of any year the ratio between the number of poles listed by the parties varies from the ratio determined by mutual agreement of the parties by more than 3 per cent of all poles so in use or reserved, the excess number shall be reduced as follows:

(1) By having the company owning a smaller number of existing jointly used poles than the ratio set forth under Paragraph (d), Article Two, Section II, set the majority of the proposed jointly used poles,

(2) By permitting the company owning such smaller number of existing jointly used poles than the ratio set forth under Paragraph (d), Article Two, Section II, to make an outright purchase of a sufficient number of jointly used poles owned by the other company. Title to such poles purchased shall be transferred by bill of sale, or

(3) By permitting the company owning such smaller number of existing jointly used poles than the ratio set forth under Paragraph (d), Article Two, Section II, to replace poles of the other company when such replacements are in order.

Adjustment of pole ownership ratio by setting proposed and/or replacing existing jointly used poles under sub-paragraphs (1) and (3) above shall be made so as to avoid or minimize rapid changes in the work load of either party's construction forces.

(d) Where both parties require anchors in the same location, the Owner of the pole shall place anchor or anchors adequate for normal requirements for both parties at no cost to the Licensee, and each party shall erect and maintain its own guys. This clause does not require the Owner to replace existing anchors.

ARTICLE EIGHT

PERIODICAL ADJUSTMENTS OF RATIO, ETC.

On January 1, 1958 and at the end of every one year period thereafter, the ratios of ownership of poles and the percentage variations therefrom as fixed on the foregoing Paragraph (d) of Article Two, Section II, and Paragraph (c) of Article Seven, Section II, shall be subject to readjustment at the request of either party made in writing to the other party not later than thirty (30) days before the end of any such one year period.

ARTICLE NINE

Nothing contained in Section II of this agreement shall be construed so as to give either of the parties hereto any proprietary right or ownership in the poles, lines, conduits, or any property of the other party covered hereto; it is understood as an arrangement providing solely for a license to the respective parties to jointly use the instrumentalities of the other herein referred to, and to so use them only under the terms thereof.

IN WITNESS THEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers duly authorized, on the day and year first above written.

THE CINCINNATI AND SUBURBAN BELL TELEPHONE COMPANY

By _____

ATTEST

_____
Secretary

THE CINCINNATI GAS & ELECTRIC COMPANY

By _____
Vice President

ATTEST

_____
Secretary

Approved As to form LEGAL DEPT.

No. 15

AMENDMENT TO REVISED JOINT USE AGREEMENT BETWEEN THE CINCINNATI GAS & ELECTRIC COMPANY AND CINCINNATI BELL, INC.

This Amendment to the Revised Joint Use Agreement (Amendment) by and between The Cincinnati Gas & Electric Company (hereinafter referred to as the Power Company), and Cincinnati Bell, Inc. (hereinafter referred to as the Telephone Company) (each a Party and collectively the Parties) is effective September 1, 2004 (Effective Date).

WITNESSETH:

WHEREAS, the Telephone Company and the Power Company executed a Revised Joint Use Agreement ("Agreement") dated December 31, 1957, to establish joint use of their respective poles on a reciprocal or rent-free basis; and

WHEREAS, the Parties now desire to amend the Agreement to acknowledge mutual obligations to accommodate lawful "third party" pole occupancies on jointly used poles; and

WHEREAS, it is desirable to continue in force and effect other provisions of the Agreement as to which no change is now contemplated; and

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the Parties hereto, for themselves, their successors and assigns, do hereby amend the Revised Joint Use Agreement of December 31, 1957, as follows:

SECTION I, ARTICLE TWO – EXPLANATION OF TERMS:
Replace item (g) in its entirety as follows:

(g) "Standard Space" is the following described space on a joint pole.

(1) For the Power Company and Power Company Licensees only, the uppermost seven feet of a standard pole.
(2) For the Telephone Company and other "communications space" attachees Licensed by the Pole Owner, at least three feet of a standard pole, located at a sufficient distance below the Standard Space of the Power Company to provide at all times the minimum clearance required by the specifications, and at a sufficient height above the ground to provide the proper vertical clearance for the lowest horizontal run line wires or cables attached in such space.

It is further agreed that the Parties hereto shall cooperate in allocating the available space on new or existing poles in accordance with the requirements of each Party in order to avoid the use of excess height of poles or the replacement of existing poles.

SECTION I, ARTICLE SIX – ATTACHMENTS OF OTHER PARTIES:
Replace the existing paragraph in its entirety as follows:

If either of the Parties should confer upon others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by the Agreement, the obligations and liabilities hereunder of the grantor in respect to such attachments shall be the same as if it were the actual owner thereof.

SECTION II, ARTICLE TWO – ERECTING, REPLACING OR RELOCATING POLES:
Replace item (d) in its entirety as follows:

(d) In any case where the Parties hereto shall conclude arrangements for the joint use hereunder of any new poles to be erected, or for replacing existing jointly used poles, the ownership of such poles shall be determined by mutual agreement, due regard being given to the desirability of avoiding mixed ownership in any given line. Such ownership of poles shall be so allocated that the Telephone Company shall at all times severally own

forty-two (42) percent of the total number of all poles jointly used by the Parties, and the Power Company shall own the remaining fifty-eight (58) percent of the total number of all poles jointly used by the Parties.

SECTION II, ARTICLE SEVEN – MAINTENANCE OF POLE OWNERSHIP RATIO:
Replace item (c) in its entirety with the following:

(c) The Parties will periodically report to each other information concerning reciprocal pole usage in accordance with methods and procedures agreed to in the Operating Routine prepared under authority of Section One, Article Three of this Agreement. The Parties will confirm by January 31 of each year whether, as of January 1 of that calendar year, the ratio between the numbers of poles listed by the Parties varies from the ratio required by paragraph (d) of Section II, Article Two by more than 2 percent, with any such excess over 2 percent to be cured as follows:

(1) By having the company owning a smaller number of existing jointly used poles than the ratio set forth under paragraph (d) Article Two, Section II, set the majority of new jointly used poles, or
(2) By permitting the company owning a smaller number of existing jointly used poles than the ratio set forth under paragraph (d) Article Two, Section II, to make an outright purchase of a sufficient number of jointly used poles owned by the other company (Title to such poles purchased to be transferred by Bill of Sale).

For each year in which the ratio between the number of poles listed by the Parties varies from the ratio required by paragraph (d) of Section II, Article Two by more than 2 percent, the Parties shall work in good faith, with due consideration of best practices, to agree on which of the two cures set forth in this Section II, Article Seven, or combination thereof, shall be utilized to reconcile the variance over 2 percent.

ALL OTHER PROVISIONS of the Revised Joint Use Agreement dated December 31, 1957, are herewith ratified and continued in full force and effect without change thereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by its proper corporate officers thereunto duly authorized as of the day, month and year first above written.

THE CINCINNATI GAS & ELECTRIC COMPANY

By: _____
John C. Procario,
Senior Vice President

CINCINNATI BELL, INC.

