

## **SECURITIES AND EXCHANGE COMMISSION**

**(Release No. 35-27975)**

**Filing Under the Public Utility Holding Company Act of 1935, as amended (“Act”)**

**May 31, 2005**

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) are available for public inspection through the Commission’s Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by **June 21, 2005**, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609, and serve a copy on the applicant(s) and/or declarant(s), at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After **June 21, 2005**, the application-declaration, as filed or as amended, may be granted and/or permitted to become effective.

**Cinergy Corp. (70-10281)**

Cinergy Corp. (“Cinergy”), a registered holding company, 139 East Fourth Street, Cincinnati, Ohio, 45202, has filed an Application-Declaration, as amended, (“Application”) under sections 6(a), 7, 9(a), 10, 12, 32 and 33 of the Public Utility Holding Company Act of 1935, as amended and rules 45 and 53 under the Act.

Background

Cinergy directly or indirectly owns all the outstanding common stock of public utility companies operating in Ohio, Indiana and Kentucky, the most significant of which are PSI Energy, Inc (“PSI”) and The Cincinnati Gas & Electric Company (“CG&E”). PSI is a vertically integrated electric utility operating in Indiana, serving more than 700,000 customers in 69 of the state’s 92 counties. CG&E is a combination gas and electric public utility holding company exempt from registration pursuant to rule 2 (b) and provides gas and electric service in the southwestern portion of Ohio. CG&E’s principal subsidiary is The Union Light, Heat and Power Company (“ULH&P”) which provides gas and electric service in northern Kentucky. Cinergy’s three utility companies are jointly referred to as the “Operating Companies.”

Cinergy also owns numerous nonutility subsidiaries engaged in businesses authorized under the Act, by Commission order or otherwise, including “exempt wholesale generators” (“EWGs”) as defined in Section 32 of the Act, “foreign utility companies” (“FUCOs”) as defined in Section 34 of the Act, “exempt telecommunications companies” as defined in Section 34 of the Act and “energy-related companies” as defined in rule 58.

## Requested Authorization

### Summary of Transactions

Cinergy requests authorization to engage in the transactions summarized below<sup>1</sup>, and described in more detail in section ---of this Notice, during the period from the effective date of the order issued in this filing through the period ending the earlier of (a) consummation of the pending merger between Cinergy and Duke Energy Corporation<sup>2</sup>, and (b) the expiration of 12 months from the date of the Commission's order in this matter granting and permitting to become effective some or all of the transactions requested in the underlying Application, ("Authorization Period") and to replace and supersede the authority granted under the Prior Orders with the financing authority sought in the Application. Among other things, Cinergy requests authority to:

- (1) increase total capitalization by \$5.0 billion through the issuance and sale of any combination of equity and debt securities as more fully described below;<sup>3</sup>
- (2) provide guarantees in an aggregate amount not to exceed \$3.0 billion;<sup>4</sup>
- (3) form and utilize special-purpose financing subsidiaries to issue and sell equity and debt securities;
- (4) enter into transactions to manage interest rate and foreign currency exchange risk;
- (5) invest financing proceeds in EWG/FUCO projects in an amount not to exceed 100% of Cinergy's consolidated retained earnings plus \$2.0 billion (the "EWG/FUCO Projects Limit"); Cinergy request that the Commission reserve jurisdiction over investments subject to the Restructuring Limit; and
- (6) invest financing proceeds in certain EWG associate companies, in the event of a transfer of part or all of certain CG&E generating facilities to one or

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<sup>1</sup> By prior orders Cinergy is authorized to engage in various financing transactions through June 23, 2005 and to issue and sell up to 50 million shares of its common stock under its stock-based employee benefit plans through December 8, 2010. Specifically, these orders are dated June 23, 2000, HCAR No. 27190 (the "Financing Order"); December 8, 2000, HCAR No. 27295 (the "Stock Plans Order") and May 18, 2001, HCAR No. 27400 (the "EWG/FUCO Order"). Collectively, the three orders are referred to as the "Prior Orders".

<sup>2</sup> On May 8, 2005 Cinergy filed a Current Report on Form 8-K with the Commission announcing the proposed merger with Duke Energy Corporation.

<sup>3</sup> As of September 30, 2004, Cinergy's total capitalization (excluding retained earnings and accumulated other income) was approximately \$3.7 billion.

<sup>4</sup> As of September 30, 2004, the aggregate amount of Cinergy's outstanding guarantees was \$705 million.

more EWG associate companies, in an amount not to exceed the net book value of the generating facilities at the time of transfer.

