

## CORPORATE PARTICIPANTS

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### **Joe Crapster**

*Duke Energy - Director Investor Relations*

### **Steve Sobell**

*Duke Energy- GM of Taxes*

### **Linda Carlisle**

*White & Case LLP - Tax Lawyer*

## PRESENTATION

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### **Operator**

Good day everyone, and welcome to the Duke Energy Retail Investor Chat Conference Call. Today's call is being recorded. At this time for opening remarks, I would like to turn the call over to Joe Crapster, Director of Investor Relations. Please go ahead, sir.

### **Joe Crapster - Duke Energy - Director Investor Relations**

Good evening and thank you for joining us. The purpose of this conference call is to provide additional tax information related to our Equity Units with the ticker symbols DKE and DUR that matured in 2004. Our intent would be that at the conclusion of this call you will have a better understanding of the tax considerations related to these financial instruments.

Joining me are Marty Uczen, Manager of Shareholder Communications at Duke Energy; Steve Sobell, General Manager of Taxes at Duke Energy, who will provide an introduction to our discussion on the Equity Units' and Linda Carlisle, with White & Case LLP, who will cover various scenarios and tax consequences. Following Steve and Linda's comments we will open the lines for questions.

As a reminder, you may access the materials being discussed on this call on the Investor Relations section of our website at [www.duke-energy.com](http://www.duke-energy.com). I will now turn the call over to Steve.

### **Steve Sobell - Duke Energy - GM of Taxes**

We are holding today's call in response to investor and broker inquiries made to the Duke Energy investor relations department concerning the two series of Duke Energy Equity Units that were issued in 2001, which were traded under the symbols DKE and DUR. There is no difference in the structure of these Equity Units.

The prospectuses to the Equity Units detail the tax treatment of each. On February 22, 2005, we posted additional guidance on the Duke Energy website regarding the tax implications of holding an Equity Unit, but investor relations has continued to receive

questions about specific fact situations. Accordingly, we decided to conduct this call to provide even more detailed guidance to investors and brokers.

The prospectuses relating to DKE and DUR contained a thorough discussion of the federal income tax consequences of owning an Equity Unit. Nothing that we will discuss today is intended to deviate from the guidance provided in the prospectuses, and in the event that there is a conflict in interpretation between the information provided on this call and the prospectuses, the prospectuses should be relied upon. For a copy of the DKE and DUR prospectuses, please visit our website at [www.duke-energy.com](http://www.duke-energy.com).

Today we are going to discuss what an Equity Unit is, the cash flows you received, the tax treatment of the components of the Equity Units, and the IRS Form 1099s that you should have received as an investor in the Equity Units under various scenarios. Please understand that Duke Energy is not the party who prepares these Form 1099s – that is the responsibility of the broker. For the brokers on this call, please note that the firm “Wall Street Concepts” specializes in preparing Form 1099s for transactions such as the Equity Units, and we understand that they have provided this service for many brokers with respect to these Equity Units.

Today's discussion is not intended to provide individual tax advice. Accordingly, you are urged to consult your tax advisor to determine your particular tax consequences.

Finally, we know that the Equity Units are complex instruments. In 2004, there were at least 15 companies that held remarketing for securities similar to the Equity Units, so I think it is safe to say that there are investors elsewhere that have similar questions. Our objective here is to be as helpful as we can and we hope that you will find the following discussion to be useful.

Now let me turn it over to Linda Carlisle from White and Case LLP.

### **Linda Carlisle - White & Case LLP - Tax Lawyer**

An Equity Unit consists of two separate instruments: a \$25 Duke Capital Note and a Forward Contract to purchase a variable number of shares of Duke common stock for \$25.

To ensure that the Notes would generate sufficient proceeds for the Investors to satisfy their obligation to pay \$25 for Duke common stock under the Forward Contracts, the Notes were sold (or remarketed) on behalf of the Investors at a reset interest rate three months before the settlement date of the Forward Contracts.

The proceeds from the sale of the Notes were used to purchase a portfolio of Treasury STRIPS for the Investors that were

substituted for the Notes as security for the Investors' obligations under the Forward Contracts.

The proceeds from the maturity of the Treasury STRIPs were used to pay \$25 to Duke on behalf of the Investors in exchange for Duke common stock in settlement of the Forward Contracts.

Investors in Equity Units received quarterly cash distributions with respect to the Equity Units that were paid in arrears every quarter up to and including the date the Forward Contracts were settled.

