

Staff Assignment: DeBaun, Cushinberry

In the Matter of the Midwest Energy Seeking Commission )  
Approval to Implement a Pay-As-You-Save Program for its ) Docket No.  
Electric Service. ) 07-MDWE-788-TAR  
)  
)

File Date: January 29, 2007



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Kansas Corporation Commission  
/S/ Susan K. Duffy

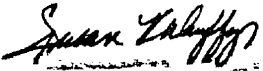
## Midwest Energy, Inc.

January 26, 2007

STATE CORPORATION COMMISSION

Susan Duffy  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, Kansas 66604-4027

JAN 29 2007

 Docket  
Room

RE: Midwest Energy PAYS® (Pay As You Save) Tariff Filing

Dear Ms. Duffy:

Midwest Energy requests Commission approval of Pay-As-You-Save (PAYS®) pilot program tariffs for its natural gas and electric service areas. Enclosed are the originals and seven copies of the proposed tariffs (with attachments) and a summary description of Midwest Energy's plan.

Questions regarding this filing should be directed to:

Mike Volker  
Director, Regulatory and Energy Services  
Midwest Energy, Inc.  
PO Box 898  
Hays, KS 67601

[mvolker@mwenergy.com](mailto:mvolker@mwenergy.com)  
785-625-1476

To Midwest Energy's knowledge, this is the first proposal of its type in Kansas. We believe that face-to-face discussions with KCC Staff members early in the review process would aid understanding and improve the usefulness of a PAYS® pilot program. Midwest Energy is pleased to take this step toward improving energy efficiency for its customers. We look forward to answering Staff's questions.

Sincerely,



Patrick Parke  
Vice President Customer Service

Enclosures

PC Don Low

Susan Cunningham

Larry Holloway

Dave Springe, CURB

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## **Midwest Energy Pay-As-You-Save (PAYS®) Pilot Program Description**

This summary is an overview of the proposed tariffs and pilot program. It is not intended to be a point-by-point discussion of the tariffs and their attachments.

### **Purpose of PAYS®<sup>1</sup>**

The PAYS® concept is designed to overcome certain types of market failure that inhibit customers from buying cost effective, resource efficient products. The concept may be applied broadly across many customer classes. Midwest Energy's proposed tariffs apply to both residential and commercial customers, but the primary target of the pilot program is the rental and low income market.

Some types of market failure that inhibit resource efficiency improvements include:

- Up front cost of efficiency improvements relative to other customer priorities. Kansas residents have many pressing concerns: health care costs, rent or mortgage payments, college tuition, gasoline and other energy costs, etc. Many people don't think they can afford to invest in efficiency.
- Customer borrowing capacity. Some people may be willing to borrow money for efficiency improvements, but their credit capacity could be stretched already.
- Long term commitment. Even if customers can afford to pay up front for efficiency measures, they may be concerned about moving before their investment generates an acceptable return. Or, they may not believe their investment will be recaptured upon sale of the property.
- Split incentives. Landlords who do not pay the utility bill have little incentive to invest in efficient products. Tenants don't want to pay higher total bills to improve another's property.
- Confidence in savings. Kansans are barraged with advertising about "miracle" products in all walks of life; some are legitimate, others are not. Customers would be more confident to invest in efficiency measures if there was independent assurance that the manufacturers' or vendors' claims are accurate.

The proposed PAYS® tariffs address all of these concerns. Fundamental characteristics include:

- No up-front cost to the customer.
- The repayment obligation is tied to the meter, so there is no concern about a lingering obligation if the customer decides to relocate. Whoever receives the direct benefits of the improvement helps pay the cost.
- The individual responsible for utility bill payment will repay the cost of the investment. Since the repayment obligation becomes a regulated utility charge, the utility has leverage to lessen the chance of related bad debt from becoming a burden for other customers. (Bad debt should actually be lower. See next item.)

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<sup>1</sup> PAYS® is a registered trademark of PAYS America, Inc. The PAYS® concept was developed by Energy Efficiency Institute of Colchester, VT 05446.

- The PAYS® Project Charge on the bill of a participating customer must be less than the estimated savings resulting from installation of the measures. Hence the name “Pay As You Save”.

Midwest Energy will develop a conservation plan for each participating customer which will include an estimate of resource savings. Thus, customers will receive an opinion on product effectiveness from a party independent of the manufacturer or vendor.

### **Kansas Energy Council Recommendations**

The 2007 Kansas Energy Plan developed by the Kansas Energy Council (KEC) encourages Kansas utilities “...to implement pilot programs to demonstrate the effectiveness of financing energy conservation improvements through a PAYS® and PAYS-type financing system.” Midwest Energy believes its proposed plan can be implemented by the June 2007 target established by KEC.

### **PAYS® Program Requirements**

In order to use the PAYS® trademark, and more importantly, achieve the purposes of the concept, three conditions must be met:

- The tariff (and repayment obligation) is assigned to a meter location, not individual customers.
- Billing of the PAYS® Project Charge will occur on the Midwest Energy bill along with charges for natural gas and/or electric use. Repayment will occur via the customer’s chosen method of utility bill payment. Non payment of the PAYS® Project Charge may result in disconnection per Midwest Energy’s approved Terms and Conditions in the same manner as non-payment for electric and natural gas service.

An independent party verifies that proposed PAYS® measures are appropriate and that estimated savings exceed the monthly PAYS® Project Charge. In the proposed plan, Midwest Energy will act as the independent party.

### **Modifications from Other PAYS® Plans**

Midwest Energy’s plan is not identical to the model developed by the originators of the PAYS® concept. Variations in the proposed plan are not meant as criticism of the original idea, but as adaptations more suitable for Midwest Energy’s resources, business processes and service area. Some of the major differences include:

- The model plan includes a “Certification Agent” (CA) different from the utility. Midwest Energy will assume that role. Midwest Energy has experienced energy advisors on staff and seeks to avoid creation or involvement of an outside program administrator.
- The primary relationship in the model plan is between the customer and the CA. The CA is literally the customer’s agent and interacts with contractors, the utility and the capital provider on the customer’s behalf. The CA becomes the conduit through which nearly all PAYS® transactional information flows for the duration of the PAYS® repayment obligation. In contrast, Midwest Energy’s design maintains a direct relationship between the property owner (landlord or customer) seeking improvements and the contractor.

