SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

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FEDERAL ENERGY REGULATORY COMMISSION

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Cincinnati Gas & Electric Co., Docket No. ER96-2504-___
PSI Energy, Inc., Docket No. ER05-___-___
Union Light Heat & Power Company, Docket No. ER05-__-___
Cinergy Marketing & Trading, LP, Docket No. ER05-___-___
Brownsville Power I. L.L.C., Docket No. ER00-826-___
Caledonia Power I. ,L.L.C., Docket No. ER00-828-___
CinCap IV, LLC, Docket No. ER98-421-___
CinCap V, LLC, Docket No. ER98-4055-___
Cinergy Capital & Trading, Inc., Docket No. ER01-1337-___
Cinergy Power Investments, Inc., Docket No. ER02-177-___
St. Paul Cogeneration, LLC, Docket No. ER03-1212-___

Dear Secretary Salas:

Cinergy Services, Inc. ("Cinergy Services"), on behalf of The Cincinnati Gas & Electric Company ("CG&E"), PSI Energy, Inc. ("PSI"), The Union Light, Heat and Power Company ("ULH&P"), and the Cinergy "Marketing Affiliates"[1] (collectively "Cinergy"), hereby submits for filing under Section 205 of the Federal Power Act initial and amended market based rate tariffs ("MBR Tariffs"). This filing is being made to implement certain organizational changes that will be made to accommodate the planned January 1, 2006 termination of the Joint Generation Dispatch Agreement ("JGDA")[2] between CG&E and PSI, and the proposed separation of CG&E's merchant activities from PSI and ULH&P.

Cinergy respectfully requests that the Federal Energy Regulatory Commission ("Commission") issue an order no later than November 1, 2005, accepting the initial and amended MBR Tariffs for filing effective on January 1, 2006. Cinergy requests that the Commission waive the requirement in FERC Rule 35.3 (18 CFR § 35.3) that all rate schedules be filed with the Commission not more than 120 days prior to the requested effective date.[3] It is important that Cinergy receive a Commission order in advance of the January 1, 2006 effective date to provide Cinergy the time needed to reorganize its operations to implement the separation of CG&E. The separation of CG&E from PSI/ULH&P will require both physical changes (*e.g.*, separating the CG&E work areas from PSI/ULH&P) and electronic changes (*e.g.*, restricting CG&E's computer access to any PSI/ULH&P market information). In addition, time is needed to properly train personnel on new code of conduct requirements proposed herein.[4]

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1 The "Marketing Affiliates" are: Brownsville Power I, L.L.C. ("Brownsville"), Caledonia Power I, L.L.C. ("Caledonia"), CinCap IV, LLC ("CinCap IV"), CinCap V, LLC ("CinCap V"), Cinergy Capital & Trading, Inc. ("CCT"), Cinergy Power Investments, Inc. ("CPI"), St. Paul Cogeneration, LLC ("St. Paul Cogen"), and Cinergy Marketing & Trading, LP ("CMT").

2 The Commission approved the JGDA on March 18, 2002. Cinergy Services, Inc., 98 FERC ¶ 61,306 (2002). The Commission subsequently approved a revised JGDA on March 25, 2005. *Cinergy Services, Inc.*, Letter Order, ER05-640-000 (dated Mar. 25, 2005).

3 The Commission has granted waiver of the 120-day regulation in cases, as here, where there is good cause. *Southern Cal. Edison Co.*, 106 FERC ¶ 61,183 at P46 (2004).

4 The initial and amended MBR Tariffs proposed herein and the associated organizational reorganizations will occur regardless of and prior to the merger with Duke Energy Corporation, pending before the Commission in Docket No. EC05-103-000. *See* Application for Authorization of Disposition of Jurisdictional Assets Under Section 203 of the Federal Power Act ("Application"), Docket No. EC05-103-000, filed July 12, 2005, at n.10. This filing therefore is not dependent on or related to the merger filing. The MBR Tariffs will be further amended prior to the merger closing to include appropriate affiliate safeguards with respect to any relevant Duke Energy Corporation affiliates.

CONTENTS OF FILING

This filing includes the following attachments which are discussed in the indicated Sections of this transmittal letter:

Tab A Affidavit of William H. Hieronymus (Section II)

Tab B CG&E MBR Tariff Amendment (clean and blackline[5]) (Section III)

PSI and ULH&P Initial MBR Tariffs (Section V):
Tab C PSI Initial MBR Tariff
Tab D ULH&P Initial MBR Tariff

CMT Initial MBR Tariff (Section VI):
Tab E CMT Initial MBR Tariff

Marketing Affiliates MBR Tariff Amendments (clean and blackline) (Section VII):
Tab F Brownsville
Tab G Caledonia
Tab H CinCap IV
Tab I CinCap V
Tab J CCT
Tab K CPI
Tab L St. Paul Cogen

I. Background and Termination of the JGDA

A. Cinergy

Cinergy Corp. is a registered holding company under the Public Utility Holding Company Act of 1935, as amended ("PUHCA"). Cinergy was created as a result of the 1994 merger of CG&E and PSI. CG&E is a combination electric and gas public utility that provides service in the southwestern portion of Ohio. CG&E is

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[5] For all amended MBR Tariffs, Cinergy has included (i) blackline sheets for revised sheets only and (ii) a full clean version.

subject to Ohio's electric utility restructuring statute which, as described in more detail below, initiated retail competition in Ohio starting in 2001. PSI is a vertically-integrated, regulated electric utility that provides service across north central, central, and southern Indiana. ULH&P is a natural gas and electric utility serving customers in Greater Cincinnati's Northern Kentucky communities, and is wholly owned by CG&E. ULH&P offers only bundled retail sales of natural gas supply and delivery, and electric distribution and transmission services, and soon will own generation (*see infra* at n.13). In addition to this Commission, CG&E is regulated by the Public Utilities Commission of Ohio ("PUCO"), PSI is regulated by the Indiana Utility Regulatory Commission ("IURC") and ULH&P is regulated by the Kentucky Public Service Commission ("KPSC"). Cinergy Services is a service company that provides Cinergy's subsidiaries with a variety of centralized administrative, management, and support services.

B. JGDA

The JGDA, among other things, provides the terms and conditions pursuant to which the generating facilities of PSI are jointly dispatched with the facilities of CG&E and governs the price for energy sales between PSI and CG&E. The JGDA was approved by the Commission on March 18, 2002. *See supra* at n.2. Pursuant to a settlement agreement approved by the IURC in Cause No. 41954 ("Settlement Agreement"), PSI is required to (i) implement the termination and separation provisions of the Settlement Agreement and (ii) initiate a JGDA termination consequences proceeding at the IURC. On July 7, 2005, PSI notified the IURC of its intent to terminate the JGDA. Cinergy will file a notice of the JGDA termination with the Commission as required by 18 CFR § 35.15.[6]

The JGDA is no longer necessary because of the Midwest Independent Transmission System Operator, Inc.'s ("Midwest ISO" or "MISO") Day 2 markets. The Midwest ISO's Day 2 electric energy markets, which commenced operations on April 1, 2005, provide the market clearing price for the region and automatically provide for joint dispatch of all resources in the region, including PSI and CG&E

[6] Cinergy also will terminate the Purchase, Sale and Operation Agreement ("PSOA") between CG&E and ULH&P. The Commission recently approved the PSOA and revisions thereto. *Union Light, Heat and Power Co.*, 110 FERC ¶ 61,212 (2005) (approving initial PSOA); *Union Light, Heat and Power Co.*, 111 FERC ¶ 61,341 (2005) (approving revisions to PSOA). However, no transactions have occurred to date under the PSOA because the underlying generation unit transfers upon which the PSOA is based have not yet occurred.

generation. The Midwest ISO's energy markets utilize locational marginal pricing ("LMP") to determine energy prices, and utilize strict market monitoring and mitigation procedures.[7]

II. Market Power Analysis

Attached hereto at Tab A is an affidavit of Dr. William H. Hieronymus of CRA International, Inc. in support of the initial and amended MBR Tariffs attached hereto. Dr. Hieronymus concludes that Cinergy readily meets the Commission's two new interim generation market power screens (*i.e.*, the pivotal supplier test and the market share test) and cannot exercise market power. Dr. Hieronymus relies in part on his recent market power analysis, filed on May 10, 2005, in Docket No. ER00-826-002, as an attachment to a notification of change in status related to CG&E's acquisition of the Allegheny Energy Supply Wheatland Generating Facility LLC. ("Wheatland"). The Commission accepted that filing by letter order.[8] A copy of the Wheatland affidavit is attached to Dr. Hieronymus' current affidavit. Cinergy confirms that there have been no material changes to the generation owned by Cinergy since that filing.

The Commission considers four factors when evaluating applications for market based rates: (i) generation market power; (ii) transmission market power; (iii) barriers to entry; and (iv) affiliate abuse and reciprocal dealing.[9] Dr. Hieronymus considers these factors and concludes that Cinergy readily satisfies the Commission's standards for market-based rate authority. Regarding the fourth factor, Cinergy submits that, as explained below, the codes of conduct contained in the attached MBR Tariffs meet all applicable Commission standards and satisfy any concerns with regard to affiliate abuse and reciprocal dealing.

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7 *See e.g., Midwest Indep. Transmission Sys. Oper., Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004); *Midwest Indep. Transmission Sys. Oper., Inc.*, 102 FERC ¶ 61,280 (2003).

8 *Brownsville Power I., L.L.C.*, Letter Order, Docket No. ER00-826-002 (dated July 15, 2005).

9 *NorthWestern Corp.*, 112 FERC ¶ 61,019 (2005).

III. The Separation of CG&E; CG&E MBR Tariff Amendments

In this Section, Cinergy discusses the separation of CG&E and amendments to its stand-alone MBR Tariff (Tab B). As stated above, Cinergy plans to terminate the JGDA January 1, 2006. Cinergy proposes to (i) create a code of conduct separation between CG&E's merchant activities and PSI/ULH&P, and (ii) eliminate the code of conduct separation between CG&E's merchant activities and the Marketing Affiliates (Section VII below discusses proposed amendments to the Marketing Affiliates' MBR Tariffs). Cinergy has determined that these code of conduct changes reflect a more appropriate structure because CG&E operates in a retail access state, but PSI and ULH&P do not operate in retail access states. This is consistent with Commission policy regarding utilities that operate in retail access states. *Exelon Generation Co.*, 93 FERC ¶61,140 (2000), *reh'g denied*, 95 FERC ¶ 61,309 (2001). Indeed, in 2004 the Commission granted CG&E a partial waiver of the affiliate restrictions,[10] authorizing CG&E to make sales to the Marketing Affiliates without restrictions.

A. Support Services/No Conduit Rule

As with the Standards of Conduct, the Commission's policy on codes of conduct long has recognized an exception for shared support employees.[11] Thus, the CG&E code of conduct provides that the information sharing prohibitions do not apply to employees of CG&E or PSI/ULH&P who are engaged in support functions, including human resources, information resources, data processing, finance, legal, accounting and other support personnel who do not participate in directing, organizing and executing the business decisions of the wholesale merchant or generation functions of CG&E or PSI/ULH&P, provided that such employees are prohibited from acting as conduits to pass market information obtained from

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10 *The Cincinnati Gas & Elec. Co.*, Letter Order, Docket No. ER04-288-000 (dated Jan. 28, 2004).

11 *LG&E Energy Marketing, Inc.*, 83 FERC ¶ 61,130 at 61,589 (1998).

PSI/ULH&P to CG&E.[12] The code of conduct also requires CG&E employees to operate separately from employees of PSI/ULH&P.[13]

B. Affiliate Energy Sales at MISO Cinergy Hub LMP

Affiliate sales restrictions in the initial and amended MBR Tariffs submitted herein are not complete prohibitions, but rather provide for sales based on an appropriate, relevant benchmark of market prices, specifically the MISO Cinergy Hub LMP. The Commission recently held that Cinergy's use of "a Day 2 Midwest ISO price used as an index satisfies the conditions in *Edgar*."[14] Cinergy proposes to use the MISO Cinergy Hub LMP as either a floor or a ceiling on rates for such sales, as appropriate to protect PSI and ULH&P ratepayers. As discussed in Section V, in sales to CG&E/Marketing Affiliates by PSI/ULH&P, sales will be no lower than the LMP, thus ensuring that the price obtained is at least a market price. In sales to PSI/ULH&P by CG&E/Marketing Affiliates, rates will be no higher than the LMP, thus ensuring that the price paid is no higher than a market price. Cinergy has conformed all MBR Tariffs to include the Commission-accepted reference to "the locational marginal price applicable at the time of sale, reported at the Midwest ISO Cinergy Hub."[15]

With this wall in place between CG&E and its franchised affiliates PSI and ULH&P, CG&E will not have access to non-public market information from PSI and ULH&P. Since CG&E possesses no prohibited market information itself – as noted, its ratepayers have retail choice – there is no remaining basis for a wall between

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[12] Herein, references to CG&E employees encompasses Cinergy Services employees engaged in directing, organizing or executing business decisions on behalf of the CG&E wholesale merchant or generation functions.

[13] CG&E soon will transfer certain generation units to ULH&P. Following the transfer, CG&E and ULH&P will own generation units located at the same generation site. Cinergy will make a separate filing with the Commission in the event that the sharing of a generation site would require a limited code of conduct waiver.

[14] *Brownsville Power I, L.L.C.*, 111 FERC ¶ 61,398, at P10 (2005) (footnotes omitted) (*citing Union Light, Heat, and Power Co., et al.*, 110 FERC ¶ 61,212 (2005)). *Edgar* refers to the standard for assessing preferences in affiliate power sales. *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991).

[15] *Union Light, Heat, and Power Co., et al.*, 110 FERC ¶ 61,212 (2005), *Cinergy Services, Inc.*, Letter Order, ER05-640-000 (dated Mar. 25, 2005).

CG&E and its marketing affiliates.[16] Accordingly, CG&E's tariff and code of conduct do not contain restrictions on sales and interactions with the Marketing Affiliates. As discussed in Section VII, Cinergy also is filing amendments to the Marketing Affiliates' MBR Tariffs to remove restrictions on affiliate sales and code of conduct restrictions with respect to CG&E (but retain restrictions with respect to PSI and ULH&P).

C. Standards of Conduct under Order No. 2004

Nothing in this filing affects or undermines Cinergy's compliance with Order No. 2004. Cinergy's transmission function will continue to operate separately from the wholesale merchant function of all Cinergy companies, including PSI, ULH&P and CG&E.

IV. Legacy Contracts under Joint CG&E/PSI MBR Tariffs

There are two joint CG&E/PSI MBR Tariffs (Rate Schedules No. 7 and 9) ("Joint MBR Tariffs"). No future sales will be entered into under these tariffs. However, Cinergy is not terminating the tariffs because there are a number of ongoing or future contracts between CG&E/PSI, as sellers, and third party buyers ("Legacy Contracts") entered into under the Joint MBR Tariffs. In the near future, Cinergy will make a separate filing with the Commission addressing the continued service of the Legacy Contracts in a manner that will avoid any sharing of market information.

V. PSI and ULH&P Initial MBR Tariffs

Currently, PSI is authorized to make market-based rate sales under the Joint MBR Tariffs, discussed above. Because PSI's and CG&E's wholesale merchant functions will be separated, and no future sales will occur under the Joint MBR Tariffs, PSI is filing a stand-alone MBR Tariff (Tab C). To date, ULH&P has not had a MBR Tariff, largely because it has not owned any generation. However, ULH&P is anticipated to acquire generation units from CG&E. This fact, together

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16 *See e.g., Exelon Generation Co., L.L.C.*, 93 FERC ¶ 61,140 (2000); *Green Power Partners I LLC*, 88 FERC ¶ 61,005 (1999).

with the proposed separation of ULH&P and CG&E. has led to Cinergy's decision to file a stand-alone MBR Tariff for ULH&P (Tab D).

