



2005-00228

174818

PAUL R. NEWTON
Vice President & General Counsel
Duke Power

Duke Energy Corporation

Mailing Address:
PB05E / PO Box 1244
Charlotte, NC 28201-1244

704 382 8106

704 382 5690 fax

prnewton@duke-energy.com

RECEIVED

JUL 21 2005

PUBLIC SERVICE
COMMISSION

July 14, 2005

RECEIVED

JUL 15 2005

PSC SC
DOCKETING DEPT.

SC PUBLIC
SERVICE
COMMISSION

2005 JUL 15 PM 11:47

PSC

VIA HAND DELIVERY

The Honorable Charles L.A. Terreni
Administrator and Chief Clerk
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina, 29210

RE: *Application of Duke Energy Corporation for Authorization to Enter into a
Business Combination Transaction with Cinergy Corp.*
Docket No. 2005-211-E

Dear Mr. Terreni:

Enclosed for filing are an original and twenty copies of Application of Duke Energy Corporation for Authorization to enter into a Business Combination Transaction with Cinergy Corp. Also enclosed is an additional copy of the Application. Please date stamp it and return to the courier in the enclosed self-addressed envelope.

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 in this matter.

Sincerely,

Paul R. Newton

Enclosure

cc: C. Dukes Scott, Esq., Office of Regulatory Staff
Florence P. Belser, Esq., Office of Regulatory Staff

William F. Austin
Richard L. Whitt
Austin Lewis & Rogers, P.A.
508 Hampton Street
Columbia, South Carolina 29201
(803) 251-7443

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 authorized to transact business in the State of South Carolina and is a public utility under the laws of this State.

Accordingly, its operations in South Carolina are subject to the jurisdiction of the Public Service Commission of South Carolina. Duke Energy also is a public utility under the laws of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission with respect to its operations in that State. The company also is 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 South Carolina and North 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 Ohio¹, 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 approximately \$15 billion in assets, \$4.7 billion in revenues and net income of \$400 million as of December 31, 2004, and ranked

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.

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 of May 8, 2005 ("Plan of Merger") (attached as Exhibit A).² The Plan of Merger 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

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.

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.

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 mergers, 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.

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.

6. Standard for Approval

Section 58-27-1300 of S.C. Code Ann. requires Commission approval prior to the consolidation or merger of a utility's property, powers, franchises, or privileges. While the statute does not explicitly specify the standard under which the Commission may review and approve such transactions, the Commission has sought to ensure that South Carolina retail customers are protected from any adverse effects of a proposed consolidation or merger. In so doing, the Commission has considered factors such as whether the proposed transaction will have any adverse effect on the utility's retail rates and charges, whether the utility's retail cost of service and jurisdictional revenues or expenses are adversely affected by the transaction, and whether the merger will result in any benefits to South Carolina retail customers. *See, e.g., Application of Duke Energy Corporation for Approval Pursuant to South Carolina Code Sections 58-27-1300, 58-27-1710, 58-27-1720 and 58-27-1730 to Issue Securities in Connection with a Business Combination Transaction with Westcoast Energy, Inc.*, Docket No. 2001-441-E (Order No. 2002-20 entered January 29, 2002); *Application Of Carolina Power & Light Company And Interpath Communications, Inc. To Transfer Ownership Of CP&L And Interpath To A Holding Company*, Docket No. 1999-434-E/C (Order No. 2000-0229 entered March 6, 2000) ; *Application of Duke Power Company for Approval to Issue Securities in Connection with a Business Combination Transaction with PanEnergy Corporation*, Docket No. 96-383-E (Order No. 97-310 entered April 21, 1997); *Application Of South Carolina Electric And Gas Company To Transfer And Redesignate Certain Certificates Of Public Convenience And Necessity In Accordance With A Corporate Reorganization*, Docket No. 84-389-E/G (Order No. 84-981 entered November 27, 1984).

7. Purpose of the Plan of Merger and Reasons 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 billion⁴, assets totaling more than \$70 billion⁵, estimated annual revenues of approximately \$27 billion⁶, and net income of approximately \$1.9 billion⁷. 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 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. Duke Power will not issue any security, incur any debt, or pledge any assets to finance any part of the acquisition of Cinergy's shares.

⁴ As of stock close May 6, 2005.

⁵ As of December 31, 2004.

⁶ As of December 31, 2004.

⁷ As of December 31, 2004.

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 South 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 and 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.

Duke Energy's role as a strong corporate citizen, taxpayer and employer in South Carolina will continue following consummation of the Plan of Merger. 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 South 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 South Carolina customers. In both Docket No. 2001-441-E (Westcoast merger) and Docket No. 96-383-E (PanEnergy merger) the Commission relied in part on the lack of adverse effect on Duke Power's retail rates in approving other business combinations involving Duke Energy. In addition, 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.

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 laws of South Carolina. 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.

In summary, the continuing jurisdiction of the Commission to protect South Carolina customers, and the lack of adverse effect on Duke Energy's retail base rates will serve to ensure that the business combination of Duke Energy and Cinergy will have no known adverse impact on the rates and service of South Carolina customers. 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 the Carolinas, will all ensure that retail customers receive benefit from the merger.

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 North Carolina Utilities Commission, 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. Notice of Holding Company Status

Pursuant to Condition 2(h) of the Commission's Opinion and Order entered on January 29, 2002, in *Application of Duke Energy Corporation for Approval Pursuant to South Carolina Code Sections 58-27-1300, 58-27-1710, 58-27-1720 and 58-27-1730 to Issue Securities in Connection with a Business Combination Transaction with Westcoast Energy, Inc.*, Docket No. 2001-441-E, Duke Energy hereby provides notice that following consummation of the Plan of Merger, it will become a subsidiary of a registered holding company under PUHCA.

10. 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

11. Filing with South Carolina Office of Regulatory Staff ("ORS").

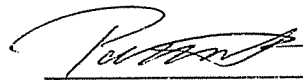
In compliance with Act 175, a copy of this Application and exhibits will be served on the Executive Director of the ORS on the date they are filed with the Commission.

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 this Commission expeditiously (i) inquire into the relief sought in this Application, (ii) review the Application and exhibits provided by Duke Energy, (iii) conclude that the relief

requested in the Application should be granted as filed, (iv) find that the Plan of Merger and the business combination of Duke Energy and Cinergy are justified by the public interest and issue its approval pursuant to Section 58-27-1300 of S.C. Code Ann. (1976, as amended) and (v) provide such other and further relief as this Commission may deem just and proper.

Respectfully submitted this 14 day of July, 2005.

DUKE ENERGY CORPORATION



Paul R. Newton
Vice President & General Counsel,
Duke Power, a division of
Duke Energy Corporation
Kodwo Ghartey-Tagoe
Chief Regulatory Counsel, Duke Power,
a division of Duke Energy Corporation
P. O. Box 1244
Mail Code: PB05E
Charlotte, North Carolina 28201-1244
(704) 382-4295

William F. Austin
Richard L. Whitt
Austin Lewis & Rogers, P.A.
508 Hampton Street
Columbia, SC 29201
(803) 251-7443

Counsel for Applicant

SC PUBLIC
UTILITY
COMMISSION
2005 JUL 15 11:07

RECEIVED

Exhibit A

PLAN OF MERGER

CONFORMED COPY

AGREEMENT AND PLAN OF MERGER

by and among

DUKE ENERGY CORPORATION,

CINERGY CORP.,

DEER HOLDING CORP.,

DEER ACQUISITION CORP.

and

COUGAR ACQUISITION CORP.

Dated as of May 8, 2005

TABLE OF CONTENTS

ARTICLE I

The Mergers and the Restructuring Transactions

Section 1.01	<u>The Duke Merger</u>	2
Section 1.02	<u>The Duke Conversion</u>	2
Section 1.03	<u>The Restructuring Transactions</u>	2
Section 1.04	<u>The Cinergy Merger</u>	3
Section 1.05	<u>Closing</u>	3
Section 1.06	<u>Effective Time of the Duke and Cinergy Mergers</u>	3
Section 1.07	<u>Effects of the Mergers and the Conversion</u>	4
Section 1.08	<u>Organizational Documents of Duke, Cinergy and the Company</u>	4
Section 1.09	<u>Directors and Officers of Duke and Cinergy</u>	5
Section 1.10	<u>Directors and Officers of the Company</u>	5
Section 1.11	<u>Post-Merger Operations</u>	6
Section 1.12	<u>Transition Committee</u>	6

ARTICLE II

Effects of the Mergers on the Capital Stock of the Constituent Corporations; Exchange of Certificates

Section 2.01	<u>Effect on Capital Stock</u>	6
Section 2.02	<u>Exchange of Certificates</u>	8
Section 2.03	<u>Dissenting Shares</u>	13

ARTICLE III

Representations and Warranties

Section 3.01	<u>Representations and Warranties of Cinergy</u>	14
Section 3.02	<u>Representations and Warranties of Duke</u>	29