A. Parameters for Financing Authorization

The following general terms would be applicable, as appropriate, to the financing transactions requested to be authorized in the Application:

(1) Common Equity Ratio. Cinergy states that, at all times during the Authorization Period, it will maintain a common stock equity ratio, as reflected in Cinergy's most recent quarterly or annual report on Form 10-Q or Form 10-K, equal to at least 30% of Cinergy's consolidated capitalization except that, even if common equity falls below that level, Cinergy requests authorization to issue common stock at any time during the Authorization Period without further action by the Commission. Consolidated capitalization, for purposes of determining the ratio, is comprised of common stock equity (i.e., common stock additional paid-in capital, retained earnings and/or treasury stock), minority interests, preferred stock preferred securities, equity linked securities, long-term debt and short-term debt. Cinergy states that, as of September 30, 2004, its common equity ratio was 41.1% of its consolidated capitalization.

(2) Ratings. Cinergy states that, (i) within two business days after the occurrence of any Ratings Event,<sup>5</sup> Cinergy will notify the Commission of its occurrence (by means of a letter via fax, email or overnight mail to the staff of the Office of Public Utility Regulation), and (ii) within 30 days after the occurrence of any Ratings Event,

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<sup>5</sup> For these purposes, (A) a "Ratings Event" will be deemed to have occurred if during the Authorization Period (i) any outstanding rated security of Cinergy is downgraded below investment grade, or (ii) any security issued by Cinergy upon original issuance is rated below investment grade; and (B) a security will be deemed "investment grade" if it is rated investment grade by any of Moody's Investors Service, Standard & Poor's, Fitch Ratings or any other nationally recognized statistical rating agency (as defined by the Commission in rules adopted under the Securities Exchange Act of 1934, as amended).

Cinergy will submit to the Commission an explanation (in the form of an amendment to this Application) of the material facts and circumstances relating to that Ratings Event (including the basis on which, taking into account the interests of investors, consumers and the public as well as other applicable criteria under the Act, it remains appropriate for Cinergy to continue to avail itself of its authority to issue the securities for which authorization has been requested in this application so long as Cinergy continues to comply with the applicable terms and conditions specified in the Commission's order authorizing the transactions requested in this application).

(3) Effective Cost of Money on Financings. Cinergy states that the effective cost of capital on any series of debt security with a maturity of one year or less ("short term debt") at the time of issuance, any series of debt security with a maturity of greater than one year ("long-term debt") at the time of issuance, preferred securities or the debt component of equity-linked securities will not exceed the competitive market rates available at the time of issuance for securities having reasonably similar terms and conditions issued by similar companies of comparable credit quality ("Comparable Securities"). In no event, according to Cinergy, will the interest rate exceed, for short term debt, 300 basis points over the comparable term London Interbank Offered Rate; for long term debt, 500 basis points over the comparable term U. S. Treasury securities for preferred or equity-linked securities, 700 basis points over the comparable term Treasury securities

(4) Maturity. Cinergy states that the maturity of any preferred stock or equity-linked securities (other than perpetual preferred stock) will not exceed 50 years and will be redeemed no later than 50 years after issuance, unless converted into common

stock. Cinergy states that the maturity of long-term debt securities will not exceed 50 years.

(5) Issuance Expenses. According to Cinergy, the underwriting fees and commissions paid in connection with the issuance, sale or distribution of any securities authorized as a result of this Application will not exceed aggregate issuance expenses that are paid at the time in respect of Comparable Securities, provided that in no event will such issuance expenses exceed five percent (5%) of the principal or face amount of the securities issued or gross proceeds of the financing.

(6) Use of Proceeds. Cinergy states that it will use proceeds from the sale of securities, issued as a result of an authorization arising out of the Application, for any lawful purpose, including (a) financing of capital expenditures and working capital requirements of the Cinergy System, including by means of loans to participating companies in accordance with the terms of the Cinergy System money pool, (b) payment, redemption, acquisition and refinancing of outstanding securities issued by Cinergy, (c) direct or indirect investments in companies or assets the acquisition of which are either exempt under the Act or by Commission rule or have been authorized by the Commission and (d) general corporate purposes.

B. Description of Specific Types of Financing

(1) Common Stock and Equity-Linked Securities.

Cinergy requests authority to issue and sell additional shares of its common stock and equity-linked securities, as defined below, from time to time over the Authorization Period, subject to the limits and conditions specified in the Application.

Cinergy proposes to issue and sell additional shares of its common stock (a) through solicitations of proposals from underwriters or dealers, (b) through negotiated transactions with underwriters or dealers, (c) directly to a limited number of purchasers or to a single purchaser, and/or (d) through agents or other third parties. The price applicable to additional shares sold in any such transaction will be based on several factors, including the current market price of the common stock and prevailing capital market conditions. These transactions may also include forward sales of Cinergy common stock.

