

SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-27987; 70-10281)

Cinergy Corp.

Order Authorizing Various Financing Transactions

June 23, 2005

Cinergy Corp. (“Cinergy”), a registered holding company under the Public Utility Holding Company Act of 1935, as amended (“Act”), Cincinnati, Ohio, has filed with the Securities and Exchange Commission (“Commission”) an application-declaration, as amended, (“Application”) under sections 6(a), 7, 9(a), 10, 12, 32 and 33 of the Act and rules 45 and 53 under the Act. The Commission issued a notice of the Application on May 31, 2005, HCAR No. 27975. No request for a hearing was received.

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) under the Act 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 described below,¹ 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,² 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 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.”

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

(1) increase total capitalization, from the amount of approximately \$3.7 billion in effect at September 30, 2004, by \$5.0 billion through the issuance and sale of any combination of equity and debt securities, whether directly or through one or more financing subsidiaries (“Aggregate Financing Limit”) as more fully described below; provided however, that Cinergy requests that the Commission reserve jurisdiction over that portion of the Aggregate Financing Limit in excess of \$4.0 billion pending completion of the record;³

(2) provide guarantees in an aggregate amount not to exceed \$3.0 billion;⁴

(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 requests that the Commission reserve jurisdiction over investments subject to the Restructuring Limit⁵; 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 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

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

⁴ As of September 30, 2004, the aggregate amount of Cinergy’s outstanding guarantees was \$705 million.

⁵ “Restructuring Limit” is the aggregate investment equal to the fair market value of the generating facilities at the time of transfer from CG&E to one or more Restructuring Subsidiaries. “Restructuring Subsidiaries” are one or more EWG associate companies to which certain of CG&E’s generating facilities might be transferred as discussed in the EWG/FUCO Order and over which proposed additional investment capacity in order to accommodate the potential transfer the Commission has reserved jurisdiction.

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,⁶ 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 underlying this order) 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 under this order long as Cinergy continues to comply with the applicable terms and conditions specified in this order). Cinergy will not issue any securities authorized under this order following the 60th day after a Ratings Event (other than (a) common

⁶ 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).

stock and (b) commercial paper and short-term bank borrowings in each case solely to fund the Cinergy system money pool); provided, however, that Cinergy requests that the Commission reserve jurisdiction over its issuance of any securities authorized under this order following such 60th day.

(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; or, for preferred or equity-linked securities, 700 basis points over the comparable term U.S. 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 (“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 unsecured and 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); provided, however, that Cinergy requests the Commission to reserve jurisdiction over any such unsecured Notes pending completion of the record.⁷ 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 and unpaid interest together

⁷ 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.

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. 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 meets certain conditions.

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 Entities 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 proposed to be transferred to ULH&P)⁸ 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.

⁸ *See* HCAR No. 27940, Jan. 21, 2004 (notice with respect to declaration filed by Cinergy and CG&E in File No. 70-10254).

The proposed transactions are also generally subject to section 32 of the Act and rules 53 and 54. Under rule 53(a), the Commission shall not make certain specified findings under sections 7 and 12 in connection with a proposal by a holding company to issue securities for the purpose of acquiring the securities of, or other interest in, an EWG, or to guarantee the securities of an EWG, if each of the conditions in paragraphs (a)(1) through (a)(4) of the rule are met, provided that none of the conditions specified in paragraphs (b)(1) through (b)(3) of rule 53 exists. Rule 54 provides that the Commission shall not consider the effect of the capitalization or earnings of subsidiaries of a registered holding company that are EWGs or FUCOs in determining whether to approve other transactions if rule 53(a), (b) and (c) are satisfied.

