COMMONWEALTH OF KENTUCKY
# OFFICE OF THE ATTORNEY GENERAL

GREGORY D. STUMBO
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601-8204

October 18 2005

RECEIVED
OCT 18 2005
PUBLIC SERVICE COMMISSION

Beth A. O'Donnell
Executive Director
Public Service Commission
611 Sower Avenue
Frankfort, KY 40602

Re: Agreed Stipulation in Case Number 2005-00228

Dear Ms. O'Donnell:

Please find attached an original and ten copies of the Agreed Stipulation by the parties in the above-noted case. I tender same for filing.

Copies of the Agreement have been forwarded to the various parties for signatures, and as a consequence, some of the signatures on the document are by facsimile copy. Prior to the hearing tomorrow, a new original will be circulated for original signatures. At that time additional filings will be made at the Commission in order to meet the filing requirements. Given the need to expedite the filing of this document, the parties have agreed to file a facsimile copy in an attempt to facilitate a potentially quicker review by the Commission prior to the hearing which is scheduled to commence in the morning.

Sincerely,

Dennis G. Howard, II
Acting Director
Office of Rate Intervention
(502) 696-5453

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**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSZON**

RECEIVED
OCT 18 2005
PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| JOINT APPLICATION OF DUKE ENERGY CORPORATION, DUKE ENERGY HOLDING CORP., DEER ACQUISITION COW., COUGAR ACQUISITION COW., 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 |

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**AGREED STIPULATION**

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The undersigned parties ("Parties"), by counsel, hereby advise the Kentucky Public Service Commission ("Commission" or "KPSC") that the Parties have agreed by written stipulation ("Stipulation") as follows:

WHEREAS, on August 1,2005, **Duke** Energy Corporation, Duke Energy Holding Corp. ("Holding"), Deer Acquisition Corp. ("DAC"), Cougar Acquisition *Corp.* ("CAC"), Cinergy Carp. ("Cinergy"), The Cincinnati Gas & Electric Company ("CG&E") and The Union Light, Heat And Power Company ("ULH&P) (collectively, "Applicants") filed an application pursuant to KRS 278.020(5) and (6) and 807 KAR 5:001 Section **8** and supporting testimony, seeking approval of a transfer **and** acquisition of control of ULH&P; and

WHEREAS, Gregory D. Stumbo, Attorney General for the Commonwealth of Kentucky, and The Kroger Co. filed motions to intervene, which the Commission granted; and

WHEREAS, the Attorney General filed testimony and supplemental testimony in support of his position; and

WHEREAS, the Parties recognize that continued litigation of this proceeding could be lengthy and costly, and the Parties desire to settle the issues Wising in this proceeding;

NOW THEREFORE, the Parties hereby agree, stipulate and recommend to the Cornmission that it issue an Order approving Applicants' application submitted to the Commission on August 1, 2005 for approval of a transfer and acquisition of control of ULH&P, subject to the following terms and conditions:

## I. MERGER SAVINGS AND MERGER COSTS

**A.** The Parties have both presented testimony pertaining to the calculation of the amount of merger savings and costs. It is understood by all signatories hereto that this Settlement agreement is subject to the approval of the Commission and does not represent the Parties' agreement on any specific theory supporting the appropriateness of any proposed or recommended adjustments to ULH&P's rates. Nevertheless, having reached accord on an amount the Parties are agreed would reflect what the Parties could expect were the case to be fully litigated, the Parties agree that the amount of the merger credit to ULH&P's ratepayers shall total $7,634,100 to be **paid** as provided below.

B. Starting with the first billing cycle which begins 30 days but not more than **60** days following closing of the Duke / Cinergy merger, ULH&P will reduce its base rates by providing gas and electric rate credits. The rate credits will total $7,634,100 over the five-year period following merger closing, and will be credited on a levelized basis as shown on Attachment 1 and will be allocated to customer classes based on operation and maintenance expense as discussed in Applicants' testimony. Upon the effective date of new rates in ULH&P's next gas and electric base rate cases (not including any electric or gas base rate case which results in rates effective prior to January 1, 2008), the gas or electric, rate credit applicable to that service will expire.

