COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

By Order entered September 2, 2011, the Commission granted a petition filed by Duke Energy Corporation ("Duke"), Cinergy Corp. ("Cinergy"), Duke Energy Ohio, Inc. ("Duke Ohio"), Duke Energy Kentucky, Inc. ("Duke Kentucky"), Diamond Acquisition Corporation ("Diamond"), and Progress Energy, Inc. ("Progress") (collectively "Joint Applicants"), requesting rehearing of our August 2, 2011 Order conditionally approving the indirect transfer of ownership and control of Duke Kentucky. The approval granted by the August 2, 2011 Order was conditional upon the Joint Applicants filing written acknowledgements that they accept, agree and will be bound by, the 49 commitments set forth in Appendix B to that Order. The Joint Applicants requested and were granted rehearing on the limited issue of the wording of commitment No. 48, relating to the composition of Duke's post-merger Board of Directors.

Commitment No. 48, as set forth in Appendix B to the August 2, 2011 Order, provides as follows:

> 48. Joint Applicants commit that for as long as Duke's post-merger operations include regulated utility service in Kentucky, Duke's post-merger Board of Directors will include at least one non-employee member who is a customer of either Duke Kentucky, Duke Ohio, or Duke Energy Indiana.

In their petition for rehearing, the Joint Applicants stated that they shared the Commission's underlying objective to be achieved by this commitment, but that the wording of the commitment significantly complicates the merger transaction, could cause unnecessary disruption to Duke's corporate governance, and could result in Duke's unintended violation of the terms of the commitment.

The only intervenor to this case is the Attorney General's Office, Rate and Intervention Division ("AG"). Informal conferences were held with the parties on August 26, 2011 and September 13, 2011. As a result of discussions held at those conferences, the Joint Applicants and the AG filed on September 15, 2011 a joint motion to accept a supplemental stipulation which sets forth a proposed rewording of commitment No. 48. The supplemental stipulation was supported by the prepared supplemental testimony of Julia S. Janson, President of Duke Kentucky and Duke Ohio. The proposed rewording of commitment No. 48 is as follows:

> 48. Joint Applicants commit that, for as long as Duke's post-merger operations include regulated utility service in Kentucky, Duke's post-merger Board of Directors will include at least one non-employee member who is a customer of either Duke Kentucky, Duke Ohio, or Duke Energy Indiana. However, in the event that any such person ceases to be a Board member and a vacancy is created due to death, resignation, incapacity, removal, failure to be elected or re-elected by Duke's shareholders, or for any other reason not enumerated herein, Duke commits to take all reasonable measures to fill this vacancy as soon as reasonably possible with another qualified Board member satisfying the above criteria.

Based on the proposed rewording of commitment No. 48 and being otherwise sufficiently advised, the Commission finds good cause to grant the motion to accept the supplemental stipulation and thereby accept the proposed rewording of commitment No. 48. The reworded version preserves the Commission's original intent, which was to ensure that Duke's Board of Directors included a member having first-hand knowledge of the issues and concerns unique to Duke's midwest utilities and their customers. In addition, the reworded version provides Duke the flexibility it needs to comply with the commitment by affording it the time necessary to identify, select, and recruit future Board members who are non-employee customers of Duke Kentucky, Duke Ohio, or Duke Energy Indiana. In accepting this supplemental stipulation, the Commission acknowledges the efforts of all those involved in reaching an amicable and expeditious resolution to this rehearing issue.

In addition, the Commission notes that our August 2, 2011 Order, at 6-7, discussed and accepted a Stipulation and Settlement Agreement ("Settlement Agreement") entered into by the Joint Applicants and the AG. That Settlement Agreement, which was set forth as Appendix A to the August 2, 2011 Order, was characterized in that Order as having three major provisions benefitting Duke Kentucky customers. Those provisions are as follows: (1) a two-year moratorium on filing new electric or gas base rate applications, subject to certain specified exceptions; (2) five annual shareholder contributions of $115,000 each to support low-income weatherization efforts; and (3) five annual shareholder contributions of $50,000 each to support economic development efforts.

Although the Settlement Agreement was incorporated into the August 2, 2011 Order, the three major provisions of the agreement were inadvertently not incorporated into the 49 commitments that were set forth in Appendix B to that Order. This oversight will now be corrected by establishing commitment No. 50, which provides that, "Joint Applicants commit to fulfilling the provisions of the June 24, 2011 Stipulation and Settlement Agreement, attached to the August 2, 2011 Order as Appendix A." To properly memorialize this additional commitment, as well as the revision to commitment No. 48, all of the 50 commitments are set forth in an Appendix to this Order.