Likewise, Midwest Energy's intent is to minimally impact the relationship between the landlord and tenant(s). Midwest Energy's role is generally limited to:

- Providing resource efficiency guidance to the customer and contractor
  - Facilitating investment in approved PAYS® measures (Capital source, contractor payment, etc.)
  - Collecting PAYS® Project Charge revenue from the party responsible for utility bills, and
  - Facilitating dispute resolution.
- The model plan allows the customer to suspend payment of the PAYS® surcharge in the event a PAYS® measure stops working. This feature maintains the premise that a customer will only pay while he/she saves. Midwest Energy's proposal addresses failed measures in a slightly different fashion.
    - If the failed measure is in a rental property, the PAYS® surcharge obligation continues, but it transfers to the landlord if the customer reports a failure, and the landlord does not remedy the situation within 30 days.
    - If the failed measure is in customer-owned property, the customer may suspend the payment, but only for 60 days. The original, full number of payments is still required. An explicit limit on the PAYS® payment suspension period provides an incentive for the customer to keep installed measures in working condition.
  - Midwest Energy's plan is "fuel blind". Other pilot programs have generally been specific to measures related to the service delivered by that utility. Midwest Energy's proposal is broadly written to accept measures that save resources regardless of supplier.

### **Attached Agreements, Disclosures and Notifications**

Several documents have been drafted to be attached to and made a part of the tariffs. These include:

- Customer-Owned Property Agreement – This Agreement between the Customer and Midwest Energy will be used when the bill-paying Customer owns the property on which improvements will be made.
- Rented/Leased Property Agreement – This three-party Agreement between the Landlord, Customer and Midwest Energy will be used when the Customer is a tenant responsible for the utility bills.
- Obligation Disclosure – This form will be used by landlords or property owners to disclose outstanding PAYS® obligations to subsequent tenants or property purchasers.
- New Customer Notification – This form will be used by Midwest Energy to notify a subsequent Customer that outstanding PAYS® obligations are attached to the premises.
- Participating Contractor Master Agreement – This Agreement between Participating Contractors and Midwest Energy sets forth the requirements for a contractor to participate. (The form of the Conservation Plan referenced in the Master Agreement has not yet been developed. The Conservation Plan will be specific to each Customer and will provide approval for work to begin.)

## **Funding Sources**

Midwest Energy has had conversations with the Kansas Housing Resources Corporation (KHRC) regarding zero-interest funds to support investments for low income customers. While no definitive agreement has been reached, both KHRC and Midwest Energy believe there will be opportunities to utilize state funds to leverage efficiency opportunities for low and moderate income customers.

## **Legislative Action**

Existing Kansas statutes give the Commission sufficient authority to approve the proposed plan. However, Midwest Energy supports a bill sponsored by Rep. Rob Olson (HB\_\_\_\_) to amend KSA 50-624. The amendment would exempt regulated public utility transactions from the requirements of the Kansas Consumer Protection Act. This would clarify sole KCC-jurisdiction over regulated utility plans like PAYS®.

## **Revenue Decoupling**

Midwest Energy and Commission Staff recommended in Docket No. 06-MDWG-1027-RTS that the Commission consider the appropriateness of a revenue decoupling mechanism in a generic proceeding. Revenue decoupling is being addressed in Docket No. 07-GIMX-247-GIV. Initiatives such as this PAYS® proposal underscore the need for a revenue decoupling mechanism in Kansas. Successful implementation of PAYS® will further erode Midwest Energy's revenue if current revenue recovery mechanisms are maintained.

## **Pilot Program**

Midwest Energy has submitted the proposed PAYS® tariffs with a termination date of July 1, 2008. The expectation is that PAYS® will be successful, but a certain expiration date will serve as a milestone for evaluation and an opportunity to refine the tariffs and attachments.

## **Ongoing PAYS® Program Development Activity**

Midwest Energy continues to work in a number of areas to further develop the pilot project. Completed and/or planned efforts include:

- Meeting with landlords and social service agencies to gain feedback on the concept
- Meeting with contractors regarding program design and solicit suggestions for process improvements
- Developing public communications plan and materials  
Internal accounting and administrative process design
- Refining economic model for the conservation plan
- Development of program tracking database

MIDWEST ENERGY, INC.

(Name of Issuing Utility)

Company Wide

(Territory to which schedule is applicable)

Replacing Schedule Initial Sheet 1

which was filed \_\_\_\_\_

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 1 of 4 Sheets

**PAY AS YOU SAVE RIDER**

**AVAILABLE**

The Pay As You Save (PAYS®) Rider is available as a pilot program to Customers with premises in Ellis, Graham, Rooks, and Trego counties for the purposes of improving resource efficiency and reducing net Customer bills, irrespective of supplier. The Rider is only available to Customers taking service under Electric Rate Schedules RS, RTE, GSS, GSS-DR, GSS-TOD, GSL, GSL-TOD, and GSH. Availability shall terminate July 1, 2008.

**PAYS® INVESTMENT AND REPAYMENT TERMS**

1. No up-front investment is required by participating Customers. The initial cost of approved efficiency measures will be paid by the Company.
2. The PAYS® repayment obligation shall be assigned to the premises and will survive changes in ownership and/or tenancy.
3. PAYS® program costs shall be recovered through a monthly line item PAYS® Project Charge on the utility bill.
4. The PAYS® Project Charge shall be treated the same as Company's charges for electric and/or natural gas service for purposes of the KCC Billing Standards. Failure to make payment may result in disconnection in accordance with the Company's approved Terms and Conditions.
5. The PAYS® Project Charge must be less than the estimated monthly average savings associated with the investment.
6. Company will be responsible for estimating resource savings and developing a Conservation Plan upon which the PAYS® Project Charge will be based.

Issued \_\_\_\_\_  
 Month Day Year  
 Effective Upon Commission Approval  
 Month Day Year  
 By Ernest A. Lehman President  
 Ernest A. Lehman Signature of Officer Title

MIDWEST ENERGY, INC.

