

**DRAFT**

**ACCOUNT RECEIVABLES PURCHASE AGREEMENT**

This ACCOUNT RECEIVABLE PURCHASE AGREEMENT (AGREEMENT), made and entered into on this **XX day of month, 2003**, between The Cincinnati Gas & Electric Company (Company), and **Company Name, Inc. a Wisconsin corporation** (Supplier, amends and supplements the **August 22, 1997** Gas Supply Aggregation/Customer Pooling Agreement FOR COMPANY'S Customer Aggregation/Firm Transportation Program between the Company and the Supplier (LDC/Supplier Agreement). The Company and the Supplier are sometimes herein referred to collectively as the Parties.

WITNESSETH:

WHEREAS, in connection with the LDC/Supplier Agreement, the Supplier intends to offer and to sell Competitive Retail Natural Gas Services subject to the requirements delineated within Rate FRAS, Full Requirements Aggregation Service; and

WHEREAS, the Supplier has requested that the Company bill the Supplier's customers for Competitive Retail Natural Gas Services on the Company's bill (sometimes hereinafter referred to as Company consolidated billing); and

WHEREAS, the Company's Retail Tariff for Choice Participants provides that the Company will not purchase Supplier's applicable accounts receivables until this Agreement has been executed by the Supplier; and

WHEREAS, subject to the terms and conditions hereof, and consistent with the Company's Terms and Conditions of Service, Supplier desires to sell and Company desires to purchase, without recourse, certain accounts receivable arising from the sale of such Competitive Retail Natural Gas Services in Supplier's ordinary course of business; and

WHEREAS, Company and Supplier intend the arrangements created herein to constitute a true sale of Supplier's accounts receivable to Company and not a loan or other arrangement.

NOW, THEREFORE, the Parties hereto agree as follows:

## I. DEFINITIONS

1.1 Certain Defined Terms. These terms are in addition to or, when modified herein, in lieu of those in the LDC/Supplier Agreement. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

1.1.1. Adverse Claim. Adverse Claim means a lien, security interest, charge, encumbrance or other adverse right or claim of any kind of any Person, but does not include any loss that is due solely to the financial inability or bad faith failure of any Customer to pay at maturity any amount due and payable in respect of a Receivable.

1.1.2. Billed Receivable. Billed Receivable means an Outstanding Receivable representing a legal, valid, and binding payment obligation for which, as of the time of determination, a Customer Bill has been rendered. A Billed Receivable includes all rights to payment of interest or finance charges, and pursuant to the contract or other agreement relating to such Billed Receivable, all security interests, guarantees, and property securing or supporting the payment of such Billed Receivable, and all books and records relating to the Billed Receivable, and all proceeds of the foregoing.

1.1.3. Budget Account Receivable. Budget Account Receivable means a contract right of Supplier to receive payment for the sale of Supplier's outstanding receivable, regardless of the level of such services delivered, including rights of Supplier pursuant to average monthly payment plans or other special payment arrangements which the Supplier may from time to time enter into with any Customer.

1.1.4. Business Day. Business Day means any day other than a Saturday, Sunday, Supplier holiday, Company holiday or public holiday or the equivalent for banks of the Federal Reserve System. Business Day is limited to the hours of 8:00 am to 5:00 pm. An event occurring after business day hours will be deemed to have occurred on the next Business Day. Each Party to this Agreement shall provide to the other Party, upon execution of this Agreement and by December 1 of each year during the term of this Agreement, a schedule of the holidays it observes for the following calendar year. If list is not provided, then the previous year's holidays will be recognized for the subsequent year.

1.1.5. Collections. Collections means, with respect to any Receivable, all cash collections, negotiable instruments, interest or finance charges, other cash or non-cash proceeds or any other form of payment in respect of any such Receivable and shall include all proceeds of any Receivable within the meaning of the Ohio Uniform Commercial Code (UCC) as may be in effect from time to time. Collections shall also mean, to the extent not prohibited under applicable law that portion of

any security deposit applied in satisfaction of a Receivable in accordance with the Parties' written agreement.

1.1.6. Customer. Customer means any Person obligated to make payment to Supplier for purchases from Supplier of Competitive Retail Natural Gas Services. Customer is limited to those persons whose load consuming facilities are connected with, or otherwise dependent upon, the Company's gas distribution facilities for the receipt of natural or artificial gas.

1.1.7. Customer Bill. Customer Bill means an invoice or any other evidence of a Customer's obligation to Supplier rendered by the Company to a Customer for purchases from Supplier of Competitive Retail Natural Gas Services.

1.1.8. Excluded Receivables. Excluded Receivables means: (a) Outstanding Receivables whose assignment is prohibited by applicable federal or state law; has been, or should have been, charged off in conformance with Supplier's standard credit and collection policies; is owed by an obligor who is in bankruptcy, reorganization, insolvency, or similar proceedings; is not greater than sixty (60) days past due; satisfies all of Supplier's credit policies; and (b) such other Outstanding Receivables as Supplier and Company from time to time shall mutually agree to be Excluded Receivables.

1.1.9. Face Amount. Face Amount means: (a) for a Billed Receivable, the unpaid balance thereof duly owed to Supplier by a Customer (excluding any portion of the unpaid balance relating to charges which are not Outstanding Accepted Receivables or which are Excluded Receivables); and (b) for a Budget Account Receivable, the contractual amount due and owing for the sale and delivery by Supplier to Customer of Competitive Retail Natural Gas Services in the ordinary course of business; in any such case determined on the Purchase Date on which such Outstanding Accepted Receivable is purchased by Company hereunder (excluding any amount due relating to charges which are not Outstanding Accepted Receivables or which are Excluded Receivables).