Cinergy currently is within the “safe harbor” afforded by rule 53(a). As of March 31, 2005, Cinergy’s “aggregate investment,” as defined in rule 53(a)(1), in EWGs and FUCOs was approximately \$744 million, or approximately 46.9% of Cinergy’s average “consolidated retained earnings,” also as defined in rule 53(a)(1), at March 31, 2005 (approximately \$1,587 million). Further, while Cinergy currently meets the 50% “safe harbor” limitation contained in rule 53(a), the Commission authorized Cinergy by order dated May 18, 2001, HCAR No. 27400, to apply financing proceeds for an aggregate investment in EWG/FUCO projects not to exceed (1) an amount equal to 100 percent of Cinergy’s consolidated retained earnings plus (2) \$2.0 billion.

Cinergy states that it satisfies all the other conditions of paragraphs (a) and (b) of rule 53. With reference to rule 53(a)(2), Cinergy states that it maintains books and records in conformity with, and otherwise adheres to, the requirements of the rule. With reference to rule 53(a)(3), Cinergy states that no more than 2% of the employees of

Cinergy's domestic public utility companies render services, at any one time, directly or indirectly, to EWGs or FUCOs in which Cinergy directly or indirectly holds an interest. With reference to rule 53(a)(4), Cinergy states that it will promptly provide a copy of the Application to each regulator referred to in the Application and will otherwise comply with the requirements of the rule concerning the furnishing of information. With reference to rule 53(b), Cinergy states that none of the circumstances enumerated in subparagraphs (1), (2), and (3) have occurred. Finally, Cinergy states that rule 53(c) by its terms is inapplicable since the proposed transactions do not involve the issue or sale of a security to finance the acquisition of an EWG or FUCO.

Fees, commissions and expenses incurred in connection with the preparation and filing of this Application are estimated not to exceed \$3,000. Cinergy states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of the Application has been given in the manner prescribed in rule 23 under the Act and no hearing has been requested of or ordered by the Commission. Based on the facts in the record, the Commission finds that the applicable standards of the Act and rules are satisfied and that no adverse findings are necessary.

IT IS ORDERED, under the applicable provisions of the Act and the rules under the Act, except for the matters over which jurisdiction has been reserved, that the authorizations requested in the Application as amended, are granted and permitted to become effective subject to the terms and conditions prescribed in rule 24 under the Act, except that Cinergy will file certificates of notification within 60 days after the end of

each calendar quarter until the end of the Authorization Period and the rule 24 certificates will contain the following information for that quarterly reporting period just completed, or that part of the quarterly reporting period completed, within the Authorization Period:

1. With respect to the EWG/FUCO Projects Limit:

- a. A computation in accordance with rule 53(a) setting forth Cinergy's consolidated retained earnings and aggregate investment, together with a calculation of remaining capacity under the EWG/FUCO Projects Limit;
- b. A breakdown showing Cinergy's aggregate investment in each individual EWG or FUCO;
- c. Cinergy's consolidated capitalization ratios, in terms of debt, common equity and preferred stock;
- d. The market-to-book ratio of Cinergy's common stock;
- e. Identification of any new EWG or FUCO projects in which Cinergy invested or committed to invest during the preceding quarter;
- f. Growth in consolidated retained earnings, segregating total earnings growth attributable to EWGs and FUCOs from that attributable to all other subsidiaries of Cinergy; and
- g. Year-to-date revenues and net income of each EWG or FUCO in which Cinergy has an interest.

2. With respect to the securities issuance authority granted in this order:

- a. Summary information concerning any securities issued during the preceding quarter under authority granted in this order, including Cinergy's relative position as of the end of the quarter under the Aggregate Financing Limit and the

Guarantees Limit, together with a representation confirming that Cinergy has met the applicable terms and conditions as set forth in the sections above on Financing Parameters and Specific Types of Financing.

b. As described in section A. 2. above, notify the Commission within two (2) business days after the occurrence of a Ratings Event and provide such further information as the Commission requires to determine whether it remains appropriate for Cinergy to continue to avail itself of the financing authority granted under this order.

IT IS FURTHER ORDERED, that jurisdiction is reserved, pending completion of the record, over (i) the Aggregate Financing Limit; (ii) the Restructuring Limit, including any potential investments in Restructuring Subsidiaries; and (iii) issuances after a Ratings Event.

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

J. Lynn Taylor
Assistant Secretary