(Name of Issuing Utility)

Company Wide

(Territory to which schedule is applicable)

Replacing Schedule Initial Sheet 2

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Sheet 2 of 4 Sheets

**PAY AS YOU SAVE RIDER**

**CONSERVATION PLAN**

The Conservation Plan will be developed by the Company and specify measures recommended by the Company to the prospective PAYS® Customer. The Conservation Plan includes:

- Estimated Resource Savings – The modeled change(s) in costs of resources consumed at the premise attributable to the efficiency measure(s) recommended. The Company will be solely responsible for savings estimates and will utilize generally accepted modeling software and techniques.
- PAYS® Project Charge – The charge to be included on the Customer’s utility bill based on the cost of the proposed measure(s) and the resulting savings. The Company will be solely responsible for calculating the PAYS® Project Charge utilizing its standard economic model of discounted cash flows. To the extent available, Company will incorporate grants and low-interest funds into calculation of the PAYS® Project Charge for the benefit of Customers who meet qualifying guidelines of such funding sources. The Company may add up to five (5) percent of the cost of proposed projects as bid by contractors or vendors to offset PAYS® program costs.
- Number of payments – The number of periods for which the PAYS® Project Charge will apply at the premises. In no case shall the duration of the PAYS® Project Charge exceed the estimated life of the measure.

Customer’s and Landlord’s (if applicable) signature of the PAYS® Agreement shall indicate acceptance of the Conservation Plan.

**UNECONOMIC MEASURES**

A Customer or Landlord may elect to “buy down” the cost of implementing an efficiency measure so that the PAYS® Project Charge will be less than average estimated monthly savings. In this way, measures that might otherwise not yield sufficient economic savings to pay for themselves may still be approved. Prior to Company approval of a Conservation Plan that includes one or more uneconomic measures, the Customer or Landlord must pay the Company the amount required to buy down said measure(s).

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| Issued _____                              | Month _____          | Day _____ | Year _____       |
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| By <u>Earnst A. Lehman</u>                | Month _____          | Day _____ | Year _____       |
| <u>Earnst A. Lehman</u>                   | Signature of Officer |           | <u>President</u> |
|   |                      |           | Title            |



THE STATE CORPORATION COMMISSION OF KANSAS

Index No. 93

SCHEDULE PAYS

MIDWEST ENERGY, INC.

(Name of Issuing Utility)

Company Wide

(Territory to which schedule is applicable)

Replacing Schedule Initial Sheet 3

which was filed \_\_\_\_\_

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Sheet 3 of 4 Sheets

**PAY AS YOU SAVE RIDER**

**NEW STRUCTURES**

A Customer or Landlord may utilize this Rider to install high efficiency equipment or measures in new structures. The Company will only invest at a maximum the difference in cost between the lowest allowable or "standard" efficiency equipment or measure required in the structure and the higher efficiency equipment or measures chosen by the Customer or Landlord. Under any circumstances, the PAYS® Project Charge to appear on the utility bill must be less than the average estimated cost of resources saved by purchase of the higher efficiency equipment or measures.

**RESPONSIBILITIES**

Responsibilities, understandings and authorizations of Customer, Company, Landlord (if applicable) and Participating Contractor shall be evidenced by written agreements, notifications and disclosures, the forms of which are made a part of this Rider.

**TRANSITION IN ROLES**

Unless otherwise specifically set forth in a standard PAYS® agreement made part of this Rider, responsibility for outstanding PAYS® obligations falls on the successor party when the roles of Customer, Landlord or Tenant change. For example: If a Tenant purchases an apartment complex, that individual assumes the obligations of Landlord.

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| By <u>Earnest A. Lehman</u>               | Month                | Day | Year      |
| <u>Earnest A. Lehman</u>                  | Signature of Officer |     | President |
|   |                      |     | Title     |

THE STATE CORPORATION COMMISSION OF KANSAS

Index No. 94

SCHEDULE PAYS

MIDWEST ENERGY, INC.

(Name of Issuing Utility)

Replacing Schedule Initial Sheet

Company Wide

(Territory to which schedule is applicable)

which was filed \_\_\_\_\_

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Sheet 4 of 4 Sheets

**PAY AS YOU SAVE RIDER**

**OTHER**

- 1) This Rider only applies to PAYS® measures permanently installed at the premises. Portable efficiency products such as compact fluorescent lights do not qualify under this Rider. The Company will solely determine permanence of measures or products.
- 2) Premises in which PAYS® measures will be installed must be permanently anchored to a foundation.
- 3) At its sole discretion, Company may withhold application of this Rider if:
  - a. The structure has an expected life shorter than the payback period, or
  - b. The structure does not meet applicable public safety or health codes.
- 4) At its sole discretion, Company will determine the maximum PAYS® program investment in any year.
- 5) Company shall be allowed to recover bad debt incurred as a result of this Rider in subsequent rate filings.
- 6) PAYS® Project Charge proceeds shall not be considered utility revenue for sales tax and franchise fee calculations.

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|           | <i>Ernest A. Lehman</i>  |                      | President |
|           | Ernest A. Lehman         | Signature of Officer | Title     |

MIDWEST ENERGY, INC.

(Name of Issuing Utility)

Company Wide

(Territory to which schedule is applicable)

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Replacing Schedule Contents Sheet 1

which was filed January 11, 2007

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 By Ernest A. Lehman President  
 Ernest A. Lehman Signature of Officer Title

MIDWEST ENERGY, INC.

(Name of Issuing Utility)

Company Wide

(Territory to which schedule is applicable)

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THE STATE CORPORATION COMMISSION OF KANSAS

Index No. 95-100

MIDWEST ENERGY, INC.

(Name of Issuing Utility)

Company Wide

(Territory to which schedule is applicable)

SCHEDULE

Replacing Schedule Sheet

which was filed July 16, 2003

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Sheet 1 of 1 Sheets

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By Earnest A. Lehman Month Day Year President

Earnest A. Lehman Signature of Officer Title

THE STATE CORPORATION COMMISSION OF KANSAS

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MIDWEST ENERGY, INC.

