

**Joint Applicants' Response  
To The Attorney General's  
Initial Requests for Information  
Volume 2**

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**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-038**

**REQUEST:**

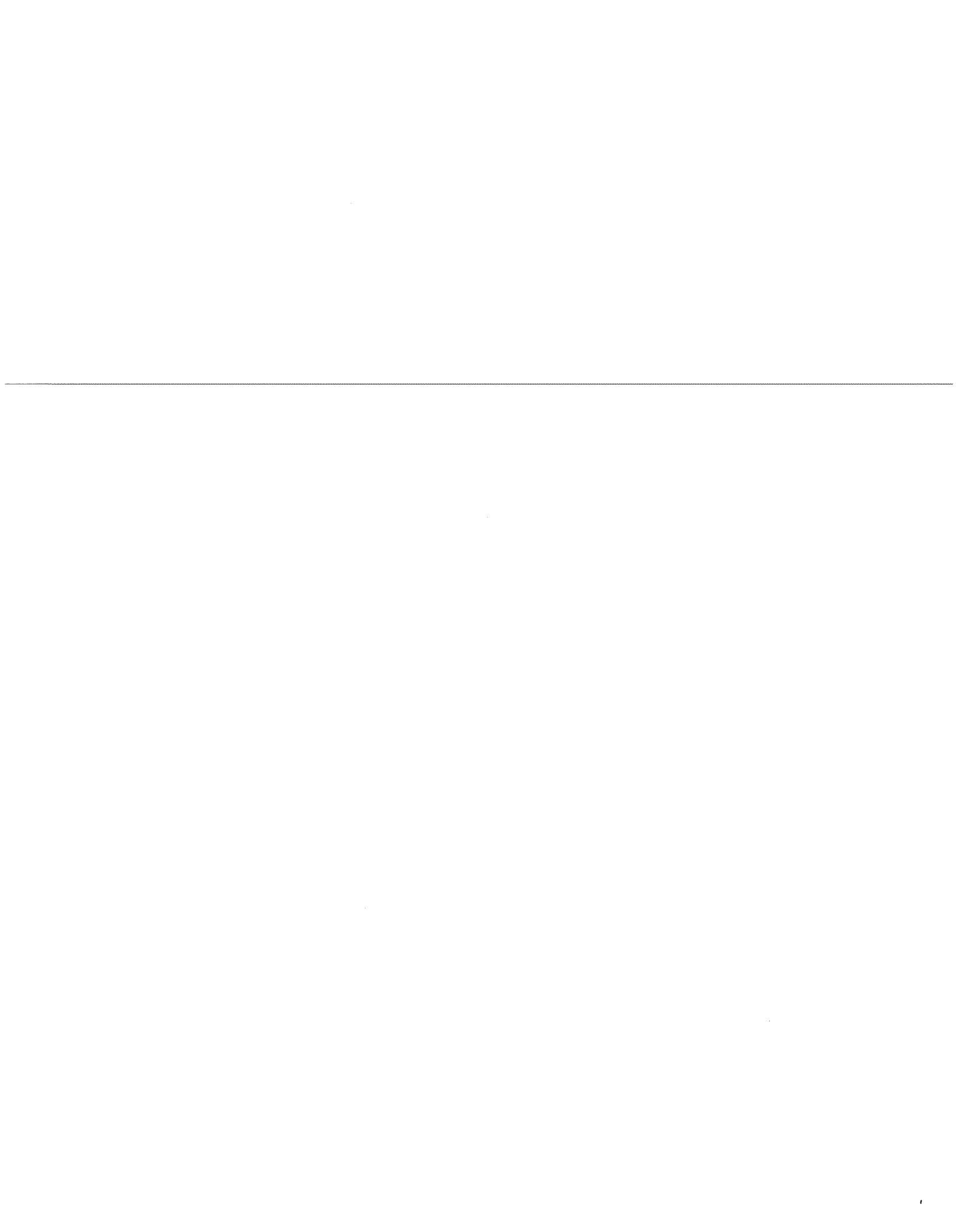
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Assuming the contemplated transaction is approved, will DEK be exposed to any increased costs for shared corporate services (including any services to be provided by Progress Servco) that it otherwise would not have faced but for approval? If so, identify all such costs as completely as possible, and provide any and all other details, including but not limited to whether DEK rate payers would be responsible for all or any portion of those increased costs.

**RESPONSE:**

It is unknown at this time exactly how each of the 23 functions currently allocated by the service company to Duke Energy Kentucky will be affected by the merger. The Company anticipates that the net impact will be to reduce overall costs borne by Duke Energy Kentucky ratepayers compared to what would be experienced without the merger.

**PERSON RESPONSIBLE:** William Don Wathen Jr.



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-039**

**REQUEST:**

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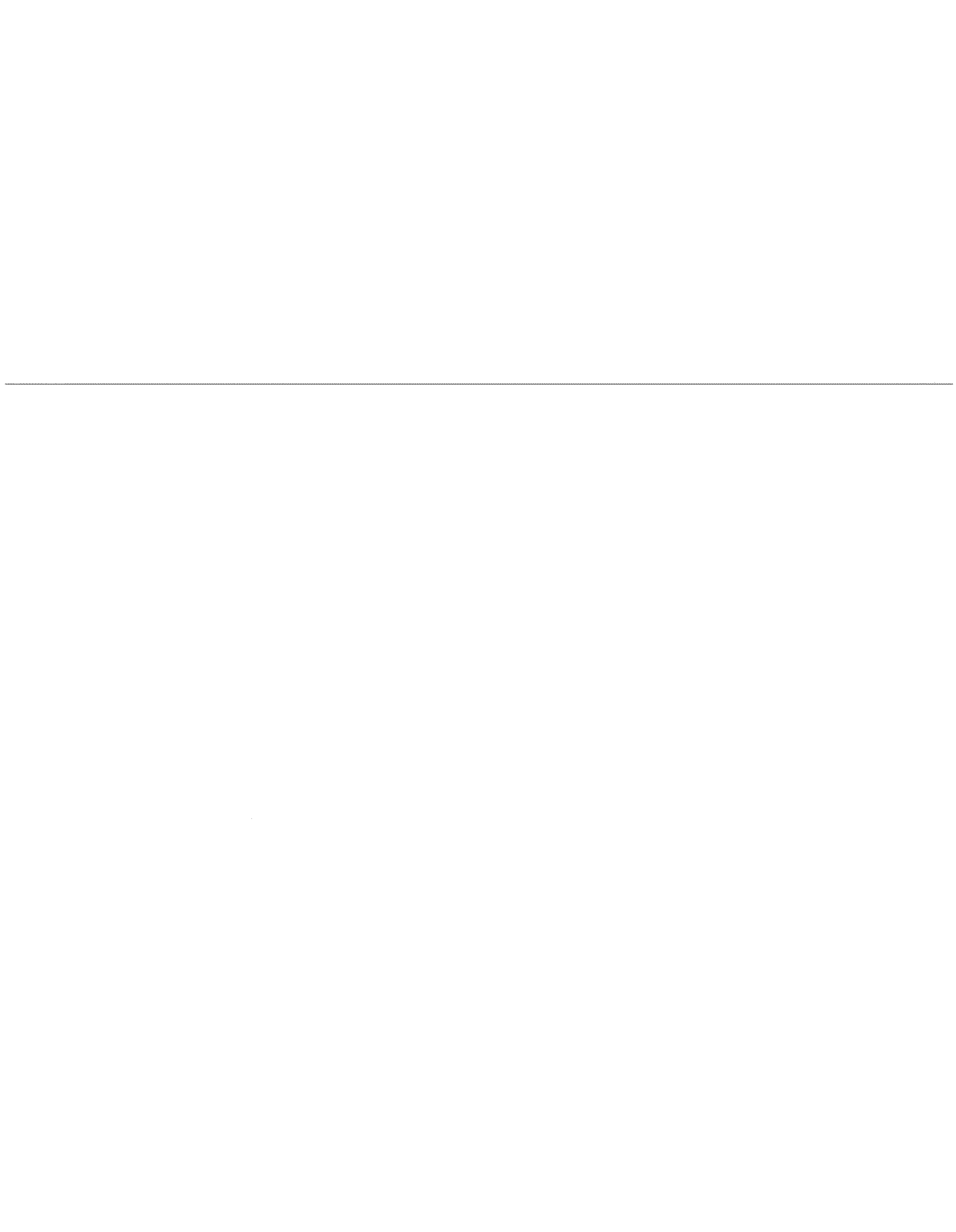
Reference the Wathen testimony, p. 17, wherein he describes the Operating Companies' Service Agreement. In the event the contemplated transaction is approved, state, in complete detail, whether DEK will incur any costs greater than it currently incurs. If so, provide a complete justification.

**RESPONSE:**

As a result of the merger, it is possible that 1 or more of the 23 service costs allocated from Duke Energy Business Services, LLC may increase in one period or more. Because the services currently being provided by Progress' service company will be "mapped" to allocations for Duke Energy Business Services, it will not be known, until that mapping process is complete, which service company costs may increase and which may decrease. It is expected, however, that the net impact of all charges allocated from Duke Energy Business Services will ultimately be lower as a result of the merger.

**PERSON RESPONSIBLE:** Michael Hendershott





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-040**

**REQUEST:**

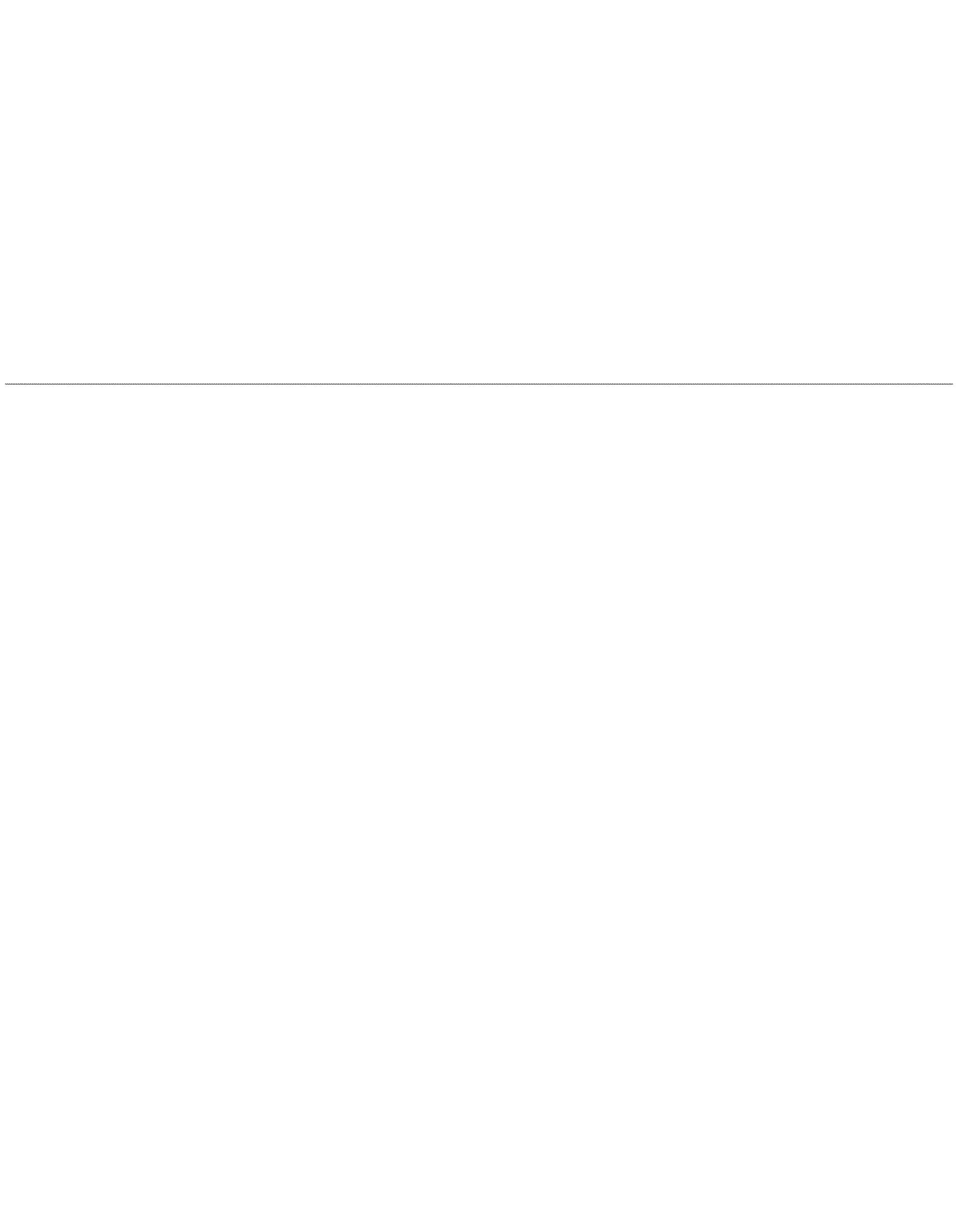
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Assuming the contemplated transaction is approved by all relevant regulatory authorities, please explain the process through which DKE (*sic*) will be able to challenge the allocation of a cost from a parent entity or affiliate. If the ability to challenge the allocation of a cost will not exist, then affirmatively state that fact.

**RESPONSE:**

Information responsive to this request is set forth on pages 16-20 of the Direct Testimony of William Don Wathen (Joint Application, Exhibit M). Allocations are governed by the terms of the applicable service agreement. Duke Energy Kentucky's ability to challenge allocations will not be changed as a result of the merger. It will continue to have the right to review and audit any allocation.

**PERSON RESPONSIBLE:** William Don Wathen Jr.



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**PUBLIC-AG-DR-01-041**

**REQUEST:**

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Please provide all minutes of any meetings held at which the acquisition was discussed: (a) between the shareholders and the company management; and (b) between the board of directors and the company management, of each of the Joint Applicants pertaining to the contemplated transaction. This request is meant to include, but is not limited to, Board meetings of any of the Joint Applicants, meetings between Joint Applicants, meetings of any of the officers of any of the Joint Applicants, etc.

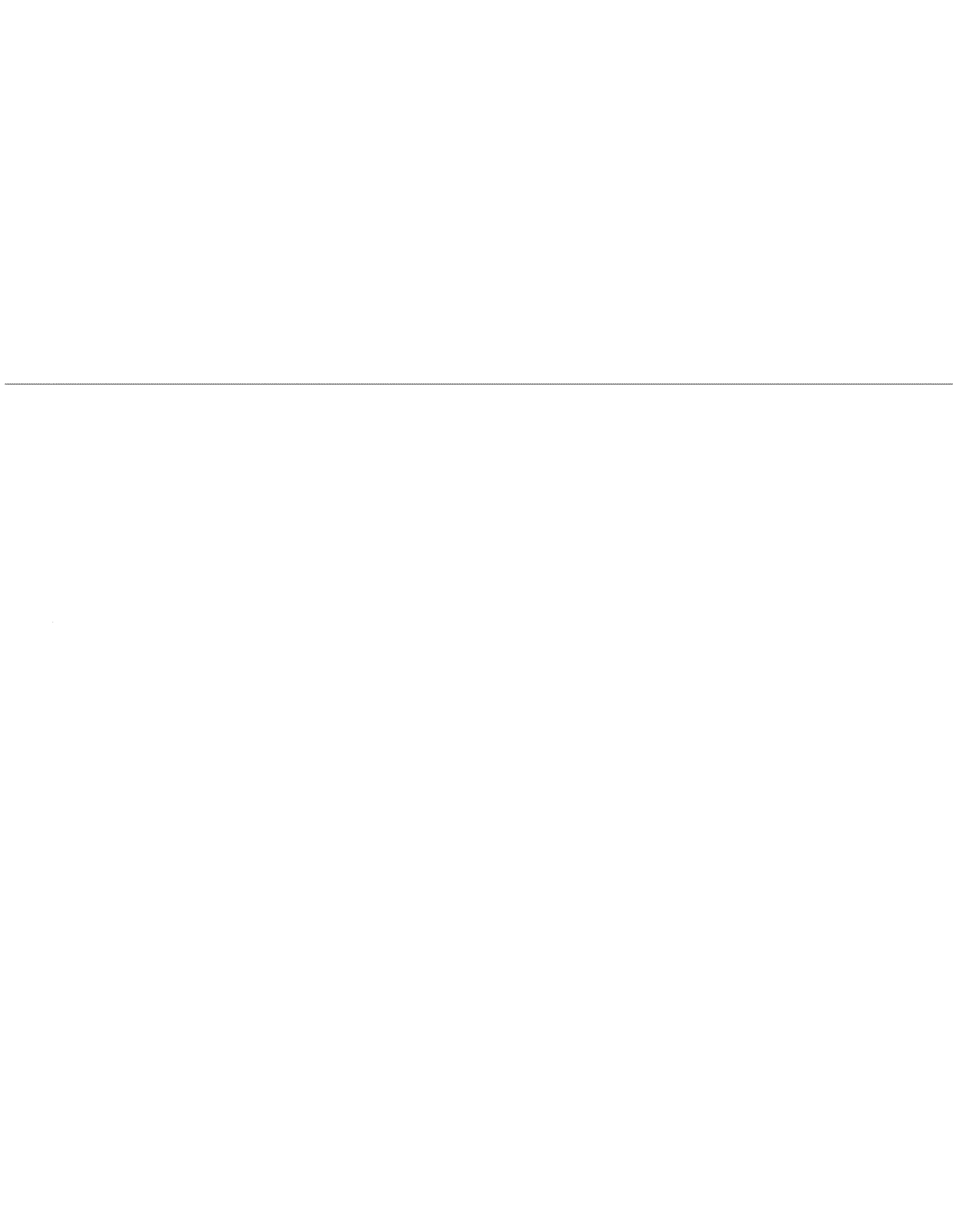
**RESPONSE:**

Objection. This request is overly broad and unduly burdensome and seeks information that is protected under the doctrines of attorney client privilege and attorney work product. Without waiving said objection, and to the extent discoverable, information responsive to this request is available on pages 57-111 of the S-4.

**CONFIDENTIAL PROPRIETARY TRADE SECRET**

This response has been filed with the Commission under a Petition for Confidential Treatment.

**PERSON RESPONSIBLE:** Objection – Legal, Holly H. Wenger (Progress), James E. Rogers (Duke)



**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**AG-DR-01-042**

**REQUEST:**

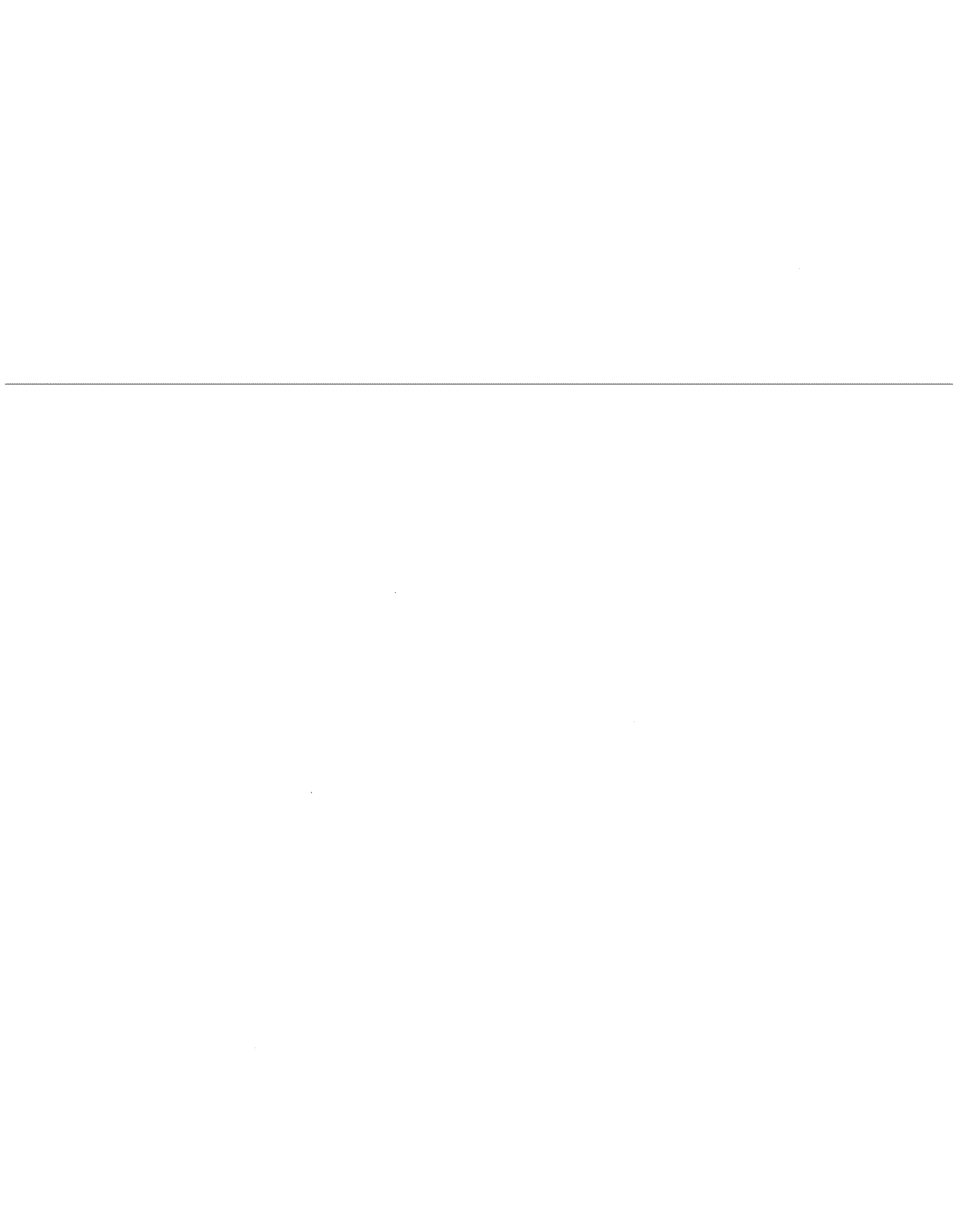
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Please provide copies of any reports, analyses or reviews of the cost of capital for DEK after any approval of the application as conducted by any/each of the Joint Applicants.

**RESPONSE:**

Objection. This document request seeks to elicit information protected by the attorney-client privilege and/or attorney work product privilege. Without waiving said objection, no such analysis has been performed.

**PERSON RESPONSIBLE:** Objection- Legal  
Stephen De May



**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**AG-DR-01-043**

**REQUEST:**

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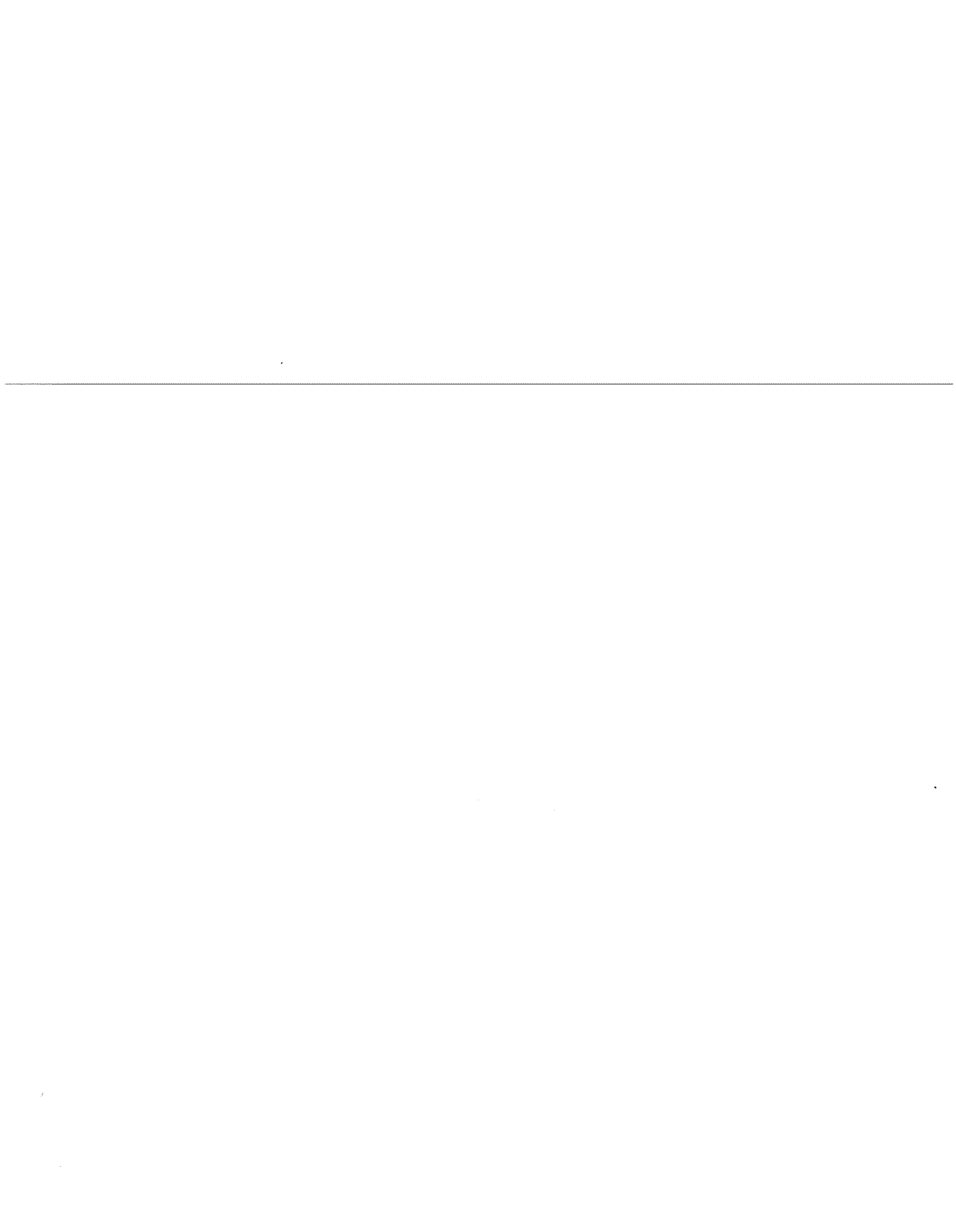
Please provide copies of any reports, analyses or reviews of the credit profile for DKE after any approval of the application as conducted by any/each of the Joint Applicants.

**RESPONSE:**

Objection. This document request seeks to elicit information protected by the attorney-client privilege and/or attorney work product privilege. Without waiving said objection and to the extent discoverable, see AG-DR-01-043 attachments from S&P and Moody's, regarding the transaction.

**PERSON RESPONSIBLE:** Objection-Legal  
Stephen De May





**MOODY'S**  
INVESTORS SERVICE

**Rating Action: Moody's affirms Duke Energy and Progress Energy's Baa2 senior unsecured ratings following merger announcement; rating outlooks stable**

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Global Credit Research - 10 Jan 2011

**Approximately \$30 billion of debt securities affected**

New York, January 10, 2011 – Moody's Investors Service affirmed the ratings and stable outlooks of Duke Energy Corporation (Duke: Baa2 senior unsecured) and its subsidiaries (listed below) as well as the ratings and stable outlooks of Progress Energy Corporation (Progress: Baa2 senior unsecured) and its subsidiaries (listed below) following today's announcement that the boards of Duke and Progress have agreed to combine in a stock-for-stock transaction. Duke will be the surviving parent company upon consummation of the transaction. In addition, Moody's changed the rating outlook for Duke Energy Ohio to stable from positive.

Ratings affirmed include:

~~Duke Energy's Baa2 senior unsecured and Issuer Rating and Prime-2 short-term rating for commercial paper;~~

Progress Energy's Baa2 senior unsecured and Issuer Rating and Prime-2 short-term rating for commercial paper;

Duke Energy Carolinas A1 senior secured, A3 senior unsecured;

Carolina Power & Light Company d/b/a Progress Energy Carolinas A1 senior secured, A3 senior unsecured and Issuer Rating, and Prime-2 short-term rating for commercial paper;

Florida Power Corporation d/b/a Progress Energy Florida's A2 senior secured, Baa1 senior unsecured and Issuer Rating; Baa3 preferred stock, and Prime-2 short-term rating for commercial paper;

Cinergy Corporation's Baa2 Long Term Issuer Rating;

Duke Energy Ohio's A2 senior secured and Baa1 senior unsecured,

Duke Energy Indiana's A2 senior secured, Baa1 senior unsecured and Baa3 preferred stock;

Duke Energy Kentucky's (p)A3 senior secured and Baa1 senior unsecured;

Florida Progress Funding Corporation's Baa2 junior subordinated debt;

FPC Capital 1's Baa2 preferred stock.

**RATINGS RATIONALE**

"The rating affirmations of Duke and Progress reflect their strong financial positions, sizeable regulated utility business operations and diversity among regulatory jurisdictions. The merger announcement is viewed as a credit neutral event for both companies, although our qualitative view regarding their relative positions within the Baa2 rating category has changed" said Mike Haggarty, Senior Vice President.

Pro-forma consolidated credit metrics for the combined Duke-Progress entity are expected to result in cash flow (CFO-pre WC) to debt of around 15% - 16%. These pro-forma credit metrics and business risk factors position the merged Duke more appropriately within its Baa2 rating category. Previously, we viewed Duke to be strongly positioned, and Progress to be weakly positioned within the Baa2 ratings category.

"We believe the merger transaction has several positive attributes" said Jim Hempstead, Senior Vice President. "The inherent logic behind the merger is the consolidation of two homogenous, capital intensive companies, to spread fixed costs across a larger asset platform. We also see good incremental diversification benefits with the proposed merger, including the addition of a Florida service territory, generation dispatch efficiencies in the Carolinas, and the ability to wring out other operating cost efficiencies across both organizations" Hempstead added. The merger creates one of the largest utility systems in the country, including the largest regulated nuclear generating fleet, operating in generally supportive regulatory environments. A larger Duke/Progress organization will also be better positioned to undertake the construction of new nuclear generation in either the Carolinas or Florida in the event the new company decides to move forward in this direction.

In addition to shareholder approval, we believe the merger will likely require the approval of two state regulatory commissions (North Carolina and South Carolina), the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC). While it is premature to predict the outcome of any of these proceedings, it remains possible that additional merger conditions could be imposed by one or more of the state regulators in order for merger approval to occur. It is also possible that today's merger announcement could have implications for other regulatory proceedings currently underway or planned over the near-term by both companies in various states, particularly given the current economic challenges that exist in their respective service territories.

Notwithstanding the clear fit that exists by merging the two companies, these regulatory issues make the consummation of the merger under the current terms less certain at this juncture. As there is greater clarity concerning the regulatory and shareholder approvals, including the impact, if any, on pending regulatory filings, Moody's will comment accordingly. Also, as the companies provide more transparency around legal structure, integration plans and synergy benefits, rating refinements, if needed, may follow. Today, we incorporate a view that the merger will close by year-end 2011.

Moody's affirmed the ratings for several Duke subsidiaries, including: Duke Energy Carolinas (Duke Carolinas: A3 senior unsecured); Duke Energy Ohio (Duke Ohio: Baa1 senior unsecured); Duke Energy Indiana (Duke Indiana: Baa1 senior unsecured) and Duke Energy Kentucky (Duke Kentucky: Baa1 senior unsecured).

Moody's also affirmed the ratings for all of Progress' subsidiaries, including: Progress Energy Carolinas, Inc. (A3 senior unsecured, Prime-2 commercial paper rating) and Progress Energy Florida, Inc. (Baa1 senior unsecured, Prime-2 commercial paper rating).

The prime-2 commercial paper ratings for both Duke and Progress are also affirmed.

For Duke Ohio, the change in the rating outlook to stable from positive reflects our modest concerns regarding the regulatory restructuring process in Ohio, lingering uncertainties associated with potential generation divestiture plans and the longer-term implications associated with the utility's ultimate capital structure and cash flow generation possibilities. Although we continue to view Ohio as a supportive regulatory and political jurisdiction, the chronic overhang of intermediate-term regulatory restructuring plans present increased uncertainties for Duke Ohio over the near-term. In addition, while we continue to view the Duke Ohio utility as strongly positioned within its Baa1 senior unsecured rating category, a rating upgrade is no longer likely over the near to intermediate term horizon. We are only modestly concerned with the implications associated with customer choice, and prefer to focus on the longer-term fundamentals of the Duke Ohio transmission and distribution utility activities.

The rating affirmations of Duke Indiana and Duke Kentucky reflect the good regulatory and political relationships that those entities have in their respective jurisdictions; the supportive suite of cost and investment recovery mechanisms, including numerous trackers; the diversity of load, customers and generation fuel supplies; and adequate sources of liquidity through the Duke Master Credit Facility. We continue to monitor the regulatory situation at Duke Indiana related to its Edwardsport Coal Gasification project, but incorporate a view that the matter will be resolved without adversely impacting credit quality.

The ratings affirmation of Duke Carolinas and Progress Energy Carolinas reflects the above-average regulatory environments in both North and South Carolina, the credit supportive cost recovery provisions in place, strong financial metrics, and service territories that should experience limited growth over the near term. The merger is not expected to immediately alter the utilities' respective capital expenditure programs or planned generation retirements.

However, joint dispatch arrangements should benefit both utilities over the longer-term and could eventually slow the timing of some new generation. Because of the relatively early enactment of North Carolina's 2002 Clean Smokestacks Act, both Duke Carolinas and Progress Energy Carolinas are fairly well positioned in meeting currently mandated environmental requirements.

The ratings affirmation of Progress Energy Florida reflects the stabilization of the political and regulatory environment in Florida, including the utility's recent rate settlement with the Florida Public Service Commission that should preclude the need for additional base rate proceedings through 2012. The utility continues to be negatively affected by the long-term outage of its Crystal River 3 nuclear plant, which has been undergoing repairs since September 2009, although the company expects to recover replacement power costs, which have been relatively manageable due to low gas prices, through its fuel cost recovery clause. The plant is currently expected to be back in service in March 2011. Although the merger will result in no direct benefits to Progress Energy Florida, such as the expected joint dispatch benefits in the Carolinas, the utility will be part of a much larger and more diverse organization in the event it decides to accelerate its currently postponed new Levy County nuclear construction project.

The rating outlooks of Duke, Progress and their respective subsidiaries are all stable and, barring unexpected new developments, Moody's does not anticipate any change in ratings or rating outlooks while the merger integration is underway and regulatory approvals are being obtained over the next year.

Rating upgrades are unlikely given last year's adverse regulatory development in Florida, lingering regulatory uncertainties in Indiana and Ohio, our expectations regarding pro-forma combined key financial credit metrics and high levels of debt at the parent holding companies.

Rating downgrades appear equally unlikely at this time, but could occur if there is a sustained decline in parent company cash flow coverage metrics below current levels, including a ratio of CFO before working capital plus interest to interest below 3.5x, a ratio of CFO before working capital to debt below 15%, a sustained decline in the supportiveness of the regulatory environments in North Carolina, South Carolina, Florida, Indiana or Ohio or a substantial increase in leverage at the parent or utilities.

The principal methodology used in this rating was Regulated Electric and Gas Utilities published in August 2009.

Duke Energy Corporation is a holding company for regulated utilities Duke Energy Carolinas, Duke Energy Ohio, Duke Energy Indiana and Duke Energy Kentucky, as well as international business activities in Central and South America. Duke Energy is headquartered in Charlotte, North Carolina.

Progress Energy, Inc. is a holding company for regulated utilities Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. and Florida Power Corporation d/b/a Progress Energy Florida, Inc., and is headquartered in Raleigh, North Carolina.

#### REGULATORY DISCLOSURES

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**MOODY'S**  
INVESTORS SERVICE

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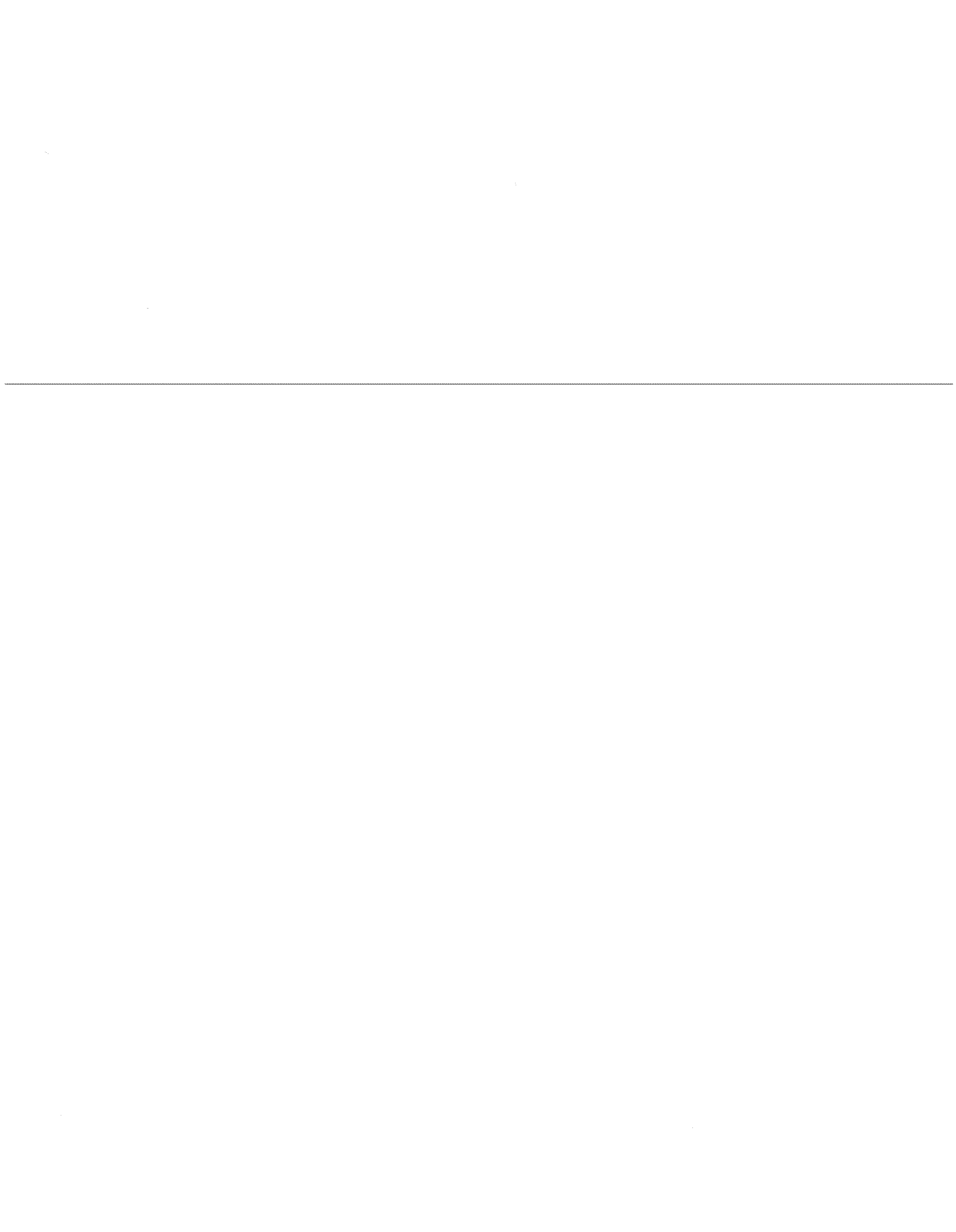
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STANDARD  
& POOR'S

# Global Credit Portal RatingsDirect®

January 10, 2011

## Research Update:

# Duke Energy 'A-' Rating Affirmed And Progress Energy 'BBB+' Rating Placed On Watch Positive On Planned Merger

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Ratings List

## Research Update:

# Duke Energy 'A-' Rating Affirmed And Progress Energy 'BBB+' Rating Placed On Watch Positive On Planned Merger

## Overview

- Duke Energy Corp. and Progress Energy Inc. have agreed to merge through a stock-for-stock transaction and assumption of existing debt.
- We are placing the 'BBB+' corporate credit and issue ratings on Progress Energy Inc., Carolina Power & Light Co. (dba Progress Energy Carolinas Inc.), and Florida Power Corp. (dba Progress Energy Florida Inc.) on CreditWatch with positive implications to reflect the likely upgrade following the completion of the transaction.
- We are affirming the 'A-' ratings on Duke Energy Corp. and the outlook remains stable. Duke is expected maintain credit quality through the merger-approval process and could show financial improvement post-merger depending on the terms of the regulatory approvals and the success of integration efforts.
- The combined entity would have an excellent business risk profile, with a primary focus on regulated electric utility operations, and a significant financial risk profile.

## Rating Action

On Jan. 10, 2011, Standard & Poor's Ratings Services placed its 'BBB+' corporate credit ratings on Progress Energy and its subsidiaries, Progress Energy Carolinas and Progress Energy Florida, on CreditWatch with positive implications. In addition, we affirmed the 'A-' corporate credit rating on Duke Energy and its subsidiaries, Duke Energy Carolinas LLC, Duke Energy Ohio Inc., Duke Energy Indiana Inc., and Duke Energy Kentucky Inc.. The rating actions follow the announcement that Progress Energy has entered into an agreement to merge with Duke Energy. Duke Energy will be the surviving entity. Completion of the merger is possible by the end of 2011 following approvals from the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the Department of Justice, and North Carolina and South Carolina regulators.

The positive CreditWatch listing on Progress Energy and its subsidiaries reflects that the company's credit quality will benefit from the merger with the higher-rated Duke Energy. The ratings affirmation on Duke Energy reflects our expectation that the combined entity will have an 'A-' corporate credit rating, based on excellent business risk profile and significant financial risk profile. The premium to be paid to Progress shareholders, which we calculate to be about 33% to book value, has a reasonable chance to be recouped through the retention of merger synergies. No additional debt is contemplated as part of the transaction, and regulatory approvals are expected



*Research Update: Duke Energy 'A-' Rating Affirmed And Progress Energy 'BBB+' Rating Placed On Watch Positive On Planned Merger*

to be timely and credit-supportive given the limited number of jurisdictions involved and the merger synergies available to show benefits to ratepayers.

Both companies are focused on regulated electric utility operations, and we expect the consolidated business risk to remain excellent. The consolidated business risk profile incorporates the following factors:

- A very large customer base of more than 7 million customers spread over six states, providing superior operating and regulatory diversity.
- The states in which the combined entity will operate are viewed as having regulatory environments in the "more credit supportive" or "credit supportive" categories.
- More than 80% of the combined company's credit profile would be characterized as very low-risk, domestic, regulated electric utility operations. The balance is derived from Duke Energy's international operations in South America and merchant activities that include a small generation fleet in the Midwest, wind power investments, and retail energy marketing.
- Total generation capacity will exceed 57,000 megawatts (MW), with about 85% of that capacity being either scrubbed, non-emitting, or having lower emissions. The remainder will present the combined entity with opportunities to retire older power plants and replace them with newer units, thereby growing rate base.

Standard & Poor's expects the combined entity to have a financial risk profile that will be in the significant category, demonstrating some weakness in the first year after the merger, but rebounding in subsequent years as a result of realizing cost savings and implementing base rate increases to recover invested capital. Therefore, we would expect that post-merger adjusted funds from operations (FFO) to total debt to average about 15%, adjusted FFO interest coverage to average 3.75x, and adjusted debt leverage to be about 52%. Consolidated liquidity should also remain adequate since both companies will preserve their existing revolving credit facilities that total \$5.3 billion.

## Rationale

The ratings on Duke Energy reflect the consolidated credit profiles of its operating subsidiaries, Duke Energy Carolinas, Duke Energy Ohio, Duke Energy Indiana, Duke Energy Kentucky, the contribution of the company's Latin American operations, and existing and planned renewable generation investments. Ratings also reflect the projected credit profile of Duke Energy after it merges with Progress Energy. The ratings on Progress Energy reflect the consolidated credit profiles of its wholly owned subsidiaries, Carolina Power & Light Co. (dba Progress Energy Carolinas, Inc, PEC) and Florida Power Corp. (dba Progress Energy Florida, Inc. PEF), and the prospect of merging with the higher-rated Duke. Progress Energy has an excellent business risk profile that reflects stable regulated electric utility operations in North and South Carolina and Florida. Duke Energy's excellent business risk profile is characterized by stable regulated utility operations in the Carolinas, Ohio, Kentucky, and Indiana. The company's operations in Latin America consist of about 4,000 MW of generation capacity. Duke is planning to expand its

*Research Update: Duke Energy 'A-' Rating Affirmed And Progress Energy 'BBB+' Rating Placed On Watch Positive On Planned Merger*

portfolio of wind and solar generation investments, currently at about 790 MW, which are viewed as having higher business risk compared with the regulated utility operations.

Duke Energy's large and diverse U.S. regulated utility operations serve customers in the Carolinas and the Midwest. The utilities operate under generally credit-supportive regulatory environments that provide for slightly below-average returns and timely recovery of fuel and other variable costs. The utility operations benefit from operating diversity in five different states, and demographic and economic diversity in service territories that range from average to attractive. The utilities have strong generation operations with high availability and capacity utilization factors. Rates are competitive for the regions of operations and provide some cushion for future rate increases and fuel cost recoveries. These strengths are offset by a significant capital spending program that will total up to \$15 billion through 2012, with about 80% of that targeted for regulated utility projects. The capital spending program is large, will necessitate additional debt issuance, and will require regular base rate increases to incorporate the new generation assets into rate base. As a result, ongoing effective management of regulatory risk that produces improving regulatory returns will be very important to support credit quality.

Duke Energy Ohio's electric security plan (ESP) went into effect in January 2009 and succeeded the earlier rate stabilization plan. The ESP plan, which expires at the end of 2011, provides for staggered base generation rate increases of \$36 million in 2009, \$74 million in 2010, and \$98 million in 2011 to compensate the company for dedicating about 4,000 MW of generation assets to serve native load. The ESP plan also includes trackers for fuel, purchased power and capacity costs, and environmental expenditures, avoiding the need for any deferrals, as well as recovery of non-bypassable charges related to new generation, if such projects are approved by the regulator. Since the ESP was implemented, customer and margin losses due to greater competitive forces and low market prices for generation in Ohio have eroded financial results and indicate that business risk has risen in the state. The company's ability to manage the competitive environment for the next few years and its strategic decisions surrounding the terms of the regulatory compact in Ohio in after 2011 could affect credit quality over the long term.

Cost increases in Indiana related to the construction of the 630 MW Edwardsport coal plant could also have credit quality implications, as Duke attempts to buttress its ability to eventually reflect the higher costs in rates through the regulatory process. The integrated gasification combined cycle (IGCC) generating station offers potential environmental and efficiency advantages over conventional coal-fired plant technology, but it has not been constructed on this scale and has proven to be an engineering and financial challenge. Estimated costs to complete the project have risen significantly (almost 50%), and only a portion of the overruns have been formally reviewed and effectively deemed prudent. If Duke is compelled to accept more risk to complete the project, its proficiency in managing that risk will be an important element in assessing its creditworthiness. A recent decision by the parties to renegotiate a settlement on Edwardsport construction and cost recovery could yet have credit implications. Public perception of the settlement, which requires approval by Indiana regulators, may have been

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affected by recent revelations of interactions between regulators and the utility that have led to dismissals or resignations of several utility executives and regulators. Credit quality would only be impaired if a new settlement or a regulatory decision shifted significant risks to Duke as a condition to completing the plant, and Duke decides to proceed with construction on that basis.

Standard & Poor's ascribes higher business risk to Duke's international operations due to the uncertainty of the local political and regulatory environments in the countries where it operates, especially Brazil, Peru, and Argentina. The Latin American assets have been self-funding, and no cash flow from overseas is factored into our analysis of Duke's ability to service the U.S. rated debt. Any substantial capital spending at the international operations could have ratings implications, depending on the risk profile of the spending. Duke is also pursuing the expansion of its wind generation business that is expected to be financed in a credit-neutral manner and under a model that minimizes market risk through long-term contracts with suitable counterparties. Any acceleration in the growth of this segment could also affect ratings.

Duke's consolidated financial risk profile is in the significant category and is expected to remain in that category after the merger. While recent historical credit metrics have been strong, in part reflecting low debt leverage, the financial profile is expected to weaken modestly over the intermediate term given the company's large capital spending program and the proposed merger. Because the associated cash flow generation will lag capital spending until several generation projects currently under construction are included in rate base, credit protection measures will weaken from 2010 levels, albeit at levels that should still support the current ratings. Adjusted debt leverage is expected to be at or below 50% and adjusted FFO to total debt to be between 15% and 20% to support current ratings.

Progress has a large and diverse customer base, serving more than 3.1 million customers. While the customer base has historically demonstrated consistent growth of more than 2% annually, the recession has slowed customer growth especially in Florida where the total number of customers declined slightly in 2009. Total generating capacity consists of more than 22,000 MW. On a consolidated basis, residential and commercial customers account for about 60% of sales, industrial customers for 15%, and wholesale customers for 20%. Wholesale sales are generally under long-term contracts with various public power, cooperative, and investor-owned utilities, regulated by the FERC on a cost-of-service basis, and lack fuel cost deferrals.

Progress Energy Carolinas and Progress Energy Florida have managed their regulatory relations effectively, achieving timely recovery of fuel and capital expenditures, and storm and environmental costs. In addition, Florida's 2006 comprehensive energy legislation provides support for new generation, including nuclear plants. North Carolina passed legislation in July 2009 that expedites the certification process for new gas-fired power plants as long as existing coal plants at the current site are retired. Progress Energy Carolinas is in the process of building three new combined cycle gas turbine units: the 600 MW Richmond facility with an in-service date of June 2011, the 950 MW Wayne County facility expected to operate in January 2013, and the 620 MW New Hanover County facility expected to operate in early

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2014. Despite political overtones that have somewhat increased regulatory risk in Florida, the regulatory environment continues to be reasonably constructive mainly through the use of various clauses that allow for recovery of approved capital expenditures, including environmental expenditures, and fuel. In June 2010, the Florida regulators approved a settlement for Progress Energy Florida that effectively maintains current base rates through 2012 without affecting the various clauses mentioned earlier, while still providing for an ROE of 9.5%-11.5%. The settlement also provides that if the earned ROE falls below 9.5%, Progress Energy Florida may seek rate relief after it has used at least \$150 million of the allowed depreciation reserve in the relevant period.

Progress Energy Florida is completing the work to bring the Crystal River 3 (CR3) nuclear plant back on line. CR3 experienced delamination within the concrete of the outer wall of the containment structure during a normal refueling and maintenance outage in September 2009. As of Sept. 30, 2010, Progress Energy Florida had incurred \$237 million in replacement power costs, with \$63 million already recovered from insurance proceeds, \$49 million still to be received from insurance, and \$125 million deferred for recovery through clauses. Repair costs totaled \$117 million, with \$18 million received from insurance, \$75 million still to be received from insurance, and the balance to be deferred for base rate recovery. In October 2010, Progress Energy Florida received approval from the Florida regulators to establish a separate docket related to the outage and replacement fuel and power costs associated with the extended outage.

Consolidated capital spending will continue to be significant over the next few years, necessitating additional borrowings, to address environmental compliance, new generation, uprates at existing plants, and system growth and maintenance needs. Total capital spending is expected to be about \$2.2 billion in 2011 and \$1.9 billion in 2012. Given the completion of environmental projects in Florida and the new generation projects in North Carolina, the capital spending program will be geared in favor of the Carolina operations on a 65%-35% basis. Progress has an aggressive financial risk profile. For the 12 months ended Sept. 30, 2010, financial performance benefited from some stabilization and/or improvement in the local economies as well as favorable weather. The financial performance has slightly exceeded our base case expectations with adjusted FFO of \$2.5 billion and adjusted total debt of \$14.8 billion, leading to adjusted FFO interest coverage of 3.5x, adjusted FFO to total debt of 16.8%, and adjusted debt leverage of 59.3%.

**Short-term credit factors**

The short-term rating on Duke Energy is 'A-2' and largely reflects the company's long-term corporate credit rating and the stable regulated utility operations that generate the bulk of cash flows. Liquidity is adequate under Standard & Poor's corporate liquidity methodology, which categorizes liquidity in five standard descriptors. Adequate liquidity supports Duke's 'A-' credit rating. Projected sources of liquidity, mainly operating cash flow and available bank lines, exceed projected uses, mainly necessary capital expenditures, debt maturities, and common dividends, by more than 1.2x. Duke's ability to absorb high-impact, low-probability events with limited need for refinancing, its flexibility to lower capital spending or sell assets, its

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sound bank relationships, its solid standing in credit markets, and generally prudent risk management further support our description of liquidity as adequate.

Duke Energy's debt maturities total about \$600 million in 2011. The company has a \$3.14 billion master revolving credit facility maturing in 2012 with approximately \$2.5 billion currently available. The master credit facility contains a sub-limit of \$1.1 billion for Duke Energy, \$840 million for Duke Energy Carolinas, \$650 million for Duke Energy Ohio, \$450 million for Duke Energy Indiana, and \$100 million for Duke Energy Kentucky.

Progress Energy's liquidity is adequate under Standard & Poor's corporate liquidity methodology, which describes a company's liquidity in five standard categories. Progress Energy's liquidity supports its 'BBB+' corporate credit rating. Projected sources of liquidity--mainly operating cash flow and available bank lines--cover projected uses, mainly necessary capital expenditures, debt maturities, and projected common dividends, by about 1.2x over the next 12 months. The short-term rating on Progress is 'A-2' reflecting the company's corporate credit rating and its stable cash-generating capability.

As of Oct. 15, 2010, the consolidated lines of credit totaled \$2 billion, with \$750 million available at each of the utility operating subsidiaries (fully available at PEC and PEF) and expiring in October 2013, and \$500 million available at the holding company with \$468 million still undrawn and expiring in May 2012. None of the bank facilities have rating triggers. Progress Energy also had \$691 million in cash and short-term investments. There is \$1 billion in debt maturities in 2011, and \$950 million in 2012.

## CreditWatch

The positive CreditWatch on Progress Energy is based on the anticipated consummation of the merger with the higher-rated Duke.

## Outlook

The outlook on Duke Energy is stable and reflects Standard & Poor's projection of steady financial performance while the company successfully completes the merger with Progress Energy and its considerable construction projects without further delays or cost increases. We could lower ratings or institute a negative outlook if credit protection measures unduly weaken or if adverse developments in Indiana or Ohio lead to a conclusion that business risk has worsened. A decision to proceed with the merger even if conditions enacted by regulators in the approval process undermine the financial basis for the transaction would also lead to lower ratings. The outlook could be revised to positive if the merger is completed with financial parameters intact, and if the large capital program is successfully completed and is not extended by new spending, especially on nuclear generation.

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**Related Criteria And Research**

- Criteria Methodology: Business Risk/Financial Risk Matrix Expanded, published May 27, 2009.
- 2008 Corporate Criteria: Analytical Methodology, published April 15, 2008.

**Ratings List**

Ratings List

	To	From
Progress Energy Corp. Corporate Credit Rating	BBB+/CW-Pos/A-2	BBB+/Stable/A-2
Carolina Power & Light Co. dba Progress Energy Carolinas Inc. Corporate Credit Rating	BBB+/CW-Pos/A-2	BBB+/Stable/A-2
Florida Power Corp. dba Progress Energy Florida Inc. Corporate Credit Rating	BBB+/CW-Pos/A-2	BBB+/Stable/A-2
Duke Energy Corp. Corporate Credit Rating	A-/Stable/A-2	A-/Stable/A-2
Duke Energy Carolinas LLC Corporate Credit Rating	A-/Stable/A-2	A-/Stable/A-2
Duke Energy Ohio, Inc. Corporate Credit Rating	A-/Stable/A-2	A-/Stable/A-2
Duke Energy Indiana, Inc. Corporate Credit Rating	A-/Stable/A-2	A-/Stable/A-2
Duke Energy Kentucky, Inc. Corporate Credit Rating	A-/Stable/--	A-/Stable/--

Complete ratings information is available to RatingsDirect subscribers on the Global Credit Portal at [www.globalcreditportal.com](http://www.globalcreditportal.com) and RatingsDirect subscribers at [www.ratingsdirect.com](http://www.ratingsdirect.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-044**

**REQUEST:**

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Please provide the total number of employees working in any and all of the Joint Applicants' customer service centers, regardless of location, dedicated to addressing inquiries and other needs of customers located in Kentucky. Please differentiate between full-time, part-time, and seasonal employees.

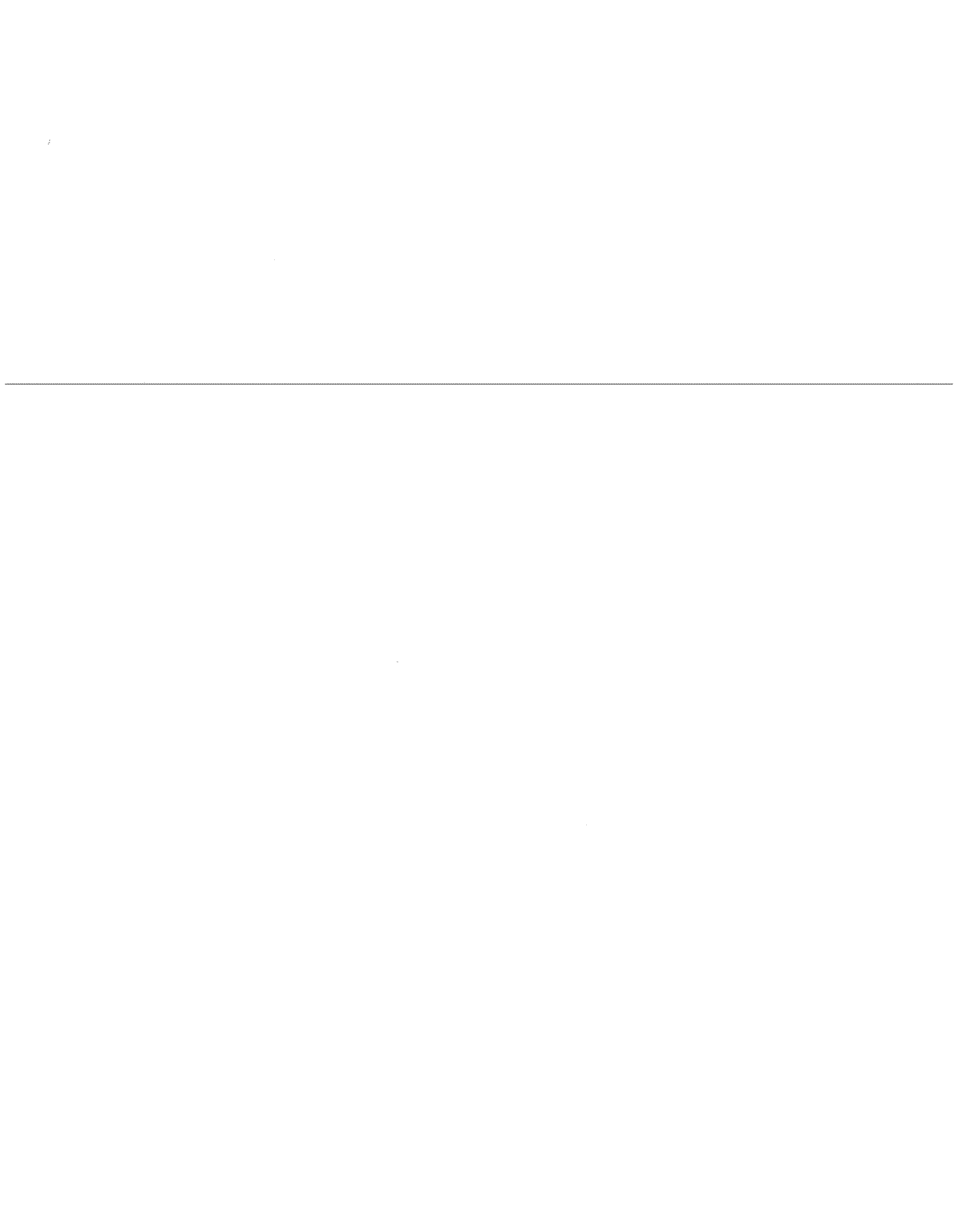
- a. Please provide the total number of such employees as of the date of your response to this request, and an estimate for the number of such employees following the completion of the contemplated transaction.
- b. Please provide a copy of any existing agreement, whether a collective bargaining or otherwise, between the Joint Applicants and their respective union employees.

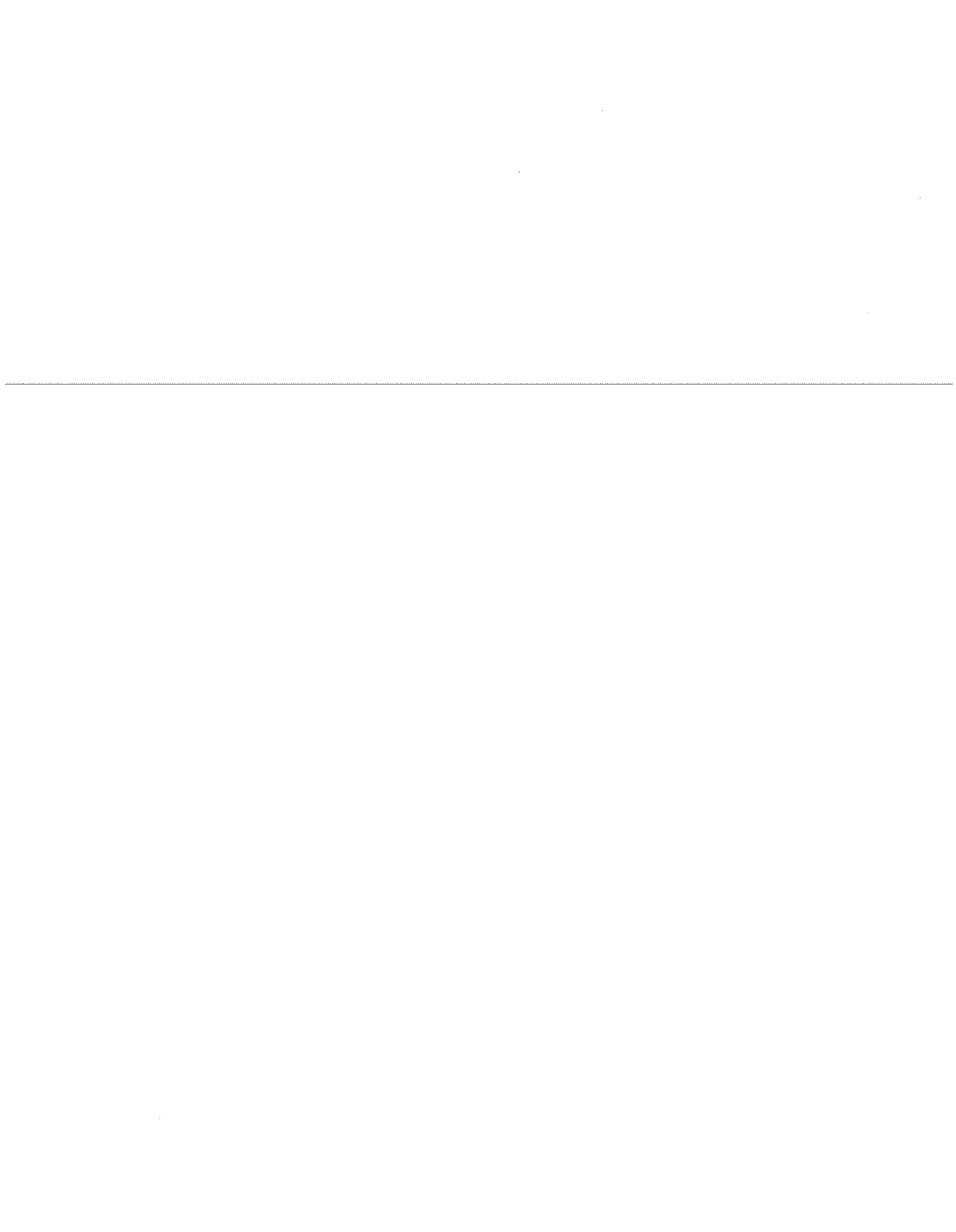
**RESPONSE:**

- a. Duke Energy allocates resources to its customer service centers based on customer demand within its Midwest service territories (Kentucky, Indiana and Ohio). As of the date of this response, Duke Energy has 198 full-time, 59 part-time, and roughly 100 3<sup>rd</sup> party vendors resourced to respond to calls within the Company's Midwest service territories. At a given point in time, the number of representatives responding to calls from Kentucky customers in time fluctuates with demand. At this point, it is unclear if the structure of the Company's call center operations will change.
- b. Please see Attachment AG-DR-01-044(b) 1-3.

**PERSON RESPONSIBLE:** Julie Janson







## USW 2007 – 2011 CONTRACT

This Contract, dated June 13, 2007, is agreed upon between Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., hereinafter referred to as the "Company," and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), hereinafter referred to as the "Union."

The Company and the Union recognize that in order for the parties to meet the challenge of competition, the need for long-term prosperity and growth, and establish employment security, each must be committed to a cooperative labor management relationship that extends from the bargaining unit members to the executive employees. The Company and the Union agree that employees at all levels of the Company must be involved in the decision making process and provide their input, commitment, and cooperation to improving productivity and helping the Company become the lowest cost producer and highest quality provider of energy service.

### ARTICLE I – PURPOSE AND RESPONSIBILITIES

Section 1. (a) It is the intent and purpose of the parties hereto that the terms and conditions of this Contract will promote and improve the economic relations between the Company and its employees who are members of the Union, to the mutual benefit of both parties. To that end, there is established herein the basic agreements as to hours of work, rates of pay, working conditions, and a method of providing for the peaceful and satisfactory adjustment of differences of opinion and interpretations of this Contract that may arise from time to time to be observed by the parties hereto during the life of this Contract.

Section 2. (a) It is expressly understood and agreed that the services to be performed by the employees covered by this Contract pertain to and are essential to the operation of a public utility and to the welfare of the public dependent thereon and in consideration thereof, as long as this Contract and conditions herein be kept and performed by the Company, the Union agrees that under no conditions and in no event, whatsoever, will the employees covered by this Contract, or any of them, be called upon or permitted to cease or abstain from the continuous performance of the duties pertaining to the positions held by them under this Contract. The Company agrees on its part to do nothing to provoke interruptions of or prevent such continuity of performance of said employees, insofar as such performance is required in the normal and usual operation of the Company's property and that any difference that may arise between the above-mentioned parties shall be settled in the manner herein provided.

(b) The Company agrees that it will not attempt to hold the Union financially responsible or institute legal proceedings against the Union because of a strike, slowdown or work stoppage not authorized, abetted or condoned by the Union. The Union agrees that, in the event of an unauthorized work stoppage, it will in good faith and without delay exert itself to bring the work stoppage to a quick termination and insist that the

employee(s) involved cease their unauthorized activities. To that end, the Union will promptly take whatever affirmative action is necessary. Furthermore, the Union agrees that any employee or employees who agitate, encourage, abet, lead or engage in such a strike, work stoppage, slowdown or other interference with the operations of the Company shall be subject to such disciplinary action as the Company may deem suitable, including discharge, without recourse to any other provision or provisions of the Contract now in effect.

(c) No employee shall be required to cross a picket line to perform work that is not necessary to provide the normal services of the Company. A supervisor shall notify individuals who are picketing that Company employees must provide service and shall make arrangements for employees to safely cross the picket line to perform such work. The Company agrees, in the case of new construction work involving Construction and Maintenance Forces, to notify the Sub-District Office of the Union not less than 24 hours in advance of any situation requiring the crossing of a picket line.

## ARTICLE II – RECOGNITION OF THE UNION

Section 1. (a) The Union is recognized as the sole and exclusive collective bargaining agency for those employees who are employed under the classifications listed in the job descriptions manual.

This Contract shall be final and binding upon the successors, assignees or transferees of the Union and the corporate entity of the Company.

(b) Employees in the following categories are specifically excluded from the collective bargaining unit represented by the Union: clerical, dispatchers, draftsmen, foremen, and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action.

(c) The Company recognizes the Union as the sole collective bargaining agency in matters concerning wages, hours of work and working conditions for all employees, as defined above, in the following Departments, Divisions and Sections:

### LOCAL UNION 12049

#### FRANCHISED ELECTRIC & GAS

##### Gas Operations

Construction & Maintenance

Corrosion Control

Systems Operations

Production - Gas Plants

##### Midwest Field Operations

Premise & Revenue Services OH/KY/IN

Service Delivery

CHIEF ADMINISTRATION OFFICER  
Enterprise Field Services  
Fleet & Meter Operations

**LOCAL UNION 5541-06**

FRANCHISED ELECTRIC & GAS  
Gas Operations  
Construction & Maintenance  
Systems Operations  
Production - Gas Plant

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Midwest Field Operations  
Premise & Revenue Services OH/KY/IN  
Service Delivery

(d) There shall be no discrimination, interference, restraint or coercion by the Company or its agents against any employee because of membership in the Union.

(e) There shall be no discrimination, interference, restraint or coercion by the Company or the Union or their agents against any employee or officer of the Union because of race, color, religion, sex, disability, national origin or ancestry or for any other reason. References to the masculine gender are intended to be construed to also include the feminine gender whenever they appear throughout the Contract.

(f) Nothing in this Contract shall be deemed to require the Company or the Union to commit an unfair labor practice or other act which is forbidden by, or is an offense under, existing or future laws affecting the relations of the Company with the employees bargained for by the Union.

**ARTICLE III – RECOGNITION OF MANAGEMENT**

Section 1. (a) The Union recognizes that the management of the Company, the direction of the working forces, the determination of the number of employees it will employ or retain in each classification and the right to hire, suspend, discharge, discipline, promote, demote or transfer, and to release employees because of lack of work or for other proper and legitimate reasons are vested in and reserved to the Company.

(b) The above rights of Management are not all-inclusive, but indicate the type of matters or rights which belong to and are inherent to Management. Any of the rights, powers, and authority the Company had prior to entering this Agreement are retained by the Company, except as expressly and specifically abridged, delegated, granted or modified by this Contract.

#### ARTICLE IV – UNION SECURITY AND CHECK-OFF

Section 1. (a) Any employee who is a member of the Union on the effective date of this Contract, shall, as a condition of continued employment, maintain membership in the Union to the extent of paying the periodic membership dues uniformly required of all Union members subject to the annual 10 day escape period hereinafter described.

(b) Any employee who is not a member of the Union on the effective date of this Contract, and who chooses not to become a member, shall be required as a condition of continued employment, to pay to the Union each month, as a contribution toward the cost of the administration of this Contract, a service charge equal in amount to the monthly dues uniformly required of Union members.

(c) New employees, hired by the Company after the effective date of this Contract, shall be required to join the Union as a condition of continued employment on the 31<sup>st</sup> day of employment in a job classification represented by the Union.

(d) The Union agrees that any present or future employee who is now or may become a member of the Union may withdraw from membership in the Union between December 15 and December 31, inclusive of each year, by giving notice of this desire to do so by registered or certified mail to the Labor Relations area of the Company. After such withdrawal, an employee shall not be required to rejoin the Union as a condition of continued employment.

(e) The Company, for all employees in the bargaining unit who have furnished the Company with voluntary check-off authorization cards, shall deduct from those employees' pay each week, dues or service charges and promptly remit the same to the International Secretary-Treasurer of the Union on a monthly basis. The initiation fee of the Union shall also be deducted and remitted to the International Union.

(f) The amount of dues or initiation fees to be deducted by the Company, within the limitations set forth on the voluntary check-off cards, shall be computed on the basis of the formula provided by the International Union. An initiation fee in an amount specified by the Union will also be deducted from the employee's pay. The Company will cooperate with the Union to change the dues computation period upon proper notice from the International Representative.

(g) The Union agrees that neither it nor any of its officers or members will intimidate or coerce any employees of the Company into joining the Union. The Company agrees that neither it nor any of its management representatives will attempt to persuade any employee from joining the Union.

(h) The Union agrees that in the event of any strike, work stoppage, slowdown, picketing or any other interference to the work or the operations of the Company by any individual employee or group of employees in the bargaining unit represented by the Union, this section of the Contract is then and there and by reason thereof automatically canceled and of no further force and effect; provided, however, that the Company may upon the presentation of proof satisfactory to the Company, within 10 days thereafter, that the Union did not directly or indirectly authorize, permit, endorse, aid or abet said strike,

work stoppage, slowdown, picketing or interference referred to, reinstate this section of the Contract, which section, if reinstated will, from and after the date of reinstatement, be of the same validity, force and effect as if it had not been canceled. In this connection, it is the expressed intention of the parties that for the purpose of making this cancellation provision effective without affecting the other sections of the Contract, this Contract is to be considered a severable Contract. Should the automatic cancellation of this section occur, it is the intention and agreement of the parties that all other sections and provisions of the Contract remain in full force and effect as therein provided.

(i) The Union shall indemnify and save the Company harmless against any and all claims, demands, law suits, or other forms of liability that may arise out of or by reason of action taken by or not taken by the Company in reliance upon any check-off authorization cards signed by the individual employees and furnished to the Company by the Union for the purpose of complying with any of the provisions of this Section.

#### ARTICLE V – CLASSIFICATION AND WAGES

Section 1. (a) The wage schedules described in the Contract in effect immediately prior to the date of this Contract, including all adjustments to those wages which were due to increases in the C.P.I. during the term of that Contract shall be amended as follows:

	As Of	Effective	Effective	Effective	Effective
Wage	May 14,	May 15,	May 15,	May 15,	May 15,
Level	2007	2007	2008	2009	2010
1	\$17.64	\$18.26	\$18.90	\$19.56	\$20.24
2	18.00	18.63	19.28	19.95	20.65
3	18.28	18.92	19.58	20.27	20.98
4	19.08	19.75	20.44	21.16	21.90
5	20.41	21.12	21.86	22.63	23.42
6	20.98	21.71	22.47	23.26	24.07
7	21.79	22.55	23.34	24.16	25.01
8	22.92	23.72	24.55	25.41	26.30
9	23.61	24.44	25.30	26.19	27.11
10	23.94	24.78	25.65	26.55	27.48
11	25.06	25.94	26.85	27.79	28.76
12	26.28	27.20	28.15	29.14	30.16
13	27.62	28.59	29.59	30.63	31.70
14	28.01	28.99	30.00	31.05	32.14
15	28.41	29.40	30.43	31.50	32.60
16	29.22	30.24	31.30	32.40	33.53

Level 5–Construction Assistant, Mechanic III (incumbent); Level 6–Meter Specialist III; Level 7–Gas Systems Operations Mechanic III, Mechanic Operator III; Level 8–Premise Mechanic, Gas Plant Operator III; Level 10–Mechanic; Level 11–Gas Plant

Operator II, Meter Specialist II; Level 12–Gas Systems Operations Mechanic II, Mechanic Operator II, Senior Mechanic; Level 13–Service Mechanic “B”, Welder II, Gas Plant Operator I, Meter Specialist I, Tool Repair Specialist; Level 14–Welder I; Level 15 –Gas Systems Operations Mechanic I, Mechanic Operator I, Service Mechanic “A”; Level 16–Inspecting.

(b) Any employee in the bargaining unit represented by the Union who was on or below the maximum hourly wage rate of his job classification on May 14, 2007, shall receive an hourly increase in accordance with the increase applicable to the maximum wage rate of his job classification in accordance with the provisions of the Contract.

(c) The hourly wage rate increases referred to herein shall not apply to the minimum hourly wage rates of starting job classifications.

(d) Employees shall be provided the higher of a 25¢ promotional increase above the maximum wage rate of the job classification from which they promote, or the minimum wage rate of the job classification to which they promote. This provision will not apply when the maximum wage rate of a job is not at least 25¢ above the maximum wage rate of the job classification from which it promotes.

(e) Whenever the difference between the minimum and maximum wage rates of any hourly rated job classification is not divisible by ten, the hourly wage rates will be by 10¢ steps, with the exception of the last step to the maximum hourly wage rate of the job classification. In such case the increase to the maximum hourly wage rate will include the 10¢ increment plus the odd amount necessary to equal the maximum hourly wage rate, provided, however, that the total amount of the increase is less than 20¢.

(f) Employees who are below the maximum hourly wage rate of their job classification shall continue to receive such length of service increases as they may be entitled to under the operation of the job classification and wage evaluation plan.

(g) The shift differentials paid to employees on scheduled shifts on classified jobs will be paid as follows:

Name and Definition of Shift		Shift Differential Cents Per Hour				
		Current	05/15/07	05/15/08	05/15/09	05/15/10
<b>Day Shift</b>	Where the majority of the scheduled hours worked are between 8:00 a.m. and 4:00 p.m.	0	0	0	0	0
<b>Afternoon Shift</b>	Where the majority of the scheduled hours worked are between 4:00 p.m. and 12:00 Midnight	\$1.45	\$1.50	\$1.55	\$1.60	\$1.65
<b>Night Shift</b>	Where the majority of the scheduled hours worked are between 12:00 Midnight and 8:00 a.m.	\$1.50	\$1.55	\$1.60	\$1.65	\$1.70



### Sunday Premium

When the majority of the regularly scheduled hours in a shift are on Sunday, a premium amount will be paid as follows:

<b>Current</b>	<b>05/15/07</b>	<b>05/15/08</b>	<b>05/15/09</b>	<b>05/15/10</b>
\$1.60	\$1.65	\$1.70	\$1.75	\$1.80

(h) The Company shall prepare occupational classifications and job descriptions ~~which will define, as nearly as possible, the nature of the work involved under each classification.~~ All required changes in job classifications or promotional sequences will be initiated by the Company.

(i) When a job description has been revised by the management, a representative of employees will be given an opportunity to suggest changes to the revised job description before it is submitted to the Company's Job Evaluation Committee. After the management has reviewed the changes to the job description, if any, suggested by the Union representative, the job description will be submitted to the Company's Evaluation Committee. The Union representative shall have an opportunity to submit written comments regarding the duties of the job to the Company's Evaluation Committee. There will be no recourse to the grievance and arbitration procedure because of the language of a job description or the evaluation of a job classification.

(j) The Job Evaluation Committee of the Company will be responsible for evaluating all new or revised job classifications. Prior to the evaluation of revised job descriptions, the representative of the Union may accompany the management representative to explain his written comments to the Committee. The evaluation established by this Committee will be used to determine a proposed maximum wage rate for each new or revised job classification. The wage rate resulting from this evaluation will be communicated to the Union as far in advance as possible, but not less than 30 days, of the proposed effective date for the installation of the new or revised classification.

(k) The Union shall maintain a Classification Committee consisting of not more than five members who may review the evaluation and wage rate of any new or revised classification. The Union's Committee may, by request, meet with the Company's Committee as soon as possible at a mutually convenient time, but within 30 days, after the Union has been notified by the Company of the proposed new or revised classification for the purpose of presenting any information relevant to the evaluation of the new or revised classification, which has been included in the previous written comments of the Union representative. The Union will be notified after the Company's Committee has reviewed the information presented by the Union. All wage rates so established shall be final and binding and not subject to the grievance and arbitration procedure. However, if any revised wage rates are reduced as a result of the evaluation(s), they will not be placed into effect until the Company and the Union have had an opportunity to negotiate them during full contract negotiations, even though the revised job classification will be in effect. Employees, presently in, or promoting to, such job classifications will continue to receive wage adjustments in accordance with the other provisions of the Agreement just as if the wage rate had remained at the same level until a new Agreement is reached.

It is understood that the right to maintain, revise or abolish any job classification or to create new classifications is the exclusive right of management.

(l) Where the Union deems an employee, or employees, to be improperly classified, it may file a grievance which shall be handled under the grievance procedure of this Contract.

(m) Members of the Union's Committee and a reasonable number of witnesses shall not suffer a loss of pay when engaged in meetings during their working hours with the Company's Job Evaluation Committee.

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Section 2. (a) No employee shall regularly be called upon to perform work beyond the scope of his classification. Employees temporarily advanced to a higher classification for four hours or more in any one day shall receive either the minimum rate of pay applicable to that classification or 25¢ per hour above the maximum wage rate of their job classification, whichever is greater, but no more than the maximum wage rate of the job to which the employee is upgraded. Employees temporarily assigned to a job scaled at a lower rate of pay than their own shall not suffer financially through such a transfer.

(b) When a temporary assignment in a job classification within the bargaining unit exceeds 90 consecutive days, the assignment being temporarily filled shall be considered a vacancy and filled permanently in accordance with the posting procedure.

(c) When an employee covered by this Contract voluntarily accepts a temporary assignment to a supervisory position, he shall be paid the same rate of his classified assignment at the time of the temporary assignment.

(d) An employee, when permanently promoted to a job classification and qualifying in all respects with the exception of time spent in the preceding classification as required in the qualification section of the job description, shall be considered as having the equivalent of such required time.

## **ARTICLE VI – SENIORITY**

Section 1. (a) System Service shall date from the time an employee first earns compensation in the employ of the Company, except as such system service may be lost in accordance with Section 6 of this Article.

(b) Classified Seniority shall date from the time an employee is permanently employed in a specific job classification. Whenever employees are accepted for job postings and their promotion is delayed by no more than 30 days or when a delay beyond 30 days is caused solely by the Company, their new classified seniority date will be adjusted to place them in their proper seniority position in relation to other employees who promoted as a result of the same posting.

(c) In the event that two or more employees achieve classified seniority on the same date, the respective seniority rank of such employees shall be determined by the Union. The Union shall promptly notify the Company in writing of its determination.

(d) Nothing in this Contract shall be construed in such a way that would enable an employee to use classified seniority for the selection of a particular job assignment. In justifiable cases, however, when requested by an employee, a supervisor will give consideration in making job assignments to the requirements of the job to be done, the physical condition, the qualifications and the classified seniority of the employee.

(e) All new employees shall be classed as probationary employees for a period of one year and shall have no system service and seniority rights during that period. After ~~one year of continuous service as probationary employees, such employees shall be~~ classified as regular employees and their system service and seniority record shall include their previous employment as probationary employees. The Company shall have the right to lay off or discharge probationary employees and there shall be no responsibility for reemployment of such employees after they are discharged or laid off during the probationary period. No unqualified probationary employee shall act as a second employee in any two-employee crew in the Construction and Maintenance or Systems Operations Sections.

(f) In order to avoid possible grievances, the Company will discuss in advance with the representatives of the Union, demotions, layoffs, and recalls from layoffs.

Section 2. (a) Classified seniority shall be administered separately in the following Departments, Divisions, and Sections:

**LOCAL UNION 12049**

**FRANCHISED ELECTRIC & GAS**

Gas Operations

Construction & Maintenance

Cincinnati District

Kentucky District

Corrosion Control

Cincinnati District

Systems Operations

Cincinnati - Kentucky District

Production - Gas Plants

Cincinnati - Kentucky District

Midwest Field Operations

Premise & Revenue Services OH/KY/IN

Service Delivery

Cincinnati District

Kentucky District

**CHIEF ADMINISTRATION OFFICER**

Enterprise Field Services

Fleet & Meter Operations

Gas Measurement Center

**LOCAL UNION 5541-06**

FRANCHISED ELECTRIC & GAS

Gas Operations  
Construction & Maintenance  
Systems Operations  
Production - Gas Plant

Midwest Field Operations  
Premise & Revenue Services OH/KY/IN  
Service Delivery

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(b) In the cases of promotions, within each District as described above, the Union agrees that the strict classified seniority interpretations may be waived when a specific employee is unqualified for a particular promotion but in such event the Company and the Union shall discuss the matter fully and come to agreement first.

(c) The classified seniority status of employees permanently assigned from one District to another District shall be fixed without delay by discussion between the Company and the Union Grievance Committee.

(d) For a period of six months following a promotion, when an employee who has been assigned to a job classification not bargained for by the Union returns to a job classification in which they have classified seniority, their seniority will be adjusted to a date that is one day less than the classified seniority date of the employee with the least classified seniority in the job classification within the bargaining unit to which the employee is assigned. If the employee returns to the bargaining unit greater than six months from said promotion, they shall be placed at the minimum wage rate in a job classification no higher than Service Mechanic B, Meter Specialist II, Mechanic Operator II, Gas Systems Operations Mechanic II and Gas Plant Operator II. For purposes of bidding and downbidding, all previous seniority is lost and the employee will be ranked in seniority as a newly hired employee. No employee may return to a bargaining unit job classification if, as a direct result, an employee represented by the Union would be laid off.

Section 3. (a) An employee who has satisfactorily met all the requirements for entrance into a job classification shall be given a period of 30 days in which to master the new assignment. If, at the end of such period, the employee is unable to fulfill the assignment, he shall be restored to his previous position and previous classified seniority rank.

(b) The Company shall have the right to require examinations, either oral, written or practical, to determine the fitness of employees for promotions. When such examinations are deemed necessary by the Company, the equipment and facilities necessary for such examinations will be provided by the Company. The Company agrees that the employee shall have the right to review the results of departmental tests upon request. If an employee indicates, within five days after receiving the results of a departmental examination, that he feels the examination was not fairly administered, the Company agrees to reexamine the employee. A Union designated witness may be present only during the practical portion of the retest. The employee, upon request, shall

receive counseling based upon tests administered by the Staffing Services area of the Company or by outside consultants. An employee who does not pass an examination shall be eligible to retake that examination after three months. An employee who does not pass the examination a second time will not be eligible for reexamination for 12 months and for subsequent two year intervals thereafter.

(c) When a permanent promotion is to be made to a job classification bargained for by the Union, a notice of the opening shall be posted by the Company on all bulletin boards for two weeks. A copy of these notices will be mailed to the Presidents of the Local Unions. ~~The period of posting may be reduced to seven days, provided that any employees with greater classified seniority who may be off duty during the entire seven-day posting period are notified of the posting by a copy of the posting notice mailed by registered or certified mail to their home address on record in Human Resources.~~

(d) All bids related to posted openings should be made in duplicate and presented to the responsible supervisor who will sign both copies, retain one and return the duplicate to the employee for the record of the Local Union.

(e) When a posted opening occurs in a job classification, employees already in that job classification within the Seniority District may exercise their classified seniority rights to cross bid for the opening if the opening exists at another headquarters. The most senior employee already in the job classification within the Seniority District who cross bids and can qualify will be selected. Only one cross bid will be accepted for each posting. Resultant openings, which the Company desires to fill, will be filled by promotion of qualified employees from the next lower job classification or other qualified employees in the same promotional sequence in the Seniority District where the resultant opening exists.

(f) When a posted opening cannot be filled from among the qualified employees in the Seniority District in which the opening exists, the opening will be filled from qualified employees from other Seniority Districts within the Section. When the opening cannot be filled from within the Section, the opening will be filled in accordance with the appropriate provisions of this Contract.

(g) Subject to the approval of the Company and the Union, any employee may waive his right to promotion if such waiver does not prevent other employees from acquiring experience in the job classification held by him. Such waiver must be submitted to the Company and the Union in writing.

(h) When an employee waives his right to an opening in a job classification, the next employee shall be entitled to such opening, on a classified seniority and sufficient qualification basis, and so on until the position is filled.

(i) An employee waiving his right under this provision cannot later claim that particular job opening as a classified seniority right; however, the employee making such waiver shall not prejudice his right to accept future vacancies or positions that may occur, on a basis of his classified seniority and qualifications.

(j) An employee permanently established in a job classification under the provisions of this section of the Contract shall not be replaced later by an employee who may have developed sufficient classified seniority or qualifications.

Section 4. (a) The Company will post at least semi-annually and will maintain lists at locations mutually agreeable to the Company and the Union showing the system service and classified seniority of each employee. If exception is not taken to the list as posted within 30 days from the date of posting, the list shall be considered as correct. Copies of these lists shall be forwarded to the Local Union President and Recording Secretary.

(b) The Company will furnish annually, upon request, to the Financial Secretary of the Local Union a complete mailing list of all employees in the bargaining unit.

Section 5. An employee's classified seniority and system service standing shall not be jeopardized due to time off for injury, sickness or leave of absence.

Section 6. An employee will lose his system service and classified seniority who:

- (1) Quits of his own accord.
- (2) Is discharged for just cause.
- (3) Employees who leave the Company involuntarily shall not lose accrued system service or classified seniority if, upon recall, they respond within six days, provided it is not obligatory on the Company to issue such a call after two years after the date of layoff. Notification of recall will be sent by registered or certified mail.

Section 7. (a) Layoffs and demotions shall be made on the basis of classified seniority. Reassignments shall also be made on the basis of classified seniority and sufficient qualifications. In case of layoff, an employee shall have the right to be returned to any job classification previously held by him in the course of his employment with the Company if his classified seniority is sufficient to qualify him for such job. An employee, however, shall not have the right to be demoted or assigned to any job classification which he has not previously held but will be given consideration by the Company for a Mechanic III position, at the maximum rate, before new employees are hired. Such an employee's classified seniority as a Mechanic III would be the same as the employee's system service.

(b) Every effort shall be made to continue the present policy of avoiding seasonal layoffs by finding other work for any employees likely to be thus affected, should such occasion arise.

Section 8. Any employee who may make application to the Staffing Office for transfer to a starting job not represented by the Union, for which he may be qualified, will be given preference for consideration before a new employee is hired for the job.

## ARTICLE VII – HOURS OF WORK

Section 1. (a) Eight or 10 consecutive hours, exclusive of lunch time, shall constitute a working day, and four or five such days, totaling 40 hours, shall constitute a working week. Regular employees available and able to work, shall be assured of a 40 hour work week. It is understood that this provision will not affect in any manner the right of the Company to make temporary or permanent reductions in forces when considered necessary by the Company.

(b) It is recognized that shift work is essential for employee groups covered by this Contract, in order to provide for continuous operation and service. However, insofar as possible, day work shall prevail. Where shift work is necessary, the Union and the Company shall cooperate in providing the necessary manpower, with the required ability, to fill day, afternoon, and night as well as weekend work schedules.

(c) Except when changing schedules or agreed otherwise, employees shall have consecutive off days, but not necessarily in the same work week.

(d) The work week of an employee for payroll purposes shall be from midnight Sunday to midnight the following Sunday. Employees working on a shift beginning two hours or less before midnight will be considered as having worked their hours following midnight. Employees working on a shift ending two hours or less after midnight will be considered as having worked their hours before midnight.

(e) The work week of an employee for purposes of determining off-days shall begin on midnight Sunday and consist of seven consecutive days in which the employee is scheduled to work five days and be off two days or scheduled to work four days and be off three days.

(f) Schedules for all employees will be based on the time prevailing in the City of Cincinnati.

(g) The first eight hours of work per day will be at straight time for regular scheduled work days, time and one-half for the employee's first scheduled off-day in the work week and double time for the employee's second scheduled off-day in the work week. Any time in excess of eight hours per day will be paid at the rate of time and one-half, except the employee's second scheduled off-day worked, which will be paid at double time. For employees who work a four day-10 hour schedule, the first 10 hours of work per day will be at straight time for regular scheduled work days, double time for the employee's second consecutive scheduled off-day and time and one-half for all other scheduled off-days. Any time in excess of 10 hours per day will be paid at the rate of time and one-half except the employee's second consecutive scheduled off-day worked which will be paid at double time.

(h) In no case will an employee be forced to take time off in lieu of time worked outside his Regular Scheduled Work Day, but should an employee elect not to work during his Regular Scheduled Work Day he shall not receive pay for such time.

(i) Employees required to work more than 16 consecutive hours will be paid double time for all time worked in excess of, and continuous with, the 16 consecutive hours.

(j) When overtime occurs within a job classification where more employees are qualified and available to work than are necessary at the moment, the Company and Union have agreed to maintain a system of selecting the employees within the job classification at each headquarters who are to work, in a sincere effort to equalize overtime work, through a set of overtime guidelines that have been established and are contained in a separate document. The employees will be notified in advance, whenever possible, when they are required to work overtime. In the event the available overtime is not offered to the entitled employee(s) under the established overtime guidelines, the Company will offer the affected employee(s) make-up overtime. All make-up overtime must be offered and worked by the employee within six months of the time the disparity occurred.

(k) Overtime lists shall be posted weekly, in each headquarters, showing the overtime hours worked or waived during the previous week by each employee at the headquarters. Probationary employees shall not be included in the overtime lists.

(l) A call-out shall be defined as notice to report for unscheduled work given to an employee by telephone or messenger after he has left his headquarters or place of reporting or in case of an off-day, after what would have been his scheduled hours on that day.

(m) Employees called out for overtime work, other than for planned overtime, shall be paid a minimum of four hours at the appropriate overtime rate.

(n) Travel time of one-half hour each way, at the appropriate overtime rate of pay, will be allowed on a call-out when such call-out exceeds four hours of continuous work that is not contiguous with a regularly scheduled shift. Employees will not be compensated for any travel time on a call-out which occurs on a regular holiday or when the employee is not released from work before his regularly scheduled shift, nor will travel time be allowed when overtime is worked continuously at the end of a regularly scheduled shift.

(o) Planned overtime shall be defined as time worked upon notice to an employee given before leaving his headquarters or place of reporting, or in case of an off-day, during or before what would have been his scheduled hours on that day, that he is to report outside of his regular schedule on any succeeding day. Such time worked shall be paid for at the appropriate overtime rate but not for less than four hours unless such planned overtime extends into or directly follows the employee's regularly scheduled work day, when it shall be paid for at the appropriate overtime rate for the actual hours worked.

## **ARTICLE VIII – WORKING CONDITIONS**

Section 1. CHANGE IN SCHEDULE: (a) Each employee shall have a specific hour for reporting for work, and shall be entitled to not less than 24 hours notice of any change. Employees, whose schedules are changed to include an off day on the next



succeeding day, shall receive such notification within 15 minutes prior to or after the start of their regularly scheduled hours of work on the day previous to such a change.

(b) If an employee is required to commence working on a schedule which was changed without 24 hours notice, he shall receive the appropriate premium pay for all consecutive hours worked. Employees, who are not notified within 15 minutes prior to or after the start of their regularly scheduled hours of work of a schedule change that includes an off day on the next succeeding day, shall receive the appropriate premium pay for all hours worked during their next scheduled work day.

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Section 2. TRANSFERS AND REASSIGNMENTS: (a) Each employee shall have a specific headquarters for reporting for work. There shall be no unreasonable, disciplinary or discriminatory transfers, but the right of the Company to effect transfers, reassignments and logical site reporting to properly run its business is recognized. The Company will discuss transfers, reassignments and logical site reporting in advance with representatives of the Union except in instances where the employees with the least classified seniority are selected or where the employees volunteer. Employees may be assigned to report to a logical site reporting location for any assignment expected to be a minimum of three days.

(b) Transfers which are for periods of 14 consecutive calendar days or less will be considered temporary transfers. Transfers of 15 consecutive calendar days or more to either permanent or temporary headquarters, planned in advance, will be considered reassignments. Notification of availability of a reassignment will be posted at least 2 weeks in advance of the requirement. Eligible employees may request a preference for the reassignment. If there are no voluntary requests, the qualified individuals lowest on the classified seniority list will be assigned.

(c) During periods of temporary transfers or reassignments, the employees will report to and work out of the new headquarters. Such employees will be paid one hour's pay at the straight time rate and mileage at the prevailing rate based on the round trip distance between the employee's regular headquarters and temporary headquarters for each day of a temporary transfer and for the first 14 consecutive calendar days of a reassignment to a temporary headquarters. If a temporary reassignment exceeds three months, the employee will be paid in a similar manner when they return to their regular headquarters. Neither the one hour's pay nor the mileage applies for temporary transfers or reassignments of employees whose normal assignment is to home site report.

(d) When it is necessary to temporarily assign employees to a logical site reporting location that is further from their home than their regular headquarters, such employees will be paid mileage at the prevailing rate based on the additional round trip mileage employees are required to drive. No mileage compensation will be paid for the temporary assignment if the other reporting location is closer to the employee's home.

(e) Logical site reporting will be offered on a voluntary basis. If there is an insufficient number of volunteers, assignments will be made on a junior qualified basis. When assigning the junior qualified, unusual or extenuating circumstances will be taken into consideration.

(f) Employees may be assigned to drive Company vehicles from and to the job site from home or sites close to home. If Company vehicles are used in such a manner, the mileage provisions for logical site reporting are not applicable. An option to the mileage provision is that employees may, during a logical site reporting assignment, pick up and return a Company vehicle to their regular headquarters, provided travel is on their own time.

Section 3. FOREMEN'S DUTIES: Foremen's duties shall be restricted to direct supervision except for Foremen's and employees' training, in cases of emergency, or for such incidental work as may occasionally be required.

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Section 4. SAFETY AND HEALTH: (a) The Company shall make all reasonable provisions for the safety and health of the employees. A suitable number of raincoats, hats, boots, gloves and water facilities and any other safety equipment required by the Company shall be provided on the job. Adequate locker, toilet and shower facilities shall be provided at all permanent headquarters from which the men operate or in the shop where they are employed. A reasonable effort will be made to provide similar facilities at temporary headquarters.

(b) Employees shall be held responsible for the equipment assigned to them.

(c) In order to promote health and safety among the Company's employees, the Company and the Union agree that a Joint Safety Advisory Committee will be established. This Committee shall meet quarterly upon the Union's request to the chairman of the committee, who shall be the Safety Director of the Company. The purpose of the Joint Safety Advisory Committee is to give consideration to those general accident prevention programs and policies that affect the safety and health of the employees represented by the Union. The Joint Safety Advisory Committee shall not deal with individual or group grievances. It is agreed that the administration of the accident prevention and medical policies, programs and procedures are vested in and reserved to Management. It is further agreed that employees engaged in the Joint Safety Advisory Committee meetings during working hours shall suffer no loss of pay for such time.

(d) The Company agrees that an employee is authorized to call for assistance if, in the employee's judgment, his safety is endangered.

Section 5. CONTRACTING OUT: (a) No employee shall be deprived of work through contracting with outside parties. When it is necessary to use private equipment, such equipment shall be manned and operated by employees, provided qualified employees are available and said equipment can be obtained on this basis.

(b) In order to meet the unusual amount of work due to deferred maintenance and an abnormal expansion of new construction, the Company contemplates that it will be necessary to continue to contract for some of this work. This is believed necessary in order to avoid the building up of a large temporary force to meet an unusual condition. If such a force were built up it would either be necessary to lay off the additional employees hired when the work was caught up, or it might become impossible to assure 40 hours work per week for 52 weeks per year for regular employees as provided for under this Contract.

(c) It will continue to be the policy of the Company, when contracting for work, not to contract for any work which is ordinarily done by its regular employees if contracting for the work would result in the layoff of any regular employees.

(d) In deciding what work shall be contracted by outside forces the Company will take into consideration the necessity of meeting the completion requirements of the work in order that the service needs of the customers may be met. The Company will make reasonable efforts to utilize our normal working force where possible to do this work.

(e) The question of what proportion of this work will be done on an overtime basis will depend on the urgency of the work, weather conditions, volume and nature of the work and the availability of the working force.

Section 6. MEAL COMPENSATION: Employees working extra time shall be entitled to a suitable lunch or compensation therefore at the conclusion of two hours in excess of eight working hours; similar lunch or money at each five-hour interval thereafter until released from duty. Employees who work a four day-10 hour schedule shall be entitled to a suitable lunch or compensation in lieu thereof, whenever they work one hour or more in excess of their normal workday; similar lunch or money at each five hour interval thereafter until released from duty. On call-out of employees for emergency work on an off-day, such employees called out to work shall be furnished a suitable lunch or compensation in lieu thereof after each five hour interval until released from duty. The meal compensation allowance shall be as follows:

Effective 5/15/07	Effective 5/15/08	Effective 5/15/10
\$10.00	\$10.50	\$10.75

Section 7. TRANSPORTATION: Except when employees are engaged in a logical site reporting assignment, all transportation of employees from shop to job or job to job, or job to shop shall be provided by the Company when same is required in the line of duty.

Section 8. WITNESSING FOR COMPANY: Regular pay and reasonable or required expenses will be allowed employees who may be summoned or requested to testify for the Company.

Section 9. JURY DUTY: Employees required to serve on a jury shall be compensated on the basis of their regular wage.

Section 10. PAYDAYS: Paydays shall continue as at present, i.e., one each calendar week. Employees on a volunteer basis may elect direct deposit. With reasonable notice to the Union, the Company shall have the right to implement a bi-weekly payday schedule. Employees hired on or after January 1, 2006 will be required to use direct deposit. Checks will be directly deposited into one or more bank accounts employees shall designate and authorize. All employees that have direct deposit shall receive a printed paper copy of their check stub at their workplace.