Finally, the August 2, 2011 Order approved the indirect transfer of control of Duke Kentucky via the acquisition of Progress by Duke, subject to the condition that the Chief Executive Officers of Duke, Cinergy, Duke Ohio, Duke Kentucky, Diamond, and Progress file a written acknowledgement accepting and agreeing to be bound by all of the commitments set forth in Appendix B to that Order. As a result of the Joint Applicants' filing of a petition for rehearing, those acknowledgements are still outstanding. Consequently, within seven days of the date of this Order, the Joint Applicants should file the written acknowledgements accepting and agreeing to be bound by the 50 commitments set forth in the Appendix to this Order.

IT IS THEREFORE ORDERED that:

1. The joint motion to accept a supplemental stipulation is granted and the supplemental stipulation is approved.

2. The Commission's August 2, 2011 Order is modified to the limited extent that Appendix B thereto is superseded by the Appendix attached hereto and incorporated herein by reference.

3. The indirect transfer of control of Duke Kentucky via the acquisition of Progress by Duke is approved, subject to the filing within seven days of the date of this Order of the written acknowledgements described in the findings above.

4. All other provisions of the Commission's August 2, 2011 Order shall remain in full force and effect.

By the Commission

ENTERED PA
OCT 28 2011
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

Executive Director

Case No. 2011-00124

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2011-00124 DATED OCT 28 2011

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

SUPPLEMENTAL STIPULATION
REGARDING REGULATORY COMMITMENT 48

This Supplemental Stipulation Regarding Regulatory Commitment 48 ("Stipulation") is entered into this 15th day of September, 2011, by and between 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") (collectively "Joint Applicants"), and Commonwealth of Kentucky, ex. rel. Jack Conway, Attorney General, by and through the Utility and Rate Intervention Division ("Attorney General").

WHEREAS, on August 19, 2011, the Joint Applicants filed their Petition for Rehearing requesting the Kentucky Public Service Commission ("Commission") to revise and clarify regulatory Commitment 48 ("Commitment 48") which was set forth in the Commission's Order of August 2, 2011 approving the merger transaction between the Joint Applicants; and,

WHEREAS, Joint Applicants' Petition for Rehearing provided, at pages 15-16, two alternatives to Commitment 48 which would maintain the Commission's original intent for there to be a Midwestern perspective in Duke Energy's Board deliberations while at the same time

EXHIBIT
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providing adequate flexibility to maintain a material and bargained for term of the merger agreement, preventing the violation of Duke Energy's governing documents, and eliminating Duke Energy's risk of being in default of Commitment 48 through events beyond its control; and,

WHEREAS, by Order dated September 2, 2011, the Commission granted Joint Applicants' Petition for Rehearing for the limited purpose of reconsidering the language contained in Commitment 48; and,

WHEREAS, an Informal Conference was held on September 13, 2011 at the Commission's offices to discuss alternative language for Commitment 48; and,

WHEREAS, with the assistance of Commission Staff, the Joint Applicants and Attorney General have negotiated and agreed on revised language for Commitment 48 which they now request and recommend the Commission adopt in place of that currently contained in Commitment 48; and,

WHEREAS, it is understood by the Joint Applicants and Attorney General that this Stipulation is not binding upon the Commission although they wish to advise the Commission of the considerable efforts which they have expended to reach this Stipulation and that they believe it constitutes a reasonable resolution of the issues surrounding Commitment 48; and,

WHEREAS, the acceptance of this Stipulation by the Commission will eliminate the need for the Commission and the parties to expend considerable resources in further litigation of this proceeding, and will eliminate the possibility of, and any need for, additional proceedings in rehearing or appeals of the Commission's final Order; and, WHEREAS, the supplemental testimony of Julia Janson, President of Duke Energy Kentucky, adequately supports this Stipulation and the agreement of the parties that it memorializes, they do hereby stipulate and recommend the following:

1. Existing Commitment 48 should be revised to provide as follows:

> 48. Joint Applicants commit that, for as long as Duke's post-merger operations include regulated utility service in Kentucky, Duke's post-merger Board of Directors will include at least one non-employee member who is a customer of either Duke Kentucky, Duke Ohio, or Duke Energy Indiana. However, in the event that any such person ceases to be a Board member and a vacancy is created due to death, resignation, incapacity, removal, failure to be elected or re-elected by Duke's shareholders, or for any other reason not enumerated herein, Duke commits to take all reasonable measures to fill this vacancy as soon as reasonably possible with another qualified Board member satisfying the above criteria.