(Name of Issuing Utility)

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|                 | Earnest A. Lehman        |           | Title      |

**Midwest Energy Pay-As-You-Save (PAYS®)  
New Customer Notification**

(For Use When Customer Buys, Rents or Leases Property with Existing PAYS® Obligations)

Customer \_\_\_\_\_ Date \_\_\_\_\_ Premise \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Service Address: \_\_\_\_\_

Daytime/Evening Phone #s: \_\_\_\_\_

Approximate new service start date: \_\_\_\_\_, 200\_\_ Occupancy: \_\_\_ Owner \_\_\_ Renter

**In an effort to control costs, PAYS® products have been installed at the location noted above where you have requested Midwest Energy (Midwest) service. Monthly PAYS® charges will appear on your bill. The savings are estimated to be greater than the charges. The specific measures installed and estimated savings are described in the PAYS® Conservation Plan for this location. A copy of the Conservation Plan is available upon request.**

**By accepting Midwest service at this location, Customer agrees to accept specific obligations regarding these measures.**

**Monthly PAYS® Obligation \$ \_\_\_\_\_ Monthly Payments Remaining on Above Date \_\_\_\_\_**

**If Customer is a tenant, Customer is obligated to:**

1. Make consecutive monthly payments specified above to Midwest as part of the utility bill until all payments have been made or until Customer no longer has an account with Midwest at this premise, whichever occurs first. Customer is not responsible for PAYS® obligations in these circumstances:  
(1) Landlord will assume the payment obligation at any time utility service is in the Landlord's name.  
(2) Landlord will assume the payment obligation any time a PAYS® measure fails or is removed and after Customer notice the Landlord fails to repair or replace it within thirty (30) days. The PAYS® repayment obligation will revert to the tenant upon repair or replacement of failed measures.
2. Promptly notify Landlord of any PAYS® product failures or maintenance needs. Responsibility for costs of maintenance and repairs shall be governed solely by the lease or rental agreement between the Landlord and Customer, subject to Kansas law.

**If Customer is the property owner, Customer is obligated to:**

1. Make consecutive monthly payments specified above to Midwest as part of the utility bill until all payments have been made or another party assumes responsibility for utility bill payment at this premise, whichever occurs first. If any PAYS® measure should fail to operate properly and upon written notice to Midwest, Customer may suspend payment of PAYS® obligation for a maximum of sixty (60) days while effectuating repairs. Any such suspension will extend the PAYS® obligation until all required payments are made. Midwest may refuse suspension of payments if failure of the PAYS® measure cannot be substantiated.

2. Maintain the installed PAYS® measure(s) in place for at least as long as there are payments due and be responsible for all required maintenance and for all costs incurred from failure to properly maintain the measure(s).
3. Make all the remaining payments upon closing the account or disclose the PAYS® monthly payment obligation to the next responsible party. Failure to disclose the PAYS® obligation to subsequent tenants or buyer will constitute permission by Customer for the tenant or buyer to break any lease or purchase agreement within fifteen (15) business days of utility service being requested without cost or recourse by Customer. **This clause creates third party beneficiary rights.** The attached disclosure form should be used to disclose the PAYS® obligation to the successor customer or owner.

**Other Terms and Conditions:**

1. Obligations herein will remain in full force and effect until the final PAYS® payment has been made.
2. In the event Customer fails to fulfill any of these responsibilities, Customer will be liable to Midwest for the remaining balance of all costs incurred for the PAYS® products. Such costs include but are not limited to all costs for measures, installation, PAYS® program administration, and litigation.
3. No waiver, alteration or modification of any of the provisions of these responsibilities will be binding unless in writing and signed by Midwest and the Customer.
4. Midwest maintains a right of inspection upon reasonable notice and during normal business hours, of the PAYS® measure(s) installed for the duration of PAYS® obligations. Any such inspection shall not be deemed as endorsement by Midwest of work performed.
5. PAYS® does not constitute a loan or create any obligations under Kansas law pertaining to consumer credit or mortgage financing. **Early repayment of PAYS® obligations shall not result in any prepayment discounts or refunds.**
6. In the event of any dispute arising over the PAYS® program between Customers, Landlords and/or Contractors, Midwest will work with the disputing parties to obtain a mutually satisfactory resolution. In the event satisfactory resolution cannot be reached, the dispute will be submitted to an arbiter of Midwest's choice. Responsibility for all costs of arbitration shall be allocated between the disputing parties as determined by the arbiter.
7. Midwest's PAYS® program is subject to Kansas Corporation Commission (KCC) jurisdiction and the approved Pay As You Save Rider.
8. The provisions of the PAYS® program shall benefit and bind the successors and assigns of Customer and Midwest. If any portion shall be held invalid or ineffective in whole or in part, such determination shall not be deemed to invalidate any of the remaining portions of the program.



## Pay As You Save (PAYS®) Obligation Disclosure

**PAYS® products were installed at this location to save money. Monthly PAYS® charges will appear on your Midwest Energy bill. The savings are estimated to be greater than the charges.**

**Please read and understand prior to signing a lease or purchase agreement for this property.**

Property Address: \_\_\_\_\_

Unit #: \_\_\_\_\_ Midwest Energy Premise Number: \_\_\_\_\_

Whoever pays the Midwest Energy bills at this location will be required to make monthly payments for money-saving Pay-As-You-Save (PAYS®) products. Payments will continue until the required number of payments for these measures has been paid. These measures were installed to lower bills for this location. If you decide to occupy the premises you will get these lower bills. Therefore, you will help pay for these measures as long as you receive the savings and there are remaining payments to be paid. The savings are estimated to be greater than the charges.

If you want more information before buying this property or signing a lease, you can call Midwest Energy at (1-800-222-3121) to learn about the:

- Specific measures installed,
- Monthly payment amount,
- Number of payments remaining, and
- Your estimated savings.

When you request utility service, Midwest Energy will send you a PAYS® Notification form outlining your responsibilities, including:

- Making monthly payments,
- If you rent, promptly reporting to your landlord if a PAYS® measure stops working, and
- If you own the property, maintaining the measures in good working condition for as long as payments are due.

My signature below indicates that I have read or have had this form read to me. I understand my obligation to make monthly payments for the PAYS® products installed at this location if I choose to rent or buy the premises. I am signing this form before signing any purchase or lease agreement.