Both the PSI and ULH&P MBR Tariffs contain identical language regarding affiliate sales and codes of conduct. As discussed above in Section III.B, sales by PSI or ULH&P to CG&E or Marketing Affiliates will be at a price no lower than the MISO Cinergy Hub LMP. This will protect PSI/ULH&P retail customers by ensuring that no sales will be made to affiliates below the prevailing market price. Consistent with Commission precedent recognizing that sales between franchised utility affiliates must protect the ratepayers of both the buyer and the seller,[17] any sales between PSI and ULH&P will be at the MISO Cinergy Hub LMP. The PSI/ULH&P codes of conduct erect a wall between themselves and CG&E and the Marketing Affiliates. Thus, PSI/ULH&P will be prohibited from sharing non-public market information with CG&E/Marketing Affiliates either directly or indirectly. Similarly, PSI/ULH&P will operate separately from CG&E/Marketing Affiliates to the maximum extent practicable; this means that there will be no shared employees engaged in the directing, organizing or executing the business decisions of the wholesale merchant or generation functions. As discussed above, all Cinergy codes of conduct permit the sharing of support function employees.

VI. CMT Initial MBR Tariff

CMT is an existing gas marketing subsidiary of Cinergy Corp., located in Houston, Texas. To allow CMT to expand its products and services to include electric power marketing, Cinergy is requesting approval of an initial MBR Tariff for CMT (Tab E). The CMT MBR Tariff, including its affiliate sales and code of conduct provisions, is identical to amended MBR Tariffs of other Marketing Affiliates (Tabs F-L).

VII. Marketing Affiliates' MBR Tariffs Amendments

As described in Sections I and III, Cinergy is amending Marketing Affiliates' MBR Tariffs to remove (i) restrictions on affiliate power sales to CG&E and (ii)

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[17] *See Ameren Serv. Co.*, 86 FERC ¶ 61,212 (1999); *Wisconsin Public Serv. Corp.*, 87 FERC ¶ 61,151 (1999).

code of conduct restrictions between CG&E and Marketing Affiliates. There are seven Marketing Affiliate MBR Tariff amendments attached hereto at Tabs F through L (in clean and blackline). Cinergy also has made non-material changes to the MBR Tariffs to make them more uniform. All changes are shown in the black-line versions.

VIII. Communications

Applicants request that all copies of notices and correspondence related to this filing be sent to the following individuals:

John S. Moot
Mary Margaret Farren
Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC, 20005
(202) 371-7000
(202) 393-5760 Fax
Email: jmoot@skadden.com
Email: mfarren@skadden.com

Diego A. Gómez
Senior Counsel
Cinergy Services, Inc.
139 East Fourth Street, EA025
Cincinnati, OH 45201
(513) 287-3369
(513) 287-2996 Fax
Email: diego.gomez@cinergy.com

Applicants respectfully request that the Commission issue an order no later than November 1, 2005, accepting the initial and amended MBR Tariffs for filing effective January 1, 2006.

Respectfully submitted,

Diego A. Gómez
Senior Counsel
Cinergy Services, Inc.
139 East Fourth Street, EA025
Cincinnati, OH 45201
(513) 287-3369

John S. Moot
Mary Margaret Farren
Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7000

TAB A

Affidavit of
William H. Hieronymus

Exhibit CIN-1

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cincinnati Gas & Electric Co.	) Docket No. ER96-2504-
PSI Energy, Inc.	) Docket No. ER05-___-___
Union Light, Heat and Power Company	) Docket No. ER05-___-___
Cinergy Marketing & Trading, LP	) Docket No. ER05-___-___
Brownsville Power I, L.L.C.	) Docket No. ER00-826-___
Caledonia Power I, L.L.C.	) Docket No. ER00-828-___
CinCap IV, LLC	) Docket No. ER98-421-___
CinCap V, LLC	) Docket No. ER98-4055-___
Cinergy Capital & Trading, Inc.	) Docket No. ER01-1337-___
Cinergy Power Investments, Inc.	) Docket No. ER02-177-___
St. Paul Cogeneration, LLC	) Docket No. ER03-1212-___

AFFIDAVIT OF
WILLIAM H. HIERONYMUS

I. INTRODUCTION

My name is William H. Hieronymus. I am a Vice President of CRA International, Inc. ("CRA"), formerly known as Charles River Associates. My business address is 200 Clarendon Street, T-33, Boston, MA 02116. For the past 30 years, the primary focus of my consulting has been on the electricity sector. For the past 17 years, I have worked primarily on the restructuring of the electricity industry from a fully regulated to a more competitively oriented model, both in the U.S. and abroad. Much of my time has been spent on market power issues. I have developed and commented on market power-related regulatory rules and Regional Transmission Organization ("RTO") (or foreign equivalent), on market power mitigation as well as on issues of market structure. I have testified before the Federal Energy Regulatory Commission ("Commission") and other regulatory bodies on market power on numerous occasions. This includes a number of mergers and acquisitions over the past dozen years, including approximately 20 mergers among electric utilities and "convergence" mergers of electric utilities and natural gas pipelines. Among these, I recently filed testimony on behalf of Cinergy Corp. and Duke Energy Corporation in

Docket No. EC05-103. I also recently filed an affidavit in connection with Cinergy Corp.'s acquisition of the Allegheny Energy Supply Wheatland Generating Facility, LLC, which was approved by the Commission on June 16, 2005.[1] At the same time, I filed an affidavit to support the reporting of a "change in status" that included the results of the Commission's generation market power screens in connection with market-based rate authority.[2] My resume is attached as Exhibit CIN-2.

I have been asked by counsel for Cinergy Services, Inc. ("Cinergy" or "Applicants")[3] to perform an analysis of market power consistent with the Commission's recent orders[4] to demonstrate that the above-captioned entities should be allowed to either sell, or continue to sell, at market-based rates in all relevant markets. Specifically, this analysis supports initial and amended market-based rate tariffs related to the planned January 1, 2006 termination of the Joint Generation Dispatch Agreement ("JGDA") between The Cincinnati Gas & Electric Company ("CG&E") and PSI Energy, Inc ("PSI"). Additionally, the analysis supports the granting of market-based rate authority to The Union Light, Heat and Power Company ("ULH&P") and Cinergy Marketing & Trading, LP ("CMT"), which heretofore have not had market-based rate tariffs.

The focus of my inquiry is the markets in which Cinergy owns or controls generation.

II. SUMMARY OF CONCLUSIONS AND ANALYSIS

I find that, under the Commission's guidelines, Cinergy lacks generation dominance in the relevant markets, and there are no other competitive issues of concern with respect to Cinergy or

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1 *Cinergy Services, Inc.*, 111 FERC ¶ 62,306 (2005).

2 *Brownsville Power I, L.L.C.*, Letter Order, Docket No. ER00-826-002, *et al.*, (dated July 15, 2005).

3 For purposes of my analysis, I have treated all of the affiliates of Cinergy as a single entity, referred to herein as "Cinergy."

4 *AEP Power Marketing, Inc.*, Order on Rehearing and Modifying Interim Generation Market Power Analysis and Mitigation Policy, 107 FERC ¶ 61,018 (2004) ("*Rehearing Order*"); *order on reh'g*, 108 FERC ¶ 61,026 (2004) ("*Clarification Order*").

its affiliates in the relevant market. Therefore, Cinergy and all its relevant affiliates should either retain their existing market-based rate authority or be granted such authority.

In the particular circumstances of this application, I have not conducted any quantitative analyses. but instead rely on the prior analysis that I submitted recently in connection with the change in status in ER00-826 (see footnote 2).[5] The analysis conducted therein is consistent with the Commission's *Rehearing Order* issued on April 14, 2004 that introduced two new interim generation market power screens that apply to all market-based rate applications, as well as consistent with the Commission's order on rehearing (*Clarification Order*) dated July 8, 2004, and subsequent Commission orders accepting updated market power analyses.

Consistent with the *Rehearing Order* and the Commission's specific guidance in more recent orders, I applied the Commission's market power screens to the control area administered by the Midwest Independent Transmission System Operator, Inc. ("MISO"), the RTO where the generation owned or controlled by Applicants is physically located, and determined that Cinergy and its affiliates easily passed both of the Commission's screens (i.e., the "Pivotal Supplier Analysis Using Uncommitted Capacity" and the "Wholesale Market Share Analysis Using Uncommitted Capacity").

I also considered that Applicants have some affiliated generation in PJM (consisting of shares of generation jointly-owned with AEP and Dayton Power & Light); however, such generation is subject to grandfathered firm transmission service to MISO and, therefore, I treated this generation as if located in MISO.[6] This also eliminates the need to conduct an analysis of PJM. The same is true with respect to generation that a Cinergy affiliate owns in connection with

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5 A copy of my previously filed affidavit is attached as Exhibit CIN-3.

6 These jointly-owned generating facilities consist of "CCD" plants operated by AEP or Dayton, that are physically located in control areas that are now part of PJM. However, Cinergy has network service and pseudo-tie configuration of its ownership interest to move the output of these jointly-owned facilities to MISO. Therefore, for purposes of my analysis, I treat Cinergy's share of these generating facilities as if located in MISO.

its share of the Ohio Valley Electric Corporation ("OVEC") in the OVEC control area;[7] that is, Cinergy has firm transmission rights to move energy from its generating facilities in the OVEC control area into MISO.[8]

Finally, Cinergy affiliates also own two generation facilities, approximately 900 MW of capacity, located in the control area of the Tennessee Valley Authority ("TVA"); however, construction of each of these facilities commenced after July 9, 1996, and, accordingly, under Commission guidelines no market screens need be conducted of this market.[9] Cinergy affiliates own no other generation relevant for this market power inquiry.[10,11]

Thus, the MISO market is the only market for which a market screen analysis must be conducted.

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7 CG&E has a 9 percent equity stake and 9 percent power participation share in OVEC.

8 OVEC's generation includes the 1,086 MW Kyger Creek plant located in Cheshire, Ohio and the 1,303 MW Clifty Creek Plant located in Madison, Indiana. (Capacity reflects nameplate ratings.)

9 "[W]e remind applicants that, pursuant to section 35.27 of our regulations, as clarified by the Commission in subsequent orders, utilities meeting the criteria of that section shall not be required to demonstrate a lack of market power in generation with respect to sales from capacity for which construction commenced on or after July 9, 1996. However, if an applicant sites or acquires generation in an area where it or its affiliates own or control other generation assets, the applicant must address whether its new capacity, when added to existing capacity, raises generation market power concerns." *Rehearing Order*, P 69 (footnote omitted).

10 Cinergy affiliates also have ownership in a modest amount of generation located at industrial/cogeneration facilities whose output is fully committed under long-term contract to either industrial hosts or unaffiliated third-parties. This capacity totals less than 200 MW in the Eastern Interconnection.

11 There are a number Cinergy-affiliated energy management agreements ("EMAs"), but my understanding is that these agreements are specifically tailored such that Cinergy does not have operational control over third-party generating facilities. See, for example, Notice of Non-Material Change in Circumstances; *The Cincinnati Gas & Electric Company* (Docket No. ER96-2506-006) letter dated September 1, 2004 (EMAs relating to KGen Company generating units in the Southeast) ("The provisions of the EMA were specifically tailored to ensure that ultimate approval rights over each Facility remain with the Owner, and are not transferred to CG&E. As the EMA does not transfer the approval rights or control over any Facility to CG&E and does not provide CG&E with the ability to operate any Facility, the EMA does not affect CG&E's inability to exercise market power.") Because the EMAs do not give Cinergy operational control, I do not consider them in my analysis.

As I demonstrated in my prior affidavit, Cinergy readily passes both the Pivotal Supplier Analysis and the Wholesale Market Share Analysis in the MISO market, and therefore, lacks generation market power with respect to sales in relevant markets.

Cinergy's affiliated transmission assets, located in MISO, are under the control of MISO and subject to the terms and conditions of the MISO Open Access Transmission Tariff ("OATT") and Transmission and Energy Markets Tariff ("TEMT"). In other markets, the only other transmission Cinergy's affiliates own are those necessary to interconnect their generation with the grid; the Commission has ruled that generation interconnection facilities of this kind do not convey market power for purposes of market-based rate determinations.[12] Accordingly, Applicants and their affiliates cannot erect barriers to entry to the market by virtue of transmission market power.

The Commission also considers whether applicants have the ability to erect barriers to entry by other suppliers in terms of such things as 1) control of sites for new capacity development; 2) control of fuel inputs to generation; and 3) control of any equipment suppliers or facilities used to transport fuels or other inputs to generation.[13] While Cinergy has local distribution companies ("LDCs"), Cinergy's ownership of LDCs does not represent a degree of control or access to the types of information that could give rise to a vertical concern. To the extent Cinergy affiliates have rights to use capacity on interstate gas transportation pipelines and storage facilities owned by others, such contracts do not give them the degree of control necessary to trigger vertical market power concerns. Further, while CG&E and ULH&P provide natural gas transportation service within the former Cinergy control area, they serve primarily a small amount of Cinergy-owned facilities. Cinergy's KO Transmission Company ("KO"),[14] which owns and operates an interstate

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12 *See, e.g.*, *Iowa Power Partners I LLC*, 81 FERC ¶ 61,058 (1997); *Vastar Res., Inc.*, 81 FERC ¶ 61,135 (1997).

13 *See, e.g.*, *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079 at P 45 (2005); *Doswell Limited Partnership*, 50 FERC ¶ 61,251 (1990); *Entergy*, 58 FERC ¶ 61,234 (1992).

14 KO is an interstate pipeline company that originates east of Lexington, Kentucky and extends northward for approximately ninety miles to the citygates of CG&E and ULH&P. KO is interconnected to two upstream pipelines: Columbia Gulf Transmission Company and Tennessee Gas Pipeline. KO's pipeline facilities are co-owned by Columbia Gas Transmission Corporation. Beginning at the origin point in Means, Kentucky, KO owns an undivided 45.29% interest in a seventy-mile portion of the system, ending at Foster Station (located in Bracken

natural gas pipeline, does not serve any competing gas-fired generation either directly or indirectly. Moreover, based on prior analyses I have conducted, Midwest gas transportation markets are not highly concentrated, meaning the conditions for a successful foreclosure strategy are not present.[15]

Cinergy exercises no unique control over sites for generating capacity in the relevant market that could restrict entry by other suppliers or other barriers to entry.

Based on these facts, Cinergy cannot erect barriers to entry that would prevent competitors from participating in the relevant markets.

Finally, each Cinergy market based rate tariff has a code of conduct that meets Commission requirements and, therefore, no issues are raised with regard to affiliate abuse or reciprocal dealing.

There are no other issues that raise any relevant competitive concerns.

III. RECOMMENDATION

On the basis of the foregoing, Cinergy clearly meets the Commission's test for market-based rate authority in all relevant markets. Therefore, I recommend Cinergy and all its relevant affiliates be allowed to retain their existing market-based rate authority or be granted such authority, as appropriate.

County, Kentucky). From Foster station, extending northward for twenty miles to the CG&E and ULH&P citygates, KO owns 100 percent of the pipeline system.

15 *See, e.g., Engage Energy America, LLC, Frederickson Power L.P. and Duke Energy Corporation*, 98 FERC ¶ 61,207 (2002) and my testimony in connection with the merger application of Duke Energy Corporation and Cinergy Corp. in Docket No. EC05-103, dated July 12, 2005.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cinergy Services, Inc., on behalf of	)	
The Cincinnati Gas & Electric Company,	)	
PSI Energy, Inc., Union Light, Heat and	)	
Power Company, Brownsville Power I	)	
I, L.L.C., Caledonia Power I,	)	Docket No. ER05-___-000
L.L.C., CinCap IV, LLC, CinCap V, LLC,	)	
Cinergy Capital & Trading, Inc.,	)	
Cinergy Power Investments, Inc., St. Paul	)	
Cogeneration, LLC, and Cinergy	)	
Marketing & Trading	)	

AFFIDAVIT

District of Columbia § § §

WILLIAM H. HIERONYMUS being duly sworn, deposes and states: that she prepared the Affidavit and Exhibits of William H. Hieronymus and that the statements contained therein and the Exhibits attached hereto are true and correct to the best of his knowledge and belief.

