

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF DUKE ENERGY)
CORPORATION, CENERGY CORP., DUKE)
ENERGY OHIO, INC., DUKE ENERGY) CASE NO.
KENTUCKY, INC., DIAMOND ACQUISITION) 2011-00124
CORPORATION, AND PROGRESS ENERGY,)
INC., FOR APPROVAL OF THE INDIRECT)
TRANSFER OF CONTROL OF DUKE ENERGY)
KENTUCKY, INC.)

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CORPORATION, CINERGY CORP., DUKE ENERGY)	
OHIO, INC., DUKE ENERGY KENTUCKY, INC.,)	CASE NO.
DIAMOND ACQUISITION CORPORATION, AND)	2011-00124
PROGRESS ENERGY, INC., FOR APPROVAL OF)	
THE INDIRECT TRANSFER OF CONTROL OF)	
DUKE ENERGY KENTUCKY, INC.)	

O R D E R

On April 4, 2011, 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 “Applicants”) tendered for filing a joint application pursuant to KRS 278.020(5) and 278.020(6) for approval of the indirect transfer of ownership and control of Duke Kentucky in accordance with the terms of a January 8, 2011 Agreement and Plan of Merger. The application also requested that the Commission (1) approve five amended affiliate agreements, (2) find that the Applicants other than Duke Kentucky and other intermediates or affiliates between Duke and Duke Kentucky are not utilities subject to our jurisdiction, (3) find that KRS 278.218 and 807 KAR 5:011, Section 11, do not apply to the proposed transaction, and (4) provide notice to the Federal Energy Regulatory Commission (“FERC”) and other applicable federal or state regulatory agencies that we have approved the proposed transaction.

Duke, an energy and utility holding company with its headquarters in Charlotte, North Carolina, is one of the largest utility companies in the United States. It owns or

controls more than 35,000 megawatts of electric generating capacity in the U.S., and supplies or delivers electricity and natural gas to approximately 4.5 million customers in the U.S. It is a Fortune 500 company with approximately \$12.7 billion in annual revenues.

Duke is the owner of Cinergy, which owns Duke Ohio, which, in turn, owns Duke Kentucky. Duke is the sole owner of Diamond, a corporation created specifically to accomplish the acquisition of Progress. Progress, an energy and utility holding company headquartered in Raleigh, North Carolina, is a Fortune 500 company with more than 22,000 megawatts of electric generating capacity in the U.S. It serves approximately 3.1 million electric customers in North Carolina, South Carolina and Florida and has approximately \$10 billion in annual revenues.

By Order entered on April 21, 2011, the Commission established a procedural schedule which provided for two rounds of discovery, intervenor testimony, discovery on the intervenor testimony, and a public hearing. That Order also found good cause to continue our review and consideration of this application for an additional 60 days beyond the initial 60 days, as permitted under KRS 278.020(6). The only intervenor in this matter is the Kentucky Attorney General through his Office of Rate Intervention ("AG"). The Applicants were subject to two rounds of discovery by the AG and three rounds of discovery by the Commission Staff. The AG did not file testimony.

At the request of the Applicants, informal conferences were held at the Commission's offices on May 19, June 8, and June 17, 2011. Subsequent to the June informal conferences, on June 24, 2011, Applicants and the AG filed a unanimous Settlement Agreement, Stipulation and Recommendation ("Settlement Agreement"),

which is attached to this Order as Appendix A.¹ An evidentiary public hearing was held on July 8, 2011 at the Commission's offices in Frankfort, Kentucky.

OVERVIEW OF THE TRANSACTION

Pursuant to the January 8, 2011 Agreement and Plan of Merger, each share of Progress common stock will be converted into the right to receive 2.6125 shares of Duke common stock. This exchange rate will be adjusted to reflect a one-for-three reverse stock split with respect to Duke's common stock, which will be implemented prior to the closing of the merger. Shareholders of Progress stock will receive Duke stock to reflect their ownership in the combined company. Upon completion of the merger, Duke's current shareholders will own approximately 63 percent of the common stock of the combined company while current Progress shareholders will own approximately 37 percent of Duke's common stock.

