TESTIMONY OF JAMES E. ROGERS
CHAIRMAN, CEO AND PRESIDENT
DUKE ENERGY CORPORATION
BEFORE THE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
SUBCOMMITTEE ON ECONOMIC POLICY
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Mr. Chairman and Members of the Committee: I am delighted to be here today to share with you my thoughts on the need to build better investor recognition of – and incentives for – companies that effectively pursue long-term goals.

Let me start by commending Chairman Brown for holding this hearing. I do not think the private sector is the only place where "short-termism" is alive and well. I am sure that the Members of the Committee also face many instances where they are under pressure to go with short term fixes for difficult problems that really need long-term solutions. The saying goes that "in politics, the long term is the next election and the short-term is the next poll". So Mr. Chairman, thank you for taking on this difficult yet vital long term issue that applies to both the private and public sectors.

As you noted in my introduction, I am the Chairman, CEO and President of Duke Energy Corporation. Duke Energy provides electric power to more than 11 million people in five states: North Carolina, South Carolina, Ohio, Indiana and Kentucky. Our diversified generation portfolio of 37,000 megawatts mirrors the mixture of supply in the U.S. as a whole with a blend of coal, nuclear, natural gas and hydropower. We are also making sizeable investments into large scale renewables such as wind, distributed renewables such as our North Carolina "solar on the rooftop" program, energy efficiency, and the smart grid.

The electric utility industry – my industry – is among the most capital-intensive in the world. We are a big-bet; long-term business. Capital is our lifeblood. For example, Duke Energy has a capital investment program of approximately $25 billion over the next five years. Access to capital allows us to modernize our power plants and transmission grid – reducing our impact on the environment, keeping our customers and communities competitive and putting people to work.

Whether the analysts tracking our quarterly performance care or not, decisions we make today at Duke will still be impacting the company decades from now. The power plants we build today will operate for 30, 40, 50 years or more. While too many elements of the investment community may be looking for a quick rise or -- quite frankly – a quick decline in our stock price, we are running a business where our decisions impact the company for decades. For Duke Energy to survive, we have to get these decisions right and we have to have investors who understand, appreciate and share this long view.

Unfortunately, I often feel that the current mindset of Wall Street conflicts with the longer time frames that are the reality of our business. In this hedge fund-driven world of instant earnings gratification, it's very difficult to justify projects that take years to complete, almost no matter what the payoff is. But think about it, many projects that the U.S. needs for its energy future – the build out of the smart grid, the construction of next generation nuclear power plants, new transmission lines to move renewable power to markets – require years to complete. We are caught between the short attention span of investors and the long-term commitment to a course that these transforming energy projects require.

Myron Steele, Chief Justice of the Delaware Supreme Court has talked about the concept of "patient capital" which bridges this gap between the long lead time that solutions may require and the instant return that too much of the financial world seems to demand:

"If we're going to compete nationally and internationally, we have to focus on what some people have characterized as 'patient capital.' We have to develop a framework in which investors can invest for the long term, and allow capital to produce what is typically American – innovative products that impact productivity, generate new ideas, and make our goods marketable across the world. Ultimately, this great engine that is the corporation is designed to enhance wealth for those who invest in it."

Last fall, I had the privilege of joining 28 leaders representing business, investment, government, academia and labor of the Aspen Institute Business & Society Program's Corporate Values Strategy Group to endorse a call to end the focus on short-termism. In our statement, *"Overcoming Short-termism: A Call for a More Responsible Approach to Investment and Business Management"* (attached to my testimony), we provided recommendations to focus attention and dialogue on the intricate problems of short-termism and what we believe are the key leverage points to return to a responsible and balanced approach to business and investment.

Our work recognizes the need to focus on the whole system. We made recommendations in three areas:

- Market Incentives: Encouraging more patient capital;
- Fiduciary Duty: Better aligning interests of financial intermediaries and their investors; and
- Transparency: Strengthening investor disclosures.

I believe Judy Samuelson, the Executive Director of the Aspen Institute Business & Society Program, is going to address this report and the comprehensive set of changes that we recommend. I would like to focus on the first set of recommendations regarding investor incentives for patient capital.

In the report, we identified several structural changes to enhance incentives to patient investors, including:

- Increasing capital gains discounts for greater holding periods of stock;
- Removing deduction limitations on long-term capital losses; and
- Enhancing shareholder rights for shareholders who meet certain minimum holding period requirements.

I strongly believe that these changes are needed and will increase investor stability and patience. But, beyond these three recommendations, we need to ensure that all of our policies to promote long-term investments work in harmony. That leads me to highlight another current source of stability – favorable tax treatment of dividends for individual shareholders – that is in danger of being lost.

Currently, dividend income for individuals is subject to only a 15 percent tax rate, instead of the larger marginal tax rate that would otherwise apply. However, this treatment expires at the end of this year. Encouraging dividend payout through tax policy promotes investor stability and long term holding in two ways. If that tax treatment expires, it will work at cross purposes with the goal of promoting long-term investor focus. Here's why:

First, with dividends, investors do not have to sell shares to harvest the underlying company's profits; they share in that profitability directly through the dividend payout. Compare, say, Apple Computer -- which may make billions in a year due to the introduction of its latest hot new gizmo. But, Apple has never paid out a dividend. There is only one way for an investor to gain access to these profits – they have to sell the shares and secure the capital gain that the market has hopefully priced into Apple's shares. And by the way, when they sell after a modest hold, they secure a discounted tax treatment due to the long term capital gains tax provisions.

Second, and more importantly, dividend stocks create steady income vehicles for investors. And in a world of disappearing pensions and longer life expectancies, dividends can provide a vital source of income for retirees. An investor that is motivated by the dividend will generally be a loyal, long term investor – so long as the Company performs.

This has certainly been our experience at Duke Energy. Our outstanding shares of common stock are currently held equally by institutional investors and retail investors.

And, just over ten percent of our institutional shares are held by investors with an investment style oriented toward income (i.e., dividend payments). Our high retail ownership is supported by the relatively low volatility of our stock price and our consistent dividend distribution. 2010 is the 84th consecutive year that Duke Energy has paid a quarterly cash dividend on its common stock.

This is not just true for Duke Energy. Nationally, we see the utility dividend providing needed income to retirees and the middle class. For instance, Ernst & Young studied tax returns in 2007 and noted the following characteristics of taxpayers claiming the dividend deduction:

- 61 percent are from taxpayers age 50 and older,
- 30 percent are from taxpayers age 65 and older,
- 65 percent are from returns with incomes less than $100,000, and
- 36 percent are from returns with incomes less than $50,000.

(See Ernst & Young report attached.)

It will be a giant step backwards if we eliminate the incentives we now have for all investors regardless of their income level to hold stocks for the dividend payment. In this instance the public policy goal of encouraging individuals to hold dividend-paying stocks (especially utilities who are modernizing their aging infrastructure) for the long-term trumps the need to increase the tax rate on dividends and to have a progressive tax regime for dividends.

In my judgment and experience, short-termism constrains the ability of a business to do the things that it must do to prosper: create sustainable goods and services, invest in innovation, take risks and develop human capital. We cannot create an economic recovery without financial policies that incent this behavior.

Thank you for your attention and I look forward to your questions.