2005-00288

Duke Energy.

PAUL R. NEWTON
Vice President & General Counsel
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Duke Energy Corporation

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VIA OVERNIGHT UPS SERVICE

Mrs. Geneva S. Thigpen, Chief Clerk
North Carolina Utilities Commission
430 North Salisbury Street, Room 5063
Raleigh, NC 27603

RE: *Application of Duke Energy Corporation for authorization under North Carolina General Statute § 62-111 to enter into a Business Combination Transaction with Cinergy Corp. and for Approval of Affiliate Agreements under North Carolina General Statute § 62-153*
Docket No. E-7, Sub 795

Dear Mrs. Thigpen:

Enclosed for filing in the above-referenced docket is an original and twenty-six copies of Application of Duke Energy Corporation for authorization under North Carolina General Statute § 62-111 to enter into a Business Combination Transaction with Cinergy Corp. and for Approval of Affiliate Agreements under North Carolina General Statute § 62-153.

Duke Energy Respectfully requests that the Commission consider and approve this Application on an expedited basis so that the acquisition described in the Application may be consummated in a timely manner.

Thank you for your assistance with this matter.

Sincerely,

Paul R. Newton

Enclosure

cc: Robert P. Gruber, Esq., Executive Director, Public Staff
Leonard G. Green, Esq., Assistant Attorney General, N. C. Department of Justice
Ralph McDonald, Esq., Bailey & Dixon, L.L.P.
James P. West, Esq., West Law Offices, P.C.

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BEFORE

THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. E-7, Sub 795

Application of Duke Energy Corporation for authorization under North Carolina General Statute § 62-111 to enter into a Business Combination Transaction with Cinergy Corp. and for Approval of Affiliate Agreements under North Carolina General Statute § 62-153	)))))))	**APPLICATION OF DUKE ENERGY CORPORATION**

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Filed July 14, 2005

BEFORE

THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. E-7, Sub 795

Application of Duke Energy Corporation for Authorization under North Carolina General Statute § 62-111 to enter into a Business Combination Transaction with Cinergy Corp. and for Approval of Affiliate Agreements under North Carolina General Statute § 62-153	)	APPLICATION

Duke Energy Corporation ("Duke Energy"), pursuant to § 62-111 of the North Carolina General Statutes (G.S.) and Rules R1-4 and R1-5 of the Rules and Regulations of the North Carolina Utilities Commission (the "Commission"), hereby makes Application for authorization to enter into a business combination with Cinergy Corp. ("Cinergy"). Pursuant to G.S. § 62-153 (b), Duke Energy also requests Commission approval of (1) a Service Company Utility Service Agreement between Duke Energy, its utility affiliates, and a new service company; (2) an Operating Companies Service Agreement between Duke Energy and its utility affiliates; (3) an Operating Company/Non-utility Companies Service Agreement; and (4) a Utility Money Pool Agreement between Duke Energy and certain affiliates.

In support of this Application, Duke Energy respectfully shows unto the Commission:

1. Name and Address of Duke Energy

The name and post office address of Duke Energy are: Duke Energy Corporation, Post Office Box 1244, Charlotte, North Carolina 28201-1244.

2. **Notices and Communications**

The names and addresses of Duke Energy's attorneys who are authorized to receive notices and communications with respect to this Application are:

Paul R. Newton
Vice President & General Counsel, Duke Power, a division of Duke Energy Corporation
Kodwo Ghartey-Tagoe
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3. **Description of Duke Energy**

Duke Energy is a corporation duly organized and existing under the laws of the State of North Carolina. Through its Duke Power division, it generates, transmits, distributes and sells electricity to approximately 2.2 million residential, commercial and industrial customers in a service area that covers about 22,000 square miles in central and western North Carolina and western South Carolina. Additionally, Duke Power owns and operates approximately 94,000 miles of distribution lines and a 13,000-mile transmission system. It also sells electricity at wholesale to many municipal, cooperative and investor-owned electric utilities. Duke Energy is a public utility under the laws of North Carolina and is subject to the jurisdiction of this Commission with respect to its operations in this State. The company also is authorized to transact business in the State of South Carolina and is a public utility under the laws of that State. Accordingly, its operations in that State are subject to the jurisdiction of the Public Service Commission of South Carolina. Duke Energy is also a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC").