ARTICLE IV

Covenants

Section 4.01	<u>Covenants of Cinergy</u>	43
Section 4.02	<u>Covenants of Duke</u>	49
Section 4.03	<u>No Solicitation by Cinergy</u>	54
Section 4.04	<u>No Solicitation by Duke</u>	57
Section 4.05	<u>Other Actions</u>	60
Section 4.06	<u>Coordination of Dividends</u>	60
Section 4.07	<u>Redemption of Duke Preferred Stock and Duke Preferred Stock A</u>	60
Section 4.08	<u>Transfer of Certain Assets</u>	60

ARTICLE V

Additional Agreements

Section 5.01	<u>Preparation of the Form S-4 and the Joint Proxy Statement; Shareholders Meetings</u>	61
Section 5.02	<u>Letters of Cinergy's Accountants</u>	62
Section 5.03	<u>Letters of Duke's Accountants</u>	62
Section 5.04	<u>Access to Information; Effect of Review</u>	62
Section 5.05	<u>Regulatory Matters; Reasonable Best Efforts</u>	63
Section 5.06	<u>Stock Options; Restricted Stock and Equity Awards; Stock Plans</u>	65
Section 5.07	<u>Employee Matters</u>	68
Section 5.08	<u>Indemnification, Exculpation and Insurance</u>	69
Section 5.09	<u>Fees and Expenses</u>	71
Section 5.10	<u>Public Announcements</u>	74
Section 5.11	<u>Affiliates</u>	75
Section 5.12	<u>NYSE Listing</u>	75
Section 5.13	<u>Shareholder Litigation</u>	75
Section 5.14	<u>Tax-Free Reorganization Treatment</u>	75
Section 5.15	<u>Standstill Agreements; Confidentiality Agreements</u>	75

ARTICLE VI

Conditions Precedent

Section 6.01	<u>Conditions to Each Party's Obligation to Effect the Mergers</u>	76
Section 6.02	<u>Conditions to Obligations of Cinergy</u>	76
Section 6.03	<u>Conditions to Obligations of Duke</u>	77
Section 6.04	<u>Frustration of Closing Conditions</u>	78

ARTICLE VII

Termination, Amendment and Waiver

Section 7.01	<u>Termination</u>	78
Section 7.02	<u>Effect of Termination</u>	81
Section 7.03	<u>Amendment</u>	82
Section 7.04	<u>Extension; Waiver</u>	82

ARTICLE VIII

General Provisions

Section 8.01	<u>Nonsurvival of Representations and Warranties</u>	82
Section 8.02	<u>Notices</u>	82
Section 8.03	<u>Definitions</u>	83
Section 8.04	<u>Interpretation and Other Matters</u>	84
Section 8.05	<u>Counterparts</u>	85
Section 8.06	<u>Entire Agreement; No Third-Party Beneficiaries</u>	85
Section 8.07	<u>Governing Law</u>	85
Section 8.08	<u>Assignment</u>	85
Section 8.09	<u>Enforcement</u>	85
Section 8.10	<u>Severability</u>	86
Section 8.11	<u>Waiver of Jury Trial</u>	86
Section 8.12	<u>Alternative Structure</u>	86

AGREEMENT AND PLAN OF MERGER, dated as of May 8, 2005 (this "Agreement"), by and among DUKE ENERGY CORPORATION, a North Carolina corporation ("Duke"), CINERGY CORP., a Delaware corporation ("Cinergy"), DEER HOLDING CORP., a Delaware corporation (the "Company") and a wholly-owned subsidiary of Duke, DEER ACQUISITION CORP., a North Carolina corporation and a wholly-owned subsidiary of the Company ("Merger Sub A"), and COUGAR ACQUISITION CORP., a Delaware corporation and a wholly-owned subsidiary of the Company ("Merger Sub B").

WHEREAS the respective Boards of Directors of Duke, Cinergy, the Company, Merger Sub A and Merger Sub B have approved the consummation of the business combination provided for in this Agreement, pursuant to which Merger Sub A and Merger Sub B will merge, respectively, with and into Duke and Cinergy, respectively, whereby, subject to the terms of Article II, each share of common stock, no par value per share, of Duke (including, except as the context otherwise requires, the associated Duke Rights as defined in Section 3.02(b), the "Duke Common Stock") and each share of common stock, par value \$.01 per share, of Cinergy (the "Cinergy Common Stock") will be converted into the right to receive the Merger Consideration (as defined in Section 2.01) (such transactions are referred to herein individually as the "Duke Merger" and the "Cinergy Merger", respectively, and collectively as the "Mergers"), as a result of which the holders of Duke Common Stock and Cinergy Common Stock will together own all of the outstanding shares of common stock, no par value per share, of the Company (the "Company Common Stock") (and the Company will, in turn, own all of the outstanding shares of common stock, no par value per share, of the surviving corporation in the Duke Merger (the "Surviving Duke Common Stock") and all of the outstanding shares of common stock, par value \$.01 per share, of the surviving corporation in the Cinergy Merger (the "Surviving Cinergy Common Stock"));

WHEREAS the respective Boards of Directors of Duke, the Company and Merger Sub A have approved the conversion of Duke into a limited liability company organized under the laws of the State of North Carolina ("Duke Power LLC") as provided for in this Agreement, whereby, subject to the terms and conditions of this Agreement, the outstanding shares of Surviving Duke Common Stock shall be converted into membership interests of Duke Power LLC;

WHEREAS the respective Boards of Directors of Duke and the Company have approved the distribution by Duke to the Company of Duke Capital LLC ("Duke Capital"), a Delaware limited liability company and wholly-owned subsidiary of Duke, and the Restructuring Transactions (as defined below);

WHEREAS the respective Boards of Directors of Duke and Cinergy have each determined that the Mergers and the other transactions contemplated hereby are consistent with, and in furtherance of, the best interests of their respective corporations and shareholders and each of Duke's and Cinergy's respective business strategies and goals;

WHEREAS Duke and Cinergy desire to make certain representations, warranties, covenants and agreements in connection with the Mergers and the transactions contemplated by

this Agreement and also to prescribe various conditions to the Mergers and the Restructuring Transactions; and

WHEREAS, for United States federal income tax purposes, it is intended that the Duke Merger and the Duke Conversion (as defined below) (together, the "Duke Reorganization") shall qualify as a reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code") and that the Cincergy Merger shall qualify as a reorganization within the meaning of Section 368(a) of the Code, and this Agreement is intended to be, and is hereby, adopted as a plan of reorganization within the meaning of Section 368(a) of the Code.

NOW, THEREFORE, in consideration of the foregoing and of the representations, warranties, covenants and agreements contained in this Agreement, the parties agree as follows:

ARTICLE I

The Mergers and the Restructuring Transactions

Section 1.01 The Duke Merger. Upon the terms and subject to the conditions set forth in this Agreement, at the Duke Effective Time (as defined in Section 1.06), Merger Sub A shall be merged with and into Duke in accordance with the North Carolina Business Corporation Act (the "NCBCA"). Duke shall be the surviving corporation in the Duke Merger and shall continue its corporate existence under the laws of the State of North Carolina and shall succeed to and assume all of the rights and obligations of Duke and Merger Sub A in accordance with the NCBCA. As a result of the Duke Merger, Duke shall become a wholly-owned subsidiary of the Company.

Section 1.02 The Duke Conversion. Upon the terms and subject to the conditions set forth in this Agreement, immediately following the effectiveness of the Duke Merger, Duke may convert to a limited liability company (the "Duke Conversion") pursuant to a plan of conversion adopted pursuant to Section 55-11A-11 of the NCBCA and Section 57C-9A-02 of the North Carolina Limited Liability Company Act (the "NCLLCA"). Following the Duke Conversion, Duke Power LLC will be a limited liability company all of whose membership or other equity interests are held by the Company.

Section 1.03 The Restructuring Transactions.

(a) Immediately following the effectiveness of the Duke Conversion, Duke Power LLC may, and may cause its subsidiaries to, effect the transactions set forth on Section 1.03(a) of the Duke Disclosure Letter (as defined in Section 3.02(a)).

(b) Immediately following the consummation of the transactions set forth on Section 1.03(a) of the Duke Disclosure Letter, Duke Power LLC may distribute to the Company the membership interests in Duke Capital (the "Duke Capital Transfer"). Following the Duke Capital Transfer, Duke Capital will be a direct wholly-owned subsidiary of the Company.

(c) Immediately following the effectiveness of the Duke Capital Transfer, the Company may cause Duke Capital to effect the transactions set forth on Section 1.03(c) of the Duke Disclosure Letter (the Duke Conversion, the Duke Capital Transfer and the transactions set forth on Section 1.03(a) and Section 1.03(c) of the Duke Disclosure Letter are referred to herein as the "Restructuring Transactions"). Duke shall provide prior notice to Cinergy of any Restructuring Transactions it proposes to effect. Immediately after the Duke Effective Time, all shares of Company Common Stock owned by Duke shall be cancelled.