1.1.10. Governmental Approvals. Governmental Approvals means all consents, approvals, authorizations, orders, registrations or qualifications of any Person or public authority as may be required by any appropriate regulatory authority in respect of the transactions contemplated hereby.

1.1.11 LDC/Supplier Agreement. LDC/Supplier Agreement bears the meaning assigned to such term in the preamble of this Agreement.

1.1.12. Outstanding Accepted Receivable. Outstanding Accepted Receivable means an Outstanding Receivable that is not an Excluded Receivable and that has been accepted by the Company. Outstanding Receivables transmitted by the Supplier and rejected by the Company are not considered an Outstanding Accepted Receivable.

1.1.13. Outstanding Receivable. Outstanding Receivable means any of Supplier's rights to payment, whether or not evidenced by a Customer Bill, arising from the electronic transmission by the Supplier in rate-ready format, for Competitive Retail Natural Gas Services that are to be billed to the Supplier's customers by the Company.

1.1.14. Person. Person means any natural person, corporation, company, voluntary association, partnership, joint venture, trust (including a business trust), unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

1.1.15. Purchase Date. Purchase Date means the date on which the transfer of title to the Company of Outstanding Accepted Receivables occurs beginning with the first billing cycle of Month & year.

1.1.16. Purchase Price. Purchase Price means the price paid by the Company to Supplier for the purchase by the Company from Supplier of Outstanding Accepted Receivables on any Purchase Date pursuant to this Agreement and calculated in accordance with Exhibit A attached hereto.

1.1.17. Receivable. Receivable means any Outstanding Accepted Receivable that has been purchased by the Company from the Supplier pursuant to this Agreement.

1.1.18. Sale and Assignment. Sale and Assignment means a sale and assignment agreement in substantially the form attached hereto as Exhibit B.

1.1.19. Supplier. Supplier means a provider of Competitive Retail Natural Gas Service as such service is defined by R. C. 4929.01(J).

1.1.20. Termination Date. Termination Date means the date of the last Business Day for which a Supplier is certified by the PUCO or registered by the Company, or the date otherwise specified for termination of Company's obligation to purchase Outstanding Accepted Receivables hereunder in the notice contemplated by Section 8.1 hereof.

## II. OBLIGATIONS OF THE PARTIES

2.1 Charges for Competitive Retail Natural Gas Services for Rate Ready Consolidated Billing and Accounts Receivables Purchase. In a rate ready billing scenario the Company shall render a Customer Bill that includes the Supplier's charges for Competitive Retail Natural Gas Services.

2.2. Sale of Outstanding Accepted Receivables. The Supplier shall sell its Outstanding Accepted Receivables to the Company under the terms of this Agreement.

## III. PURCHASE OF OUTSTANDING ACCEPTED RECEIVABLES

3.1. Purchases, Purchase Procedure, and Charge Off Limit Fees. In accordance with the Purchase Price, Procedures, and Fees set forth in Exhibit A, the Company shall purchase from Supplier, without recourse, and Supplier shall sell and assign to Company, all right, title and interest in and to all of the Outstanding Accepted Receivables of Supplier described in the applicable Sale and Assignment, including all right, title and interest in all Collections whenever received by Supplier. Company and Supplier hereby agree that each such purchase of Outstanding Receivables shall constitute a true sale of all rights, title and interest in and to such Outstanding Receivables and to all amounts paid in respect of such Outstanding Receivables. The Company may return to the Company's sales service any customer that has an arrearage for Competitive Retail Natural Gas Services of sixty (60) days and of \$10.00 or more or, with the agreement of Supplier, drop such customer from the consolidated billing program pursuant to this Agreement and not return such customer to sales service. The Company shall, on an annual basis review and adjust the discount rate set forth pursuant to Exhibit A. The Company shall notify Supplier of any changes to the calculation methodology set forth in Exhibit A prior to implementation of such methodology pursuant to the annual review and adjustment. The Company shall use reasonable efforts to notify Supplier of an adjustment to the discount rate related to the annual review and adjustment, whether or not such adjustment is related to a change in methodology.

3.2 Supplier Contract and Company Billing Cycles. The Supplier, in its contract for Competitive Retail Natural Gas Service with any end use customer, shall include terms and conditions that match the Supplier's and such customer's billing and collection procedures to the Company's billing cycle pursuant to O.A.C. 4901:1-29-13 and the Company's tariffs.

#### IV. REPRESENTATIONS AND WARRANTIES

4.1. Representations and Warranties of Supplier. These representations and warranties are in addition to those in the LDC/Supplier Agreement. Supplier represents and warrants to Company as follows:

4.1.1. No Restrictions. The sale of Receivables pursuant to this Agreement, the performance of Supplier's obligations under this Agreement, and the consummation of the transactions herein contemplated do not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Adverse Claim upon any of Supplier's property or assets pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument (other than this Agreement) to which Supplier is a Party or by which any of Supplier's property or assets is subject, nor will such action result in any violation of the provisions of Supplier's Articles of Incorporation, Bylaws or other organizational documents, including but not limited to partnership agreements, or any statute or any order, rule or regulation of any court or governmental agency or body of the United States, any State or any political subdivision of either having jurisdiction over Supplier or any of Supplier's properties; and no consent, approval, authorization, order, registration or qualification of or with any such court or any such regulatory authority or other such governmental agency or body (other than the Governmental Approvals and such other consents, approvals, authorizations, orders, registrations or qualifications as have been obtained) is required for the sale of Receivables hereunder or the consummation by Supplier or the other transactions contemplated by this Agreement.

4.1.2. Supplier's Authority and Information. The Supplier possesses the legal authority to sell the Outstanding Receivables pursuant to the terms and conditions of this Agreement and there exist no pending actions that might infringe such authority or Supplier's rights and title in the Outstanding Receivables. The Supplier is the legal and beneficial owner of the Outstanding Receivables at the time of sale to the Company and warrants that all of the information provided by the Supplier related to this Agreement is accurate in all material respects.