In addition to its regulated operations in North Carolina and South Carolina, Duke Energy, through subsidiaries, engages in a broad range of energy and energy-related business activities in the Americas and also owns a real estate subsidiary. Duke Energy had approximately $55.5 billion in assets, $22.5 billion in revenues and net income of $1.5 billion as of December 31, 2004, and ranked number 86 on Fortune Magazine's 2005 ranking of the 500 largest publicly traded U.S. companies.

4. Description of Cinergy

Cinergy is a Delaware corporation headquartered in Cincinnati, Ohio. Its principal direct and indirect subsidiaries are (i) PSI Energy, Inc. ("PSI"), a vertically integrated electric utility serving a significant portion of the retail electric requirements in the State of Indiana, (ii) The Cincinnati Gas & Electric Company ("CG&E"), a utility engaged in the production, transmission, distribution, and sale of electricity and the sale and transportation of natural gas in the southwestern portion of Ohio[1] and (iii) The Union Light, Heat and Power Company ("ULH&P"), a wholly-owned subsidiary of CG&E and a vertically integrated utility serving a portion of the retail electric and gas requirements in Northern Kentucky. Collectively, PSI, CG&E and ULH&P serve approximately 1.5 million retail electric customers and 500,000 retail gas customers. In addition to regulated utility operations, Cinergy's subsidiaries are involved in wholesale power generation and sales, energy marketing and trading, and other energy-related businesses.

Cinergy is a registered holding company under the Public Utility Holding Company Act of 1935 ("PUHCA"). It had $15 billion in assets, approximately $4.7 billion in annual revenues and net income of $400 million as of December 31, 2004, and ranked number 412 on Fortune Magazine's 2005 ranking of the 500 largest publicly traded U.S. Companies.

5. Description of the Proposed Transaction.

Duke Energy and Cinergy have entered into Agreement and Plan of Merger by and among Duke Energy, Cinergy, Duke Energy Holding Corp., a Delaware corporation ("Holdings"), Deer Acquisition Corp., a North Carolina corporation ("Deer Acquisition") and Cougar Acquisition Corp., a Delaware corporation ("Cougar Acquisition"), dated as

[1] Beginning January 1, 2001, all retail customers in Ohio were allowed to choose their electric generation supplier. Currently, CG&E is in a market development period for residential customers and a competitive retail electric market for non-residential customers, as it transitions to deregulation of electric generation and a competitive retail electric service market in the state of Ohio. Ohio's customer choice legislation provided for a market development (frozen rate) period that began January 1, 2001, and ended December 31, 2004, for non-residential customers and is scheduled to end December 31, 2005, for residential customers. At the end of these market development periods, pursuant to authorization received from the Ohio Commission, CG&E will implement market rates under a rate stabilization plan that covers the period after the market development period through year-end 2008.

of May 8, 2005 ("Plan of Merger").[2] The Plan of Merger (attached as Exhibit A) sets forth a series of mergers and restructuring transactions as described below that will implement the business combination of Duke Energy and Cinergy. These transactions are also schematically depicted in Exhibit B.

A. Before the effective time of the Plan of Merger, Duke Energy will redeem all the outstanding shares of its preferred stock (the "Preferred Stock Redemption"). Under the Preferred Stock Redemption, each holder of Preferred Stock, par value $100 per share, and Preferred Stock A, par value $25 per share, will receive the redemption price to which it is entitled under the applicable preferred stock series, together with all dividends accrued and unpaid to the date of such redemption. The Preferred Stock Redemption will facilitate the limited liability company conversion discussed in paragraph 5.C. below.