Upon completion of the merger, the combined company will be headquartered in Charlotte, North Carolina. Duke will continue to own Cinergy, which will continue to own Duke Ohio, which will continue to own Duke Kentucky. According to the application, the merger will not impact the corporate structure or local operations of Duke Kentucky.

Duke Kentucky and many of its affiliates are parties to Commission-approved service agreements that permit transactions to occur between the parties under defined pricing terms and conditions. The Applicants are requesting approval of revisions that reflect the addition of Progress as a party to the following affiliate agreements: (1) Service Company Utility Service Agreement; (2) Operating Companies Service

¹ Testimony in support of the Settlement Agreement was filed by the Applicants on June 27, 2011.

Agreement; (3) Utility Money Pool Agreement;² (4) Intercompany Asset Transfer Agreement; and (5) Tax Sharing Agreement.

STATUTORY STANDARD FOR MERGER

Under KRS 278.020(5), no person may acquire or transfer control of a utility until the Commission has determined that the acquirer has the financial, technical, and managerial abilities to provide reasonable service. In addition, under KRS 278.020(6), no individual may acquire control of a utility unless the Commission has determined that the acquisition is made in accordance with the law, for a proper purpose, and is consistent with the public interest.

APPLICANTS' COMMITMENTS

In their application, the Applicants offered to adhere to 41 commitments ("Regulatory Commitments") relating to rates or service in conjunction with the Commission's approval of the proposed transaction.³ These Regulatory Commitments reflected the majority (41 of 46) of the commitments imposed by the Commission in 2005 in conjunction with its approval of the Duke-Cinergy merger, Case No. 2005-00228.⁴ The five commitments which the Applicants stated should not be continued in conjunction with the Duke-Progress merger were Commitment No. 4, which related to

² The amended money pool agreement contained in the application was updated by the Applicant's filing of April 29, 2011.

³ The Applicants' 41 commitments were contained in Exhibit L of the application, the Direct Testimony of Julia S. Janson.

⁴ Case No. 2005-00228, Joint Application of Duke Energy Corporation, Duke Energy Holding Corp., Deer Acquisition Corp., Cougar Acquisition Corp., Cinergy Corp., The Cincinnati Gas and Electric Company and The Union Light, Heat and Power Company for Approval of an Acquisition and Transfer of Control (Ky. PSC. Nov. 29, 2005).

push-down accounting; Commitment No. 6, which related to Duke Kentucky filing a number of reports on its service reliability and quality, reports that are now filed by all jurisdictional electric utilities pursuant to our Order in another case; Commitment No. 29, which related to not closing Duke Kentucky customer service centers; Commitment No. 45, which related to our ability to assert any pricing methodology in a future FERC proceeding in conjunction with inter-company transactions between Duke Kentucky and its affiliates; and Commitment No. 46, which related to Duke's interstate gas pipeline business.

In response to Commission Staff's data request, Applicants clarified various of their Regulatory Commitments; agreed to continue Commitment No. 4 to apply to any acquisition premium paid by Duke for the Progress stock; split Commitment No. 12 into two Commitments, Nos. 11 and 12; agreed to modify Commitment No. 23 to reflect the filing of certain monthly financial statements with the Commission; agreed to a new commitment, which has become Commitment No. 24, which relates to Duke Kentucky abiding by other regulatory jurisdictions in the approvals of the Duke-Progress merger; agreed to continue Commitment No. 45 in a modified form which eliminated references to the repeal of the Public Utility Holding Company Act of 1935 and the enactment of the Energy Policy Act of 2005; and agreed to a new commitment related to examining policies that may be more sympathetic to low-income customers.⁵

⁵ The updated Regulatory Commitments are contained in Exhibit A to Appendix A of this Order, which is the June 24, 2011 Settlement Agreement filed by the parties.

SETTLEMENT AGREEMENT

The Applicants and the AG have characterized their Settlement Agreement as addressing all pertinent matters at issue in this proceeding and representing a fair, just and reasonable resolution of all of the issues in this proceeding.

