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January 2, 2021

Via email to shareholderproposals@sec.gov

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Omission of Shareholder Proposal Submitted by the Comptroller of the City of New York as custodian and trustee of the New York City Teachers' Retirement System, New York City Employees Retirement System, and the Board of Education Retirement System

Dear Sir or Madam:

Pursuant to Rule 14a-8(j)(1) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), Duke Energy Corporation ("Duke Energy" or the "Company") requests confirmation that the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "SEC") will not recommend any enforcement action if the Company omits from its proxy solicitation materials ("Proxy Materials") for its 2021 Annual Meeting of Shareholders (the "2021 Annual Meeting") a proposal (the "Proposal") submitted by the Comptroller of the City of New York as custodian and trustee of the New York City Teachers' Retirement System, New York City Employees Retirement System, and the Board of Education Retirement System (the "Proponent").

This letter provides an explanation of why the Company believes that it may exclude the Proposal and includes the attachments required by Rule 14a-8(j). In accordance with *Staff Legal Bulletin No. 14D* (Nov. 7, 2008), this letter and its exhibits are being delivered by e-mail to shareholderproposals@sec.gov. A copy of this letter and its attachments are also being sent on this date to the Proponent in accordance with Rule 14a-8(j), informing the Proponent of the Company's intention to omit the Proposal from its Proxy Materials. We also wish to take this opportunity to inform the Proponent that if it submits additional correspondence to the Staff with respect to the Proposal, a copy of that correspondence should also be furnished to the Company, addressed to the undersigned, pursuant to Exchange Act Rule 14a-8(k). This letter is being submitted not less than 80 days before the filing of the Company's definitive proxy statement, which the Company intends to file on or around March 23, 2021.

THE PROPOSAL

The Proposal requests that the Company's Board "adopt a policy and amend the bylaws as necessary, to require the Chair of the Board to be an independent member of the Board." See Exhibit A for the complete Proposal submitted by the Proponent.

As part of the supporting statement, the Proponent also states that "[w]e are also concerned by Duke's previously undisclosed related-party transactions with its lead "Independent" director" and "[f]urther compromising Browning's independence are previously undisclosed related-party transactions. Duke built a solar plant in Purdue Research Foundation's (PRF) Discovery Park District, a large development in Indiana for which Browning Investments LLC is PRF's 'master planning partner,' responsible for developing, constructing, financing, and owning certain projects." (collectively, the "False Related-Party Statements")

BASIS FOR EXCLUSION OF PROPOSAL

The Company believes that the Proposal may be properly excluded from its Proxy Materials pursuant to Rule 14a-8(i)(3) because the supporting statement contains false and misleading statements in violation of Rule 14a-9 of the Exchange Act.

BACKGROUND

The Company received the Proposal, accompanied by a cover letter from the Proponent, on November 17, 2020. On December 22, 2020, representatives of the Company spoke with the Proponent to request that the False Related-Party Statements outlined above be deleted from the Proposal. As of the date of this no action request, the Proponent has failed to revise the Proposal.

DISCUSSION

The Proposal Contains Factual Statements that Are Materially False and Misleading.

Under Rule 14a-8(i)(3), a shareholder proposal may be excluded from a company's proxy materials if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in a company's proxy materials. Specifically, Rule 14a-9(a) prohibits false or misleading statements "with respect to any material fact, or which omit[s] to state any material fact necessary in order to make the statements therein not false or misleading."

In Staff Legal Bulletin No. 14B (Sept. 15, 2004)("SLB 14B"), the Staff states that reliance on Rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where "statements directly or indirectly impugn character, integrity, or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation." The Staff has determined on numerous occasions that an assertion which alleges or implies the violation of a law, without support for such a claim, constitutes a false and misleading statement within the meaning of Rule 14a-9. See, e.g., Citigroup Inc. (avail. February 18, 2003) (concurring with the exclusion of proposal alleging improper conduct on the part of

members of Citigroup's board of directors, and in one instance implying improper conduct through a "cozy relationship" with the director of another corporation); General Electric Company (avail. January 24, 2003) (alleging board involvement in the receipt of "illicit benefits" by the Chairman of the Board of General Electric.)

And, the Staff has consistently permitted the exclusion of proposals under Rule 14a-8(i)(3) where such proposals were false or misleading under Rule 14a-9. *See, e.g.*, Entergy Corp (avail. Feb. 14, 2007)(permitting exclusion of a proposal requesting that the board adopt a policy giving shareholders the opportunity to vote on a resolution to approve the compensation committee report where the supporting statement made false statements regarding executive compensation at the company, director committee membership and director stock ownership); Jefferies Group, Inc. (avail. Feb. 11, 2008, recon. denied Feb. 25, 2008) (permitting exclusion of a proposal requesting a shareholder advisory vote at the annual meeting where the proposal claimed the advisory vote was "supported by company management.")

