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**VIA OVERNIGHT DELIVERY**

October 4, 2005

Ms. Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602-0615

RECEIVED

OCT 05 2005

PUBLIC SERVICE  
COMMISSION

Re: 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

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Dear Ms. O'Donnell:

I have enclosed an original and twelve copies of the Joint Applicant's Requests for Information to Attorney General in the above-referenced case.

Please date stamp and return the two extra copies in the enclosed, self-addressed envelope.

If you have any questions, please do not hesitate to contact me at (513) 287-3601.

Sincerely,

John J. Finnigan, Jr.  
Senior Counsel

JJF/sew

cc: All parties of interest (w/encl.)

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RECEIVED

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 )

OCT 05 2005
PUBLIC SERVICE
COMMISSION

CASE NO. 2005-00228

JOINT APPLICANTS'
REQUESTS FOR INFORMATION
TO ATTORNEY GENERAL

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 ("Joint Applicants") requests that the
Attorney General ("AG") respond fully, in writing, and under oath to the following set of
interrogatories and requests for production of documents (collectively, the "Information
Requests").

DEFINITIONS AND INSTRUCTIONS

These Information Requests are continuing in nature. Therefore, with respect to
any of the following interrogatories or requests for production of documents as to which
AG or its counsel acquires additional knowledge or information, Joint Applicants ask that

AG immediately serve on the undersigned further answers fully setting forth any such additional knowledge or information.

When an interrogatory or request for production of documents does not specifically request a particular fact or document, but such fact or document is necessary to make the response comprehensive, complete, or not misleading, such interrogatory or request for production of documents shall be deemed to specifically request that fact(s) or document(s).

The requests for production of documents include, without limitation, all documents that are in the possession, custody, or control of AG and/or AG's predecessors, successors, parents, subsidiaries, divisions, officers, directors, employees, agents or representatives, including any and all documents obtained by AG and/or AG's representatives, counsel, or agents from any source whatsoever.

For the purposes of these Information Requests, unless otherwise stated, the following terms shall have the meanings indicated:

*Person* is any human being, corporation, association, joint venture, government, governmental agency, public corporation, board, commission, regulatory authority, committee, partnership, group, firm, or any other organization or entity cognizable at law; *Merger Proceeding* means the above-captioned matter and any other matters filed by Joint Applicants in the above-referenced docket of the Public Service Commission of Kentucky.

*You, your, or yours* means the AG, and any of AG's agents, representatives, employees, or counsel;

*Document* is intended to be comprehensive and includes, without limitation, the original and any non-identical copy, regardless of origin or location, of any data, correspondence, internal correspondence, statement, report, record book, record, account book, account, pamphlet, periodical, discovery, letter, memorandum, internal memorandum, telegram, telex, cable, study, stenographic or handwritten note, paper, working paper, facsimile, invoice, bill, voucher, check, statement, chart, graph, drawing, voice recording, tape, microfilm, microfiche, computer disk, floppy disk, tape data sheet, or data processing card or disk, electronic mail, or any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however stored, produced or reproduced, to which you have or have had access or which location is known to you;

The term *identify* when used with reference to a natural person, means to state: (a) that person's full name, (b) that person's present (or last known) position and business affiliation, (c) that person's present (or last known) residence address and telephone number, and (d) the nature of that person's past and present relationship with you;

The term *identify* when used with reference to an entity other than a natural person, means to state the full name, and present (or last known) address and telephone number of the entity;

The term *identify* when used with reference to a document, including any document relied upon in any answer to any interrogatory or request for production of documents, or that corroborates any such response, means to state: (a) the type of document, (b) its title or subject matter, (c) the date of the document, (d) the identity of the document's author, sender, and every recipient of the document or of a copy thereof, and (e) the present location and custodian of the document and every known copy

thereof. When the document is a written agreement or contract, *identify* also means to state the date such written agreement or contract was entered into and its effective date, the name of each party thereto, the identity of each person who signed such agreement on behalf of each party thereto, the date of termination and the date of every amendment or modification thereto;

*Relating to* means constituting, defining, containing, mentioning, embodying, reflecting, regarding, referencing, identifying, stating, concerning, referring to, dealing with, generated wholly or partly in response to or because of, or in any way pertaining to.

