

SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-27999; 70-10287)

Cinergy Corporation

Order Authorizing Investment in Non-Utility Subsidiaries That Provide Infrastructure Services in the United States; Reservation of Jurisdiction

July 12, 2005

Cinergy Corp., (“Cinergy”), Cincinnati, Ohio, a registered holding company under the Public Utility Holding Company Act of 1935, as amended, (“Act”), has filed with the Securities and Exchange Commission (“Commission”) an application-declaration, as amended (“Application”), under sections 6(a), 7, 9(a), 10 and 11(b)(1) of the Act and rule 54 under the Act. The Commission issued a notice of the filing of the Application on April 1, 2005 (HCAR No. 27955). No request for a hearing was received.

Cinergy requests authority to invest, directly or indirectly through one or more subsidiaries, up to \$100 million (including existing investments, the “Investment Cap”) from time to time through June 30, 2008 (“Authorization Period”), in new or existing non-utility companies (“IS Subsidiaries”) that derive or would derive substantially all of their operating revenues from the sale of Infrastructure Services (as hereinafter defined) both within and outside the United States. The Investment Cap would include Cinergy's existing investments in IS Subsidiaries on the date of any order issued by the Commission's in regard to the Application.¹ Cinergy requests that the Commission

¹ Cinergy states that as of March 31, 2005 it had invested approximately \$30 million in IS Subsidiaries.

reserve jurisdiction, pending completion of the record, over Cinergy's proposal to invest in any IS Subsidiary that derives or will derive a substantial portion of its operating revenues from the sale of Infrastructure Services outside the United States.

By order dated October 23, 2002 in File No. 70-10015, HCAR No. 27581 (“2002 Order”), the Commission authorized Cinergy to invest up to \$500 million through March 31, 2005 in IS Subsidiaries that derive or would derive substantially all of their operating revenues from the sale of Infrastructure Services (as defined below) both within and outside the United States, while reserving jurisdiction over investments by Cinergy in IS Subsidiaries that would provide Infrastructure Services outside the United States. As defined in the 2002 Order, and for purposes of the Application, “Infrastructure Services” include design, construction (as defined in rule 80(c) under the Act), retrofit and maintenance of utility transmission and distribution systems; substation construction; installation and maintenance of natural gas pipelines and laterals, water and sewer pipelines, and underground and overhead telecommunications networks; and installation and servicing of meter reading devices and related communications networks, including fiber optic cable; provided, however, that Infrastructure Services would under no circumstances include the acquisition or ownership of “utility assets” within the meaning of section 2(a)(18) of the Act.

Currently, Cinergy has four IS Subsidiaries: (i) Cinergy Supply Network, Inc., a Delaware corporation (“CSN”), which does not engage in an active business but is solely a holding company for Cinergy's other IS Subsidiaries; (ii) Reliant Services, LLC

(“Reliant”), an Indiana limited liability company owned jointly and equally by CSN and a subsidiary of Vectren Corporation. Reliant provides line locating and meter reading services to utilities and through its wholly-owned indirect subsidiary, Miller Pipeline Corporation, installs, repairs and maintains underground pipelines used in natural gas, water and sewer systems. Reliant operates throughout the United States with its customer base primarily concentrated in the Midwest; (iii) MP Acquisition Corp., an Indiana corporation (“MP”), is a direct wholly-owned subsidiary of Reliant that engages in no active business but rather is solely a holding company for Miller Pipeline Corporation; and (iv) Miller Pipeline Corporation, an Indiana corporation (“Miller Pipeline”) and a direct wholly-owned subsidiary of MP that installs, repairs and maintains underground pipelines used in natural gas, water and sewer systems. Miller Pipeline operates throughout the United States with its customer base primarily concentrated in the Midwest.

Investments in any IS Subsidiary may take the form of an acquisition, directly or indirectly, of the stock or other equity securities of a new subsidiary or of an existing company and any subsequent purchases of additional equity securities and any loans or cash capital contributions to any such company. In addition, any guarantee provided by Cinergy in respect of any payment or performance obligation of any IS Subsidiary would be counted against the Investment Cap. Cinergy will fund investments in IS Subsidiaries using available cash or the proceeds of financings, as authorized in HCAR No. 27190 (June 23, 2000) or any supplemental or superseding financing order issued to Cinergy during the Authorization Period.