Section 11. RETROGRESSION: Should an employee, who has given long service to the Company, become physically unable to satisfactorily and safely perform the regular duties of his job classification, an effort will be made by the Company to find work of a less strenuous nature for which he is qualified. The employee's hourly rate will be red-circled at the time of his assignment to a job of a lower classification until his hourly rate is equal to the maximum hourly wage rate of the job classification to which he has been assigned.

Section 12. JOB ABOLISHMENT: Should an employee have his job abolished, an effort will be made by the Company to find another job classification for which the employee is qualified. An employee assigned to a job of a lower classification as a result of his job being abolished will maintain his present hourly rate until the maximum hourly wage rate for the job classification to which he has been assigned is equal to the employee's present hourly rate or until he qualifies and receives a promotion.

Section 13. GENERAL ILLNESS: (a) Regular employees who are actively working on January 1, regular employees who return to work from an authorized extended absence on or after January 1, probationary employees who become regular employees on or after January 1, shall be paid as gross wages, for absent time due to bona fide illness or injury, a maximum annual amount equal to 40 hours at their regular Straight Time Pay. Such payment shall be made by the Company on the nearest practicable regular pay day following the date such employee becomes eligible.

(b) After an employee has been continuously disabled, subject to medical determination, and unable to return to work for more than seven consecutive calendar days, the employee will receive Short-Term Disability consisting of up to 26 weeks of pay per incidence with payment based on the schedule below or until the employee is able to return to work, whichever comes first. During the seven consecutive calendar day waiting period, it is intended that no employee will incur a loss of more than five scheduled days of straight time pay.

The administration of short-term disability compensation for employees will be administered over a two-year period for the purposes of calculating weeks at 100% of pay. Multiple occurrences of STD in a rolling 24-month period will be paid as follows.

<b>Years of Service</b>	<b>Maximum Weeks at 100% Pay per Rolling 24 Months</b>	<b>Weeks at 66 2/3% Pay</b>
0-1	None	All
1-5	10	Balance
6-10	15	Balance
11-14	20	Balance
15-20	26	Balance
21 or more	All	N/A

For example, if a 14-year employee is on leave in January for 15 weeks and then another 15 weeks in March of the following year, the first illness and five weeks of the 2nd illness will be paid at 100%. The remainder of the weeks will be paid at 66 2/3%.

(c) After an employee has been continuously disabled, subject to medical determination, and is unable to return to work for more than 27 consecutive weeks, and has exhausted Short-Term Disability Benefits, the employee will receive Long-Term Disability benefits as described in the Company's Long-Term Disability Plan Description.

(d) Compensation will not be provided for illnesses resulting from such causes as: *illegal use of drugs, intoxication, willful intention to injure oneself, the commission of a crime, elective or cosmetic procedures not covered by the medical plan, the employee's refusal to adopt such remedial measures as may be commensurate with his disability, or permit reasonable examination by the Company.*

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(e) In order to facilitate the scheduling of the work forces, an employee who will be absent from work shall notify the Company within a reasonable period of time before his scheduled shift if possible and shall likewise give the Company reasonable advance notice of his return to work. Unless an employee notifies the Company concerning the cause of his absence before the end of the first scheduled working day of such absence, his waiting period and subsequent claim for sick leave pay shall not begin until such notice is received.

(f) Failure to present a certificate from a physician licensed to practice medicine prior to the end of the fifth scheduled working day or failure to provide a legitimate excuse will cause the employee's Short-Term Disability to be denied until the time such certificate is received.

(g) If an employee requests work of a less strenuous nature for a temporary period following an illness or disability, the Company will make an effort to find such work providing the employee's physical condition is satisfactory and is approved by the Company physician.

Section 14. HOSPITAL AND MEDICAL PLANS: (a) Health care coverage shall consist of the specially negotiated HMO Plan and shall remain in effect for the term of the 2007 – 2011 Contract. All terms of the specially negotiated HMO Plan, regarding plan design, covered services, premiums and other employee costs, shall be in accordance with the 2007 negotiations letter of agreement entitled "Health Care Benefits."

(b) Any other health care plans (medical or dental) that the Company unilaterally implements at its sole discretion for the general non-represented employee population shall also be provided to the bargaining unit employees at the same costs and plan design structure as for the non-represented employees. It is expressly understood that the right to add, eliminate, and alter or to make any other changes to these health care plans or to employee costs for the plans, is reserved to the Company.

(c) The Company's part of the monthly premiums for the health care plans will continue to be paid while an employee is receiving illness or accident compensation, provided the employee was covered by such a contract immediately prior to the employee's sickness or industrial accident.

(d) Employees are eligible for Post-Retirement Medical Benefits in accordance with the terms of the letter from the Company to the Union dated April 4, 2005 and the 2007 negotiations letter entitled "Retirement Plan and HRA Conversion Agreement."

Section 15. INSURANCE: The Company will provide each employee with Term Life Insurance in the amount of two times the employee's straight time annual salary.

Section 16. INDUSTRIAL ACCIDENTS: An injured employee who is unable to work because of an industrial accident will be paid a supplement in an amount equal to 100% of their weekly wage (40 hours), less the state mandated compensation. This supplemental industrial accident compensation will begin after an initial seven calendar day waiting period and will continue for not more than 26 weeks of continuous disability. However, if an industrial accident disability continues for 14 or more calendar days, the employee will receive this supplemental industrial accident compensation for the initial seven-day waiting period.

Section 17. INCLEMENT WEATHER: The Company will not require employees to work out of doors in heavy or continuous storms or excessively cold temperatures in exposed locations, unless such work is necessary to conform to the law or applicable regulations, to protect life, property, or to guarantee service to the customers. Employees covered by this Contract shall not be required to lose time due to such weather conditions, but the Company may provide work indoors or under adequate shelter at their regular rate of pay.

Section 18. Upon the death of the designated relatives of an employee, the employee, upon request, may be entitled to the stipulated maximum number of calendar days off for which he is entitled to receive regular pay for not more than the indicated number of consecutive working days, including the day of the funeral. If prior arrangements are made, an employee may include a maximum of one day following the funeral as one of the consecutive working days off, and in the case of a spouse, child, mother, father, brother or sister, two days following the funeral. No pay will be granted for regular scheduled off days.

Relationship	Maximum Consecutive Calendar Days Off	Maximum Consecutive Working Days Off With Pay
Spouse or Domestic Partner	7	5
Child, Stepchild or Foster Child	7	5
Mother, Stepmother or Foster Mother	7	5
Father, Stepfather or Foster Father	7	5
Brother	7	5
Sister	7	5
In-Laws (father, mother, brother, sister, son or daughter)	5	3
Grandchild	6	4
Grandparent/Spouse's Grandparent	4	2

If an employee has worked four hours or more and is notified of a death in his family, and leaves the job, the day will not be charged as one of the consecutive working days. If,

however, he has not worked four hours, the day will be charged as one of the consecutive working days for which he is entitled to receive regular pay.

Section 19. BULLETIN BOARDS: The Company agrees to furnish bulletin boards at all division headquarters. The use of these boards is restricted to the following: notices of Union meetings, notices of Union election, notice of changes within the Union affecting its membership, or any other official notices issued on the stationery of the Union and signed by the Regional Director or any duly elected or appointed official of the Local Union. There shall be no other general distribution or posting by members of the Union of pamphlets or literature of any kind except as provided for herein.

Section 20. UNION OFFICE: (a) Members of the Union selected for full time office shall be entitled to unpaid leaves of absence without prejudice or loss of seniority. Such leaves of absence shall be limited to a period of one year, and shall be renewed at the conclusion thereof, if necessary. At no time shall the operations of the Company be interfered with by such leaves of absence. All requests for such leaves of absence shall be in writing and submitted at least one week in advance.

(b) Except as it may conflict with other provisions of this Contract, the President, Vice President, Recording Secretary, and elected Grievance Committee men shall not be required to work regular afternoon and night shifts. However, not more than two employees from each headquarters may exercise this privilege.

Section 21. ADDRESSES AND TELEPHONE NUMBERS: Each employee in a job classification represented by the Union shall be responsible for maintaining an up-to-date address and telephone number on file at the Company. Forms to report changes will be provided by the Company and made available to employees at each headquarters.

Section 22. PERSONAL DAY: (a) An employee who has completed six months of continuous service shall be entitled to four compensated personal days off each calendar year. Requests for personal days must be made at least seven calendar days prior to the date requested and must be approved by management. However, because of extenuating circumstances, a day off with less than a seven calendar day notification may be approved by an employee's supervisor. Arrangements for all personal days must be made with supervision on or before November 1 of each year or it shall be lost. The Company reserves the right to limit the number of employees who can be off on a specific day. If a personal day is not used during a year, it shall be lost and no additional compensation shall be granted.

(b) An employee who has completed six months of continuous service shall be entitled to one compensated Diversity Day off each calendar year. Requests for this day must be made at least seven calendar days prior to the date requested and must be approved by management. However, because of extenuating circumstances, less than a seven calendar day notification may be approved by an employee's supervisor. The Company reserves the right to limit the number of employees who can be off on a specific day. If the Diversity Day is not used during a year, it shall be lost and no additional compensation shall be granted.

Section 23. TEAMS: The purpose of bargaining unit teams is to promote an environment of continuous improvement in the work place for the mutual benefit of the Company, its customers, and the Union. Performance of special functions and duties within the team is voluntary. The teams will not be involved in any issue or take any action or make any decision which will subordinate the interests and viability of the Union. The teams will not engage in collective bargaining or deal with management over bargainable issues, as all parties recognize this to be the exclusive role of the Union.

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## ARTICLE IX – ADMINISTRATION AND GRIEVANCE ADJUSTMENT

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Section 1. (a) The Union shall maintain a system of Stewards whose duties shall be to represent the Union in seeing that the provisions of this Contract as they apply on the job are observed at all times. The Union shall have a Grievance Committee composed of five\* members. This committee shall meet with the management of the Company on all matters pertaining to the provisions of this Contract, and any and all matters of dispute between the Union and the Company under the terms and during the life of this Contract. The Recording Secretaries for the Local Unions may also attend such meetings.

(b) If an employee, after consulting with the immediate supervisors, feels that a grievance exists, the avenue of grievance adjustment shall be: first, between the employee and the officially designated steward, and the foreman or supervisor; second, between the employee, the officially designated steward, and, at the discretion of the Union, a representative of the Union Grievance Committee, and the Departmental Section Management; third, between members of a Union Grievance Committee consisting of not more than five\*\* members and the Department Management; fourth, between the Union Grievance Committee, Agents of the Union and officials of the Company. The Recording Secretaries for the Local Unions may also attend third and fourth step grievance meetings. If a satisfactory settlement cannot be reached before the third step of the procedure outlined above, the grievance shall be reduced to writing by the Union.

(c) An employee, who is considered necessary to the proper settlement of the grievance, shall be present at the grievance meetings.

(d) The Union Grievance Committee and the Recording Secretaries of the Local Unions when engaged during their regular working hours in grievance meetings with Management shall not suffer a loss of pay for such time.

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\*The Grievance Committee of Local Union 5541-06 shall consist of not more than three members.

\*\*The Grievance Committee of Local Union 5541-06 shall consist of not more than three members.



## ARTICLE X – ARBITRATION

Section 1. (a) In the event that a mutually agreeable settlement of differences arising out of this Contract between the Company and the Union be impossible and either party to the Contract desires to submit such differences to arbitration, that party shall notify the other party, in writing, of the issues to be arbitrated and at the same time also name its arbitrator. The other party shall name its arbitrator within five days after receiving such notice from the other party requesting arbitration of the issue, or issues, specified in the request for arbitration. The two arbitrators thus named shall meet within 10 days in an attempt to settle the issue, or issues, referred to them. If the two arbitrators do not reach a settlement these two arbitrators shall endeavor to agree on a third and neutral arbitrator. If no agreement can be reached within five days on the selection of the third arbitrator the parties shall jointly request a list of names of persons eligible to act as a third arbitrator from the Director of the United States Mediation and Conciliation Service. In the event of the failure of the two arbitrators to select the third arbitrator from said list of eligible persons, the two arbitrators shall jointly apply to the Director of the United States Mediation and Conciliation Service for an additional list of names of persons eligible to act as a third arbitrator. In the event of the failure of the two arbitrators to select the third arbitrator from the second list of eligible persons, the two arbitrators, beginning with the Union arbitrator, shall cross off names in turn until only one remains, whereupon the remaining name shall be acceptable to both parties as the neutral arbitrator and chairman of the Arbitration Board.

(b) The three-man arbitration board shall be allowed a reasonable time after hearings to announce a decision and the decision of the majority of the members of the three man arbitration board shall be final and binding upon both parties. During the period of arbitration and while the terms of this Contract are in full force and effect there shall be no strikes, lockouts, interference with or interruption to the services of the Company.

(c) In case of arbitration each party shall bear the expenses of its own arbitrator. The expenses of the neutral arbitrator and other joint expenses shall be shared equally by the Company and the Union.

## ARTICLE XI – DISCIPLINE AND DISCHARGE

Section 1. (a) The Company will not discipline or discharge an employee save for just cause. Written notice of any discharge or disciplinary action involving lost time taken by the Company against any employee shall be furnished to the Union and the employee within two working days.

(b) Appeal from discharge must be taken within five working days in the form of a written notice from the Union to the Company. The Company and the Union shall strive to reach a just decision within 10 days following the appeal. Failing therein, the matter shall be submitted to arbitration as provided above.

(c) This Section shall not apply to disciplinary action taken in accordance with Article I, Section 2, of this Contract.

## ARTICLE XII – HOLIDAYS

Section 1. (a) The following days are observed as regular holidays which will be recognized on the indicated dates. The Company may change the date for recognizing a holiday if the date indicated is changed by a legislative enactment or if the prevailing community practice is not consistent with the indicated date.

Holiday	Date Recognized
New Year's Day	January 1
Memorial Day	Last Monday - May
Independence Day	July 4
Labor Day	First Monday - September
Thanksgiving Day	Fourth Thursday - November
Day after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

(b) If the recognized date of a holiday occurs on a Saturday or Sunday the Company will have the option of observing that holiday on another date which the Company determines to be consistent with the community practice or paying eight hours of regular straight time pay in lieu thereof for the holiday.

(c) Regular employees whose duties do not require them to work on holidays will be paid eight hours straight time holiday pay provided the employees have worked their scheduled day before, or his scheduled day after the holiday. Employees who are on a four day-10 hour schedule will receive 10 hours of straight time pay if a holiday falls within their regular scheduled work week but they are not required to work the holiday, provided the employees have worked their scheduled day before, or their scheduled day after the holiday. Employees whose regular scheduled work week does not include the paid holiday will receive eight hours of straight time holiday pay. Regular employees who are scheduled to work on a recognized holiday will be paid at time and one-half for the first eight hours worked in addition to their straight time holiday pay.

(d) An employee called out to work on a recognized holiday for a period of four hours or less will be paid for four hours at time and one-half in addition to his straight time holiday pay. An employee called out to work on a recognized holiday for a period of more than four hours but less than eight hours will be paid for eight hours at time and one-half in addition to his regular straight time holiday pay.

(e) Employees who are required to work more than eight hours on a recognized holiday will be paid at the rate of double time for all such work in excess of eight hours.

(f) When necessary, employees will be granted a reasonable time off with pay to vote in a national, state or local election.

(g) Excluding planned projects and appointments prompted by customer requests, no field construction, field maintenance or routine customer service work shall be performed on the actual calendar holidays for Labor Day, Thanksgiving Day and Christmas Day, except that which is necessary to protect life, property or continuity of service.

### ARTICLE XIII – VACATIONS

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Section 1. (a) Every effort will be made to grant vacations at a time suitable to the employee, but should the number leaving on vacation in any one period handicap the operations of the Company, the Company reserves the right to limit the number receiving vacations. Preference for vacations shall be granted within a classification at a headquarters on a system service basis.

(b) Vacations for employees will be granted with pay during the calendar year in which they complete the specified number of years of continuous service on the following basis:

(1) Employees with less than one year of continuous service with the Company shall be entitled to one day of vacation for each month worked, with a maximum of 10 days total.

(2) Employees with one year of continuous service with the Company shall be entitled to a vacation of two weeks.

(3) Employees with seven or more years of continuous service with the Company shall be entitled to a vacation of three weeks.

(4) Employees with 15 or more years of continuous service with the Company shall be entitled to a four week vacation or, if required to work by the Company, payment of one week's wages (40 hours at straight time) in lieu thereof for the fourth week.

(5) Employees with 21 or more years of continuous service with the Company shall be entitled to a five week vacation or, if required to work by the Company, payment of one week's wages (40 hours at straight time) in lieu thereof for the fifth week.

(6) Employees with 32 or more years of service with the Company shall be entitled to a six week vacation or, if required to work by the Company, payment of one week's wages (40 hours at straight time) in lieu thereof for the sixth week if the employee has attained at least 34 years of service. The sixth week of vacation prior to 34 years of service will automatically be deposited in the employee's vacation bank and is intended for banking purposes unless specifically approved for time off by supervision.

(c) An employee accrues entitlement of 1/12 of their current year's vacation for each full month the employee is employed during the current calendar year or is on STD, or leave of absence. Any employee leaving the Company's service during any calendar

year shall receive payment for any unused portion of accrued vacation for that current year. However, in the event of an employee's death, the estate of the employee will be paid the unused portion of the employee's total vacation allotment for the current year.

(d) The anniversary of employment shall determine the employee's vacation status.

(e) *In order for an employee to qualify for a vacation, the employee must have been on the Company payroll as a full-time regular or probationary employee on the last day in the calendar year previous to the vacation, and must have been available whenever necessary for the Company medical examinations and reports.*

(f) An employee who is eligible for more than a three week vacation may be required to take the vacation in excess of three weeks outside the preferred vacation period, which is the period from June 1 to September 30.

(g) An employee who meets all the qualifications for vacation, and is on a Leave of Absence for illness on the last day in the calendar year previous to the vacation, will be entitled to vacation.

(h) When a holiday falls within an employee's vacation such employee shall receive either an additional day's pay to compensate for the loss of such holiday or the paid vacation period shall be extended for one day, at the discretion of the Company.

(i) Vacations must be selected for full weeks. However, an employee entitled to two or more weeks of vacation in a calendar year may arrange to take five days of that vacation in one day increments. Requests for these days must be made at least seven calendar days prior to the date requested and must be approved by supervision. However, because of extenuating circumstances, a day off with less than a seven calendar day notification may be approved by an employee's supervisor. An employee entitled to four or more weeks of vacation in a calendar year may arrange to take an additional five days of that vacation in one day increments. Requests for these additional five days must be made seven or more calendar days prior to the date requested and must be approved by supervision. The decision to grant or not grant a one day vacation by supervision shall not be subject to the grievance and arbitration procedure. The Company reserves the right to limit the number of employees who can be off on a specific day and may, but cannot be required to, grant a one day increment on a work day preceding or following a holiday or other vacation. Such one day increments must be utilized before an employee's scheduled vacation in a particular year is exhausted.

#### **ARTICLE XIV – NATIONAL DEFENSE**

Section 1. (a) Employees who volunteer for or are drafted in the armed services of the United States, or are conscripted by the United States Government, shall retain all rights and privileges under this Contract, including seniority standing and shall be entitled to vacation pay due.

(b) The Company in recognition of service rendered to the Nation, agrees to restore all employees to their former positions, except those dishonorably discharged, who notify the Company within the time specified by applicable legislation of their desire to return to work. An employee who leaves the Service ill, injured or unable to work shall retain all rights of his former job until he is able to work. An injured, weakened or partially disabled employee shall be offered light duty, if he is physically able to perform such work. All Company Group Life Insurance carried by employees entering the Service will be cancelled 90 days after employee enters such service, and will be reinstated without physical examination or waiting period upon the employee returning to work. Any advance premium paid by employees beyond the date of cancellation will be refunded to the employees.

(c) The foregoing provisions shall apply only to employees who are eligible for statutory re-employment rights.

#### **ARTICLE XV – DEPARTMENT STEWARDS**

The Union shall furnish the Company with a list of Department Stewards and this list shall be kept current. It is further agreed that only regular employees of the Company who are covered by this Contract shall be designated as Stewards.

#### **ARTICLE XVI**

Section 1. RETIREMENT INCOME PLAN: (a) The Retirement Income Plan which includes the changes as required by appropriate federal legislation and regulation governing such plans as amended effective January 1, 2003.

(b) In consideration of the additional benefits incorporated in the Retirement Income Plan, the parties to this Contract agree that the Company will not reduce the benefits and the Union will not request any change in the Retirement Income Plan until the expiration of the Contract in effect on May 15, 2011.

Section 2. SAVINGS INCENTIVE PLAN: (a) The Company agrees to establish and maintain an employee savings plan, subject to the provisions of the appropriate federal legislation and regulation governing such plans, to be known as the "Cinergy Corp. Union Employees' Savings Incentive Plan" for non-exempt employees, hereinafter called the "Savings Incentive Plan."

(b) The Savings Incentive Plan is contained in the Company's publication the "Cinergy Corp. Union Employees Savings Incentive Plan," which includes highlights of the Plan, complete text of the Plan, and complete text of the Trust Agreement.

(c) The Company hopes and expects to continue the Savings Incentive Plan indefinitely but it must reserve the right to alter or amend it or merge it into any other Savings Plan at any time. Any reduction or discontinuance of Company contributions during the term of the Contract will be subject to collective bargaining. However, under no circumstances shall any part of the corpus or income held by the Trustee of the Savings

Incentive Plan be recoverable by the Company or be used for or diverted to any purposes other than for the exclusive benefit of the employee participants or their beneficiaries as provided in the Savings Incentive Plan.

#### **ARTICLE XVII – INTERRUPTION OR PYRAMIDING BENEFITS**

Section 1. (a) With the exception of shift differential premium, and a holiday occurring during an employee's vacation, it is agreed that under no circumstances shall any Section of this Contract be interpreted to provide the pyramiding of a benefit or premium payment to employees covered by this Contract. For example, no employee may claim sick pay while receiving vacation pay or holiday pay while receiving sick pay.

(b) It is further agreed that there shall be no interruption in the payment of one benefit in order that the employee may receive payment for another benefit. For example, no employee may interrupt his vacation to begin sick leave or interrupt his sick leave to include a holiday. The only exceptions to the provision are that an employee's sick pay may be interrupted to include vacation pay and that vacation pay may be interrupted to include death in family pay as set forth in the Contract. In the event of a death of a relative as defined in Article VIII, Section 18 occurs after the start of an employee's vacation, any compensable bereavement time off under the Contract would interrupt the vacation and replace the unused planned vacation days. The rescheduling of the unused vacation days interrupted by the death must be approved in advance by supervision and shall not impact normal administration of vacation in one-day increments as provided in Article XIII, Section 1(i).

#### **ARTICLE XVIII – DURATION**

Section 1. (a) The Contract shall become effective as of May 15, 2007, and all the provisions thereof shall continue in full force and effect until May 15, 2011, and thereafter for successive three year periods unless one of the parties hereto on or before the 60th day next preceding any contract anniversary date shall notify the other party hereto, in writing, of its desire to modify or terminate the same.

(b) Joint conferences between representatives of the Company and the Union shall be promptly started following any of the above notifications for the purpose of reaching a mutually satisfactory agreement.

(c) On or before May 15, 2011, this Contract may be extended by mutual agreement of the parties for a specific number of calendar days. If a tentative agreement on the terms of a new Contract has been reached on or before May 15, thereafter the Union shall have one-half of the specified number of days in which to submit the Contract to its membership for ratification and in case of failure to ratify, in order that the Company shall have the remaining one-half of the specified number of days as notice before a work stoppage occurs.

IN WITNESS WHEREOF, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO-CLC, on behalf of Local Unions 12049 and 5541-06, and Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc., do hereby, by their duly authorized agents, in the premises, execute and sign this 2007 – 2011 Contract in duplicate this 19th day of June, 2008.

**DUKE ENERGY OHIO, INC.**  
**DUKE ENERGY KENTUCKY, INC.**  
Cincinnati, Ohio

**UNITED STEELWORKERS (USW),**  
**AFL-CIO-CLC**

\_\_\_\_\_  
Sandra P. Meyer  
President

\_\_\_\_\_  
Leo W. Gerard  
President

\_\_\_\_\_  
Jay R. Alvaro  
Managing Director, Labor Relations

\_\_\_\_\_  
James D. English  
Secretary/Treasurer

\_\_\_\_\_  
Terry J. Hoppenjans  
Sr. Labor Relations Consultant

\_\_\_\_\_  
Thomas Conway  
Vice President – Administration

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Fred Redmond  
Vice President – Human Affairs

\_\_\_\_\_  
David McCall  
Director, District 1

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Tim Bray  
Staff Representative

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David W. McLean  
Sub 5 Director

\_\_\_\_\_  
Charles E. Millay

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Michael R. Blum

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Tim Caudill

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Terry Sammons

\_\_\_\_\_  
Michael W. McAlpin

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Steve Bowermaster

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Gary Tuttle

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John Waits

— \_\_\_\_\_  
Stephen Fields III



## **Appendix A**

### **Historical Documents Preserved And Made A Part Of This Agreement**

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### **For Interpretation And Application**

The index and marginal references in the Labor Agreement to documents in Appendix A are intended only for convenience in administering the Labor Agreement. The index and marginal references and Appendix A are not intended to list every document that could be applicable to any factual situation arising under a given Article or Section of the Labor Agreement. It is also not intended that each document referenced in an Article or Section will be applicable to any or all factual situations covered by the referenced Article or Section. No inferences, presumptions, or conclusions shall be drawn by the Company, the Union, or any arbitrator from the indexing of, a marginal reference to, or failure to reference any document listed in Appendix A.

## Appendix A

### HISTORICAL DOCUMENTS PRESERVED AND MADE PART OF THIS AGREEMENT FOR INTERPRETATION AND APPLICATION INDEX BY CONTRACT CLAUSE

A-DOC #	CLAUSE	ISSUE	DATE
A-41	Article II, Section 1	Union Security – Company Neutrality	10/07/96
A-28	Article V, Section 1	Training Union on Job Evaluation Procedure	05/13/94
A-62	Article V, Section 2	Supervisory Upgrades	08/01/07
A-27	Article VI, Section 3	Notification to the Union of Posted Job Openings	05/13/94
A-61	Article VI, Section 3(b)	Promotional Retraining	01/18/02 (10/07/96) (05/13/94)
A-4	Article VII, Section 1	Continuity of Work and Overtime	07/05/79
A-8	Article VII, Section 1	Inspecting Mechanic Job Class – No Shift Rotation	05/17/82
A-12	Article VII, Section 1	Work Week for Gas Plant Operators	05/19/88
A-52	Article VII, Section 1	Work Hours	01/18/02 (10/07/96) (05/13/94)
A-18	Article VII, Section 1(j)	Scheduling Make-up Overtime	05/23/91
A-63	Article VII, Section 1(j)	Overtime Guidelines – Construction Maintenance, Corrosion System Operations, Gas Production and Measurement Center	06/14/07
A-64	Article VII, Section 1(j)	Service Delivery Overtime Guidelines	06/15/07
A-60	Article VII, Section 1(m)	Call Out Pay	01/18/02
A-3	Article VIII, Section 2	Reassignment of Employees in Supply, Production and Control of Gas Operating	06/11/73
A-37	Article VIII, Section 2	Logical Job Site Reporting Assignments	10/07/96
A-54	Article VIII, Section 2	Voluntary Transfers Between Headquarters	01/18/02 (10/07/96) (05/13/94)
A-13	Article VIII, Section 5	Company Monitor Contractor Safety	05/23/91
A-34	Article VIII, Section 5	Information Concerning Contractors	05/13/94
A-36	Article VIII, Section 5	Inspecting Mechanics	10/07/96 (05/13/94) (05/23/91)
A-1	Article VIII, Section 8	Witness Pay for Criminal Cases	06/11/73
A-5	Article VIII, Section 13	One-time Use of Sick Pay for Chemical Addiction Rehab.	07/05/79
A-6	Article VIII, Section 13	Provide Union List of Employees Off Work for Illness	07/05/79
A-9	Article VIII, Section 13	Employee Notification of Absence Expectations	05/24/85 (05/18/76)
A-66	Article VIII, Section 14(a)	Health Care Benefits	08/01/07
A-14	Article VIII, Section 14(b)	Company May Replace Health Care Plans	05/23/91
A-71	Article VIII, Section 14(d)	Retirement Plan and HRA Conversion Agreement	08/01/07
A-76	Article VIII, Section 14(d)	Post-Retirement Medical Benefits	04/04/05
A-68	Article VIII, Section 15	\$9,000.00 Paid-Up Post-Retirement Life Insurance Coverage	08/01/07

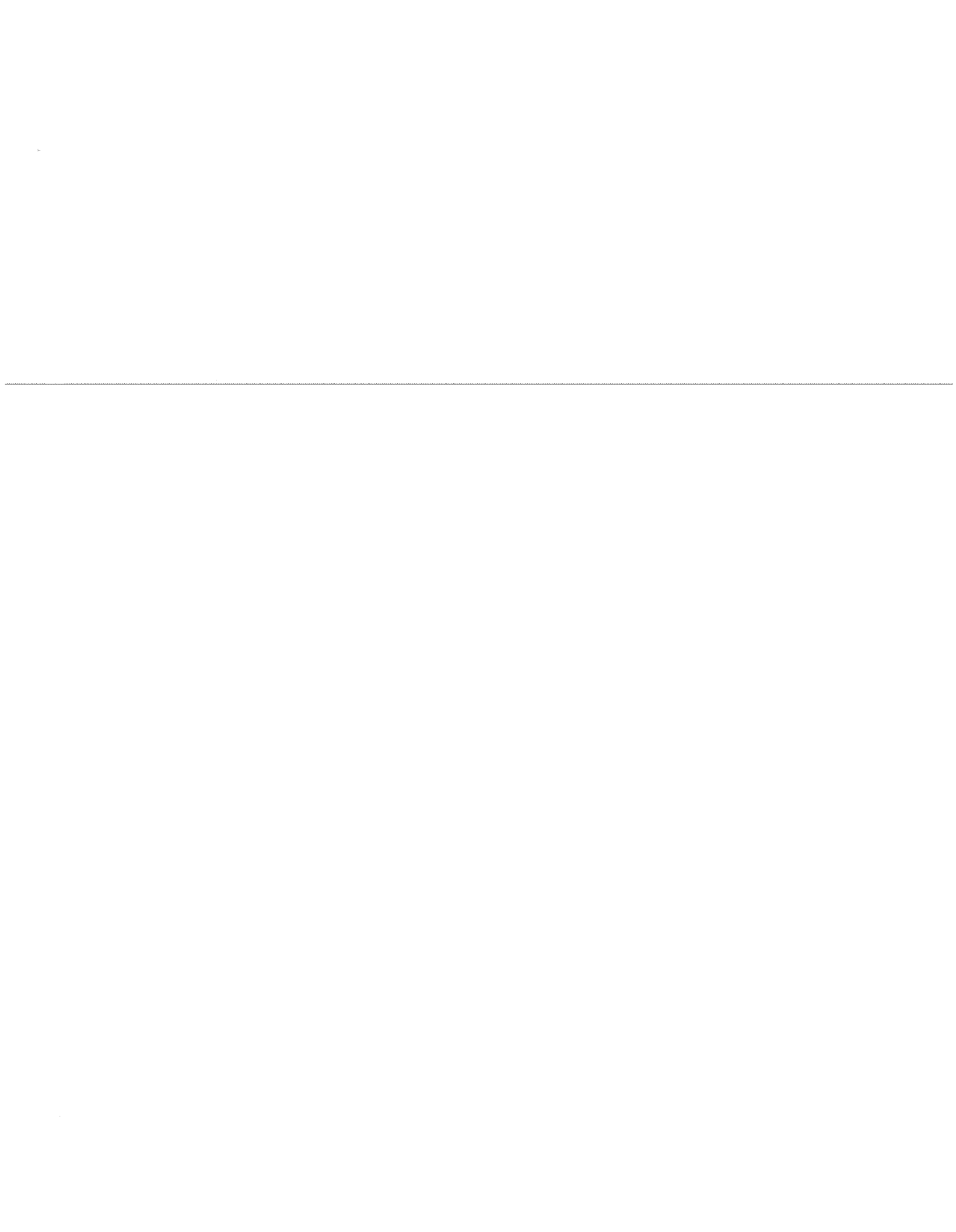
A-DOC #	CLAUSE	ISSUE	DATE
A-7	Article VIII, Section 17	Inclement Weather	07/05/79
A-65	Article VIII, Section 17	Inclement Weather – Service Delivery	08/01/07
A-40	Article VIII, Section 23	Participative Management Team Guidelines	10/07/96 (05/13/94)
A-15	Article IX, Section 1	Personal Attorneys During Grievances and Arbitrations	05/23/91
A-21	Article IX, Section 1	Timeliness of Grievance Procedure	05/13/94
A-10	Article XII, Section 1	No Holiday Pay Eligibility for Unavailability	05/24/85
A-16	Article XII, Section 1	Double Time Rate and Consecutive Holidays	05/23/91
A-17	Article XIII, Section 1	Holiday Occurs During Scheduled Vacation Period	05/23/91
A-74	Article XIII, Sections 1(c)	Vacation Payout	04/04/05
A-2	Misc.	Customer Service Route Bidding	06/11/73
A-11	Misc.	Meter Reads and Non-pay Work on Customer Premises	05/24/85
A-19	Misc.	Non-Pay Disconnect Work Group	05/23/91
A-20	Misc.	Procedure for Employees Who Become Pregnant	05/23/91
A-22	Misc.	Family and Medical Leave Act	05/13/94
A-23	Misc.	Construction Assistants – Duties and Pay Rate	05/13/94 (05/23/91)
A-25	Misc.	Inspecting Mechanics To Not Cross Union Local Areas	05/13/94
A-35	Misc.	Mechanic III Pay Rate and Work CG&E Wide	10/07/96
A-38	Misc.	Combination Workers (Service Delivery)	10/07/96
A-49	Misc.	Wage or Benefit Enhancements	01/18/02
A-50	Misc.	Incentive Bonus Pay	01/18/02
A-51	Misc.	Downbidding to Entry-Level Jobs	01/18/02 (10/07/96) (05/13/94) (05/23/91)
A-55	Misc.	Pay for Non-Industrial Medical Appointments	01/18/02 (10/07/96) (05/13/94)
A-57	Misc.	Paid Lunch Periods	01/18/02 (10/07/96) (05/24/85)
A-58	Misc.	Martin Luther King, Jr. Day	01/18/02 (10/07/96) (05/13/94)
A-67	Misc.	Union Employee Annual Incentive Program (UEIP)	08/01/07
A-69	Misc.	Sabbatical Vacation Bank and Vacation Credit Programs	08/01/07
A-70	Misc.	Sale of Assets	08/01/07
A-72	Misc.	Discontinue Automatic Progression	08/01/07
A-73	Misc.	Benefit Claims Disputes	04/04/05
A-75	Misc.	Clothing Allowance	04/04/05

## Appendix A

### HISTORICAL DOCUMENTS PRESERVED AND MADE PART OF THIS AGREEMENT FOR INTERPRETATION AND APPLICATION INDEX BY DOCUMENT NUMBER

A-DOC #	CLAUSE	ISSUE	DATE
A-1	Article VIII, Section 8	Witness Pay for Criminal Cases	06/11/73
A-2	Misc.	Customer Service Route Bidding	06/11/73
A-3	Article VIII, Section 2	Reassignment of Employees in Supply, Production and Control of Gas Operating	06/11/73
A-4	Article VII, Section 1	Continuity of Work and Overtime	07/05/79
A-5	Article VIII, Section 13	One-time Use of Sick Pay for Chemical Addiction Rehab.	07/05/79
A-6	Article VIII, Section 13	Provide Union List of Employees Off Work for Illness	07/05/79
A-7	Article VIII, Section 17	Inclément Weather	07/05/79
A-8	Article VII, Section 1	Inspecting Mechanic Job Class – No Shift Rotation	05/17/82
A-9	Article VIII, Section 13	Employee Notification of Absence Expectations	05/24/85 (05/18/76)
A-10	Article XII, Section 1	No Holiday Pay Eligibility for Unavailability	05/24/85
A-11	Misc.	Meter Reads and Non-pay Work on Customer Premises	05/24/85
A-12	Article VII, Section 1	Work Week for Gas Plant Operators	05/19/88
A-13	Article VIII, Section 5	Company Monitor Contractor Safety	05/23/91
A-14	Article VIII, Section 14(b)	Company May Replace Health Care Plans	05/23/91
A-15	Article IX, Section 1	Personal Attorneys During Grievances and Arbitrations	05/23/91
A-16	Article XII, Section 1	Double Time Rate and Consecutive Holidays	05/23/91
A-17	Article XIII, Section 1	Holiday Occurs During Scheduled Vacation Period	05/23/91
A-18	Article VII, Section 1(j)	Scheduling Make-up Overtime	05/23/91
A-19	Misc.	Non-Pay Disconnect Work Group	05/23/91
A-20	Misc.	Procedure for Employees Who Become Pregnant	05/23/91
A-21	Article IX, Section 1	Timeliness of Grievance Procedure	05/13/94
A-22	Misc.	Family and Medical Leave Act	05/13/94
A-23	Misc.	Construction Assistants – Duties and Pay Rate	05/13/94 (05/23/91)
A-25	Misc.	Inspecting Mechanics To Not Cross Union Local Areas	05/13/94
A-27	Article VI, Section 3	Notification to the Union of Posted Job Openings	05/13/94
A-28	Article V, Section 1	Training Union on Job Evaluation Procedure	05/13/94
A-34	Article VIII, Section 5	Information Concerning Contractors	05/13/94
A-35	Misc.	Mechanic III Pay Rate and Work CG&E Wide	10/07/96
A-36	Article VIII, Section 5	Inspecting Mechanics	10/07/96 (05/13/94) (05/23/91)
A-37	Article VIII, Section 2	Logical Job Site Reporting Assignments	10/07/96
A-38	Misc.	Combination Workers (Service Delivery)	10/07/96
A-40	Article VIII, Section 23	Participative Management Team Guidelines	10/07/96

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			(05/13/94)
A-41	Article II, Section 1	Union Security -- Company Neutrality	10/07/96
A-49	Misc.	Wage or Benefit Enhancements	01/18/02
A-50	Misc.	Incentive Bonus Pay	01/18/02
A-51	Misc.	Downbidding to Entry-Level Jobs	01/18/02 (10/07/96) (05/13/94) (05/23/91)
A-52	Article VII, Section 1	Work Hours	01/18/02 (10/07/96) (05/13/94)
A-54	Article VIII, Section 2	Voluntary Transfers Between Headquarters	01/18/02 (10/07/96) (05/13/94)
A-55	Misc.	Pay for Non-Industrial Medical Appointments	01/18/02 (10/07/96) (05/13/94)
A-57	Misc.	Paid Lunch Periods	01/18/02 (10/07/96) (05/24/85)
A-58	Misc.	Martin Luther King, Jr. Day	01/18/02 (10/07/96) (05/13/94)
A-60	Article VII, Section 1(m)	Call Out Pay	01/18/02
A-61	Article VI, Section 3(b)	Promotional Retraining	01/18/02 (10/07/96) (05/13/94)
A-62	Article V, Section 2	Supervisory Upgrades	08/1/07
A-63	Article VII, Section 1(j)	Overtime Guidelines -- Construction Maintenance, Corrosion System Operations, Gas Production and Measurement Center	6/14/07
A-64	Article VII, Section 1(j)	Service Delivery Overtime Guidelines	06/15/07
A-65	Article VIII, Section 17	Inclement Weather -- Service Delivery	08/01/07
A-66	Article VIII, Section 14(a)	Health Care Benefits	08/01/07
A-67	Misc.	Union Employee Annual Incentive Program (UEIP)	08/01/07
A-68	Article VIII, Section 15	\$9,000.00 Paid-Up Post-Retirement Life Insurance Coverage	08/01/07
A-69	Misc.	Sabbatical Vacation Bank and Vacation Credit Programs	08/01/07
A-70	Misc.	Sale of Assets	08/01/07
A-71	Article VIII, Section 14(d)	Retirement Plan and HRA Conversion Agreement	08/01/07
A-72	Misc.	Discontinue Automatic Progression	08/01/07
A-73	Misc.	Benefit Claims Disputes	04/04/05
A-74	Article XIII, Sections 1(c)	Vacation Payout	04/04/05
A-75	Misc.	Clothing Allowance	04/04/05
A-76	Article VIII, Section 14(d)	Post-Retirement Medical Benefits	04/04/05



## AGREEMENT

Between the

Utility Workers Union of America, AFL-CIO, Local 600

and

Duke Energy Ohio, Inc.  
Duke Energy Kentucky, Inc.

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THIS AGREEMENT is entered into between the Utility Workers Union of America, AFL-CIO, Local 600, formerly the Independent Utilities Union, hereinafter referred to as the "Union," and Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., hereinafter referred to as the "Company," through and by their duly authorized representatives.

WITNESSETH: Whereas, the parties to the Agreement as are mentioned above are desirous of maintaining collective bargaining between the Employer and its Employees, as are represented by the Union as bargaining agent, and are desirous of stabilizing employment, eliminating strikes, lockouts, curtailment of employment, and the peaceful settlement of all employer and employee disputes, and of making an honest effort to improve the conditions of both the employer and the employees.

WHEREAS, it is deemed desirable and necessary that definite operations and practices between the Company and the employees of the Company represented by the Union be formally set forth and described, with a desire that uniformity of working conditions exist between the aforementioned Companies and such employees.

WHEREAS, the Company and the Union recognize that in order for the parties to meet the challenge of competition, the need for long term prosperity and growth, and establish employment security, each must be committed to a cooperative labor management relationship that extends from the bargaining unit members to the executive employees. The Company and the Union agree that employees at all levels of the Company must be involved in the decision making process and provide their input, commitment, and cooperation to improving productivity and helping the Company become the lowest cost producer and highest quality provider of energy service.

NOW, THEREFORE, the Company and the Union do hereby agree to the following terms and conditions, to-wit:

## ARTICLE I

**Section 1.** (a) The Company hereby recognizes the Union during the term of this Agreement as the sole and exclusive representative of all regular full-time and part-time employees of the occupational classifications in the units defined as "The Office, Clerical and Technical Unit" and "The Residual Unit," as described in the Order issued by the National Labor Relations Board dated August 12, 1944 and amended by the National Labor Relations Board Order dated February 24, 1967. The units so defined shall retain jurisdiction over such work as was normally performed by them prior to this Agreement but such jurisdiction shall not be expanded except by mutual agreement of the parties hereto or through due processes under the National Labor Relations Act.

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(b) The Company recognizes the Union as the sole bargaining agent of the units contained in the preceding paragraph for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment, and the Company agrees to attempt to adjust any and all disputes, and any other matters, arising out of or pursuant to this Agreement, with the Union.

(c) This Agreement shall be final and binding upon the successors, assignees or transferees of the Union and the corporate entity of the Company.

**Section 2.** (a) The Company agrees not to interfere, restrain, coerce, or discriminate against any of the members of the Union, because of his or her membership in the Union, or because of their activity as a member or officer of the Union. Should reasonable proof of any such interference, restraining, coercion or discrimination by any person in a supervisory capacity against a member of the Union be shown to the Company by the Union, the Company agrees to take immediate corrective action in connection with such complaint. It is further agreed that no member shall be discharged because of his or her service, or lawful activity as a member of the Union, nor will the Company at any time attempt to discourage membership in the Union.

(b) There shall be no discrimination, interference, restraint or coercion by the Company or the Union or their agents against any employee because of race, color, religion, sex, disability, national origin or ancestry or for any other reason. References to the masculine gender are intended to be construed to also include the feminine gender wherever they appear throughout the Agreement.

(c) The Union recognizes that the management of the Company, the direction of the working forces, the determination of the number of men it will employ or retain in each classification, and the right to hire, suspend, discharge, discipline, promote, demote or transfer, and to release employees because of lack of work or for other proper and legitimate reasons are vested in and reserved to the Company.

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(d) The above rights of Management are not all-inclusive, but indicate the type of matters or rights which belong to and are inherent to Management. Any of the rights, powers, and authority the Company had prior to entering this Agreement are retained by



the Company, except as expressly and specifically abridged, delegated, granted or modified by this Agreement.

(e) The foregoing two paragraphs do not alter the employee's right of adjusting grievances as provided for in Article VII, Section 1 of this Agreement.

**Section 3.** Respecting the subject of "Union Security," the parties mutually agree as follows:

(a) All regular employees of the Company as of March 31, 2008, who are not members of the Union, shall not be required as a condition of their continued employment to join the Union. ~~However, after April 1, 2008, all regular employees of the Company within the bargaining unit represented by the Union who are members of the Union, or who may become members of the Union, shall be required as a condition of their continued employment to maintain their membership in the Union in good standing, subject to the annual 10 day escape period described in subsection (f) of this section.~~

(b) The Union agrees that neither it nor any of its officers or members will intimidate or coerce any of the employees of the Company to join or become members of the Union, nor will said Union or any of its officers or members unfairly deprive any employee within the bargaining unit represented by the Union of union membership or of any opportunity to obtain union membership if said employee so desires. In this connection the Company agrees that it will not discriminate against any employee on account of activities or decisions in connection with the Union, except as the same may become necessary on the part of the Company to carry out its obligations to the Union under this Agreement.

(c) If a dispute arises as to the actual union status of any employee, at any time, as to whether or not the employee has been unfairly deprived of or denied union membership, the dispute shall be subject to arbitration, in accordance with the arbitration provisions of Article VII of this Agreement.

(d) The Company agrees that after April 1, 2008, and as long as this section of the Agreement shall remain in full force and effect, that all persons, before they are employed as regular employees in any classification within the unit represented by the Union, shall be required to signify, in writing, their voluntary willingness and intention to join the Union 31 days after being employed in a job classification represented by the Union. During new employee orientation, employees hired into job classifications represented by the Union, shall be required to sign the "Membership Application" and the "Payroll Deduction Authorization" cards for the Union, so that enrollment will be effective 31 days after being hired.

(e) Except for those employees mentioned in subsection (d) of this section and subject to all state and federal laws, all employees who are not members of the Union shall be required, as a condition of their continued employment, to pay to the Union a service charge as a contribution towards the administration of the Agreement in an

amount equal to the dues uniformly required by Union members.

(f) The Union agrees that any present or future employee who is now or may become a member of the Union may withdraw from membership in the Union between September 16th and September 25th inclusive of each year by giving notice by registered mail to the Labor Relations Department of the Company. However, the Union will not impose restrictions, which are prohibited by law, on employees who wish to withdraw from Union membership. The Company will forward a copy of any such withdrawal to the President of the Union. After such withdrawal, an employee shall not be required to rejoin the Union as a condition of continued employment.

~~(g) The Company agrees to dismiss any employee represented by the Union, at the written request of the Union, for nonpayment of union dues or service charges or to discipline employees represented by the Union in the manner herein provided for violation of this Agreement, if requested to do so, in writing, by the Union. Nothing in this clause, however, shall be construed so as to require the Company to dismiss or discipline any employee in violation of any state or federal law.~~

(h) The Company agrees, after receiving proper individual authorizations by means of written individual assignments in a form mutually agreeable to both parties, to deduct Union dues or service charges and initiation fees from employees' pay. This deduction shall be made a mutually agreed upon number of times each year and shall be forwarded to the Treasurer of the Union.

(i) The Union agrees that in the event of any strike, work stoppage, slowdown, picketing or any other interference to the work or the operations of the Company by any individual employee or group of employees in the bargaining unit represented by the Union this section of the Agreement is then and there and by reason thereof automatically canceled and of no further force and effect; provided, however, that the Company shall upon the presentation of proof satisfactory to the Company, within ten days thereafter, that the Union did not directly or indirectly authorize, permit, endorse, aid or abet said strike, work stoppage, slowdown, picketing or interference referred to, reinstate this section of the Agreement, which section, if reinstated will, from and after the date of reinstatement, be of the same validity, force and effect as if it had not been canceled. In this connection, it is the expressed intention of the parties that for the purpose of making this cancellation provision effective without affecting the other sections of the Agreement, this Agreement is to be considered a severable agreement. Should the automatic cancellation of this section occur, it is the intention and agreement of the parties that all other sections and provisions of the Agreement remain in full force and effect as therein provided. The Company agrees that it will not deliberately arrange or incite such interference to the work or operations of the Company as are referred to in this section.

**Section 4.** The Company agrees that it will not attempt to hold the Union financially responsible or institute legal proceedings against the Union because of a strike, slowdown or work stoppage not authorized, abetted or condoned by the Union. The Union agrees that, in the event of an unauthorized work stoppage, it will in good faith

and without delay exert itself to bring the work stoppage to a quick termination and insist that the employee(s) involved cease their unauthorized activities. To that end, the Union will promptly take whatever affirmative action is necessary. Furthermore, the Union agrees that any employee or employees who agitate, encourage, abet, lead or engage in such a strike, work stoppage, slowdown or other interference with the operations of the Company shall be subject to such disciplinary action as the Company may deem suitable, including discharge, without recourse to any other provision or provisions of the Agreement now in effect.

## ARTICLE II

~~Section 1. The Company agrees to designate and authorize a representative or representatives to meet with The General Board of the Union. It is agreed that these meetings shall be held quarterly, at a time mutually agreed upon, and at any other time upon the written request of either party to this Agreement. These meetings will be held within seven days after such request is made.~~

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Section 2. The Company agrees to meet and confer with any special committee of the Union, duly appointed by the President to administer any activity relating to the welfare of the members of the Union.

## ARTICLE III

Section 1. (a) This Agreement and the provisions thereof, shall become effective April 1, 2008 and shall continue in full force and effect until April 1, 2012, and from year-to-year thereafter unless changed by the parties.

(b) Either of the parties hereto desiring to change any section or sections of this Agreement and/or to terminate this Agreement shall notify the other party in writing of the desired changes at least 60 days prior to April 1, 2012 or any subsequent anniversary date. During this 60-day period, conferences shall be held by and between the parties hereto, with a view to arriving at a further Agreement, and in all events this Agreement shall remain in full force and effect during the period of negotiations.

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(c) In the event agreement is reached on or before April 1, the 2008 – 2012 Agreement will be extended for a mutually agreed number of calendar days. The Union shall have one-half of the mutually agreed number of calendar days immediately following the date an agreement is reached in which to submit the Agreement to its membership for ratification and in case of failure to ratify, in order that the Company shall have the remaining one-half of the mutually agreed number of calendar days as notice before a strike or work stoppage commences. Providing the mutually satisfactory Agreement is ratified by the membership within the first one-half of the mutually agreed number of days following the date an agreement is reached, such Agreement will be made retroactive to the 1st day of April and any agreed upon wage adjustments will be made retroactive to the 31st day of March.

**Section 2.** It is agreed that this Agreement may be amended or added to at any time by the written consent of both parties hereto.

#### ARTICLE IV

**Section 1.** The Company agrees to do nothing to encourage an employee to bargain individually.

**Section 2.** The Company agrees that if a matter rightfully termed a Union activity is referred by an employee to his or her representative or delegate, and this is taken up ~~with the supervisor or any one qualified or authorized to act for the Company, such~~ Company representative shall not initiate, negotiate, or discuss this question with the employee without affording the representative or delegate of the division an opportunity to be present.

**Section 3.** Departmental supervisory personnel will notify the departmental union delegate when a significant change or condition affecting that department or a work group within that department is contemplated by the management of the particular department. When major organizational changes affecting personnel in various departments are contemplated, the Company agrees to notify the Union, in writing, at least 14 calendar days in advance of the change, and, upon written request by the President of the Union, a meeting shall be arranged between the Company and the Union to discuss such changes.

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**Section 4.** Copies of bulletins issued by the Company concerning working conditions for any division or department represented by the Union, shall be forwarded to the General Board of the Union.

#### ARTICLE V

**Section 1.** The principle of seniority is recognized by the Company. There shall be two types of seniority defined as follows:

1. System service shall be based upon the length of time an employee has been continuously employed by the Company, and shall be the governing factor in establishing vacation dates.
2. Classified seniority shall be the length of time worked by an employee on a specific classified job.

It shall be considered a break in system service and seniority when an employee has been off the Company payroll, except when an employee has:

- (1) Been laid off because of lack of work and has not, at any time during the period of layoff or during a period not to exceed three years from the date of

layoff, refused to return to work for the Company in a capacity formerly held or comparable to the capacity formerly held, by the employee. However, actual time away will be deducted from the employee's system service.

- (2) Been granted a leave of absence for good cause by consent of the Company, without loss of system service and seniority rights, providing the employees are available whenever necessary for the Company's medical examinations during the leave of absence. However, the employees will receive vacation in accordance with the second paragraph of Article IX, Section 5. Requests for leave of absence and consent hereto shall be in writing.

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- (3) Entered the military service of the United States or has been conscripted by the United States Government. No deductions for time away shall be made from the employee's system service and seniority record.
- (4) Resigned voluntarily and subsequently been re-hired. Actual time away will be deducted from the employee's system service and seniority record, and, while previous system service shall be maintained, no classified seniority shall be retained.

Existing system service and seniority records shall not be rearranged to meet the above requirements in exceptions (1), (2) and (3), but they shall be met in all cases beginning March 21, 1983.

**Section 2.** (a) Job available postings for job classifications covered by this Agreement shall be provided by the Company and posted for a period of seven calendar days on all bulletin boards in the department or division where the opening exists.

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(b) If after the initial posting the job opening has not been filled by a qualified applicant from the department or division, the job available notice will then be reposted for a period of seven calendar days on all bulletin boards throughout the Company where there are employees covered by this Agreement. In certain cases where it is known that there are no qualified applicants within a division or a department, the initial posting may be waived and the job posting will then be initially posted throughout the Company where there are employees covered by this Agreement. However, if applications are received from employees within the department requesting the job opening, these applications will be given consideration before those received from employees in other departments. Furthermore, anytime employees are accepted for a job opening on a lateral or cross bid, they shall not be eligible to laterally or cross bid again for a period of six months from the date of acceptance. The only exception to this six month waiting period is that employees may cross bid to another headquarters within the same bidding area at any time.

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(c) In those departments where the multiple posting system is in use, employees are permitted to submit their applications for promotions, lateral bids or cross bids in advance of an opening according to the multiple posting administrative procedures of the applicable department.

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(d) It is agreed that classified seniority will be considered within a department, district or departmental section concerning available advancements, although other qualifications for the particular position will of necessity be considered. All other factors being sufficient, the employee oldest in the point of classified seniority shall be given a reasonable opportunity to qualify for the position.

~~(e) Should the classified seniority of any two or more employees be equal, the~~ respective seniority position of such employees shall be determined according to the dates of the most recent individual employment application or resume, whichever has the earliest date. If the dates still remain equal, the relative seniority positions shall be determined by lot by the Union and the Company notified of the results, in writing.

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In the event no fully qualified individual has bid on a Union wide job opening, the previous experience requirement only will be waived, with the exception of positions within the General Clerical sequence, and an employee will not be disqualified for promotion on the basis of not having passed through a lower job in the promotional sequence if otherwise qualified. Employees who have at least one half of the required previous experience and are in the direct promotional sequence of a job opening, posted Union wide, where previous experience has been waived, will be considered for the job before all other non-qualified employees. Any claim of discrimination in this connection may be taken up by the Union as a grievance. In making promotions to any job outside the bargaining unit, first consideration shall be given by the Company to employees with seniority and ability, but it is mutually agreed that seniority shall not be controlling.

(f) An employee may waive his right to promotion, providing such waiver is presented to the Company in writing and does not prevent other employees from acquiring experience in the job held by the employee. When an employee waives his right to promotion, the employee next in seniority, other qualifications being sufficient, shall be entitled to such promotion. When it is necessary to fill an open position, and no employees are willing to promote, the Company may assign the junior qualified employee to promote to the job classification.

(g) If no qualified regular full-time employee has been accepted following the posting procedure and consideration of requests for demotion, second consideration for non-technical job openings shall be given to part-time employees within the bargaining unit based on qualifications as determined by the Company. For technical job openings, the Company will give second consideration to part-time employees with a technical degree and/or technical expertise based on qualifications as determined by the Company. As a result of these determinations, if the top two or more part-time applicants have equal assessments, then the non-technical or technical job opening will

be offered to the applicant with the greatest system seniority.

(h) Should the job opening not be filled after the posting procedure above, at the discretion of management, consideration may be given to requests for transfer which have been received from employees outside the bargaining unit or may be filled from outside the Company.

(i) If the particular job opening is not filled within 60 days from the expiration date of the bargaining unit-wide posting, the job opening will be reposted in accordance with the job posting procedure outlined above.

~~(j) The job posting procedure outlined above does not restrict the Company's right to cancel a job posting at any time.~~

(k) An employee shall not have seniority rights to bid on a demotion but may, in writing by letter or by submitting a bid for a posted job opening, request consideration for a demotion. However, if an employee's request for demotion is granted by the Company, any accumulated classified seniority will be forfeited in job classifications above the job to which he demotes.

(l) The Company and the Union agree that the job posting procedure will be waived for the employment of Co-ops, as probationary employees in job classifications represented by the bargaining unit, providing that the next opening in the same job classification and bidding area is posted and made available to employees within the bargaining unit. If such opening is not filled by a bargaining unit employee, openings in the same job classification and bidding areas will continue to be posted and made available to employees within the bargaining unit until such time that a bargaining unit employee fills one of the openings.

**Section 3.** (a) In the event of any layoffs or curtailments of employment, rollbacks and layoffs shall be made in accordance with system seniority rights. When the Company reduces the number of employees in a job classification, the Company will use the following process to determine rollbacks and layoffs. Employees with the least amount of System Service seniority within the job classification that is targeted for a reduction will relegate back and be assigned to vacant positions and/or replace full-time employees in the bidding area with the least amount of System Service seniority. Displaced employees must be qualified for the job classification to which they are assigned and the job classification must be within the same bidding area and below their former job classification. Displaced employees will be reclassified into the next lower job classification within their bidding area for which they are qualified, if there are employees in that job classification and they have less system seniority than the displaced employees. Displaced employees will have their wage rates red-circled for a period of 18 months. At the end of 18 months, their wage rates will be reduced to the maximum wage rate of the job classification to which they were reclassified. Displaced employees who are assigned to perform work in lower level job classifications, if qualified, will be reassigned to higher job classifications as they become available within

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the bidding area, until the displaced employees return to assignments within their former job classification; obtain a job within the bidding area at the same or higher wage level as their former job classification; or, obtain a job in another bidding area. Displaced employees will not be assigned to or be required to perform the duties of job classifications at levels higher than their former job classification. Any employees unable to be assigned to vacant positions and/or replace full-time employees in the bidding area will be subject to layoff.

Part-time Meter Readers will be laid off before any full-time Meter Readers are rolled back or laid off. The same holds true for part-time and full-time call-takers in the Call Center.

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Where multiple part-time employees in a job classification at the same location are scheduled to work a total of 40 or more hours per week, a qualified displaced full-time employee in the same bidding area may replace the part-time employees by accepting a full-time job at that location, if the department can still schedule straight-time coverage for the required hours.

A full-time displaced employee with at least 15 years of service and subject to layoff, if qualified, will be allowed to displace the employee with the least amount of system seniority outside of the displaced employee's bidding area. Those employees with 15 or more years of service will have their wage rates red-circled for 18 months.

Displaced employees unable to displace full-time employees and subject to layoff, if qualified, will be allowed to replace employees in part-time positions within their bidding area, by accepting the wage rate, benefits, work hours and other terms and conditions of employment of the part-time employee. The two exceptions are Meter Reading and Call Center, where these employees may retain their full-time status and accept the wage rate applicable to new full-time employees in these departments. Full-time employees within the Customer Relations bidding area, but outside the Call Center and Meter Reading Departments, may displace a maximum of four part-time employees in each department (i.e., Call Center and Meter Reading) within a 12-month period.

Employees who were rolled back prior to April 1, 2008 and their wage rates are red-circled, will continue to have their wage rates red-circled.

An employee will not have the right to recede to a position within his bidding area that he did not pass through before reaching his present position. For purposes of this section, if an employee is unable to exercise system seniority rights in lower job classifications within his department because he did not pass through those job classifications before reaching his present position, he will be credited with system seniority in all job classifications lower than his initial job within the bidding area which are in the same direct promotional sequence. Under no circumstances may an employee exercise seniority rights outside his own bidding area or in the selection of a specific job within a classification.



(b) In a department where there have been layoffs and a subsequent increase in employment exists within three years, the Company agrees to recall those employees in the department who have suffered a layoff because of lack of employment, in the reverse order of the dates of their layoffs. It is further agreed that the Company will notify the employee or employees, in writing by registered or certified mail, to report back to work. The Company agrees to send a copy of these letters to the Union at the time of the mailing of the original. If they do not report back to work within a 15-day period, the Company shall have the right to recall the next employee in line.

(c) It shall be the duty of all employees, including those on layoff status, to have their proper post office address and telephone number on file with their individual departments and the Human Resources Department of the Company.

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(d) The Union may designate a witness to tests given in a departmental section, and shall have the right to review the results of these departmental tests upon request. This does not apply to standard tests given by the Staffing Services Division or by outside consultants. A-4

(e) The Company will make an effort to find another job classification for which an employee is qualified if his job is abolished. An employee who, because of this job abolishment, is assigned to a classification having a lower rate of pay, will maintain his existing level of pay until the maximum wage rate of the job classification to which he is assigned is equal to his existing wage rate. This provision does not affect the right of an employee to bid on a future posted job opening for which he may be qualified.

**Section 4.** (a) Temporary transfers from one department, district, or departmental section to another will not affect an employee's system service or seniority rank and his record will remain posted in the department, district, or departmental section from which he was transferred.

(b) Permanent transfers from one department, district, or departmental section to another will not affect an employee's system service or classified seniority, which will be used to determine his system service and seniority rank in his new department, district, or departmental section. A-2

(c) When an employee has successfully bid on a posted job and his move to the posted job is delayed, consideration shall be given to the proper adjustment of the employee's seniority rank so that the employee will not be penalized with respect to future promotions. The employee will receive a seniority date and the wage rate of the job on which he has been accepted no later than the beginning of the third week after the employee is notified that he has been accepted for the new job.

**Section 5.** All new employees shall be classed as probationary for a period of one year and shall have no system service or seniority rights. After one year's service as a probationary employee, they shall be reclassified and their system service and seniority record shall include their previous employment as a probationary employee.

**Section 6.** Temporary employees shall be those hired for a specific job of a limited duration, not to exceed six months unless agreed upon by both parties, and shall not acquire system service or classified seniority rights. The Union shall be notified of the hiring of such employees.

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**Section 7.** (a) Part-time employees shall be those hired to perform a continuing specific work requirement that is temporary in nature or less than 40 hours per week. Part-time employees will only be used for part-time applications in order to supplement the regular full-time workforce, unless otherwise agreed. While the intention is for part-time employees, who are non-temporary in nature, to be regularly scheduled to work less than 32 hours per week, the actual hours worked may be greater due to temporary operational needs or trading of hours with other employees. The departments utilizing part-time employees will develop schedules to be worked by such personnel. However, schedules for part-time employees may at times vary according to work needs. These employees will work in bargaining unit positions and will be paid the minimum wage rate for the job classification or at a specially negotiated rate. They shall not acquire classified seniority rights. Part-time employees may be laid off for any reason without recall rights. Such layoffs shall not be subject to the grievance procedure. Benefits for part-time employees shall be on a prorated basis as agreed to by the parties.

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(b) Part-time employees may request consideration for other part-time openings and may submit applications for openings in regular full-time positions. When part-time employees become full-time employees, they shall be credited with system service for the length of time they were employed by the Company as a part-time employee on or after January 1, 1996. For part-time employees who become full-time employees after April 1, 2008 and who have been employed as part-time for at least 12 consecutive months prior to becoming full-time, the probationary period shall be reduced from one year to nine months.

(c) The overtime provisions of this Agreement, including meal compensation, will only apply to part-time employees when they work in excess of their regular scheduled hours per day or eight hours per day, whichever is greater. Part-time employees will not be called out for overtime assignments unless all full-time available employees have been called. The total number of part-time employees, excluding those in the Call Center and Meter Reading work groups and those hired to perform a continuing specific work requirement that is temporary in nature, will not exceed 5% of the total number of full-time employees performing work represented by the Union.

## ARTICLE VI

**Section 1.** The parties hereto recognizing the importance of safety projects and regulations for the protection of the health, life and limb of all employees, agree to make all reasonable efforts to maintain such rules and regulations conducive to the health and safety of all concerned. The Company will notify the Union leadership of any work related accident resulting in the hospital admission or death of any employee in the bargaining unit.

## ARTICLE VII

~~**Section 1.** Any dispute or disagreement arising between an employee and the Company or the Union and the Company may become the subject of a grievance. However, with respect to any claim or dispute involving the application or interpretation of an employee welfare or pension (includes defined benefit and 401(k) plans) plan, the claim or dispute shall not be resolved under the grievance procedure outlined herein, but instead, shall be resolved in accordance with the terms and procedures set forth in the relevant plan document. Additionally, should the content of any communication relating to employee benefits conflict with the terms of the relevant plan document, the terms of the plan document shall govern. Recognizing the importance of resolving disputes or disagreements in a peaceful and timely manner, grievances shall be processed in accordance with the following procedure:~~

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### 1st Step

An employee must file any grievance, involving wages, hours of work, conditions of employment, or of any nature arising out of this Agreement with the employee's supervisor. The grievance shall first be taken up with the supervisor involved, within 20 days of its occurrence or 20 days from the time the employee or the Union became aware of the occurrence. The initial meeting shall be held between the supervisor(s), the employee involved and the elected union representative or delegate. Grievances in this step shall be answered verbally at the meeting or within 5 days of the conclusion of the meeting. The supervisor will also inform the Union of the appropriate management person to notify in the event that the Union wishes to pursue the grievance to the second step.

### 2nd Step

If the parties are unable to resolve the grievance following the first step, within 10 workdays of the first step response, the Union may submit a written grievance to the management of the department designated in the first step. Department management will schedule a meeting with a small committee representing the Union within 20 workdays after receipt of the written grievance. The department management will render a written decision within 30 workdays after the date of the meeting.

### 3rd Step

If the parties are unable to resolve the grievance following the second step, within 30 workdays of the second step response, the Union may notify the Labor Relations Department in writing of its desire to advance the grievance to the third step of the grievance procedure. The Labor Relations Department will schedule a meeting with the appropriate management representatives and a small committee representing the Union within 20 workdays after receipt of the written request. The Labor Relations Department will render a written decision within 30 workdays of the date of the third-step meeting. The written response will be sent by certified mail, return receipt requested.

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In the case of a discharge, the Union may bypass the first step of the grievance procedure and submit a written grievance requesting a second step grievance meeting, within 10 days following the date of discharge.

### Arbitration

**Section 2.** (a) If the parties are unable to resolve the grievance following the third-step, the Union, within 30 workdays of receipt of the third step response, may notify the General Manager, Labor Relations in writing of its desire to advance the grievance to arbitration.

(b) Upon receipt of the Union's notification, the parties will promptly petition the Federal Mediation and Conciliation Service (FMCS) for a panel of seven arbitrators and an arbitrator will be selected by the parties. In the event that no acceptable arbitrator appears on the panel of arbitrators submitted by FMCS, either party may request an additional panel from FMCS.

(c) The arbitrator so selected shall hold a hearing as promptly as possible on a date satisfactory to the parties. If a stenographic record of the hearing is requested by either party, the initial copy of this record shall be made available for the sole use of the arbitrator. The cost of this initial copy and its own copy shall be borne by the requesting party, unless both parties desire a copy. If both parties desire a copy, they shall equally share the cost of the arbitrator's copy, and shall each bear the cost of any copies of the record they desire.

(d) After completion of the hearing and the submission of the post-hearing briefs, the arbitrator shall render a decision and submit to the parties written findings that will be binding on both parties to the Agreement.

(e) The arbitrators' and other joint expenses mutually agreed upon shall be borne equally by both parties.

(f) Any grievance that is not taken to the next step within the time limits specified will be deemed to have been withdrawn. If at any step in the grievance procedure, the

Company does not answer within the designated time frame, the Union may notify the Company of its desire to advance the grievance to the next step of the grievance procedure. Any time limits may be extended by written agreement between the parties.

(g) The arbitrator shall have no authority to add to, detract from, alter, amend, or modify any provision of this Agreement. It is also mutually agreed that there shall be no work stoppage or lockouts pending the decision of the arbitrator or subsequent thereto.

**ARTICLE VIII**

~~Section 1.~~ (a) The parties hereto agree that the wage rate schedules in effect immediately prior to the execution of this Agreement shall be amended as follows:

**MAXIMUM WEEKLY OR HOURLY WAGE RATES**

	<u>As of April 3, 2007</u>	<u>April 1, 2008</u>	<u>April 1, 2009*</u>	<u>April 1, 2010**</u>	<u>April 1, 2011***</u>
<b>Non-Manual (Clerical) Maximum Wage Rates</b>					
	<b>Base Increase</b>	<b>2.5%</b>	<b>2.5%</b>	<b>2.5%</b>	<b>2.5%</b>
N1	\$489.60	\$502.00	\$514.40	\$527.20	\$540.40
N2	\$541.60	\$555.20	\$569.20	\$583.60	\$598.00
N3	\$605.20	\$620.40	\$636.00	\$652.00	\$668.40
N4	\$605.20	\$620.40	\$636.00	\$652.00	\$668.40
N5	\$649.60	\$666.00	\$682.80	\$700.00	\$717.60
N6	\$709.60	\$727.20	\$745.20	\$764.00	\$783.20
N7	\$709.60	\$727.20	\$745.20	\$764.00	\$783.20
N8	\$787.60	\$807.20	\$827.20	\$848.00	\$869.20
N9	\$842.00	\$863.20	\$884.80	\$906.80	\$929.60
N10	\$905.20	\$928.00	\$951.20	\$974.80	\$999.20
N11	\$905.20	\$928.00	\$951.20	\$974.80	\$999.20
N12	\$943.60	\$967.20	\$991.20	\$1,016.00	\$1,041.60
N13	\$985.60	\$1,010.40	\$1,035.60	\$1,061.60	\$1,088.00
N14	\$1,022.00	\$1,047.60	\$1,073.60	\$1,100.40	\$1,128.00
			Plus 1% Lump Sum		
<b>Meter Reader Maximum Wage Rates</b>					<b>A-48</b>
MR1	\$15.08	\$15.46	\$15.85	\$16.25	\$16.66
MR2	\$610.80	\$626.00	\$641.60	\$657.60	\$674.00
MR3	\$717.20	\$735.20	\$753.60	\$772.40	\$791.60
MR4	\$850.40	\$871.60	\$893.20	\$915.60	\$938.40
MR5	\$914.40	\$937.20	\$960.80	\$984.80	\$1,009.60
MR6	\$16.15	\$16.55	\$16.96	\$17.38	\$17.81

Customer Projects Resource Specialist Maximum Wage Rate

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A5	\$1,066.40	\$1,093.20	\$1,120.40	\$1,148.40	\$1,177.20
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Call Center Maximum Wage Rates

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C1	\$21.17	\$21.70	\$22.24	\$22.80	\$23.37
C2*	\$15.08	\$15.08	\$15.08	\$15.08	\$15.08
C3*	\$15.08	\$15.08	\$15.08	\$15.08	\$15.08
C4*	\$12.00	\$12.00	\$12.00	\$12.00	\$12.00

\* Employees above maximum will receive a lump sum increase after Year 1.

Manual Maximum Wage Rates

	Base Increase	3%	3%	3%	3%
	\$552.00	\$568.40	\$585.60	\$603.20	\$621.20
	\$576.40	\$593.60	\$611.60	\$630.00	\$648.80
	\$656.40	\$676.00	\$696.40	\$717.20	\$738.80
M4	\$690.80	\$711.60	\$732.80	\$754.80	\$777.60
	\$722.00	\$743.60	\$766.00	\$788.80	\$812.40
M5	\$741.60	\$764.00	\$786.80	\$810.40	\$834.80
PJ	\$773.60	\$796.80	\$820.80	\$845.60	\$870.80
M9	\$828.80	\$853.60	\$879.20	\$905.60	\$932.80
	\$861.60	\$887.60	\$914.40	\$942.00	\$970.40
MA & MB	\$899.20	\$926.00	\$953.60	\$982.40	\$1,012.00
M7 & MD	\$949.60	\$978.00	\$1,007.20	\$1,037.60	\$1,068.80
	\$971.20	\$1,000.40	\$1,030.40	\$1,061.20	\$1,093.20
	\$1,024.80	\$1,055.60	\$1,087.20	\$1,120.00	\$1,153.60

Technical Maximum Wage Rates

	Base Increase	3%	3%	3%	3%
T1	\$750.00	\$772.40	\$795.60	\$819.60	\$844.00
T2	\$819.60	\$844.00	\$869.20	\$895.20	\$922.00
T3	\$908.80	\$936.00	\$964.00	\$992.80	\$1,022.40
T4	\$973.60	\$1,002.80	\$1,032.80	\$1,063.60	\$1,095.60
T5	\$1,046.00	\$1,077.20	\$1,109.60	\$1,142.80	\$1,177.20
T6	\$1,092.00	\$1,124.80	\$1,158.40	\$1,193.20	\$1,228.80
T7	\$1,137.20	\$1,171.20	\$1,206.40	\$1,242.40	\$1,279.60
T8	\$1,179.60	\$1,214.80	\$1,251.20	\$1,288.80	\$1,327.60
T9	\$1,213.60	\$1,250.00	\$1,287.60	\$1,326.40	\$1,366.00

Customer Projects Coordinator Maximum Wage Rates

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CP1	\$23.29	\$23.99	\$24.71	\$25.45	\$26.21
CP2	\$27.46	\$28.28	\$29.13	\$30.00	\$30.90
CP3	\$33.48	\$34.48	\$35.51	\$36.58	\$37.68

\*The wage increases listed in this column will be further increased (decreased) by 1 cent per hour for each full 0.2% increase (decrease) of more than 4.0% in the U. S. Revised Urban Wage Earners and Clerical Workers Consumer Price Index published by the Bureau of Labor Statistics, U.S. Department of Labor, with the October, 2008 index as the zero base and percentage increases calculated from that base after each quarter. The increase, if any, will be reflected in the payroll period beginning on April 6, 2009, June 29, 2009, October 5, 2009, and January 4, 2010, based on the indexes of January 2009, April 2009, July 2009, and October 2009, respectively.

\*\*The wage increases listed in this column will be further increased (decreased) by 1 cent per hour for each full 0.2% increase (decrease) of more than 4.0% in the U. S. Revised Urban Wage Earners and Clerical Workers Consumer Price Index published by the Bureau of Labor Statistics, U.S. Department of Labor, with the October, 2009 index as the zero base and percentage increases calculated from that base after each quarter. The increase, if any, will be reflected in the payroll period beginning on April 5, 2010, July 5, 2010, October 4, 2010, and January 3, 2011, based on the indexes of January 2010, April 2010, July 2010, and October 2010, respectively.

\*\*\*The wage increases listed in this column will be further increased (decreased) by 1 cent per hour for each full 0.2% increase (decrease) of more than 4.0% in the U. S. Revised Urban Wage Earners and Clerical Workers Consumer Price Index published by the Bureau of Labor Statistics, U.S. Department of Labor, with the October, 2010 index as the zero base and percentage increases calculated from that base after each quarter. The increase, if any, will be reflected in the payroll period beginning on April 4, 2011, July 4, 2011, October 3, 2011, and January 2, 2012, based on the indexes of January 2011, April 2011, July 2011, and October 2011, respectively.

(b) These wage rate increases shall not apply to the minimum wage rates of starting job classifications.

(c) The wage increases mentioned above shall not apply to any employee whose present wage rate is on or above the new maximum wage rate of his job classification, except employees who are on physical retrogressions, who shall receive the increase applicable to their individual wage rate as of the indicated dates of increase.

(d) Manual employees shall be provided the higher of a \$10.00 promotional increase above the maximum wage rate of the job classification from which they promote, or the minimum wage rate of the job classification to which they promote. Clerical and Technical employees shall be provided the higher of a \$10.00 promotional increase or the minimum wage rate of the job classification to which they promote. This provision will not apply when the maximum wage rate of a job classification is not at least \$10.00 above the maximum wage rate of the job classification from which it promotes.

(e) Whenever the difference between the minimum and maximum wage rates of a job classification is not divisible by \$4.00, the intermediate wage rates will be by \$4.00 steps, with the exception of the last step to the maximum wage rate of the job. In such

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case the increase to the maximum wage rate will include the \$4.00 increment plus the odd amount necessary to equal the maximum wage rate, provided, however, that the total amount of this increase is less than \$8.00.

(f) Any employee in the Union who was on or below the maximum wage rate of his job classification as of the indicated dates of increase shall receive the increase applicable to the maximum wage rate of his job classification.

(g) The shift differentials and Sunday premium paid to employees on scheduled shifts on classified jobs will be as follows:

Name of Shift	Definition of Shift	Shift Differential Cents Per Hour			
		4/01/08	4/01/09	4/01/10	4/01/11
Day Shift	Where the majority of the scheduled hours worked are between 8:00 a.m. and 4:00 p.m.	0	0	0	0
Afternoon Shift	Where the majority of the scheduled hours worked are between 4:00 p.m. and 12:00 Midnight	\$1.50	\$1.55	\$1.60	\$1.65
Night Shift	Where the majority of the scheduled hours worked are between 12:00 Midnight and 8:00 a.m.	\$1.55	\$1.60	\$1.65	\$1.70

When the majority of the hours in a shift are on a Sunday, a Sunday premium will be paid to an employee for all scheduled straight time hours worked on that shift.

Sunday Premium	\$1.65	\$1.70	\$1.75	\$1.80
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(h) The nature of the work involved under each payroll classification shall be defined, as nearly as possible, by the Company and occupational classifications and job descriptions shall be prepared by the Company and be subject to review by the Union.

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(i) The Job Evaluation Committee of the Company will be responsible for evaluating all new or revised job classifications. The evaluation established by this Committee will be used to determine the maximum wage rate for each new or revised job classification. Results of the evaluation will be communicated to the Union at least two weeks before the effective date of the new or revised job classification.

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(j) The Union shall appoint a Classification Committee consisting of not more than five members who may review the evaluation and wage rate of any new or revised classification. The Union's Committee may, by request, meet with the Company's Committee as soon as possible at a mutually agreeable time, but within 30 days after the Union has been notified by the Company of the proposed new or revised classification, for the purpose of presenting any information relative to the evaluation of a new or revised classification. The Union will be notified after the Company's Committee has reviewed the information presented by the Union. All wage rates so established shall be final and binding and not subject to the grievance and arbitration procedure. However, if any revised wage rates are reduced as a result of the evaluation(s), they will not be placed into effect until the Company and the Union have had an opportunity to negotiate them during full contract negotiations, even though the revised job classification will be in effect. Employees, presently in, or promoting to, such job classifications will continue to receive wage adjustments in accordance with the other provisions of the Agreement just as if the wage rate had remained at the same level until a new Agreement is reached.

(k) When the Union believes that a new or revised job description does not adequately describe the principal duties and minimum qualifications necessary to provide a sufficient basis for evaluating that job description, a letter outlining the Union's suggested changes may be sent to the management of the appropriate department for consideration. However, there will be no recourse to the grievance and arbitration procedure because of the language of a job description or the evaluation of a job classification.

(l) Where the Union deems an employee to be improperly classified, it will be considered as a grievance and shall be handled under the grievance procedure described elsewhere in this Agreement.

**Section 2.** (a) With the exception of shift differential premium, and a holiday occurring during an employee's vacation, it is agreed that under no circumstances shall any section of this Agreement be interpreted to provide the pyramiding of a benefit or premium payment to employees covered by this Agreement. For example, no employee may claim sick pay while receiving vacation pay or holiday pay while receiving sick pay.

(b) It is further agreed that there shall be no interruption in the payment of one benefit in order that employees may receive payment for another benefit. For example, employees may not interrupt vacation to begin sick leave or interrupt sick leave to include a holiday. The only exceptions to this provision are that an employee's sick pay may be interrupted to include vacation pay and that vacation pay may be interrupted to include death in family pay as set forth in the Agreement.

**ARTICLE IX**

**Section 1.** ABSENCE DUE TO SICKNESS OR ACCIDENT: (a) Regular employees who are actively working on January 1, regular employees who return to work from an authorized extended absence on or after January 1, probationary employees who become regular employees on or after January 1, shall be paid as gross wages, for absent time due to bona fide illness or injury, a maximum annual amount equal to 40 hours at their regular Straight Time Pay. Such payment shall be made by the Company on the nearest practicable regular pay day following the date such employee becomes eligible.

~~(a) After a part-time employee with 12 months of service or a full-time employee has been continuously disabled, subject to medical determination, and unable to return to work for more than seven consecutive calendar days, the employee will receive Short-Term Disability pay consisting of up to 26 weeks of pay per incident with payment based on the schedule below or until the employee is able to return to work, whichever occurs first.~~

The administration of short-term disability compensation for employees will be administered over a two-year period for the purposes of calculating weeks at 100% of pay. Multiple occurrences of STD in a rolling 24-month period will be paid as follows:

Years of Service	Maximum Weeks at 100% Pay per Rolling 24 months	Weeks at 66 2/3% Pay
0-1	None	All
1-5	10	Balance
6-10	15	Balance
11-14	20	Balance
15-20	26	Balance
21 or more	ALL	N/A

For example, if a 14-year employee is on leave in January for 15 weeks and then another 15 weeks in March of the following year, the first illness and five weeks of the second illness will be paid at 100%. The remainder of the weeks will be paid at 66 2/3%. Any other qualifying STD absences during the rolling 24-month period would be paid at 66 2/3%.

(c) After an employee has been continuously disabled, subject to medical determination, and is unable to return to work for more than 27 consecutive weeks, and has exhausted Short-Term Disability benefits, the employee will receive Long-Term Disability benefits as described in the Company's Long-Term Disability Plan Description.

**Section 2.** No wages will be paid for illness caused by illegal use of drugs, intoxication, or willful intention to injure himself or others, elective or cosmetic procedures not covered by the medical plan, for the employee's refusal to adopt such remedial measures as may be commensurate with the employee's disability or permit such

reasonable examinations and inquiries by the Company as in its judgment may be necessary to ascertain the employee's condition.

**Section 3.** It is also mutually understood and agreed that the Company shall have the right to investigate and determine for its own satisfaction the bona fide nature of any illness for which pay is requested as well as the duration thereof. In order to facilitate the scheduling of the work forces, employees who will be absent from work are expected to notify the Company as soon as possible, but not later than one hour after their regular starting times and in the case of shift workers, one hour before the start of their shifts. Unless an employee submits a legitimate excuse for not reporting the cause of absence before the end of the first hour of such absence, the employee's claim for sick leave pay shall not begin until such notice is received.

**Section 4.** When employees have received all of the disability pay to which they are entitled under this Agreement they shall be granted, upon written request on a form provided by the Company, a "leave of absence" and shall not be eligible for further disability pay benefits until they have returned to steady employment.

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**Section 5.** (a) An employee accrues entitlement of 1/12 of their current year's vacation for each full month the employee is employed during the current calendar year or is on STD, or leave of absence. Any employee leaving the Company's service during any calendar year shall receive payment for any unused portion of accrued vacation for that current year. However, in the event of an employee's death, the estate of the employee will be paid the unused portion of the employee's total vacation allotment for the current year.

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Employees returning from military service will receive vacations with pay in the calendar year in which they return as follows:

Month in which Employee Returns to Company's Employment	Amount of Vacation Based on System Service of Employee
Up to and including June	Full
July, August and September	One-Half
After September	None

(b) In order for an employee to qualify for a vacation, the employee must have been ready, willing and able to work as a full-time regular or probationary employee during the calendar year the vacation is taken.

(c) The anniversary of employment shall determine the employee's vacation status. Every effort will be made to grant vacations at a time suitable to the employee, but should the vacation of an employee handicap the operations of the Company in any way, the Company reserves the right to require the vacation be taken at another time. Normally, preference shall be granted in the selection of vacation dates on the basis of

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system service.

(d) Employees with less than one year of service with the Company shall be entitled to one day of vacation for each month worked, with a maximum of 10 total days.

(e) Employees with one year of service with the Company shall be entitled to a vacation of two weeks.

(f) Employees with seven or more years of service with the Company shall be entitled to a vacation of three weeks. Should the amount of work or other working conditions be such that the operations of the Company would be handicapped by granting of the third week of an employee's vacation, the Company reserves the right to require an employee to take his third week of vacation at such time that does not interfere with the operations of the Company.

(g) Employees with 15 or more years of service with the Company shall be entitled to a fourth week of vacation or payment of one week's wages (40 hours) at straight time in lieu thereof. The Company may also require such employees to take the fourth week of their vacation at such time as does not interfere with the operations of the Company.

(h) Employees with 21 or more years of service with the Company shall be entitled to a fifth week of vacation or payment of one week's wages (40 hours) at straight time in lieu thereof. The Company may also require such employees to take the fifth week of their vacation at such time as does not interfere with the operations of the Company.

(i) Employees with 34 or more years of service with the Company shall be entitled to a sixth week of vacation or payment of one week's wages (40 hours) at straight time in lieu thereof. The Company may also require such employees to take the sixth week of their vacation at such time as does not interfere with the operations of the Company.

(j) Employees with 32 or more years of service with the Company shall be entitled to a six week vacation or, if required to work by the Company, payment of one week's wages (40 hours at straight time) in lieu thereof for the sixth week if the employee has attained at least 34 years of service. The sixth week of vacation prior to 34 years of service will automatically be deposited in the employee's vacation bank, if eligible to be banked, and is intended for banking purposes unless specifically approved for time off by supervision.

If an Employee with 32 or 33 years of service has personal needs that would require the Employee to use one of the Employer Service Credits as an additional week off, the Employee must request the approval of his supervisor when the employee submits a vacation schedule at the beginning of each year. Employer Service Credits, if approved and used as time off, must be used in whole week increments and will not be included in final average pay for pension purposes. Effective January 1, 2013, employees will be granted a sixth week of vacation time off during their 32<sup>nd</sup> year of employment in lieu of a week of service credit.

## ARTICLE X

**Section 1.** Regular employees entering the armed services of the United States or employees who are conscripted by the United States Government during a period of national emergency shall continue to accumulate full system service and full seniority and may return to their former position or one of equal pay and rank, provided they report for work with a certificate of satisfactory completion of military or governmental service within 90 days after their release from active service.

**Section 2.** (a) All Company Group Life Insurance carried by employees entering the military service will be canceled the first of the month following the beginning of the employee's leave of absence unless the employee requests to continue his insurance coverage for an additional period of time up to a maximum of 90 days after his leave of absence begins.

(b) Company Group Life Insurance of employees returning to Company service within 90 days after their release from active service will be reinstated without physical examination or waiting period.

**Section 3.** None of the foregoing provisions in this Article shall apply to those employees who are not eligible for statutory re-employment rights.

## ARTICLE XI

**Section 1.** (a) The following days are observed as regular holidays which will be recognized on the indicated dates. The Company may change the date for recognizing a holiday if the date indicated is changed by a legislative enactment or if the prevailing community practice is not consistent with the indicated date.

HOLIDAY	DATE RECOGNIZED
New Year's Day	January 1
Memorial Day	Last Monday – May
Independence Day	July 4
Labor Day	First Monday – September
Thanksgiving Day	Fourth Thursday – November
Day after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

(b) If the recognized date of a holiday occurs on a Saturday or Sunday, the Company will have the option of either celebrating that holiday on another date which is consistent with community practice or paying eight hours of regular straight time holiday pay in lieu thereof for the holiday.

(c) Regular employees whose duties do not require them to work on holidays will be paid straight time. Regular employees who are scheduled to work on a recognized holiday will be paid at time and one-half for the first eight hours worked in addition to their straight time holiday pay. However, those employees who work less than the eight hours scheduled will have their straight time holiday pay correspondingly reduced.

(d) Regular employees who are called out to work on a recognized holiday for a period of four hours or less not contiguous with hours worked into or out of the holiday will be paid for four hours at time and one-half in addition to their straight time holiday pay. Employees who are called out to work on a recognized holiday for more than four hours not contiguous with hours worked into or out of the holiday but less than eight hours will be paid for eight hours at time and one-half in addition to their regular straight time holiday pay. Employees who are required to work more than eight hours on a recognized holiday will be paid at the rate of double time for all such work in excess of eight hours. An employee must work either his full scheduled day before, or his full scheduled day after a holiday to be entitled to receive holiday pay. An employee will not be compensated for travel time on a call-out which occurs on a regular holiday.

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(e) When a holiday falls within an employee's vacation, the employee shall, at the discretion of the Company, either be allowed an additional vacation day at such time in the same year as shall be mutually agreed upon between the employee and his supervisor or shall receive eight hours additional pay to compensate for the loss of such holiday pay.

(f) An employee beginning a leave of absence will not receive holiday pay for holidays occurring after the last day worked except when the employee works the full calendar day immediately before a recognized holiday which is in the same pay period.

**Section 2.** (a) An employee who has completed six months of service with the Company shall be entitled to four compensated Personal days off and one compensated Diversity day off each calendar year. Requests for Personal/Diversity days must be made at least seven calendar days prior to the date requested and must be approved by management. However, because of extenuating circumstances, a day off with less than a seven calendar-day notification may be approved by an employee's supervisor. Arrangements for all Personal/Diversity days must be made with supervision on or before November 1 of each year or it shall be lost. The Company reserves the right to limit the number of employees who can be off on a specific day. If a Personal/Diversity day is not used during a year, it shall be lost and no additional compensation shall be granted. Any employee discharged from the Company for any reason shall not receive compensation for any remaining Personal/Diversity days.

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(b) The administration of Personal/Diversity days shall be the same as vacation days with the exceptions as outlined in paragraph (a) above and that retiring employees will not receive any pay for Personal/Diversity days except those not used in the calendar year they retire.

## ARTICLE XII

**Section 1.** (a) It is agreed that the present establishment of 40 hours per week of the Company will remain in effect, except in those divisions where longer or shorter hours are now being worked, and the Company guarantees employment of not less than 40 hours per week for 52 weeks of each year to all employees represented by the Union as bargaining agent, who are available and ready to work, and who are regular full-time employees of the Company, except those on a less than 40 hour basis now. No such employees shall be required to work more than 40 hours in any one week, consisting of seven days, nor more than eight hours in any one day except as hereinafter provided.

(b) Nothing in this section will affect in any manner the right of the Company to make temporary or permanent reductions in forces when considered necessary by the Company.

(c) Nothing in this Agreement shall be deemed to require the Company or the Union to commit an unfair labor practice or other act which is forbidden by, or is an offense under, existing or future laws affecting the relations of the Company with the employees bargained for by the Union.

**Section 2.** (a) The work week of an employee for payroll purposes and for determining off-days shall consist of seven consecutive days with a minimum of two scheduled off days and be from midnight Sunday to midnight the following Sunday. Employees working on a shift beginning two hours or less before midnight will be considered as having worked their hours following midnight.

A-12  
A-17  
A-47

(b) Regular scheduled hours of work per day will be at straight time for regular scheduled work days, time and one-half for the employee's first scheduled off-day in the work week, double time for the employee's second scheduled off-day in the work week and time and one-half for any additional scheduled off-days in the work week. Any time in excess of the employee's regular scheduled hours per day will be paid at the rate of time and one-half except the employee's second scheduled off-day worked which will be paid at double time.

(c) Employees required to work more than 16 consecutive hours will be paid double time for all time worked in excess of, and contiguous with, the 16 consecutive hours.

(d) Schedules for all employees will be based on the time prevailing in the City of Cincinnati.

(e) In no case will an employee be forced to take time off in lieu of overtime pay. The Company shall be the sole judge as to the necessity for overtime work, and the employee shall be obligated to work overtime when requested to do so. When overtime occurs in a group or department, where more employees are qualified and available to work than are necessary at the moment, the Company agrees to establish a system of

selecting the employees who are to work, in a sincere effort to equalize overtime work. The employees will be notified in advance, whenever possible, when they are required to work overtime.

**Section 3.** (a) The Union recognizes the need for shift work and weekend work in order to provide for continuous operation, and overtime rates will apply as set forth in Article XII, Section 2.

(b) An employee who is transferred from his regular shift to another shift shall be notified of said transfer at least 24 hours prior thereto.

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**Section 4.** (a) ~~Employees called out for other than planned overtime shall be paid~~ a minimum of four hours at the appropriate overtime rate. Travel time of one-half hour each way will be allowed on a call-out when such call-out exceeds four hours of continuous work that is not contiguous with a regular scheduled shift. Employees will not be compensated for any travel time for planned overtime; or on a call-out when the employee is not released from work before his regularly scheduled shift; nor will travel time be allowed when overtime is worked continuously at the end of a regularly scheduled shift.

(b) Planned overtime shall be defined as time worked upon notice to an employee given before leaving his headquarters or place of reporting, or in case of an off-day, during or before what would have been his scheduled hours on that day, that he is to report outside of his regular schedule on any succeeding day. Such time worked shall be paid for at the appropriate overtime rate but not for less than four hours unless such planned overtime extends into or directly follows the employee's regularly scheduled work day, when it shall be paid for at the appropriate overtime rate for the actual hours worked.

**Section 5.** (a) Employees working two hours or more in excess of their normal work day, shall receive a meal, or compensation in lieu thereof, and an additional meal, or compensation in lieu thereof, after each additional five hours of continuous overtime work over and above the original two hours mentioned above.

(b) Employees called out on either their scheduled off day, or four or more hours before his regularly scheduled starting time, shall be furnished a meal, or compensation in lieu thereof, for each contiguous five hour interval worked even though he works into his regularly scheduled work day.

(c) The meal compensation allowance referred to above shall be as follows:

Effective 4/01/08	Effective 4/01/09	Effective 4/01/10	Effective 4/01/11
\$10.25	\$10.50	\$10.50	\$10.75



**Section 6.** It is further agreed by the Company that any manual employee temporarily advanced to a higher classification shall receive the minimum rate of pay applicable to that classification if such work is for four hours or more. If such work is for more than four hours the employee shall receive the minimum rate of pay applicable to that classification for the remainder of the normal day worked. In the administration of this section of the Agreement, a temporary assignment shall be construed to mean any job assignment which is not expected to continue for more than 90 consecutive days.

A-46

**Section 7.** (a) Employees in this bargaining unit temporarily assigned to a supervisory position outside the bargaining unit for four hours or more, shall receive \$1.50 per hour above the maximum rate of pay of either their job classification, or the highest rated job classification they supervise, whichever is greater.

(b) Employees promoted to a job outside the bargaining unit and who return to the bargaining unit within nine months, shall retain all classified seniority accumulated up to the date of their promotion. If employees who were in a job outside the bargaining unit for more than nine months, return to the bargaining unit, they will be placed in a starting job classification and receive a classified seniority date behind all employees. No employee may return to a bargaining unit job classification if, as a result, an employee represented by the Union would be laid off.

### ARTICLE XIII

**Section 1.** (a) The Company agrees that upon his or her return to work from illness or disability, consideration will be given to the employee's physical condition, and, if possible, a less vigorous type of work will be granted at no reduction in the employee's regular pay for a temporary period to be determined by the employee's and the Company's physicians.

(b) If an employee with 25 or more years of service becomes physically unable to satisfactorily and safely perform the regular duties of his classification, an effort will be made by the Company to find work of a less strenuous nature for which he is qualified and to which the employee will be retrogressed. The employee's wage rate will be reduced by \$4.00 per week at the time of the assignment to a job of a lower classification and at six months' periods will be reduced by \$4.00 steps until the employee's wage rate is equal to the maximum wage rate of the job classification to which he has been retrogressed.

(c) If an employee with 20 to 24 years of service becomes physically unable to satisfactorily and safely perform the regular duties of his job classification, he may request a demotion to a lower classification requiring work of a less strenuous nature for which he is qualified to perform. If such a demotion is granted by the Company, the employee will be assigned to a lower classification and will have his wage rate red-circled until it is equal to the maximum wage rate of the job classification to which he has been demoted. Employees whose wages have been red-circled and who subsequently achieve 25 years of service will become retrogressed in accordance with paragraph (b) above.

(d) If an employee with less than 20 years of service becomes physically unable to satisfactorily and safely perform the regular duties of his job classification, he may request a demotion to a lower classification requiring work of a less strenuous nature for which he is qualified to perform. If such a demotion is granted by the Company, the employee will be assigned to a lower classification and will have his wage rate established at the maximum wage rate of the job classification to which he has been demoted.

**Section 2.** Injured employees who are unable to work because of an industrial accident will be paid a supplement in an amount equal to 100% of their weekly wage (40 hours), less the state mandated compensation. This supplemental industrial accident compensation will begin after the initial seven calendar day waiting period and will continue for not more than 26 weeks of continuous disability. If, however, an industrial accident disability continues for two or more weeks, the employee will receive this supplemental industrial accident compensation for the initial seven day waiting period.

**Section 3.** Upon the death of the designated relatives of an employee, the employee, upon request, may be entitled to the stipulated maximum number of calendar days off for which the employee is entitled to receive regular pay for not more than the indicated number of consecutive working days, including the day of the funeral. No pay will be granted for regular scheduled off days.

Relationship	Maximum Consecutive Calendar Days Off	Maximum Consecutive Working Days Off With Pay
Spouse or Domestic Partner	7	5
Child/Step/Foster	7	5
Mother/Step/Foster	7	5
Father/Step/Foster	7	5
Brother	7	5
Sister	7	5
In-Laws (father, mother, brother, sister, son or daughter)	5	3
Grandchild	5	3
Grandparent/Spouse's Grandparent	4	2

If an employee has reported to work and is notified of a death in the family and leaves the job, the day will not be charged as one of the consecutive working days for which the employee is entitled to receive regular pay.

#### ARTICLE XIV

**Section 1.** The Company agrees to erect bulletin boards at locations to be selected by the Union and the Company. The use of these boards is restricted to the following: notices of Union meetings, notices of Union elections, notices of changes within the Union affecting its membership, and any other notices issued on the letterhead of the Union and signed by the President and Secretary of the General Board. There shall be no other general distribution or posting by the members of the Union of pamphlets, or political literature of any kind, except as herein provided.

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#### ARTICLE XV

**Section 1.** Any member or members not to exceed three members elected or employed by the Union whose duties for the Union require their full time shall be granted a leave of absence by the Company for six months and additional six months' periods thereafter, provided that each member is from a different promotional sequence or that the Company has granted permission for two members to be from the same promotional sequence. On return to the employ of the Company, such employees shall be employed at their previous classification or other higher classification within this unit for which they may be qualified.

#### ARTICLE XVI

**Section 1.** (a) The Company agrees to notify the Union of the contemplated hiring of any outside contractors to do work normally performed by regular employees covered by this Agreement. Such notification will be given if it is contemplated that the work will be in excess of 2,000 man-hours.

(b) It is the sense of this provision that the Company will not contract/outsouce any work which is ordinarily done by its regular employees if as a result thereof, it would become necessary to lay off any such employees.

**Section 2.** (a) Each employee shall have a specific headquarters for reporting for work. However, the right of the Company to effect transfers and reassignments to properly run its business is recognized.

(b) When it is necessary to temporarily assign employees to a headquarters other than their own or to a job site reporting location that is further from their home than their regular headquarters, these employees will be paid mileage at the prevailing rate based on the additional round-trip mileage employees are required to drive. No mileage compensation will be paid for the temporary assignment if the other reporting location is closer to the employee's home. Employees reassigned (non-temporary assignment) to a different headquarters will be paid mileage compensation during the first fourteen calendar days of the reassignment.

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(c) When an entire work group is assigned to a new headquarters, paragraph (b) of this Article shall not apply.

(d) Job site reporting and other temporary assignments will be offered on a voluntary basis. If there is an insufficient number of volunteers, assignments will be made on a junior qualified basis. When assigning the junior qualified, unusual or extenuating circumstances will be taken into consideration.