4.1.3. Authorization and Effect of Agreement. This Agreement has been duly authorized, executed and delivered by Supplier and constitutes Supplier's valid and legally binding obligation, enforceable against Supplier in accordance with its terms, subject as to enforcement to bankruptcy, insolvency, reorganization and other similar laws of general applicability relating to or affecting creditors, rights and to general principles of equity.

4.1.4. Title of Receivables. The Parties intend that each Receivable at the time of its purchase by the Company pursuant to this Agreement (i) will constitute an -account- within the meaning of Section 1309.102(A)(2) of the Ohio Revised Code, as now or hereafter in effect, (ii) will be, together with the rights to the Collections in respect thereof, owned by the Supplier free from any

Adverse Claim, (iii) will be denominated and payable only in U.S. dollars, and (iv) will not knowingly contravene any law, rule or regulation applicable thereto, On each Purchase Date, the Supplier shall irrevocably and without recourse transfer and assign to the Company title to the Receivables (and all rights to the Collections in respect thereof) being purchased by the Company on such Purchase Date, free of any Adverse Claim, and the Supplier shall, at its cost and expense, defend the Company's title to such Receivables (and the Collections in respect thereof) against any Adverse Claim (except for any Adverse Claim arising from any act or omission of the Company) asserted by any Person at any time. To the Supplier's knowledge the Face Amount of each Receivable shall represent and constitute the legal, valid and binding obligation of the account debtor thereunder to pay such Face Amount. In the event that a jurisdictional court or regulatory agency determines that the sale of Receivables from the Supplier to the Company pursuant to this Agreement does not constitute a true sale then this Agreement shall constitute a security Agreement in regard to the affected Receivables.

4.1.5. No Financing Statements. There is no financing statement under the UCC of any jurisdiction, as now or hereafter in effect, (or similar statement or instrument of registration or otherwise under the laws of any jurisdiction) authorized by Supplier now on file or registered in any public office covering any interest of any kind in the Receivables or any Collections in respect thereof, or intended so to be, and Supplier will neither execute nor file in any public office any financing statement (or similar statement or instrument of registration or otherwise under the laws of any jurisdiction) relating to such Receivables or any Collections in respect thereof, except for the UCC financing statements filed or to be filed in respect of and covering the purchase of the Receivables hereunder.

4.1.6. Principal Place of Business. The principal place of business and principal executive office of Supplier, as well as the offices where Supplier maintains Supplier's principal books, records, computer programs, electronically stored data and other documents evidencing Outstanding Receivables, are located at the address or addresses set forth in Section 10.2 hereof (or at such other location, of which Company shall be notified in accordance with Section 10.2 hereof). Supplier is a corporation duly organized or incorporated, validly existing and in good standing under the laws of the State of **Wisconsin** under the name of FSG Energy Services.

4.1.7. Perfection. Upon the filing of the U.C.C. financing statements prepared by the Company and reviewed by the Supplier, all filings and recordings (including UCC financing statement filings) required to perfect any security interest of the Company in all Receivables (and all Collections in respect thereof) when sold and when value is received therefore have been accomplished and are in full force and effect, and Supplier shall at Supplier's expense perform all acts and execute all documents reasonably requested by Company at any time to evidence, perfect, maintain and enforce any security interest or title and interest of Company in such Receivables (and all Collections in respect thereof) and the priority thereof.

4.1.8. Investment Company. Supplier is not an investment company or a company controlled by an investment company within the meaning of the Investment Company Act of 1940, as amended.

4.1.9 Supplier. Supplier is certified by the Commission as a Retail Natural Gas Supplier as the term Retail Natural Gas Supplier is defined in Ohio Revised Code Section 4929.01(N) and Ohio Administrative Code Section 4901:1-27-01(Y).

4.2. Representations and Warranties of Company. Company represents and warrants to Supplier as follows:

4.2.1. Organization and Power. Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio with all requisite corporate power and authority to own its properties and to transact the business in which it is now engaged or in which it proposes to engage.

4.2.2. No Restrictions. The purchase by Company of Receivables pursuant to this Agreement and the consummation of the transactions herein contemplated will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under the terms of, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Company is a party or by which Company is bound or to which any of the property or assets of Company is subject, nor will such action result in any violation of the provisions of the certificate of incorporation or the by-laws of Company or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Company or any of Company's properties; and no consent, approval, authorization, order, registration or qualification of or with any court or any such regulatory authority or other governmental agency or body (other than the Governmental Approvals and such other consents, approvals, authorizations, orders, registrations or qualifications as have been obtained) is required for the purchase by Company of Receivables hereunder or the consummation by Company of the other transactions contemplated by this Agreement.

4.2.3. Authorization and Effect of Agreement. This Agreement has been duly authorized, executed and delivered by Company and constitutes the valid and legally binding obligation of Company enforceable against Company in accordance with its terms, subject as to enforcement to bankruptcy, insolvency, reorganization and other similar laws of general applicability relating to or affecting creditors' rights and to general principles of equity.



## V. COVENANTS OF Supplier

5.1. Preservation of Supplier Status. Supplier or its legal successor shall preserve and maintain its status as a Supplier during the term of this Agreement.

5.2. Maintenance of Offices. Supplier shall maintain originals or duplicates of the principal documents (including, without limitation, computer tapes and disks) evidencing all sales of Competitive Retail Natural Gas Services, Receivables and Customer Bills (to the extent said Customer Bills are in Supplier's possession) at the address as set forth in Section 10.2 hereof, and Supplier shall give to the Company not less than 45 days prior written notice of any change in location of its principal executive offices or location of such documents, or any reincorporation or reorganization to a state other than as set forth in Section 4.1.6 hereof; and (b) Supplier agrees to take such reasonable action as may be requested by the Company, to maintain any security interest and title and interest and priority of the Company in such Receivables and Collections in respect thereof.

