

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 51995 / July 8, 2005

ACCOUNTING AND AUDIT ENFORCEMENT

Release No. 2273 / July 8, 2005

ADMINISTRATIVE PROCEEDING

File No. 3-11974

In the Matter of

**DUKE ENERGY
CORPORATION,**

Respondent.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Duke Energy Corporation (“Duke” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

1. Duke, a North Carolina corporation with its principal executive offices in Charlotte, North Carolina, is an integrated provider of energy and energy services. Duke's common stock is registered with the Commission under Section 12(b) of the Exchange Act and trades on the NYSE under the symbol DUK.

2. From at least June 1997 through at least November 2002, Duke traded electricity and natural gas products with other energy companies. The trading unit that is the focus of this matter was located in Houston, Texas.

3. Duke engaged in trading electricity and natural gas products for two principal purposes: (a) to hedge against Duke's exposure to the risk of unanticipated swings in the price of electricity and natural gas; and (b) to profit through speculative trading.

4. Duke maintained separate "books" for the company's hedging and speculative trading activities and, in conformity with Generally Accepted Accounting Principles ("GAAP"), the books were treated differently for accounting purposes. Under GAAP, only if a transaction was properly designated as a hedging transaction would it qualify for accrual accounting treatment in which at least a portion of the gain or loss on the transaction could be deferred until a later period. Conversely, in conformity with GAAP, the gain or loss on all speculative transactions should have been recognized currently in earnings, on a mark-to-market basis.

5. From approximately 1997 to 2002, Duke's internal accounting controls were insufficient to ensure that its traders properly recorded their trading activities in Duke's books and records. As a result, certain traders manipulated those books and records in order to maximize the size of their year-end bonuses and other performance-based compensation.

6. Duke's internal accounting controls deficiencies included the following: First, while Duke awarded year-end bonuses and other performance-based compensation primarily on the basis of traders' profitability for the past year, Duke allowed certain traders to have control over both accrual and mark-to-market accounted trading books, thereby giving these traders an opportunity improperly to shift losses into their accrual books where at least a portion of the losses would not be recognized until a later period, after the traders' annual bonus determinations already had been made. Second, although Duke's policies and procedures required traders to enter their trades promptly into Duke's systems, Duke failed to monitor traders to ensure that, in practice, the traders actually assigned each trade to a particular book at the time that the trader entered into the trade. This failure allowed traders to assign trades based upon whether the trades resulted in gains

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

(in which case, the trades could be assigned to a trader's mark-to-market book where the gains would be recognized in full in the current period), or losses (in which case, the trades could be assigned to a trader's accrual book where at least a portion of the losses could be deferred until later periods). Third, Duke did not require traders to maintain time-stamped trading tickets that recorded the time at which each trade was entered into, making it more difficult for Respondent to detect misclassifications of trading transactions because of the lack of an audit trail Duke could follow to determine the time at which a trade was entered into, relative to the time when the trader actually assigned the trade to a particular book. Fourth, Duke failed to establish a system whereby internal compliance personnel would monitor a trader's individual decision to move a trade from one book to another, which allowed traders to move losing positions from a mark-to-market book to an accrual book.

7. As a result of Duke's internal accounting controls deficiencies, between approximately January 1, 2001 and June 30, 2002, three individuals in Duke's trading operation misclassified approximately \$56.2 million of trading losses as hedge trading losses, to be accounted for in Respondent's books and records on an accrual basis, when, in fact, those trading losses were speculative trading losses that, under GAAP, should have been accounted for in Respondent's books and records on a mark-to-market basis. Further, as a result of these misclassifications, these three traders were awarded bonuses by Duke, for the year ended December 31, 2001, in amounts that the traders would not otherwise have been awarded.

8. Although the misclassifications detailed above did not have a material impact on Duke's financial statements, as a result of the conduct described above, Duke committed violations of Section 13(b)(2)(A) of the Exchange Act, which requires issuers to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

9. Also as a result of the conduct described above, Duke committed violations of Section 13(b)(2)(B) of the Exchange Act, which requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are executed in accordance with management's general or specific authorization, transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, and to maintain accountability for assets, access to assets is permitted only in accordance with management's general or specific authorization, and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Duke's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and the cooperation Respondent afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Duke's Offer.

Accordingly, it is hereby ORDERED that Respondent Duke cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

By the Commission.

Jonathan G. Katz
Secretary