Cinergy states that it will not seek recovery through higher rates to its utility subsidiaries' customers for any losses Cinergy may sustain, or any inadequate returns it may realize, in respect of its investments in IS Subsidiaries, and that any Infrastructure Services performed by any IS Subsidiaries, directly or indirectly, for any associate or affiliate utility companies (as those terms are defined in the Act) would be conducted at cost and otherwise in accordance with the service agreements approved by the Commission in HCAR No. 27016 (May 4, 1999).

With respect to the transactions proposed, commencing with the first full six month period after the date of this order and for the duration of the Authorization Period, Cinergy will file with the Commission in accordance with rule 24 under the Act a report for the six month period ended June 30 of each year to be filed no later than August 31 of the same year and a report for the six month period ended December 31 of each year, to be filed no later than March 31 of the following year. Each such report will list all Cinergy subsidiaries that are engaged in the business of providing Infrastructure Services. In addition, each report will list all of the Cinergy subsidiaries that provided Infrastructure Services to associate or affiliate utility companies during the reporting period and will include, for each such subsidiary:

- (i) a list of the associate or affiliate utility companies that received Infrastructure Services from that subsidiary;
- (ii) a description of the types of Infrastructure Services provided to each recipient;
- (iii) the dollar amount of the Infrastructure Services provided to each recipient;

(iv) a description of the method used in charging each recipient for those Infrastructure Services, *i.e.*, cost, or, if permitted, other than cost (citing the authority for providing the service at other than cost); and

(v) a reference to the agreement under which the Infrastructure Services were provided.

Except to the extent it is included within Cinergy's Annual Report on Form U5S, each report for the period ended December 31 will provide an income statement and balance sheet for each Cinergy subsidiary that provides Infrastructure Services for, and as of, the most recently completed fiscal year.

The proposed transactions are subject to rule 54 under the Act, and meets the requirements set forth in that rule. Rule 54 provides that, in determining whether to approve the issue or sale of any securities for purposes other than the acquisition of any “exempt wholesale generator” (“EWG”) or “foreign utility company” (“FUCO”) or other transactions unrelated to EWGs or FUCOs, the Commission shall not consider the effect of the capitalization or earnings of subsidiaries of a registered holding company that are EWGs or FUCOs if the requirements of rule 53(a), (b) and (c) are satisfied. Cinergy’s aggregate investment in EWGs and FUCOs is within the “safe harbor” afforded by rule 53(a). At March 31, 2005, Cinergy’s “aggregate investment” (as defined in rule 53(a)(1)) was approximately \$744 million and Cinergy’s “consolidated retained earnings” (also as defined in rule 53(a)(1)) were approximately \$1,587 million.²

² Cinergy states that it also satisfies all of the other conditions of paragraphs (a) and (b) of rule 53. With reference to rule 53(a)(2), Cinergy maintains books and records in

Fees and expenses in the estimated amount of \$2000 are expected to be incurred in connection with the preparation and filing of the Application. 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. On the basis of the facts in the record, it is found that the applicable standards of the Act and rules under the Act are satisfied, and no adverse findings are necessary.

IT IS ORDERED, under the applicable provisions of the Act and the rules under the Act, that, except as to matters as to which jurisdiction has been reserved, the Application be, and hereby is, granted and permitted to become effective immediately, subject to the terms and conditions prescribed in rule 24 under the Act.

IT IS FURTHER ORDERED that jurisdiction is reserved, pending completion of the record, over Cinergy's proposal to invest in any IS Subsidiary that derives or will

conformity with, and otherwise adheres to, the requirements thereof. With reference to rule 53(a)(3), 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 will promptly provide a copy of this application to each regulator referred to therein, and will otherwise comply with the requirements thereof concerning the furnishing of information.

With reference to rule 53(b), none of the circumstances enumerated in subparagraphs (1), (2) and (3) have occurred. Finally, 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.

derive a substantial portion of its operating revenues from the sale of Infrastructure Services outside the United States.

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

Jill M. Peterson

Assistant Secretary