5.3. Continuing Obligations. The Supplier will duly and timely perform and fulfill all obligations on its part to be performed or fulfilled under or in connection with the Receivables, and will do nothing to limit, impair or restrict the Company's right, title and interest in and to any of the Receivables (or any Collections in respect thereof) or the collection or collectability of any of the Receivables. Notwithstanding the foregoing, the Supplier may make adjustments or allowances to any of the Receivables in the ordinary course of business, provided that the Supplier shall promptly inform the Company in writing of any such adjustment or allowance so made and shall, upon the Company's written request therefore, promptly compensate the Company for any loss suffered or incurred by the Company as a result of any such adjustment or allowance.

5.4. Further Action. Supplier will make, execute or endorse, acknowledge, and file or deliver to Company from time to time such vouchers, invoices, schedules, confirmatory assignments, conveyances, transfer endorsements, powers of attorney, certificates, reports, and other assurances or instruments and take such further steps relating to the Receivables and Collections in respect thereof as Company may reasonably request for the protection of the rights of Company hereunder.

5.5. Approvals. Supplier shall use its best efforts to obtain, and to assist Company in obtaining, any and all consents, approvals, authorizations, orders, registrations and qualifications which may be required from time to time in the future to consummate the transactions contemplated by this Agreement, including without limitation the Governmental Approvals.

5.6. Sales, Adverse Claims, Etc. Except as otherwise herein provided, Supplier shall not sell, assign (by operation of law or otherwise), dispose of, or create or suffer to exist any Adverse Claim upon or with respect

to, Supplier's undivided interest in any Receivable or Collections in respect thereof or assign any right to receive income in respect thereof. Without limiting the generality of the foregoing, Supplier will not claim any ownership or other interest in the Receivables and will respond to third party inquiries with respect to the ownership of the Receivables by stating that such ownership has been entirely transferred to Company.

5.7. Extension or Amendment of Receivables. Without the prior written consent of Company, Supplier shall not extend, amend or otherwise modify the terms of any Receivable.

5.8. Compliance with Laws, Etc. Supplier shall comply in all material respects with applicable laws, rules, regulations and orders applicable to all of its Outstanding Receivables as now or hereinafter in effect.

5.9. Keeping of Records and Books of Account. Supplier shall at its sole cost and expense maintain and implement, or cause to be maintained and implemented, administrative and operating procedures, and keep and maintain, or cause to be kept and maintained, all documents, books, records and other information including, without limitation, all tapes, disks or other electronically stored or computerized programs, data, records or documents, reasonably necessary or advisable for the calculation and collection of all Receivables for a period of not less than three (3) years. Such books and records shall appropriately reflect the sale of such Receivables to Company.

5.10. Inspection. Upon reasonable prior notice and, in any event, no more than two times per year for good cause shown, during regular business hours, Supplier shall permit Company or Company's agents or representatives, or, upon reasonable notification to Seller, agents or representatives of any lender providing financing to Company, for the purpose of protecting Company's interests hereunder, to examine and make copies of and abstracts from all relevant books, records and documents (including, without limitation, computer tapes and disks) in the possession or under the control of Supplier relating to sales of Receivables and Collections in respect thereof.

5.11. Annual Financial Audit. On the effective date of this Agreement or thereafter, the Company shall provide Supplier with a letter, from an appropriate financial institution or the Company's independent public accountant, that shall verify the need for the requirements set forth in Exhibit C to allow the Company to purchase and process Supplier's receivables. Thereafter, in connection with Supplier's annual independent financial audit, Supplier shall instruct its independent public accounting firm to audit the accounts receivable records maintained by Supplier in accordance with the audit outline set forth in Exhibit C hereto and to furnish the results of such audit to Company's independent public accountant. The Supplier shall pay for such audit and any incremental cost that may arise from the preparation of the materials required by this Agreement associated with such audit. The Company agrees to execute and deliver a confidentiality agreement in form and substance reasonably satisfactory to the Supplier and Company with respect to the information supplied by the Company's independent public accountants

and agrees (a) to use such information only in connection with the purchase and process of Supplier's Receivables and (b) to not deliver or transmit such information to any third party unless such third party shall have executed and delivered a confidentiality agreement with the Supplier and only as part of the purchase and process of Supplier's Receivables unless the Company is ordered to transmit such information pursuant to a Court or Administrative Agency of competent jurisdiction. If a Court or Administrative Agency orders such disclosure by the Company, the Company shall use commercially reasonable efforts to provide Seller with notice.

5.12. Financial Statements. On the effective date of this Agreement or thereafter, the Company shall provide with a letter, from an appropriate financial institution or the Company's independent public accountant, that shall verify the need for Company to receive the financial statements referenced in Exhibit D to allow the Company to purchase and process Supplier's receivables. Exhibit D shall specify the financial statements and schedule of delivery of those financial statements that Supplier must provide to Company. Such fiscal year financial statements shall be accompanied by an opinion of Supplier's independent public accounting firm at Supplier's expense. The Company agrees to execute and deliver a confidentiality agreement in form and substance reasonably satisfactory to the Supplier and Company with respect to the information supplied by the Company's independent public accountants and agrees (a) to use such information only in connection with the purchase and process of Supplier's Receivables and (b) to not deliver or transmit such information to any third party unless such third party shall have executed and delivered a confidentiality agreement with the Supplier and only as part of the purchase and process of Supplier's Receivables unless the Company is ordered to transmit such information pursuant to a Court or Administrative Agency of competent jurisdiction. If a Court or Administrative Agency orders such disclosure by the Company, the Company shall use commercially reasonable efforts to provide Supplier with notice.

