

S T O L L

K E E N O N

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P A R K

L L P

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ROBERT M. WATT, III  
859-231-3043  
watt@skp.com

August 26, 2005

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AUG 26 2005

PUBLIC SERVICE  
COMMISSION

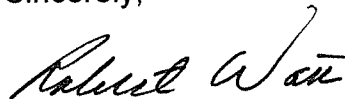
Hon. Elizabeth A. O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40601

Re: Duke/Cinergy Merger  
Case No 2005-00228

Dear Ms. O'Donnell:

We submit herewith for filing an original and ten copies of the Request for Approval of Confidentiality Agreement in the above-captioned matter. Thank you for your attention to this matter.

Sincerely,



Robert M. Watt, III

Rmw

Encl.

Cc: Parties of Record (w/encl.)

**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 )**

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AUG 26 2005

PUBLIC SERVICE  
COMMISSION

**CASE NO. 2005-00228**

\* \* \* \* \*  
**REQUEST FOR APPROVAL OF  
CONFIDENTIALITY AGREEMENT**

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Joint Applicants, with the agreement of the Office of the Attorney General, respectfully request the Commission to formally approve the Agreement Regarding Material Afforded Temporary or Permanent Confidential Treatment, a copy of which is attached hereto, for this proceeding.

Respectfully submitted,

Robert M. Watt, III  
Stoll, Keenon & Park, LLP  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507  
859-231-3000  
[robert.watt@skp.com](mailto:robert.watt@skp.com)

By   
Counsel for Joint Applicants

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing pleading has been served by mailing a copy of same, postage prepaid, to the following persons on this 26<sup>th</sup> day of August 2005:

David E. Spenard, Esq.  
Dennis Howard, II, Esq.  
Office of the Attorney General  
Utility & Rate Intervention Division  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601-8204

Michael L. Kurtz, Esq.  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

Kate E. Moriarty, Esq.  
John J. Finnigan, Jr., Esq.  
Cinergy Services, Inc.  
139 E. Fourth Street, 2500 Atrium II  
Cincinnati, Ohio 45201

Paul R. Newton, Esq.  
Duke Power  
P.O. Box 1244  
Mail Code: PB05E  
Charlotte, North Carolina 28201

Kodwo Ghartey-Tagoe, Esq.  
Duke Power  
P.O. Box 1244  
Mail Code: PB05E  
Charlotte, North Carolina 28201



\_\_\_\_\_  
Counsel for Joint Applicants

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.,	)	Case No. 2005-00228
The Cincinnati Gas & Electric Company, and	)	
The Union Light, Heat and Power Company for	)	
Approval of a Transfer and Acquisition	)	
of Control	)	

**AGREEMENT REGARDING MATERIAL AFFORDED  
TEMPORARY OR PERMANENT CONFIDENTIAL TREATMENT**

The Joint Applicants 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 (“ULH&P”) and the Office of the Attorney General (“OAG”)(individually referred to as “Party,” and jointly referred to as “Parties”) do hereby enter into this Agreement Regarding Material Afforded Temporary or Permanent Confidential Treatment (“Agreement”) by the Kentucky Public Service Commission in this proceeding. The scope of this Agreement is the treatment of information for which confidential treatment is sought under 807 KAR 5:001 Section 7 during the course of this proceeding. This Agreement does not constitute any resolution of the merits of any request for confidential treatment; furthermore, it does not serve as a waiver or concession of other rights with regard to the materials (e.g., the right to seek to compel production, the right to assert a claim that a request is unduly burdensome, etc.). Nothing in this Agreement is intended to preclude the use of any material that becomes part of the public record or enters into the public domain.

This is a proceeding before the Kentucky Public Service Commission, and the law of the Commonwealth of Kentucky governs this Agreement. The Parties acknowledge the framework for the Commission's procedure for determining confidentiality set forth by 807 KAR 5:001 Section 7. The Parties also recognize the Commission's conditions for entitlement to receive confidential material set forth in Appendix B of the Commission's 12 April 2002 Order in PSC Case No. 2002-00018, *In the Matter of: Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GMBH*. (Attachment "A"). The Parties accept each condition set forth in Attachment "A" as a binding condition in this Agreement, and the Parties incorporate each condition into this Agreement by reference to it. Upon execution, the Parties will submit this Agreement to the Public Service Commission with a request that the Commission formally approve the Agreement for this proceeding.

