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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

AUG 13 2018

PUBLIC SERVICE
COMMISSION

In the Matter of

CMN-RUS, Inc.

Complainant

v.

Windstream Kentucky East, LLC

Respondent

No. 2018-00157

**First Set of Discovery Requests from CMN-RUS, Inc.
to Windstream (2nd part)**

CMN-RUS, Inc. (“CMN”), submits this First Set of Discovery Requests (2nd part) to Windstream Kentucky East, LLC (“Windstream”) in accordance with the Commission’s scheduling Order issued August 7, 2018 (the “8/7/18 Order”). The 8/7/18 Order (¶7) incorporated CMN discovery requests (#1-7) served June 22, 2018, into this First Set of Discovery Requests and allowed Windstream through August 27, 2018, to file responses thereto complying with the 8/7/18 Order. Windstream served a response to CMN’s First Set of Discovery Requests (1st part) on August 2, 2018 — a copy of Windstream’s Answers and Responses is attached hereto (“8/2/18 Windstream Responses”). Because the 8/2/18 Windstream Responses do not meet all the requisites of the 8/7/18 Order (*e.g.*, that “the witness responsible for responding to questions relating to the information provided” be identified, ¶8a), CMN anticipates that Windstream will be providing responses to the first part along with its responses to this second part of CMN’s First Set of Discovery Requests. To minimize confusion, CMN does not repeat the first-part requests here, and begins these second-part discovery requests with Request # 8.

Definitions:

“Windstream” or “you” means Windstream Kentucky East, LLC.

“Windstream Affiliate” means a partnership, corporation, LLC, trust (including any telecom real estate investment trust or REIT), or other business entity that is (a) a parent company of Windstream, (b) another subsidiary of a parent company of Windstream, (c) under common control with you or your parent, or (d) listed among the scores of “Windstream Companies” for any jurisdiction on the Kinetic website under “Windstream Legal Notices: Windstream Companies Tariffs and Price Lists,” <http://www.tariffs.net/windstream/> (last visited Aug. 10, 2018). For the purposes of this definition, “Windstream Affiliate” includes Uniti.

“CMN” means CMN-RUS, Inc.

“300 Pole Rule” means your rule, policy, or practice, that limits the number of poles for which an attacher may apply to 300 poles in a rolling 30-day period.

“KDL” means Windstream KDL, LLC, a Windstream Affiliate.

“KIH Amendment” means the First Amendment to Pole Attachment License Agreement dated July 7, 2016, by and between Windstream Kentucky East, LLC and the Commonwealth of Kentucky, Kentucky Communications Network Authority, and the Finance and Administration Cabinet in connection with the Kentucky Information Highway project (“the KIH”); a copy of the KIH Amendment was attached to the Complaint as Appendix C.

DISCOVERY REQUESTS

8. If the text of any of your responses to Requests #1-7 from your Answers and Responses served August 2, 2018, has not been included *verbatim* in your response to the

respective Request filed and served in accordance with the 8/7/18 Order, show the changes made to that text in redline form.

9. Including but not limited to Windstream Kentucky West, LLC, identify each Windstream Affiliate (by full legal name) that owns poles, whether or not that affiliate is a local exchange carrier or other public utility, and the state(s) or other jurisdiction(s) in which that affiliate owns poles.

10. Provide the following data and other information relating to Windstream-owned or -controlled poles and (separately) to Windstream Affiliate-owned or -controlled poles in Fayette County:

- a. the current number of poles, the number of poles in each category by number of users/attachers, and the “as of” date for the data;
- b. the most current map indicating the location of the poles;
- c. the number of poles and the balance sheet values for poles (i) at the beginning, (ii) added, (iii) retired, (iv) transferred, and (v) at the end, for each of the full calendar years 2013, 2014, 2015, 2016, and 2017 and for the current calendar year (2018) to date;
- d. with respect to poles added after 2012 (*see subpart c(ii) above*), identify for each calendar year and the current calendar year to date (i) the number or proportion of such poles that expanded Windstream’s pole network in Fayette County, (ii) the location of such expansion(s); and (ii) for acquired poles, from whom the poles were acquired and the circumstances of the acquisition (*e.g.*, asset purchase or swap, acquisition of the pole owner).