Each quarterly cash distribution (except the final distribution) included the quarterly interest payment on the Note. The Investors did not own the Notes when the final quarterly cash distribution was paid, but received an amount equal to the quarterly interest payment on the Note upon the maturity of the Treasury STRIPs.

Every quarterly cash distribution also included a quarterly "contract adjustment payment" that Duke made with respect to the Forward Contract.

Investors also received a distribution of cash from the remarketing of the Notes equal to the proceeds from the remarketing in excess of the purchase price of the Treasury STRIPs.

This slide describes how the Note in an Equity Unit was treated for tax purposes.

The purchase price of an Equity Unit was allocated between the Note and the Forward Contract according to their fair market values. At original issue, all of the \$25 purchase price was allocated to the Note.

The Note was treated as a "contingent payment debt instrument" for tax purposes. As a result, an Investor was required to include in income each year the amount of original issue discount, or OID, that accrued on the Note during each day of the year that the Investor owned the Note. The amount of OID that accrued on a Note each year should have been reported to the IRS and the Investor on a Form 1099-OID.

In addition, because the Note was a contingent payment debt instrument, gain or loss on the sale of a Note would be ordinary gain or loss, not capital.

Because the Investor was taxed on the OID that accrued on the Note each year, the portion of the quarterly cash distributions attributable to coupon payments of interest on the Note were not treated as income for tax purposes. For a DKE Equity Unit, 71.15% of the quarterly cash distribution was not included in income and 54% of the quarterly cash distribution on a DUR Equity Unit was not included in income.

The Notes were sold or remarketed on behalf of the Investors at a new interest rate three months before the settlement of the Forward

Contracts to ensure that the Investors could satisfy their obligation to pay Duke \$25 under the Forward Contract with the proceeds from the pledged securities.

The amount realized by an Investor from the remarketing should have been reported to the IRS and the Investor on a Form 1099-B. Gain or loss from the sale of the Notes, however, is treated as ordinary gain or loss.

The proceeds from the remarketing were used to purchase Treasury STRIPs on behalf of the Investor with a principal amount sufficient to satisfy the Investor's obligation to Duke under the Forward Contract and provide the Investor with an amount of cash equal to the final quarterly interest payment on the Note. Any proceeds in excess of the purchase price of the Treasury STRIPs (the "excess proceeds") were distributed in cash to the Investors. The cash distribution of excess proceeds was part of the amount realized by the Investors and was not a separate item of taxable income.

Gain or loss on the remarketing of a Note equals the difference between the amount realized on the sale of a Note and the Investor's adjusted tax basis in the Note.

The amount realized by an Investor, and the amount reported on the Form 1099-B, was the sum of the purchase price of the Treasury STRIPs purchased for the Investor and the excess proceeds.

An Investor's adjusted tax basis in a Note equaled:

- the Equity Unit purchase price allocated to the Note;
- plus the OID accrued to date on the Note;
- minus the coupon payments received to date on the Note.

This slide discusses how the Forward Contract in an Equity Unit was treated for tax purposes. At the original issue of the Equity Unit, none (\$0) of the Equity Unit purchase price was allocated to the Forward Contract.

A portion of each quarterly cash distribution included a taxable contract adjustment payment. For a DKE Equity Unit, 28.85% of the quarterly cash distribution was a contract adjustment payment and 46% of the quarterly cash distribution on a DUR Equity Unit was a contract adjustment payment.

The contract adjustment payments were reported to the IRS and Investors as taxable income on Form 1099-MISC. There is, however, no authority that addresses the tax treatment of the quarterly contract adjustment payments made with respect to the Forward Contracts. Investors should consult their personal tax advisor regarding the tax treatment of the contract adjustment payments.

For tax purposes, the Investor was treated as a party to a forward contract that obligated the Investor to purchase a variable number

of shares of Duke common stock for \$25, depending on the market price of Duke common stock on the settlement date of the Forward Contract.

This slide describes how the Treasury STRIPs, which were substituted as security for the Forward Contract, were treated for tax purposes.

An Investor was treated as the owner of an undivided interest in the Treasury STRIPs that were purchased with the proceeds from the remarketing of the Notes.

The excess of the principal amount of the Treasury STRIPs over the purchase price of the Treasury STRIPs was treated as OID and an Investor was required to include in income his or her share of the OID on the Treasury STRIPs.

On the maturity of the Treasury STRIPs, \$25 was paid to Duke in settlement of the Forward Contract on behalf of an Investor, and Duke transferred the agreed number of shares of Duke common stock to the Investor.

The remaining principal amount of the STRIPs was used to provide the Investor with an amount of cash equal to the final quarterly interest payment on the Note.

