1. Refer to page 12 of the Direct Testimony of Scott J. Rubin ("Rubin Testimony"). Mr. Rubin states that he does not believe that the Commission should approve the transaction before Cinergy Corp. holds its shareholder vote on the merger. Based on Mr. Rubin's experience, provide the percentage of mergers of utility companies that are not approved by shareholders.

Answer:
Mr. Rubin has not researched the question, but it seems that nearly all mergers involving major utilities are approved by shareholders.

Responsible witness: Scott J. Rubin

2. Refer to page 21 of the Rubin Testimony. Mr. Rubin suggests that the Commission impose 11 conditions on the merger.

a. Condition 1 would require The Union Light, Heat and Power Company ("ULH&P") to disclose all uses made of its personnel, assets, and equipment for any unregulated purpose. Explain the purpose of this condition.

b. Condition 10 would require ULH&P to maintain a capital structure that contains at least 35 percent common equity. Explain why Mr. Rubin proposes 35 percent.

c. Condition 11 would prohibit ULH&P from paying any dividend to its parent company that exceeds more than 80 percent of its earnings attributable to common equity in the then-current year. Explain why Mr. Rubin proposes 80 percent.

Answer:

a. The purpose of Condition 1 is to help the Commission and other interested parties to understand whether regulated assets, personnel, and facilities are being used for unregulated purposes. Such information could be an indication of potential problems within the holding company, potential problems with the focus and priorities of ULH&P's management, or other potentially serious issues of utility governance and control.

b. The 35 percent figure is one that Mr. Rubin has proposed for other utilities, including Kentucky American Water. There is nothing "magical" about that figure, and a higher figure certainly could be justified. Mr. Rubin believes it is important to have some minimum level of equity investment required for the operating utility. This helps to ensure that the utility is reinvesting a reasonable portion of its earnings in Kentucky. Having a minimum level of equity in the capital structure also helps to ensure that the utility can access the capital markets (for example, for new debt issuances) and otherwise maintain access to capital in a cost-effective manner.

c. The reasons for the 80 percent figure are the same as the reasons for the 35 percent figure discussed in subpart b. The two criteria are designed to work together to ensure an appropriate level of capitalization and reinvestment. Similarly, Mr. Rubin has proposed 80 percent for other utilities, including Kentucky American, because he believes it to be a reasonable, maximum dividend payout ratio.

Responsible witness: Scott J. Rubin

3. Has Mr. Rubin reviewed the requirements of KRS 278.2201 through 278.2219 and KRS 278.300?

a. If yes, did those requirements influence Mr. Rubin's recommended conditions? Explain the response.

b. If no, explain why such a review wasn't performed.

Answer:

Before preparing his testimony, Mr. Rubin reviewed the requirements of KRS 278.2201 through 278.2219. He had not reviewed KRS 278.300 at that time, but has done so in order to respond to this question, and he was generally aware of the requirements set forth in section 278.300.

a. Mr. Rubin's review of KRS 278.2201 through 278.2219 did not directly influence his recommended conditions – other than to propose strict adherence to 278.2207(1)(b) (Condition 17) – because the Commission has the authority to grant waivers or exemptions of substantial portions of those requirements. The Commission's ability to grant waivers or exemptions provides the public with less assurance (than would otherwise be the case) that these requirements will, in fact, apply to ULH&P and its new owners. This is particularly the case since the Application filed in this case includes such a request for a waiver.

KRS 278.300 appears to apply to a utility's issuance of securities, which was not directly addressed in Mr. Rubin's proposed conditions. Mr. Rubin's Condition 5 does address restrictions on the ability of ULH&P's parent company to pledge or otherwise use as security the stock of ULH&P. This does not appear to Mr. Rubin to be addressed by section 278.300.

b. Not applicable.

Responsible witness: Scott J. Rubin