COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF DUKE ENERGY CORPORATION, DUKE ENERGY HOLDING CORP., DEER ACQUISITION CORP., COUGAR ACQUISITION CORP., CINERGY CORP., THE CINCINNATI GAS & ELECTRIC COMPANY AND THE UNION LIGHT, HEAT AND POWER COMPANY FOR APPROVAL OF A TRANSFER AND ACQUISITION OF CONTROL	)	CASE NO. 2005-00228

<u>SUPPLEMENTAL DATA REQUEST OF COMMISSION STAFF TO APPLICANTS</u>

Pursuant to 807 KAR 5:001, Commission Staff requests that Duke Energy Corporation ("Duke Energy"), Duke Energy Holding Corp., Deer Acquisition Corp., Cougar Acquistion Corp., Cinergy Corp. ("Cinergy"), The Cincinnati Gas & Electric Company ("CG&E"), and The Union Light, Heat and Power Company ("ULH&P") file the original and 8 copies of the following information with the Commission on or before September 16, 2005, with a copy to all parties of record. Each copy of the information requested should be placed in a bound volume with each item tabbed. When a number of sheets are required for an item, each sheet should be appropriately indexed, for example, Item 1(a), Sheet 2 of 6. Include with each response the name of the witness who will be responsible for responding to questions relating to the information provided.

Careful attention should be given to copied material to ensure its legibility. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request.

1. Refer to the Commission Staff's First Data Request dated August 16, 2005 ("First Staff Request"), Item 1. Cinergy and Duke Energy were requested to provide the corporate organizational charts, showing all subsidiary and affiliated companies, of Cinergy and Duke Energy as of June 30, 2005. The response provided for Duke Energy, Attachment CS 1.1-B, was only an alphabetic listing of the subsidiaries and affiliated companies and not a corporate organizational chart. Provide the originally requested information for Duke Energy, following the format used for Cinergy in Attachment CS 1.1-A.

2. Refer to the First Staff Request, Item 4(c). Cinergy and Duke Energy were asked to describe the mechanisms contained in ULH&P's accounting system that would prevent the recording of any change of control payments – either directly, indirectly, or allocated – on ULH&P's books and records. The response noted the uncertainty related to the need for "push down" accounting, but did not provide the requested information. Provide the originally requested information.

3. Refer to the First Staff Request, Item 10. Provide the dates for the shareholders' meetings to vote on the merger of Cinergy and Duke Energy.

4. Refer to the First Staff Request, Item 14. Duke Energy was requested to provide for the Duke Energy Generating Fleet a schedule identical to Attachment D of the application. The two-part response that was filed is not identical to Attachment D of

the application. Specifically, the response does not indicate whether the unit is regulated or unregulated, and, except for one unit, whether it is considered a base load, intermediate load, or peaking unit. Provide the originally requested information.

5. Refer to the First Staff Request, Item 16(a). ULH&P states that "an 'equitable' sharing of savings reflects this outcome and has been determined to be approximately 50-50 sharing between these two stakeholders of net regulated cost savings."

a. Explain whether ULH&P is opposed to designing the sharing plan so that the savings are shared 50-50 in each year for the entire 5-year period.

b. If yes, describe the specific objections to this sharing design.

6. Refer to the First Staff Request, Item 21.

a. Describe and compare the information technology ("IT") projects identified in the Continuous Improvement Now ("CIN-10") program with the IT projects anticipated to be undertaken as part of the merger of Cinergy and Duke Energy.

b. Will the IT projects anticipated as part of the merger complement or oppose the IT projects planned as part of CIN-10? Explain the response in detail.

7. Refer to the First Staff Request, Item 23. Cinergy and Duke Energy were requested to reconcile the $696 million in out-of-pocket costs to achieve merger savings with the costs shown in Attachment BFB-5 of Barry Blackwell's Direct Testimony. No reconciliation with the costs shown in Attachment BFB-5 was provided. Provide the originally requested information. Also, explain why Thomas Flaherty provided the response to Item 23 when the request referenced the Direct Testimonies of Gregory Ficke and Mr. Blackwell.

8. Refer to the First Staff Request, Item 34. In this response, ULH&P has committed that it will not loan any funds or advance any credit or indemnity to New Duke Energy or Cinergy without the prior authorization of the Commission. Does this commitment apply to all subsidiaries and affiliates of Cinergy and New Duke Energy? Explain the response.