11. Refer to the chart provided in the 8/2/18 Windstream Responses (attached), p.4, response to Request #1a:

- a. With respect to the “Nationwide” statistics, state their source and scope, *i.e.*, whether the numbers provided are for all utility poles nationwide or are specific to Windstream alone, to a Windstream Affiliate, or to Windstream and all Windstream Affiliates, etc.
- b. Describe the area covered by “Lexington, KY” (also referred to as “Lexington market”), compare it with Fayette County, and, if different from Fayette County, provide the pole-count information requested in Request 10(a) above for the “Lexington, KY area” for both (i) Windstream-owned and -controlled poles and (ii) Windstream Affiliate-owned and -controlled poles.
- c. State the entity or entities who own or control the poles and to whom applications are made in the “Lexington, KY” statistics.
- d. Provide the “Lexington, KY” statistics for applications and poles for each month from (and including) January 2016 through the present.

12. Provide a copy of each currently-applicable or -effective franchise agreement with Lexington-Fayette Urban County Government (“LFUCG”) entered into by Windstream or a Windstream Affiliate.

13. Provide a copy of your currently-effective joint-use agreement or other pole-related agreement with Kentucky Utilities Company (KU), Louisville Gas and Electric Company (LG&E), or any affiliate of either such utility.

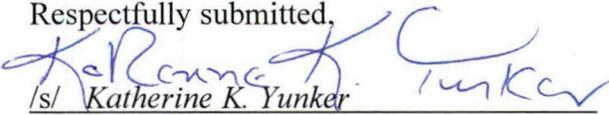
14. Provide a copy of each agreement Windstream or any Windstream Affiliate has or has had relating to the KIH and any document terminating or modifying such agreement. With respect to the KIH Amendment, identify the period of time for which it was or has been in effect.

15. For the period from and including January 1, 2013, to the present, list each person, entity, or organization (including any Windstream Affiliate) which has or had an attachment, or applied to have an attachment, to one or more Windstream poles in Fayette County.

16. Is it your contention that Windstream cannot outsource one or more functions of pole attachment, survey or other application process, and make-ready work? If so:

- a. Define what Windstream means by "outsource" in contending that it cannot outsource one or more of these functions.
- b. State which specific function(s) Windstream cannot outsource and, as to each, identify any externally-imposed restriction (*e.g.*, statute or regulation with which you are legally bound to comply, contract with a third party, etc.) that prevents outsourcing.
- c. State what resources Windstream would need to add internally to perform the function(s) identified in part (a) above, to complete surveys of poles and complete make-ready work for requests for attachment to 1500 poles per rolling 30-day period,
 - (i) in accordance with the timeline in 47 CFR 1.1420(g) for "larger orders" (*i.e.* orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state during a 30-day period); and
 - (ii) in accordance with the timeline in the KIH Amendment.

Respectfully submitted,


/s/ Katherine K. Yunker

Katherine K. Yunker

kyunker@mmlk.com

MCBRAYER, MCGINNIS, LESLIE &
KIRKLAND PLLC

201 East Main Street; Suite 900
Lexington, KY 40507-1310
859-231-8780, ext. 1137
Attorney for CMN-RUS, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2018, pursuant to the Commission's 8/7/18 Order ¶2, a conformed copy of the foregoing has been served on the attorneys for Respondent by electronic mail or by hand-delivery to: Casey C. Stansbury <cstansbury@mrrlaw.com>, Tia J. Combs <tcombs@mrrlaw.com>; MAZANEC, RASKIN & RYDER CO.; 230 Lexington Green Circle, Suite 605; Lexington, KY 40503.


/s/ Katherine K. Yunker

Attorney for Complainant

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
Case No. 2018-00157**

In the Matter of

CMN-RUS, INC.

COMPLAINANT

v.

WINDSTREAM KENTUCKY EAST, INC.