By: _____
Dennis Hinkel,
Senior Vice President

AMENDMENT TO REVISED JOINT USE AGREEMENT

THIS AGREEMENT, made this 25th day of June, 1962, by and between The Cincinnati and Suburban Bell Telephone Company, hereinafter called the "Telephone Company", and The Cincinnati Gas & Electric Company, hereinafter called the "Power Company", corporations under the laws of Ohio,

WITNESSETH:

WHEREAS, the Telephone Company and the Power Company executed a Revised Joint Use Agreement dated December 31, 1957, to establish joint use of their respective poles on a reciprocal or rent-free basis; and

WHEREAS, the parties now desire to make changes in said Agreement of December 31, 1957, to authorize different voltage limitations on jointly used poles and to provide for tree trimming incidental to the establishment of joint use of poles; and

WHEREAS, it is desirable to continue in force and effect other provisions of said Agreement of December 31, 1957, as to which no change is now contemplated;

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby amend the Revised Joint Use Agreement of December 31, 1957, as follows:

1. SECTION II, ARTICLE ONE-(b) Delete the words "including any tree trimming or cutting incidental thereto."

2. SECTION II, ARTICLE TWO-(d) Delete the words "at 5000 Volts or above" and place in their stead the following words "above 15000 Volts between conductors (8700 Volts between conductor and ground)."

3. SECTION II, ARTICLE TWO-(e)-(3) Delete the words "including tree trimming."

4. SECTION II, ARTICLE TWO-(i) add this new paragraph (i) to read as follows:

"Whenever tree trimming is associated with work contemplated under this agreement, whether in

DOCUMENT FILE No. 15512-1

constructing a new pole line, converting an existing pole line or rebuilding a pole line, the responsibility for necessary tree trimming and the cost thereof shall be determined in accordance with the detailed methods and procedures agreed to in the Operating Routine prepared under authority of Section One, Article Three of this Agreement.

All other provisions of the Revised Joint Use Agreement dated December 31, 1957, are herewith ratified and continued in full force and effect without change thereto.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to the Revised Joint Use Agreement dated December 31, 1957, to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, on the day and year first above written.

THE CINCINNATI AND SUBURBAN BELL TELEPHONE COMPANY

By H P Johnston
Vice President

ATTEST:

Secretary

THE CINCINNATI GAS & ELECTRIC COMP.

By S. M. Hewitt
Vice President

ATTEST:

Secretary

Approved As to Form LEGAL DEPT. By

June 30, 1992

LETTER OF UNDERSTANDING

This Letter of Understanding is associated with the Revised Operating Routine of the Revised Joint Use Agreement between The Cincinnati Gas & Electric Company and Cincinnati Bell Telephone Company.

This Letter replaces the Letter of Understanding between the two companies executed on 03-01-90 as well as all other confirmatory letters regarding the field trialing of Cincinnati Gas & Electric provided pole line services to Cincinnati Bell Telephone.

It is intended that this Letter will permit both companies to proceed with the controlled introduction of a "one crew" approach to the replacement and removal of jointly used poles.

Both companies agree to the following pursuant to Section 8 of the Operating Routine:

In those situations where it is mutually agreed upon by both parties, Cincinnati Bell Telephone as owner of certain jointly used poles authorizes The Cincinnati Gas & Electric Company as its licensee to set replacement poles and anchors and provide other related pole line services. The administration of such services will be in accordance with the Operating Routine. Upon completion, The Cincinnati Gas & Electric Company will bill Cincinnati Bell Telephone Company in accordance with Attachment 1 of this Letter of Understanding.

In those situations where it is mutually agreed upon by both parties, The Cincinnati Gas & Electric Company as owner of certain jointly used poles authorizes Cincinnati Bell Telephone Company as its licensee to remove and dispose of replaced poles and anchors and provide other related pole line services. The administration of such services will be in accordance with the Operating Routine. Upon completion, Cincinnati Bell Telephone Company will bill The Cincinnati Gas & Electric Company in accordance with Attachment 1 of this Letter of Understanding.

Attachment 1 to this Letter of Understanding will continue in effect for a period ending sixty days following notification by either party of its cancellation or until an adjustment of charges have been mutually agreed upon by both parties.

DATE: 7-1-92 BY: M. L. Forsette
Manager, EDE Department
Cincinnati Gas & Electric Company

DATE: 6-25-92 BY: R. J. Lanning Jr.
for Vice President, R&NTS
Cincinnati Bell Telephone Company

2004
Joint Cost Agreement
Cinergy and Cincinnati Bell Telephone
Effective January 1, 2004

	LENGTH	CLASS	MATERIAL (% OF COST)		COST IN PLACE		REMOVAL
	20'	ALL	25%	$	375.00	$	180.00
	25'	ALL	25%	$	450.00	$	180.00
	30'	ALL	25%	$	550.00	$	230.00
*	**35'**	**ALL**	**25%**	**$**	**820.00**	**$**	**230.00**
**	**40'**	**ALL**	**25%**	**$**	**915.00**	**$**	**260.00**
	45'	ALL	30%	$	1,070.00	$	280.00
	50"	ALL	30%	$	1,012.00	$	280.00
	55'	ALL	35%	$	1,151.00	$	300.00
	60'	ALL	40%	$	1,315.00	$	300.00
	65'	ALL	45%	$	1,725.00	$	300.00
	70'	ALL	50%	$	2,041.00	$	300.00
	75	ALL	50%	$	2,240.00	$	300.00
	80	ALL	50%	$	2,725.00	$	300.00

New Standard Pole Construction:

35' pole in rear lots - off streets (see * above), otherwise, 40' pole (see ** above). The "Cost causer" will pay for any "additional height" requested.

Sacrificed Life - Sale of Poles:

Basis for determining "in place" value of poles: depreciate "cost in place" amount at a simple rate of 4% per year - up to a maximum of 76% (see Table 1).

Pole Replacements:

1. If the Licensee requests replacement of an existing joint pole, it will reimburse Owner for the full cost of the new pole (in lieu of: "sacrificed life" - "cost of removal"). Owner to remove the existing pole at its cost. Ownership is not affected.
2. Licensee will not be responsible for any pole replacement costs if the Owner initiates the replacement.
3. The Pole Owner will replace a joint use pole with a "standard pole" as required for any public road work.
4. The Owner and Licensee will share any required "additional height" required to resolve a "common obstacle."
5. Ground Rod Assemblies to be included with pole sets performed for "Cost in Place" amounts shown above.

Joint Anchors:

1. Whenever a "joint anchor" will eliminate the need for multiple anchors, the pole Owner will provide a "joint anchor" suitable for the load of a single phase primary circuit and one telephone distribution cable.
2. With the exception of a "joint anchor," the "cost causer" will pay the full cost of any new anchor installed.
3. The "in place" value of any existing anchor sold will be fifty percent (50%) of its installed "cost in place."