Cinergy also proposes to issue and sell from time to time options and warrants to acquire its common stock together with other equity-linked securities (collectively, “Equity-Linked Securities”), including but not limited to contracts (“Stock Purchase Contracts”) obligating holders to purchase from Cinergy, and/or Cinergy to sell to the holders, a number of shares of Cinergy common stock specified directly or by formula at an aggregate offering price either fixed at the time the Stock Purchase Contracts are issued or determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as part of units (“Stock Purchase Units”) consisting of a stock purchase contract and debt and/or Treasury securities, securing holders’ obligations to purchase the common stock of Cinergy under Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations under the contracts in a specified manner.

Cinergy further proposes to issue common stock or Equity-Linked Securities as consideration, in whole or in part, for acquisitions of securities or assets of businesses of non-affiliates, the acquisition of which (a) is exempt under the Act or the rules under the

Act or (b) has been authorized by prior Commission order issued to Cinergy, subject in either case to applicable limitations on total investments in any such business. The shares of Cinergy common stock issued (or, with respect to Equity-Linked Securities, that may be issued) in connection with any such transaction would be valued at market value based on (i) the closing price on the day before closing of the sale, (ii) average high and low prices for a period prior to the closing of the sale, or (iii) some other method negotiated by the parties.

Finally, Cinergy seeks Commission authorization to issue and sell common stock and Equity-Linked Securities in accordance with Cinergy's existing 401(k) plans and other stock-based plans for employees, officers and/or directors, as well as any additional stock-based plans Cinergy may adopt during the Authorization Period. A summary of the material terms and conditions of Cinergy's existing stock-based plans is set forth in Exhibit H attached to the Application.

(2) Preferred Securities

Cinergy proposes to issue and sell preferred securities in one or more series, subject to the limitations and conditions specified in the Application.

According to Cinergy, the preferred securities of any series (a) will have a specified par or stated value or liquidation value per security, (b) will carry a right to periodic cash dividends and/or other distributions, subject among other things, to funds being legally available, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the par or stated or liquidation value, (d) may be convertible or exchangeable into common stock of Cinergy, (e) and may bear such further rights, including voting, preemptive or other rights, and other terms

and conditions, as set forth in the applicable certificate of designation, purchase agreement or similar instrument governing the issuance and sale of such series of preferred securities.

Cinergy proposes to issue preferred securities in private or public transactions. With respect to private transactions, Cinergy proposes to issue and sell preferred securities of any series directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell the preferred securities without registration under the Securities Act of 1933, as amended (the "Securities Act") in reliance upon one or more applicable exemptions from registration under the Securities Act. From time to time Cinergy also proposes to issue and sell preferred securities of one or more series to the public through (i) underwriters selected by negotiation or competitive bidding or (ii) selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

According to Cinergy, the liquidation preference, dividend or distribution rates, redemption provisions, voting rights, conversion or exchange rights, and other terms and conditions of a particular series of preferred securities, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding and reflected in the applicable certificate of designation, purchase agreement, underwriting agreement or other instrument setting forth such terms.

(3) Debt Securities

a. Short-Term Notes

Cinergy proposes, subject to the terms and conditions specified in the Application, from time to time within the Authorization Period, to make short-term borrowings from banks or other financial institutions. Cinergy states that such borrowings from banks or other financial institutions will be evidenced by (a) “transactional” promissory notes to be dated the date of such borrowings and to mature not more than one year after the date thereof or (b) “grid” promissory notes evidencing all outstanding borrowings from the respective lender, to be dated as of the date of the first borrowing, with each borrowing maturing not more than one year thereafter. Any such note may or may not be subject to prepayment, in whole or in part, with or without a premium in the event of prepayment.

b. Commercial Paper

Cinergy proposes to issue and sell commercial paper through one or more dealers or agents or directly to purchasers from time to time during the Authorization Period, subject to the limits and conditions specified in the Application.

Cinergy proposes to issue and sell the commercial paper at market rates with varying maturities not to exceed 364 days. According to Cinergy, the commercial paper will be in the form of book-entry unsecured promissory notes with varying denominations of not less than \$1,000 each. Also, for commercial paper sales effected on a discount basis, no commission or fee will be payable in connection with those sales; however, the purchasing dealer will re-offer the commercial paper at a rate less than the rate to Cinergy. Further, the discount rate to dealers will not exceed the maximum

market clearing discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and the same maturity and any purchasing dealer will re-offer the commercial paper in such a manner as not to constitute a public offering within the meaning of the Securities Act.

c. Long-Term Notes

Cinergy proposes to issue and sell long-term debt securities (“Notes”) in one or more series from time to time within the Authorization Period, subject to the limits and conditions specified in the Application.