C. Merger savings related to electric fuel costs will be flowed to customers, as actually achieved, beginning with the reactivation of a fuel cost recovery mechanism for ULH&P pursuant to the Commission's December 5, 2003 Order in Case No. 2003-00252, and fallowing merger closing. Merger savings related to gas costs will be flowed to customers following merger closing, as actually achieved, through the purchased gas adjustment clause.

D. The Commission's approval of this Stipulation, if granted, shall be deemed to grant ULH&P accounting authority to establish the necessary accounting deferrals to defer merger costs (as shown in Attachment 1) over the same time period during which ULH&P provides rate credits to customers. Such deferred costs will be recovered as provided herein and amortized off of ULH&P's books on a levelized basis over five years, and will not ever be otherwise eligible for recovery through rates, If ULH&P files a new gas or electric base rate case within five years following merger closing, the Company's amortization of such costs far that particular service shall cease upon the effective date for such new rates, and ULH&P will not seek to recover such unamortized costs as part of such new base rates. None of the provisions of this paragraph shall apply to any electric or gas base rate case which results in rates effective **prior** to January 1, 2008.

## II. ACTIVATION OF SHARING MECHANISM FOR OFF-SYSTEM SALES PROFITS

**A.** Upon merger closing, ULH&P shall activate the mechanism **for** sharing profits for ULH&P's off-system sales approved in the Commission's December 5, 2003 Order in Case No. 2003-00252. Under this sharing mechanism and for calendar year 2006 only, the off-system sales profits shall be shared and allocated as follows: the first $1.45 million in aff-system sales profits shall be allocated to customers; the next $400,000 of off-system sales profits shall be allocated to ULH&P; and any additional off-system sales profits shall be allocated 50 / 50% between ULH&P and customers. In no event shall the amount of the off-system sales profits allocated to customers be less than $1.45 million for 2006.

B. If the merger fails to close in 2006 in time to allow customers to receive the benefit established in the preceding paragraph, the off-system sharing mechanism shall be adjusted so that when it is activated, it will afford the benefits set aut in the preceding paragraph in addition to any benefits that would accrue to customers in the year it is activated.

C. The off-system sales profits applicable to custamers under paragraph II(A) hereof shall be allocated to customer class based on the proportion of operation and maintenance expense in the cost of service study (excluding fuel **and** purchased power) approved in ULH&P's most recent electric base rate case. ULH&P will calculate such off-system sales profits beginning January 1,2006 through December 31, 2006, and will credit customers for such profits beginning with the first billing cycle which begins **30** days or more following merger closing. ULH&P will project and credit customers for profits for December 2006, and will perform a true-up for such amounts in January 2007. Beginning January 1, 2007, the sharing terms of the sharing mechanism shall revert to the terms approved in the Commission's December 5, 2003 Order in Case No. 2003-00252.

## III. MOST FAVORED NATION CLAUSE

A. Following approval of the Merger by the state commissions of North Carolina, South Carolina, Ohio, and approval of the affiliate agreements filed with the Indiana Utility Regulatory Commission in connection with the Merger, any sharing mechanisms pursuant to which merger savings are shared with retail customers in each of these states will be reviewed to identify the utility whose retail customers will receive the largest percentage of the net merger savings to be achieved over the first five years after closing of the merger allocated to that utility. If the application of that percentage to the net savings allocable to Kentucky retail customers would result in a greater savings sharing than that which has been allocated to Kentucky retail customers, then the rate credits described above for Kentucky retail customers will be increased to match the application of that percentage to the net savings allocable to Kentucky retail customers. Application of this methodology is intended to ensure that Kentucky retail customers receive the benefit of a "most favored nation" status with regard to the sharing of net merger savings. In no event will the application of the methodology cause Kentucky retail customers' share of net merger savings to be reduced.

## IV. MERGER COMMITMENTS

**A.** Applicants agree to follow the merger commitments set forth in Attachment 2 to this Stipulation.

## V. OTHER TERMS AND CONDITIONS

**A.** The Parties stipulate that the testimony filed by the Parties in this proceeding shall be deemed admitted into evidence and may be relied upon by the Commission in rendering any orders in this proceeding.

B. The Parties will endeavor to obtain prompt approval of this Stipulation by the Commission. The Parties do not intend to modify the relief sought in the application or the testimony relied upon in support of the application, and this Stipulation shall not be deemed to be a new application. The Parties further request that the Commission issue its Order on this Stipulation by November 29, 2005, pursuant to the 120-day time limit in KRS 278.020(6).