(Purchaser/Renter) Signature \_\_\_\_\_ Date \_\_\_\_\_

(Purchaser/Renter) Name (print) \_\_\_\_\_

**Important: Both parties should keep a signed copy of this disclosure.**

Midwest Energy, Inc. – PO Box 898 – Hays, Kansas 67601

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**Midwest Energy Pay-As-You-Save (PAYS®)  
Participating Contractor Master Agreement**

(Must Be Signed and Submitted to Midwest Energy Prior to Starting a PAYS® Project)

Contractor (Business) Name \_\_\_\_\_ Date \_\_\_\_\_

Contractor Mailing Address: \_\_\_\_\_

Contractor Daytime/Evening Phone #s: \_\_\_\_\_

Contractor is engaged in the business of selling and/or installing resource saving equipment, products and services. By signing this form, Contractor agrees to the provisions of the Midwest Energy (Midwest) PAYS® program and becomes a participating Contractor. Unless specified otherwise herein, "Customer" refers to the individual or entity that owns the property upon which PAYS® measures will be installed.

**1. CONTRACTOR RESPONSIBILITIES AND UNDERSTANDINGS**

- a. Contractor shall submit a binding bid for PAYS® measures to Customer and provide a copy to Midwest. PAYS® measures may include equipment, products and/or services that result in resource savings and lower bills. Midwest will be solely responsible for determining whether proposed measures meet the general or economic criteria for inclusion in the PAYS® program.
- b. Approved PAYS® measures, specifications and costs for each project shall be as set forth in a Conservation Plan developed by Midwest and made a part of this Agreement. An executed Conservation Plan will be considered an instruction to Contractor to commence work.
- c. Contractor understands that only non-portable efficiency measures installed on premises permanently anchored to a foundation are eligible. Savings must be greater than the monthly PAYS® Project Charge calculated by Midwest.
- d. Contractor shall be solely responsible for determining the materials and products to be installed, and the means and methods of installation. Contractor shall furnish, at Contractor's own expense, all labor, materials, equipment, and other items necessary to satisfy the binding bid and meet the terms of this Agreement.
- e. Contractor shall complete approved PAYS® work in a timely manner. Upon completion, Contractor shall instruct Customer and Tenant(s), if applicable, on the proper use, operation and maintenance of PAYS® measures.
- f. Contractor will provide for timely removal of debris resulting from installation or repairs of PAYS® projects unless otherwise stipulated in writing with the Customer.
- g. Contractor is responsible for the conduct of its employees or agents. Contractor will be responsible for any costs associated with damage to property of Customer or Tenant(s) caused by its employees or agents.

- h. Contractor will secure and pay for all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of the work.
- i. Contractor will give all notices and comply with all laws, ordinances, rules and orders of any public authority bearing on the performance of the work.
- j. Contractor is obligated to make certain that its work conforms to all applicable federal, state and local laws, statutes, building codes and regulations, including but not limited to all applicable EPA/VOSHA/OSHA/NESC and NEC rules and regulations.
- k. Upon post-installation inspection by Midwest, Contractor agrees to replace any equipment or repair any condition resulting in PAYS® measure performance failing to meet the specifications set forth in the Conservation Plan of any project. Contractor agrees to pay Midwest for the cost of follow-up inspections which result in rework. Any inspection by Midwest or initiation of PAYS® Project Charge on responsible party's utility bill in no way limits either Contractor's or product manufacturer's liability as set forth herein or under Kansas law.
- l. Contractor shall purchase and maintain such comprehensive general liability and other insurance which will provide protection from claims arising from the result of Contractor's performance on any PAYS® project. Contractor shall maintain insurance coverage consistent with requirements of any regulatory or licensing body associated with the services provided. Any property damage or bodily injury claims related to the performance of this Agreement in excess of insurance limits or not covered by comprehensive liability, worker's compensation, or automobile liability insurance are the responsibility of the Contractor.
- m. Contractor understands that an independent relationship has been created between Customer and Contractor. Contractor is not an employee or agent of the Midwest. Midwest will not be liable for personal injury or property damage caused by Customer, Tenant(s) (if different from Customer), Contractor or Contractor's agents or employees. Midwest is not a guarantor of products, materials, or work performed by Contractor.
- n. Contractor understands that Midwest's roles under this Agreement are limited to: (1) Providing efficiency guidance to Customer and Contractor, (2) Facilitating payment to Contractor for approved PAYS® measures, (3) Collecting PAYS® Project Charge revenue from the party responsible for utility bills, and (4) Facilitating dispute resolution.
- o. In the event of any dispute arising over the PAYS® program between Customers, Tenant(s) and/or Contractors, Midwest will work with the disputing parties to obtain a mutually satisfactory resolution. In the event satisfactory resolution cannot be reached, the dispute will be submitted to an arbiter of Midwest's choice. Responsibility for all costs of arbitration shall be allocated between the disputing parties as determined by the arbiter.
- p. Contractor shall be responsible for ensuring that all utilities are properly located, marked and identified through utilization of and compliance with the requirements of the Kansas One-Call "Dig Safe" program. Contractor is responsible for working around existing utilities and agrees to

defend, indemnify and hold harmless Midwest and Customer for any and all claims for damages to such utilities.

- q. Contractor understands that failure to abide by the terms of this Agreement may result in disallowance of Contractor's subsequent participation in the PAYS® program in addition to any other remedies afforded to offended parties. Any such disallowance shall be at Midwest's sole discretion.

## **2. PAYMENT FOR PAYS® PROJECTS**

- a. Contractor should notify Midwest when work on a PAYS® Project is complete. When work is considered complete and satisfactory, Midwest will pay to Contractor and Customer jointly the outstanding balance of the amount agreed upon in the Conservation Plan. For projects with equipment purchases costing more than one-thousand (1,000) dollars, Midwest will pay Contractor in advance up to fifty (50) percent of the total project cost agreed upon in the Conservation Plan provided Contractor is bonded consistent with the requirements specified below.
- b. Contractor shall maintain a Performance Bond or a two (2) year irrevocable Letter of Credit from a Kansas bank equal to no less than fifty (50) percent of the sum of all active (not completed) PAYS® Projects or \$20,000 whichever is less. The cost of either a Performance Bond or Letter of Credit shall be the responsibility of the Contractor. The bonding agent must be registered in the state of Kansas.
- c. In lieu of supplying a bond or Letter of Credit, Contractor has the option of performing work and receiving full payment upon satisfactory completion, with check payable to Contractor and Customer jointly.
- d. Work shall be considered complete and satisfactory when Customer has signed off that the work is complete and acceptable. Acceptance is signified by endorsement of the check written by Midwest jointly to Customer and Contractor for the approved PAYS® measures.