B. At the effective time of the Plan of Merger, Deer Acquisition will be merged with and into Duke Energy (the "Deer Acquisition Merger") in accordance with the North Carolina Business Corporation Act (the "NCBCA"). As part of the transaction, the common stock shareholders of Duke Energy will receive shares of Holdings common stock on a one-for-one basis. Duke Energy will be the surviving corporation and will continue its corporate existence under the laws of the State of North Carolina. As a result of the Deer Acquisition Merger, Duke Energy will become a wholly-owned subsidiary of Holdings.

[2] Holdings, a signatory to the Plan of Merger, has previously been created as a shell subsidiary of Duke Energy solely for purposes of achieving the Plan of Merger. It was formerly known as Deer Holding Corp. Deer Acquisition, a signatory to the Plan of Merger, has previously been created as a shell subsidiary of Duke Energy solely for purposes of achieving the Plan of Merger. Cougar Acquisition, one of the signatories to the Plan of Merger, has previously been created as a shell corporation solely for purposes of achieving the Plan of Merger.

C. After the Deer Acquisition Merger becomes effective, Duke Energy will convert to a limited liability company to be called Duke Power Company LLC (the "Duke Energy Conversion") pursuant to a plan of conversion adopted under Section 55-11A-11 of the NCBCA and Section 57C-9A-02 of the North Carolina Limited Liability Company Act. Conversion of Duke Energy to a limited liability company is an efficient means of addressing the potential tax impact of the distribution to Holdings of Duke Energy's limited liability company interests in Duke Capital LLC ("Duke Capital") described in paragraph 5.D below. Following the Duke Energy Conversion, Duke Power Company LLC ("Duke Power") will remain a wholly owned subsidiary of Holdings, as Holdings will own all of the limited liability company interests in Duke Power. Duke Power will remain a public utility subject to this Commission's jurisdiction.

D. Immediately following the effectiveness of the Duke Energy Conversion, Duke Power will distribute to Holdings all of the limited liability company interests in Duke Capital, causing Duke Capital to be a direct wholly owned subsidiary of Holdings. Duke Capital will continue to own all of its direct and indirect subsidiaries, comprising all of the unregulated businesses of Duke Energy prior to completion of the merger.

E. After the Duke Capital distribution, Cougar Acquisition will be merged with and into Cinergy in accordance with the Delaware General Corporation Law (the "DGCL") (the "Cougar Acquisition Merger"). In connection with the merger each Cinergy shareholder will receive 1.56 shares of Holdings common stock for each share of Cinergy common stock he or she owns. Cinergy will be the surviving corporation in the Cougar Acquisition Merger and is currently expected to continue its corporate existence under the laws of the State of Delaware. As a result of the Cougar Acquisition Merger, Cinergy will become a wholly owned subsidiary of Holdings.

F. Pursuant to the Plan of Merger and following consummation of the above transactions, Holdings will change its name to "Duke Energy Corporation" (hereafter "New Duke Energy") and will become a registered holding company under PUHCA. Based on the number of shares outstanding as of May 8, 2005, current Duke Energy shareholders will own approximately 76 percent of New Duke Energy's common stock and current Cinergy shareholders will own approximately 24 percent of New Duke Energy's common stock. New Duke Energy and Duke Power will maintain their headquarters in Charlotte, North Carolina.

G. As a result of the merger, New Duke Energy will establish a service company to provide goods and services to its utility and non-utility subsidiaries, including Duke Power.[3] The goods and services to be provided include the following: finance, treasury, tax, accounting, legal, human resources, information systems, investor relations, public relations, maintenance planning and engineering, fuel procurement, fuel and strategic planning. The centralized provision of goods and services through the service company will enable the utility and non-utility subsidiaries of New Duke Energy to achieve enhanced cost efficiencies and economies of scale.