If any information called for by an interrogatory or request for production of documents is withheld on the basis of a claim of privilege, the nature of the information with respect of which privilege is claimed shall be set forth in answers hereto, together with the type of privilege claimed and a statement of all circumstances upon which plaintiff will rely to support such a claim of privilege. Any documents that are allegedly privileged or otherwise unavailable shall be identified in writing by indicating the following:

- (1) the date of the document;
- (2) the author of the document;
- (3) the recipient(s) of the document;
- (4) the general subject matter of the document;
- (5) the identity of any and all persons to whom the contents of the document have already been revealed;
- (6) the identity of the person or entity now in possession or control of the document; and
- (7) the basis upon which the document is being withheld or the reason why it cannot be produced.

Joint Applicants expressly reserve the right to request more information to determine whether such documents are privileged or otherwise not subject to production.

### **REQUESTS FOR INFORMATION**

1. Reference Mr. Rubin's testimony at page 2, lines 21-23. Produce a copy of each article, section of a book, speech, and presentation referred to.

2. Reference Mr. Rubin's testimony at page 3, lines 12-26. Produce a copy of Mr. Rubin's testimony in each of these four proceedings, and a copy of any commission order in such proceedings which relates or refers to Mr. Rubin's testimony.

3. Reference Mr. Rubin's testimony at page 4, lines 3-11. Produce a copy of Mr. Rubin's testimony in these proceedings, and a copy of any commission order in such proceedings which relates or refers to Mr. Rubin's testimony.

4. Has Mr. Rubin reviewed the Energy Policy Act of 2005 ("EPAAct of 2005")?

5. If the answer to the preceding information request is in the affirmative, please describe the provisions of the EPAAct of 2005 which apply to affiliate transactions between a utility and holding company affiliates?

6. If the answer to information request no. 4 is in the affirmative, did Mr. Rubin review the EPAAct of 2005 prior to preparing his testimony in this proceeding?

7. Has Mr. Rubin reviewed the FERC's rulemaking on cash management practices between utilities and holding company affiliates (RM02-14-000, RM02-14-001, Order No. 634-A)?

8. If the answer to the preceding information request is in the affirmative, please state whether the stated purpose of this rulemaking is to develop rules relating to cash

management reporting and documentation for transactions relating to cash management agreements between utilities and holding company affiliates.

9. If the answer to information request no. 7 is in the affirmative, did Mr. Rubin review the rulemaking on cash management practices between utilities and holding company affiliates prior to preparing his testimony in this proceeding?

10. Does Mr. Rubin agree that, even with the repeal of the Public Utility Holding Company Act of 1935, a utility will still be prohibited under 16 U.S.C. 824d(a) from making or paying any dividends from any funds properly included in the utility's capital account?

11. If the answer to information request no. 10 is in the affirmative, does Mr. Rubin agree that this statute helps assure that a utility is properly capitalized.

12. Does Mr. Rubin agree that §1275 of the EPCRA of 2005 provides that FERC can review the allocation of costs for the provision of non-power goods and services by a service company to a utility, at the election of either a state commission with jurisdiction over the utility, or at the election of the utility?

13. If the answer to information request no. 12 is in the affirmative, does Mr. Rubin agree that this statute helps assure that non-power goods and services provided by a service company to a utility company are priced reasonably?

14. Does Mr. Rubin agree that §§ 1264 and 1265 of the EPCRA of 2005 provide that both the FERC and state utility commissions can have access to the books and records of a holding company and its affiliates as necessary to investigate the costs incurred by a utility?

15. If the answer to information request no. 14 is in the affirmative, does Mr. Rubin agree that this statute helps assure that non-power goods and services provided by a service company to a utility company are priced reasonably?

16. Has Mr. Rubin reviewed the FERC's rulemaking on reporting practices for utilities and holding company affiliates (RM05-32-000)?