- Miscellaneous Cost Items -
2004
Joint Cost Agreement
Cinergy and Cincinnati Bell Telephone
Effective January 1, 2004

	COST IN PLACE
POLES SET IN CONCRETE:	
1 yard concrete	$ 250.00
2 yards concrete	$ 350.00
Anchor Rods - when poles are set in concrete (all sizes)	$ 70.00
ANCHORS:	
Screw anchors all sizes (8" or 14") (36 MAD / MAT)	$ 210.00
Concrete or Patent Anchors (18MAD/18 MAT)	$ 350.00
Sale of an existing anchor/rod (all years)	50% of installed cost
POLE KEY ASSEMBLY:	
As required	$ 100.00
ADDITIONAL POLE REPLACEMENT COSTS:	
Transfer of all cables and fixtures at poles with cable risers when "Place In Place" not feasible (includes any - corner/dead-end pole tranfers, or any equipment cabinets)	Estimate of Actual Cost

- CONTINUED -

2004

Joint Cost Agreement

Cinergy and Cincinnati Bell Telephone

Effective January 1, 2004

ITEM	DESCRIPTION OF CBT WORK OPERATIONS	UNIT COST
1.	Place Key Planks - New or Existing Pole	$ 200.00
2.	Shift Existing Guy Wire	$ 175.00
3.	Shift Terminal (All)	$ 830.00
4.	Shift Cable and any wires on Dead-End Pole	$ 350.00
6.	Shift Load Coil Case on Existing Pole (No Splicing Required)	$ 510.00
7.	Shift Cross Connecting Terminal, SAI, Control Point, Access Point on existing or replaced pole, Load Coil Case, Cross Connecting Terminal, SAI, Control Point or Access Point Requiring Splicing, or any other Operation Not Detailed Above.	Estimate of Actual Cost

- CONTINUED -

2004

Joint Cost Agreement

Cinergy and Cincinnati Bell Telephone

Effective January 1, 2004

ITEM	DESCRIPTION OF CINERGY WORK OPERATIONS	COST
9.	Shift secondary rack (1W)	$ 65.00
10.	Shift secondary rack (3W)	$ 110.00
11.	Shift street light, including mast arm or bracket	$ 315.00
12.	Install new ground connection of concentric neutral cable in Underground Residential Development system (during construction)	$ 76.00
13.	Install new ground connection of concentric neutral cable in Underground Residential Development system (post construction)	$ 347.00
14.	Install insulator in headguy/downguy	$ 250.00
15.	Shift or transfer transformer or capacitor, feeder tie switch installation, extend underground service, crossarms, shift or transfer primary underground terminal pole equipment or other special unusual installation	Estimate of Actual Cost

TABLE 1

DEPRECIATION FACTORS BY YEAR FOR DETERMINING COST IN PLACE - TRANSFER OF OWNERSHIP EFFECTIVE JANUARY 1, 2004

To determine "Cost in Place" charges:

1. **Using Schedule A, determine the sum of COST IN PLACE values for existing poles.**
2. **Using the Table below, determine the appropriate DEPRECIATION FACTOR based on the year of placement.**
3. **Multiply the sum of COST IN PLACE values by the DEPRECIATION FACTOR.**
4. **MINIMUM COST OF "IN PLACE" POLES (year not known) based on a minimum 24% value: (In 2004, this will be comparable to the value of a pole placed in 1985)**

YEAR SET	PERCENT	FACTOR
2004	100	1.00
2003	96	.96
2002	92	.92
2001	88	.88
2000	84	.84
1999	80	.80
1998	76	.76
1997	72	.72
1996	68	.68
1995	64	.64
1994	60	.60
1993	56	.56
1992	52	.52
1991	48	.48
1990	44	.44
1989	40	.40
1988	36	.36
1987	32	.32
1986	28	.28
1985 and all OTHER YRS	24	.24

- APPROVALS -
2003 Joint Cost Agreement

This "Cost Agreement" to become effective for all JUR Proposals initiated after January 1, 2004.

For Cinergy Corp. Companies:

Date: 30 DEC 03 **By:** Richard L. Wolff

Title: Supervisor

For Cincinnati Bell Telephone NE&C:

Date: Jan 5, 2004 **By:** Larry Lee

Title: Senior Manager – OSP Infrastructure

2005
Joint Cost Agreement
Cinergy and Cincinnati Bell Telephone
Effective January 1, 2005

	LENGTH	CLASS	MATERIAL (% OF COST)		COST IN PLACE		REMOVAL
	20'	ALL	25%	$	375.00	$	275.00
	25'	ALL	25%	$	450.00	$	275.00
	30'	ALL	18%	$	550.00	$	275.00
*	**35'**	**ALL**	**19%**	**$**	**820.00**	**$**	**275.00**
**	**40'**	**ALL**	**26%**	**$**	**1,061.00**	**$**	**275.00**
	45'	ALL	26%	$	1,166.00	$	310.00
	50"	ALL	29%	$	1,230.00	$	310.00
	55'	ALL	32%	$	1,308.00	$	310.00
	60'	ALL	38%	$	1,482.00	$	310.00
	65'	ALL	44%	$	1,922.00	$	325.00
	70'	ALL	49%	$	2,226.00	$	325.00
	75	ALL	51%	$	2,443.00	$	325.00
	80	ALL	56%	$	2,944.00	$	325.00

New Standard Pole Construction:

35' pole in rear lots - off streets (see * above), otherwise, 40' pole (see ** above). The "Cost causer" will pay for any "additional height" requested.

Sacrificed Life - Sale of Poles:

Basis for determining "in place" value of poles: depreciate "cost in place" amount at a simple rate of 4% per year - up to a maximum of 76% (see, Table 1).

Pole Replacements:

1. If the Licensee requests replacement of an existing joint pole, it will reimburse Owner for the full cost of the new pole (in lieu of: "sacrificed life" - "cost of removal"). Owner to remove the existing pole at its cost. Ownership is not affected.
2. Licensee will not be responsible for any pole replacement costs if the Owner initiates the replacement.
3. The Pole Owner will replace a joint use pole with a "standard pole" as required for any public roadwork.
4. The Owner and Licensee will share any required "additional height" required to resolve a "common obstacle."
5. Ground Rod Assemblies to be included with pole sets performed for "Cost in Place" amounts shown above.

Joint Anchors:

1. Whenever a "joint anchor" will eliminate the need for multiple anchors, the pole Owner will provide a "joint anchor" suitable for the load of a single-phase primary circuit and one telephone distribution cable.
2. With the exception of a "joint anchor," the "cost causer" will pay the full cost of any new anchor installed.
3. The "in place" value of any existing anchor sold will be fifty percent (50%) of its installed "cost in place."

- Miscellaneous Cost Items -
2005
Joint Cost Agreement
Cinergy and Cincinnati Bell Telephone
Effective January 1, 2005

	COST IN PLACE
POLES SET IN CONCRETE:	
1 yard concrete	$ 250.00
2 yards concrete	$ 350.00
Anchor Rods - when poles are set in concrete (all sizes)	$ 70.00
ANCHORS:	
Screw anchors all sizes (8" or 14") (36 MAD / MAT)	$ 210.00
Concrete or Patent Anchors (18MAD/18 MAT)	$ 350.00
Sale of an existing anchor/rod (all years)	50% of installed cost
POLE KEY ASSEMBLY:	
As required	$ 200.00
ADDITIONAL POLE REPLACEMENT COSTS:	
Transfer of all cables and fixtures at poles with cable risers when "Place In Place" not feasible (includes any - corner/dead-end pole transfers, Or any equipment cabinets)	Estimate of Actual Cost