The major provisions of the Settlement Agreement, which is attached hereto and incorporated herein as Appendix A to this Order, are as follows:

- 1) Duke Kentucky will not file new gas or electric base rate applications for two years from the date of a final Order approving the proposed indirect transfer of control. This provision does not apply to future deferrals of extraordinary costs, requests for emergency rate relief pursuant to KRS 278.190(2), adjustments to Duke Kentucky's cost recovery surcharge mechanisms, or the future establishment of an environmental surcharge mechanism pursuant to KRS 278.183.
- 2) Applicants will make five annual shareholder contributions of \$115,000 each to support low-income weatherization efforts within Duke Kentucky's service territory. Contributions will go to People Working Cooperatively or to another entity to be determined by Duke Kentucky and the AG. Such contributions will not be recovered from Duke Kentucky's ratepayers.
- 3) Applicants will make five annual shareholder contributions of \$50,000 each to support economic development within the service territory of Duke Kentucky. The contributions will be made to one or more non-profit entities as shall be agreed upon by Duke Kentucky

and the AG. These contributions will not be recovered from Duke Kentucky's ratepayers.

The Commission has thoroughly reviewed the Settlement Agreement and we compliment the Applicants and the AG on the results they achieved. We find that the Settlement Agreement represents a reasonable resolution to the issues surrounding the proposed acquisition and should be approved. While the Commission finds that the Settlement Agreement should be approved, we believe the evidence of record requires that we address the following issues which are not addressed or only partially addressed therein.

ADDITIONAL ISSUES

Commitment No. 8 of the Application

In the application, Commitment No. 8 as carried forward from our approval of the Duke-Cinergy merger required that the applicants commit to not achieve merger savings at the expense of a material degradation of the adequacy and reliability of Duke Kentucky's service. [Emphasis added.] The Commission believes that the achievement of merger savings at the expense of any degradation of the adequacy and reliability of service would be unacceptable and, thus, the word "material" should be stricken from the commitment, which is now Commitment No. 7 in Appendix B to this Order.

Commitment No. 23 of the Application

In the application, Commitment No. 23, also as carried forward from our approval of the Duke-Cinergy merger, required that the quarterly reports filed here by Duke Kentucky include a schedule of its current capital structure and a schedule of any capital contribution made to Duke Kentucky in the applicable quarter. During this

proceeding, Duke Kentucky agreed to file with the Commission separate gas and electric income statements and a combined gas and electric balance sheet for each of the eight months it does not make the quarterly filings.⁶ However, in the updated Regulatory Commitments attached to the Settlement Agreement, Commitment No. 23 was revised to require monthly reports but not the quarterly reports that had been filed previously.

At the public hearing, Duke Kentucky confirmed that, due to an oversight, the wording of Commitment No. 23 was in error. It also reaffirmed its agreement to include separate gas and electric income statements and a combined gas and electric balance sheet in the monthly reports for each of the months it does not file quarterly reports.

Demand-Side Management

In several cases it has decided in recent years, the Commission has stated its belief that conservation, energy efficiency and demand-side management (“DSM”) programs are very important and that such programs will become more cost-effective as additional restrictions are placed on coal-fired generation.⁷ In our decisions in those proceedings, we encouraged the applicant utility and “all other electric energy providers

⁶ See Applicants’ Response to Commission Staff’s Initial Information Request, Item 18.

⁷ Case No. 2008-00254, Grayson Rural Electric Cooperative Corporation (Ky. PSC Jun. 3, 2009); Case No. 2008-00030, Farmers Rural Electric Cooperative Corporation (Ky. PSC Jun. 10, 2009); and Case No. 2010-00222, Meade County Rural Electric Cooperative Corporation (Ky. PSC Feb. 17, 2011).

to make a greater effort to offer cost-effective DSM and other energy efficiency programs....”⁸

The Commission recognizes that, for many years, Duke Kentucky has offered a substantial menu of energy efficiency and DSM programs to its customers. We believe, however, that these types of programs have become increasingly important as stricter environmental regulations are being promulgated that will impact the cost of electric generation. Therefore, we find that an additional regulatory commitment is appropriate to ensure that Duke Kentucky continues to offer and aggressively pursue and deploy cost-effective DSM and energy efficiency best-practice programs to its customers. This additional commitment is set forth as No. 47 in Appendix B.