C. This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues raised in these proceedings; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process, encouraged by this Commission and undertaken by the Parties representing a wide range of interests, including the Commission's Staff, to resolve the aforementioned issues. While this Stipulation is not binding on the Commission, it **is** entitled to careful consideration by the Commission.

D. Except **for** dispute resolution purposes, neither this Stipulation, nor the information **and** data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Party, or the Commission itself. This Stipulation is a reasonable compromise involving a balancing of competing positions, and it does not necessarily reflect the position which one or more of the Parties would have taken **if** these issues had been fully litigated.

E. This Stipulation is expressly conditioned upon closing of the merger between Duke Energy Corporation and Cinergy **Corp.,** except merger commitment no. **44,** which will apply regardless whether the merger is closed. **This** Stipulation is also expressly conditioned upon adoption of the Stipulation by the Commission, in its entirety **and** without modification. Should the Commission reject or modify all or any part of this Stipulation or impose additional or different conditions or requirements upon the Parties, any **Party** shall have the right, within 10 days of service of the Commission's order, to file notice that the Party is withdrawing from the Stipulation and the Stipulation **will** terminate upon the filing of such notice. Upon such notice of termination or withdrawal by any Party pursuant to the above provisions, the Stipulation shall immediately become null and void.

F. All af the Signatory Parties fully support this Stipulation **and** urge the Commission to accept and approve the terms hereof.

*G.* Based on the Parties' agreement, the Parties respectfully request the Commission to take the following actions:

1. APPROVE the merger between Duke Energy and Cinergy pursuant to KRS 278.020 on the basis that Duke Energy, Holding, **DAC** and **CAC** have the financial, technical and managerial abilities to provide reasonable service, and that the proposed merger is in accordance with law, for a proper purpose and is consistent with the public interest;

2. APPROVE the corporate reorganization of Holding described in the application, to take place following the merger, in which Holding will be renamed

Duke Energy Corporation and the entity presently known by the same name will be converted to a North Carolina limited liability company called Duke Power Company LLC;

3. ORDER that neither Duke Energy, Holding, DAC, CAC, Cinergy, CG&E nor any intermediate company between ULH&P and Duke Energy or Holding will, by reason of direct or indirect ownership of stock of ULH&P, be a utility in Kentucky as defined in KRS 278.010(3), as 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 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;

4. INFORM the Federal Energy Regulatory Commission that this Commission has approved the merger between Duke Energy and Cinergy;

5. APPROVE, subject to the Parties' continuing right to argue in any rate proceeding that the allocations established by theses agreements are to be treated differently on a going-forward basis, the following agreements, as filed in this proceeding, made by and among ULH&P and its affiliates: (1) Service Company Utility Service Agreement; (2) Operating Company / Non-utility Companies Services Agreement; (3) Operating Companies Services Agreement; (4) Money Pool Agreement; and (5) Tax Sharing Agreement;

6. GRANT ULH&P a deviation under KRS 278.2207(2) for the pricing terms of the affiliate agreements, on the grounds that the requested pricing is reasonable and in the public interest; and,

7. APPROVE ULH&P's application for authority to modify current accounting procedures in order to defer transaction costs and costs incurred in order to realize cost savings as a result of the merger transaction.

HAVE SEEN AND AGREED:

Robert M. Watt, III
Stoll, Keenon & Park LLP
300 West Vine St., Suite 2100
Lexington, Kentucky 40507-1801
Phone: (859) 231-3043
Fax: (859) 253-1093
e-mail: watt@skp.com

ATTORNEY FOR JOINT APPLICANTS

Paul R. Newton
Vice President & General Counsel, Duke Power
Kodwo Ghartey-Tagoe
Chief Regulatory Counsel
Duke Energy Corporation
P.O. Box 1244
Mail Code PB05E
Charlotte, North Carolina 28201-1244
Phone: (704) 382-8106
Fax: (704) 382-5690
e-mail: pnewton@duke-energy.com

ATTORNEYS FOR DUKE ENERGY CORPORATION, DUKE ENERGY HOLDING CORP., DEER ACQUISITION CORP., AND COUGAR ACQUISITION CORP.

James B. Gainer
Vice President and General Counsel, Regulated Businesses
Kate E. Moriarty
Assistant General Counsel
John J. Finnigan, Jr.
Senior Counsel
Cinergy Services, Inc.