5.13. Limitations to Annual Financial Audits and Financial Statements required pursuant to paragraphs 5.11 and 5.12. Neither the Company nor its auditors shall require Supplier to undergo the audit or provide the financial statements required pursuant to Exhibits C and D to this Agreement unless requested by the Company, but the Company shall not make such a request more than two times during any twelve (12) month period. The Company shall provide information in its possession related to this Agreement to its auditors upon such auditor's request.

## VI. CONDITIONS PRECEDENT

6.1. Conditions Precedent to All Purchases. Each purchase of Outstanding Receivables hereunder shall be subject to, unless otherwise waived by Company in the manner set forth in Section 10.1 hereof, the following further conditions precedent:

(a) On the appropriate Purchase Date (and Supplier, by accepting the Purchase Price, shall be deemed to have certified that) the representations and warranties made by Supplier contained in Section 4.1 hereof are correct in all material respects on and as of such date, as though made on and as of such date (or if made as of a specific date, as of such date);

(b) All Governmental Approvals with respect to this Agreement and the LDC/Supplier Agreement required in connection with Supplier's execution, delivery and performance hereof and thereof, each Sale and Assignment and the other documents to be delivered hereunder, and the transactions documents to be delivered hereunder, and the transactions contemplated hereby required in connection with Supplier's execution, delivery and performance hereof or thereof, shall have been received and shall be in effect on the appropriate Purchase Date;

(c) Company shall have received from the Supplier such other approvals, opinions or documents as Company may reasonably request;

(d) Supplier shall not be in material breach of any covenant of this Agreement or of the LDC/Supplier Agreement;

(e) Supplier shall not have (i) instituted or consented to the institution of any proceeding, or filed a petition, answer, consent or other pleading, in either case, seeking reorganization of Supplier or any other relief or procedure with respect to Supplier, under any applicable federal or state law relating to bankruptcy, insolvency, liquidation, dissolution or similar law, (ii) consented to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of Supplier or a substantial part of its property, (iii) made any assignment for the benefit of creditors, (iv) admitted in writing its inability to pay its debts generally as they become due, or (v) taken any corporate action in furtherance of any of the foregoing actions, and no involuntary proceeding shall have been instituted against Supplier or its properties for any such reorganization, relief, appointment, assignment or admission.

## VII. ADMINISTRATION AND COLLECTION

### 7.1. Further Action Evidencing Purchases.

(a) Supplier agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary or desirable or that Company may reasonably request, in order to perfect, protect or evidence the transfer of title of Receivables transferred hereunder and rights to Collections in respect thereof, or to

enable Company to exercise or enforce any of its rights hereunder. Without limiting the generality of the foregoing, Supplier shall upon request of Company (i) execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices as may be necessary or appropriate for the protection of Company's rights hereunder; and (ii) to the extent practical, mark its data processing records evidencing all of its Receivables with a legend, acceptable to Company, identifying those Receivables that have been sold in accordance with this Agreement .

(b) Supplier hereby authorizes Company to file one or more financing or continuation statements, and amendments thereto and further assignments thereof relative to all or any of the Receivables and rights in Collections in respect thereof now existing or hereafter arising without the signature of Supplier where permitted by law. If Supplier shall fail to execute or file any financing or continuation statement, amendment, instrument or notice in accordance with subsection (a) above, Company may, and is hereby irrevocably appointed attorney-in-fact to execute or file the same on behalf of and in the name of Supplier.

(c) If Supplier fails to perform any of its agreements or obligations under this Agreement related to the documentation of the transfer of title of Receivables transferred hereunder or the perfection of security interests therein, Company may (but shall not be required to) itself perform, or cause performance of such agreement or obligation and the reasonable and necessary expenses of Company incurred in connection therewith shall be payable by Supplier upon demand by Company.

## VIII. TERMINATION

### 8.1. Termination.

(a) In the event that the Supplier ceases to provide Competitive Retail Natural Gas Services to Customer's in the Company's service territory or otherwise withdraws from the Ohio Choice market in accordance with the provisions of the EDU/Supplier Agreement, this Addendum shall immediately terminate. In addition, either party to this Agreement may terminate this Agreement at any time upon not less than 30-days' written notice to the other Party. [The termination of this Addendum pursuant to this Section 8.1 does not relieve the Company from its obligation to negotiate to purchase Supplier's Receivables or provide consolidated billing in the future pursuant to The Public Utilities Commission of Ohio's Orders, nor does it relieve Supplier of its obligations as a Supplier pursuant to The Public Utilities Commission of Ohio's Orders.

(b) Further, this Addendum may be terminated by a Party upon the occurrence of any of the following:

(i) Immediately upon written notice in the event the other Party has materially breached any of its duties, obligations, representations or warranties under this Agreement and has not cured such breach pursuant to the Company's tariff, Commission Order, or Ohio Administrative Code Section 4901:1-27-12; and

(ii) Immediately upon the other Party committing any fraudulent or illegal act, or willful, reckless or grossly negligent misconduct; and

(iii) Immediately upon written notice in the event there is any bankruptcy reorganization or other arrangement, receivership or similar insolvency proceeding commenced by or against the other Party.

From and after the Termination Date, the Company shall have no further obligation to purchase receivables pursuant to this Agreement. Except as specified in Section 8.2 hereof, termination of this Agreement by either Party shall not affect Receivables and rights in the Collections in respect thereof, or the rights and obligations of Company or Supplier with respect thereto, sold to Company pursuant to this Agreement prior to the date of such termination, and no such termination shall affect either Party's obligations to the other under Section 8.2, Article IX, Section 10.5 and Section 10.6 hereof.

