Frost Brown Todd LLC
ATTORNEYS

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APR 04 2011

PUBLIC SERVICE COMMISSION

Mark David Goss
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April 4, 2011

Via Hand-Delivery

Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

Re: In the Matter of: 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. PSC Case No. 2011-00124

Dear Mr. Derouen:

Pursuant to KRS 278.020(5) and (6) and 807 KAR 5:001 Section 8(2), enclosed please find an original and ten (10) copies of the Joint Application for Approval of the Indirect Transfer of Control of Duke Energy Kentucky, Inc. along with the Exhibits which accompany this Application.

Please file these documents upon your receipt and return a file-stamped copy to me.

Please be advised that I have delivered a courtesy copy of this filing to Mr. Dennis G. Howard, II, Office of the Kentucky Attorney General.

Please do not hesitate to contact me if you have any questions concerning this filing.

Sincerely yours,

Mark David Goss

Enclosures

cc: Dennis G. Howard, II
Larry Cook

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APR 04 2011

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

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**

<u>JOINT APPLICATION PURSUANT TO KRS 278.020</u>

Duke Energy Corporation ("Duke Energy"), Cinergy Corp. ("Cinergy"), Duke Energy Ohio, Inc. ("Duke Energy Ohio"), Duke Energy Kentucky, Inc. ("Duke Energy Kentucky"), Diamond Acquisition Corporation ("Diamond") and Progress Energy, Inc. ("Progress Energy") (collectively, the "Joint Applicants") jointly apply to the Kentucky Public Service Commission (the "Commission") pursuant to KRS 278.020(5) and (6), and 807 KAR 5:001, Section 8 for approval of the indirect transfer of control of Duke Energy Kentucky.

I. INTRODUCTION

1. Joint Applicants file this Application requesting authorization and approval by the Commission to consummate a business transaction (the "transaction" or "merger") whereby Progress Energy will become a wholly owned subsidiary of Duke Energy. As a result of the transaction, an indirect change of control of Duke Energy Kentucky will occur, which requires Commission approval.[1]

[1] KRS 278.020(5) and (6); *In the Matter of Joint Application of Kentucky Power Company, American Electric Power Company, Inc., and Central and Southwest Corporation Regarding a Proposed Merger*, Order, Case No. 1999-00149 (Ky. P.S.C. June 14, 1999) ("[t]he proposed merger of AEP and CSW will result in an indirect change in control of Kentucky Power and therefore requires prior Commission approval").

2. The Commission's authority and jurisdiction to rule upon transfers of control such as the one presented here are set forth in KRS 278.020(5) and (6), which provide:

> (5) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.
>
> (6) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.

3. Duke Energy is a corporation organized and existing under the laws of the State of Delaware. Its principal office is located at 526 South Church Street, Charlotte, North Carolina 28202-1802. Duke Energy is a Fortune 500 energy company with more than 35,000 MW of electric generation capacity and approximately $12.7 billion in annual revenues. It serves approximately 4 million retail customers in Kentucky, Ohio, Indiana, North Carolina, and South Carolina. It also owns and operates natural gas distribution facilities that serve approximately 500,000 retail customers in Kentucky and Ohio. Duke Energy is the sole owner of Cinergy, a Delaware corporation, and Cinergy is the sole owner of Duke Energy Ohio, an Ohio corporation. In turn, Duke Energy Ohio is the sole owner of Duke Energy Kentucky, a Kentucky corporation. Duke Energy Kentucky is a "utility" as that term is defined in KRS 278.010(3)(a) and (b). Duke Energy is also the sole owner of Diamond, a North Carolina corporation created to accomplish the acquisition of Progress Energy. Duke Energy's most recent annual report is attached to this Application as Exhibit A. A list of its current generating facilities is attached to this Application as Exhibit B.

4. Progress Energy is a corporation organized and existing under the laws of the State of North Carolina. Its principal office is located at 411 Fayetteville Street Mall, P. O. Box 1551, Raleigh, North Carolina 27602-1551. Progress Energy is also a Fortune 500 energy company with more than 22,000 MW of generation capacity and approximately $10 billion in annual revenues. Progress Energy includes Progress Energy Carolinas, Inc., and Progress Energy Florida, Inc., that together serve about 3.1 million customers in North Carolina, South Carolina and Florida. Progress Energy's most recent annual report is attached to this Application as Exhibit C. A list of its current generating facilities is attached to this Application as Exhibit D.