(e) Employees may be assigned to drive Company vehicles from and to the job site from home or sites close to home. If Company vehicles are used in such a manner, the mileage provisions for job site reporting are not applicable. An option to the mileage provision is that employees may, during a job site reporting assignment, pick up and return a Company vehicle to their regular headquarters, provided travel is on their own time.

## ARTICLE XVII

**Section 1.** Witness Fees. Regular pay and reasonable or required expenses will be allowed employees who may be summoned or requested to testify for the Company.

**Section 2.** (a) Employees required to serve on a jury shall be compensated on the basis of their regular salary. Employees must report to work during the working hours when they do not need to be present for jury duty.

(b) An employee working on either a night or afternoon shift at a time when he is scheduled for jury duty, who is unable to postpone the jury duty until a time when he will be working on a day shift, may request the Company to assign him to a day shift schedule. Such a request must be made at least seven working days before the jury duty service is scheduled to begin. When the term of jury duty for such an employee has ended, he shall return to his normal working schedule.

## ARTICLE XVIII

**Section 1.** RETIREMENT INCOME PLAN: (a) Eligible Union employees will participate, or continue to participate, in the existing Cinergy Corp. Union Employees' Retirement Income Plan (the "Retirement Income Plan"); provided, however, that effective January 1, 2009, the cash balance feature provided under the Retirement Income Plan shall be amended to provide that all future pay and interest credits provided thereunder to eligible Union employees will mirror the pay and interest credits provided as of the date of this Agreement under the Duke Energy Retirement Cash Balance Plan (i.e., 4% - 7% depending on age and years of service).

(b) In consideration of the additional benefits incorporated in the Retirement Income Plan, the parties to this Agreement agree that the Company will not reduce the benefits and the Union will not request any change in the Retirement Income Plan until the expiration of the Agreement which becomes effective on April 1, 2008.

## ARTICLE XIX

**Section 1.** The Company will provide each employee with Term Life Insurance in the amount of two times the employee's straight time annual salary.

## ARTICLE XX

**Section 1.** HOSPITAL AND MEDICAL PLANS: (a) Health care coverage shall consist of the specially negotiated EPO Plan and shall remain in effect for the term of the 2008 – 2012 Contract. All terms of the specially negotiated EPO Plan, regarding plan design, covered services, premiums and other employee costs, shall be in accordance with the 2008 negotiations letter of agreement entitled "Health Care Benefits."

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(b) Any other health care plans (medical or dental) that the Company unilaterally implements at its sole discretion for the general non-represented employee population shall also be provided to the bargaining unit employees at the same costs and plan design structure as for the non-represented employees. It is expressly understood that the right to add, eliminate, and alter or to make any other changes to these health care plans or to employee costs for the plans, is reserved to the Company.

(c) The Company's part of the premium will continue to be paid while an employee is receiving illness or accident compensation provided the employee was covered by such a contract immediately prior to their sickness or industrial accident.

## ARTICLE XXI

**Section 1.** The level of benefit coverage within the medical, dental, flexible spending accounts, basic and additional life, long-term disability, and pension plans will remain substantially equivalent to the coverages mutually agreed upon during negotiations.

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## ARTICLE XXII

**Section 1.** (a) Eligible Union employees will participate or continue to participate in the existing Duke Energy Retirement Savings Plan for Legacy Cinergy Union Employees (Midwest), successor plan to the Cinergy Corp. Union Employees' Savings Incentive Plan (the "Retirement Savings Plan"); provided, however, that, effective January 1, 2009, the matching contribution formula (rate and definition of eligible compensation) applicable to eligible Union employees who participate in the cash balance feature under the Retirement Income Plan shall be amended to mirror the matching contribution formula provided under the Duke Energy Retirement Savings Plan for all participants other than "Cinergy Traditional Employees" as of the date of this Agreement (i.e., 100% match on

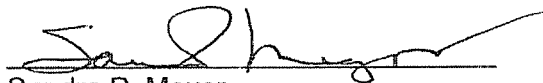
pre-tax and Roth 401(k) contributions up to 6% of the participant's eligible compensation, with no incentive matching contribution opportunity).

(b) The Savings Incentive Plan is contained in the Company's publication "Duke Energy Retirement Savings Plan for Legacy Cinergy Union Employees (Midwest)," which includes highlights of the Plan, as amended, complete text of the Plan, and complete text of the Trust Agreement.

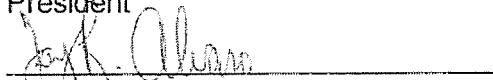
(c) The Company hopes and expects to continue the Savings Incentive Plan indefinitely, but it must reserve the right to alter or amend it or to discontinue Company contributions to it at any time. However, under no circumstances shall any part of the corpus or income held by the Trustee of the Savings Incentive Plan be recoverable by the Company or be used for or diverted to any purposes other than for the exclusive benefit of the employee participants or their beneficiaries as provided in the Savings Incentive Plan.

IN WITNESS WHEREOF, the Utility Workers Union of America, AFL-CIO, Local 600, formerly the Independent Utilities Union, Cincinnati, Ohio and Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., do hereby, by their duly authorized agents, execute and sign this Agreement in duplicate on this 21st day of August, 2008.

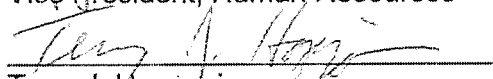
DUKE ENERGY OHIO, INC.  
DUKE ENERGY KENTUCKY, INC.

  
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Sandra P. Meyer

President

  
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Jay R. Alvaro

Vice President, Human Resources

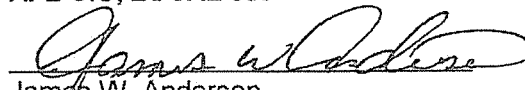
  
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Terry J. Hoppenjans

Labor Relations Manager

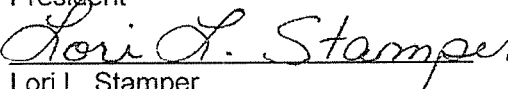
  
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Michael A. Ciccarella

Labor Relations Consultant

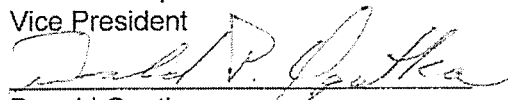
UTILITY WORKERS UNION OF AMERICA,  
AFL-CIO, LOCAL 600

  
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James W. Anderson

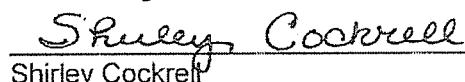
President

  
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Lori L. Stamper

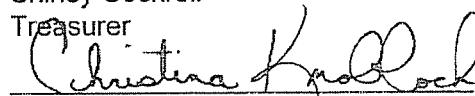
Vice President

  
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Donald P. Opatka

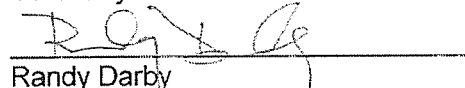
UWUA Region III Director

  
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Shirley Cockrell

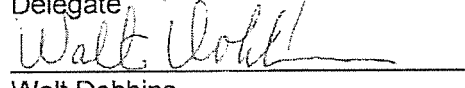
Treasurer

  
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Christina Knobloch

Secretary

  
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Randy Darby

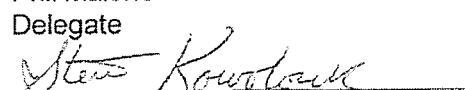
Delegate

  
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Walt Dobbins

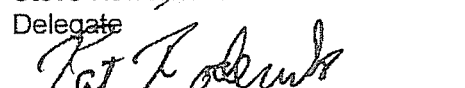
Delegates

  
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Phil Malone

Delegate

  
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Steve Kowolonek

Delegate

  
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Pat Roderick

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Lori Turner

Delegate

Delegate

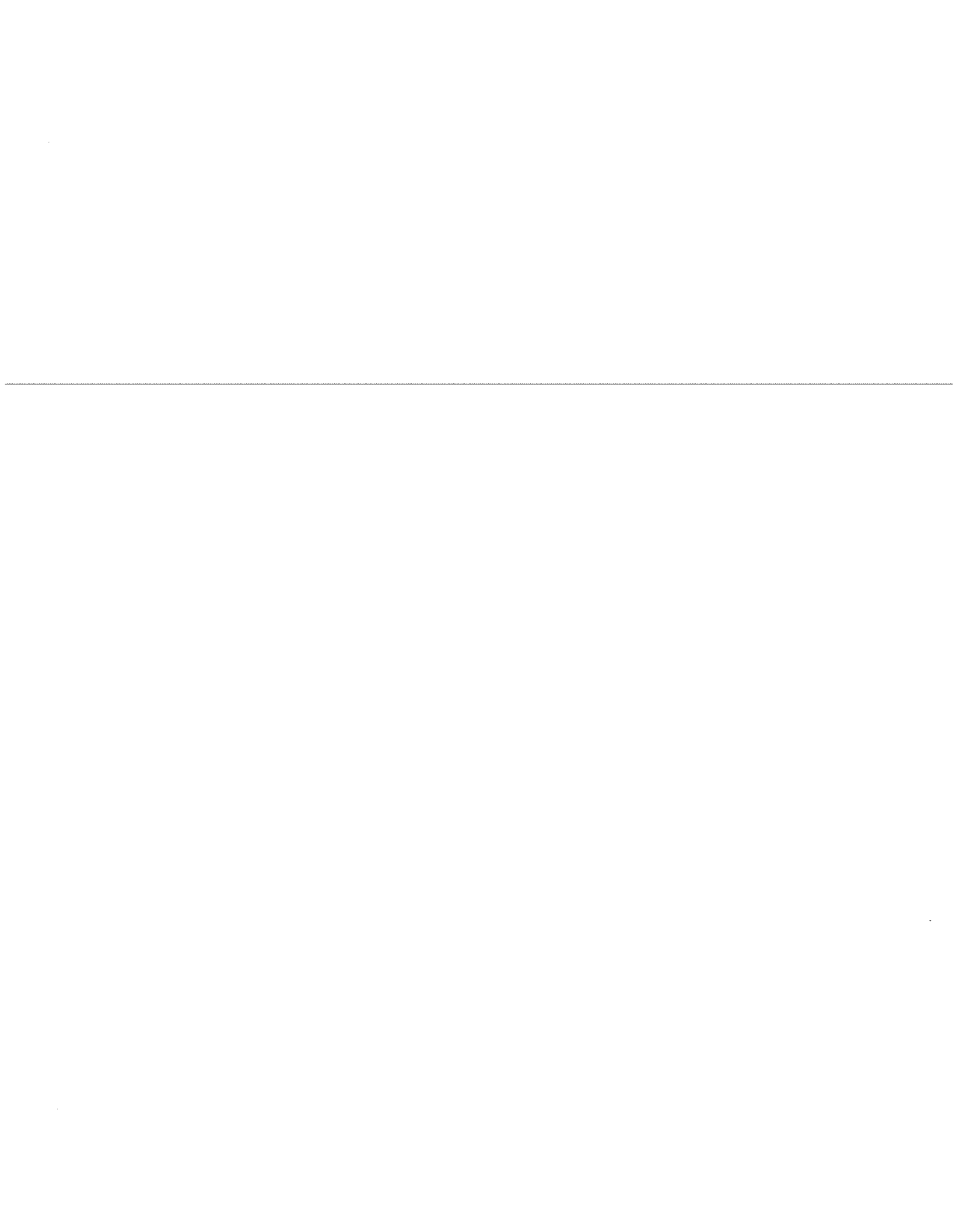
## APPENDIX A

### HISTORICAL DOCUMENTS PRESERVED AND MADE PART OF THIS AGREEMENT FOR INTERPRETATION AND APPLICATION INDEX BY DOCUMENT NUMBER

Document Number	Document Date	Article	Subject
A-1	12/22/1971	IX, 5(c)	Vacation Selection
A-2	07/16/1974	V, 4(b)	Inter-Department Transfers
A-3	03/28/1977	V, 2(c)	Multiple Posting System in Property Department
A-4	03/28/1977	V, 3(d)	Testing Procedures When Employees Promote
A-5	04/10/1986	IX, 4	Leaves of Absence
A-6	04/18/1989	V, 6	Hiring Co-ops -- Union Notification
A-7	04/18/1989	V, 2(c)	Multiple Posting System -- Electric Operations
A-8	04/18/1989	IX, 5(c)	Partial Day Vacations
A-9	04/18/1989	I, 2(c)	Falsification and Tampering with Company Records
A-10	03/14/1991	V, 2(b) VIII, 1(e)	Job Enrichment
A-11	04/16/1992	XI, 1(d)	Holiday Call-Out
A-12	04/16/1992	XII, 2(a)	Flextime
A-13	04/16/1992	XII, 3(b)	24 Hour Notice -- Change of Shift
A-14	04/16/1992	I, 1(a)	Reorganization of Distribution Operations Division
A-15	04/16/1992	XVI, 2(b)	Out-of-Town Work or Training
A-17	04/16/1992	XII, 2(a)	4-10 Hour Day Fact Sheet
A-18	04/16/1992	VII, 1(a)	Personal Attorneys
A-19	05/26/1994	I, 1(a)	Collecting Funds by Field Personnel
A-20	07/19/1994	V, 2(e)	Gas Operations Trainer
A-21	01/11/1998	V, 2(e) VIII, 1(a) VIII, 1(j)	Customer Projects Resource Specialist
A-25	05/29/2002	IV, 3	Notice of Organization and Working Condition Changes
A-30	05/29/2002	V, 2(a)	Journey Person Job Sequence
A-32	05/29/2002	II, 1 III, 1(b) VII, 1(a)	Time Off for Union Duties/Business
A-38	09/02/1998	VIII, 1(i)	BOGAR Job Evaluation System



Document Number	Document Date	Article	Subject
A-39	12/05/2000	V, 2(a)	Decentralization of Order Completion Work
A-40	12/29/2000	VIII, 1(e) VIII, 1(h) VIII, 1(i)	Manual, Clerical and Technical Job Classifications
A-41	05/14/2003	VIII, 1(i)	Disconnect Non-Pay, Succession and Special Reads
A-42	06/10/2004	XX, 1(a)	Post-Retirement Medical
A-43	11/09/2004	V, 2(a)	New Service Contact Center Job Postings
A-44	01/09/2007	V, 2(e)	CPC Letter
		VIII, 1(a) VIII, 1(i)	
A-46	04/21/2005	XII, 6	Temporary Upgrading in Clerical and Technical Jobs
A-47	04/21/2005	XII, 2(a)	Consecutive Off Days
A-48	04/21/2005	V, 7(a) VIII, 1(a)	East Meter Reading
A-49	04/21/2005	V, 3(a)	Interplant Seniority Rights
A-50	04/21/2005	IX, 2	Treatment for Substance Abuse
A-51	04/21/2005	XI, 2(a)	Personal/Diversity Day Requests
A-52	04/21/2005	IX, 5(a)	Vacation Carryover
A-55	04/21/2005	V, 3(a)	Job Elimination Situations
A-56	04/21/2005	V, 2(a)	Redeployment
A-57	06/02/2008	XX, 1(a) XXI, 1	Health Care Benefits
A-58	06/02/2008	Misc.	Retirement Plan Agreement
A-59	06/02/2008	Misc.	Sabbatical Vacation Bank and Vacation Credit Programs
A-60	06/02/2008	Misc.	Union Employee Annual Incentive Program (UEIP)
A-61	06/02/2008	V, 7(a) VIII, 1(a)	Cincinnati Call Center
A-62	06/02/2008	Misc.	Part-Time Employee Benefits
A-63	06/02/2008	Misc.	Meter Reading Travel Allowance



## MEMORANDUM OF AGREEMENT

This Agreement is made and entered into by and between Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc., hereinafter referred to as the "Company," and Local Union 1347 of The International Brotherhood of Electrical Workers, AFL-CIO, referred to hereinafter as the "Union."

The Company and the Union recognize that in order for the parties to meet the challenge of competition, the need for long term prosperity and growth, and establish employment security, each must be committed to a cooperative labor management relationship that extends from the bargaining unit members to the executive employees. The Company and the Union agree that employees at all levels of the Company must be involved in the decision making process and provide their input, commitment, and cooperation to improving productivity and helping the Company become the lowest cost producer and highest quality provider of energy service.

### ARTICLE I

Section 1. (a) The Company recognizes the Union, during the term of this Agreement, as the sole and exclusive representative of the employees in the bargaining unit defined as "The Electrical Workers Unit" by the National Labor Relations Board in its Decision and Direction of Election dated August 12, 1944, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) All new employees shall be classified as probationary employees for a period of one (1) year. Employees with six months or more of continuous service are eligible to receive supplemental industrial accident compensation, supplemental jury duty pay and will be entitled to bidding rights to other job classifications. Further, probationary employees shall have no recourse to the grievance procedure as set forth in Article II, Section 1 for the first six (6) months of the probationary period. However, after serving six (6) months of the probationary period, probationary employees will have recourse to the grievance procedure for any non-discipline related grievances.

Section 2. (a) This Agreement and the provisions thereof shall take effect on April 1, 2009 and shall be binding on the respective parties hereto until April 1, 2014 and from year to year thereafter unless changed by the parties.

(b) Either of the parties hereto desiring to change any section or sections of this Agreement and/or to terminate this Agreement shall notify the other party in writing of that intention at least sixty (60) days prior to April 1, 2014 or any subsequent anniversary date. If neither party gives such notice the Agreement shall continue from year to year. If such notice is given by either party the Agreement shall be open for consideration of the change or changes desired. Within fifteen (15) days from the date the first notice of intention to change is given by either party to the other, but not later than thirty (30) days prior to April 1, 2014 conferences shall commence for the purpose of considering the proposed changes. At the first such conference, each party will submit its proposed changes, in writing, to the other party.

(c) In case of failure to reach an agreement on the changes desired by either or both parties, within a period of thirty (30) days following commencement of conferences, but in no event later than the renewal date of this Agreement, the changes shall be referred to arbitration as

provided for in Article II, Section 2 hereof. Either party desiring to avail itself of arbitration in this case shall notify the other party in writing of its desire to arbitrate and at the same time name its arbitrator. The parties mutually agree that there shall be no strikes, work stoppages, slowdowns or lockouts pending the decision of the arbitrators. The provisions of this paragraph shall not apply in the event either party gives written notice to the other party at least sixty (60) days prior to April 1, 2014, of its desire to terminate the Agreement on April 1, 2014, if there remains at that time issues which the parties are unable to resolve.

(d) In the event agreement is reached on or before March 31, the 2009 - 2014 Agreement will be extended for a mutually agreed number of calendar days. The Union shall have one-half of the mutually agreed number of calendar days immediately following the date an agreement is reached in which to submit the Agreement to its membership for ratification and in case of failure to ratify, in order that the Company shall have the remaining one-half of the mutually agreed number of calendar days as notice before a strike or work stoppage commences. Providing the mutually satisfactory Agreement is ratified by the membership within the first one-half of the mutually agreed number of days following the date an agreement is reached, such Agreement will be made retroactive to the 31st day of March.

(e) It is agreed that this Agreement may be amended or added to at any time by written consent of both parties hereto.

Section 3. The Union agrees not to admit to membership or permit to retain membership for collective bargaining purposes any foreman or supervisory employee of the Company who is not employed in a classification within the unit now represented by the Union.

Section 4. (a) It is expressly understood and agreed that the services to be performed by the employees covered by this Agreement pertain to and are essential to the operation of a public utility and to the welfare of the public dependent thereon and in consideration thereof, as long as this Agreement and conditions herein be kept and performed by the Company, the Union agrees that under no conditions and in no event, whatsoever, will the employees covered by this Agreement, or any of them, be called upon or permitted to cease or abstain from the continuous performance of the duties pertaining to the positions held by them under this Agreement. The Company agrees on its part to do nothing to provoke interruptions of or prevent such continuity of performance of said employees, insofar as such performance is required in the normal and usual operation of the Company's property and that any difference that may arise between the above-mentioned parties shall be settled in the manner herein provided.

(b) The Company agrees that it will not attempt to hold Local Union 1347 of the International Brotherhood of Electrical Workers, financially responsible or institute legal proceedings against the Union because of a strike, slowdown or work stoppage not authorized, abetted or condoned by the Union. The Union agrees that any employee or employees who agitate, encourage, abet, lead or engage in such a strike, work stoppage, slowdown or other interference with the operations of the Company shall be subject to such disciplinary action as the Company may deem suitable, including discharge, without recourse to any other provision or provisions of the Agreement now in effect.

Section 5. (a) This Agreement covers all work done for the Company including work performed by Duke Energy Shared Services, Inc., by the employees of the occupational classifications in the unit defined as "The Electrical Workers Unit" by the National Labor Relations Board Order dated August 12, 1944, which is covered by this Agreement. The unit so defined shall retain jurisdiction over such work as was normally performed by it prior to March 31, 1945, but such jurisdiction shall not be expanded except by mutual agreement of the parties hereto or through due process under the National Labor Relations Act.

Employees other than those covered by this Agreement shall continue to perform work normally performed by them prior to March 31, 1945, except where mutually agreed upon in specific instances as itemized in Departmental Rules of this Agreement.

(b) Except in case of emergency, work regularly done by employees in a classification shall be restricted to such work as is normally assigned to that classification, or work of a basically similar nature.

(c) Foremen's duties shall be restricted to direct supervision except in cases of emergency, for such incidental work as may occasionally be required or as may be otherwise outlined in the Departmental Work Rules.

Section 6. The Company and the Union agree to meet and deal with each other through their duly accredited representatives on matters relating to hours, wages and other conditions of employment of the employees of the Company covered by this Agreement.

Section 7. Respecting the subject of "Union Security," the parties mutually agree as follows:

(a) All regular employees of the Company as of the ratification of this Agreement, who are not members of the Union shall not be required as a condition of their continued employment to join the Union. However, after April 1, 2009, all regular employees of the Company within the bargaining unit represented by the Union who are members of the Union, and who are not more than six months in the arrears with dues, or who may become members of the Union, shall be required as a condition of their continued employment to maintain their membership in the Union in good standing, subject to the annual ten day escape period hereinafter described.

(b) The Union agrees that neither it nor any of its officers or members will intimidate or coerce any of the employees of the Company to join or become members of the Union, nor will said Union or any of its officers or members unfairly deprive any employee within the bargaining unit represented by the Union of union membership or of any opportunity to obtain union membership if said employee so desires. In this connection the Company agrees that it will not discriminate against any employee on account of activities or decisions in connection with the Union except as the same may become necessary on the part of the Company to carry out its obligations to the Union under this Agreement.

(c) If a dispute arises as to the actual union status of any employee at any time as to whether or not the employee has been unfairly deprived of or denied union membership, the dispute shall be subject to arbitration, in accordance with the arbitration provisions of Article II, Section 2 of this Agreement.

(d) Within thirty-one (31) days after the date of hire, all employees who are not members of the Union, except those employees mentioned in subsection (i) of this section, shall be required as a condition of continued employment to pay to the Union each month a service charge as a contribution toward the administration of this Agreement in an amount equal to the monthly dues

uniformly required by the Union Members. Such contributions shall be checked off upon proper written authority executed by the employee and remitted to the Union in the same manner as the dues of members.

(e) The Company agrees to dismiss any employee at the written request of the Union for non-payment of union dues or service charges or to discipline employees represented by the Union in the manner herein provided for violation of this Agreement, if requested to do so in writing by the Union. Nothing in this clause, however, shall be construed so as to require the Company to dismiss or discipline any employee in violation of any state or federal law.

(f) The Union agrees that any present or future employee who is now or may become a member of the Union may withdraw from membership in the Union between September 21st and September 30 inclusive of each year, by giving notice by registered or certified mail to the Labor Relations Department of the Company. After such withdrawal an employee shall not be required to rejoin the Union as a condition of continued employment.

(g) The Company agrees that after proper individual authorizations by means of written individual assignments in a form mutually agreeable to both parties to deduct Union dues and service charges, and the original initiation fee from members' pay. This deduction shall be made once each month and shall be forwarded within seven calendar days to the authorized agent of the Union.

(h) The Union agrees that in the event of any strike, work stoppage, slowdown, picketing or any other interference to the work or the operations of the Company by a group of employees in the bargaining unit represented by the Union this section of the contract is then and there and by reason thereof automatically canceled and of no further force and effect; provided, however, that the Company may, upon the presentation of proof satisfactory to the Company, within ten days thereafter, that the Union did not directly or indirectly authorize, permit, endorse, aid or abet said strike, work stoppage, slowdown, picketing or interference referred to, reinstate this section of the contract, which section, if reinstated will, from and after the date of reinstatement, be of the same validity, force and effect as if it had not been canceled. In this connection, it is the expressed intention of the parties that for the purpose of making this cancellation provision effective without affecting the other sections of the contract, this contract is to be considered a severable contract. Should the automatic cancellation of this section occur, it is the intention and agreement of the parties that all other sections and provisions of the contract remain in full force and effect as therein provided. The Company agrees that it will not deliberately arrange or incite such interference to the work or operations of the Company as are referred to in this section.

(i) The Company agrees that all persons, before they are employed as regular employees in any classification within the unit represented by the Union, shall be required to signify in writing their voluntary willingness and intention to join the Union not later than thirty-one (31) days after their employment by the Company.

Section 8. There shall be no discrimination, interference, restraint or coercion by the Company or the Union or their agents against any employee because of membership or non-membership in the Union, because of lawful activities on behalf of the Union, or because of race, color, religion, sex or national origin or ancestry or for any other reason. References to the masculine gender are intended to be construed to also include the female gender wherever they appear throughout the Agreement.

Section 9. (a) Except where expressly abridged by a specific provision of this Agreement, the Union recognizes that the management of the Company, the direction of the working forces, the determination of the number of men it will employ or retain in each classification, and the right to hire, suspend, discharge, discipline, promote, demote or transfer, and to release employees because of lack of work or for other proper and legitimate reasons are vested in and reserved to the Company.

(b) The above rights of Management are not all-inclusive, but indicate the type of matters or rights which belong to and are inherent to Management. Any of the rights, powers, and authority the Company had prior to entering this Agreement are retained by the Company, except as expressly and specifically abridged, delegated, granted or modified by this Agreement.

(c) The Company may adopt or revise any work methods and procedures which are not in direct conflict with the provisions of this Agreement. The Company will notify the Union, in writing, of any new or revised Company work methods and procedures. Such new or revised Company work methods and procedures shall not be effective until such notice is given.

(d) The foregoing three paragraphs do not alter the employee's right of adjusting grievances as provided for in Article II, Section 1 of this Agreement.

(e) In order to avoid possible grievances, the Company will discuss in advance with the representatives of the Union, promotions, demotions, layoffs, transfers and rehiring of employees in all classifications governed by this Agreement, except in instances where the employee with the greatest length of classified seniority is selected for promotion, or the employee with the least classified seniority is selected for demotion or layoff. The Company agrees that the Department Management will notify in writing in advance or as promptly as possible the Master Steward or Business Manager of the Union of promotions, demotions or transfers of employees covered by this Agreement.

(f) Except as herein provided, promotions, demotions, transfers or layoffs of employees covered by this Agreement made by the Company without discussion in advance with the Union representatives will not be considered permanent, until so discussed.

Section 10. A copy of any letter constituting disciplinary action by the Company against any employee covered by this Agreement shall be furnished to the employee and the Union. In case of a grievance resulting from such a warning letter see Article II, Section 1.

Section 11. Employees shall not be required to cross a picket line except to perform work which is necessary to provide the normal services of the Company. A supervisor shall make the necessary arrangements with the picketing Union involved for the employee to cross the picket line. Whenever possible, the supervisor will attempt to have the employee enter the property through a non-picketed entrance.

## ARTICLE II

Section 1. GRIEVANCE PROCEDURE. (a) Any dispute or disagreement arising between an employee and the Company, or the Union and the Company may become the subject of a grievance. However, with respect to any claim or dispute involving the application or interpretation of an employee health, welfare or pension (including defined benefit, defined contribution and 401(k) plans) plan, initially the Employee and the Union will make a good faith effort to resolve those disputes in accordance with the terms and procedures set forth in the relevant plan document and applicable laws. Additionally, should the content of any communication relating to employee benefits conflict with the terms of the relevant plan document, the terms of the plan document shall govern. The time limit for filing a grievance will be suspended as long as the Employee and the Union are pursuing the appeal processes in the benefit plans.

Realizing the importance of avoiding delays in rendering decisions regarding grievances, the following procedure shall be followed. ~~If after consultation between an employee covered by this Agreement and his or her immediate supervisor, the employee still feels that there is a grievance arising out of this Agreement, the avenue of adjustment for grievances shall be as follows:~~

### First Step

An employee or the Union must file any grievance, involving wages, hours of work, conditions of employment, or of any nature arising out of this Agreement with the employee's supervisor. The grievance shall first be taken up with the supervisor involved, within 30 days of its occurrence or 30 days from the time the employee or the Union became aware of the occurrence. The initial meeting shall be held between the supervisor and other management, the employee involved and the officially designated steward. Grievances in this step shall be answered verbally at the meeting or within 5 days of the conclusion of the meeting. The supervisor will also inform the Union of the appropriate management person to notify in the event that the Union wishes to pursue the grievance to the second step.

### Second Step

If the parties are unable to resolve the grievance following the first step, within 10 work days of the first step response, the Union may submit a written grievance to the management of the department designated in the first step. Department management will schedule a meeting with a small committee representing the Union within 20 workdays after receipt of the written grievance. The department management will render a written decision within 30 workdays after the date of the meeting.

### Third Step

If the parties are unable to resolve the grievance following the second step, within 30 workdays of the second step response, the Union may notify the Labor Relations Department in writing of its desire to advance the grievance to the third step of the grievance procedure. The Labor Relations Department will schedule a meeting with the appropriate management representatives and a small committee representing the Union within 20 workdays after receipt of the written request. The Labor Relations Department will render a written decision within 30 workdays of the date of the third step meeting.



The procedure outlined in this section may be altered at the request of the Union in a discharge case by filing the grievance in writing initially at the second step of the grievance procedure.

Employees engaged in the above grievance procedure during their working hours shall not suffer a loss of straight-time pay for that time.

Section 2. ARBITRATION PROCEDURE. (a) If the parties are unable to resolve the grievance following the third step, the Union, within 30 workdays of receipt of the third-step response, may notify the General Manager, Labor Relations in writing of its desire to advance the grievance to arbitration.

(b) Upon receipt of the Union's notification the parties will promptly petition the Federal Mediation and Conciliation Service (FMCS) for a panel of seven arbitrators and an arbitrator will be selected by the parties. In the event that no acceptable arbitrator appears on the panel of arbitrators submitted by FMCS either party may request an additional panel from FMCS.

(c) The arbitrator so selected shall hold a hearing as promptly as possible on a date satisfactory to the parties. If a stenographic record of the hearing is requested by either party, the initial copy of this record shall be made available for the use of the arbitrator and the party requesting the records. The cost of this initial copy and its own copy shall be borne by the requesting party, unless both parties desire a copy. If both parties desire a copy they shall equally share the cost of the arbitrator's copy, and shall each bear the cost of any copies of the record they desire.

(d) After completion of the hearing and the submission of the post-hearing briefs, the arbitrator shall render a decision and submit to the parties written findings that will be binding on both parties to the Agreement.

(e) The arbitrators' and other joint expenses mutually agreed upon shall be borne equally by both parties.

(f) Any grievance that is not taken to the next step within the time limits specified will be deemed to have been withdrawn and shall not set a binding precedent for any pending or future grievances. If at any step in the grievance procedure, the Company does not answer within the designated time frame, the Union may notify the Company of its desire to advance the grievance to the next step of the grievance procedure. Any time limits may be extended by written agreement between the parties.

(g) The arbitrator shall have no authority to add to, detract from, alter, amend, or modify any provision of this Agreement. It is also mutually agreed that there shall be no work stoppage or lockouts pending the decision of the arbitrator or subsequent thereto.

### ARTICLE III

Section 1. System Service shall date from the time an employee first earns compensation in the employ of the Company, except as such continuous service record may be lost in accordance with Item (h), Section 5 of Article III of this Agreement.

Section 2. Division Seniority shall be the total seniority accumulated in a specific division.

Section 3. Classified Seniority shall date from the time an employee is employed in a specific classification.

Section 4. For the purpose of this Agreement the Divisions of the Company shall be considered as follows:

- |       |  |   |
|-------|--|---|
| (1)   | East Bend Station  | - Regulated Coal Fleet                  |
| (2)   | Miami Fort Station                                       | - Non-Regulated Generation              |
| (3)   | Walter C. Beckjord Station                               | - Non-Regulated Generation              |
| (4)   | Wm. H. Zimmer Station                                    | - Non-Regulated Generation              |
| (5)   | Woodsdale Station<br>(including the Dicks Creek Station) | - Regulated Coal Fleet                  |
| <hr/> |  |   |
| (6)   | Operators  | - Midwest Field Operations              |
| (7)   | Substation   | - Midwest Field Operations              |
| (8)   | Test & Relay   | - Midwest Field Operations              |
| (9)   | Electric Trouble   | - Midwest Field Operations              |
| (10)  | Electric Meter   | - Midwest Field Operations              |
| (11)  | Overhead Transmission and<br>Distribution, Construction  | - Midwest Field Operations              |
| (12)  | Underground Cable and Equipment                          | - Midwest Field Operations              |
| (13)  | Service Division   | - Midwest Field Operations              |
| (14)  | Power Delivery Warehouses                                | - Midwest Operations                    |
| (15)  | Generation Supply Chain                                  | - Midwest Warehouse Operations          |
| (16)  | Fleet Services   | - Enterprise Fleet and Meter Operations |

Section 5. (a) Company System Service shall be used to determine the amount of vacation an employee is eligible to receive.

(b) There shall be no transfer of classified seniority rights for Power Operations' employees between the East Bend Station, the Miami Fort Station, the Walter C. Beckjord Station, the Wm. H. Zimmer Station and the Woodsdale Station.

(c) The Company shall maintain an up-to-date seniority list of all employees in each Division. Such list shall show System Service and Classified Seniority of each employee and shall be posted in a place or places accessible to all employees in such Divisions. If exception is not taken to the list as posted within thirty (30) days from the date of posting the list shall be

considered as correct and no change will be made thereafter except by mutual agreement between the Company and the Union. Copies of these lists shall be forwarded to the Union.

(d) An employee entering military service shall continue to accumulate full system service and full seniority for the time specified by applicable laws provided that he returns with a certificate of satisfactory completion of his active service and applies for work within the time specified by said laws after his release from active duty.

When a regular employee returns from military service, as defined in the previous paragraph of this section, he shall be given an opportunity and reasonable assistance to qualify for any job to which he would have progressed in the promotional sequence in which he was employed at the time of his entry into military service; and he will be promoted to that classification at the time he becomes qualified and provided he bids every opening in his promotional sequence at the time he becomes qualified after he returns from military service. His classified seniority shall then be adjusted.

(e) Leave of absence may be granted, if requested in writing, to an employee with the written consent of the Company. Employees on leave of absence for Military Service, illness, injury, or Union business shall accumulate system service and seniority. Employees on leave of absence granted for any other reason shall not accumulate system service or seniority but system service and seniority already accumulated shall not be forfeited. Where a leave of absence is granted to any employee covered by this Agreement, the Company shall notify the Union in writing without delay.

(f) Any member or members not to exceed three (3) members elected or employed by Local 1347 of the Union whose duties for the Local require their full time shall be granted a leave of absence by the Company for six (6) months and additional six (6) months' periods thereafter providing that each member is from a different promotional sequence or that the Company has granted permission for two (2) members to be from the same promotional sequence. On return to the employ of the Company such employees shall be employed at their previous classification or other higher classification within this unit for which they may be qualified.

Employees on leave of absence who are employed full time by the Local Union shall be eligible to participate, at no cost to the Company, in the Medical Insurance programs and the Group Life Insurance program.

(g) An employee losing time due to illness or injury shall be entitled, upon recovery, if physically and mentally qualified, to the position held prior to such accident or illness.

(h) Employees will lose their system service and seniority who:

- (1) Quit of their own accord. If such employees should return to work with the Company on a full-time basis, those employees will recoup their system service seniority previously held before leaving the Company.
- (2) Is discharged for cause.
- (3) Fails to report their availability for work within three (3) scheduled working days, fails to report for work within seven (7) days after being recalled from layoff or fails to make other arrangements satisfactory to the Company within the first three (3) scheduled working days after notification.

Section 6. (a) In making promotions within the bargaining unit classified seniority, ability and qualifications shall be taken into consideration. Ability and qualifications being sufficient seniority shall prevail. Any employee promoted to a supervisory job outside the bargaining unit shall retain, for a period of nine months, all classified seniority accumulated up to the date of the promotion. Such seniority may be exercised, through the established bidding procedures, within the bargaining unit, should such job be jeopardized because of lack of work or any other reason except for dismissal for cause. If an employee, who was a supervisor for more than nine months, returns to the bargaining unit, he will receive a classified seniority date behind all incumbent employees in the job classification from which he originally promoted. No supervisor may return to a bargaining unit job classification, if it would result in the layoff or prevent the recall from layoff, of an employee represented by the Union.

(b) In the event of a layoff or work force reduction, layoffs, demotions, and transfers shall be made on the basis of classified seniority within a promotional sequence in a department. An employee shall have the right to be returned to any starting level job classification previously held by him in the course of his employment with the Company if his seniority is sufficient to qualify him for such job and an opening or job vacancy exists. An employee does not recoup any classified seniority in those job classifications higher than the one to which he is assigned, despite the fact he may have previously worked in the higher job classifications, until he is permanently promoted to the higher job classification through the established posting procedure. For purposes of this paragraph, if an employee has not worked in a lower classification in his promotional sequence, he will be credited with classified seniority in each such lower job classification for all time worked in a job classification at the same or higher wage level within his promotional sequence. An employee, however, shall not have the right to be demoted or transferred to any classification in another promotional sequence which he has not previously held, except as provided in Article III, Section 7(f). Under no circumstances will an employee be permitted to arbitrarily select a job where no vacancy or job opening exists.

(c) Except for temporary or probationary employees, the Company shall give not less than a 28 calendar day advance notice to the Union of any general reduction in forces.

(d) When increasing forces the Company agrees to recall employees previously laid off for lack of work. When recalling occurs it shall be done on the basis of classified seniority and no new employee shall be hired in that promotional sequence until all regular employees in that promotional sequence who have been laid off within three (3) years have been recalled or rehired, provided that such former regular employees are available for work and are qualified to perform the job. Such former employees shall make satisfactory arrangements for reporting to work in accordance with Article III, Section 5(h) (3) after notification through the United States Mail, or by telegraph, addressed to the address last given to the Company by the employee. A copy of such notice shall be given to the Business Manager at the time the notice is sent to the employee. Failure of the employee so notified to report to work or to supply a reason satisfactory to the Company for not doing so, within the time limit herein, shall be considered a waiver of re-employment rights by the employee. Employees who are on a layoff status from the Company shall be considered for hire, before other applicants, on the basis of all of their Division Seniority, into bargaining unit job classifications for which they do not have a recall right for a period of three (3) years.

(e) Should time constituting seniority of any two or more employees be equal, the respective seniority of such employees shall be determined by lot by the Union and the Company notified in writing by the Union.

Section 7. (a) When an opening in a job classification covered by this Agreement is to be filled, a notice shall be posted by the Company on all bulletin boards in the appropriate Division(s). A copy of such notice shall be mailed to the Business Manager of the Union. This notice shall be posted two weeks before the opening is permanently filled. This period of posting may be reduced to seven (7) days provided that any employees with greater seniority who may be off duty during the entire seven (7) day posting period are notified of the posting by a copy of the posting notice mailed, by registered or certified mail, to their home address on record with the Company. Where a notice is posted as provided above and the opening has not been filled sixty (60) days after the closing date of the posting, it shall be invalid and a new posting made before the opening is permanently filled. This shall not preclude the management from filling the opening by assignment if no qualified bids are received on the first posting of the opening. This procedure may be modified in departmental rules where mutually agreed upon.

(b) Subject to the approval of the Company and the Union any employee may waive his right to promotion or temporary advancement either within or outside the bargaining unit if such waiver does not prevent other employees from acquiring experience in the job held by him. Such waiver must be submitted to the Company and the Union in writing at least seven (7) days in advance. A request for withdrawal of such a waiver must be submitted in writing.

(c) When an employee waives his right to a position, the next employee shall be entitled to such position, on a seniority and sufficient qualification basis, and so on until the position is filled.

(d) An employee waiving his right under this provision cannot later claim that particular job as a seniority right; however, the employee making such waiver shall not prejudice his right to accept future vacancies or positions that may occur, on a basis of his classified seniority and qualifications.

(e) An employee permanently established in a classification under the provisions of this section of the Agreement shall not be replaced later by an employee who may have developed sufficient seniority or qualifications.

(f) Any Union employee who may make application to the Employment Office for transfer to a starting job within the Union for which the employee may be qualified will be given preference for consideration before an employee transferring from outside the Union or a new employee is hired for the job. Anyone transferring as provided herein shall not receive a reduction in rate unless the employee's rate of pay exceeds the maximum rate of the job to which the employee is transferred. In such case the employee's rate shall be reduced to the maximum rate of that job. For the first six (6) months after an employee transfers from outside the Union, the employee may be discharged without recourse to the grievance procedure of this Agreement.

(g) When an opening occurs in a job classification, employees already in that job classification within the Division may exercise their seniority rights to cross bid for the particular opening. The employee already in the job classification within the Division who cross bids and who can qualify will be selected; however, only one cross bid will be allowed. When an opening has been filled in accordance with the procedure outlined above, the resultant openings will be filled by promotion of employees from the next lower job classification in the particular promotional sequence in accordance with the provisions of this Agreement. An employee shall not have the right to bid on a demotion but may request in writing consideration for a demotion.

The procedure outlined above is not applicable to those Divisions where the multiple posting system is in use. In the Divisions where multiple posting is used, the employees are permitted to submit their applications for promotion or cross bid in advance of an opening. An employee shall not have the right to bid on a demotion but may request in writing consideration for a demotion. When openings occur, they will be posted on the bulletin boards at the various headquarters within the appropriate Division(s). In the Divisions where multiple posting is used and job openings exist cross bids will be permitted at each job classification level before promotions are made and until the posting is completed.

This Section of the Agreement shall not be interpreted in such a way as to enable employees to utilize seniority in the selection of a particular shift, working crew or job assignment, but supervisors may make such assignments on the basis of an employee's request with consideration to the requirements of the job to be filled and the seniority of the employee.

(h) All new employees and all employees transferring from other bargaining units into a job classification represented by the Union shall be classified as probationary employees for a period of one (1) year and shall have no system service and seniority rights during that period. After one (1) year continuous service as a probationary employee, such employees shall be classified as regular employees and their system service and seniority record shall include their previous employment as probationary employees and any other previous employment to which they are entitled. The Company shall have the right to lay off or discharge probationary employees for cause and there shall be no responsibility for re-employment of such employees after they are discharged or laid off during the probationary period.

(i) Employees hired for a specific temporary project of limited duration shall be classed as temporary employees and shall not acquire system service or seniority rights. The Union shall be notified in writing of the hiring of such employees and of the project and probable duration for which they are employed. The Union shall be notified in writing of any change in the employment status of such employees.

Section 8. An employee, when permanently assigned to a job classification and qualifying in all respects with the exception of time spent in the preceding classification as required in the qualification section of the job description, shall be considered as having the equivalent of such required time.

#### ARTICLE IV

Section 1. VACATIONS. (a) Vacations for hourly rated employees will be granted with pay during the calendar year in which they complete the specified number of years of service on the following basis:

(1) Employees with less than one (1) year of service with the Company shall be entitled to one (1) day of vacation for each month worked, with a maximum of ten (10) days total.

(2) Employees with one (1) year of service with the Company shall be entitled to a vacation of two (2) weeks.

(3) Employees with seven (7) or more years of service with the Company shall be entitled to a vacation of three (3) weeks.

(4) Employees with fifteen (15) or more years of service with the Company shall be entitled to a four (4) week vacation or, if required to work by the Company, payment of one week's wages (forty hours at straight time) in lieu thereof for the fourth week.

(5) Employees with twenty-one (21) or more years of service with the Company shall be entitled to a five (5) week vacation or, if required to work by the Company, payment of one week's wages (forty hours at straight time) in lieu thereof for the fifth week.

(6) Employees with thirty-two (32) or more years of service with the Company shall be entitled to a six (6) week vacation or, if required to work by the Company, payment of one week's wages (forty hours at straight time) in lieu thereof for the sixth week if the employee has attained at least 34 years of service. The sixth week of vacation prior to 34 years of service will automatically be deposited in the employee's vacation bank and is intended for banking purposes unless specifically approved for time off by supervision. Effective January 1, 2014, employees will be granted a sixth week of vacation time off during their 32<sup>nd</sup> year of employment in lieu of a week of service credit.

(b) The normal vacation period shall be from Memorial Day to September 30, inclusive. An employee who is eligible for more than a two (2) week vacation may be required to take the vacation in excess of two (2) weeks outside the normal vacation period.

(c) An employee accrues entitlement to 1/12 of their current year's vacation for each month the employee is employed during the current calendar year or is on STD, or leave of absence. Any employee leaving the Company's service during any calendar year shall receive payment for any unused portion of accrued vacation for that current year, except that the maximum vacation payout for unused vacation, including vacation bank, cannot exceed 22 weeks of straight-time pay. Active employees may use current year vacation at any time during the year as approved by supervision.

(d) In order for an employee to qualify for a vacation, the employee must have been on the Company payroll as a full-time regular or probationary employee on the last day in the calendar year previous to the vacation, and must have been available whenever necessary for the Company medical examinations and reports.

(e) Every effort will be made to grant vacation at a time suitable to the employee, but should the number leaving on vacation in any one period handicap the operations of the Company, the Company reserves the right to limit the number receiving vacations. Preference for vacations shall be granted within a classification at a headquarters on a system service basis within the bargaining unit.

Vacations must be selected for full weeks. However, an employee entitled to two or more weeks of vacation in a calendar year may arrange to take five days of that vacation in one-day increments. Requests for these days must be made at least five calendar days prior to the date requested and must be approved by supervision. However, because of extenuating circumstances, a day off with less than a five calendar day notification may be approved by an employee's supervisor. An employee entitled to five or more weeks of vacation in a calendar year may arrange to take ten days of that vacation in one-day increments. However, because of extenuating circumstances a day off may be taken with less than the five calendar day notification with approval by supervision. Requests for at least five of these ten days must be made five or more calendar days prior to the date requested and must be approved by supervision. The Company reserves the right to limit the number of employees who can be off on a specific day and may, but cannot be required to, grant a one day increment on a work day preceding or following a

holiday or other vacation. Such one-day increments must be utilized before an employee's scheduled vacation in a particular year is exhausted.

(f) The estate of an employee who dies shall receive all current year vacation pay earned in accordance with Article IV, Section 1(a).

(g) Time lost because of a leave of absence due to injury or illness shall not be considered as a break in continuous service, providing the employee is available whenever necessary for the Company medical examinations and reports during the leave of absence. Vacation will be granted in accordance with Article IV, Section 1(d).

(h) Employees returning from military service in a subsequent calendar year will receive all vacation pay they have earned in accordance with Article IV, Section 1(a).

(i) When a holiday falls within an employee's vacation such employee shall receive either eight (8) hours additional pay to compensate for the loss of such holiday or one additional vacation day shall be allowed immediately before or immediately after the vacation period at the discretion of the Company.

An employee leaving the Company, except due to retirement, will not receive holiday pay for a holiday which occurs after the employee's last day worked.

An employee leaving the Company due to retirement and drawing vacation pay will receive eight (8) hours straight time holiday pay in addition to regular vacation pay when a holiday falls within the vacation pay period.

(j) An employee required by the Company to work during his normal vacation period shall be paid at his regular rate for all such time worked as provided in this Agreement and in addition shall receive such pay as he would normally have received for the vacation period.

The Company will not require an employee to work during his scheduled vacation period unless the absence of such employee would jeopardize the maintenance of continuous service by the Company. The Company agrees to notify the Union in writing of each instance where an employee is required to work during his scheduled vacation, outlining the nature of the emergency requiring such action.

(k) Any employee who becomes legitimately ill immediately before his scheduled vacation shall not be required to take his vacation during such an illness. If, however, an employee becomes ill after his vacation period has begun he shall not be entitled to sick pay during his vacation period. All vacations will be taken within the calendar year that they become due, except for vacation the employee or the Company deposits in the employee's retirement vacation bank or unused vacation time that an employee carries over. An employee may carryover unused vacation hours from one calendar year to the next not to exceed eighty (80) hours. Vacation bank time and unused vacation carry-over time will be paid to the employee upon termination of employment.

An employee's vacation will start when the employee is released from duty on his last regularly scheduled working day prior to the scheduled vacation, and shall end at the start of his first regularly scheduled working day following the scheduled vacation. However, prior to the beginning of his scheduled vacation, an employee may indicate, in writing to his supervisor, that he desires to be considered for work on what would have been normal off days at the beginning or end of his scheduled vacation.



Section 2. (a) An employee who has completed six months of continuous service shall be entitled to four compensated personal days off each calendar year. Requests for personal days must be made at least four calendar days prior to the date requested and must be approved by management. However, because of extenuating circumstances, a day off with less than a four calendar day notification may be approved by an employee's supervisor. Arrangements for all personal days must be made with supervision on or before November 1 of each year or it shall be lost. The Company reserves the right to limit the number of employees who can be off on a specific day. If a personal day is not used during a year, it shall be lost and no additional compensation shall be granted.

(b) An employee who has completed six months of continuous service shall be entitled to one compensated Diversity Day off each calendar year. Requests for this day must be made at least four calendar days prior to the date requested and must be approved by management. However, because of extenuating circumstances, less than a four-calendar day notification may be approved by an employee's supervisor. The Company reserves the right to limit the number of employees who can be off on a specific day for business needs. However, every effort will be made by supervision to honor an employee's request for this Diversity Day. If the Diversity Day is not used during a year, it shall be lost and no additional compensation shall be granted.

Section 3. ABSENCE DUE TO SICKNESS OR ACCIDENT. (a) Regular employees who are actively working on January 1, regular employees who return to work from an authorized extended absence on or after January 1, probationary employees who become regular employees on or after January 1, shall be paid as gross wages, for absent time due to bona fide illness or injury, a maximum annual amount equal to 40 hours at their regular Straight Time Pay. Such payment shall be made by the Company on the nearest practicable regular payday following the date such employee becomes eligible.

(b) After an employee has been continuously disabled, subject to medical determination, and unable to return to work for more than seven consecutive calendar days, the employee will receive Short Term Disability compensation in accordance with the following table for up to twenty-six (26) weeks or until the employee is able to return to work, whichever occurs first. During the seven consecutive calendar day waiting period, it is intended that no employee will incur a loss of more than forty hours of straight time pay.

The administration of Short Term Disability compensation will be as follows:

<b>Years of Service</b>	<b>Maximum Weeks at 100% Pay per Rolling 24 Months</b>	<b>Weeks at 66 2/3% Pay</b>
0-1	None	All
1-5	10	Balance
6-10	15	Balance
11-14	20	Balance
15-20	26	Balance
21 or more	All	N/A

For example, if a 14-year employee is on leave in January for 15 weeks and then another 15 weeks in March of the following year, the first illness and five weeks of the 2<sup>nd</sup> illness will be paid at 100%. The remainder of the weeks will be paid at 66 2/3%.

Failure to present a certificate from a physician licensed to practice medicine prior to the end of the seventh (7th) consecutive calendar day or failure to provide a legitimate excuse will cause the employee's Short Term Disability to be denied until the time such certificate is received.

(c) After an employee has been continuously disabled, subject to medical determination, and is unable to return to work for more than twenty-seven (27) consecutive weeks, and has exhausted Short Term Disability Benefits, the employee will receive Long Term Disability benefits as described in the Company's Long Term Disability Plan Description.

(d) In order to facilitate the scheduling of the work forces, an employee who will be absent from work is expected to notify the Company as soon as possible. Unless an employee submits a legitimate excuse for not reporting the cause of his absence before the end of the first scheduled working day of such absence, the employee's claim for Short Term Disability shall not begin until such notice is received.

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(e) No wages will be paid under Article IV, Section 3 for illness caused by use of drugs, intoxication, or willful intention to injure oneself or others, by the commission of any crime by the employee, procedures not covered by the medical plan, the employee's refusal to adopt remedial measures as may be commensurate with the employee's disability or permit reasonable examinations and inquiries by the Company as in its judgment may be necessary to ascertain the employee's condition.

(f) The Company agrees that on an employee's return from illness, or disability of any kind, an effort will be made to find a less strenuous type of work for such employee until such time as the Company's and the employee's physician agree that he is capable of taking up his former duties. During this temporary period the employee shall be paid his regular classified rate of pay.

(g) If employees with twenty-five (25) or more years of service become physically unable to satisfactorily and safely perform the regular duties of their classification, an effort will be made by the Company to find work of a less strenuous nature for which they are qualified and to which the employees will be retrogressed. At the time of their assignment to a job of a lower classification their hourly wage rate will be reduced by ten cents (10¢) per hour and at six month periods will be reduced by ten cent (10¢) steps until their hourly wage rate conforms to the maximum hourly wage rate of the job classification to which they are assigned.

(h) If employees with twenty (20) to twenty-four (24) years of service become physically unable to satisfactorily and safely perform the regular duties of their job classification, they may request a demotion to a lower classification requiring work of a less strenuous nature for which they are qualified to perform. If such a demotion is granted by the Company, these employees will be assigned to a lower classification and will have their hourly wage rate red-circled until it is equal to the maximum hourly wage rate of the job classification to which they have been demoted. Employees whose wages have been red-circled and who subsequently achieve twenty-five (25) years of service will become retrogressed in accordance with paragraph (g) above.

If employees with less than twenty (20) years of service become physically unable to satisfactorily and safely perform the regular duties of their job classification, they may request a demotion to a lower classification requiring work of a less strenuous nature for which they are qualified to perform. If such a demotion is granted by the Company, these employees will be assigned to a lower classification and will have their hourly wage rate red-circled at 50% of the differential between the maximum wage rate of the job classification to which they are demoted and their former job classification. Two years after being assigned to the lower paying job, the employee's wage rate will be reduced to the maximum wage rate of the employee's current job classification.

Section 4. INDUSTRIAL ACCIDENTS. (a) An injured employee who is unable to work because of an industrial accident will be paid a supplement in an amount equal to 100% of their weekly wage (40 hours), less the state mandated compensation. This supplemental industrial accident compensation will begin after an initial seven (7) calendar day waiting period and will continue for not more than twenty-six (26) weeks of continuous disability. However, if an industrial accident disability continues for fourteen (14) or more calendar days, the employee will receive this supplemental industrial accident compensation for the initial seven (7) day waiting period.

(b) An injured employee who has been continuously disabled due to an industrial accident, subject to medical determination, and is unable to return to work for more than twenty-six (26) consecutive weeks, and has exhausted Short Term Disability benefits, will receive Long Term Disability benefits as described in the Company's Long Term Disability Plan Description.

Section 5. SURPLUS EMPLOYEES. Should an employee be declared a surplus employee, an effort will be made by the Company to find another job classification for which the employee is qualified. An employee assigned to a job of a lower classification as a result of his being a surplus employee will maintain his present hourly rate until the maximum hourly wage rate for the job classification to which he has been assigned is equal to the employee's present hourly wage rate or until the employee is promoted into a job opening for which he is qualified.

## ARTICLE V

Section 1. (a) Definitions of Workers:

Day Worker - An employee whose Regular Scheduled Work Period falls between the hours of 6:00 a.m. and 6:30 p.m. and whose Regular Scheduled Work Week does not vary.

Straight Shift Worker - An employee whose Regular Scheduled Work Period does not vary, but whose Regular Scheduled Work Week varies according to a prearranged schedule.

Fixed Shift Worker - An employee whose Regular Scheduled Work Period and whose Regular Scheduled Work Week do not vary but who may work any of three shifts.

Modified Shift Worker - An employee whose Regular Scheduled Work Period varies but whose Regular Scheduled Work Week remains constant.

Rotating Shift Worker - An employee whose Regular Scheduled Work Period and Regular Scheduled Work Week both vary according to a prearranged schedule.

(b) These definitions attempt to define the types of schedules of the employees, however, it is not meant to limit the hours that an employee may be scheduled by existing practices or future schedules that may be developed by mutual agreement of the parties.

(c) The Regular Scheduled Work Period for Day Workers, Straight Shift Workers, Fixed Shift Workers, and Modified Shift Workers will consist of eight (8) or ten (10) consecutive hours exclusive of the lunch period.

(d) The Regular Scheduled Work Period for Rotating Shift Workers shall be eight (8) or ten (10) consecutive hours comprising his regularly scheduled shift, except where modified by the Work Rules.

(e) For payroll purposes, the regular Work Week for all workers shall begin at midnight Sunday, and employees working on a shift beginning two (2) hours or less before midnight will be considered as having worked their hours following midnight.\*

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\*For exceptional shifts varying more than two (2) hours from a midnight origin or termination and where the shift overlaps from one day into another day the time shall be reported and paid for on the basis of the calendar day in which the shift begins, except on a holiday. Where a shift overlaps by more than two (2) hours from one day into another on a holiday, the time shall be paid for on a calendar day basis which will begin and end at the respective midnight periods.

Schedules for all employees will be based on the time prevailing in the City of Cincinnati.

(f) The Regular Scheduled Work Week for Day Workers, Fixed Shift Workers and for Modified Shift Workers shall begin on Monday and shall consist of five (5) consecutive days from Monday to Friday, inclusive, except as otherwise mutually agreed to by the parties.

(g) The Regular Scheduled Work Week for both Straight Shift Workers and Rotating Shift Workers shall begin on Monday and end on Sunday.

(h) Off-days for both Rotating Shift Workers and Straight Shift Workers shall be consecutive but not necessarily in the same work week.

(i) Time and one-half shall be paid for overtime; for all time worked outside of the Regular Scheduled Work Day; for all time worked on a scheduled off-day, except the second (2nd) off-day.

Time and one-half shall be paid for the first eight (8) hours worked on a holiday in addition to Holiday Pay.

(j) Double time shall be paid for the time worked on an employee's second scheduled off-day. Day workers and employees who work four (4) day ten (10) hour schedules between the hours of 6:00 a.m. and 6:30 p.m. only, will have Sunday as their double time day.

Double time shall be paid for all time worked in excess of eight (8) hours on a holiday.

### **Emergency Work**

Time and one-half shall be paid for all emergency time worked for other utilities at their respective operating locations. Emergency work performed at any location or facility owned and/or operated by the Company, or its parent and related subsidiaries/affiliates shall be paid as follows:

For continuous emergency work performed at any location or facility owned and/or operated by the Company, or its parent and related subsidiaries/affiliates, for which the employees depart from their home headquarters and return back to the home headquarters thereafter without an overnight lodging stay, the straight time rate will be paid during regular working hours. The rate of time and one-half will be paid for hours of continuous work over the regularly scheduled hours. After 16 consecutive hours of work, subsection (k) will apply.

For emergency work performed at any location or facility owned and/or operated by the Company, or its parent and related subsidiaries/affiliates, that requires a lodging stay away from home, on the first day of the assignment the straight time rate will be paid during regular working hours and the time and one-half rate will be paid for hours of continuous work over the regularly scheduled hours. Beginning with the second day and for the remaining consecutive days of such an assignment, the rate of time and one-half will be paid for all hours worked. After 16 consecutive hours of work, subsection (k) will apply.

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(k) Employees required to work more than 16 consecutive hours will be paid double time for all time worked in excess of, and contiguous with, the 16 consecutive hours.

(l) In no case will an employee be forced to take time off in lieu of overtime. Should an employee elect not to work during his Regular Scheduled Work Day he shall not receive pay for such time. A Day Worker's Regular Scheduled Work Day may be changed, at the applicable premium rate of pay, for projects or operations that exceed one (1) day's duration.

(m) The Company shall be the sole judge as to the necessity for overtime work and the employee shall be obligated to work overtime when requested to do so. Overtime shall be divided as equally and impartially as possible among all employees within a job classification of a headquarters or as may be contained in the work rules unless an employee designates, in writing, that he does not wish to be called for overtime. Such waiver does not excuse an employee from overtime work when requested to do so. Overtime lists showing overtime hours paid for and overtime hours waived shall be posted weekly on the Company bulletin boards in each headquarters.

(n) Employees temporarily upgraded to a job classification shall not be scheduled to work planned overtime when a qualified employee established in the job classification in that headquarters is available for work.

(o) When an employee changes headquarters or job classifications, the total of his overtime hours, including overtime hours worked or waived, will be canceled. The employee will then be charged with the same number of hours as the average of combined overtime hours worked and waived by all employees within that classification at the headquarters. When averaging overtime, omit the hours of any ill or injured employee whose hours have dropped below the lowest man for the group. Upon his return to work, his hours will not be included in the average until they are equal to those of the lowest man in the classification. However, an employee who is off work due to an injury or illness for 90 consecutive calendar days or more will have the option, upon returning to unrestricted duty, of being averaged in as described above on the current overtime list.

(p) The Union recognizes the need for shift work and weekend work in order to provide for continuous operation. Premium rates will apply as set forth in Article V, Section 1, (i), (j) and (k).

(q) The Company reserves the right to temporarily change the schedule of any employee upon notice to the employee of not less than forty-eight (48) hours, subject to the exceptions outlined in the Departmental and Divisional Working Rules in Exhibit A of this Agreement.

(r) The hours of any employee assigned to a training program may be adjusted to a uniform day schedule so that all employees involved in a particular program will be working on a consistent schedule.

Section 2. It is agreed that the Scheduled Work Week shall consist of five (5) eight-hour or four (4) ten-hour days and forty (40) hours per week.

Section 3. (a) The following days are observed as regular holidays which will be recognized on the indicated dates. The Company may change the date for recognizing a holiday if the date indicated is changed by a legislative enactment or if the prevailing community practice is not consistent with the indicated date.

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<u>Holiday</u>	<u>Date Recognized</u>
New Year's Day	January 1
Memorial Day	Last Monday - May
Independence Day	July 4
Labor Day	First Monday – September
Thanksgiving Day	Fourth Thursday – November
Day after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

(b) If the recognized date of a holiday occurs on a Saturday or Sunday the Company will have the option of observing that holiday on another date which the Company determines to be consistent with the community practice or paying eight (8) hours of regular straight time pay in lieu thereof for the holiday.

(c) Regular employees whose duties do not require them to work on holidays will be paid straight time; regular employees who are required to work on a recognized holiday for a period of four (4) hours or less not contiguous with hours worked into or out of the holiday will be paid for four (4) hours at time and one-half in addition to their straight time holiday pay. Employees who are required to work on a recognized holiday for more than four (4) hours not contiguous with hours worked into or out of the holiday but less than eight (8) hours will be paid for eight (8) hours at time and one-half in addition to their regular straight time holiday pay. Employees required to work on a holiday which is also their second off day will be paid at the rate of double time for the first eight (8) hours worked on the holiday. Employees who are required to work beyond their regularly scheduled work day on a recognized holiday or on the actual calendar date of the New Year's Day, Independence Day, Christmas Eve or Christmas Day holidays will be paid at the rate of double time for all such work in excess of their regularly scheduled work day. Employees must work either their full scheduled day before, or their full scheduled day after a holiday to be entitled to receive holiday pay.

(d) An employee will not be compensated for travel time on a call-out which occurs on a regular holiday.

(e) Employees who are on a four (4) day-ten (10) hour schedule will receive ten (10) hours of straight time pay if a holiday falls within their regular scheduled work week but they are not required to work the holiday. Employees whose regular scheduled work week does not include the paid holiday will receive eight (8) hours of straight time holiday pay.

Section 4. (a) An employee called out for overtime work shall receive a minimum of four (4) hours' pay at time and one-half, and double time if on an employee's second scheduled off-day.

(b) Employees called out, ahead of their regularly scheduled starting time, for other than planned overtime, shall be paid a minimum of four (4) hours at the appropriate overtime rate. A call-out shall be defined as notice to report for unscheduled work given to an employee by telephone or messenger after he has left his headquarters or place of reporting. Travel time of one-half hour each way, at the appropriate overtime rate of pay, will be allowed on a call-out when such call-out exceeds four (4) hours of continuous work that is not contiguous with a regularly scheduled shift. Employees will not be compensated for any travel time on a call-out when the employee is not released from work before his regularly scheduled shift, nor will travel time be allowed when overtime is worked continuously at the end of a regularly scheduled shift.

An employee shall be compensated for two (2) hours, at the straight time rate, if before reporting to work, a call-out overtime assignment is canceled later than one (1) hour after the original notification.

(c) Planned overtime shall be defined as time worked upon notice to an employee given before leaving his headquarters or place of reporting, or in case of an off-day, during or before what would have been his scheduled hours on that day, that he is to report outside of his regular schedule on any succeeding day. Such time worked shall be paid for at the appropriate overtime rate but not for less than four (4) hours unless such planned overtime extends into or directly follows the employee's regularly scheduled work day, when it shall be paid for at the appropriate overtime rate for the actual hours worked.

(d) When planned overtime is canceled, notice shall be given before an employee leaves his headquarters or place of reporting, or by telephone during or before what would have been his scheduled hours on the day preceding the planned overtime.

(e) An employee, who is scheduled for planned overtime and who is not notified of the cancellation of the planned overtime, within the prescribed period of time, but is notified by telephone before he reports for work, or cannot be notified by telephone and reports for work, shall receive two (2) hours pay at straight time. If planned overtime is rescheduled to begin more than eight (8) hours after the original starting time, the employee shall receive two (2) hours pay at straight time.

Section 5. (a) Except as otherwise provided, when performing work within the southwest Ohio and northern Kentucky (DEO/DEK) service territories, employees, required to work ten consecutive hours (excluding time taken out for meals), shall be furnished a meal compensation allowance and an additional meal compensation allowance for each contiguous five hour interval worked thereafter until released from duty. Employees who work a four day-ten hour schedule shall be furnished a meal compensation allowance whenever they work one hour or more in excess of their normal work day, and an additional meal compensation allowance for each contiguous five hour interval worked thereafter until released from duty.

Except as otherwise provided, when performing work outside the southwest Ohio and northern Kentucky (DEO/DEK) service territories, employees required to work ten consecutive hours (excluding time taken out for meals), shall be furnished a meal, or compensation in lieu thereof, and an additional meal, or compensation in lieu thereof, for each contiguous five hour interval worked thereafter until released from duty. Employees who work a four day-ten hour schedule shall be furnished a meal or compensation in lieu thereof whenever they work one hour or more in excess of their normal work day, and an additional meal, or compensation in lieu thereof, for each contiguous five hour interval worked thereafter until released from duty.

(b) When employees are called out to perform work within the southwest Ohio and northern Kentucky (DEO/DEK) service territories, on either their scheduled off day, or four or more hours before their regularly scheduled starting time, they shall be furnished a meal compensation allowance for each contiguous five hour interval worked even though they work into their regularly scheduled work day.

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When employees are called out to perform work outside the southwest Ohio and northern Kentucky (DEO/DEK) service territories, on either their scheduled off day, or four or more hours before their regularly scheduled starting time, they shall be furnished a meal, or compensation in lieu thereof, for each contiguous five hour interval worked even though they work into their regularly scheduled work day.

(c) Employees scheduled to work a double shift within the southwest Ohio and northern Kentucky (DEO/DEK) service territories (two consecutive eight hour shifts on different work days) shall be entitled to meal compensation allowances during this 16 hour period.

Employees scheduled to work a double shift outside the southwest Ohio and northern Kentucky (DEO/DEK) service territories (two consecutive eight hour shifts on different work days) shall be entitled to meals, or compensation in lieu thereof, during this 16 hour period.

(d) The meal compensation allowance referred to throughout this Agreement shall be as follows:

<b>Current</b>	<b>Effective</b>	<b>Effective</b>	<b>Effective</b>	<b>Effective</b>
	<b>4-1-10</b>	<b>4-1-11</b>	<b>4-1-12</b>	<b>4-1-13</b>
\$10.50	\$10.65	\$10.75	\$10.85	\$11.00

Section 6. Excluding planned projects and appointments prompted by customer requests, no field construction, field maintenance or routine customer service work shall be performed by employees included in this Agreement on actual calendar holidays for Labor Day, Thanksgiving Day and Christmas Day, except that which is necessary to protect life, property or continuity of service.



Section 7. Pay-day for employees covered by this Agreement shall be on Friday of every other week. When it is reasonably possible, checks will be delivered to the employees not later than quitting time on Thursday.

Section 8. (a) When conditions require that an employee shall work at such a distance from his regular headquarters that returning to his headquarters each day would be impracticable, the Company at its option shall either provide transportation, meals and lodging or reimburse the employee to a reasonable amount for expenses incurred. If such an employee is not required to work on his regular off-days, the Company shall provide transportation to his regular headquarters or shall pay him straight time for eight (8) hours in each twenty-four (24) hours in each such off-day and shall furnish meals and lodging for each such off-day.

(b) Employees required to train outside the Company's service area as part of a training program will be paid at their regular straight time rate when participating in the training program and, in addition, will be provided reasonable expenses for transportation, meals and lodging

Section 9. (a) Each employee shall have a specific headquarters for reporting for work. However, the right of the Company to temporarily assign employees to other locations to properly run its business is recognized.

(b) When it is necessary to temporarily assign employees to a headquarters other than their own or to a job site reporting location that is farther from their home than their regular headquarters, such employees will be paid mileage at the amount per mile approved by the Internal Revenue Service, based on the additional round trip mileage employees are required to drive. No mileage compensation will be paid for the temporary assignment if the other reporting location is closer to the employee's home.

(c) Job site reporting and other temporary assignments will be offered on a voluntary basis. If there is an insufficient number of volunteers, assignments will be made on a junior qualified basis. When assigning the junior qualified, unusual or extenuating circumstances will be taken into consideration.

(d) Employees may be assigned to drive Company vehicles from and to the job site from home or sites close to home. If Company vehicles are used in such a manner, the mileage provisions for job site reporting are not applicable. During a job site reporting assignment, depending on Company vehicle availability, employees at their option, may pick up and return such Company vehicle to their regular headquarters, provided such travel is on their own time.

(e) Employees in the Power Delivery Warehouses, Generation Supply Chain, Transportation, and Power Generation Departments will not be subject to job site reporting. However, if employees from these departments are temporarily assigned to a headquarters other than their own, the provisions of this section will apply.

Section 10. (a) The Company will not require employees to do construction or maintenance work in exposed locations out of doors during heavy or continuous storms or excessively cold weather, unless such work is necessary to protect life, property or continuity of service.

(b) Employees covered by this Agreement shall not be required to lose time due to such weather conditions, but the Company may provide work indoors at their regular rate of pay.

(c) Employees will be permitted to waive overtime when planned outages have been prearranged with the customer wherein the outage may not be deferred due to inclement weather, however, if the desired number of employees, from each of the required job classifications, are not acquired on a voluntary basis the qualified employees with the lowest accumulated overtime will be assigned. This work, when possible, will be performed "dead" and the employees will be furnished with the appropriate weather gear when necessary.

Section 11. Any employee covered by this Agreement who is eligible to vote in any City, County, State or National election shall be allowed a reasonable time off with pay, if necessary, to vote if he so desires.

Section 12. Upon the death of the designated relatives of an employee, the employee, upon request, may be entitled to the stipulated maximum number of calendar days off for which he is entitled to receive regular pay for not more than the indicated number of consecutive working days, including the day of the funeral. If prior arrangements are made, an employee may include a maximum of one (1) day following the funeral as one of the consecutive working days off, and in the case of a spouse, child, mother, father, brother or sister, two (2) days following the funeral. No pay will be granted for regular scheduled off days.

<u>Relationship</u>	<u>Maximum Consecutive Calendar Days Off</u>	<u>Maximum Consecutive Working Days Off With Pay</u>
Spouse or Domestic Partner	7	5
Child, Stepchild or Foster Child	7	5
Mother, Stepmother or Foster Mother	7	5
Father, Stepfather or Foster Father	7	5
Brother, Stepbrother or Foster Brother	7	5
Sister, Stepsister or Foster Sister	7	5
In-laws (father, mother, brother sister, son or daughter)	5	3
Grandchild	6	4
Grandparent/Spouse's Grandparent	4	2

If an employee has worked four (4) hours or more and is notified of a death in his family, and leaves the job, the day will not be charged as one of the consecutive working days. If, however, he has not worked four (4) hours, the day will be charged as one of the consecutive working days for which he is entitled to receive regular pay.

Section 13. (a) Employees required to serve on a jury shall be compensated on the basis of their regular wage. Employees will be required to report to their headquarters following their daily release from jury service if there are at least four hours of work time remaining.

(b) An employee working on either a night or afternoon shift at a time when he is scheduled for jury duty, who is unable to postpone the jury duty until a time when he will be working on a day shift, may request the Company to assign him to a day shift schedule. Such a request must be made at least seven (7) working days before the jury duty service is scheduled to begin. When the term of jury duty for such an employee has ended, he shall return to his normal working schedule.

Section 14. Regular pay and reasonable or required expenses will be allowed employees who may be summoned to testify for the Company in lawsuits.

Section 15. The person elected by the Union to represent them as Business Manager shall be permitted, after proper arrangements have been made with the appropriate department manager of the Company, or his authorized representative, to enter all buildings and areas where men covered by this Agreement are working when such visits are necessary to carry out the terms of this Agreement in connection with questions arising out of this Agreement.

Section 16. (a) The Company shall have the right to require examinations, either oral, written, or practical, to determine the fitness of employees for promotional opportunities. Such examinations shall be uniformly administered and shall be required of all successful employee-applicants for new positions. The equipment and facilities necessary for such examinations will be provided by the Company. The Company shall compensate the employees engaged in examinations for the time spent in such examinations at their regular rate of pay. An employee can indicate, within five days after receiving the results of an examination, that he feels the examination was not fairly administered. If the employee submits a valid reason, the Company will administer a second examination with a Union designated witness present. If this second examination is administered it will not be subject to the grievance procedure.

(b) An employee who has successfully completed an examination for a new position shall be reclassified and paid the proper rate for the new classification as soon as he begins work in the new classification, in accordance with the terms of this Agreement. Any employee failing to pass such examination shall be eligible to retake that examination after a period of three (3) months, provided an opening exists in the classifications for which the examination has been taken. Any employee failing the examination a second time will not be eligible for reexamination for a twelve (12) month period and for subsequent two (2) year intervals thereafter except that departmental tests may be retaken after subsequent twelve (12) month intervals.

Section 17. The Company agrees to furnish bulletin boards at all division headquarters for the use of the Union. The use of these boards is restricted to the following: notices of union meetings, notices of union elections, notice of changes within the union affecting its membership, or any other official notices issued on the stationery of the Union and signed by the Business Manager or other duly elected or appointed officer. There shall be no other general distribution or posting by members of the Union of pamphlets or literature of any kind except as provided for herein.

Section 18. The Company agrees to guarantee employment of not less than forty (40) hours per week for fifty-two (52) weeks of each year to employees covered by this Agreement who are ready and available and able to work, and who are regular full-time employees of the Company, provided nothing in this section shall be construed to prevent the Company from releasing employees because of lack of work or for other proper and legitimate reasons, as provided for in Article I, Section 9.

Section 19. (a) The Company agrees to notify the Business Manager of the Union, on a quarterly basis, of the hiring of any outside contractors to do planned work normally done by the regular employees covered by this Agreement that may exceed 500 hours of time. It is the Company's intention that any contractors performing work on behalf of the Company do so safely and competently.

(b) In instances where it is necessary to contract for equipment, during periods of emergency, such equipment will be manned by regular Company employees if and when they are available and qualified to operate such equipment.

(c) It is the sense of this provision that the Company will not contract any work which is ordinarily done by its regular employees, if as a result thereof, it would become necessary to lay off any such employees.

Section 20. (a) The Company agrees that any employee covered by this Agreement who is temporarily advanced to a higher classification for one hour or more shall receive either the minimum rate of pay applicable to that classification or twenty-five cents (25¢) per hour, whichever is greater, but no more than the maximum wage rate of the job to which the employee is upgraded. If such work is for more than four (4) hours the employee shall receive this upgrade pay for the remainder of the normal day worked. When an employee covered by this Agreement is temporarily advanced to a non-supervisory position outside his bargaining unit, he shall be paid the established hourly wage rate for such position if such work is for one (1) hour or more. When an employee is temporarily required to perform work in a lower-paid classification, he is to suffer no reduction in pay.

(b) In the administration of this section of the Agreement a temporary assignment shall be construed to mean any job assignment which is not expected to continue for more than ninety (90) days.

(c) When an employee in this bargaining unit is temporarily advanced to a supervisory position outside the bargaining unit, the employee shall be paid the same rate of their classified assignment at the time of the temporary assignment. The temporary advancement of any individual is intended to be of a limited duration and not to exceed a maximum of six months total within a rolling twelve month period. Employees temporarily advanced to a supervisory position will not be assigned to supervise contractors completing work normally performed by IBEW 1347 represented employees.

Section 21. (a) Company Group Life Insurance carried by employees entering military service will be canceled ninety (90) days after employee enters such service. Advance premium paid by employee beyond date of cancellation will be refunded to employee. Insurance of employees re-entering Company service within ninety (90) days after their release from active duty will be reinstated without physical examination or waiting period.

(b) Employees on layoff will be entitled to continue to participate in the Company Group Life Insurance coverage at no cost to the Company. Employees on layoff must pay the total monthly premium for their coverage by the first of each month. Such insurance coverage will be terminated when employees do not pay the total premium as stated above; when they accept full time employment elsewhere; or when they lose their system service in accordance with Article III, Section 5(h). Employees will have their prior Group Life Insurance coverage reinstated without physical examination or waiting period upon returning to Company service from a layoff.

Section 22. (a) The Company shall furnish the employees with the proper safety devices as required by the Company for protection of life and property in the performance of their duties. The employees shall at all times use every means for the preservation of such safety appliances and shall use them when necessary.

(b) The Company will notify promptly the Union Business Manager or the Union Business Office of any accident resulting in serious injury or death to an employee.

(c) The Union may investigate any serious accident with its Union Committee and at its own expense and the management representative on the site will cooperate with the Union Committee. This shall not be construed to mean a joint investigating committee.

It is further agreed that the Company will not provide the Union Committee with the report made by the Company. It is further agreed that the Union investigation will not interfere with or interrupt the normal operation of the job.

(d) The Company and the Union agree to the establishment of a Joint Safety Advisory Committee which shall meet quarterly or more frequently upon the call of the Chairman of the Committee.

It is further agreed that employees engaged in such meetings during their working hours shall suffer no loss in pay for such time.

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(e) The purpose of the Joint Safety Advisory Committee is to give consideration to those general accident prevention programs and policies that affect the safety of the employees in the bargaining unit represented by Local Union 1347 of the International Brotherhood of Electrical Workers. The Joint Safety Advisory Committee shall not deal with individual or group grievances. The administration of the accident prevention policies, programs and procedures are vested in and reserved to the management of the Company.

Section 23. The Company reserves the right to arrange at its own expense for medical examinations of any employee at any time. When practical, the examinations will occur while employees are on duty.

Section 24. (a) The Union shall furnish the Company with a list of Department Stewards and this list shall be kept current. It is further agreed that only regular employees of the Company who are covered by this Agreement shall be designated as stewards.

(b) When in the judgment of the Company the absence of a Steward from his regular duties will not interfere with the operations of the Company, he may be available for handling grievances, witnessing an examination or an investigation of an employee within this unit.

Section 25. (a) The wage schedules described in the Agreement in effect immediately prior to the date of this Agreement shall be amended as follows:

Maximum Hourly Wage Rates

Wage Level	Effective March 31, 2009	Effective April 1, 2009*	Effective April 1, 2010**	Effective April 1, 2011***	Effective April 1, 2012****	Effective April 1, 2013*****
	Includes \$.10 COLA	2.0%	2.0%	2.0%	3.0%	3.0%
1	\$12.92	\$13.18	\$13.44	\$13.71	\$14.12	\$14.54
2	\$14.90	\$15.20	\$15.50	\$15.81	\$16.28	\$16.77
3	\$18.92	\$19.30	\$19.69	\$20.08	\$20.68	\$21.30
4	\$19.31	\$19.70	\$20.09	\$20.49	\$21.10	\$21.73
5	\$19.72	\$20.11	\$20.51	\$20.92	\$21.55	\$22.20
6	\$20.67	\$21.08	\$21.50	\$21.93	\$22.59	\$23.27
7	\$21.97	\$22.41	\$22.86	\$23.32	\$24.02	\$24.74
8	\$22.63	\$23.08	\$23.54	\$24.01	\$24.73	\$25.47
9	\$23.03	\$23.49	\$23.96	\$24.44	\$25.17	\$25.93
10	\$23.52	\$23.99	\$24.47	\$24.96	\$25.71	\$26.48
11	\$24.68	\$25.17	\$25.67	\$26.18	\$26.97	\$27.78
12	\$25.01	\$25.51	\$26.02	\$26.54	\$27.34	\$28.16
13	\$25.34	\$25.85	\$26.37	\$26.90	\$27.71	\$28.54
14	\$25.95	\$26.47	\$27.00	\$27.54	\$28.37	\$29.22
15	\$26.56	\$27.09	\$27.63	\$28.18	\$29.03	\$29.90
16	\$27.68	\$28.23	\$28.79	\$29.37	\$30.25	\$31.16
17	\$27.89	\$28.45	\$29.02	\$29.60	\$30.49	\$31.40
18	\$28.41	\$28.98	\$29.56	\$30.15	\$31.05	\$31.98
19	\$29.17	\$29.75	\$30.35	\$30.96	\$31.89	\$32.85
20	\$30.71	\$31.32	\$31.95	\$32.59	\$33.57	\$34.58
21	\$31.19	\$31.81	\$32.45	\$33.10	\$34.09	\$35.11
22	\$31.50	\$32.13	\$32.77	\$33.43	\$34.43	\$35.46
23	\$31.79	\$32.43	\$33.08	\$33.74	\$34.75	\$35.79
24	\$32.12	\$32.76	\$33.42	\$34.09	\$35.11	\$36.16
25	\$32.43	\$33.08	\$33.74	\$34.41	\$35.44	\$36.50
26	\$32.82	\$33.48	\$34.15	\$34.83	\$35.87	\$36.95

\* The wages listed in this column will be increased (decreased) by 1 cents for each full 0.2% increase (decrease) of more than 3.0% in the U.S. Revised Urban Wage Earners and Clerical Workers Consumer Price Index published by the Bureau of Labor Statistics, U.S. Department of Labor, with the October, 2008 Index as the zero base and percentage increases calculated from that base after each quarter. The increase, if any, will be reflected in the payroll period beginning on April 1, 2009, July 1, 2009, October 1, 2009, January 1, 2010, based on the indexes of January 2009, April 2009, July 2009 and October 2009, respectively.

\*\* The wages listed in this column will be increased (decreased) by 1 cents for each full 0.2% increase (decrease) of more than 3.0% in the U.S. Revised Urban Wage Earners and Clerical Workers Consumer Price Index published by the Bureau of Labor Statistics, U.S. Department of

Labor, with the October, 2009 Index as the zero base and percentage increases calculated from that base after each quarter. The increase, if any, will be reflected in the payroll period beginning on April 1, 2010, July 1, 2010, October 1, 2010, January 1, 2011, based on the indexes of January 2010, April 2010, July 2010 and October 2010, respectively.

\*\*\* The wages listed in this column will be increased (decreased) by 1 cents for each full 0.2% increase (decrease) of more than 3.0% in the U.S. Revised Urban Wage Earners and Clerical Workers Consumer Price Index published by the Bureau of Labor Statistics, U.S. Department of Labor, with the October, 2010 Index as the zero base and percentage increases calculated from that base after each quarter. The increase, if any, will be reflected in the payroll period beginning on April 1, 2011, July 1, 2011, October 1, 2011, January 1, 2012, based on the indexes of January 2011, April 2011, July 2011 and October 2011, respectively.

\*\*\*\* The wages listed in this column will be increased (decreased) by 1 cents for each full 0.2% increase (decrease) of more than 4.0% in the U.S. Revised Urban Wage Earners and Clerical Workers Consumer Price Index published by the Bureau of Labor Statistics, U.S. Department of Labor, with the October, 2011 Index as the zero base and percentage increases calculated from that base after each quarter. The increase, if any, will be reflected in the payroll period beginning on April 1, 2012, July 1, 2012, October 1, 2012, January 1, 2013, based on the indexes of January 2012, April 2012, July 2012 and October 2012, respectively.

\*\*\*\*\* The wages listed in this column will be increased (decreased) by 1 cents for each full 0.2% increase (decrease) of more than 4.0% in the U.S. Revised Urban Wage Earners and Clerical Workers Consumer Price Index published by the Bureau of Labor Statistics, U.S. Department of Labor, with the October, 2012 Index as the zero base and percentage increases calculated from that base after each quarter. The increase, if any, will be reflected in the payroll period beginning on April 1, 2013, July 1, 2013, October 1, 2013, January 1, 2014, based on the indexes of January 2013, April 2013, July 2013 and October 2013, respectively.

No adjustments, retroactive or otherwise, shall be made due to any revisions which may later be made in the published figures in the Consumer Price Index for the months indicated above.

Employees are eligible for an incentive lump sum bonus up to a maximum of 2% or 5% of straight time and overtime wages per year in accordance with the 2009 negotiations letter of agreement entitled, "Union Employee Incentive Plan (UEIP), based on the achievement of goals during the previous year, as determined by the Company.

(b) Effective April 1, 2009, any employee who was on or below the maximum hourly wage rate of his job classification on April 1, 2009, shall receive the hourly wage rate increase in accordance with the increase applicable to the maximum wage rate of their job classification.

The hourly wage rate increases shall not apply to the minimum hourly wage rates of starting job classifications.

(c) Employees shall be provided the higher of a twenty-five cent (25¢) promotional increase above the maximum wage rate of the job classification from which they promote, or the minimum wage rate of the job classification to which they promote. This provision will not apply when the maximum wage rate of a job is not at least twenty-five cents (25¢) above the maximum wage rate of the job classification from which it promotes.

(d) Whenever the difference between the minimum and maximum wage rates of any hourly rated job classification is not divisible by ten, the hourly wage rates will be by ten cent (10¢) steps with the exception of the last step to the maximum hourly wage rate of the job classification. In such

case the increase to the maximum hourly wage rate will include the ten cent (10¢) increment plus the odd amount necessary to equal the maximum hourly wage rate, provided, however, that the total amount of this increase is less than twenty cents (20¢).

(e) Employees who are below the maximum hourly wage rate of their job classification shall continue to receive such length of service increases as they may be entitled to under the operation of the job classification and wage evaluation plan.

(f) Employees who are on physical retrogressions shall receive the increase applicable to their present individual hourly wage rates.

(g) The shift differentials to be paid employees on scheduled shifts on classified jobs shall be as follows:

Name of Shift	Definition of Shift	Differential Shift Cents Per Hour				
		Current	4/1/10	4/1/11	4/1/12	4/1/13
Day Shift	Where the majority of the scheduled hours worked are between 8:00 a.m. and 4:00 p.m.	0	0	0	0	0
Afternoon Shift	Where the majority of the scheduled hours worked are between 4:00 p.m. and 12:00 Midnight.	\$1.50	\$1.55	\$1.60	\$1.65	\$1.70
Night Shift	Where the majority of the scheduled hours worked are between 12:00 Midnight and 8:00 a.m.	\$1.55	\$1.60	\$1.65	\$1.70	\$1.75

(h) When the majority of the hours in a shift are on Sunday, a Sunday premium in the amount of \$1.75 per hour will be paid to an employee for all scheduled straight time hours worked on that shift. On April 1, 2010 this amount will increase to \$1.80 per hour; on April 1, 2011 to \$1.85 per hour; on April 1, 2012 to \$1.90 per hour; and on April 1, 2013 to \$1.95 per hour.

(i) In conjunction with the letter of Patrick P. Gibson of 2000, which is the preamble to the Company's job classification and evaluation system, the Company shall prepare occupational classifications and job descriptions which will define, as nearly as possible, the nature of the work involved under each payroll classification. The Company will initiate all new and revised job classifications or promotional sequences.

(j) When the management of a department has written or revised a job description, a representation of union employees within that department will be given an opportunity to suggest changes to the job description. The union representative will also be requested to complete a job questionnaire. The completed job questionnaire must be signed by the union representative and approved by the management of the department. After the management of the department has reviewed the suggested changes to the job description and approved the job questionnaire, this job documentation will be submitted to the Company's Evaluation Committee. The union representative will be invited to the Company's evaluation Committee meeting to present information about the job



classification. There will be no recourse to the grievance and arbitration procedure because of the language of a job description or the evaluation of a job classification.

(k) The Company's Evaluation Committee will be responsible for evaluating all new and revised job classifications. The Union will appoint two (2) members to the Company's Evaluation Committee. The evaluation that is established by this Committee is used to determine the maximum wage rate for each new or revised job classification. Results of the evaluation will be communicated to the Union two weeks before the new or revised job classification becomes effective.

(l) The Union shall maintain a Job Evaluation Advisory Committee consisting of not more than five members who may review the evaluation and wage rate of any job classification which undergoes a substantial change in qualifications or duties. The Union's Committee may, by request, meet with the Company's Committee, at a mutually convenient time within thirty (30) days after the effective date of the new or revised job classification, to present any information relevant to the evaluation of the job classification which has been included in the previous written comments of the Union representative. The Union will be notified after the Company's Committee has reviewed the additional information presented by the Union. All wage rates so established shall be final and binding and not subject to the grievance and arbitration procedure. However, if any revised wage rates are reduced as a result of the evaluation(s), they will not be placed into effect until the Company and the Union have had an opportunity to negotiate them during full contract negotiations, even though the revised job classification will be in effect. Employees, presently in, or promoting to, such job classifications will continue to receive wage adjustments in accordance with the other provisions of the Agreement just as if the wage rate had remained at the same level until a new Agreement is reached. The Company will not be required to maintain, establish or discontinue any job classification covered by this Agreement.

(m) Members of the Union's Job Evaluation Advisory Committee shall not suffer a loss of pay when engaged in meetings during their working hours with the Company's Job Evaluation Committee.

(n) Where the Union deems an employee, or employees, to be improperly classified, it will be considered as a grievance and shall be handled under the grievance procedure of this Agreement.

Section 26. (a) Eligible employees represented by the Union will participate, or continue to participate, in the existing Cinergy Corp. Union Employees' Retirement Income Plan (the "Retirement Income Plan") as amended and restated effective January 1, 2009, and subsequently amended to make legally-required changes or technical changes that do not reduce the benefits formula.

(b) It is agreed that the Company will not reduce the benefits and the Union will not request any change in the Retirement Income Plan until the expiration of the Agreement on April 1, 2014.

(c) The Company and the Union shall enter into the attached side letter ("Retirement Plan Agreement") relating to mandatory and voluntary opportunities to convert to the "New Duke Retirement Program.

(d) For the term of this Agreement, post-retirement health care under the health care plans sponsored by Duke Energy Corporation will be made available to eligible Union employees hired prior to January 1, 2010 in accordance with correspondence from the Company to the Union dated

July 22, 2004 and the applicable plan documents. Union employees who are hired on or after January 1, 2010 will not be eligible for either the Traditional Option (as defined in the correspondence from the Company to the Union dated July 22, 2004) or the HRA Option (as defined in the correspondence from the Company to the Union dated July 22, 2004), but such employees shall be eligible for access (at unsubsidized rates) to post-retirement healthcare under the Duke Energy Corporation Medical Plan if they have attained age 50 and completed 5 years of vesting service under the Retirement Income Plan as of the date of their retirement.

Section 27. The Company will provide each employee with Term Life Insurance in the amount of two (2) times the employee's straight time annual salary. Effective January 1, 2010, employees will have the opportunity to purchase supplemental coverage during each annual enrollment and under the same terms offered to other non-represented employee groups.

Section 28. (a) Health care coverage shall consist of the specially negotiated Exclusive Provider Organization ("EPO") option offered under the Duke Energy Corporation Medical Plan with the design, covered service, premiums and other employee costs memorialized in the 2009 negotiations letter of agreement entitled "Health Care Benefits", which option initially shall be offered on January 1, 2010, and shall continue to be offered for the term of the 2009 - 2014 Agreement. Any other health care options (medical, dental, or vision) that the Company unilaterally implements under the Duke Energy Corporation Medical Plan, the Duke Energy Corporation Dental Plan and/or the Duke Energy Corporation Vision Plan at its sole discretion for the general non-exempt non-represented employee population shall also be offered to the bargaining unit employees during the term of the 2009-2014 Agreement at the same costs and with the same plan design structure as applies to the general non-exempt, non-represented employee population. It is expressly understood that the right to add, eliminate, alter and/or to make any other changes to the health care options offered to the general non-exempt, non-represented employee population or to the employee costs for these options, is reserved to the Company, in its sole discretion.

(b) Employees on layoff will be entitled to continue to participate in the health care plan and dental plan coverages that they had at the time of layoff, at no cost to the Company. Employees on layoff must pay, in advance, the total monthly premium for their coverage by the fifteenth of each month for the following month's coverage. Such insurance coverage will be terminated when employees do not pay the total premium as stated above; when they accept full time employment elsewhere; or when they lose their system service in accordance with Article III, Section 5(h).

Section 29. (a) The Company agrees to maintain an employee savings plan, subject to the provisions of the appropriate federal legislation and regulation governing such plans. Eligible Union employees will participate or continue to participate in the existing Duke Energy Retirement Savings Plan for Legacy Cinergy Union Employees (Midwest), successor plan to the Cinergy Corp. Union Employees' Savings Incentive Plan hereinafter called the "Retirement Savings Plan."

(b) The Retirement Savings Plan is memorialized in the plan document entitled the "Duke Energy Retirement Savings Plan for Legacy Cinergy Union Employees (Midwest)," which, as amended includes the complete text of the Retirement Savings Plan.

(c) The Company hopes and expects to continue the Retirement Savings Plan indefinitely but it must reserve the right to alter or amend it or to discontinue Company contributions to it at any time. However, under no circumstances shall any part of the corpus or income held by the Trustee of the Retirement Savings Plan be recoverable by the Company or be used for or diverted to any

purposes other than for the exclusive benefit of the employee participants or their beneficiaries as provided in the Retirement Savings Plan.

(d) The Company and the Union shall enter into the attached side letter ("Retirement Plan Agreement") which references certain enhancements to the Retirement Savings Plan related to the mandatory and voluntary opportunities to convert to the "New Duke Retirement Program".

## ARTICLE VI

Section 1. (a) With the exception of shift differential premium, and a holiday occurring during an employee's vacation or second off day, it is agreed that under no circumstances shall any Section of this Agreement be interpreted to provide the pyramiding of a benefit or premium payment to employees covered by this Agreement. For example, no employee may claim sick pay while receiving vacation pay or holiday pay while receiving sick pay.

(b) It is further agreed that there shall be no interruption in the payment of one benefit in order that the employee may receive payment for another benefit. For example, no employee may interrupt vacation to begin sick leave or interrupt sick leave to include a holiday. The only exceptions to this provision are that an employee's sick pay may be interrupted to include vacation pay and that vacation pay may be interrupted to include death in family pay as set forth in the Agreement. In the event that any vacation days are unused as a result of a death in the family situation, the use of these unused vacation days must be approved in advance by supervision and shall not apply to the administration of vacation in one-day increments as provided under Article IV, Section 1(e) of the Agreement.

Section 2. This Agreement shall remain binding upon successors, assigns or transferees of the Company in the event of a merger, acquisition, divestiture, asset swap or sale, or other similar transaction announced or begun during the Agreement. The Company will require the Buyer, or any transferee, to recognize the Union as the collective-bargaining agent for bargaining-unit employees the Buyer employs and assume provisions identical to provisions of the Agreement applicable to those bargaining-unit employees.

The Union will support and it will not oppose, or in any way support or encourage opposition to the Company's position regarding any mergers, acquisitions, divestitures or similar transactions or any regulatory matters (including rate cases or stranded cost determinations) or environmental matters announced or begun during the term of the Agreement.

IN WITNESS WHEREOF, Local Union 1347 of the International Brotherhood of Electrical Workers and Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. ("Company"), do hereby, by their duly authorized agents, in the premises, execute and sign this 2009 – 2014 Agreement between Duke Energy Ohio, Inc., and Duke Energy Kentucky, Inc. and Local Union 1347, in duplicate, this 17th day of July, 2009.

**FOR THE UNION**

Local Union No. 1347 of the  
International Brotherhood  
Of Electrical Workers

**FOR THE COMPANY**

Duke Energy Ohio, Inc.  
Duke Energy Kentucky, Inc.

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Stephen H. Feldhaus  
Business Agent

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Julie S. Janson  
President, Duke Energy Ohio, Inc. &  
President, Duke Energy Kentucky, Inc.

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Kenneth M. Gross  
President

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Jim O'Connor  
VP, Employee & Labor Relations

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Mike Ciccarella  
Labor Relations Consultant

EXHIBIT "A"

DEPARTMENTAL AND DIVISIONAL WORKING RULES

POWER OPERATIONS DEPARTMENT

GENERAL WORK RULES

APPLICABLE TO:  
EAST BEND STATION  
MIAMI FORT STATION  
WALTER C. BECKJORD STATION  
WM. H. ZIMMER STATION  
WOODSDALE STATION  
(including the Dick's Creek Station)

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1. Shift Schedules shall be established in accordance with the negotiated letter dated October 11, 1996 discussing flexibility in work scheduling. Day shifts will be any hours between 6:00 a.m. and 6:30 p.m. Afternoon shifts will be any hours between 2:00 p.m. and 2:00 a.m. Evening shifts will be any hours between 10:00 p.m. and 10:00 a.m.
2. A list of the employees in each Production Team and Support Team of each Division shall be posted by the Company each week showing the overtime worked by each employee during the previous week.
3. The meal period for employees, whose schedule provides a non-compensated one-half hour's meal period, will be defined in each Section. If the meal period is not granted between the time period designated in each Section, the employee will be allowed a shorter lunch period and will be permitted to eat on the job and will receive one-half hour's pay at the overtime rate.
4. There shall be no Working Foreman or supervisors in any Section except when designated for the fifteen (15) minute relief periods.
5. On Shift Work Schedules, subject to the approval of the Company, employees will be permitted to trade shifts on the same job and jobs on the same shift, if both are qualified and agreeable.
6. On Shift Work Schedules, a list of employees in these Sections shall be posted by the Company showing the current job assignment and the progressive scheduled off-days where applicable.
7. No employee working on a Shift Work Schedule may be relieved and leave his job more than 30 minutes before his scheduled quitting time, unless he has received prior approval from his supervisor.
8. The Company will not require employees to furnish tools.
9. All thirty (30) minute unpaid meal periods may begin a half-hour before or after the normal meal period, at the discretion of supervision.

10. When employees are assigned to training classes they may be required to work eight (8) hours exclusive of an unpaid lunch period.
11. Those Production Team employees who are assigned to work for one or more days on other Teams will work the same designated hours as the Team to which they are assigned.
12. Personnel may be required to work ten (10) and twelve (12) hour shifts at the appropriate straight time and overtime rates for outages and/or as needs dictate:

Division	1	East Bend Station
Division	2	Miami Fort Station
Division	3	W. C. Beckjord Station
Division	4	WM. H. Zimmer Station
Division	5	Woodsdale Station (including the Dick's Creek Station)

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- (a) Production Teams will work on a Rotating Shift Schedule or as described in General Work Rule 1.
  - (b) Support Teams will work schedules as required to support the Production Teams, as described in General Work Rule 1.

## MIDWEST FIELD OPERATIONS

### Division 6: OPERATORS

#### (a) MOBILE OPERATORS SECTION

1. These employees shall operate on a Rotating Shift Schedule or in accordance with the negotiated letter dated October 11, 1996 discussing flexibility in work scheduling. Day shifts will be any hours between 6:00 a.m. and 6:30 p.m. Afternoon shifts will be any hours between 2:00 p.m. and 2:00 a.m. Evening shifts will be any hours between 10:00 p.m. and 10:00 a.m.

Relief Operators work on all shifts.

For the purpose of determining shift differential wages, all employees in this group including Relief Operators shall be designated Shift Workers.

