

**Before the  
FEDERAL COMMUNICATION COMMISSION  
Washington, D.C. 20554**

FIBER TECHNOLOGIES NETWORKS, L.L.C.,	)	
	)	
<i>Complainant,</i>	)	
	)	
v.	)	File No. EB-14-MD-015
	)	
DUKE ENERGY-INDIANA, INC., DUKE	)	
ENERGY CAROLINAS, LLC, and DUKE	)	
ENERGY PROGRESS, INC.,	)	
	)	
<i>Respondents.</i>	)	
	)	

**STATEMENT OF JURISDICTIONAL AUTHORITY**

**I. Introduction**

The Indiana Utility Regulatory Commission (“Indiana Commission”) has jurisdiction over pole attachments within the state of Indiana, in accordance with Ind. Code § 8-1-2-5. The Indiana Commission’s jurisdiction includes, but is not limited to, rates, charges, terms and conditions. While the Indiana Commission does not possess jurisdiction over all cable television issues, the Indiana Commission does still possess jurisdiction over the state’s public utilities, including telecommunications carriers.

**II. 1979-1981 Indiana Commission Letters**

On August 22, 1978, then Indiana Commission Chairman, Larry Wallace, sent a letter to the Federal Communications Commission (“FCC”) seeking clarification as to the FCC’s inappropriate omission, of the state of Indiana, from the FCC’s “first report and order” listing states that had asserted their jurisdiction over pole attachments. In July of that year, the Indiana Commission tendered its “Certification of Jurisdiction” to the FCC.

On September 21, 1979, Chairman Wallace sent a second letter inquiring why the FCC had inappropriately deleted the state of Indiana from the list of states asserting jurisdiction over pole attachments. Finally, on October 21, 1981, Chairman Wallace sent a letter to the FCC withdrawing the Indiana Commission's "Certification of Regulation of Cable Television Pole Attachments." Chairman Wallace's letters accurately describe the jurisdiction of the Indiana Commission as to Cable Television issues only.

### **III. The Indiana Commission possesses jurisdictional authority over pole attachments.**

Ind. Code § 8-1-2-5 provides the Indiana Commission with jurisdiction over pole attachments. In relevant part, Ind. Code 8-1-2-5 states:

“(a) Every public utility, and every municipality, and every person, association, limited liability company, or corporation having tracks, conduits, subways, poles, or other equipment on, over, or under any street or highway shall for a reasonable compensation, permit the use of the same by any other public utility or by a municipality owning or operating a utility, whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owner or other users of such equipment, nor in any substantial detriment to the service to be rendered by such owners or other users.

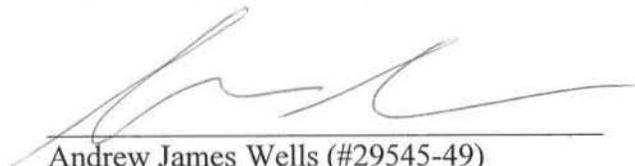
(b) In case of failure to agree upon such use or the conditions or compensations for such use... any public utility or any person, association, limited liability company, or corporation interested may apply to the commission and if after investigation the commission shall ascertain that public convenience and necessity require such use or such physical connections, and that such use or such physical connection or connections would not result in irreparable injury to the owner or other users of such equipment or the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such owner or other public utilities or other users of such equipment or facilities, it shall by order direct that such use be permitted and prescribe reasonable conditions and compensations for such joint use and that such physical connection or connections be made and determine how and within what time such connection or connections shall be made, and by whom the expense of making and maintaining such connection or connections shall be paid.”

The Indiana Commission's jurisdiction has been upheld by the Indiana Court of Appeals on numerous occasions, most recently in *Kankakee Valley Rural Elec. Mbrshp. Corp. v. United Tel Co. of Ind., Inc.*, 843 N.E.2d 987 (Ind. Ct. App. 2006). The Court held, “granting jurisdiction

to the [Indiana Commission] in matters that involve utility pole disputes assures that decisions are made by the administrative agency that has the institutional expertise to do so”. *Id. at 992.* Additionally, the Court held “the Pole Attachment statute applies to every other person and association that owns poles--not just public utilities”. *Id.* 47 U.S. Code § 224 (c)(1) provides, in relevant part, “[n]othing in this section shall be construed to apply to, or to give the Commission [FCC] jurisdiction... in any case where such matters are regulated by a State.” Therefore, it is appropriate for pole attachment disputes, including Proceeding No. 14-227, File No. EB-14-MD-015, to come before the Indiana Commission.

The records of the Indiana Commission do not contain FCC certification of jurisdiction pursuant to 47 U.S.C. § 224(c) and 447 C.F.R. § 1.1414. Nonetheless, the Indiana Legislature empowered the Indiana Commission with jurisdiction over pole attachments, no later than 1993 (upheld most recently in 2006).

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I do certify that on the xx<sup>th</sup> day of December 2014, I served upon the following counsel in the above-entitled cause one copy of the Statement of Jurisdictional Authority, by depositing the same in the United States mail, first-class postage prepaid, addressed to the following persons:

Federal Communication Commission c/o U.S. Bank – Enforcement Bureau  
FCC Government Lockbox #979094  
1005 Convention Plaza, St. Louis, MO 63101

Duke Energy Indiana, Inc.  
1000 East Main Street  
Plainfield, IN 46168

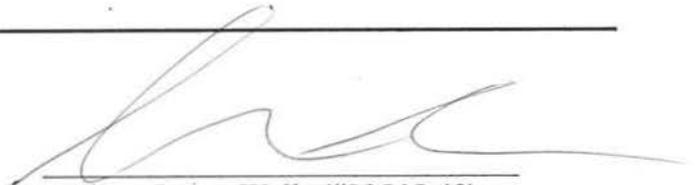
Duke Energy Carolinas, LLC  
526 South Church Street  
Charlotte, NC 28202

Duke Energy Progress, Inc.  
410 South Wilmington St.  
Raleigh, NC 27601

North Carolina Utilities Commission  
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