

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)	CASE NO. 2005-00228
CORP., THE CINCINNATI GAS &)	
ELECTRIC COMPANY AND THE)	
UNION LIGHT, HEAT AND POWER)	
COMPANY FOR APPROVAL OF A)	
TRANSFER AND ACQUISITION)	
OF CONTROL)	

O R D E R

By Order dated November 29, 2005, the Commission approved the proposed merger of Duke Energy Corporation (“Duke Energy”) and Cinergy Corp. (“Cinergy”) and the resulting indirect transfer of control of The Union Light, Heat and Power Company (“ULH&P”). Appended to that Order as Attachment 2 was an Agreed Stipulation entered into by the parties to this case. The Agreed Stipulation includes 46 merger commitments made by the Joint Applicants¹ in this proceeding.

On April 6, 2006, ULH&P filed a motion requesting a determination that it will be in compliance with Merger Commitments Nos. 3 and 4 if it ceased filing voluntary

¹ In addition to Duke Energy, Cinergy, and ULH&P, the Joint Applicants include Duke Energy Holding Corp., Deer Acquisition Corp., Cougar Acquisition Corp., and The Cincinnati Gas and Electric Company (“CG&E”).

reports with the Securities and Exchange Commission ("SEC") and thereby avoid the impacts of "push-down" accounting. Merger Commitment Nos. 3 and 4 state:

3. The payment for Cinergy's stock shall be recorded on New Duke Energy's books and shall be excluded from the books of ULH&P for retail ratemaking purposes and for accounting purposes, unless inconsistent with Securities and Exchange Commission ("SEC") principles.

4. Any acquisition premium paid by Duke Energy for the Cinergy stock shall not be "pushed down" to ULH&P for retail ratemaking purposes, and for accounting purposes, unless inconsistent with SEC principles.

Attached to ULH&P's pending motion is a copy of a letter it filed on March 9, 2006 discussing the following issues relating to push-down accounting:

- A general discussion of push-down accounting, which states that under generally accepted accounting principles ("GAAP") the business combination of Duke Energy and Cinergy must be accounted for by using purchase accounting. The discussion also states that any goodwill or other adjustments to the value of assets or liabilities of the acquired entity must be "pushed-down" to the financial statements of the acquired entity and its subsidiaries which file periodic reports to the SEC;
- The potential impacts on ULH&P's pension and other post-retirement benefits, retained earnings and future dividend payments, and other financial disclosures if push-down accounting is required for ULH&P;
- A review of the discussion of push-down accounting contained in the record of this case and the merger commitments contained in the Agreed Stipulation;
- ULH&P's conclusion that it would be required to apply push-down accounting for financial accounting purposes; and
- ULH&P's research that indicated if it ceased voluntarily filing periodic reports with the SEC, it would not be required to apply push-down accounting.

ULH&P stated in its March 9, 2006 letter that, under SEC rules, ULH&P is exempt from the requirement to file periodic reports with the SEC because its registered securities are not offered for sale in the public markets. Although ULH&P's most recent securities have been sold in private placements and all of their securities are held by fewer than 300 persons, ULH&P has voluntarily filed periodic reports with the SEC in the past. ULH&P noted that the requirement for push-down accounting is an SEC rule, rather than a GAAP requirement promulgated by the Financial Accounting Standards Board. Based on its research, ULH&P concluded that if it discontinues voluntarily filing periodic reports with the SEC after the closing of the Duke Energy/Cinergy merger, it will not be required to use push-down accounting.

ULH&P stated that it has evaluated the impacts of discontinuing its voluntary filings with the SEC and has concluded that doing so will produce the following benefits:

- The avoidance of push-down accounting, which will eliminate the requirement for ULH&P to maintain two sets of books: one for financial accounting purposes, and another for rate-making purposes;
- The avoidance of increased costs associated with compliance with the Sarbanes-Oxley Act;
- The ability to continue providing the Commission and other stakeholders with meaningful financial information about ULH&P's financial condition and financial statements audited in accordance with GAAP; and
- The avoidance of increased financial costs that result from liquidity premiums for small offerings in the public securities markets.²

² ULH&P did acknowledge that if it elected to issue a larger offering in the public securities markets, it could re-register with the SEC, although this action could possibly result in the application of push-down accounting. See April 6, 2006 motion at 3.