HAVE SEEN AND AGREED:

Robert M. Watt, III
Stoll, Keenon & **Park** LLP
300 West Vine St., Suite 2100
Lexington, Kentucky 40507-1801
Phone: **(859) 231-3043**
**Fax:** **(859) 253-1093**
**e-mail:** watt@skp.com

ATTORNEY FOR JOINT APPLICANTS

Paul R. Newton
Vice President & General Counsel, Duke Power
Kodwo Ghartey-Tagoe
Chief Regulatory Counsel
Duke Energy Corporation
P.O. **Box** 1244
Mail Code PB05E
Charlotte, North **Carolina 28201-1244**
Phone: **(704) 382-8106**
Fax: **(704)** 382-5690
e-mail: pnewton@duke-energy.com

**ATTORNEYS** FOR DUKE ENERGY CORPORATION, DUKE ENERGY HOLDING **CORP.**, DEER ACQUISITION CORP., **AND** COUGAR ACQUISITION CORP.

Johnf. Finnigan

James B. Gainer
Vice President and General Counsel, Regulated Businesses
Kate E. Moriarty
Assistant General Counsel
John J. Finnigan, Jr.
Senior Counsel
Cinergy Services, Inc.

P. O. Box 960
Room 2500, Atrium II
139 East Fourth Street
Cincinnati, Ohio 45201-0960
Phone: (513) 287-3601
**Fax:** (513) 287-3810
e-mail: jfinnigan@cinergy.com

ATTORNEYS FOR CINERGY CORP., THE CINCINNATI GAS & ELECTRIC COMPANY, AND THE UNION LIGHT, HEAT AND POWER *COMPANY*

Hon. Dennis G. Howard, II
Acting Director
Office of Rate Intervention
Hon. David E. Spenard
Assistant Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, Ky 40601

ATTORNEY FOR GREGORY D. STUMBO
ATTORNEY GENERAL

Hon. Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 2110
Cincinnati, Ohio 45202

ATTORNEY FOR THE KROGER CO.

## The Union Light Heat and Power Company
## Case Number 2005-00228

### Sharing of Merger Savings
($ 000's)
(Gas Service)

| Line No. | | Year 1 (A) | Year 2 (B) | Year 3 (C) | Year 4 (D) | Year 5 (E) | Five Year Total (F) | Annual Avg. (G) |
|---|---|---|---|---|---|---|---|---|
| 1 | Estimated Savings | $ 830.8 | $ 1,146.5 | $ 1,344.8 | $ 1,479.5 | $ 1,610.6 | $ 6,412.2 | $ 1,282.4 |
| 2 | **Estimated Costs** | $ 1,555.6 | $ 989.1 | $ 877.8 | $ 407.8 | $ 407.8 | $ 4,238.1 | $ 847.6 |
| 3 | Estimated Net Savings | $ (724.8) | $ 157.4 | $ 467.0 | $ 1,071.7 | $ 1,202.8 | $ 2,174.1 | $ 434.8 |
| 4 | Gross Savings Returned to Customers | $ 1,030.220 | $ 1,030.220 | $ 1,030.220 | $ 1,030.220 | $ 1,030.220 | $ 5,151.100 | |
| 5 | Amortization of Costs Collected from Customers | $ (847.600) | $ (847.600) | $ (847.600) | $ (847.600) | $ (847.600) | $ (4,238.000) | |
| 6 | Net Savings to Customers | $ 182.620 | 182.620 | $ 182.620 | 182.620 | 182.620 | 913.100 | |

