**IN THE UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF INDIANA**
**INDIANAPOLIS DIVISION**

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| **In re:** | ) **Chapter 11** |
| | ) |
| **Kiel Bros. Oil Company, Inc., and** | ) **Case No.04-11121-BHL-11** |
| **KP Oil, Inc.** | ) **Case No. 04-11167-FJO-11** |
| | ) |
| **Debtors.** | ) **Jointly Administered under** |
| | ) **Case No. 04-11121-BHL-11** |
| | ) |

**RESPONSE OF DUKE ENERGY INDIANA, INC., f/k/a CINERGY/PSI ENERGY TO DEBTORS' OBJECTION TO CLAIM OF CINERGY PSI AND NOTICE OF RESPONSE DEADLINE AND HEARING**

Duke Energy Indiana, Inc., f/k/a Cinergy/PSI Energy ("Duke"), by counsel, submits this Response to *Debtors' Objection To Claim of Cinergy PSI and Notice of Response Deadline and Hearing* (the "Objection"). In support of its Response, Duke states the following:

**FACTUAL BACKGROUND**

1. On June 15, 2004 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with this Court.

2. By Order dated August 31, 2004, the Court established October 15, 2004 (the "Bar Date") as the deadline for filing proofs of claim.

3. On August 26, 2004, Duke timely filed its proof of claim in the amount of $71,073.10 (Claim No. 65) (the "Duke Proof of Claim"). Pursuant to the Duke Proof of Claim, Duke sought general unsecured status for its pre-petition claim against the Debtors in the total amount of $71,073.10.

4. Because of the voluminous nature of the account documents relating to the Duke Proof of Claim, Duke attached to the Duke Proof of Claim a summary of accounts which, among

other things, provided that the Debtors owed Duke $71,073.10 for pre-petition utility services, the location where such services were performed, the customer account number, the site identification, and the amounts due. Moreover, Duke did not attach the voluminous attachments because the Debtors should have received the invoices supporting the Duke Proof of Claim. At no time did the Debtors request Duke to provide additional documentation. In order to resolve the legally and factually unsupported Objection, Duke will produce to Debtors' counsel the voluminous account documents supporting the Duke Proof of Claim.

5. In the Objection, the Debtors make the bald assertion that they object to the Duke Proof of Claim "on the grounds that no liability exists on the Claim as the invoices included on the Claim do not appear as due and owing on the Debtors' books and records." *See* Objection at ¶ 3. No basis for the Debtors' conclusion for its objection to the Duke Proof of Claim is set forth in the Objection. For the reasons set forth below, this Court should dismiss the Objection and enter an Order allowing the Duke Proof of Claim as an allowed claim in the amount of $71,073.10.

**DISCUSSION**

6. Rule 3001 of the Federal Rules of Bankruptcy Procedure ("Rule 3001") provides that a proof of claim shall conform substantially to the appropriate Official Form, which is Form No. 10.

7. The Duke Proof of Claim substantially complies with Official Form No. 10 and the Debtors have not asserted otherwise.

8. Section 502(a) of the Bankruptcy Code provides, in pertinent part, that, "[a] claim of interest, proof of which is filed under Section 501 of this title, is deemed allowed, unless a party in interest...objects."

9. The apparent basis for the Debtors' Objection to the Duke Proof of Claim is that the Debtors' books and records do not reflect any amounts owed to Duke. (*See* Objection at ¶ 3).

10. In order for the Debtors to succeed with their Objection, they first have to overcome Bankruptcy Rule 3001(f) which provides that, "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim."

11. Thus when objected to, a proof of claim provides "some evidence as to its validity and amount" and "is strong enough to carry over a mere formal objection without more." *Lundell v. Anchor Construction Specialists (In re Lundell)*, 223 F.23 1035, 1039 (9th Cir. 2000) (citations omitted); *see also In re Wilkinson*, 175 B.R. 627, 628 (Bankr. E.D. Va. 1994) (holding that an objector has the burden to do more than merely file an objection that states that a claim evidenced by a timely filed, and properly formatted and supported proof of claim has been paid); *First Nat'l Bank of Fayetteville, Ark. v. Circle J. Dairy (In re Circle J. Dairy)*, 112 B.R. 297, 299-300 (Bankr. W.D. Ark. 1989) (holding that a mere formal objection without more does not defeat a proof of claim).

12. Overcoming the presumptive validity of a proof of claim can only be accomplished when, *e.g.*, an objecting party produces specific and detailed allegations that place the claim into dispute, *see In re Lenz*, 110 B.R. 523, 525 (D. Colo. 1990); by the presentation of legal arguments based upon the contents of the claim and its supporting documents, *see In re Circle J. Dairy*, 112 B.R. at 300; or by the presentation of pretrial pleadings, such as a motion for summary judgment, in which evidence is presented to bring the validity of the claim into question, *see In re Frontier Airlines, Inc.*, 112 B.R. 395- 399-400 (D. Colo. 1990).

13. The Duke Proof of Claim was timely filed in accordance with §§ 501 and 502 of the Bankruptcy Code and constitutes a properly executed proof of claim pursuant to Bankruptcy Rule 3001. Therefore, it constitutes *prima facie* evidence of the validity and the amount of Duke's unsecured pre-petition claim in this case.

14. Accordingly, the Debtors have the burden to overcome the *prima facie* validity of the Duke Proof of Claim before the burden of production can be shifted upon Duke. *See, e.g., Wilkinson*, 175 B.R. at 628.

15. As the Debtors have failed to set forth any legally or factually sufficient basis for their Objection to the Duke Proof of Claim, and have not provided any documentation to support their Objection to the Duke Proof of Claim, the Court should dismiss the Objection and allow the Duke Proof of Claim as an allowed claim in the total amount of $71,073.10.

## CONCLUSION

For all of the foregoing reasons, this Court should dismiss the Objection and enter an Order allowing the Duke Proof of Claim as an allowed claim in the amount of $71,073.10, and grant such other and further relief as is just and reasonable.

DATED: July 12, 2007

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 12, 2007, I caused a true copy of the foregoing *Response* to be sent through the Court's ECF system or by first class mail, postage prepaid, to the following:

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