Section 1.04 The Cinergy Merger. Upon the terms and subject to the conditions set forth in this Agreement, immediately following the latest of consummation of the Duke Merger or any Restructuring Transactions, at the Cinergy Effective Time (as defined in Section 1.06), Merger Sub B shall be merged with and into Cinergy in accordance with the Delaware General Corporation Law (the "DGCL"). Cinergy shall be the surviving corporation in the Cinergy Merger and shall continue its corporate existence under the laws of the State of Delaware and shall succeed to and assume all of the rights and obligations of Cinergy and Merger Sub B in accordance with the DGCL. As a result of the Cinergy Merger, Cinergy shall become a wholly-owned subsidiary of the Company.

Section 1.05 Closing. The closing of the Mergers and the Restructuring Transactions (the "Closing") will take place at 10:00 a.m., local time, on a date to be specified by the parties (the "Closing Date"), which shall be no later than the second business day after satisfaction or waiver of the conditions set forth in Article VI, (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at such time) unless another time or date is agreed to by the parties hereto. The Closing shall be held at such location in The City of New York as is agreed to by the parties hereto.

Section 1.06 Effective Time of the Duke and Cinergy Mergers. Subject to the provisions of this Agreement, (i) with respect to the Duke Merger, as soon as practicable after 10:00 a.m., local time, on the Closing Date the parties thereto shall file articles of merger (the "Duke Articles of Merger") executed in accordance with, and containing such information as is required by, Section 55-11-05 of the NCBCA with the Secretary of State of the State of North Carolina and on or after the Closing Date shall make all other filings or recordings required under the NCBCA, (ii) with respect to the Duke Conversion, as soon as practicable on the Closing Date following the Duke Effective Time, Duke shall file articles of organization of Duke Power LLC (the "Duke Power Articles of Organization") and articles of conversion (the "Duke Articles of Conversion") executed in accordance with, and containing such information as is required by, Section 55-11A-12 of the NCBCA and Section 57C-9A-02 of the NCLLCA with the Secretary of State of the State of North Carolina and on or after the Closing Date shall make all other filings or recordings required under the NCBCA and the NCLLCA, and (iii) with respect to the Cinergy Merger, immediately following the consummation of the Restructuring Transactions, the parties thereto shall file a certificate of merger (the "Cinergy Certificate of Merger") executed in accordance with, and containing such information as is required by, the relevant provisions of Section 251 of the DGCL with the Secretary of State of the State of Delaware and on or after the Closing Date shall make all other filings or recordings required under the DGCL. The Duke Merger shall become effective at such time as the Duke Articles of Merger are duly filed with the Secretary of State of the State of North Carolina (the time the

Duke Merger becomes effective being hereinafter referred to as the "Duke Effective Time"), the Duke Conversion shall become effective at such time as the Duke Articles of Conversion and the Duke Power Articles of Organization are duly filed with the Secretary of State of the State of North Carolina (the time the Duke Conversion becomes effective being hereinafter referred to as the "Conversion Effective Time"), and the Cinergy Merger shall become effective at such time as the Cinergy Certificate of Merger is duly filed with the Secretary of State of the State of Delaware (the time the Cinergy Merger becomes effective being hereinafter referred to as the "Cinergy Effective Time"). The latest time to occur of the Duke Effective Time, the Conversion Effective Time and the Cinergy Effective Time shall hereinafter be referred to as the "Effective Time."

Section 1.07 Effects of the Mergers and the Conversion. The Duke Merger, the Cinergy Merger and the Duke Conversion shall generally have the effects set forth in this Agreement and the applicable provisions of the NCBCA, the DGCL and the NCLLCA respectively.

Section 1.08 Organizational Documents of Duke, Cinergy and the Company.

(a)

(i) At the Duke Effective Time, (a) the articles of incorporation of Duke, as in effect immediately prior to the Duke Effective Time, shall be the articles of incorporation of Duke as the surviving corporation in the Duke Merger and (b) the by-laws of Duke, as in effect immediately prior to the Duke Effective Time, shall be the by-laws of Duke as the surviving corporation in the Duke Merger, in each case until superceded by the Duke Power Articles of Organization filed as part of the Duke Conversion; and

(ii) At the Conversion Effective Time, the parties shall (i) file the Duke Power LLC Articles of Organization in a form mutually acceptable to the parties hereto and (ii) cause Duke Power LLC to adopt an operating agreement mutually acceptable to the parties hereto; and

(iii) At the Cinergy Effective Time, (A) the certificate of incorporation of Merger Sub B, as in effect immediately prior to the Cinergy Effective Time, shall be the certificate of incorporation of Cinergy as the surviving corporation in the Cinergy Merger until thereafter changed or amended as provided therein or by applicable law and (B) the by-laws of Merger Sub B, as in effect immediately prior to the Cinergy Effective Time, shall be the by-laws of Cinergy as the surviving corporation in the Cinergy Merger, until thereafter changed or amended as provided therein, in the certificate of incorporation of Cinergy or by applicable law.

(b) The parties shall take all appropriate action so that, at the Duke Effective Time, (i) the certificate of incorporation of the Company shall be in the form attached as Exhibit A hereto and (ii) the by-laws of the Company shall be in the form attached as Exhibit B hereto. Each of Duke and Cinergy shall take all actions necessary to cause the

Company, Merger Sub A and Merger Sub B to take any actions necessary in order to consummate the Mergers, the Restructuring Transactions and the other transactions contemplated hereby.

Section 1.09 Directors and Officers of Duke and Cinergy.

(a) The directors of Merger Sub A at the Duke Effective Time shall, from and after the Duke Effective Time, be the directors of Duke as the surviving corporation in the Duke Merger until their successors have been duly elected or appointed and qualified.

(b) Subject to Section 1.10, the officers of Duke at the Duke Effective Time shall, from and after the Duke Effective Time, continue to be the officers of Duke as the surviving corporation in the Duke Merger until their successors have been duly elected or appointed and qualified.

(c) The directors of Duke at the Conversion Effective Time shall, from and after the Conversion Effective Time, be the managers of Duke Power LLC until their successors have been duly elected or appointed and qualified.

(d) Subject to Section 1.10, the officers of Duke at the Conversion Effective Time shall, from and after the Conversion Effective Time, continue to be the officers of Duke Power LLC until their successors have been duly elected or appointed and qualified.

(e) The directors of Merger Sub B at the Cinergy Effective Time shall, from and after the Cinergy Effective Time, be the directors of Cinergy as the surviving corporation in the Cinergy Merger until their successors have been duly elected or appointed and qualified.

(f) Subject to Section 1.10, the officers of Cinergy at the Cinergy Effective Time shall, from and after the Cinergy Effective Time, continue to be the officers of Cinergy as the surviving corporation in the Cinergy Merger until their successors have been duly elected or appointed and qualified.

Section 1.10 Directors and Officers of the Company. Exhibit C hereto sets forth (i) as of the Effective Time, subject to the By-Laws of the Company effective as of the Effective Time, the number of directors constituting the Board of Directors of the Company and the number of Duke Directors (as defined in Exhibit B hereto) and the number of Cinergy Directors (as defined in Exhibit B hereto), (ii) as of the Effective Time, the Chairman of the Board of Directors of the Company and the President and Chief Executive Officer of the Company, and (iii) the manner in which certain senior officers of the Company as of the Effective Time will be selected after the date hereof and prior to the Effective Time. Certain of the responsibilities of the Chairman of the Board of Directors of the Company are set forth on Exhibit C hereto. The material terms of the changes to the existing employment agreement of the President and Chief Executive Officer of Cinergy to be in effect as of the Effective Time in his employment agreement with the Company as the President and Chief Executive Officer of the Company are set forth on Exhibit D hereto. The parties shall use their commercially reasonable efforts to cause an amended employment agreement reflecting such terms to be

executed by the Company and the Chief Executive Officer of the Company as promptly as practicable after the date hereof.

Section 1.11 Post-Merger Operations. Following the Effective Time, the Company shall conduct its operations in accordance with the following:

(a) Name. At the Effective Time, the Company's name shall be changed to "Duke Energy Corporation."

(b) Principal Corporate Offices. The Company shall maintain its headquarters and principal corporate offices in Charlotte, North Carolina. Each of Duke Power LLC, The Cincinnati Gas & Electric Company, PSI Energy, Inc. and The Union Light, Heat and Power Company shall maintain its utility headquarters in its present location.

(c) Charities. The parties agree that provision of charitable contributions and community support in their respective service areas serves a number of their important corporate goals. During the two-year period immediately following the Cinergy Effective Time, the Company and its subsidiaries taken as a whole intend to continue to provide charitable contributions and community support within the service areas of the parties and each of their respective subsidiaries in each service area at levels substantially comparable to the levels of charitable contributions and community support provided, directly or indirectly, by Duke and Cinergy within their respective service areas during the two-year period immediately prior to the Effective Time.

Section 1.12 Transition Committee. The parties shall create a special transition committee (the "Transition Committee") that shall be co-chaired by the Chief Executive Officer of Duke and the Chief Executive Officer of Cinergy and shall be composed of such chief executive officers and two other designees of Duke and one other designee of Cinergy. After the date hereof and prior to the Effective Time, the Transition Committee shall examine various alternatives regarding the manner in which to best organize and manage the business of the Company after the Cinergy Effective Time, subject to applicable law.