## **3. WARRANTIES**

- a. Contractor will warrant to Customer that all materials and equipment furnished under this Agreement will be new, and that all work will be of good quality, free from faults and defects.
- b. Contractor will guarantee its workmanship, including all parts and labor, for a period of one year from date of final payment and acceptance of the work.
- c. Contractor warrants that the resource efficient products designed and installed by the Contractor will meet Customer's requirements.
- d. Contractor will extend to Customer all manufacturer's warranties for material and equipment installed. Contractor agrees to provide copies of all warrantee information to Customer should

such information exist. Said warranties will not in any way limit Contractor's obligations as set forth above.

#### **4. INDEMNIFICATION**

- a. Contractor shall assume all liability and shall defend, indemnify and hold harmless Customer, Tenant(s) and Midwest, individually, against all liability or loss and against all claims or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the performance of the Agreement or by conditions created thereby, or based upon any violation of any statute, ordinance, building code or regulation and the defense of any such claims or actions.
- b. In addition to the indemnification set forth above, Contractor agrees to indemnify, defend and hold harmless the Customer, Tenant(s) and Midwest and any and all of Midwest's officers, employees, contractors and agents from and against any costs or damages resulting from enforcement or nuisance actions brought by any governmental entity or third party arising from the handling, removal and/or disposal of Hazardous Materials from the project, such costs to include but not be limited to costs of remediation, fines, penalties, and legal costs incurred in the defense of such actions either in a court of law or an administrative proceeding including reasonable fees and disbursements of attorneys and consultants, property damage, personal injury and third party claims.

#### **5. TERMINATION**

- a. This Agreement may be terminated either by Midwest or Contractor with seven (7) days written notice from one party to the other.
- b. In the event of termination, Contractor will be paid for any work completed to the satisfaction of Customer, less the cost of Midwest's estimate of the additional cost that might be incurred in completing work in progress and started under this Agreement. Midwest may delay such payment until such time as another contractor has signed an agreement to complete the remaining work.

#### **6. CHANGES IN WORK**

- a. Contractor shall not make changes to the work which either increase or decrease the Agreement price, without the written approval of Midwest and Customer. Said changes include but are not limited to substitutions or alterations of specified materials or equipment, relocations and replacements. Additional costs for change orders may render proposed measures uneconomic and not acceptable as PAYS® measures.
- b. The cost or credit resulting from such change shall be determined by lump sum, mutually agreed to by Customer and Contractor and supported by substantiating data. If the parties are unable to agree, Midwest will work with the disputing parties to obtain a mutually satisfactory resolution. In the event satisfactory resolution cannot be reached, the dispute will be submitted to an arbiter of

Midwest's choice. Responsibility for all costs of arbitration shall be allocated between the disputing parties as determined by the arbiter.

**7. MISCELLANEOUS PROVISIONS**

- a. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement.
- b. This Agreement may not be assigned nor any of the rights and duties hereunder without the prior written consent of Contractor and Midwest.
- c. Notice from one party to the other under this Agreement shall be deemed to have been properly delivered if forwarded by United States Postal Service, First Class Mail, to the addresses shown in this Agreement.
- d. If any of this Agreement shall be held invalid or ineffective in whole or in part, such determination shall not be deemed to invalidate any of the remaining portions of this Agreement. This agreement is governed by Kansas law.

MIDWEST ENERGY, INC.

CONTRACTOR

\_\_\_\_\_  
Name/Title:

\_\_\_\_\_  
Name/Title:

## Midwest Energy Pay-As-You-Save (PAYS®) Rented/Leased Property Agreement

(For Use When Customer Rents or Leases the Property; Must Be Signed Prior to Starting Work)

Customer/Tenant \_\_\_\_\_ Date \_\_\_\_\_ Premise \_\_\_\_\_

Customer Mailing Address: \_\_\_\_\_

Service Address: \_\_\_\_\_

Customer Daytime/Evening Phone #s: \_\_\_\_\_

Landlord/Property Owner \_\_\_\_\_ Phone \_\_\_\_\_

Landlord/Property Owner Address: \_\_\_\_\_

### 1. PAYS® MEASURE(S) PURCHASED, COST & ESTIMATED SAVINGS

| PAYS® Efficiency Measure(s)*            | Cost | Measure Payments | Required Payment** | Monthly | Estimated Monthly Savings |
|---|------|------------------|--------------------|---------|---------------------------|
|   |      |                  |                    |         |                           |
|   |      |                  |                    |         |                           |
|   |      |                  |                    |         |                           |
|   |      |                  |                    |         |                           |
| <b>Total PAYS® Measure(s) Purchased</b> |      |                  |                    |         |                           |

\* Detailed description of measure(s) and specifications for installation included in attached Conservation Plan.

\*\*Monthly Payment amount(s) include a portion of Midwest Energy's PAYS® Program costs.

### 2. INFORMATION ACCURACY

Customer and Landlord have made every effort to provide Midwest Energy (Midwest) with accurate information about the structure and its use to enable Midwest to assess the efficiency of the premises and equipment. Customer and Landlord acknowledge that the accuracy of Midwest's savings estimates depends on the accuracy of information Customer and Landlord provided to Midwest.