2. There shall be no Working Foremen in this group.
3. Mobile Operators assigned to relief shall be entitled to not less than a twenty-four (24) hour notice of changes in shift assignments or scheduled days off.

Division 7: SUBSTATION

(a) ELECTRIC MAINTENANCE SECTION

1. This Section shall work on a Fixed Shift Schedule or in accordance with the negotiated letter dated October 11, 1996 discussing flexibility in work scheduling. Day shifts will be any hours between 6:00 a.m. and 6:30 p.m. Afternoon shifts will be any hours between 2:00 p.m. and 2:00 a.m. Evening shifts will be any hours between 10:00 p.m. and 10:00 a.m.

The supervisor, at his discretion, may designate the thirty (30) minute meal period to begin one-half hour before the Normal Meal Period or may delay the beginning of the thirty (30) minute meal period to the time when the Normal Meal Period is scheduled to end.

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(b) ELECTRIC REPAIR SECTION

1. This Section shall operate on a Day Schedule or in accordance with the negotiated letter dated October 11, 1996 discussing flexibility in work scheduling. Day shifts will be any hours between 6:00 a.m. and 6:30 p.m. Afternoon shifts will be any hours between 2:00 p.m. and 2:00 a.m. Evening shifts will be any hours between 10:00 p.m. and 10:00 a.m.

The normal meal period will be between 12:00 noon and 12:30 p.m. However, the supervisor, at his discretion, may designate the thirty (30) minute meal period between 11:30 a.m. and 1:00 p.m. If the meal period is not granted between the time of 11:30 a.m. and 1:00 p.m., the employee will be allowed a shorter lunch period and will be permitted to eat on the job and will receive one-half hour's pay at the overtime rate.

(c) CONSTRUCTION SECTION

1. This Section shall operate on a seasonally adjusted Day Schedule or in accordance with the negotiated letter dated October 11, 1996 discussing flexibility in work scheduling. Day shifts will be any hours between 6:00 a.m. and 6:30 p.m. Afternoon shifts will be any hours between 2:00 p.m. and 2:00 a.m. Evening shifts will be any hours between 10:00 p.m. and 10:00 a.m.

The Manual work of the Foremen in this Division shall be restricted to assistance in the handling or placing of heavy materials or equipment, the occasional pulling up of materials to employees and similar operations. It is the intention of Management that the primary duties of such Foremen shall be the supervision, planning, inspection and assignment of work to their crews and that no manual work is to be done which will detract from these primary duties.

2. The Company shall not require an employee to furnish tools.

Division 8: TEST & RELAY

1. This Division shall operate on a Day Schedule or in accordance with the negotiated letter dated October 11, 1996 discussing flexibility in work scheduling. Day shifts will be any hours between 6:00 a.m. and 6:30 p.m. Afternoon shifts will be any hours between 2:00 p.m. and 2:00 a.m. Evening shifts will be any hours between 10:00 p.m. and 10:00 a.m.

The normal meal period will be between 12:00 noon and 12:30 p.m. However, the supervisor, at his discretion, may designate the thirty (30) minute meal period between 11:30 a.m. and 1:00 p.m. If the meal period is not granted between the time of 11:30 a.m. and 1:00 p.m., the employee will be allowed a shorter lunch period and will be permitted to eat on the job and will receive one-half hour's pay at the overtime rate.

2. The Company shall not require an employee to furnish tools.

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MIDWEST FIELD OPERATIONS

GENERAL WORK RULES  
APPLICABLE TO DIVISION 9 THROUGH 13

1. Shift Schedules shall be defined in each section in accordance with the negotiated letter dated October 11, 1996, discussing flexibility in work scheduling. Day shifts will be any hours between 6:00 a.m. and 6:30 p.m. Afternoon shifts will be any hours between 2:00 p.m. and 2:00 a.m. Evening shifts will be any hours between 10:00 p.m. and 10:00 a.m.
2. The normal meal period for divisions which operate on a day schedule will be between 12:00 noon and 12:30 p.m. However, the supervisor, at his discretion, may designate the thirty (30) minute meal period between 11:30 a.m. and 1:00 p.m. If the meal period is not granted between the time of 11:30 a.m. and 1:00 p.m., the employee will be allowed a shorter lunch period and will be permitted to eat on the job and will receive one-half hour's pay at the overtime rate.
3. The Company shall not require an employee to furnish tools.
4. Employees who bid, qualify and are accepted for posting openings in a Division shall receive a classified seniority date based on the date they enter the job opening and shall be eligible for merit increases at six (6) month intervals regardless of the wage rate of any other employee in the job classification, but in no event will an employee receive a wage rate that is higher than the maximum rate of the job classification which he is entering.
5. Employees hired after April 1, 2006, into any job classification within Divisions 9, 11, 12 and 13 (c) must reside within a 30-mile radius of the Company's headquarters located at Fourth & Main Streets, Cincinnati, Ohio.



Division 9: ELECTRIC TROUBLE

1. The Electric Trouble Section will operate on a Rotating Shift Schedule or as described in General Work Rule 1.
2. The Manual work of the Foremen in this Section shall be restricted to assistance in the handling or placing of heavy materials or equipment, the occasional pulling up of materials to Linemen and similar operations. It is the intention of Management that the primary duties of such Foremen shall be the supervision, planning, inspection and assignment of work to their crews and that no manual work is to be done which will detract from these primary duties.
3. Extra Linepersons "A"-Trouble shall be assigned for periods of one (1) week and will be given not less than forty-eight (48) hours notice concerning the shift assigned for the following week.

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4. Management shall prepare a storm working schedule which will be utilized at the discretion of the Department Manager when, in his opinion, unusually severe and prolonged storm conditions warrant the use of this schedule. The duration of the storm working schedule will also be determined by the Department Manager. Meal compensation will be paid to the employees who are assigned to this storm working schedule as follows:

Employees assigned to work on the storm working schedule within the southwest Ohio and northern Kentucky (DEO/DEK) service territories who have completed five hours of continuous storm work shall be furnished a meal compensation allowance and an additional meal compensation allowance for each five hour interval thereafter, until released from storm duty.

Employees assigned to work on the storm working schedule outside the southwest Ohio and northern Kentucky (DEO/DEK) service territories who have completed five hours of continuous storm work shall be furnished a meal, or compensation in lieu thereof, and an additional meal, or compensation in lieu thereof, for each five hour interval thereafter, until released from storm duty.

Division 10: ELECTRIC METER

1. The Electric Meter Section will operate on a Day Schedule or as described in General Work Rule 1.  
  
The Premise Service Section will operate on a Rotating Shift Schedule or as described in General Work Rule 1.
2. There shall be no working Foremen in this Section.
3. Extra Premise Troubleshooters shall be assigned for periods of one (1) week and will be given not less than forty-eight (48) hours notice concerning the shift assigned for the following week.
4. Extra Premise Troubleshooters will be used to fill assigned shifts at their respective headquarters.

5. Management shall prepare a storm working schedule which will be utilized at the discretion of the Department Manager when, in his opinion, unusually severe and prolonged storm conditions warrant the use of this schedule. The duration of the storm working schedule will also be determined by the Department Manager. Meal compensation will be paid to the employees who are assigned to this storm working schedule as follows:

Employees assigned to work on the storm working schedule who have completed five (5) hours of continuous storm work shall be furnished a meal, or compensation in lieu thereof, and an additional meal, or compensation in lieu thereof, for each five (5) hour interval thereafter, until released from storm duty.

#### Division 11: OVERHEAD TRANSMISSION AND DISTRIBUTION CONSTRUCTION DIVISION

1. The Overhead Transmission and Distribution Section shall operate on a Day Schedule or as described in General Work Rule 1.

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2. The Manual work of the Foremen in this Division shall be restricted to assistance in the handling or placing of heavy materials or equipment, the occasional pulling up of materials to Linemen and similar operations. It is the intention of Management that the primary duties of such Foremen shall be the supervision, planning, inspection and assignment of work to their crews and that no manual work is to be done which will detract from these primary duties.
3. Additional help will be supplied small line crews setting poles and transformers when conditions are such that the normal crews need additional help in the setting of poles and transformers in a safe and workmanlike manner.
4. Management shall prepare a storm working schedule which will be utilized at the discretion of the Department Manager when, in his opinion, unusually severe and prolonged storm conditions warrant the use of this schedule. The duration of the storm working schedule will also be determined by the Department Manager. Meal compensation will be paid to the employees who are assigned to this storm working schedule as follows:

Employees assigned to work on the storm working schedule within the southwest Ohio and northern Kentucky (DEO/DEK) service territories who have completed five hours of continuous storm work shall be furnished a meal compensation allowance and an additional meal compensation allowance for each five hour interval thereafter, until released from storm duty.

Employees assigned to work on the storm working schedule outside the southwest Ohio and northern Kentucky (DEO/DEK) service territories who have completed five hours of continuous storm work shall be furnished a meal, or compensation in lieu thereof, and an additional meal, or compensation in lieu thereof, for each five hour interval thereafter, until released from storm duty.

#### Division 12: UNDERGROUND CABLE AND EQUIPMENT

1. This Division shall operate on a Day Schedule and when required, a Fixed Shift Schedule or as described in General Work Rule 1.
2. There shall be no working Foremen in this Division.

3. When an opening occurs in a job classification within the Cable; Transformer & Equipment; and Test & Operation Sections of the Underground Cable and Equipment Division, job openings will be filled by the multiple posting system as outlined in Article III, Section 7(g).
4. Overtime shall be divided as equally and impartially as possible among all employees within a job classification in each Section of Division 12, such as Cable Section; Transformer & Equipment Section; and the Test & Operation Section.

Division 13: SERVICE DIVISION

(a) MATERIAL AND REPAIR SECTION

The Material and Repair Section shall operate on a Day Shift Schedule and when required on a Modified Shift Schedule or as described in General Work Rule 1.

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(b) MACHINE SHOP SECTION

This Section shall operate on a Day Schedule or as described in General Work Rule 1.

(c) BRECON HEAVY EQUIPMENT AND REPAIR SECTION

This Section shall operate on a Day Schedule or as described in General Work Rule 1.

The manual work of the Foremen in this Division shall be restricted to assistance in the handling or placing of heavy materials or equipment, the occasional pulling up of materials to employees and similar operations. It is the intention of Management that the primary duties of such Foremen shall be the supervision, planning, inspection and assignment of work to their crews and that no manual work is to be done which will detract from these primary duties.

Division 14: POWER DELIVERY WAREHOUSES

1. This Division shall operate on a Modified and a Fixed Shift Schedule (Monday - Friday) in accordance with the negotiated letter dated October 11, 1996, discussing flexibility in work scheduling. Day shifts will be any hours between 6:00 a.m. and 6:30 p.m. Afternoon shifts will be any hours between 2:00 p.m. and 2:00 a.m. Evening shifts will be any hours between 10:00 p.m. and 10:00 a.m.

Each shift will include a one-half hour meal period.

2. The Company shall not require an employee to furnish tools.

Division 15: GENERATION SUPPLY CHAIN

This Division shall operate on a Modified Shift Schedule and, where necessary, a Rotating Shift Schedule in accordance with the negotiated letter dated October 11, 1996, discussing flexibility in work scheduling. Day shifts will be any hours between 6:00 a.m. and 6:30 p.m. Afternoon shifts will be any hours between 2:00 p.m. and 2:00 a.m. Evening shifts will be any hours between 10:00 p.m. and 10:00 a.m.

Each shift will include a one-half hour meal period.

- a) At Woodsdale Storeroom a one-day notice is required to change a schedule from day-to-day.
- b) At Woodsdale Storeroom any schedule can start thirty (30) minutes earlier and end thirty (30) minutes earlier with a one-day notice of a schedule change.

Division 16: FLEET SERVICES

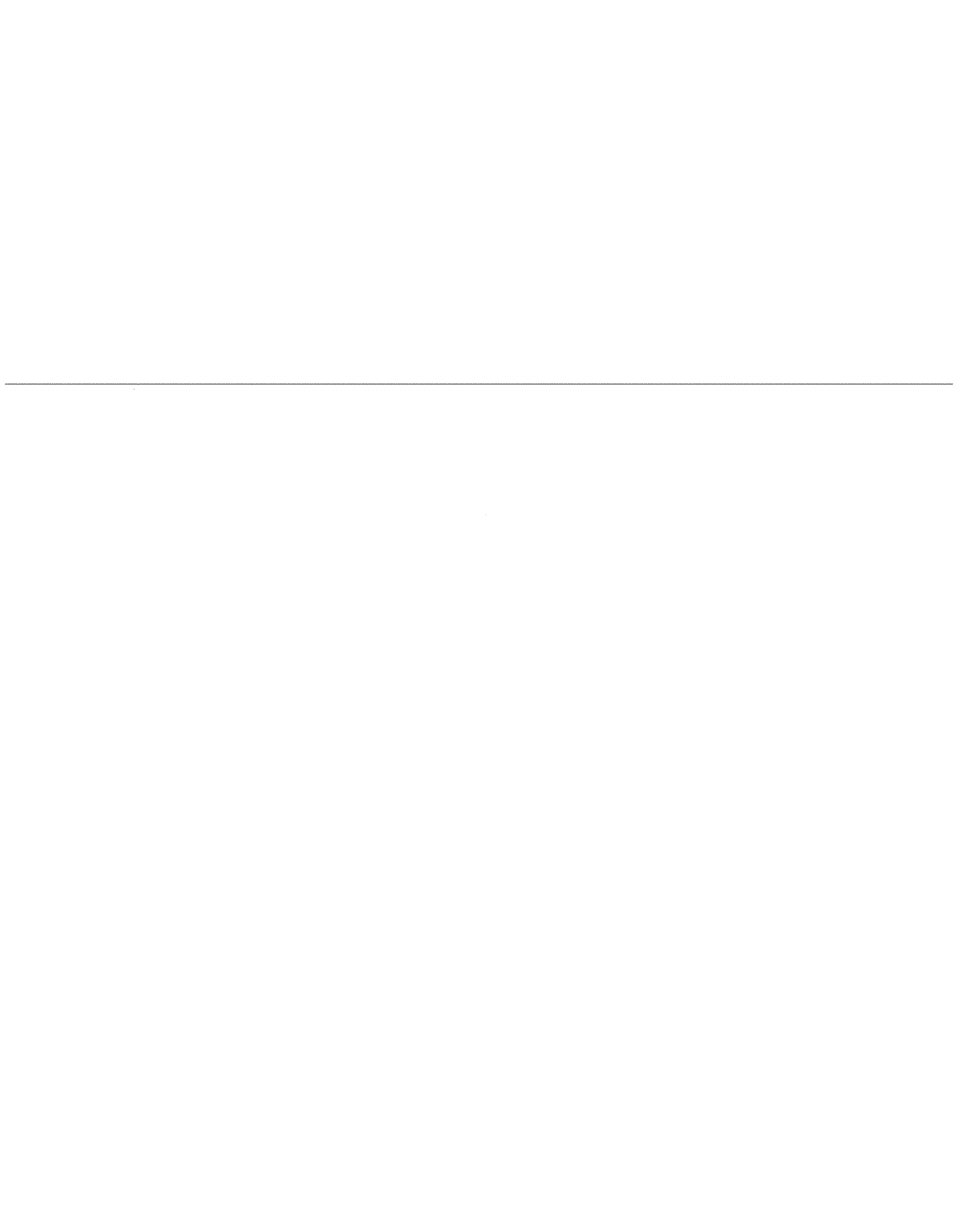
- 1. This Department shall operate on a Fixed Shift Schedule in accordance with the negotiated letter dated October 11, 1996, discussing flexibility in work scheduling. Day shifts will be any hours between 6:00 a.m. and 6:30 p.m. Afternoon shifts will be any hours between 2:00 p.m. and 2:00 a.m. Evening shifts will be any hours between 10:00 p.m. and 10:00 a.m.

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Each shift will include a one-half hour meal period.

Employees in the following listed job classifications on January 1 of each year will be granted a tool allowance applicable to their classification as follows:

	<u>Current</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Transportation Senior Hydraulic, Transportation Senior Mechanic, Transportation Senior Body Mechanic, Transportation Mechanic "A" and Transportation Mechanic "B"	\$325	\$350	\$375	\$400	\$425



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-045**

**REQUEST:**

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Please provide copies of any and all documents the Joint Applicants have filed with the Securities and Exchange Commission regarding the contemplated transaction, to the extent not already provided.

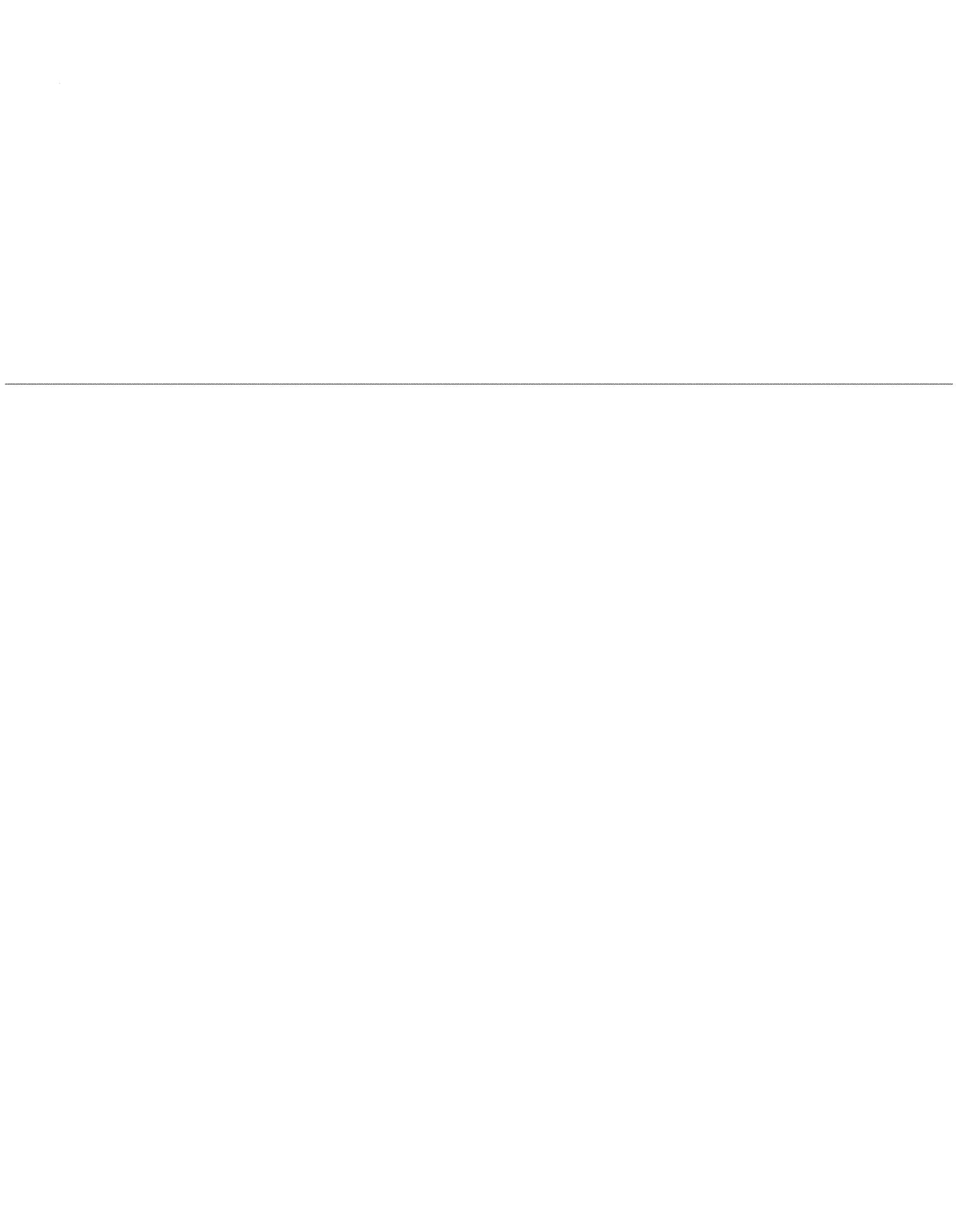
**RESPONSE:**

Please see the links to Duke Energy's and Progress Energy's SEC filings listed below:

<http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001326160&owner=exclude&count=40>

<http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001094093&owner=exclude&count=40>

**PERSON RESPONSIBLE:** Stephen De May / Holly H. Wenger



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-046**

**REQUEST:**

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Please state whether the Joint Applicants will agree to make available for inspection copies of any and all documents they have filed with any and all other regulatory bodies, whether state or federal, regarding the contemplated transaction. If yes, please provide same. If not, please explain why not, especially on grounds of relevancy.

**RESPONSE:**

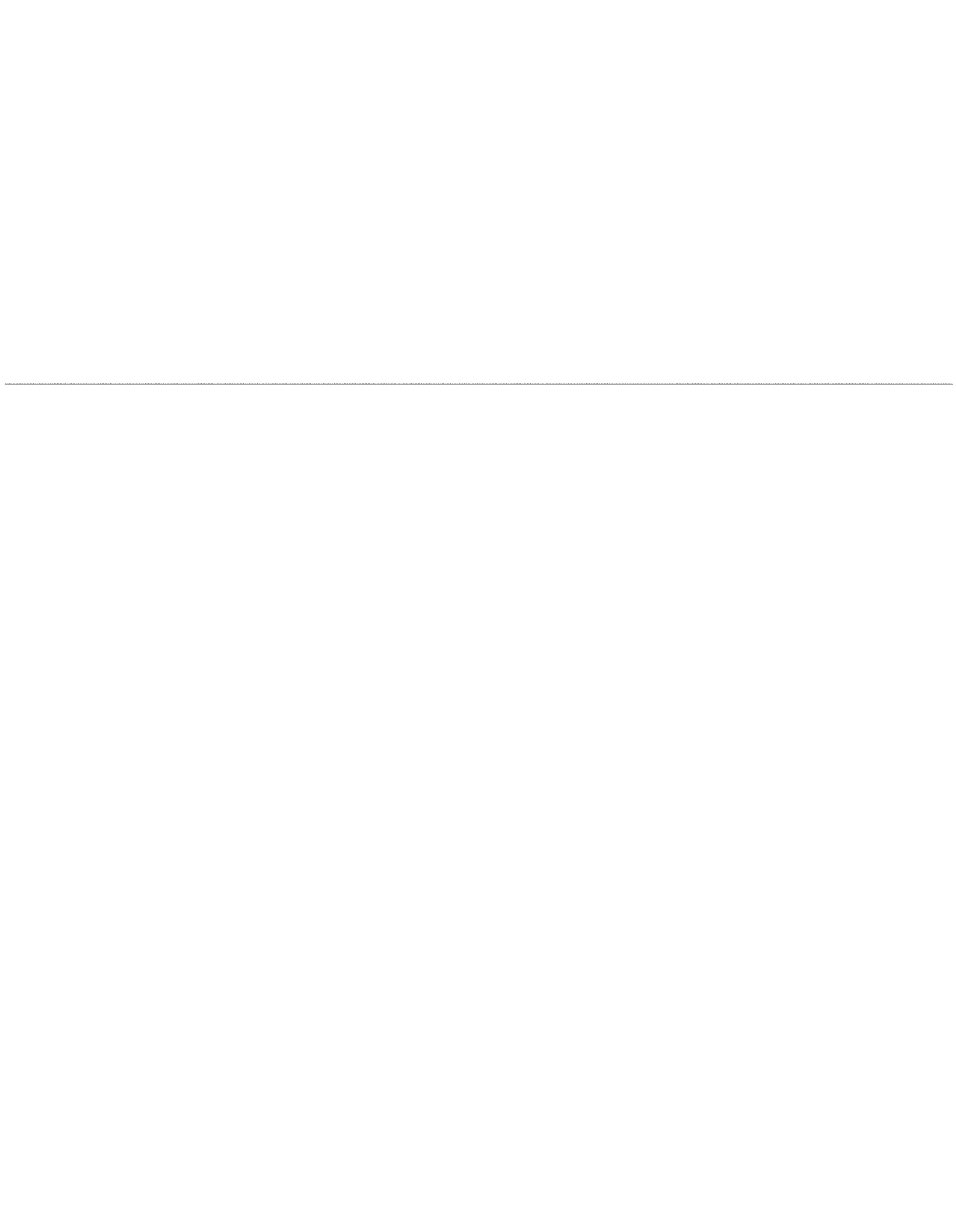
Objection. This request is overly broad and unduly burdensome with respect to “any and all other regulatory bodies.” Documents filed with the Federal Energy Regulatory Commission, North Carolina Utilities Commission, and Public Service Commission of South Carolina are publicly available and can be acquired by the Attorney General.

Without waiving said objection, to the extent not already provided, or publicly available and not otherwise protected under the doctrines of attorney client privilege or attorney work product, to the extent relevant, and subject to appropriate and applicable protections for confidential and proprietary trade secret information, Joint Applicants agree to make available for inspection any and all documents related to this transaction that are filed by Joint Applicants in other jurisdictions.

**PERSON RESPONSIBLE: Objection- Legal**

**James E. Rogers**





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-047**

**REQUEST:**

Please provide copies of any and all reports and other documents identifying synergies expected to result from the contemplated transaction.

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- a. Separately identify any synergies, with costs detailed, affecting the Joint Applicants' Kentucky-based operations; and
- b. State whether any synergy savings, with costs detailed, will be shared with the Joint Applicants' customers, and if so, whether this includes Kentucky customers, and how much.

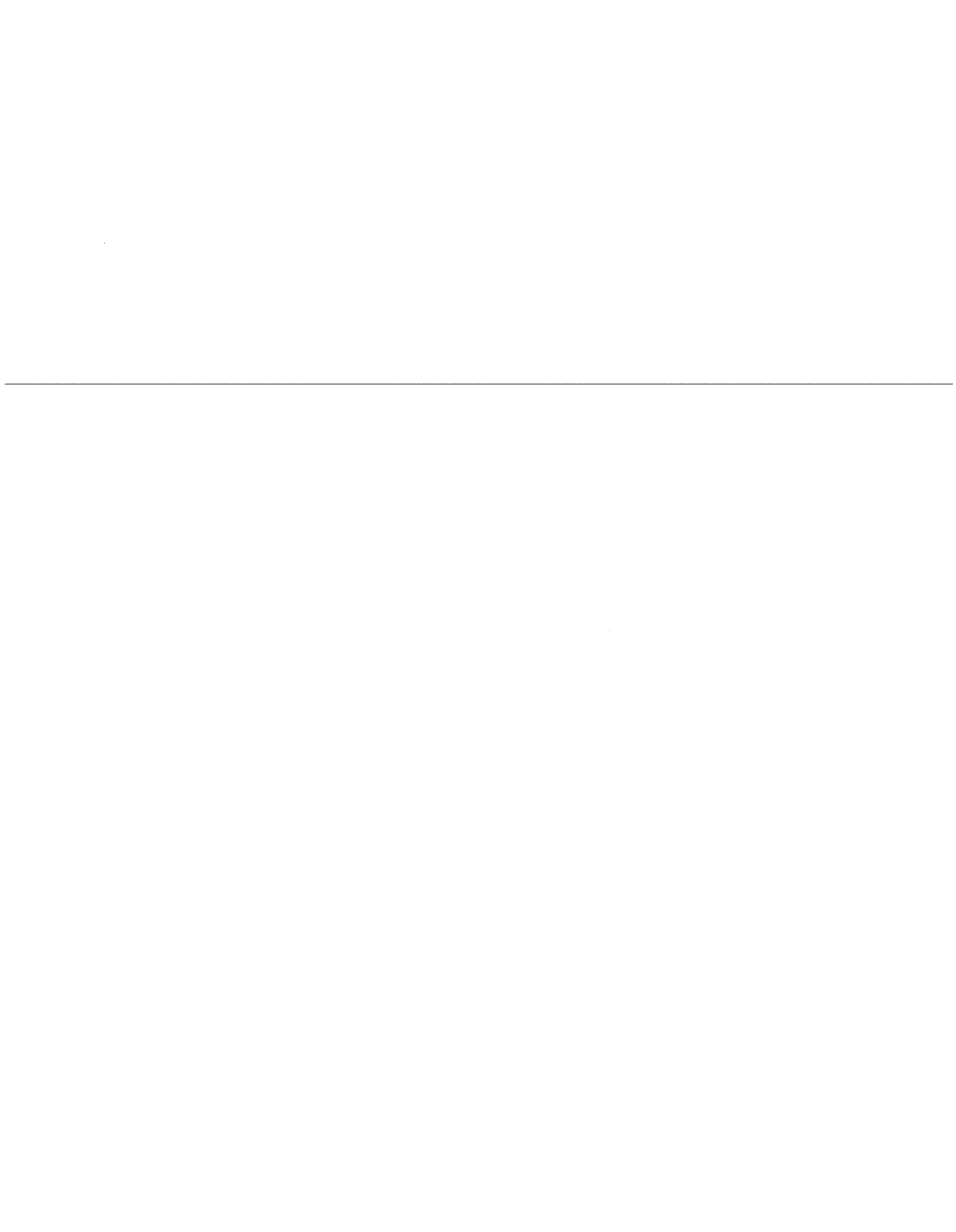
**RESPONSE:**

Objection. This document request seeks to elicit information protected by the attorney-client privilege and/or attorney work product privilege. Without waiving said objection, see response to question #18.

- a. Synergy savings and related costs to achieve were not specifically identified for Duke Energy Kentucky. Duke Energy Kentucky represents approximately 1.6% of the new Duke Energy; therefore, approximately 1.6% of certain nonfuel costs to achieve and nonfuel synergy savings will be allocated to Duke Energy Kentucky. Not all net synergy savings will be allocable to Duke Energy Kentucky. For example, nuclear related net savings are not allocable to Duke Energy Kentucky, but corporate and administrative net savings are.
- b. Customers will receive the benefits of any savings net of costs to achieve in future rate proceedings over time. The net savings from the merger will serve to reduce the amount of future rate increases required. Please see response to Attorney General's question in AG-DR-01-32.

**PERSON RESPONSIBLE:** As to Objection – Legal  
Brian Savoy (a)  
AR Mullinax (b)





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-048 PUBLIC**

**REQUEST:**

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Please provide copies of any and all reports and other documents identifying economies of scale or scope, with costs detailed, expected to result from the contemplated transaction.

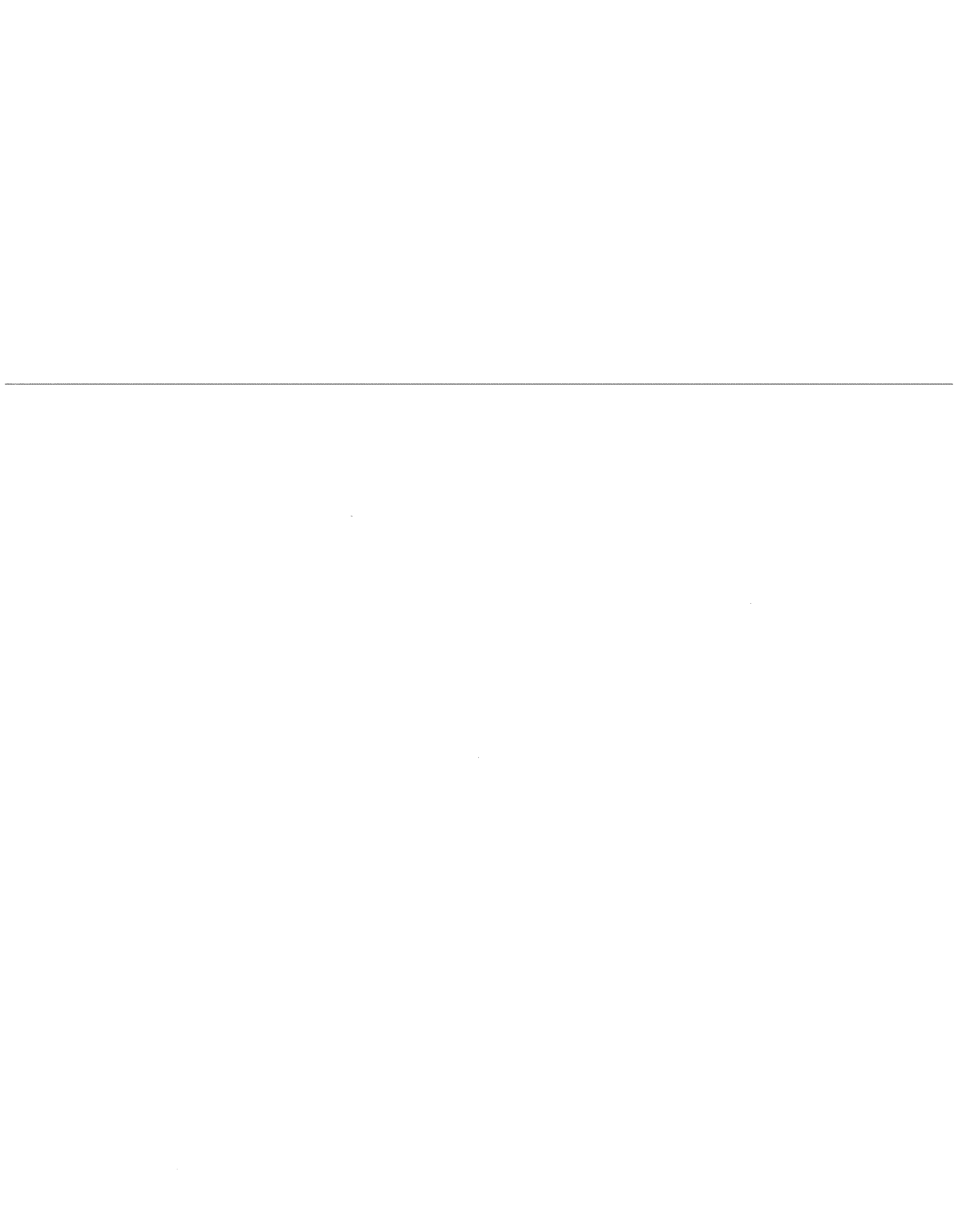
- a. Identify any economies of scope or scale, with costs detailed, affecting the Joint Applicants' Kentucky-based operations; and
- b. State whether any savings related to economies of scale or scope, with costs detailed, will be shared with the Joint Applicants' customers, and if so, how much.

**RESPONSE:**

**CONFIDENTIAL PROPRIETARY TRADE SECRET**

This response has been filed with the Commission under a Petition for Confidential Treatment.

**PERSON RESPONSIBLE:** As to Objection - Legal  
William Don Wathen Jr/ Brian Savoy/ AR Mullinax



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-049**

**REQUEST:**

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Please state whether any of the executive management of DEK, its corporate parent entities or affiliates, or of Progress Energy, and members of their proposed board of directors are members, officers, partners, directors of, or have a controlling interest in, any business entity engaged in the electric or gas industry other than the Joint Applicants, and if so, identify them by name and by type of interest.

**RESPONSE:**

Objection. This request is overbroad and unduly burdensome to the extent it requests information beyond the jurisdiction of Kentucky and that is irrelevant to this proceeding. This transaction results in an indirect change of control over Duke Energy Kentucky, and thus Duke Energy Corporation will continue to own and operate Duke Energy Kentucky upon consummation of the acquisition of Progress Energy. Accordingly, although this question is directed to "Joint Applicants," it is inapplicable to Progress Energy. The question is applicable to Duke Energy Corporation and its affiliated companies, and thus the response is made on behalf of those entities.

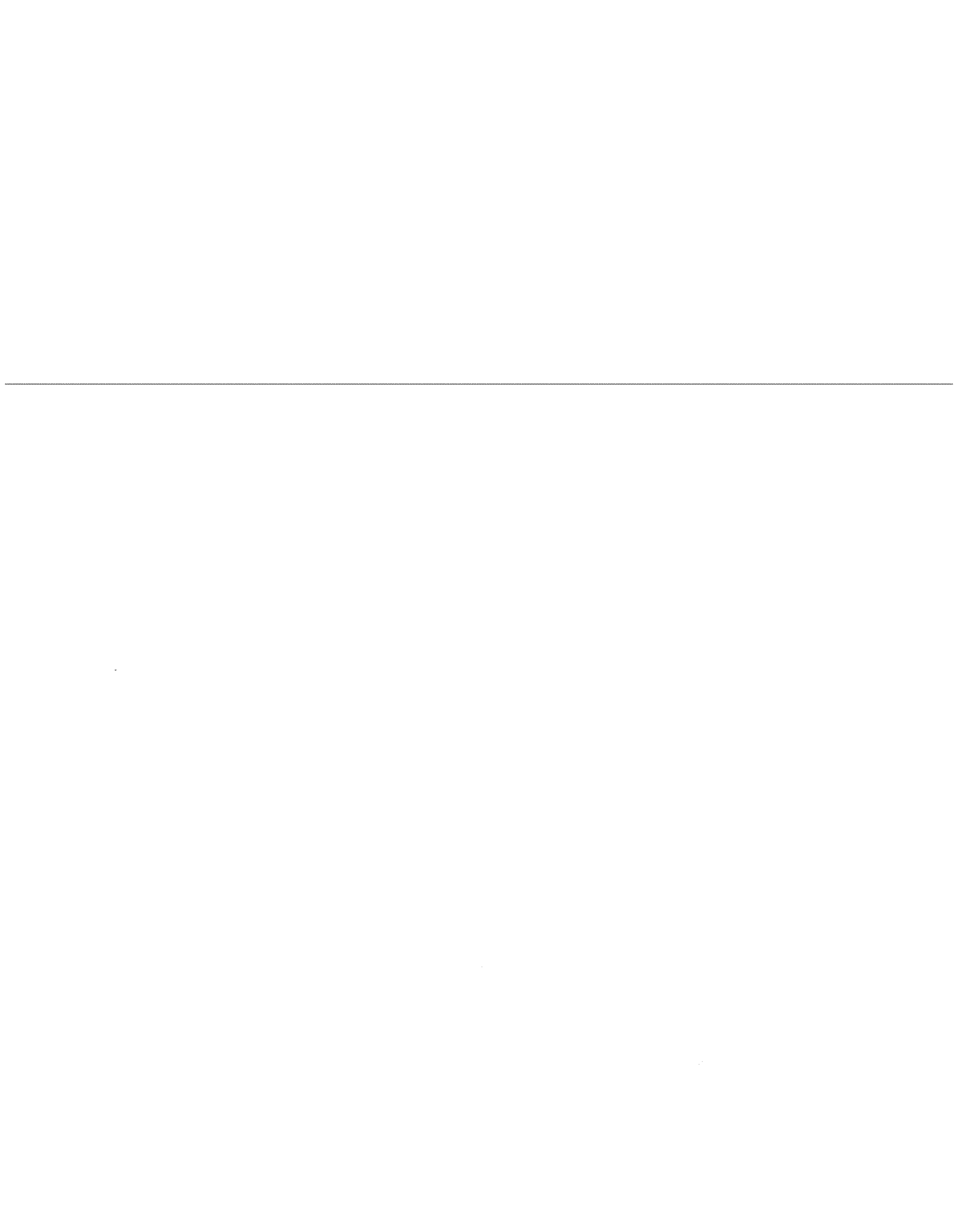
Without waiving said objection, please see Attachment AG-DR-01-49 (1)-(2) for Duke Energy Corporation's FERC Form 561 (Annual Report of Interlocking Positions) and List of Duke Public Utilities Subject to Interlock Regulations under 18 C.F.R. § 45.2(b)(1)<sup>1</sup>

**PERSON RESPONSIBLE:** Objection- Legal

James E. Rogers

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<sup>1</sup> "Public utility" means "any person who owns or operates facilities for the transmission of electric energy in interstate commerce, or any person who owns or operates facilities for the sale at wholesale of electric energy in interstate commerce." 18 C.F.R. § 45.2(b)(1) (2010).





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-050**

**REQUEST:**

Please identify, in detail, any and all tax savings the Joint Applicants expect to result from the contemplated transaction, and provide any relevant quantifications.

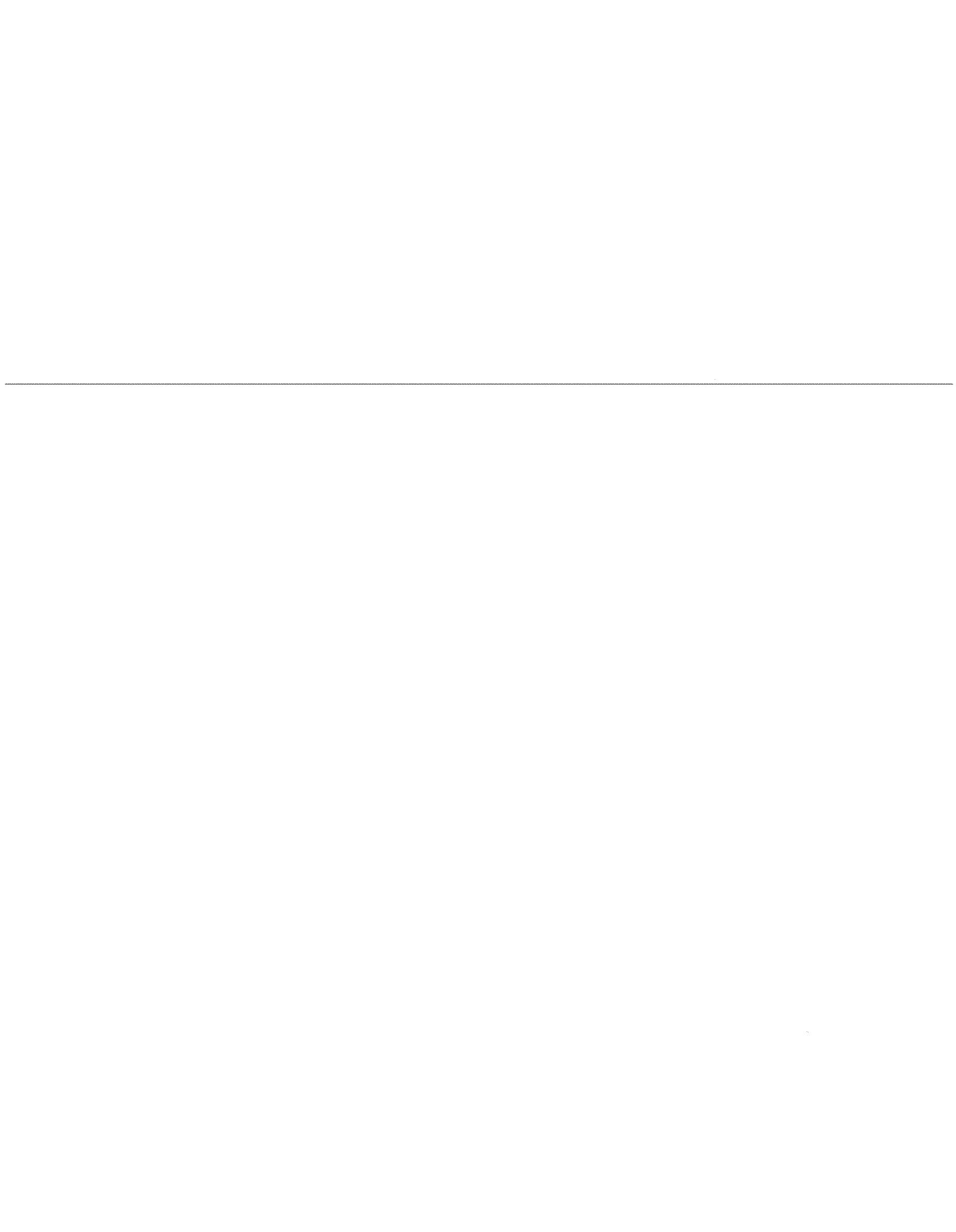
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**RESPONSE:**

This transaction results in an indirect change of control over Duke Energy Kentucky, and thus Duke Energy Corporation will continue to own and operate Duke Energy Kentucky upon consummation of the acquisition of Progress Energy. Accordingly, although this question is directed to "Joint Applicants," it is inapplicable to Progress Energy. The question is applicable to Duke Energy Corporation and its affiliated companies, and thus the response is made on behalf of those entities.

At this time, the Joint Applicants have not identified or quantified any specific tax savings with respect to the contemplated transaction.

**PERSON RESPONSIBLE:** Keith Butler



**AG-DR-01-051**

**REQUEST:**

Please state whether the Joint Applicants currently have any deferred tax accounts on their balance sheets. If "yes," please identify the account(s), the amount carried therein, and provide a summary of the nature of the balance.

- a. For each deferred tax balance identified above, please state what impact the contemplated transaction will have on the account (e.g., will the contemplated transaction result in a loss of any deferred tax credits?).

**RESPONSE:**

Objection. This Interrogatory is overly broad and unduly burdensome to the extent it seeks information beyond the Kentucky jurisdiction. This request is irrelevant and beyond the scope of the proceeding. This transaction results in an indirect change of control over Duke Energy Kentucky, and thus Duke Energy Corporation will continue to own and operate Duke Energy Kentucky upon consummation of the acquisition of Progress Energy. Accordingly, although this question is directed to "Joint Applicants," it is inapplicable to Progress Energy. Without waiving said objection, balances for Duke Energy Kentucky are as follows:

As of March 31, 2011, Duke Energy Kentucky had balances in its deferred tax accounts on its balance sheet as follows:

Account 190	\$ 1,181,945
Account 281	\$ (197,747)
Account 282	\$ (218,694,154)
Account 283	\$ (3,781,101)

Debit/(Credit) balance in account

Account 190 is primarily benefit related deferred taxes

Account 281 is primarily pollution control related deferred taxes

Account 282 is primarily depreciation and other related property, plant & equipment related deferred taxes

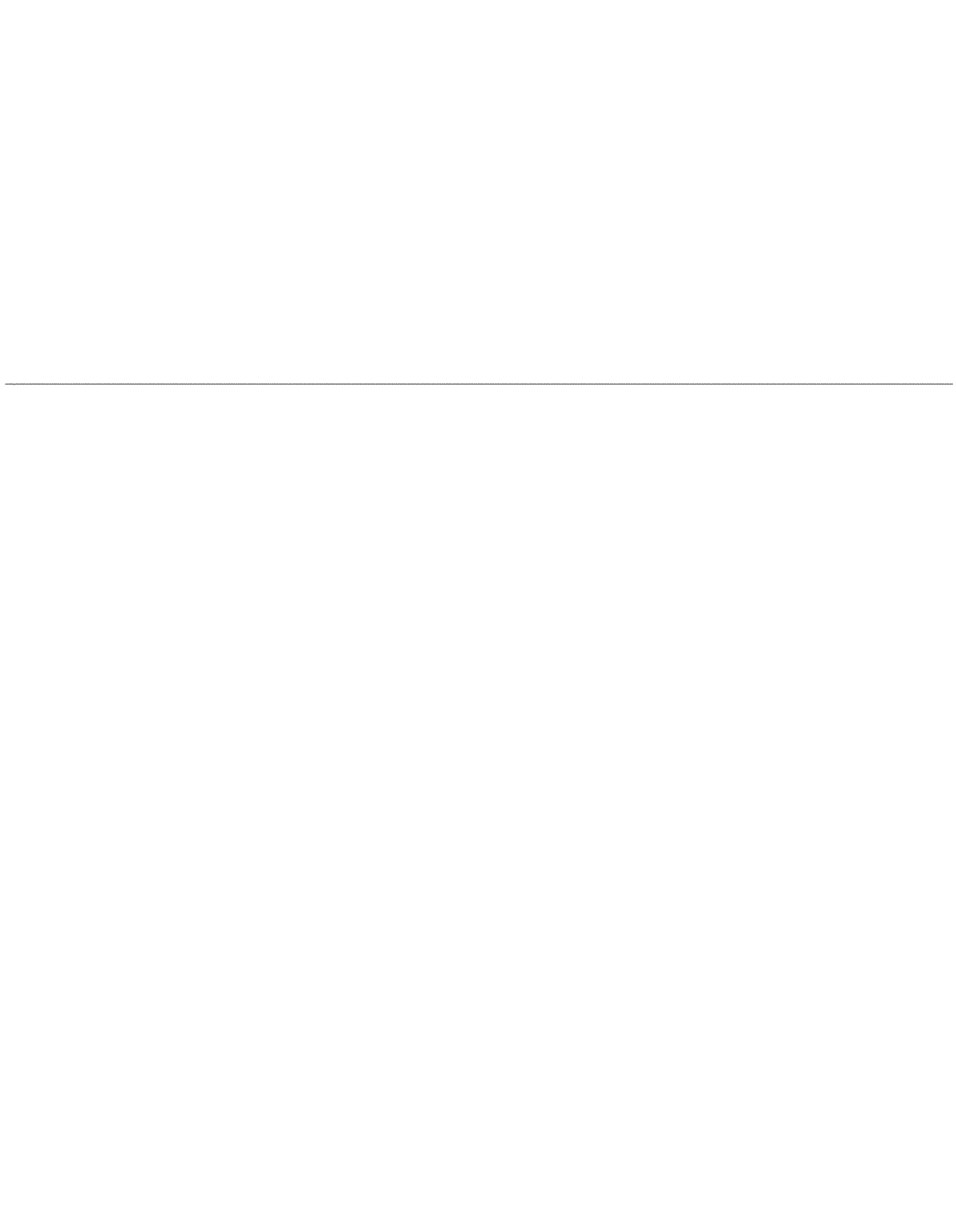
Account 283 is primarily regulatory asset/liability related deferred taxes

The merger will have no impact to Duke Energy Kentucky's deferred taxes.

**PERSON RESPONSIBLE:** Objection-Legal

Keith Butler

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**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-052 PUBLIC**

**REQUEST:**

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Do the Joint Applicants agree that there are two categories of costs for the proposed transaction, namely: (1) costs-to-achieve the transaction (e.g., due diligence reports, legal counsel, etc.); and (2) costs-to-achieve cost savings in the post-transaction structure (e.g., systems integration, etc.)? If not, please identify the categories and provide a definition. Regardless of the answer, please provide the following:

- a. For the costs-to-achieve the transaction, explain how the Joint Applicants determine the costs that are allocated to or the responsibility of their respective shareholders, and those costs that are allocated to or the responsibility of their respective ratepayers, if any. Include any allocation methodologies.
- b. For the costs-to-achieve cost the post-transaction structure, explain how the Joint Applicants determine the costs that are allocated to or the responsibility of their respective shareholders, and those costs that are allocated to or the responsibility of their respective ratepayers, if any. Include any allocation methodologies.
- c. For the costs-to-achieve the transaction, explain how the Joint Applicants determine the costs that are allocated to or the responsibility of their respective non-regulated operations. Include any allocation methodologies.
- d. For the costs-to-achieve cost the post-transaction structure, explain how the Joint Applicants determine the costs that are allocated to or the responsibility of their respective regulated operations. Include any allocation methodologies.
- e. Do the Joint Applicants agree that there are certain costs associated with the contemplated transaction that are attributable solely to the process of obtaining the approval of the transaction (e.g. legal counsel for the regulatory proceedings)?
- f. Do the Joint Applicants consider the reduction of tax liability or the obtainment of tax benefits as cost savings?
- g. Do the Joint Applicants consider the reduction of a company's or unit's operating loss a cost savings?

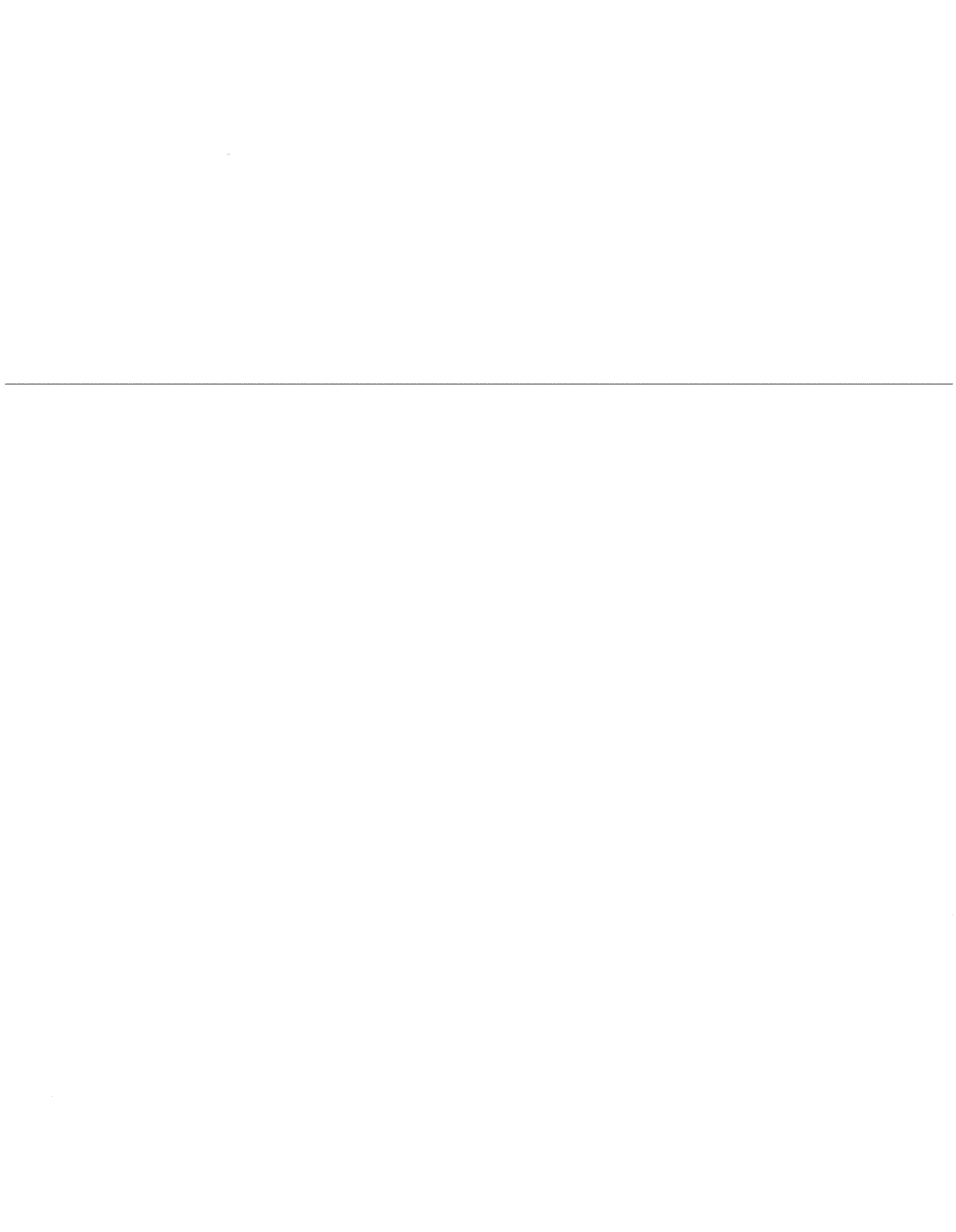
- h. Please supply an itemized schedule that shows the cost-to-achieve the transaction by year for as many years as your projections provide. (This is a request for a schedule that shows the estimated costs by year, by applicant.)
- i. For the schedule requested under sub-part [h] (the prior question), please identify by year for as many years as your projections provide the following:
- (1) the assignment of costs to each of the Joint Applicants' shareholders;
  - (2) the assignment of costs to each of the Joint Applicants' ratepayers, if any; and
  - (3) the breakdown of the assignment of costs between regulated and non-regulated operations of each of the Joint Applicants.
- 
- j. Please supply an itemized schedule that shows the costs-to-achieve the cost savings in the post-transaction structure by year for as many years as your projections provide. (This is a request for a schedule that depicts the estimated costs by year.)
- k. For the schedule requested under sub-part [j] (the prior question), please identify by year for as many years as your projections provide the following:
- (1) the assignment of costs to each of the Joint Applicants' shareholders;
  - (2) the assignment of costs to each of the Joint Applicants' ratepayers, if any; and
  - (3) the breakdown of the assignment of costs between regulated and non-regulated operations.

**RESPONSE:**

**CONFIDENTIAL PROPRIETARY TRADE SECRET**

This response has been filed with the Commission under a Petition for Confidential Treatment.

**PERSON RESPONSIBLE:** Objection-Legal  
(a-d, i-k) Brian Savoy  
(e,g) Don Wathen  
(f) Keith Butler  
(h,j) AR Mullinax





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-053**

**REQUEST:**

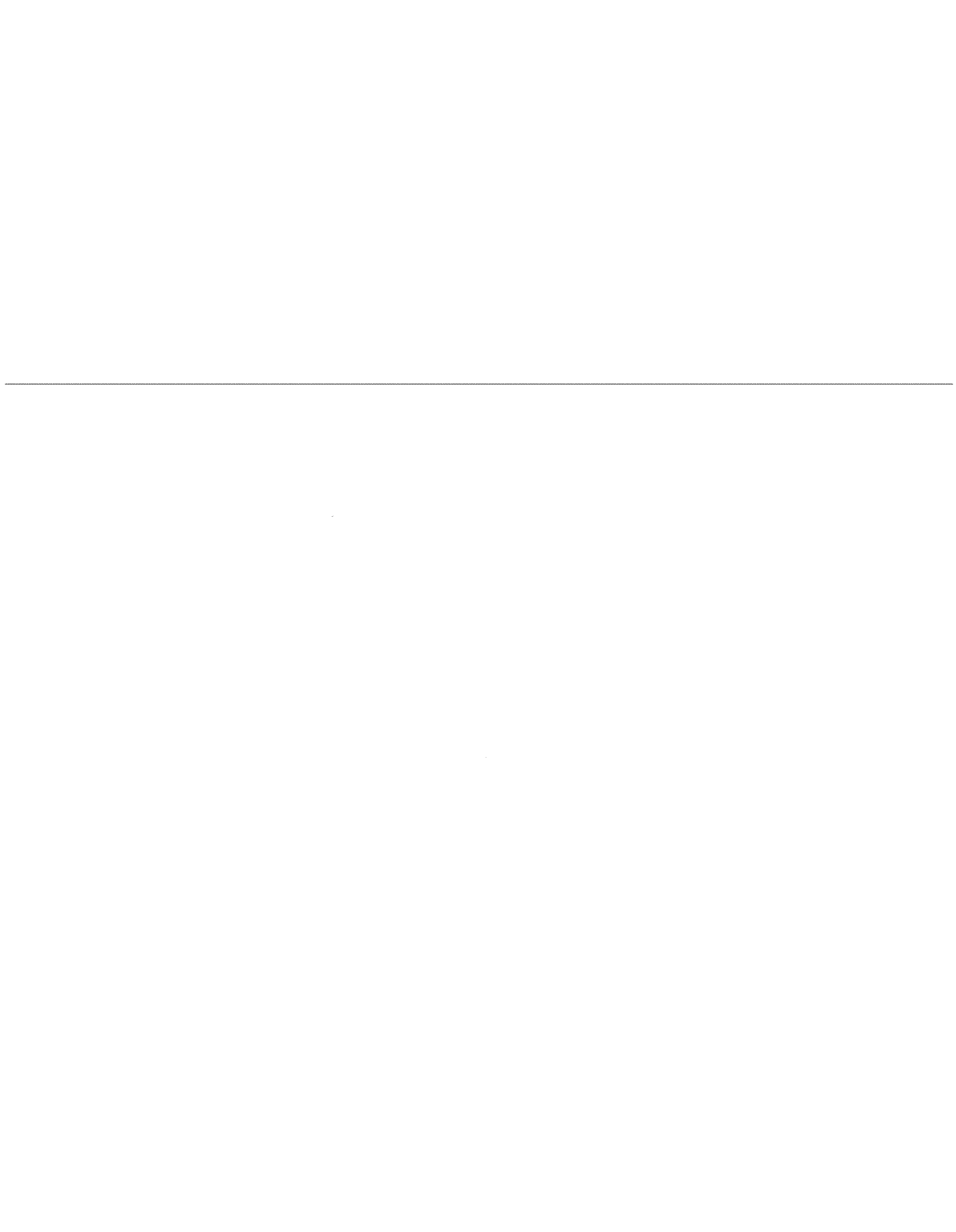
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For each category of costs to achieve cost savings in the post transaction structure, did both of the Joint Applicants determine the allocation percentages to separate out the non-regulated cost savings from the regulated costs savings? For example, did the Joint Applicants determine the amount of total staffing cost savings to allocate to regulated operations and the amount to allocate to non-regulated operations?

**RESPONSE:**

Non-regulated operations are expected to represent approximately 10% of the new Duke Energy and regulated operations approximately 90%. Therefore, it is reasonable to assume that the non-regulated operations will be allocated approximately 10% of the estimated allocable nonfuel costs to achieve associated with corporate and administrative functions, with the remaining 90% allocated to the regulated operations. Any specific costs to achieve directly identified for non-regulated functions will be assigned 100% to the non-regulated operations and similarly, specific costs to achieve directly identified for regulated functions will be assigned 100% to regulated operations.

**PERSON RESPONSIBLE:** Brian Savoy



**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**AG-DR-01-054 PUBLIC**

**REQUEST:**

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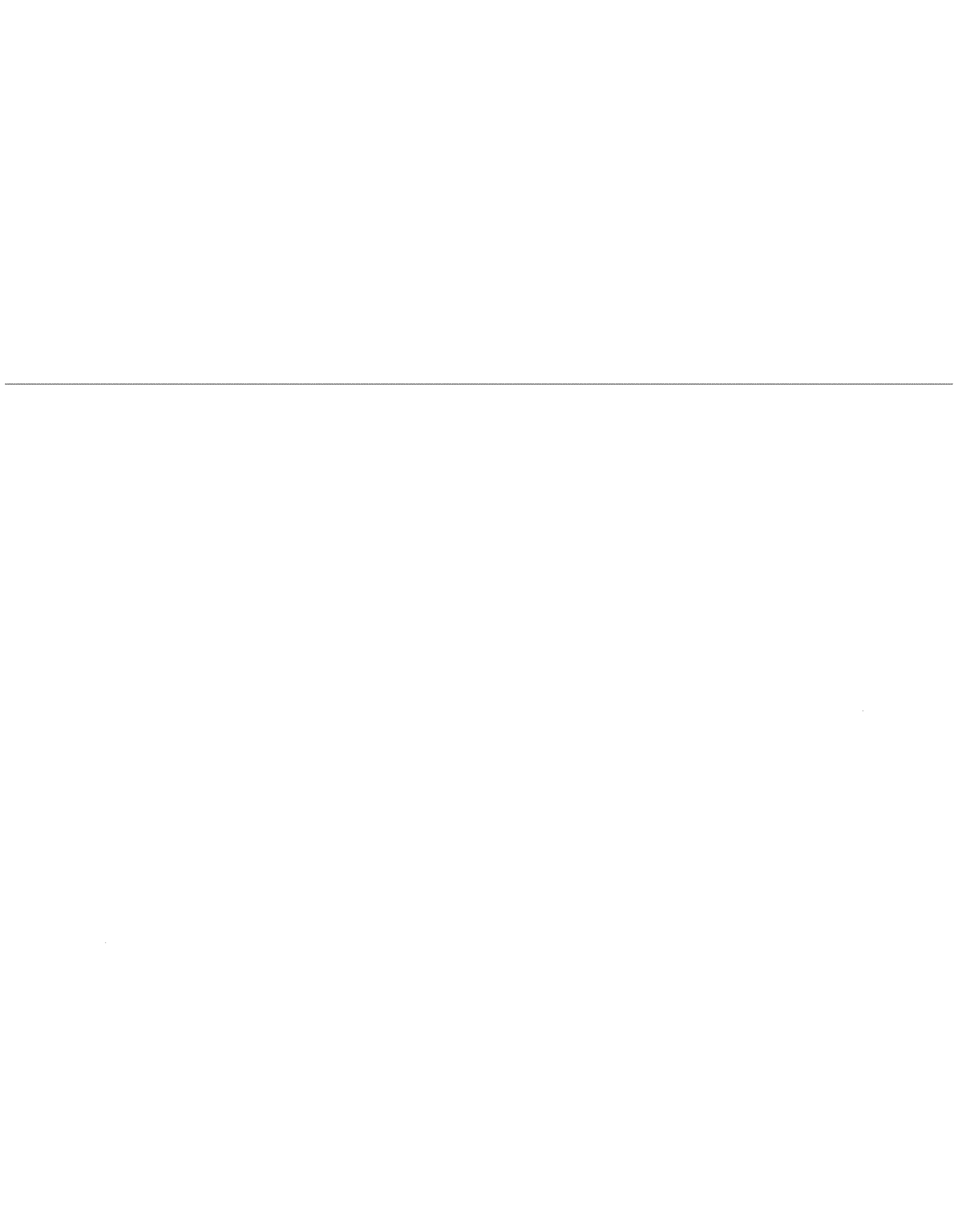
Please provide documentation of all allocations. If the Joint Applicants did not do so, please explain why.

**RESPONSE:**

**CONFIDENTIAL PROPRIETARY TRADE SECRET**

This response has been filed with the Commission under a Petition for Confidential Treatment.

**PERSON RESPONSIBLE:** Brian Savoy



**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**PUBLIC AG-DR-01-055**

**REQUEST:**

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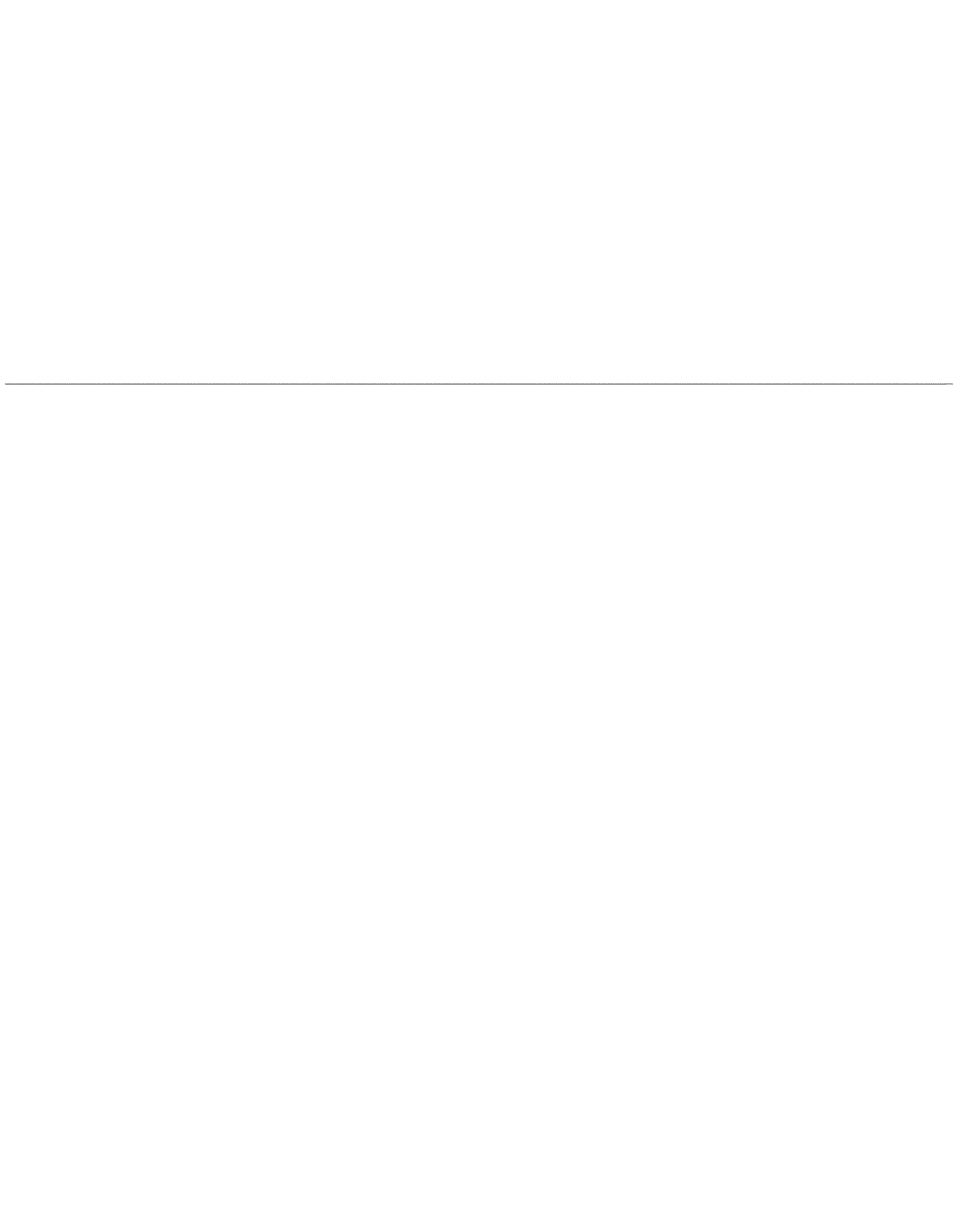
For each category of costs to achieve cost savings in the post transaction structure, identify the allocation process, including the factors, for allocating costs between regulated and non-regulated operations.

**RESPONSE:**

**CONFIDENTIAL PROPRIETARY TRADE SECRET**

This response has been filed with the Commission under a Petition for Confidential Treatment.

**PERSON RESPONSIBLE:** Brian Savoy



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-056**

**REQUEST:**

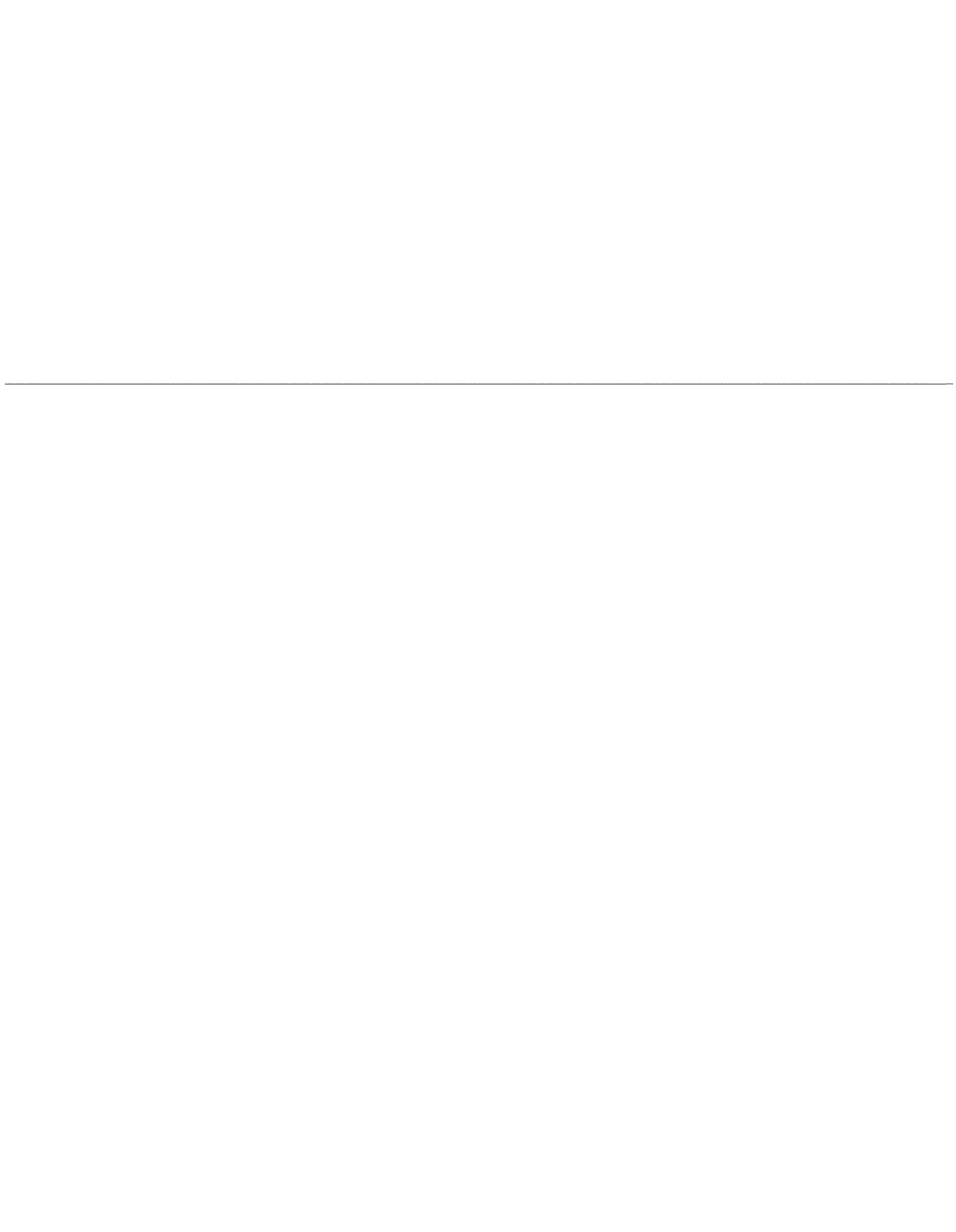
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For each category of costs to achieve cost savings in the post transaction structure, identify the corresponding amount of cost savings allocated to non-regulated operations for that category.

**RESPONSE:**

Cost savings were not specifically identified for regulated and non-regulated operations. However, non-regulated cost savings estimates can be calculated based on net savings estimated for Duke Energy that are allocable to non-regulated operations. Non-regulated operations represents approximately 10% of the new Duke Energy; therefore, approximately 10% of certain non-fuel net savings will be allocated to non-regulated operations. Not all net savings will be allocable to non-regulated operations. For example, nuclear related net savings are not allocable to non-regulated, but corporate and administrative net savings are. Please see response to AG-DR-01-32.

**PERSON RESPONSIBLE:** Brian Savoy





**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**AG-DR-01-057 PUBLIC**

**REQUEST:**

Please provide a copy of any and all due diligence report(s) conducted.

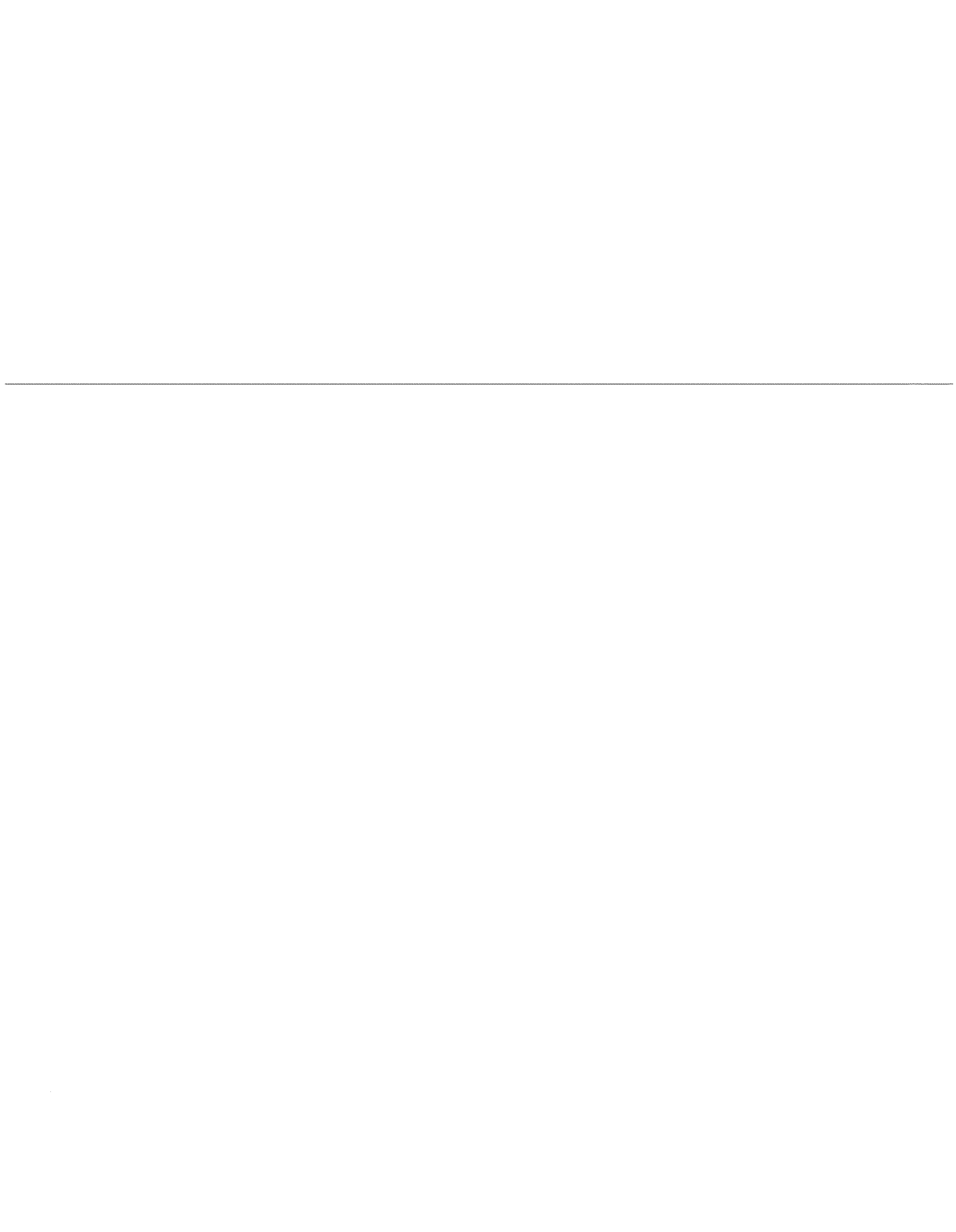
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**RESPONSE:**

**CONFIDENTIAL PROPRIETARY TRADE SECRET**

This response has been filed with the Commission under a Petition for Confidential Treatment.

**PERSON RESPONSIBLE:** As to Objection - Legal



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-058**

**REQUEST:**

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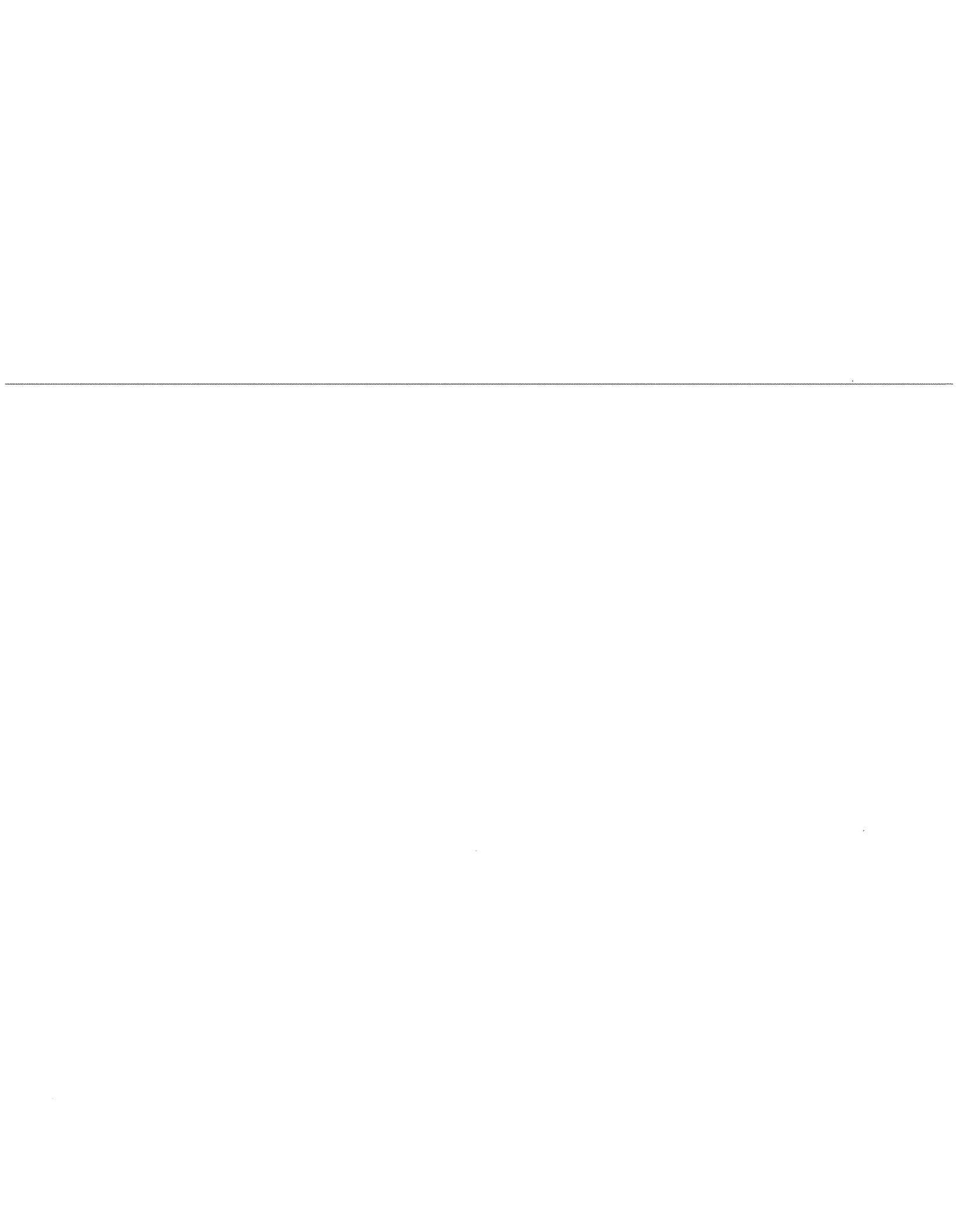
In the course of conducting their due diligence reviews, did the Joint Applicants identify any facts or circumstances that would have a material adverse effect on their customers? If yes, please identify same and provide the associated documents.

**RESPONSE:**

Objection. This request is overbroad and unduly burdensome to the extent it requests information beyond the jurisdiction of Kentucky. This transaction results in an indirect change of control over Duke Energy Kentucky, and thus Duke Energy Corporation will continue to own and operate Duke Energy Kentucky upon consummation of the acquisition of Progress Energy. Accordingly, although this question is directed to "Joint Applicants," it is inapplicable to Progress Energy. The question is applicable to Duke Energy Corporation and its affiliated companies, and thus the response is made on behalf of those entities.

Duke Energy believes that the contemplated transaction will benefit customers over time. However, in the course of its due diligence review, Duke Energy did consider business and other risks. See "Risk Factors" in Amendment No. 2 to the Registration Statement on Form S-4 filed by Duke Energy with the Securities and Exchange Commission on April 25, 2011.

**PERSON RESPONSIBLE:** James E. Rogers



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-059**

**REQUEST:**

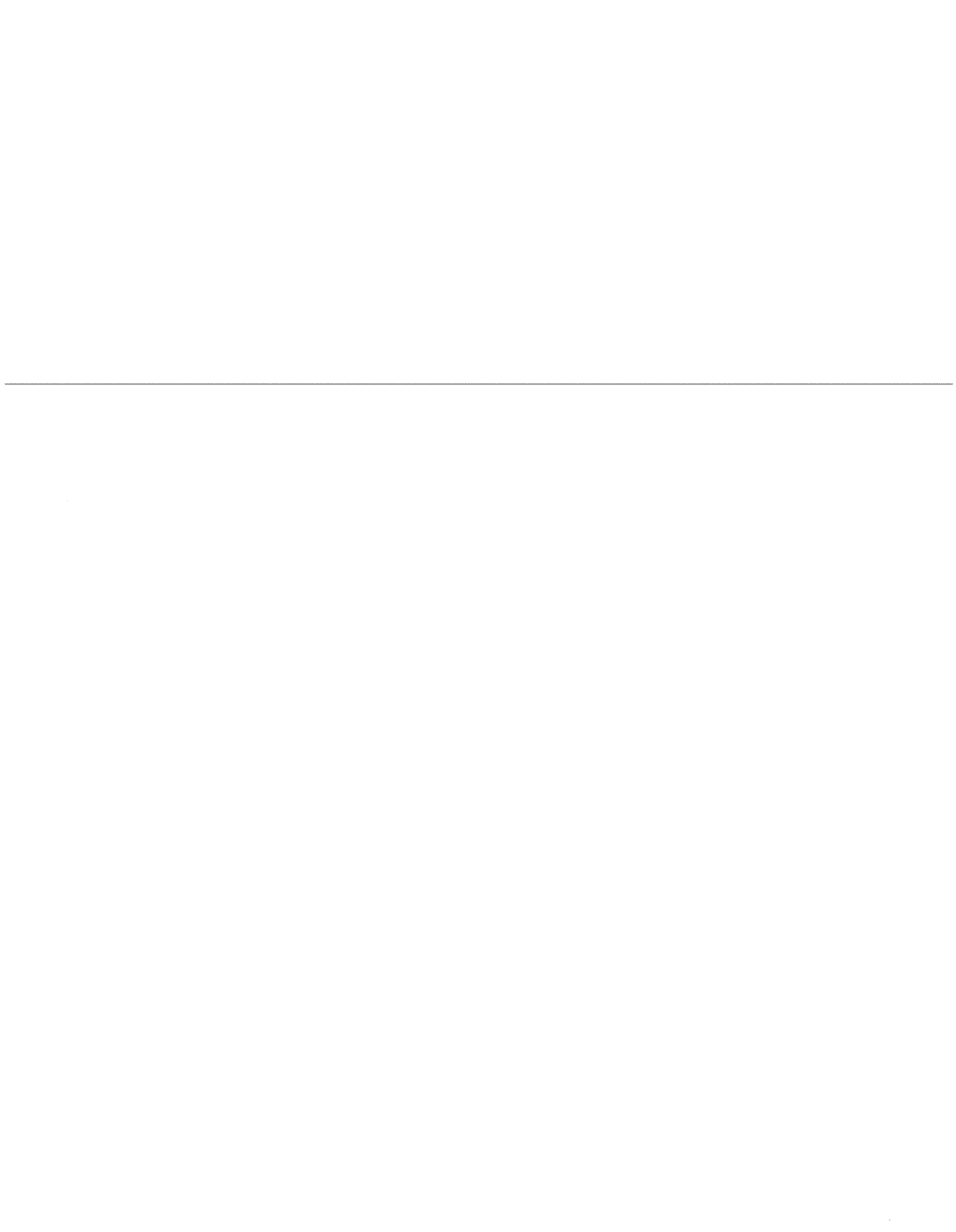
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Will the contemplated transaction result in any changes in accounting principles for either of the Joint Applicants or any of their subsidiaries or affiliates? If yes, please summarize the change(s), and identify the impact on DEK ratepayers, whether direct or indirect, if any.

**RESPONSE:**

A determination has not been made at this time whether or not there will be any changes in accounting principles for either the joint applicants or any of their subsidiaries or affiliates as a result of consummation of the contemplated transaction. However, no items have been identified to date, nor are any currently anticipated, that would have any impact on Duke Energy Kentucky ratepayers. Please see the Direct Testimony of Danny Wiles (Joint Application, Exhibit P), which discusses how accounting principles applicable to this transaction apply to Duke Energy Kentucky.

**PERSON RESPONSIBLE:** Danny Wiles



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-060**

**REQUEST:**

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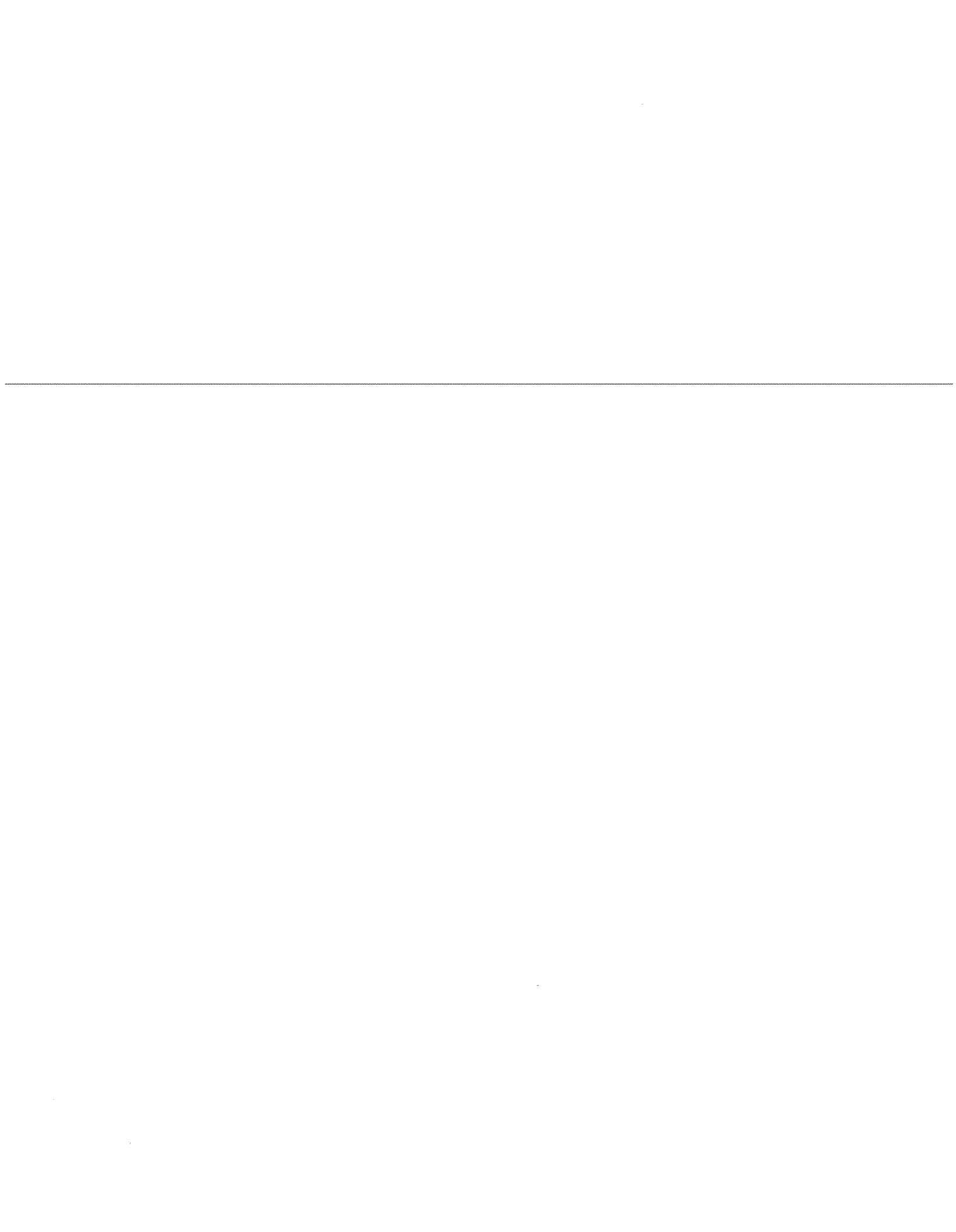
Do the Joint Applicants anticipate any substantive changes in any existing contracts of the Joint Applicants with other vendors (e.g., engineering, information technology, maintenance, etc.)? If so, please summarize the changes.

**RESPONSE:**

Objection. This request is overbroad and unduly burdensome to the extent it requests information beyond the jurisdiction of Kentucky. This transaction results in an indirect change of control over Duke Energy Kentucky, and thus Duke Energy Corporation will continue to own and operate Duke Energy Kentucky upon consummation of the acquisition of Progress Energy. Accordingly, although this question is directed to "Joint Applicants," it is inapplicable to Progress Energy. The question is applicable to Duke Energy Corporation and its affiliated companies, and thus the response is made on behalf of those entities.

All contractual commitments will be met while evaluations will be initiated for more optimum ways to secure products and services for all major areas of the business over time.

**PERSON RESPONSIBLE:** AR Mullinax





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-061**

**REQUEST:**

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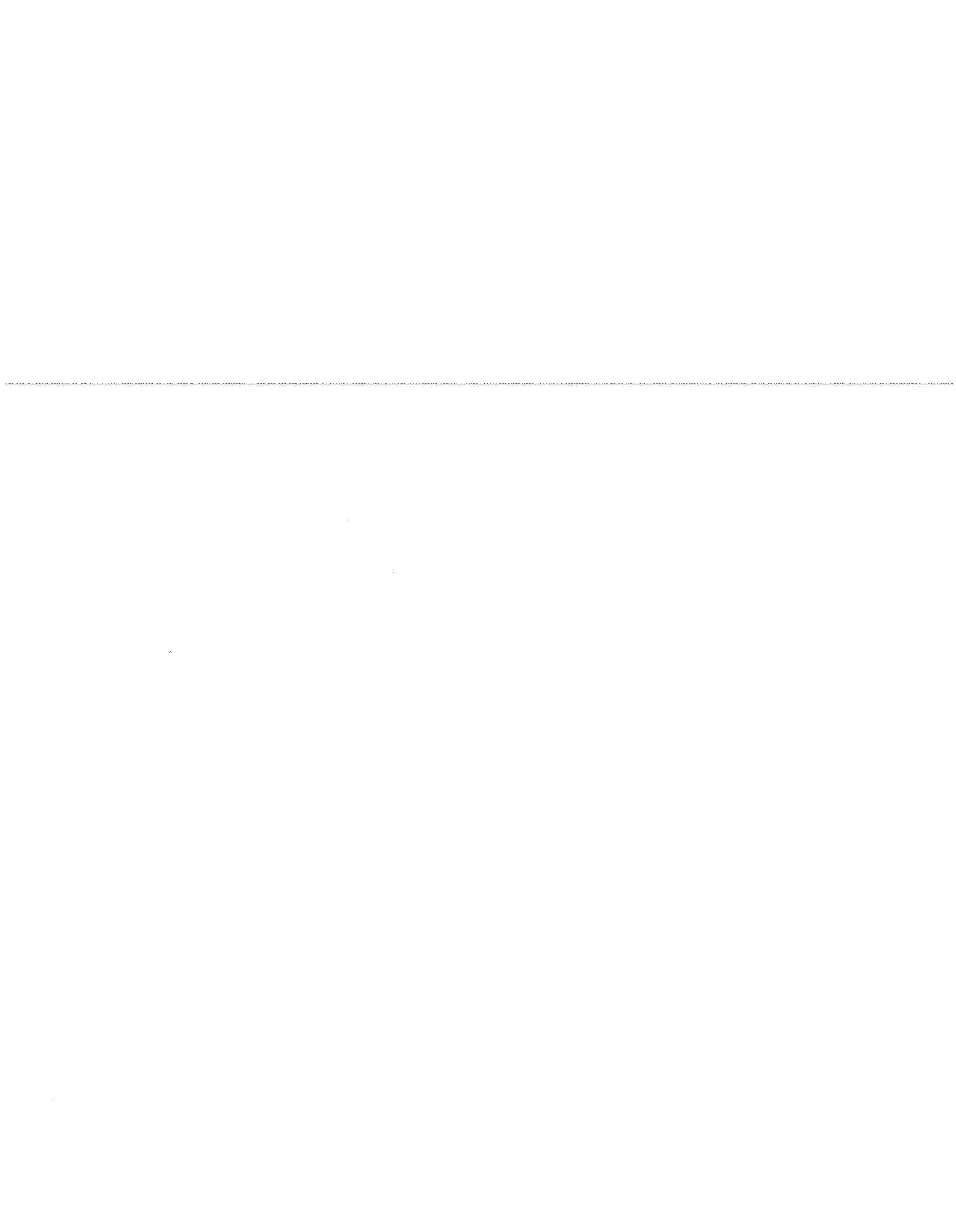
Do the Joint Applicants anticipate entering any new contracts as a consequence of the contemplated transaction? If so, will any of the entities with whom the Joint Applicants will enter into said contract(s) be affiliated in any way with the Joint Applicants, or any of their employees, stockholders, officers, contractors, consultants, or directors?

**RESPONSE:**

Objection. This request is overbroad and unduly burdensome to the extent it requests information beyond the jurisdiction of Kentucky. This transaction results in an indirect change of control over Duke Energy Kentucky, and thus Duke Energy Corporation will continue to own and operate Duke Energy Kentucky upon consummation of the acquisition of Progress Energy. Accordingly, although this question is directed to "Joint Applicants," it is inapplicable to Progress Energy. The question is applicable to Duke Energy Corporation and its affiliated companies, and thus the response is made on behalf of those entities.

Objection. This request calls for speculation and guess work. Without waiving said objection and to the extent discoverable, see Attachment I to the Application in this proceeding and the direct testimonies of Stephen De May and William Don Wathen for discussion of service agreements to be entered into as a result of the transaction.

**PERSON RESPONSIBLE:** Objection- Legal  
William Don Wathen Jr.



**AG-DR-01-062**

**REQUEST:**

Published reports have stated that Duke Energy has agreed to guarantee a \$10 mil. line of credit to sponsor the Democrat National Convention to be held in Charlotte, North Carolina in 2012. Describe what, if any, measures the Joint Applicants have taken to insure that DEK's ratepayers (and all of the Joint Applicants' regulated affiliates) are 100% insulated from any financial impact to them for this debt.

- a. Confirm whether the corporate entity actually providing the guarantee described above is Duke Energy, whether it is a regulated utility, and where it is regulated.
  - (i) If the entity providing the guarantee is a PAC, please state so;
  - (ii) If the entity providing the guarantee is a regulated utility, please confirm that the regulated entity's assets are being placed at risk for a non-utility purpose.
- b. Provide a description of any and all other similar guarantees to any political party or cause.

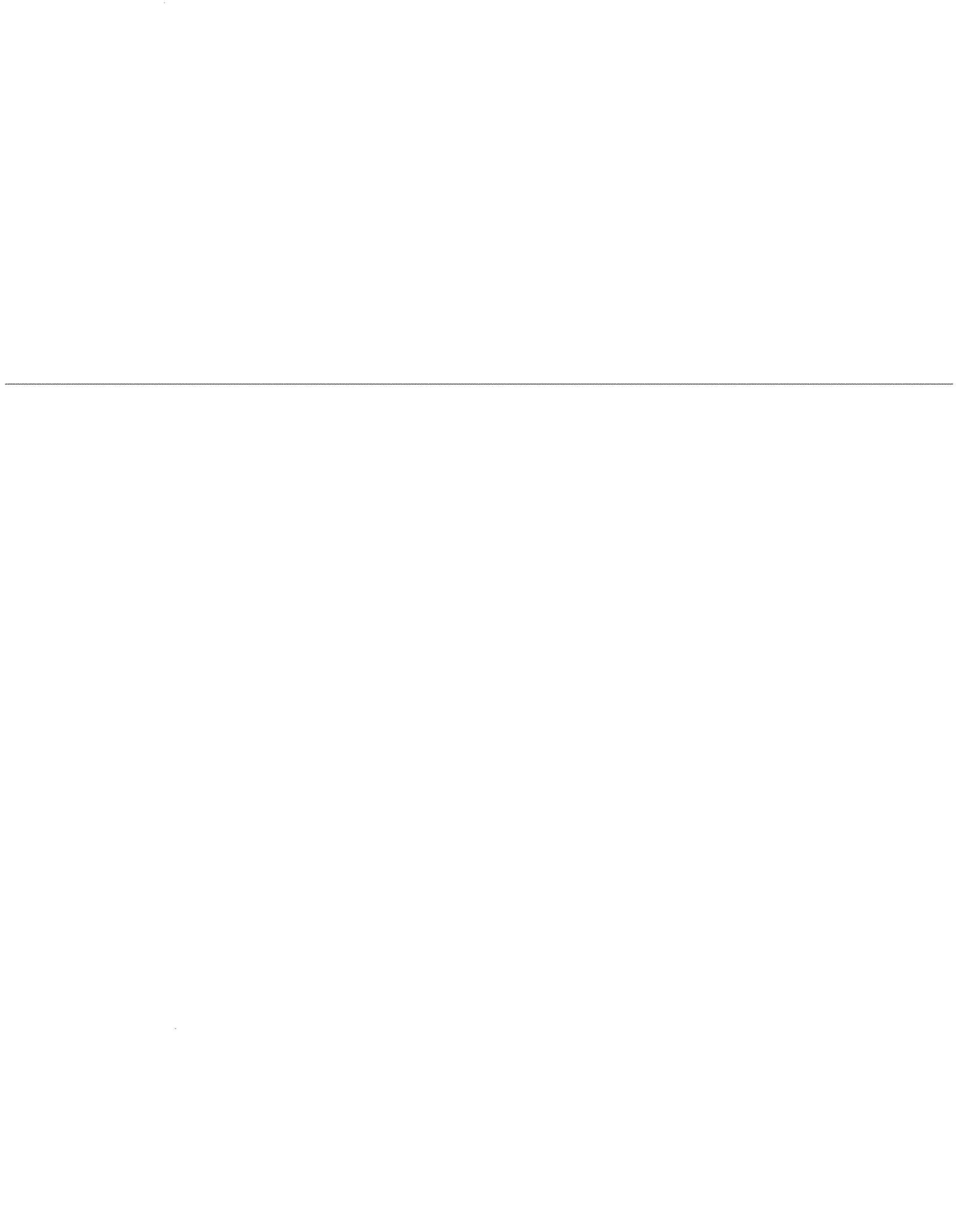
**RESPONSE:**

In connection with the City of Charlotte being named the host city for the 2012 Democratic National Convention, Duke Energy Corporation [as part of its Charlotte economic development efforts,] has committed to provide \$10,000,000 of credit support to the Charlotte DNC Host Committee, pursuant to their agreement with the DNC National Convention Committee and the City of Charlotte. This support is in the form of a backstop guarantee, not a loan.