6. Statutory Standard for Approval

North Carolina General Statutes § 62-111 provides that all mergers or combinations affecting a public utility require Commission approval. The statute further provides that the standard the Commission shall use in determining whether to approve a proposed merger is whether the merger is "justified by the public convenience and necessity."

[3] While PUHCA does not require the establishment of a service company, as a matter of policy and practice, the Securities and Exchange Commission has required the establishment of a service company where the holding company will have multiple public utility subsidiaries like Holdings.

In approving the business combination of SCANA Corporation and Public Service Company of North Carolina, Inc. (the "SCANA Order") (Order issued December 7, 1999, in Docket No. G-5, Sub 400) and in approving the business combination of CP&L Energy, Inc. and Florida Progress Corporation (the "CP&L Order") (Order issued August 22, 2000, in Docket No. E-2, Sub 760), the Commission found that under the public convenience and necessity standard it should give approval to each of those merger transactions only if:

(i) The merger would have no known adverse impact on the rates and service of North Carolina ratepayers;

(ii) The ratepayers would be protected as much as possible from potential harm; and

(iii) The ratepayers would receive enough benefit from the merger to offset any potential costs, risks, and harms.

In the SCANA Order the Commission found that G.S. § 62-111 does not require that a proposed merger of utility companies be based upon demonstrations of specific cost savings. Cost savings are just one factor that may be considered in evaluating a request to engage in a business combination transaction. Other benefits relied upon by the Commission in approving both the SCANA and CP&L combinations included such non-quantifiable benefits as: a larger, more viable and more financially diverse company with a broader range of assets and increased ability to provide stable and reliable service; a stronger and more diverse company that is able to compete regionally; and a corporation with a strong presence in North Carolina which creates corporate and other taxes payable to the State of North Carolina and the provision of significant employment opportunities.

Additionally, in *Matter of Investigation of Merger Filing Requirements for Electric and Natural Gas Utilities*, Docket No. M-100, Sub 129, the Commission concluded that, to assist in the determination of whether a merger or other business combination within the electric or natural gas industries meets the statutory standard, applicants seeking approval to engage in such transactions must file a market power analysis and a cost-benefit analysis with their applications. (Order issued November 2, 2000). [4]

7. **Purpose of the Plan of Merger and Satisfaction of Statutory Standards for Approval**

Duke Energy entered into the Plan of Merger to build a stronger company. The merger will create a larger, diversified, financially stronger company that will affirmatively benefit the public. The combined company will have a market capitalization of approximately $36 billion[5], assets totaling more than $70 billion[6], estimated annual revenues of approximately $27 billion[7], and net income of approximately $1.9 billion[8]. Further information on the current size and scope of the two companies may be found in the 2004 annual reports to shareholders of Duke Energy and Cinergy, attached hereto as Exhibit C.

Based upon these estimates, New Duke Energy will have one of the top five electric businesses in the United States on a stand-alone basis, and combined with its gas operations, will be one of the largest diversified utility and gas operations companies in

[4] In addition, applicants are required to file copies of market power and cost-benefit analyses related to the merger that are filed with other state and federal agencies. Duke Energy's cost-benefit and market power analyses related to the merger are attached to this Application as Exhibits D and E respectively. Exhibit D-1 is a copy of the Summary of Merger Synergies that Duke Energy and Cinergy filed with their joint application for FERC approval of the merger on July 12, 2005.
[5] As of stock close May 6, 2005.
[6] As of December 31, 2004.
[7] As of December 31, 2004.
[8] As of December 31, 2004.

North America. It will enjoy the benefits of a diverse portfolio including those arising from differences in the economic and climatic conditions of the service areas in which its utility businesses operate. Additionally, the ability to share best practices between two superior operators should lead to enhanced operations for Duke Power and the Cinergy utilities.

Duke Power will benefit from New Duke Energy's financial strength and access to financial markets. Duke Power itself will retain the ability and financial strength to obtain financing on its own, subject to any necessary regulatory approval. Furthermore, consistent with North Carolina law, Duke Power will not guarantee the credit of any of its affiliates without Commission approval. Duke Power also will not issue any security, incur any debt, or pledge any assets to finance any part of the acquisition of Cinergy's shares.

