



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

GREGORY D. STUMBO
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7 October 2005

Via Hand Delivery

Beth O'Donnell, Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

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OCT 07 2005

PUBLIC SERVICE
COMMISSION

RE: PSC Case No. 2005-00228

Dear Ms. O'Donnell:

The Attorney General submits for filing the pre-filed Supplemental Direct Testimony of his witness, Scott J. Rubin. Counsel certifies and gives notice of the filing of the original and ten photocopies of the redacted testimony and the filing of one copy, under seal, of the unredacted testimony.

Service of the redacted testimony was by mailing a true and correct copy of the same, first class postage prepaid, to the parties of record (and to Robert M. Watt, III). The Joint Applicants (and Mr. Watt) have also been served with the unredacted testimony. Mr. Kurtz has not been served with the unredacted copy. Filing and service takes place this 7th day of October, 2005.

Regards,

David Edward Spenard

David Edward Spenard
Assistant Attorney General



Commonwealth of Kentucky
Before the Public Service Commission

**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

**SUPPLEMENTAL
DIRECT TESTIMONY**

OF

SCOTT J. RUBIN

On behalf of the
Office of the Attorney General of Kentucky

***** REDACTED – PUBLIC VERSION *****

Dated: October 7, 2005

Introduction

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- Q. Please state your name and business address.**
- A. My name is Scott J. Rubin. My business address is 3 Lost Creek Drive, Selinsgrove, PA.
- Q. Did you submit direct testimony in this case?**
- A. Yes, my direct testimony was submitted by the Office of the Attorney General on September 28, 2005.
- Q. What is the purpose of this supplemental testimony?**
- A. Just before my direct testimony was submitted, the Commission issued an order that required Duke to produce a copy of a presentation to Duke’s Board of Directors, dated May 4, 2005. The Commission’s order required Duke to produce the document by September 30, 2005, and gave the parties an opportunity to submit supplemental testimony related to that document on October 7, 2005.
- Q. Have you reviewed Duke’s presentation that was the subject of the Commission’s order?**
- A. Yes, we received a copy from Duke on September 30, 2005. I have had a limited opportunity to review it.
- Q. Is this the document you referred to on pages 14 and 15 of your direct testimony?**
- A. Yes, it is.
- Q. Does your review of this document lead you to change anything in your direct testimony?**
- A. Yes, after reviewing the document there are a few things I would change.

1 **Q. On page 14 of your direct testimony, you expressed concern about this document**
2 **apparently showing a much higher level of synergy savings than was contained in**
3 **the testimony and exhibits filed by the Applicants in this case. Do you still have this**
4 **concern?**

5 A. No, I do not. The May 4 presentation to Duke's board is generally consistent with the
6 methodology used in preparing the study filed in this case. The overall dollar amounts
7 are so different because the information filed in this case only looks at the first five years,
8 while the presentation to Duke's board looks at ten years.

9 **Q. On page 14 of your direct testimony, you also expressed concern that this document**
10 **had not been provided to the U.S. Justice Department. Do you still have this**
11 **concern?**

12 A. Yes, I do. I do not understand why this document would not have been produced as part
13 of the Hart Scott Rodino filing. There is nothing in the document that discusses litigation
14 or other matters that would fall under the attorney-client privilege (and even if there
15 were, the document still should have been produced in redacted form). Further, there
16 were numerous documents relating to the same subject matter that were part of the Hart
17 Scott Rodino filing, including synergy savings analyses that were produced just a couple
18 of weeks before the May 4 presentation and that are amended by the May 4 presentation.

19 **Q. On page 15 of your direct testimony, you stated that Duke's failure to produce this**
20 **document was an indication of its lack of candor and that it is not fit to own and**
21 **operate a public utility in Kentucky. Is this still your opinion?**

22 A. Yes, it is. While I am pleased that the Commission ordered Duke to produce this
23 document, I remain very concerned that it was necessary to go through that process to

1 obtain this document. The document is directly responsive to a discovery request, is
2 clearly relevant to the subject matter of this case, and does not contain information that is
3 privileged. I am still troubled by Duke's failure to produce this document as part of the
4 normal discovery process in this case.