The guarantor, Duke Energy Corporation, is the Delaware parent holding company of the Duke Energy corporate system, and is neither a regulated utility, nor a political action committee. As such, all of Joint Applicants' regulated affiliates, including DEK, are 100% insulated from any financial impact of this potential debt obligation.

The Host Committee is not a political party, and Duke Energy Corporation has no outstanding similar guarantees to any political party or cause.

**PERSON RESPONSIBLE:** Stephen De May



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-063**

**REQUEST:**

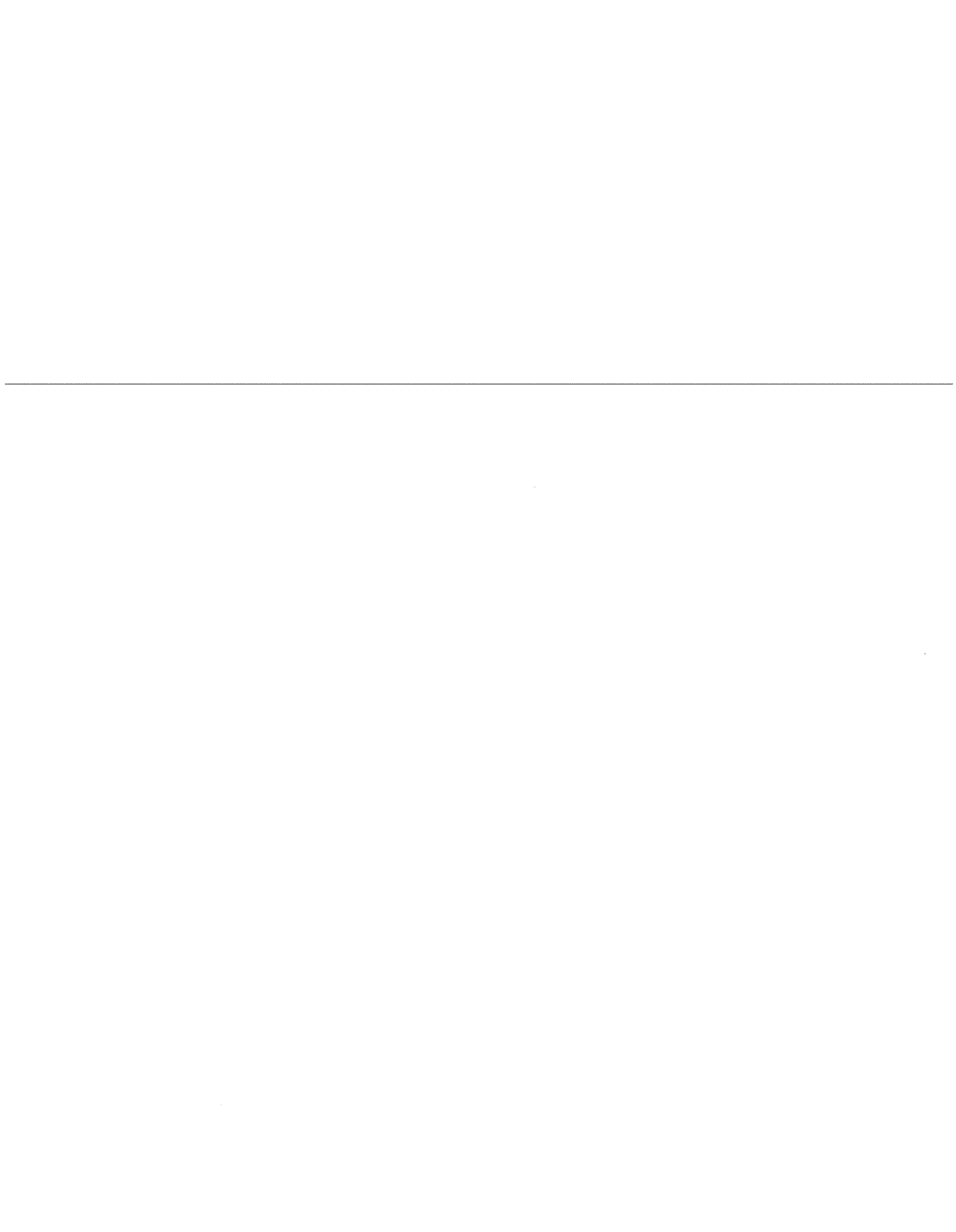
Provide the name and position of the person(s) who prepared each Exhibit to the application filing materials, if not already disclosed.

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**RESPONSE:**

RESPONSE: The Joint Applicants object to this request on the basis that it is overly broad and unduly burdensome. Exhibits A through D are publications of Duke Energy and Progress Energy that were prepared in the ordinary course of business and involved the contributions and assistance of many individuals throughout both companies. Exhibit E is the Merger Agreement and the terms contained therein are the product of lengthy negotiations by and between Duke Energy and Progress Energy through their employees, advisors and agents. Exhibit F is a simplified post-merger organizational chart and Exhibit H is a basic map of the Joint Applicants' service territory. Exhibit G includes the articles of incorporation and all amendments for each of the Joint Applicants and, collectively, are the results of work of numerous individuals undertaken over a period spanning many decades. Exhibit I includes the affiliate agreements that have been prepared and reviewed by several individuals employed by the Joint Applicants. Exhibits J through P are the testimony of the individual witnesses. Virtually all of these exhibits were prepared with the assistance of counsel. Without waiving the objection or any applicable attorney-client privileges, the Joint Applicants will attempt to identify the individual(s) who have information responsive to any particular question(s) the Attorney General may have about any of these exhibits.

**PERSON RESPONSIBLE: Legal**



**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**AG-DR-01-064 PUBLIC**

**REQUEST:**

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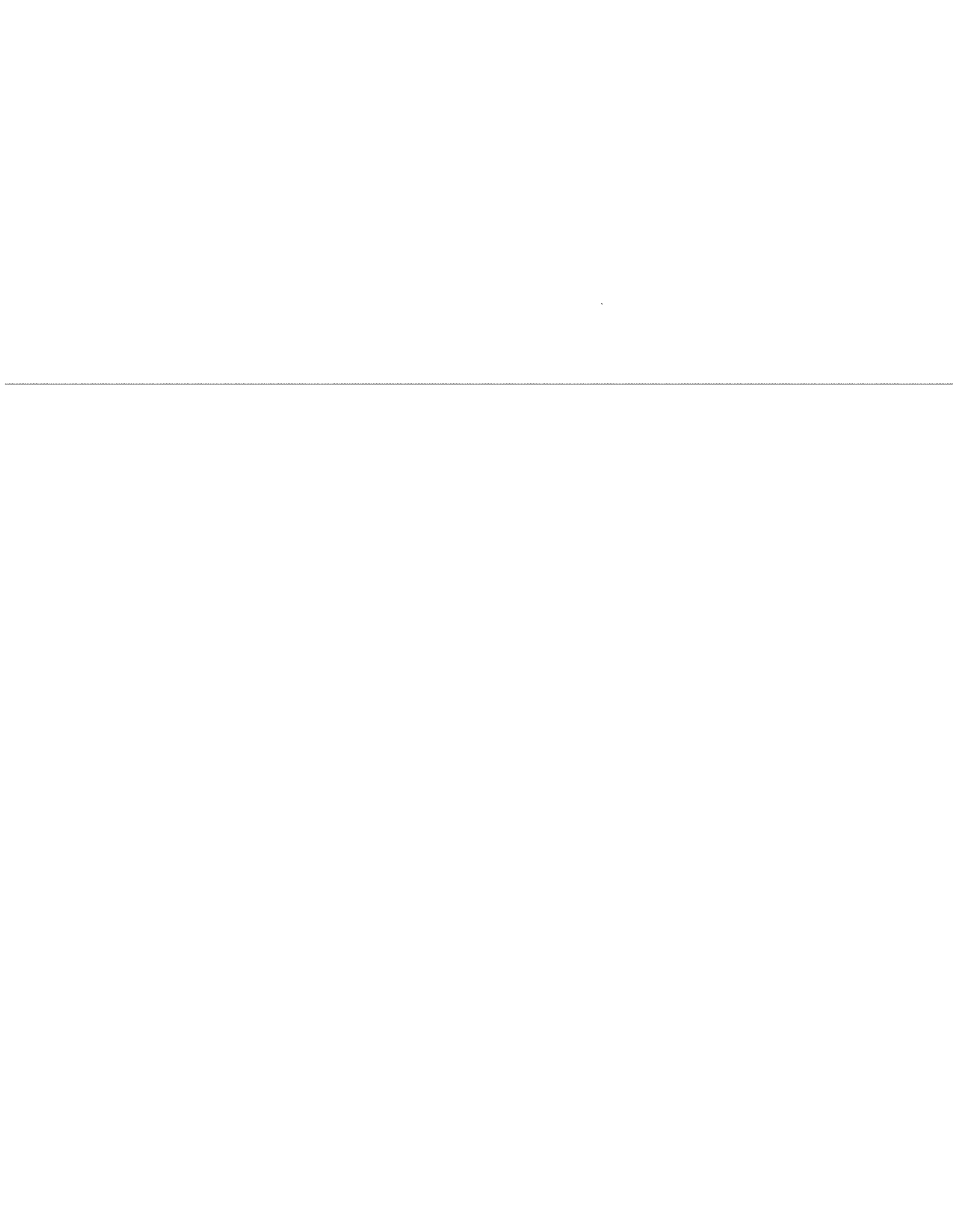
Please provide a copy of any and all materials, including but not limited to transcripts of presentations, recordings or notes of presentations, or other information, regarding any and all financial analyses concerning the transaction.

**RESPONSE:**

**CONFIDENTIAL PROPRIETARY TRADE SECRET**

This response has been filed with the Commission under a Petition for Confidential Treatment.

**PERSON RESPONSIBLE:** Richard Bates





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-065**

**REQUEST:**

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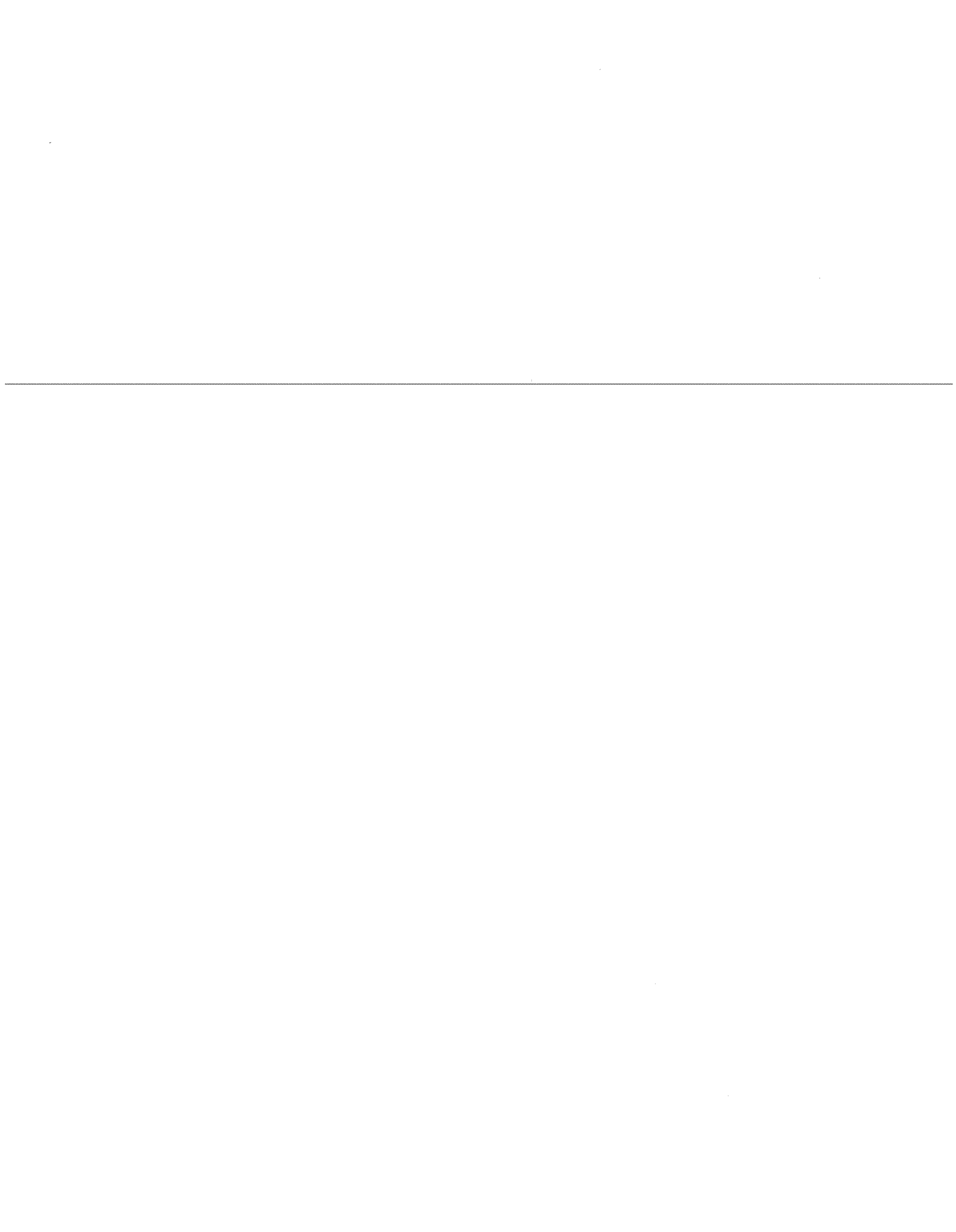
Please state whether any of the Joint Applicants' subsidiaries or affiliates located in Kentucky, or any other state, will as a condition of the contemplated transaction be required to guarantee the debt of any other subsidiary, affiliate, or holding company of the Joint Applicants. If "yes," please provide complete details.

- a. If "yes," are any of the terms to which the Kentucky-based subsidiaries or affiliates of Joint Applicants have agreed, or will agree, different in any way from the terms agreed to by subsidiaries or affiliates based in other states? If so, explain in detail.

**RESPONSE:**

Neither of the Joint Applicants nor their subsidiaries will be required to guarantee the debt of any other subsidiary or holding company as a condition of the merger.

**PERSON RESPONSIBLE:** Stephen De May



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-066**

**REQUEST:**

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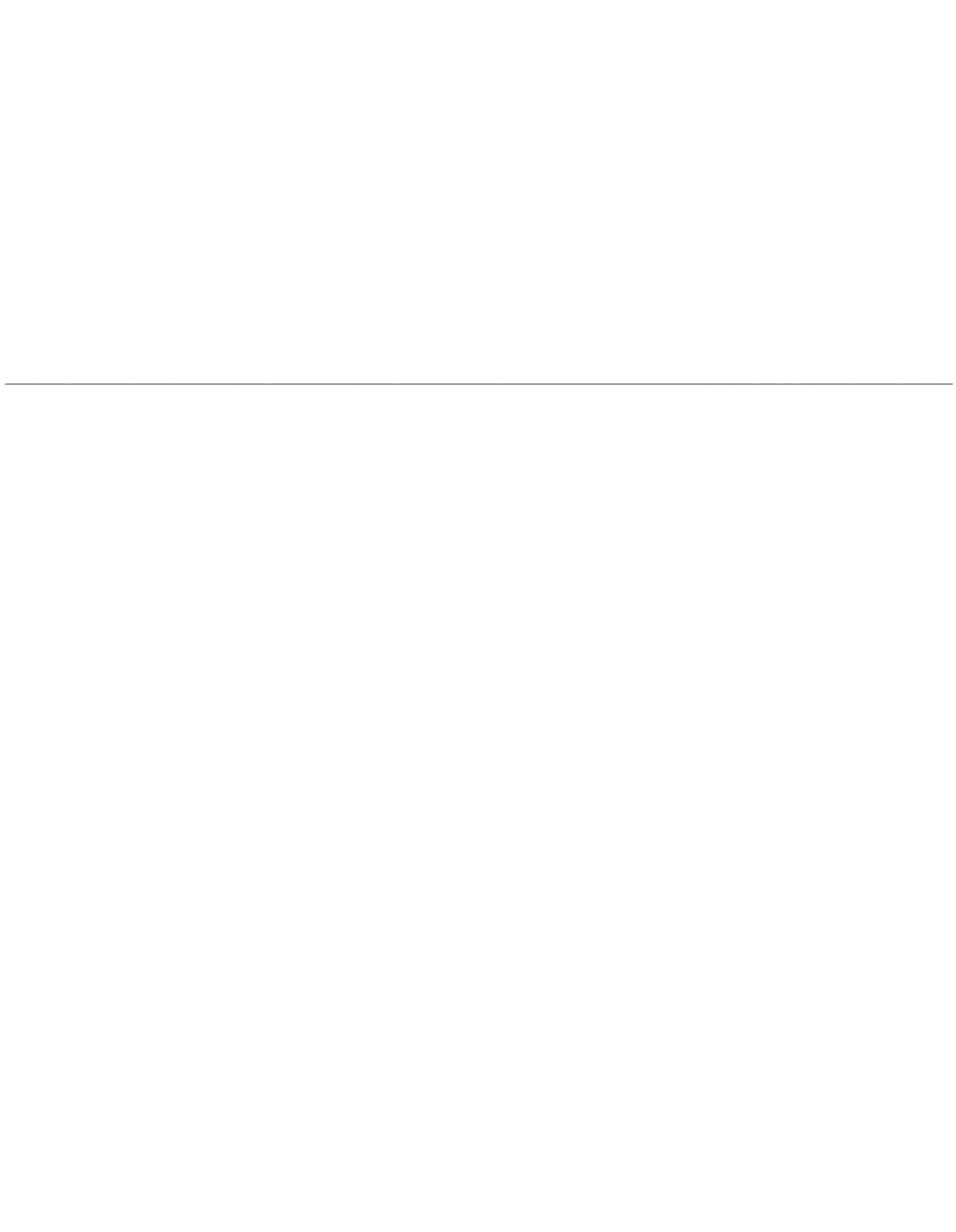
Please state whether any of the Joint Applicants' subsidiaries or affiliates located in Kentucky, or any other state, will as a condition of the contemplated transaction be required to grant liens or other encumbrances against their own assets in favor of any lender(s) providing financing or any portion of financing necessary for the contemplated merger to occur. If "yes," please provide complete details.

- a. If "yes," are any of the terms to which the Joint Applicants' Kentucky-based subsidiaries or affiliates have agreed, or will agree, different in any way from the terms agreed to by subsidiaries or affiliates based in other states? If so, explain in detail.

**RESPONSE:**

Neither the Joint Applicants nor their subsidiaries or affiliates will be required to grant liens or other encumbrances against their assets in favor of any lender providing financing for the contemplated merger. The merger is being financed in a 100% stock for stock transaction.

**PERSON RESPONSIBLE:** Stephen De May



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-067 PUBLIC**

**REQUEST:**

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Please provide a complete copy of any filings associated with the contemplated merger made pursuant to the Hart-Scott-Rodino Antitrust Improvements Acts of 1976 (15 U.S.C.A. § 18a, together with regulations promulgated thereunder at 16 CFR §§ 801-803) (hereinafter jointly referred to as “the Act”).

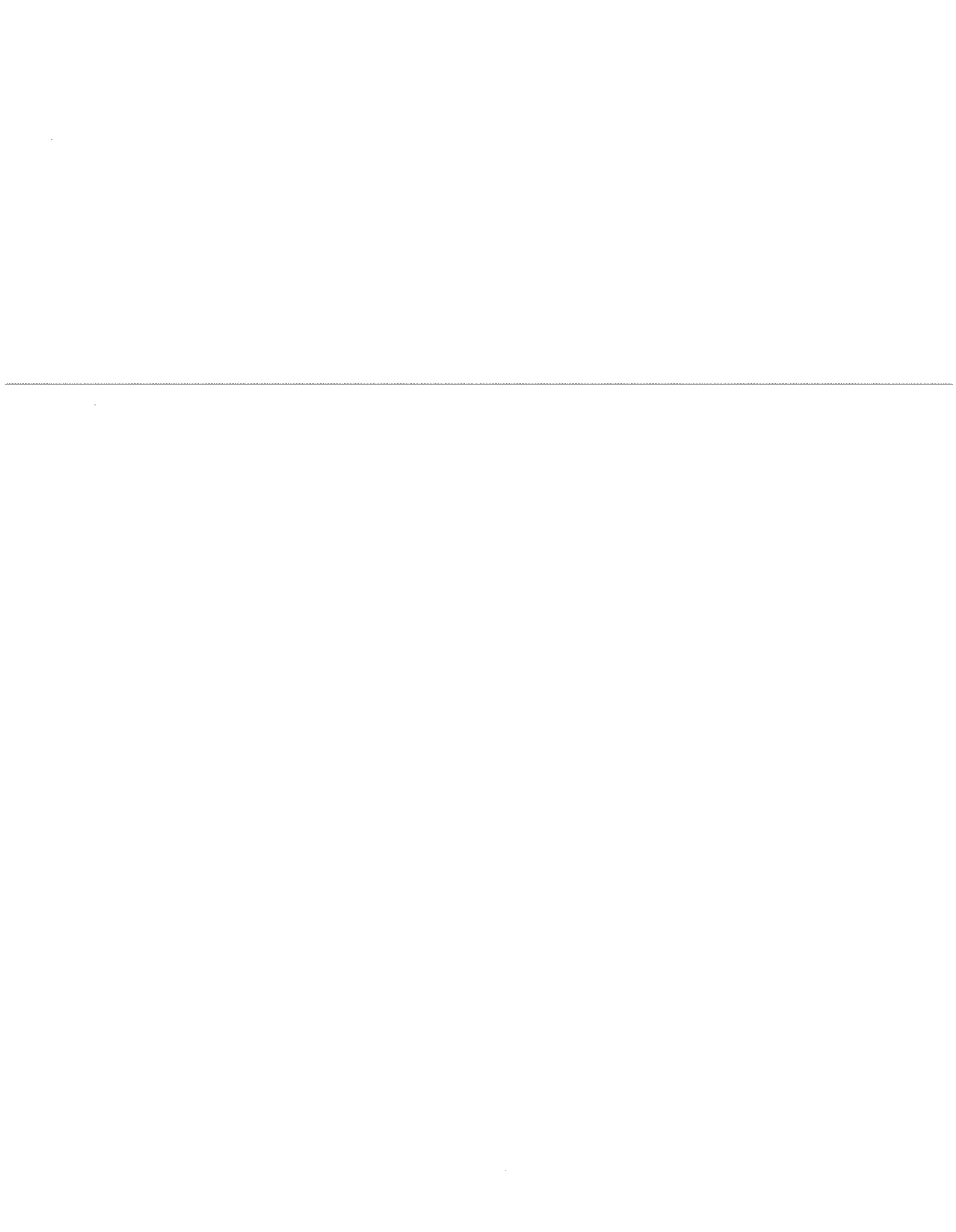
- a. In the event the U.S. Department of Justice Antitrust Division determines that further inquiry is necessary and pursuant to the Act issues a second request for documents to the Joint Applicants, will the Joint Applicants agree to supply the PSC and the Kentucky Attorney General’s Office with copies of any documents produced in response to such a request, regardless of when the Joint Applicants make their (its) response?

**RESPONSE:**

**CONFIDENTIAL PROPRIETARY TRADE SECRET**

This response has been filed with the Commission under a Petition for Confidential Treatment.

**PERSON RESPONSIBLE:** Objection – Legal, William D. Johnson - Progress



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-068**

**REQUEST:**

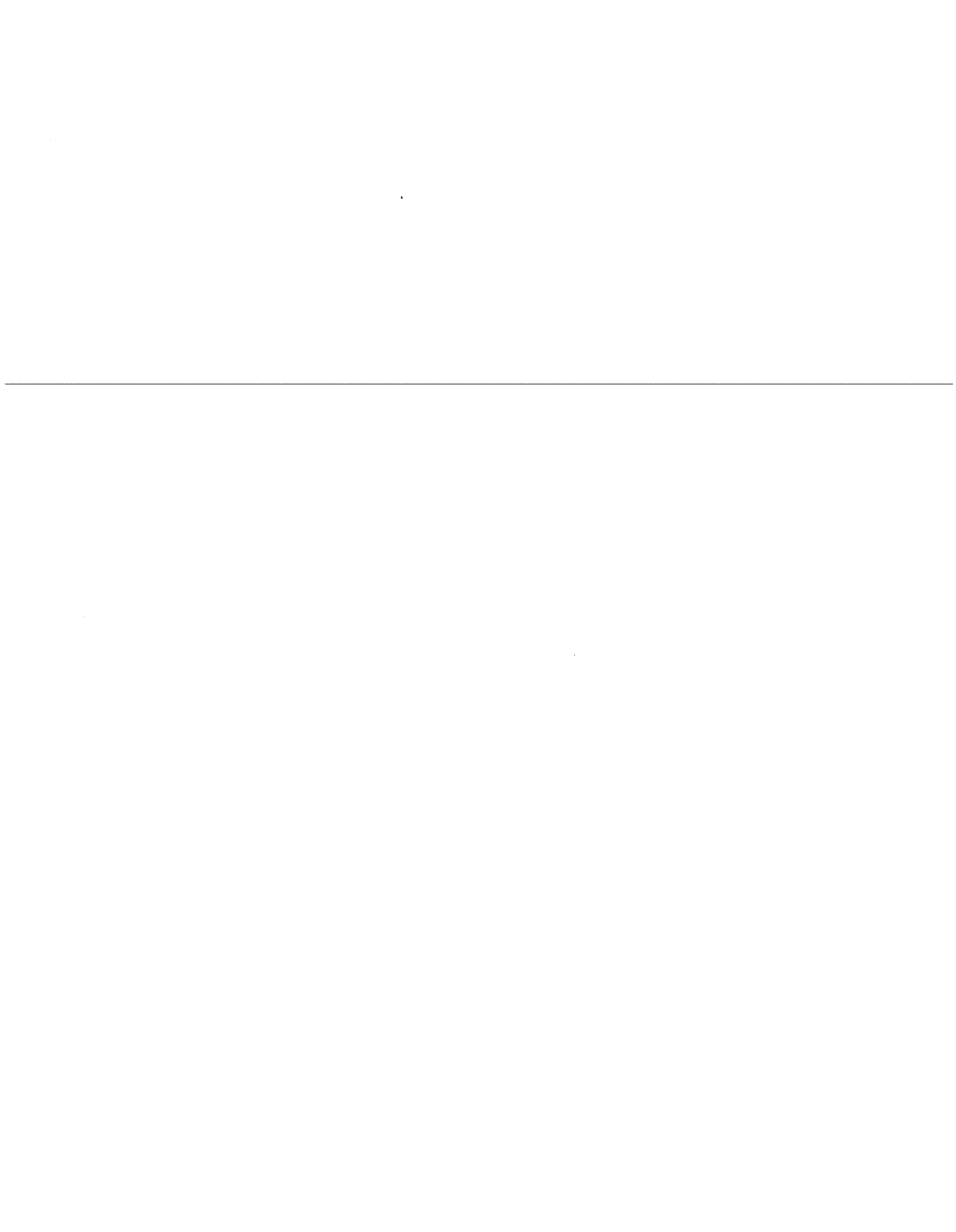
Will DEK give clear and conspicuous notice to Kentucky consumers regarding any change in services resulting from the contemplated transaction? If not, why not?

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**RESPONSE:**

The Joint Applicants object to the question on the basis that it is vague and ambiguous with respect to the terms "clear and conspicuous." Without waiving said objection, Duke Energy Kentucky will follow the Commission's rules and regulations and Orders regarding notice to customers.

**PERSON RESPONSIBLE:** Objection-legal  
Julie Janson





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-069**

**REQUEST:**

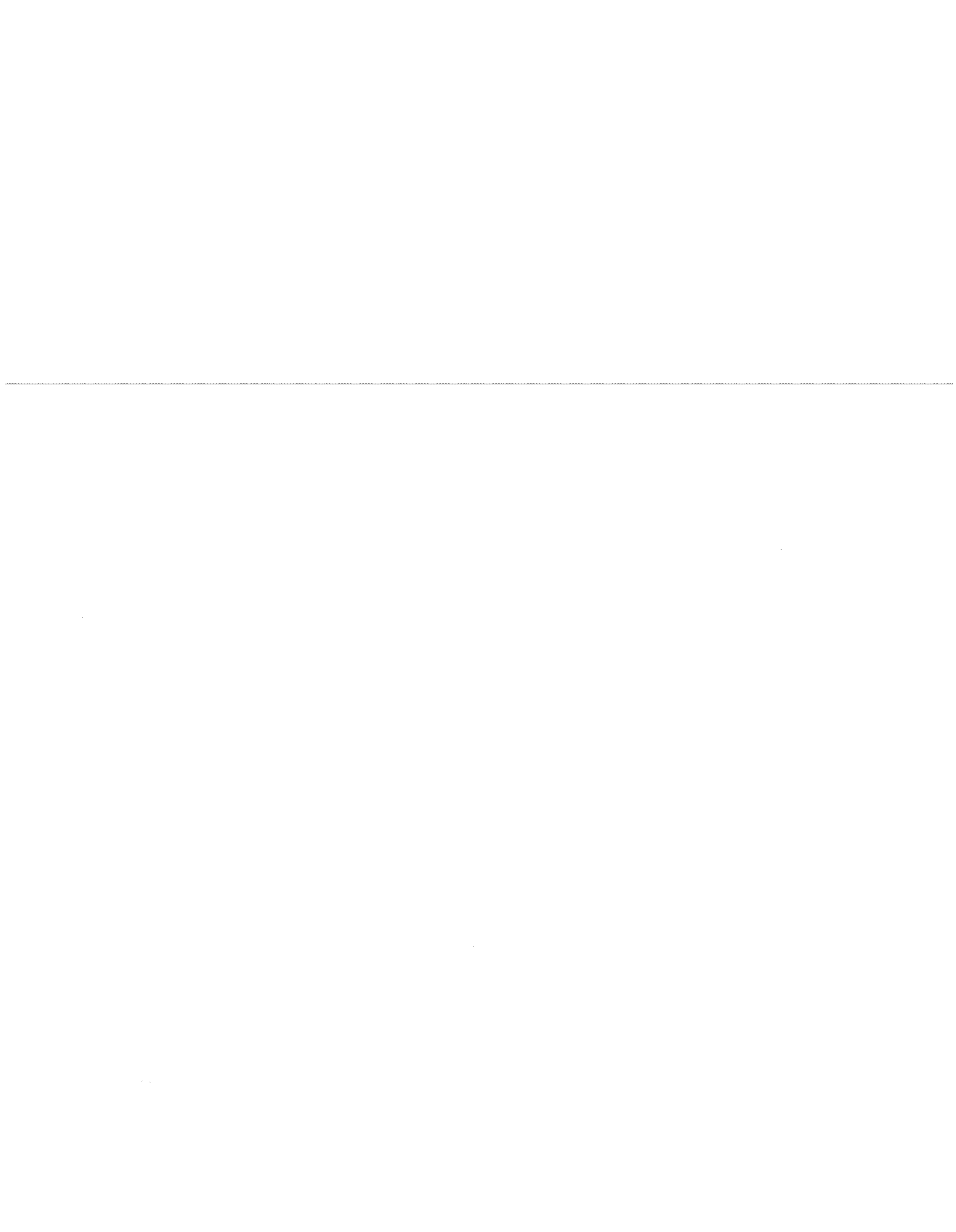
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Will the transaction result in any write-ups, write-offs, or a restatement of financial results of DEK, its parent entity, or that of its affiliates? If yes, please explain in detail with all financial ramifications for DEK's ratepayers.

**RESPONSE:**

As addressed in the direct testimony of Danny Wiles, generally accepted accounting principles ("GAAP") in the United States govern how the acquiring entity, Duke Energy Corporation, will account for the contemplated transaction once it closes. Under GAAP, Duke Energy Corporation will apply the purchase price of the transaction to the assets and liabilities that are being acquired based on fair values. This process will result in items being recorded at amounts that may differ from the amounts shown in the historical financial statements of the acquired entity. With regards to Duke Energy Kentucky, as also addressed in the direct testimony of Danny Wiles, the accounting for the contemplated transaction will have no impact on the financial statements of Duke Energy Kentucky and therefore there are no financial ramifications for Duke Energy Kentucky's ratepayers related to write-ups, write-offs or a restatement of financial results with this transaction.

**PERSON RESPONSIBLE:** Danny Wiles/Steve Young



**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**AG-DR-01-070**

**REQUEST:**

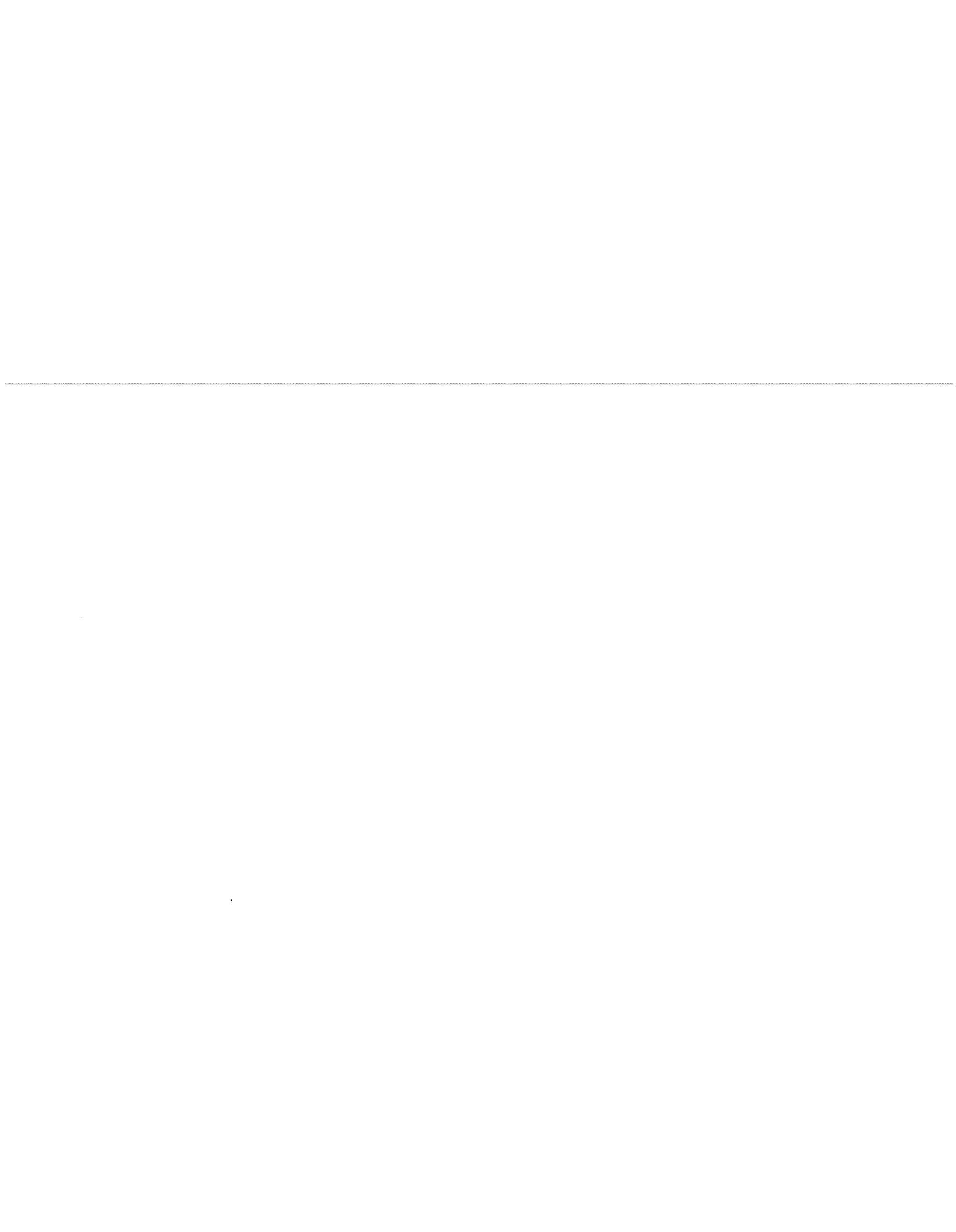
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Post-transaction, will DEK, its parent entities, or its affiliates be required to make any filings with the Securities and Exchange Commission? If yes, please identify and explain the filing requirement(s).

**RESPONSE:**

Please see response to Staff-DR-01-002.

**PERSON RESPONSIBLE:** Legal



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-071**

**REQUEST:**

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Is DEK currently required to comply with The Sarbanes-Oxley Act of 2002? Will it be required to do so following the closure of the contemplated transaction? Please identify and explain the post-transaction Sarbanes-Oxley-related requirements for DEK (if any), and for its parent entities, and what effect, if any, these requirements will or may have on DEK's ratepayers.

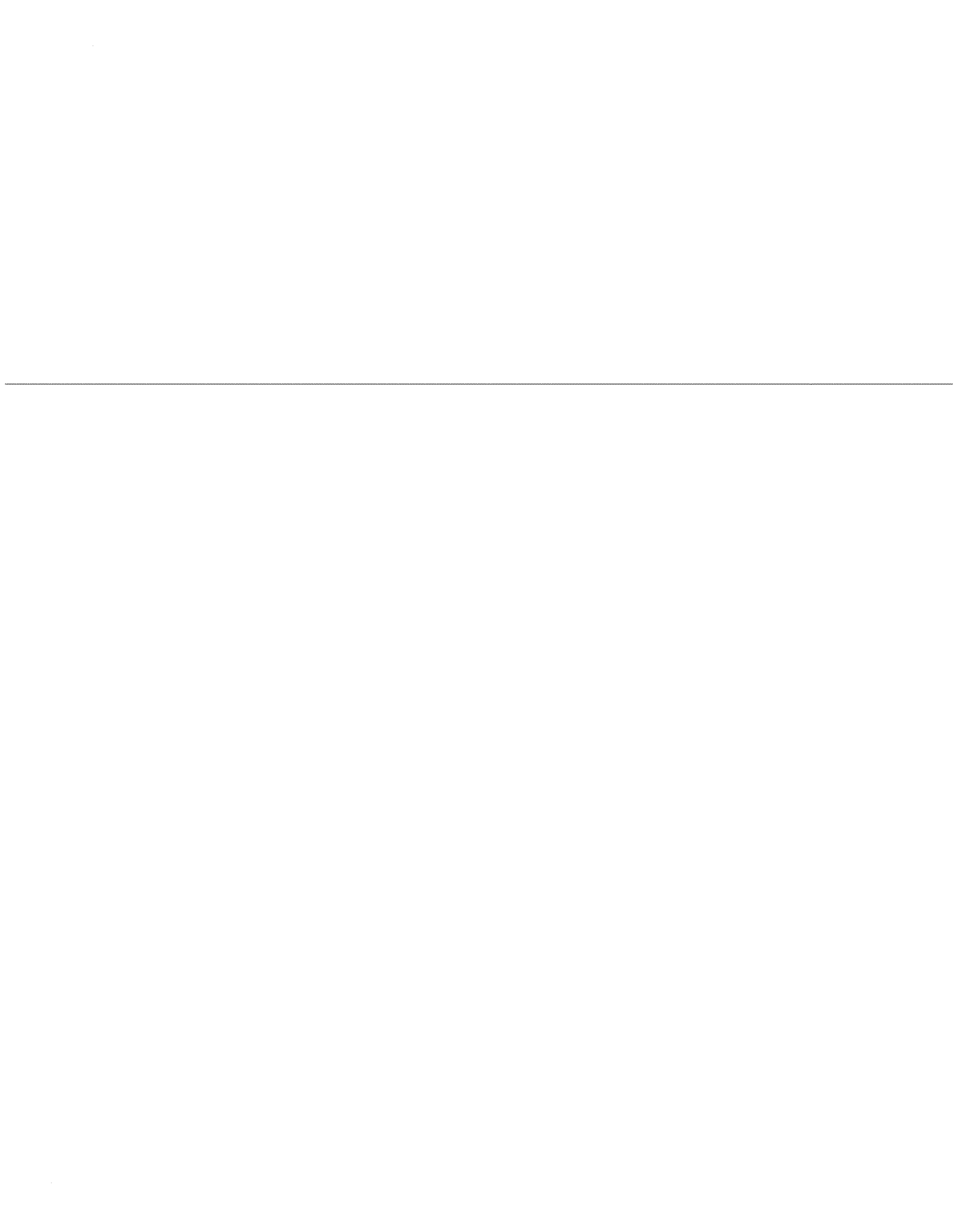
**RESPONSE:**

Objection. The Joint Applicants object to this request to the extent that it calls for a legal conclusion. Without waiving said objection... Duke Energy Kentucky is not currently required to comply with the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") as an "issuer" under the Act, and it is not expected that Duke Energy Kentucky will be required to do so following the closing of the contemplated transaction.

Duke Energy Ohio (Duke Energy Kentucky's direct parent company) and Duke Energy (Duke Energy Kentucky's ultimate parent company), as persons required to file Securities Exchange Act Reports, are currently required, and post-transaction will continue to be required, to comply with some or all of the requirements of the Sarbanes-Oxley Act applicable to "issuers," with some requirements not directly applicable to Duke Energy Ohio insofar as it is not the issuer of securities admitted to trading on a national exchange. The provisions applicable to "issuers" include requirements for enhanced financial disclosures and internal controls for assuring the accuracy of financial statements and disclosures, certifications required to be made by senior executives of the issuer, and penalties for manipulation of financial information and other offences, among other applicable requirements.

It is not anticipated that there will be any impact to Duke Energy Kentucky's ratepayers related to post-transaction Sarbanes-Oxley-related requirements as there is no change expected for Duke Energy Kentucky.

**PERSON RESPONSIBLE:** As to Objection -- Legal



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-072**

**REQUEST:**

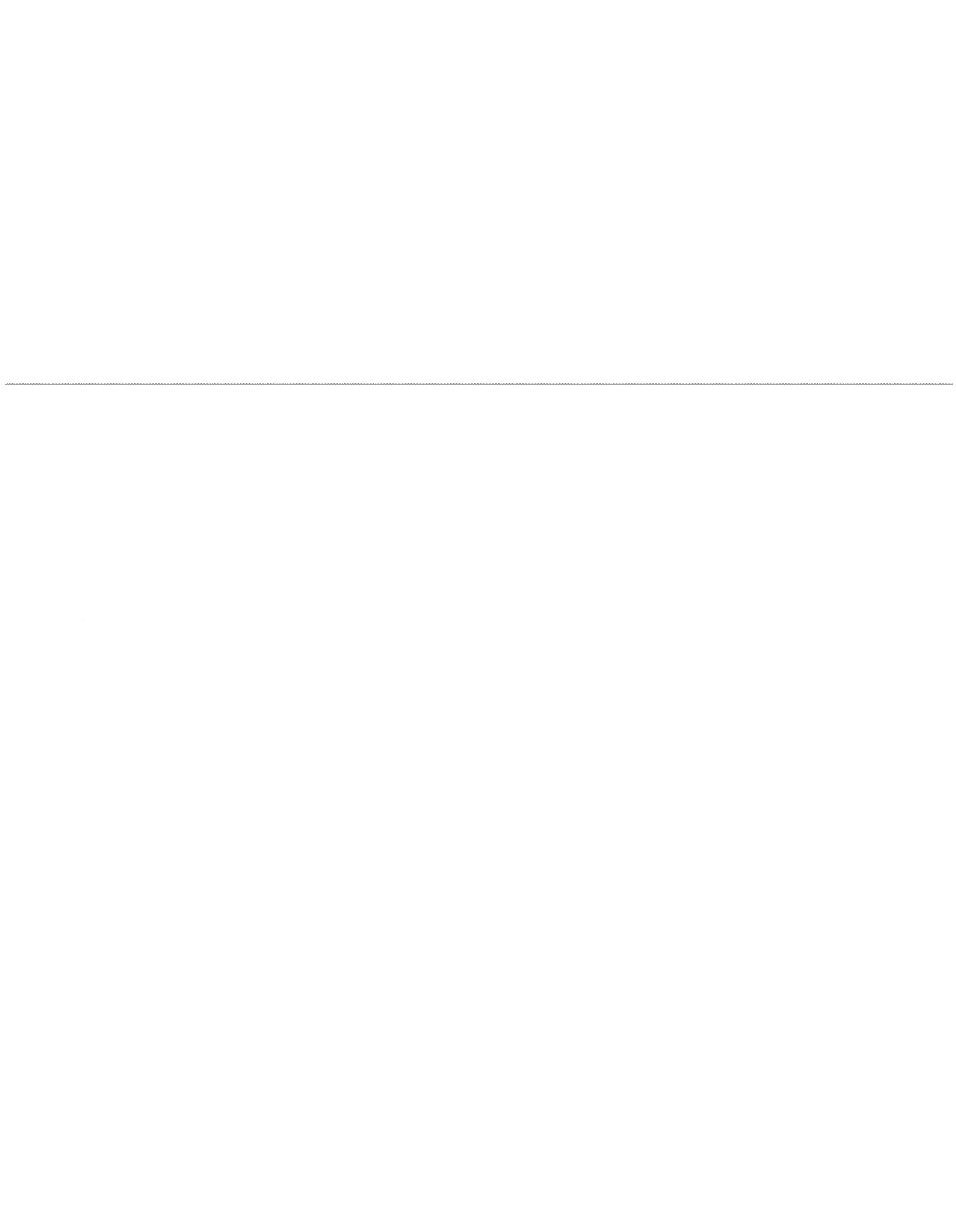
Please identify any anticipated/estimated change(s) in DEK's equity-to-capital ratio.  
Provide all documentation which relates to same.

---

**RESPONSE:**

There are no anticipated/estimated changes to Duke Energy Kentucky's equity-to-capital ratio that would directly result from the contemplated transaction.

**PERSON RESPONSIBLE:** Danny Wiles & Stephen De May





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-073**

**REQUEST:**

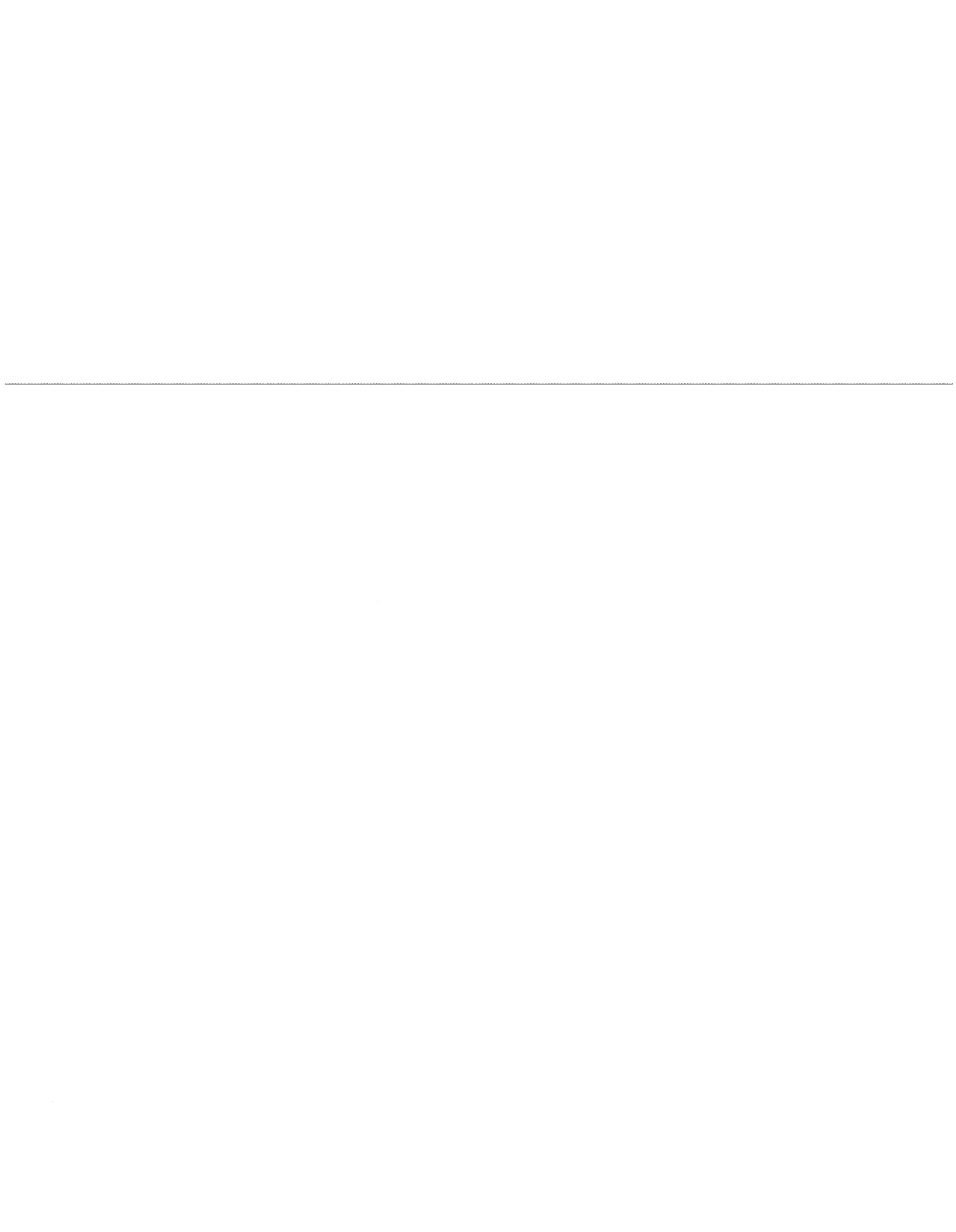
If DEK's parent entities and/or its affiliates experience any changes in their equity-to-capital ratio, please describe any potential effect on DEK and its ratepayers.

---

**RESPONSE:**

Duke Energy Kentucky's (Duke Energy Kentucky) ultimate parent company, Duke Energy Corp., will experience a change in its equity-to-capital ratio due to the issuance of shares to consummate the contemplated transaction and the consolidation of the debt of Progress Energy Corp. However, there are no anticipated effects on Duke Energy Kentucky or its ratepayers from any changes to the capital structure of any of Duke Energy Kentucky's parent entities or its affiliates.

**PERSON RESPONSIBLE:** Danny Wiles & Stephen De May



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-074**

**REQUEST:**

As of January 1, 2011, how much of DEK's debt (in dollars and percentage of total capital) was held by Progress or any Progress subsidiary? Concerning this debt:

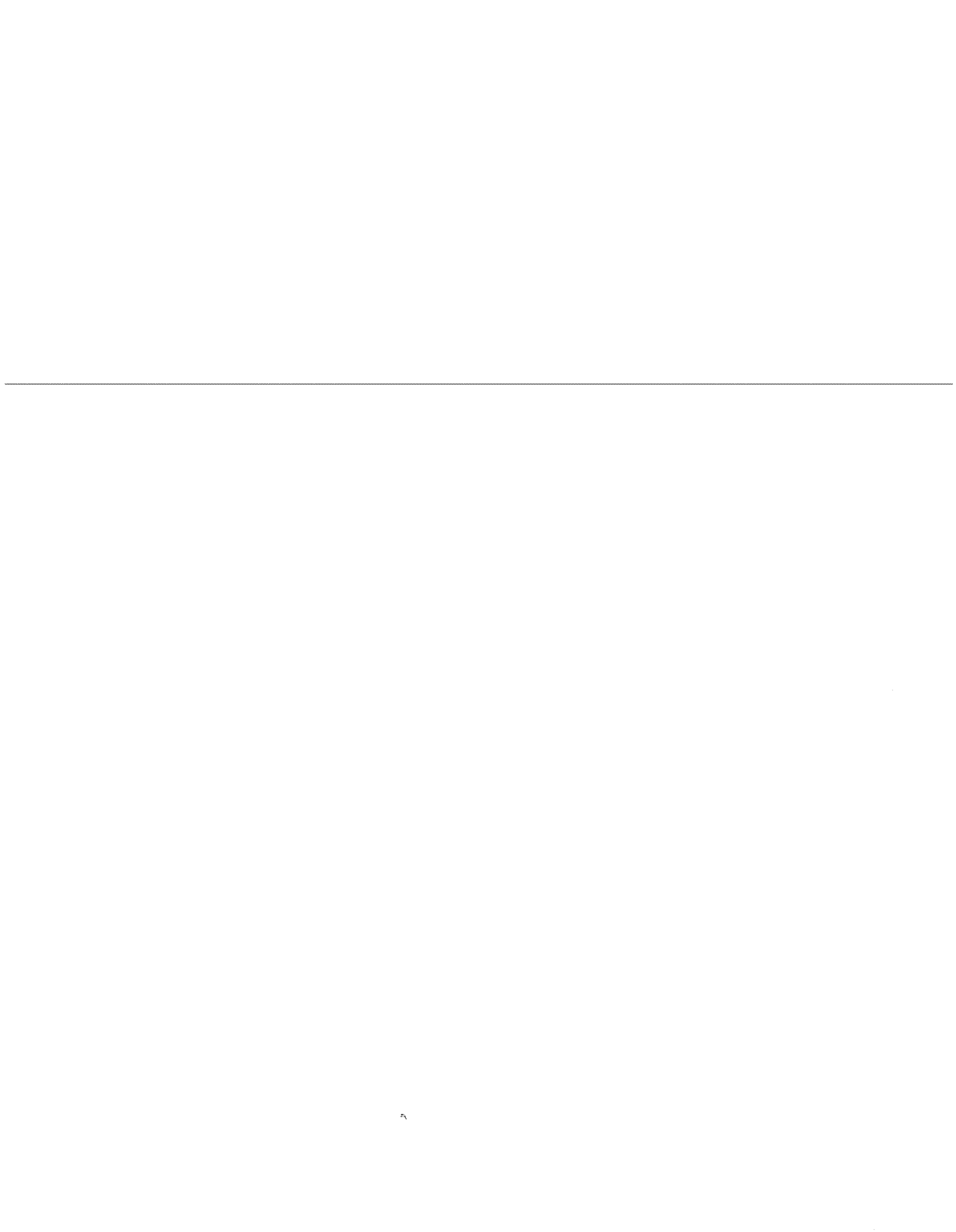
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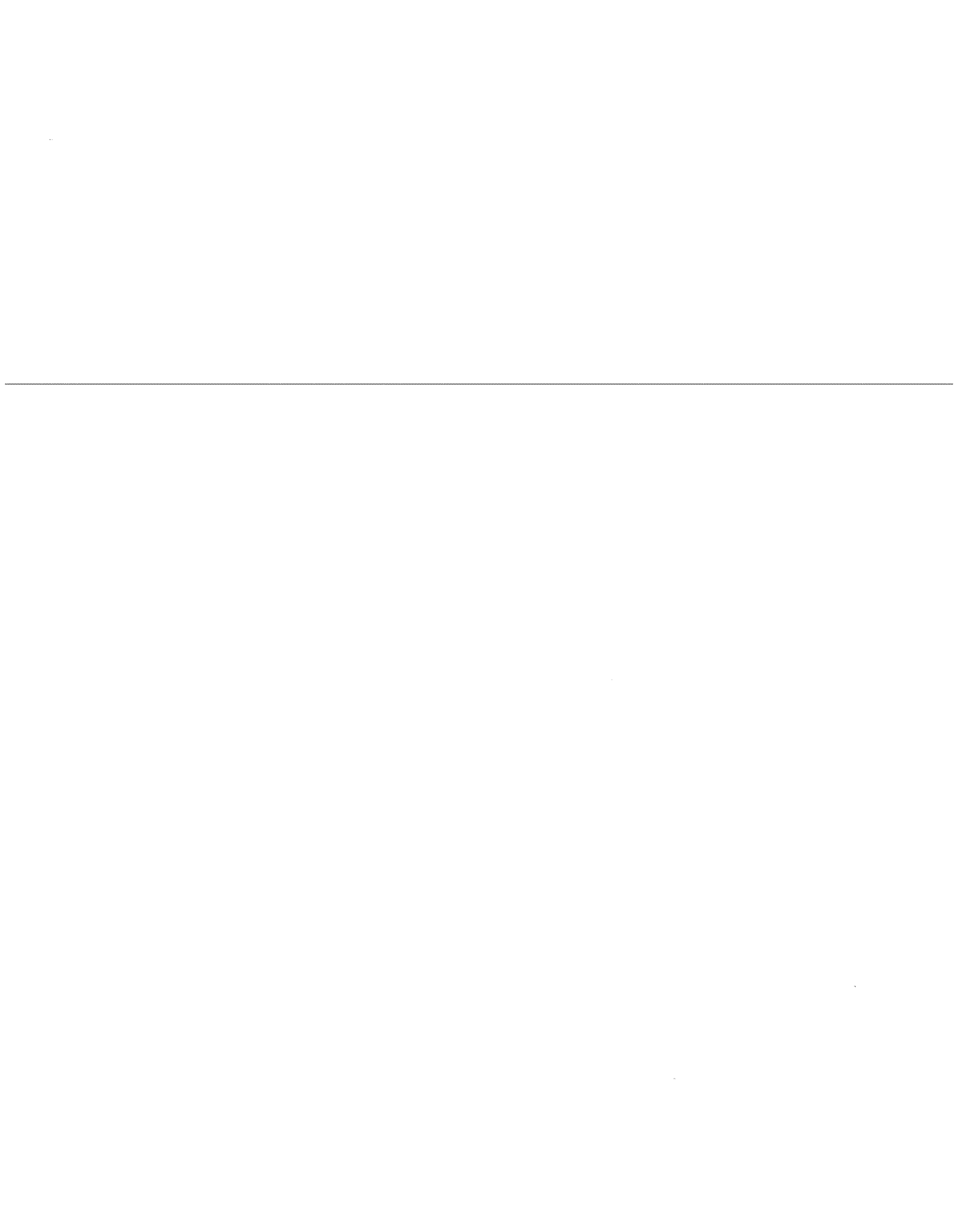
- a. Please provide a copy of each debt instrument between DEK and Progress or any subsidiary of Progress;
- b. Please provide a workpaper showing, at January 1, 2011, and at the end of the most recent accounting period, the amount outstanding on each debt instrument and the interest rate; and
- c. What is anticipated to happen to each debt instrument as a result of the transaction proposed in this case?

**RESPONSE:**

None of Duke Energy Kentucky's debt is currently held by Progress Energy or any of its subsidiaries.

**PERSON RESPONSIBLE:** Stephen De May





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-076**

**REQUEST:**

Have any of the Joint Applicants conducted a recent, complete due diligence report of all EPA requirements associated with all EPA regulated facilities?

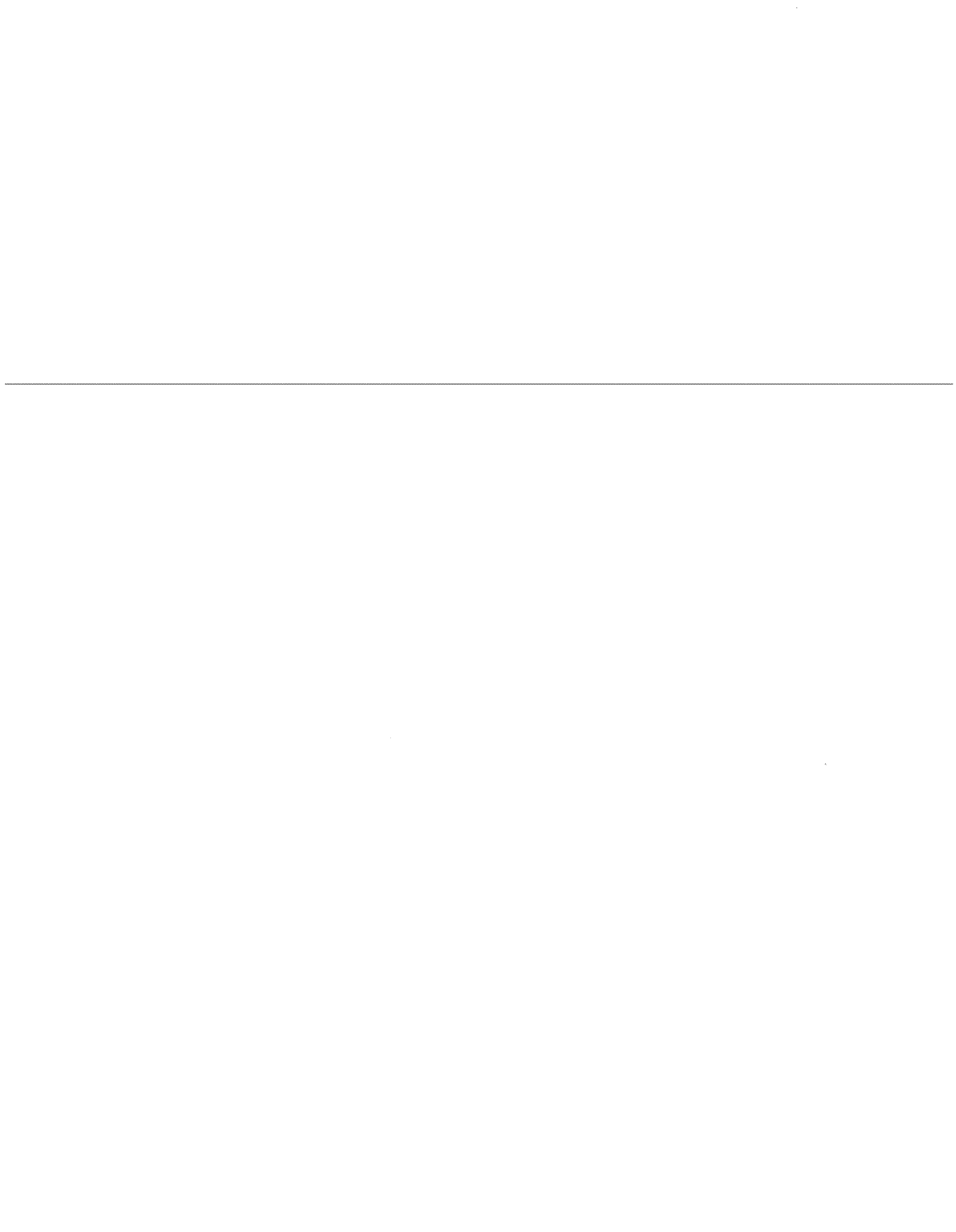
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- a. If yes, please provide a copy of copies same;
- b. If not, why not?; and
- c. If not, do DEK, its parent entities and its affiliates believe it prudent to accept “ownership” of the applicable facilities without a due diligence report?

**RESPONSE:**

Objection. This request is vague, ambiguous, and unduly burdensome and seeks information that is not relevant to this proceeding and beyond the jurisdiction of Kentucky. Further, this document request seeks to elicit information protected by the attorney-client privilege and/or attorney work product privilege. Without waiving said objection and to the extent discoverable, Duke Energy, has a comprehensive environmental compliance program that keeps track of all state and federal environmental requirements for all of our facilities. This includes working with our state environmental officials to address and respond to concerns. Additionally, there are number of recent EPA requirements published for review and comment. Some EPA requirements have yet to be published. The uncertainty around the end state of the proposed requirements makes it difficult to determine the final actions to be taken any individual unit or station. However, Duke Energy Kentucky and Duke Energy Corporation have knowledge of the current operating parameters and permits for which EPA regulated facilities are required meet.

**PERSON RESPONSIBLE:** As to Objection – Legal  
Barry Pulskamp



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-077**

**REQUEST:**

Will DEK and / or its parent entities or affiliates receive any tax advantage(s) or benefit(s) from the proposed transaction? If so, please provide a quantification.

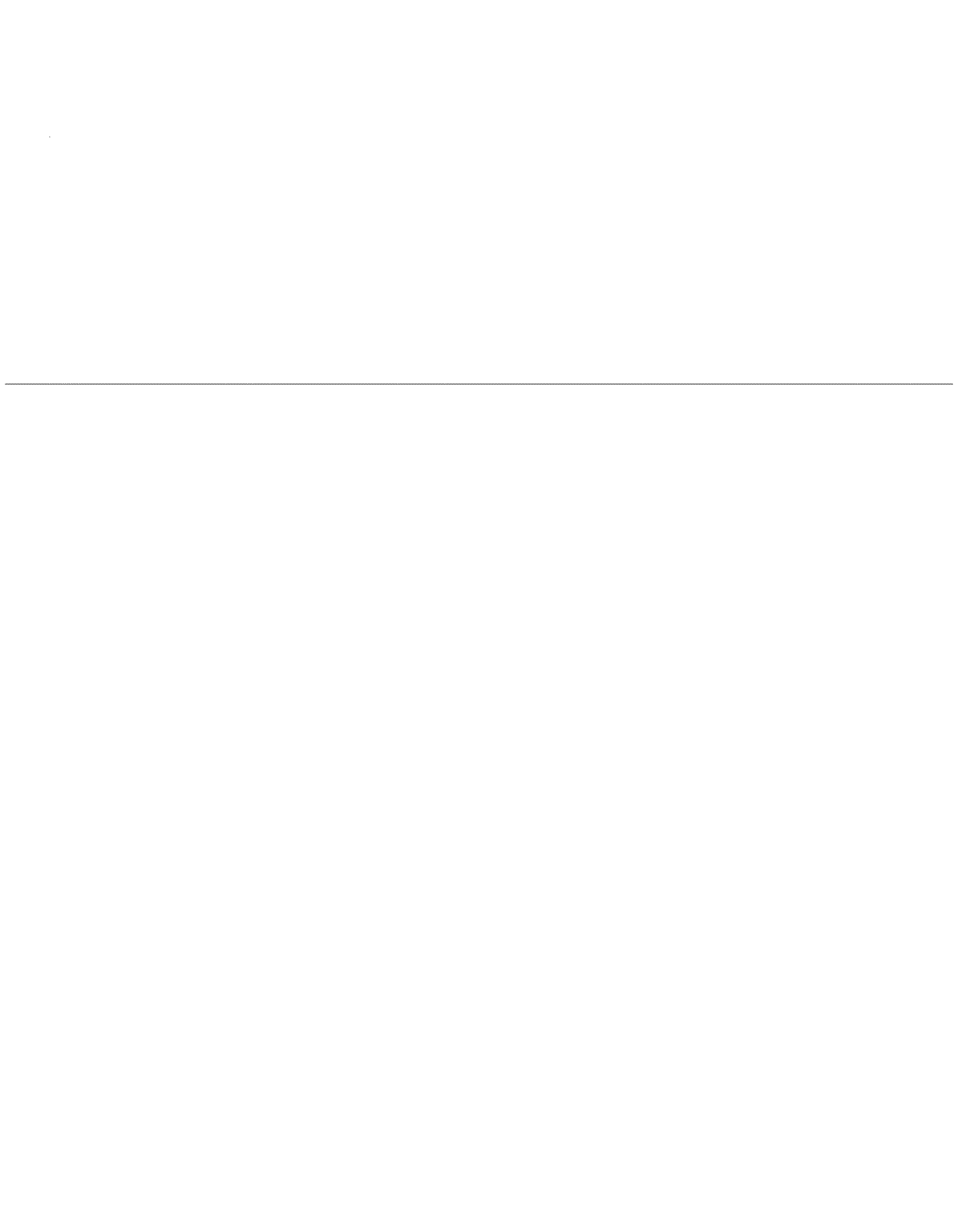
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**RESPONSE:**

At this time, no specific tax advantage(s) or benefits from the proposed transaction have been identified or quantified.

**PERSON RESPONSIBLE:** Keith Butler





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-078**

**REQUEST:**

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For the past five years, please provide a dollar breakdown by year of any charitable donations that DEK and / or any charitable affiliate have made. This list should detail the donation by way of purpose or designation for the contribution.

**RESPONSE:**

See AG-DR-01-078 attachment.

**PERSON RESPONSIBLE:**

Julie Janson

## DEK Foundation Giving from 2007 - 2011

2007

KY	Midwest Charitable Giving	Saint Agnes School	Pre K-12 Education	\$1,000.00
KY	Midwest Charitable Giving	Thomas Edison Elementary School	Pre K-12 Education	\$9,000.00
KY	Midwest Charitable Giving	Behringer-Crawford Museum Board of Trustees Devou Park	Arts & Culture	\$1,000.00
KY	Midwest Charitable Giving	Kenton County School District	Env Conservation, Education, and Research	\$25,000.00
KY	Midwest Charitable Giving	Charles H. Kelly Elementary School	Pre K-12 Education	\$1,000.00
KY	Midwest Charitable Giving	Camp Ernst Middle School	Pre K-12 Education	\$1,000.00
KY	Midwest Charitable Giving	Brighton Center Inc	Env Conservation, Education, and Research	\$1,200.00
KY	Midwest Charitable Giving	Boone County Schools	Pre K-12 Education	\$1,000.00
KY	Midwest Charitable Giving	Center for Technology Enterprise Inc	Pre K-12 Education	\$5,000.00
KY	Midwest Charitable Giving	Kicks for Kids, Inc.	Health & Human Services	\$3,000.00
KY	Midwest Charitable Giving	Northern Kentucky Symphony Inc	Arts & Culture	\$12,500.00
KY	Midwest Charitable Giving	Cub Scout Pack #845	Env Conservation, Education, and Research	\$500.00
KY	Midwest Charitable Giving	Northern Kentucky Firefighters Association	Civic	\$0.00
KY	Midwest Charitable Giving	City of Crescent Springs	None Selected	\$1,000.00
KY	Midwest Charitable Giving	Northern Kentucky Health Dept.	Economic Development	\$0.00

KY	Midwest Charitable Giving	Campbell Lodge Boys' Home	Env Conservation, Education, and Research	\$1,000.00
KY	Midwest Charitable Giving	Diocesan Catholic Children's Home	Health & Human Services	\$0.00
KY	Midwest Charitable Giving	Mentor Baptist Church	Economic Development	\$0.00
KY	Midwest Charitable Giving	Jersey Productions, Inc.	Economic Development	\$0.00
KY	Midwest Charitable Giving	Boone County Citizen Corps Council	Civic	\$870.00
KY	Midwest Charitable Giving	HealthPoint Family Care	None Selected	\$0.00
KY	Midwest Charitable Giving	Kincaid Regional Theatre Company	Arts & Culture	\$2,000.00
KY	Midwest Charitable Giving	St. Elizabeth Medical Center	None Selected	\$12,500.00
KY	Midwest Charitable Giving	The Carnegie Visual & Performing Arts Center Inc	None Selected	\$50,000.00
KY	Midwest Charitable Giving	Family Nurturing Center of Kentucky	Env Conservation, Education, and Research	\$2,500.00
KY	Midwest Charitable Giving	Wilderness Road Girl Scout Council Inc	Pre K-12 Education	\$1,500.00
KY	Midwest Charitable Giving	City of Edgewood	None Selected	\$0.00
KY	Midwest Charitable Giving	Stage One the Louisville Childrens Theatre Inc	Economic Development	\$0.00
KY	Midwest Charitable Giving	Simple Beginnings Np	Env Conservation, Education, and Research	\$250.00
KY	Midwest Charitable Giving	Sons of the American Legion, Squadron 275	Community Leadership	\$0.00
KY	Midwest Charitable Giving	Hospice of the Bluegrass - Northern Kentucky	Civic	\$1,000.00
KY	Midwest Charitable Giving	Campbell County YMCA	Env Conservation, Education, and Research	\$500.00

KY	Midwest Charitable Giving	Campbell County High School	Higher Education/Research	\$1,300.00
KY	Midwest Charitable Giving	Diocesan Catholic Children's Home	Community Leadership	\$1,000.00
KY	Midwest Charitable Giving	American Cancer Society of Northern Kentucky	None Selected	\$0.00
KY	Midwest Charitable Giving	Children Incorporated	Health & Human Services	\$1,000.00
KY	Midwest Charitable Giving	Southbank Partners	Economic Development	\$2,500.00
KY	Midwest Charitable Giving	City of Edgewood	Arts & Culture	\$500.00
KY	Midwest Charitable Giving	NAACP Northern Kentucky Branch	Civic	\$1,400.00
KY	Midwest Charitable Giving	Campbell County Rural Knothole	Env Conservation, Education, and Research	\$500.00
KY	Midwest Charitable Giving	Grant County Foundation for Higher Education	Higher Education/Research	\$2,000.00
KY	Midwest Charitable Giving	Senior Services of Northern Kentucky	Health & Human Services	\$8,000.00
KY	Midwest Charitable Giving	Campbell Lodge Boys' Home	Health & Human Services	\$1,000.00
KY	Midwest Charitable Giving	Northern Kentucky Skating Foundation	Arts & Culture	\$900.00
KY	Midwest Charitable Giving	Women's Crisis Center, Inc.	Health & Human Services	\$1,000.00
KY	Midwest Charitable Giving	WAVE Foundation	Pre K-12 Education	\$5,000.00
KY	Midwest Charitable Giving	City of Fort Wright, Kentucky	Env Conservation, Education, and Research	\$2,500.00
KY	Midwest Charitable Giving	Northern Kentucky Harvest	Health & Human Services	\$1,000.00
KY	Midwest Charitable Giving	Children Incorporated	Pre K-12 Education	\$5,000.00

KY	Midwest Charitable Giving	Forward Quest, Inc.	Community Leadership	\$100,000.00
KY	Midwest Charitable Giving	Brighton Center Inc	Health & Human Services	\$4,252.00
KY	Midwest Charitable Giving	Fourth at the Fort Inc	Community Leadership	\$1,000.00
KY	Midwest Comm Develop	Northern Kentucky Chamber of Commerce	Pre K-12 Education	\$6,000.00
		<b># of Gifts: 53</b>		<b>\$280,172.00</b>

**2008**

KY	Midwest Charitable Giving	Cub Scout Pack #845	Civic	\$250.00
KY	Midwest Charitable Giving	Wildlife Conservation Kentucky Inc	Env Conservation, Education, and Research	\$2,000.00
KY	Midwest Charitable Giving	Charles H. Kelly Elementary School	Pre K-12 Education	\$1,000.00
KY	Midwest Charitable Giving	Camp Ernst Middle School	Pre K-12 Education	\$1,000.00
KY	Midwest Charitable Giving	Newport Central Catholic High School	Other	\$1,000.00
KY	Midwest Charitable Giving	Special Olympics Kentucky	Health & Human Services	\$2,000.00
KY	Midwest Charitable Giving	4th at the Fort, Inc	Community Leadership	\$1,000.00
KY	Midwest Charitable Giving	St. Elizabeth Medical Center	Health & Human Services	\$0.00
KY	Midwest Charitable Giving	Northern Kentucky Skating Foundation	Economic Development	\$0.00
KY	Midwest Charitable Giving	Children Incorporated	Health & Human Services	\$5,000.00
KY	Midwest Charitable Giving	Covington Partners In Prevention	Pre K-12 Education	\$1,000.00
KY	Midwest Charitable Giving	Campbell County High School	Economic Development	\$1,300.00

KY	Giving	Leadership Kentucky	Community Leadership				\$1,000.00
KY	Midwest Charitable Giving	Dinsmore Homestead Foundation Inc	Health & Human Services				\$2,500.00
KY	Midwest Charitable Giving	Jersey Productions, Inc.	Arts & Culture				\$2,500.00
KY	Midwest Charitable Giving	Florence Elementary School	Pre K-12 Education				\$1,000.00
KY	Midwest Charitable Giving	Burlington Elementary	Pre K-12 Education				\$1,153.25
KY	Midwest Charitable Giving	Thomas Edison Elementary School	Pre K-12 Education				\$2,640.00
KY	Midwest Charitable Giving	Thomas Edison Elementary School	Pre K-12 Education				\$2,000.00
KY	Midwest Charitable Giving	South Bank Partners Inc	Economic Development				\$4,000.00
KY	Midwest Charitable Giving	Conner High School	Pre K-12 Education				\$500.00
KY	Midwest Charitable Giving	Appalachia-Science In the Public Interest Inc	Env Conservation, Education, and Research				\$3,000.00
KY	Midwest Charitable Giving	Forward Quest, Inc.	Civic				\$100,000.00
KY	Midwest Charitable Giving	Lloyd Memorial High School	Pre K-12 Education				\$1,400.00
KY	Midwest Charitable Giving	Boone County Veterans Memorial	Civic				\$1,000.00
KY	Midwest Charitable Giving	Senior Services of Northern Kentucky	Health & Human Services				\$750.00
KY	Midwest Charitable Giving	Healthpoint Family Care Inc	Health & Human Services				\$3,000.00
KY	Midwest Charitable Giving	Emergency Cold Shelter of Northern Kentucky, Inc	Community Leadership				\$5,000.00
KY	Midwest Charitable Giving	Campbell Lodge Boys' Home	Health & Human Services				\$2,500.00
KY	Midwest Charitable Giving	Fourth Street Elementary School	Civic				\$2,500.00

KY	Midwest Charitable Giving	Vision 2015	Community Leadership	\$10,000.00
KY	Midwest Charitable Giving	Fourth Street Elementary School	Civic	\$2,500.00
KY	Midwest Charitable Giving	Fourth Street Elementary School	Pre K-12 Education	\$2,000.00
KY	Midwest Charitable Giving	Northern Kentucky Community Action Commission Inc	Community Leadership	\$1,000.00
KY	Midwest Charitable Giving	The Carnegie Visual and Performing Arts Center	Other	\$5,000.00
KY	Midwest Charitable Giving	Saint Agnes School	Pre K-12 Education	\$1,000.00
KY	Midwest Charitable Giving	Northern Kentucky Symphony Inc	Arts & Culture	\$15,000.00
KY	Midwest Charitable Giving	Northern Kentucky University	Env Conservation, Education, and Research	\$2,000.00
KY	Midwest Charitable Giving	Diocesan Catholic Children's Home	Health & Human Services	\$1,000.00
KY	Midwest Charitable Giving	Kincaid Regional Theatre Company	Arts & Culture	\$3,000.00
KY	Midwest Charitable Giving	City of Newport	Community Leadership	\$5,000.00
KY	Midwest Charitable Giving	City of Edgewood	Arts & Culture	\$500.00
KY	Midwest Charitable Giving	Education Alliance of Northern Kentucky, Inc.	Higher Education/Research	\$500.00
KY	Midwest Charitable Giving	American Cancer Society Inc	Health & Human Services	\$1,000.00
KY	Midwest Charitable Giving	Institute for Nonprofit Capacity	Civic	\$7,500.00
KY	Midwest Charitable Giving	Transitions Inc	Civic	\$5,000.00
KY	Midwest Charitable Giving	City of Newport	Community Leadership	\$4,000.00
KY	Midwest Charitable Giving	Center for Great Neighborhoods of Covington Inc	Community Leadership	\$900.00



KY	Midwest Charitable Giving	Frank Duveneck Arts and Cultural	Arts & Culture	\$1,000.00
KY	Midwest Charitable Giving	Kenton County Schools	Env Conservation, Education, and Research	\$7,500.00
KY	Midwest Charitable Giving	City of Dayton	Env Conservation, Education, and Research	\$2,000.00
KY	Midwest Charitable Giving	Northern Kentucky Harvest	Health & Human Services	\$1,000.00
KY	Midwest Charitable Giving	Be Concerned Inc	Health & Human Services	\$500.00
KY	Midwest Charitable Giving	Friends of Linden Grove Cemetery	Env Conservation, Education, and Research	\$5,000.00
KY	Midwest Charitable Giving	The Friends of Sunrock Farm, Inc.	Env Conservation, Education, and Research	\$300.00
KY	Midwest Charitable Giving	Northern Kentucky Council of Partners	Pre K-12 Education	\$2,500.00
		<b># of Gifts: 56</b>		<b>\$238,693.25</b>

**2009**

KY	Foundation Grants	Children Incorporated	Economic Development	\$5,000.00
KY	Foundation Grants	Fourth At The Fort Inc	Civic	\$2,000.00
KY	Foundation Grants	Kentucky Center for the Arts Endowment Fund Inc	Arts & Culture	\$2,500.00
KY	Foundation Grants	Northern Kentucky Community Action Commission Inc	Env Conservation, Education, and Research	\$500.00
KY	Foundation Grants	Congregation of Divine Providence	Community Leadership	\$500.00
KY	Foundation Grants	Northern Kentucky Symphony Inc	Arts & Culture	\$10,000.00
KY	Foundation Grants	The Carnegie Visual and Performing Arts Center	Arts & Culture	\$5,000.00
KY	Foundation Grants	Forward Quest, Inc.	Economic Development	\$100,000.00

KY	Foundation Grants	City of Covington, Kentucky	Env Conservation, Education, and Research	\$2,000.00
KY	Foundation Grants	Newport Foundation Inc	Community Leadership	\$4,800.00
KY	Foundation Grants	Boone County Fiscal Court	Env Conservation, Education, and Research	\$1,500.00
KY	Foundation Grants	The Friends of Sunrock Farm, Inc.	Env Conservation, Education, and Research	\$500.00
KY	Foundation Grants	City of Fort Thomas	Arts & Culture	\$5,000.00
KY	Foundation Grants	Family Nurturing Center of Kentucky	Health & Human Services	\$1,000.00
KY	Foundation Grants	Campbell County SearchRescue	Civic	\$2,000.00
KY	Foundation Grants	Welcome House of Northern Kentucky Inc	Health & Human Services	\$1,000.00
KY	Foundation Grants	CBC Foundation Inc.	Economic Development	\$10,000.00
KY	Foundation Grants	Newcities Institute Inc	Pre K-12 Education	\$15,000.00
KY	Foundation Grants	Northern Kentucky Symphony Inc	Arts & Culture	\$1,000.00
KY	Foundation Grants	Kenton County Sheriff's Office	Health & Human Services	\$1,000.00
KY	Foundation Grants	Family Nurturing Center of Kentucky	Arts & Culture	\$1,000.00
KY	Foundation Grants	Behringer-Crawford Museum Board of Trustees Devou Park	Arts & Culture	\$2,000.00
KY	Foundation Grants	Ryle High School	Community Leadership	\$350.00
KY	Foundation Grants	Covington Fire Department	Community Leadership	\$2,500.00
KY	Foundation Grants	Ryle High School	Pre K-12 Education	\$1,000.00
KY	Foundation Grants	Healthpoint Family Care Inc	Community Leadership	\$2,000.00
KY	Foundation Grants	The Carnegie Visual and Performing Arts Center	Arts & Culture	\$2,500.00
KY	Foundation Grants	Charles H. Kelly Elementary School	Community Leadership	\$1,000.00
KY	Foundation Grants	KnightsColumbus CharitiesKentucky Inc	Community Leadership	\$1,000.00

KY	Foundation Grants	Prichard Committee for Academic Excellence	Env Conservation, Education, and Research	\$1,000.00
KY	Foundation Grants	Kincaid Regional Theatre Company	Arts & Culture	\$3,000.00
KY	Foundation Grants	Northern Kentucky Skating Foundation	None Selected	\$1,000.00
KY	Foundation Grants	Campbell Lodge Boys' Home	Health & Human Services	\$1,000.00
KY	Foundation Grants	Faith Community Pharmacy	Health & Human Services	\$1,500.00
KY	Foundation Grants	St. Elizabeth Hospital Foundation	None Selected	\$1,000.00
KY	Foundation Grants	Villa Madonna Academy	None Selected	\$1,000.00
KY	Foundation Grants	J. D. Patton Area Technology Center	Env Conservation, Education, and Research	\$1,500.00
KY	Foundation Grants	City of Edgewood	Arts & Culture	\$1,000.00
KY	Foundation Grants	Northern Kentucky Leadership Foundation Inc	Community Leadership	\$1,000.00
KY	Foundation Grants	University of Louisville	Env Conservation, Education, and Research	\$1,050.00
KY	Foundation Grants	Brighton Center Inc	Community Leadership	\$500.00
KY	Foundation Grants	Diocesan Catholic Children's Home	Health & Human Services	\$1,000.00
KY	Foundation Grants	Wildlife Conservation Kentucky Inc	Env Conservation, Education, and Research	\$4,000.00
KY	Foundation Grants	Center for Great Neighborhoods of Covington Inc	Env Conservation, Education, and Research	\$1,000.00
KY	Foundation Grants	City of Florence	Civic	\$1,000.00
KY	Foundation Grants	City of Independence	Civic	\$1,000.00
KY	Foundation Grants	Wildlife Conservation Kentucky Inc	Community Leadership	\$2,000.00
KY	Foundation Grants	Trooper Island Inc	Community Leadership	\$1,000.00
KY	Foundation Grants	Northern Kentucky Council of Partners	Community Leadership	\$1,000.00

KY	Foundation Grants	Kids Voting Kentucky Inc	Community Leadership	\$760.00
KY	Foundation Grants	Dayton Police Department	Civic	\$1,200.00
KY	Foundation Grants	Glenn O. Swing Elementary School	Community Leadership	\$1,000.00
KY	Foundation Grants	Brighton Center Inc	Community Leadership	\$1,992.00
KY	Foundation Grants	James A. Caywood Elementary	Pre K-12 Education	\$585.00
KY	Foundation Grants	Kentucky Philanthropy Initiative Inc	Health & Human Services	\$5,000.00
KY	Foundation Grants	Fort Thomas Independent Schools	Pre K-12 Education	\$2,000.00
KY	Foundation Grants	Northern KY U.-Institute for Nonprofit Capacity	Community Leadership	\$5,000.00
KY	Foundation Grants	Be Concerned Inc	Health & Human Services	\$500.00
KY	Foundation Grants	Covington Partners In Prevention	Pre K-12 Education	\$1,000.00
KY	Foundation Grants	Brighton Center Inc	Community Leadership	\$2,000.00
KY	Foundation Grants	Thomas More College	Higher Education/Research	\$2,500.00
KY	Foundation Grants	J. D. Patton Area Technology Center	Env Conservation, Education, and Research	\$10,000.00
KY	Foundation Grants	Behringer-Crawford Museum Board of Trustees Devou Park	Arts & Culture	\$1,000.00
KY	Foundation Grants	Leadership Kentucky	Community Leadership	\$1,000.00
KY	Foundation Grants	City of Fort Mitchell	Community Leadership	\$2,500.00
KY	Foundation Grants	Florence Elementary School	Pre K-12 Education	\$1,000.00
KY	Foundation Grants	Burlington Elementary	Pre K-12 Education	\$1,000.00
KY	Foundation Grants	Charles H. Kelly Elementary School	Pre K-12 Education	\$1,000.00
KY	Foundation Grants	Northern Kentucky Community Action Commission Inc	Community Leadership	\$7,764.71
		<b># of Gifts: 69</b>		<b>\$259,001.71</b>

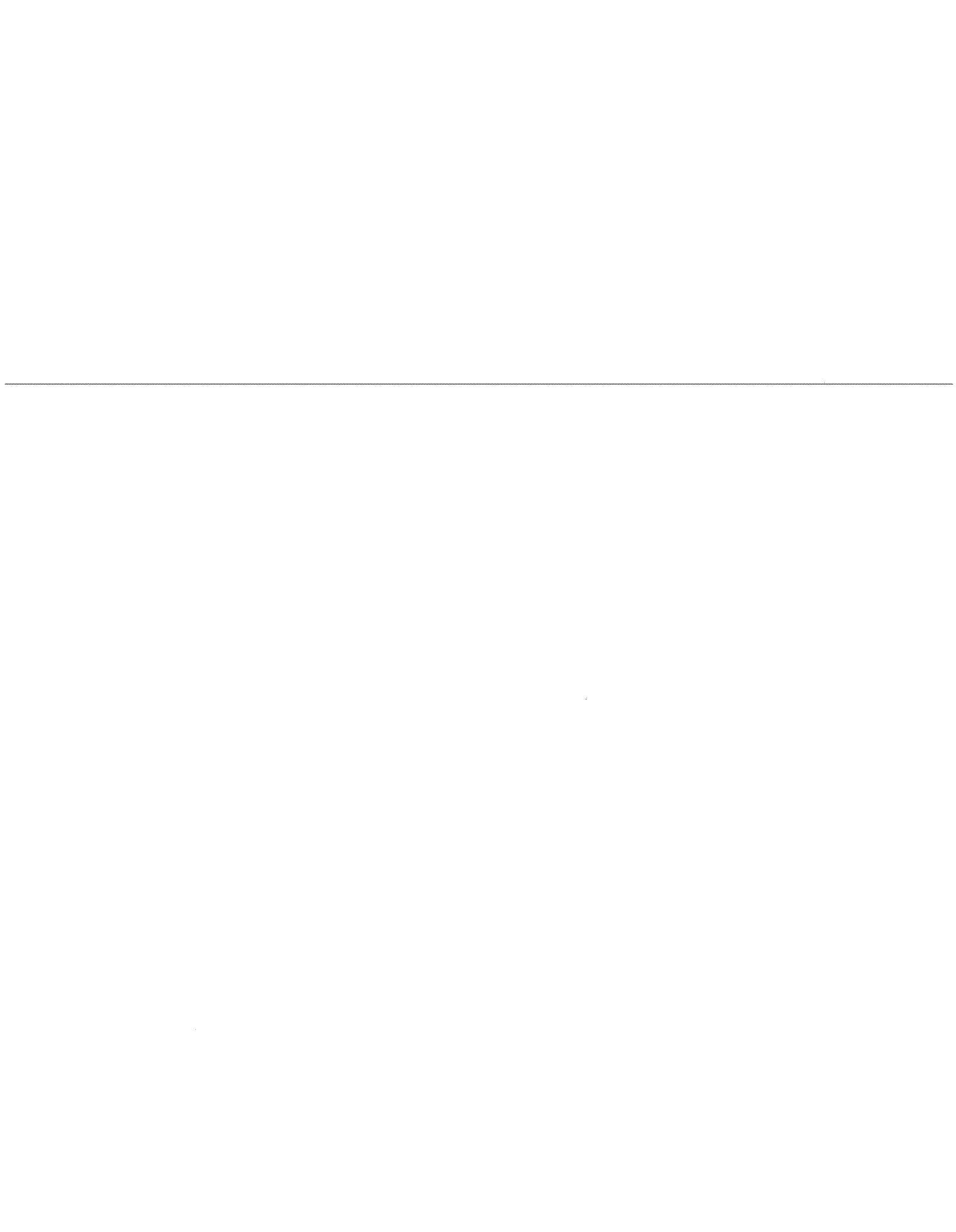
2010

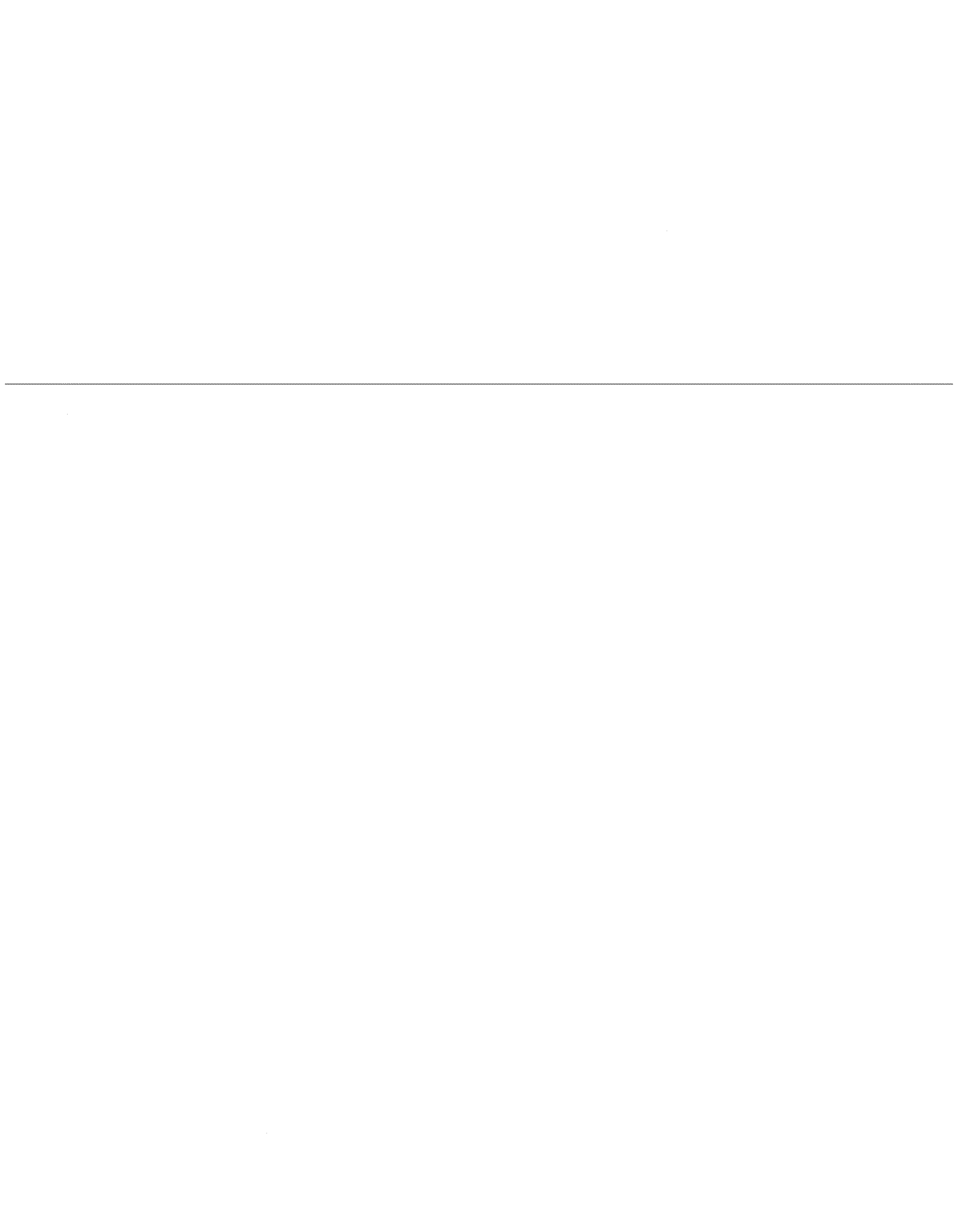
KY	Foundation Grants	Brighton Center, Inc.	Newport	41072	Economic Development	\$2,500.00
KY	Foundation Grants	Campbell County Fiscal Court	Newport	41072	Health & Human Services	\$19,700.00
KY	Foundation Grants	Campbell County SearchRescue	California	41007	Economic Development	\$2,000.00
KY	Foundation Grants	Center for Economic Analysis and Development	Highland Heights	41076	Other	\$250,000.00
KY	Foundation Grants	Children, Inc.	Covington	41011	Health & Human Services	\$7,500.00
KY	Foundation Grants	City of Edgewood	Edgewood	41017		\$1,000.00
KY	Foundation Grants	Emergency Cold Shelter of Northern Kentucky, Inc	Covington	41011	Economic Development	\$1,000.00
KY	Foundation Grants	Faith Community Pharmacy	Crescent Springs	41017	Health & Human Services	\$2,000.00
KY	Foundation Grants	Florence Elementary School	Florence	41042	Health & Human Services	\$400.00
KY	Foundation Grants	Fourth At The Fort Inc	Fort Thomas	41075		\$5,000.00
KY	Foundation Grants	Governors Scholars Program Inc	Frankfort	40601	Other	\$6,000.00
KY	Foundation Grants	J. D. Patton Area Technology Center	Edgewood	41017		\$3,750.00
KY	Foundation Grants	Kentucky Engineering Foundation Inc	Frankfort	40601	Economic Development	\$3,000.00
KY	Foundation Grants	Kicks for Kids, Inc.	Covington	41011	Economic Development	\$5,000.00
KY	Foundation Grants	Kincaid Regional Theatre Company	Falmouth	41040		\$2,500.00
KY	Foundation Grants	Leadership Kentucky	Frankfort	40601		\$1,000.00
KY	Foundation Grants	Newport Foundation Inc	Newport	41071-2184	Other	\$1,000.00
KY	Foundation Grants	Northern Kentucky African-American Heritage Task Force	Covington	41011	Economic Development	\$1,000.00
KY	Foundation Grants	Northern Kentucky Symphony Inc	Newport	41072		\$7,500.00
KY	Foundation Grants	Prichard Committee for Academic Excellence	Lexington	40588	Economic Development	\$10,000.00

KY	Foundation Grants	Thomas More College	Crestview Hills	41017	Health & Human Services	\$20,000.00
KY	Foundation Grants	Transitions Inc.	Bellevue	41073	Economic Development	\$2,500.00
KY	Foundation Grants	Vision 2015	Covington	41011	Other	\$69,000.00
KY	Foundation Grants	Vision 2015	Covington	41011	Economic Development	\$10,000.00
KY	Foundation Grants	Vision 2015	Covington	41011	Other	\$100,000.00
KY	Foundation Grants	Vision 2015	Covington	41011	Other	\$25,000.00
KY	Foundation Grants	Wave Foundation Inc	Newport	41071	Health & Human Services	\$9,850.00
KY	Foundation Grants	Women's Crisis Center, Inc.	Covington	41011	Economic Development	\$5,000.00
KY	Foundation Grants	Wood Hudson Cancer Research Laboratory Inc	Newport	41071	Economic Development	\$5,000.00
KY	Foundation Grants	Yearlings Inc	Lakeside Park	41017		\$2,000.00
		<b># of Gifts: 30</b>				<b>\$580,200.00</b>

**2011**

KY	Foundation Grants	Boone County Schools	Florence	41042		\$20,000.00
KY	Foundation Grants	Brighton Center, Inc.	Newport	41072	Civic	\$3,000.00
KY	Foundation Grants	Emergency Cold Shelter of Northern Kentucky, Inc	Covington	41011	Economic Development	\$2,000.00
KY	Foundation Grants	Kenton County Board of Education	Fort Mitchell	41017	Civic	\$10,000.00
		<b># of Gifts: 4</b>				<b>\$35,000.00</b>







**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-080**

**REQUEST:**

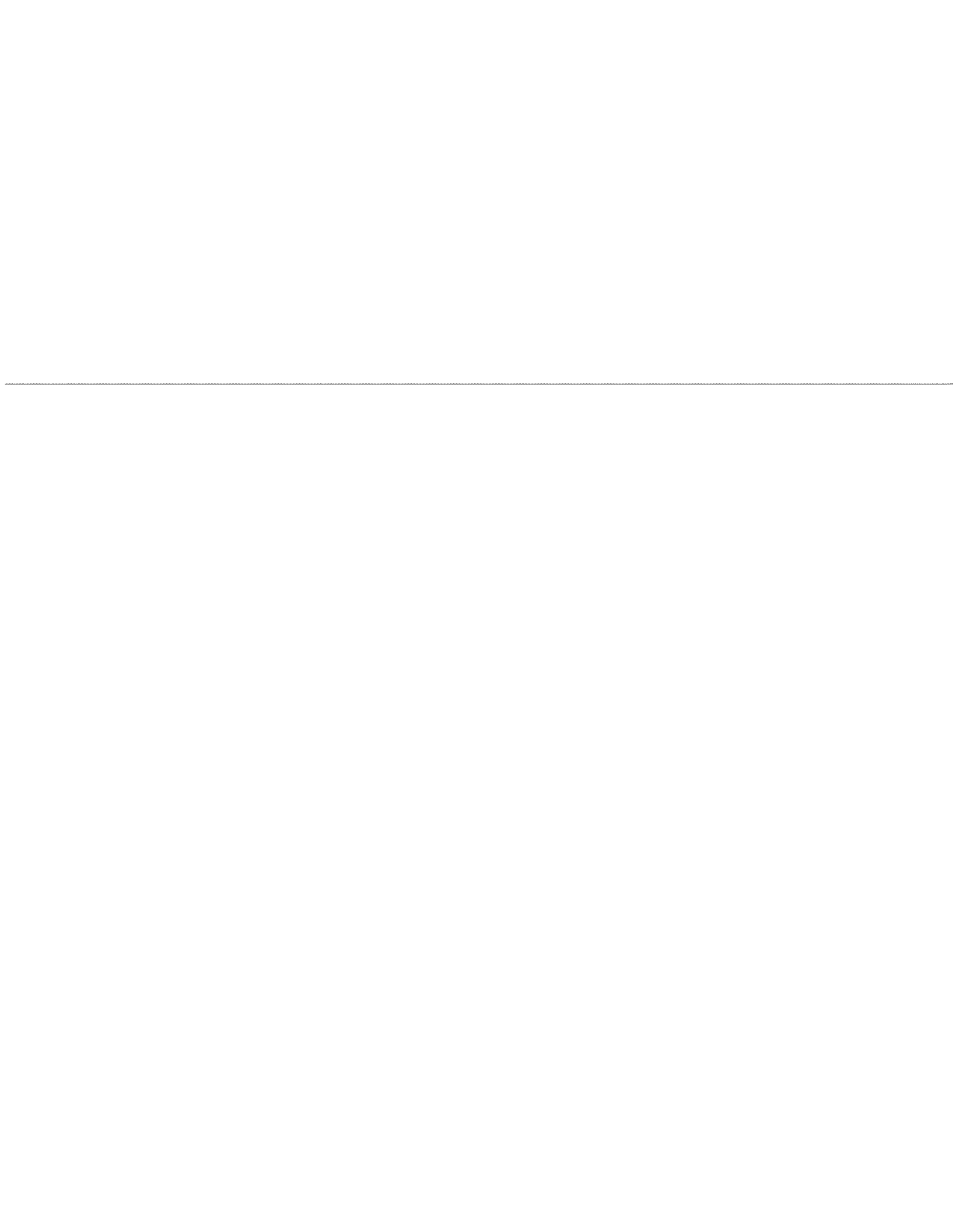
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Assuming the contemplated transaction receives full approval from all relevant regulatory authorities, will DEK be operating on a stand-alone basis following the transaction's consummation? Will DEK be filing separate tax returns following the transaction's consummation? Please provide documentation demonstrating the anticipated or planned tax return status.