The combination of Duke Energy and Cinergy, and the synergies that are expected to result, will create a new, diversified, financially strong company with increased financial flexibility, efficiencies, productivity and revenue, and lower costs. All of the above factors will enhance the ability of Duke Power to continue its provision of reliable service at reasonable rates for North Carolina customers.

These synergies include reduced costs resulting from (1) the elimination of duplicative spending and overlapping functions, (2) the standardization and aggregation of external purchases of commodities and services, and (3) the consolidation of certain operations. Although the synergies will result in more productive, efficient operations with tangible savings, the economic savings and benefits are not immediate, but necessarily accrue over time and will be offset by costs to achieve. Accordingly, the benefits, after consideration of relevant costs necessary to close the transaction and to realize the identified savings and benefits, should be recognized over time as well. Over the first five years following the close of the merger, savings should ramp up and costs-to-achieve should decline. The Cost-Benefit Analysis in Exhibit D provides the estimated net savings (i.e., gross savings minus costs-to-achieve and other offsets) over the five year period following the close of the merger. Table 1 below provides a summary of the cumulative 5 year net savings included in the Exhibit.

Table 1
Cumulative 5-Year Net Regulated/Corporate Savings
($millions)

Gross Savings	Costs-to-Achieve and Offsets	Net Savings	Allocable to Duke Power	Allocable to NC Retail
$1330	$593	$737	$354	$244

Eventually, a "steady state" level of savings should be achieved; i.e., the level of savings that should continue into the future, barring other impacts unrelated to the merger. Table 2 shows the expected annual savings 5 years after the merger. The estimated Year 5 savings are a proxy for the expected on-going savings.

Table 2
Year 5 Gross Savings
($millions)

Total Gross Savings	Gross Savings (Regulated/Corporate)	Allocable to Duke Power	Allocable to NC Retail
$509	$337	$154	$106

Duke Energy's role as a strong corporate citizen, taxpayer and employer in North Carolina will continue following consummation of the Plan of Merger. Among other things, the headquarters and principal corporate offices of New Duke Energy as well as Duke Power will be maintained in Charlotte, North Carolina. Both Duke Energy and Cinergy share a common dedication and commitment to the communities they serve, to the environment, and to corporate citizenship. After the merger, this dedication and commitment will not change. Like Duke Energy, Cinergy shares a rich history of corporate giving and citizenship. The spirit of giving and community activism will only become stronger by the combination of these two community-focused companies, backed by the resulting financial strength of the combined company.

At the same time as the business combination with Cinergy is expected to create the benefits described above, the combination will not change or adversely affect Duke Energy's North Carolina retail electric operations or service to its customers. Duke Power will continue to own and operate all of its electric distribution and transmission facilities and all of its existing generating facilities. It will also continue to provide electric service to all customers within its assigned territories. There will be no sale, assignment, pledge, transfer or lease of Duke Energy's public utility franchise, and the conversion of Duke Energy to a limited liability company will have no effect on the Commission's jurisdiction.

The Plan of Merger will not adversely affect retail electric rates for Duke Energy's North Carolina customers. Pursuant to G.S. § 62-133.6(e), the rate freeze provision of the Clean Smokestacks legislation which became effective in 2002, Duke Energy's retail base rates are frozen (with certain limited exceptions) through 2007. The current base rate freeze will be unaffected by the Plan of Merger.

The Commission's ability to regulate and set appropriate rules for contracts and other relationships between Duke Energy and its regulated and unregulated affiliates will not be affected by the merger. In particular, Duke Energy commits that, following consummation of the Plan of Merger and being converted to Duke Power, it will continue to follow and adhere to its Cost Allocation Manual and Code of Conduct.[9] In both the SCANA and CP&L Orders the Commission relied in part upon such protections in finding that the business combinations in question would not have any known adverse impacts on rates or service and would protect customers as much as possible from potential harm.