ARTICLE II

Effects of the Mergers on the Capital Stock of the Constituent Corporations; Exchange of Certificates

Section 2.01 Effect on Capital Stock. (a) At the Duke Effective Time, by virtue of the Duke Merger and without any action on the part of the holder of any shares of Duke Common Stock or any capital stock of Merger Sub A:

(i) Cancellation of Certain Duke Common Stock. Each share of Duke Common Stock that is owned by Duke, Cinergy or the Company shall automatically be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefore.

(ii) Conversion of Duke Common Stock. Subject to Section 2.02(e), each issued and outstanding share of Duke Common Stock (other

than shares to be canceled in accordance with Section 2.01(a)(i) and Dissenting Shares (as defined in Section 2.03)) shall be converted into the right to receive 1 (the "Duke Ratio") fully paid and nonassessable share of Company Common Stock (such aggregate amount, the "Duke Merger Consideration"). As of the Duke Effective Time, all such shares of Duke Common Stock shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Duke Common Stock shall cease to have any rights with respect thereto, except the right to receive the shares of Company Common Stock (and cash in lieu of fractional shares of Company Common Stock) to be issued or paid in consideration therefore upon the surrender of such certificate in accordance with Section 2.02, without interest and the right to receive dividends and other distributions in accordance with Section 2.02.

(iii) Conversion of Merger Sub A Common Stock. The aggregate of all shares of the capital stock of Merger Sub A issued and outstanding immediately prior to the Duke Effective Time (of which, as of the date of this Agreement, 100 shares of common stock, par value \$.01 per share, are issued and outstanding, each entitling the holder thereof to vote on the approval of this Agreement) shall be converted into 100 shares of Surviving Duke Common Stock.

(b) At the Cinergy Effective Time, by virtue of the Cinergy Merger and without any action on the part of any holder of Cinergy Common Stock or any capital stock of Merger Sub B:

(i) Cancellation of Certain Cinergy Common Stock. Each share of Cinergy Common Stock that is owned by Cinergy, Duke or the Company shall automatically be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefore.

(ii) Conversion of Cinergy Common Stock. Subject to Section 2.02(e), each issued and outstanding share of Cinergy Common Stock (other than shares to be canceled in accordance with Section 2.01(b)(i)) shall be converted into the right to receive 1.56 (the "Cinergy Ratio") fully paid and nonassessable shares of Company Common Stock (such aggregate amount, the "Cinergy Merger Consideration," and, together with the Duke Merger Consideration, the "Merger Consideration"). As of the Cinergy Effective Time, all such shares of Cinergy Common Stock shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Cinergy Common Stock shall cease to have any rights with respect thereto, except the right to receive the shares of Company Common Stock (and cash in lieu of fractional shares of Company Common Stock) to be issued or paid in consideration therefore upon the surrender of such certificate in accordance with Section 2.02, without interest and the right to receive dividends and other distributions in accordance with Section 2.02.

(iii) Conversion of Merger Sub B Common Stock. The aggregate of all shares of the capital stock of Merger Sub B issued and outstanding immediately prior to the Cinergy Effective Time (of which, as of the date of this Agreement, 100 shares of common stock, without par value, are issued and outstanding, each entitling the holder thereof to vote on the approval of this Agreement) shall be converted into the right to receive 100 shares of Surviving Cinergy Common Stock.

(c) Duke Preferred Stock and Preferred Stock A. Prior to the Duke Effective Time, each issued and outstanding share of Preferred Stock, par value \$100 per share ("Duke Preferred Stock"), of Duke and each issued outstanding share of Preferred Stock A, par value \$25 per share ("Duke Preferred Stock A"), of Duke shall be redeemed in accordance with Section 4.07.

(d) Exchangeable Shares of Duke Energy Canada Exchangeco, Inc. As of the Duke Effective Time, each issued and outstanding exchangeable share (the "Exchangeable Shares") of Duke Energy Canada Exchangeco, Inc. ("Exchangeco"), a corporation incorporated under the laws of Canada and an indirect subsidiary of Duke, shall become exchangeable for one share of Company Common Stock and one share of Company Common Stock shall be issuable upon a redemption or retraction of each Exchangeable Share, in each case in accordance with the terms of the provisions relating to the Exchangeable Shares as of immediately prior to the Duke Effective Time. In addition, following the Effective Time, the Company shall execute such assignment and assumption agreements and documentation as are necessary to cause the Company to be bound by the terms and provisions of the Support Agreement among Duke, Duke Canada Call Co. and Exchangeco dated March 14, 2002, and the Voting and Exchange Trust Agreement among Duke, Exchangeco and Computershare Trust Company of Canada, dated March 14, 2002.

Section 2.02 Exchange of Certificates.

(a) Exchange Agent. As of the Effective Time, the Company shall enter into an agreement with such bank or trust company as may be mutually agreed by Duke and Cinergy (the "Exchange Agent"), which agreement shall provide that the Company shall deposit with the Exchange Agent as of the Effective Time, for the benefit of the holders of shares of Duke Common Stock and Cinergy Common Stock, for exchange in accordance with this Article II, through the Exchange Agent, certificates representing the shares of Company Common Stock (such shares of Company Common Stock, together with any dividends or distributions with respect thereto with a record date after the Cinergy Effective Time, being hereinafter referred to as the "Exchange Fund") representing the Merger Consideration.

(b) Exchange Procedures. As soon as reasonably practicable after the Effective Time, the Exchange Agent shall mail to each holder of record of a certificate or certificates that immediately prior to the Effective Time represented outstanding shares of Duke Common Stock or Cinergy Common Stock (the "Certificates") whose shares were converted into the right to receive shares of Company Common Stock pursuant to Section 2.01, (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and shall be

in such form and have such other provisions as Duke and Cinergy may reasonably specify) and (ii) instructions for use in surrendering the Certificates in exchange for certificates representing whole shares of Company Common Stock, cash in lieu of fractional shares pursuant to Section 2.02(e) and any dividends or other distributions payable pursuant to Section 2.02(c). Upon surrender of a Certificate for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate shall be entitled to receive in exchange therefore a certificate representing that number of whole shares of Company Common Stock that such holder has the right to receive pursuant to the provisions of this Article II, certain dividends or other distributions in accordance with Section 2.02(c) and cash in lieu of any fractional share of Company Common Stock in accordance with Section 2.02(e), and the Certificate so surrendered shall forthwith be canceled. In the event of a transfer of ownership of Duke Common Stock or Cinergy Common Stock that is not registered in the transfer records of Duke or Cinergy, as the case may be, a certificate representing the proper number of shares of Company Common Stock may be issued to a person other than the person in whose name the Certificate so surrendered is registered if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the person requesting such issuance shall pay any transfer or other taxes required by reason of the issuance of shares of Company Common Stock to a person other than the registered holder of such Certificate or establish to the satisfaction of the Company that such tax has been paid or is not applicable. Until surrendered as contemplated by this Section 2.02, each Certificate shall be deemed at any time after the Duke Effective Time or the Cinergy Effective Time, as the case may be, to represent only the right to receive upon such surrender the Merger Consideration, which the holder thereof has the right to receive in respect of such Certificate pursuant to the provisions of this Article II, certain dividends or other distributions in accordance with Section 2.02(c) and cash in lieu of any fractional share of Duke Common Stock or Cinergy Common Stock, as the case may be, in accordance with Section 2.02(e). No interest shall be paid or will accrue on the Merger Consideration or any cash payable to holders of Certificates pursuant to the provisions of this Article II.

(c) Distributions with Respect to Unexchanged Shares. No dividends or other distributions with respect to Company Common Stock shall be declared or paid with a record date on or after the Duke Effective Time and on or prior to the Effective Time. No dividends or other distributions with respect to Company Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Company Common Stock issuable hereunder in respect thereof and no cash payment in lieu of fractional shares shall be paid to any such holder pursuant to Section 2.02(e), and all such dividends, other distributions and cash in lieu of fractional shares of Company Common Stock shall be paid by the Company to the Exchange Agent and shall be included in the Exchange Fund, in each case until the surrender of such Certificate in accordance with this Article II. Subject to the effect of applicable escheat or similar laws, following surrender of any such Certificate there shall be paid to the holder of the certificate representing whole shares of Company Common Stock issued in exchange therefore, without interest, (i) promptly after the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Company Common Stock and the amount of any cash payable in lieu of a fractional share of Company Common Stock to which such holder is entitled pursuant to Section 2.02(e) and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but

prior to such surrender and with a payment date subsequent to such surrender payable with respect to such whole shares of Company Common Stock.