Duke Board of Directors

Duke currently has 11 members on its Board of Directors, while Progress currently has 14 members on its board. Post-merger, the reconstituted Board of Directors will consist of 18 members, 11 being elected by the Duke shareholders and 7 being elected by the Progress shareholders. Duke has no existing requirements that any Board members be customers of its utilities or that any Board members reside in the geographic territories within which it provides utility service. Duke indicated that it seeks the most highly qualified candidates to serve on its Board, without regard to their place of residency.

At this time, Duke’s Midwest utilities serve just over 2.0 million customers, including roughly 500,000 gas customers served by Duke Ohio and Duke Kentucky.

⁸ The Commission’s emphasis on conservation, energy efficiency and demand-side management is in keeping with the November 2008 report entitled “Intelligent Energy Choices for Kentucky’s Future” which sets out Governor Steve Beshear’s energy policy for the Commonwealth.

Duke's customer count in North Carolina and South Carolina totals approximately 2.4 million. Thus, Duke's Midwest customers now account for almost 45.5 percent of Duke's regulated service. Post-merger, Duke will serve approximately 7.5 million customers, with its Midwest operations accounting for 26.6 percent of that total. While Duke's Midwest operations will continue to represent a sizable portion of its post-merger business, the Commission is concerned that there are presently no requirements to ensure that Duke's Midwest customers have at least one voice and one vote on its new Board. For this reason, we find that there needs to be a commitment by the Applicants 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. This additional commitment is set forth as No. 48 in Appendix B.

Merger Costs

In the Direct Testimony of William Don Wathen, pages 6-7, he states that "costs to achieve the merger savings will not be included in any test year for recovery in electric or gas rates by Duke Energy Kentucky." On April 29, 2011, an errata was filed by Applicants to add the phrase "without Commission approval" to Mr. Wathen's statement. By Order of May 9, 2011, the Commission rejected the filing of the errata and advised the Applicants that the errata could be adopted only by filing an amendment to their application. The Applicants chose to not file an amendment. Based on the record, the Commission finds that no merger costs should be recovered from Duke Kentucky ratepayers and that this statement should be added as a merger commitment. This commitment is set forth as No. 49 in Appendix B.

Additional Issues – Summary

With restatement of Regulatory Commitment Nos. 7 and 23, as discussed above, and the addition of three new commitments, Regulatory Commitments Nos. 47, 48 and 49, which address DSM, the make-up of the Duke board of directors, and merger costs, a complete list of all the commitments, or conditions, which the Commission finds are reasonable and necessary in order to approve the proposed merger, is attached hereto as Appendix B.

SUMMARY OF FINDINGS

The Commission, after consideration of the evidence of record and being otherwise sufficiently advised, finds that:

1. Duke Kentucky will, after the consummation of the Duke-Progress merger, have the financial, technical, and managerial abilities to provide reasonable electric and gas utility service.
2. The proposed acquisition of Progress by Duke and the associated indirect transfer of control of Duke Kentucky resulting from this transaction is in accordance with law, for a proper purpose, and will be consistent with the public interest only if the Applicants accept and agree to the commitments and conditions set forth in Appendix B, attached hereto and incorporated herein by reference.
3. Duke, Cinergy, Duke Ohio, Diamond, Progress, or any other intermediate or affiliate between Duke and Duke Kentucky, will not, by reason of the Duke-Progress merger, be utilities as defined in KRS 278.010(3).

4. As the Duke-Progress merger results in an indirect transfer of Duke Kentucky in its entirety, rather than a transfer of control of the assets of Duke Kentucky, KRS 278.218 does not apply to the transaction.

5. As the Duke-Progress merger does not result in any change in the utility operating in Kentucky or any change in Duke Kentucky's rates, rules, classifications, or administrative regulations, 807 KAR 5:011, Section 11, does not apply to the transaction.

6. The acquisition should be approved on the condition that the Chief Executive Officers of Duke, Cinergy, Duke Ohio, Duke Kentucky, Diamond and Progress file, within seven days of the date of this Order, a written acknowledgement accepting, and agreeing to be bound by, all of the commitments set forth in Appendix B, attached hereto and incorporated herein by reference.