In addition, the Parties note and agree to the following:

1. The OAG shall not publicize or otherwise disclose the confidential material to any third party and shall strictly limit access to the Confidential Information to themselves and those of their employees, consultants and legal counsel who have a need to know the confidential material for purposes of the OAG's participation in Case No. 2005-00228 (collectively the "Representatives"). Prior to accessing the confidential material, each of the Representatives shall execute a non-disclosure agreement as described below and attached as Attachment "B" to this Agreement.

2. The OAG shall strictly limit their and the Representatives' use of the confidential material to use in Case No. 2005-00228 before the Commission and any appeals from this case and for no other use whatsoever
3. The responsibility to request confidential treatment for material falls solely upon the Party seeking to obtain confidential treatment.
4. The Public Service Commission's procedure for determining confidentiality, which includes the right to seek judicial review, is the exclusive means for requesting confidential treatment.
5. The Party requesting confidential treatment shall comply with 807 KAR 5:001 Section 7. The Party will underscore, highlight with transparent ink, or designate with other reasonable methods the portions that it asserts as confidential. Additionally, under this Agreement, the Party requesting confidential treatment shall furnish such material to the other Party in a manner that conspicuously designates or identifies that the item (e.g., the binder, the computer disc, the exhibit, etc.) contains materials for which a request for confidential treatment has been made (or, if and when applicable, shall designate or identify the contents as confidential pursuant to a specific Commission ordering granting confidential treatment).
6. The Parties recognize that there are risks inherent in the transmission, storage, and utilization of electronic information including risks inherent in the use of electronic mail. The Parties will use their best efforts to safeguard confidential information in electronic media; however, the Parties do not warrant or otherwise guarantee the safety of information in electronic media from

inadvertent disclosure to or access by non-parties who handle the information (such as a non-party computer server through which information passes during its normal course) or from acts of non-parties (such as theft or other improper appropriation by “hackers,” etc.).

7. The OAG will not disclose material subject to this Agreement to an outside expert or consultant unless and until that individual agrees in writing to be bound by this Agreement. Further, at the conclusion or termination of an outside expert’s or consultant’s service to the OAG for this matter, he/she shall return any and all confidential material in his/her possession to the OAG except that the outside expert or consultant will not be under any duty under this Agreement to transmit his/her work-product to the OAG or the Joint Applicants. The outside expert or consultant will, upon conclusion or termination, destroy his/her work-product, notes, etc., containing confidential material and certify the destruction in writing to the OAG. The OAG will provide the Party producing the confidential material with a photocopy or other proof of such written certification and, if any confidential material is produced by all Joint Applicants collectively, then notice to ULH&P will be deemed as notice to all Joint Applicants.
8. At the conclusion or termination of this matter (which includes any judicial review), the OAG will, at its election, either return confidential material provided by the Joint Applicants for which the Commission has granted protection to ULH&P or, alternatively, destroy the material and certify its destruction to ULH&P. The OAG will provide the Party producing the

confidential material with a photocopy or other proof of such written certification and, if any confidential material is produced by all Joint Applicants collectively, then notice to ULH&P will be deemed as notice to all Joint Applicants. With regard to the OAG's work-product (notes, memoranda, etc.), containing confidential material, the OAG will observe its legal obligations regarding the retention and destruction of the subject materials.

9. The Parties agree that the Kentucky Public Service Commission is the sole and exclusive forum for considering any alleged breach of this Agreement, and the remedies within the jurisdiction of the Commission are the only available remedies except that the Agreement does not restrict the Joint Applicants from seeking any injunctive relief in the Franklin Circuit Court to which they believe that they are otherwise entitled to seek; furthermore, it does not extinguish any right to judicial review of actions by the Commission.
10. In order for an amendment to this Agreement to be effective, it must be in writing and it must reflect acceptance by the OAG and all of the Joint Applicants. Notwithstanding this condition, nothing in this Agreement restricts or otherwise binds the Public Service Commission in its exercise of jurisdiction over the Parties and this proceeding. The Parties recognize that the Commission may, by Order, impose restrictions or conditions upon the Parties that supersede or conflict with this Agreement. While the Commission may enter such an Order, the Parties reserve their rights to seek administrative or judicial remedies for the Commission's action.