5 **Q. On pages 37-48 of your direct testimony, you discuss the Applicants' synergy**
6 **savings analysis. Does anything in the May 4 presentation change this section of**
7 **your testimony?**

8 A. Yes, information in the May 4 presentation leads me to change my review of the synergy
9 savings analysis.

10 First, I suggested on page 40 of my direct testimony that the May 4 study might
11 show a level of savings that was substantially higher than the level shown in the
12 Applicants' testimony. While the May 4 presentation does lead me to question one
13 aspect of the Applicants' analysis (which I will discuss below), the amount at issue is
14 relatively small compared to the amounts I mentioned on page 40 of my direct testimony.

15 Second, on pages 43 and 44 of my direct testimony, I stated that I was willing to
16 accept the Applicants' allocation of 71% of regulated and shared services savings to the
17 regulated utilities. Based on my review of the May 4 study, I am no longer willing to
18 accept that as reasonable.

19 Third, I am revising my Schedule SJR-1. This reflects changes in my
20 recommendation concerning the amount of synergy savings that should be reflected in
21 ULH&P's rates. Schedule SJR-1 (revised) is attached to this Supplemental Testimony.

1 **Q. What new information did you find in the May 4 presentation?**

2 A. The May 4 presentation contains information about the division of savings between the
3 regulated and non-regulated sides of New Duke. The testimony, exhibits, and
4 workpapers filed in this case divide the savings into two categories: (1) regulated &
5 shared and (2) non-regulated. From the information that has been provided in this case, it
6 is not possible to determine which costs are in the “regulated” category and which are in
7 the “shared” category. It also is not possible to determine how “shared” costs are then
8 allocated back to the regulated and non-regulated sides of the business.

9 I refer to this issue on page 39 of my direct testimony. There I noted that the
10 Applicants stated publicly that overall savings were allocated approximately 50/50
11 between regulated and unregulated operations, but the filing in this case shows that only
12 43% of the savings were allocated to the regulated side of the business. Because I did not
13 have any further information about the source of the 50/50 split in the Applicants’ public
14 statements, I thought it might have just been a very rough approximation – a shorthand
15 way of referring to the 43/57 split contained in the information filed in this case.

16 The May 4 presentation, however, contains a page that directly shows the 50/50
17 allocation and explains its source. Page 19 of the presentation, attached as Schedule
18 SJR-2 (Confidential), shows that the Applicants actually had analyzed three categories of
19 savings: (1) utility, (2) shared, and (3) non-regulated. The document then shows that
20 shared savings are allocated 59% to the regulated side of the business and 41% to non-
21 regulated operations (it also explains the source for the 59/41 allocation). After this
22 allocation, the May 4 presentation shows that the regulated and non-regulated sides of the
23 business each will be allocated 50% of the savings.

1 **Q. Have you been able to verify the accuracy of the 59/41 allocation of shared savings**
2 **or the overall 50/50 allocation?**

3 A. No, I have not. In the cover letter that accompanied the May 4 document, counsel for
4 Duke stated that there were no additional workpapers that support this document, other
5 than those that have been provided. I cannot find anything in those workpapers that
6 divides the savings into three categories and that shows the allocation process for shared
7 savings. Thus, I remain unable to verify the accuracy of the allocation.

8 **Q. How will this change your synergy savings analysis?**

9 A. Based on this new information that shows a real basis for the 50/50 allocation of savings,
10 and my inability to verify either the allocation filed by the Applicants in this case or the
11 one contained in the May 4 presentation, I propose to use the allocation that is more
12 favorable to ULH&P and its customers, which is the 50/50 allocation. This would result
13 in regulated savings of \$1,050 million (50% of the \$2.1 billion in savings shown in
14 Flaherty Testimony, page 5), less \$40 million for fuel savings, or \$1,010 million in gross
15 (that is, before costs to achieve) regulated non-fuel savings. This compares to the \$906
16 million in gross regulated savings that is contained in the Applicants' filing, as I explain
17 on page 39 of my direct testimony. The effect, then, is to increase the amount of
18 regulated, non-fuel savings by \$104 million.