An Investor's holding period for Duke common stock that he or she acquired upon settlement of the Forward Contract began on the day after settlement of the Forward Contract.

For an Investor who purchased an Equity Unit at original issue, his or her basis in the Duke common stock acquired upon settlement of the Forward Contract is equal to the \$25 purchase price paid for the stock under the Forward Contract, assuming that the Investor treated the contract adjustment payments as taxable income.

If the Investor did not treat the contract adjustment payments as taxable income, the Investor's basis in the Duke common stock is the \$25 purchase price of the stock under the Forward Contract minus the amount of contract adjustment payments the Investor has received.

This is a summary of the information you should have received as a result of owning the Equity Units.

Your broker should have reported the amount of OID that you accrued on the Notes in 2004 to the IRS and to you on a Form 1099-OID. Investors should consult their personal tax advisors regarding how to report OID from the Notes if they purchased the Equity Unit after the original issue.

Your broker should have reported your share of the OID that accrued on the Treasury STRIPs in 2004 to the IRS and to you on a Form 1099-OID.

Your broker should have reported the amount of contract adjustment fees paid to you in 2004 to the IRS and to you on a Form 1099-MISC.

Your broker should have reported the amount realized by you from the remarketing of the Notes to the IRS and to you on a Form 1099-B.

The gain or loss recognized from the remarketing of the Notes is reported on Schedule D and described as ordinary income or loss from a contingent payment debt instrument. Because this treatment is not consistent with the Schedule D instructions, you should attach a statement explaining this characterization. See page S-71 of the DKE prospectus and page S-45 of the DUR prospectus explaining this treatment.

In the following examples, we will go over the tax consequences to an Investor in DKE units in three scenarios.

In each example, we have assumed that the Investor treated the contract adjustment payments as taxable income.

The principles of the examples apply equally to similar investments in DUR Equity Units.

In this example, the Investor purchased a DKE Equity Unit at original issue, held the unit through the remarketing of Notes in 2004, and received shares of Duke common stock in 2004 in settlement of the Forward Contract.

For each year, the Investor was required to include in income the OID that accrued on the Note, as reported on Form 1099-OID by the Investor's broker.

Each year, an Investor also included in income the contract adjustment payments that the Investor received, as reported on the Form 1099-MISC by the Investor's broker.

In 2004, the Investor recognized a gain on the remarketing of the Notes, which was treated as ordinary interest income. The amount realized, not the gain, was reported by the Investor's broker on Form 1099-B.

In 2004, the Investor also was required to include in income the OID that accrued on the Investor's share of the Treasury STRIPs that replaced the Notes after the remarketing, as reported on Form 1099-OID by the Investor's broker.

The Investor's gain from the remarketing of the Notes is the difference between the amount the Investor realized from the sale of the Note and the Investor's adjusted tax basis in the Note.

The amount realized from the sale of the Note as reported on the Form 1099-B was \$25.395 per unit.

The Investor's adjusted tax basis in the Note was \$25.24: the purchase price of the Note (\$25) plus the OID that had accrued on the Note (\$4.520) minus the coupon payments made on the Notes (\$4.280).

The difference between the \$25.395 realized by the Investor and the Investor's \$25.24 adjusted tax basis is a \$0.155 gain that the Investor treats as ordinary interest income.

The difference between the principal amount of the Treasury STRIPs (i.e., the \$25.367 redemption price at maturity) and the purchase price of the Treasury STRIPs (\$25.239) is \$0.038 of OID reported on Form 1099-OID that the Investor is required to include in income.

\$25 of the principal amount of the STRIPs was used to pay Duke pursuant to the Forward Contract. The remaining \$0.367 was paid to the Investor in the final quarterly cash distribution on the Equity Unit.

Assuming that the Investor treated the contract adjustment payments as taxable income, the Investor's tax basis in the .6414 shares received under the Forward Contract equaled the \$25 that was paid for the shares pursuant to the Forward Contract plus the Investor's basis, if any in the Forward Contract. Since \$0 of the original issue purchase price of the Equity Unit was allocated to the Forward Contract, the Investor had no basis in the Forward Contract and had a \$25 basis in the .6414 shares.

For 2004, the tax information reporting with respect to Example 1 would be as follows:

1. A Form 1099-MISC would report the \$0.298 of contract adjustment payments received in the two quarterly cash distributions in 2004;
2. A Form 1099-OID would report \$0.205 of OID on the Note that accrued in 2004 up to the date of the remarketing;
3. A Form 1099-OID would report the \$0.038 of OID on the Treasury STRIPs, which accrued in 2004; and
4. A Form 1099-B would report the \$25.395 net proceeds from the remarketing of the Note.