The False Related-Party Statements directly assert that the Company has failed to disclose a related-party transaction between the Company and its independent lead director, Michael Browning, thus insinuating that the Company has violated the federal securities laws. This assertion is an accusation of improper and illegal conduct on the part of the Company's management and directors which impugns the character, integrity, or personal reputation of the Company, its management and Mr. Browning, while failing to provide any factual basis for the accusation.

The facts are that no such related-party transaction exists. Item 404 of Regulation S-K defines transactions with related persons as "any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds \$120,000, and in which any related person had or will have a direct or indirect material interest."

PRF has partnered with Browning Investments LLC ("Browning Investments") as the master planning partner for the *developable* land of the Discovery Park District. Separately, and wholly unrelated to the partnership with Browning Investments, PRF contracted with the Company to build a solar generating facility (the "Solar Facility") on land that the PRF had determined to be *undevelopable* land in the Discovery Park District, and, therefore, was not part of the land for which Browning Investments acted as a master planning partner. The land on which the Company built the Solar Facility was leased directly from PRF, and was unconnected to the land being developed by Browning Investments. There were no negotiations between the Company and Browning Investments related to the lease. Browning Investments was neither a party to, nor had an interest in, the lease between the Company and PRF.

Accordingly, the transaction is not a related-party transaction which required disclosure, thus rendering the False Related-Party Statements false and misleading under Rule 14a-9 because they allege a violation of law, without support for such a claim, and the Proposal is excludable under Rule 14a-8(i)(3).

To the extent the Staff does not concur with our view that the False Related-Party Statements render the entire Proposal excludable, the False Related-Party Statements themselves are excludable under Rule 14a-8(i)(3). The Staff has often concurred with the exclusion of certain portions of shareholder proposals and supporting statements that contain false and misleading statements. *See, e.g.*, Rite Aid Corporation (avail. Mar. 13, 2015)(concurring with the exclusion of portions of the supporting statement regarding the SEC and other organizations' support of the proposal as materially false and misleading); Post Properties, Inc. (avail. Mar. 26, 2004) (concurring that the portion of the supporting statement which alleges a violation of the federal securities laws is materially false or misleading under rule 14a-9 and such language should be deleted); and The Boeing Company (avail. Feb. 6, 2004)(concurring that certain characterizations in the supporting statement may be materially misleading and should be revised.)

CONCLUSION

Based on the foregoing, the Company respectfully requests that the Staff advise that it will not recommend any enforcement action if the Company excludes the Proposal from its Proxy Materials for the 2021 Annual Meeting. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the issuance of a response. In such case, or if you have any questions or desire any further information, please contact the undersigned at (704) 382-9151.

Very truly yours,



Nancy M. Wright

CC: Kodwo Ghartey-Tagoe, Executive Vice President and Chief Legal Officer
David S. Maltz, Vice President, Legal, Chief Governance Officer and Assistant
Corporate Secretary
Michael Garland, Assistant Comptroller - Corporate Governance and Responsible
Investment Comptroller of the City of New York

EXHIBIT A

(Copy of Proposal and Related Correspondence)

From: [Sologub, Jenny](#) on behalf of [Garland, Michael](#)
To: [Wright, Nancy M.](#)
Cc: [Garland, Michael](#); [Narita, Yumi](#)
Subject: [EXTERNAL] NYCRS-Duke Energy- Independent Chair Shareholder Proposal-11.17.2020
Date: Tuesday, November 17, 2020 6:02:19 PM
Attachments: [image001.png](#)
[NYCRS-Duke Energy-Independent Chair Shareholder Proposal-11.17.2020.pdf](#)

***** CAUTION! EXTERNAL SENDER *** STOP & THINK!** Do you know and trust this sender? Were you expecting this email? Are grammar and spelling correct? Does the content make sense? If suspicious, then do not click links, open attachments or enter your ID or password.

Ms. Wright,

Please see attached shareholder proposal on behalf of the New York City Retirement Systems. We are also sending a hard copy via Express Mail.

We look forward to the opportunity to discuss it with you.