William H. Hieronymus

SUBSCRIBED AND SWORN TO BEFORE ME, this the ___ day of August 2005.

Notary Public, District of Columbia

CHRISTINE McCAFFREY
Notary Public of District of Columbia
My Commission Expires October 14, 2007

CHRISTINE McCAFFREY NOTARY PUBLIC DISTRICT OF COLUMBIA

Printed Name:

My Commission Expires:

INTERNATIONAL

Exhibit CIN-2

WILLIAM H. HIERONYMUS

Ph.D. Economics
University of Michigan

M.A. Economics
University of Michigan

B.A. Social Sciences
University of Iowa

William Hieronymus has consulted extensively to managements of electricity and gas companies, their counsel, regulators, and policymakers. His principal areas of concentration are the structure and regulation of network utilities and associated management, policy, and regulatory issues. Dr. Hieronymus has spent the last seventeen years working on the restructuring and privatization of utility systems in the U.S. and internationally. In this context he has assisted the managements of energy companies on corporate and regulatory strategy, particularly relating to asset acquisition and divestiture. He has testified extensively on regulatory policy issues and on market power issues related to mergers and acquisitions. In his thirty years of consulting to this sector, he also has performed a number of more specific functional tasks, including analyzing potential investments; assisting in negotiation of power contracts, tariff formation, demand forecasting, and fuels market forecasting. Dr. Hieronymus has testified frequently on behalf of energy sector clients before regulatory bodies, federal courts, and legislative bodies in the United States the United Kingdom and Australia. He has contributed to numerous projects, including the following:

ELECTRICITY SECTOR STRUCTURE, REGULATION, AND RELATED MANAGEMENT AND PLANNING ISSUES

U.S. Market Restructuring Assignments

- Dr. Hieronymus serves as an advisor to the senior executives of electric utilities on restructuring and related regulatory issues, and he has worked with senior management in developing strategies for shaping and adapting to the emerging competitive market in electricity. Related to some of these assignments, he has testified before state agencies on regulatory policies and on contract and asset valuation.

Exhibit CIN-2

- For utilities seeking merger approval, Dr. Hieronymus has prepared and testified to market power analyses at FERC and before state commissions. He also has assisted in discussions with the Antitrust Division of the Department of Justice and in responding to information requests. The mergers on which Dr. Hieronymus has testified include both electricity mergers and combination mergers involving electricity and gas companies. Among the major mergers on which he has testified are EEG (Exelon and PSE&G), Sempra (Enova and Pacific Enterprises), Xcel (New Century Energy and Northern States Power), Exelon (Commonwealth Edison and Philadelphia Electric), AEP (American Electric Power and Central and Southwest), Dynegy-Illinois Power, Con Edison-Orange and Rockland, Dominion-Consolidated Natural Gas, NiSource-Columbia Energy, E-on-PowerGen/LG&E and NYSEG-RG&E and Exelon-PSE&G. He also submitted testimony in mergers that were terminated for unrelated reasons, including Entergy-Florida Power and Light, Northern States Power and Wisconsin Energy, KCP&L and Utilicorp and Consolidated Edison-Northeast Utilities. Testimony on similar topics has been filed for a number of smaller utility mergers and for asset acquisitions. Dr Hieronymus has also assisted numerous clients in the pre-merger screening of potential acquisitions and merger partners.

- For utilities seeking to establish or extend market rate authority, Dr. Hieronymus has provided numerous analyses concerning market power in support of submissions under Sections 205 of the Federal Power Act.

- For utilities and power pools engaged in restructuring activities, he has assisted in examining various facets of proposed reforms. Such analysis has included features of the proposals affecting market efficiency and those that have potential consequences for market power. Where relevant, the analysis also has examined the effects of alternative reforms on the client's financial performance and achievement of other objectives.

- For generators and marketers, Dr. Hieronymus has testified extensively in the regulatory proceedings concerning the electricity crisis in the WECC that occurred during May 2000 and May 2001. His testimony concerned, inter alia, the economics of long term contracts entered into during that period the behavior of market participants during the crisis period and the nexus between purportedly dysfunctional spot markets and forward contracts.

- For the New England Power Pool (NEPOOL), Dr. Hieronymus examined the issue of market power in connection with NEPOOL's movement to market-based pricing for energy, capacity, and ancillary services. He also assisted the New England utilities in preparing their market power mitigation proposal. The main results of his analysis were incorporated in NEPOOL's market power filing before FERC and in ISO-New England's market power mitigation rules.

- For a coalition of independent generators, he provided affidavits advising FERC on changes to the rules under which the northeastern U.S. power pools operate.

Exhibit CIN-2

- Dr. Hieronymus has contributed substantially to projects dealing with the restructuring of the California electricity industry. In this context he also is a witness in California and FERC proceedings on the subject of market power and mitigation and more recently before FERC in connection with transactions related to PG&E's bankruptcy and on the contracts signed between merchant generators and various buyers.

Valuation of Utility Assets in North America

- Dr. Hieronymus has testified in state securitization and stranded cost quantification proceedings, primarily in forecasting the level of market prices that should be used in assessing the future revenues and the operating contribution earned by the owner of utility assets in energy and capacity markets. The market price analyses are tailored to the specific features of the market in which a utility will operate and reflect transmission-constrained trading over a wide geographic area. He also has testified in rebuttal to other parties' testimony concerning stranded costs, and has assisted companies in internal stranded cost and asset valuation studies.

- He was the primary valuation witness on behalf of a western utility in an arbitration proceeding concerning the value of a combined cycle plant coming off lease that the utility wished to purchase.

- He assisted a bidder in determining the commercial terms of plant purchase offers as well as assisting clients in assessing the regulatory feasibility of potential acquisitions and mergers.

- He has testified concerning the value of terminated long term contracts in connection with contract defaults by bankrupt power marketers and merchant generators.

Other U.S. Utility Engagements

- Dr. Hieronymus has contributed to the development of several benchmarking analyses for U.S. utilities. These have been used in work with clients to develop regulatory proposals, set cost reduction targets, restructure internal operations, and assess merger savings.

- Dr. Hieronymus was a co-developer of a market simulation package tailored to region-specific applications. He and other senior personnel have conducted numerous multi-day training sessions using the package to help utility clients in educating management regarding the consequences of wholesale and retail deregulation and in developing the skills necessary to succeed in this environment.

- He has made numerous presentations to U.S. utility managements regarding overseas electricity systems.

Exhibit CIN-2

- In connection with nuclear generating plants nearing completion, he has testified in Pennsylvania, Louisiana, Arizona, Illinois, Missouri, New York, Texas, Arkansas, New Mexico, and before the Federal Energy Regulatory Commission regarding plant-in-service rate cases on the issues of equitable and economically efficient treatment of plant costs for tariff-setting purposes, regulatory treatment of new plants in other jurisdictions, the prudence of past system planning decisions and assumptions, performance incentives, and the life-cycle costs and benefits of the units. In these and other utility regulatory proceedings, Dr. Hieronymus and his colleagues have provided extensive support to counsel, including preparation of interrogatories, cross-examination support, and assistance in writing briefs.

- On behalf of utilities in the states of Michigan, Massachusetts, New York, Maine, Indiana, Pennsylvania, New Hampshire, and Illinois, he has submitted testimony in regulatory proceedings on the economics of completing nuclear generating plants that were then under construction. His testimony has covered the likely cost of plant completion; forecasts of operating performance; and extensive analyses of the impacts of completion, deferral, and cancellation upon ratepayers and shareholders. For the senior managements and boards of utilities engaged in nuclear plant construction, Dr. Hieronymus has performed a number of highly confidential assignments to support strategic decisions concerning the continuance of construction.

- For an eastern Pennsylvania utility that suffered a nuclear plant shutdown due to NRC sanctions relating to plant management, he filed testimony regarding the extent to which replacement power cost exceeded the costs that would have occurred but for the shutdown.

- For a major Midwestern utility, Dr. Hieronymus headed a team that assisted senior management in devising its strategic plans, including examination of such issues as plant refurbishment/life extension strategies, impacts of increased competition, and available diversification opportunities.

- On behalf of two West Coast utilities, Dr. Hieronymus testified in a needs certification hearing for a major coal-fired generation complex concerning the economics of the facility relative to competing sources of power, particularly unconventional sources and demand reductions.

- For a large western combination utility, he participated in a major 18-month effort to provide the client with an integrated planning and rate case management system.

- For two Midwestern utilities, Dr. Hieronymus prepared an analysis of intervenor-proposed modifications to the utilities' resource plans. He then testified on their behalf before a legislative committee.

Exhibit CIN-2

U.K. Assignments

- Following promulgation of the white paper that established the general framework for privatization of the electricity industry in the United Kingdom, Dr. Hieronymus participated extensively in the task forces charged with developing the new market system and regulatory regime. His work on behalf of the Electricity Council and the twelve regional distribution and retail supply companies focused on the proposed regulatory regime, including the price cap and regulatory formulas, and distribution and transmission use of system tariffs. He was an active participant in industry-government task forces charged with creating the legislation, regulatory framework, initial contracts, and rules of the pooling and settlements system. He also assisted the regional companies in the valuation of initial contract offers from the generators, including supporting their successful refusal to contract for the proposed nuclear power plants that subsequently were canceled as being non-commercial.

- During the preparation for privatization, Dr. Hieronymus assisted several individual U.K. electricity companies in understanding the evolving system, in developing use of system tariffs, and in enhancing commercial capabilities in power purchasing and contracting. He continued to advise a number of clients, including regional companies, power developers, large industrial customers, and financial institutions on the U.K. power system for a number of years after privatization.

- Dr. Hieronymus assisted four of the regional electricity companies in negotiating equity ownership positions and developing the power purchase contracts for a 1,825 megawatt combined cycle gas station. He also assisted clients in evaluating other potential generating investments including cogeneration and non-conventional resources.

- Dr. Hieronymus also has consulted on the separate reorganization and privatization of the Scottish electricity sector. Part of his role in that privatization included advising the larger of the two Scottish companies and, through it, the Secretary of State on all phases of the restructuring and privatization, including the drafting of regulations, asset valuation, and company strategy.

- He assisted one of the Regional Electricity Companies in England and Wales in the 1993 through 1995 regulatory proceedings that reset the price caps for its retailing and distribution businesses. Included in this assignment was consideration of such policy issues as incentives for the economic purchasing of power, the scope of price control, and the use of comparisons among companies as a basis for price regulation. Dr. Hieronymus's model for determining network refurbishment needs was used by the regulator in determining revenue allowances for capital investments.

- He assisted one of the Regional Electricity Companies in its defense against a hostile takeover, including preparation of its submission to the Cabinet Minister who had the responsibility for determining whether the merger should be referred to the competition authority.

Exhibit CIN-2

Assignments Outside the U.S. and U.K.

- Dr. Hieronymus testified before the federal court of Australia concerning the market power implications of acquisition of a share of a large coal-fired generating facility by a large retail and distribution company.

- Dr. Hieronymus assisted a large state-owned European electricity company in evaluating the impacts of the 1997 EU directive on electricity that inter alia requires retail access and competitive markets for generation. The assignment included advice on the organizational solution to elements of the directive requiring a separate transmission system operator and the business need to create a competitive marketing function.

- For the European Bank for Reconstruction and Development, he performed analyses of least-cost power options and evaluated the return on a major investment that the Bank was considering for a partially completed nuclear plant in Slovakia. Part of this assignment involved developing a forecast of electricity prices, both in Eastern Europe and for potential exports to the West.

- For the OECD he performed a study of energy subsidies worldwide and the impact of subsidy elimination on the environment, particularly on greenhouse gases.

- For the Magyar Villamos Muvek Troszt, the electricity company of Hungary, Dr. Hieronymus developed a contract framework to link the operations of the different entities of an electricity sector in the process of moving from a centralized command- and-control system to a decentralized, corporatized system.

- For Iberdrola, the largest investor-owned Spanish electricity company, he assisted in development of their proposal for a fundamental reorganization of the electricity sector, its means of compensating generation and distribution companies, its regulation, and the phasing out of subsidies. He also has assisted the company in evaluating generation expansion options and in valuing offers for imported power.

- Dr. Hieronymus contributed extensively to a project for the Ukrainian Electricity Ministry, the goal of which was to reorganize the Ukrainian electricity sector and prepare it for transfer to the private sector and the attraction of foreign capital. The proposed reorganization is based on regional electric power companies, linked by a unified central market, with market-based prices for electricity.

- At the request of the Ministry of Power of the USSR, Dr. Hieronymus participated in the creation of a seminar on electricity restructuring and privatization. The seminar was given for 200 invited Ministerial staff and senior managers for the USSR power system. His specific role was to introduce the requirements and methods of privatization. Subsequent to the breakup of the Soviet Union, Dr. Hieronymus continued to advise both the Russian energy and power ministry and the government-owned generation and transmission company on restructuring and market development issues.

Exhibit CIN-2

- On behalf of a large continental electricity company, Dr. Hieronymus analyzed the proposed directives from the European Commission on gas and electricity transit (open access regimes) and on the internal market for electricity. The purpose of this assignment was to forecast likely developments in the structure and regulation of the electricity sector in the common market and to assist the client in understanding their implications.

- For the electric utility company of the Republic of Ireland, he assessed the likely economic benefit of building an interconnector between Eire and Wales for the sharing of reserves and the interchange of power.

- For a task force representing the Treasury, electricity generating, and electricity distribution industries in New Zealand, Dr. Hieronymus undertook an analysis of industry structure and regulatory alternatives for achieving the economically efficient generation of electricity. The analysis explored how the industry likely would operate under alternative regimes and their implications for asset valuation, electricity pricing, competition, and regulatory requirements.

TARIFF DESIGN METHODOLOGIES AND POLICY ISSUES

- Dr. Hieronymus participated in a series of studies for the National Grid Company of the United Kingdom and for ScottishPower on appropriate pricing methodologies for transmission, including incentives for efficient investment and location decisions.

- For a U.S. utility client, he directed an analysis of time-differentiated costs based on accounting concepts. The study required selection of rating periods and allocation of costs to time periods and within time periods to rate classes.

- For EPRI, Dr. Hieronymus directed a study that examined the effects of time-of-day rates on the level and pattern of residential electricity consumption.

- For the EPRI-NARUC Rate Design Study, he developed a methodology for designing optimum cost-tracking block rate structures.

- On behalf of a group of cogenerators, Dr. Hieronymus filed testimony before the Energy Select Committee of the UK Parliament on the effects of prices on cogeneration development.

- For the Edison Electric Institute (EEI), he prepared a statement of the industry's position on proposed federal guidelines regarding fuel adjustment clauses. He also assisted EEI in responding to the U.S. Department of Energy (DOE) guidelines on cost-of-service standards.

- For private utility clients, Dr. Hieronymus assisted in the preparation both of their comments on draft FERC regulations and of their compliance plans for PURPA Section I33.

Exhibit CIN-2

- For a state utilities commission, Dr. Hieronymus assessed its utilities' existing automatic adjustment clauses to determine their compliance with PURPA and recommended modifications.

- For DOE, he developed an analysis of automatic adjustment clauses currently employed by electric utilities. The focus of this analysis was on efficiency incentive effects.