### 3. LANDLORD UNDERSTANDINGS, RESPONSIBILITIES AND AUTHORIZATIONS

- a. Landlord authorizes the installation of the PAYS® efficiency measures itemized in the Conservation Plan.
- b. Landlord authorizes Midwest to assign the PAYS® Tariff to this premise. Landlord understands repayment obligations will continue until such time Midwest has been fully reimbursed for costs itemized above. Landlord has no repayment obligations at any time utility service is in the name of the current tenant or future tenants with these exceptions: (1) Landlord will assume the payment obligation at any time utility service is in the Landlord's name. (2) Landlord will assume the payment obligation any time a PAYS® measure fails or is removed and after Customer notice the Landlord fails to repair or replace it within thirty (30) days. The PAYS® repayment obligation will revert to the tenant upon repair or replacement of failed measures.

- c. Landlord shall make all the remaining payments upon sale of the property or disclose the PAYS® monthly payment obligation to the successor property owner. Landlord shall disclose the PAYS® monthly payment obligation to subsequent tenants. Failure to disclose the PAYS® obligation to subsequent tenants or buyer will constitute permission by Landlord for the tenant or buyer to break any lease or purchase agreement within fifteen (15) business days of utility service being requested without cost or recourse by Landlord. **This clause creates third party beneficiary rights.** The attached disclosure form should be used to disclose the PAYS® obligation to successor owners or tenants.
- d. Selection of the contractor or vendor shall be the responsibility of Landlord. Landlord understands that when an independent contractor installs PAYS® measures, an independent relationship has been created by virtue of the agreement between Landlord and contractor. Contractor is not an employee or agent of Midwest. Midwest will not be liable for personal injury or property damage caused by Landlord, contractor or contractor's agents or employees. Midwest is not a guarantor of products, materials, or work performed by contractor. This Agreement does not limit or increase Landlord's rights regarding manufacturers, vendors and contractors.
- e. Landlord authorizes Midwest to issue payments for the products, materials and/or work when an independent contractor or vendor is used. (Labor or installation charges will not be reimbursed for self-installed measures.) Payment will be made jointly to Landlord and contractor/vendor; receipts for materials and/or work performed must be provided to Midwest. Landlord shall be solely responsible for acceptance of completed work.
- f. Landlord understands that any change order that deviates from the Conservation Plan must be agreed to in writing by Landlord, Customer, Midwest, and the contractor.
- g. Landlord will maintain the installed PAYS® measure(s) in place for at least as long as there are payments due under this Agreement and be responsible for any required maintenance and repairs unless otherwise agreed to between Landlord and Customer.
- h. Landlord will obtain and maintain property insurance for casualty losses on the premises sufficient to ensure replacement of any measure installed under this program.
- i. Landlord understands that this Agreement does not constitute a loan or create any obligations under Kansas law pertaining to consumer credit or mortgage financing. **Early repayment of PAYS® obligations shall not result in any prepayment discounts or refunds.**
- j. Landlord warrants that (s)he is the sole owner of these premises and is authorized to sign below. If this is not the case, Landlord agrees to assume all responsibility for costs associated with the installation of PAYS® measures including but not limited to installation, removal, premises repairs and PAYS® program costs.

#### 4. CUSTOMER UNDERSTANDINGS, RESPONSIBILITIES AND AUTHORIZATIONS

- a. Customer authorizes Midwest to assign the PAYS® Tariff to this premise. Customer shall make consecutive monthly payments itemized above to Midwest as part of the utility bill until all payments have been made or until Customer no longer has an account with Midwest at this premise, whichever occurs first. Customer will not be responsible for payments as noted in 3.b.(1) and 3.b.(2) above.
- b. Customer understands that when an independent contractor installs PAYS® measures, an independent relationship has been created by virtue of the agreement between Landlord and contractor. Contractor is not an employee or agent of Midwest. Midwest will not be liable for personal injury or property damage caused by Landlord, Customer, contractor or contractor's agents or employees. Midwest is not a guarantor of products, materials, or work performed by contractor.
- c. Customer understands that this Agreement does not constitute a loan or create any obligations under Kansas law pertaining to consumer credit or mortgage financing. **Early repayment of PAYS® obligations shall not result in any prepayment discounts or refunds.**
- d. Customer will promptly report failure of PAYS® measure(s) to Landlord.



**5. AGREEMENT DURATION, TERMINATION AND MISCELLANEOUS PROVISIONS**

- a. This Agreement and obligations herein shall remain in full force and effect until the final PAYS® payment has been made.
- b. The initial PAYS® amount due will appear on the utility bill following issuance of payments to vendor(s) and/or contractor(s). Payment will be due to Midwest on the same terms as regular utility payments.
- c. If the Customer or Landlord breaches any of the terms of this Agreement, the party responsible for the breach shall reimburse Midwest for all costs incurred for these PAYS® products. Such costs include but are not limited to all costs for measures, installation, PAYS® program administration, and litigation.
- d. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of all parties to this Agreement.
- e. Notice from one party to the other under this Agreement shall be deemed to have been properly delivered if forwarded by first class mail to remaining parties at addresses noted herein.
- f. Midwest maintains a right of inspection upon reasonable notice and during normal business hours, of the PAYS® measure(s) installed pursuant to this Agreement for the duration of this Agreement. Any such inspection shall not be deemed as endorsement by Midwest of work performed.
- g. In the event of any dispute arising over the PAYS® program between Customers, Landlords and/or Contractors, Midwest will work with the disputing parties to obtain a mutually satisfactory resolution. In the event satisfactory resolution cannot be reached, the dispute will be submitted to an arbiter of Midwest's choice. Responsibility for all costs of arbitration shall be allocated between the disputing parties as determined by the arbiter.
- h. Midwest's PAYS® program is subject to Kansas Corporation Commission (KCC) jurisdiction and the approved Pay As You Save Rider.
- i. The provisions of this Agreement shall benefit and bind the successors and assigns of all parties. If any portion of this Agreement shall be held invalid or ineffective in whole or in part, such determination shall not be deemed to invalidate any of the remaining portions of this Agreement.

MIDWEST ENERGY, INC.