Cinergy proposes to issue and sell Notes of any series as either senior or subordinated obligations of Cinergy. According to Cinergy, if issued on a secured basis, Notes would be secured solely by common stock, or other assets or properties, of one or more of Cinergy’s nonutility subsidiaries (exclusive of any nonutility subsidiary held by CG&E or PSI)<sup>6</sup>. Notes of any series (i) will have maturities greater than one year, (ii) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount of the notes, (iii) may be entitled to mandatory or optional sinking fund provisions, and (iv) may be convertible or exchangeable into common stock of Cinergy. Interest accruing on Notes of any series may be fixed or floating or “multi-modal” (i.e., where the interest is periodically reset, alternating between fixed and floating interest rates for each reset period, with all accrued

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<sup>6</sup> According to Cinergy, the nonutility subsidiaries in question consist of one or more direct, wholly-owned nonutility subsidiaries of Cinergy, which currently comprise the following: Cinergy Investments, Inc., which holds Cinergy’s nonutility wholesale gas marketing business and cogeneration business, among others; Cinergy Global Resources, Inc., which holds most of Cinergy’s foreign utility investments; CinTec LLC, which holds certain ETC investments; Cinergy Technologies, Inc., which holds certain ETC investments and nonutility energy-related businesses; and Cinergy Wholesale Energy, Inc., which holds certain currently inactive nonutility businesses. None of these nonutility subsidiaries (or their subsidiaries) has any material relationships with Cinergy’s utility companies, other than with respect to certain Commission-approved and/or state public utility commission-approved affiliate contracts.

and unpaid interest together with interest on that interest becoming due and payable at the end of each such reset period). Under Cinergy's proposal, Notes may be issued under one or more indentures to be entered into between Cinergy and financial institutions(s) acting as trustee(s); supplemental indentures may be executed in respect of separate offerings of one or more series of Notes.

Cinergy states that Notes may be issued in private or public transactions. With respect to the former, Notes of any series may be issued and sold directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell the Notes without registration under the Securities Act in reliance upon one or more applicable exemptions from registration under the Securities Act. From time to time Cinergy may also issue and sell Notes of one or more series to the public either (i) through underwriters selected by negotiation or competitive bidding or (ii) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

Finally, according to Cinergy, the maturity dates, interest rates, redemption and sinking fund provisions, and conversion features, if any, with respect to the Notes of a particular series, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding and reflected in the applicable indenture or supplement to the indenture in addition to any purchase agreement or underwriting agreement setting forth these terms.

(4) Financing Entities

In addition to issuing any of the foregoing debt or equity securities directly, Cinergy requests approval to form one or more subsidiaries that, subject to the limits and conditions of the Application, would (a) issue and sell any of the foregoing securities, (b) lend, distribute or otherwise transfer the proceeds of those securities to Cinergy or an entity designated by Cinergy and (c) engage in transactions incidental to issuance or sale of those securities.

Cinergy states that its proposed subsidiaries will comprise one or more financing subsidiaries (each, a “Financing Subsidiary”) and one or more special-purpose entities (each, a “Special-Purpose Entity”, and together with Financing Subsidiaries, “Financing Conduits”). In either case the subsidiaries’ businesses will be limited to issuing and selling securities on behalf of Cinergy and transactions incidental to issuing or selling those securities; the subsidiaries will have no substantial physical assets or properties. Any securities issued by the Financing Conduits may be guaranteed by Cinergy, either directly or ultimately.

Cinergy proposes to acquire shares of common stock or other equity interests of a Financing Subsidiary for an amount not less than the minimum required by applicable law. The business of a Financing Subsidiary will be limited to effecting financing transactions with third parties for the benefit of Cinergy and its subsidiaries. As an alternative in a particular instance to Cinergy directly issuing debt or equity securities, or through a Special-Purpose Entity, Cinergy may determine to use a Financing Subsidiary as the normal issuer of the particular debt or equity security. In that circumstance, Cinergy may provide a guarantee or other credit support with respect to the securities

issued by the Financing Subsidiary, the proceeds of which would be lent, distributed or otherwise transferred to Cinergy or an entity designated by Cinergy. In passing it is worth noting that Section 13(b) of the Act and rules 87 and 90 under the Act provide for such services as long as the charge for those services does not exceed a market price.

According to Cinergy, one of the primary strategic reasons behind the use of a Financing Subsidiary is to segregate financings for the different businesses conducted by Cinergy, distinguishing between securities issued by Cinergy to finance its investments in nonutility businesses and those issued to finance its investments in the core utility business. A separate Financing Subsidiary may be used by Cinergy with respect to different types of nonutility businesses. Cinergy proposes to use Special-Purpose Subsidiaries in connection with certain financing structures for issuing debt or equity securities, in order to achieve a lower cost of capital, or incrementally greater financial flexibility or other benefits, than would otherwise be the case.