- For the commissioners of a public utility commission, Dr. Hieronymus assisted in preparation of briefing papers, lines of questioning, and proposed findings of fact in a generic rate design proceeding.

SALES FORECASTING METHODOLOGIES FOR GAS AND ELECTRIC UTILITIES

- For the White House Sub-Cabinet Task Force on the future of the electric utility industry, Dr. Hieronymus co-directed a major analysis of "least-cost planning studies" and "low-growth energy futures." That analysis was the sole demand-side study commissioned by the task force, and it formed a basis for the task force's conclusions concerning the need for new facilities and the relative roles of new construction and customer side-of-the-meter programs in utility planning.

- For a large eastern utility, Dr. Hieronymus developed a load forecasting model designed to interface with the utility's revenue forecasting system-planning functions. The model forecasts detailed monthly sales and seasonal peaks for a 10-year period.

- For DOE, he directed development of an independent needs assessment model for use by state public utility commissions. This major study developed the capabilities required for independent forecasting by state commissions and provided a forecasting model for their interim use.

- For state regulatory commissions, Dr. Hieronymus has consulted in the development of service area-level forecasting models of electric utility companies.

- For EPRI, he authored a study of electricity demand and load forecasting models. The study surveyed state-of-the-art models of electricity demand and subjected the most promising models to empirical testing to determine their potential for use in long-term forecasting.

- For a Midwestern electric utility, he provided consulting assistance in improving the client's load forecast, and testified in defense of the revised forecasting models.

- For an East Coast gas utility, Dr. Hieronymus testified with respect to sales forecasts and provided consulting assistance in improving the models used to forecast residential and commercial sales.

Exhibit CIN-2

OTHER STUDIES PERTAINING TO REGULATED AND ENERGY COMPANIES

- In a number of antitrust and regulatory matters, Dr. Hieronymus has performed analyses and litigation support tasks. These cases have included Sherman Act Section 1 and 2 allegations, contract negotiations, generic rate hearings, ITC hearings, and a major asset valuation suit. In a major antitrust case, he testified with respect to the demand for business telecommunications services and the impact of various practices on demand and on the market share of a new entrant. For a major electrical equipment vendor, Dr. Hieronymus testified on damages with respect to alleged defects and associated fraud and warranty claims. In connection with mergers for which he is the market power expert, Dr. Hieronymus assists clients in Hart-Scott-Rodino investigations by the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission. In an arbitration case, he testified as to changed circumstances affecting the equitable nature of a contract. In a municipalization case, he testified concerning the reasonable expectation period for the supplier of power and transmission services to a municipality. In two Surface Transportation Board proceedings, he testified on the sufficiency of product market competition to inhibit the exercise of market power by railroads transporting coal to power plants.

- For a landholder, Dr. Hieronymus examined the feasibility and value of an energy conversion project that sought a long-term lease. The analysis was used in preparing contract negotiation strategies.

- For an industrial client considering development and marketing of a total energy system for cogeneration of electricity and low-grade heat, Dr. Hieronymus developed an estimate of the potential market for the system by geographic area.

- For the U.S. Environmental Protection Agency (EPA), he was the principal investigator in a series of studies that forecasted future supply availability and production costs for various grades of steam and metallurgical coal to be consumed in process heat and utility uses.

Dr. Hieronymus has been an invited speaker at numerous conferences on such issues as market power, industry restructuring, utility pricing in competitive markets, international developments in utility structure and regulation, risk analysis for regulated investments, price squeezes, rate design, forecasting customer response to innovative rates, intervener strategies in utility regulatory proceedings, utility deregulation, and utility-related opportunities for investment bankers.

Prior to rejoining CRA in June 2001, Dr. Hieronymus was a Member of the Management Group at PA Consulting, which acquired Hagler Bailly, Inc. in October 2000. He was a Senior Vice President of Hagler Bailly. In 1998, Hagler Bailly acquired Dr. Hieronymus's former employer, Putnam, Hayes & Bartlett, Inc. He was a Managing Director at PHB. He joined PHB in 1978. From 1973 to 1978 he was a Senior Research Associate and Program Manager for Energy Market Analysis at CRA. Previously, he served as a project director at Systems Technology Corporation and as an economist while serving as a Captain in the U.S. Army.

Exhibit CIN-1

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cinergy Services, Inc., on behalf of	)	
PSI Energy, Inc. and The Cincinnati Gas	)	**Docket No. ER05-___-000**
& Electric Company,	)	

AFFIDAVIT OF
WILLIAM H. HIERONYMUS

I. INTRODUCTION

My name is William H. Hieronymus. I am a Vice President at Charles River Associates Incorporated ("CRA"). My business address is 200 Clarendon Street, T-33, Boston, MA 02116. For the past 30 years, the primary focus of my consulting has been on the electricity sector. For the past 17 years, I have worked primarily on the restructuring of the electricity industry from a fully regulated to a more competitively oriented model, both in the U.S. and abroad. Much of my time has been spent on market power issues. I have developed and commented on market power-related regulatory rules and Regional Transmission Organization ("RTO") (or foreign equivalent), on market power mitigation as well as on issues of market structure. I have testified before the Federal Energy Regulatory Commission ("Commission") and other regulatory bodies on market power on numerous occasions, including requests for market rate authority. I am concurrently filing testimony on behalf of Cinergy and Allegheny Energy Supply Wheatland Generating Facility, LLC in connection with their Section 203 application relating to the acquisition by Cinergy of the Allegheny's Wheatland facility.[1] My resume is attached as Exhibit CIN-2.

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[1] *See Cinergy Services, Inc., et al.*, Joint Application for Authorization to Transfer Jurisdictional Facilities Under Section 203 of the Federal Power Act, Docket No. EC05-___ (filed May __, 2005).

Exhibit CIN-1

I have been asked by counsel for Cinergy Services, Inc. ("Cinergy" or "Applicants")[2] to perform an analysis of market power consistent with the Commission's recent orders[3] to demonstrate that Cinergy should be allowed to continue to sell at market-based rates in relevant markets subsequent to its acquisition of the Wheatland facility.

The focus of my inquiry is the markets in which Cinergy owns or controls generation.[4]

II. SUMMARY OF CONCLUSIONS

I find that, under the Commission's guidelines, Cinergy lacks generation dominance in the relevant markets, and there are no other competitive issues of concern with respect to Cinergy or its affiliates in the relevant market. Therefore, Cinergy should retain its market-based rate authority.

The analysis I have conducted is consistent with the Commission's *Rehearing Order* issued on April 14, 2004 that replaced the interim generation market power screen using the Supply Margin Assessment ("SMA")[5] with two new interim generation market power screens that apply to all market-based rate applications. I also have taken into consideration the Commission's order on rehearing (*Clarification Order*) dated July 8, 2004, and, to the extent applicable, the series of Commission staff deficiency letters on updated market power analyses made pursuant to the

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2 For purposes of my analysis, I have treated all of the affiliates of Cinergy as a single entity, referred to herein as "Cinergy."

3 *AEP Power Marketing, Inc., et al.,* Order on Rehearing and Modifying Interim Generation Market Power Analysis and Mitigation Policy, 107 FERC ¶ 61,018 (2004) ("*Rehearing Order*"); *order on reh'g*, 108 FERC ¶ 61,026 (2004) ("*Clarification Order*").

4 Other than generation owned in the former Cinergy control area, or jointly-owned generation outside of the Cinergy control area for which Cinergy has firm rights for delivery into the Cinergy control area, Cinergy affiliates own generation in the control areas of the Ohio Valley Electric Corp ("OVEC") and Tennessee Valley Authority ("TVA"). My analysis does not include an analysis of the OVEC and TVA control areas, although I do consider this generation with respect to its impact on the default market for other Cinergy-owned generation, because this generation is not located within the market where generation is being acquired.

5 *AEP Power Marketing, Inc., et al., Order on Triennial Market Power Updates and Announcing New, Interim Generation Market Power Screen and Mitigation Policy*, 97 FERC ¶ 61,219 (2001) ("SMA Order").

relevant Commission orders[6] and recent Commission orders accepting updated market power analyses.[7] I have performed the two market screens analyses described by the Commission in the *Rehearing Order*, namely the "Pivotal Supplier Analysis Using Uncommitted Capacity" ("Pivotal Supplier Test") and the "Wholesale Market Share Analysis Using Uncommitted Capacity" ("Market Share Test").

Consistent with the *Rehearing Order* and the Commission's specific guidance in more recent orders, I applied the Commission's market power screens to the control area administered by the Midwest Independent Transmission System Operator, Inc. ("MISO"), the RTO where the generation owned or controlled by Applicants is physically located.[8] I included Cinergy's purchase of the Wheatland generating facility from Allegheny Energy as part of Cinergy's portfolio of generation. With respect to Applicants' affiliated generation in PJM (consisting of shares of generation jointly-owned with AEP and Dayton Power & Light), such generation is subject to grandfathered firm transmission service to MISO; therefore I treated this generation as if located in MISO and hence it is not necessary to conduct an analysis of PJM.

Cinergy readily passes both the Pivotal Supplier Test and the Market Share Test in the MISO market, and therefore, lacks generation market power with respect to sales in relevant markets. Applicants do not have the ability to exercise vertical market power with respect to transmission. Applicants' transmission assets, located in MISO, are under the control of MISO and subject to the terms and conditions of the MISO Open Access Transmission Tariff ("OATT") and Transmission and Energy Markets Tariff ("TEMT"). Further, Cinergy exercises no control

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6 *See, e.g., AEP Power Marketing, Inc., et al.*, Letter from Steve P. Rodgers, Director, Division of Tariffs and Market Development – South,, Docket No. ER96-2495 (Oct. 29, 2004).

7 *See*, for example, various Commission *Orders On Updated Market Power Analysis, Instituting Section 206 Proceeding And Establishing Refund Effective Date* and *Orders Accepting Updated Market Power Analysis*, discussed at the Commission's December 15, 2004 open meeting and issued subsequently.

8 At least two recent orders have indicate that the MISO RTO should be regarded as the default geographic market for the purpose of analyzing market power no that MISO has begun to operate its centralized "Day 2" energy markets. *See AES Huntington Beach, LLC*, 111 FERC ¶ 61,079 at P35 & n.13 (2005); *Alliant Energy Corp. Servs., Inc.*, 109 FERC ¶ 61,289 at P 31 (2004).

over sites in the relevant market for generating plants that could restrict entry by other suppliers or other barriers to entry. For these reasons, I conclude that Cinergy should continue to be allowed to sell at market-based rates.

III. DESCRIPTION OF APPLICANTS

Cinergy is a public utility holding company under the Public Utility Holding Company Act of 1935, created as part of the October 1994 merger of The Cincinnati Gas & Electric Company ("CG&E") and PSI Energy, Inc. ("PSI").[9]

CG&E, an Ohio corporation and wholly-owned direct subsidiary of Cinergy, is a combination electric and gas public utility company that provides service in the southwestern portion of Ohio and, through The Union Light, Heat and Power Company ("ULH&P"), in nearby areas of Kentucky.

PSI, an Indiana corporation and wholly owned direct public utility subsidiary of Cinergy, is a vertically-integrated and regulated utility that provides service in north central, central, and southern Indiana.

Exhibit CIN-3 provides a list of the generating units owned by Cinergy or its affiliates. Cinergy has approximately 12,000 MW of affiliated capacity, mostly located in MISO,[10] and approximately 900 MW of merchant peaking capacity in Tennessee and in Mississippi, both

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9 *Cincinnati Gas & Elec. Co. and PSI Energy, Inc.*, 64 FERC ¶ 61,237 (1993), *order denying reh'g*, 71 FERC ¶ 61,380 (1995).

10 Some of Cinergy's jointly-owned generating facilities are physically located in control areas that are now part of PJM. However, Cinergy has network service and pseudo-tie configuration of its ownership interest to move the output of these jointly-owned facilities to MISO. Therefore, for purposes of my analysis, I treated Cinergy's affiliated share of these generating facilities as if located in MISO. (Conversely, I treated the jointly-owned shares of Cinergy-affiliated plants located in MISO that are owned by parties in PJM as if located in PJM.)

located in TVA's control area.[11] CG&E also has a 9 percent equity stake and 9 percent power participation share OVEC.

Cinergy recently announced the purchase of Allegheny Energy Supply Wheatland Generating Facility, LLC, which owns the approximately 508 MW Wheatland generating plant in Indiana.[12] The plant is interconnected to MISO and is located in the former Cinergy control area. I have included this unit as being under Cinergy's control for purposes of my analysis.

IV. GENERATION DOMINANCE

Background and Analytic Approach

In the *Rehearing Order*, the Commission outlined a new interim methodology to be used by applicants requesting market-based rate authority under Section 205 of the Federal Power Act or making their required triennial market power update filings. As in the *SMA Order*, the Commission indicated that the new screens are an interim method to be used until a new permanent methodology is adopted by the Commission. The Commission applies two screens -- the Pivotal Supplier Test and the Market Share Test – and, if both screens are passed, no further inquiry into generation dominance is required. If an entity exceeds one or both of the screens, further analysis is required.[13]

In the *Rehearing Order*, "the Commission concluded that the default relevant geographic market for the interim generation market power analysis should continue to be based on the applicant's control area market or an entire ISO/RTO for applicants located in ISO/RTOs that have

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11 Cinergy affiliates also have ownership in a modest amount of generation located at industrial/cogeneration facilities whose output is fully committed under long-term contract to either industrial hosts or unaffiliated third-parties. This capacity totals less than 200 MW in the Eastern Interconnect. While I (properly) did not include this generation in my analysis since it is committed under long-term contracts, my conclusions would be unaltered had I included it.

12 The plant's nameplate rating is 540 MW and its summer rating is 472 MW.

13 *See Rehearing Order* at PP 105-112 (defining the Delivered Price Test).

Exhibit CIN-1

sufficient market structure and a single energy market.".[14] I therefore conducted my analysis for the MISO market.[15] I have taken into account that Cinergy has grandfathered firm transmission rights to move energy from its jointly-owned facilities physically located in control areas that are now part of PJM (Conesville, J M Stuart and Killen), and have therefore treated this generation as if it were located in MISO. In addition, since Cinergy also has firm transmission rights to move energy from its generating facilities in the OVEC control area, I treated the OVEC generation as if it were located in MISO. Finally, I conservatively treated Cinergy's affiliated generation in TVA as if it were located in MISO and disregard other imports entirely; this treatment simplifies the analysis by eliminating the need to determine a simultaneous import capability and allocation of first-tier imports into MISO.

Pivotal Supplier Test Using Uncommitted Capacity

The Pivotal Supplier Test seeks to determine if load can be served without an applicant's generation. Once the wholesale market is determined, the test is straightforward: regardless of the generation owned or controlled by applicants, the only issue is whether there is sufficient rival generation to serve wholesale load.

The *Rehearing Order* specifies a number of calculations for the Pivotal Supplier test.

First, Uncommitted Capacity is calculated by taking capacity owned or controlled through contract and firm purchases, less operating reserves, native load commitments and firm non-requirement sales. This calculation applies to both applicants and competing generators. The Commission indicates that nameplate capacity should be used, and that operating reserves should be based on North American Electric Reliability Council ("NERC") or regional reliability council requirements. In calculating Uncommitted Capacity, the *Rehearing Order* specifies that the

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14 *Clarification Order* at P 31.

15 The Commission has stated that "once [it] act[s] on a generation market power analysis for a given ISO/RTO, future applicants can rely on that analysis to support their market-based rate applications." *Clarification Order* at P 175. The Commission has approved the use of MISO as a default geographic market in other proceedings. *See AES Huntington Beach, LLC*, 111 FERC ¶ 61,079 at P35 & n.13 (2005); *Alliant Energy Corp. Servs., Inc.*, 109 FERC ¶ 61,289 at P 31 (2004).