(d) No Further Ownership Rights in Duke Common Stock or Cinergy Common Stock. All shares of Company Common Stock issued upon the surrender for exchange of Certificates in accordance with the terms of this Article II (including any cash paid pursuant to this Article II) shall be deemed to have been issued (and paid) in full satisfaction of all rights pertaining to the shares of Duke Common Stock or Cinergy Common Stock, as the case may be, theretofore represented by such Certificates, subject, however, to Duke's and Cinergy's respective obligations to pay any dividends or make any other distributions with a record date prior to the Duke Effective Time or the Cinergy Effective Time, as the case may be, that may have been declared or made by Duke or Cinergy, as the case may be, on such shares of Duke Common Stock or Cinergy Common Stock that remain unpaid at the Duke Effective Time or the Cinergy Effective Time, as the case may be, and there shall be no further registration of transfers on the stock transfer books of Duke or Cinergy of the shares of Duke Common Stock and Cinergy Common Stock, respectively, that were outstanding immediately prior to the Duke Effective Time or the Cinergy Effective Time, as the case may be. If, after the Duke Effective Time or the Cinergy Effective Time, as the case may be, Certificates are presented to the Company, Duke, Cinergy or the Exchange Agent for any reason, they shall be canceled and exchanged as provided in this Article II, except as otherwise provided by law.

(e) No Fractional Shares.

(i) No certificates or scrip representing fractional shares of Company Common Stock shall be issued upon the surrender for exchange of Certificates, no dividend or distribution of the Company shall relate to such fractional share interests and such fractional share interests will not entitle the owner thereof to vote or to any rights of a shareholder of the Company.

(ii) As promptly as practicable following the Cinergy Effective Time, the Exchange Agent shall determine the excess of (A) the number of whole shares of Company Common Stock delivered to the Exchange Agent by the Company pursuant to Section 2.02(a) representing the Cinergy Merger Consideration over (B) the aggregate number of whole shares of Company Common Stock to be distributed to former holders of Cinergy Common Stock pursuant to Section 2.02(b) (such excess being herein called the "Cinergy Excess Shares"). Following the Cinergy Effective Time, the Exchange Agent shall, on behalf of former shareholders of Cinergy, sell the Cinergy Excess Shares at then-prevailing prices on the New York Stock Exchange, Inc. ("NYSE"), all in the manner provided in Section 2.02(e)(iii). As promptly as practicable following the Duke Effective Time, the Exchange Agent shall determine the excess, if any, of (A) the number of whole shares of Company Common Stock delivered to the Exchange Agent by the Company pursuant to Section 2.02(a) representing the Duke Merger Consideration over (B) the aggregate number of whole shares of Company Common Stock to be distributed to former holders of Duke Common Stock pursuant to Section 2.02(b) (such excess being herein called the "Duke Excess Shares"). Following the Duke Effective Time, the Exchange Agent shall,

on behalf of former shareholders of Duke, sell the Duke Excess Shares at then-prevailing prices on the NYSE, all in the manner provided in Section 2.02(e)(iv).

(iii) The sale of the Cinergy Excess Shares by the Exchange Agent shall be executed on the NYSE through one or more member firms of the NYSE and shall be executed in round lots to the extent practicable. The Exchange Agent shall use reasonable efforts to complete the sale of the Cinergy Excess Shares as promptly following the Effective Time as, in the Exchange Agent's sole judgment, is practicable consistent with obtaining the best execution of such sales in light of prevailing market conditions. Until the net proceeds of such sale or sales have been distributed to the holders of Certificates formerly representing Cinergy Common Stock, the Exchange Agent shall hold such proceeds in trust for holders of Cinergy Common Stock (the "Cinergy Common Shares Trust"). Cinergy shall pay all commissions, transfer taxes and other out-of-pocket transaction costs, including the expenses and compensation of the Exchange Agent incurred in connection with such sale of the Cinergy Excess Shares. The Exchange Agent shall determine the portion of the Cinergy Common Shares Trust to which each former holder of Cinergy Common Stock is entitled, if any, by multiplying the amount of the aggregate net proceeds composing the Cinergy Common Shares Trust by a fraction, the numerator of which is the amount of the fractional share interest to which such former holder of Cinergy Common Stock is entitled (after taking into account all shares of Cinergy Common Stock held at the Cinergy Effective Time by such holder) and the denominator of which is the aggregate amount of fractional share interests to which all former holders of Cinergy Common Stock are entitled.

(iv) The sale of the Duke Excess Shares by the Exchange Agent shall be executed on the NYSE through one or more member firms of the NYSE and shall be executed in round lots to the extent practicable. The Exchange Agent shall use reasonable efforts to complete the sale of the Duke Excess Shares as promptly following the Effective Time as, in the Exchange Agent's sole judgment, is practicable consistent with obtaining the best execution of such sales in light of prevailing market conditions. Until the net proceeds of such sale or sales have been distributed to the holders of Certificates formerly representing Duke Common Stock, the Exchange Agent shall hold such proceeds in trust for holders of Duke Common Stock (the "Duke Common Shares Trust"). Duke shall pay all commissions, transfer taxes and other out-of-pocket transaction costs, including the expenses and compensation of the Exchange Agent incurred in connection with such sale of the Duke Excess Shares. The Exchange Agent shall determine the portion of the Duke Common Shares Trust to which each former holder of Duke Common Stock is entitled, if any, by multiplying the amount of the aggregate net proceeds composing the Duke Common Shares Trust by a fraction, the numerator of which is the amount of the fractional share interest to which such former holder of Duke Common Stock is entitled (after taking into account all shares of Duke Common Stock held at the Duke Effective Time by such holder) and the denominator of which is the aggregate amount of fractional share interests to which all former holders of Duke Common Stock are entitled.

(v) As soon as practicable after the determination of the amount of cash, if any, to be paid to holders of Certificates formerly representing Duke Common Stock or Cinergy Common Stock, as the case may be, with respect to any fractional share interests, the Exchange Agent shall make available such amounts to such holders of Certificates formerly representing Duke Common Stock or Cinergy Common Stock, as the case may be, subject to and in accordance with the terms of Section 2.02(c).

(f) Termination of Exchange Fund. Any portion of the Exchange Fund that remains undistributed to the holders of the Certificates for six months after the Effective Time shall be delivered to the Company, upon demand, and any holders of the Certificates who have not theretofore complied with this Article II shall thereafter look only to the Company for payment of their claim for Merger Consideration, any dividends or distributions with respect to Company Common Stock and any cash in lieu of fractional shares of Company Common Stock.

(g) No Liability. None of the Company, Duke, Cinergy or the Exchange Agent or any of their respective directors, officers, employees and agents shall be liable to any person in respect of any shares of Company Common Stock, any dividends or distributions with respect thereto, any cash in lieu of fractional shares of Company Common Stock or any cash from the Exchange Fund, in each case delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. If any Certificate shall not have been surrendered prior to two years after the Cinergy Effective Time (or immediately prior to such earlier date on which any Cinergy Merger Consideration, any dividends or distributions payable to the holder of such Certificate or any cash payable to the holder of such Certificate formerly representing Cinergy Common Stock pursuant to this Article II, would otherwise escheat to or become the property of any Governmental Authority (as defined in Section 3.01(d)), any such Cinergy Merger Consideration, dividends or distributions in respect of such Certificate or such cash shall, to the extent permitted by applicable law, become the property of the Company, free and clear of all claims or interest of any person previously entitled thereto. If any Certificate shall not have been surrendered prior to two years after the Duke Effective Time (or immediately prior to such earlier date on which any Duke Merger Consideration, any dividends or distributions payable to the holder of such Certificate or any cash payable to the holder of such Certificate formerly representing Duke Common Stock pursuant to this Article II, would otherwise escheat to or become the property of any Governmental Authority), any such Duke Merger Consideration, dividends or distributions in respect of such Certificate or such cash shall, to the extent permitted by applicable law, become the property of the Company, free and clear of all claims or interest of any person previously entitled thereto.

(h) Investment of Exchange Fund. The Exchange Agent shall invest any cash included in the Exchange Fund, as directed by the Company, on a daily basis. Any interest and other income resulting from such investments shall be paid to the Company.

(i) Withholding Rights. The Company and the Exchange Agent shall be entitled to deduct and withhold from any consideration payable pursuant to this Agreement to any Person who was a holder of Duke Common Stock or Cinergy Common Stock, as the case may be, immediately prior to the Duke Effective Time or the Cinergy Effective Time, as the case

may be, such amounts as the Company and the Exchange Agent may be required to deduct and withhold with respect to the making of such payment under the Code or any other provision of applicable federal, state, local or foreign tax law. To the extent that amounts are so withheld by the Company or the Exchange Agent and duly paid over to the applicable taxing authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person to whom such consideration would otherwise have been paid.

(j) Lost, Stolen or Destroyed Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by the Company, the posting by such person of a bond in such reasonable amount as the Company may direct as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration and, if applicable, any unpaid dividends and distributions on shares of Company Common Stock deliverable in respect thereof and any cash in lieu of fractional shares, in each case pursuant to this Agreement.