In this example, the Investor purchased the DKE Equity Unit at original issue and sold the unit on January 3, 2004, which was before the remarketing.

The Investor in this example was required to include in income the OID that accrued on the Note until January 3, 2004.

Upon the sale of the Equity Unit on January 3, 2004, the Investor was treated as having sold the Note for its fair market value, which we have assumed was \$25. In this example, the sale of the Note resulted in a loss, which the Investor treats as an ordinary loss.

The Investor is also treated as having assigned the Forward Contract to the buyer of the Equity Unit and recognizing a capital loss upon the assignment of the Forward Contract.

On the sale of the Note, the Investor recognized gain or loss equal to the difference between the amount realized by the Investor from the sale of the Note and the Investor's adjusted tax basis in the Note.

The Investor is treated as having received \$25 for the Note.

The Investor's adjusted tax basis in the Note (\$25.417) is the \$25 paid for the Note by the Investor plus the OID accrued on the Note before January 3, 2004 (\$4.330) minus the coupon payments made on the Note before January 3, 2004 (\$3.913).

The difference between the \$25 realized by the Investor and the Investor's \$25.371 adjusted basis is a \$0.417 loss that was treated as an ordinary loss.

On the assignment of the burdensome Forward Contract, the Investor is treated as having paid the buyer of the Equity Unit \$11.50 to assume the burdensome Forward Contract.

Since the Investor had no basis in the Forward Contract, the Investor realized a capital loss of \$11.50 upon the assignment of the Forward Contract.

For 2004, the tax information reporting with respect to Example 2 would be as follows:

1. A Form 1099-OID would report \$0.008 of OID on the Note that accrued in 2004 until the sale of the Note on January 3;
2. A Form 1099-B would report the \$13.50 net proceeds from the sale of the DKE Unit.

This amount represents the net proceeds received from the sale of the Note for \$25 and the Investor's deemed payment of \$11.50 to the buyer of the Equity Unit to assume the burdensome Forward Contract.

In this example, the Investor purchased a DKE Equity Unit on January 3, 2004 for \$13.50, held the Equity Unit through the remarketing of the Notes, and received shares of Duke common stock upon the settlement of the Forward Contract.

The Investor was required to include in income the OID that accrued on the Note.

The Investor treated the contract adjustment payments (which were 28.85 percent of each quarterly cash distribution) as taxable income.

The Investor recognized gain on the remarketing of the Note, which was treated as ordinary interest income.

The Investor also was required to include in income the OID that accrued on the Treasury STRIPs that were purchased for the Investor with proceeds from the remarketing of the Notes.

The Investor's gain from the remarketing of the Note is the difference between the amount realized by the Investor (\$25.395) and the Investor's adjusted tax basis in the Note.

The amount realized by the Investor is the same as in Example 1.

The Investor's adjusted tax basis (\$24.829) equaled:

1. The \$25 purchase price paid by the Investor for the Note;
2. Plus the \$0.196 of OID that accrued on the Note beginning on January 3, 2004;
3. Minus the \$0.367 coupon payment on the Note received by the Investor.

The difference is a \$0.566 gain that was treated as ordinary interest income.

The difference between the principal amount of the Treasury STRIP (i.e., the redemption price at maturity) and the purchase price of the Treasury STRIP is OID reported on Form 1099-OID that the Investor is required to include in income.

Assuming that the Investor treated contract adjustment payments as taxable income, the Investor's adjusted tax basis in the shares of Duke common stock received in settlement of the Forward Contract equaled the \$25 purchase price for the stock under the Forward Contract plus the Investor's basis, if any, for the Forward Contract.

Assuming that the deemed \$11.50 payment to the Investor to assume the burdensome Forward Contract was treated as an open transaction, the \$11.50 payment reduced the taxpayer's adjusted basis in the shares to \$13.50. Please consult your tax advisor regarding the treatment of open transactions.

For 2004, the tax information reporting with respect to Example 3 would be as follows:

1. A Form 1099-MISC would report the \$0.298 of contract adjustment payments received in the two quarterly cash distributions in 2004;
2. A Form 1099-OID would report \$0.196 of OID on the Note that accrued in 2004 from January 3 until the remarketing of the Note;
3. A Form 1099-OID would report the \$0.038 of OID on the Treasury STRIPs, which accrued in 2004; and
4. A Form 1099-B would report the \$25.395 net proceeds from the remarketing of the Note.

Additional information regarding the tax treatment of Duke Equity Units and the prospectuses for the DKE and DUR Equity Units can be found on the Duke Energy website.