- CONTINUED -

2005

Joint Cost Agreement

Cinergy and Cincinnati Bell Telephone

Effective January 1, 2005

ITEM	DESCRIPTION OF CBT WORK OPERATIONS	UNIT COST
1.	Place Key Planks - New or Existing Pole	$ 200.00
2.	Shift Existing Guy Wire	$ 175.00
3.	Shift Terminal (All)	$ 830.00
4.	Shift Cable and any wires on Dead-End Pole	$ 350.00
6.	Shift Load Coil Case on Existing Pole (No Splicing Required)	$ 510.00
7.	Shift Cross Connecting Terminal, SAI, Control Point, Access Point on existing or replaced pole, Load Coil Case, Cross Connecting Terminal, SAI, Control Point or Access Point Requiring Splicing, or Any other Operation Not Detailed Above.	Estimate of Actual Cost

- CONTINUED -

2005

Joint Cost Agreement

Cinergy and Cincinnati Bell Telephone

Effective January 1, 2005

ITEM	DESCRIPTION OF CINERGY WORK OPERATIONS	COST
9.	Shift secondary rack (1W)	$ 65.00
10.	Shift secondary rack (3W)	$ 110.00
11.	Shift street light, including mast arm or bracket	$ 315.00
12.	Install new ground connection of concentric neutral cable in Underground Residential Development system (during construction)	$ 76.00
13.	Install new ground connection of concentric neutral cable in Underground Residential Development system (post construction)	$ 347.00
14.	Install insulator in headguy/downguy	$ 250.00
15.	Shift or transfer transformer or capacitor, feeder tie switch installation, extend underground service, crossarms, shift or transfer primary underground terminal pole equipment or other special unusual installation	Estimate of Actual Cost

TABLE 1

DEPRECIATION FACTORS BY YEAR FOR DETERMINING COST IN PLACE - TRANSFER OF OWNERSHIP EFFECTIVE JANUARY 1, 2005

To determine "Cost in Place" charges:

1. **Using Schedule A, determine the sum of COST IN PLACE values for existing poles.**
2. **Using the Table below, determine the appropriate DEPRECIATION FACTOR based on the year of placement.**
3. **Multiply the sum of COST IN PLACE values by the DEPRECIATION FACTOR.**
4. **MINIMUM COST OF "IN PLACE" POLES (year not known) based on a minimum 24% value: (In 2005, this will be comparable to the value of a pole placed in 1986)**

YEAR SET	PERCENT	FACTOR
2005	100	1.00
2004	96	.96
2003	92	.92
2002	88	.88
2001	84	.84
2000	80	.80
1999	76	.76
1998	72	.72
1997	68	.68
1996	64	.64
1995	60	.60
1994	56	.56
1993	52	.52
1992	48	.48
1991	44	.44
1990	40	.40
1989	36	.36
1988	32	.32
1987	28	.28
1986 and all OTHER YRS	24	.24

Approvals
2005 Joint Pole Cost Agreement

This Cost Agreement to be applied to all JUR Proposals initiated after January 1, 2005.

DATE: _____ **BY:** _____

Supervisor - T. & D. Engineering
Cincinnati Gas & Electric / ULH&P
Cinergy Corp. Companies

DATE: _____ **BY:** _____

Senior Manager – OSP Infrastructure
OSP Engineering & Construction
Cincinnati Bell Telephone

SO 12607

PERMIT # 1-MAY-00

BAR CODE 00000 4TJ

TELECOMMUNICATIONS

POLE ATTACHMENT

AGREEMENT

between

CINCINNATI BELL TELEPHONE

and

THE CINCINNATI GAS & ELECTRIC COMPANY

Dated: May 1, 2000

(R 04/99)

DEPOSITION EXHIBIT

OCTA 16

12-15-08

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TELECOMMUNICATION POLE ATTACHMENT AGREEMENT

THIS AGREEMENT, is effective this 18th day of February, 2000, and is by and between The CINCINNATI GAS & ELECTRIC COMPANY, a Cinergy Company, with its principal office located at 139 East Fourth Street, Cincinnati, Ohio, 45202, herein referred to as "CG&E," and CINCINNATI BELL TELEPHONE, and maintaining its principal office for the conduct of business at 201 East Fourth Street 103-1175, Cincinnati, Ohio 45202, herein referred to as "Licensee";

WITNESSETH:

WHEREAS, Licensee purposes to furnish telecommunications service in areas of Ohio in which CG&E's poles are located, intends to erect and maintain aerial telecommunication facilities throughout the area to be served, and desires to attach such telecommunication facilities to poles owned and/or maintained by CG&E, hereinafter referred to as "Poles"; and

WHEREAS, CG&E is willing, during the term of this Agreement, to permit Licensee to attach said telecommunication facilities to the Poles subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties hereby mutually agree as follows:

SCOPE OF AGREEMENT

SECTION 1.1 This Agreement shall be in effect in any area in Ohio where Licensee is authorized by law to provide telecommunications service and in which the Poles are located. Upon complying with all of the applicable terms and conditions of said law(s) and this Agreement, Licensee is authorized to make attachments of its telecommunications facilities to the

Poles for the purpose of providing telecommunications service to its customers. The terms "telecommunications facilities" does not include facilities for Licensee's electric power supply. The attachment of electric power supply facilities will be considered by CG&E on a case-by-case basis and may require a separate license agreement.

SECTION 1.2 CG&E reserves the right to deny attachment by Licensee of its telecommunication facilities to any of the Poles including, but not limited to, Poles which in the reasonable judgment of CG&E (i) are required for the sole use of CG&E, (ii) are not acceptable for attachment by Licensee because of safety or reliability considerations, or because of incompatibility with existing or committed attachments of others within the available space on the existing Poles, or (iii) have been installed primarily for the use of a third party. A "committed attachment" for purposes of this Agreement shall be an attachment which is permitted under an existing agreement between the attachment owner and CG&E but which has not been made by said owner on the Pole. For any Pole which Licensee desires an attachment, CG&E shall disclose to Licensee the name and address of any 'committed attachment' owner. Licensee shall be responsible to obtain the written consent from any committed attachment owner, which if specified in the agreement with CG&E, shall not be unreasonably withheld, and which may be necessary for Licensee to attach its telecommunications facilities to any Pole. CG&E shall make a reasonable effort to accommodate Licensee's request to utilize a Pole, wherever possible: provided, however, CG&E shall not be required to replace, relocate or modify any Pole or its facilities contained thereon to facilitate an attachment by Licensee. Upon the written request of Licensee, CG&E may at its sole discretion and at the cost and expense of Licensee, conduct such replacement, relocation or modification.

SECTION 1.3 Any unauthorized attachment to a Pole shall be subject to removal. CG&E will provide written notice to Licensee allowing thirty (30) days in which to remove or to make suitable license arrangements with CG&E for the unauthorized attachment. If no removal or arrangements have been made within that time period, CG&E shall then have the right to remove the unauthorized attachment at the cost and expense of Licensee.

SECTION 1.4 If it shall become necessary for CG&E to use the space on the Pole occupied, or contracted for, by Licensee, Licensee shall, upon receipt of 30-days' written notice, either vacate the space by the removal of its attachment or shall authorize CG&E to replace the Pole at the cost and expense of Licensee; provided, Licensee has not heretofore paid for the replacement, relocation or modification of such Pole.

