

David S. Samford

Counsel

859.244.3230

dsamford@fibtlaw.com

September 15, 2011

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PUBLIC SERVICE
COMMISSION

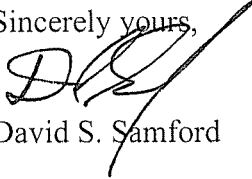
Mr. Jeffrey Derouen
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

Re: In the Matter of: The Joint 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.
PSC Case No. 2011-00124

Dear Mr. Derouen:

Enclosed please find an original and ten (10) copies of the Joint Motion to Accept Supplemental Stipulation and supporting exhibits to be filed in the above-referenced matter. Please return file-stamped copies of each for our records. The original signature copy of Ms. Janson's Verification will be filed tomorrow under separate cover.

Sincerely yours,



David S. Samford

cc: Richard Raff
Jennifer Hans
Dennis G. Howard, II
Lawrence Cook

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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SEP 15 2011

IN THE MATTER OF:

PUBLIC SERVICE
COMMISSION

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

**JOINT MOTION TO ACCEPT SUPPLEMENTAL STIPULATION REGARDING
REGULATORY COMMITMENT 48 AND FOR LEAVE TO
SUPPLEMENT THE RECORD WITH ADDITIONAL
TESTIMONY IN SUPPORT OF STIPULATION**

Come now 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 “Joint Applicants”), and Commonwealth of Kentucky ex. rel. Jack Conway, Attorney General, by and through the Utility and Rate Intervention Division (“Attorney General”), and move the Kentucky Public Service Commission (“Commission”) for an Order accepting a Supplemental Stipulation regarding Regulatory Commitment 48 (the “Stipulation”) and for leave to supplement the record with additional testimony in support of that Stipulation. In support of this motion, the parties state as follows:

On August 2, 2011, the Commission issued an Order approving the proposed merger transaction between the Joint Applicants conditioned upon their acceptance of 49 regulatory commitments. Contained in those 49 commitments were three new commitments which the

Joint Applicants and the Attorney General had not negotiated nor agreed to.¹ Commitment 47 which deals with demand side management and energy efficiency programs, and Commitment 49, which provides that no costs to achieve the merger transaction will be recovered from Duke Kentucky ratepayers, were readily accepted by the Joint Applicants. However, Commitment 48 provides 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 was a customer of Duke Kentucky, Duke Ohio or Duke Energy Indiana, Inc. ("Duke Indiana"). While Joint Applicants accepted and endorsed the notion that the directors of a utility should reflect the character and perspective of its service territory, the Joint Applicants believed that Commitment 48, as written, significantly complicated the merger transaction, could cause unnecessary disruption to the corporate governance of Duke Energy, and could result in an unintended future technical default. On the basis of these concerns, the Joint Applicants filed a Petition for Rehearing with the Commission on August 19, 2011.

The Joint Applicants' Petition for Rehearing requested that the Commission revise and clarify its language in Commitment 48 so as to provide sufficient flexibility to fulfill the obligation without running the risk of experiencing a technical default for reasons beyond the Company's control. To accomplish this, the Joint Applicants proposed two alternatives to Commitment 48 in their Petition for Rehearing.² However, the Joint Applicants also made it clear that there could be other language which would be acceptable to them in protecting the spirit and intent of Commitment 48.

¹ These three additional Commitments are numbered 47 – 49.

² Joint Applicants' Petition for Rehearing, August 19, 2011, pp. 15-16.

On September 2, 2011, the Commission entered an Order granting Joint Applicants' Petition for Rehearing of the August 2, 2011 Order. Subsequently, the Commission entered an Order setting an Informal Conference for September 13, 2011. At that conference, representatives of the Joint Applicants, the Attorney General and Commission Staff discussed language which clarifies Commitment 48 so as to ameliorate the Joint Applicants' concerns and to promote the public interest. That revised language is the subject of the Stipulation entered into between the Joint Applicants and the Attorney General and attached hereto and made a part hereof as Exhibit A.

So that the record in this case might contain adequate and sufficient evidence to support the Stipulation and the proposed revisions to Commitment 48, the sworn supplemental testimony of Julia Janson, President of Duke Kentucky, is attached hereto and made a part hereof as Exhibit B. The parties request that the Commission's Order specifically provide that the record be supplemented with Ms. Janson's testimony.

The parties believe that this revision to Commitment 48 maintains the Commission's purpose of having a Midwestern perspective present in Duke Energy's Board deliberations while at the same time respecting the bargain that the Joint Applicants made to enter into the merger, removing any conflict regarding Board governance issues, and lessening the risk of Duke Energy being in default through events beyond its control.

