



For Immediate Release

Contact: Kerwin Olson (317) 735-7727

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IURC silence on Duke/Progress Merger Lack of Jurisdiction or Lack of Transparency?

Today, in a letter to Indiana Utility Regulatory Commission Chairman James Atterholt, the Citizens Action Coalition raised concerns with respect to the Commission's apparent lack of engagement to date, at least publicly, in the proposed merger between Duke Energy and Progress Energy. CAC also submitted a public information request seeking any communications regarding the proposed merger between and among officials of both Duke Energy and Progress Energy with the IURC and other State agencies.

"We find it difficult to understand why the Commission has not already begun a public investigation into the consequences of this proposed merger on the customers of Duke Energy Indiana," stated Kerwin Olson, Interim Executive Director of CAC. "Especially considering the recent behavior of Duke Energy not only with inappropriate communications with the Commission, but also with the gross mis-management of the problem plagued Edwardsport IGCC."

Duke Energy and Progress Energy are positioned to become the nation's largest electric utility later this year. Shareholders of the two companies are scheduled to vote on the deal tomorrow, August 23, 2011. The deal is worth an estimated \$26 billion still requires approval from various State and Federal regulators as well as the company's shareholders.

Mr. Olson continued: "While the IURC lacks the jurisdiction to review or approve the stock exchange effecting the merger itself, the Commission does have the authority to review the impact the proposed merger will have on Duke Energy Indiana's retail electric customers. In addition, Indiana Code does grant the IURC authority to review and approve all affiliate transactions and agreements required to implement the merger to ensure that those agreements are in fact in the public interest."

More specifically, Indiana Codes states:

IC 8-1-2-49

Inspection of books and records; affiliated interests; jurisdiction; annual reports

Sec. 49. . . . (2) Said commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with utility

corporations and other utility companies under the jurisdiction of the commission, to the extent of access to all accounts and records of joint or general expenses, any portion of which may be applicable to such transactions, and to the extent of authority to require such reports to be submitted by such affiliated interests, as the commission may prescribe...

No management, construction, engineering, or similar contract, made after March 8, 1933, with any affiliated interest, as defined in this section, shall be effective unless it shall first have been filed with the commission. If it be found that any such contract is not in the public interest, the commission, after investigation and a hearing, is hereby authorized to disapprove such contract.

The Commission did exercise this jurisdiction in 1995 when then PSI merged with Cinergy, and then again in 2005 when Cinergy merged with Duke Energy, both of which led to agreements that flowed back some of the merger benefits and savings and provided other important protections to Indiana electric customers. Moreover, the Commission exercised this jurisdiction **before not after** the prior mergers had been consummated. Of particular relevance here are the modified settlement agreement and final order approved by the IURC regarding the Duke-Cinergy merger on March 15, 2006 in Cause No. 42873.

Mr. Olson concluded: “We are hopeful that the Commission will recognize the potential negative impact to Indiana electric customers that this proposed merger presents. The benefits of a merger of this size at a minimum should be equally shared by shareholders and ratepayers. Ratepayers should not be asked to bear the costs of a transaction that may only serve to increase their electric bill and adversely affect the service they are provided. In addition, the existing affiliate agreements and regulatory commitments and conditions approved at the time of the Duke-Cinergy merger provide important protections to DEI’s Indiana customer. Those protections should not be surrendered without a fight to the new utility behemoth that would result from the proposed merger. Shareholders, executives, and the headquarters city of Charlotte, NC should not be the only winners to come out of this deal if it is ultimately approved.”