8.2 Termination Procedures. Unless Supplier and Company are continuing billing and collection arrangements under the LDC/Supplier Agreement, not less than 30 days prior to the Termination Date (or, in the case of termination by Company, on the Termination Date), Supplier agrees to have accounting procedures that distinguish Receivables and Collections in respect thereof owned by Company from other receivables and collections, and to maintain such procedures so long as any such Receivables are outstanding. Following the Termination Date Supplier agrees to collect all Receivables, receive all Collections in respect thereof and otherwise facilitate Collections of Receivables purchased by the Company and remit to the Company pursuant to terms in the LDC/Supplier Agreement. In the event billing and collection arrangements between the Supplier and the Company are continuing under the LDC/Supplier Agreement, Supplier and Company shall coordinate to ensure records are adequately marked to distinguish Receivables from other receivables. In lieu of the foregoing, Supplier shall have the option by written notice to Company not less than 30 days prior to the Termination Date (or, in the case of termination by Company, on the Termination Date) to repurchase all Receivables from Company on the Termination Date. The repurchase price shall be the unpaid balance of the Receivables on the repurchase date. In the event of a repurchase under this Section 8.2, Company shall deliver to

Supplier, at Supplier's expense, all instruments of transfer and related documents as may be reasonably necessary to effect such transfer, free of any Adverse Claim.

## IX. INDEMNIFICATION

### 9.1. Indemnities by Supplier.

(a) Without prejudice to any other rights which Company may have hereunder or under applicable law, Supplier hereby agrees to indemnify and save harmless Company from and against any and all damages, losses, claims, liabilities, costs and expenses (including reasonable attorneys fees and disbursements) arising out of or resulting from the material breach of any representation or covenant of Supplier and its agents, employees, or assignees, under this Agreement.

(b) Notwithstanding any other provision of this Agreement, and in furtherance and not in limitation of the foregoing, Supplier agrees to pay to Company upon demand any and all reasonable amounts necessary to indemnify it and save it harmless from and against any and all damages, losses, claims, liabilities or expenses (including reasonable attorneys, fees and disbursements) awarded against or incurred by it arising out of or as a result of:

(i) Company's reliance on any representation or warranty made by or on behalf of Supplier under or in connection with this Agreement, in any report from Supplier or in any other information delivered by Supplier pursuant hereto or thereto, which shall have been false or incorrect in any material respect when made or deemed made;

(ii) The failure by Supplier to comply with any applicable law, rule or regulation with respect to any of the Receivables, or the nonconformity of any of the Receivables with any such applicable law, rule or regulation.

(iii) The failure to vest in the Company ownership of the Receivables free and clear of any Adverse Claim;

(iv) The failure to file, or any delay in filing, financing statements, continuation statements or other similar instruments or documents under the UCC of any applicable jurisdiction or other applicable laws with respect to any Receivables, whether at the time of any purchase of any Receivable or at any subsequent time due to the action or inaction of the Supplier;

(v) Any Adverse Claim related to any Receivable (including, without limitation the Adverse Claims described in Section 4.1.4 hereof);

(vi) Any failure by Supplier to deliver timely to Company the Collections, books, records, documents or other information which may be required to be delivered pursuant to this Agreement;

(vii) Any failure by Supplier to be duly qualified to do business, and to be in good standing, in every jurisdiction where such qualification was required hereunder for the enforcement of any Receivable against the applicable Customer.

(c) Supplier shall not be liable for any loss suffered by Company that is due solely to the financial inability or bad faith failure of any Customer to pay at maturity any amounts due and payable in respect of a Receivable.

## 9.2. Indemnities by the Company.

(a) Without prejudice to any other rights which Supplier may have hereunder or under applicable law, the Company hereby agrees to indemnify and save harmless Seller from and against any and all damages, losses, claims, liabilities, costs and expenses (including reasonable attorneys fees and disbursements) arising out of or resulting from the material breach of any representation or covenant of the Company and its agents, employees, or assignees, under this Agreement.

(b) Notwithstanding any other provision of this Agreement, and in furtherance and not in limitation of the foregoing, the Company agrees to pay to Supplier upon demand any and all amounts necessary to indemnify it and save it harmless from and against any and all damages, losses, claims, liabilities or expenses (including reasonable attorneys, fees and disbursements) awarded against or incurred by it arising out of or as a result of:

(i) Supplier's reliance on any representation or warranty made by or on behalf of the Company under or in connection with this Agreement, in any report from the Company or in any other information delivered by the Company pursuant hereto or thereto, which shall have been false or incorrect in any material respect when made or deemed made;

(ii) The failure by the Company to comply with any applicable law, rule or regulation with respect to any of the Receivables, or the nonconformity of any of the Receivables with any such applicable law, rule or regulation;



(iii) Any failure by the Company timely to deliver to Supplier the Collections, books, records, documents or other information which may be required to be delivered pursuant to this Agreement;

(v) Any failure by the Company to be duly qualified to do business, and to be in good standing, in every jurisdiction where such qualification was required hereunder for the enforcement of any Receivable against the applicable Customer.

9.3. Potential Liabilities. Each Party hereto will use commercially reasonable efforts to identify situations involving possible liability or obligations under this Article IX (other than Section 9.1(b) and 9.2(b) hereof) and to determine the amount of any such liability or obligations, and, upon having notice of such situations, it will promptly advise the other Party thereof.

9.4. Cooperation in Litigation. Each Party hereto agrees to reasonably assist, at the request of the other Party, in any action, suit or proceeding brought by or against either Party by a third party relating to any of the transactions contemplated by this Agreement, or to the collection of any Receivables. The Party requesting assistance should reimburse the other Party for all extraordinary costs that arise from such request.