The parties also believe that this matter may be submitted on the record and that there is no need for a formal hearing.

WHEREFORE, the Joint Applicants and the Attorney General respectfully request that the Commission enter an Order accepting both the Stipulation and supplemental testimony filed as Exhibits herein.

This 15th day of September, 2011.

Respectfully submitted,



Mark David Goss
David S. Samford
Frost Brown Todd LLC
250 West Main Street, Suite 2800
Lexington, KY 40507-1749
(859) 231-0000 – Telephone
*Counsel for Joint Applicants,
Duke Energy Corporation; Cinergy Corp.
Duke Energy Ohio, Inc.
Duke Energy Kentucky, Inc.
Diamond Acquisition Corporation
Progress Energy, Inc.*

- and -

Rocco D'Ascenzo
Amy B. Spiller
Duke Energy Business Services LLC
139 East Fourth Street
Room 2500, Atrium II
P. O. Box 960
Cincinnati, Ohio 45201-0960
*Counsel for Joint Applicants,
Duke Energy Corporation; Cinergy Corp.
Duke Energy Ohio, Inc.
Duke Energy Kentucky, Inc.
Diamond Acquisition Corporation*

Jennifer Hans
Dennis G. Howard, II
Lawrence W. Cook
Assistant Attorneys General
Utility and Rate Intervention Division
P. O. Box 2000
Frankfort, Kentucky 40602-2000

This 15th day of September, 2011.

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Mark David Goss
David S. Samford
Frost Brown Todd LLC
250 West Main Street, Suite 2800
Lexington, KY 40507-1749
(859) 231-0000 – Telephone
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Rocco D'Ascenzo
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139 East Fourth Street
Room 2500, Atrium II
P. O. Box 960
Cincinnati, Ohio 45201-0960
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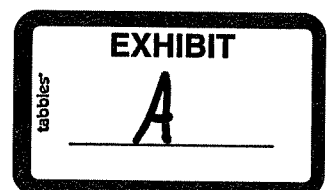
**THE JOINT APPLICATION OF DUKE ENERGY)
CORPORATION, CINERGY CORP., DUKE)
ENERGY OHIO, INC., DUKE ENERGY) CASE NO. 2011-00124
KENTUCKY, INC., DIAMOND ACQUISITION)
CORPORATION, AND PROGRESS ENERGY, INC.)
FOR APPROVAL OF THE INDIRECT TRANSFER)
OF CONTROL OF DUKE ENERGY KENTUCKY, INC.)**

SUPPLEMENTAL STIPULATION
REGARDING REGULATORY COMMITMENT 48

This Supplemental Stipulation Regarding Regulatory Commitment 48 (“Stipulation”) is entered into this 15th day of September, 2011, by and between Duke Energy Corporation (“Duke Energy”), 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 “Joint Applicants”), and Commonwealth of Kentucky, ex. rel. Jack Conway, Attorney General, by and through the Utility and Rate Intervention Division (“Attorney General”).

WHEREAS, on August 19, 2011, the Joint Applicants filed their Petition for Rehearing requesting the Kentucky Public Service Commission (“Commission”) to revise and clarify regulatory Commitment 48 (“Commitment 48”) which was set forth in the Commission’s Order of August 2, 2011 approving the merger transaction between the Joint Applicants; and,

WHEREAS, Joint Applicants’ Petition for Rehearing provided, at pages 15-16, two alternatives to Commitment 48 which would maintain the Commission’s original intent for there to be a Midwestern perspective in Duke Energy’s Board deliberations while at the same time



providing adequate flexibility to maintain a material and bargained for term of the merger agreement, preventing the violation of Duke Energy's governing documents, and eliminating Duke Energy's risk of being in default of Commitment 48 through events beyond its control; and,

WHEREAS, by Order dated September 2, 2011, the Commission granted Joint Applicants' Petition for Rehearing for the limited purpose of reconsidering the language contained in Commitment 48; and,

WHEREAS, an Informal Conference was held on September 13, 2011 at the Commission's offices to discuss alternative language for Commitment 48; and,

WHEREAS, with the assistance of Commission Staff, the Joint Applicants and Attorney General have negotiated and agreed on revised language for Commitment 48 which they now request and recommend the Commission adopt in place of that currently contained in Commitment 48; and,

WHEREAS, it is understood by the Joint Applicants and Attorney General that this Stipulation is not binding upon the Commission although they wish to advise the Commission of the considerable efforts which they have expended to reach this Stipulation and that they believe it constitutes a reasonable resolution of the issues surrounding Commitment 48; and,