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**Steve Sobell - Duke Energy- GM of Taxes**

Okay, Amy, we've finished with our prepared remarks and maybe we can open it up for some questions.

## QUESTION AND ANSWER

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**Caller #1**

After all of the things I just listened to I will try to get to the web site and review that. But I guess the question I have is, I have my proceeds from all of my stock sales for the year and that is matched with what was sent in to the IRS. And there is an additional \$30,000 that was sent in that is not in my group's proceeds that I sold. And on the line in my report where it doesn't put a number it just puts the securities were received and left blank. And that is the difference in what I have and what is reported to the IRS.

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**Steve Sobell - Duke Energy - GM of Taxes**

Are you saying stock sales?

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**Caller #1**

Okay. Let me fill you in completely. I had the DUR. I think I started with 1,200 shares and it was converted to 747 of the common. I later sold the common. And when the DUR was converted there is nothing in the report to say I sold anything. It just has securities transferred, received or something to that effect; and a zero. And that is the difference in my total proceeds and what was sent to the IRS. A little over \$30,000.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Sir, I'm just trying to understand the facts. Please bear with me for one moment.

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**Caller #1**

Okay. Maybe I'm not telling you...

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

No, you are being very lucid and I appreciate it. Thank you for your patience. You're saying that you bought the Equity Units?

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**Caller #1**

I bought 1,200 shares of DUR.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Okay. You bought both a Note and a Forward?

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**Caller #1**

All I know is I bought a stock that was listed on the exchange as DUR and I don't know what else was attached to it. I didn't know anything about that.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Well, that is why we're trying to explain it to you sir. The Equity Unit did consist of a note and a Forward Contract traded under one, as you said, one exchange number, or symbol. May I ask did you buy it as an original issuance, sir?

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**Caller #1**

Did I buy what?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Did you buy when the Equity Units first came onto the market?

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**Caller #1**

Well, no, I will give you a date when I bought it, if you would like. I bought it and sold it 2 times.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Okay.

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**Caller #1**

I'm sorry, go ahead.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

I'm saying I cannot give you explicit or personal tax advice.

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**Caller #1**

I understand that, but I bought it and sold it. Then I bought on 10/6/04. I bought 1,200 shares and that was what was converted to 747 shares of common.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

That is correct. That is pursuant to the Forward Contract, the proceeds from the Note and the Treasury set.

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**Caller #1**

The only problem is where this 1,200 left my account there is a zero there. It doesn't show any proceeds where I sold it. I know that is not your responsibility but for some reason either that should have been kept within Duke or it should have been supplied to the broker where I am dealing somehow to get the proceeds to add to what I have to make the two balance.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Sir, I know that the information was provided by Duke to the brokers. What I suggest at this point is that you discuss this with your broker. And also look at Example 2, which we did not discuss because that does deal with buying and selling of an Equity Unit. And that might provide some insight as to the tax treatment of the purchase and sale.

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**Caller #1**

Okay. I will go look at this web site that you announced here tonight. And I will also go back to the broker and the tax people I deal with. But they are as confused as I am.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

We're doing our best to try and diffuse that.

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**Caller #1**

I'm sure you are. In case I can't resolve this, what do I do? Send a letter to the IRS explaining the difference and hope they will accept it?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Attaching a statement to the Schedule D explaining or paraphrasing the description of the tax treatment of the DUR unit from the prospectus would be very helpful in filing your return.

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**Caller #1**

It still won't match but it will give a reason for it not matching, I guess.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

And the IRS always likes to have a reason.

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**Caller #1**

I hope they will accept it.

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**Caller #2**

Herb and I are on the line. And we have a problem. We have a 1099 corrected form here that says that we sold Duke Energy on August 16 of '04 for \$69,000. We did not sell our Duke Energy stock until January of this year '05. And we never received \$69,000. So I don't know how to explain this to the IRS because it is on this 1099.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

What you should have received is the 1099-B with respect to the remarketing of the note. You did not sell the stock. You sold the Note component of the Equity Unit. And at that time used the majority of the proceeds from that sale to buy a treasury security, which was then used to buy the Duke Stock pursuant to the Forward Contract 3 months later.

What you have received on the 1099-B is a number which is your gross proceeds, not your amount realized. What you need to do is to take that number and subtract from it your adjusted basis in the Note. Now may I ask you did you purchase the note at original issue of the Equity Unit?

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**Caller #2**

2002...2003.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

You would look at your purchase price for the Equity Unit and allocate based upon fair market value a portion of the amount you paid for that unit to the Note. And then you would add accrued OID and subtract any interest payments that you received on the Note.