5. The names and addresses of the Joint Applicants' attorneys who are authorized to receive notices and communications regarding this Application are as follows:

Mark David Goss
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250 West Main Street, Suite 2800
Lexington, KY 40507-1749
Telephone: (859) 231-0000

Rocco D'Ascenzo
Amy B. Spiller
Duke Energy Business Services, LLC
139 East Fourth Street
1303 Main
P. O. Box 960
Cincinnati, OH 45201-0960

II. DESCRIPTION OF THE TRANSACTION

6. The transaction will be completed pursuant to the terms and conditions of the *Agreement and Plan of Merger* by and among Duke Energy, Diamond and Progress Energy, dated January 8, 2011 (the "Merger Agreement"). A copy of the Merger Agreement is attached as Exhibit E to this Application. The transaction will occur at the holding company level. Progress Energy will become a subsidiary of Duke Energy. Progress Energy, Progress Energy Carolinas, Inc. ("PEC") (Progress Energy's operating company subsidiary in North Carolina and South Carolina) and Progress Energy Florida, Inc. ("PEF") (Progress Energy's operating company subsidiary in Florida) will continue to exist as separate legal entities. PEC and Duke Energy Carolinas, LLC ("DEC") ("Duke Energy's operating company subsidiary in North Carolina and South Carolina) will be merged into a single legal entity at some point in the future, however, numerous aspects of their operations must be addressed, including but not limited to

determination of business practices, operating procedures, equipment specifications, uniform rate schedules, service regulations, and computer systems, prior to such combination.

7. The transaction will not impact the ownership structure of Duke Energy Kentucky. Duke Energy Kentucky will remain a wholly owned subsidiary of Duke Energy Ohio, which will remain a wholly owned subsidiary of Cinergy. Cinergy will also continue to be wholly owned by Duke Energy. Under the Merger Agreement, Diamond, a wholly owned subsidiary of Duke Energy, has been formed for the purpose of effecting the merger. Diamond will merge with and into Progress Energy, which will be the surviving corporation in the merger and become a wholly owned subsidiary of Duke Energy. The chart attached to this Application as Exhibit F shows a simplified illustration of Duke Energy's corporate organization immediately following the completion of the transaction.

8. In the transaction, each outstanding share of Progress Energy common stock will be converted at the effective time of the merger into the right to receive 2.6125 shares of Duke Energy common stock. This exchange ratio will be adjusted proportionately to reflect a 1 for 3 reverse stock split with respect to Duke Energy common stock, which action Duke Energy will implement prior to the closing of the merger. The exchange ratio was fixed at the time of the merger announcement and will not be adjusted to reflect stock price changes prior to the closing of the merger. Duke Energy shareholders will continue to hold their existing Duke Energy shares adjusted for the reverse stock split mentioned above, but Progress Energy shareholders will receive Duke Energy stock to reflect their ownership in the combined company.

9. As a result of these steps, upon completion of the merger, Duke Energy's shareholders will continue to own approximately 63 percent of the total of Duke Energy's common stock and current Progress Energy shareholders will own approximately 37 percent of

Duke Energy's common stock. No single shareholder will own 10 percent or more of the voting securities of Duke Energy as a result of this transaction.

10. Upon completion of the merger, James E. Rogers, the current Chairman, President and Chief Executive Officer of Duke Energy, will serve as the Executive Chairman of the Board of Directors of Duke Energy, and William D. Johnson, the current Chairman, President and Chief Executive Officer of Progress Energy, will serve as the President and Chief Executive Officer of Duke Energy. Both Mr. Rogers and Mr. Johnson are expected to serve on the Board of Directors of Duke Energy, which at that time will be comprised of eighteen members, with eleven, including Mr. Rogers, designated by Duke Energy, and seven, including Mr. Johnson, designated by Progress Energy. The combined company will be headquartered in Charlotte, North Carolina. Until the merger has received all necessary approvals and is closed, the companies will continue as separate entities. Upon the completion of the merger, neither the corporate structure nor local operations of Duke Energy Kentucky will be impacted.