WHEREAS, the acceptance of this Stipulation by the Commission will eliminate the need for the Commission and the parties to expend considerable resources in further litigation of this proceeding, and will eliminate the possibility of, and any need for, additional proceedings in rehearing or appeals of the Commission's final Order; and,

WHEREAS, the supplemental testimony of Julia Janson, President of Duke Energy Kentucky, adequately supports this Stipulation and the agreement of the parties that it memorializes, they do hereby stipulate and recommend the following:

1. Existing Commitment 48 should be revised to provide as follows:

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. However, in the event that any such person ceases to be a Board member and a vacancy is created due to death, resignation, incapacity, removal, failure to be elected or re-elected by Duke's shareholders, or for any other reason not enumerated herein, Duke commits to take all reasonable measures to fill this vacancy as soon as reasonably possible with another qualified Board member satisfying the above criteria.

2. The supplemental testimony of Julia Janson, President of Duke Kentucky, should be accepted into the record by the Commission as support for this Stipulation;

3. The Commission should enter an Order in response to the Joint Applicants' Petition for Rehearing by revising the language of regulatory Commitment 48 consistent with that contained above and further providing that the acquisition which is the subject of this proceeding should be approved on the condition that the Chief Executive Officers of each Joint Applicant file, within seven days of the date of its Order, a written acknowledgment accepting, and agreeing to be bound by, all of the commitments set forth in Appendix B to the Commission's August 2, 2011 Order, with the substitution of newly revised Commitment 48 in place of previous Commitment 48.

4. The parties agree that this Stipulation is reasonable and is in the best interests of all concerned and the public interest, and they urge the Commission to adopt it in its entirety.

This ____ day of September, 2011.

Respectfully submitted,



Mark David Goss
David S. Samford
Frost Brown Todd LLC
250 West Main Street, Suite 2800
Lexington, KY 40507-1749
(859) 231-0000 – Telephone
*Counsel for Joint Applicants,
Duke Energy Corporation; Cinergy Corp.
Duke Energy Ohio, Inc.
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Rocco D'Ascenzo
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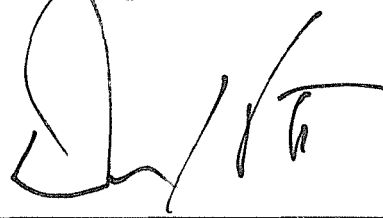
Jennifer Hans
Dennis G. Howard, II
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Assistant Attorneys General
Utility and Rate Intervention Division
P. O. Box 2000
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Mark David Goss
David S. Samford
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Utility and Rate Intervention Division
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COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

**THE JOINT APPLICATION OF DUKE)
ENERGY CORPORATION, CENERGY)
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.)**

Case No. 2011-00124

SUPPLEMENTAL TESTIMONY OF

JULIA S. JANSON

ON BEHALF OF

JOINT APPLICANTS

September 15, 2011

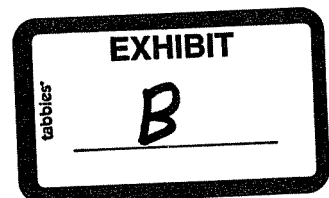


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I. INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Julia S. Janson, and my business address is 139 East Fourth Street,
3 Cincinnati, Ohio 45202.

4 **Q. WHAT IS YOUR POSITION WITH DUKE ENERGY KENTUCKY, INC.?**

5 **A.** I am President of Duke Energy Kentucky, Inc. ("Duke Energy Kentucky" or the
6 "Company") and Duke Energy Ohio, Inc. ("Duke Energy Ohio").

7 **Q. HAVE YOU PREVIOUSLY OFFERED TESTIMONY IN THIS**
8 **PROCEEDING?**

9 **A.** Yes. I tendered direct testimony as part of the Joint Applicants' Application on
10 April 4, 2011. I also provided testimony while under cross-examination at the
11 hearing held in this matter on July 8, 2011.

12 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?**

13 **A.** The purpose of my supplemental testimony is twofold. First, I will describe the
14 Joint Applicants' concerns with Commitment 48 which caused us to seek
15 rehearing of the Order entered by the Public Service Commission
16 ("Commission") on August 2, 2011. Second, I will explain why the proposed
17 amendment to Commitment 48 resolves these concerns while still protecting the
18 important public interest objective that motivated the Commission to include
19 Commitment 48 in the first place. The proposed amendment to Commitment 48
20 was discussed at an informal conference held on September 13, 2011 and is
21 attached as Exhibit A to the Supplemental Stipulation filed by the Joint
22 Applicants and the Attorney General

II. THE PROPOSED AMENDMENT TO COMMITMENT 48

1 **Q. PLEASE DESCRIBE THE JOINT APPLICANTS' REACTION TO THE**
2 **ORDER ENTERED BY THE COMMISSION ON AUGUST 2, 2011.**

3 **A.** On August 2, 2011, the Commission issued its order conditionally approving the
4 proposed merger transaction, provided that the Joint Applicants would also accept
5 forty-nine regulatory commitments, including three commitments that were not
6 set forth in the original Stipulation and Settlement Agreement. The Joint
7 Applicants could readily accept forty-eight of the forty-nine regulatory
8 commitments in the Commission's Order. One of the commitments –
9 Commitment 48 – could not be easily accepted, however.