Establishment of a registered holding company structure is necessary to achieve the merger. It also will provide New Duke Energy with greater flexibility in carrying out its business than Duke Energy has today because the holding company structure makes business combinations and business expansion easier while preserving the separate identity, transparency and financial integrity of the traditional regulated utility operations.

Additionally, establishment of New Duke Energy as a registered holding company under PUHCA will not diminish the Commission's authority and jurisdiction under the North Carolina General Statutes. Indeed, the Commission already regulates certain utilities that are subsidiaries of registered holding companies. While PUHCA regulates the permissible lines of business, acquisitions, financings, affiliate contracts, and other activities of registered holding companies and their affiliates, the Securities and Exchange Commission (which administers PUHCA) generally defers to assertions of jurisdiction by state commissions with respect to their jurisdictional utility companies, either formally pursuant to the express provisions of PUHCA or informally.

[9] The Cost Allocation Manual will be amended to reflect changes in allocation factors, names of the relevant companies, and other changes made necessary by the merger. Likewise, the Code of Conduct will be amended to reflect any changes necessitated by the merger.

As demonstrated in the attached market power analysis (Exhibit E), the merger raises no market power issues.[10] Under any appropriate relevant geographic market definition, the effect of combining Duke Energy's and Cinergy's generation assets under a parent company has a small effect on horizontal market concentration, and thus does not raise competitive concerns. Likewise, the attached market power analysis demonstrates that the merger creates no material vertical market power issues because there are no concerns related either to transmission ownership and operation, or to the combination of electric generation assets and fuel supplies or fuel delivery systems.

In summary, (i) the continuing jurisdiction of the Commission to protect North Carolina customers, (ii) the freeze in Duke Energy's retail base rates, (iii) the continued applicability of Duke Energy's Cost Allocation Manual and Code of Conduct, and (iv) the lack of any market power concerns, will all serve to ensure that the business combination of Duke Energy and Cinergy will have no known adverse impact on the rates and service of North Carolina customers and will protect them as much as possible from potential harm. Further, (i) the creation of a financially diverse and stronger company, (ii) the complementary and diverse service areas of Duke Energy and the Cinergy utilities, (iii) the achievement of lower costs in the long term through economies of scale and use of a service company, and (iv) the continued presence of Duke Energy as a strong corporate citizen, taxpayer and employer in North Carolina, will all ensure that customers receive enough benefit from the merger to offset any potential costs, risks and harms. For all of the reasons set forth above, the Commission should find that the Plan of

[10] Exhibit E contains the market power analysis submitted in support of this Application. It is the Prepared Direct Testimony and Exhibits of William H. Hieronymus prepared on behalf of Duke Energy and Cinergy and filed in support this application as well as the companies' joint application for FERC approval of the merger. Duke Energy also submits this testimony and exhibits in fulfillment of the requirement for copies of all market power analyses related to the merger that are filed with other state and federal agencies.

Merger and the business combination of Duke Energy and Cinergy are justified by the public convenience and necessity and issue its approval pursuant to G.S. § 62-111.

8. Approvals from Other Agencies

In addition to this Commission's approval, the conditions associated with the consummation of the Plan of Merger include approvals by the shareholders of Duke Energy and Cinergy, and the approvals or concurrence of the following federal and state regulatory agencies: the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Nuclear Regulatory Commission, the United States Department of Justice, the Federal Trade Commission, the Federal Communications Commission, the Public Service Commission of South Carolina, the Public Utilities Commission of Ohio, and the Kentucky Public Service Commission. Additionally, the Indiana Utility Regulatory Commission's acceptance for filing or approval of the various merger related affiliate agreements is required.