CUSTOMER/TENANT

\_\_\_\_\_  
Name/Title:

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

LANDLORD/PROPERTY OWNER

\_\_\_\_\_  
Name/Title:

**Midwest Energy Pay-As-You-Save (PAYS®)  
Customer-Owned Property Agreement**

(For Use When Customer Owns the Property; Must Be Signed Prior to Starting Work)

Customer \_\_\_\_\_ Date \_\_\_\_\_ Premise \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Service Address: \_\_\_\_\_

Daytime/Evening Phone #s: \_\_\_\_\_

**1. PAYS MEASURE(S) PURCHASED, COST & ESTIMATED SAVINGS**

| PAYS® Efficiency Measure(s)*            | Cost | Measure Payments | Required Payment** | Monthly | Estimated Monthly Savings |
|---|------|------------------|--------------------|---------|---------------------------|
|   |      |                  |                    |         |                           |
|   |      |                  |                    |         |                           |
|   |      |                  |                    |         |                           |
|   |      |                  |                    |         |                           |
| <b>Total PAYS® Measure(s) Purchased</b> |      |                  |                    |         |                           |

\* Detailed description of measure(s) and specifications for installation included in attached Conservation Plan.  
 \*\*Monthly Payment amount(s) include a portion of Midwest Energy's PAYS® Program costs.

**2. INFORMATION ACCURACY**

Customer has made every effort to provide Midwest Energy (Midwest) with accurate information about the structure and its use to enable Midwest to assess the efficiency of Customer's premises and equipment. Customer acknowledges that the accuracy of Midwest's savings estimates depends on the accuracy of information Customer provided to Midwest.

**3. CUSTOMER UNDERSTANDINGS AND RESPONSIBILITIES**

- a. Customer will maintain the installed PAYS® measure(s) in place for at least as long as there are payments due under this Agreement. Customer will be responsible for all required maintenance and repairs.
- b. Customer shall make consecutive monthly payments specified above to Midwest as part of the utility bill until all payments have been made or another party assumes responsibility for utility bill payment at this premise, whichever occurs first.
- c. If any PAYS® measure should fail to operate properly and upon written notice to Midwest, Customer may suspend payment of PAYS® obligation for a maximum of sixty (60) days while effectuating repairs. Any such suspension will extend the PAYS® obligation until all required payments are made. Midwest may refuse suspension of payments if failure of the PAYS® measure cannot be substantiated.
- d. Customer shall make all the remaining payments upon closing the account or disclose the PAYS® monthly payment obligation to the next responsible party. Failure to disclose the PAYS® obligation to subsequent tenants or buyer will constitute permission by Landlord for the tenant or buyer to break any lease or purchase agreement within fifteen (15) business days of utility service being requested without

cost or recourse by Landlord. **This clause creates third party beneficiary rights.** The attached disclosure form should be used to disclose the PAYS® obligation to the successor customer.

- e. Customer shall sign a PAYS® Rented/Leased Property Agreement if the Customer elects to lease the property and utility service is placed in the tenant's name.
- f. Selection of the contractor or vendor shall be the responsibility of Customer. Customer understands that when an independent contractor installs PAYS® measures, an independent relationship has been created by virtue of the agreement between Customer and contractor. Contractor is not an employee or agent of Midwest. Midwest will not be liable for personal injury or property damage caused by Customer, contractor or contractor's agents or employees. Midwest is not a guarantor of products, materials, or work performed by contractor. This Agreement does not limit or increase Customer's rights regarding manufacturers, vendors and contractors.
- g. Customer understands that any change order that deviates from the approved Conservation Plan must be agreed to in writing by Customer, Midwest, and the contractor.
- h. Customer will obtain and maintain property insurance for casualty losses on the premises sufficient to ensure replacement of any measure installed under this program.
- i. Customer understands that this Agreement does not constitute a loan or create any obligations under Kansas law pertaining to consumer credit or mortgage financing. **Early repayment of PAYS® obligations shall not result in any prepayment discounts or refunds.**
- j. Customer warrants that (s)he is the sole owner of these premises and is authorized to sign below. If this is not the case, Customer agrees to assume all responsibility for costs associated with the installation of PAYS® measures including but not limited to installation, removal, premises repairs and PAYS® program costs.

#### 4. CUSTOMER AUTHORIZES MIDWEST TO:

- a. Assign the PAYS® Tariff to this premise which shall remain in full force until the final PAYS® payment has been paid.
- b. Issue payments for the products, materials and/or work when an independent contractor or vendor is used. (Labor or installation charges will not be reimbursed for self-installed measures.) Payment will be made jointly to customer and contractor/vendor; receipts for materials and/or work performed must be provided to Midwest. Customer shall be solely responsible for acceptance of completed work.

#### 5. AGREEMENT DURATION, TERMINATION AND MISCELLANEOUS PROVISIONS

- a. This Agreement and obligations herein shall remain in full force and effect until the final PAYS® payment has been made.
- b. The initial PAYS® amount due will appear on the utility bill following issuance of payments to vendor(s) and/or contractor(s). Payment will be due to Midwest on the same terms as regular utility payments.
- c. If the Customer breaches any of the terms of this Agreement, Customer shall reimburse Midwest for all costs incurred for these PAYS® products. Such costs include but are not limited to all costs for measures, installation, PAYS® program administration, and litigation.
- d. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement.
- e. Notice from one party to the other under this Agreement shall be deemed to have been properly delivered if forwarded by first class mail to Customer or Midwest addresses noted on this page.
- f. Midwest maintains a right of inspection upon reasonable notice and during normal business hours, of the PAYS® measure(s) installed pursuant to this Agreement for the duration of this Agreement. Any such inspection shall not be deemed as endorsement by Midwest of work performed.

- g. In the event of any dispute arising over the PAYS® program between Customers, Landlords and/or Contractors, Midwest will work with the disputing parties to obtain a mutually satisfactory resolution. In the event satisfactory resolution cannot be reached, the dispute will be submitted to an arbiter of Midwest's choice. Responsibility for all costs of arbitration shall be allocated between the disputing parties as determined by the arbiter.
- h. Midwest's PAYS® program is subject to Kansas Corporation Commission (KCC) jurisdiction and the approved Pay As You Save Rider.
- i. The provisions of this Agreement shall benefit and bind the successors and assigns of Customer and Midwest. If any portion of this Agreement shall be held invalid or ineffective in whole or in part, such determination shall not be deemed to invalidate any of the remaining portions of this Agreement.

MIDWEST ENERGY, INC.

CUSTOMER

\_\_\_\_\_  
Name/Title:

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