(5) Hedging Transactions and Certain Risk Management Instruments

Cinergy requests authority to manage interest rate and foreign currency exchange risk through the entry into, purchase and sale of various risk management instruments commonly used in capital markets, such as interest rate and currency swaps, caps, collars, floors, options, warrants, forwards, forward issuance agreements and similar products designed to manage those risks (collectively, “Derivative Instruments”).

Cinergy requests authorization to enter into Derivative Instruments (either directly or through Financing Conduits) for the purpose of managing interest rate and foreign currency exchange risk only with counterparties (“Authorized Counterparties”) whose senior debt, at the date of entry into the Derivative Instrument, is rated investment grade

by at least one nationally recognized credit rating agency. Cinergy states that the Derivative Instruments will be for fixed periods and the notional principal amount will not exceed the principal amount of the underlying security, except to the extent necessary to adjust for differing price movements between the underlying security and the Derivative Instrument or to allow for the fees related to the transaction. Cinergy states that any fees and commissions that it pays in connection with any Derivative Instrument will not exceed the then-current market level.

Cinergy states that it will not engage in “speculative” derivative transactions and will comply with the Statement of Financial Accounting Standards (“SFAS”) 133 as amended (“Accounting for Derivative Instruments and Hedging Activities”) with respect to all Derivative Instruments entered into, purchased or sold together with such other standards, if any, relating to accounting for derivative transactions as may, over the course of the Authorization Period, be adopted and implemented by the Financial Accounting Standards Board (“FASB”). Cinergy will designate certain of the Derivative Instruments that may be authorized as a result of the Application as either fair value or cash flow hedges in accordance with SFAS 133 and as determined at the date of entry into the respective Derivative Instruments.

In addition, as explained in Exhibit J attached to the Application, Cinergy states that it will enter into certain Derivative Instruments that, although accounted for under SFAS 133, will not receive hedge accounting treatment under SFAS 133.

(6) Intra-System Financings and Guarantees

Cinergy requests authority, subject to the limits and conditions specified in the Application, to guarantee, obtain letters of credit, enter into financing arrangements and otherwise provide credit support (each, a “Guarantee”) from time to time during the Authorization Period, in respect to the debt or other securities or obligations of any or all of Cinergy’s subsidiary or associate companies (including those formed or acquired at any time over the Authorization Period), and otherwise to further the business of Cinergy. The terms and conditions of any Guarantees, and the underlying liabilities covered by those Guarantees would, according to Cinergy, be established at arm’s length based upon market conditions. Cinergy requests authorization to charge a fee to the subsidiary on whose behalf Cinergy issues a Guarantee. Cinergy states that this fee will not exceed a reasonable estimate of the costs, if any that would have been incurred by the subsidiary in obtaining the liquidity necessary to perform under the Guarantee for the period it remains outstanding.

Cinergy states that the total amount of Guarantees outstanding at any one time will be limited not only by the Guarantees Limit, but also, where issued in respect of EWGs or FUCOs or rule 58 Companies, by the investment limitations specified under rules 53 and 58 and applicable Commission orders, including the order requested under the Application. From time to time Cinergy expects to issue Guarantees in respect of obligations that are not, according to Cinergy, susceptible to exact quantification. For these cases Cinergy requests authority to determine its exposure under the Guarantees, for purposes of measuring compliance with the Guarantees Limit (and any applicable investment limits under rules 53 and 58), by appropriate means, including estimation of

exposure based on loss experience or projected potential payment amounts under the underlying obligation. Cinergy proposes to make these estimates, if appropriate, in accordance with generally accepted accounting principles. These estimates will be re-evaluated periodically.

Where, as discussed above, Cinergy may cause debt or equity securities to be issued through Financing Conduits authorized as a result of this Application, Cinergy requests authorization to provide a Guarantee in respect of the payment and other obligations of the Financing Conduit under the securities issued by it. Since any securities nominally issued by a Financing Conduit are in substance securities issued by Cinergy itself, Cinergy intends that any securities issued by a Financing Conduit count dollar-for-dollar against the Aggregate Financing Limit. Conversely, Cinergy states that any Guarantees of securities of Financing Conduits should be excluded entirely from the Guarantees Limit, since inclusion of those Guarantees would amount to “double counting,” in effect reducing Cinergy’s Aggregate Financing Limit to the extent it used Financing Conduits.

#### C. EWG/FUCO Investments Limit

Cinergy requests authority, subject to the limits and conditions specified in the Application, to issue and sell securities for the purpose of funding investments in EWGs and FUCOs in an amount not to exceed the EWG/FUCO Investments Limit. The EWG/FUCO Investments Limit is comprised of two separate investment limits, the EWG/FUCO Projects Limit and the Restructuring Limit, permitting respective aggregate investments as follows:

(1) EWG/FUCO Projects Limit. With respect to EWG/FUCO Projects other than those subject to the Restructuring Limit, an aggregate investment not to exceed (a) 100% of Cinergy's consolidated retained earnings, plus (b) \$2.0 billion.