**RESPONSE:**

Following the transaction's consummation, Duke Energy Kentucky will continue to operate as it does today. Duke Energy Kentucky is part of the consolidated federal tax filing of Duke Energy Corporation. After the transaction is consummated, Duke Energy Kentucky would still continue to be a part of the consolidated federal tax filing of Duke Energy Corporation. Duke Energy Kentucky is currently part of the Duke Energy Ohio consolidated nexus filing in the State of Kentucky, along with KO Transmission Company, Miami Power Corporation and Tri-State Improvement Company. There is nothing contemplated at this time that would alter the way Duke Energy Kentucky is filing tax returns at either a federal or state level after the transaction is consummated.

**PERSON RESPONSIBLE:** Keith Butler



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-081**

**REQUEST:**

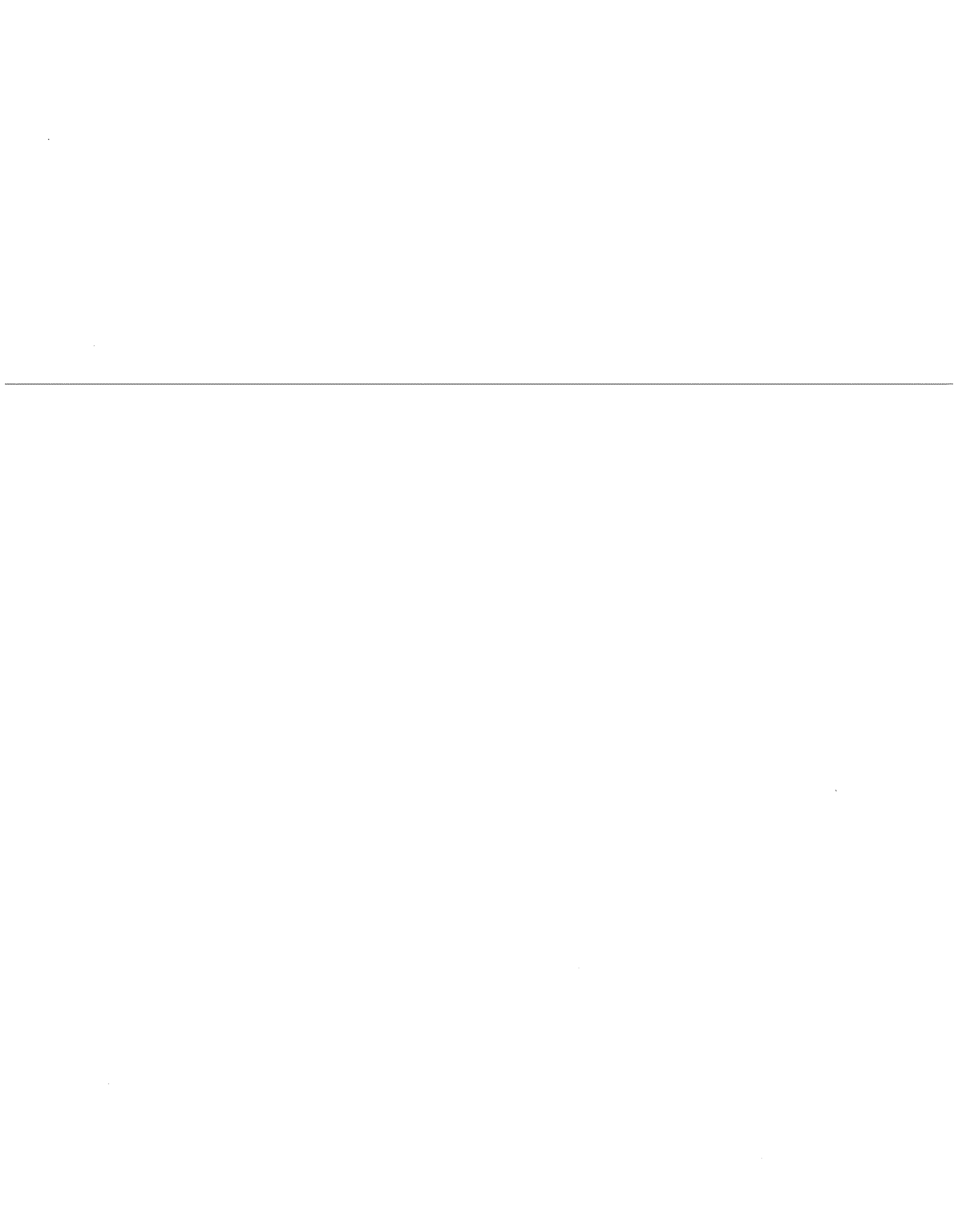
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Assuming the contemplated transaction receives full approval from all relevant regulatory authorities, will any officer or board member of DEK have a seat on the board of directors of any parent entities or affiliates following the transaction's consummation? If yes, please explain in detail by way of officer or board member and company.

**RESPONSE:**

As was agreed upon in the Agreement and Plan of Merger by and among Duke Energy Corporation ("Duke Energy"), Diamond Acquisition Corporation and Progress Energy, Inc. dated as of January 8, 2011), upon the closing of the merger, Duke Energy's Board of Directors shall appoint the current Chief Executive Officer, Jim Rogers, of Duke Energy as Chairman of the Board of Directors. Mr. Rogers currently serves as a Director as well as Chief Executive Officer of Duke Energy Kentucky. No further decisions regarding the appointment of directors to affiliated entities other than Duke Energy Corporation have been made at this time; however, it is possible that other directors and officers of Duke Energy Kentucky may be appointed those positions after the merger.

**PERSON RESPONSIBLE:** James E. Rogers



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-082**

**REQUEST:**

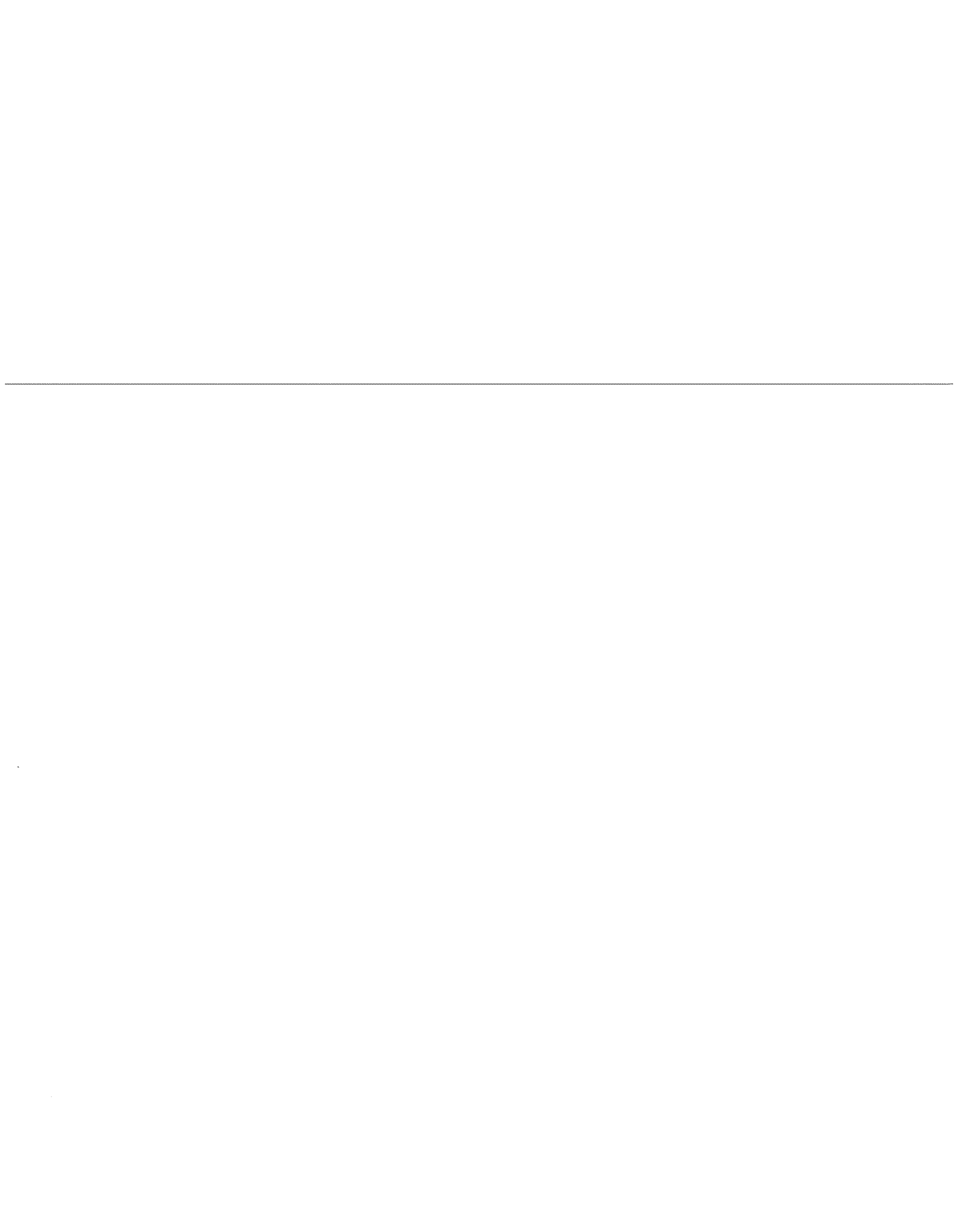
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Assuming the contemplated transaction receives full approval from all relevant regulatory authorities, will DEK offer any type or sort of retention and / or incentive program for its managers? If so, which of the Joint Applicants will bear any associated costs? Will DEK's ratepayers bear any of those costs, directly or indirectly? Explain in detail along with program and costs.

**RESPONSE:**

Regardless of whether the contemplated transaction receives full approval from all relevant regulatory authorities, Duke Energy Kentucky anticipates that it will continue to maintain a variety of incentive and employee benefit plans in the ordinary course. The Joint Applicant, however, has not yet determined whether, assuming the contemplated transaction receives full approval from all relevant regulatory authorities, Duke Energy Kentucky will offer any type or sort of retention and/or incentive program that is specifically designed to reflect the contemplated transaction. As a result, the Joint Applicant cannot determine at this time which Joint Applicant would bear any of these costs (if any) and/or the details and costs of such a program (if any).

**PERSON RESPONSIBLE:** Jennifer Weber



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-083**

**REQUEST:**

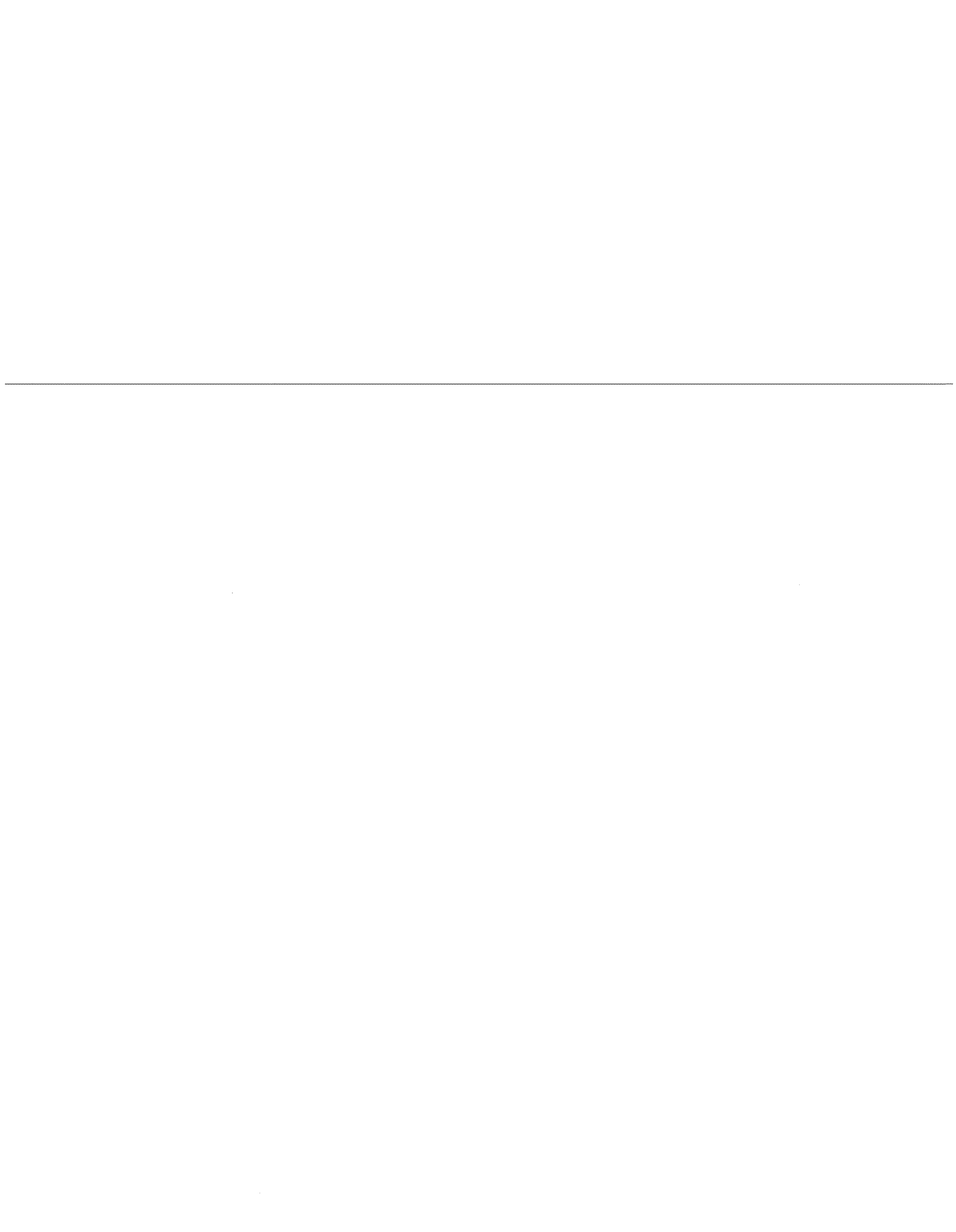
What benefits will DEK's customers receive as a result of the contemplated transaction?  
Explain in detail with **specific** savings attributable to all projected savings.

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**RESPONSE:**

The Joint Applicants provided information responsive to this request in their response to question 16(b) above.

**PERSON RESPONSIBLE:** William Don Wathen/ Stephen De May/ Jim Stanley/ Julie S. Janson





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-084**

**REQUEST:**

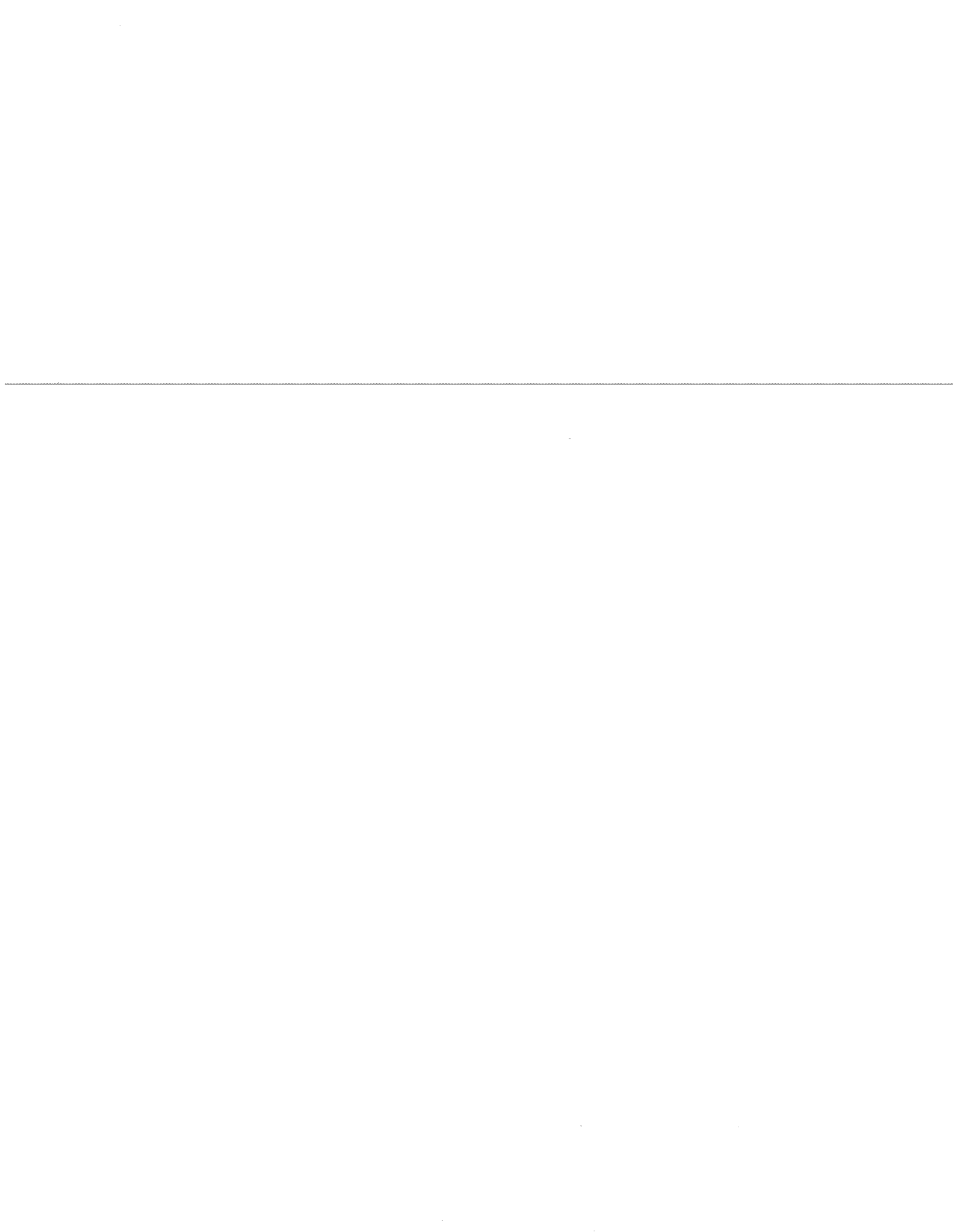
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Will DEK, and its parent entities commit to not use “pushdown accounting” in any manner arising from the contemplated transaction? If not, why not?

**RESPONSE:**

Push down accounting is not applicable to Duke Energy Kentucky in this transaction for the reasons explained on pages 4-9 of the testimony of Danny Wiles (Joint Application, Exhibit P).

**PERSON RESPONSIBLE:** Danny Wiles



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-085**

**REQUEST:**

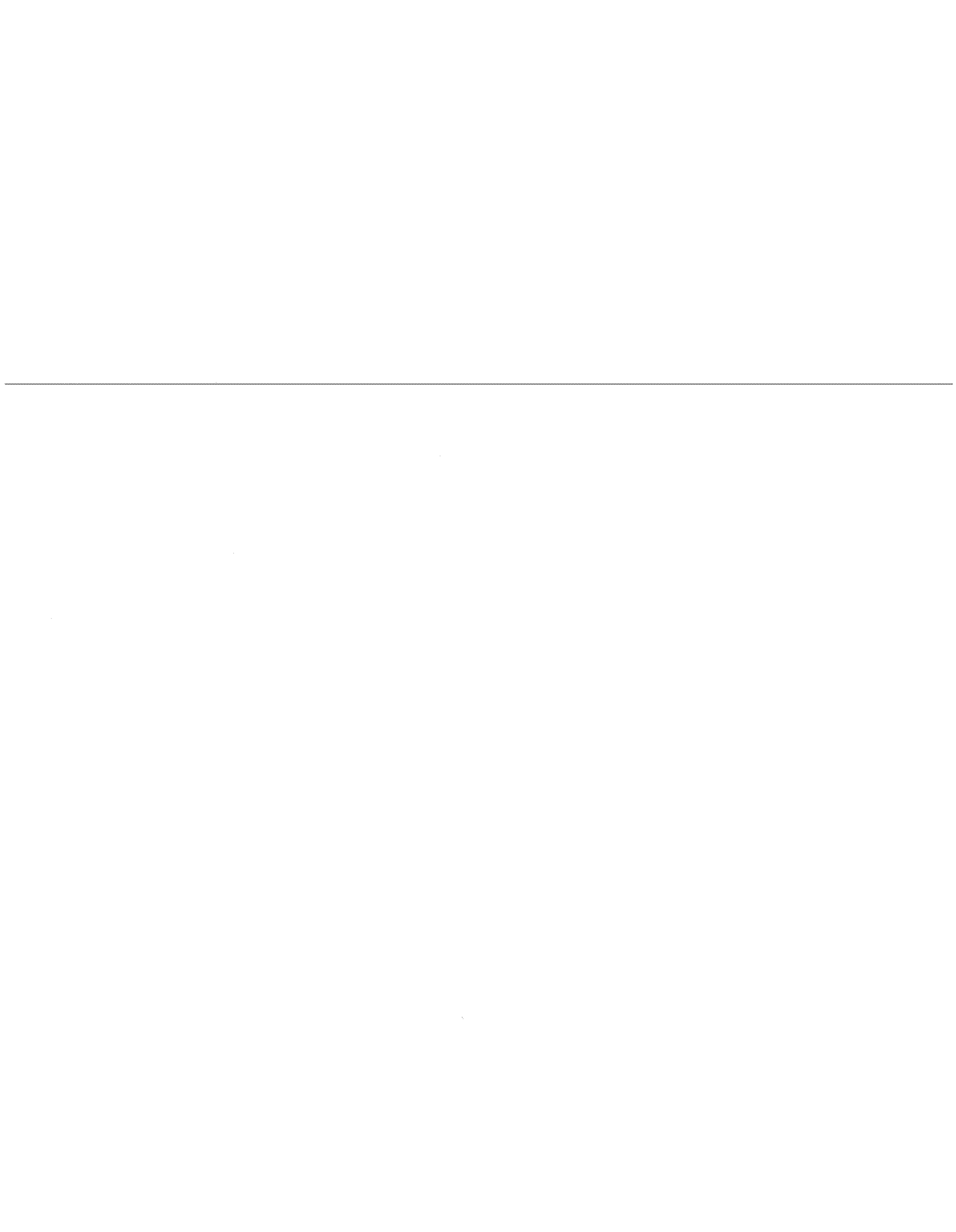
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Will the contemplated transaction allow DEK any opportunity to refinance any current outstanding debt? If so, would this translate to higher costs? If so, please explain how much. If not, why not?

**RESPONSE:**

The merger will not provide Duke Energy Kentucky any additional opportunity to refinance any current outstanding debt. A decision to refinance debt would be governed by the provisions of each individual debt instrument, which are unaffected by the merger.

**PERSON RESPONSIBLE:** Stephen De May



**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**AG-DR-01-085(a)**

**REQUEST:**

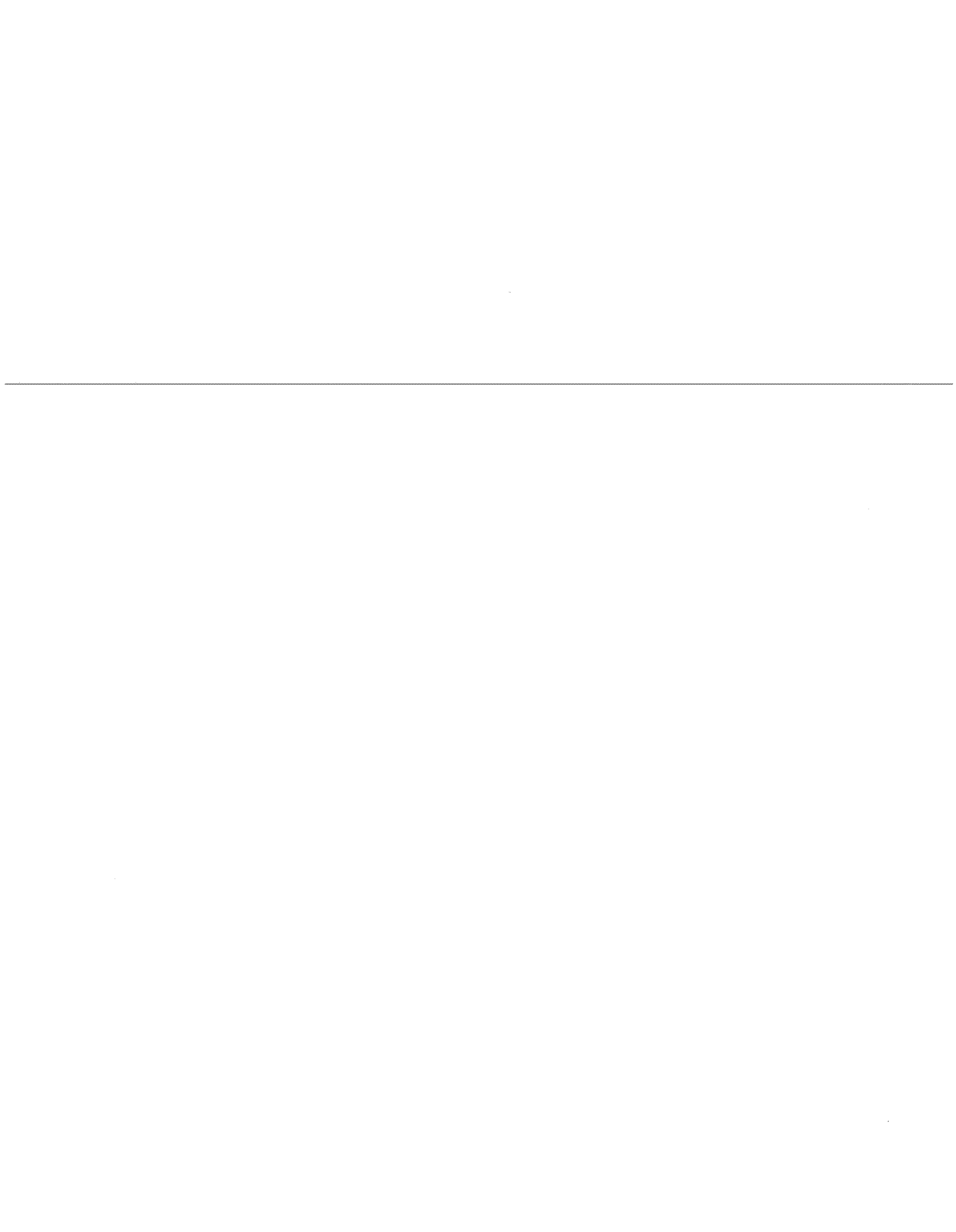
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Will the Joint Applicants agree to commit in this jurisdiction to any other conditions or commitments that are either imposed by or agreed upon in any other regulatory approval process associated with this transaction in any other jurisdiction?

**RESPONSE:**

To the extent such conditions or commitments are reasonable and applicable to Duke Energy Kentucky's operations, yes.

**PERSON RESPONSIBLE:** James E. Rogers



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

AG-DR-01-086

**REQUEST:**

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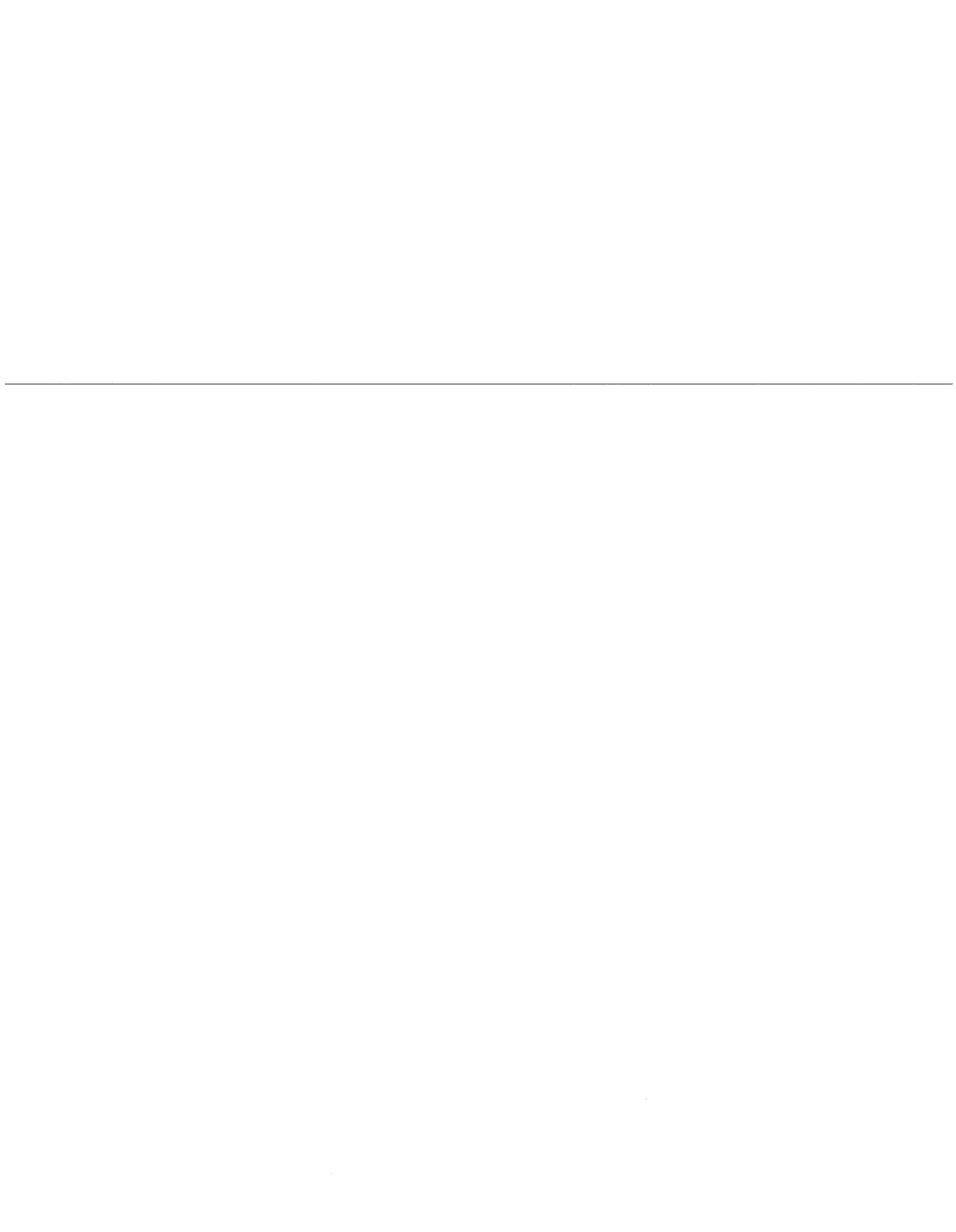
Assuming the contemplated transaction receives full approval from all relevant regulatory authorities, what amount of liquid assets will DEK's parent entities hold?

**RESPONSE:**

Duke Energy's form S-4 (filed with the SEC on March 16, 2011) states that the 12/31/2010 pro forma balance sheet of the combined company includes \$2.281 billion in cash and short-term investments.

In addition to cash assets, the companies have approximately \$5.3 billion in general credit facilities. As of 12/31/2010 and on a pro forma combined basis, approximately \$4.5 billion was available under these facilities.

**PERSON RESPONSIBLE:** Stephen De May





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-087**

**REQUEST:**

Please provide a narrative describing the development of the structure for the bidding and negotiation process and include in the narrative the identity of the individuals who were responsible for the development and approval of the structure of the bidding and negotiation process.

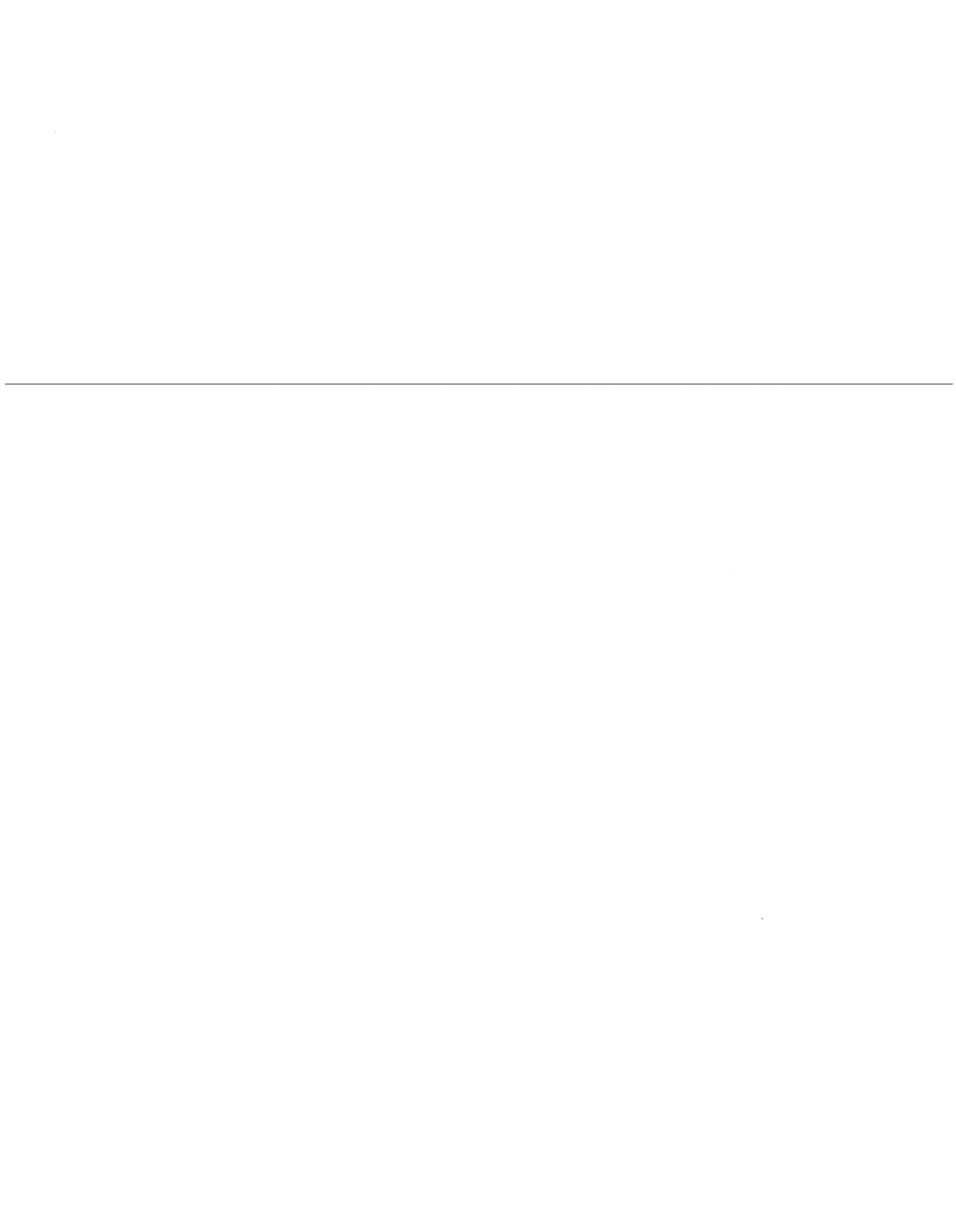
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- a. Identify every corporation, holding company, partnership, firm, individual, investor group, or other entity that was invited, solicited, or asked to participate in the bidding process.
- b. Identify the criteria for selecting targets for soliciting a bid.
- c. To the extent that there were “various sequences of the bidding process,” describe in detail each sequence and identify the participants for each sequence and the corresponding result, by participant, of each sequence. (By participant, indicate whether the participant moved to the next level, whether the participant withdrew, whether the participant was eliminated, etc.)
- d. For any participant in the bidding process that submitted a valuation of E.ON U.S. or otherwise identified a purchase price, please provide a copy of the valuation and identify the purchase price.
- e. For any valuation or purchase price submitted, indicate whether DEK’s parent entities asked a third-party consultant (such as an investment advisor, financial consultant, etc.) to review, critique, or otherwise analyze the valuation or purchase price. If there was such a request, then please provide details for each request and the response and include any documents relating to the request and response, including e-mails and any other documentation as defined in the Attorney General’s instruction number 10.

**RESPONSE:**

- a-c. The Duke Energy – Progress Energy merger was not an auction process, and thus there was no bidding. For the narrative of the negotiation process, please refer to the “Background of Merger” section in the Duke Energy Corporation Amendment No. 1 to Form S-4, as filed with the Securities and Exchange Commission on April 8, 2011, beginning on page 44. Sub-questions a)-d) should be addressed by materials therein. In response to sub-question e), Duke Energy and its Board of Directors solicited opinions from Financial Advisors from both JP Morgan and Bank of America / Merrill Lynch. These opinions are included in the “Opinions of Financial Advisors to Duke Energy” section in the Duke Energy Corporation Amendment No. 1 to Form S-4, as filed with the Securities and Exchange Commission on April 8, 2011, beginning on page 63.
- d. Objection. The Joint Applicants object to this request as it relates to a prior Commission proceeding not involving any of the Joint Applicants and is therefore irrelevant. There is no transaction involving E.On U.S. at issue in this proceeding. This request is beyond the scope of the proceeding.
- e. The opinions of financial advisors of Duke Energy Kentucky’s parent entities are attached to the previously filed S-4 and are incorporated herein by reference.

**PERSON RESPONSIBLE:** As to Objection – Legal  
Richard Bates



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-088**

**REQUEST:**

With regard to Joint Applicants' assertion that the transaction is "consistent with the public interest," please provide and answer the following:

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- a. For the transaction through which DEK's parent entities obtained approval for the change of control and ownership of Union Light, Heat & Power (Kentucky PSC Case No. 2005-00228), identify each factor, stated-reason, and rationale provided by the Joint Applicants in that proceeding supporting the argument that approval of the acquisition by Duke was consistent with the public interest within the meaning of KRS 278.020(5).
- b. With regard to each factor, stated-reason, and / or rationale provided by the Joint Applicants in Case No. 2005-00228 in support of the argument that the acquisition by Duke was consistent with the public interest, please indicate how the approval of the agreement presented in this proceeding impacts that factor, stated-reason, or rationale.
- c. Please identify with specificity each factor, stated-reason, or rationale of the Joint Applicants offered in support of their argument in the instant matter that Duke's acquisition of Progress is consistent with the public interest, within the meaning of KRS 278.020(5).
- d. Is it the position of the Joint Applicants that a financial investment by a global energy company is inconsistent with (or otherwise not in) the public interest? If no, then please explain why the proposed acquisition provides any incremental public benefit. (For example, is it the case that Duke, following the closure of the contemplated transaction, has no incentive to operate DEK with the goal of sustainable long-term growth for the benefit of DEK, its customers, employees, managers and community stakeholders?)
- e. Is it the position of either Joint Applicant that continued ownership by Duke is not in the public interest? If yes, then please identify the date on which any Joint Applicant made this determination.

**RESPONSE:**

Objection. This request is overbroad and unduly burdensome to the extent it requests information beyond the jurisdiction of Kentucky. This transaction results in an indirect change of control over Duke Energy Kentucky, and thus Duke Energy Corporation will continue to own and operate Duke Energy Kentucky upon consummation of the acquisition of Progress Energy. Accordingly, although this question is directed to “Joint Applicants,” it is inapplicable to Progress Energy. The question is applicable to Duke Energy Corporation and its affiliated companies, and thus the response is made on behalf of those entities.

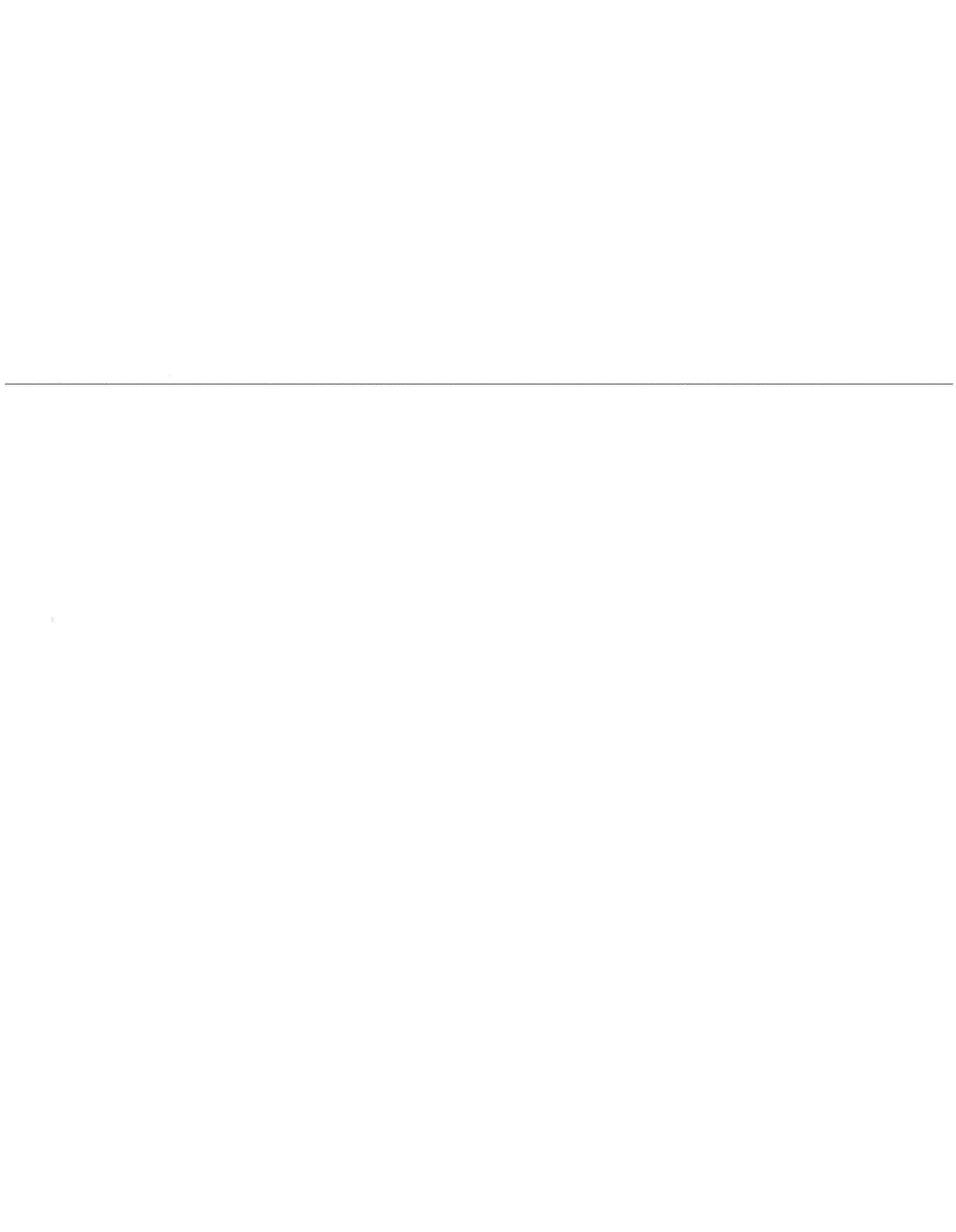
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- a. The Joint Applicants object to the question on the basis that it is overly broad, unduly burdensome and irrelevant to this proceeding and seeks a legal opinion. Without waiving this objection, the information sought is publicly available to the Attorney General through the direct testimony filed in Case No. 2005-00228.
- b. The Joint Applicants object to the question on the basis that it is overly broad, unduly burdensome and irrelevant to this proceeding. Each transfer of control must be independently reviewed and the facts of this case – which is an indirect transfer of control – are materially different than the facts presented in Case No. 2005-00228 – which was a direct transfer of control case. Without waiving this objection, the Joint Applicants refer generally to pages 28-29 of the testimony of Jim Rogers (Joint Application, Exhibit J) and pages 31-32 of the testimony of Julia Janson (Joint Application, Exhibit L), which describe Duke Energy Kentucky’s successful track record of completing mergers. The Joint Applicants also generally refer to the testimony of Jim Rogers (Joint Application, Exhibit J, pp. 15-28), William Johnson (Joint Application, Exhibit K, pp. 28-30), Julia Janson (Joint Application, Exhibit L, pp. 32-40), William Wathen (Joint Application, Exhibit M, pp. 6-9) and Jim Stanley (Joint Application, Exhibit O, pp. 9-18), which explain some of the anticipated benefits of this transaction for Duke Energy Kentucky and its ratepayers.
- c. The Joint Applicants refer to paragraphs 19-29 of the Application and to the testimony of Jim Rogers (Joint Application, Exhibit J, pp. 15-28), William Johnson (Joint Application, Exhibit K, pp. 17-30), Julia Janson (Joint Application, Exhibit L, pp. 32-40, 57-58), William Wathen (Joint Application, Exhibit M, p. 9) and Jim Stanley (Joint Application, Exhibit O, pp. 17-18).
- d. The Joint Applicants object to the question on the basis that it is vague. Duke Energy Kentucky is not being acquired. Without waiving said objection, this case involves an indirect change in control of Duke Energy Kentucky. Duke Energy Corporation is the acquiring company and will continue to own and operate Duke

Energy Kentucky. There is no change in ownership with respect to Duke Energy Kentucky. Each transfer of control must be independently reviewed. The Joint Applicants refer generally to pages 28-29 of the testimony of Jim Rogers (Joint Application, Exhibit J) and pages 31-32 of the testimony of Julia Janson (Joint Application, Exhibit L), which describes Duke Energy Kentucky's successful track record of completing mergers. The Joint Applicants also generally refer to the testimony of Jim Rogers (Joint Application, Exhibit J, pp. 15-28), William Johnson (Joint Application, Exhibit K, pp. 28-30), Julia Janson (Joint Application, Exhibit L, pp. 32-40), William Wathen (Joint Application, Exhibit M, pp. 6-9) and Jim Stanley (Joint Application, Exhibit O, pp. 9-18), which explain some of the anticipated benefits of this transaction for Duke Energy Kentucky and its ratepayers.

- 
- e. ~~The Joint Applicants object to this question on the basis that it is ambiguous and vague. It is unclear which Joint Applicants are referenced and the question implies that Duke Energy is divesting itself of Duke Energy – which is patently false. Without waving said objections, the Application and testimony attached thereto demonstrate why the continued ownership of Duke Energy Kentucky by Duke Energy is in the public interest. This case involves an indirect transfer of control of Duke Energy Kentucky. Duke Energy Corporation is the acquiring company and will continue to own and operate Duke Energy Kentucky. There is no change in ownership with respect to Duke Energy Kentucky.~~

**PERSON RESPONSIBLE:** Objections- Legal  
James E. Rogers  
Julie S. Janson  
William Don Wathen Jr.



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-089**

**REQUEST:**

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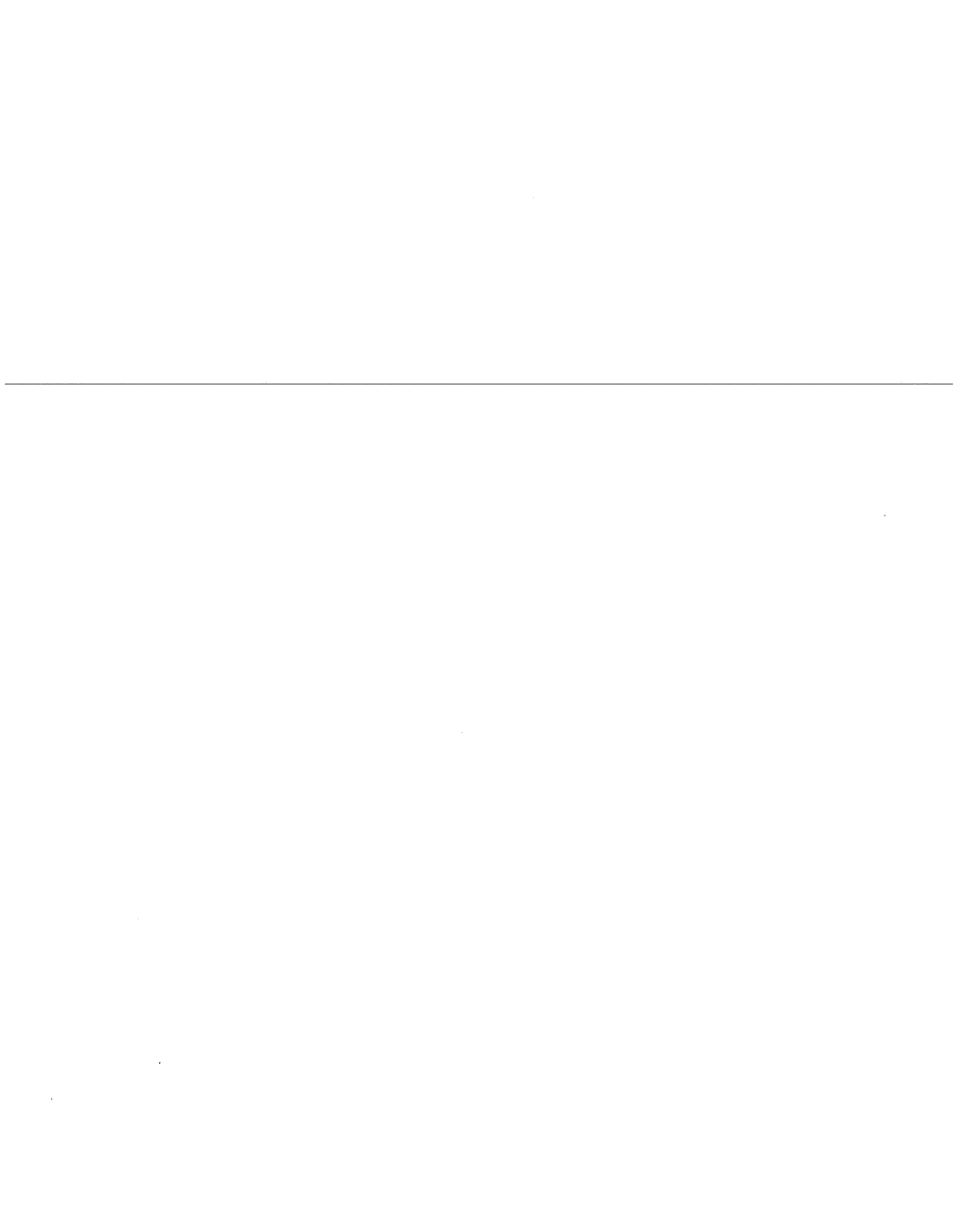
The Joint Applicants in Case No. 2005-00228 indicated that the transaction would be seamless and transparent for ULH&P's ratepayers. State whether the Joint Applicants in the instant case plan to reach this same standard, and if so, how.

**RESPONSE:**

The transaction will be seamless and transparent for Duke Energy Kentucky's rate payers. This case involves an indirect change in control of Duke Energy Kentucky. Duke Energy Corporation is the acquiring company and will continue to own and operate Duke Energy Kentucky. There is no change in ownership with respect to Duke Energy Kentucky. The Joint Applicants also generally refer to the testimony of Julia Janson (Joint Application, Exhibit L) on pages 32-40.

**PERSON RESPONSIBLE:** William Don Wathen/ Julie Janson





**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**AG-DR-01-090**

**REQUEST:**

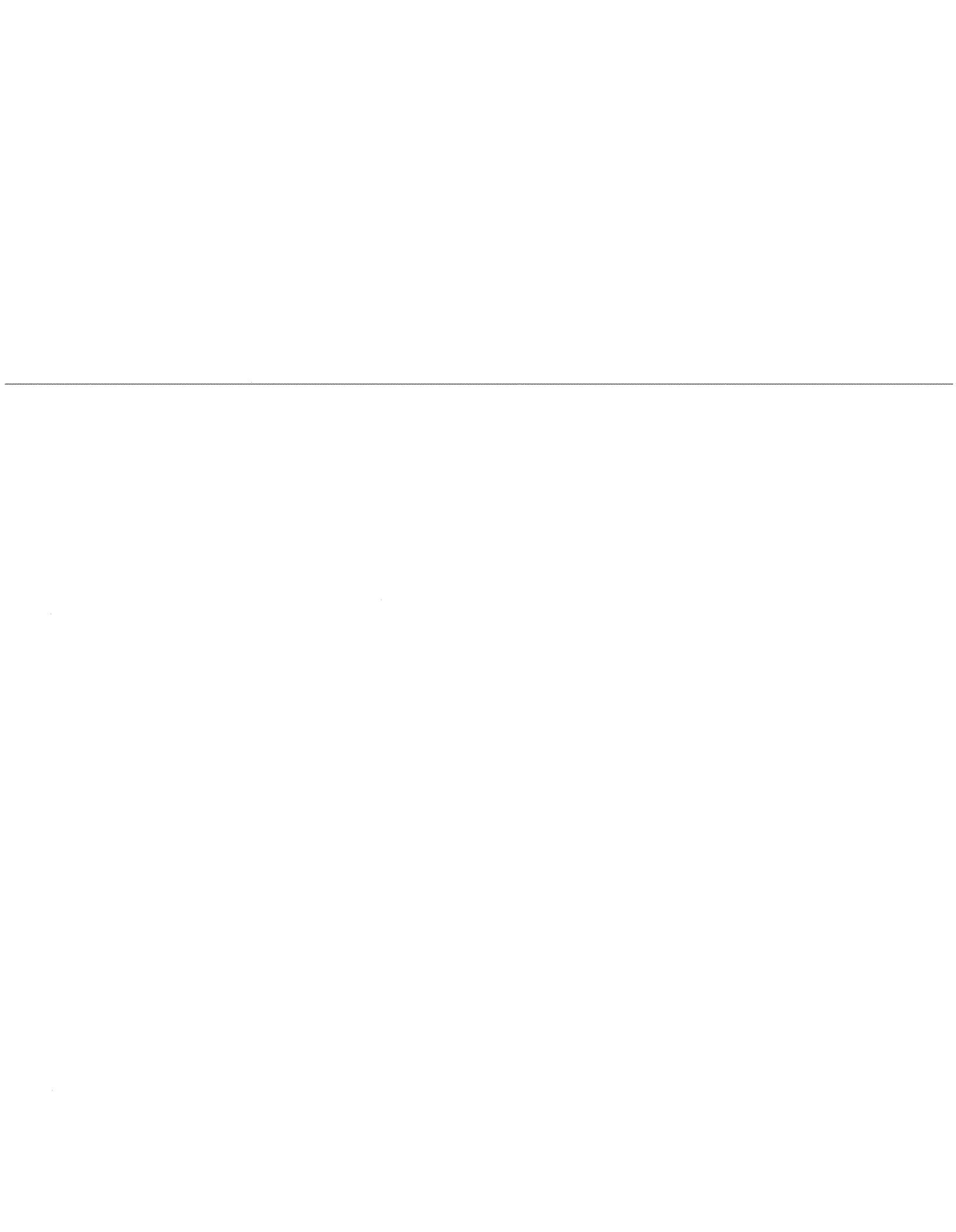
State what effects, if any, the contemplated transaction will have on DEK's petition to obtain membership in PJM.

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**RESPONSE:**

Duke Energy does not expect that the transaction will have any effect on Duke Energy Kentucky's petition to obtain PJM membership.

**PERSON RESPONSIBLE:** Jim Stanley



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-091**

**REQUEST:**

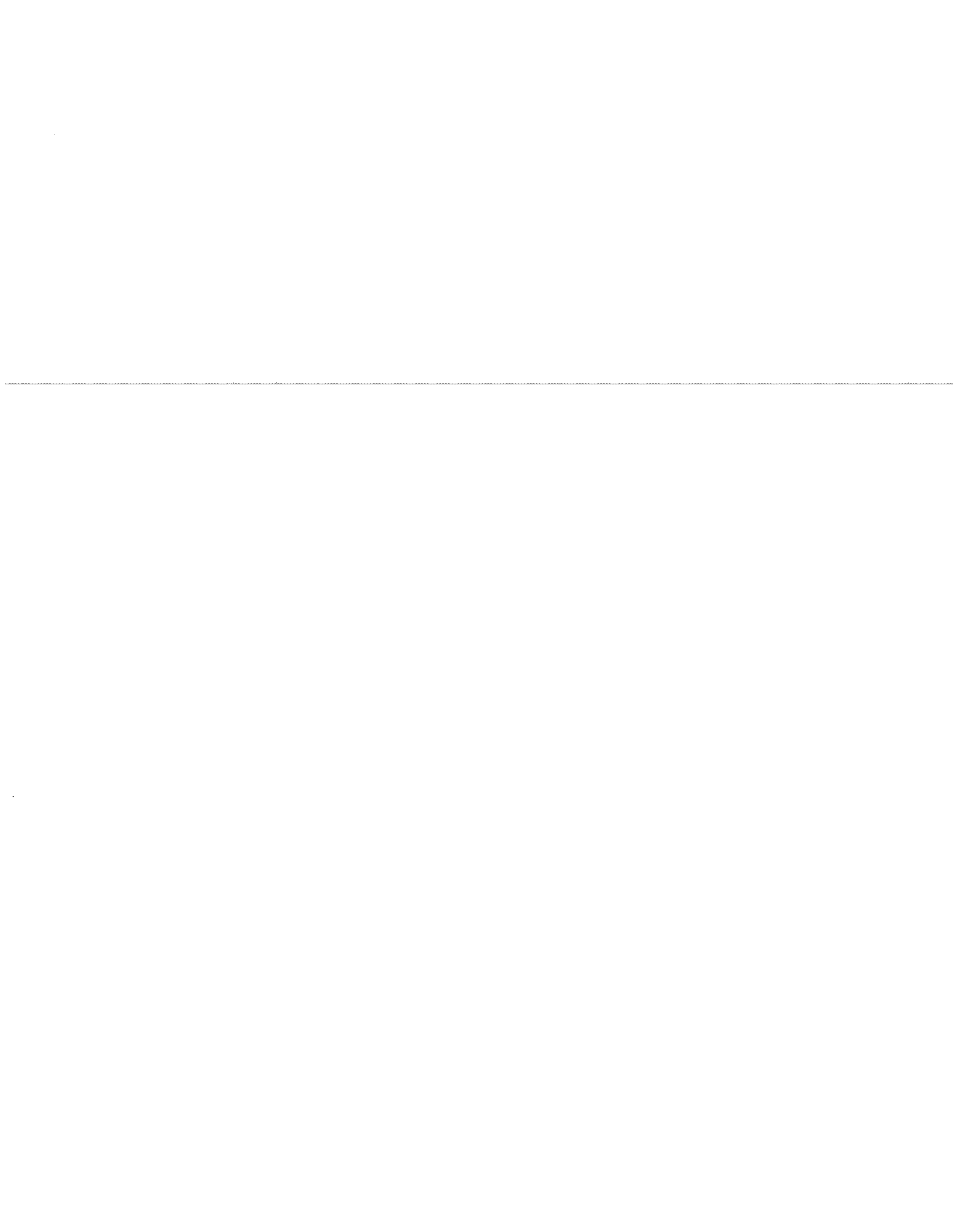
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The Joint Applicants in Case No. 2005-00228 stated that synergies expected from that transaction would include “reduced costs resulting from the elimination of overlapping functions, increased purchasing power, the avoidance of duplicative expenditures, and the consolidation of certain operations.” (Application, Case No. 2005-00228, p. 9). State whether similar synergies are expected in the instant contemplated transaction.

**RESPONSE:**

Yes, similar synergies are expected in the instant contemplated transaction. Refer to the response to AG-DR-01-083 for additional context.

**PERSON RESPONSIBLE:** AR Mullinax



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-092**

**REQUEST:**

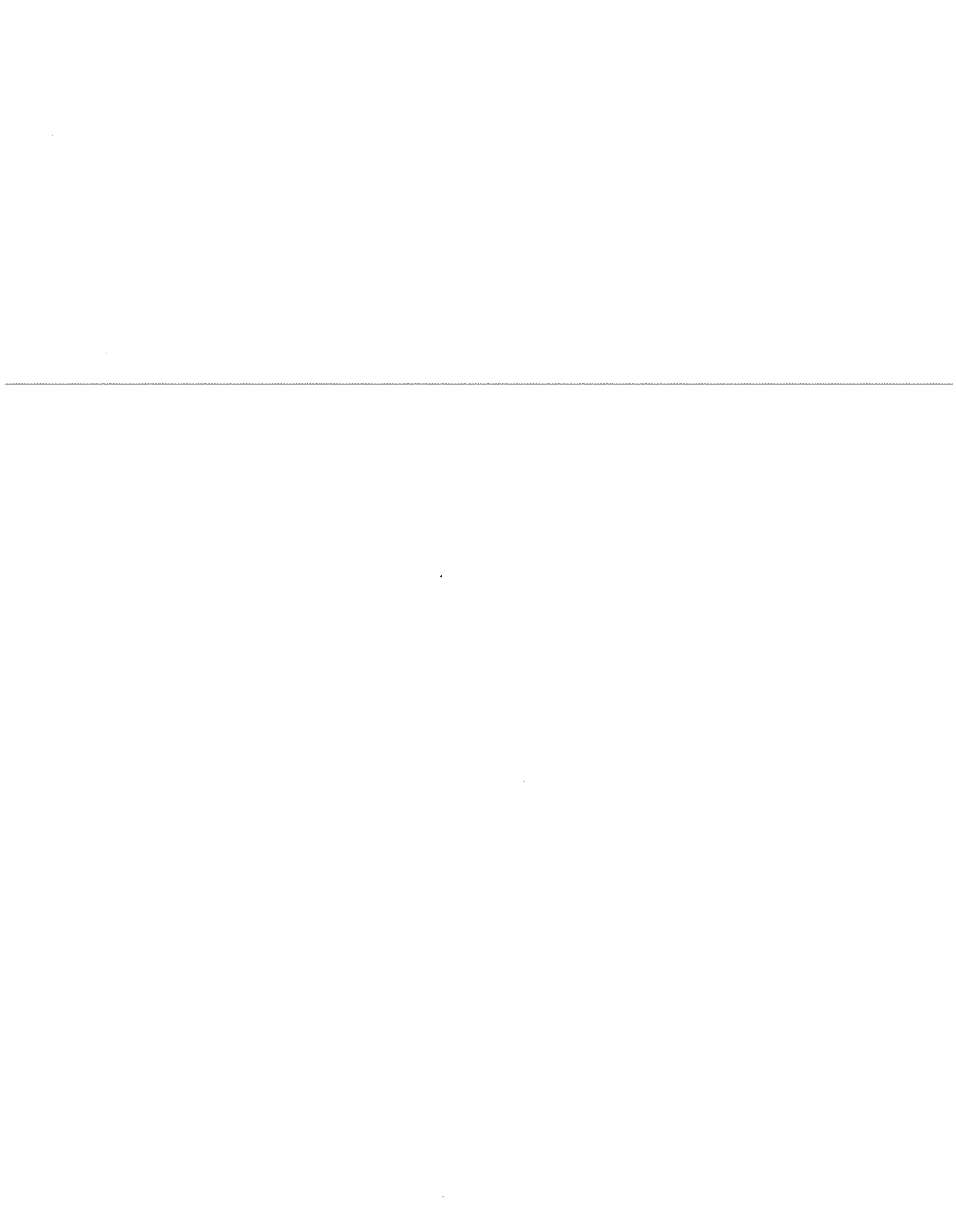
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State how the contemplated transaction would affect Duke's status under PUHCA 2005. Is DEK currently subject to FERC regulation? Will it be following the closure of the contemplated transaction? If so, provide any projected incremental costs associated with DEK losing its exemption from FERC regulation, if applicable.

**RESPONSE:**

Objection. Calls for legal opinion. Without waiving said objection, the contemplated transaction will not affect Duke Energy's status under PUHCA 2005. Duke Energy Kentucky is currently subject to FERC regulation and will continue to be subject to FERC regulation following the closure of the contemplated transaction.

**PERSON RESPONSIBLE: Legal**



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-093**

**REQUEST:**

Did DEK and / or its parent entities assume the existence of any synergies when they made the economic decision to purchase Progress?

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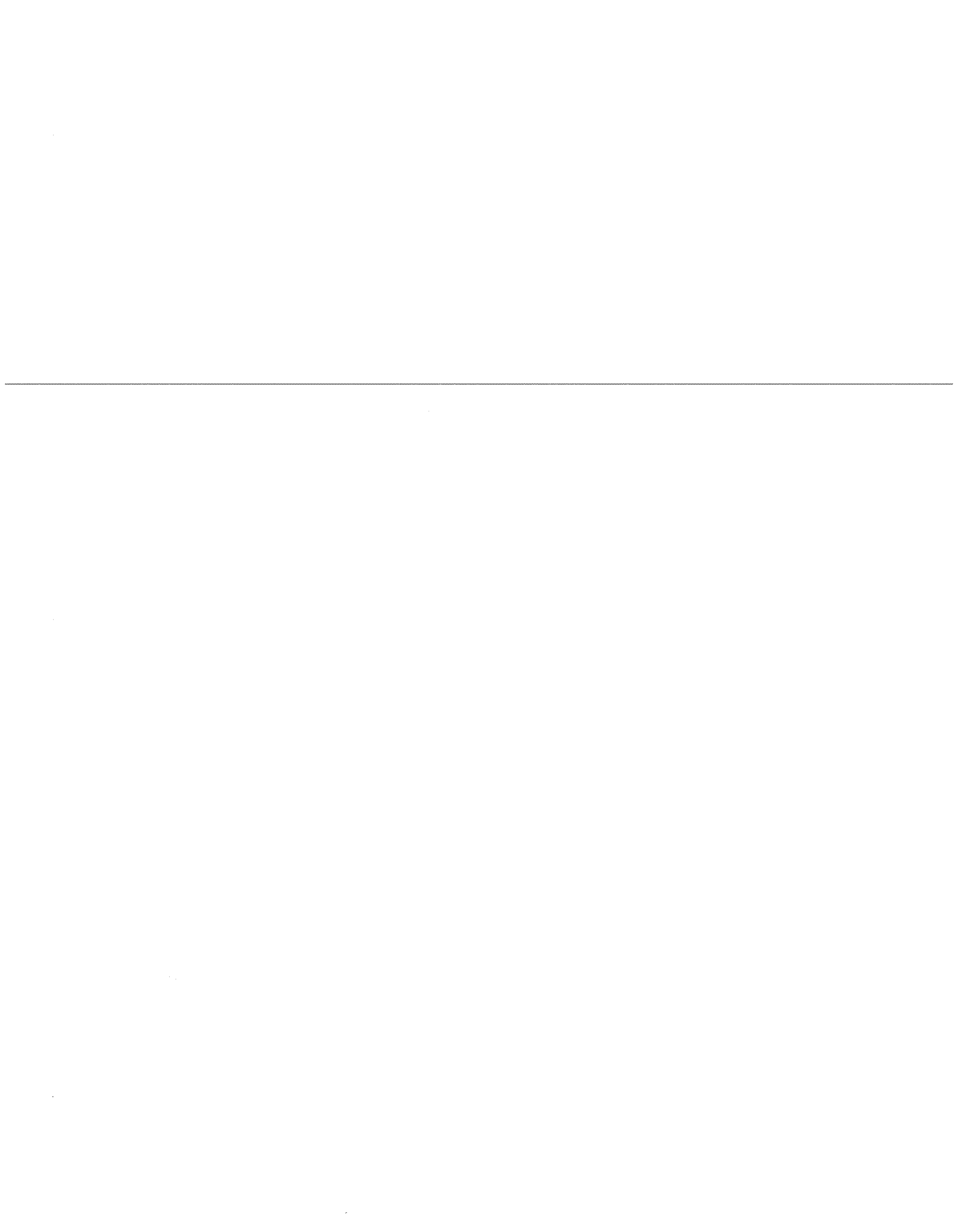
- a. Aside from the determination of the purchase price, did Duke (by itself or acting through an agent or third-party) research, analyze, or otherwise investigate possible synergies associated with a purchase of Progress? If not, explain why not. If yes, then please explain in detail the results of the research, analysis, or investigation.

**RESPONSE:**

Objection. This document request seeks to elicit information protected by the attorney-client privilege and/or attorney work product privilege. Information responsive to this request was provided in response to AG-DR-01-016. Finally, information responsive to this request is set forth throughout the previously filed S-4, which is incorporated herein by reference.

**PERSON RESPONSIBLE:** As to Objection – Legal  
AR Mullinax





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-094**

**REQUEST:**

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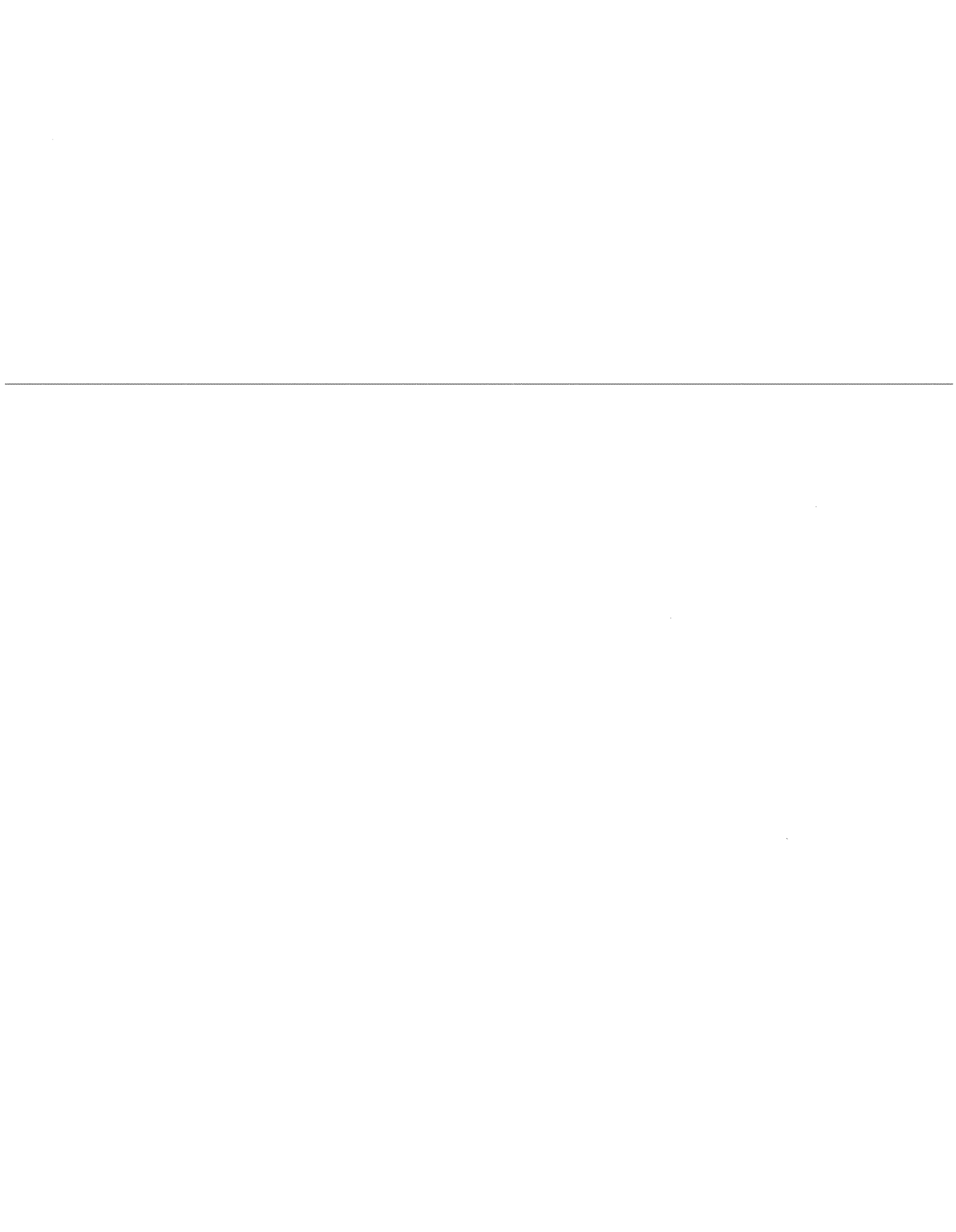
Do the Joint Applicants anticipate, project, or otherwise forecast any additional reorganizations, mergers, change of control, or other transactions involving DEK for the thirty-six (36) month period following any potential approval and consummation of this purchase agreement? If yes, then please describe in detail.

**RESPONSE:**

Objection. The Joint Applicants object to this request to the extent that it calls for speculation and guess work. The request is further objectionable to the extent it seeks information protected under the doctrines of attorney work product or attorney client privilege. Without waiving said objection, the Joint Applicants in the regular course of business review potential transactions and other opportunities periodically. The Joint Applicants cannot anticipate, project, or forecast what these opportunities may be or whether they may occur over any given time frame.

**PERSON RESPONSIBLE:** Objection- Legal

James E. Rogers



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-095**

**REQUEST:**

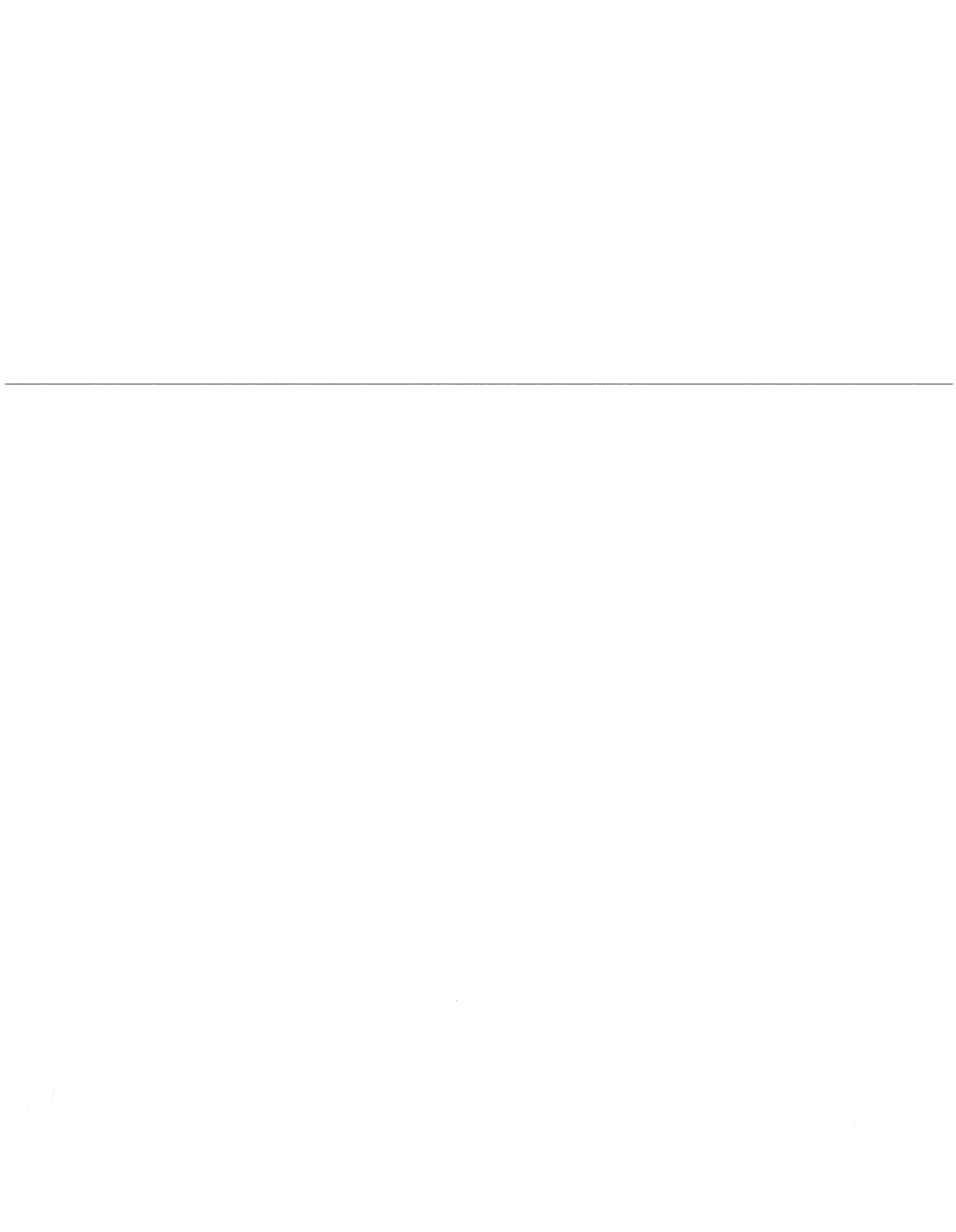
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Are the Joint Applicants willing to make a commitment that if they do not hold DEK for a ten-year (10) period, then they will pay (to the Commonwealth of Kentucky) an exit fee if they voluntarily enter into an agreement to sell DEK? If not, then please explain why not.

**RESPONSE:**

The Joint Applicants are willing to agree to reasonable regulatory commitments as set forth on pages 40-54 of Julia Janson's testimony (Joint Application, Exhibit L). Paying an "exit fee" to the Commonwealth of Kentucky is unreasonable under any circumstances.

**PERSON RESPONSIBLE:** James E. Rogers



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-096**

**REQUEST:**

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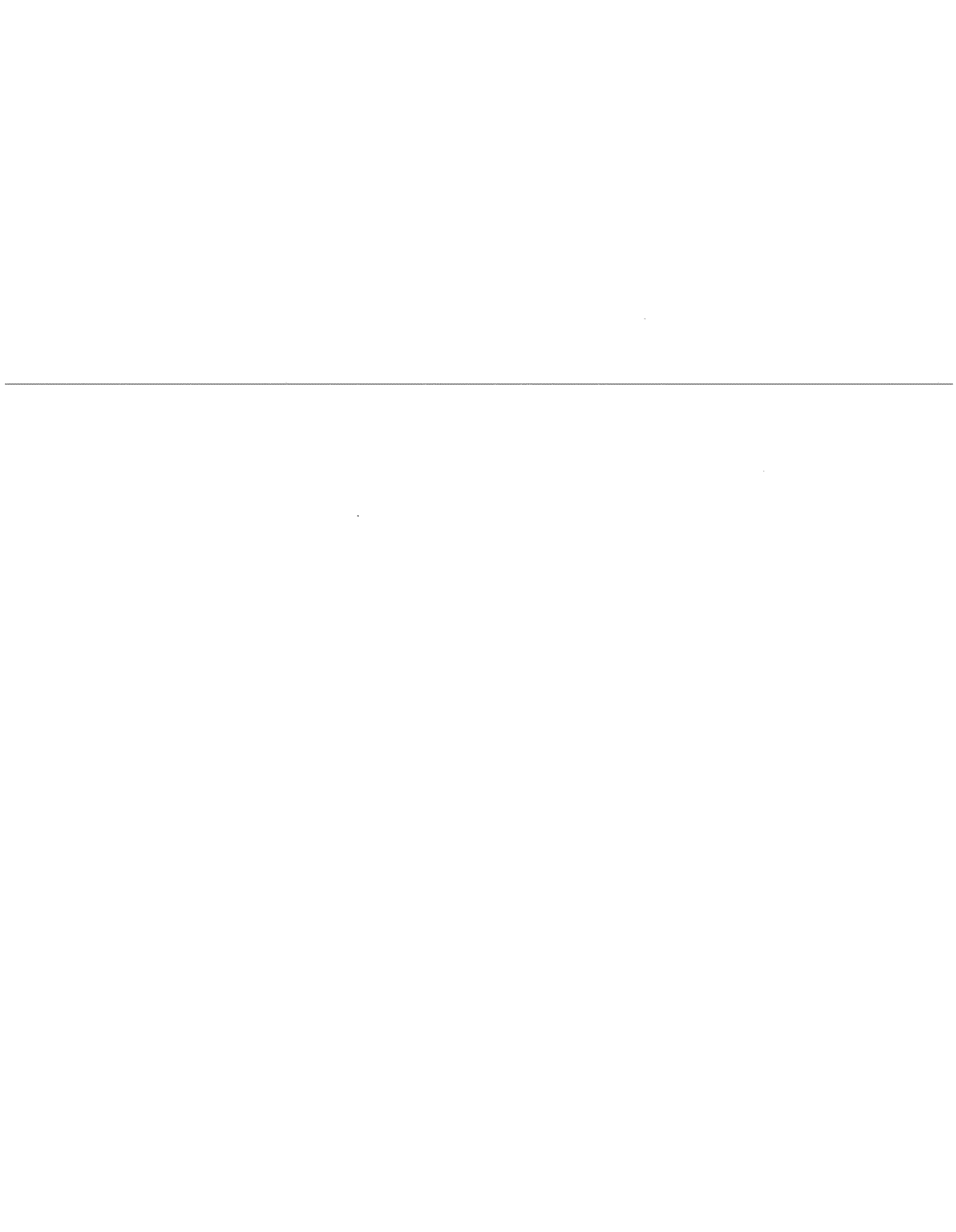
For each commitment made by the Joint Applicants, please identify the aspect of the commitment that does not presently exist. (In other words: For each commitment indicate whether it is simply a continuation of a current commitment or whether it represents an incremental increase in an existing commitment or a wholly-new commitment.)

**RESPONSE:**

Objection. The Joint Applicants object to this request on the basis that is vague and ambiguous. Without waiving said objections, the Joint Applicants have indicated that they are willing to agree to reasonable regulatory commitments as set forth on pages 40-54 of Julia Janson's Direct Testimony (Joint Application, Exhibit L). The continued applicability of regulatory commitments already in place are discussed therein.

**PERSON RESPONSIBLE:** Objection- Legal

Julie S. Janson



**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**AG-DR-01-097**

**REQUEST:**

Are the Joint Applicants willing to commit to review with DEK whether policies more sympathetic to low-income customers would be appropriate?

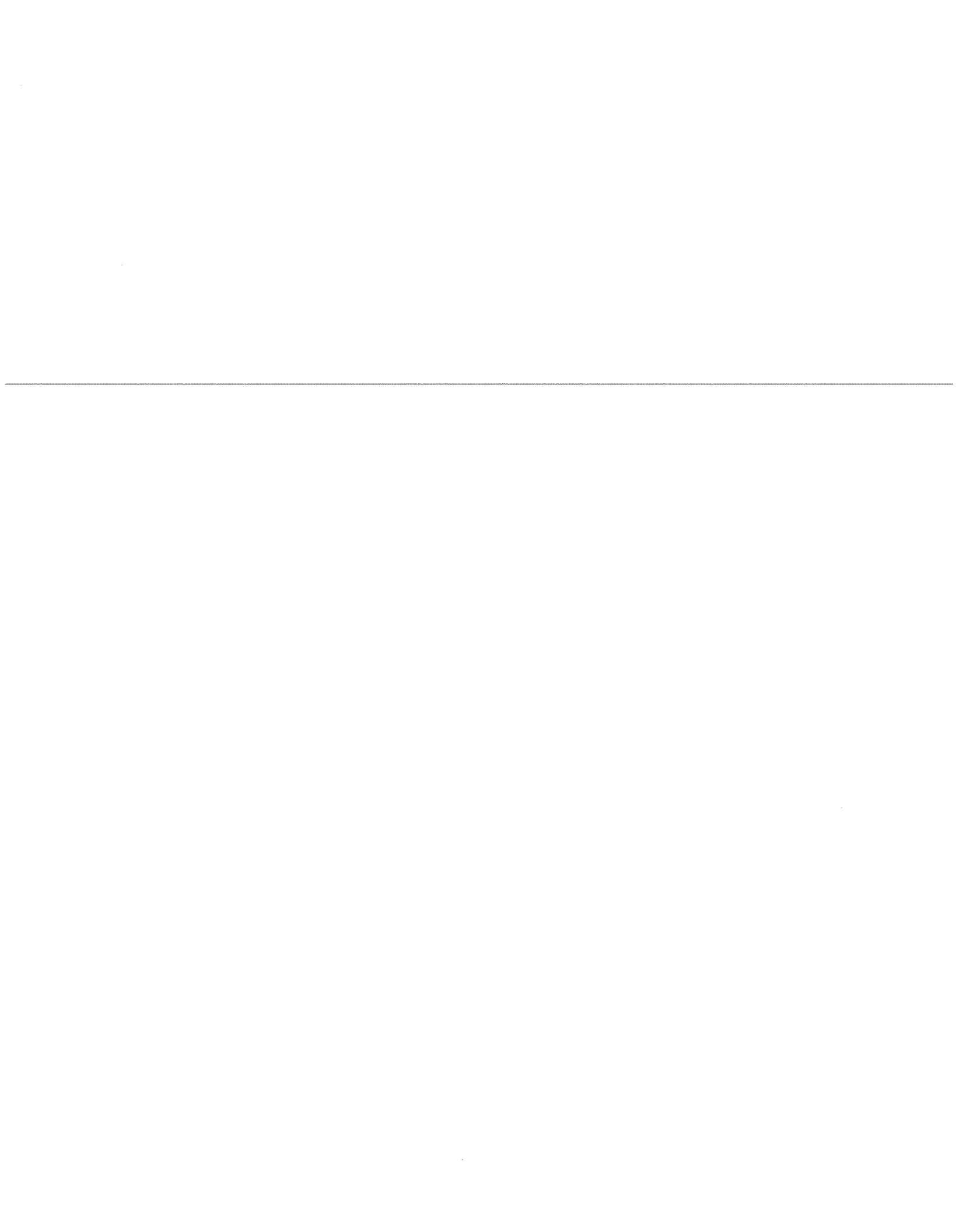
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**RESPONSE:**

Yes.

**PERSON RESPONSIBLE:** Julie S. Janson





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-098**

**REQUEST:**

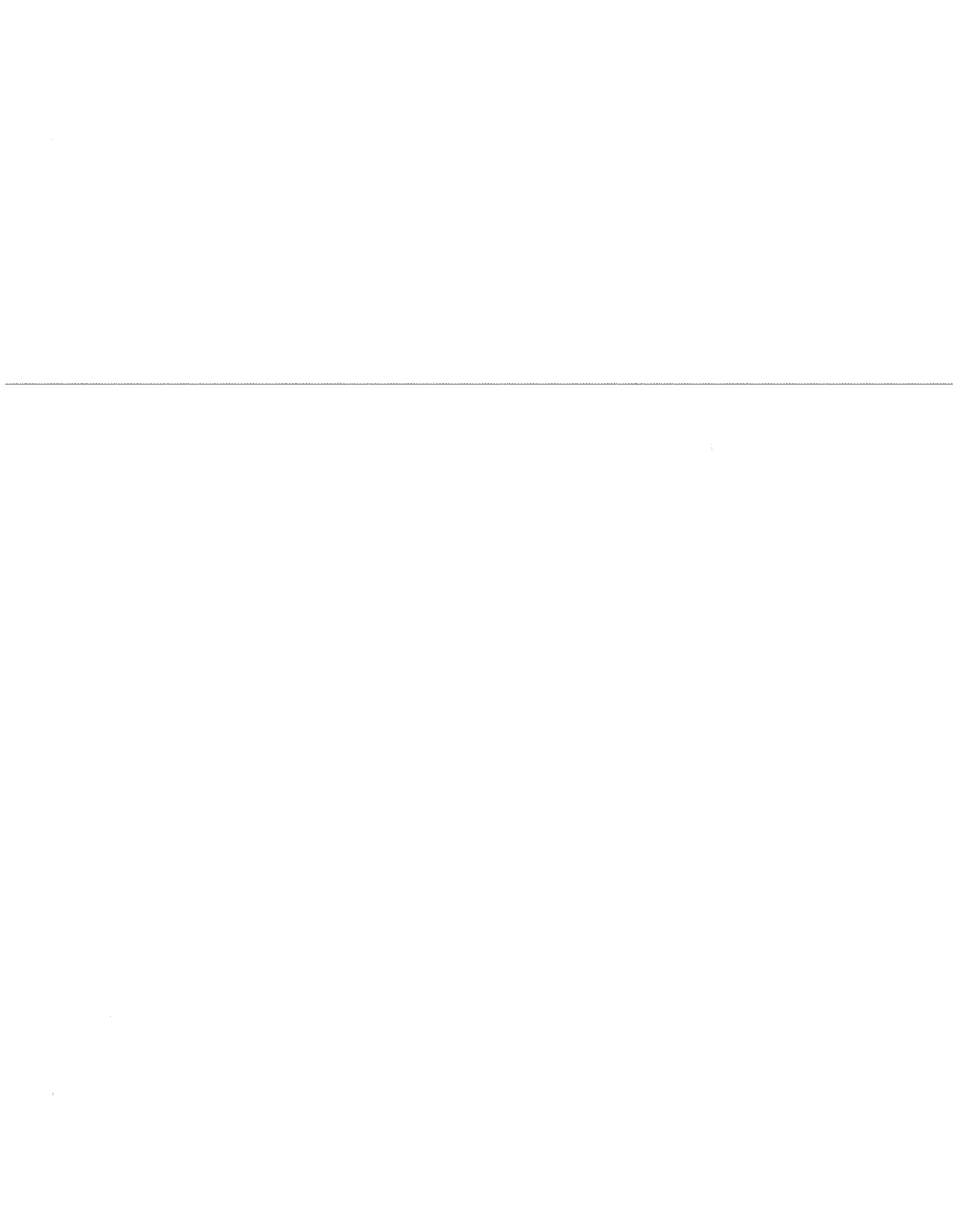
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Will DEK and / or its ratepayers, directly or indirectly, incur any additional costs, liabilities, or obligations in conjunction with the proposed transaction in connection with the repayment and refinancing of closing indebtedness?

**RESPONSE:**

No debt will be incurred to close the transaction.

**PERSON RESPONSIBLE:** Stephen De May



**REQUEST:**

With regard to future rate cases, please explain the following:

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- a. How will DEK demonstrate that it is not seeking a higher rate of return on equity than would have been sought if no acquisition had occurred? Explain in complete detail.
- b. Will the Joint Applicants agree to a commitment through which the cost associated with demonstrating compliance with this provision will be borne solely by shareholders and not recovered through rates? If not, why not?
- c. If DEK was to seek a higher rate of return on equity than would have been sought in the absence of an acquisition, then what is the remedy? Include in this discussion an answer to the inseparable question of whether the Joint Applicants believe that the Commission has the power to establish a return on equity for DEK that is expressly below a return on equity that the Commission would otherwise authorize “but for” this commitment.
- d. Does KRS Chapter 278 provide the authority for the Commission to, based upon this potential commitment, “cap” or otherwise limit the return on equity for DEK to a return on equity that would have been sought if no acquisition had occurred? If yes, then please identify the basis for the authority.
- e. Do the Joint Applicants take the legal position that that the Commission’s enforcement of any such provision is permissible (as being lawful in view of federal and state constitutional protections relating to the taking of property as well as federal and state statutes relating to rate-setting)?
- f. If the answer to the above question is no, then please explain why.
- g. If the Joint Applicants fail to adhere to any PSC conditions imposed as a condition or consequence of any approval, do the Joint Applicants believe any ultimate approval could be rescinded? If not, why not? If not, what are the ramifications to the ratepayers, including rate implications? Explain in detail.

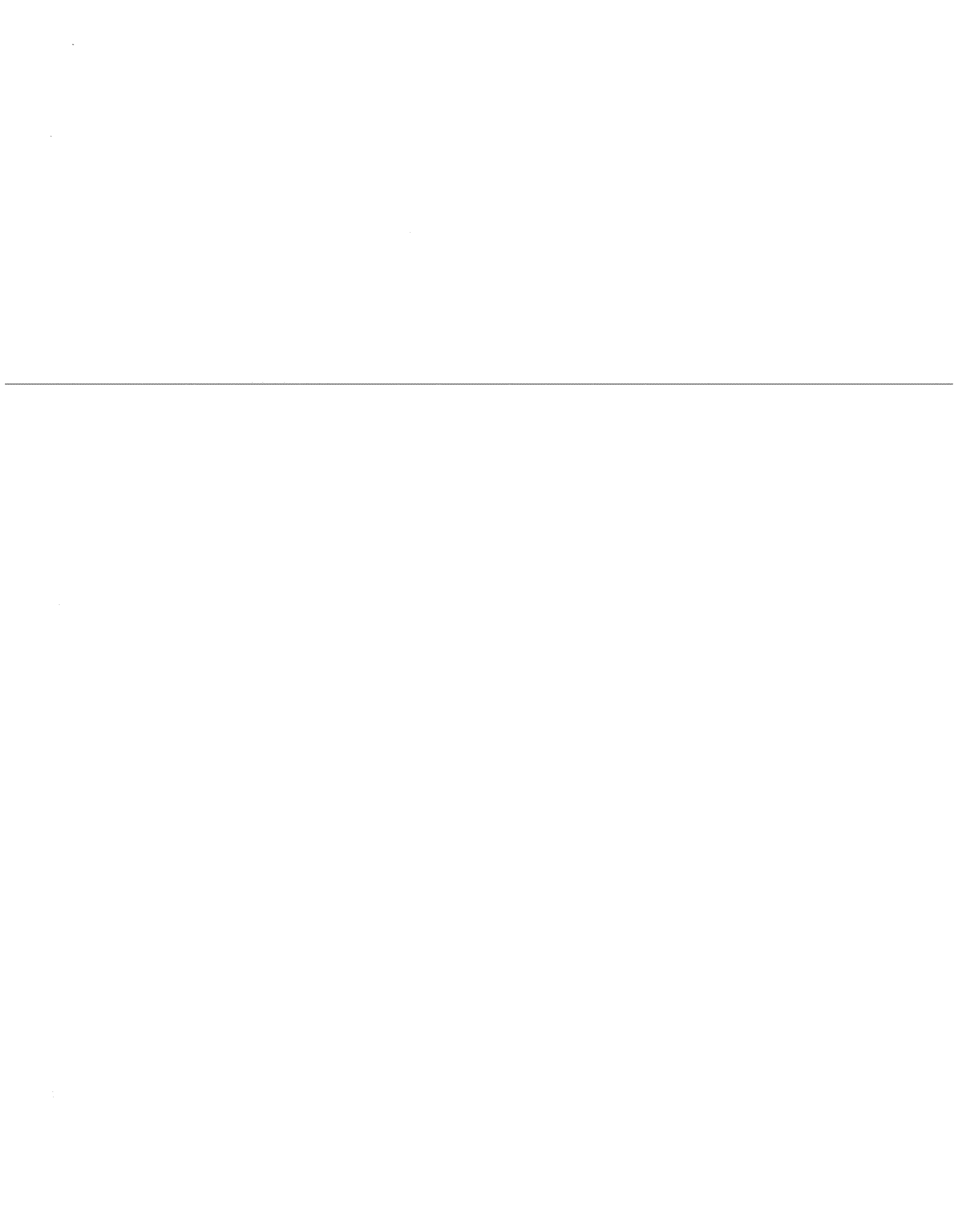
**RESPONSE:**

- (a) Objection. The Joint Applicants object to the question on the basis that it is not relevant to this proceeding. By approving this transaction, the Commission will make no finding regarding the appropriate rate of return on equity for Duke Energy Kentucky. Questions about Duke Energy Kentucky's rates must be addressed in future rate proceedings.
- (b) Objection. The Joint Applicants object to this question on the basis that is vague and ambiguous. It is unclear what "provision" is meant. Without waiving said objections, the Joint Applicants have indicated their willingness to agree to reasonable regulatory commitments as set forth on pages 40-54 of Julia Janson's testimony (Joint Application, Exhibit L).
- 
- (c) Objection. The Joint Applicants object to the question on the basis that it is not relevant to this proceeding. By approving this transaction, the Commission will make no finding regarding the appropriate rate of return on equity for Duke Energy Kentucky. Questions about Duke Energy Kentucky's rates must be addressed in future rate proceedings. The Joint Applicants also object to the question to the extent that it calls for a legal conclusion regarding the scope of the Commission's authority.
- (d) Objection. The Joint Applicants object to the question on the basis that it is not relevant to this proceeding. The Joint Applicants also object to the question to the extent that it calls for a legal conclusion regarding the scope of the Commission's authority. Without waiving said objection, by approving this transaction, the Commission will make no finding regarding the appropriate rate of return on equity for Duke Energy Kentucky. Questions about Duke Energy Kentucky's rates must be addressed in future rate proceedings where the Commission must determine whether Duke Energy Kentucky is charging fair just and reasonable rates for services rendered.
- (e) Objection. The Joint Applicants object to the question on the basis that it is not relevant to this proceeding. By approving this transaction, the Commission will make no finding regarding the appropriate rate of return on equity for Duke Energy Kentucky. Questions about Duke Energy Kentucky's rates must be addressed in future rate proceedings. The Joint Applicants also object to the question to the extent that it calls for a legal conclusion regarding the scope of the Commission's authority.
- (f) Objection. The Joint Applicants object to the question on the basis that it is not relevant to this proceeding. By approving this transaction, the Commission will make no finding regarding the appropriate rate of return on equity for Duke Energy Kentucky. Questions about Duke Energy Kentucky's rates must be addressed in future rate proceedings. The Joint Applicants also object to the question to the extent that it calls for a legal conclusion regarding the scope of the Commission's authority.
- (g) Objection. The Joint Applicants object to the question on the basis that it is speculative and to the extent that it calls for a legal conclusion regarding the scope of

the Commission's authority. Without waiving said objections, the Joint Applicants have indicated their willingness to agree to reasonable regulatory commitments as set forth on pages 40-54 of Julia Janson's testimony (Joint Application, Exhibit L).

**PERSON RESPONSIBLE:** Objections (a)-(g)- Legal  
(b) Julie S. Janson

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**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-100**

**REQUEST:**

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With regard to any pending or threatened litigation (including any pending or threatened regulatory review or supervision enforcement actions) involving DEK, its parent entities and its affiliates, are the Joint Applicants making any provisions through which they will agree to fund the defense of pending or threatened litigation? If so, please explain in detail. If not, please explain why not.