DEFENDANT

**WINDSTREAM KENTUCKY EAST, INC.'S ANSWERS AND RESPONSES
TO FIRST SET OF DISCOVERY REQUESTS FROM CMN-RUS, INC.**

Comes the Defendant, Windstream Kentucky East, Inc. ("Windstream"), by counsel, and for its Answers and Responses to the Plaintiff's First Set of Discovery Requests from CMN-RUS, Inc. ("CMN"), states as follows:

GENERAL OBJECTIONS

Defendant's Answers are made subject to, and without waiver of:

1. Any questions as to the admissibility into evidence of the Answers or the subject matter of the Answers;
2. The right to object to other discovery directed to the subject matter of the requests;
3. The right to make additional objections or seek protective orders in the future concerning any requests; and
4. The right to, at any time, revise, correct, add to or clarify any of the Answers contained herein. In particular, Windstream is still investigating this matter and reserves the right to add additional information as it becomes available.
5. The right to assert that these Requests were made without appropriate legal basis or authorization.

The Defendant also generally objects as follows:

1. The Defendant objects to the requests to the extent they relate to issues other than those directly related to the subject matter of this action. As such, they are overly broad, unduly burdensome, and seek information which is not relevant to the subject matter of this action and not reasonably calculated to lead to discovery of admissible evidence.

2. The Defendant objects to the requests insofar as they call for information which is neither admissible under the applicable rules of evidence nor reasonably calculated to lead to the discovery of admissible evidence.

3. The Defendant objects to all requests which seek information that is a matter of public record.

4. The Defendant objects to requests to the extent they seek information concerning events and communications protected by the attorney-client privilege and/or the work-product doctrine. Nothing contained in these Answers is intended as, or shall in any way be deemed, a waiver of any privilege or doctrine.

The responses herein are subject to, and limited by, the foregoing general objections. Additional objections are also made to specific requests.

DISCOVERY REQUESTS

1. Please refer to your Answer ¶5, in which you state that Windstream limits the number of attachment applications it will process "in order to effectively manage use of its resources." It is your contention that:

- a. the 300 Pole Rule is required to effectively manage the use of Windstream's resources? If so, please produce any data supporting your contention.

- b. in circumstances in which a third party agrees to (i) assume all cost of retaining additional resources to process applications in excess of 300 poles per 30 days and (ii) pay all cost of contractors approved by Windstream to perform make ready, that processing more than 300 poles within a 30-day period interferes with the effective management of Windstream's resources? If so, please produce any data supporting your contention.

Answer:

- a. Windstream does contend the 300 Pole Rule is necessary for proper management of its resources. Windstream engineers must review and inspect the make ready surveys and construction performed by external contractors to ensure compliance with safety and engineering standards. They must manage contractors as they perform the work necessary to allow other providers to attach facilities to Windstream poles. This also means inspecting the attachments of other providers to ensure all safety and engineering requirements are met. These requirements are set by both the Federal Communications Commission and the National Electric Safety Code. Not following these rules may result in significant fines, or worse, the injury of a civilian. Therefore, it is imperative Windstream rely on its own internal engineers to ensure compliance.

Significant time is involved in an engineer's work in this regard. A Windstream Pole Attachment Application contains pole data and information for twenty-five (25) poles. It takes approximately fifteen (15) hours to survey an application. A Windstream Engineering Manager then spends an hour reviewing the survey to ensure accuracy.

In addition, Windstream cannot put all of its resources into CMN-RUS' requests to the exclusion of other attachers. The chart below shows the application and pole count for the last four months:

Nationwide:	Applications	Poles
March	160	4,000
April	143	3,575
May	120	3,000
June	99	2,475
Lexington, KY	Applications	Poles
March	20	500
April	13	325
May	14	350
June	15	375

By requesting to attach to 1,500 poles per month, CMN is asking Windstream to increase its monthly pole volume by almost 500%. Attachers (as in all attachers in the Lexington market) normally apply to attach to about 380 poles per month. There are approximately 50 attachers in the Lexington market. If each of them demanded to attach to 1,500 poles a month Windstream would have to manage and process and survey 75,000 poles a month. That is substantially more poles than were processed all of last quarter, much less in a single month. Therefore, Windstream reasonably holds each provider to a 300-pole limit per month so Windstream is able to keep up with requests. Allowing one provider to increase the per month number by what CMN requests would place an unreasonable burden on Windstream.

CMN-RUS references the KIH project several times in the Complaint, but the KLH project was not without its problems. That project stretched Windstream's resources thin, a situation Windstream does not wish to repeat.

