

SECURITIES AND EXCHANGE COMMISSION**(Release No. 35- 28067; 70-10303)****Cinergy Corp., et al.****Order Authorizing Short-Term Financing Transactions; Reservation of Jurisdiction****November 29, 2005**

Cinergy Corp. ("Cinergy") Cincinnati, Ohio, a Delaware corporation and a registered holding company under the Public Utility Holding Company Act of 1935, as amended ("Act"), The Cincinnati Gas & Electric Company ("CG&E"), a wholly-owned electric and gas utility subsidiary of Cinergy and an exempt holding company, and CG&E's wholly-owned subsidiaries; The Union Light, Heat and Power Company ("ULH&P"), an electric and gas utility company, Miami Power Corporation ("Miami"), an electric utility company, KO Transmission Company ("KO"), a nonutility company, Tri-State Improvement Company ("Tri-State"), a nonutility company, Cinergy Services, Inc. ("Cinergy Services"), a Delaware corporation and wholly-owned service company subsidiary of Cinergy, all of Cincinnati, Ohio, and PSI Energy, Inc., ("PSI"), Plainfield, Indiana, a wholly-owned electric utility subsidiary of Cinergy, (collectively with the foregoing companies, "Applicants"), have filed with the Securities and Exchange Commission ("Commission") an application-declaration ("Application") under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act. The Commission issued a notice of the filing of the Application on May 31, 2005 (HCAR No. 27975). No request for a hearing was received.

Applicant's request authorization to engage in certain short-term financing transactions, including (i) loans and borrowings under the money pool arrangement, (ii) bank borrowings and (iii) commercial paper sales.

Cinergy was created as a holding company in connection with the 1994 merger of CG&E and PSI.¹ 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

¹ See Cinergy Corp., HCAR No. 26146, Oct. 21, 1994 ("1994 Merger Order").

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.

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 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, 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 such

companies, other than Cinergy, ("Money Pool") PSI, ULH&P and Miami were authorized to make loans to and incur borrowings from each other²;

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 ("Bank Borrowings"); and

4. PSI was also authorized to issue and sell commercial paper.

The maximum principal amount of short-term borrowings that PSI, ULH&P and Miami could incur and have outstanding at any one time 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 would no longer be appropriate for ULH&P, given that company's anticipated capital requirements following the consummation of its proposed 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.³ This transaction would 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. In addition, Applicants propose to engage in the following

² Cinergy Corp., et al., HCAR No. 26362, (Aug. 25, 1995) authorizing establishment of Money Pool ("1995 Money Pool Order").

³ See the application with respect to this transaction in File No. 70-10254, HCAR No. 28066.

transactions through the earlier of (a) consummation of the pending merger between Cinergy 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 Application⁴:

1. In connection with the continued operation of the Money Pool, PSI, ULH&P and Miami ("Nonexempt Subsidiaries")⁵ propose to make loans to and incur borrowings from each other;
2. In connection with the continued operation of the Money Pool, Cinergy,⁶ Cinergy Services, CG&E, Tri-State and KO propose to make loans to the Nonexempt Subsidiaries;
3. The Nonexempt Subsidiaries propose to incur Banks Borrowings; 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 would not exceed the following amounts (each, a "Borrowing Cap"): PSI, \$600 million; ULH&P, \$150 million; and Miami, \$100,000.

⁴ Notwithstanding the request for authority through the timeframes stated above, the authorization period in this matter extends only to February 8, 2006 ("Authorization Period"). The Energy Policy Act of 2005 repealed the Act, effective February 8, 2006. Therefore, the Commission grants authority in this matter only to the effective date of repeal of the Act.

⁵ Applicants state that the short-term borrowing authority requested for PSI, ULH&P and Miami is not subject to the 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. The PUCO, however, does have authority over short-term borrowings of any maturity; and accordingly, short-term borrowings by CG&E are exempt from Commission authorization under rule 52(a).

⁶ By order dated June 23, 2005 (HCAR No. 27987) Cinergy received Commission authority to make loans to, and investments in, other system companies, including through the Cinergy system money pool.

(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 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.⁷

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.")

Bank Borrowings & Commercial Paper

Subject to their respective Borrowing Caps, from time to time over the Authorization Period, (a) the Nonexempt Subsidiaries propose to engage in Bank

⁷ 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 under rule 52(a) (in the case of CG&E) and rule 52(b) (in the case of Cinergy Services, Tri-State and KO).

Borrowings 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.

Applicants state that within 60 days after the end of each calendar quarter (beginning with the first full quarter after the date of this order), Cinergy Services, on behalf of the Applicants, will file a certificate with the Commission in accordance with rule 24 under the Act setting forth the following information with respect to the preceding calendar quarter: (1) each Applicant's maximum principal amount of external short-term borrowings outstanding at any one time outstanding (i.e., Bank Borrowings and commercial paper sales); and (2) with respect to the operation of the Money Pool, (a) the average annual interest rate applicable to borrowings through the Money Pool, (b) the maximum principal amount of Money Pool borrowings by the respective Applicants outstanding at any one time, and (c) the maximum principal amount of funds loaned through the Money Pool by the respective Applicants outstanding at any one time.

In addition, solely with respect to the issuance by PSI, ULH&P and Miami of notes to banks to evidence their respective Bank Borrowings ("Notes") 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,⁸ Cinergy

⁸ 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

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 each of PSI and ULH&P, together with Miami with regard to Notes, to continue to avail itself of its authority hereunder to issue Notes and commercial paper, so long as each continues to comply with the applicable terms and conditions specified in the Commission's order authorizing the transactions requested in the Application). None of PSI, ULH&P and Miami will issue any Notes or in the case of PSI and ULH&P commercial paper following the 60th day after a Ratings Event (in each case other than solely for purposes of funding the Money Pool); provided, however, that each of PSI, ULH&P and Miami requests that the Commission reserve jurisdiction over its issuance of any such securities following that 60th day.

The proposed transaction is subject to rule 54 under the Act, and meets the requirements set forth in that rule.⁹

rating agency (as defined by the Commission in rules adopted under the Securities Exchange Act of 1934, as amended).

⁹ 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.

Applicants state that other than the securities issuance fees and expenses, and outside counsel fees and expenses not to exceed \$1,000, they do not anticipate incurring any fees and expenses in connection with the proposed transactions. Applicants state 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 for matters as to which jurisdiction is reserved, the Application of

Applicants state that 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.

Applicants further state that Cinergy 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 conformity with, and otherwise adheres to, the requirements of that rule. 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 its application to each regulator referred to in the application, and will comply with the requirements of that rule concerning the furnishing of information. With reference to rule 53(b), none of the circumstances enumerated in subparagraphs (1), (2) and (3) of that rule 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.

Cinergy Corporation, et al., (70-10303) as amended, 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, with respect to the issuance of any securities authorized in this order (other than solely for purposes of funding the Money Pool) following the 60th day after the occurrence of a Ratings Event.

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



Jonathan G. Katz
Secretary