2. The supplemental testimony of Julia Janson, President of Duke Kentucky, should be accepted into the record by the Commission as support for this Stipulation;

3. The Commission should enter an Order in response to the Joint Applicants' Petition for Rehearing by revising the language of regulatory Commitment 48 consistent with that contained above and further providing that the acquisition which is the subject of this proceeding should be approved on the condition that the Chief Executive Officers of each Joint Applicant file, within seven days of the date of its Order, a written acknowledgment accepting, and agreeing to be bound by, all of the commitments set forth in Appendix B to the Commission's August 2, 2011 Order, with the substitution of newly revised Commitment 48 in place of previous Commitment 48.

4. The parties agree that this Stipulation is reasonable and is in the best interests of all concerned and the public interest, and they urge the Commission to adopt it in its entirety.

This _____ day of September, 2011.

Respectfully submitted,

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APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2011-00124 DATED OCT 28 2011

REGULATORY COMMITMENTS

1. Joint Applicants commit to make available to the Kentucky Public Service Commission ("Commission"), for inspection and examination at such time and place as the Commission designates, the books and records of Duke Energy Kentucky, Inc. ("Duke Energy Kentucky") and the books and records of any subsidiary of Duke Energy Corporation ("Duke Energy') in which Duke Energy holds a controlling interest, to the extent necessary to verify transactions with Duke Energy Kentucky. Joint Applicants commit that the books and records of Duke Energy Kentucky, Duke Energy Ohio, Inc. ("Duke Energy Ohio") and Cinergy Corp. ("Cinergy") will be located in Cincinnati, Ohio, Plainfield, Indiana, or Charlotte, North Carolina.

2. Joint Applicants commit that Duke Energy Kentucky shall not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance any part of Duke Energy's merger with Progress Energy, Inc. ("Progress Energy"). Duke Energy Kentucky will loan and borrow money from affiliates only under the terms of, and only with the parties to, the Utility Money Pool Agreement that is approved as part of the Commission's review of the proposed merger transaction. Although Duke Energy and Progress Energy will be parties to the Utility Money Pool Agreement, Duke Energy Kentucky will not make money pool loans or otherwise make loans to Duke Energy, Progress Energy or any affiliate that is not a party to the Utility Money Pool Agreement.

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

4. Although there is no "push down" accounting applicable to Duke Energy Kentucky in this merger transaction, any acquisition premium paid by Duke Energy for the Progress Energy stock shall not be "pushed down" to Duke Energy Kentucky for retail ratemaking purposes or for accounting purposes, unless inconsistent with SEC principles.

5. No change in control payments will be allocated to the retail customers of Duke Energy Kentucky for retail ratemaking purposes or for accounting purposes, unless inconsistent with SEC principles.

6. Following the merger of Duke Energy and Progress Energy, executive level personnel will continue to be based in the Cincinnati/Northern Kentucky area with direct responsibility for gas and electric operations matters in Kentucky. Duke Energy Kentucky will file annual reports on the number of sustained outages (defined as having a duration of greater than five minutes) and the outage duration for the circuits at each substation. When Duke Energy's chief executive officer has annual meetings with the Commission, gas and electric operations personnel will also be present to discuss service reliability issues.

7. Joint Applicants commit that they will not achieve merger savings at the expense of degradation in the adequacy and reliability of Duke Energy Kentucky's retail gas and electric service.

8. Joint Applicants commit that Duke Energy Kentucky shall continue to maintain a substantial level of involvement in community activities, through annual charitable and other contributions.

9. Joint Applicants commit to maintaining Duke Energy Kentucky's proactive stance on developing economic opportunities in Kentucky and supporting economic development activities throughout Duke Energy Kentucky's service territory.

10. Joint Applicants commit that the accounting and reporting system used by Duke Energy Kentucky will be adequate to provide assurance that directly assignable utility and non-utility costs are accounted for properly and that reports on the utility and non-utility operations are accurately presented.

11. Joint Applicants commit to implement and maintain cost allocation procedures that will accomplish the objective of preventing cross-subsidization, and be prepared to fully disclose all allocated costs, the portion allocated to Duke Energy Kentucky, complete details of the allocation methods, and justification for the amount and the method. Joint Applicants commit to give the Commission 30 days' advance notice of any changes in cost allocation methods set forth in the Service Company Utility Service Agreement, the Operating Company/Non-Utility Companies Service Agreements and the Operating Companies Service Agreement approved as part of the merger transaction.