I would suggest that you look at Example 3 in our slides which I do believe will be helpful in analyzing how you determine the amount realized and how you would report it to the Internal Revenue Service.

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**Caller #2**

Do we get a copy so that we can use it?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

It is on our web site.

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**Caller #2**

It is on the web site?

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**Joe Crapster – Duke Energy – Director Investor Relations**

We're having a difficult time understanding the question.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Sorry, sir.

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**Joe Crapster –Duke Energy – Director Investor Relations**

Could you repeat it please?

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**Caller #2**

I think I can get on the web site. I've already been on it today.

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**Caller #3**

I have a question as to what the broker reported to me. And this is important to me. I heard all the other conversations. It is very confusing but the broker sent me a corrected form at the last minute. They added gross receipts for Duke, which is way, way more than what I actually think I received. But is the broker obliged to send 2 forms? Are they obliged to send 2 forms OID?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Yes. You should have received a Form OID with respect to the Note and a Form OID with respect to the Treasury STRIPS for 2004.

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**Caller #3**

Now does he have to send 1 Form 1099-MISC?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Yes, sir. Your broker should have sent to you one 1099-MISC reflecting the contract adjustment fees that you received from Duke on the Forward Contract.

**Caller #3**

And what about the 1099-B?

**Linda Carlisle - White & Case LLP - Tax Lawyer**

The 1099-B is an amount which reflects the gross proceeds that you received on the remarketing or the sale of the Note.

**Caller #3**

Okay. Now what should I do if the broker did not send me all this information? The broker added an amount of around \$6,000 just as Duke Energy. That's it. Not how many shares or what it is about. And he said that they are just as confused as I am. By the way, I just wanted you to know that. Is it the broker's obligation to send all these forms?

**Linda Carlisle - White & Case LLP - Tax Lawyer**

Yes, sir, it is.

**Caller #3**

Okay, so I have to get back to the broker. The complete information was sent to every broker?

**Linda Carlisle - White & Case LLP - Tax Lawyer**

The complete information is available to every broker in Publication 1212, which is an IRS publication and from the information that Duke has provided. But also, too, please ask your broker to look on the web site for this presentation and the examples. We hope that will be instructive to the broker in getting out the right forms.

**Caller #4**

Thank you very much for your patience. It must be a trying time. My particular case is what you call Case 3, which in the literature I have Scenario 2, where I bought some Duke in August of the year 2002. The question I have is I have a description, a question-and-answer about scenario 2. This is for a purchaser who bought the Equity Units after the original offering but before the remarketing. Okay?

**Linda Carlisle - White & Case LLP - Tax Lawyer**

Right.

**Caller #4**

I would like to read a question and maybe you can clarify a few things. It says does the assumption of the Forward Contract with a negative fair value of \$1,150 result in a taxable income to the purchaser at the time of acquisition of the DKE Equity Unit? And the answer says that holders need to consult their personnel tax advisers if this deemed payment constitutes an open transaction under the tax laws.

The first question I have is a very general question. What is the difference between everybody buying stock that I have to go to the tax adviser? How come there is not a set response? You know what I mean? I mean why can't Duke say here is the opinion regarding an open transaction. Why do people have to go to different advisers? What are some of the different scenarios that could impact us differently? Did you understand the question?

**Linda Carlisle - White & Case LLP - Tax Lawyer**

I believe I do, sir. The question relates to the assumptions by a party, regardless of whether it is a Duke Equity Unit or not, of a burdensome contract. In the examples that you're positing there you are assuming or someone is assuming, an obligation to buy shares of Duke for \$25 at a point in time when the shares are worth \$12.50 or \$13.50, excuse me.

For anyone in their right mind to assume that position or that contract, they would want to be paid for it. They would want to be paid the difference between the \$25 that they are going to ultimately have to pay and the purchase or the fair market value of the stock to date.

In a situation where someone is assuming that contract and then ultimately buying the shares, as a tax lawyer I can say that, and not giving you individual tax advice, but just as a tax lawyer, it is unclear in the tax law whether that person must immediately recognize as income a deemed amount for assuming that purchase price. Or whether I can leave it open and say that just is taking into account the basis of the shares of stock that you acquire under the burdensome contract. That unfortunately is the reason why you get an answer that is not an answer. Okay? But you are getting an answer that is saying, "please think about this one hard." It is an open transaction issue.