19 In addition, because I am allocated a higher percentage of the non-fuel savings to
20 the utilities (78.3%) I also allocate that same percentage of costs to achieve and pre-
21 merger initiatives to the utilities. This results in net regulated savings of \$748.5 million.

22 As I explained in my testimony, the Applicants allocate 3.3% of regulated, non-
23 fuel savings to ULH&P. Thus, instead of the \$22.4 million in savings I showed on

1 Schedule SJR-1 in my direct testimony, I now show savings to ULH&P of \$24.7 million
2 (3.3% of \$748.5 million). My recommended division of these savings between
3 customers and shareholders remains 50 to 100%, or a range of \$12.35 million to \$24.7
4 million, as I show on Schedule SJR-1 (revised).

5 **Q. What is your final savings recommendation?**

6 A. I continue to recommend that ULH&P's customers should receive 100% of these
7 estimated savings during the first five years, and that those savings should remain in
8 place even if ULH&P files a rate case during that five-year period.

9 **Q. Does this conclude your supplemental testimony?**

10 A. Yes, it does.

Synergy Savings (Excluding Fuel) to Customers of ULH&P
(x \$1,000,000)

Category	Regulated	ULH&P	Range of 50-100%
Gross Savings (1)	1,010.0		
Costs to Achieve (2) (3)	(253.7)		
Net Savings Subtotal	756.3		
Pre-Merger Initiatives (4)	(7.8)		
Total Net Savings	748.5	24.7	12.35 to 24.7

Note:

(1) 50% of total gross savings of \$2.1 billion (Flaherty Testimony, p. 5) less fuel (\$40 million)

(2) Adjusted costs to achieve allocated to regulated and shared services (x \$1,000,000) x 78.3%:

1. As filed by Applicants	513	
<u>Adjustments</u>		
2. Employee retention costs	(25)	
3. Employee relocation costs	(10)	
4. Regulatory process costs	(37)	
5. Communications costs	(23)	
6. Transaction costs	(41)	
7. Total adjustments	(136)	(sum lines 2-6)
8. Recoverable costs to achieve	377	(line 1 - line 7)
9. Less information tech. costs	(225)	(already reflects capital)
10. Costs to be divided between expense and capital	152	(line 8 - line 9)
11. Annual capitalization factor	0	
12. Number of years	5	
13. Capital recovery over 5 years	99	(product lines 10-12)
14. Allowable costs to achieve	324	(-line 9 + line 13)
15. Portion allocated to regulated	78.3%	note 3
16. Regulated costs to achieve	253.7	(line 14 x line 15)

(3) Percentage allocated to regulated = $1,010 / 1,290 = 78.3\%$

(4) Pre-merger initiatives of \$10 million x 78.3%

CONFIDENTIAL

Schedule SJR-2

19

Privileged and Confidential - Prepared for Counsel

Commonwealth of Kentucky
Before the Public Service Commission

In the Matter of:)
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

AFFIDAVIT OF SCOTT J. RUBIN

Commonwealth of Pennsylvania)
County of Snyder)

Scott J. Rubin, being first duly sworn, states the following: The prepared Pre-filed Supplemental Direct Testimony and the attached schedules constitute the supplemental direct testimony of Affiant in the above-styled case. Affiant states that he would give the answers set forth in the Pre-filed Supplemental Direct Testimony if asked the questions propounded therein. Affiant further states that, to the best of his belief and knowledge, his statements made are true and correct. Further, Affiant saith not.


Scott J. Rubin

SUBSCRIBED AND SWORN to before me this 7th day of October, 2005.


NOTARY PUBLIC

My Commission Expires: _____