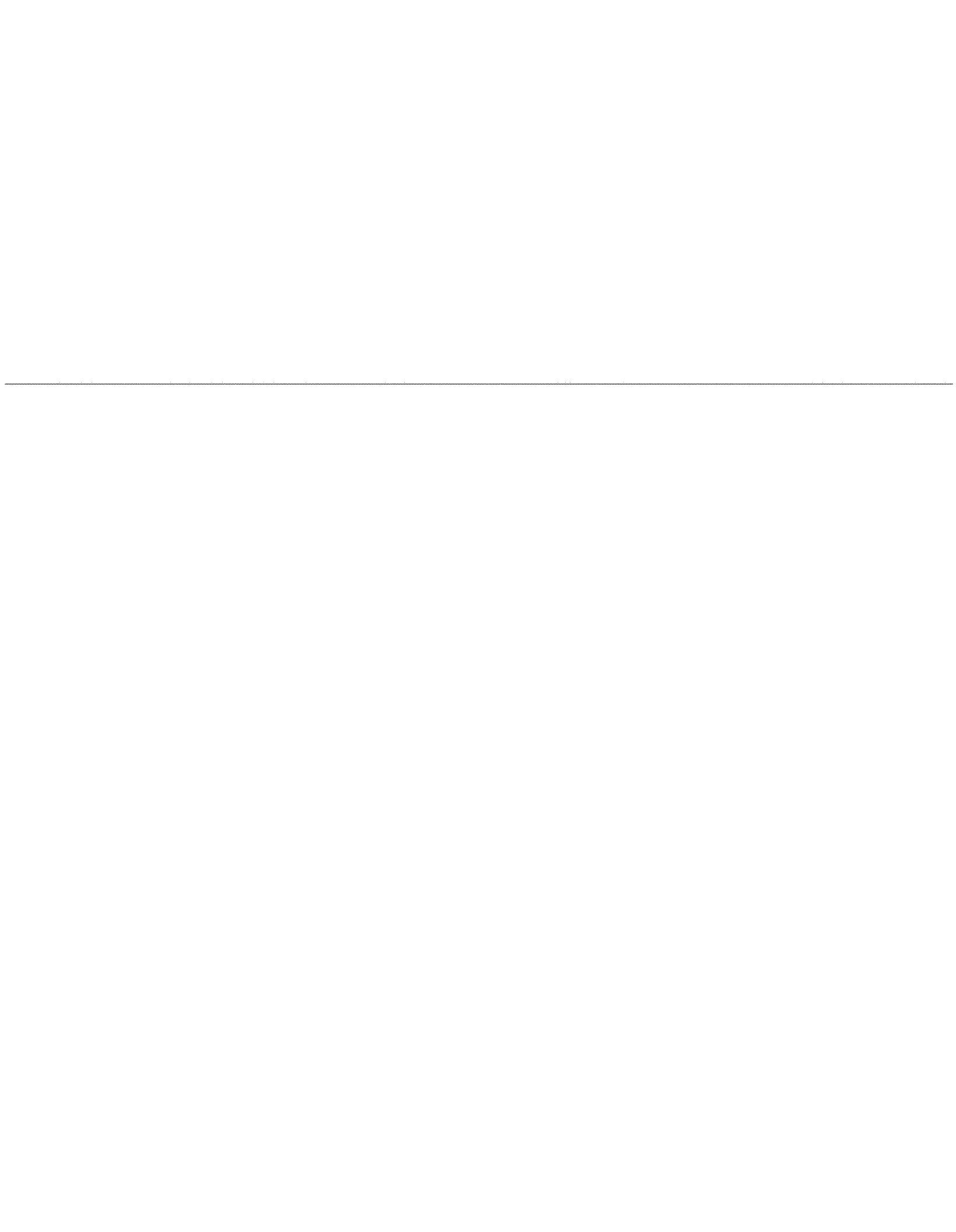
**RESPONSE:**

Objection. This request is vague, and overly broad and seeks information protected under the doctrines of attorney work product and attorney client privilege. Without waiving said objection no such agreements have been made between Joint Applicants at this time in connection to any merger-related litigation. Each of the companies are responsible for paying its own fees and expenses.

**PERSON RESPONSIBLE:** Objection- Legal

Steven Young





**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**AG-DR-01-101**

**REQUEST:**

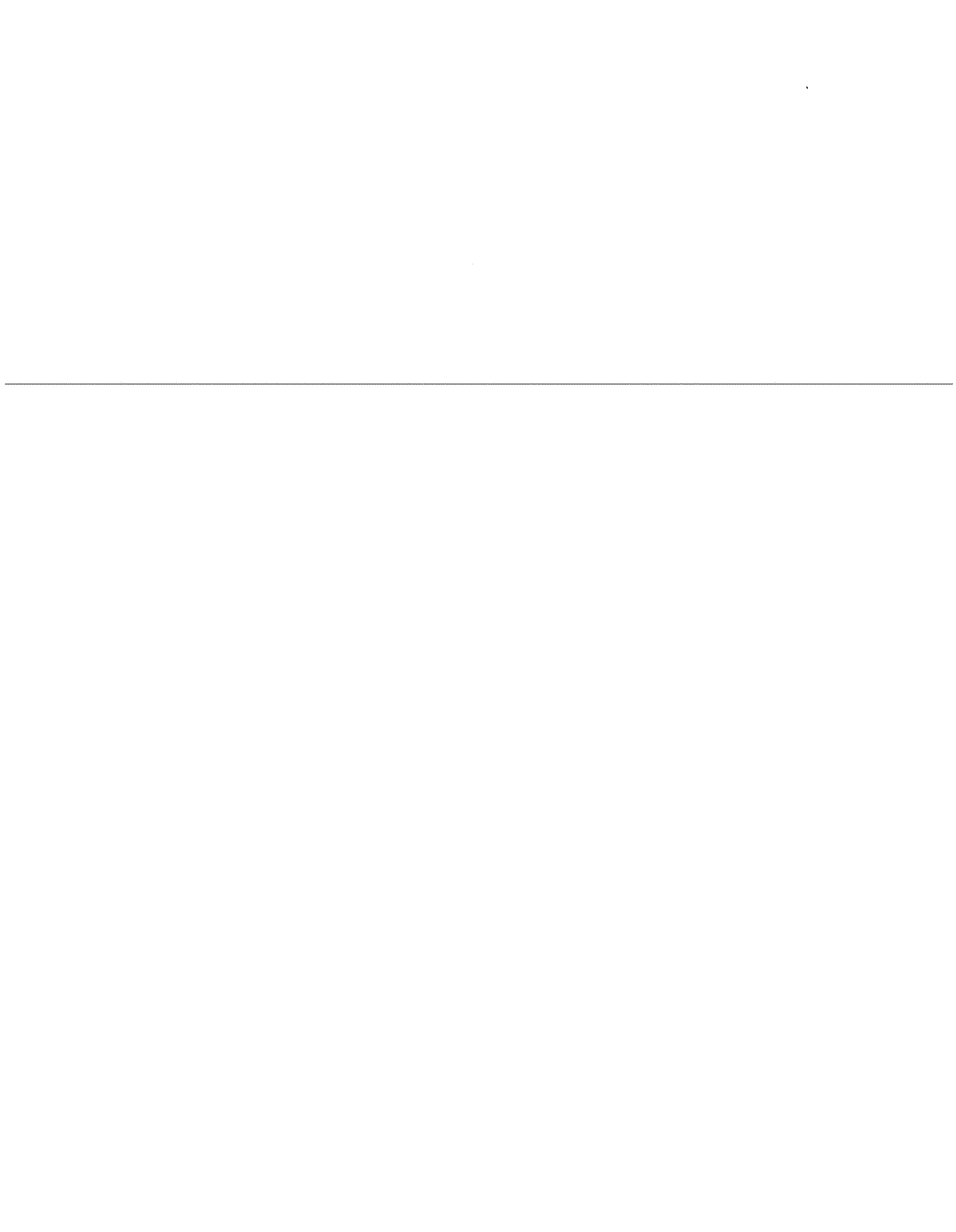
Do the Joint Applicants anticipate that DEK will be a participant in a consolidated tax return or will it file separate tax returns? Please explain in detail.

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**RESPONSE:**

The Joint Applicants answered this question in their response to AG-DR-01-080 above.

**PERSON RESPONSIBLE:** Keith Butler



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-102**

**REQUEST:**

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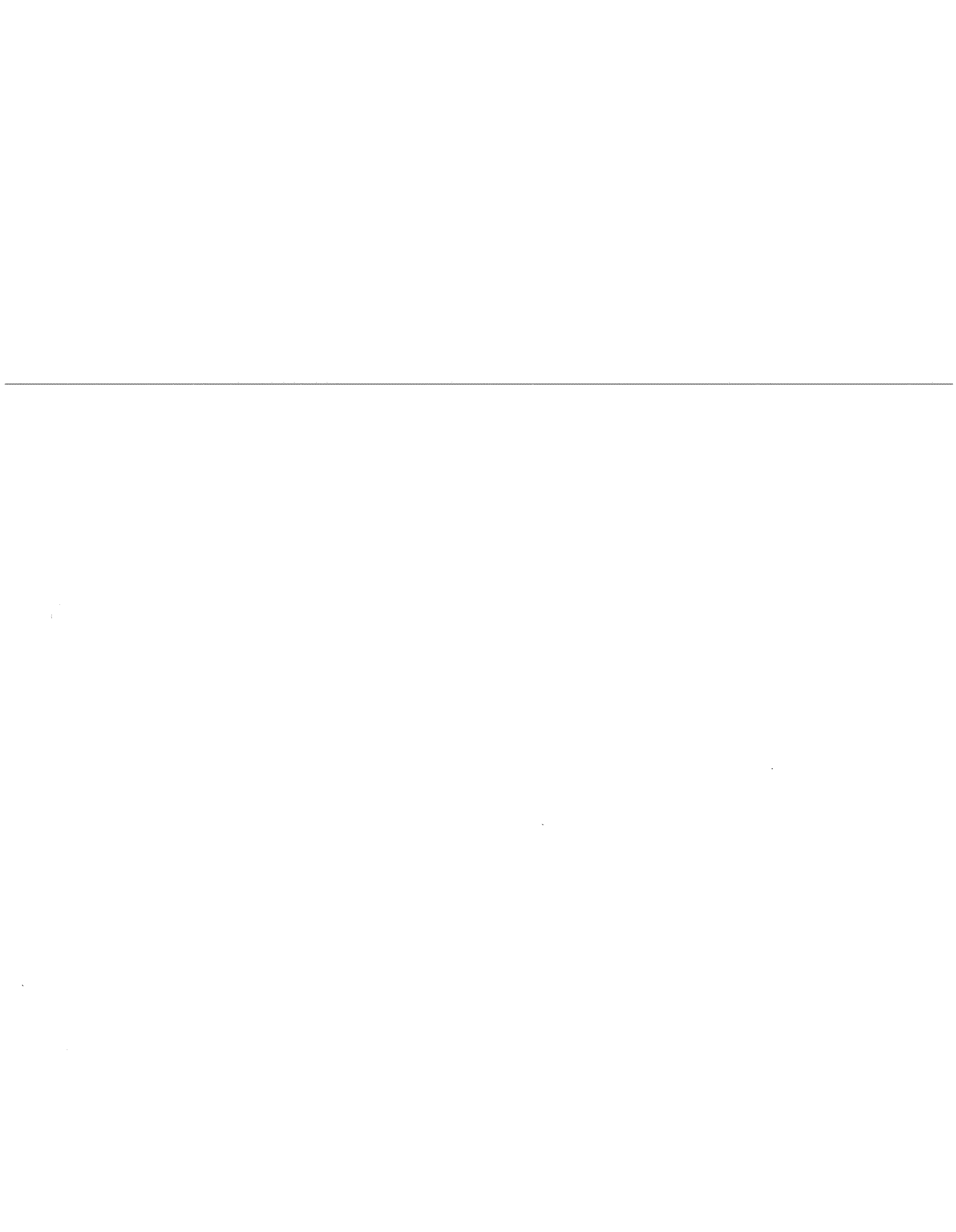
Assuming the contemplated transaction is approved, will DEK be exposed to any type of contractual liability or obligations that it otherwise would not have faced but for the approval? If so, please describe in detail.

**RESPONSE:**

Objection. This request is vague and ambiguous with respect to the term “any type of contractual liability or obligations” and as such is overly broad and unduly burdensome. Without waiving said objection and to the extent discoverable, at this time Duke Energy Kentucky is not aware of a contractual liability or obligation that it otherwise would not have faced but for the approval.

**PERSON RESPONSIBLE:** Objection- legal

Steve K. Young



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-103**

**REQUEST:**

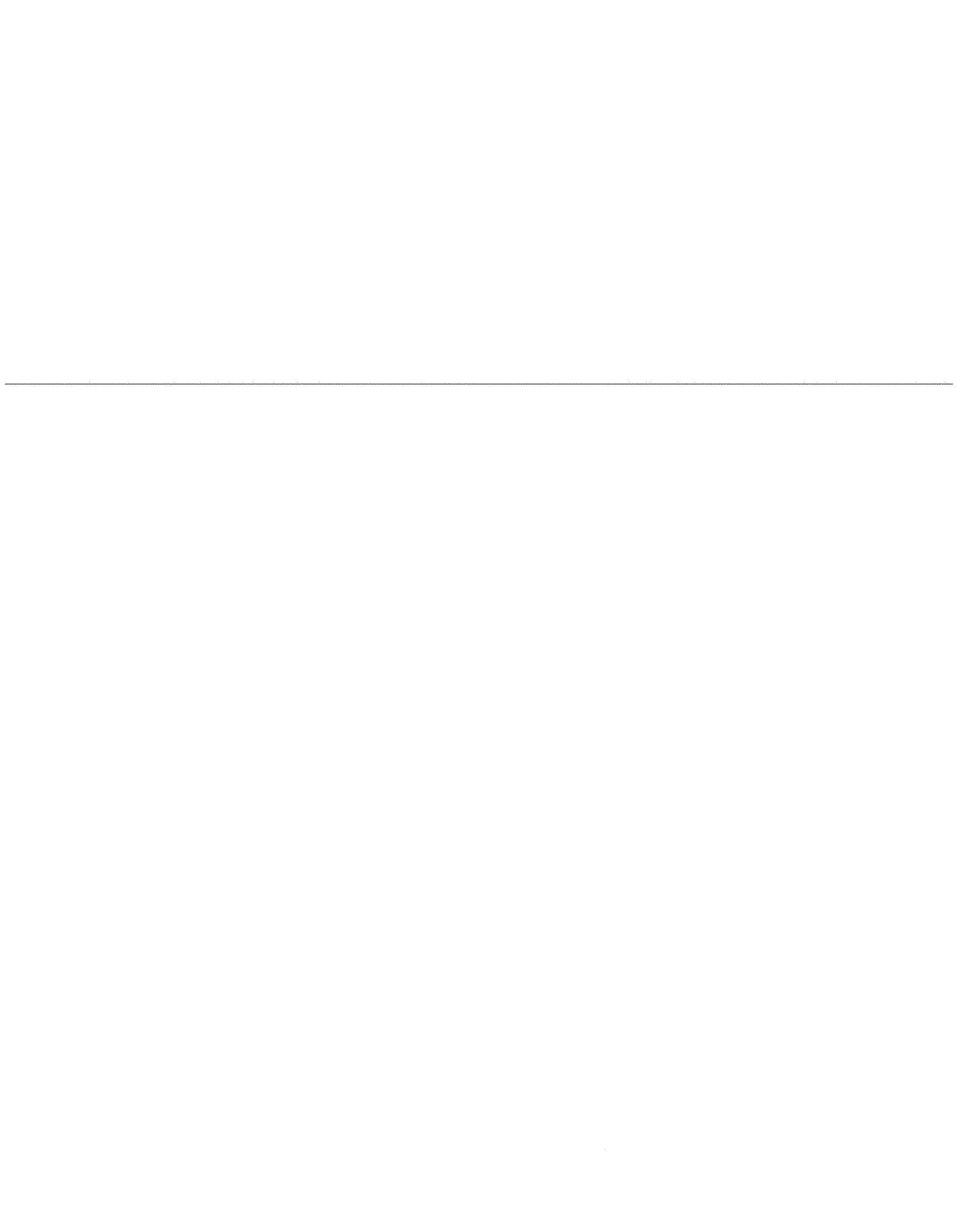
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Assuming the contemplated transaction is approved, will DEK be exposed to any increased insurance premiums, whether health insurance, disability, life, etc., that it otherwise would not have faced but for the approval? If so, please describe in detail.

**RESPONSE:**

The Joint Applicant generally provides health and welfare benefits through self-insured plans, and therefore generally does not pay “insurance premiums” for medical plans. The cost of these health and welfare plans depends on a number of factors, including the design of the health and welfare plans and the impact of health care cost trends (i.e., inflation). Because these factors are not currently known, at this time the Joint Applicant cannot determine whether Duke Energy Kentucky will be exposed to increased costs related to health and welfare plans that it would not have faced but for the approval of the contemplated transaction. Although we have not yet analyzed the costs of the other insured plans in connection with the contemplated transaction, such as disability and life insurance plans, we do not anticipate that insurance premiums would increase as a result of the contemplated transaction.

**PERSON RESPONSIBLE:** Jennifer Weber



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-104**

**REQUEST:**

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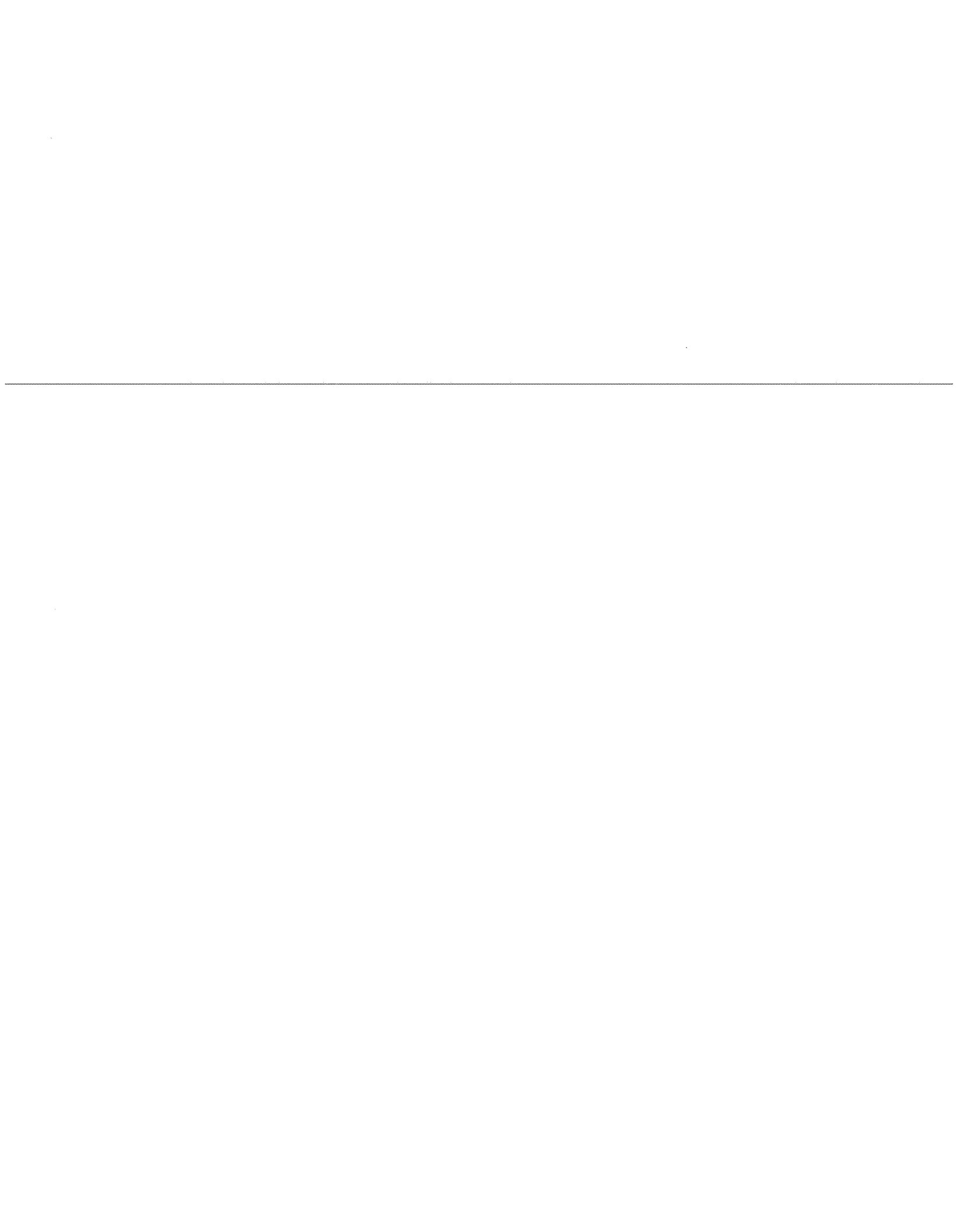
Assuming the contemplated transaction is approved, will DEK be exposed to any additional contributions to any pension plans, medical plans, etc. for employees that it otherwise would not have faced but for the approval? If so, please describe in detail, together with any applicable employee's or officer's name(s), if known, as well as amount.

**RESPONSE:**

Benefit plan costs and contributions for plans covering Duke Energy Kentucky employees are separately determined from all other regulated and non-regulated entities. Therefore, Duke Energy Kentucky will not be exposed to any additional contributions resulting from the merger.

**PERSON RESPONSIBLE:** Stephen De May





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-105**

**REQUEST:**

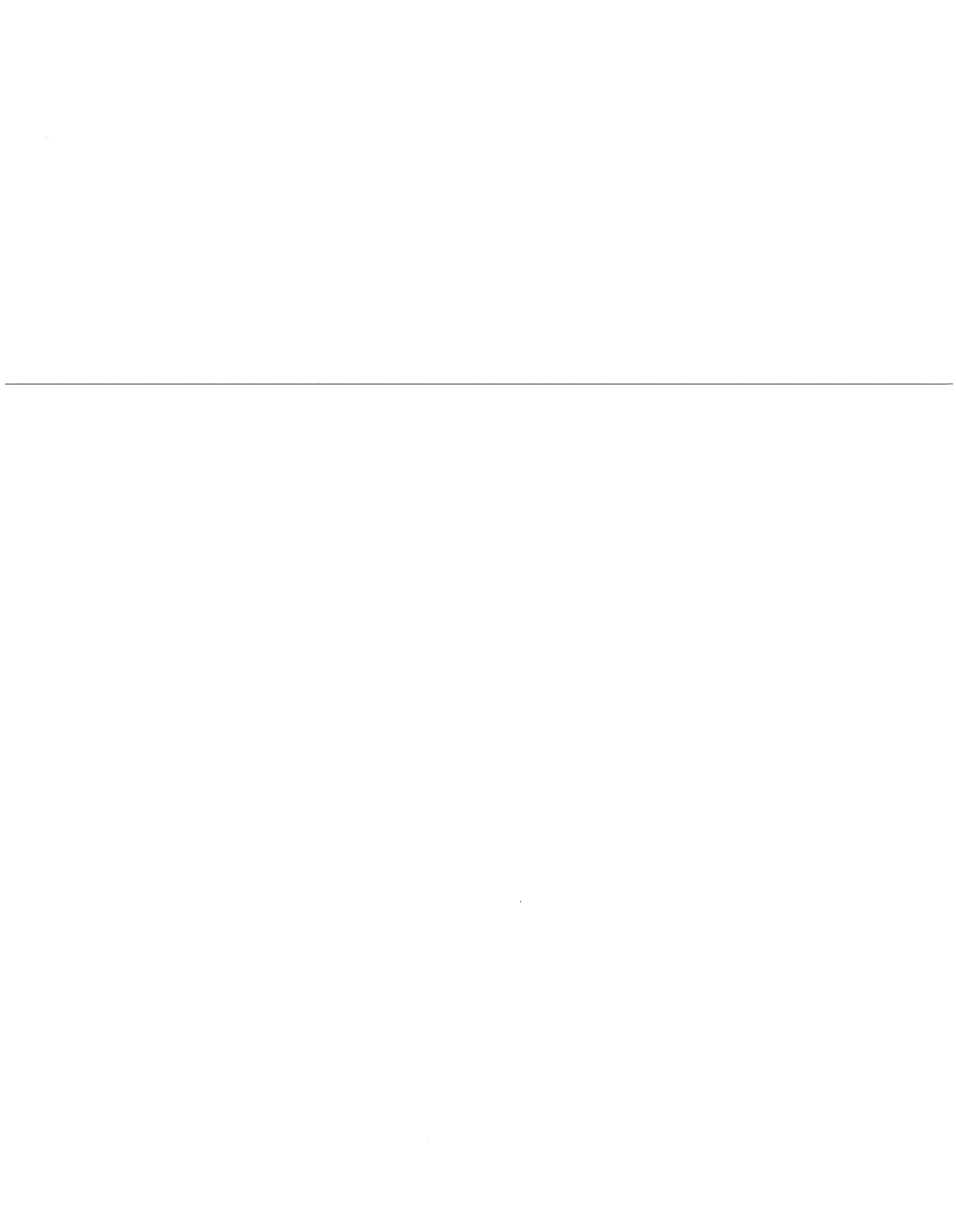
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Assuming the contemplated transaction is approved, will DEK be exposed to any additional generation, transmission, or distribution requirements that it otherwise would not have faced but for the approval? If so, please describe in detail.

**RESPONSE:**

It is not expected that Duke Energy Kentucky will be exposed to any additional generation, transmission, or distribution requirements resulting from the approval of the proposed merger.

**PERSON RESPONSIBLE:** Jim Stanley



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-106**

**REQUEST:**

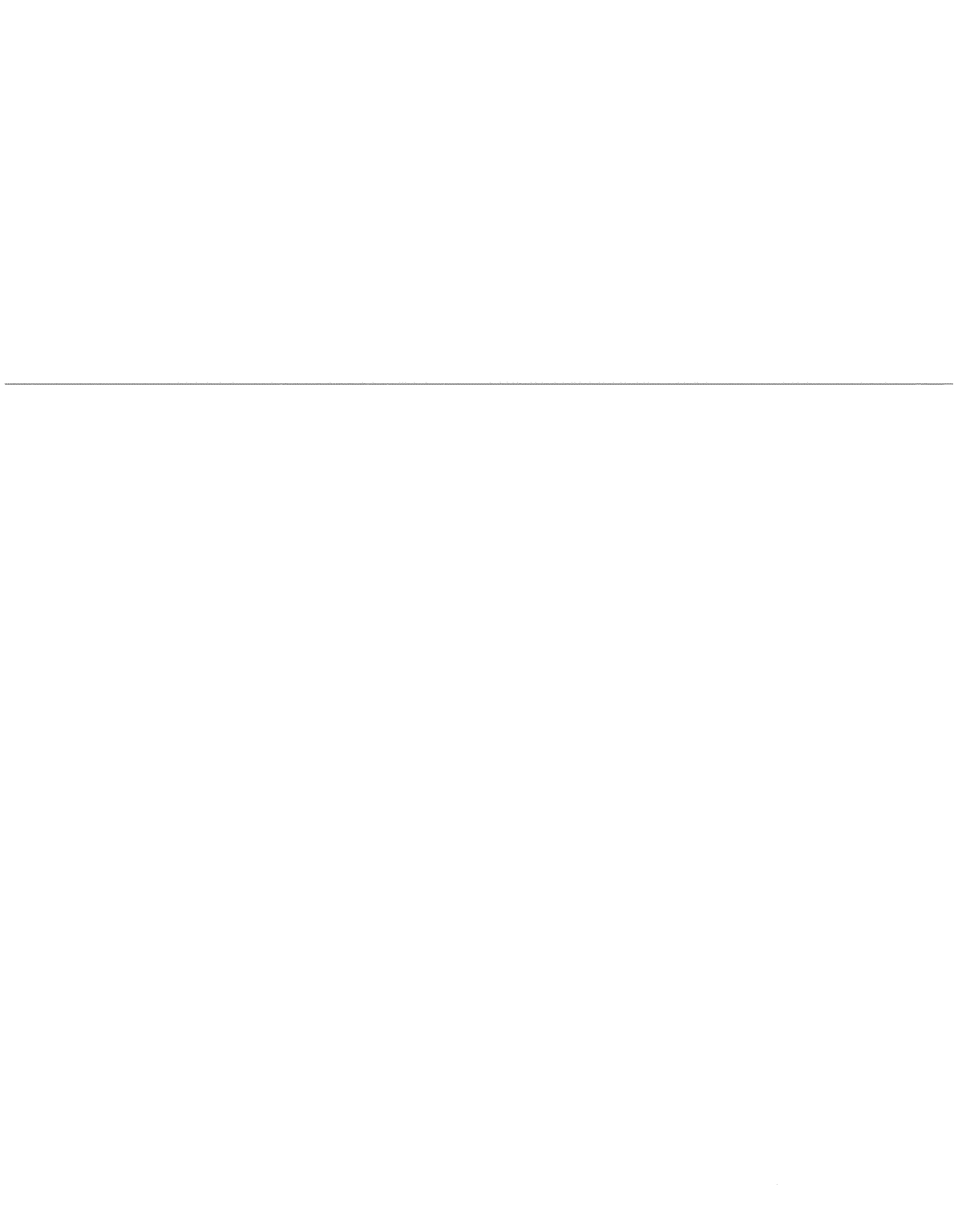
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State whether Progress and Duke ever have or currently do retain the services of lobbyists related in any manner to: (a) any employee of the federal government; and / or (b) any employee of the Commonwealth of Kentucky. If so, identify the lobbyist and employee, and explain in detail whether the retention of these services constituted a conflict of interest or potential conflict under any applicable law, and if so, why. Identify any corrective action either or both of the Joint Applicants believe may be required to remedy any conflict or potential conflict.

**RESPONSE:**

Objection. The Joint Applicants object to this request to the extent that it calls for a legal conclusion. The Joint Applicants further object to the request on the basis that it is overly broad and unduly burdensome and is irrelevant to the issues before the Commission. Without waiving said objection, the Joint Applicants abide by all laws, regulations and rules pertaining to lobbying activities. Jason Bentley of MML&K Government Solutions, Duke's contract lobbying firm in Frankfort, is related to John Bentley, who is an employee of the Commonwealth of Kentucky. Specifically, John Bentley is employed by the Kentucky Department of Natural Resources, Division of Mine Reclamation and Enforcement, in their Pikeville Office. Joint Applicants do not believe there is a conflict to remedy.

**PERSON RESPONSIBLE:** As to Objection – Legal  
John Finnigan



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-107**

**REQUEST:**

Will the Joint Applicants agree to confirm to abide by, at a minimum, the conditions which PPL and E.ON agreed to accept in their recent merger?<sup>1</sup>

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<sup>1</sup> Case No. 2010-00204.

**RESPONSE:**

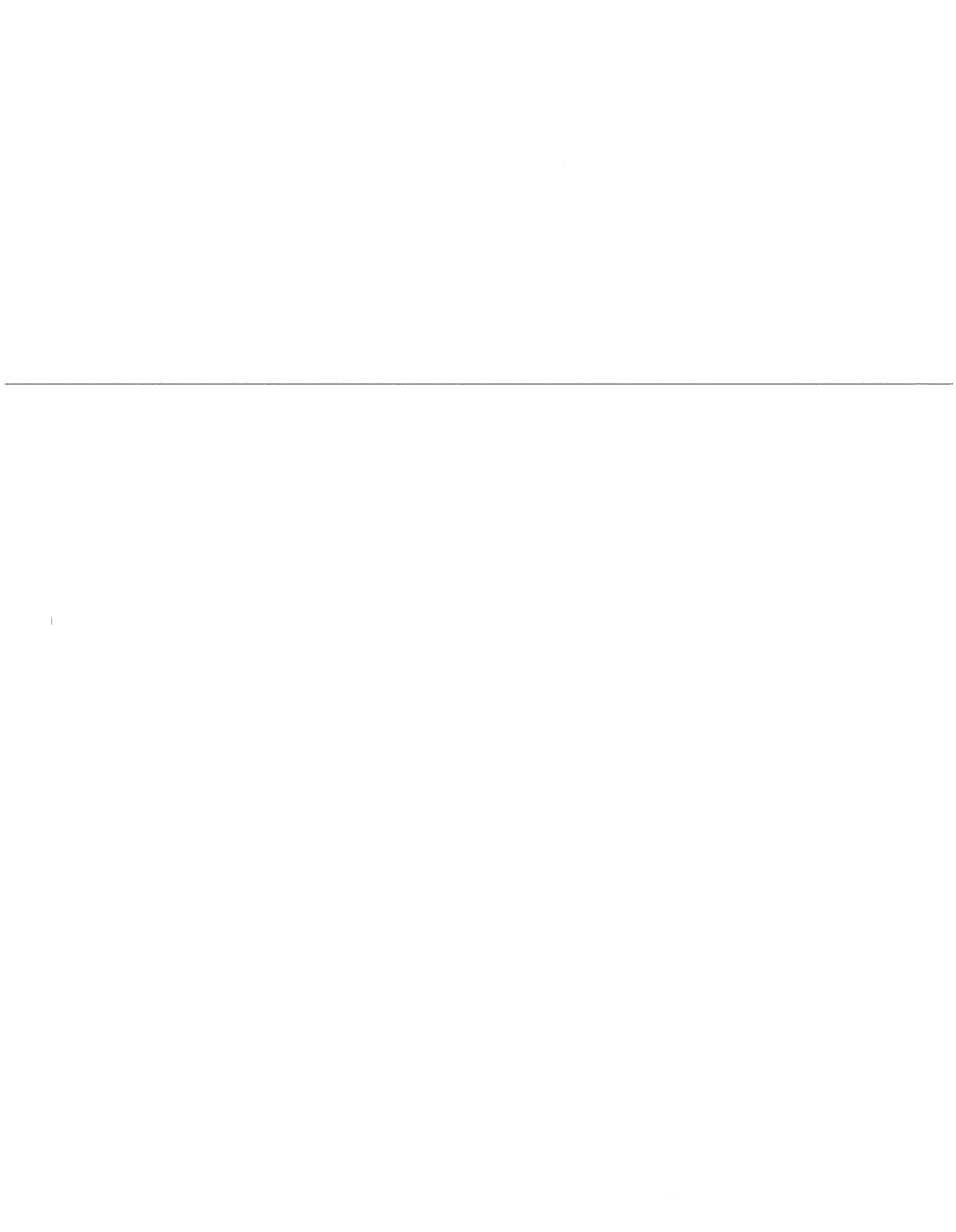
Many of the conditions in the PPL and E.ON merger are simply inapplicable to Joint Applicants or Duke Energy Kentucky and thus Joint Applicants cannot make such a general statement. The Attorney General's request in this regard is confusing and not in the best interests of either Duke Energy Kentucky or its customers. If the Attorney General has a more specific list of which commitments the Attorney General would like Joint Applicants to consider, the Joint Applicants would revise its response accordingly.

**PERSON RESPONSIBLE:**

Julie S. Janson

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<sup>1</sup> Case No. 2010-00204.



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-108**

**REQUEST:**

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A news story published in the February 21, 2011 edition of the *Charlotte Business Journal* indicated that the largest shareholder in both Progress and Duke cut its holdings in the two firms by more than \$450 million in the fourth quarter of 2010, which translated to a sale of 5.6 million shares of Progress' stock, and 12 million shares in Duke's stock.

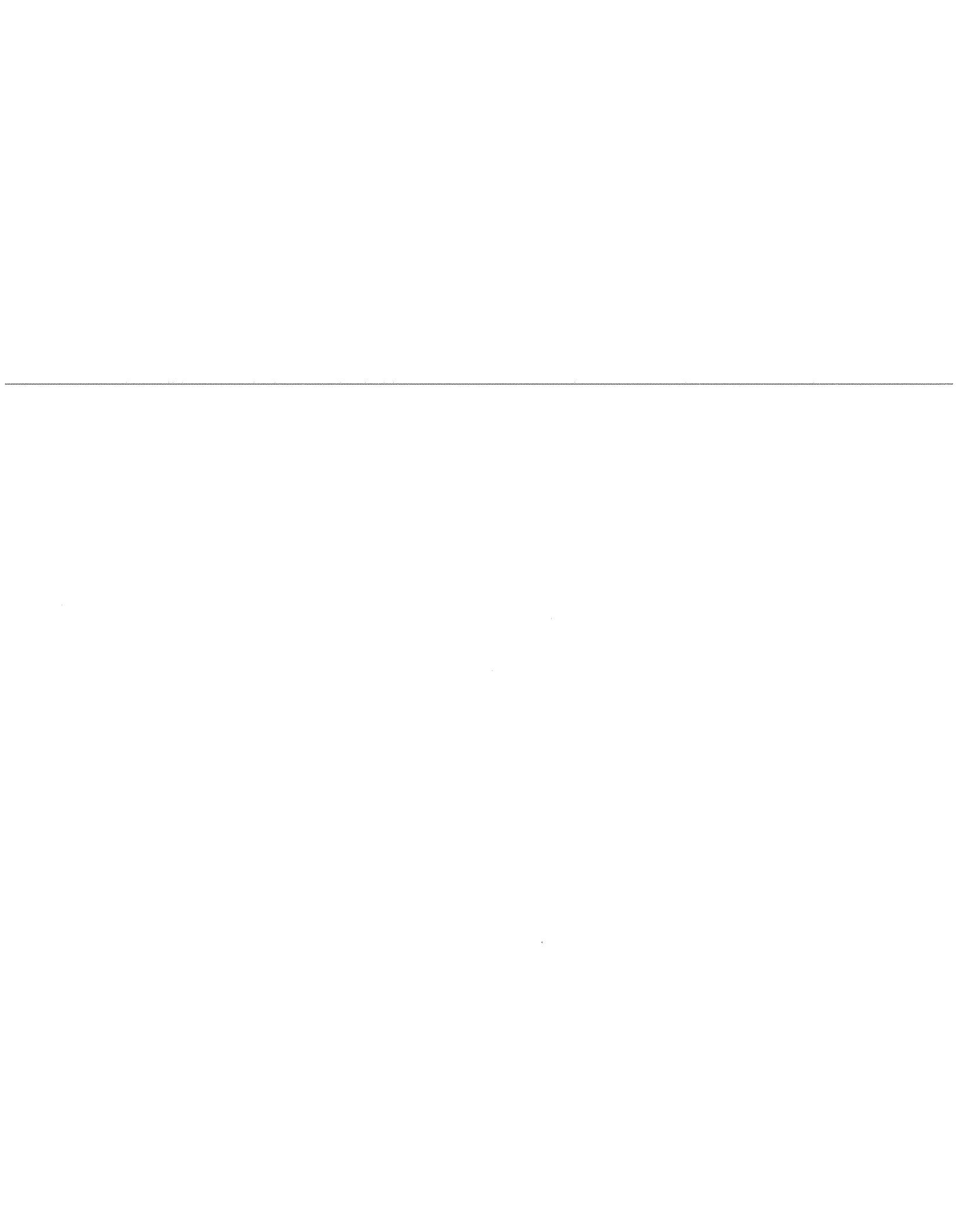
- a. Explain what effect, if any, this significant stock sale will or could have on the contemplated transaction.
  
- b. Explain what effect, if any, whether directly or indirectly, this significant stock sale will or could have on DEK ratepayers.

**RESPONSE:**

- (a) This stock sale will not have a significant impact on the merger. The total shares outstanding for both companies did not change as a result of these sales, the merger agreement provides for a fixed exchange ratio, and the amount of shares involved is less than 1% for Duke and approximately 2% for Progress Energy.
  
- (b) The stock sale will not impact Duke Energy Kentucky ratepayers.

**PERSON RESPONSIBLE:** Stephen De May





**AG-DR-01-109**

**REQUEST:**

Reference the Rogers testimony, p. 14, lines 3-5, wherein he testifies that he: “. . . will be responsible for conducting board meetings, assisting in setting the board’s agenda and supporting the board selection process.”

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- a. Identify the other company officials, if any, who will be able to conduct any type of board meeting, whether a regular meeting or any sort of extraordinary meeting;
- b. The testimony states that Mr. Rogers will be responsible for “assisting” in setting the Board’s agenda. Identify any and all other Board members and / or company officers who will have the ability to set the Board’s agenda, including: (i) who will have the ability to add items to the agenda, and how that process would work; and (ii) who would have the ability to delete items from the Board’s agenda, and how that process would work;
- c. Identify any and all processes through which the Board’s agenda can be established;
- d. Identify and discuss in detail all measures Duke Energy will have in place to insure the Board’s independence;
- e. State whether Duke Energy will have in place D & O coverage; provide the name of the insurance carrier and provide a dec sheet;
- f. Identify all committees of the Board of the new parent entity, their composition, functions, and charges. Identify also the limits of each committee’s authority, if any;
- g. State whether directors on the Board of the new entity will have limits on their terms, and identify where such limits can be found in the bylaws or other corporate documents;

- h. Identify and explain in detail the extent of Mr. Rogers' authority in the Board selection process. Provide a complete description of the process, including who else, if anyone, will be able to nominate and select directors;
  - i. Provide a copy of any bylaws and / or any and all other rules, regulations, etc. that would or could control how the Board operates, who has the ability to set agendas, and voting rights and proxies;
  - j. Provide the identity of any and all independent directors. If none, explain in detail why there will be none, and how the Company intends to comply with the Sarbanes-Oxley Act;
- 
- k. Provide copies of any due diligence reports that the Joint Applicants may have conducted regarding governance by the Board, and / or its independence, regardless of whether the Joint Applicants decided to follow any recommendations set forth therein; and
  - l. State whether Mr. Rogers will have final authority in: (i) setting the Board's agenda; and (ii) approving or vetoing any type or sort of Board resolution. If so, identify where that authority can be found in documents which in any way describe Duke Energy's corporate governance documents.

**RESPONSE:**

- a. As set forth in attachments to the Merger Agreement (Joint Application, Exhibit E) and in the testimony of Jim Rogers (Joint Application, Exhibit J) on page 14 and William Johnson (Joint Application, Exhibit K) on page 17, Mr. Rogers and Mr. Johnson will work together to determine the agenda for board meetings. Duke Energy's corporate bylaws, which Duke Energy does not expect to amend before completion of the transaction, provide that the Chairman of the Board or, in the absence of the Chairman of the Board, the Lead Director, or in the absence of the Chairman of the Board and the Lead Director, a member of the Duke Energy board selected by the members of the board present, presides at meetings of the Duke Energy board of directors. This provision applies to both regularly scheduled board meetings and special meetings of the Duke Energy board of directors. Under the Duke Energy corporate bylaws, the Lead Director is a Duke Energy director selected by the Duke Energy board of directors from among the independent members of the board, with independence defined by reference to applicable Securities Exchange Commission or self-regulatory organization rule or regulation. Duke Energy and Progress Energy agreed in the Merger Agreement that Duke Energy will designate the Lead Director as of the time of completion of the transaction, following reasonable consultation with Progress Energy.

- b. As set forth in attachments to the Merger Agreement (Joint Application, Exhibit E) and in the testimony of Jim Rogers (Joint Application, Exhibit J) on page 14 and William Johnson (Joint Application, Exhibit K) on page 17, Mr. Rogers and Mr. Johnson will work together to determine the agenda for board meetings.

With respect to Selection of Agenda Items for meetings of the Duke Energy board of directors, Duke Energy's Principles for Corporate Governance provide the following:

- The Chairman of the Board with the assistance of management and the Lead Director will establish the agenda for board meetings.
- Board members are free to suggest agenda items.
- The Duke Energy board annually reviews long-term strategic plans and reviews strategic updates.
- The board annually reviews operating plans and specific goals at the beginning of the year and financial performance periodically.

In light of the post-transaction split of the position of Chairman of the Board and the position of Chief Executive Officer, it is contemplated that Duke Energy's Principles for Corporate Governance will be revised to provide that the Chief Executive Officer, with the assistance of the Chairman of the Board, management and the Lead Director, will establish the agenda for board meetings.

The current process for setting the agenda includes management preparation and recommendation of applicable business initiatives for presentation to the board of directors. These recommendations are reviewed with the Chairman and CEO and further refined based on his input and analysis. A revised draft agenda of items is then reviewed with the Lead Director who provides input, based on current strategic objectives, director interest, concerns and feedback and general corporate governance considerations. In light of the post-transaction split of the position of Chairman of the Board and the position of Chief Executive Officer, it is contemplated that the process for setting the agenda will also include a review with the Chairman of the Board.

- c. The processes through which the Duke Energy Board's agenda can be established are discussed in the prior response.
- d. Duke Energy is subject to the corporate governance rules of the New York Stock Exchange (the "NYSE") applicable to listed companies. These rules require that a majority of the members of the Duke Energy board of directors be "independent" within the meaning of the NYSE listed company rules. The

applicable NYSE rules also require that all members of the Audit Committee, the Compensation Committee and the Corporate Governance Committee of the Duke Energy board of directors be independent. In the case of the audit committee, members must also meet the “independence” standard established pursuant to Rule 10A-3 promulgated under the Securities Exchange Act (or qualify for an available exemption).

Duke Energy’s Principles for Corporate Governance provide that independent directors will constitute a substantial majority of the Duke Energy board, and that the Corporate Governance Committee of the Duke Energy board will confirm that the composition of relevant board committees conforms to applicable director independence requirements.

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The Duke Energy Annual Director and Officer questionnaire solicits information that is used to evaluate an individual’s relationship to the Company and related independence decisions. The Duke Energy board of directors may determine a director to be independent if the board of directors has affirmatively determined that the director has no material relationship with Duke Energy or its consolidated subsidiaries, either directly or as a stockholder, director, officer or employee of an organization that has a relationship with Duke Energy or its subsidiaries. Independence determinations are generally made on an annual basis at the time the Duke Energy board of directors approves director nominees for inclusion in the annual proxy statement and, if a director joins the Duke Energy board of directors in the interim, at such time. In addition to the NYSE listing standards and applicable SEC rules, the Duke Energy board of directors also considers its Standards for Assessing Director Independence which set forth certain relationships between Duke Energy and directors and their immediate family members, or affiliated entities, that the board, in its judgment, has deemed to be material or immaterial for purposes of assessing a director’s independence. In the event a director has a relationship with Duke Energy that is not addressed in the Standards for Assessing Director Independence, the independent members of the board determine whether such relationship is material.

- e. Upon completion of the transaction, Duke Energy expects to have in place D&O coverage with its existing primary carrier. A copy of the declarations sheet is included as AG-DR-01-109(e) Attachment.
- f. The standing committees of the Duke Energy board of directors currently are:

The Audit Committee, which selects and retains a firm of independent public accountants to conduct audits of the accounts of Duke Energy and its subsidiaries; reviews with the independent public accountants the scope and results of their

audits, as well as the accounting procedures, internal controls, and accounting and financial reporting policies and practices of Duke Energy and its subsidiaries; makes reports and recommendations to the Duke Energy board of directors; and is responsible for approving all audit and permissible non-audit services provided to Duke Energy by its independent public accountants. [A copy of the current charter of the Audit Committee of the Duke Energy board of directors, which sets forth the committee's functions and charges as well as any limitations on authority, is located at: <http://www.duke-energy.com/corporate-governance/board-committee-charters.asp>]

- The Corporate Governance Committee, which considers matters related to corporate governance and formulates and periodically revises governance principles; recommends the size and composition of the Duke Energy board of directors and its committees and recommends potential successors to the Chief Executive Officer of Duke Energy; recommends to the Duke Energy board of directors the slate of nominees, including any nominees recommended by stockholders, for director for each year's annual meeting of stockholders and, when vacancies occur, names of individuals who would make suitable directors of Duke Energy; and performs an annual evaluation of the performance of the Chief Executive Officer of Duke Energy. [A copy of the current charter of the Corporate Governance Committee of the Duke Energy board of directors, which sets forth the committee's functions and charges as well as any limitations on authority, is located at <http://www.duke-energy.com/corporate-governance/board-committee-charters.asp>]
- The Compensation Committee, which establishes and reviews Duke Energy's overall compensation philosophy; reviews and approves the salaries and other compensation of certain employees, including all executive officers of Duke Energy; reviews and approves compensatory agreements with executive officers, approves equity grants and reviews the effectiveness of, and approves changes to, compensation programs; and makes recommendations to the Duke Energy board of directors on compensation for outside directors. [A copy of the current charter of the Compensation Committee of the Duke Energy board of directors, which sets forth the committee's functions and charges as well as any limitations on authority, is located at <http://www.duke-energy.com/corporate-governance/board-committee-charters.asp>]
- The Finance & Risk Management Committee, which is primarily responsible for the oversight of financial matters and risk at Duke Energy. This oversight function includes reviewing Duke Energy's financial and fiscal affairs and making recommendations to the Duke

Energy board of directors regarding dividends, financing and fiscal policies; reviewing the financial exposure of Duke Energy, as well as mitigating strategies; reviewing Duke Energy's risk exposure as related to overall company portfolio and impact on earnings; and reviewing the financial impacts of major projects as well as capital expenditures. [A copy of the current charter of the Finance & Risk Management Committee of the Duke Energy board of directors, which sets forth the committee's functions and charges as well as any limitations on authority, is also located at <http://www.duke-energy.com/corporate-governance/board-committee-charters.asp>

- The Nuclear Oversight Committee, which provides oversight of the nuclear safety, operational and financial performance, and long-term plans and strategies of Duke Energy's nuclear power program. [A copy of the current charter of the Nuclear Oversight Committee of the Duke Energy board of directors, which sets forth the committee's functions and charges as well as any limitations on authority, is located at <http://www.duke-energy.com/corporate-governance/board-committee-charters.asp>

Duke Energy and Progress Energy agreed in the Merger Agreement that the standing committees of the Duke Energy Board at the time of completion of the transaction will consist of the five existing standing committees of the Duke Energy board described above plus a Regulatory Policy and Operations Committee. This Regulatory Policy and Operations Committee will be formed post-merger. Therefore, it does not currently have a charter. However, it is contemplated that this new committee's responsibilities will include oversight of public policy and operational matters.

Duke Energy and Progress Energy also agreed in the Merger Agreement that at least one of the seven directors to be designated by Progress Energy to serve on the Duke Energy board of directors as of the time of completion of the transaction will serve on each committee of the Duke Energy board of directors following completion of the transaction. No committee appointments have been determined at this time.

- g. Members of the Duke Energy board of directors generally are elected for one-year terms and stand for re-election each year at the annual meeting of Duke Energy stockholders. Article Fifth, paragraph (e) of the Amended and Restated Certificate of Incorporation of Duke Energy provides that directors hold office until the next annual meeting of stockholders of Duke Energy and until their respective successors have been duly elected and qualified (subject to their prior death, resignation, retirement, disqualification or removal from office). Sections

2.02 and 2.03 of Duke Energy's corporate bylaws provide for an annual meeting of Duke Energy stockholders to elect directors and consider any other proper business. Under Section 2.11 of the General Corporation Law of the State of Delaware (Duke Energy's jurisdiction of incorporation), a stockholder or director may seek a court-ordered annual meeting if the period elapsed since the last annual meeting of stockholders exceeds thirteen months. Duke Energy's corporate documents do not place a limit on the number of terms a director may serve.

- h. Under Duke Energy's corporate bylaws, nominations of persons for election as a director of Duke Energy may be made only by the Duke Energy board of directors ~~(on which Mr. Rogers will serve as a member and as Chairman) or by a stockholder that meets specified ownership and procedural requirements set forth in Section 3.03 of the bylaws.~~

Duke Energy's current Principles for Corporate Governance provide that the Corporate Governance Committee of the Duke Energy board of directors has the primary responsibility for nominating candidates for election to the Duke Energy board of directors. The responsibilities and duties of the Corporate Governance Committee specified in the committee's charter, which was adopted by the full Duke Energy board, include: establishing criteria for the selection of new directors to serve on the Duke Energy board; identifying individuals believed to be qualified as candidates to serve on the Duke Energy board; and reviewing and making recommendations to the full Duke Energy board, or determining whether members of the Board should stand for re-election.

Article Fifth, paragraph (d) of Duke Energy's Amended and Restated Certificate of Incorporation and Section 3.04 of Duke Energy's corporate bylaws provide that newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board resulting from death, resignation, disqualification, removal or other cause are to be filled only by vote of a majority of the remaining Directors then in office. The Principles for Corporate Governance state that the following procedure is recommended whenever a vacancy occurs on the Duke Energy board or the board wishes to add to its membership: first, potential candidates are identified through the efforts of an external search organization or otherwise; next, the Chairman of the Board or the Chairman of the Corporate Governance Committee shall make initial exploratory contacts with the potential candidates; then an opportunity shall be arranged for the members of the Corporate Governance Committee or as many as can do so to meet the potential candidates; the Corporate Governance Committee shall then



select a candidate to recommend to the Duke Energy board of directors for consideration and appointment.

In the course of the Corporate Governance Committee's activities, it is expected that the Chairman of the Board, the Chief Executive Officer, the Lead Director and other directors may from time to time identify potential candidates to serve on the Duke Energy board of directors and bring such candidates to the attention of the Corporate Governance Committee.

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Duke Energy and Progress Energy agreed in the Merger Agreement that the initial Duke Energy board of directors upon completion of the transaction will include 11 directors designated by Duke Energy (including Mr. Rogers) and seven directors designated by Progress Energy (including Mr. Johnson).

- I. AG-DR-109(i) attachment contains a copy of Article III (Directors) of Duke Energy's corporate by laws as well as a copy of Article X (Emergency Provisions) of Duke Energy's corporate bylaws, which emergency provisions are operative only during a national emergency declared by the President of the United States or the person performing the President's functions, or in the event of a nuclear, atomic or other attack on the United States or on a locality in which Duke Energy conducts its principal business or customarily holds meetings of its Board of Directors or stockholders, or during the existence of any other catastrophic event or similar emergency, as a result of which a quorum of the Duke Energy board of directors cannot readily be assembled for action. AG-DR-109(i) attachment also contains a copy of Duke Energy's current Principles for Corporate Governance.
  
- j. In addition, a copy of Section 141 of the General Corporation Law of the State of Delaware, Duke Energy's jurisdiction of incorporation, is included as AG-DR-01-109(j) attachment. Section 141 of the Delaware General Corporation Law provides generally for management of a Delaware corporation by the corporation's board of directors and sets forth the ability of, and limitations on, a board of directors to delegate authority to board committees, among other matters relating to the operation of the board of directors of a Delaware corporation. Under applicable Delaware law, a director may not give a proxy to any other person to vote in place of such director at any meeting of the Board of Directors of Duke Energy.

Please see the response to Question [E(d)] above regarding director independence determinations. The Duke Energy board of directors has determined that all current Duke Energy directors, other than Mr. Rogers, are independent under the

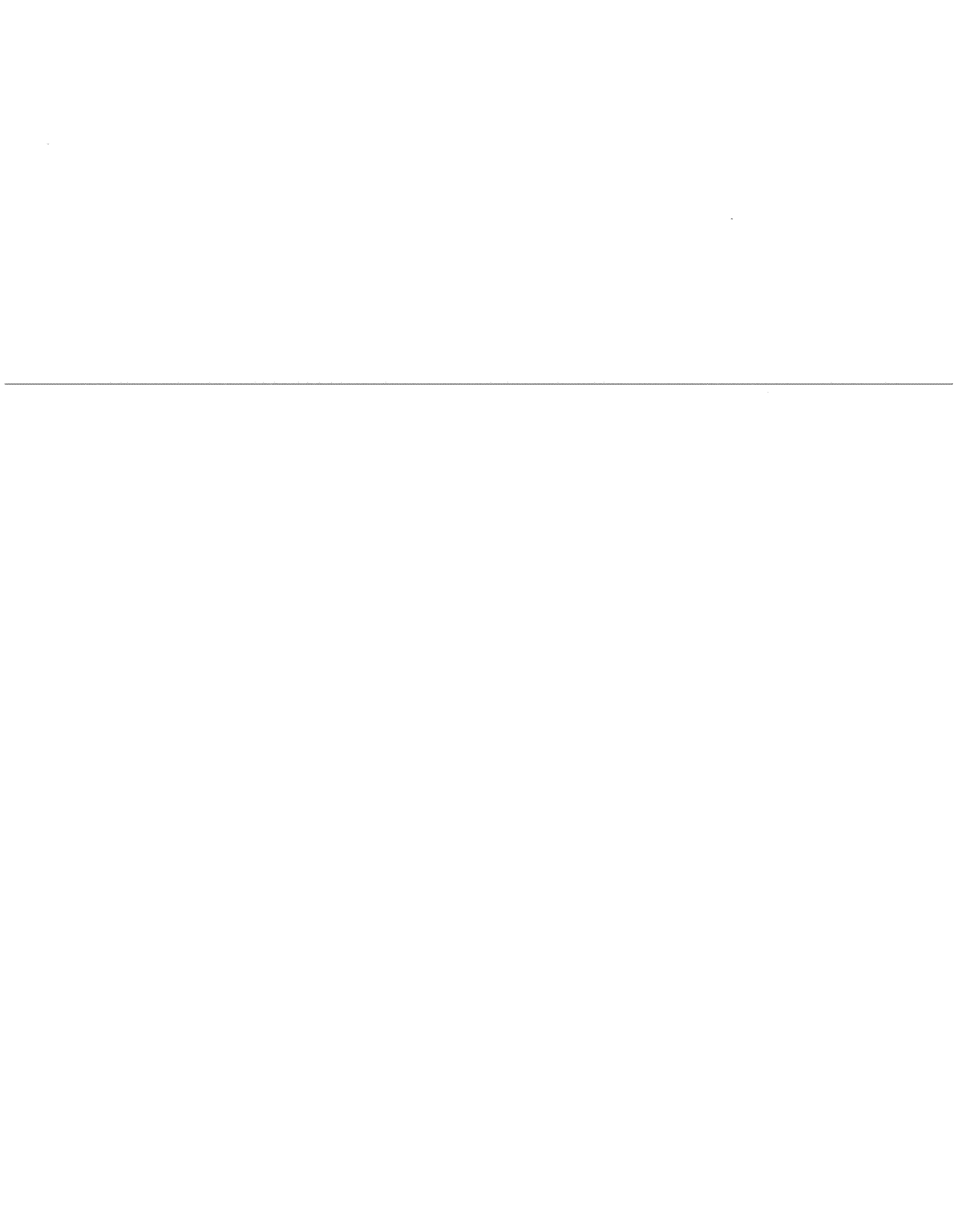
listing standards of the NYSE and the applicable SEC rules. The Progress Energy board of directors has determined that all current Progress Energy directors, other than Mr. Johnson, are independent under the listing standards of the NYSE and the applicable SEC rules. Since the Joint Applicants expect that all eleven current members of the Duke Energy board will serve on the initial Duke Energy board upon completion of the transaction, which at that time will number 18 directors, at least a majority (and likely significantly more) of such board members are expected to meet the applicable independence requirements for service on the Duke Energy board.

k. The Joint Applicants did not prepare or receive such diligence reports.

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l. As set forth in attachments to the Merger Agreement (Joint Application, Exhibit E) and on page 14 of the Direct Testimony of Jim Rogers (Joint Application, Exhibit J) and page 17 of the Direct Testimony of William Johnson (Joint Application, Exhibit K), Mr. Rogers and Mr. Johnson will work together to determine the agenda for board meetings. The final disposition of board resolutions will be determined by the board. Please see the response to Question [E(b)] regarding the process for setting agendas for meetings of the Duke Energy board of directors, as to which Mr. Rogers would not individually have final authority. Neither would Mr. Rogers have authority to approve or veto action taken by the Duke Energy board of directors.

**PERSON RESPONSIBLE:** Jim Rogers  
(e) Swati Daji





BINDER

October 20, 2010

INSURED ORGANIZATION: Duke Energy Corporation  
ADDRESS: 526 South Church Street  
Charlotte, NC 28202-1802

Re: Directors and Officers Liability Insurance  
Primary Insurance

Associated Electric & Gas Insurance Services Limited hereby agrees to provide coverage under Policy No. D0172A1A10 for the POLICY PERIOD from the 1st day of November, 2010 until the 1st day of November, 2011, both days at 12:01 A.M., Standard Time, at the address of the INSURED ORGANIZATION.

- 1) Gross Policy Premium: \$1,335,319  
Terrorism: \$48,431  
Commission: \$0  
Less Continuity Credit (USD): \$638,787  
Policy Premium: \$744,963
- 2) This POLICY is written on AEGIS form 6000P/6100P
- 3) Prior and Pending Litigation Date: The 1st day of January, 2007 at 12:01 A.M., Standard Time, at the address of the INSURED ORGANIZATION.
- 4) This POLICY is written as PRIMARY Insurance:

LIMITS OF LIABILITY:

- |                 |   |
|-----------------|---|
| A. \$35,000,000 | aggregate Limit of Liability for the POLICY PERIOD  |
| B. \$350,000    | for all INVESTIGATIVE EXPENSE for the POLICY PERIOD |

RETENTION:

- |                          |                        |
|--------------------------|------------------------|
| Insuring Agreement I (A) | \$0                    |
| Insuring Agreement I (B) | \$5,000,000 each CLAIM |

DISCOVERY PERIOD:

- |           |  |
|-----------|--|
| Premium:  | 125% of the annualized Rated Premium   |
| Duration: | commencing on the effective date of cancellation or non-renewal and ending 12 months after such date |

**5) Membership and Voting Rights:**

This POLICY will entitle the INSURED ORGANIZATION to be a member in the INSURER unless that membership is superseded, at any point in time, by a parent or affiliated company, which is also a member in the INSURER.

This POLICY will also entitle the INSURED ORGANIZATION to a vote on any matter submitted to the members of the INSURER unless that voting right is superseded, at any point in time, by the voting right of a parent or affiliated company.

**6) Terrorism Coverage:****TRIPRA of 2007 (U.S. Locations Only)**

Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA) extends the program for seven years. It eliminates the distinction between foreign and domestic acts of terrorism while maintaining the current federal share (85%) and the insurer co-pay (15%) above the insurer's retention. It hardens the cap on all insurers' aggregate liability at \$100 billion. ~~Currently, it does not require insurers to offer coverage for~~ nuclear, biological, chemical and radiological risks (NBCR). In addition, the bill maintains the current program trigger of \$100 million and the mandatory recoupment layer of \$27.5 billion for federal payments, specifying recoupment timeframes. The Act requires that 133% of federal outlays be recovered through policyholder surcharges. Finally, it provides for several studies of insurance availability/affordability for NBCR risks and for terrorism market capacity. AEGIS will continue to provide terrorism coverage for the policyholder as it has since the original bill was enacted in 2002.

**7) Endorsements:**

The following endorsements and/or exclusions will also be attached to the policy.


1. Prior Acts Exclusion Endorsement [Form 6500]
2. Corporate Entity Securities Claims Endorsement (Criminal, Formal Administrative and Regulatory Proceedings, Co-Defendant) [Form 6500] - Pending and Prior Litigation Date January 1, 2007
3. Clean Air Act, Title IV and Title V Acid Rain Program Designated Representative and Responsible Official Endorsement [Form 6500] - language from expiring form 6511 will apply
4. Outside Position Coverage - Affiliated Outside For-Profit Organizations Including Management or Operating Committees (Blanket Form - Equity Interest) [Form 6500]
5. Employee Outside Position Coverage - Not For Profit Organizations [Form 6525]
6. Amended Definition of Notice of Circumstances Endorsement [Form 6500]
7. Amended Discovery Period Endorsement [Form 6500]
8. Amended Changes and Assignment Endorsement [Form 6500]
9. Amended Representation and Severability - Insured Organization Endorsement, Insuring Agreements (A), (B) and Corporate Entity Securities Coverage (Full Severability for All Insureds, "Side A" Fully Non-Rescindable) [Form 6656]
10. Amended Retention Endorsement [Form 6616] - \$10,000,000 each Securities Claim / \$5,000,000 each Claim other than a Securities Claim / \$0 Insuring Agreement I(A)
11. Outside Position Coverage - Outside For-Profit Organizations Including Management or Operating Committees (Scheduled Organizations) [Form 6500] - Outside Entities include Crescent Holdings, LLC; Q-Comm Corporation; DukeNet/TCG LLC; Reliant Services, LLC and Conterra Ultra Broadband Holdings, Inc., Advantage IQ, Inc.
12. Amended Condition (Q) Construction Endorsement [Form 6615] - New York
13. Extradition Endorsement [Form 6611]
14. Amended Exclusion (G) (EBL) Endorsement [Form 6500]
15. Deletion of Exclusion (E)(5) and (E)(6) Endorsement [Form 6500]
16. Deletion of Exclusion (A) Endorsement [Form 6617]
17. ERISA Amendatory Endorsement [Form 6500]
18. SOX 304(a) Costs Endorsement [Form 6500]
19. Amendatory Endorsement [Form 6500]
20. Amended Priority of Payments Endorsement [Form 6500]
21. Amended Definition of Claim Endorsement [Form 6500]

- 22. Member With Voting Rights Endorsement [Form 6583]
- 23. Terrorism Limits and TRIPRA of 2007 Endorsement [Form 6639]

Attached is an invoice for the amount due AEGIS shown above, which is payable within 15 days of the date hereof, or 20 days from the inception date above, whichever is later. A POLICY reflecting the above terms will be prepared and sent to you shortly.

THIS BINDER SUPERSEDES ANY PREVIOUSLY ISSUED BINDER

AEGIS Insurance Services, Inc.



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Signature of Authorized Representative



October 20, 2010

WRITTEN STATEMENT FROM FOREIGN INSURER  
REQUIRED BY REVENUE PROCEDURE 81-21

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Insurer: Associated Electric & Gas Insurance Services Limited  
Maxwell Roberts Building  
4<sup>th</sup> Floor  
One Church Street  
P.O. Box HM2455  
Hamilton, HMJX  
BERMUDA

Premium Period: November 1, 2010 to November 1, 2011

The Internal Revenue Service ("IRS") has issued Revenue Procedure 81-21, which states that direct insureds and U.S. brokers will be exempt from liability for any unpaid Federal Insurance Excise Tax ("FET") imposed by section 4371 of the Internal Revenue Code on underwriting premiums if they receive a statement from a foreign insurer to the effect that the premiums they pay are subject to U.S. income tax and concomitantly exempt from FET. This statement will serve as the statement prescribed by the IRS to establish the FET exemption.

AEGIS has received a private ruling from the Internal Revenue Service to the effect that it is engaged in a U.S. trade or business and underwriting profits attributable to premiums paid to it will be subject to income tax. The ruling also provides that such premiums are exempt from the FET.

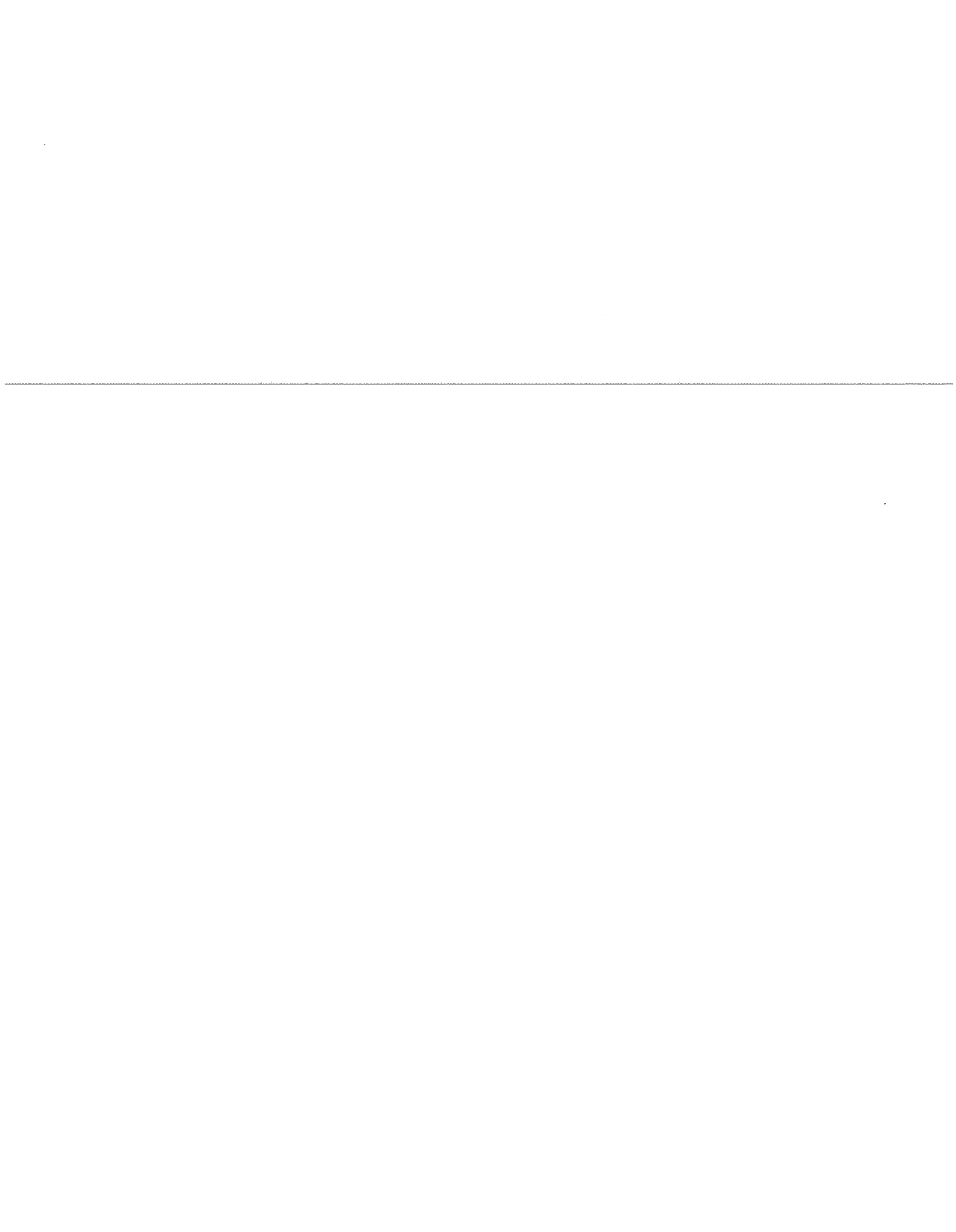
This is to advise you that all premiums paid by you to AEGIS with respect to the captioned premium period will constitute an item of effectively connected income to AEGIS and thus are exempt from FET.

ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

*John J. Denman Jr.*

John J. Denman Jr.  
Treasurer and Controller

Maxwell Roberts Building, 4th floor, One Church Street, P.O. Box HM2455, Hamilton HM JX, Bermuda 441 296-2131  
AEGIS and the AEGIS Logo are Registered Service Marks of Associated Electric & Gas Insurance Services Limited





AMENDED AND RESTATED  
BY-LAWS

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OF  
DUKE ENERGY CORPORATION  
A Delaware corporation  
Effective as of February 26, 2008

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AMENDED AND RESTATED BY-LAWS

OF

DUKE ENERGY CORPORATION

(A CORPORATION ORGANIZED UNDER THE LAWS OF THE  
STATE OF DELAWARE, THE "CORPORATION")  
(EFFECTIVE AS OF FEBRUARY 26, 2008)

ARTICLE I

Offices

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**Section 1.01.** Principal Office. The principal office of the Corporation shall be located in Charlotte, North Carolina.

**Section 1.02.** Registered Office and Agent. The address of the registered office of the Corporation in the State of Delaware shall be 1209 Orange Street, Wilmington, Delaware 19801. The name of the registered agent is The Corporation Trust Company. Such registered agent has a business office identical with such registered office.

**Section 1.03.** Other Offices. The Corporation may have such other offices either within or without the State of Delaware as the Board of Directors (the "Board" and each member thereof, a "Director") may designate or as the business of the Corporation may from time to time require.

ARTICLE II

Stockholders

**Section 2.01.** Place of Stockholders' Meetings. All meetings of the stockholders of the Corporation shall be held at such place or places, within or outside the State of Delaware, as may be fixed by the Board from time to time or as shall be in the respective notices thereof. The Board may, in its sole discretion, determine that a meeting of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication in the manner authorized by the General Corporation Law of the State of Delaware (the "DGCL").

**Section 2.02.** Day and Time of Annual Meetings of Stockholders. An annual meeting of stockholders shall be held at such date and hour as shall be determined by the Board and designated in the notice thereof. Any previously scheduled annual meeting of stockholders may be postponed by action of the Board taken prior to the time previously scheduled for such annual meeting of stockholders.

**Section 2.03.** Purposes of Annual Meetings. Subject to the rights of the holders of any series of Preferred Stock of the Corporation, at each annual meeting, the stockholders shall elect the Directors. At any such annual meeting any other business properly brought before the meeting may be transacted.

(b) To be properly brought before an annual meeting, business must be (i) specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Board, (ii) otherwise properly brought before the meeting by or at the direction of the Board or (iii) otherwise properly brought before the meeting by a stockholder who is a holder of record at the time of the giving of notice provided for in this Section 2.03(b), who is entitled to vote at the meeting and who complies with the procedures set forth in this Section 2.03(b). For business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action under applicable law and the stockholder must have given written notice thereof, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Corporation at the principal executive offices of the Corporation, not less than 90 days nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting provided, that the first such anniversary date occurring after the effective date of these By-Laws shall be deemed to be May 1, 2006, and provided, further, that ~~in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date,~~ notice by the stockholder to be timely must be so received not later than the tenth day following the day on which notice of the date of the annual meeting was mailed or public announcement of the date of such meeting is first made by the Corporation, whichever occurs first. In no event shall the public announcement of an adjournment of an annual meeting of stockholders commence a new time period for the giving of a stockholder's notice as described above. Any such notice shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, and, in the event that such business includes a proposal to amend either the Restated Certificate of Incorporation of the Corporation (the "Certificate") or these By-Laws, the text of the proposed amendment, (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (iii) the class and number of shares of the Corporation that are beneficially owned by the stockholder, (iv) any material interest of the stockholder in such business and (v) if the stockholder intends to solicit proxies in support of such stockholder's proposal, a representation to that effect. The foregoing notice requirements shall be deemed satisfied by a stockholder if the stockholder has notified the Corporation of his or her intention to present a proposal at an annual meeting and such stockholder's proposal has been included in a proxy statement that has been prepared by management of the Corporation to solicit proxies for such annual meeting; provided, however, that if such stockholder does not appear or send a qualified representative to present such proposal at such annual meeting, the Corporation need not present such proposal for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation. No business shall be conducted at an annual meeting of stockholders except in accordance with this Section 2.03(b), and the presiding officer of any annual meeting of stockholders may refuse to permit any business to be brought before an annual meeting without compliance with the foregoing procedures or if the stockholder solicits proxies in support of such stockholder's proposal without such stockholder having made the representation required by clause (v) of the second preceding sentence.

#### **Section 2.04. Special Meetings of Stockholders.**

(a) Except as otherwise expressly required by the Certificate or applicable law and subject to the rights of the holders of any series of Preferred Stock of the Corporation, special meetings of the stockholders or of any class or series entitled to vote may be called for any purpose or purposes by the Chairman of the Board or by the Board of Directors pursuant to a resolution stating the purpose or purposes thereof, to be held at such place (within or without the State of Delaware), date and hour as shall be determined by the

Chairman or the Board, as applicable, and designated in the notice thereof. At any such special meeting any business properly brought before the meeting may be transacted.

(b) To be properly brought before a special meeting, business must be (i) specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Board or (ii) otherwise properly brought before the meeting by or at the direction of the Board. No business shall be conducted at a special meeting of stockholders except in accordance with this Section 2.04(b) or as required by applicable law.

**Section 2.05. Notice of Meetings of Stockholders.** Whenever stockholders are required or permitted to take any action at a meeting, unless notice is waived in writing by all stockholders entitled to vote at the meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called.

In lieu of and/or in addition to the foregoing, notice of any meeting of the stockholders of the Corporation may be given via electronic transmission, to the fullest extent permitted by Section 232 of the DGCL. To be valid, such electronic transmission notice must be in a form of electronic transmission to which the stockholder has consented. Any stockholder can revoke consent to receive notice by a form of electronic transmission by written notice to the Corporation. Such consent shall be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or an Assistant Secretary or to the transfer agent or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat any such undeliverable notices as a revocation shall not invalidate any meeting or other action. "Electronic transmission" shall mean any form of communication, not directly involving the physical transmission of paper, that creates a record and that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Unless otherwise provided by law, and except as to any stockholder duly waiving notice, the written notice of any meeting shall be given personally, by mail, or by a form of electronic transmission consented to by the stockholder to whom notice is given, not less than 10 days nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the records of the Corporation. If by a form of electronic transmission, notice shall be deemed given when transmitted to the stockholder in accordance with the provisions set forth herein; provided, however, that if the electronic transmission notice is posted on an electronic network (e.g., a website or chatroom), notice shall be deemed given upon the later of (A) such posting and (B) the giving of separate notice of the posting to the stockholder.

Except as otherwise expressly required by applicable law, notice of any adjourned meeting of stockholders need not be given if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken.

**Section 2.06. Quorum of Stockholders.**

(a) Unless otherwise expressly required by the Certificate or applicable law, at any meeting of the stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of the votes entitled to be cast thereat shall constitute a quorum for the entire meeting, notwithstanding the withdrawal of stockholders entitled to cast a sufficient number of votes in person or by proxy to reduce the number of votes represented at the meeting below a quorum. Shares of the Corporation's stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in an election of the directors of such other corporation is held by the Corporation, shall neither be counted for the purpose of determining the presence of a quorum nor be entitled to vote at any meeting of the stockholders; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including its own stock, held by it in a fiduciary capacity.

(b) At any meeting of the stockholders at which a quorum shall be present, a majority of those present in person or by proxy may adjourn the meeting from time to time. Whether or not a quorum is present, the officer presiding thereat shall have power to adjourn the meeting from time to time. Except as otherwise expressly required by applicable law, notice of any adjourned meeting other than announcement at the meeting at which an adjournment is taken shall not be required to be given.

(c) At any adjourned meeting, any business may be transacted that might have been transacted at the meeting originally called, but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof unless a new record date is fixed by the Board.

**Section 2.07. Presiding Official and Secretary of Meeting; Conduct of Meetings.**

(a) The Chairman of the Board or, in his or her absence, the Chief Executive Officer or, in the absence of the Chairman of the Board and the Chief Executive Officer, an officer of the Corporation designated by the Chairman of the Board, shall preside at meetings of the stockholders. The Secretary or an Assistant Secretary of the Corporation shall act as secretary of the meeting, or if neither is present, then the presiding officer may appoint a person to act as secretary of the meeting.

(b) The Board may to the extent not prohibited by law adopt such rules and regulations for the conduct of the meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the presiding officer of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding officer, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding officer of the meeting, may to the extent not prohibited by law include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting, (ii) rules and procedures for maintaining order at the meeting and the safety of those present, (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the presiding officer of the meeting shall determine, (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof and (v) limitations on the time allotted to questions or comments by participants. Unless, and to the extent, determined by the Board or the presiding officer of the



meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

**Section 2.08. Voting by Stockholders.**

(a) Except as otherwise expressly required by the Certificate or applicable law, at every meeting of the stockholders each stockholder of record shall be entitled to the number of votes specified in the Certificate (or, with respect to any class or series of Preferred Stock, in the applicable certificate of designations providing for the creation of such class or series), in person or by proxy, for each share of stock standing in his or her name on the books of the Corporation on the date fixed pursuant to the provisions of Section 2.12 of these By-Laws as the record date for the determination of the stockholders who shall be entitled to receive notice of and to vote at such meeting.

(b) When a quorum is present at any meeting of the stockholders, all questions shall be decided by the vote of a majority of the total number of votes of the Corporation's capital stock represented and entitled to vote at such meeting, unless the question is one upon which by express provision of law, the rules or regulations of any stock exchange or governmental or regulatory body applicable to the Corporation, the Certificate or these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Such votes may be cast in person or by proxy as provided in Section 2.09.

(c) Except as otherwise expressly required by applicable law, the vote at any meeting of stockholders on any question need not be by ballot, unless so directed by the presiding officer of the meeting.

**Section 2.09. Proxies.** Each stockholder entitled to vote at a meeting of the stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder as proxy, but no such proxy shall be voted upon after three years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by

the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information on which they relied.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided, however, that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

**Section 2.10. Inspector.** In advance of any meeting of the stockholders, the ~~Board or the Chairman of the Board shall appoint one or more inspectors to act at the meeting~~ and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of the stockholders, the presiding officer of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by applicable law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by applicable law.

**Section 2.11. List of Stockholders.**

(a) At least ten days before every meeting of stockholders, the officer who has charge of the stock ledger of the Corporation shall cause to be prepared and made a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder.

(b) For such ten-day period through the conclusion of the meeting, such list shall be open to examination by any stockholder for any purpose germane to the meeting as required by applicable law (i) on a reasonably accessible electronic network provided that the information required to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

(c) The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section 2.11 or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

**Section 2.12. Fixing of Record Date for Determination of Stockholders of Record.**

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than ten days before the date of such meeting.

If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board, and prior action by the Board is required by law, the record date for determining the stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolutions taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

**ARTICLE III**  
**Directors**

**Section 3.01. Number and Qualifications.** The number of Directors constituting the Board shall be not less than nine nor more than 18, as may be fixed from time to time by the Board in accordance with Section 3.07. A Director must be a stockholder of the Corporation or become a stockholder of the Corporation within a reasonable time after election to the Board.

Notwithstanding any provision in these By-Laws or the Certificate to the contrary, prior to the first annual meeting of stockholders at which Directors are elected following the effective date of these By-Laws, the size of the Initial Board shall not be increased or decreased without the affirmative vote of at least 80% of the entire Board.

**Section 3.02. Chairman of the Board.** The Chairman of the Board shall be chosen from among the Directors. The Chairman of the Board shall perform all duties incidental to such person's position which may be required by law and all such other duties as are properly required of the Chairman of the Board by the Board. The Chairman of the Board shall preside at all meetings of stockholders and of the Board and shall make reports to the Board and the stockholders, and shall see that all orders and resolutions of the Board and of any Committee thereof are carried into effect. The Chairman of the Board shall have such other duties and Elected Officers reporting directly to him or her as set forth in a resolution of the Board.

**Section 3.03. Election and Term of Directors.** Subject to the rights of the holders of any class or series of Preferred Stock of the Corporation, nominations of persons for election as Directors may be made by the Board or by any stockholder who is a stockholder of record at the time of giving of the notice of nomination provided for in this Section 3.03 and who is entitled to vote for the election of Directors. Any stockholder of record entitled to vote for the election of Directors at a meeting may nominate a person or persons for election as Directors only if written notice of such stockholder's intent to make such nomination is given, either by personal delivery or by United States mail, postage prepaid, to the Secretary at the principal executive offices of the Corporation, (i) with respect to an election to be held at an annual meeting of stockholders, not less than 90 nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting provided, that the first such anniversary date occurring after the effective date of these By-Laws shall be deemed to be May 1, 2006 and provided, further, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so received not later than the tenth day following the day on which notice of the date of the annual meeting was mailed or public announcement of the date of such meeting is first made by the Corporation, whichever occurs first and (ii) with respect to an election to be held at a special meeting of stockholders for the election of Directors, not earlier than the 90th day prior to such special meeting and not later than the close of business on the later of the 60th day prior to such special meeting or the tenth day following the day on which public announcement of the date of the special meeting and of the nominees to be elected at such meeting is first made. Each such notice shall set forth: (a) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated; (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (d) such other information regarding each nominee proposed by such stockholder as would have been required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had each nominee been nominated, or intended to be nominated, by the Board; (e) the consent of each nominee to serve as a Director if so elected and (f) if the stockholder intends to solicit proxies in support of such stockholder's nominee(s), a representation to that effect. The presiding officer of any meeting of stockholders to elect Directors and the Board may refuse to acknowledge any attempted nomination of any person not made in compliance with the foregoing procedure or if

the stockholder solicits proxies in support of such stockholder's nominee(s) without such stockholder having made the representation required by clause (f) of the preceding sentence. Only such persons who are nominated in accordance with the procedures set forth in this Section 3.03 shall be eligible to serve as Directors of the Corporation.

At each meeting of the stockholders for the election of Directors at which a quorum is present, the persons receiving the greatest number of votes, up to the number of Directors to be elected, shall be the Directors. Each Director so elected shall hold office until the next annual meeting of stockholders and until such Director's successor is duly elected and qualified or until such Director's earlier death, resignation or removal.

**Section 3.04. Newly Created Directorships; Vacancies.** Subject to the rights of holders of any class or series of Preferred Stock and unless otherwise required by the Certificate, newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board resulting from death, resignation, disqualification, removal or other cause shall be filled only by the affirmative vote of a majority of the remaining Directors then in office, even though less than a quorum of the Board, and any Director so chosen shall hold office until the next annual meeting of stockholders at which Directors are elected and until their successors are duly elected and qualified, or until their earlier death, resignation or removal. No decrease in the number of Directors constituting the Board of Directors shall shorten the term of any incumbent Director.

**Section 3.05. Resignation.** Any Director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

**Section 3.06. Meetings of the Board.**

(a) The Board may hold its meetings, both regular and special, either within or outside the State of Delaware, at such places as from time to time may be determined by the Board or as may be designated in the respective notices or waivers of notice thereof.

(b) Regular meetings of the Board shall be held at such times and at such places as from time to time shall be determined by the Board.

(c) The first meeting of each newly elected Board shall be held as soon as practicable after the annual meeting of the stockholders.

(d) Special meetings of the Board shall be held whenever called by direction of the Chairman of the Board or at the request of Directors constituting a majority of the number of Directors then in office.

(e) Members of the Board or any Committee of the Board may participate in a meeting of the Board or such Committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and by any other means of remote communication permitted by applicable law, and such participation shall constitute presence in person at such meeting.

(f) A regular meeting of the Board of Directors shall be held without other notice than this By-Law as soon as practicable after the annual meeting of stockholders. The Board may, by resolution, provide the time and place for the holding of additional regular meetings without other notice than such resolution. Notice of any special meeting of the Board shall be given to each Director at such Director's business or residence in writing by hand delivery, first-class or overnight mail or courier service, facsimile transmission or orally by telephone. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five calendar days before such meeting. If by overnight mail or courier service, such notice shall be deemed adequately delivered when the notice is delivered to the overnight mail or courier service company at least 24 hours before such meeting. If by facsimile transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least 12 hours before such meeting. If by telephone or by hand delivery, the notice shall be given at least 12 hours prior to the time set for the meeting. ~~Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice of such meeting.~~ Any and all business may be transacted at any meeting of the Board. No notice of any adjourned meeting need be given. No notice to or waiver by any Director shall be required with respect to any meeting at which the Director is present except when such Director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened.

**Section 3.07. Quorum and Action.** Except as otherwise expressly required by the Certificate, these By-Laws or applicable law, at any meeting of the Board, the presence of at least a majority of the number of Directors fixed pursuant to these By-Laws shall constitute a quorum for the transaction of business; but if there shall be less than a quorum at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. Unless otherwise provided by applicable law, the Certificate or these By-Laws, the vote of a majority of the Directors present at any meeting at which a quorum is present shall be necessary for the approval and adoption of any resolution or the approval of any act of the Board.

**Section 3.08. Presiding Director and Secretary of Meeting.** The Chairman of the Board or, in the absence of the Chairman of the Board, the Lead Director, or in the absence of the Chairman of the Board and the Lead Director, a member of the Board selected by the members present, shall preside at meetings of the Board. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the presiding Director may appoint a secretary of the meeting.

**Section 3.09. Action by Consent without Meeting.** Any action required or permitted to be taken at any meeting of the Board or of any Committee thereof may be taken without a meeting if all of the Directors or members of such Committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board or such Committee.

**Section 3.10. Compensation of Directors.** Directors, as such, may receive, pursuant to resolution of the Board, fixed fees and other compensation for their services as Directors, including, without limitation, their services as members of a Committee of the Board.

**Section 3.11. Committees of the Board and Powers.** The Board may designate one or more Committees of the Board, which shall consist of two or more Directors. Any such Committee may to the extent permitted by applicable law exercise such powers and shall have such responsibilities as shall be specified in the designating resolution. A Committee of the

Board may not (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by law to be submitted to stockholders for approval or (ii) adopt, amend or repeal any bylaw of the corporation. The Board shall have power at any time to fill vacancies in, to change the membership of, or to dissolve any such Committee. Nothing herein shall be deemed to prevent the Board from appointing one or more Committees consisting in whole or in part of persons who are not Directors; provided, however, that no such Committee shall have or may exercise any authority of the Board.

**Section 3.12. Meetings of Committees.** Regular meetings of any Committee may be held without notice at such time and at such place, within or outside the State of Delaware, as from time to time shall be determined by such Committee. The Chairman of the Board, the Board or the Committee by vote at a meeting, or by two members of any Committee in writing ~~without a meeting, may call a special meeting of any such Committee by giving notice~~ to each member of the Committee in the manner provided for in Section 3.06(f) hereof. Unless otherwise provided in the Certificate, these By-Laws or by applicable law, neither business to be transacted at, nor the purpose of, any regular or special meeting of any such Committee need be specified in the notice or any waiver of notice.

**Section 3.13. Quorum of Committee; Manner of Action.** At all meetings of any Committee a majority of the total number of its members shall constitute a quorum for the transaction of business. Except in cases in which it is by applicable law, by the Certificate, by these By-Laws, or by resolution of the Board otherwise provided, a majority of such quorum shall decide any questions that may come before the meeting. In the absence of a quorum, the members of the Committee present by majority vote may adjourn the meeting from time to time, without notice other than by verbal announcement at the meeting, until a quorum shall attend. A Committee may also act by the written consent of all members thereof although not convened in a meeting provided that such written consent is filed with the minute books of the Committee.

#### ARTICLE IV Officers

**Section 4.01. Elected Officers.** The Elected Officers of the Corporation shall consist of the Chief Executive Officer and such other officers as the Board may designate as Elected Officers from time to time. Any two or more offices may be held simultaneously by the same person, except as otherwise expressly prohibited by applicable law. The Board may elect a Lead Director from among the independent (as such term is defined by applicable SEC or self-regulatory organization rule or regulation) members of the Board. Elected officers shall have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article IV. Such officers shall also have such powers and duties as from time to time may be conferred by the Board or by any Committee thereof. The Board or the Chief Executive Officer may from time to time appoint such other officers (including one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents Assistant Secretaries, Assistant Treasurers and Assistant Controllers), as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in these By-Laws or, to the extent consistent with these By-Laws, as may be prescribed by the Board or the Chief Executive Officer. The Corporation shall maintain a Chief Executive Officer, a President, a Secretary, a Treasurer and a Controller and such other officers as the Board may deem proper.

**Section 4.02. Election and Term of Office.** Elected Officers of the Corporation shall be elected by the Board at such times as the Board may deem necessary. Officers who are not Elected Officers may be elected from time to time by the Board or appointed by the Chief Executive Officer. Each officer shall hold office until such person's successor shall have been duly elected and shall have qualified or until such person's death or until he or she shall resign or shall be removed pursuant to Section 4.11.

**Section 4.03. (Intentionally omitted.)**

**Section 4.04. Chief Executive Officer.** The Chief Executive Officer shall be responsible for the general management of the affairs of the Corporation and shall perform all duties incidental to such person's office which may be required by law and all such other duties as are properly required of the Chief Executive Officer by the Board. The Chief Executive Officer shall report to the Board. The Chief Executive Officer shall, in the absence or inability to act of the Chairman of the Board and the Lead Director (if elected), preside at all meetings of stockholders.

**Section 4.05. President.** The President shall act in a general executive capacity and shall assist the Chief Executive Officer and the Chairman of the Board, if so designated by the Board, in the administration and operation of the Corporation's business and general supervision of its policies and affairs.

**Section 4.06. Vice Presidents.** The Executive Vice Presidents, the Senior Vice Presidents and the Vice Presidents shall have such powers and duties as may be prescribed for them, respectively, by the Board or the Chief Executive Officer. Each of such officers shall report to the Chief Executive Officer or such other officer as the Chief Executive Officer shall direct or to the Chairman of the Board, if so designated by the Board.

**Section 4.07. Secretary.** The Secretary shall attend all meetings of the stockholders and of the Board, shall keep a true and faithful record thereof in proper books and shall have the custody and care of the corporate seal, records, minute books and stock books of the Corporation and of such other books and papers as in the practical business operations of the Corporation shall naturally belong in the office or custody of the Secretary or as shall be placed in the Secretary's custody by order of the Board. The Secretary shall cause to be kept a suitable record of the addresses of stockholders and shall, except as may be otherwise required by statute or these By-Laws, sign and issue all notices required for meetings of stockholders or of the Board. The Secretary shall sign all papers to which the Secretary's signature may be necessary or appropriate, shall affix and attest the seal of the Corporation to all instruments requiring the seal, shall have the authority to certify the By-Laws, resolutions of the stockholders and the Board and other documents of the Corporation as true and correct copies thereof and shall have such other powers and duties as are commonly incidental to the office of Secretary and as may be assigned to him or her by the Board or the Chief Executive Officer.

**Section 4.08. Treasurer.** The Treasurer shall have charge of and supervision over and be responsible for the funds, securities, receipts and disbursements of the Corporation; cause the moneys and other valuable effects of the Corporation to be deposited in the name and to the credit of the Corporation in such banks or trust companies or with such bankers or other depositories as shall be selected in accordance with resolutions adopted by the Board; cause the funds of the Corporation to be disbursed by checks or drafts upon the authorized depositories of the Corporation, and cause to be taken and preserved proper vouchers for all moneys disbursed; render to the proper officers and to the Board and any duly



constituted committee of the Board responsible for financial matters, whenever requested, a statement of the financial condition of the Corporation and of all his or her transactions as Treasurer; cause to be kept at the principal executive offices of the Corporation correct books of account of all its business and transactions; and, in general, perform all duties incident to the office of Treasurer and such other duties as are given to him or her by the By-Laws or as may be assigned to him or her by the Chief Executive Officer or the Board.

**Section 4.09. Controller.** The Controller shall be the chief accounting officer of the Corporation; shall keep full and accurate accounts of all assets, liabilities, commitments, revenues, costs and expenses, and other financial transactions of the Corporation in books belonging to the Corporation, and conform them to sound accounting principles with adequate internal control; shall cause regular audits of these books and records to be made; shall see that all expenditures are made in accordance with procedures duly established, from time to time, by the Corporation; shall render financial statements upon the request of the Board; and, in general, shall perform all the duties ordinarily connected with the office of Controller and such other duties as may be assigned to him or her by the Chief Executive Officer or the Board.

**Section 4.10. Assistant Secretaries, Assistant Treasurers and Assistant Controllers.** Assistant Secretaries, Assistant Treasurers and Assistant Controllers, when elected or appointed, shall respectively assist the Secretary, the Treasurer and the Controller in the performance of the respective duties assigned to such principal officers, and in assisting such principal officer, each of such assistant officers shall for such purpose have the powers of such principal officer; and, in case of the absence, disability, death, resignation or removal from office of any principal officer, such principal officer's duties shall, except as otherwise ordered by the Board, temporarily devolve upon such assistant officer as shall be designated by the Chief Executive Officer.

**Section 4.11. Removal.** Any officer or agent may be removed by the affirmative vote of a majority of the Directors then in office whenever, in their judgment, the best interests of the Corporation would be served thereby. In addition, any officer or agent appointed by the Chief Executive Officer may be removed by the Chief Executive Officer whenever, in his or her judgment, the best interests of the Corporation would be served thereby. Any removal shall be without prejudice to the contract rights, if any, of the person so removed.

**Section 4.12. Vacancies.** A newly created elected office and a vacancy in any elected office because of death, resignation or removal may be filled by the Board for the unexpired portion of the term at any meeting of the Board. Any vacancy in an office appointed by the Chief Executive Officer because of death, resignation or removal may be filled by the Chief Executive Officer.

## **ARTICLE V** **Indemnification**

**Section 5.01. Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation.** Subject to Section 5.03, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other

enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

**Section 5.02. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation.** Subject to Section 5.03, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

**Section 5.03. Authorization of Indemnification.** Any indemnification under this Article V (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former Director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 5.01 or Section 5.02, as the case may be. Such determination shall be made, with respect to a person who is a Director or officer at the time of such determination, (i) by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such Directors designated by a majority vote of such Directors, even though less than a quorum, or (iii) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion, or (iv) by the stockholders. Such determination shall be made, with respect to former Directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former Director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

**Section 5.04. Good Faith Defined.** For purposes of any determination under Section 5.03, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or,

with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 5.04 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 5.01 or Section 5.02, as the case may be.

**Section 5.05. Indemnification by a Court.** Notwithstanding any contrary determination in the specific case under Section 5.03, and notwithstanding the absence of any determination thereunder, any Director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 5.01 or Section 5.02. The basis of such indemnification by a court shall be a determination by such court that indemnification of the Director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 5.01 or Section 5.02, as the case may be. Neither a contrary determination in the specific case under Section 5.03 nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the Director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5.05 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the Director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

**Section 5.06. Expenses Payable in Advance.** Expenses (including attorneys' fees) incurred by a Director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article V. Such expenses (including attorneys' fees) incurred by former Directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

**Section 5.07. Nonexclusivity of Indemnification and Advancement of Expenses.** The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate, these By-Laws, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 5.01 and Section 5.02 shall be made to the fullest extent permitted by law. The provisions of this Article V shall not be deemed to preclude the indemnification of any person who is not specified in Section 5.01 or Section 5.02 but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

**Section 5.08. Insurance.** The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article V.

**Section 5.09. Certain Definitions.** For purposes of this Article V, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article V with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term "another enterprise" as used in this Article V shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article V, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article V.

**Section 5.10. Survival of Indemnification and Advancement of Expenses.** The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

**Section 5.11. Limitation on Indemnification.** Notwithstanding anything contained in this Article V to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5.05), the Corporation shall not be obligated to indemnify any Director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board.

**Section 5.12. Indemnification of Employees and Agents.** The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation and employees or agents of the Corporation that are or were serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or

other enterprise, similar to those conferred in this Article V to Directors and officers of the Corporation.

## **ARTICLE VI** **Capital Stock**

**Section 6.01. Stock Certificates.** The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. If shares are represented by certificates, each certificate shall be signed by, or in the name of, the Corporation by (i) the Chairman of the Board, the Chief Executive Officer, the President or any Vice President, and (ii) the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary. In addition, such certificates may be signed by a transfer agent of a registrar (other than the Corporation itself) and may be sealed with the seal of the Corporation or a facsimile thereof. Any or all of the signatures on such certificates may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of its issuance.

Each certificate representing shares shall state upon the face thereof: the name of the Corporation; that the Corporation is organized under the laws of Delaware; the name of the person or persons to whom issued; the number and class of shares and the designation of the series, if any, which such certificate represents; and the par value of each share represented by such certificate or a statement that the shares are without par value.

**Section 6.02. Record Ownership.** A record of the name of the person, firm or corporation and address of such holder of each certificate, the number of shares represented thereby and the date of issue thereof shall be made on the Corporation's books. The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof, and accordingly shall not be bound to recognize any equitable or other claim to or interest in any share on the part of any person, whether or not it shall have express or other notice thereof, except as otherwise expressly required by applicable law.

**Section 6.03. Transfer of Record Ownership.** Transfers of stock shall be made on the books of the Corporation only by direction of the person named in the certificate or such person's attorney, lawfully constituted in writing, and only upon the surrender of the certificate therefor and a written assignment of the shares evidenced thereby. Whenever any transfer of stock shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the Corporation for transfer, both the transferor and transferee request the Corporation to do so.

**Section 6.04. Transfer Agent; Registrar; Rules Respecting Certificates.** The Corporation shall maintain one or more transfer offices or agencies (which may include the Corporation) where stock of the Corporation shall be transferable. The Corporation shall also maintain one or more registry offices (which may include the Corporation) where such stock shall be registered. The Board may make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of stock certificates in accordance with applicable law.

**Section 6.05. Lost, Stolen or Destroyed Certificates.** No certificate for shares of stock in the Corporation shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the Corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board or any financial officer may in its or such person's discretion require. A new certificate may be issued without requiring any bond if the Board or such financial officer so determines.

## ARTICLE VII

### Contracts, Checks and Drafts, Deposits and Proxies

**Section 7.01. Contracts.** The Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances.

**Section 7.02. Checks and Drafts.** All checks, drafts or other orders for the payment of money, issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by the Board.

**Section 7.03. Deposits.** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories as may be selected by or under the authority of the Board.