17. If the answer to the preceding information request is in the affirmative, please state whether the stated purpose of this rulemaking is to develop rules relating to reporting to FERC various aspects of utilities' and holding companies' operations, financial condition, and/or affiliate transactions.

18. If the answer to information request no. 17 is in the affirmative, did Mr. Rubin review the rulemaking on reporting practices for utilities and holding company affiliates prior to preparing his testimony in this proceeding?

19. Did Mr. Rubin review the testimony of Mr. Thomas J. Flaherty on behalf of Joint Applicants prior to preparing his testimony?

20. Does Mr. Rubin agree that Mr. Flaherty estimates the following:

(a.) \$2.1 billion in gross merger savings over the first five years following the merger (Flaherty testimony at p. 8, lines 7-10);

(b.) the level of gross merger savings by the end of the five-year period is \$509 million annually (Flaherty testimony at p. 7, Table 1, "Total Gross Savings" for Year 5);

(c.) the level of gross merger savings by the end of the five-year period is representative of the level of ongoing savings and can be used as a reasonable



determination of both annual and cumulative savings (Flaherty testimony at p. 19, lines 1-3);

21. Does Mr. Rubin agree that, based on Mr. Flaherty's testimony as set forth in information request no. 20, the gross merger savings for years six through ten are projected at \$2.545 billion (\$509 million annually, identified in sub-part (b), above, times five years)?

22. Does Mr. Rubin agree that, based on Mr. Flaherty's testimony as set forth in information request nos. 19 and 20, the ten-year gross merger savings are projected at approximately \$4.6 billion (\$2.1 billion for the first five years, plus \$2.545 billion for years six through ten)?

23. Does Mr. Rubin agree that the gross merger savings of approximately \$4.6 billion over ten years supported by Mr. Flaherty's testimony and as set forth in information request nos. 20-22 are roughly equal to the \$4.6 billion in gross merger savings over ten years discussed in the Duke Board minutes and the "synergy study" referred to at page 14, lines 3-15 of Mr. Rubin's testimony?

24. Does Mr. Rubin agree that the "synergy study" referred to beginning at page 14 of his testimony was filed by Joint Applicants in this proceeding on or about September 30, 2005?

25. Does Mr. Rubin agree that the "synergy study" supports merger savings that are comparable to the level of merger savings that they have stated publicly and that they provided in the record of this case prior to September 30, 2005?

26. If the answer to information request no. 25 is in the affirmative, does Mr. Rubin agree that Duke has “honestly provided relevant information in a truthful manner” on this point, and that his suggestion at page 15, lines 3-17 to the contrary is unfounded?

27. If the answer to information request no. 25 is in the affirmative, does Mr. Rubin agree that Duke has the financial, managerial and technical abilities to ensure that ULH&P continues to provide adequate and reliable service, and that the transfer is being made for a proper purpose and is otherwise consistent with the public interest?

28. Has the Attorney General ever asserted any claim of attorney-client privilege in a legal proceeding to which he has been a party?

29. Mr. Rubin recommends in Condition No. 1 that the Commission should require ULH&P to fully disclose all uses of ULH&P personnel, assets and equipment for any unregulated purposes, including the fully allocated cost of such personnel, assets and equipment. Does Mr. Rubin agree that, to the extent ULH&P is required to file a cost allocation manual, this type of information is required under KRS 278.2205?

30. If the answer to the preceding information request is in the affirmative, was Mr. Rubin aware prior to preparing his testimony that this type of information is required under KRS 278.2205?

31. Is Mr. Rubin aware that ULH&P files annual reports with the Commission which provide information about ULH&P’s cost allocation methodologies?

32. Is Mr. Rubin aware that, under the proposed Service Company Utility Service Agreement between ULH&P and Duke Energy Shared Services, LLC, ULH&P would request services from Duke Energy Shared Services through written service requests

which would document the type of service and the estimated cost, and which would be available for review by the Commission and other stakeholders in rate proceedings?

33. Mr. Rubin recommends in Condition No. 2 that the Commission should require ULH&P to obtain a CPCN prior to the sale or transfer of land, regardless of value. Is Mr. Rubin aware of any other utility which is required to do so?