7. The affiliate agreements as amended to add Progress and as filed in this case should be approved.

8. Duke Kentucky should provide copies of the final approval orders or other notifications received from FERC, the United States Department of Justice, the Federal Communications Commission, the Nuclear Regulatory Commission, the North Carolina Utilities Commission, and the South Carolina Public Service Commission, to the extent these documents have not already been provided in this case.

9. While it may be the Applicants' desire that this approval be communicated to FERC and other applicable federal and state regulatory agencies, it is not the Commission's responsibility to provide such communication. The Applicants will need to provide copies of this Order to those agencies.

IT IS THEREFORE ORDERED that:

1. 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 Finding No. 6 above.

2. The affiliate agreements as amended to add Progress and as filed in this case are approved.

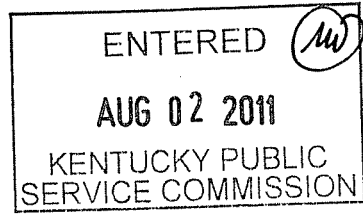
3. Duke Kentucky shall file copies of the final approval orders, or other notifications received from FERC, the United States Department of Justice, the Federal Communications Commission, the Nuclear Regulatory Commission, the North Carolina Utilities Commission, and the South Carolina Public Service Commission within 10 days of their receipt.

4. Twenty days after the date of this Order and every 20 days thereafter, the Applicants shall file a written report on the status and expected closing date of the acquisition approved herein.

5. Within five days of the consummation of the acquisition, Duke Kentucky shall file a written notice with the Commission setting forth the date of acquisition.

6. Any documents filed in the future pursuant to ordering paragraphs 1, 2, 3, 4, and 5 herein shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:

Stephanie Bell for Jeff Duvon
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2011-00124 DATED **AUG 02 2011**

RECEIVED

Stipulation and Settlement Agreement

JUN 24 2011

PUBLIC SERVICE
COMMISSION

This Stipulation and Settlement Agreement is entered into and effective as of this 24th day of June, 2011 (the "Stipulation and Settlement Agreement"), by and between JACK CONWAY, Attorney General of the Commonwealth of Kentucky, by and through his duly authorized representatives in the Office of the Attorney General's Division of Rate Intervention (the "Attorney General"), and DUKE ENERGY CORPORATION ("Duke Energy"), CINERGY CORP. ("Cinergy"), DUKE ENERGY OHIO, INC. ("Duke Energy Ohio"), DUKE ENERGY KENTUCKY, INC. ("Duke Energy Kentucky"), DIAMOND ACQUISITION CORPORATION ("Diamond") and PROGRESS ENERGY, INC. ("Progress Energy") (collectively, the "Joint Applicants"). The Attorney General and Joint Applicants are collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS the Joint Applicants filed their Application and testimony in *In the Matter of: The 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.*, with the Kentucky Public Service Commission ("Commission") on April 4, 2011, and the case was docketed as Case No. 2011-00124 (the "Transfer Case"); and

WHEREAS the Attorney General was granted leave by the Commission to intervene in the Transfer Case; and

WHEREAS the Parties have diligently negotiated and reached an agreement regarding the reasonable terms and regulatory conditions which the Parties believe should apply to and

support the Commission's approval of the transaction set forth in the Transfer Case Application;
and

WHEREAS the Parties agree that this Stipulation and Settlement Agreement, viewed in its entirety, constitutes a fair, just and reasonable resolution of all the issues in the Transfer Case;
and

WHEREAS the Parties agree that following the completion of the merger transaction described in the Transfer Case Application, Duke Energy shall continue to possess the financial, technical and managerial abilities to ensure that Duke Energy Kentucky provides reasonable service as required by KRS 278.020(5); and

WHEREAS the Parties agree that the resolution of the Transfer Case in accordance with the terms and conditions set forth herein is for a public purpose, in accordance with law and consistent with the public interest as required by KRS 278.020(6); and

WHEREAS the Parties recognize that this Stipulation and Settlement Agreement is nonbinding upon the Commission, but simply constitutes an agreement by and between themselves, and that the Commission may inquire about and consider any issues arising from or relating to the Transfer Case as part of the formal proceeding scheduled to commence on or about July 8, 2011; and

WHEREAS the Parties desire to document and record said terms and conditions of their agreement herein;