## X. MISCELLANEOUS

10.1. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement, nor consent to any departure by either Party herefrom or therefrom, shall in any event be effective unless the same be in writing and signed by the other Party hereto, then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

10.2. Notices, Etc. All notices and other communications required or permitted hereunder shall, unless otherwise stated herein, be in writing and mailed or delivered, as to each Party hereto, at such Party's address specified below:

(a) If to Company:

By courier or telecopy:

By Mail:

Bill Greene, Manager  
Cincinnati Gas & Electric Co.  
139 East Fourth Street –  
Cincinnati, OH 45202

(b) If to Seller:

Notice Address:

Location of Seller's  
Books and Records:

Name, title  
Company Name  
Address  
City, State , Zip

or at such other address as shall be designated by such Party in a written notice to the other Party hereto. All such notices and communications shall be deemed to have been duly given when delivered to the addressees at the appropriate addresses specified above.

10.3. No Waiver; Remedies. No failure on the part of either Party hereto to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

10.4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Company and Supplier, and their respective successors and assigns, except that the Supplier may not assign its rights or obligations hereunder without the prior written consent of Company, which consent shall not be unreasonably withheld. Company may assign its rights or obligations hereunder in connection with any financing transaction relating to the Receivables without the consent of Supplier.

10.5. Costs, Expenses and Taxes. In addition to the rights of indemnification granted to Company under Article IX hereof, Company and Supplier shall negotiate and set forth in Exhibit A, the Company's and/or Supplier's recovery of all reasonable costs and expenses, if any (including reasonable attorneys fees and expenses), in connection with the negotiation, review, preparation, amendment, enforcement and release of this Agreement and the other documents and instruments to be delivered by it hereunder.

10.6. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

10.7. Sevarability Clause. Any provisions of this Agreement that are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

10.8 No Petition: Set-Off. Supplier hereby irrevocably and unconditionally waives all right of set-off that it may have under contract (including this Agreement), applicable law or otherwise with respect to any property, funds or monies of Company at any time held by or in the possession of Seller.

10.9. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

10.10 Except as otherwise specifically modified or supplemented by this Agreement, all terms and conditions, and the obligations and responsibilities of the Parties, as set forth in the LDC/Supplier Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers hereto duly authorized, as of the date first above written.

Supplier

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: VP Gas Operations

**Exhibit A**

**CG&E Calculation of Purchase Price  
12 Month Rolling Year  
(July 2001 - June 2002)**

Annual Base Carrying Cost	14.20%
/ Days in Year	365
= Daily Carrying Charge	0.0389%
X DSO	32.84
= Carrying Cost Discount Factor	1.28%
+ Collection Experience Component	1.13%
= Discount Factor	2.41%
Adjusted 30-day \$50 Arrears	0.41%
<b>Total Discount Factor</b>	<b>2.00%</b>

**Exhibit B**

**Sale and Assignment Agreement**

**Date:** monthXX, 2003

Subject to and upon the terms and conditions set forth in the Account Receivables Purchase Agreement, dated as of month XX, 2003 (the Agreement between Name of Company, and The Cincinnati Gas & Electric Company), Name of Company, hereby sells and assigns to The Cincinnati Gas & Electric Company (CG&E), without recourse, for a Discount Rate of 2%, all right, title and interest in and to Outstanding Accepted Receivables and all collections relating thereto, as more fully described on the attached, which outstanding accepted receivables arose from the transmission by Name of Company, and acceptance by CG&E of charges in a rate-ready billing format for Competitive Retail Natural Gas Service that are billed to Name of Company's customers by CG&E. All of the representations and warranties of Name of Company, contained in CG&E's Supply Aggregation/Customer Pooling Agreement and CG&E's Rate FRAS, Full Requirements Aggregation Service are deemed incorporated herein by reference.

This sale and assignment shall be governed by and construed in accordance with the Account Receivables Purchase Agreement and the laws of the state of Ohio.

In witness whereof, Name of Company, has caused the Sale and Assignment to be duly executed and delivered by its duly authorized officer as of the date first above written.

Name of Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Cincinnati Gas & Electric Company (CG&E)

By: \_\_\_\_\_

Name:

Title: VP Gas Operations

**Purchase of Accounts Receivable (PAR): Attachment to Exhibit B of the Accounts Receivable Purchase Agreement**

**Consolidated Rate Ready Bill Option for Purchased Receivables:**

1. Within 1 business day of validating the meter read, The Cincinnati Gas & Electric Company (CG&E) shall bill the customer for the applicable billing period. The bill shall include charges for service supplied by CG&E and the natural gas commodity provided by **Supplier**, and billed under a rate-ready billing method.
2. Within twenty business days following the end of each month in which the customers accounts are billed by CG&E, the amount transferred to **Supplier** is the amount actually invoiced for natural gas supplied by **Supplier** and taxes associated therewith through CG&E's gas customer choice program, less the agreed upon discount rate specified in Exhibit A of the Accounts Receivable Purchase Agreement.
3. **Supplier** shall act in accordance with CG&E's tariffs.

Exhibit C

month XX, 2003

Company Name

Address

City, State, Zip

Attn: Mr. Name

Re: Exhibit C of the CG&E Purchase of Receivables Agreement with Company Name

Dear Name :

Pursuant to Section 5.11 of the Purchase of Receivables Agreement dated ---, this letter is CG&E's verification for the need of requirements and the Exhibit C requirements. In order for CG&E to enter a Purchase of receivables Agreement it must have the ability to audit the books and records of the seller related to the sale of receivables. Such audit shall contain sufficient information such that CG&E may verify the accuracy of the transactions related to the Purchase of Receivables Agreement. Therefore, at the expense of Company Name , it shall provide and permit the following as Exhibit C:

(a) At any reasonable time and upon reasonable prior notice, and in any case no less than annually, Company name , shall permit CG&E or its respective agents or representatives to visit and inspect any of Company Name 's., properties, to examine its books of account and other records and files, relating to Receivables, including, without limitation, computer tapes and disks, and to discuss its affairs, business, finances and accounts with its officers. In the case of examinations, inspections or other work performed by agents or representatives appointed by CG&E, Company Name , agrees to pay such agents or representatives immediately and unconditionally upon demand all reasonable fees and expenses incurred in connection with the performance by such agents or representatives of their duties pursuant to this covenant.