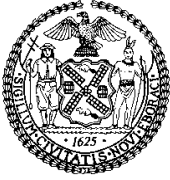
Thank you,
Mike

MICHAEL GARLAND

Assistant Comptroller - Corporate Governance and Responsible Investment
Office of New York City Comptroller Scott M. Stringer, Bureau of Asset
Management

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mgarlan@comptroller.nyc.gov





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Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT

November 17, 2020

David B. Fountain
Sr. VP, Legal, Chief Ethics and Compliance Officer and Corporate Secretary
Duke Energy Corporation
DEC 48H, P.O. Box 1414
Charlotte, NC 28201-1414

Dear Mr. Fountain:

I write to you on behalf of the Comptroller of the City of New York, Scott M. Stringer. The Comptroller is the custodian and a trustee of the New York City Teachers' Retirement System, New York City Employees Retirement System, and the Board of Education Retirement System (the "Systems"). The Systems' boards of trustees have authorized the Comptroller to file this resolution and to inform you of their intention to present the enclosed proposal for the consideration and vote of stockholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

The Systems are beneficial owners of more than \$2,000 in market value of the Company's stock and have held such stock continuously for over one year. Furthermore, each System intends to continue to hold at least \$2,000 worth of these securities through the date of the Company's next annual meeting. Proof of ownership will be sent by the Systems' custodian, State Street Bank and Trust Company, under separate cover.

We would welcome the opportunity to discuss the proposal with you. Should the Board of Directors approve a policy requiring an Independent Board Chair that we consider responsive to the proposal, we will withdraw the proposal from consideration at the annual meeting.

Please feel free to contact me at mgarlan@comptroller.nyc.gov if you would like to discuss this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Garland".

Michael Garland
Enclosure

RESOLVED:

Shareowners of Duke Energy Corporation (“Duke”) ask the Board of Directors to adopt a policy, and amend the bylaws as necessary, to require the Chair of the Board to be an independent member of the Board. This policy shall apply prospectively, and not violate any contractual obligation.

SUPPORTING STATEMENT

As long-term shareholders, we believe that independent Board leadership now or upon succession to the next CEO, (as the proposal requests), would assist the Board in overseeing Duke’s necessary strategic transformation to achieve its goal of net zero carbon emissions by 2050. We commend Duke for committing to this important target. We are concerned, however, that (1) Duke’s planned transition from coal is too slow and (2) it’s near term capital investments in long-lived natural gas assets are incompatible with achieving its 2050 target and that these assets are at risk of becoming stranded. Our fundamental concern is that Duke’s CEO has no long-term incentive to make investments and strategic choices whose payoff — no matter how substantial — is decades into the future. We are also concerned by Duke’s previously undisclosed related-party transactions with its lead “Independent” director.

As summarized in a 2020 Deloitte study: “[T]here are significant gaps between decarbonization targets and the scheduled fossil fuel plant retirements, renewable additions and flexibility requirements needed to achieve full decarbonization. The math doesn’t yet add up.”¹ Deloitte was referring generally to U.S. utilities that have made net zero commitments, but this is a particular concern for Duke, whose current plans entail running several big coal plants into the 2040s².

An independent Board chair is an effective means to ensure that the CEO is accountable for managing the company in close alignment with the *long-term* interests of its shareowners. It can also help strengthen the quality of questions in the boardroom.

Chairing the board and running the company are distinct, time-intensive responsibilities. There is an inherent conflict of interest when a CEO chairs the board to which she is answerable. A

¹ Utility Decarbonization strategies, at <https://www2.deloitte.com/us/en/insights/industry/power-and-utilities/utility-decarbonization-strategies.html>

² Benjamin Storrow, E&E News, “Utilities’ big promises on CO2 questioned by analysts,” September 25, 2019, at <https://www.scientificamerican.com/article/utilities-big-promises-on-co2-questioned-by-analysts/#:~:text=America's%20utilities%20are%20getting%20ambitious%20about%20carbon%20reduction.&text=Ceres%2C%20a%20sustainability%20nonprofit%2C%20recently,are%20notable%20on%20several%20fronts.>

2019 PwC survey found that directors on boards with a joint CEO-Chair report being more likely to have difficulty voicing a dissenting view (57% versus 41%).

Duke's lack of independent board leadership may be exacerbated by the fact that "Independent" Lead Director, Michael Browning, is Duke's longest tenured director. Duke's corporate governance principles currently state that independent directors normally retire the earlier of age 70 or 15 years of service. Browning is 74 and has 30 years of service on the boards of Duke and its predecessor companies.

Further compromising Browning's independence are previously undisclosed related-party transactions. Duke built a solar plant in Purdue Research Foundation's (PRF) Discovery Park District, a large development in Indiana for which Browning Investments LLC is PRF's "master planning partner," responsible for developing, constructing, financing, and owning certain projects.

We urge shareholders to vote for this proposal.