NOW, THEREFORE, in consideration of the premises and conditions set forth herein, the Parties do hereby agree and stipulate as follows:

ARTICLE I – BASE RATE CASE STAY OUT COMMITMENT

1.01 Base Rate Case Stay Out. Except as noted in Section 1.02 herein, Duke Energy Kentucky agrees to not file an application for approval of a base rate increase for either its retail electric or natural gas businesses for two years from the date of the Commission’s entry of a final order approving the indirect transfer of control of Duke Energy Kentucky in the Transfer Case. Duke Energy Kentucky may file its notice of intent to file a base rate application sooner than two years from the date of the Commission’s final order in the Transfer Case.

1.02 Exceptions. Notwithstanding the base rate case stay out commitment set forth in Section 1.01, Duke Energy Kentucky shall retain the right to seek the approval from the Commission of:

a) the deferral of extraordinary and uncontrollable costs (e.g., ice, wind storm, etc.), but excluding any costs related to the transfer of indirect control transaction that is the subject matter of the Transfer Case (e.g., transaction costs and management retention bonuses, etc.);

b) emergency rate relief under KRS 278.190(2) to avoid a material impairment or damage to its credit or operations;

c) adjustments to the operation of any of Duke Energy Kentucky’s cost recovery surcharge mechanisms (e.g., Fuel Adjustment Clause, Demand Side Management, Gas Cost Recovery, etc.), including any base rate roll-ins, which are part of the normal operations of such mechanisms;

d) the establishment or implementation of an environmental surcharge mechanism pursuant to KRS 278.183.

1.03 Effect of Failure to Complete Transaction. The commitment set forth in Section 1.01 shall become effective upon the Commission's final order approving the Application in the Transfer Case. In the event the anticipated merger is not completed, however, the obligation set forth in Section 1.01 shall no longer be effective or applicable to Duke Energy Kentucky.

ARTICLE II – LOW INCOME WEATHERIZATION SUPPORT

2.01 Low Income Weatherization Support. Duke Energy Kentucky currently supports low income weatherization programs within its service territory. As a supplement to this existing program, the Joint Applicants agree to make five (5) equal, annual shareholder contributions of \$115,000.00 (total of \$575,000.00) to support weatherization efforts within the service territory of Duke Energy Kentucky. The contributions shall be made by the Duke Energy Foundation to People Working Cooperatively ("PWC") or to another entity to be mutually determined by Duke Energy Kentucky and the Attorney General. The annual contribution shall be made on or before March 31 of each year. Duke Energy Kentucky shall take reasonable steps to assure that PWC or any other entity receiving funds hereunder will administer the funds using the same guidelines and program parameters that are currently used to administer Duke Energy Kentucky's existing low income weatherization program with the goal of maximizing the impact of the annual contributions.

2.02 No Recovery Through Rates. The Joint Applicants' contribution shall not be recovered through Duke Energy Kentucky's base rates or through its Demand Side Management Rider.

ARTICLE III – LOCAL ECONOMIC DEVELOPMENT SUPPORT

3.01 Local Economic Development Support. Duke Energy Kentucky currently supports economic development programs within its service territory. As a supplement to its

existing support, the Joint Applicants agree to make five (5) equal, annual shareholder contributions of \$50,000.00 (total of \$250,000.00) to support economic development opportunities within the service territory of Duke Energy Kentucky. The contributions will be made by the Duke Energy Foundation to one or more non-profit recipients as shall be agreed upon by the Attorney General and Duke Energy Kentucky.

3.02 No Recovery Through Rates. The Joint Applicants' contribution shall not be recovered through Duke Energy Kentucky's base rates.

ARTICLE IV – REGULATORY COMMITMENTS AND AFFILIATE AGREEMENTS

4.01 Regulatory Commitments. The Joint Applicants agree to be bound, to the extent applicable to each of them, by the regulatory commitments set forth in Appendix A to this Stipulation and Settlement Agreement. These regulatory requirements should expressly supersede and replace any and all regulatory commitments previously imposed by the Commission's order in Case No. 2005-00228 approving the merger of Duke Energy and Cinergy Corp.