(2) Restructuring Limit. Solely with respect to the potential transfer of certain of CG&E's generating facilities to one or more Restructuring Subsidiaries, an aggregate investment in such Restructuring Subsidiaries not to exceed the net book value of any such transferred generating facilities at the date of transfer.

With respect to the Restructuring Limit, Cinergy states that the net book value of CG&E's generating facilities at September 30, 2004 (excluding certain generating facilities to be transferred to ULH&P)<sup>7</sup> was approximately \$1,544 million, including construction work in progress of \$44 million. Ohio is the only state in the three-state region in which Cinergy's utilities operates that has enacted electric restructuring legislation. This legislation went into effect in January 2001, deregulating electric generation and supply and giving Ohio retail customers the right to choose electric suppliers. Cinergy states that CG&E may determine to transfer one or more of its generating facilities to one or more Restructuring Subsidiaries during the Authorization Period. In light of this and Ohio's restructuring law Cinergy states that it has included the Restructuring Limit as part of its overall proposal regarding EWG/FUCO investments. Pending completion of the record, however, Cinergy requests that the Commission reserve jurisdiction over the Restructuring Limit, including any potential investments in Restructuring Subsidiaries.

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<sup>7</sup> See HCAR No. 27940, Jan. 21, 2004 (notice with respect to declaration filed by Cinergy and CG&E in File No. 70-10254).

**Cinergy Corp., et al. (70-10303)**

Cinergy Corp. (“Cinergy”), a Delaware corporation registered under the Act, The Cincinnati Gas & Electric Company (“CG&E”), an electric and gas utility company and holding company, and a wholly-owned subsidiary of Cinergy, and CG&E’s wholly-owned subsidiaries The Union Light, Heat and Power Company (“ULH&P”), an electric and gas utility company, and Miami Power Corporation (“Miami”), an electric utility company, and KO Transmission Company (“KO”), a nonutility company, and Tri-State Improvement Company (“Tri-State”), a nonutility company, each at 139 East Fourth Street, Cincinnati, Ohio, together with PSI Energy, Inc., an electric utility company (“PSI”) and wholly-owned subsidiary of Cinergy, at 1000 East Main Street, Plainfield, Indiana, and Cinergy Services, Inc., a Delaware corporation and wholly-owned service company subsidiary of Cinergy, also at 139 East Fourth Street, Cincinnati, (“Cinergy Services” and, collectively with the foregoing companies, “Applicants”), have filed an application-declaration (“Application”) with the Commission under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act. Applicants request authorization to engage in certain short-term financing transactions as described below, involving (i) loans and borrowings under the “money pool” arrangement described below, (ii) bank borrowings and (iii) commercial paper sales.

Cinergy directly holds all the outstanding common stock of CG&E and PSI.

Cinergy was created as a holding company in connection with the 1994 merger of CG&E and PSI.<sup>8</sup> Through CG&E (including its principal subsidiary, ULH&P) and PSI, Cinergy provides retail electric and/or natural gas service to customers in southwestern Ohio, northern Kentucky and most of Indiana. In addition to its Midwestern-based utility business, Cinergy has numerous non-utility subsidiaries engaged in a variety of energy-related businesses.

CG&E is a combination electric and gas public utility holding company exempt from registration under the Act in accordance with rule 2(b) under the Act. CG&E is engaged in the production, transmission, distribution and sale of electric energy and the sale and transportation of natural gas in southwestern Ohio and, through ULH&P, northern Kentucky. The Public Utilities Commission of Ohio (“PUCO”) regulates CG&E with respect to retail sales of electricity and natural gas and other matters, including issuance of securities.

A direct wholly-owned subsidiary of CG&E formed under Kentucky law, ULH&P is engaged in the transmission, distribution and sale of electric energy and the sale and transportation of natural gas in northern Kentucky. The Kentucky Public Service Commission (“KPSC”) regulates ULH&P with respect to retail sales of electricity and natural gas and other matters, including issuance of securities. In addition to ULH&P, CG&E has several other subsidiaries. None of these subsidiaries, individually or in the aggregate, is material to CG&E’s business.

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<sup>8</sup> See Cinergy Corp., HCAR No. 26146, Oct. 21, 1994 (“1994 Merger Order”).

Miami is an electric utility company whose business is limited to ownership of a 138 kilovolt transmission line extending from the Miami Fort Power Station in Ohio (in which CG&E owns interests in four electric generating units) to a point near Madison, Indiana. KO is a nonutility company that owns interests in natural gas pipeline facilities located in Kentucky. Tri-State is a nonutility company that acquires and holds real estate intended for future use in CG&E's utility business.