(k) Adjustments to Prevent Dilution. In the event that Duke changes the number of shares of Duke Common Stock or securities convertible or exchangeable into or exercisable for shares of Duke Common Stock, Cinergy changes the number of shares of Cinergy Common Stock or securities convertible or exchangeable into or exercisable for shares of Cinergy Common Stock, issued and outstanding prior to the Effective Time, or the Company changes the number of shares of Company Common Stock or securities convertible or exchangeable into or exercisable for shares of Company Common Stock issued and outstanding after the Duke Effective Time and prior to the Cinergy Effective Time, in each case as a result of a reclassification, stock split (including a reverse stock split), stock dividend or distribution, recapitalization, merger, subdivision, issuer tender or exchange offer, or other similar transaction, except to the extent any of the foregoing actions are expressly permitted by this Agreement, the Cinergy Ratio shall be equitably adjusted.

(l) Uncertificated Shares. In the case of outstanding shares of Cinergy Common Stock or Duke Common Stock that are not represented by Certificates, the parties shall make such adjustments to this Section 2.02 as are necessary or appropriate to implement the same purpose and effect that this Section 2.02 has with respect to shares of Cinergy Common Stock and Duke Common Stock that are represented by Certificates.

Section 2.03 Dissenting Shares. Any holder of shares of Duke Common Stock who shall have exercised rights to dissent with respect to the Duke Merger in accordance with the NCBCA and who has properly exercised such holder's rights to demand payment of the "fair value" of the holder's shares of Duke Common Stock (the "Dissenting Shares") as provided in the NCBCA (the "Dissenting Shareholder") shall thereafter have only such rights, if any, as are provided a Dissenting Shareholder in accordance with the NCBCA and shall have no rights to receive the Merger Consideration pursuant to Section 2.01 (provided, that nothing contained herein shall limit such Dissenting Shareholder's rights to the payment of all declared and unpaid dividends on Duke Common Stock); provided, however, that if a Dissenting Shareholder shall fail to properly demand payment (in accordance with the NCBCA) or shall have effectively withdrawn or lost such rights to relief as a Dissenting Shareholder under the NCBCA, then such

Dissenting Shareholder's Dissenting Shares automatically shall cease to be Dissenting Shares and shall be converted into and represent only the right to receive, upon surrender of the Certificate representing the Dissenting Shares, the Merger Consideration pursuant to Section 2.01 and declared and unpaid dividends or other distributions as provided in Section 2.02(b) and Section 2.02(c). Duke shall give Cinergy and the Company prompt notice of any demands received by Duke prior to the Duke Effective Time, any attempted withdrawals of such demands and any other instruments served pursuant to the NCBCA and received by Duke relating to Duke's shareholders rights of dissent under the NCBCA, and Duke and Cinergy shall cooperate with respect to all negotiations and proceedings with respect to such demands.

ARTICLE III

Representations and Warranties

Section 3.01 Representations and Warranties of Cinergy. Except as set forth in the letter dated the date of this Agreement and delivered to Duke by Cinergy concurrently with the execution and delivery of this Agreement (the "Cinergy Disclosure Letter") or, to the extent the qualifying nature of such disclosure is readily apparent therefrom, as set forth in the Cinergy SEC Reports (as defined in Section 3.01(e)) filed on or after January 1, 2004 and prior to the date hereof, Cinergy represents and warrants to Duke as follows:

(a) Organization and Qualification.

(i) Each of Cinergy and its subsidiaries is duly organized, validly existing and in good standing (with respect to jurisdictions that recognize the concept of good standing) under the laws of its jurisdiction of organization and has full power and authority to conduct its business as and to the extent now conducted and to own, use and lease its assets and properties, except for such failures to be so organized, existing and in good standing (with respect to jurisdictions that recognize the concept of good standing) or to have such power and authority that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect (as defined in Section 8.03) on Cinergy. Each of Cinergy and its subsidiaries is duly qualified, licensed or admitted to do business and is in good standing (with respect to jurisdictions that recognize the concept of good standing) in each jurisdiction in which the ownership, use or leasing of its assets and properties, or the conduct or nature of its business, makes such qualification, licensing or admission necessary, except for such failures to be so qualified, licensed or admitted and in good standing (with respect to jurisdictions that recognize the concept of good standing) that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy. Section 3.01(a) of the Cinergy Disclosure Letter sets forth as of the date of this Agreement the name and jurisdiction of organization of each subsidiary of Cinergy.

(ii) Section 3.01(a) of the Cinergy Disclosure Letter sets forth a description as of the date of this Agreement, of all Cinergy Joint Ventures,

including (x) the name of each such entity and (y) a brief description of the principal line or lines of business conducted by each such entity. For purposes of this Agreement:

(A) "Joint Venture" of a person or entity shall mean any person that is not a subsidiary of such first person, in which such first person or one or more of its subsidiaries owns directly or indirectly an equity interest, other than equity interests held for passive investment purposes that are less than 5% of each class of the outstanding voting securities or equity interests of such second person;

(B) "Cinergy Joint Venture" shall mean any Joint Venture of Cinergy or any of its subsidiaries in which the net book value as of December 31, 2004 of Cinergy's or its subsidiaries' interest exceeds \$35,000,000; and

(C) "Duke Joint Venture" shall mean any Joint Venture of Duke or any of its subsidiaries in which the invested capital associated with Duke's or its subsidiaries' interest exceeds \$100,000,000.

(iii) Except for interests in the subsidiaries of Cinergy, the Cinergy Joint Ventures and interests acquired after the date of this Agreement without violating any covenant or agreement set forth herein. Cinergy does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any equity or similar interest in, any person, in which the net book value as of December 31, 2004 of such interest individually exceeds \$35,000,000.

(b) Capital Stock.

(i) The authorized capital stock of Cinergy consists of:

(A) 600,000,000 shares of Cinergy Common Stock, of which 198,360,398 shares were issued and outstanding as of May 6, 2005; and

(B) 10,000,000 shares of preferred stock, par value \$.01 per share, none of which were issued and outstanding as of the date of this Agreement.

As of March 31, 2005, 138,862 shares of Cinergy Common Stock were held in the treasury of Cinergy. As of the date of this Agreement, 5,837,978 shares of Cinergy Common Stock were subject to outstanding Cinergy Employee Stock Options (as defined in Section 5.06(a)) and 6,914,109 additional shares of Cinergy Common Stock were reserved for issuance pursuant to the Cinergy Corp. 1996 Long-Term Incentive Compensation Plan, Stock Option Plan, Employee Stock Purchase and Savings Plan, UK Sharesave Scheme, Retirement

Plan for Directors, Directors' Deferred Compensation Plan, Directors' Equity Compensation Plan and any other compensatory plan, program or arrangement under which shares of Cinergy Common Stock are reserved for issuance (collectively, the "Cinergy Employee Stock Option Plans"). All of the issued and outstanding shares of Cinergy Common Stock are, and all shares reserved for issuance will be, upon issuance in accordance with the terms specified in the instruments or agreements pursuant to which they are issuable, duly authorized, validly issued, fully paid and nonassessable. Except as disclosed in this Section 3.01(b), as of the date of this Agreement there are no outstanding subscriptions, options, warrants, rights (including stock appreciation rights), preemptive rights or other contracts, commitments, understandings or arrangements, including any right of conversion or exchange under any outstanding security instrument or agreement (together, "Options"), obligating Cinergy or any of its subsidiaries to issue or sell any shares of capital stock of Cinergy or to grant, extend or enter into any Option with respect thereto.

(ii) Except as permitted by this Agreement, all of the outstanding shares of capital stock of each subsidiary of Cinergy are duly authorized, validly issued, fully paid and nonassessable and are owned, beneficially and of record, by Cinergy or a subsidiary, free and clear of any liens, claims, mortgages, encumbrances, pledges, security interests, equities and charges of any kind (each a "Lien"), except for any of the foregoing that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy. There are no (A) outstanding Options obligating Cinergy or any of its subsidiaries to issue or sell any shares of capital stock of any subsidiary of Cinergy or to grant, extend or enter into any such Option or (B) voting trusts, proxies or other commitments, understandings, restrictions or arrangements in favor of any person other than Cinergy or a subsidiary wholly-owned, directly or indirectly, by Cinergy with respect to the voting of or the right to participate in dividends or other earnings on any capital stock of any subsidiary of Cinergy.

(iii) Cinergy is a "registered holding company" as defined under Section 2(a)(12) of the Public Utility Holding Company Act of 1935, as amended (the "1935 Act").

(iv) As of the date of this Agreement, no bonds, debentures, notes or other indebtedness of Cinergy or any of its subsidiaries having the right to vote (or which are convertible into or exercisable for securities having the right to vote) (collectively, "Cinergy Voting Debt") on any matters on which Cinergy shareholders may vote are issued or outstanding nor are there any outstanding Options obligating Cinergy or any of its subsidiaries to issue or sell any Cinergy Voting Debt or to grant, extend or enter into any Option with respect thereto.