"average daily peak native load for the peak month" should be used. Also included in Uncommitted Capacity are uncommitted supplies that can be imported into the relevant market from first-tier markets, limited by the simultaneous import capability into the market being analyzed.

Second, the wholesale market is calculated based on the annual peak load (needle peak) less the "average daily peak native load for the peak month."[16]

Third, total uncommitted supply minus wholesale load yields the Net Uncommitted Supply. If the applicant's uncommitted capacity is less than the Net Uncommitted Supply, the pivotal supplier screen is passed.

Wholesale Market Share Test Using Uncommitted Capacity

The Market Share Test evaluates, for each of four seasons, whether the applicant has a dominant position in the market, with dominance defined as a market share in excess of 20 percent of uncommitted capacity.

For purposes of the Market Share Test, the proxy for native load is the "minimum peak load day for each season" (Summer, Fall, Winter, and Spring).[17] Additionally, the Market Share Test also includes a measure of seasonal planned outages.

Assumptions

My analysis of the MISO market is generally is based on calendar year 2003 as the most recent historical time period for which generation and load data are available ("applicants…must use the most recent 12 months' historical data as a snapshot in time")[18]

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16 *Id.* at P 91.

17 *Id.* at P 100.

18 *Rehearing Order* at P 118.

Exhibit CIN-1

Generating Capacity. Exhibit CIN-3 provides details of the capacity owned or controlled by Cinergy. I used nameplate capacity ratings as specified in the *Rehearing Order*. However, I note that nameplate ratings do not necessarily reflect typical industry practice for reporting deliverable energy or capacity, for which the industry tends to rely on seasonal ratings; hence, as a result, the generator ratings may not match ratings Cinergy uses in other official filings. The primary sources of generation data include data published by the Energy Information Administration of the U.S. Department of Energy (Form EIA-860, Annual Generator Report) and the EIA-411 filings for relevant NERC regions.

Planned Outages. For MISO overall, I used data filed from the 2003 FERC Form 714 for each of the former individual control areas. I applied the average of outages at time of peak for the respective three-month seasonal period. These data are not directly equivalent to the Commission's specification (i.e., the total number of MW-days of outages divided by the total number of days in the season),[19] but the FERC Form 714 is the data source identified by the Commission's in the *Rehearing Order*[20] and *Clarification Order*[21] to be used for this purpose.

Operating reserves. I based operating reserves for Cinergy on its obligations under East Central Reliability Council ("ECAR") guidelines (4.5 percent). Operating reserves for other MISO Participants are based on regions' North American Reliability Council ("NERC") requirements. Where such data are not available, I have assumed that operating reserves are equal to 4.5 percent of each utility's peak load. The results of my analysis are not sensitive to this assumption.

Load. I relied on hourly load data from the 2003 FERC Form 714 for all MISO participants. I adjusted Cinergy hourly loads, to eliminate the loads of Wabash Valley Power Association and Indiana Municipal Power Agency that are included in the Cinergy control area. Loads attributed to Cinergy do not reflect the portion of CG&E's load that has switched. Cinergy

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19 *Rehearing Order* at P 100.

20 *Rehearing Order* at P 100.

21 *Clarification Order* at P 120.

is responsible for the remainder of the load in the Cinergy control area, either as the regulated utility provider (PSI) or the default service provider (CG&E).

Simultaneous Imports. No simultaneous import studies have been conducted in connection with this application. I conservatively excluded imports, other than from Applicants, from my analysis of the MISO market. This treatment understates competitors' ability to participate in wholesale electricity markets and therefore overstates the Cinergy presence in the market. Exhibit CIN-4 reflects the assumptions (page 1), results of the Pivotal Supplier Test (page 2) and the Market Share Test (page 3) for MISO.

Results of Analysis

Cinergy owns or controls 14,716 MW of generation in MISO, including its share of jointly owned plants in PJM (1,515 MW) and OVEC (215 MW) for which Cinergy has grandfathered transmission rights for delivery into MISO. I also conservatively included Cinergy-affiliated generation in TVA (979 MW) as if it were located in MISO.

Notably, my analysis understates the amount of uncommitted capacity competing with Cinergy, since I simply assume that the remainder of generation in MISO is committed to the extent there is load in MISO. Because portions of MISO (Ohio and Michigan) have retail access, it is difficult to calculate precisely the portion of generation that is committed to serving load.

Pivotal Supplier Test. Cinergy's uncommitted capacity in MISO is 5,149 MW, reflecting its 14,716 MW of supply less native load commitments and operating reserves plus imports of 2,709 MW. There is 23,348 MW of competing uncommitted capacity in MISO. Thus, total Uncommitted Supply is 28,496 MW. The Wholesale Market (the difference between the needle peak and the average daily peak) is 12,056 MW, and Net Uncommitted Supply (Total Uncommitted Supply minus Wholesale Market) is 16,441 MW. Because Applicants' uncommitted supply, 6,081 MW, is less than the Net Uncommitted Supply, Cinergy is not a pivotal supplier in MISO. See the summary below and page 2 of Exhibit CIN-4.

Exhibit CIN-1

Pivotal Supplier Test	(MW)
Cinergy Generation in MISO, plus Imports	14,716
Native Load Commitments	(9,050)
Operating Reserves	(517)
Applicant Uncommitted Capacity	5,149
Other Generation in MISO	109,689
Other Native Load Commitments	(82,517)
Operating Reserves	(3,824)
Uncommitted Capacity of Competing Supply	23,348
Total Uncommitted Supply	28,496
Wholesale Market (Peak minus Avg. Daily Peak)	12,056
Net Uncommitted Supply Available to Compete at Wholesale	16,441
Is Cinergy a Pivotal Supplier?	No

Market Share Test. Applicant's uncommitted capacity in MISO ranges from 6,076 MW (Spring) to 8,033 MW (Summer) after consideration of native load commitments, operating reserves, planned outages and imports. Competing uncommitted capacity in MISO (consisting of other generation located in MISO, adjusted for native load, operating reserves and planned outages) ranges from 39,915 MW (Spring) to 45,395 MW (Summer). Total Uncommitted Supply ranges from 45,991 MW (Spring) to 53,428 MW (Summer). Cinergy's market share ranges from 13 to 16 percent, therefore below the 20 percent market share screen threshold. See summary below and page 3 of Exhibit CIN-4.

Exhibit CIN-1

Market Share Test – Cinergy in MISO

	Winter	*Spring*	*Summer*	*Fall*
Cinergy Generation in MISO, Plus Imports	14,716	14,716	14,716	14,716
Native Load Commitments	(6,022)	(5,440)	(6,053)	(6,158)
Operating Reserves	(517)	(517)	(517)	(517)
Planned Outages	(1,080)	(2,683)	(114)	(298)
Applicant Uncommitted Capacity	7,097	6,076	8,033	7,743
Other Generation in MISO	109,689	109,689	109,689	109,689
Other Native Load Commitments	(57,810)	(53,847)	(59,230)	(59,574)
Operating Reserves	(3,824)	(3,824)	(3,824)	(3,824)
Planned Outages	(6,342)	(12,103)	(1,240)	(5,417)
Competing Uncommitted Supply	41,713	39,915	45,395	40,874
Total Uncommitted Supply	48,810	45,991	53,428	48,616
Cinergy Share	15%	13%	15%	16%

On the basis of the Commission's screens, Cinergy cannot be thought of as having generation market power in any relevant market.

V. TRANSMISSION MARKET POWER AND BARRIERS TO ENTRY

Cinergy's affiliated transmission assets, located in MISO, are under the control of MISO and subject to the terms and conditions of the MISO OATT. In other markets, the only other transmission Cinergy's affiliates own are those necessary to interconnect their generation with the grid; the Commission has ruled that generation interconnection facilities of this kind do not convey market power for purposes of market-based rate determinations.[22] Accordingly, Applicant and its affiliates cannot erect barriers to entry to the market by virtue of transmission market power.

The Commission also considers whether applicants have the ability to erect barriers to entry by other suppliers in terms of such things as 1) control of sites for new capacity development; 2) control of fuel inputs to generation; and 3) control of any equipment suppliers or facilities used

22 *See, e.g., Iowa Power Partners I LLC*, 81 FERC ¶ 61,058 (1997); *Vastar Res., Inc., et al.*, 81 FERC ¶ 61,135 (1997).

to transport fuels or other inputs to generation.[23] While Cinergy has local distribution companies ("LDCs"), Cinergy's ownership of LDCs does not represent a degree of control or access to the types of information that could give rise to a vertical concern. To the extent Cinergy affiliates have rights to use capacity on interstate gas transportation pipelines and storage facilities owned by others, such contracts do not give them the degree of control necessary to trigger vertical market power concerns.[24] Further, while CG&E and ULH&P provide natural gas transportation service within the former Cinergy control area, they serve primarily a small amount of Cinergy-owned facilities. Moreover, Based on prior analyses I have conducted, Midwest gas transportation markets are not highly concentrated, meaning the conditions for a successful foreclosure strategy are not present.[25]

Cinergy exercises no unique control over sites for generating capacity in the relevant market that could restrict entry by other suppliers or other barriers to entry.

There are no other issues that raise any relevant competitive concerns.

Based on these facts, Cinergy cannot erect barriers to entry that would prevent competitors from participating in the relevant markets.

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23 *See, e.g.*, *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079 at P 45 (2005); *Doswell Limited Partnership*, 50 FERC ¶ 61,251 (1990); *Entergy*, 58 FERC ¶ 61,234 (1992).

24 Potential vertical abuses of the type that the Commission has been concerned with in Order No. 642 and in other orders involving vertical mergers, implicitly require that the upstream affiliate have operational control of the pipeline. As holders of firm transportation rights, Cinergy lacks the capabilities of a pipeline operator.

25 See, e.g., *Engage Energy America, LLC, Frederickson Power L.P. and Duke Energy Corporation*, 98 FERC ¶ 61,207 (2002).

> As we have previously held (See e.g., El Paso Energy Corporation and the Coastal Corporation, 92 FERC ¶ 61,076 at 61,332 (2000)), both highly concentrated common upstream and downstream markets are necessary in order to allow effective strategies of foreclosure or raising rivals' costs. It has not been shown that such conditions exist in any of the relevant markets....
>
> Wholesale purchasers of gas-fired generation in the downstream Midwest markets, on the other hand, lack sufficient alternatives for power supplies, as indicated by the high levels of market concentration in most circumstances. However, any concern that a combined Duke Energy-Westcoast, either by itself or in coordination with other upstream suppliers, would be able to raise the delivered fuel costs of their downstream rivals is assuaged by the fact that upstream markets are either unconcentrated or moderately concentrated.

VI. CONCLUSION AND RECOMMENDATION

On the basis of the foregoing analysis, Cinergy clearly meets the Commission's test for market-based rate authority in the relevant market, MISO. Therefore, I recommend that Applicants be allowed to continue to sell at market-based rates.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cinergy Services, Inc., on behalf of PSI Energy, Inc. and Cincinnati Gas & Electric Company	)))	**Docket No. ER05-___-000**

AFFIDAVIT

County of Suffolk	§
Commonwealth of Massachusetts	§
	§

WILLIAM H. HIERONYMUS being duly sworn, deposes and states: that he prepared the Affidavit and Exhibits of William H. Hieronymus and that the statements contained therein and the Exhibits attached hereto are true and correct to the best of his knowledge and belief.

William H. Hieronymus

William H. Hieronymus

SUBSCRIBED AND SWORN TO BEFORE ME, this the 4th day of May 2005.

Catherine M. Joyce

Notary Public, Commonwealth of Massachusetts

CATHERINE M. JOYCE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
April 3, 2009

Charles
River
Associates

Exhibit CIN-2

WILLIAM H. HIERONYMUS — Vice President

Ph.D.	Economics, University of Michigan
M.A.	Economics, University of Michigan
B.A.	Social Science, University of Iowa

William Hieronymus has consulted extensively to managements of electricity and gas companies, their counsel, regulators, and policymakers. His principal areas of concentration are the structure and regulation of network utilities and associated management, policy, and regulatory issues. Dr. Hieronymus has spent the last fourteen years working on the restructuring and privatization of utility systems in the U.S. and internationally. In this context he has assisted the managements of energy companies on corporate and regulatory strategy, particularly relating to asset acquisition and divestiture. He has testified extensively on regulatory policy issues and on market power issues related to mergers and acquisitions. In his twenty-five years of consulting to this sector, he also has performed a number of more specific functional tasks, including analyzing potential investments; assisting in negotiation of power contracts, tariff formation, demand forecasting, and fuels market forecasting. Dr. Hieronymus has testified frequently on behalf of energy sector clients before regulatory bodies, federal courts, and legislative bodies in the United States and United Kingdom. He has contributed to numerous projects, including the following:

ELECTRICITY SECTOR STRUCTURE, REGULATION, AND RELATED MANAGEMENT AND PLANNING ISSUES

U.S. Market Restructuring Assignments

- Dr. Hieronymus serves as an advisor to the senior executives of electric utilities on restructuring and related regulatory issues, and he has worked with senior management in developing strategies for shaping and adapting to the emerging competitive market in electricity. Related to some of these assignments, he has testified before state agencies on regulatory policies and on contract and asset valuation.

- For utilities seeking merger approval, Dr. Hieronymus has prepared and testified to market power analyses at FERC and before state commissions. He also has assisted in discussions with the Antitrust Division of the Department of Justice and in responding to information requests. The mergers on which Dr. Hieronymus has testified include both electricity mergers and combination mergers involving electricity and gas companies. Among the major mergers on which he has testified are Sempra (Enova and Pacific Enterprises), Xcel (New Century Energy and Northern States Power),

CRA

Exelon (Commonwealth Edison and Philadelphia Electric), AEP (American Electric Power and Central and Southwest), Dynegy-Illinois Power, Con Edison-Orange and Rockland, Dominion-Consolidated Natural Gas, NiSource-Columbia Energy, E-on-PowerGen/LG&E and NYSEG-RG&E. He also submitted testimony in mergers that were terminated for unrelated reasons, including Entergy-Florida Power and Light and Consolidated Edison-Northeast Utilities. Testimony on similar topics has been filed for a number of smaller utility mergers and for asset acquisitions. Dr Hieronymus has also assisted numerous clients in the pre-merger screening of potential acquisitions and merger partners.

- For utilities seeking to establish or extend market rate authority, Dr. Hieronymus has provided numerous analyses concerning market power in support of submissions under Sections 205 of the Federal Power Act.

- For utilities and power pools engaged in restructuring activities, he has assisted in examining various facets of proposed reforms. Such analysis has included features of the proposals affecting market efficiency and those that have potential consequences for market power. Where relevant, the analysis also has examined the effects of alternative reforms on the client's financial performance and achievement of other objectives.

- For generators and marketers, Dr. Hieronymus has testified extensively in the regulatory proceedings concerning the electricity crisis in the WECC that occurred during May 2000 and May 2001. His testimony concerned, *inter alia*, the economics of long term contracts entered into during that period the behavior of market participants during the crisis period and the nexus between purportedly dysfunctional spot markets and forward contracts.

- For the New England Power Pool (NEPOOL), Dr. Hieronymus examined the issue of market power in connection with NEPOOL's movement to market-based pricing for energy, capacity, and ancillary services. He also assisted the New England utilities in preparing their market power mitigation proposal. The main results of his analysis were incorporated in NEPOOL's market power filing before FERC and in ISO-New England's market power mitigation rules.

- For a coalition of independent generators, he provided affidavits advising FERC on changes to the rules under which the northeastern U.S. power pools operate.

- As part of a large planning and analysis team, Dr. Hieronymus assisted a Midwest utility in developing an innovative proposal for electricity industry restructuring.