11. The OAG will give prompt notice to the Party affected by the request (“Affected Party”) if it receives an Open Records request pursuant to KRS 61.870 through 61.884 for material subject to this Agreement (“Open Records request”). Further, if the OAG determines that it should disclose material subject to this Agreement in response to such Open Records request, it shall also provide prompt notice to the Affected Party. This Agreement does not restrict or otherwise waive the rights of any of the Joint Applicants to seek administrative or judicial remedies relating to an Open Records request submitted to the OAG.

**ON BEHALF OF JOINT APPLICANTS**

By: Robert Watt  
Robert M. Watt, III

Title: \_\_\_\_\_  
Attorney for Joint Applicants

Date: August 26, 2005

**OFFICE OF THE  
ATTORNEY GENERAL**

By: David Edward Spensell

Title: Assistant Attorney General

Date: 25 August 2005

APPENDIX B

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2002-00018 DATED APRIL 12, 2002

CONDITIONS UNDER WHICH A REQUESTING PARTY SHALL  
BE ENTITLED TO RECEIVE MATERIAL AFFORDED  
TEMPORARY OR PERMANENT CONFIDENTIAL TREATMENT

- The Requesting Party shall not use the material for purposes other than to prepare for or try this case.
- The Requesting Party shall not use the material for any other purpose in this jurisdiction or in any other jurisdiction.
- The Requesting Party shall not disclose or permit the disclosure of this material to any persons, including officers, employees and consultants, except as expressly permitted herein.
- The Requesting Party shall take all steps reasonably necessary to see that no person receiving access to this material shall use, disclose, copy or record this material for any purpose other than the preparation or conduct of this case.
- The Requesting Party shall maintain a register in which counsel shall currently record the name and position of persons who have had access to this material.
- The Requesting Party shall not disclose this material except to counsel regularly employed by Intervenor, secretaries, paralegals, and other staff of such attorneys or counsel, and bona fide outside experts or consultants and their employees. Where the Requesting Party is a governmental entity whose officers are elected officials and govern the Requesting Party's actions in this case, the material may be disclosed to those officials.
- The Requesting Party shall not disclose this material to any outside experts or consultants who at any time during their employment or retention by the Intervenor are also employed or retained by a competitor of the Joint Applicants.
- The Requesting Party shall inform in writing each person to whom the material is disclosed of these conditions and shall obtain a written acknowledgement from such person that he or she has been informed of these conditions and agrees to be bound by them. It shall further advise each person that failure to comply with these provisions may result in the imposition of civil or criminal sanctions under KRS 278.990.
- The Requesting Party shall provide counsel for the Joint Applicants with a copy of each written acknowledgement.

2005-00228

Attachment A

- The Requesting Party shall not disclose the material in whole or in part during any aspect of this proceeding except under seal and shall not refer to such material in open proceedings except in a manner which maintains the confidentiality of the material.

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 & ) Case No. 2005-00228  
Electric Company, and The Union Light, Heat )  
and Power Company for Approval of a )  
Transfer and Acquisition of Control )

**AGREEMENT REGARDING MATERIAL AFFORDED  
TEMPORARY OR PERMANENT CONFIDENTIAL TREATMENT**

I have read, understand, and agree to abide by the terms and conditions of the Agreement  
Regarding Material Afforded Temporary or Permanent Confidential Treatment executed on  
25 August 2005.

Name: David Edsel Spenard  
Company: Office of the Attorney General  
Address: 1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204  
Telephone: 502-696-5457

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Joint Application of Duke Energy )  
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Deer Acquisition Corp., Cougar Acquisition )  
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Electric Company, and The Union Light, Heat )  
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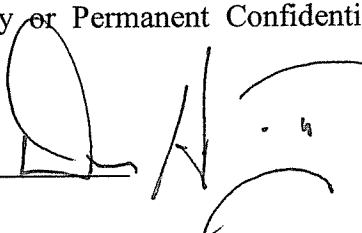
**AGREEMENT REGARDING MATERIAL AFFORDED  
TEMPORARY OR PERMANENT CONFIDENTIAL TREATMENT**

I have read, understand, and agree to abide by the terms and conditions of the Agreement

Regarding Material Afforded Temporary or Permanent Confidential Treatment executed on

8/25 2005.

Name:

Dennis Howard 

Company:

OAG

Address:

1024 Capital Center Drive Frankfort KY 40601

Telephone:

502.696.5453