**Caller #4**

It would all assume we would need to know the price of the Duke stock at the time we purchased it. Because the value of the

Forward Contract, if we're going to be purchasing Duke stock at \$25, the price of the Duke stock at the time we buy this contract.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

You're right. You have to allocate your purchase price of the Equity Unit between the Forward Contract and the Note.

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**Caller #4**

And the senior note. Since we are assuming the Senior Note is \$25, which I guess is also a function of the price of the Duke stock at the time. But let me ask a second part of the question. It says whether the deemed payment constitutes an open transaction under the tax law, which if so would defer the tax consequences of the deemed payment until the purchaser sells the Duke stock that we seized under the Forward Contract.

So they are saying that if that was the case, whether it is right or not, the tax consequences won't apply until you sell the Duke common stock which have acquired?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

That is correct, because in that situation your basis in the common stock would be \$13.50.

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**Caller #4**

Okay. And then if on February this was sold for a STRIP Contract, I believe you call it?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Yes, sir, Treasury STRIP.

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**Caller #4**

How come I didn't receive any notice that I received a STRIP Contract?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

The perspectives for both DKE and DUR did provide, or did explain, that pursuant to the terms of the Equity Unit the Notes would be sold on behalf of the investor 3 months before the Forward Contracts matured. And in the prospectus would be the notice of the sale.

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**Caller #5**

Let's say this was purchased in September of 2001 at a slightly higher price from the \$25. How would you treat that? Which example would you be using?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Example 3. What you are doing is, again, you are at the date of the purchase of the Equity Unit, determining the appropriate basis in each of the instruments. You're allocating the purchase price between the Forward Contract and the Note. If you're saying that you bought at that particular time for a little bit more than \$25, it may very well be that you're allocating more than zero to the Forward Contract.

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**Caller #5**

In your example you showed, I think, \$11.50 that you had to add on for your basis.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Right. In that situation I was paying \$13.50 for the entire Equity Unit.

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**Caller #5**

In this case, if you were paying more for it would that be an adjustment down or would you simply ignore it?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Oh, no, it would be an adjustment down. I'm sorry, sir, what do you mean by that? As a tax lawyer I can't tell you to ignore it.

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**Caller #5**

Okay. Your basis for the shares was your \$25 less the \$11.50 which you treated as income, which gave you a basis of \$13.50.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

But that is only because in this example I have purchased the Equity Unit for \$13.50. I have assumed that the note was worth \$25. Okay?

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**Caller #5**

Okay. In this case you bought this matter at \$13.50, but let's say \$26.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Okay. We bought it at \$26.

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**Caller #5**

Then because you're paying more for it, I guess there's no income?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

There's no income, no. There is no income. But what you are doing now is first off trying to figure out, what is that extra dollar. Was that the fair market value of the note or was that an amount that you would pay because \$25 on the Forward Contract was a good deal? Duke stock was higher than \$25 at that portion. And you would allocate that extra dollar between the note and the Forward Contract. And that would affect, to the extent it is allocated to the Note, your adjusted issue price and any gain on the proceeds of the remarketing or the sale.

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**Caller #5**

Do you have any flexibility in terms of where you allocate that money?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

You are to allocate, pursuant to the tax law, on fair market value. And so the question is, of course there is always some latitude in determining fair market value and these instruments are not individually traded. So you don't have a market necessarily for the notes or a market for the contract. I'm not going to tell you there is discretion. I'm telling you that the standard is fair market value but there is no one fair market value for non-publicly traded instruments.

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**Caller #5**

Can you allocate it either to one or to the other? Or do you have to split it?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

It depends upon fair market value. If the entire extra dollar is with respect to the fair market value of the Note, it would all go to the Note. If the extra dollar is with respect to the share of stock, it would affect the Forward Contract and give you basis in the Forward.

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**Caller #5**

And so the rub is not knowing how to allocate that?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

The rub is trying to make a reasonable allocation of the excess.

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**Caller #6**

I'm going to try and make this as simple as possible. We bought the Equity Units from Duke two times. One was on 10/29/03 and the other was on 8/6/03. I believe it was about \$13.50 at that time. As it converted and turned into common stock the difference is taxable between the \$13.50 and the \$25?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

No, sir.

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**Caller #6**

It is not really realized as far as that gain.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Again, at that point in time it was not realized when you assumed the burdensome contact, because remember this is our Example 3 again.

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**Caller #6**

Yes, I tried to follow it. It is still confusing.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

I'm sorry. I will do my best.

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**Caller #6**

I guess if we paid \$13.50 for it, we still have it as common stock. Is there anything that has to be reported as far as taxable income other than basically interest?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

As you see in Example 4, for 2004...