- Dr. Hieronymus has contributed substantially to projects dealing with the restructuring of the California electricity industry. In this context he also is a witness in California and FERC proceedings on the subject of market power and mitigation and more recently before FERC in connection with transactions related to PG&E's bankruptcy and on the contracts signed between merchant generators and various buyers.

Valuation of Utility Assets in North America

- Dr. Hieronymus has testified in state securitization and stranded cost quantification proceedings, primarily in forecasting the level of market prices that should be used in assessing the future revenues and the operating contribution earned by the owner of utility assets in energy and capacity markets. The market price analyses are tailored to the specific features of the market in which a utility will operate and reflect transmission-constrained trading over a wide geographic area. He also has testified in rebuttal to other parties' testimony concerning stranded costs, and has assisted companies in internal stranded cost and asset valuation studies.

- He was the primary valuation witness on behalf of a western utility in an arbitration proceeding concerning the value of a combined cycle plant coming off lease that the utility wished to purchase.

- He assisted a bidder in determining the commercial terms of plant purchase offers as well as assisting clients in assessing the regulatory feasibility of potential acquisitions and mergers.

Other U.S. Utility Engagements

- Dr. Hieronymus has contributed to the development of several benchmarking analyses for U.S. utilities. These have been used in work with clients to develop regulatory proposals, set cost reduction targets, restructure internal operations, and assess merger savings.

- Dr. Hieronymus was a co-developer of a market simulation package tailored to region-specific applications. He and other senior personnel have conducted numerous multi-day training sessions using the package to help utility clients in educating management regarding the consequences of wholesale and retail deregulation and in developing the skills necessary to succeed in this environment.

- He has made numerous presentations to U.S. utility managements regarding overseas electricity systems.

- For an East Coast electricity holding company, Dr. Hieronymus prepared and testified to an analysis of the logic and implementation issues concerning utility-sponsored conservation and demand-management programs as alternatives to new plant construction.

- In connection with nuclear generating plants nearing completion, he has testified in Pennsylvania, Louisiana, Arizona, Illinois, Missouri, New York, Texas, Arkansas, New Mexico, and before the Federal Energy Regulatory Commission regarding plant-in-service rate cases on the issues of equitable and economically efficient treatment of plant costs for tariff-setting purposes, regulatory treatment of new plants in other jurisdictions, the prudence of past system planning decisions and assumptions, performance incentives, and the life-cycle costs and benefits of the units. In these and other utility regulatory proceedings, Dr. Hieronymus and his colleagues have provided extensive support to counsel, including preparation of interrogatories, cross-examination support, and assistance in writing briefs.

- On behalf of utilities in the states of Michigan, Massachusetts, New York, Maine, Indiana, Pennsylvania, New Hampshire, and Illinois, he has submitted testimony in regulatory proceedings on the economics of completing nuclear generating plants that were then under construction. His testimony has covered the likely cost of plant completion; forecasts of operating performance; and extensive analyses of the impacts of completion, deferral, and cancellation upon ratepayers and shareholders. For the senior managements and boards of utilities engaged in nuclear plant construction, Dr. Hieronymus has performed a number of highly confidential assignments to support strategic decisions concerning the continuance of construction.
- For an eastern Pennsylvania utility that suffered a nuclear plant shutdown due to NRC sanctions relating to plant management, he filed testimony regarding the extent to which replacement power cost exceeded the costs that would have occurred but for the shutdown.
- For a major Midwestern utility, Dr. Hieronymus headed a team that assisted senior management in devising its strategic plans, including examination of such issues as plant refurbishment/life extension strategies, impacts of increased competition, and available diversification opportunities.
- On behalf of two West Coast utilities, Dr. Hieronymus testified in a needs certification hearing for a major coal-fired generation complex concerning the economics of the facility relative to competing sources of power, particularly unconventional sources and demand reductions.
- For a large western combination utility, he participated in a major 18-month effort to provide the client with an integrated planning and rate case management system.
- For two Midwestern utilities, Dr. Hieronymus prepared an analysis of intervenor-proposed modifications to the utilities' resource plans. He then testified on their behalf before a legislative committee.

U.K. Assignments

- Following promulgation of the white paper that established the general framework for privatization of the electricity industry in the United Kingdom, Dr. Hieronymus participated extensively in the task forces charged with developing the new market system and regulatory regime. His work on behalf of the Electricity Council and the twelve regional distribution and retail supply companies focused on the proposed regulatory regime, including the price cap and regulatory formulas, and distribution and transmission use of system tariffs. He was an active participant in industry-government task forces charged with creating the legislation, regulatory framework, initial contracts, and rules of the pooling and settlements system. He also assisted the regional

assignment involved developing a forecast of electricity prices, both in Eastern Europe and for potential exports to the West.

- For the OECD he performed a study of energy subsidies worldwide and the impact of subsidy elimination on the environment, particularly on greenhouse gases.
- For the Magyar Villamos Muvek Troszt, the electricity company of Hungary, Dr. Hieronymus developed a contract framework to link the operations of the different entities of an electricity sector in the process of moving from a centralized command-and-control system to a decentralized, corporatized system.
- For Iberdrola, the largest investor-owned Spanish electricity company, he assisted in development of their proposal for a fundamental reorganization of the electricity sector, its means of compensating generation and distribution companies, its regulation, and the phasing out of subsidies. He also has assisted the company in evaluating generation expansion options and in valuing offers for imported power.
- Dr. Hieronymus contributed extensively to a project for the Ukrainian Electricity Ministry, the goal of which was to reorganize the Ukrainian electricity sector and prepare it for transfer to the private sector and the attraction of foreign capital. The proposed reorganization is based on regional electric power companies, linked by a unified central market, with market-based prices for electricity.
- At the request of the Ministry of Power of the USSR, Dr. Hieronymus participated in the creation of a seminar on electricity restructuring and privatization. The seminar was given for 200 invited Ministerial staff and senior managers for the USSR power system. His specific role was to introduce the requirements and methods of privatization. Subsequent to the breakup of the Soviet Union, Dr. Hieronymus continued to advise both the Russian energy and power ministry and the government-owned generation and transmission company on restructuring and market development issues.
- On behalf of a large continental electricity company, Dr. Hieronymus analyzed the proposed directives from the European Commission on gas and electricity transit (open access regimes) and on the internal market for electricity. The purpose of this assignment was to forecast likely developments in the structure and regulation of the electricity sector in the common market and to assist the client in understanding their implications.
- For the electric utility company of the Republic of Ireland, he assessed the likely economic benefit of building an interconnector between Eire and Wales for the sharing of reserves and the interchange of power.
- For a task force representing the Treasury, electricity generating, and electricity distribution industries in New Zealand, Dr. Hieronymus undertook an analysis of industry structure and regulatory alternatives for achieving the economically efficient generation of electricity. The analysis explored how the industry likely would operate under alternative regimes and their implications for asset valuation, electricity pricing, competition, and regulatory requirements.

TARIFF DESIGN METHODOLOGIES AND POLICY ISSUES

- Dr. Hieronymus participated in a series of studies for the National Grid Company of the United Kingdom and for ScottishPower on appropriate pricing methodologies for transmission, including incentives for efficient investment and location decisions.
- For a U.S. utility client, he directed an analysis of time-differentiated costs based on accounting concepts. The study required selection of rating periods and allocation of costs to time periods and within time periods to rate classes.
- For EPRI, Dr. Hieronymus directed a study that examined the effects of time-of-day rates on the level and pattern of residential electricity consumption.
- For the EPRI-NARUC Rate Design Study, he developed a methodology for designing optimum cost-tracking block rate structures.
- On behalf of a group of cogenerators, Dr. Hieronymus filed testimony before the Energy Select Committee of the UK Parliament on the effects of prices on cogeneration development.
- For the Edison Electric Institute (EEI), he prepared a statement of the industry's position on proposed federal guidelines regarding fuel adjustment clauses. He also assisted EEI in responding to the U.S. Department of Energy (DOE) guidelines on cost-of-service standards.
- For private utility clients, Dr. Hieronymus assisted in the preparation both of their comments on draft FERC regulations and of their compliance plans for PURPA Section 133.
- For a state utilities commission, Dr. Hieronymus assessed its utilities' existing automatic adjustment clauses to determine their compliance with PURPA and recommended modifications.
- For DOE, he developed an analysis of automatic adjustment clauses currently employed by electric utilities. The focus of this analysis was on efficiency incentive effects.
- For the commissioners of a public utility commission, Dr. Hieronymus assisted in preparation of briefing papers, lines of questioning, and proposed findings of fact in a generic rate design proceeding.

SALES FORECASTING METHODOLOGIES FOR GAS AND ELECTRIC UTILITIES

- For the White House Sub-Cabinet Task Force on the future of the electric utility industry, Dr. Hieronymus co-directed a major analysis of "least-cost planning studies" and "low-growth energy futures." That analysis was the sole demand-side study commissioned by the task force, and it formed a basis for the task force's conclusions concerning the need for new facilities and the relative roles of new construction and customer side-of-the-meter programs in utility planning.

- For a large eastern utility, Dr. Hieronymus developed a load forecasting model designed to interface with the utility's revenue forecasting system-planning functions. The model forecasts detailed monthly sales and seasonal peaks for a 10-year period.
- For DOE, he directed development of an independent needs assessment model for use by state public utility commissions. This major study developed the capabilities required for independent forecasting by state commissions and provided a forecasting model for their interim use.
- For state regulatory commissions, Dr. Hieronymus has consulted in the development of service area-level forecasting models of electric utility companies.
- For EPRI, he authored a study of electricity demand and load forecasting models. The study surveyed state-of-the-art models of electricity demand and subjected the most promising models to empirical testing to determine their potential for use in long-term forecasting.
- For a Midwestern electric utility, he provided consulting assistance in improving the client's load forecast, and testified in defense of the revised forecasting models.
- For an East Coast gas utility, Dr. Hieronymus testified with respect to sales forecasts and provided consulting assistance in improving the models used to forecast residential and commercial sales.

OTHER STUDIES PERTAINING TO REGULATED AND ENERGY COMPANIES

- In a number of antitrust and regulatory matters, Dr. Hieronymus has performed analyses and litigation support tasks. These cases have included Sherman Act Section 1 and 2 allegations, contract negotiations, generic rate hearings, ITC hearings, and a major asset valuation suit. In a major antitrust case, he testified with respect to the demand for business telecommunications services and the impact of various practices on demand and on the market share of a new entrant. For a major electrical equipment vendor, Dr. Hieronymus testified on damages with respect to alleged defects and associated fraud and warranty claims. In connection with mergers for which he is the market power expert, Dr. Hieronymus assists clients in Hart-Scott-Rodino investigations by the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission. In an arbitration case, he testified as to changed circumstances affecting the equitable nature of a contract. In a municipalization case, he testified concerning the reasonable expectation period for the supplier of power and transmission services to a municipality. In two Surface Transportation Board proceedings, he testified on the sufficiency of product market competition to inhibit the exercise of market power by railroads transporting coal to power plants.

- For a landholder, Dr. Hieronymus examined the feasibility and value of an energy conversion project that sought a long-term lease. The analysis was used in preparing contract negotiation strategies.
- For an industrial client considering development and marketing of a total energy system for cogeneration of electricity and low-grade heat, Dr. Hieronymus developed an estimate of the potential market for the system by geographic area.
- For the U.S. Environmental Protection Agency (EPA), he was the principal investigator in a series of studies that forecasted future supply availability and production costs for various grades of steam and metallurgical coal to be consumed in process heat and utility uses.

Dr. Hieronymus has been an invited speaker at numerous conferences on such issues as market power, industry restructuring, utility pricing in competitive markets, international developments in utility structure and regulation, risk analysis for regulated investments, price squeezes, rate design, forecasting customer response to innovative rates, intervener strategies in utility regulatory proceedings, utility deregulation, and utility-related opportunities for investment bankers.

Prior to rejoining CRA in June 2001, Dr. Hieronymus was a Member of the Management Group at PA Consulting, which acquired Hagler Bailly, Inc. in October 2000. He was a Senior Vice President of Hagler Bailly. In 1998, Hagler Bailly acquired Dr. Hieronymus's former employer, Putnam, Hayes & Bartlett, Inc. He was a Managing Director at PHB. He joined PHB in 1978. From 1973 to 1978 he was a Senior Research Associate at CRA. Previously, he served as a project director at Systems Technology Corporation and as an economist while serving as a Captain in the U.S. Army.

Exhibit CIN-3

Generation Owned or Controlled by Cinergy and its Affiliates

Control Area	Unit Name	Unit No.	Primary Fuel	Unit Type	Nameplate Capacity (MW)	Summer Capacity (MW)	% Ownership	Net Nameplate Capacity (MW)	Net Summer Capacity (MW)
MISO	Dicks Creek	1	NG	JE	100.0	92.0	100.0%	100.0	92.0
MISO	Dicks Creek	3-5	NG	GT	59.1	44.2	100.0%	59.1	44.2
MISO	East Bend	2	COAL	ST	669.3	600.0	69.0%	461.8	414.0
MISO	Miami Fort	5-6	COAL	ST	263.2	243.0	100.0%	263.2	243.0
MISO	Miami Fort	7-8	COAL	ST	1,114.8	1,000.0	64.0%	713.5	640.0
MISO	Miami Fort	GT3-6	FO2	GT	66.0	56.8	100.0%	66.0	56.8
MISO	Walter C Beckjord	1-5	COAL	ST	760.5	704.0	100.0%	760.5	704.0
MISO	Walter C Beckjord	6	COAL	ST	460.8	414.0	37.5%	172.8	155.3
MISO	Walter C Beckjord	GT1-4	FO2	GT	211.6	186.4	100.0%	211.6	186.4
MISO	Woodsdale	GT1-6	NG	GT	489.6	462.0	100.0%	489.6	462.0
MISO	Cayuga	1-2	COAL	ST	1,062.0	995.0	100.0%	1,062.0	995.0
MISO	Cayuga	4	NG	GT	121.0	99.0	100.0%	121.0	99.0
MISO	Cayuga	3a-d	FO2	IC	10.4	10.0	100.0%	10.4	10.0
MISO	Connersville	1-2	FO2	GT	83.6	86.0	100.0%	83.6	86.0
MISO	Edwardsport	6	FO2	ST	35.0	40.0	100.0%	35.0	40.0
MISO	Edwardsport	7-8	COAL	ST	109.2	120.0	100.0%	109.2	120.0
MISO	Gibson	1-4	COAL	ST	2,671.6	2,512.0	100.0%	2,671.6	2,512.0
MISO	Gibson	5	COAL	ST	667.9	620.0	50.1%	334.3	310.3
MISO	Markland	1-3	WAT	HY	64.8	45.0	100.0%	64.8	45.0
MISO	Miami Wabash	1-6	FO2	GT	104.6	96.0	100.0%	104.6	96.0
MISO	Noblesville	3	NG	ST	318.0	285.0	100.0%	318.0	285.0
MISO	R Gallagher	1-4	COAL	ST	600.0	560.0	100.0%	600.0	560.0
MISO	Wabash River	1-6	COAL	ST	972.7	753.0	100.0%	972.7	753.0
MISO	Wabash River	7a-c	FO2	IC	8.1	8.0	100.0%	8.1	8.0
MISO	Wabash River	1a			192.0	175.0	100.0%	192.0	175.0
MISO	W H Zimmer	ST1	COAL	ST	1,425.6	1,300.0	46.5%	662.9	604.5
MISO	Madison	1-8	NG	GT	683.2	576.0	100.0%	683.2	576.0
MISO	Henry County	1-3	NG	GT	135.0	136.5	100.0%	135.0	136.5
MISO	Wheatland	1-4	NG	CT	540.0	472.0	100.0%	540.0	472.0
Subtotal,MISO								12,008.5	10,881.0
PJM	Conesville	4	COAL	ST	841.5	780.0	40.0%	336.6	312.0
PJM	J M Stuart	1-4	COAL	ST	2,440.8	2,340.0	39.0%	951.9	912.6
PJM	Killen Station	2	COAL	ST	666.4	600.0	33.0%	219.9	198.0
PJM	Killen Station	GT1	FO2	GT	20.1	18.0	33.0%	6.6	5.9
Subtotal,PJM								1,515.1	1,428.5
OVEC	Kyger Creek		COAL	ST	1,086.0	985.7	9.0%	97.7	88.7
OVEC	Clifty Creek		COAL	ST	1,303.2	1,195.8	9.0%	117.3	107.6
TVA	Brownsville		NG	GT	460.0	450.0	100.0%	460.0	450.0
TVA	Caledonia		NG	GT	519.0	444.0	100.0%	519.0	444.0
Subtotal,Other								1,194.0	1,090.3
TOTAL								14,715.58	13,399.84