Additionally, in other jurisdictions, CMN has previously submitted subpar applications, increasing the processing time necessary. A non-exhaustive list of examples is listed below:

Application	Date
Zionsville Feeder Ring 1H	9/8/2017
Carmel CRO54 A	6/17/2017
Brownstone A Pole Application	5/8/2017
Fishers 13b	10/27/2017
Fishers 61	9/23/2017

These applications took longer to process than normal, and such subpar applications are a common occurrence for CMN.

In addition, during the first 6 months of 2018, Windstream has been notified of 20 occasions where CMN contractors have damaged Windstream property. Management of ensuring that these sites are repaired uses Windstream's resources that might otherwise be used in the pole attachment process. A list of these sites is attached hereto as WIN0001.

- b. Payment is not the only consideration when processing applications and scheduling make ready. As noted above Windstream engineers must review and inspect the make ready surveys and construction performed by external contractors to ensure compliance with safety and engineering standards. This cannot be outsourced as noncompliance may result in significant fines, or worse, the injury of a civilian. In addition, as described in Windstream's Answer, Windstream has personal knowledge of CMN's record of untimely payments.

2. Please refer to your Answer ¶5, in which you contend that the lack of specific time frames for application, survey, and make ready processing does not make the License Agreement unreasonable. Please state the basis (factual and legal) for that contention. Please also state:

- a. whether it is your contention that Windstream may take an indefinitely long amount of time to process and complete pole attachment requests and, if so, the basis for your contention; and
- b. what, if any, are the minimum time frames Windstream contends are reasonable and the basis for your contention.

Answer: Objection. This question seeks attorney-client privilege and work product information. Without waiving said objection,

- a. It is not Windstream's contention that the company may take an indefinitely long amount of time to process and complete pole attachment requests.
- b. For up to 300 poles per month for the sort of attachment sought by CMN:
 - 45 days for review of application and survey
 - 14 days for tender of an estimate of make-ready charges
 - 14 days for applicants to tender payment for make-ready charges
 - 60 days for performance of make ready

These timelines also assume average application volume and that the applicable time period does not include any emergencies to which Windstream must attend.

3. Please refer to your Answer ¶5, in which you deny that the provisions in Windstream's License Agreement (including the 300 Pole Rule) are unreasonable and contend that the License Agreement provisions are consistent with Kentucky law and standards of the telecommunications industry.

- a. It is your contention that the 300 Pole Rule is consistent with the standards set forth in 47 CFR 1.1420(g)? If so, please state how or under what conditions the 300 Pole Rule is consistent with the standards set forth in 47 CFR 1.1420(g).

- b. Please (i) identify with which Kentucky law(s) you contend that the 300 Pole Rule is consistent and (ii) state how or under what conditions the 300 Pole Rule is consistent with respect to the/those specific Kentucky law/s.
- c. It is your contention that the 300 Pole Rule is consistent with a standard in the telecommunications industry pertaining to the processing of poles other than the standards set forth in 47 CFR 1.1420(g)? If so, please (i) identify each such other standard with which the 300 Pole Rule is consistent and (ii) state how or under what conditions the 300 Pole Rule is consistent with the respective standard.

Answer: Objection. This question requests information protected by the attorney-client privilege and the work product doctrine. Without waiving said objection, please refer to Windstream's Answer to question 1. In addition, Windstream reiterates that it cannot outsource the review and quality control part of the Make Ready process. Therefore, an increase in the number of applications places a greater burden on Windstream internally that CMN cannot solve.

- a. First, 47 CFR 1.1420 concerns the timelines for make ready, not the number of poles being attached to. Moreover, as CMN has already admitted in its Complaint, in Kentucky, this regulation is inapplicable. As such, this question is irrelevant and there is no need for any analysis of how Windstream's practices in Kentucky compare to the regulation.
- b. The 300 Pole Rule is not in violation of any Kentucky law. CMN has not pointed out any law with which the 200 Pole Rule is incompatible.
- c. As noted above, 47 CFR 1.1420 concerns the timelines for make ready, not the number of poles being attached to and this regulation is inapplicable in Kentucky. There are no published standards for number of poles to be attached to per month with which Windstream is legally

bound to comply. Windstream asserts that it can process applications for 300 poles a month from CMN and has been doing so for several months.