PSI is engaged in the production, transmission, distribution and sale of electric energy in north central, central, and southern Indiana. The Indiana Utility Regulatory Commission ("IURC") regulates PSI with respect to retail sales of electricity and other matters, including issuance of securities.

Cinergy Services Inc. ("Cinergy Services"), Cinergy's service company subsidiary, provides centralized management, administrative and other support services to the utility and nonutility associate companies in Cinergy's holding company system.

By order dated August 2, 2001, HCAR No. 27429 ("2001 Order"), the Commission authorized the Applicants to engage in various short-term financing transactions from time to time through June 30, 2006, as follows:

1. With respect to the Cinergy system "money pool," ("Money Pool") which was established by and among Cinergy, Cinergy Services, PSI and CG&E (including its subsidiaries) to help provide for the short-term cash and working capital requirements of the latter three companies,<sup>9</sup> PSI, ULH&P and Miami were authorized to make loans to and incur borrowings from each other;

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<sup>9</sup> Cinergy Corp., et al., HCAR No. 26362, (Aug. 25, 1995) authorizing establishment of Money Pool ("1995 Money Pool Order").

2. Cinergy, CG&E, Cinergy Services, Tri-State and KO were authorized to make loans to PSI, ULH&P and Miami;
3. PSI, ULH&P and Miami were authorized to incur short-term borrowings from banks and other financial institutions; and
4. PSI was also authorized to issue and sell commercial paper.

Under the 2001 Order, the maximum principal amount of short-term borrowings that PSI, ULH&P and Miami could incur and have outstanding at any one time (whether from (i) the Money Pool, (ii) banks and other financial institutions, or (iii) in PSI's case, through sales of commercial paper) was as follows: PSI, \$600 million; ULH&P, \$65 million; and Miami, \$100,000.

Applicants state that the short-term borrowing limitation established in the 2001 Order is no longer appropriate for ULH&P, given that company's anticipated capital requirements following the consummation of its pending transaction with CG&E, in which it will acquire interests in three of CG&E's electric generating stations, with 1105 megawatts of total capacity. This transaction will significantly increase the overall size of ULH&P, with a commensurate impact on its ongoing capital requirements, including short-term borrowing needs. ULH&P now proposes to increase its short-term borrowing authority from \$65 million to \$150 million for the duration of the Authorization Period, as defined below.

In addition, Applicants propose to engage in the following transactions, also in each case through the earlier of (a) consummation of the pending merger between Cinergy Corp. ("Cinergy"), a Delaware corporation and registered holding company under the Act, and Duke Energy Corporation and (b) the expiration of 12 months from

the date of the Commission's order granting the authorizations requested in the Application ("Authorization Period"):

1. In connection with the continued operation of the Money Pool, PSI, ULH&P and Miami ("Nonexempt Subsidiaries")<sup>10</sup> propose to make loans to and incur borrowings from each other;
2. In connection with the continued operation of the Money Pool, Cinergy<sup>11</sup> Services, CG&E, Tri-State and KO propose to make loans to the Nonexempt Subsidiaries thereunder;
3. The Nonexempt Subsidiaries propose to incur short-term borrowings from banks or other financial institutions (collectively, "Banks"); and
4. PSI and ULH&P propose to issue and sell commercial paper.

The maximum principal amount of short-term borrowings outstanding at any time by the Nonexempt Subsidiaries (whether pursuant to the Money Pool, Bank loans or sales of commercial paper) would not exceed the following amounts (each, a "Borrowing

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<sup>10</sup> Applicants state that the short-term borrowing authority requested for PSI, ULH&P and Miami (whether from affiliates, as under the Money Pool, or from non-affiliates, as with respect to borrowings from banks and other financial institutions and sales of commercial paper) is not subject to the securities issuance jurisdiction of the applicable state public utility commissions. Accordingly, the proposed short-term borrowings for these companies are not eligible for the exemption afforded by rule 52(a) under the Act. More specifically, neither the IURC nor the KPSC has authority over short-term borrowings (defined as (i) in the case of the IURC, borrowings with a maturity of one year or less, and (ii) in the case of the KPSC, borrowings with a maturity of two years or less). The PUCO, however, does have authority over short-term borrowings of any maturity; accordingly, short-term borrowings by CG&E are exempt from Commission authorization under rule 52(a).

<sup>11</sup> Cinergy has Commission authority through June 23, 2005 (Cinergy Corp. et al., HCAR No. 27190, (June 23, 2000)) to use financing proceeds to "make loans to, and investments in, other system companies, including through the Cinergy system money pool [citation omitted]." Cinergy has filed an application (File No. 70-10281) to extend that authorization.

Cap”): PSI, \$600 million; ULH&P, \$150 million; and Miami, \$100,000. (The Borrowing Caps for PSI and Miami are unchanged from those set forth in the 2001 Order.)