11. Pursuant to 807 KAR 5:001, Section 8(3), the Joint Applicants state that the Articles of Incorporation and all amendments thereto of Duke Energy Kentucky have already been filed with the Commission in Case No. 2009-00202 and are incorporated by reference herein. Certified copies of the Articles of Incorporation and all amendments thereto of Duke Energy, Cinergy, Duke Energy Ohio, Diamond and Progress Energy are attached to this Application collectively as Exhibit G.

III. THE TRANSACTION MEETS THE REQUIREMENTS FOR APPROVAL UNDER KRS 278.020(5) AND (6)

12. The Commission should approve the transaction because the surviving entity, Duke Energy, has the financial, technical and managerial abilities to provide reasonable service, and the transaction is to be made in accordance with law, for a proper purpose and is consistent

with the public interest. These conclusions and the facts that support them are demonstrated by the attachments and supporting testimony submitted with this application.

13. Once completed, the transaction will create the largest utility in the United States supported by substantial regulated earnings and cash flows. It will serve approximately 7.1 million domestic regulated retail electric customers in Kentucky, Ohio, Indiana, North Carolina, South Carolina and Florida, and approximately 500,000 retail gas customers in Kentucky and Ohio. A map showing the service territories served by the new Duke Energy is attached to this Application as Exhibit H. As of December 31, 2010, the new Duke Energy will have more than 57.2 GW of total generation capacity, $24.4 billion in total revenue, $97 billion in total assets, and a market capitalization of approximately $36.5 billion.

14. Upon completion of the transaction, Duke Energy's 57.2 GW of total owned generation capacity will be made up as follows:

Coal	42%
Gas/Oil	35%
Nuclear	16%
Hydro-Wind	7%

15. Upon completion of the transaction, Duke Energy will be well positioned for meeting pending environmental regulations as the following generation capacity by technology (GW / %) shows:

Gas/Oil	19.9 GW	/	35%
Scrubbed Coal	17.6 GW	/	31%
Unscrubbed Coal	6.6 GW	/	11%
Non-emitting (nuclear, hydro and renewable)	13.1 GW	/	23%

A. Duke Energy has the Financial, Technical and Managerial Abilities to Provide Reasonable Service to Duke Energy Kentucky's Customers.

16. Upon completion of the transaction, Duke Energy will have the financial, technical and managerial abilities to continue to provide reasonable service to Duke Energy Kentucky's customers. The transaction will not diminish, but will enhance, Duke Energy Kentucky's ability to provide reliable gas and electric service at reasonable rates to its retail customers in Kentucky, and will otherwise promote the public interest. Because of the structure of the transaction, Duke Energy Kentucky's retail customers will enjoy a seamless transition and will not experience any adverse impact on the type or quality of public utility services they currently receive. In fact, Duke Energy Kentucky will become part of a larger, stronger, more substantial and diversified entity. The transaction will present opportunities for optimizing operations across a larger platform and creating economies of scale that will enhance and improve Duke Energy Kentucky's abilities to obtain capital in support of its business and to supply reliable gas and electric service at reasonable rates to its retail customers in Kentucky. Duke Energy Kentucky will not incur any indebtedness and will not issue any securities to finance any part of the purchase price or transaction costs paid by Duke Energy in the merger with Progress Energy.

17. Duke Energy Kentucky has demonstrated a longstanding commitment to providing safe and reliable service to its Kentucky customers at just and reasonable rates. This commitment will not change as a result of the transaction. Upon completion of the transaction, Duke Energy Kentucky will continue to own and operate all of its electric and gas distribution and local transmission facilities just as before, and pledges to provide the same level of excellent service to its retail customers that it has historically achieved.

18. Both Duke Energy and Progress Energy have substantial and long-established technical experience by virtue of their total generation capacity of approximately 57.2 GW, their total assets of approximately $97 billion, their diversified generation portfolio, and their status as leaders in domestic electricity generation, supply and delivery. The management teams of both Duke Energy and Progress Energy have extensive experience providing efficient and reliable service to their retail customers. The combination of the very strong and complementary management team of the new Duke Energy, and the enhanced breadth of its operational assets, ensure that it will have the financial, technical and managerial abilities to continue providing Duke Energy Kentucky's customers high quality service after the transaction is completed.

B. The Transaction is to be Made in Accordance with Law, for a Proper Purpose, and is Consistent with the Public Interest.