4. With respect to your denial in Answer ¶7 that eight (8) to twelve (12) months is a reasonable period to attach to 12,500 poles (*i.e.* a rate of 1042 to 1562 poles per month), please:

- a. explain how and under what conditions your denial is consistent with the standards set forth in 47 CFR 1.1420(g);
- b. state all facts on which you base your denial that 8-12 months is a reasonable period to attached to 12,500 poles, and produce any data, statistics, or analyses supporting your denial.

Answer:

- a. As noted above, 47 CFR 1.1420(g) concerns the timelines for make ready, not the number of poles being attached to and this regulation is inapplicable in Kentucky. Windstream does not have to square its practices with 47 CFR 1.1420(g). Moreover, CMN asked to attach to 1,500 poles per month; no smaller amount was ever discussed as CMN refused further negotiations when Windstream told CMN this number was not feasible.
- b. As stated in the Answer to question 1, Windstream does not have the resources to meet CMN's demands and not all activities can be outsourced. If CMN was allowed to increase the number of poles per rolling 30-day period from 300 to 1,500 it would have a drastic impact on Windstream's internal resources. The volume average would change from 15.5 apps / 387.5 poles per month to 75.5 apps / 1887.5 poles per month. That is a 487% increase in volume.

5. Please refer to your denial in Answer ¶10 that Windstream was unwilling to negotiate any provisions of its License Agreement with CMN. If Windstream is/has been willing to negotiate provisions of the License Agreement with CMN, please identify:

a. the circumstances under which Windstream is/has been willing to negotiate the provisions of the License Agreement with CMN; and,

b. any provisions Windstream is not/has not been willing to negotiate with CMN.

Answer: Objection. This matter was negotiated in telephone call including both representatives from Windstream and CMN. As such, the information requested herein is equally available to CMN. Without waiving said objection, two conference calls were held in December 2017 concerning this matter. Windstream offered to enter into its Standard Pole Attachment Agreement with CMN, and Windstream provided CMN a copy of the agreement. CMN declined and demanded to be allowed to attach to 1,500 poles per month. When Windstream told CMN this was not feasible, CMN then sought to attach under the tariff, thereby foreclosing additional negotiation.

6. Please refer to your Answer ¶¶10 and 23. Is it your contention that the outstanding invoice to your affiliate, KDL, has a negative impact on Windstream? If so, please state in detail what you contend is the negative impact on Windstream and the basis for your contention.

Answer: KDL and Windstream Kentucky East are subsidiaries of the same parent company, Windstream Communications, LLC. The financials for one subsidiary have impacts on the entire company, thus when KDL is invoiced for \$1.3 million in make ready charges it affects the entire company.

7. Please refer to your Answer ¶22 denial that you have not attempted to negotiate terms agreeable to both Windstream and CMN concerning the matters stated in the Complaint. Please describe all such attempts and list all such terms.

Answer: Objection. This matter was negotiated in telephone call including both representatives from Windstream and CMN. As such, the information requested herein is equally available to

CMN. Without waiving said objection, two conference calls were held to discuss this matter, one on December 12, 2017 and one on December 19, 2017. At that time, Windstream offered CMN its standard terms. CMN refused to negotiate and notified Windstream that it would use the tariff.

MAZANEC, RASKIN & RYDER CO., LPA

s/ Tia J. Combs

CASEY C. STANSBURY

TIA J. COMBS

230 Lexington Green Circle, Suite 605

Lexington, KY 40503

(859) 899-8499

(859) 899-8498 – Fax

cstansbury@mrrlaw.com

tcombs@mrrlaw.com

Counsel for Defendant,

Windstream Kentucky East, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing was served via first class USPS mail, postage prepaid, on August 2, 2018 upon the following:

Katherine K. Yunker
McBrayer, McGinnis, Leslie & Kirkland, PLLC
201 East Main Street, Suite 900
Lexington, KY 40507
Kyouunker@mmlk.com
Counsel for Complainant,
CMN-RUS, Inc.

s/ Tia J. Combs

Counsel for Defendant,

Windstream Kentucky East, Inc.