34. If the answer to the preceding information request is in the affirmative, please identify the utility and provide a copy of the statute, rule, or commission order which imposed such requirement.

35. Is Mr. Rubin aware that KRS 278.218 requires Commission approval prior to the sale of utility assets with original book value in excess of \$1 million dollars, under certain circumstances?

36. If the answer to the preceding information request is in the affirmative, was Mr. Rubin aware of this requirement prior to preparing his testimony?

37. Mr. Rubin recommends in Condition No. 3 that ULH&P from should be prohibited from including in rates any portion of the acquisition premium or goodwill related to the merger. Is Mr. Rubin aware that Joint Applicants have already committed to this in Item Nos. 3 and 4 of Attachment GCF-1 to Mr. Ficke's testimony?

38. If the answer to the preceding information request is in the affirmative, was Mr. Rubin aware of this commitment prior to preparing his testimony?

39. If the answer to information request no. 37 is in the affirmative, why did Mr. Rubin recommend Condition No. 3, given that it is redundant of Joint Applicants' commitments in Item Nos. 3 and 4 of Attachment GCF-1 to Mr. Ficke's testimony?

40. Mr. Rubin recommends in Condition No. 5 that the Commission should require ULH&P to obtain a CPCN prior to pledging its stock for any purpose. Is Mr. Rubin aware that this is already required under KRS 278.020, in that the statute requires Commission approval prior to a transfer of control of ULH&P?

41. Mr. Rubin recommends in Condition No. 6 that the Commission should require ULH&P to include in its annual report to the Commission copies of its requested and approved construction budgets for the then-current year, with an explanation of any variance and the impacts on customer service. Is Mr. Rubin aware of any other utility which is required to do so?

42. If the answer to the preceding information request is in the affirmative, please identify the utility and provide a copy of the statute, rule, or commission order which imposed such requirement.

43. Mr. Rubin recommends in Condition No. 7 that the Commission should require ULH&P to report to the Commission within five business days any downgrading of the bonds of ULH&P, Cinergy, CG&E or New Duke, with a copy of the rating agency's report. Is Mr. Rubin aware of any other utility which is required to do so?

44. If the answer to the preceding information request is in the affirmative, please identify the utility and provide a copy of the statute, rule, or commission order which imposed such requirement.

45. Mr. Rubin recommends in Condition No. 9 that the Commission should require Cinergy, CG&E and New Duke to commit that no capital investment shall have a higher priority than the capital requirements, including working capital, of ULH&P. Is

Mr. Rubin aware of any other utility holding company which is required to do so, aside from the cases listed at pages 22-23 of his testimony?

46. If the answer to the preceding information request is in the affirmative, please identify the utility and provide a copy of the statute, rule, or commission order which imposed such requirement.

47. Mr. Rubin recommends in Condition No. 11 that the Commission should prohibit ULH&P from paying any dividend in excess of 80% of its earnings attributable to common equity in the current year. Is Mr. Rubin aware of any other utility which is prohibited from doing so, aside from the cases listed at pages 22-23 of his testimony?

48. If the answer to the preceding information request is in the affirmative, please identify the utility and provide a copy of the statute, rule, or commission order which imposed such restriction.

49. Is Mr. Rubin aware that, under ULH&P's current SEC-approved Utility Service Agreement, Cinergy Services recovers its costs of capital from ULH&P on services provided by Cinergy Services?

50. If the answer to the preceding information request is in the affirmative, why does Mr. Rubin recommend that the Commission should discontinue this practice which has been in effect since the 1994 Cinergy merger?

51. Mr. Rubin recommends in Condition No. 14 that the Commission should require a direct ULH&P employee to investigate the cost/availability of comparable services from unaffiliated providers prior to ULH&P requesting the service from Duke Services. Is Mr. Rubin aware of any other utility which is required to do so?

52. If the answer to the preceding information request is in the affirmative, please identify the utility and provide a copy of the statute, rule, or commission order which imposed such requirement.