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**Caller #6**

2004.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

You would have OID on the Note. You would have OID on that Treasury STRIP. You would have miscellaneous 1099-MISC reporting on the contract adjustment fee up until the point in time when you received the Duke common stock at the maturity of the Forward Contract. And you would have received a 1099-B which gave you gross proceeds from the remarketing. And you should have reported as ordinary income gain probably. I'm saying based upon Example 3, gain or loss on the sale of the Notes at the remarketing.

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**Caller #6**

Right. The only thing we received was the 1099-B. And the 1099-B actually took the shares at full market value of \$25 and gave that amount. It wasn't even where you got a percentage of the common shares. It gave the full amount of the shares that you had in the equity at the \$25.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Sir, what I would suggest is that you forward the slides to your broker and particularly with respect to Example 3, ask for the 1099 reporting that you have not received.

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**Caller #6**

Okay. So other than the 1099-B we should have received the other 3 1099s, the miscellaneous, the OID note, and the 1099-OID Treasury STRIP.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Yes, sir. It sounds to me as though your broker has tried to lump everything into one 1099-B.

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**Caller #6**

Right. Basically it is all growth.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Right. And I don't know that for sure but I would suggest getting this information to your broker and seeing if it is helpful to your broker. Okay?

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**Caller #7**

In about the middle of '02, we purchased 1,615 shares of DUR. On a statement I have from my broker last October, he showed the total cost basis at \$29,926 and showed the estimated market value at \$23,482. And it says that they had a loss at that time of \$6,444. I'm giving you that because it is just before the conversion date.

When I received my 1099s, there was no original issue discount whatsoever listed on my statements. It says 000. There is a sheet in the statement that says Duke Energy Corporation purchased on these certain dates, sale price of .54 cents and cost basis \$9,960.62.

I don't know what that is all about. I have no idea. I have called the tax people and my broker also, and they said they had no idea how to handle it. And that they hoped to find out. But I mean it is getting towards tax time at this point. It showed on the statement also that I received interest payments of \$3,331.75 which I did, but that is shown on my statements as interest. So I'm very confused. I paid \$17.78 for part of it and \$18.92 for part of it. I guess my question is, do I have a loss or gain or where do I stand?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Sir, I wish I could tell you. What I can tell you is that your broker has not reported this correctly. And what I would suggest, once again, is if you could ask your broker to please go to this web site to look at the materials that Duke has posted. You should not have received an INT, a 1099 interest on the DUK units. Oh, it is DKE?

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**Caller #7**

DUR.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

DUR, excuse me. The interest payments themselves were not taxable income because you were accruing original issue discount, or OID, on the notes and then on the Treasury STRIPS. I know that Duke and Duke Investor Relations will be more than happy to get this information to your broker to help you and your broker understand how these units should be reported for tax purposes.

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**Caller #7**

Okay, it is very confusing. They took the total cost that I had in the total units and put that as cost basis for the converted units. Will that work?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

I can't tell you, sir, that this is the appropriate way to report a gain or loss on these units for tax purposes. I can understand how your broker arrived at that calculation but I cannot tell you that is the way it should be reported for federal income tax purposes.

That does conclude today's conference, and we do thank you for your participation.

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**Caller #7**

One final question, please. When these things were converted, the DUK stock was at about \$23 or thereabout. And I had much more in this total and this other assuming the number of shares that we had and that we received. So I guess I had a loss at this point. If I had sold Duke common by the time I got it, I would have had a loss of about \$6,500 or thereabout. Is that an actual loss? Can I claim this as a loss for the closing price of the common on the date that it was converted against the price I paid for it?

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

No, sir, what you would have to do is sell the stock. Which we don't advocate you do.

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**Caller #7**

I tell you what, this is fun. Okay, thanks a lot for your help.

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**Linda Carlisle - White & Case LLP - Tax Lawyer**

Thank you, sir.

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**Joe Crapster - Duke Energy - Director Investor Relations**

Thank you. Before we go this evening I wanted to reiterate that these financial instruments are complex. As a result, Duke Energy has taken a proactive position to help investors and brokers understand the tax implications for these investments. However, we are restricted from providing individual tax advice. If you still do not feel comfortable applying this information to your situation, we encourage you to take this information and seek professional tax assistance.

Once again, the information will be posted on the web site. The slides are already out there. And we will have a replay of the call from this evening. And we will also have a transcript available tomorrow. And should you need additional information beyond what was discussed today, feel free to contact our Investor Relations department. And I would also once again like to thank you for joining us this evening and have a good one. Good night.

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**Operator**