TERM OF AGREEMENT

SECTION 2.1 Unless terminated by CG&E as provided herein or by Licensee upon at least ninety (90) days prior written notice to CG&E, this Agreement shall extend for an initial term of five (5) years and shall automatically extend for successive three (3)-year terms unless and until terminated at the end of such initial or extended term, by either party providing the other with at least ninety (90) days' written notice prior to the expiration of such initial or extended term. Upon termination of this Agreement as provided herein, Licensee shall commence, within 30 days, the removal of its telecommunications facilities from all of the Poles. Licensee shall complete the removal of its telecommunications facilities within four (4) months from the termination date or at a minimum rate of 5,000 attachments per month. If Licensee does not complete said removal in this manner, CG&E shall have the right to remove the remaining telecommunications facilities at the cost and expense of Licensee. CG&E shall have a lien upon any telecommunications facilities of Licensee so removed by CG&E upon the termination of this Agreement for the amount of the cost and expense of removal,

transport, and storage of the telecommunications facilities, and any other amounts then due to CG&E under this Agreement which are not covered by the deposit per Section 8.4 of this Agreement. All such telecommunications facilities shall be released by CG&E to Licensee at the site where they are being stored upon the payment by Licensee to CG&E of all amounts then owed to CG&E.

DEFINITION OF TERMS

SECTION 3.1 For purposes of this Agreement, the following terms shall have the following meanings:

Attachment: The term "attachment" shall mean the necessary contact on the Pole to accommodate a single messenger strand (support wire) system, with or without telecommunications cable(s) lashed to it. This includes service drops and multiple contacts where required for construction on this single messenger strand system. Any additional contact required for a second messenger strand system will be considered as a second attachment. Multiple service drops attached to a single lift (drop) Pole and positioned in close proximity to one another will be considered as one attachment. Any other appurtenance affixed to a Pole not herein defined shall be considered separate attachment.

Distribution Pole: The term "Distribution Pole" is defined as wood, concrete or metal pole owned and/or maintained by CG&E on which is supported supply conductors energized at less than 50KV and is included in FERC Account 364, Distribution Plant Poles, Towers and Fixtures. Normally this Pole will have a length of less than fifty-five (55) feet. This includes lift (drop) Poles which normally support only service drops to a customer.

NESC: The term "NESC" shall mean the current edition of the National Electrical Safety Code which includes any modification or supplements thereof.

PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS

SECTION 4.1 Before making any attachment of its telecommunication facilities to any Pole of CG&E, Licensee shall make application to CG&E for a permit in the form of Exhibit "A", attached hereto. No attachment, or lashing of additional cables to an existing messenger strand, shall be made by Licensee prior to receipt from CG&E of an approved permit, which will be processed by CG&E within a reasonable time frame, with the exception of additional attachments made during emergency repair work which should be reported to CG&E as soon as possible after the emergency subsides. Licensee shall ensure that each permitted attachment is made in accordance with the terms of this Agreement and in accordance with any additional terms and conditions which the permit may contain. The failure of Licensee to obtain such a permit prior to making an attachment shall constitute a trespass and a willful violation of this Agreement. Recurrent violations in this regard may result among other things, in termination of said Agreement in its entirety.

SECTION 4.2 Licensee's telecommunications facilities shall be erected, operated and maintained in accordance with the current requirements of CG&E, as may be amended or revised. Existing telecommunications facilities which comply with NESC requirements may be operated in place until rebuild, relocation, etc., provides Licensee with the opportunity to upgrade them to current CG&E requirements. In addition, Licensee will comply with the NESC standards.

SECTION 4.3 CG&E shall have the right to conduct a pre-attachment field inspection of all proposed attachment locations covered by a permit application. Also, post-attachment field inspections will be conducted after attachment by Licensee. Licensee shall reimburse CG&E upon written demand, of all costs of such inspection not recovered by CG&E in its annual rental fee. Failure by CG&E to assess or collect such costs at the time of such inspection shall not constitutes waiver of CG&E's right to assess or collect such cost for any future inspections. Subject to CG&E's right per Section 1.2, in the event that any Poles of CG&E to which Licensee desires to make attachments are inadequate to support Licensee's facilities in accordance with the aforesaid specifications, CG&E may so notify Licensee, in writing, including a detailed description of the make-ready work necessary to provide adequate facilities, together with the estimated cost thereof, to Licensee, and any other specifications with which the attachment must comply as a condition of the permit approval. If Licensee still desires to make the attachment, and so advises CG&E in writing, thereby agreeing to reimburse CG&E for the entire cost and expense thereof, including, but not limited to, the increased cost of larger Poles, cost of removal less any salvage value and the expense of transferring CG&E's facilities, from the old to the new Poles, etc., CG&E shall replace such inadequate facilities. Upon completion, CG&E will notify Licensee granting authorization to attach. Where Licensee's desired attachments can be accommodated on present Poles of CG&E by rearranging CG&E's facilities thereon and CG&E is willing hereunder to make such rearrangement, Licensee shall pay CG&E for the entire cost and expense of completing such rearrangement. Licensee shall also make arrangements with the owners of other facilities attached to the Poles for any cost and expense incurred by them in transferring or rearranging their other facilities. Any additional support of Poles, including, but not limited to, guying required by CG&E to accommodate the attachments of Licensee shall be provided by and at the cost and expense of licensee. Licensee shall not set any poles under or in close proximity to

CG&E's facilities. Licensee may, however, request CG&E to set such poles as Licensee may desire and have the right to set. If such request is granted by CG&E, Licensee shall pay CG&E for the entire cost and expense of setting such poles. Notwithstanding any reimbursement, the Pole(s) shall remain the property of CG&E.

SECTION 4.4 It shall be the duty and responsibility of Licensee to maintain accurate, up-to-date location maps and records of all its attachments on CG&E's Poles. CG&E shall have the right to inspect, and upon request, obtain a copy of said location maps and records at any time during regular business hours upon the giving of reasonable notice.

SECTION 4.5 Licensee shall, at its own expense, make and maintain its attachments to CG&E's Poles in a safe and workmanlike manner in accordance with applicable CG&E standards ,industry standards, and applicable codes. Such attachments shall not conflict or unreasonably interfere with the primary use of said Poles by CG&E, or by any existing or committed attachment owner. Licensee shall immediately, upon written notice, and at its own cost and expense, remove, relocate, replace or renew its facilities placed on any Poles, or transfer them to substituted Poles, or perform any other work in connection with its facilities that may be required by CG&E requirements or the NESC. However, in an emergency situation, CG&E shall have the right to relocate, replace or renew the facilities placed on Poles by Licensee, transfer them to substituted Poles, or perform any other work in connection with said facilities that may be required in the maintenance, replacement, removal or relocation of said Poles, the facilities thereon, or for the service needs of CG&E. Licensee shall, on written demand, reimburse CG&E for all reasonable expenses incurred by CG&E pursuant to the provisions of this Section. Nothing in this Agreement shall be construed to relieve Licensee from maintaining adequate work forces readily available to promptly repair, service and maintain Licensee's facilities as herein required.

SECTION 4.6 CG&E reserves to itself, its successors and assigns, the right to maintain its Poles and to operate its facilities thereon in such manner as will best enable it to fulfill its own electric service requirements, and it accordance with the NESC or any amendments or revision of said Code. Notwithstanding any provision to the contrary contained in this Agreement, CG&E shall not be liable to Licensee for any interruption to its telecommunications service, for any interference with the operation of the telecommunications facilities of Licensee, or for any consequential damages sustained by Licensee.