19. The proposed transaction was unanimously approved by the Boards of Directors of Duke Energy at a meeting held on January 8, 2011, and of Progress Energy at a meeting also held on January 8, 2011. The closing of the transaction contemplated by the Merger Agreement is subject not only to approval by this Commission and the shareholders of the two companies, but also by the Federal Energy Regulatory Commission ("FERC"), the United States Department of Justice, the Federal Communications Commission and the Nuclear Regulatory Commission. Regulatory review and approvals will also be sought from the North Carolina Utilities Commission and the South Carolina Public Service Commission. The Joint Applicants will make all required federal and state regulatory filings on a timely basis, and they expect to receive all required approvals in time to close the transaction by the end of 2011. A copy of each Application for regulatory approval listed above will be filed with the Commission promptly after it has been filed with the appropriate Commission or agency.

20. Upon Commission approval of this Application and the closing of the transaction, this Commission will retain the same ratemaking and regulatory authority to regulate the rates and services of Duke Energy Kentucky under Kentucky law as it does today. Because the proposed transaction will receive all necessary corporate approvals, all federal and state regulatory filings incident to the proposed transaction will be made on a timely basis, all required governmental approvals will be received before closing the transaction, and the proposed transaction will not change the regulatory status of Duke Energy Kentucky in any fashion under Kentucky law, the proposed transaction will be made in accordance with law.[2]

21. Following the merger, the new Duke Energy's utility operating companies will continue to operate as public utilities in their respective jurisdictions. Duke Energy will keep their respective books and records as prescribed by law, and will make accounting entries in accordance with the required accounting standards. In addition, Duke Energy Kentucky will continue to be subject to the Kentucky affiliate transaction laws[3] and the FERC Standards of Conduct.

22. Duke Energy Kentucky is authorized to engage in transactions for products and services with affiliates provided the transactions are in compliance with Kentucky law and where applicable, pursuant to Commission approved affiliate agreements. Duke Energy Kentucky and many of its affiliates are already parties to Commission-approved service agreements that permit certain transactions to occur between the signatory parties and under defined pricing terms and

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[2] KRS 278.218, which requires approval of the Commission when the acquisition or transfer of ownership or control of any "assets" of a utility exceeds $1 million, is inapplicable to this transaction. The proposed transaction does not involve a direct transfer of assets; rather, it involves the change in ownership and indirect control of Duke Kentucky. Because the control of the assets of Duke Kentucky will remain entirely with Duke Kentucky and its corporate parents, KRS 278.218 does not apply. If, however, the Commission determines that KRS 278.218 does apply, the Commission should approve the proposed acquisition under that section as well as KRS 278.020(5) and (6), because the proposed transaction is for a proper purpose and is consistent with the public interest.

[3] KRS 278.2201 through 278.2219.

conditions. The Progress Energy companies will be made parties to existing affiliate agreements already reviewed and approved by this Commission as part of the merger between Duke Energy and Cinergy Corp., in Case No. 2005-00228. At this time, Joint Applicants expect that the Progress Energy companies will be added to the following affiliate agreements: (1) Service Company Utility Service Agreement (allows service company to perform services for each of the public utilities); (2) Asymmetrically Priced Operating Company/Non-Utility Agreement (allows the utilities and non-utility affiliates to perform various services for each other in accordance with FERC pricing rules and KRS 278.2207(1)); (3) Operating Companies Service Agreement (allows the utilities to perform services for each other); (4) Utility Money Pool Agreement (allows for inter-company loans among the utility affiliates, service company, and holding company); (5) Intercompany Asset Transfer Agreement (permits the transfer of inventory assets, excluding commodities, at the transferring company's fully-allocated cost, subject to certain limitations);[4] and (6) Tax Sharing Agreement (allows for joint filing of federal tax returns). Copies of the existing agreements are on file with this Commission as part of Duke Energy Kentucky's annual reporting filings and updated in its Cost Allocation Manual.[5]

23. Of the aforementioned agreements, only those directly authorizing transactions between Duke Energy Kentucky and Progress Energy companies at a price based upon cost will need Commission approval for a deviation from KRS 278.2207. There are five such agreements: (1) Service Company Utility Service Agreement; (2) Operating Companies Services Agreement; (3) Utility Money Pool Agreement; (4) Intercompany Asset Transfer Agreement; and (5) Tax Sharing Agreement. Duke Energy Kentucky hereby submits those agreements (contained in

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[4] This agreement was approved by the Commission in Case No. 2008-00122.