12. Joint Applicants commit to periodic comprehensive third-party independent audits of the affiliate transactions under the affiliate agreements approved as part of the merger transaction. Such audits will be conducted no less often than every two years, and the reports will be filed with the Commission and the Attorney

General. Duke Energy Kentucky shall file the audit report, if possible, when Duke Energy Kentucky files its annual report. The audits will continue for six years or until three service company audits are performed, in the event more than six years are needed to perform three audits.

13. Duke Energy Kentucky commits to protect against cross-subsidization in transactions with affiliates.

14. Duke Energy Kentucky acknowledges that, for ratemaking purposes, the Commission has jurisdiction over its capital structure, financing and cost of capital and that the Commission will continue to exercise such jurisdiction.

15. Joint Applicants commit that the merger will have no adverse impact on the base rates or the operation of the fuel adjustment clause, gas cost recovery and demand side management clause of Duke Energy Kentucky.

16. In future rate cases, Duke Energy Kentucky will not seek a higher rate or return on equity than would have been sought if the merger transaction had not occurred.

17. The accounting and ratemaking treatments of Duke Energy Kentucky's excess accumulated deferred income taxes will not be affected by the merger of Duke Energy and Progress Energy.

18. Duke Energy and Progress Energy commit to take an active and ongoing role in managing and operating Duke Energy Kentucky in the interests of customers, employees, and the Commonwealth of Kentucky, and to take the lead in enhancing Duke Energy Kentucky's relationship with the Commission, with state and local governments, and with other community interests, including, but not limited to, meetings

between Duke Energy's chief executive officer and the Commission at least once a year or more frequently if deemed necessary by the Commission.

19. Joint Applicants commit that, for a period of five years following the merger, Duke Energy Kentucky will advise the Commission at least annually on the adoption and implementation of best practices at Duke Energy Kentucky following the completion of the merger between Duke Energy and Progress Energy.

20. Joint Applicants commit to notify the Commission as soon as practicable of registration or issuance of new public long-term debt or equity in excess of $500 million issued by Duke Energy or Cinergy.

21. Duke Energy Kentucky commits to notify the Commission subsequent to its board approval and as soon as practicable following any public announcement of any acquisition of a regulated or non-regulated business representing five percent or more of Duke Energy's market capitalization.

22. Joint Applicants commit that Duke Energy Kentucky will pay dividends only out of retained earnings. Applicants further commit to maintain a capital structure for Duke Energy Kentucky which contains a minimum of thirty-five (35) percent equity.

23. Joint Applicants commit that when Duke Energy Kentucky files its monthly reports with the Commission, it shall include with that filing a schedule of the current capital structure and a schedule of any capital contributions made to Duke Energy Kentucky in the applicable month. The monthly reports shall also include separate gas and electric income statements and a combined gas and electric balance sheet for each of the eight months in which it does not make quarterly filings.

24. The Joint Applicants commit that, to the extent applicable, practicable and reasonable, Duke Energy Kentucky will abide by regulatory conditions required by other jurisdictions in their approval of the merger between Duke Energy and Progress Energy, unless those regulatory conditions are adverse to the interests of Duke Energy Kentucky's ratepayers.

25. Joint Applicants commit that customers will experience no adverse change in utility service due to the consolidation of Duke Energy Business Services, LLC, and Progress Energy Services Company, LLC.

26. Joint Applicants commit to: a) adequately fund and maintain Duke Energy Kentucky's transmission and distribution system; b) comply with all Commission regulations and statutes; and c) supply Duke Energy Kentucky's service needs.

27. When implementing best practices, Joint Applicants commit to taking into full consideration the related impacts on the levels of customer service and customer satisfaction, including any negative impacts resulting from workforce reductions.

28. Joint Applicants commit to minimize, to the extent possible, any negative impacts on levels of customer service and customer satisfaction resulting from workforce reductions.

29. Duke Energy Kentucky commits to notify the Commission in writing thirty (30) days prior to any material changes in its participation in funding for research and development. Material changes include, but are not limited to, any change in funding equal to or greater than twenty-five (25) percent of Duke Energy Kentucky's previous year's budget for research and development. The written notification will include an explanation of and the reasons for the change in policy.

30. Joint Applicants commit to dedicating Duke Energy Kentucky's existing and future rate-based generation facilities to the first call requirements of its existing and future native load customers.

31. Joint Applicants commit that within sixty (60) days of the closing of any merger, disposition or acquisition involving Duke Energy or a subsidiary thereof, in the United States that is exempted under KRS 278.020(5) and KRS 278.020(6), Duke Energy Kentucky will file with the Commission a notice setting forth an analysis of any changes and implications for Duke Energy Kentucky's customers.