The push-down accounting issue was discussed at an informal conference held at the Commission's offices on March 30, 2006. Subsequent to the conference, the Attorney General ("AG") filed written comments on April 10, 2006 stating that, while he took no position on whether ULH&P had the right to discontinue its SEC filings, he did not object to ULH&P's proposed course of action.

Based on the motion and being otherwise sufficiently advised, the Commission finds that our November 29, 2005 Order discussed previous merger cases in which we expressed our concerns and strong opposition to push-down accounting, due to the potential adverse financial impact on the regulated utility and its ratepayers. That Order also noted the financial reporting responsibilities that ULH&P and the Joint Applicants have to the SEC. Based upon the information recently provided by ULH&P, it now appears that at least some of ULH&P's financial reporting was done on a voluntary rather than mandatory basis. While we have previously expressed strong opposition to push-down accounting, the Commission must now consider the ramifications for both ULH&P and its ratepayers of discontinuing the previous voluntary periodic reporting to the SEC.

Based on the information provided on this issue, the Commission finds that ULH&P's proposal to discontinue its voluntary periodic reporting to the SEC, and thereby eliminate the need for push-down accounting for ULH&P, will satisfy Merger Commitment Nos. 3 and 4. If ULH&P does elect to discontinue this voluntary periodic reporting to the SEC, ULH&P will avoid the costs of maintaining separate books for financial and rate-making purposes. While this election should allow ULH&P to avoid Sarbanes-Oxley compliance costs, it would not exempt its parent company, CG&E, or

its affiliated holding companies, Cinergy and Duke Energy, from similar compliance costs. ULH&P's election can be reversed and it can seek to register with the SEC in the future, if there is a need to do so, even though this action may require the application of push-down accounting. And as noted by ULH&P, discontinuing the voluntary SEC reporting will not impact the Commission's receipt of ULH&P's financial statements that have been audited in accordance with GAAP.

The Agreed Stipulation adopted by the November 29, 2005 Order also addresses financial reporting requirements in Merger Commitment No. 36, which provides as follows:

36. Applicants commit that ULH&P and Duke Energy will file copies of the Form U5S and Form U-13-60 with the Commission. If after the finalization of the reporting requirements in RM05-32-000 (Repeal of the Public Utilities Holding Company Act of 1935 and Enactment of the Energy Policy Act of 2005 – Notice of Proposed Rulemaking), the FERC does not require the aforementioned reports to be filed, then ULH&P will meet with the Commission to discuss and reach agreement on alternative reporting to meet the Commission's reasonable data needs. Applicants also commit that New Duke Energy, Cinergy and CG&E will file copies of their annual reports with the Commission.

In its final rule in RM05-32-000, the Federal Energy Regulatory Commission ("FERC") did not require utilities to file SEC Form U5S, but they must still file a modified version of SEC Form U-13-60. FERC's adoption of its own version of Form U-13-60 resolves that portion of Merger Commitment No. 36. FERC's elimination of Form U5S was discussed at the March 30, 2006 informal conference. ULH&P indicated a willingness to file SEC Form 10-K for Duke Energy, Cinergy, and CG&E as an alternative to Form U5S. The Commission finds that the submission by Duke Energy, Cinergy, and CG&E of their

respective SEC Form 10-Ks to the Commission is a reasonable alternative and that doing so will satisfy the requirements of Merger Commitment No. 36.

IT IS THEREFORE ORDERED that:

1. ULH&P will be in compliance with Merger Commitment Nos. 3 and 4, appended to the November 29, 2005 Order, if it discontinues filing voluntary financial reports with the SEC and thereby eliminates the need to use push-down accounting for recording the Duke/Cinergy merger on the books of ULH&P.

2. ULH&P will satisfy Merger Commitment No. 36, appended to the November 29, 2005 Order, by the timely submission of SEC Form 10-K for Duke Energy, Cinergy, and CG&E.

Done at Frankfort, Kentucky, this 3rd day of May, 2006.

By the Commission

ATTEST:


Executive Director