SECTION 4.7 Licensee shall exercise proper precautions to avoid damage to facilities of CG&E and of others supported on the Poles, and hereby assumes all responsibility for any and all loss or damage caused by Licensee. Licensee shall make an immediate report to CG&E of the occurrence of any damage and hereby agrees to reimburse CG&E for any reasonable cost and expense incurred by CG&E in making repairs. Licensee hereby assumes full responsibility for any and all damages to its own plant or facilities and damages to any appliances or equipment of any subscriber to Licensee's service, arising from accidental contact with CG&E's energized conductors.

GOVERNMENTAL APPROVALS AND EASEMENTS

SECTION 5.1 Prior to making any attachment, Licensee affirmatively warrants and represents to CG&E that it has the legal right to operate its telecommunications facilities upon such Pole by having obtained all applicable governmental reviews and approvals. Upon request, Licensee shall make available to CG&E copies of any written approvals.

SECTION 5.2 It shall be the sole responsibility of Licensee to obtain for itself such easements or licenses as may be appropriate for the placement and maintenance of its attachments to the Poles located on public or private property. Nothing in this Agreement shall constitute or create an assignment to Licensee by CG&E of any easement or license held by CG&E or of any rights under any easement or license held by CG&E. Prior to making any attachment, Licensee affirmatively warrants and represents to CG&E that it has the legal right to place such attachment on the property of any person owing or claiming any interest in the property over which such attachment will be located pursuant to the terms of this Agreement.

FIELD INVENTORIES AND INSPECTIONS

SECTION 6.1 CG&E shall have the right to conduct periodic inspections of Licensee's telecommunications facilities and attachments on the Poles and Licensee shall reimburse CG&E upon written demand by CG&E, for the reasonable cost and expense incurred in obtaining such audit inspections. CG&E may obtain inspections as it deems necessary, within reason, and upon reasonable written notice. The provisions of this Section and the rights contained herein shall not operate to relieve Licensee of any responsibility, obligation or liability under this Agreement.

SECTION 6.2 In order to verify the number of attachments made by Licensee to the Poles, CG&E shall have the right to conduct a field inventory once every year, or more frequently upon reasonable cause. Licensee shall reimburse CG&E, upon written demand, for the reasonable cost and expense of any such inventory obtained by CG&E. The provisions of this Section and the rights contained herein, shall not operated to relieve Licensee of any responsibility, obligation or liability under this Agreement.

SECTION 6.3 Bills for inspections, field inventories, expenses and other charges under this Agreement, shall be payable within thirty (30) days after mailed to License. Non-payment by Licensee within the thirty (30)-day period shall constitute a default under this Agreement.

REMOVAL OF ATTACHMENTS

SECTION 7.1 Licensee may at any time remove its attachments from the Poles and it shall immediately give CG&E written notice of such removal in the form of Exhibit "A", attached hereto. No refund or proration of any prepaid attachment fee shall be given on account of such removal. Licensee shall continue to be responsible for payment of the applicable attachment fee for previously permitted facilities until the end of the billing period during which notice of removal of said facilities is received by CG&E.

SECTION 7.2 Upon written notice from CG&E to Licensee that any governmental authority has objected to or disputed the right of Licensee to use any of the Poles for the attachment of telecommunications facilities, the permit covering the use of such Poles shall terminate and the telecommunications facilities of Licensee shall be removed at once from the affected Poles unless within fifteen (15) days from said notice, Licensee shall make provision reasonably satisfactory to CG&E for the protection of CG&E's interest in connection with any such dispute or controversy. Notwithstanding the existence of any such dispute or controversy, Licensee shall have the right to pursue a permit from CG&E for any other Poles.

RENTAL AND PROCEDURE FOR PAYMENTS

SECTION 8.1 The total annual attachment rental fee is equal to the rate as specified in **Exhibit "B"** attached hereto, multiplied by the total number of attachments on the CG&E poles. The rental period is the twelve (12)-month period beginning July 1 of the current year to June 30 of the following year. The annual rental rate per contact shall apply to any attachments made during the year, and shall be calculated as of the date the Exhibit "A" permit is issued by CG&E. Licensee will pay one-twelfth (1/12) of the annual rental fee for each month remaining in the rental period. CG&E reserves the right to revise the rental rate annually upon the last thirty (30) days' written notice to Licensee prior to the end of the annual period. Any and all amendments of the rental rate shall be made on a new Exhibit "B" superseding the preceding Exhibit "B" which will be attached hereto and made a part thereof. In all other respects except for any changes in the number of Pole attachments as provided in Section 2, this Agreement shall remain in full force and effect.

SECTION 8.2 If CG&E makes a field inventory of the telecommunications facilities of Licensee in accordance with Section 6.2 of this Agreement, and CG&E finds that the total number of actual attachments is greater than the aggregate number reflected in all current attachment permits, then upon completion of such inventory, CG&E's attachment record will be adjusted accordingly and subsequent billing will be based on the adjusted number of attachments. Retroactive billing will be prorated equally from the date of the previous field inventory or the effective date of this Agreement, whichever is later, together with the appropriate attachment rate in effect at that time and interest rate, based on the IRS statutory rate for underpayment of income taxes, compounded annually. In no event will retroactive billing be more than five (5) years. Licensee's acceptance and payment of monthly invoices issued by CG&E

shall constitute its verification that said invoice is correct as to the number of attachments. Should the field inventory by CG&E determine that Licensee has made attachments without a permit or without having paid the proper rental charge by correcting an invoice to reflect such additional attachments, Licensee agrees to pay an unauthorized attachment charge of $25 per Pole for each unauthorized Pole attachment in excess of ten (10) or two percent (2%) of the last verified reported total, whichever is larger. The payment of the aforesaid penalty hereunder by Licensee shall not negate CG&E's right to terminate this Agreement under Section 4.1 above.

SECTION 8.3 All Billings by CG&E under this Agreement are due and payable within thirty (30) days after they are mailed by CG&E. If for any reason Licensee is delinquent in the payment of any billing under this Agreement, Licensee shall pay interest on such unpaid amount from the date such invoice was mailed until it is paid. The interest rate shall be the maximum permitted by law in the State of Ohio. In order to dispute any portion of a bill, Licensee shall notify CG&E in writing of the amount of the disputed charge and the nature of the dispute within thirty (30) days of the date of the invoice. The disputed and undisputed portion of the bill shall remain due and payable as rendered. CG&E will then evaluate the dispute within sixty (60) days, and notify Licensee of its evaluation of the disputed portion. If the dispute is resolved in favor of Licensee, CG&E shall refund the disputed amount to Licensee within thirty (30) days from the resolution.

SECTION 8.4 Licensee shall furnish a deposit in the form of cash, irrevocable letter of credit or performance bond acceptable to CG&E, to guarantee the payment of any sums which may become due to CG&E for rentals, inspections, or make-ready work performed for the benefit of Licensee under this Agreement, including the removal of attachments upon termination of this Agreement by any of its provisions. The amount of the deposit shall be determined and maintained thereafter as provided on the Exhibit "C" Schedule of Required Deposit attached hereto. The Schedule of Required

Deposit will be subject to revision by CG&E from time to time to be consistent with any change in construction costs or rental attachment rates. CG&E shall give Licensee ninety (90) days notification prior to the effective date of any such schedule revision. Cash deposits will not earn interest for the benefit of Licensee. Any irrevocable letter of credit or performance bond furnished pursuant to this Section shall be in a form reasonably acceptable to CG&E. Any irrevocable letter of credit shall be issued by a banking corporation or institution duly authorized to transact business and have an office located in the State of Ohio.