(b) Maintain and implement administrative and operating procedures, including, without limitation, an ability to recreate records evidencing Receivables in the event of the destruction of the originals hereof, and keep and maintain all records and other information, reasonably necessary or advisable for the collection of Receivables, including, without limitation, records adequate to permit, on a daily basis, a reasonable estimate of Receivables and all Collections and adjustments to Receivables.

(c) Cause Company Name , at its expense, to timely and fully perform and comply with all material provisions and covenants required to be observed

by Company Name under the contracts and agreements related to the Receivables.

Very truly yours,

Bill Greene  
Manager,  
Supplier Business Center



## Exhibit D

Month XX, 2003

Company Name

Address

City, State, Zip

Attn: Mr. Name

Re: Exhibit D of the CG&E Purchase of Receivables Agreement with Company Name

Dear Name

Pursuant to Section 5.12 of the Purchase of Receivables Agreement dated ~~Date--~~, this letter is CG&E's verification for the need of requirements and the Exhibit D requirements. In order for CG&E to enter a Purchase of Receivables Agreement it must have the ability to review financial statements of the seller related to the sale of receivables. Such review shall concern financial statements such that CG&E may verify the accuracy of the transactions related to the Purchase of Receivables Agreement. Therefore, at the expense of Company Name, it shall provide and permit the following as Exhibit D:

### 1. Periodic Reporting

Company Name, shall provide internally generated reports and support documents as CG&E may require, concerning the sale of receivables to CG&E such that CG&E may verify the accuracy of such receivable reports and determine whether the items shown on the reports comply with the terms of the Purchase of Receivables Agreement dated Month, 2003, such as the proper calculation on ineligible receivables. The information shall enable CG&E to trace all sections of such reports to supporting documentation and to the general ledger.

Company Name, shall supply a reconciliation of the accounts receivable aging per the receivable reports to the detail-aged trial balance. And, in addition, a reconciliation of total receivables per the aged trial balance to the general ledger and the most recent reconciliation between the general ledger and company financial statements. The reconciliation must note the timeliness of completion and any material discrepancies.

## 2. Receivable Aging

**Company Name** shall prepare financial statements detailing its payment terms and aging methodology (i.e. invoice vs. due date, etc.). **Company name** shall select 15 accounts from among the various aging categories on the current month trial balance to determine if the accounts are being aged in accordance with the terms and methodology.

**Company Name** shall discuss the accuracy of the accounts receivable aging system with CG&E's auditors. It shall note the procedures utilized to test and substantiate the accuracy of the receivable aging system and the results thereof. It shall also note any accounts that may be aged in a non-conforming manner. Regarding delinquent (+90 days past due) obligors, **Company Name**, shall inquire as to the reasons for material past due amounts. It shall note the type of extensions granted on accounts and how an obligor qualifies for an extension. **Company name** shall also discuss with CG&E's auditors the magnitude of accounts that have been extended, modified or restructured. Determine how unapplied amounts and/or partial payments affect an account's aging status (i.e. are receivables reaged) In addition, **Company Name**, shall note the accounting treatment and aging of unapplied deductions taken by customers.

## 3. Receivable Concentration

**Company Name**, shall provide a listing of the 13 largest obligors as of the current period on a financial statement. **Company Name**, shall include the aging of these accounts, verify the accuracy of this information by tracing amounts to the receivable trial balance, scan the trial balance noting any unidentified obligor concentrations, determine if it is properly aggregating exposure among affiliated obligors and if more than one entity is originating the receivables, exposure across the various entities.

## 4. Credit

Provide a statement setting forth **Company Name**'s credit policies and procedures since the implementation date of the Purchase of Receivables Agreement date and set forth any amendments to the credit policies and procedures implemented since that date. **Company Name** shall provide a copy of any planned or implemented revisions.

## 5. Marking and Segregation

**Company Name** shall provide a statement demonstrating that the accounts receivable being purchased are marked and/or segregated in accordance with the terms of the Agreement to indicate the ownership interest.

## 6. Internal Audit Reports

**Company Name** shall inform CG&E if its internal auditors have performed any reviews of the credit procedures and/or receivable system during the last year. If so, it shall provide a copy of any reports noting any material issues which may pertain to the receivables being purchased. If not, **Company Name**, shall inform CG&E when any such review would be scheduled.

## 7. External Auditors Management Letter.

**Company Name**, shall provide the most recent external auditors management letter regarding the management of the Purchase of Receivables Agreement. It shall note any weaknesses identified in **Company Name**, 'receivable operations and/or related controls (i.e., EDP or general ledger systems) and discuss any material issues with management. It shall also include the results of the external auditor's most recent accounts receivable confirmation procedures, noting any material issues.

## 8. Seller/Originator of Receivables

**Company Name** shall provide a auditable statement verifying that it is the sole originator and legal entity of the receivables being sold pursuant to the Purchase of Receivables Agreement. **Company Name**, shall inform CG&E if there have been any events that have occurred, or are contemplated, that may necessitate refilling UCC Statements, including but not limited to mergers, acquisitions, asset sales, or any changes in: corporate names, location of chief executive offices, location of books and records relative to receivables.

Very truly yours,

Jim Henning  
Manager,  
Gas Operations