9. Refer to the First Staff Request, Item 36. The "Interpretive Response" to Question 2 in the Securities and Exchange Commission's ("SEC") Staff Accounting Bulletin No. 53 states,

> The staff recognizes that the existence of outstanding public debt, preferred stock or a significant minority interest in a subsidiary might impact the parent's ability to control the form of ownership. Although encouraging its use, the staff generally does not insist on the application of "push down" accounting in these circumstances.

a. Given this response and the levels of publicly held debt for ULH&P disclosed in the response to Item 36(c), explain in detail why ULH&P, Cinergy, and Duke Energy believe ULH&P could be subject to "push down" accounting.

b. Would ULH&P agree that, given the interpretive response from SEC Staff Accounting Bulletin No. 53 and the levels of ULH&P's publicly held debt, it would be unlikely that the SEC Staff will insist on "push down" accounting? Explain the response.

10. Is "push down" accounting limited to recognition of the difference between the asset purchase price and the book value, which is typically recorded as goodwill, or does it also include any costs or expenses related to the merger?

11. Is ULH&P aware of any other merger of utilities in the past 15 years in which the SEC required the use of "push down" accounting? If yes, provide the names of the utilities that merged and the dates that the mergers were consummated.

12. Refer to the First Staff Request, Item 37, Attachment CS 1.37-B. Concerning the definition of "Associated company,"

a. Explain why any of the subsidiaries or affiliates of the Duke Energy consolidated group would not be subject to the Tax Sharing Agreement.

b. Describe the process a subsidiary or affiliate would undertake when making the decision to be a "consenting member" of the Duke Energy consolidated group subject to the Tax Sharing Agreement.

13. Refer to the First Staff Request, Item 40, Attachment CS 1.40-A, page 7.

a. Explain why provisions discussing the actions the parties to the Cinergy Utility Money Pool Agreement would undertake if a state commission found an amendment to the agreement was rejected, disapproved, or found to be unreasonable were not incorporated into the Duke Energy Regulated Money Pool Agreement ("Duke Money Pool Agreement").

b. Would Cinergy, Duke Energy, CG&E, and ULH&P be willing to commit to seeking the Commission's approval or concurrence of any amendments to the Duke Money Pool Agreement at least 60 days prior to the effective date of the amendment? Explain the response.

14. Refer to the First Staff Request, Item 41. Provide a listing of the "recent" merger transactions reviewed by Steven Fetter, showing the date the merger was announced, the date the merger was approved, the sharing of merger savings proposed

by the applicants, and the sharing of merger savings authorized by the appropriate state commission.

15. Refer to the First Staff Request, Item 42 and Attachment CS 1.42-A.

a. Provide the copies of Internal Revenue Code Section 482, as originally requested in Item 42(b).

b. Refer to pages 10 through 12 of Attachment CS 1.42-A. Explain why provisions discussing the actions the parties to the Cinergy Service Company Agreement would undertake if a state commission found an amendment to the agreement was rejected, disapproved, or found to be unreasonable were not incorporated into the Duke Service Company Agreement.

c. Would Cinergy, Duke Energy, CG&E, and ULH&P be willing to commit to seeking the Commission's approval or concurrence of any amendments to the Duke Service Company Agreement at least 60 days prior to the effective date of the amendment? Explain the response.

16. Refer to the First Staff Request, Item 43, Attachment CS 1.43-A, page 5. Concerning the new Section 5.1 of the Operating Company/Nonutility Companies Service Agreement, would Cinergy, Duke Energy, CG&E, and ULH&P be willing to commit to seeking the Commission's approval or concurrence of any amendments to this agreement at least 60 days prior to the effective date of the amendment? Explain the response.

17. Refer to the First Staff Request, Item 44. Would Cinergy, Duke Energy, CG&E, and ULH&P be willing to commit to seeking the Commission's approval or

concurrence of any amendments to the Operating Companies Service Agreement at least 60 days prior to the effective date of the amendment? Explain the response.

18. Refer to the Staff's First Data Request, Item 45. Explain why ULH&P is proposing to allocate all the estimated net savings to its jurisdictional operations, as originally requested.

19. Refer to the First Staff Request, Item 48.

a. Concerning the responses to Items 48(b) and 48(c), the request sought citations to decisions by this Commission or other state commissions that have used operation and maintenance expenses as the method to allocate net merger savings. With this clarification, provide the originally requested information.

b. ULH&P states that it rejected an allocation factor based on total present revenues because it includes a return on investment and gas cost recovery amounts, as well as recovery of fuel and purchased power costs. Since the recovery of gas, fuel, and purchased power costs can be removed from total revenues, does ULH&P believe that using total revenue minus the gas, fuel, and purchased power costs is a reasonable allocation method? Explain the response.