REVISION OF ATTACHMENT RENTAL RATE

SECTION 9.1 CG&E shall have the right to revise the attachment rental rates annually for Poles as set forth in Section 8.1 in accordance with the following methodology. The annual Distribution Pole attachment rental fee will not exceed forty percent (40%) of the annual carrying charge of the Distribution Pole as determined by CG&E. Distribution Pole FERC account information will be used for calculating this charge.

CG&E will provide written notice to Licensee of such revision with supporting data not less than thirty (30) days prior to the effective date of any such revision. The anticipated effective date of any such revision shall be July 1 of a given year and shall remain in effect through June 30 of the following year.

DEFAULTS

SECTION 10.1 If Licensee shall fail to comply with any material provision of this Agreement, or default in any material obligation under this Agreement, and such non-compliance or default shall continue for thirty (30) days after receipt of written notice by Licensee from CG&E specifying such non-compliance or default, all rights of Licensee to apply for additional attachment permits shall be suspended on said thirtieth day (suspension date). If such non-compliance or default shall continue for a period of an additional thirty (30) days after such suspension date, CG&E may, at it option and in addition to any other rights herein or at law or in equity, terminate this Agreement or any permit issued pursuant thereto; provided, however, so long as Licensee is using its best and reasonable efforts to expeditiously correct the non-compliance or default, Licensee shall have an additional period of time not to exceed six (6) months after such suspension date to correct the non-compliance or default. In case of such termination, no refund of the applicable prepaid rentals shall be made.

SECTION 10.2 During any period of suspension of Licensee's right pursuant to Section 10.1 above, CG&E will not process or approve any application for a permit for additional attachments until Licensee has corrected such underlying non-compliance or default, unless otherwise agreed to between the parties.

LIABILITY AND INSURANCE

SECTION 11.1 Licensee shall be liable for any damage to CG&E's property which arises from this Agreement although caused in whole or in part by any act or omission, negligent or otherwise, of CG&E or its agents but excluding the willful or intentional misconduct of CG&E or its agents.

11.1.1 Licensee hereby releases and shall hold harmless CG&E and its agents from all liability for damage to Licensee's property which arises from this Agreement although caused in whole or in part by any act or omission, negligent or otherwise, of CG&E or its agents but excluding the willful or intentional misconduct of CG&E or its agents.

11.1.2 Licensee shall defend, indemnify, and hold harmless CG&E from any claim or lawsuit (and costs and expenses incurred by CG&E related to any such claim or lawsuit) by third parties, including Licensee's employees and other agents, for personal injury including death or property damage including the loss of use thereof, which arises out of or is related to (i) Licensee's telecommunications facilities; (ii) the exercise of Licensee's rights or obligations pursuant to this Agreement; (iii) the use of CG&E's Poles by Licensee; or (iv) the performance or failure to perform any work or service by Licensee or its agents, although caused in whole or in part by any act or omission, negligent or otherwise, of CG&E or its agents but excluding the willful or intentional misconduct of CG&E or its agents. CG&E shall give Licensee reasonably prompt written notice of any claim or lawsuit, and an opportunity to defend the claim or lawsuit along with reasonable cooperation at Licensee's expense.

11.1.3 If any of the foregoing provisions under this Section are found to be contrary to law in whole or in part by a court of competent jurisdiction, the remainder of the provisions shall, in all other respects, be and remain legally effective and binding.

SECTION 11.2 It is understood and agreed that Licensee shall install, maintain and operate its facilities in such a manner as not to interfere in any way with other telecommunication systems or with television or radio reception by the public. If any of Licensee's telecommunications facilities are found to be the cause of any such interference, Licensee shall take immediate steps to eliminate the cause and if such interference is not or cannot be expeditiously eliminated, Licensee shall remove from operation the interfering

cause. The liability imposed upon Licensee in Section 11.1 is applicable to any liability imposed upon CG&E, which arises out of any interference to other communication systems or to television or radio reception of the public.

SECTION 11.3 Licensee shall cause, and shall direct each of its subcontractors to cause, the insurance company providing Workmen's Compensation insurance for the Licensee or subcontractors during the whole of the effective period of this Agreement to file the applicable documents with the appropriate Board within the State of Ohio to certify to the satisfaction of said Board that Licensee and its subcontractors have complied with all applicable requirements of "The Ohio Workmen's Compensation Act as amended to date. Licensee shall pay all compensation, awards, allowances, physicians' fees, hospital fees, nurse's charges and burial expenses due to any person on account of the injury, death, treatment, hospitalization, care or burial of any employee of Licensee who may suffer injury, occupational illness or death in the course of the performance of any part of the work under this Agreement, as Licensee may be required to do by any state or federal workmen's compensation law or employers' liability law applicable; and shall defend, indemnify and save harmless CG&E from any and all claims for any compensation, award, allowance, physician's fee, hospital fee, nurse's charge or burial expense, including third party tortfeasor suits instituted under the appropriate section of "The Ohio Workmen's Compensation Act" in accordance with this Section.

SECTION 11.4 Licensee shall procure, and keep in force during the entire period while this Agreement is in effect, a policy or policies of insurance, in a form reasonably acceptable to CG&E and issued by an insurance company reasonably acceptable to CG&E, adequately protecting Licensee and CG&E from and against any and all claims, losses or actions arising out of Licensee's activities pursuant to this Agreement or in any way connected with Licensee's telecommunications facilities to be installed

pursuant to this Agreement. Any such insurance policy or policies except for Workmen's Compensation shall specifically designate CG&E as a named additional insured, and within ten (10) days of execution of this Agreement, Licensee shall provide CG&E with Certificates of Insurance, for itself and each of Licensee's subsidiaries within CG&E's service territory in the State of Ohio, which shall provide evidence of insurance in amounts of not less than:

Workmen's Compensation	Statutory Requirements
Employer's Liability	$100,000 Each Person
Comprehensive General Liability	
Bodily Injury	$1,000,000 Each Person
Bodily Injury	$3,000,000 Each Occurrence
Property Damage	$3,000,000 Each Occurrence
Contractual Liability	
Bodily Injury	$1,000,000 Each Person
Bodily Injury	$3,000,000 Each Occurrence
Property Damage	$3,000,000 Each Occurrence

Licensee shall provide CG&E with additional certificates of insurance on or before each annual renewal date of this Agreement.

RIGHTS OF OTHER PARTIES

SECTION 12.1 Nothing herein contained shall be construed to confer on Licensee an exclusive right to make attachments to the Poles.

ASSIGNMENT OF RIGHTS/DELEGATION OF DUTIES

SECTION 13.1 Licensee shall not assign its right or delegate its duties herein without the prior written consent of CG&E, which consent shall not be unreasonably withheld by CG&E. Licensee shall have the right to assign its right and delegate its duties herein to an affiliated corporation; provided, however, that such Licensee shall remain secondarily responsible for the faithful performance of its duties herein. Prior to any assignment notice or request by Licensee herein, Licensee shall provide CG&E with a fully completed and executed Exhibit "D" Certificate.