4.02 Approval of Affiliate Agreements. The Parties agree that the affiliate agreements tendered to the Commission by the Joint Applicants as Exhibit I to their Application, as amended by the Joint Applicants' tender to the Commission of an amended Utility Money Pool Agreement on April 28, 2011, are reasonable, in accordance with Kentucky law and should be approved by the Commission. The Attorney General agrees to not oppose the Commission's approval of said affiliate agreements.

ARTICLE V – OTHER PROVISIONS

5.01 Merger Savings Mechanism. The Parties agree that the unique facts of this indirect transfer case do not permit an immediate and quantifiable calculation of merger savings

likely to accrue to Duke Energy Kentucky following the completion of the proposed merger transaction. Although the Joint Applicants are targeting merger savings to be recognized over time, the Parties agree that the task of seeking to identify and quantify such savings in the short-term would be administratively burdensome and would be costly to the point of eroding the value of the savings. Accordingly, the Parties agree that future net savings arising from the merger transaction and inuring to the benefit of Duke Energy Kentucky will best be recognized for retail ratemaking purposes in future base rate case proceedings and that no merger savings mechanism should be implemented as part of the Commission's approval of the Transfer Case. The Parties' agreement that a merger savings mechanism is not appropriate in this specific situation is made solely in recognition of the unique facts of this merger transaction and not upon any particular interpretation of law. The right of the Attorney General to request the implementation of reasonable merger savings mechanisms in future transfer of control cases is expressly reserved.

5.02 Confidentiality. The Attorney General does not object to the Commission granting confidential treatment to the confidential information for which confidentiality has previously been sought by the Joint Applicants by the filing of various petitions during the course of this proceeding.

5.03 No Admissions. Except as specifically stated otherwise in this Stipulation and Settlement Agreement, the Parties agree that making this Stipulation and Settlement Agreement shall not be deemed in any respect to constitute an admission by any Party hereto that any computation, formula, allegation, assertion or contention made by any other Party in the Transfer Case is true or valid.

5.04 Filing of Stipulation and Settlement Agreement. The Parties Agree that a fully executed copy of this Stipulation and Settlement Agreement shall be filed of record in the Transfer Case as an exhibit to supplemental testimony requesting the Commission to approve the indirect transfer of control of Duke Energy Kentucky in accordance with the terms and conditions set forth herein.

5.05 Participation in Hearing. The Attorney General waives all cross-examination of the Joint Applicants' witnesses, except as set forth in subparagraph (b) of this section, unless the Commission disapproves this Stipulation and Settlement Agreement. The Attorney General further agrees that upon his execution of this Stipulation and Settlement Agreement, he will not:

a) otherwise contest the Joint Applicants' Application in the Transfer Case, as modified by this Stipulation and Settlement Agreement, during the hearing of the Transfer Case; or

b) cross-examine the Joint Applicants' witnesses during the hearing of the Transfer Case except insofar as such cross-examination is of the witness(es) offered by the Joint Applicant to support the Stipulation and Settlement Agreement.

5.06 Good Faith. The Parties agree to act in good faith and to use their best efforts to recommend to the Commission that this Stipulation and Settlement Agreement be accepted and approved.

5.07 Further Review. If the Commission enters a final order approving the Application in the Transfer Case and adopting and implementing the terms and conditions set forth herein, the Parties agree that they shall not file a petition for rehearing before the Commission or file an action for review in the Franklin Circuit Court with respect to such final order.

5.08 Effect of Final Order. The Parties agree that if the Commission issues a final order that fails to approve the Application in the Transfer Case, fails to adopt and implement all of the terms and conditions set forth herein, or adds or imposes additional conditions or burdens upon the proposed merger transaction or on any or all of the Joint Applicants that are unacceptable to any or all of the Joint Applicants in their sole discretion, upon notice given to the Commission and the Attorney General, then:

a) this Stipulation and Settlement Agreement shall be void and withdrawn by the Parties from further consideration by the Commission and none of the Parties shall be bound by any of the provisions herein, although no Party shall be prohibited from advocating any position contained in this Stipulation and Settlement Agreement; and

b) neither the terms of this Stipulation and Settlement Agreement nor any matters raised during the negotiations of this Stipulation and Settlement Agreement shall be binding on any of the Parties to this Stipulation and Settlement Agreement or be construed against any of the Parties.