20. Refer to the First Staff Request, Item 51.

a. Concerning the response to Item 51(b), explain the meaning of the qualification "pursuant to the testimony of John P. Steffen."

b. Are Cinergy, Duke Energy, CG&E, and ULH&P guaranteeing that ULH&P's ratepayers will receive net savings based on total estimated gas savings of $6,412,200 and estimated electric savings of $28,392,400? Explain the response.

c. Concerning the responses to Items 51(d) and 51(f), explain in detail why ULH&P is unwilling to commit to revising the calculation of its sharing of merger savings if the actual gas deferred cost is less than $4,238,100 or the electric deferred cost is less than $12,390,100.

21. Refer to the First Staff Request, Item 52. ULH&P states that the cost-of-service study filed in its 1991 rate case is its most recent electric cost-of-service study on which rates are based.

a. Describe in detail and provide copies of any analysis done by ULH&P to verify that its 1991 cost-of-service study is still valid.

b. Given that the make-up of ULH&P's customer base has changed since 1991, would allocating savings using a percent of revenues approach, based on current revenues, more accurately reflect ULH&P's current cost of service than a 14-year old cost-of-service study? Explain the response.

22. Refer to the First Staff Request, Item 53.

a. Concerning Merger Commitment Issue ("Merger Issue") 1,

(1) Do Cinergy, CG&E, and ULH&P contend that they are not familiar with the commitments made to this Commission in Case No. 1994-00104?[1] Explain the response.

(2) In its May 13, 1994 Order in Case No. 1994-00104, pages 10 through 22, the Commission detailed its concerns relating to the protection of utility resources, monitoring of Cinergy and the subsidiaries, and reporting requirements.

[1] Case No. 1994-00104, Application of The Cincinnati Gas & Electric Company and Cinergy Corp. for Approval of the Acquisition of Control of The Union Light, Heat & Power Company by Cinergy Corp., final Order dated May 13, 1994.

Specifically identify which of these concerns are now obsolete due to the impending repeal of the Public Utility Holding Company Act of 1935 ("PUHCA").

(3) Do Cinergy, Duke Energy, CG&E, and ULH&P agree that the pending repeal of PUHCA could result in state commissions securing commitments on various subjects that will no longer be within the jurisdiction of the SEC? Explain the response.

b. Concerning Merger Issue 8, explain why any early termination costs or severance costs associated with executives who voluntarily leave or are terminated because of the merger should not be treated like the change of control payments, and not allocated to ULH&P.

c. Concerning Merger Issue 11, explain who would be responsible for safety violations by employees of independent contractors if Cinergy, Duke Energy, or CG&E hired the independent contractor, but the independent contractor was performing work in the ULH&P service territory.

d. Concerning Merger Issue 12,

(1) Explain why Cinergy and Duke Energy believe the $750 million limit is reasonable.

(2) Provide a schedule showing all issuances of new debt or equity in excess of $100 million issued by Cinergy or Duke Energy since January 1, 1998.

e. Concerning Merger Issue 14,

(1) Explain why the originally suggested language is considered "overly restrictive."

(2) Explain why the suggested alternative language is reasonable.

(3) Explain how the suggested alternative language substitutes for the provision of "transferring more than 10 percent of the retained earnings of ULH&P to CG&E, Cinergy, or Duke Energy."

f. Concerning Merger Issue 15, explain why changing the notice to "as soon as practicable prior to" is reasonable.

g. Concerning Merger Issue 20, explain why the suggested change to 25 percent is reasonable. Also provide the percentage change in ULH&P's research and development budget for each year of the most recent 5 calendar years.

h. Concerning Merger Issue 23, explain why the Applicants believe the suggested language changes are necessary and reasonable.

i. Concerning Merger Issue 25, would changing "must be present to offer" to "must be present or participating by conference call to offer" be an acceptable alternative? Explain the response.

j. Concerning Merger Issue 26,

(1) Indicate how many of ULH&P's officers are also officers of Cinergy. Include the positions each officer holds in ULH&P and Cinergy.

(2) Which officers of ULH&P, other than its President, will be required to live in the Kentucky/Cincinnati metropolitan area?

(3) Explain why the officers of ULH&P whose areas of responsibility are limited to the retail delivery of gas or electric service will not be required to live in the Kentucky/Cincinnati metropolitan area.

23. There is a disclosure on page 94 of Cinergy's SEC Form 10-Q for the quarter ended June 30, 2005 of a merger-related lawsuit filed in the Court of Common Pleas in Hamilton County, Ohio against Cinergy and each member of its Board of Directors.

a. As of the date of this data request, what is the status of this lawsuit?

b. Have other lawsuits been filed against Cinergy and/or Duke Energy in conjunction with the proposed merger? If yes, for each lawsuit identify the caption, action number, the court where filed, and the issues raised.

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DATED: September 8, 2005

cc: Parties of Record