# Sharing *of* Merger Savings
## ($ 000's)
## (Electric)

| Line No. | | Year 1 (A) | Year 2 (B) | Year 3 (C) | Year 4 (D) | Year 5 (E) | Five Year Total (F) | Annual Avg. (G) |
|---|---|---|---|---|---|---|---|---|
| 1 | Estimated Savings | $ 3,480.8 | $ 5,116.6 | $ 5,952.9 | $ 6,603.3 | $ 7,238.8 | $ 28,392.4 | $ 5,678.5 |
| 2 | Estimated Costs | $ 5,724.2 | $ 3,284.4 | $ 1,484.5 | $ 948.3 | $ 948.7 | $ 12,390.1 | $ 2,478.0 |
| 3 | Estimated Net Savings | $ (2,243.4) | $ 1,832.2 | $ 4,468.4 | $ 5,655.0 | $ 6,290.1 | $ 16,002.3 | $ 3,200.5 |
| 4 | Gross Savings Returned to Customers | $ 3,822.2 | $ 3,822.2 | $ 3,822.2 | $ 3,822.2 | $ 3,822.2 | $ 19,111.0 | |
| 5 | Amortization of Costs Collected from Customers | $ (2,478.0) | $ (2,478.0) | $ (2,478.0) | $ (2,478.0) | $ (2,478.0) | $ (12,390.0) | |
| 6 | Net Savings to Customers | $ 1,344.2 | $ 1,344.2 | $ 1,344.2 | $ 1,344.2 | $ 1,344.2 | $ 6,721.0 | |

# ATTACHMENT 2
## MERGER COMMITMENTS

1. 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 ULH&P and the books and records of any subsidiary of the new Duke Energy Corporation ("New Duke Energy") in which New Duke Energy holds a controlling interest, to the extent necessary to verify transactions with ULH&P. Applicants commit that ULH&P's, CG&E's, and Cinergy's books and records will be located in either in Cincinnati, Ohio, Plainfield, Indiana or Charlotte, North Carolina.

2. Applicants commit that ULH&P shall not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance any part of Duke Energy Corporation's ("Duke Energy") acquisition of Cinergy Corp.'s ("Cinergy") stock. ULH&P will loan and borrow money from affiliates only under the terms of the Duke Energy Regulated Money Pool Agreement ("Regulated MPA") and only with the parties to the agreement. Although Cinergy and New Duke Energy will be parties to the Regulated MPA, ULH&P will not make money pool loans or otherwise make loans to Cinergy or New Duke Energy or any affiliate that is not a party to the Regulated MPA.

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.

5. No change in control payments will be allocated to the retail customers of ULH&P for retail ratemaking purposes and for accounting purposes, unless inconsistent with SEC principles.

6. ULH&P commits to make an annual filing with the Commission that sets forth ULH&P's CATDI, SAIDI and SAIFI data for the previous year to enable the Commission to monitor ULH&P's commitment that reliability and service quality will not materially degrade as a result of the merger. ULH&P commits to report this data with and without the impact of major storms, or other major impacts, and to meet with the Commission upon request to review the data in such reports.

7. Following the merger, 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. ULH&P 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 CEO **has** annual meetings with the Commission, gas and electric operations personnel will also be present to discuss service reliability issues.

8. Applicants commit that they will not achieve merger savings at the expense **of** material degradation in the adequacy and reliability of ULH&P's retail gas and electric service.

9. Applicants commit that ULH&P shall continue to maintain a substantial level of involvement in community activities, through annual charitable and other contributions.

10. Applicants commit to maintaining ULH&P's pro-active stance on developing economic opportunities in Kentucky **and** supporting economic development activities throughout ULH&P's service territory.

11. Applicants commit that the accounting and reporting system used by ULH&P 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.

12. 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 ULH&P, complete details of the allocation methods, and justification for the amount and the method. 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 / NonUtility Companies Services Agreements and the Operating Companies Service Agreement approved as part of the Duke / Cinergy merger proceeding. Applicants commit to periodic comprehensive third-party independent audits **of** the affiliate transactions under the affiliate agreements approved in the Duke / Cinergy merger proceeding. Such audits will be conducted no less often than every two years, and reports will be filed with the Commission and the Attorney General. ULH&P shall file the audit report, if possible, when ULH&P files its annual report. Applicants may request **a** change to the frequency of the audit reports in future years, subject to agreement by the Commission and the Attorney General.

**13.** ULH&P commits to protect against cross-subsidization in transactions with affiliates.

14. **ULH&P** acknowledges that, for rate-making purposes, the Commission has jurisdiction over ULH&P's capital structure, financing, and cost of capital, **and** that the Commission will continue to exercise such jurisdiction.

15. Applicants commit that the merger will have no adverse impact on the base

rates or the operation of the fuel adjustment clause, gas supply clause, and demand side management clause of ULH&P.

16. In future rate cases ULH&P shall not seek a higher rate of return on equity than would have been sought if the merger had not occurred.

17. The accounting and rate-making treatments of ULH&P's excess deferred income taxes will not be affected by the merger of Cinergy and Duke Energy.