Proceeds of short-term borrowings by the Nonexempt Subsidiaries (whether under the Money Pool, bank loans or sales of commercial paper) would be used by those companies for general corporate purposes, including (1) interim financing of capital requirements; (2) working capital needs; (3) repayment, redemption, refinancing of debt or preferred stock; (4) cash requirements to meet unexpected contingencies and payment and timing differences; (5) loans through the Money Pool; and (6) other transactions relating to those Applicants’ utility businesses.

#### Money Pool

Subject to their respective Borrowing Caps, from time to time over the Authorization Period, the Nonexempt Subsidiaries propose to make loans to each other; and Cinergy Services, CG&E, Tri-State and KO propose to make loans to the Nonexempt Subsidiaries, in accordance with the Money Pool.<sup>12</sup>

Applicants propose no changes to the Money Pool, the terms of which were originally authorized in the 1995 Money Pool Order and are set forth in the related Money Pool Agreement. (Cinergy, Cinergy Services, CG&E, Tri-State, KO, PSI, ULH&P and Miami are collectively referred to as the “Money Pool Participants.”)

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<sup>12</sup> Borrowings by Cinergy Services, CG&E, Tri-State and KO from each other or from any of the other Money Pool participants under the Money Pool (namely, Cinergy and the Nonexempt Subsidiaries) are exempt (together with the corresponding loans) under rule 52(a) (in the case of CG&E) and rule 52(b) (in the case of Cinergy Services, Tri-State and KO).

Short-term Bank Borrowings & Commercial Paper

Subject to their respective Borrowing Caps, from time to time over the Authorization Period, (a) the Nonexempt Subsidiaries propose to borrow short-term funds from Banks pursuant to formal or informal credit facilities, and (b) PSI and ULH&P propose to issue and sell commercial paper, as described below.

Bank borrowings would be evidenced by promissory notes, each of which would be issued no later than the expiration date of the Authorization Period and would mature no later than one year from the date of issuance (except in the case of borrowings by ULH&P, which would mature no later than two years from the date of issuance); would bear interest at a rate no higher than the lower of (a) 400 basis points over the comparable London interbank offered rate or (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies; may require fees to the lender not to exceed 200 basis points per annum on the total commitment; and, except for borrowings on uncommitted credit lines, may be prepayable in whole or in part, with or without a premium.

Subject to the applicable Borrowing Caps, from time to time over the Authorization Period, PSI and ULH&P also propose to issue and sell commercial paper through one or more dealers or agents (or directly to a limited number of purchasers if the resulting cost of money is equal to or less than that available from commercial paper placed through dealers or agents).

PSI and ULH&P propose to issue and sell the commercial paper at market rates (either on an interest bearing or discount basis) with varying maturities not to exceed 270 days. The commercial paper will be in the form of book-entry unsecured promissory

notes with varying denominations of not less than \$1,000 each. In commercial paper sales effected on a discount basis, the purchasing dealer may re-offer the commercial paper at a rate less than the rate to PSI or ULH&P. The discount rate to dealers will not exceed the maximum discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and the same maturity. The purchasing dealer will re-offer the commercial paper in a manner that will not constitute a public offering within the meaning of the Securities Act of 1933..

In addition, solely with respect to the issuance by PSI, ULH&P and Miami of Bank debt and by PSI and ULH&P of commercial paper (in each case other than for purposes of funding the Money Pool): (i) within two business days after the occurrence of any Ratings Event,<sup>13</sup> Cinergy will notify the Commission of its occurrence (by means of a letter via fax, email or overnight mail to the staff of the Office of Public Utility Regulation), and (ii) within 30 days after the occurrence of any Ratings Event, Cinergy will submit to the Commission an explanation (in the form of an amendment to the Application) of the material facts and circumstances relating to that Ratings Event (including the basis on which, taking into account the interests of investors, consumers and the public as well as other applicable criteria under the Act, it remains appropriate for PSI, ULH&P and Miami to continue to avail itself of its authority to issue the securities for which authorization has been requested in the Application so long as each continues

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<sup>13</sup> For these purposes, (A) a “Ratings Event” will be deemed to have occurred if during the Authorization Period (i) any outstanding rated security of PSI, ULH&P or Miami is downgraded below investment grade, or (ii) any security issued by PSI, ULH&P or Miami upon original issuance is rated below investment grade; and (B) a security will be deemed “investment grade” if it is rated investment grade by any of Moody’s Investors Service, Standard & Poor’s, Fitch Ratings or any other nationally recognized statistical rating agency (as defined by the Commission in rules adopted under the Securities Exchange Act of 1934, as amended).

to comply with the applicable terms and conditions specified in the Commission's order authorizing the transactions requested in the Application).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland  
Deputy Secretary