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RECEIVED

MAY 19 2011

PUBLIC SERVICE  
COMMISSION

May 18, 2011

**VIA HAND-DELIVERY**

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

RE: *The Joint Application of Duke Energy Corporation, Cinergy Corp., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Diamond Acquisition Corporation and Progress Energy, Inc. for Approval of the Indirect Transfer of Control of Duke Energy Kentucky, Inc., Case No. 2011-00124*

Dear Mr. Derouen,

Enclosed, please find an original and ten copies of a petition for confidentiality and a single copy of the confidential information for which confidentiality is sought. The confidential information is tendered as a supplement to the Joint Applicants' response to initial Commission Staff information request 32. A copy of the confidential information has been tendered to the Attorney General, in accordance with and pursuant to a confidentiality agreement dated May 10, 2011 between the Attorney General's Office and the Joint Applicants.

Please return a file-stamped copy of the petition for confidentiality for our records.

Sincerely,



Mark David Goss

cc: Dennis Howard (with attachment)  
Larry Cook

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COMMONWEALTH OF KENTUCKY

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BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION

MAY 19 2011

PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

THE JOINT APPLICATION OF DUKE )  
ENERGY CORPORATION, CENERGY )  
CORP., DUKE ENERGY OHIO, INC., )  
DUKE ENERGY KENTUCKY, INC., )  
DIAMOND ACQUISITION CORPORATION, )  
AND PROGRESS ENERGY, INC FOR )  
APPROVAL OF THE INDIRECT )  
TRANSFER OF CONTROL OF )  
DUKE ENERGY KENTUCKY )

Case No. 2011-00124

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JOINT APPLICANTS' PETITION  
FOR CONFIDENTIAL TREATMENT OF INFORMATION

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Duke Energy Corporation (“Duke Energy”), Cinergy Corp. (“Cinergy”), Duke Energy Ohio, Inc. (“Duke Ohio”), Duke Energy Kentucky, Inc. (“Duke Kentucky”), Diamond Acquisition Corporation (“Diamond”), and Progress Energy, Inc. (“Progress Energy”), (collectively Joint Applicants), pursuant to 807 KAR 5:001, Section 7, respectfully request the Commission to grant confidentiality to, and protect from public disclosure, certain information provided by Joint Applicants as a supplement to their response to the Commission Staff’s initial information requests in this proceeding. In support, the Joint Applicants, individually and collectively, state:

1. Joint Applicants filed responses to the initial information requests of the Commission Staff and the Attorney General on May 10, 2011. The Joint Applicants’ response to Commission Staff request 32 included a public response which included five attachments containing documents that were neither confidential nor privileged. In

addition, the Joint Applicants tendered a confidential response which referenced and attached additional confidential documents which were filed under seal and objected to the production of other documents on the basis of attorney-client privilege.

2. On or about May 13, 2011, Duke Energy and Progress Energy filed responses to information requests propounded by the North Carolina Utilities Commission in a separate merger-related proceeding in that jurisdiction. In tendering those responses, Duke Energy and Progress Energy agreed to waive the attorney-client privilege that applied to one particular confidential document directly related to an exhibit to the application in the North Carolina merger case. The Joint Applicants agreed to waive the privilege contingent on agreement that the document would be available for inspection for confidential, *in camera* review.

3. That document may be described as follows. As part of the merger planning process, Duke Energy and Progress Energy engaged the services of Booz & Company (“Booz”) to work under the direction of counsel and to consult on certain merger-related matters (the “Confidential Information”). This document contains certain proprietary and confidential conceptual and directional guidance relating to the potential combination of the companies.

4. The Joint Applicants believe that the Confidential Information made available for *in camera* review on a confidential basis to the North Carolina Utility Commission Staff is also responsive to the Commission Staff’s request 32. Although the applicable attorney-client privilege has now been waived, the document remains confidential and proprietary, and is therefore being tendered under seal.

5. The Kentucky Open Records Act exempts from disclosure certain information, inter alia proprietary information and/or sensitive commercial information. KRS 61.878(1)(c). The information tendered herewith is confidential or proprietary information and, if openly disclosed, would permit an unfair commercial advantage to competitors of the Joint Applicant(s) that disclosed the records. Progress Energy and Duke Energy consider the Confidential Information to be confidential because it contains confidential business concepts and strategies for achieving potential, forward looking benefits to the combination of Duke Energy and Progress Energy. These concepts and strategies are being considered during the integration process and it is not known which of the potential measures and strategies will be employed or to what extent. Releasing this information in the public domain will disclose these potential business strategies to competitors in all jurisdictions and would expose the companies to litigation risk.

6. The information for which Joint Applicants seek confidential treatment has not been publicly disclosed and is only known and available to those individuals employed by the Joint Applicants' respective companies who have a legitimate business reason to have access to the information and to the staff of the North Carolina Utility Commission only on a confidential, *in camera* basis.

7. In accordance with the provisions of 807 KAR 5:001 Section 7, the Joint Applicants are filing one copy of the Confidential Information under seal, in unredacted format. Joint Applicants are also making the Confidential Information available to the Attorney General's office in accordance with, and pursuant to, a Confidentiality Agreement entered into by the Joint Applicants and Attorney General's office on May 10, 2011.

WHEREFORE, Joint Applicants respectfully request the Commission to grant confidentiality to, and protect from public disclosure, the Confidential Information filed herewith under seal as set forth herein.

This 19<sup>th</sup> day of May, 2011.

Respectfully submitted,



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Duke Energy Corporation  
Cinergy Corporation  
Duke Energy Ohio, Inc.  
Duke Energy Kentucky, Inc.  
Diamond Acquisition Corporation and  
Progress Energy, Inc.*

- and -

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Duke Energy Corporation  
Cinergy Corporation  
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Duke Energy Kentucky, Inc. and  
Diamond Acquisition Corporation*

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been served via hand delivery to the following party on this 19<sup>th</sup> day of May 2011:

Hon. Dennis Howard  
Hon. Larry Cook  
Office of the Attorney General  
Utility Intervention and Rate Division  
1024 Capital Center Drive  
Frankfort, Kentucky 40601



*Counsel for Joint Applicants,  
Duke Energy Corporation  
Cinergy Corporation  
Duke Energy Ohio, Inc.  
Duke Energy Kentucky, Inc.  
Diamond Acquisition Corporation and  
Progress Energy, Inc.*