[5] Duke Energy Kentucky last filed its Cost Allocation Manual and updated service agreements in March 2010.

Exhibit I) to the Commission for its review and approval pursuant to KRS 278.2207(2). The addition of the Progress Energy companies to the Asymmetrically Priced Operating Company/Non-Utility Agreement, which prices services in accordance with KRS 278.2207, does not require Commission approval.

24. The combination of Duke Energy and Progress Energy will create a larger, more diversified, and financially stronger and flexible company that will benefit the public. By combining the two companies, a new company will emerge with a strong balance sheet and credit profile to provide all of its customers, including those of Duke Energy Kentucky, with affordable electricity and gas, coupled with state-of-the-art service reliability. The new Duke Energy companies also intend to leverage best practices to achieve even higher levels of safety, operational excellence and customer satisfaction.

25. Due to the geographical disparity of the merging Companies in relation to the operation of Duke Energy Kentucky, Duke Energy did not assume the existence of any substantial synergies relative to Duke Energy Kentucky when it made the decision to merge with Progress Energy. Nevertheless, the financial and credit profile of the new Duke Energy, the continued commitment to the provision of electric and gas service to its customers at reasonable rates, and the enhanced and experienced executive management leadership that will be put in place, ensure that Duke Energy Kentucky and its customers will be benefitted, and not disadvantaged, by this strategic combination.

26. Indeed, it is anticipated that upon the actual integration of Duke Energy and Progress Energy and their service companies, additional cost savings opportunities will be created. The transition to integration is a significant undertaking and these savings will occur over time as a result of the combination and assimilation of the companies' information

technology systems, supply chain functions, generation operations, corporate and administrative programs, and inventories. There will be upfront costs associated with integrating these functions to yield benefits, but the future savings in these areas will be passed on to the company's customers in the normal course of rate making proceedings. In addition, the transaction provides the new Duke Energy with more diversified generation and fuel sources, an increased knowledge base, and the ability to continue high levels of customer service and community support. In sum, the Duke Energy/Progress Energy combination creates an enterprise that will enjoy increased productivity and lower costs than would otherwise prevail, and one that remains fully committed to superior customer service and corporate citizenship. All of these advantages will inure to the benefit of Duke Energy Kentucky and its customers.

27. The cost savings described above do not reflect any savings associated with involuntary workforce reductions. Over time, Duke Energy and Progress Energy do expect their combined workforces to be reduced, compared to continued operation as unaffiliated companies. To the maximum extent possible, the post-merger Duke Energy will manage these reductions through normal retirements, employee attrition, possible voluntary retirement programs and similar measures, rather than through forced layoffs.

28. In sum, the proposed transaction is a strategic combination of two very dynamic and well-run companies that have similar business profiles and operating philosophies. Duke Energy has a proven track record in Kentucky of providing reliable and affordable electric and gas service to its customers. Progress Energy has demonstrated a similar track record. The new Duke Energy is committed to operating all of its subsidiaries, including Duke Energy Kentucky,

with the goal of sustainable and long-term growth for the benefit of those companies and their customers, employees, managers and community stakeholders.[6]

29. For all of the reasons set forth above, the proposed transaction is in accordance with law, for a proper purpose and is consistent with the public interest.

IV. TESTIMONY IN SUPPORT OF JOINT APPLICATION

30. The Joint Applicants have filed the written testimony of certain witnesses, which are attached to this Application as Exhibits J through P. The purpose of this testimony is to discuss in greater detail the precise manner and extent to which the proposed transaction satisfies the requirements of KRS 278.020(5) and (6).

31. Mr. James E. Rogers, the Chairman, President and Chief Executive Officer of Duke Energy will offer a brief description of Duke Energy as it exists today. His testimony will then focus upon the strategic rationale behind the merger and the benefits of the merger for all stakeholders – customers, investors, communities and employees. Mr. Rogers will also explain the proposed transaction and discuss the successes of the various past mergers involving Duke Energy Kentucky.