10 **Q. WHAT CONCERNS DID THE JOINT APPLICANTS HAVE WITH**
11 **REGARD TO COMMITMENT 48?**

12 **A.** Commitment 48 imposes a mandate that, following the merger of the two
13 companies, the new Duke Energy Corporation ("Duke Energy") Board of
14 Directors must include at least one non-employee director who is a customer of
15 one of Duke Energy's Midwest operating companies. While the underlying
16 objective sought to be achieved by the Commission is shared by Joint Applicants
17 and is one which has historically been achieved without a regulatory requirement,
18 Commitment 48 significantly complicated the merger transaction, could have
19 caused unnecessary disruption to the corporate governance of Duke Energy, and
20 could result in an unintended future default by the Joint Applicants. Each of these

1 concerns is described in greater detail in the Joint Applicants' petition for
2 rehearing and I would adopt that filing as part of my testimony today.

3 **Q. HAVE THE JOINT APPLICANTS' CONCERNS WITH COMMITMENT**
4 **48 BEEN SATISFACTORILY ADDRESSED?**

5 **A.** Yes. Although Duke Energy currently has a non-employee, individual customer
6 of Duke Energy Indiana, Inc. ("Duke Energy Indiana") on its Board, the amended
7 Commitment 48 affords Duke Energy the flexibility and time to make sure that
8 this Commitment can be taken into account and accommodated in the
9 identification, selection and recruitment of future Directors. The amended
10 Commitment 48 also affords Duke Energy some flexibility by expressly
11 recognizing that it may not be possible to immediately fill a vacancy in this Board
12 position, should one occur. As a matter of fact, Board vacancies have generally
13 not been filled until the next occurring annual shareholder meeting.

14 **Q. DOES THE AMENDED COMMITMENT 48 CONTINUE TO PROTECT**
15 **THE PUBLIC INTEREST?**

16 **A.** Yes. Duke's customers within the Midwestern service territories will be directly
17 represented on the Board as a non-employee, individual customer of Duke Energy
18 Ohio, Duke Energy Kentucky or Duke Energy Indiana will serve on the Board so
19 long as Duke Energy's post-merger operations include regulated utility service in
20 Kentucky. Moreover, by adopting a "reasonableness" standard, the amended
21 Commitment 48 incorporates a well-established body of law that will make the
22 Company's compliance with Commitment 48 much easier to monitor and enforce.

23 **Q. WHAT RELIEF DO THE JOINT APPLICANTS SEEK?**

1 **A.** The Joint Applicants respectfully request the Commission to accept the proposed
2 amendments to Commitment 48. The Joint Applicants are certainly cognizant
3 that the Commission has a very busy docket, but respectfully request the
4 Commission to rule upon the petition for rehearing as soon as is practicable
5 because Duke Energy Kentucky's ability to seek future rate relief is directly tied
6 to the entry of a final order in this proceeding.

III. SUMMARY

7 **Q. WOULD YOU LIKE TO SUMMARIZE YOUR TESTIMONY?**

8 **A.** Commitment 48, as amended, helps protect the public interest while still
9 providing the Joint Applicants with the flexibility needed to make sure that Duke
10 Energy will not be in jeopardy of falling into default despite circumstances which
11 would likely be beyond its control.

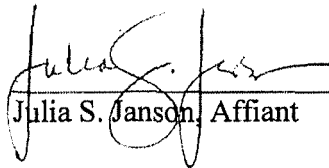
12 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?**

13 **A.** Yes.

VERIFICATION

State of Ohio)
) **SS:**
County of Hamilton)

The undersigned, Julia S. Janson, being duly sworn, deposes and says that she is the President of Duke Energy Kentucky, Inc. and Duke Energy Ohio, Inc., and that the matters set forth in the foregoing supplemental testimony are true and correct to the best of her information, knowledge and belief.



Julia S. Janson, Affiant

Subscribed and sworn to before me by Julia S. Janson on this 15TH day of September, 2011.



NOTARY PUBLIC

My Commission expires: No EXPIRATION



ROCCO O. D'ASCENZO
ATTORNEY AT LAW
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.