(c) Authority. Cinergy has full corporate power and authority to enter into this Agreement, to perform its obligations hereunder and, subject to obtaining Cinergy Shareholder Approval (as defined in Section 3.01(p)), to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Cinergy

and the consummation by Cinergy of the transactions contemplated hereby have been duly and validly adopted and approved by the Board of Directors of Cinergy, the Board of Directors of Cinergy has recommended approval of this Agreement by the shareholders of Cinergy and directed that this Agreement be submitted to the shareholders of Cinergy for their approval, and no other corporate proceedings on the part of Cinergy or its shareholders are necessary to authorize the execution, delivery and performance of this Agreement by Cinergy and the consummation by Cinergy of the Cinergy Merger and the other transactions contemplated hereby, other than obtaining Cinergy Shareholder Approval. This Agreement has been duly and validly executed and delivered by Cinergy and constitutes a legal, valid and binding obligation of Cinergy enforceable against Cinergy in accordance with its terms.

(d) No Conflicts; Approvals and Consents.

(i) The execution and delivery of this Agreement by Cinergy do not, and the performance by Cinergy of its obligations hereunder and the consummation of the Mergers and the other transactions contemplated hereby will not, conflict with, result in a violation or breach of, constitute (with or without notice or lapse of time or both) a default under, result in or give to any person any right of payment or reimbursement, termination, cancellation, modification or acceleration of, or result in the creation or imposition of any Lien upon any of the assets or properties of Cinergy or any of its subsidiaries or any of the Cinergy Joint Ventures under, any of the terms, conditions or provisions of (A) the certificates or articles of incorporation or by-laws (or other comparable organizational documents) of Cinergy or any of its subsidiaries or any of the Cinergy Joint Ventures, or (B) subject to the obtaining of Cinergy Shareholder Approval and the taking of the actions described in paragraph (ii) of this Section 3.01(d) and obtaining the Duke Required Statutory Approvals (as defined in Section 3.02(d)(ii)), (x) any statute, law, rule, regulation or ordinance (together, "laws"), or any judgment, order, writ or decree (together, "orders"), of any Federal, state, local or foreign government or any court of competent jurisdiction, administrative agency or commission or other governmental authority or instrumentality, domestic, foreign or supranational (each, a "Governmental Authority") applicable to Cinergy or any of its subsidiaries or any of the Cinergy Joint Ventures or any of their respective assets or properties, or (y) any note, bond, mortgage, security agreement, agreement, indenture, franchise, concession, contract, lease or other instrument to which Cinergy or any of its subsidiaries or any of the Cinergy Joint Ventures is a party or by which Cinergy or any of its subsidiaries or any of the Cinergy Joint Ventures or any of their respective assets or properties is bound, excluding from the foregoing clauses (x) and (y) such items that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy.

(ii) Except for (A) compliance with, and filings under, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder (the "HSR Act"); (B) the filing with and, to the extent required, the declaration of effectiveness by the Securities and Exchange Commission (the "SEC") of (1) a proxy statement relating to the approval of this

Agreement by Cinergy's shareholders (such proxy statement, together with the proxy statement relating to the approval of this Agreement by Duke's shareholders, in each case as amended or supplemented from time to time, the "Joint Proxy Statement") pursuant to the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "Exchange Act"), (2) the registration statement on Form S-4 prepared in connection with the issuance of Company Common Stock in the Mergers (the "Form S-4") and (3) such reports under the Exchange Act as may be required in connection with this Agreement and the transactions contemplated hereby; (C) the filing of documents with various state securities authorities that may be required in connection with the transactions contemplated hereby; (D) such filings with and approvals of the NYSE to permit the shares of Company Common Stock that are to be issued pursuant to Article II to be listed on the NYSE; (E) the registration, consents, approvals and notices required under the 1935 Act; (F) notice to, and the consent and approval of, the Federal Energy Regulatory Commission (the "FERC") under Section 203 of the Federal Power Act, as amended (the "Power Act"), or an order under the Power Act disclaiming jurisdiction over the transactions contemplated hereby; (G) the filing of an application to, and consent and approval of, and issuance of any required licenses and license amendments by, the Nuclear Regulatory Commission (the "NRC") under the Atomic Energy Act of 1954, as amended (the "Atomic Energy Act"); (H) the filing of the Cinergy Certificate of Merger and other appropriate merger documents required by the DGCL with the Secretary of State of the State of Delaware and appropriate documents with the relevant authorities of other states in which Cinergy is qualified to do business; (I) compliance with and such filings as may be required under applicable Environmental Laws (as defined in Section 3.01(n)); (J) to the extent required, notice to and the approval of (1) the Public Utilities Commission of Ohio ("PUCO"), (2) the Indiana Utility Regulatory Commission ("IURC"), (3) the Kentucky Public Service Commission ("KPSC"), (4) the North Carolina Utilities Commission ("NCUC"), and (5) the Public Service Commission of South Carolina ("PSCSC" and, collectively with PUCO, IURC, KPSC, and NCUC, the "Applicable PSCs"); (K) required pre-approvals (the "FCC Pre-Approvals") of license transfers with the Federal Communications Commission (the "FCC"); (L) such other items as disclosed in Section 3.01(d) of the Cinergy Disclosure Letter; and (M) compliance with, and filings under, antitrust or competition laws of any foreign jurisdiction, including the Competition Act (Canada), Investment Canada Act and other applicable Canadian federal and provincial regulatory requirements (the items set forth above in clauses (A) through (H) and (J), collectively, the "Cinergy Required Statutory Approvals"), no consent, approval, license, order or authorization ("Consents") or action of, registration, declaration or filing with or notice to any Governmental Authority is necessary or required to be obtained or made in connection with the execution and delivery of this Agreement by Cinergy, the performance by Cinergy of its obligations hereunder or the consummation of the Mergers and the other transactions contemplated hereby, other than such items that the failure to make or obtain, as the case may

be, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on Cinergy.

(e) SEC Reports, Financial Statements and Utility Reports.

(i) Cinergy and its subsidiaries have filed each form, report, schedule, registration statement, registration exemption, if applicable, definitive proxy statement and other document (together with all amendments thereof and supplements thereto) required to be filed by Cinergy or any of its subsidiaries pursuant to the Securities Act of 1933, as amended, and the rules and regulations thereunder (the "Securities Act") or the Exchange Act with the SEC since January 1, 2002 (as such documents have since the time of their filing been amended or supplemented, the "Cinergy SEC Reports"). As of their respective dates, after giving effect to any amendments or supplements thereto, the Cinergy SEC Reports (A) complied as to form in all material respects with the requirements of the Securities Act or the Exchange Act, if applicable, as the case may be, and, to the extent in effect and applicable, the Sarbanes-Oxley Act of 2002 ("SOX"), and (B) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(ii) Each of the principal executive officer of Cinergy and the principal financial officer of Cinergy (or each former principal executive officer of Cinergy and each former principal financial officer of Cinergy, as applicable) has made all certifications required by Rule 13a-14 or 15d-14 under the Exchange Act or Sections 302 and 906 of SOX and the rules and regulations of the SEC promulgated thereunder with respect to the Cinergy SEC Reports. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in SOX. Since the effectiveness of SOX, neither Cinergy nor any of its subsidiaries has arranged any outstanding "extensions of credit" to directors or executive officers within the meaning of Section 402 of SOX.

(iii) The audited consolidated financial statements and unaudited interim consolidated financial statements (including, in each case, the notes, if any, thereto) included in the Cinergy SEC Reports (the "Cinergy Financial Statements") complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, were prepared in accordance with United States generally accepted accounting principles ("GAAP") applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto and except with respect to unaudited statements as permitted by Form 10-Q of the SEC) and fairly present (subject, in the case of the unaudited interim financial statements, to normal, recurring year-end audit adjustments that were not or are not expected to be, individually or in the aggregate, materially adverse to Cinergy) the consolidated financial position of Cinergy and its consolidated subsidiaries as of the respective

dates thereof and the consolidated results of their operations and cash flows for the respective periods then ended.

(iv) All filings (other than immaterial filings) required to be made by Cinergy or any of its subsidiaries since January 1, 2002, under the 1935 Act, the Power Act, the Communications Act of 1934 and applicable state laws and regulations, have been filed with the SEC, the FERC, the Department of Energy (the "DOE"), the FCC or any applicable state public utility commissions (including, to the extent required, PUCO, IURC and KPSC), as the case may be, including all forms, statements, reports, agreements (oral or written) and all documents, exhibits, amendments and supplements appertaining thereto, including all rates, tariffs, franchises, service agreements and related documents and all such filings complied, as of their respective dates, with all applicable requirements of the applicable statute and the rules and regulations thereunder, except for filings the failure of which to make or the failure of which to make in compliance with all applicable requirements of the applicable statute and the rules and regulations thereunder, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy.

(v) The management of Cinergy has (x) designed disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act), or caused such disclosure controls and procedures to be designed under their supervision, to ensure that material information relating to Cinergy, including its consolidated subsidiaries, is made known to the management of Cinergy by others within those entities, and (y) has disclosed, based on its most recent evaluation of internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act), to Cinergy's outside auditors and the audit committee of the Board of Directors of Cinergy (A) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect Cinergy's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Cinergy's internal control over financial reporting. Since December 31, 2004, any material change in internal control over financial reporting required to be disclosed in any Cinergy SEC Report has been so disclosed.