32. Mr. William D. Johnson, the current Chairman, President and Chief Executive Officer of Progress Energy, will introduce Progress Energy to the Commission. As the future President and Chief Executive Officer of Duke Energy following the consummation of the merger, Mr. Johnson will also describe Duke Energy's future leadership team and its financial, technical and managerial ability to own and operate Duke Energy Kentucky. His testimony will

[6] The Joint Applicants are mindful of the regulatory requirements which the Commission imposed in the CG&E/Cinergy/ULH&P merger (Case No. 94-104), and Duke Energy/Cinergy (Case No. 2005-00228) merger, all of which requirements were combined and made a part of Case No. 2005-00228 by the Commission in its November 29, 2005 Order, pages 9-10. Joint Applicants fully expect to continue to abide by any of those requirements which will still apply upon completion of this merger. However, as in Case No. 2005-00228, the Joint Applicants request that all vintage requirements from Case No. 2005-00228 be made a part of the final Order in this case.

describe Progress Energy's philosophy regarding corporate governance and its commitment to system reliability, customer service, economic development, community investment, its workforce and environmental stewardship.

33. Ms. Julia S. Janson, President of Duke Energy Kentucky and Duke Energy Ohio, will testify regarding the impact of the merger on Duke Energy Kentucky and its stakeholders. Ms. Janson's testimony will describe why Duke Energy Kentucky is willing to continue to abide by the commitments that are currently in place as a result of the Duke Energy/Cinergy merger that would continue to be applicable to this particular transaction, as well as how the post-merger Duke Energy will continue to have the financial, managerial and technical expertise to own and operate Duke Energy Kentucky. She will also explain the regulatory approvals that are being sought as part of the merger in order to demonstrate that the transaction is in accordance with law, for a proper purpose and in the public interest.

34. Mr. William D. Wathen Jr., Vice President of Rates for Duke Energy Kentucky and Duke Energy Ohio, will discuss Duke Energy Kentucky's current electric and natural gas rates. He will also explain how the proposed merger will not adversely affect the rates of Duke Energy Kentucky and how its customers are likely to see savings in future base rate proceedings. Mr. Wathen will discuss four of the affiliate agreements that will be amended as a result of the merger and that are submitted for the Commission's approval.

35. Mr. Stephen De May, Senior Vice President of Investor Relations and the Treasurer of Duke Energy, will provide testimony on how the post-merger Duke Energy will continue to have the financial ability to own and operate Duke Energy Kentucky. He will describe the financial objectives of Duke Energy Kentucky and identify several safeguards that will prevent the merger from having any adverse impact upon Duke Energy Kentucky's financial

condition. Mr. De May will also describe the reverse stock split that is occurring as part of this transaction in greater detail and address the change to the Utility Money Pool Agreement that is submitted for the Commission's approval as part of the Joint Applicants' application.

36. Mr. Jim L. Stanley, Senior Vice President of Power Delivery for Duke Energy's Franchised Electric and Gas Business, which includes Duke Energy Kentucky, will testify on the technical operations of Duke Energy Kentucky. Mr. Stanley's testimony will discuss the current operational characteristics of Duke Energy Kentucky and provide an explanation as to why the proposed transaction will not adversely impact Duke Energy Kentucky or its stakeholders from an operational perspective. He will also explain why the post-merger Duke Energy will have the requisite technical ability to continue to allow Duke Energy Kentucky to provide safe and reliable utility service.

37. Finally, Mr. Danny Wiles, Vice President of the U.S. Franchised Electric and Gas ("USFE&G") Business, will offer testimony regarding accounting issues related to the transaction. In particular, he will describe how this transaction is significantly different than the merger of Duke Energy and Cinergy as it relates to Duke Energy Kentucky's accounting. The result of this difference is that Duke Energy Kentucky will not be subject to "push-down" accounting as a result of the completion of the merger. He will also testify regarding the *pro forma* financial statements that apply to this transaction.

V. CONCLUSION

38. The merger of Duke Energy and Progress Energy at the holding company level will change the indirect ownership of Duke Energy Kentucky, but will not negatively affect it as a utility provider in Kentucky. The merger will have no adverse effect on Duke Energy Kentucky's customers, and will neither affect the rates nor the terms and conditions under which

Duke Energy Kentucky provides services, nor will it affect the jurisdiction of this Commission in any fashion. To the contrary, the merger will provide long-term benefits to Duke Energy Kentucky's customers through the advantages the combined company will achieve as a result of greater scale, scope and ability to achieve efficiencies.