18. Cinergy and Duke Energy commit to take an active and ongoing role in managing and operating ULH&P in the interests of customers, employees, and the Commonwealth of Kentucky, and to take the lead in enhancing ULH&P'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. Applicants commit that, for a period of five years following the merger, ULH&P will advise the Commission at least annually on the adoption and implementation of best practices at ULH&P following the completion of the merger between Cinergy and Duke Energy.

20. Applicants commit to provide notification to 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 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 5 percent or more of Duke Energy's market capitalization.

22. Applicants commit that ULH&P will pay dividends only out of retained earnings. Applicants further commit to maintain a capital structure for ULH&P which contains a minimum of thirty-five percent equity.

23. Applicants commit that when ULH&P files its quarterly reports with the Commission, it shall include with that filing a schedule of the current capital structure and a schedule of any capital contribution made to ULH&P in the applicable quarter.

24. Applicants commit that customers will experience no adverse change in utility service due to the creation of Duke Energy Shared Services, LLC.

25. Applicants commit to: (a) adequately fund and maintain ULH&P's transmission and distribution system; (b) comply with all Commission regulations and statutes; and (c) supply ULH&P's customers' service needs.

26. When implementing best practices, 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.

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

28. ULH&P commits to notify the Commission in writing **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** 25% ULH&P's previous year's budget for research and development. The written notification will include **an** explanation and the reasons for the change in policy.

29. Applicants commit that ULH&P's local customer service office will not be closed **as** a result of the proposed merger and that, if and when local customer service offices may be closed to achieve best practices, the Applicants will take into account the impact of the closures on customer service.

**30.** Applicants commit to dedicating ULH&P's existing and future rate-based generation facilities to the first call requirements of its existing and future native load customers.

31. Applicants commit that within 60 days of the closing of any utility merger, disposition *or* acquisition in the United States that is exempted under KRS 278.020(5) and 278.020(6), ULH&P will **file** with the Commission a notice setting forth **an** analysis of any changes and implications for ULH&P's customers.

**32.** Applicants commit that CG&E will hold 100 percent of the common stock of ULH&P and that CG&E 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 278.020(6).

**33.** 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 CEO of ULH&P or its 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.** Applicants commit that ULH&P's President will reside within Kentucky or the Cincinnati metropolitan area.

35. Applicants commit that management talent will not be diverted from ULH&P to Duke Energy or any of its affiliates in **a** manner which threatens the continued efficient operation of ULH&P.

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 Utility 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.

37. ULH&P 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. ULH&P 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.** ULH&P will continue to have qualified **and** skilled customer service representatives available **24** hours a day, to respond to power outage calls. Customers will **also** have access to ULH&P's online services **and** automated telephone service, **24** hours **a** day, to perform routine interactions or to obtain general billing and customer information.

**39.** ULH&P will continue to staff qualified and skilled customer service representatives during core business hours to handle all types of customer inquiries, **and** will continue its commitment to a **Quality** Assurance process.

40. ULH&P 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 ULH&P can issue long-term debt, it must receive approval **of** the Commission.

**42.** ULH&P Will not guarantee the credit of any of its affiliates unless specifically approved by the Commission.

**43.** All debt **at** the New Duke Energy and Cinergy levels will be non-recourse to ULH&P.

**44.** Applicants commit that in the event the merger between Cinergy and Duke Energy is not consummated and Cinergy either makes a termination payment to Duke Energy or receives a termination payment from Duke Energy pursuant to The Agreement and Plan of Merger, then neither the cost of the termination payment nor the receipt of a termination payment would be allocated to ULH&P's books. Additionally, if the merger is not consummated, ULH&P's customers will not bear any costs of the failed transaction.

45. Applicants agree that the Commission's approval of "at-cost" pricing for the Utility Service Agreement, Services Agreements and Operating Companies Service Agreement does not preclude the Commission from asserting any pricing methodology at the FERC, if applicable, after the finalization of the reporting requirements in RM05-32-000 (Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Energy Policy Act of 2005 – Notice of Proposed Rulemaking).

46. Following the merger, the size of the resulting New Duke Energy will present the opportunity to consider whether separating the electric and gas pipeline businesses creates value. No determination has been made. The plans under consideration involve Duke Energy's interstate gas pipeline business, not CG&E's and ULH&P's retail gas businesses.