Market Power Tests for Cinergy in MISO

Facts:		
Cinergy Generation and Contracts in MISO	11,466	
Wheatland	540	
Cinergy Generation in PJM	1,515	
Cinergy Generation in OVEC	215	
Cinergy Generation in TVA	979	
Total Cinergy Generation and Contracts in MISO	14,716	
Other Generation in MISO	109,689	
Assumptions	MISO	Cinergy
Operating Reserves	4,341	517
Planned Outages (Winter)	7,422	1,080
Planned Outages (Spring)	14,786	2,683
Planned Outages (Summer)	1,354	114
Planned Outages (Fall)	5,716	298
Load Data	MISO	Cinergy System Load
Peak Load (Peak Hour, August 2003)	103,623	10,187
Peak Load (Avg. Daily Peak for August 2003)	91,568	9,050
Minimum Peak Demand Day, Winter	63,832	6,022
Minimum Peak Demand Day, Spring	59,286	5,440
Minimum Peak Demand Day, Summer	65,283	6,053
Minimum Peak Demand Day, Fall	65,732	6,158

Pivotal Supplier Test -- Cinergy in MISO

Cinergy Generation and Contracts in MISO	11,466
Wheatland	540
Cinergy Generation in PJM	1,515
Cinergy Generation in OVEC	215
Cinergy Generation in TVA	979
Native Load Commitments	(9,050)
Operating Reserves	(517)
Applicant Uncommitted Capacity	5,149
Other Local Generation	109,689
Native Load Commitments	(82,517)
Operating Reserves	(3,824)
Uncommitted Capacity of Competing Supply	23,348
Total Uncommitted Supply	28,496
Wholesale Market (Peak minus Avg. Daily Peak)	12,056
Net Uncommitted Supply Available to Compete at Wholesale	16,441
Is There Sufficient Third-Party Uncommitted Supply to Serve the Wholesale Market?	**Yes**
Is Cinergy Uncommitted Capacity Less Than Net Uncommitted Capacity?	**Yes**
Is Cinergy a Pivotal Supplier?	**No**

Market Share Test -- Cinergy in MISO

	Winter	*Spring*	*Summer*	*Fall*
Cinergy Generation and Contracts in MISO	11,466	11,466	11,466	11,466
Wheatland	540	540	540	540
Cinergy Generation in PJM	1,515	1,515	1,515	1,515
Cinergy Generation in OVEC	215	215	215	215
Cinergy Generation in TVA	979	979	979	979
Native Load Commitments	(6,022)	(5,440)	(6,053)	(6,158)
Operating Reserves	(517)	(517)	(517)	(517)
Planned Outages	(1,080)	(2,683)	(114)	(298)
Applicant Uncommitted Capacity	7,097	6,076	8,033	7,743
Other Local Generation	109,689	109,689	109,689	109,689
Other Native Load Commitments	(57,810)	(53,847)	(59,230)	(59,574)
Operating Reserves	(3,824)	(3,824)	(3,824)	(3,824)
Planned Outages	(6,342)	(12,103)	(1,240)	(5,417)
Competing Uncommitted Supply	41,713	39,915	45,395	40,874
Total Uncommitted Supply	48,810	45,991	53,428	48,616
Cinergy Share	15%	13%	15%	16%
Does Cinergy Pass the Market Share Test?	Yes	Yes	Yes	Yes

TAB B
CLEAN

Cincinnati Gas & Electric Company
Market Based Rate Tariff
Amendment

WHOLESALE MARKET-BASED RATE TARIFF
OF
THE CINCINNATI GAS & ELECTRIC COMPANY
PROVIDING FOR
SALES OF CAPACITY, ENERGY AND/OR ANCILLARY SERVICES
AND RESALE OF TRANSMISSION RIGHTS

****

INTRODUCTION

The Cincinnati Gas & Electric Company ("CG&E") operates an electric system in the state of Ohio. CG&E hereby offers to provide Market-Based Power Sales Service of Capacity and Energy pursuant to the terms and conditions of this Tariff.

I. DEFINITIONS

The following words and terms used herein shall be understood to have the following meanings:

1. Buyer: A purchaser of electric capacity, energy and/or ancillary services or resold transmission rights under this Tariff.

2. Cinergy Operating Companies: The Cincinnati Gas & Electric Company and PSI Energy, Inc.

3. Commission: The Federal Energy Regulatory Commission or such successor federal regulatory agency as may have jurisdiction over this Tariff.

4. Parties: The Seller and Buyer that have entered into a Service Agreement for service pursuant to this Tariff.

5. Seller: CG&E.

6. Tariff: This wholesale market-based rate tariff, as amended from time to time.

7. Service Agreement: The agreement entered into by Seller and Buyer for service under this Tariff.

8. Transaction: A particular transaction agreed to by the Parties pursuant to a Service Agreement under this Tariff.

9. Transmission Tariff: The Transmission Tariff filed by the Cinergy Operating Companies (or successor regional transmission organization) in compliance with Order No. 888, as it may be amended from time to time.

II. SALES OF ELECTRIC CAPACITY, ENERGY AND/OR ANCILLARY SERVICES

1. Electric Capacity and Energy: Seller may sell electric capacity and/or energy to Buyer under this Tariff from time to time at rates, terms and conditions established by the agreement of the Parties. All such Transactions shall be voluntary.

2. Prohibited Transactions: Except as set forth in Paragraph 3, no sale may be made pursuant to this rate schedule to (1) PSI Energy, Inc., or (2) The Union Light, Heat and Power Company without first receiving Commission authorization under Section 205 of the Federal Power Act.

3. Affiliate Sales: Seller may make sales to any entity identified in Paragraph 2 pursuant to the terms of this tariff, provided however that in no case may such sales be made at a rate that exceeds, on an after-the fact comparison basis, the locational marginal price applicable at the time of sale, reported at the Midwest ISO Cinergy Hub.

4. Ancillary Services: Seller may sell the following ancillary services to Buyer under this Tariff from time to time at rates, terms and conditions established by the agreement of the Parties, provided that the ancillary services are not sold in conjunction with transmission service provided by the Transmission Tariff. All such Transactions shall be voluntary:

   (i) Installed Capability and the following ancillary services in the ISO New England ("ISO-NE") market:
      (a) Ten Minute Spinning Reserves,
      (b) Ten Minute Non-Spinning Reserves,
      (c) Thirty Minute Operating Reserves and
      (d) Automatic Generation Control;

(ii) Installed Capacity and the following ancillary services in the New York ISO ("NYISO") market:

(a) Ten Minute Spinning Reserves,
(b) Ten Minute Non-Synchronized Reserves.
(c) Thirty Minute Operating Reserves,
(d) Regulation and Frequency Response Service and
(e) Energy Imbalance;

(iii) the following ancillary services in the PJM Interconnection ("PJM") market:

(a) Energy Imbalance.
(b) Operating Reserves (which includes Spinning Reserves, Ten Minute Reserves and Thirty Minute Reserves) and
(c) Regulation Service; and

(iv) such additional ancillary services in the ISO-NE, NYISO. PJM or such other markets as the Federal Energy Regulatory Commission (the "Commission") may specify and authorize from time-to-time in orders that extend such authority to all sellers previously authorized to sell energy and/or capacity at market-based rates.

5. Provision of Unbundled Transmission Service: Except as provided under Sections II.2 and III, this Tariff does not provide for the sale of transmission service or ancillary services. Either Seller or Buyer may arrange for transmission service and ancillary services in conjunction with the sale of capacity and energy.

III. RESALE OF TRANSMISSION RIGHTS

1. Character of Service: Seller may resell to a Buyer all or a portion of Seller's rights to the use of the transmission system of a transmission provider that Seller has reserved for its own use under a service agreement with the transmission provider, or has acquired from another customer of the transmission provider, including capacity that Seller has reserved or acquired for its own use on its own transmission system under the Transmission Tariff. In order to be eligible for this service, the Buyer must be an Eligible Customer under the transmission tariff of the transmission provider from whom the transmission service rights to be transferred were originally obtained. When Seller resells transmission

capacity that Seller has reserved or acquired for its own use on its own transmission system. Seller will continue to comply with all of the non-rate terms and conditions of the Transmission Tariff. The Seller will report the name of the Buyer in its Electric Quarterly Report.

2. Limitation on Sales Prices: The price at which Seller resells transmission rights to the Buyer shall not exceed the highest of (a) the original rate paid by Seller, (b) the applicable transmission provider's maximum rate on file at the time of the sale to the Buyer for service of the same duration; or (c) Sellees own opportunity costs, capped at the applicable transmission provider's cost of expansion at the time of the Seller's sale to the Buyer. Seller shall not recover opportunity costs on an incremental basis in connection with such sale without first receiving Commission approval pursuant to a filing under Section 205 of the Federal Power Act.

IV. RATES

All sales shall be made at rates established by agreement between Seller and Buyer.

V. MARKET BEHAVIOR RULES

This section is filed under protest. The filing of this section does not waive CG&E rights to contest the legality of its provisions before the Commission or any court of competent jurisdiction, and, in the event that the provisions (or any part thereof) are determined invalid or unlawful, the provisions (or applicable part thereof) shall be null and void and of no further force and effect.

As a condition of market-based rate authority, CG&E will comply with the following Market Behavior Rules:

1. **Unit Operation:** CG&E will operate and schedule generating facilities, undertake maintenance, declare outages and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable power market. Compliance with this Market Behavior Rule 1 does not require CG&E to bid or supply electric energy or other electricity products unless such requirement is a part of a separate Commission-approved tariff or requirement applicable to CG&E.

2. **Market Manipulation**: Actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could

manipulate market prices. market conditions. or market rules for electric energy or electricity products are prohibited. Actions or transactions undertaken by CG&E that are explicitly contemplated in Commission approved rules and regulations of an applicable power market (such as virtual supply or load bidding) or taken at the directions of an ISO or RTO are not in violation of this Market Behavior Rule. Prohibited actions and transactions include, but are not limited to:

a. pre-arranged offsetting trades of the same product among the same parties which involve no economic risk and no net change in beneficial ownership (sometimes called "wash trades");

b. transactions predicated on submitting false information to transmission providers or other entities responsible for operation of the transmission grid (such as inaccurate load or generation data: or scheduling non-firm service or products sold as firm), unless CG&E exercised due diligence to prevent such occurrences;

c. transactions in which an entity first creates artificial congestions and then purports to relieve such artificial congestions (unless CG&E exercised due diligence to prevent such occurrence), and

d. collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for electric energy or electricity products.

3. **Communications**: CG&E will provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, or Commission-approved independent system operators, or jurisdictional transmission providers, unless CG&E exercised due diligence to prevent such occurrences.

4. **Reporting**: To the extend CG&E engages in reporting of transactions to publishers of electricity or natural gas price indices, CG&E shall provide

accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the Policy Statement issued by the Commission in Docket No. PL03-3 and any clarifications thereto. CG&E shall notify the Commission within 15 days of the effective date of this tariff provision of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, CG&E shall adhere to such other standards and requirements for price reporting as the Commission may order.

5. **Record Retention**: CG&E shall retain, for a period of three years, all data and information upon which it billed the prices it charged for the electric energy or electric energy products it sold pursuant to this tariff or the prices it reported for use in price indices.

6. **Related Tariffs**: CG&E shall not violate or collude with another party in actions that violate CG&Es market-based rate code of conduct or Order No. 889 standards of conduct, as they may be revised from time to time.

Any violation of these Market Behavior Rules will constitute a tariff violation. CG&E will be subject to disgorgement of unjust profits associated with the tariff violation, from the date on which the tariff violation occurred. CG&E may also be subject to suspension or revocation of its authority to sell at market based rates or other appropriate non-monetary penalties.

VI. OTHER TERMS AND CONDITIONS

All other terms and conditions shall be established by agreement between Seller and Buyer.

VII. EFFECTIVE DATE

This Tariff is effective on January 31, 2004 or such other date set by the Commission.

VIII. REVISIONS TO THE TARIFF

Seller may file revisions to this Tariff by notifying Buyer in writing and by unilaterally making the appropriate filing with the Commission pursuant to the provisions of Section 205 of the Federal Power Act; provided, however, that such revision shall not affect the rates, terms and conditions of Transactions entered into prior to the date of such revision, unless otherwise agreed by the Parties.

IX. REPORTING REQUIREMENT

CG&E must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

SERVICE AGREEMENT

UNDER THE WHOLESALE MARKET-BASED RATE TARIFF

OF

THE CINCINNATI GAS & ELECTRIC COMPANY

PROVIDING FOR

SALES OF CAPACITY, ENERGY AND/OR ANCILLARY SERVICES

AND RESALE OF TRANSMISSION RIGHTS

**SERVICE AGREEMENT
UNDER THE WHOLESALE MARKET-BASED RATE TARIFF
OF
THE CINCINNATI GAS & ELECTRIC COMPANY
PROVIDING FOR
SALES OF CAPACITY, ENERGY AND/OR ANCILLARY
SERVICES
AND RESALE OF TRANSMISSION RIGHTS**

1.0 The Cincinnati Gas & Electric Company ("CG&E") is the "Seller" under this Service Agreement.

2.0 This Service Agreement, dated as of _________________, is entered into by and between Seller and ____________________________________ (Buyer").

3.0 All capitalized terms herein shall have the meaning set forth in Seller's Tariff.

4.0 Seller may provide and Buyer may purchase service under Seller's Tariff.

5.0 Terms and conditions for service shall be set forth in a Master Power Purchase and Sale Agreement (Master Agreement") and the Master Agreement shall be executed by Seller and Buyer.

6.0 Any notice or request made to or by a Party (Seller or Buyer) regarding this Service Agreement shall be made to the representative of the other Party as indicated below:

Seller: Buyer:

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

The Cincinnati Gas & Electric Company

By: ____________________ Title: ____________________ Date: __________
Name

[INSERT BUYER COMPANY NAME]

By: ____________________ Title: ____________________ Date: __________
Name

THE CINCINNATI GAS AND ELECTRIC COMPANY

STATEMENT OF POLICY AND CODE OF CONDUCT WITH RESPECT TO THE RELATIONSHIP BETWEEN THE CINCINNATI GAS AND ELECTRIC COMPANY AND ITS FRANCHISED UTILITY AFFILIATES

Applicability

This Code of Conduct applies to the relationship between The Cincinnati Gas and Electric Company employees or Cinergy Services, Inc. employees who participate in directing, organizing and executing the business decisions of its wholesale merchant or generation functions ("CG&E") and (1) PSI Energy, Inc. ("PSI"), (2) The Union Light, Heat and Power Company ("ULH&P") and (3) any employee of Cinergy Services, Inc. acting on behalf of PSI or ULH&P (collectively, the "Affiliates").