39. The Joint Applicants do not believe that filing a tariff Adoption Notice pursuant to the provisions of 807 KAR 5:011, Section 11 is required as a result of this transaction because: (1) there will not be any change in the "operating utility" as Duke Energy Kentucky will remain as the "utility" under KRS 278.010(3) subject to the jurisdiction of the Commission, and (2) none of Duke Energy Kentucky's "rates, rules, classifications or administrative regulations" will change. In the event, however, that the Commission finds that 807 KAR 5:011, Section 11 is applicable to this transaction, Joint Applicants request that the Commission approve a deviation under 807 KAR 5:011, Section 14, thereby relieving Joint Applicants from the requirements of 807 KAR 5:011, Section 11.

40. For the foregoing reasons, Joint Applicants respectfully request that the Commission find that Duke Energy, Cinergy, Duke Energy Ohio, Duke Energy Kentucky, Diamond and Progress Energy have the financial, technical and managerial abilities to provide reasonable service, and that the proposed transaction is in accordance with law, for a proper purpose and is consistent with the public interest.

WHEREFORE, the Joint Applicants respectfully request that the Commission, after investigation and hearing, enter a final Order as follows:

1. APPROVE the merger between Duke Energy and Progress Energy pursuant to KRS 278.020(5) and (6) on the basis that Duke Energy, Cinergy, Duke Energy Ohio, Duke Energy Kentucky, Diamond and Progress Energy have the financial, technical and managerial

abilities to provide reasonable service, and that the proposed transaction is in accordance with law, for a proper purpose and is consistent with the public interest;

2. ORDER that neither Duke Energy, Cinergy, Duke Energy Ohio, Diamond nor Progress Energy, nor any intermediate or affiliate company between Duke Energy Kentucky and Duke Energy will, by reason of direct or indirect ownership of stock of Duke Energy Kentucky, be a "utility" in Kentucky as defined in KRS 278.010(3), since they will not own, operate or manage any facilities used in connection with the generation, production, transmission and distribution of electricity to or for the public for compensation, and they will not own, operate or manage any facility used in connection with the production, manufacture, storage, distribution, sale or furnishing of natural or manufactured gas to or for the public for compensation for light, heat, power or other uses;

3. PROVIDE notice and information to the Federal Energy Regulatory Commission and any other applicable state or federal regulatory agencies that this Commission has approved the transaction between Duke Energy and Progress Energy;

4. ORDER that KRS 278.218 does not apply to the proposed transaction because the control of the assets of Duke Energy Kentucky will not be transferred in any fashion; or, in the alternative, if the Commission determines that KRS 278.218 does apply, approve the proposed transaction under KRS 278.218 because the proposed transaction is for a proper purpose and is consistent with the public interest;

5. ORDER that 807 KAR 5:011, Section 11 does not apply to this case; or, in the alternative, if the Commission determines that 807 KAR 5:011, Section 11 does apply, approve a deviation under 807 KAR 5:011, Section 14, thereby relieving Joint Applicants from the requirements of 807 KAR 5:011, Section 11;

6. APPROVE the affiliate agreements as amended and attached hereto collectively as Exhibit I; and

7. ORDER all other due and proper relief to which it may appear the Joint Applicants are entitled.

This 4th day of April, 2011.

Respectfully submitted,

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

EXHIBITS

Exhibit A – Duke Energy's 2010 Annual Report

Exhibit B – List of Duke Energy's generating facilities

Exhibit C – Progress Energy's 2010 Annual Report

Exhibit D – List of Progress Energy's generating facilities

Exhibit E – Agreement and Plan of Merger

Exhibit F – Corporate Organization Chart (post-merger)

Exhibit G – Certified Copies of Articles of Incorporation and all Amendments of Duke Energy, Cinergy, Duke Energy Ohio, Diamond and Progress Energy

Exhibit H – Map of Duke Energy's Service Territories (post-merger)

Exhibit I – Affiliate Agreements

Exhibit J – Direct testimony of James E. Rogers

Exhibit K – Direct testimony of William D. Johnson

Exhibit L – Direct testimony of Julia S. Janson

Exhibit M – Direct testimony of William Don Wathen Jr.

Exhibit N – Direct testimony of Stephen G. De May

Exhibit O – Direct testimony of Jim L. Stanley

Exhibit P – Direct Testimony of Danny Wiles