SECTION 13.2 Any use of the Poles by Licensee under this Agreement shall not create or vest the Licensee any ownership or property right including an irrevocable license in said Poles or facilities of CG&E. Licensee's rights herein shall be and remain limited to attaching its telecommunications facilities to the Poles strictly in accordance with the terms and conditions of this Agreement. Nothing herein contained shall be construed to require CG&E to maintain any of said Poles for a period longer than demanded by its own service requirements.

WAIVER OF TERMS OR CONDITIONS

SECTION 14.1 Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

BONDING TO ELECTRIC COMPANY GROUND

SECTION 15.1 For Section 15.1 to 15.5, inclusive, the following terms when used herein shall have the following meaning, to wit:

15.1.1 "Vertical Ground Wire" shall mean a wire conductor of CG&E attached vertically to the Pole and extended from CG&E's Multi-Grounded Neutral (defined below) through Licensee's space to the base of the Pole where it may be either butt wrapped on the Pole or attached to a grounded electrode.

15.1.2 "Multi-Grounded Neutral" shall mean a CG&E conductor located in CG&E's space which is bonded to all of CG&E's Vertical Ground Wires.

15.1.3 "Bonding Wire" shall mean a Number 6 AWG copper wire or its equivalent conductor connecting equipment of Licensee and CG&E to the Vertical Ground Wire.

SECTION 15.2 At the time Licensee's telecommunications facilities are installed, Licensee shall install a Bonding Wire on every Pole where a Vertical Ground Wire exists, in accordance with the NESC. Any part of Licensee telecommunications facilities attached to a CG&E Pole which does not have a Vertical Ground Wire shall be bonded to Licensee's facility support wire.

SECTION 15.3 Under no condition may the CG&E Vertical Ground Wire be broken, cut, severed, or otherwise damaged by Licensee.

SECTION 15.4 CG&E reserves the right to install, at Licensee's cost and expense, a Bonding Wire to any part of the telecommunications facilities where, in the opinion of CG&E, a potential safety hazard is created or may exist in the future.

SECTION 15.5 It shall be the responsibility of Licensee to instruct its personnel working on the Poles of the potential danger of bonding its wires to CG&E's Vertical Ground Wire and to furnish adequate protective equipment to protect its personnel from bodily harm. CG&E assumes no responsibility for instructing, furnishing equipment to, or for the training or job qualifications of Licensee's personnel, including contractor employees, working on the Poles.

MISCELLANEOUS PROVISIONS

SECTION 16.1 This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio.

SECTION 16.2 CG&E may make reasonable alterations or additions to the form or content of the Exhibits attached to this agreement.

SECTION 16.3 In the event that this Agreement is applicable to telecommunications facility attachments previously made to CG&E's Poles by Licensee or any of its predecessors, and said existing attachments will continue to be used by Licensee in its operations, Licensee shall furnish to CG&E a Certificate of Existing Telecommunications Facility Attachments on CG&E Poles on the form attached hereto as **Exhibit "D"**.

SECTION 16.4 Commencing with the effective date of this Agreement, the submittal of **Exhibit "A"** attached hereto, shall be the exclusive procedure to be used by Licensee in obtaining permits to attach or remove its telecommunications facilities to/from CG&E Poles. This will also adjust the inventory of attachments from which billing is generated. Any **Exhibit "A"** attachment/removal request shall be submitted to:

Joint Use Facilities Administrator-WP656
CINCINNATI GAS & ELECTRIC COMPANY
1000 East Main Street
Plainfield, IN 46186-1782

SECTION 16.5 Any notice or approval provided for in this Agreement shall be considered as having been given if faxed and mailed by certified mail-return receipt requested:

a) To Licensee as follows:

Cincinnati Bell Telephone
201 East Fourth Street, 103-1175
Cincinnati, Ohio 45202
Phone:
Fax:

b) To CG&E as follows:

Joint Use Facilities Administrator-WP656
CINCINNATI GAS & ELECTRIC COMAPNY
1000 East Main Street
Plainfield, IN 46168-1782
Telephone No. (317) 838-6359
Fax No. (317) 838-4612

SECTION 16.6 This Agreement shall supersede and terminate any existing attachment agreement between the parties relating to telecommunications facility attachments including, but not limited to, that certain agreement(s) between the parties as shown on the Exhibit "E" Schedule of Superseded Agreements attached hereto. By entering into this Agreement, it is expressly understood and agreed that neither party shall be deemed to have waived any rights or remedies which have accrued under any superseded agreement prior to the commencement date of this Agreement.

SECTION 16.7 This Agreement shall not become effective and binding upon CG&E until it is approved and executed by an authorized representative of CG&E, and until a fully executed copy hereof is delivered to Licensee. This Agreement shall be modified or amended only by a written document signed by an authorized representative of each party hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, by their respective duly authorized representatives on the dates indicated below but effective as of the day, month and year stated above.

CINCINNATI BELL TELEPHONE

Licensee

By: Harold V Rankin III

Printed Name: HAROLD V RANKIN III

Printed Title: STRUCTURE ENGINEER

Dated: 9-27-00

THE CINCINNATI GAS & ELECTRIC COMPANY

CG&E

By: Ulrich Angleton

Printed Name: ULRICH ANGLETON

Printed Title: JOINT-USE ADMINISTRATOR

Dated: May 1, 2000

EXHIBIT "A"

REQUEST RE POLE ATTACHMENTS PERMIT NO.

DATE 9-26, 2010

The following plant rearrangements, changes, or additions are proposed (provide location and brief description of project):

CINCINNATI BELL TELEPHONE REQUESTS PERMISSION TO ATTACH (1) 6M STRAND WITH A FIBER CABLE LASHED TO IT THAT IS .5 INCH IN DIAMETER AND WEIGHTS 84 LBS PER KFT. ON (7) CGE POLES ALONG BETHANY RD. W/OF SR741 IN WARREN CO. OHIO

W3-230E
NPT
W3-231E
W3-232E
W3-233E
W3-234E
W3-235E

EXHIBIT "B"

Dated: October 1, 1999

(Superseding Exhibit "B" dated N/A)

Licensee shall pay to CG&E a rate of $ 18.00 per year for each Distribution Pole attachment.

Other exhibits?

Exhibit 4
Deposition of Donald Storck of November 21, 2008

BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates.	)	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for a Tariff Approval.	)	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	)	Case No. 08-711-EL-AAM
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	)	Case No. 06-718-EL-ATA

DEPOSITION OF: DONALD STORCK

November 21, 2008

9:00 a.m.

REPORTED BY:

Renee Rogers, Registered Professional Reporter

for the provision of telecommunication services would not be covered by the tariff?

A I do understand that.

Q Okay. Do you know whether phone companies make prior application before they're attached to Duke's drop poles?

A No. I don't know.

Q Do you know whether cable companies historically have obtained prior approval from Duke for attachment to drop poles?

A No, I don't.

Q Do you know whether there have been any agreement or agreements reached between cable operators and Duke personnel informally that would allow cable operators to submit applications for drop poles after the fact?

A No, I don't.

Q Do you know whether the FCC has stated that drop poles may be authorized after the fact or would be treated as covered by the primary attachment --

A No.

Q -- to the distribution pole?

A I don't know.