5.09 Commission Jurisdiction. The Parties agree that nothing in this Stipulation and Settlement Agreement shall be construed in a manner that diminishes or eliminates the Commission's jurisdiction under Chapter 278 of the Kentucky Revised Statutes.

5.10 Future Effect. The Parties agree that this Stipulation and Settlement Agreement shall inure to the benefit of, and be binding upon, the Parties, their successors and assigns.

5.11 Whole Agreement. The Parties agree that this Stipulation and Settlement Agreement constitutes the complete agreement and understanding among the Parties and that any and all oral statements, representations, or agreements made prior hereto or contemporaneously

herewith, shall be null and void, and shall be deemed to have been merged into this Stipulation and Settlement Agreement.

5.12 Fair, Just and Reasonable Result. The Parties agree that, for the purpose of this Stipulation and Settlement Agreement, the terms are based upon the independent analysis of the Parties to reflect a fair, just and reasonable outcome and are the product of arms-length negotiation and compromise. The Parties further agree that upon the completion of the proposed merger transaction, Duke Energy shall have the requisite financial, technical and managerial abilities to ensure that Duke Energy Kentucky continues to provide reasonable service, as required by KRS 278.020(5), and that the proposed merger transaction is in accordance with law, for a proper purpose and consistent with the public interest, as required by KRS 278.020(6).

5.13 Admissibility. The Parties agree that the Stipulation and Settlement Agreement, either in whole or in part, shall not be admissible in any court or administrative agency except insofar as such court or administrative agency is addressing litigation arising out of the implementation of the terms and condition set forth herein. This Stipulation and Settlement Agreement shall not have any precedential value in this or any other jurisdiction.

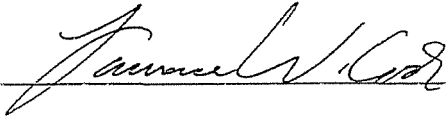
5.14 Consultation and Authority. The signatories hereto warrant that they have informed, advised, and consulted with the Parties they represent in the Transfer Case with regard to the contents and significance of this Stipulation and Settlement Agreement and based upon the foregoing, are authorized to execute this Stipulation and Settlement Agreement on behalf of the Parties they represent.

5.15 Construction. The Parties agree that this Stipulation and Settlement Agreement is a product of negotiation among all Parties, and that no provision of this Stipulation and Settlement Agreement shall be strictly construed in favor of, or against, any Party.

5.16 Counterparts. The Parties agree that this Stipulation and Settlement Agreement may be executed in multiple counterparts.

IN WITNESS WHEREOF, the Parties have affixed their signatures hereunto.

JACK CONWAY, ATTORNEY GENERAL

BY:  _____

DUKE ENERGY CORPORATION

BY: _____

CINERGY CORP.

BY: _____

DUKE ENERGY OHIO, INC.

BY: _____

DUKE ENERGY KENTUCKY, INC.

BY: _____

DIAMOND ACQUISITION CORPORATION

BY: _____

PROGRESS ENERGY, INC.

BY: _____

5.16 Counterparts. The Parties agree that this Stipulation and Settlement Agreement may be executed in multiple counterparts.

IN WITNESS WHEREOF, the Parties have affixed their signatures hereunto.

JACK CONWAY, ATTORNEY GENERAL

BY: _____

DUKE ENERGY CORPORATION

BY: *Charles D. Gon*

CINERGY CORP.

BY: *Charles D. Gon*

DUKE ENERGY OHIO, INC.

BY: *Charles D. Gon*

DUKE ENERGY KENTUCKY, INC.

BY: *Charles D. Gon*

DIAMOND ACQUISITION CORPORATION

BY: *Charles D. Gon*

PROGRESS ENERGY, INC

BY: *Charles D. Gon*

Stipulation and Settlement Agreement

Exhibit A

Joint Applicants' 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 material 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.

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 and the reasons of 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 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.

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2011-00124 DATED **AUG 02 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.

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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.

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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.

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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 non-employee member who is a customer of either Duke Kentucky, Duke Ohio, or Duke Energy Indiana.

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

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