Client Claim Number	CMR Number	Damage Address	Damage City	Damage State	Damager Name	Muni Y N	Billed Status	Billed AR	Source	Date of Damage	Locate Ticket	Damage Ticket
21900069180576	1404657	BC 4184 STARRUSH PL / BUNCHBERRY	LEXINGTON	KY	INTERNATIONAL INC	No	UnBilled	\$0.00	FNOL	3/15/2018	KY1803120717	KY1803150466
CMR180427541382	1415352	BC 4184 STARRUSH DR	LEXINGTON	KY	INTERNATIONAL INC	No	UnBilled	\$0.00	FNOL	4/27/2018	KY1804020733	
72198972500061	1407615	BC 3100 AYLESBURY CIR / BRIGHTON	LEXINGTON	KY	RLM UNDERGROUND	No	UnBilled	\$0.00	FNOL	3/28/2018		
21900069180922	1415037	BC 3105 BOULDER CT	LEXINGTON	KY	RLM UNDERGROUND	No	Billed	\$2,594.71	FNOL	4/25/2018		
21900069180650	1408850	BC 3100 AYLESBURY CIR	LEXINGTON	KY	RLM UNDERGROUND	No	UnBilled	\$0.00	FNOL	3/29/2018		
21900069181404	1419882	BC 1244 SHERBORNE PL / BRIGHTON PL	LEXINGTON	KY	RLM UNDERGROUND	No	UnBilled	\$0.00	FNOL	5/14/2018		
CMR180411535282	1411233	BC 1108 CANYON CT/COLORADO RD	LEXINGTON	KY	RLM UNDERGROUND	No	UnBilled	\$0.00	FNOL	4/10/2018		
CMR180608559942	1427386	BC 3305 PUEBLO COURT	LEXINGTON	KY	RLM UNDERGROUND	No	UnBilled	\$0.00	FNOL	6/7/2018		
CMR180425540372	1414723	BC 3104 GLENWOOD DR/TIMBER CRE	LEXINGTON	KY	RLM UNDERGROUND	No	UnBilled	\$0.00	FNOL	4/25/2018		
72198970500017	1403400	BC 205 CROSSFIELD PLACE / CASHE	LEXINGTON	KY	KTT ENTERPRISES INC	No	UnBilled	\$0.00	FNOL	3/8/2018	KY1802261332	
72198972500047	1406187	BC 248 CATERA TRCE / OLD TODDS RD	LEXINGTON	KY	KTT ENTERPRISES INC	No	Billed	\$17,696.05	FNOL	3/22/2018	KY1803081084	
CMR180621045282	1430381	BC 2322 STONEWOOD LN	LEXINGTON	KY	KTT ENTERPRISES INC	No	UnBilled	\$0.00	FNOL	7/13/2018	KY1806211414	
CMR180411535202	1411230	BC 3160 CAVERSHAM PARK LN/SHAKER R	LEXINGTON	KY	ROADLINK INC	No	UnBilled	\$0.00	FNOL	4/9/2018	KY1804040355	
21900069180944	1415354	BC 2256 SUNNINGDALE DR / OWLS HEAD	LEXINGTON	KY	ROADLINK INC	No	Billed	\$7,278.08	FNOL	4/27/2018	KY1804200964	
21900069181572	1427388	BC 2724 RED LEAF DR	LEXINGTON	KY	UNIFIED UTILITY ALLIANCE INC	No	UnBilled	\$0.00	FNOL	6/8/2018		
CMR180607558772	1426800	BC 2705 PLEASANT CREEK LN	LEXINGTON	KY	HILLS ELECTRIC LLC	No	UnBilled	\$0.00	FNOL	6/6/2018		
CMR180309524582	1403419	BC 632 ANDOVER VILLAGE PL/FORE	LEXINGTON	KY	DOUBLE C CONTRACTORS INC	No	UnBilled	\$0.00	FNOL	3/9/2018		
CMR180504544012	1417290	BC 1409 PLEASANT RIDGE DR/COLO	LEXINGTON	KY	RLM UNDERGROUND INC	No	UnBilled	\$0.00	FNOL	5/4/2018		
CMR180720061282	1438137	BC 2724 RED LEAF DR/GUNPOWDER DR	LEXINGTON	KY	UNIFIED UTILITY ALLIANCE INC	No	UnBilled	\$0.00	FNOL	6/6/2018		