Marketing of Power

1. To the maximum extent practical, the employees of CG&E will operate separately from the employees of the Affiliates.

2. No employee of the Affiliates will share market information with any employee of CG&E unless all such information is simultaneously made available to the public. This policy will not apply to market information disclosed to employees of CG&E or the Affiliates who are engaged in support functions, including human resources, information resources, data processing, finance, legal, accounting and other support personnel who do not participate in directing, organizing and executing the business decisions of the wholesale merchant or generation functions of the Affiliates or CG&E, provided that such employees are prohibited from acting as conduits to pass market information obtained from the Affiliates to CG&E.

3. Sales of any non-power goods or services by the Affiliates, including sales made through its affiliated EWG's or QF's, to CG&E will be at the higher of cost or market price.

4. Sales of any non-power goods or services by CG&E to the Affiliates will not be at a price above market.

Brokering of Power

To the extent CG&E seeks to broker power for the Affiliates:

5. CG&E will offer the Affiliate's power first.

6. The arrangement between CG&E and the Affiliate is non-exclusive.

7. CG&E will not accept any fees in conjunction with any Brokering services it performs for the Affiliate.

To the extent the Affiliates seek to broker power for CG&E:

8. The Affiliates will offer their own power for sale before offering to broker power generated by CG&E.

9. The Affiliates will not charge CG&E a brokering fee less than the higher of cost or market, with market being the fee that it would charge a non-affiliate for its brokering services.

10. The Affiliates will make any information they share with CG&E in the course of their brokering activities simultaneously available to non-affiliates.

TAB B
BLACKLINE

Cincinnati Gas & Electric Company
Market Based Rate Tariff
Amendment

WHOLESALE MARKET-BASED RATE TARIFF
OF
THE CINCINNATI GAS & ELECTRIC COMPANY
PROVIDING FOR
SALES OF CAPACITY, ENERGY AND/OR ANCILLARY
SERVICES
AND RESALE OF TRANSMISSION RIGHTS

****

INTRODUCTION

The Cincinnati Gas & Electric Company ("CG&E") operates an electric system in the state of Ohio. CG&E hereby offers to provide Market-Based Power Sales Service of Capacity and Energy pursuant to the terms and conditions of this Tariff.

I. DEFINITIONS

The following words and terms used herein shall be understood to have the following meanings:

~~1. Affiliate: In the case of any exempt wholesale generator defined under Section 32(a) of the Public Utility Holding Company Act of 1935, as amended, "affiliate" is defined in accordance with Section 214 of the Federal Power Act. In the case of any other entity, "affiliate" is defined in accordance with 18 C.F.R. § 161.2(a).~~

~~2.~~1. Buyer: A purchaser of electric capacity, energy and/or ancillary services or resold transmission rights under this Tariff.

~~3.~~2. Cinergy Operating Companies: The Cincinnati Gas & Electric Company and PSI Energy, Inc.

~~4.~~3. Commission: The Federal Energy Regulatory Commission or such successor federal regulatory agency as may have jurisdiction over this Tariff.

~~5.~~4. Parties: The Seller and Buyer that have entered into a Service Agreement for service pursuant to this Tariff.

~~6.~~5. Seller: CG&E.

~~7.~~6. Tariff: This wholesale market-based rate tariff, as amended from time to time.

~~8.~~7. Service Agreement: The agreement entered into by Seller and Buyer for service under this Tariff.

~~9.~~8. Transaction: A particular transaction agreed to by the Parties pursuant to a Service Agreement under this Tariff.

~~10.~~9. Transmission Tariff: The Transmission Tariff filed by the Cinergy Operating Companies (or successor regional transmission organization) in compliance with Order No. 888, as it may be amended from time to time.

II. SALES OF ELECTRIC CAPACITY, ENERGY AND/OR ANCILLARY SERVICES

1. Electric Capacity and Energy: Seller may sell electric capacity and/or energy to Buyer under this Tariff from time to time at rates, terms and conditions established by the agreement of the Parties. All such Transactions shall be voluntary.

2. Prohibited Transactions: Except as set forth in Paragraph 3, no sale may be made pursuant to this rate schedule to (1) PSI Energy, Inc., or (2) The Union Light, Heat and Power Company without first receiving Commission authorization under Section 205 of the Federal Power Act.

3. Affiliate Sales: Seller may make sales to any entity identified in Paragraph 2 pursuant to the terms of this tariff, provided however that in no case may such sales be made at a rate that exceeds, on an after-the fact comparison basis, the locational marginal price applicable at the time of sale, reported at the Midwest ISO Cinergy Hub.

4. Ancillary Services: Seller may sell the following ancillary services to Buyer under this Tariff from time to time at rates, terms and conditions established by the agreement of the Parties, provided that the ancillary services are not sold in conjunction with transmission service provided by the Transmission Tariff. All such Transactions shall be voluntary:

   (i) Installed Capability and the following ancillary services in the ISO New England ("ISO-NE") market:

   (a) Ten Minute Spinning Reserves,
   (b) Ten Minute Non-Spinning Reserves,
   (c) Thirty Minute Operating Reserves and
   (d) Automatic Generation Control;

(ii) Installed Capacity and the following ancillary services in the New York ISO ("NYISO") market:

(a) Ten Minute Spinning Reserves,
(b) Ten Minute Non-Synchronized Reserves,
(c) Thirty Minute Operating Reserves,
(d) Regulation and Frequency Response Service and
(e) Energy Imbalance:

(iii) the following ancillary services in the PJM Interconnection ("PJM") market:

(a) Energy Imbalance,
(b) Operating Reserves (which includes Spinning Reserves, Ten Minute Reserves and Thirty Minute Reserves) and
(c) Regulation Service; and

(iv) such additional ancillary services in the ISO-NE, NYISO, PJM or such other markets as the Federal Energy Regulatory Commission (the "Commission") may specify and authorize from time-to-time in orders that extend such authority to all sellers previously authorized to sell energy and/or capacity at market-based rates.

~~3.~~5. Provision of Unbundled Transmission Service: Except as provided under Sections II.2 and III, this Tariff does not provide for the sale of transmission service or ancillary services. Either Seller or Buyer may arrange for transmission service and ancillary services in conjunction with the sale of capacity and energy.

III. RESALE OF TRANSMISSION RIGHTS

1. Character of Service: Seller may resell to a Buyer all or a portion of Seller's rights to the use of the transmission system of a transmission provider that Seller has reserved for its own use under a service agreement with the transmission provider, or has acquired from another customer of the transmission provider, including capacity that Seller has reserved or acquired for its own use on its own transmission system under the Transmission Tariff. In order to be eligible for this service, the Buyer must be an Eligible Customer under the transmission tariff of the transmission provider from whom the transmission service rights to be transferred were originally obtained. When Seller resells transmission

THE CINCINNATI GAS AND ELECTRIC COMPANY

STATEMENT OF POLICY AND CODE OF CONDUCT WITH RESPECT TO THE RELATIONSHIP BETWEEN THE CINCINNATI GAS AND ELECTRIC COMPANY AND ITS FRANCHISED UTILITY AFFILIATES

Applicability

This Code of Conduct applies to the relationship between The Cincinnati Gas and Electric Company employees or Cinergy Services, Inc. employees who participate in directing, organizing and executing the business decisions of its wholesale merchant or generation functions ("CG&E") and (1) PSI Energy, Inc. ("PSI"), (2) The Union Light, Heat and Power Company ("ULH&P") and (3) any employee of Cinergy Services, Inc. acting on behalf of PSI or ULH&P (collectively, the "Affiliates").

Marketing of Power

1. To the maximum extent practical, the employees of CG&E will operate separately from the employees of the Affiliates.

2. No employee of the Affiliates will share market information with any employee of CG&E unless all such information is simultaneously made available to the public. This policy will not apply to market information disclosed to employees of CG&E or the Affiliates who are engaged in support functions, including human resources, information resources, data processing, finance, legal, accounting and other support personnel who do not participate in directing, organizing and executing the business decisions of the wholesale merchant or generation functions of the Affiliates or CG&E, provided that such employees are prohibited from acting as conduits to pass market information obtained from the Affiliates to CG&E.

3. Sales of any non-power goods or services by the Affiliates, including sales made through its affiliated EWG's or QF's, to CG&E will be at the higher of cost or market price.

4. Sales of any non-power goods or services by CG&E to the Affiliates will not be at a price above market.

Brokering of Power

To the extent CG&E seeks to broker power for the Affiliates:

5. CG&E will offer the Affiliate's power first.

6. The arrangement between CG&E and the Affiliate is non-exclusive.

7. CG&E will not accept any fees in conjunction with any Brokering services it performs for the Affiliate.

To the extent the Affiliates seek to broker power for CG&E:

8. The Affiliates will offer their own power for sale before offering to broker power generated by CG&E.

9. The Affiliates will not charge CG&E a brokering fee less than the higher of cost or market, with market being the fee that it would charge a non-affiliate for its brokering services.

10. The Affiliates will make any information they share with CG&E in the course of their brokering activities simultaneously available to non-affiliates.

TAB C

PSI Energy, Inc.
Initial
Market Based Rate Tariff

MARKET-BASED RATE TARIFF
OF
PSI ENERGY, INC.

1. Availability: PSI Energy, Inc. ("PSI") makes electric energy available under this Rate Schedule at market-based rates for wholesale sales to any purchaser with whom PSI has contracted.

2. Applicability: This Rate Schedule is applicable to all wholesale sales of electric energy by PSI not otherwise subject to a particular rate schedule of PSI.

3. Rates: All sales shall be made at rates established by agreement between the purchaser and PSI.

4. Other Terms and Conditions: All other terms and conditions of sale shall be established by agreement between the purchaser and PSI.

5. Effective Date: This Rate Schedule is effective on the date specified by the Federal Energy Regulatory Commission ("Commission").

6. Prohibited Transactions: Except as set forth in Paragraph 7, no sale may be made pursuant to this rate schedule to any affiliate of PSI without first receiving Commission authorization under Section 205 of the Federal Power Act.

7. Affiliate Sales: PSI may make sales to any entity identified in Paragraph 6 pursuant to the terms of this tariff, provided however that in no case may such sales be made at a rate that is lower than, on an after-the fact comparison basis, the locational marginal price applicable at the time of sale, reported at the Midwest ISO Cinergy Hub. For sales by PSI to The Union Light Heat & Power Company, such sales shall be at the locational marginal price applicable at the time of sale, reported at the Midwest ISO Cinergy Hub.

8. Transmission Capacity Reassignment: PSI may reassign transmission capacity that it has reserved for its own use at a price not to exceed the highest of (1) the original transmission rate paid by PSI; (2) the applicable transmission provider's maximum stated firm transmission rate on file at the time of the transmission reassignment; or (3) PSI's own opportunity costs, capped at the applicable transmission provider's cost of expansion at the time of the sale to the eligible customer. PSI will not recover opportunity costs in connection with reassignments without making a separate filing under section 205. Except for the price, the terms and conditions under which the reassignment is made shall be the terms and conditions governing the original grant by the transmission provider. Transmission capacity only may be reassigned to a customer eligible to take service under the transmission provider's open access transmission tariff or other transmission rate schedules. PSI will report the name of the assignee in its quarterly reports.

9. Reporting Requirement: PSI must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to,

each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

Market Behavior Rules

As a condition of market-based rate authority, PSI Energy, Inc. (hereafter, Seller) will comply with the following Market Behavior Rules:

1. Unit Operation: Seller will operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable power market. Compliance with this Market Behavior Rule 1 does not require Seller to bid or supply electric energy or other electricity products unless such requirement is a part of a separate Commission-approved tariff or requirement applicable to Seller.

2. Market Manipulation: Actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for electric energy or electricity products are prohibited. Actions or transactions undertaken by Seller that are explicitly contemplated in Commission-approved rules and regulations of an applicable power market (such as virtual supply or load bidding) or taken at the direction of an ISO or RTO are not in violation of this Market Behavior Rule. Prohibited actions and transactions include, but are not limited to:

   a. pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk and no net change in beneficial ownership (sometimes called "wash trades");

   b. transactions predicated on submitting false information to transmission providers or other entities responsible for operation of the transmission grid (such as inaccurate load or generation data; or scheduling non-firm service or products sold as firm), unless Seller exercised due diligence to prevent such occurrences;

   c. transactions in which an entity first creates artificial congestion and then purports to relieve such artificial congestion (unless Seller exercised due diligence to prevent such an occurrence); and

   d. collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for electric energy or electricity products.

3. Communications: Seller will provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, or Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercised due diligence to prevent such occurrences.

4. Reporting: To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas price indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to

any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the Policy Statement issued by the Commission in Docket No. PL03-3 and any clarifications thereto. Seller shall notify the Commission within 15 days of the effective date of this tariff provision of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

5. Record Retention: Seller shall retain, for a period of three years, all data and information upon which it billed the prices it charged for the electric energy or electric energy products it sold pursuant to this tariff or the prices it reported for use in price indices.

6. Related Tariffs: Seller shall not violate or collude with another party in actions that violate Seller's market-based rate code of conduct or Order No. 889 standards of conduct, as they may be revised from time to time.

Any violation of these Market Behavior Rules will constitute a tariff violation. Seller will be subject to disgorgement of unjust profits associated with the tariff violation, from the date on which the tariff violation occurred. Seller may also be subject to suspension or revocation of its authority to sell at market-based rates or other appropriate non-monetary remedies.

PSI ENERGY. INC.

STATEMENT OF POLICY
AND CODE OF CONDUCT
WITH RESPECT TO THE RELATIONSHIP BETWEEN
PSI, ENERGY. INC. AND
ITS MARKETING AFFILIATES

Applicability

This Code of Conduct applies to the relationship between PSI Energy, Inc. ("PSI") and (1) The Cincinnati Gas & Electric Company employees who participate in directing, organizing and executing the business decisions of its wholesale merchant or generation functions; (2) Brownsville Power I, L.L.C.; (3) Caledonia Power I, L.L.C.; (4) CinCap IV, LLC; (5) CinCap V, LLC; (6) Cinergy Capital and Trading, Inc.; (7) Cinergy Power Investments. Inc.; (8) St. Paul Cogeneration, LLC; (9) Cinergy Marketing & Trading, LP; and (10) any employee of Cinergy Services, Inc. acting on behalf of such companies (collectively, the "Marketing Affiliates").

Marketing of Power

1. To the maximum extent practical, the employees of PSI will operate separately from the employees of the Marketing Affiliates.

2. No employee of PSI will share market information with any employee of the Marketing Affiliates unless all such information is simultaneously made available to the public. This policy will not apply to market information disclosed to employees of the Marketing Affiliates who are engaged in support functions, including human resources, information resources, data processing, finance, legal, accounting. and other support personnel who do not participate in directing, organizing and executing the business decisions of the wholesale merchant or generation functions of the Marketing Affiliates, *provided* that such employees are prohibited from acting as conduits to pass market information obtained from PSI to the Marketing Affiliates.

3. Sales of any non-power goods or services by the Marketing Affiliates, including sales made through its affiliated EWG's or QF's, to PSI will not be at a price above market.

4. Sales of any non-power goods or services by PSI to the Marketing Affiliates will be at the higher of cost or market price.

Brokering of Power

To the extent the Marketing Affiliates seek to broker power for PSI:

5. The Marketing Affiliates will offer PSI's power first.

6. The arrangement between PSI and the Marketing Affiliates is non-exclusive.

7. The Marketing Affiliates will not accept any fees in conjunction with any brokering services they perform for PSI.

To the extent PSI seeks to broker power for the Marketing Affiliates:

8. PSI will offer its own power for sale before offering to broker power for the Marketing Affiliates.

9. PSI will not charge the Marketing Affiliates a brokering fee less than the higher of cost or market, with market being the fee that it would charge a non-affiliate for its brokering services.

10. PSI will make any market information it shares with the Marketing Affiliates in the course of its brokering activities simultaneously available to non-affiliates.