9. Holding Company Notice

Pursuant to Condition 1(h) of the Commission's Order Approving Merger and Issuance of Securities entered February 8, 2002, in Docket No. E-7, Sub 700, *Application of Duke Energy Corporation for Authorization under North Carolina General Statute Sections 62-111 and 62-161 to engage in and Issue Common Stock in Connection with the Acquisition of Westcoast Energy, Inc,* Duke Energy hereby provides notice that upon consummation of the Plan of Merger, it will become a subsidiary of a registered holding company under PUHCA.

10. Request for Approval of Affiliate Transactions

Pursuant to G.S. § 62-153, Duke Energy requests Commission approval of the following affiliate agreements between Duke Power and various affiliates: (1) a Utility

Service Agreement that would allow the proposed service company to perform services for each of the public utilities of New Duke Energy including Duke Power; (2) an Operating Companies Service Agreement that would allow the various utility operating companies to perform various services for each other; (3) an Operating Company/Non-utility Companies Service Agreement that would allow Duke Power and its non-utility affiliates to perform various services for each other; and (4) an Utility Money Pool Agreement that would allow for short-term inter-company loans among the New Duke Energy utility affiliates and two non-utility subsidiary companies of CG&E.[11] The agreements, which are collectively attached as Exhibit F, are in substantially the same forms as those to be signed by the parties. Prior to their execution, the parties will specify, among other things, whether the service company will be a successor company to Duke Energy Business Services, LLC or the existing Cinergy service company, and the non-utility company parties to the Operating Companies/Non-utility Companies Service Agreement. These non-utility company parties will be added closer to the time of the closing of the merger, and all of the agreements will be signed after the closing of the merger because of the impact of the merger on the structure of some of the parties to the agreements. Duke Energy will file executed copies after closing of the merger.

Duke Energy submits that the agreements are just and reasonable, and have neither the purpose nor the effect of transferring, dissipating or concealing the earnings of Duke Power. The Utility Service Agreement will be required by the SEC as a result of New Duke Energy's proposed status as a registered holding company and establishment

[11] Duke Energy also intends to file a Tax Sharing Agreement with its affiliates for Commission approval at a later date.

of a service company. Additionally, each of the agreements will enable Duke Power and its affiliates to conduct their businesses in an efficient and cost effective manner.

11. Exhibits

Exhibits in support of this Application and incorporated herein by reference include:

EXHIBIT A	Agreement and Plan of Merger dated May 8, 2005
EXHIBIT B	Schematic diagram of transactions under the Plan of Merger
EXHIBIT C	Annual Reports of Duke Energy and Cinergy
EXHIBIT D	Cost-Benefit Analysis
EXHIBIT E	Market Power Analysis
EXHIBIT F	Affiliate Agreements Filed Pursuant to G.S. § 62-153

WHEREFORE, Duke Energy respectfully requests that the Commission consider and approve this Application expeditiously so that the transaction described in this Application may be consummated as soon as possible after other regulatory and shareholder approvals. Specifically, Duke Energy respectfully requests that the Commission (1) approve the business combination between Duke Energy and Cinergy as described in this Application as in the public convenience and necessity, (2) approve the affiliate agreements, and (3) issue any other necessary approvals within its jurisdiction required for consummation of the Plan of Merger as expeditiously as possible.

Respectfully submitted this 14 day of July, 2005.

DUKE ENERGY CORPORATION

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Counsel for the Applicant

VERIFICATION

Paul R. Newton, being first duly sworn, deposes and says:

I am an officer of DUKE ENERGY CORPORATION, applicant in the above-entitled Application, to wit, its Vice President and General Counsel, Duke Power, a division of Duke Energy Corporation. I have read the foregoing Application and know the contents thereof, and the same is true and correct to the best of my knowledge, information and belief.

Paul R. Newton

Sworn to and subscribed before me
this 14th day of July, 2005.

Rita G Kale
Notary Public

My Commission Expires: 6-17-07

[SEAL]

RITA G KALE
NOTARY
PUBLIC
CATAWBA CO., NORTH CAROLINA