**Section 7.04. Proxies.** Unless otherwise provided by the Board, the Chairman of the Board, the Chief Executive Officer, the President or any Executive Vice President, Senior Vice President or Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper in the premises.

## ARTICLE VIII

### General Provisions

**Section 8.01. Dividends.** Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate, if any, may be declared by the Board at any regular or special meeting of the Board (or any action by written consent in lieu thereof in accordance with Section 3.09 hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the

Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board may modify or abolish any such reserve.

**Section 8.02. Fiscal Year.** The fiscal year of the Corporation shall begin on the first day of January in each year and shall end on the thirty-first day of December of such year.

**Section 8.03. Seal.** The corporate seal of the Corporation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board, the name of the Corporation, the year of its incorporation and the words "Corporate Seal" and "Delaware". The corporate seal may be used by causing it or a facsimile thereof to be impressed or reproduced or otherwise.

**Section 8.04. Waivers of Notice.** Whenever any notice is required by applicable law, the Certificate or these By-Laws, to be given to any Director, member of a Committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, or a waiver by electronic transmission by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of stockholders or any regular or special meeting of the Board or members of a Committee of the Board need be specified in any written waiver of notice unless so required by law, the Certificate or these By-Laws.

#### **ARTICLE IX** **Amendment of By-Laws**

**Section 9.01. Amendment.** Except as otherwise expressly provided in the Certificate, these By-Laws, or any of them, may from time to time be supplemented, amended or repealed, or new By-Laws may be adopted, by the Board at any regular or special meeting of the Board, if such supplement, amendment, repeal or adoption is approved by a majority of the entire Board.

**Section 9.02. Entire Board of Directors.** As used in this Article IX and in these By-Laws generally, the terms "entire Board" or "entire Board of Directors" mean the total number of Directors which the Corporation would have if there were no vacancies.

#### **ARTICLE X** **Emergency Provisions**

**Section 10.01. General.** The provisions of this Article X shall be operative only during a national emergency declared by the President of the United States or the person performing the President's functions, or in the event of a nuclear, atomic or other attack on the United States or on a locality in which the Corporation conducts its principal business or customarily holds meetings of its Board or its stockholders, or during the existence of any other catastrophic event or similar emergency, as a result of which a quorum of the Board cannot readily be assembled for action. Said provisions in such event shall override all other By-Laws of the Corporation in conflict with any provisions of this Article X and shall remain operative during such emergency, but thereafter shall be inoperative; provided, that, all actions taken in good faith pursuant to such provisions shall thereafter remain in full force and effect unless and

until revoked by action taken pursuant to the provisions of the By-Laws other than those contained in this Article X.

**Section 10.02. Unavailable Directors.** All Directors who are not available to perform their duties as Directors by reason of physical or mental incapacity or for any other reason or who are unwilling to perform their duties or whose whereabouts are unknown shall automatically cease to be Directors, with like effect as if such persons had resigned as Directors, so long as such unavailability continues.

**Section 10.03. Authorized Number of Directors.** The authorized number of Directors shall be the number of Directors remaining after eliminating those who have ceased to be Directors pursuant to Section 10.02, or the minimum number required by applicable law, whichever number is greater.

**Section 10.04. Quorum.** The number of Directors necessary to constitute a quorum shall be one-third of the authorized number of Directors as specified in Section 10.03, or such other minimum number as, pursuant to the law or lawful decree then in force, it is possible for the by-laws of a corporation to specify.

**Section 10.05. Creation of Emergency Committee.** In the event the number of Directors remaining after eliminating those who have ceased to be Directors pursuant to Section 10.02 is less than the minimum number of authorized Directors required by law, then until the appointment of additional Directors to make up such required minimum, all the powers and authorities which the Board could by law delegate, including all powers and authorities which the Board could delegate to a Committee, shall be automatically vested in an emergency committee, and the emergency committee shall thereafter manage the affairs of the Corporation pursuant to such powers and authorities and shall have all other powers and authorities as may by law or lawful decree be conferred on any person or body of persons during a period of emergency.

**Section 10.06. Constitution of Emergency Committee.** The emergency committee shall consist of all the Directors remaining after eliminating those who have ceased to be Directors pursuant to Section 10.02, provided that such remaining Directors are not less than three in number. In the event such remaining Directors are less than three in number, the emergency committee shall consist of three persons, who shall be the remaining Director or Directors and either one or two officers or employees of the Corporation, as the remaining Director or Directors may in writing designate. If there is no remaining Director, the emergency committee shall consist of the three most senior officers of the Corporation who are available to serve, and if and to the extent that officers are not available, the most senior employees of the Corporation. Seniority shall be determined in accordance with any designation of seniority in the minutes of the proceedings of the Board, and in the absence of such designation, shall be determined by rate of remuneration.

**Section 10.07. Powers of Emergency Committee.** The emergency committee, once appointed, shall govern its own procedures and shall have power to increase the number of members thereof beyond the original number, and in the event of a vacancy or vacancies therein, arising at any time, the remaining member or members of the emergency committee shall have the power to fill such vacancy or vacancies. In the event at any time after its appointment all members of the emergency committee shall die or resign or become unavailable to act for any reason whatsoever, a new emergency committee shall be appointed in accordance with the foregoing provisions of this Article X.



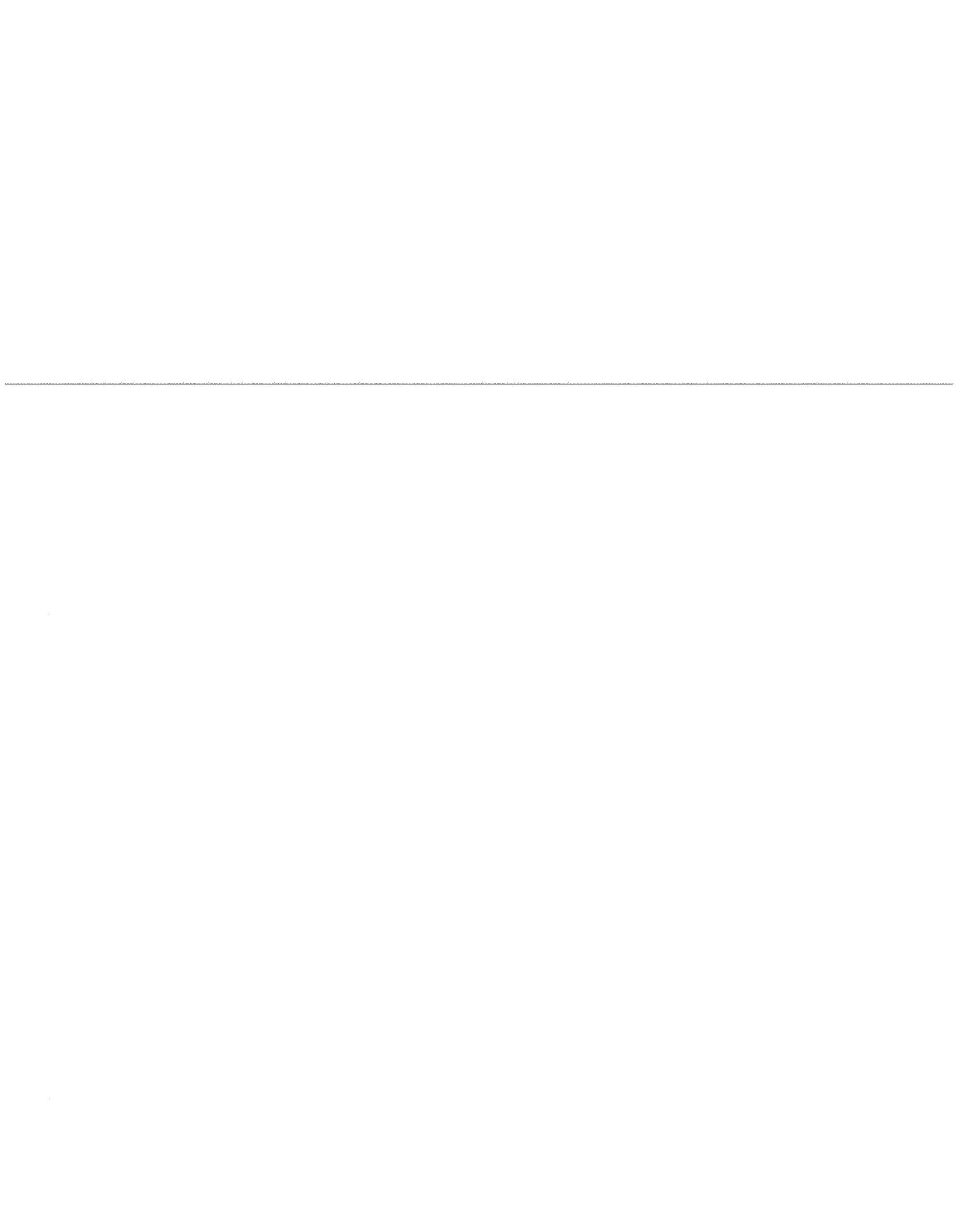
**Section 10.08. Directors Becoming Available.** Any person who has ceased to be a Director pursuant to the provisions of Section 10.02 and who thereafter becomes available to serve as a Director shall automatically become a member of the emergency committee.

**Section 10.09. Election of Board of Directors.** The emergency committee shall, as soon after its appointment as is practicable, take all requisite action to secure the election of Directors, and upon such election all the powers and authorities of the emergency committee shall cease.

**Section 10.10. Termination of Emergency Committee.** In the event, after the appointment of an emergency committee, a sufficient number of persons who ceased to be Directors pursuant to Section 10.02 become available to serve as Directors, so that if they had not ceased to be Directors as aforesaid, there would be sufficient Directors to constitute the minimum number of Directors required by law, then all such persons shall automatically be deemed to be reappointed as Directors and the powers and authorities of the emergency committee shall terminate.

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**Section 10.11. Nonexclusive Powers.** The emergency powers provided in this Article X shall be in addition to any powers provided by applicable law.





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## TITLE 8

### Corporations

#### CHAPTER 1. GENERAL CORPORATION LAW

##### Subchapter IV. Directors and Officers

**§ 141. Board of directors; powers; number, qualifications, terms and quorum; committees; classes of directors; nonstock corporations; reliance upon books; action without meeting; removal.**

(a) The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation. If any such provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the certificate of incorporation.

(b) The board of directors of a corporation shall consist of 1 or more members, each of whom shall be a natural person. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. Directors need not be stockholders unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the bylaws require a greater number. Unless the certificate of incorporation provides otherwise, the bylaws may provide that a number less than a majority shall constitute a quorum which in no case shall be less than 1/3 of the total number of directors except that when a board of 1 director is authorized under this section, then 1 director shall constitute a quorum. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.

(c)(1) All corporations incorporated prior to July 1, 1996, shall be governed by paragraph (1) of this subsection, provided that any such corporation may by a resolution adopted by a majority of the whole board elect to be governed by paragraph (2) of this subsection, in which case paragraph (1) of this subsection shall not apply to such corporation. All corporations incorporated on or after July 1, 1996, shall be governed by paragraph (2) of this subsection. The board of directors may, by resolution passed by a majority of the whole board, designate 1 or more committees, each committee to consist of 1 or more of the directors of the corporation. The board may designate 1 or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or

disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not the member or members present constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of directors as provided in subsection (a) of § 151 of this title, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation under § 251, § 252, § 254, § 255, § 256, § 257, § 258, § 263 or § 264 of this title, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution, bylaws or certificate of incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to § 253 of this title.

(2) The board of directors may designate 1 or more committees, each committee to consist of 1 or more of the directors of the corporation. The board may designate 1 or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matter: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by this chapter to be submitted to stockholders for approval or (ii) adopting, amending or repealing any bylaw of the corporation.

(3) Unless otherwise provided in the certificate of incorporation, the bylaws or the resolution of the board of directors designating the committee, a committee may create 1 or more subcommittees, each subcommittee to consist of 1 or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

(d) The directors of any corporation organized under this chapter may, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes; the term of office of those of the first class to expire at the first annual meeting held after such classification becomes effective; of the second class 1 year thereafter; of the third class 2 years thereafter; and at each annual election held after such classification becomes effective, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation or bylaw provision dividing the directors into classes may authorize the board of directors to assign members of the board already in office to such classes at the time such classification becomes effective. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect 1 or more directors who shall serve for such term, and have such voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected separately by the holders of any class or series of stock may be greater than or less than those of any other director or class of directors. In addition, the certificate of incorporation may confer upon 1 or more directors, whether or not elected separately by the holders of any class or series of stock, voting powers greater than or less than those of other directors. Any such provision conferring greater or lesser voting power shall apply to voting in any

committee or subcommittee, unless otherwise provided in the certificate of incorporation or bylaws. If the certificate of incorporation provides that 1 or more directors shall have more or less than 1 vote per director on any matter, every reference in this chapter to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

(e) A member of the board of directors, or a member of any committee designated by the board of directors, shall, in the performance of such member's duties, be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation.

(f) Unless otherwise restricted by the certificate of incorporation or bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board, or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

(g) Unless otherwise restricted by the certificate of incorporation or bylaws, the board of directors of any corporation organized under this chapter may hold its meetings, and have an office or offices, outside of this State.

(h) Unless otherwise restricted by the certificate of incorporation or bylaws, the board of directors shall have the authority to fix the compensation of directors.

(i) Unless otherwise restricted by the certificate of incorporation or bylaws, members of the board of directors of any corporation, or any committee designated by the board, may participate in a meeting of such board, or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

(j) The certificate of incorporation of any nonstock corporation may provide that less than 1/3 of the members of the governing body may constitute a quorum thereof and may otherwise provide that the business and affairs of the corporation shall be managed in a manner different from that provided in this section. Except as may be otherwise provided by the certificate of incorporation, this section shall apply to such a corporation, and when so applied, all references to the board of directors, to members thereof, and to stockholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation, respectively; and all references to stock, capital stock, or shares thereof shall be deemed to refer to memberships of a nonprofit nonstock corporation and to membership interests of any other nonstock corporation.

(k) Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

(1) Unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided in subsection (d) of this section, stockholders may effect such removal only for cause; or

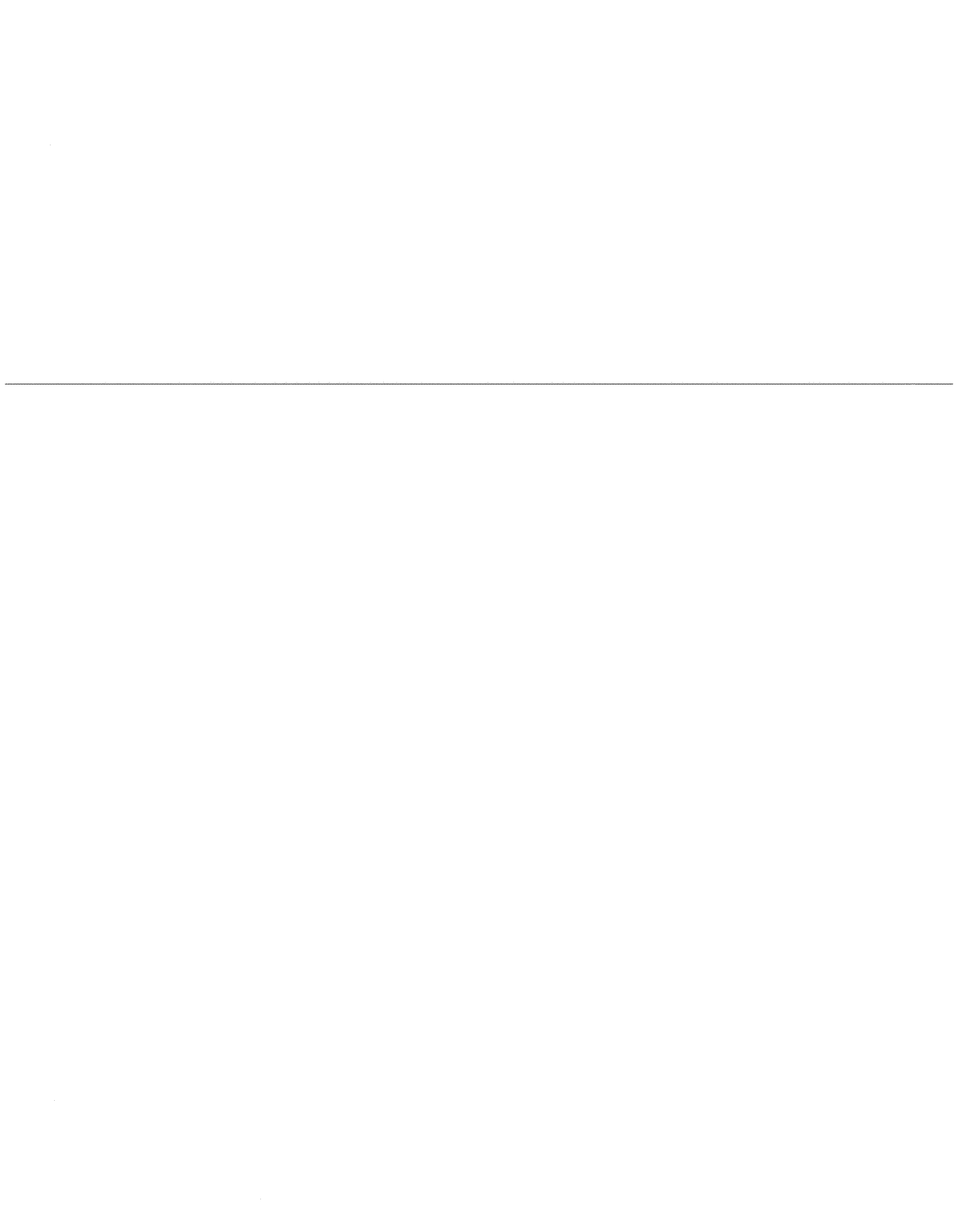
(2) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against such director's removal would be sufficient to elect such director if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which such director is a part.

Whenever the holders of any class or series are entitled to elect 1 or more directors by the certificate

of incorporation, this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

8 Del. C. 1953, § 141; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 3; 57 Del. Laws, c. 148, §§ 5, 6; 57 Del. Laws, c. 421, § 1; 59 Del. Laws, c. 437, §§ 2-5; 64 Del. Laws, c. 112, § 6; 65 Del. Laws, c. 127, § 3; 66 Del. Laws, c. 136, §§ 2, 3; 70 Del. Laws, c. 79, § 7; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 349, § 2; 71 Del. Laws, c. 339, §§ 11-13; 72 Del. Laws, c. 343, §§ 4-6; 73 Del. Laws, c. 298, § 2; 74 Del. Laws, c. 84, § 2; 74 Del. Laws, c. 326, § 2; 75 Del. Laws, c. 30, § 1; 75 Del. Laws, c. 306, §§ 3, 4; 76 Del. Laws, c. 145, § 1; 77 Del. Laws, c. 253, §§ 10-12.;

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**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-110**

**REQUEST:**

Reference the Rogers testimony, p. 14, line 5, in which he testifies that he: “will also provide input on public policy positions . . .”. Please identify the individual(s) in the post-transaction Duke Energy who will have authority to decide the company’s positions relative to any and all public policy decisions.

- a. State whether Mr. Rogers will have final authority to approve or veto any public policy provisions.

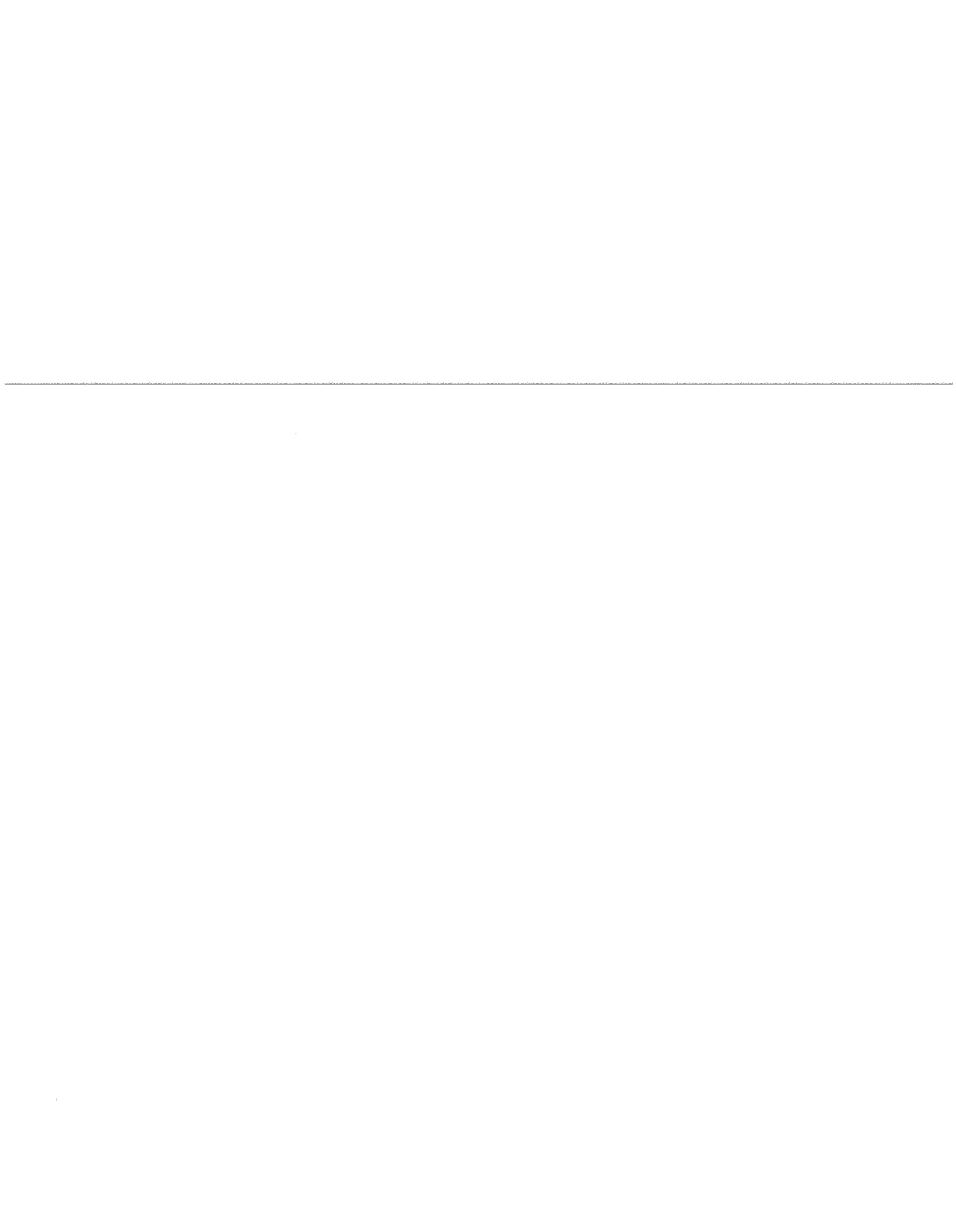
**RESPONSE:**

Objection. The Joint Applicants object to this request on the basis that it is irrelevant to this proceeding. Without waiving said objection, the division of duties between Mr. Rogers and Mr. Johnson is set forth in an attachment to the Merger Agreement (Joint Application, Exhibit E). Following completion of the transaction, the Chief Executive Officer will have the primary responsibility for developing Duke Energy’s public policy positions, with the Executive Chairman of the Board of Directors having secondary responsibility to provide assistance and counsel to the Chief Executive Officer in developing such positions. However, the Board of Directors of Duke Energy as a body will have the ultimate authority to decide Duke Energy’s positions relative to any and all public policy decisions.

- a. Objection. The Joint Applicants object to this request on the basis that it is irrelevant to this proceeding. Without waiving said objection Insofar as the Board of Directors of Duke Energy will have the ultimate authority to decide the company’s positions relative to public policy decisions as described above, Mr. Rogers will not individually have final authority to approve or veto public policy decisions.

**PERSON RESPONSIBLE:** As to Objection – Legal  
James E. Rogers





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-111**

**REQUEST:**

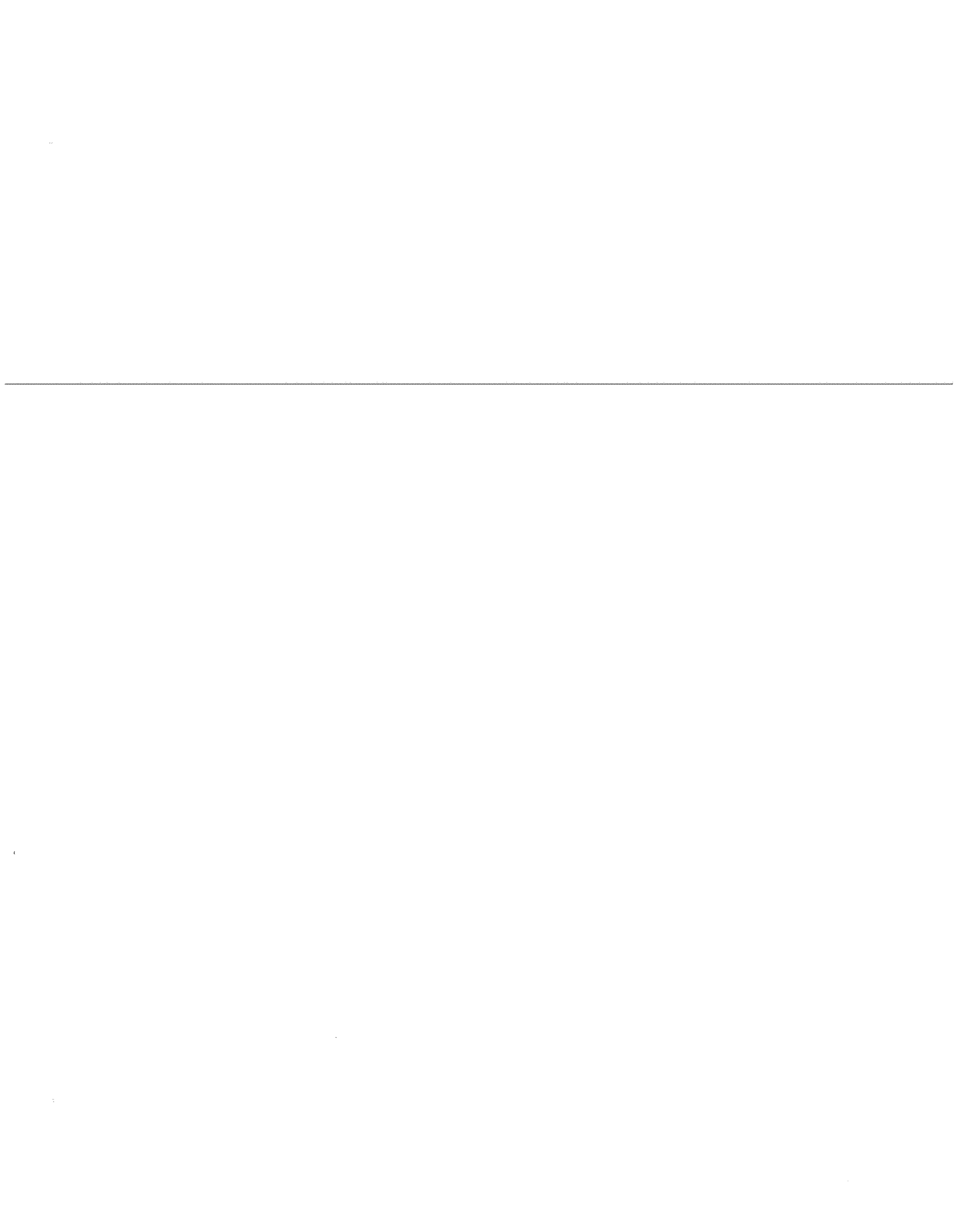
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Reference the Rogers testimony, p. 17, lines 5-6, in which Mr. Rogers testifies that: “the post-merger Duke Energy [will] assume[] a larger role in helping to shape the utility industry and to contribute to the development of federal and state energy policies.” State, in detail, how DEK will be prepared to meet Kentucky’s energy policies in the event those policies conflict with the policies of DEK, its corporate parents or affiliates.

**RESPONSE:**

Duke Energy uses a balanced stakeholder approach in formulating its position on energy policy. Under this approach, the interests of stakeholders, including customers, our communities, shareholders and regulators, are taken into account. By using this approach, Duke Energy Kentucky will harmonize its policies, and those of its parents and affiliates, with Kentucky energy policies.

**PERSON RESPONSIBLE:** Julie S. Janson



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-112**

**REQUEST:**

Reference the Rogers testimony, p. 17, lines 11-12, in which Mr. Rogers testifies: "Duke Energy will continue to listen, learn and lead on these issues." Provide a detailed discussion of how DEK intends to listen to its ratepayers and their interests.

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- a. Do the Joint Applicants recognize that DEK has a legal responsibility to pursue its ratepayers' best interests?

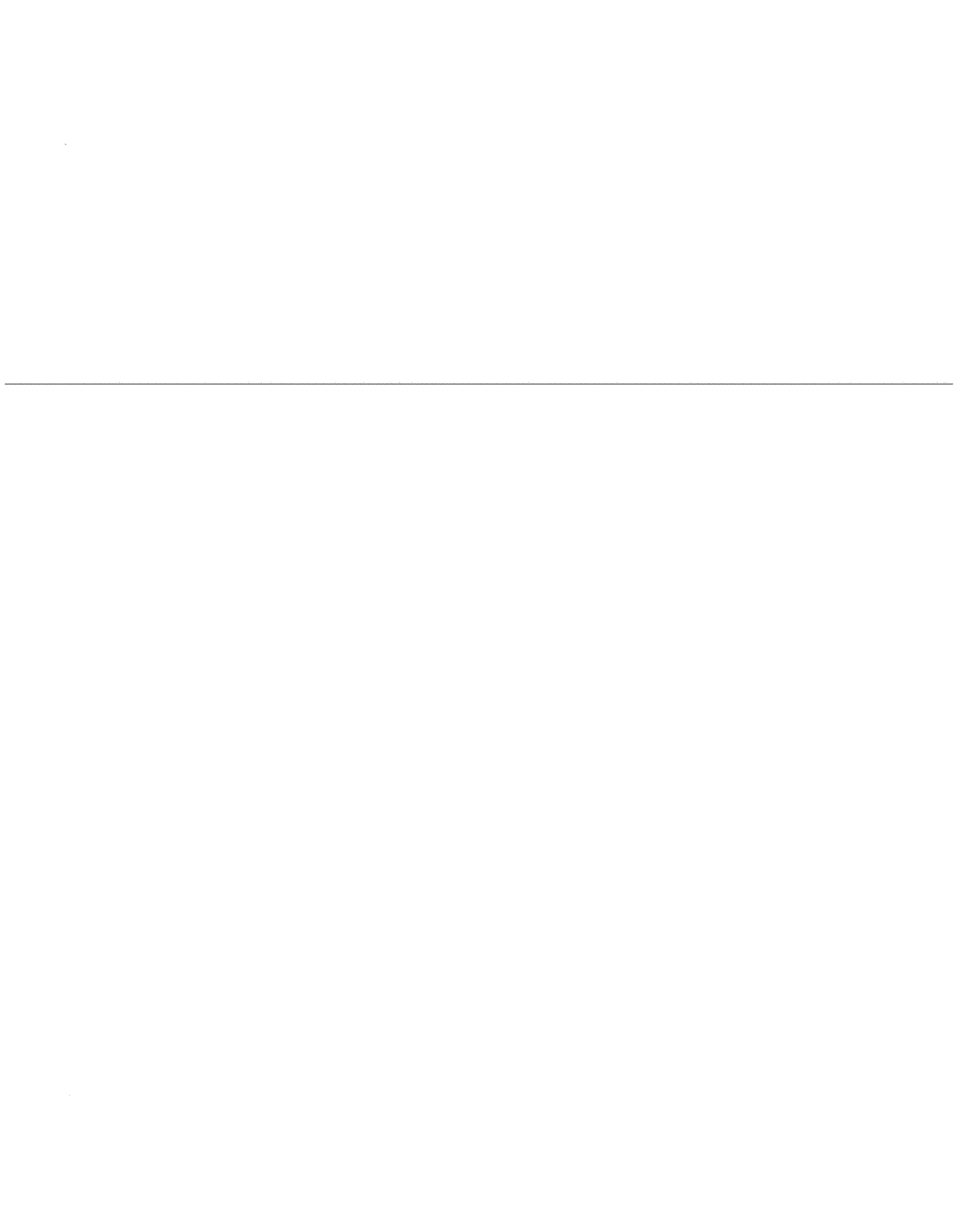
**RESPONSE:**

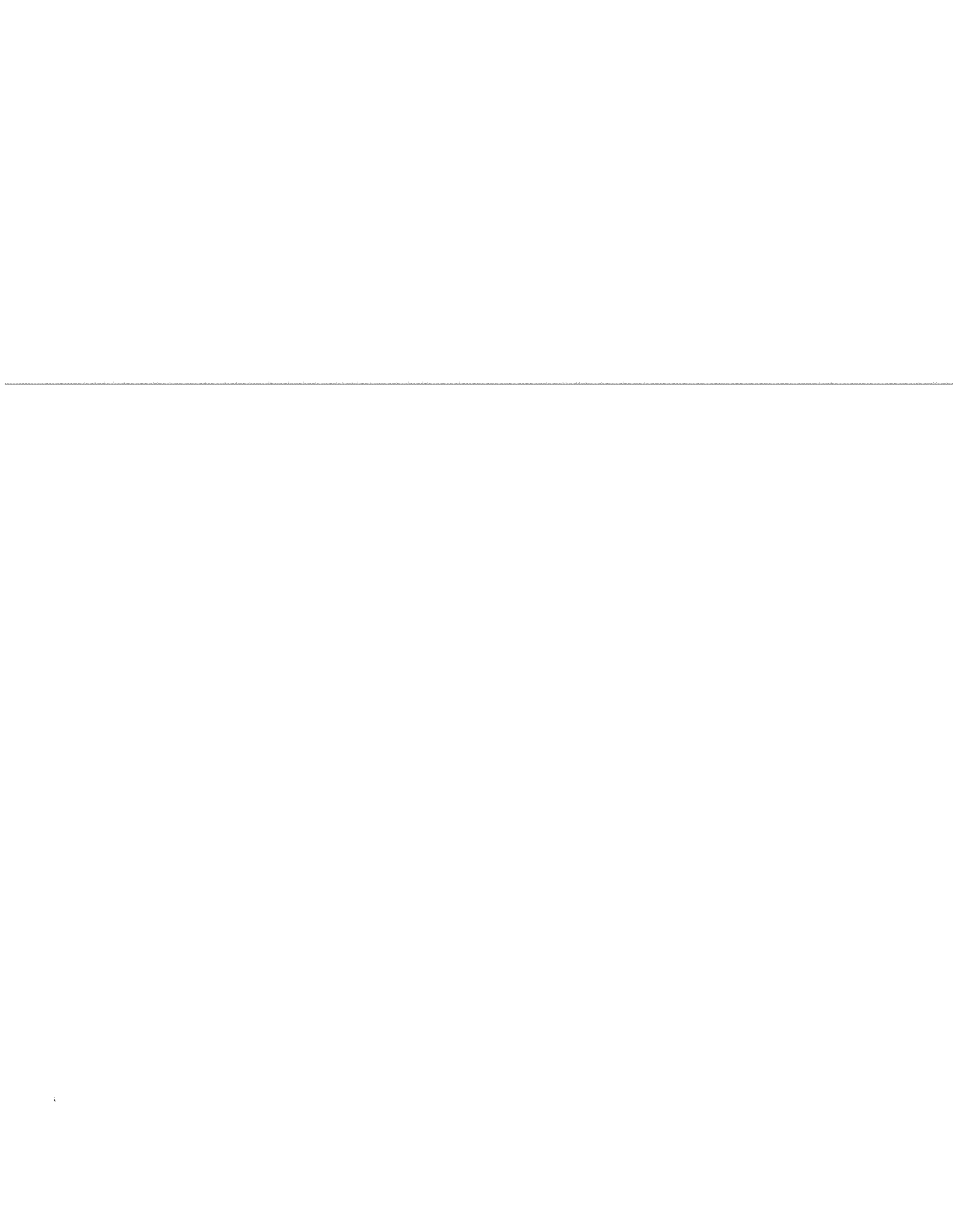
See Direct Testimony of Julie S. Janson at pages 12-30 for a discussion of Duke Energy Kentucky's customer service and satisfaction initiatives, its economic development initiatives, its community investment and commitment to energy efficiency and the environment.

- a. **RESPONSE:** The Joint Applicants object to the question to the extent that it calls for a legal conclusion. Without waiving said objection, the Joint Applicants recognize and always seek to fulfill their legal duties to ratepayers as set forth in KRS Chapter 278 and other applicable authority.

**PERSON RESPONSIBLE:** Objection- legal

Julie S. Janson.





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-113**

**REQUEST:**

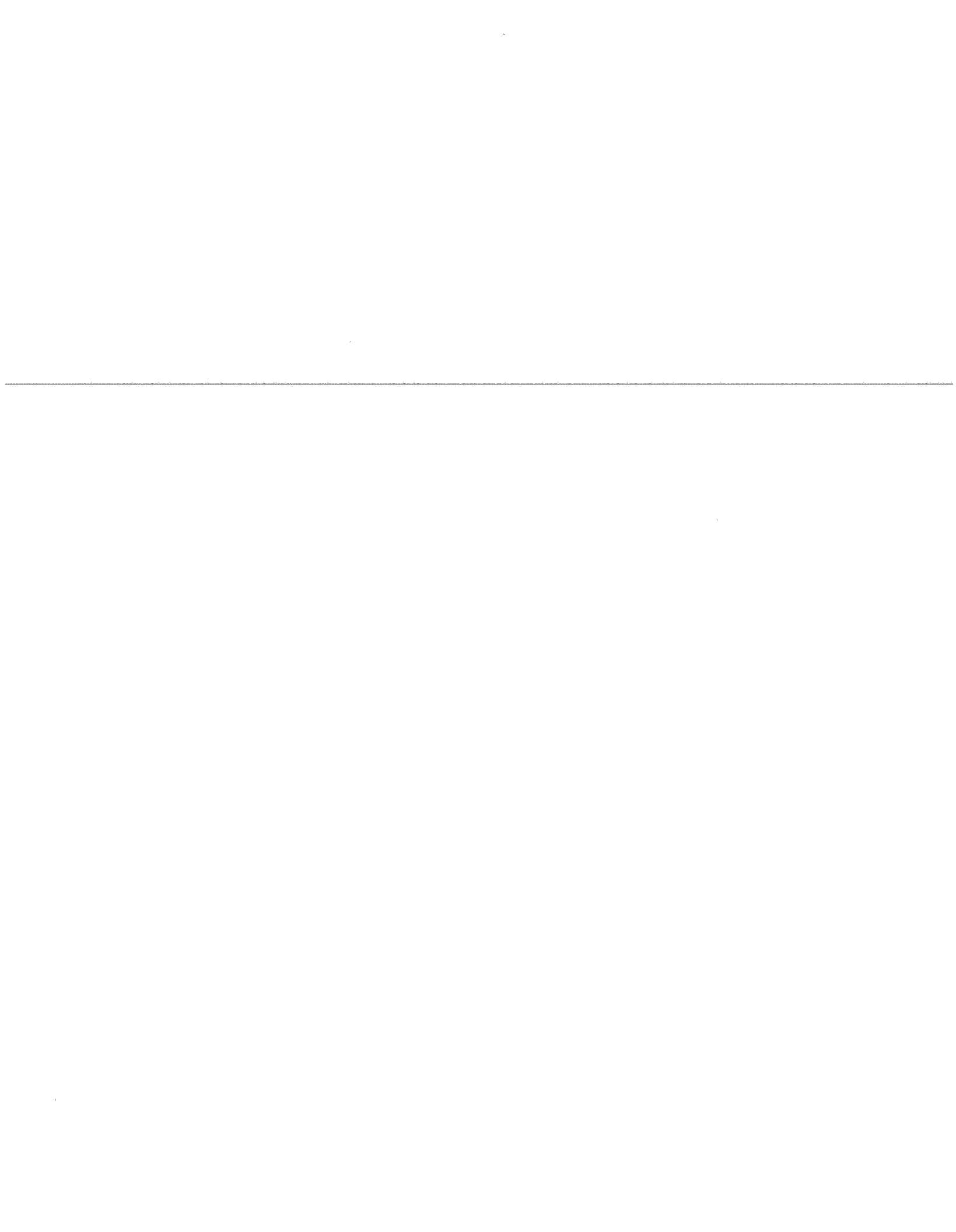
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Reference the Rogers testimony, p. 20, lines 15-19, wherein Mr. Rogers states that the combination of operational resources will improve DEK's ability to timely respond to outages caused by weather or other disasters. Reconcile this statement with Mr. Rogers' prior testimony, and other testimony, which indicate that workforce reductions will occur. Identify also the resources that Progress Energy will bring into DEK's service territory that will bring about such an improved responsiveness.

**RESPONSE:**

Objection. The Joint Applicants refer to pages 36-38 of the Direct Testimony of Julia Janson (Joint Application, Exhibit L), which indicates that there will be no noticeable impact on Duke Energy Kentucky's field crews and pages 17-18 of the Direct Testimony of Jim Stanley (Joint Application, Exhibit O), which indicates there are no plans to reduce Duke Energy Kentucky's linemen and plant operators. In addition, workforce reductions will likely occur in areas where functional duplication exists. There are no anticipated reductions in employees of Duke Energy Kentucky attributable to the merger. Progress Energy resources (labor, equipment and materials) will be available to respond to outages caused by weather or other disasters.

**PERSON RESPONSIBLE:** Jim Stanley





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-114**

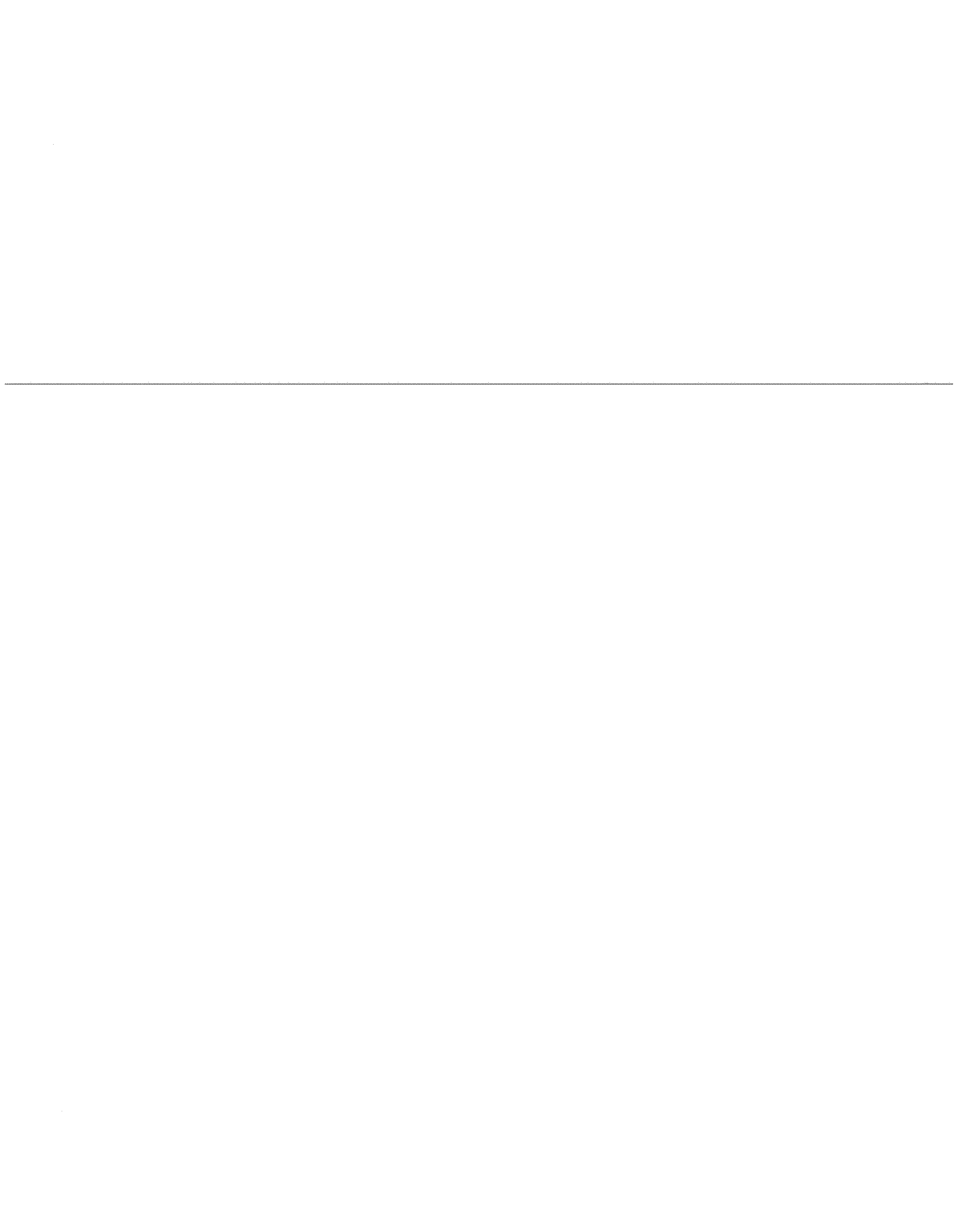
**REQUEST:**

Reference the William D. Johnson testimony, p. 16, lines 20-22, wherein he testifies: “Customers in Kentucky . . . will also see tangible benefits of the merger over the long-run as the two companies integrate with one another and achieve savings and gains in efficiency and productivity.” Please describe the nature, extent, and types of tangible benefits, and the savings and gains in energy productivity that DEK customers can expect to see. Please provide quantifications, if possible.

**RESPONSE:**

Duke Energy Kentucky’s customers will tangibly benefit from the merger over the long-run through the implementation of best practices and the achievement of efficiencies afforded by a merger of this size – particularly in areas of fuel procurement, equipment and inventory management and operational savings. While the exact value of these benefits cannot be precisely quantified at this time, they will benefit ratepayers over the long-term by mitigating the amount of future rate increases. The Attorney General’s attention is also drawn to specific examples of the potential synergies accruing to the benefit of Duke Energy Kentucky’s ratepayers that are set forth in the testimony of Jim Rogers (Joint Application, Exhibit J, pp. 15-28), Julia Janson (Joint Application, Exhibit L, pp. 32-40), William Wathen (Joint Application, Exhibit M, pp. 6-9) and Jim Stanley (Joint Application, Exhibit O, pp. 9-18).

**PERSON RESPONSIBLE:** William D. Johnson/Julie S. Janson/Jim Stanley



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-115**

**REQUEST:**

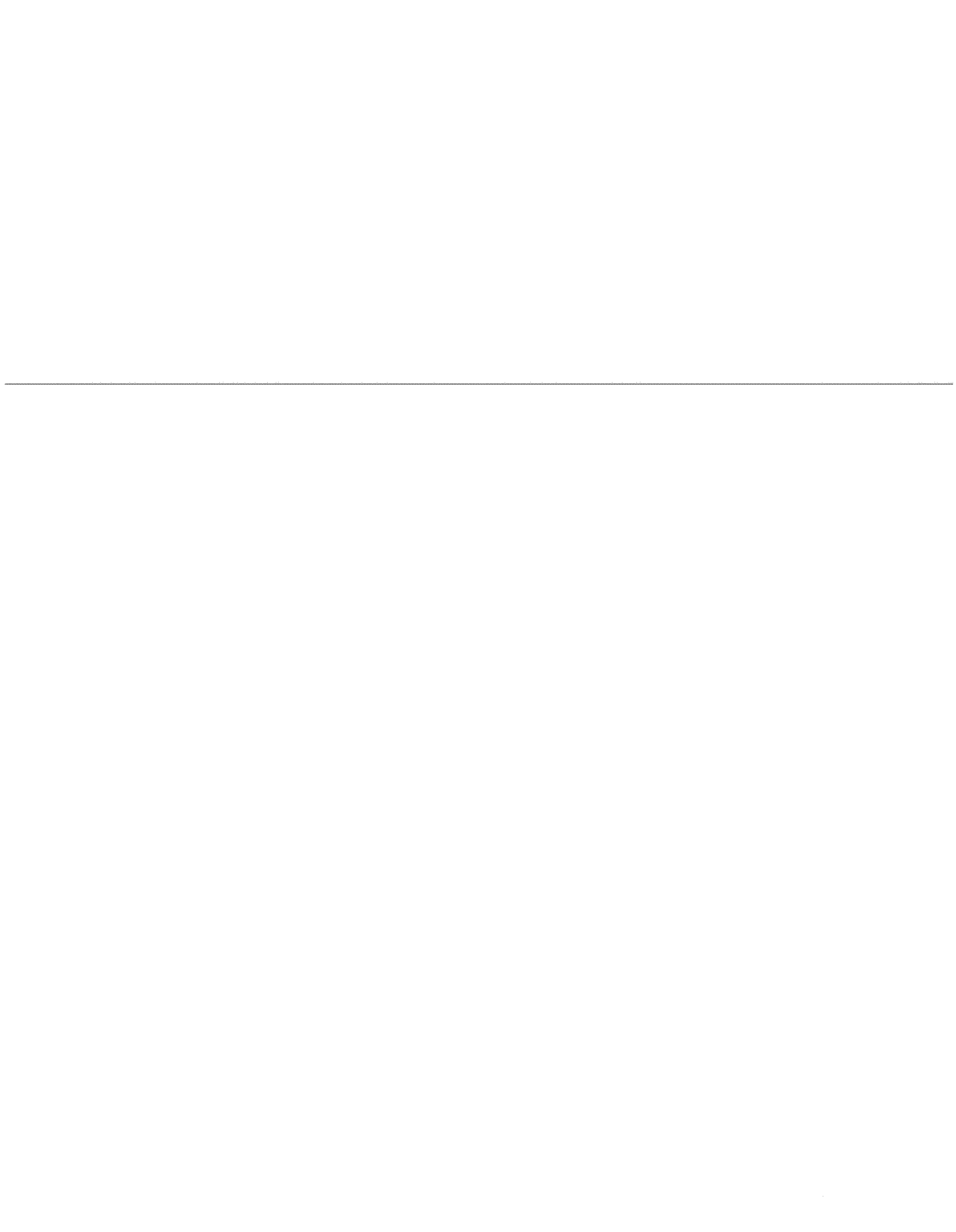
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Reference the Johnson testimony, p. 17, lines 17-18, wherein he testifies: "I will have primary responsibility for determining the Board's agenda, developing the strategic plan . . . ". Provide a detailed description of how Mr. Johnson's authority to determine the Board's agenda, and developing the strategic plan will interact with Mr. Rogers' authority to do likewise. Include in your description who else will have authority to bring items onto the Board's agenda, including whether any of the independent directors will be able to do so.

**RESPONSE:**

This question is answered as part of the Joint Applicants' response to question 109(b) and (c).

**PERSON RESPONSIBLE:** William D. Johnson



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-116**

**REQUEST:**

Reference the Janson testimony, at p. 34, lines 6-8, wherein she states:

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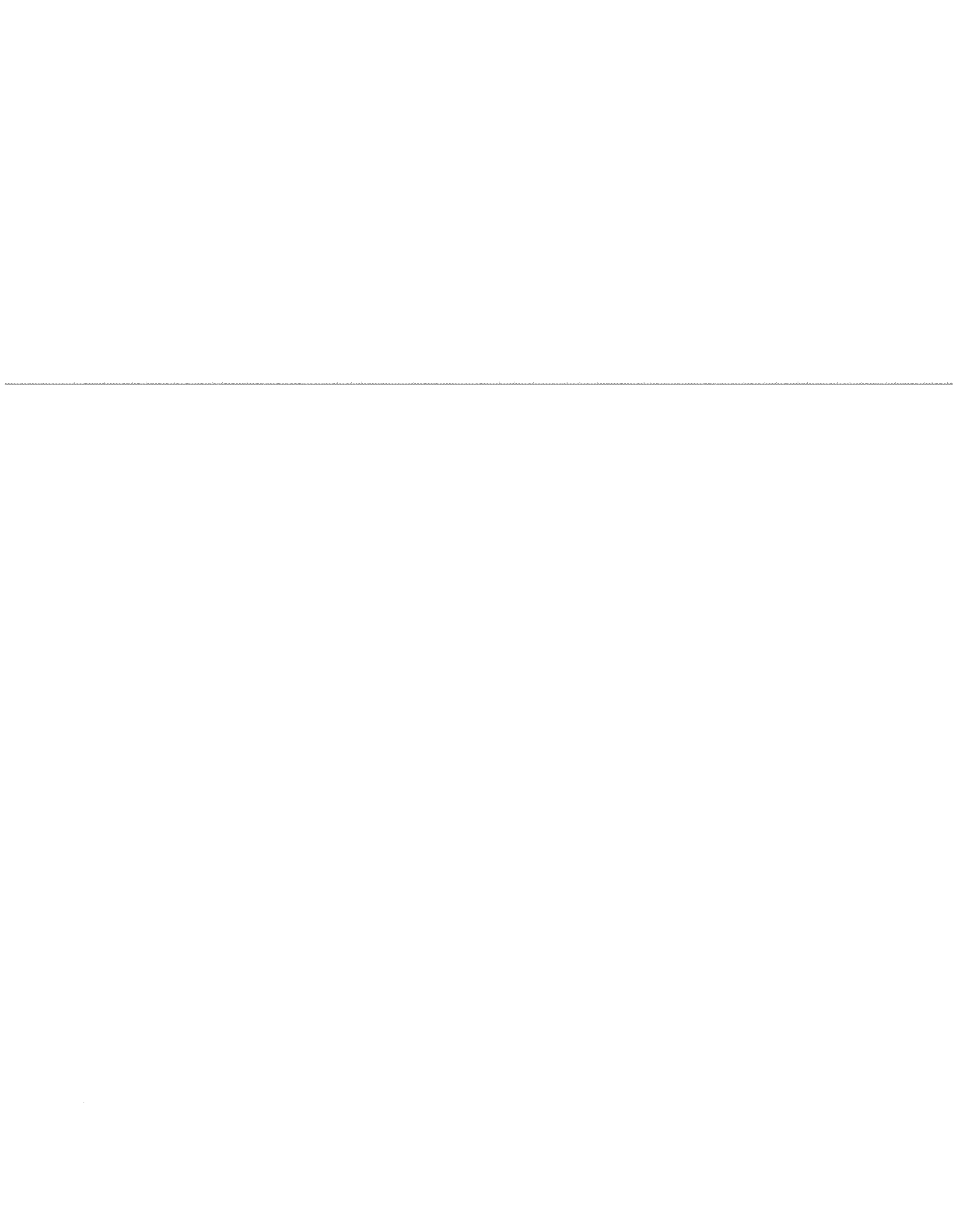
“The increased scale and scope of operations resulting from the merger will strengthen the balance sheet of the post-merger Duke Energy and increase financial flexibility.” Describe in detail how DEK’s balance sheet following the transfer of control will be strengthened, and how the transaction will increase financial flexibility.

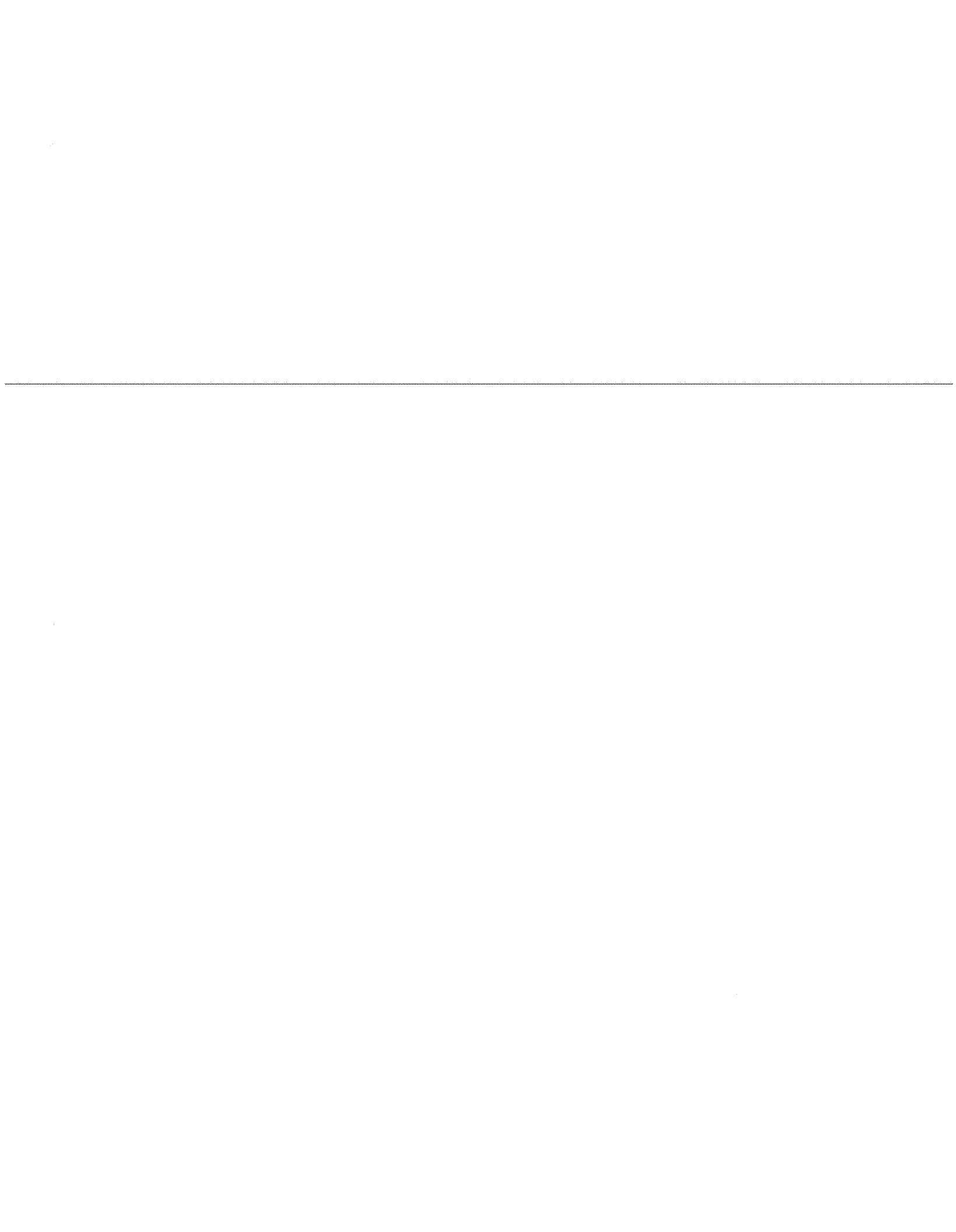
**RESPONSE:**

Balance sheet strength is assessed both quantitatively (e.g. ratio of debt to total capitalization) and qualitatively. The qualitative factors supporting Duke Energy’s balance sheet strength will improve as a result of this merger, primarily due to (1) the increase in regulated businesses as a percentage of the company from ~79% to ~88%, (2) further diversification of geographic locations, regulatory environments, and fuel mix, and (3) increase in size and scale. These changes result in lower business and financial risk and more predictable and stable cash flows. The Progress Energy companies are expected to be upgraded by S&P following the merger close, indicating that the combined balance sheet is stronger than if the companies are separate.

Duke Energy Kentucky’s balance sheet will continue to be capitalized based on the objective of maintaining a capital structure of 50% debt and 50% equity. Even though Duke Energy Kentucky’s balance sheet will not be directly impacted by the merger, it will benefit from the improved financial position of the consolidated entity.

**PERSON RESPONSIBLE:** Stephen De May





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-117**

**REQUEST:**

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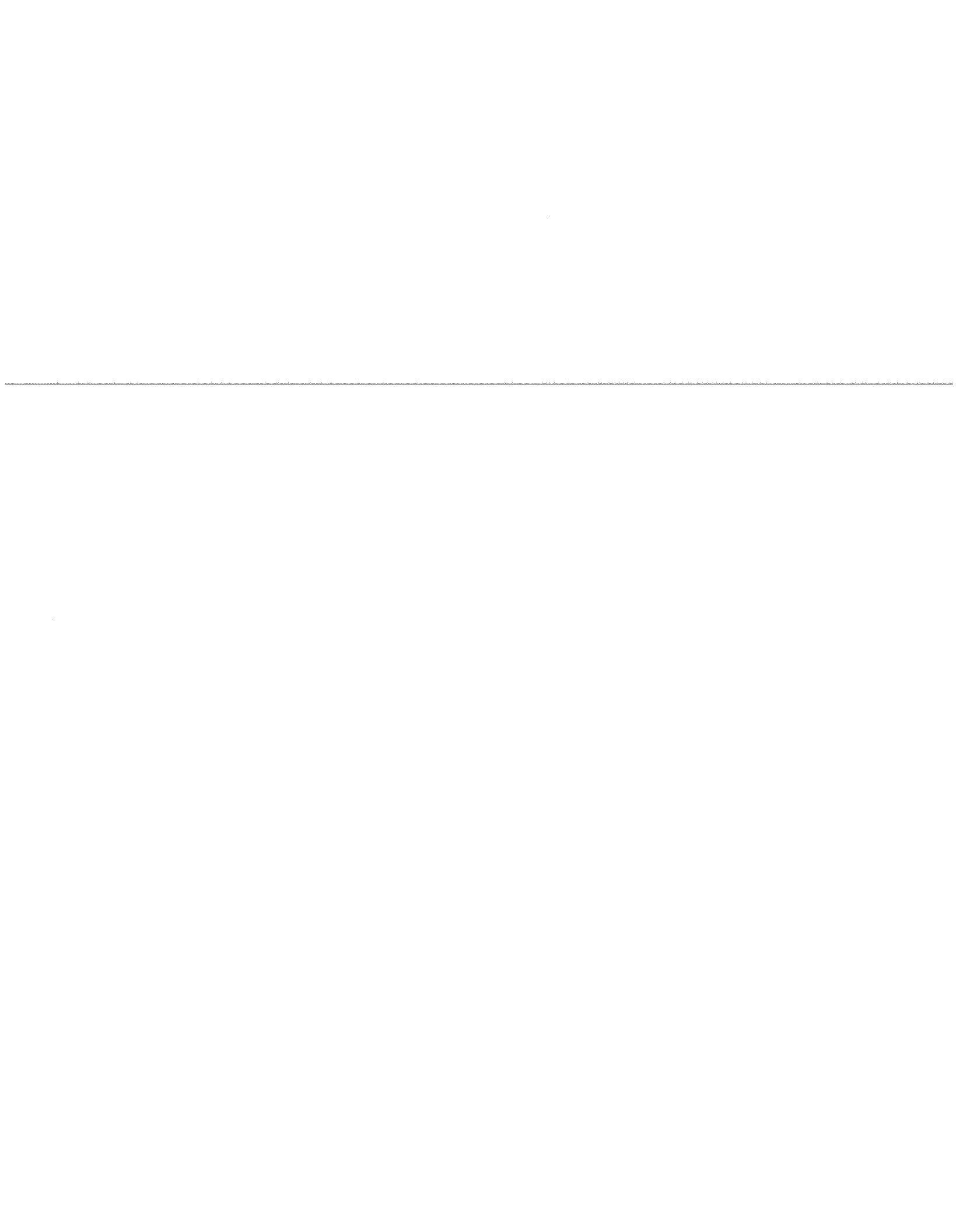
Reference the Janson testimony, at p. 34, lines 19-22, wherein she states that following the merger, Duke Energy will have the best intra-company mutual aid system in the nation. However, several company officials have testified that workforce reductions will occur as a result of the merger. Will any such reductions occur among employees tasked to repair / restoration, or maintenance functions? If so, provide complete details.

**RESPONSE:**

The Joint Applicants refer to pages 37-38 of the Direct Testimony of Julia Janson (Joint Application, Exhibit L), which indicates that there will be no noticeable impact on Duke Energy Kentucky's field crews and pages 17-18 of the Direct Testimony of Jim Stanley (Joint Application, Exhibit O), which indicates there are no plans to reduce Duke Energy Kentucky's linemen and plant operators. In addition, the merger with Progress Energy will provide additional intra-company resources for mutual assistance. As stated in Mr. Rogers' Direct Testimony, page 15, lines 6 – 7, "there are no anticipated reductions in employees of Duke Energy Kentucky attributable to the merger."

**PERSON RESPONSIBLE:** Jim Stanley





**REQUEST:**

Reference the Janson testimony, at p. 34 wherein she states that in the future, DEK will experience efficiencies which could come from implementation of best practices, and a stronger financial position.

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- a. Describe in complete detail what Ms. Janson means by the use of the term “best practices.” Is DEK not already following the best practices? If not, why not? Identify any and all practices which DEK will assume which will yield efficiencies.
- b. Describe in complete detail what Ms. Janson means by use of the term “stronger financial position.”

**RESPONSE:**

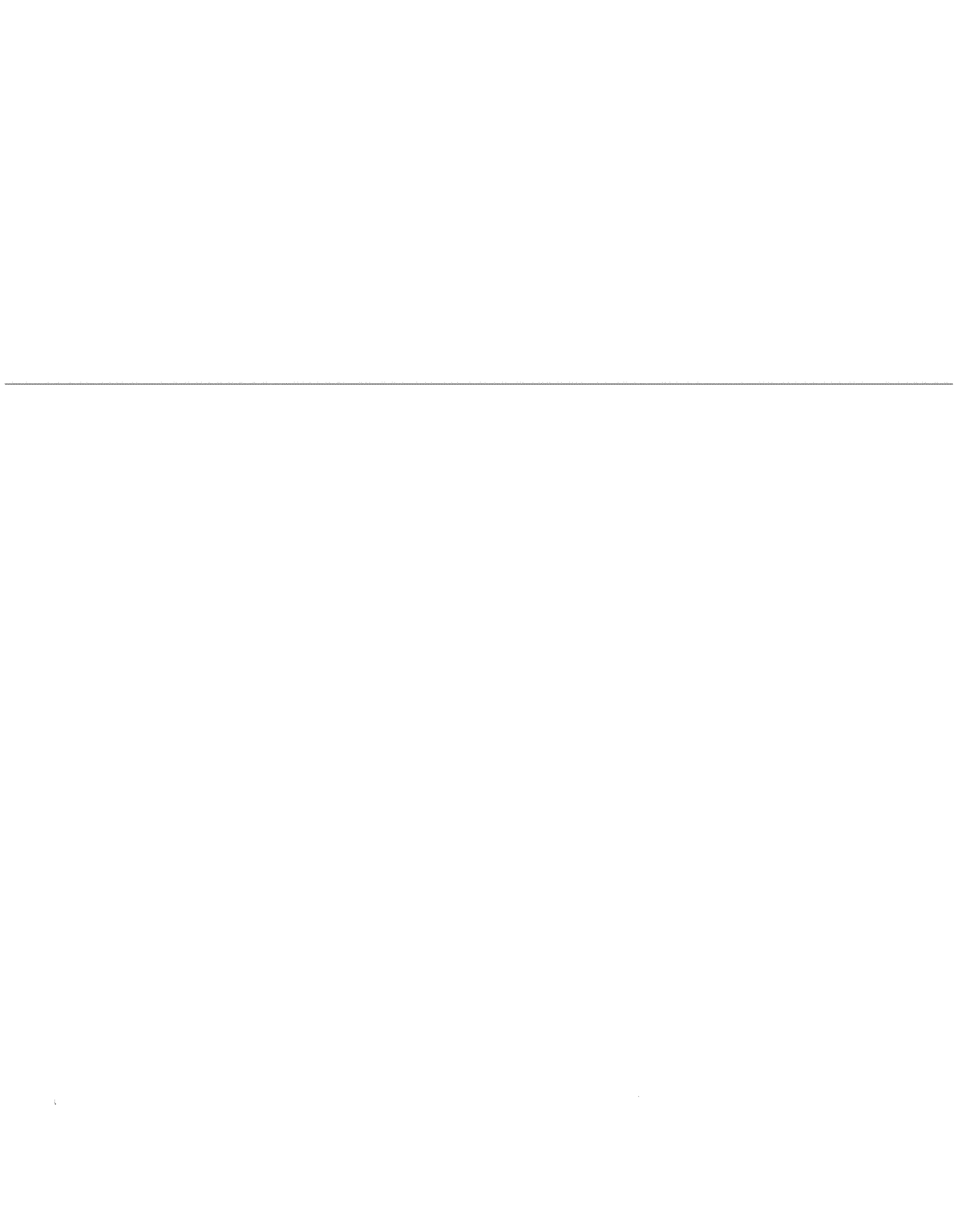
- a. The Joint Applicants object to the question on the basis that it is argumentative. Without waiving said objection, the Joint Applicants refer to the testimony of Jim Rogers (Joint Application, Exhibit J) on page 16, the testimony of Julia Janson (Joint Application, Exhibit L) on pages 36-27 and the testimony of Jim Stanley (Joint Application, Exhibit O) on page 18, where a general description of how best practices are implemented as part of a merger of this magnitude.
- b. The Joint Applicants object to the question on the basis that it is vague. No context or citation is given. Without waiving said objection, the Joint Applicants refer to the testimony of Jim Rogers (Joint Application, Exhibit J) on page 16, the testimony of Julia Janson (Joint Application, Exhibit L) on pages 34-36 and the testimony of Stephen De May (Joint Application, Exhibit O) on pages 5-9, which articulates why Duke Energy Kentucky will be in a

stronger financial position following the consummation of this merger. The merger will result in a company with more assets on its balance sheet and greater cash flow. This will improve our ability to finance infrastructure investments at a reasonable cost.

**PERSON RESPONSIBLE:** Objection- Legal

James E. Rogers/ Stephen De May/ Julie S. Janson/ Jim Stanley

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**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-119**

**REQUEST:**

Reference the Janson testimony on p. 35, wherein she states DEK will deploy more “smart grid” technology. State whether DEK will commit to deploying only such smart grid technology which:

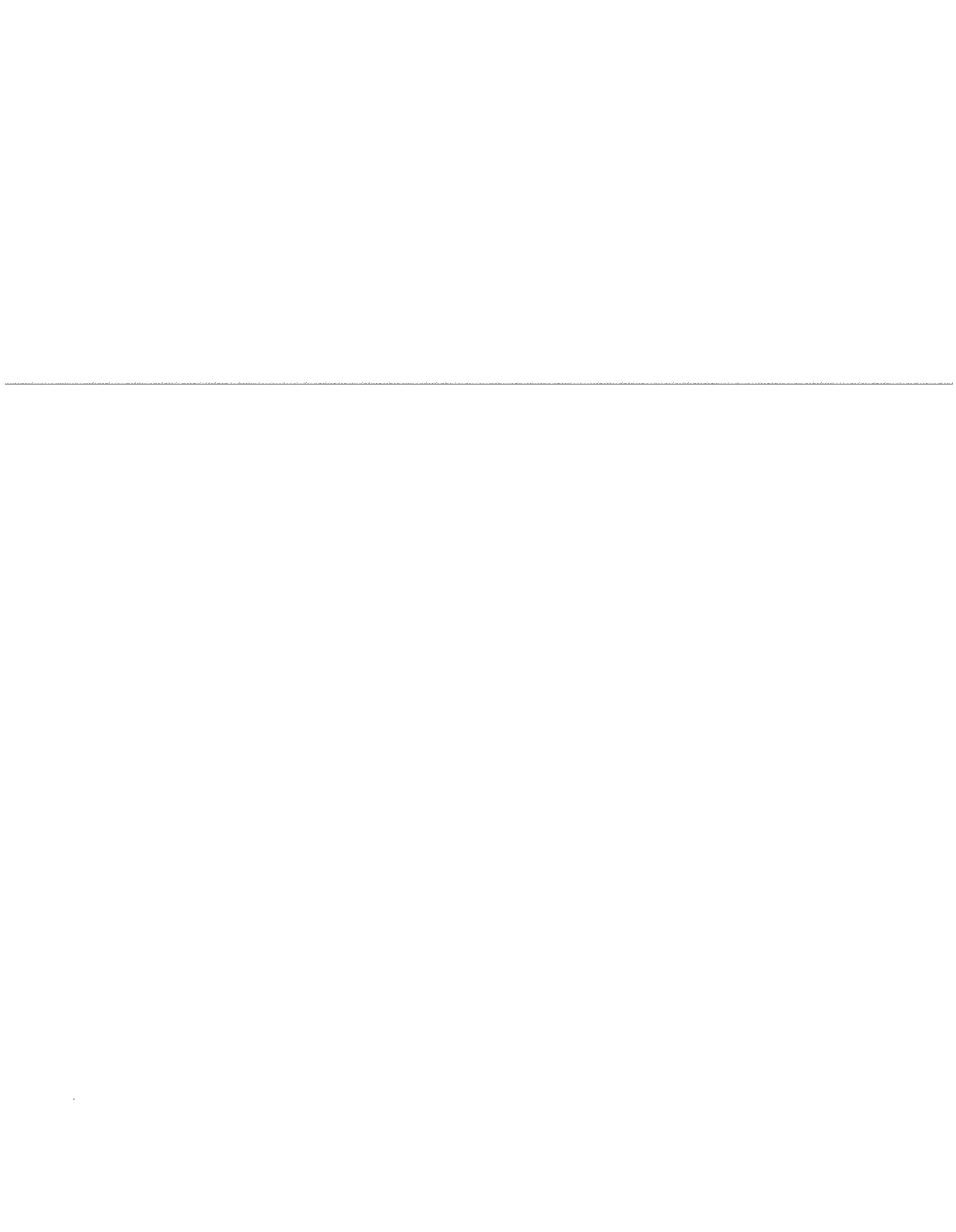
- a. is justified by a robust cost-benefit analysis conducted from the ratepayers’ perspective;
- b. would be accompanied by measurable, verifiable, transparent and enforceable performance metrics; and
- c. would be subject to prudency reviews and audits to determine if the consumer benefits have been delivered as promised.

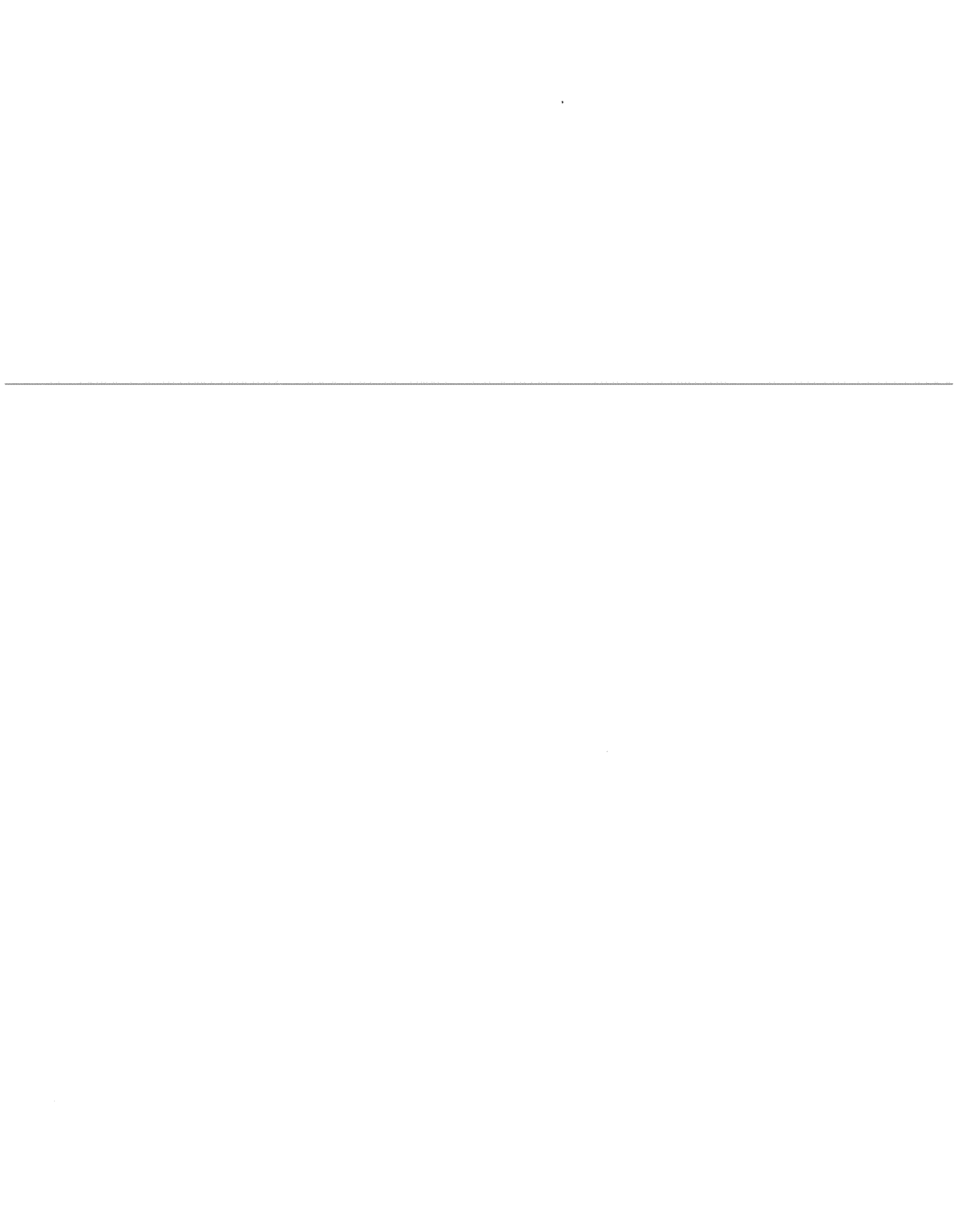
If the company will not make such a commitment, explain in complete detail why not.

**RESPONSE:**

Kentucky law already provides appropriate statutory safeguards for the issues raised in the question through Certificate of Public Convenience and Necessity and rate proceeding requirements. Accordingly, there is no need for a commitment in this case as such issues may be fully reviewed in other proceedings.

**PERSON RESPONSIBLE:** Julie Janson





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-120**

**REQUEST:**

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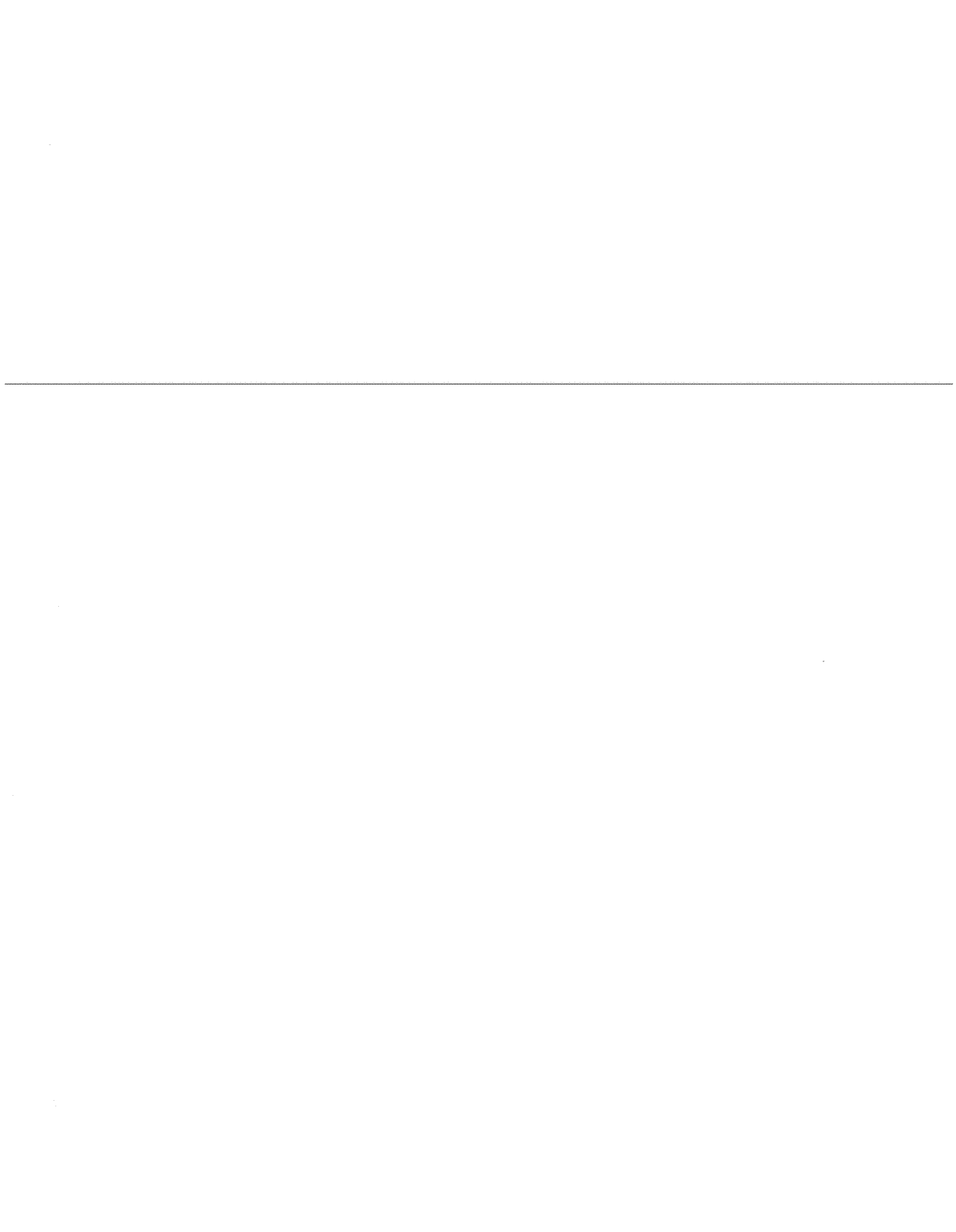
Reference the Janson testimony, p. 46, wherein she discussed Merger Commitment # 16, which prohibited Duke Energy Kentucky from seeking a higher rate of return on equity than would have been sought if the merger had not occurred. Discuss in detail how the Kentucky PSC would be able to determine whether DEK has satisfied this commitment.

**RESPONSE:**

The Kentucky PSC's authority to set rates in a general rate proceeding where a return on equity would be established provides the forum and the opportunity to ensure that the Company has met this commitment.

**PERSON RESPONSIBLE:** William Don Wathen Jr.  
Legal





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-121**

**REQUEST:**

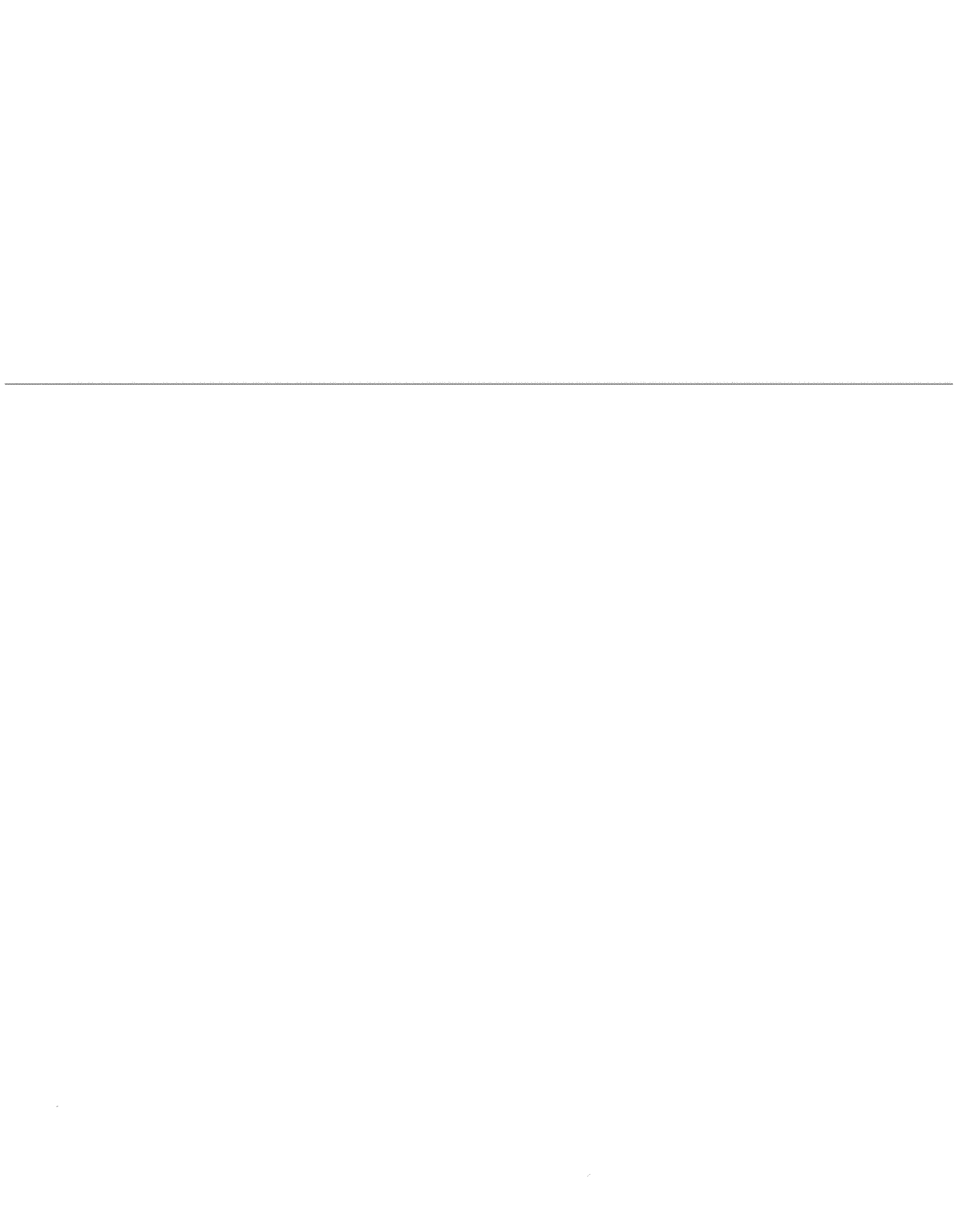
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In the event the successor company fails to adhere to, or comply with, any ultimate approval by the Kentucky PSC of the proposed transaction, please describe/explain in detail what penalties may be imposed on the successor company to which it will commit in addition to those existing under KRS 278.990. If the Joint Applicants are not willing to commit to additional penalties, please explain why not.

**RESPONSE:**

The Joint Applicants object to the question to the extent that it calls for a legal conclusion and is speculative. Without waiving said objections, Kentucky law speaks for itself.

**PERSON RESPONSIBLE:** Legal



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

AG-DR-01-122

**REQUEST:**

Please provide DEK's ROE for each of the past 5 five (years).

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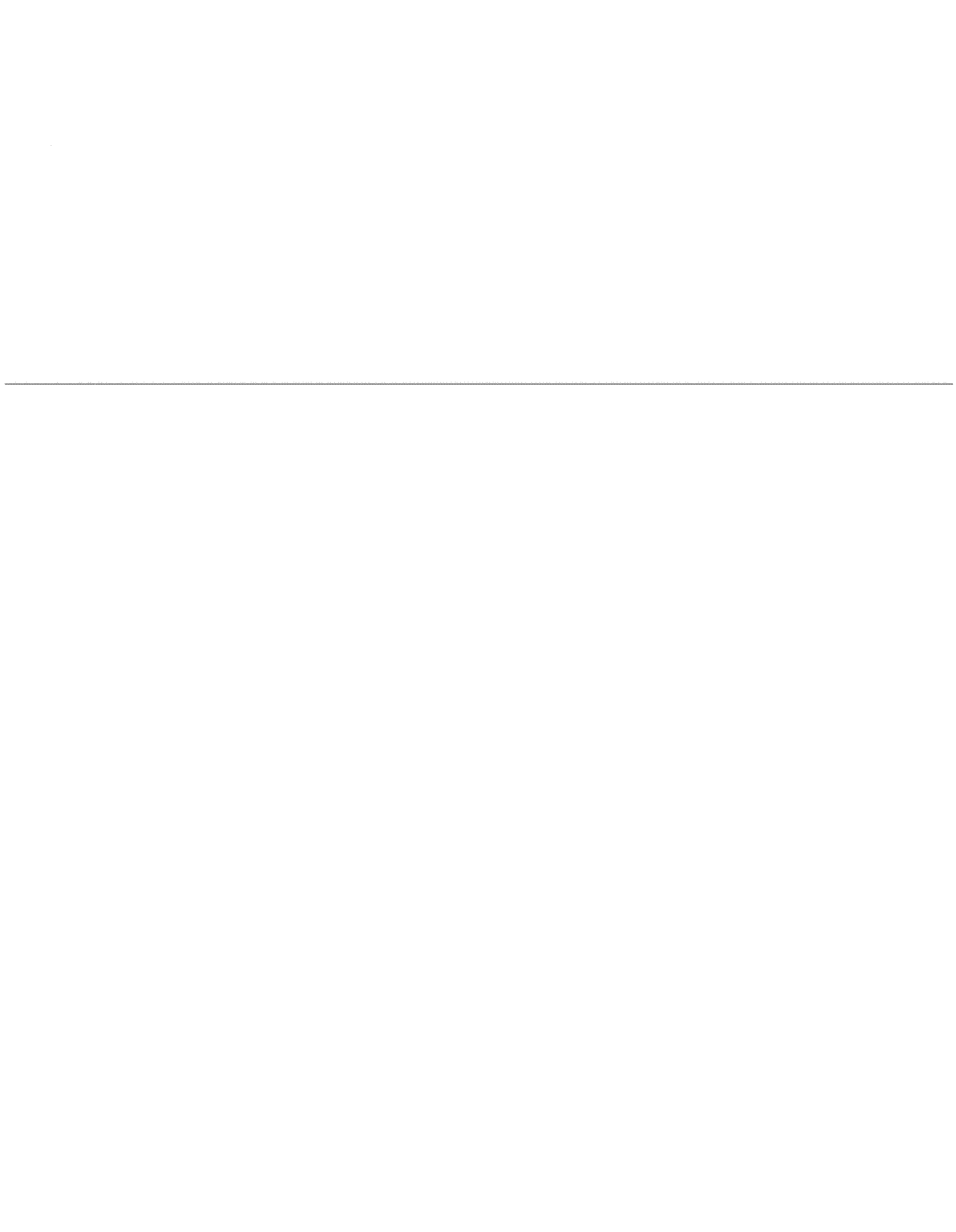
**RESPONSE:**

Duke Energy Kentucky's consolidated returns on equity for the most recent five years are as follows:

2006	3.9%
2007	9.1%
2008	9.6%
2009	6.9%
2010	9.7%

Net Income (page 117, line 78, of the FERC Form 1) divided by average proprietary capital (page 112, line 16).

**PERSON RESPONSIBLE:** Danny Wiles



**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-123**

**REQUEST:**

Please provide DEK's net jurisdictional revenues for each of the past five (5) years.

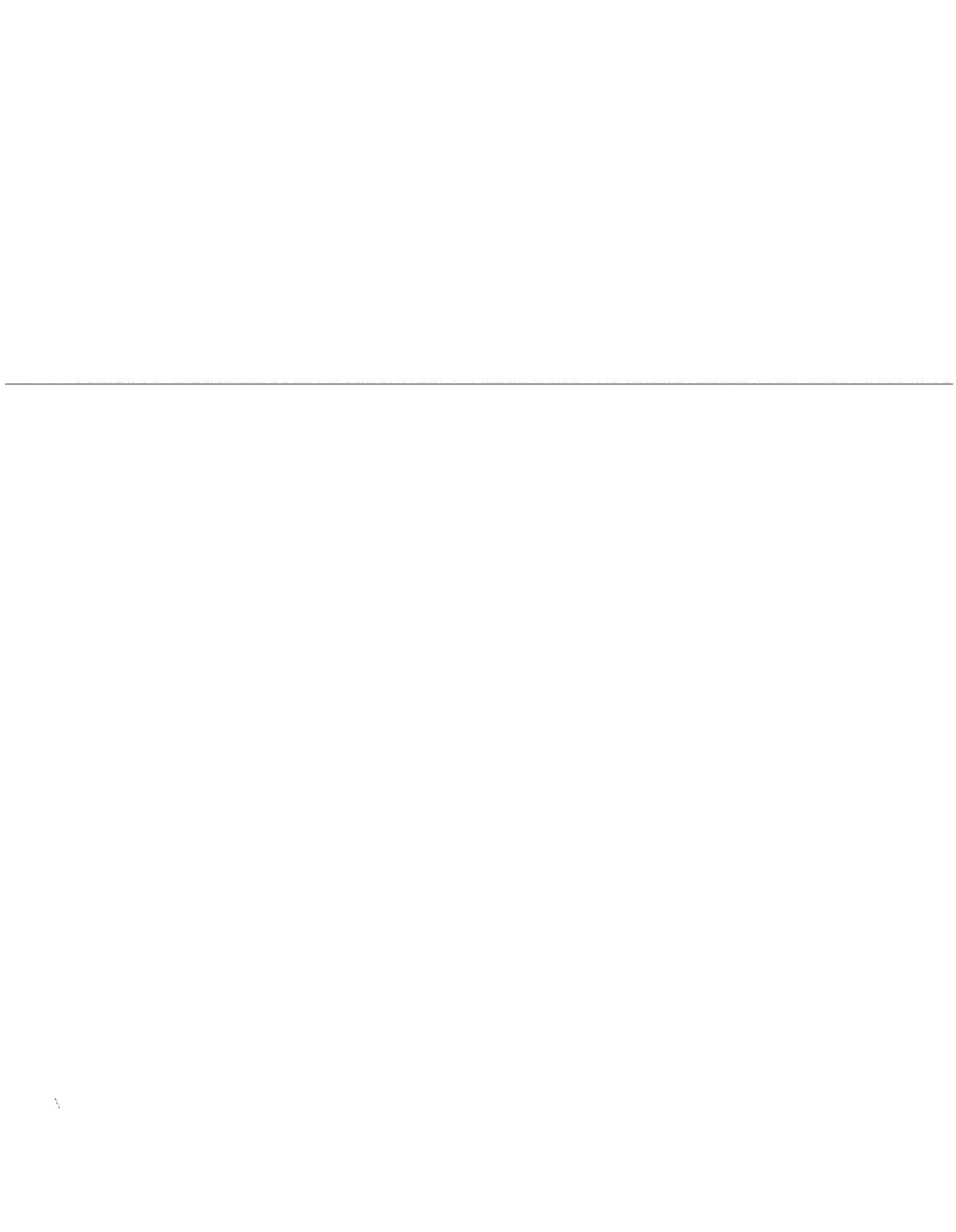
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**RESPONSE:**

<b>Total Revenue<sup>(a)</sup></b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Electric	\$263,560,794	\$349,942,849	\$355,842,739	\$341,022,260	\$347,408,408
Gas	\$136,319,814	\$140,667,824	\$144,286,542	\$119,451,643	\$139,332,186

Note: <sup>(a)</sup> Includes sales for resale and miscellaneous other revenue as reported on pages 300 and 301 of the FERC Form 1 and Form 2.

**PERSON RESPONSIBLE:** Danny Wiles



**Duke Energy Kentucky  
Case No. 2011-124  
Attorney General First Set Data Requests  
Date Received: April 25, 2011**

**AG-DR-01-124**

**REQUEST:**

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If the application is approved by the PSC, will the Joint Applicants agree to a condition for a most favored nation's clause wherein it will agree to provide any benefits that other jurisdictional regulatory bodies impose, by way of an evidentiary hearing or settlement? If not, why not?

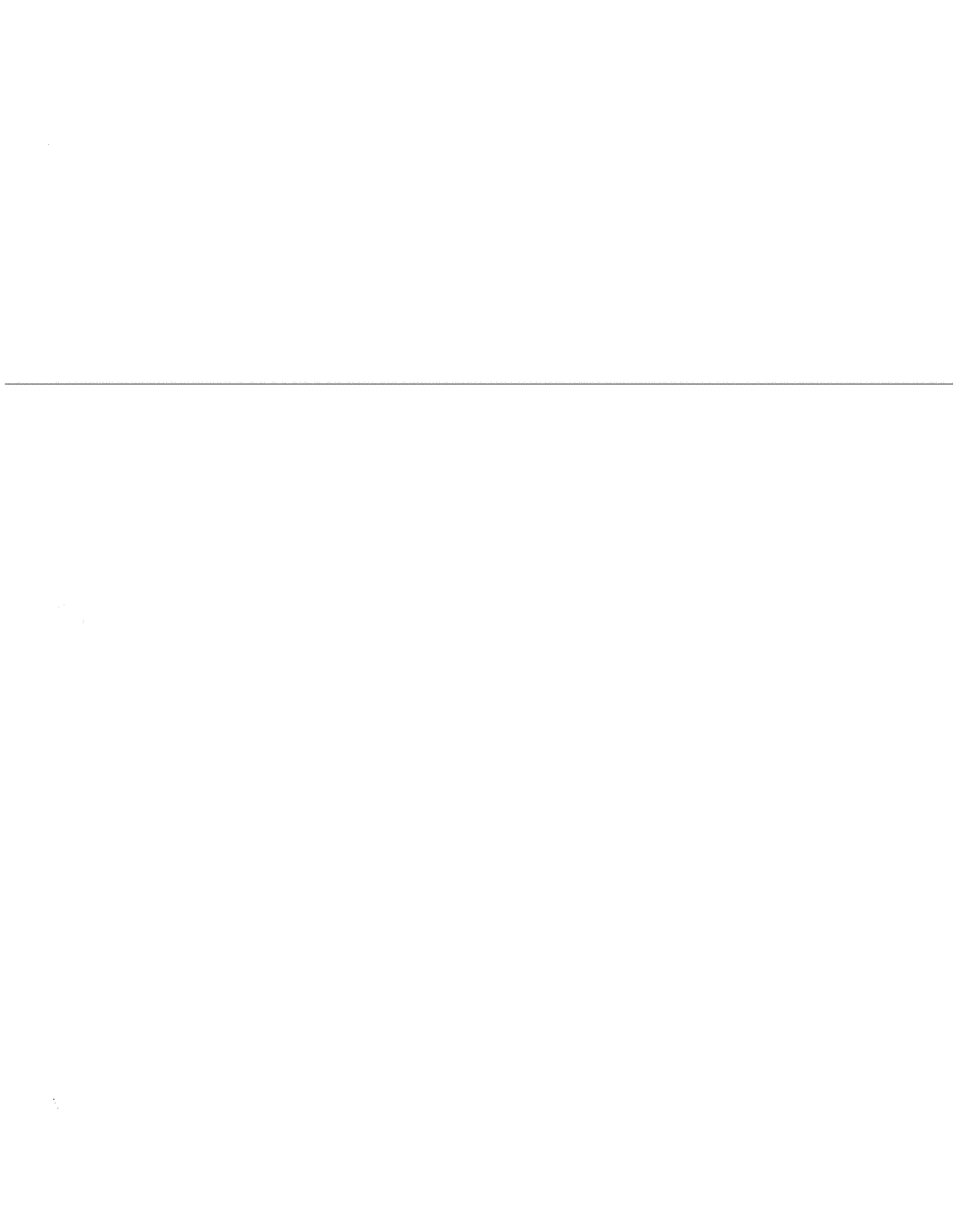
**RESPONSE:**

To the extent reasonable and applicable to Duke Energy Kentucky operations, yes.

**PERSON RESPONSIBLE:**

James E. Rogers/ Julie S. Janson





**Duke Energy Kentucky**  
**Case No. 2011-124**  
**Attorney General First Set Data Requests**  
**Date Received: April 25, 2011**

**AG-DR-01-125**

**REQUEST:**

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In a report dated April 20, 2011, the *New York Times* reported that Dayton Power & Light (DPL) would be acquired by AES. DPL is the minority owner of the East Bend generating station, of which DEK is the majority owner. State what effect(s), if any of which the Joint Applicants are aware, that the DPL acquisition will or could have on the operation of the East Bend plant, or any other plant(s) in the Joint Applicants' fleets.

**RESPONSE:**

At this time, we are not aware of any effects that the DPL acquisition will or could have on the operation of the East Bend plant, or any other plant(s) in the Joint Applicants' fleets.

**PERSON RESPONSIBLE:** Barry Pulskamp