32. Joint Applicants commit that Duke Energy Ohio will hold one hundred (100) percent of the common stock of Duke Energy Kentucky and that Duke Energy Ohio will not transfer any of that stock without prior notice to the Commission, even if the transfer is exempted under KRS 278.020(5) and KRS 278.020(6).

33. Joint Applicants commit that when budgets, investments, dividend policies, projects and business plans are being considered by Duke Energy for the Kentucky business, at a minimum, the chief executive officer of Duke Energy Kentucky or his or her designee must participate on a real-time basis to offer a Kentucky perspective to the decision and be permitted to participate in any debates on the issues on a real-time basis.

34. Joint Applicants commit that Duke Energy Kentucky's president will reside within Kentucky or the Cincinnati metropolitan area.

35. Joint Applicants commit that managerial talent will not be diverted from Duke Energy Kentucky to Duke Energy or any of its affiliates in a manner which threatens the continued efficient operation of Duke Energy Kentucky.

36. Joint Applicants commit that Duke Energy Kentucky and Duke Energy will file copies of the FERC Form 1 and FERC Form 2 with the Commission. If the Federal Energy Regulatory Commission ("FERC") ever does not require the aforementioned reports to be filed, then Duke Energy Kentucky will meet with the Commission to discuss and reach agreement on alternative reporting to meet the Commission's reasonable data needs. Joint Applicants also commit that Duke Energy, Cinergy and Duke Energy Ohio will file copies of their annual reports with the Commission.

37. Duke Energy Kentucky is committed to providing a variety of customer programs and services that enable its customers to better manage their energy bills based on the varied needs of its customers. Duke Energy Kentucky will continue to offer a variety of service options that provide accessibility and convenience, as well as consistent customer service experience, regardless of the service channel.

38. Duke Energy Kentucky will continue to have qualified and skilled customer service representatives available twenty-four (24) hours a day, to respond to power outage calls. Customers will also have access to Duke Energy Kentucky's online service and automated telephone service, twenty-four (24) hours a day, to perform routine interactions or to obtain general billing and customer information.

39. Duke Energy Kentucky will continue to staff qualified and skilled customer service representatives during core business hours to handle all types of customers' inquiries, and will continue its commitment to a Quality Assurance program.

40. Duke Energy Kentucky will continue to survey its customers regarding their satisfaction and will integrate this information into its processes, programs, and services that impact its customers.

41. Before Duke Energy Kentucky can issue long-term debt, it must receive approval of the Commission.

42. Duke Energy Kentucky will not guarantee the credit of any of its affiliates unless specifically approved by the Commission.

43. Joint Applicants commit that all debt of Duke Energy and Progress Energy will be non-recourse to Duke Energy Kentucky.

44. Joint Applicants commit that in the event the merger between Duke Energy and Progress Energy is not completed and Duke Energy makes a termination payment to Progress Energy or receives a termination payment from Progress Energy pursuant to the January 8, 2011, Merger Agreement identified in the Joint Applicants' Application, then neither the cost of the termination payment nor the receipt of a termination payment would be allocated to Duke Energy Kentucky's books except if required for SEC reporting. Additionally, if the merger is not completed, Duke Energy Kentucky's customers will not bear any costs of the failed transaction.

45. Duke Energy Kentucky commits to follow Kentucky law with respect to the pricing for inter-company transactions not otherwise covered by Commission-approved service agreements and will not presume to preclude the Commission from asserting any pricing methodology in a future proceeding at FERC.

46. The Joint Applicants commit to review with Duke Energy Kentucky whether policies more sympathetic to low-income customers would be more appropriate.

47. Duke Energy Kentucky commits to continue aggressively pursuing cost-effective DSM and energy efficiency programs and commits to deploy such programs, using industry best practices, in Kentucky.

48. Joint Applicants commit that for as long as Duke's post-merger operations include regulated utility service in Kentucky, Duke's post-merger Board of Directors will include at least one member who is a customer of either Duke Kentucky, Duke Ohio, or Duke Energy Indiana. However, in the event that any such person ceases to be a Board member and a vacancy is created due to death, resignation, incapacity, removal, failure to be elected or re-elected by Duke's shareholders, or for any other reason not enumerated herein, Duke commits to take all reasonable measures to fill this vacancy as soon as reasonably possible with another qualified Board member satisfying the above criteria.

49. No costs to achieve the merger transaction will be recovered from Duke Kentucky ratepayers.

50. Joint Applicants commit to fulfilling the provisions of the June 24, 2011 Stipulation and Settlement Agreement, attached to the August 2, 2011 Order as Appendix A

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