53. Mr. Rubin recommends in Condition No. 19 that the Commission should prohibit ULH&P from entering into a service agreement which would allow ULH&P to pay any operating costs for its ultimate corporate parent. Is Mr. Rubin aware of any other utility which is prohibited from doing so?

54. If the answer to the preceding information request is in the affirmative, please identify the utility and provide a copy of the statute, rule, or commission order which imposed such restriction.

55. Mr. Rubin recommends in Condition No. 20 that the Commission should prohibit ULH&P from entering into a service agreement which would count a combination customer as two customers. Is Mr. Rubin aware of any other utility which is prohibited from doing so?

56. If the answer to the preceding information request is in the affirmative, please identify the utility and provide a copy of the statute, rule, or commission order which imposed such restriction.

57. Please provide the calculation which led Mr. Rubin to derive the \$3.2 billion figure for gross merger savings, at Table 2 of his Attachment SJR-1.

58. Mr. Rubin recommends at page 47 of his testimony that the merger savings credit should remain in effect for a minimum of four years, regardless of whether ULH&P files a base rate case during that time. Does Mr. Rubin agree that if ULH&P were to file a base rate case prior to that time, then ULH&P's customers would receive a

greater amount than the actual net merger savings allocable to ULH&P which Mr. Rubin himself recommends?

59. If the answer to the preceding information request is in the affirmative, what is Mr. Rubin's basis for recommending that ULH&P's customers should receive such excess amount of net merger savings?

60. Mr. Rubin recommends that the Commission should not approve this application until after the shareholders of both companies have approved the merger. Is Mr. Rubin aware that the Commission has previously approved other utility mergers without imposing this requirement?

61. Reference Mr. Rubin's discussion of Internal Revenue Code § 482 beginning at page 28 of his testimony. Does Mr. Rubin understand that Internal Revenue Code § 482 relates to how ULH&P and Duke Energy Shared Services, LLC will report transactions for tax purposes, not for ratemaking purposes?

62. Reference Mr. Rubin's discussion of Internal Revenue Code § 482 beginning at page 28 of his testimony. Does Mr. Rubin understand that, per Mr. Blackwell's statement at page 4, line 22 to page 5, line 2, the Joint Applicants propose that, "notwithstanding the Section 482 exception, for ratemaking purposes, services will be rendered to ULH&P at cost, as is the current practice under the existing service agreement between Cinergy Services, Inc. and ULH&P.

63. Reference page 40 of Mr. Rubin's testimony. Please identify the utility and provide a copy of the order in any other merger proceeding in which either retention costs, relocation costs, regulatory process costs or internal/external communication costs

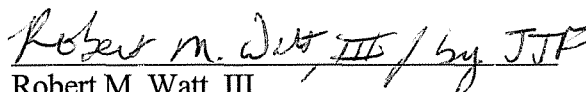
were not included as part of the costs-to-achieve merger savings recovered from customers.

64. Reference page 41 of Mr. Rubin's testimony. What is Mr. Rubin's understanding as to whether the Ernst & Young and the May 9, 2005 presentation to analysts were discussing capitalizing versus expensing of merger savings and costs-to-achieve for financial accounting purposes, or for ratemaking purposes? Please provide the basis for your understanding.

65. Reference page 41 of Mr. Rubin's testimony. What is Mr. Rubin's understanding as to what percentage of the merger savings have been capitalized by Mr. Flaherty for purposes of calculating the net merger savings to be flowed to customers through the merger savings mechanism. Please provide the basis for your understanding.

Respectfully submitted,

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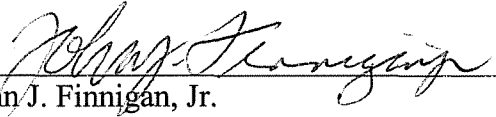
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Request For Information Propounded to the Attorney General by The Union Light, Heat and Power Company was served on the following parties, by e-mail and by overnight mail this 4th day of October, 2005.

  
\_\_\_\_\_  
John J. Finnigan, Jr.

Hon. Dennis G. Howard, II  
Acting Director  
Office of Rate Intervention  
Hon. David E. Spenard  
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