(vi) Since December 31, 2004, (x) neither Cinergy nor any of its subsidiaries nor, to the knowledge of the Executive Officers (for the purposes of this Section 3.01(e)(vi), as such term is defined in Section 3b-7 of the Exchange Act) of Cinergy, any director, officer, employee, auditor, accountant or representative of Cinergy or any of its subsidiaries has received or otherwise obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of Cinergy or any of its subsidiaries or their respective internal accounting controls relating to periods after December 31, 2004, including any material complaint, allegation, assertion or claim that

Cinergy or any of its subsidiaries has engaged in questionable accounting or auditing practices (except for any of the foregoing after the date hereof which have no reasonable basis), and (y) to the knowledge of the Executive Officers of Cinergy, no attorney representing Cinergy or any of its subsidiaries, whether or not employed by Cinergy or any of its subsidiaries, has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation, relating to periods after December 31, 2004, by Cinergy or any of its officers, directors, employees or agents to the Board of Directors of Cinergy or any committee thereof or to any director or Executive Officer of Cinergy.

(f) Absence of Certain Changes or Events. Since December 31, 2004, through the date hereof, there has not been any change, event or development that, individually or in the aggregate, has had or could reasonably be expected to have a material adverse effect on Cinergy.

(g) Absence of Undisclosed Liabilities. Except for matters reflected or reserved against in the balance sheet (or notes thereto) as of December 31, 2004, included in the Cinergy Financial Statements, as of the date of this Agreement, neither Cinergy nor any of its subsidiaries has any liabilities or obligations (whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due) of any nature that would be required by GAAP to be reflected on a consolidated balance sheet of Cinergy and its consolidated subsidiaries (including the notes thereto), except liabilities or obligations (i) that were incurred in the ordinary course of business consistent with past practice since December 31, 2004, or (ii) that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy.

(h) Legal Proceedings. Except for environmental matters, which are the subject of Section 3.01(n), as of the date of this Agreement, (i) there are no actions, suits, arbitrations or proceedings pending or, to the knowledge of Cinergy, threatened against, relating to or affecting, nor to the knowledge of Cinergy are there any Governmental Authority investigations or audits pending or threatened against, relating to or affecting, Cinergy or any of its subsidiaries or any of the Cinergy Joint Ventures or any of their respective assets and properties that, in each case, individually or in the aggregate, have had or could reasonably be expected to have a material adverse effect on Cinergy, and (ii) neither Cinergy nor any of its subsidiaries is subject to any order of any Governmental Authority that, individually or in the aggregate, has had or could reasonably be expected to have a material adverse effect on Cinergy.

(i) Information Supplied. None of the information supplied or to be supplied by Cinergy for inclusion or incorporation by reference in (i) the Form S-4 will, at the time the Form S-4 is filed with the SEC, at any time it is amended or supplemented or at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) the Joint Proxy Statement will, at the date it is first mailed to Cinergy's shareholders or Duke's shareholders or at the time of the Cinergy Shareholders Meeting (as defined in Section 5.01) or the Duke Shareholders Meeting (as defined in Section 5.01), contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the

circumstances under which they are made, not misleading. The Joint Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder, except that no representation is made by Cinergy with respect to statements made or incorporated by reference therein based on information supplied by or on behalf of Duke for inclusion or incorporation by reference in the Joint Proxy Statement.

(j) Permits; Compliance with Laws and Orders. Cinergy, its subsidiaries and the Cinergy Joint Ventures hold all permits, licenses, certificates, authorizations and approvals of all Governmental Authorities ("Permits") necessary for the lawful conduct of their respective businesses, except for failures to hold such Permits that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy. Cinergy, its subsidiaries and the Cinergy Joint Ventures are in compliance with the terms of their Permits, except failures so to comply that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy. Cinergy, its subsidiaries and the Cinergy Joint Ventures are not in violation of or default under any law or order of any Governmental Authority, except for such violations or defaults that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy. Cinergy is, and has been, in compliance in all material respects with (i) the provisions of SOX applicable to it on or prior to the date hereof and has implemented such programs and has taken all reasonable steps necessary to ensure Cinergy's future compliance (not later than the relevant statutory and regulatory deadlines therefore) with all provisions of SOX which shall become applicable to Cinergy after the date hereof and (ii) the applicable listing standards and corporate governance rules and regulations of the NYSE. This Section 3.01(j) does not relate to matters with respect to taxes, such matters being the subject of Section 3.01(k), Environmental Laws, such matters being the subject of Section 3.01(n) and benefits plans, such matters being the subject of Section 3.01(l).

(k) Taxes. Except as has not had, and could not reasonably be expected to have, a material adverse effect on Cinergy:

(i) Each of Cinergy and its subsidiaries has timely filed, or has caused to be timely filed on its behalf, all Tax Returns (as defined below) required to be filed by it, and all such Tax Returns are true, complete and accurate. All Taxes (as defined below) shown to be due and owing on such Tax Returns have been timely paid.

(ii) The most recent financial statements contained in the Cinergy SEC Reports filed prior to the date of this Agreement reflect, in accordance with GAAP, an adequate reserve for all Taxes payable by Cinergy and its subsidiaries for all taxable periods through the date of such financial statements.

(iii) There is no audit, examination, deficiency, refund litigation, proposed adjustment or matter in controversy with respect to any Taxes or Tax Return of Cinergy or its subsidiaries, to the knowledge of Cinergy, neither Cinergy nor any of its subsidiaries has received written notice of any claim made by a governmental authority in a jurisdiction where Cinergy or any of its

subsidiaries, as applicable, does not file a Tax Return, that Cinergy or such subsidiary is or may be subject to income taxation by that jurisdiction, no deficiency with respect to any Taxes has been proposed, asserted or assessed against Cinergy or any of its subsidiaries, and no requests for waivers of the time to assess any Taxes are pending.

(iv) The federal income Tax Returns of Cinergy and its subsidiaries have been examined by and settled with the Internal Revenue Service ("IRS") (or the applicable statutes of limitation have lapsed) for all years through 1990. All material assessments for Taxes due with respect to such completed and settled examinations or any concluded litigation have been fully paid.

(v) There are no outstanding written agreements, consents or waivers to extend the statutory period of limitations applicable to the assessment of any Taxes or deficiencies against Cinergy or any of its subsidiaries, and no power of attorney granted by either Cinergy or any of its subsidiaries with respect to any Taxes is currently in force.

(vi) Neither Cinergy nor any of its subsidiaries is a party to any agreement providing for the allocation or sharing of Taxes imposed on or with respect to any individual or other Person (other than (I) such agreements with customers, vendors, lessors or the like entered into in the ordinary course of business and (II) agreements with or among Cinergy or any of its subsidiaries), and neither Cinergy nor any of its subsidiaries (A) has been a member of an affiliated group (or similar state, local or foreign filing group) filing a consolidated U.S. federal income Tax Return (other than the group the common parent of which is Cinergy) or (B) has any liability for the Taxes of any person (other than Cinergy or any of its subsidiaries) (I) under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law), or (II) as a transferee or successor.

(vii) There are no material Liens for Taxes (other than for current Taxes not yet due and payable) on the assets of Cinergy and its subsidiaries.

(viii) Neither Cinergy nor any of its subsidiaries has taken or agreed to take any action or knows of any fact, agreement, plan or other circumstance that is reasonably likely to prevent or impede either the Duke Reorganization from qualifying as a reorganization under Section 368(a) of the Code or the Cinergy Merger from qualifying as a reorganization under Section 368(a) of the Code.

For purposes of this Agreement:

"Taxes" means any and all federal, state, local, foreign or other taxes of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental

authority, including, without limitation, taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, unemployment, social security, workers' compensation, or net worth, and taxes or other charges in the nature of excise, withholding, ad valorem or value added.

"Tax Return" means any return, report or similar statement (including the schedules attached thereto) required to be filed with respect to Taxes, including, without limitation, any information return, claim for refund, amended return, or declaration of estimated Taxes.

(I) Employee Benefit Plans; ERISA.

(i) Except for such matters that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy, (A) all Cinergy Employee Benefit Plans (as defined below) are in compliance with all applicable requirements of law, including ERISA (as defined below) and the Code, and (B) there does not now exist, nor do any circumstances exist that could result in, any Controlled Group Liability that would be a liability of Cinergy or any of its subsidiaries following the Closing. The only material employment agreements, severance agreements or severance policies applicable to Cinergy or any of its subsidiaries are the agreements and policies disclosed in Section 3.01(I)(i) of the Cinergy Disclosure Letter.

(ii) As used herein:

(A) "Controlled Group Liability" means any and all liabilities (i) under Title IV of ERISA, (ii) under Section 302 of ERISA, (iii) under Sections 412 and 4971 of the Code, and (iv) as a result of a failure to comply with the continuation coverage requirements of Section 601 et seq. of ERISA and Section 4980B of the Code.

(B) "Cinergy Employee Benefit Plan" means any Plan entered into, established, maintained, sponsored, contributed to or required to be contributed to by Cinergy or any of its subsidiaries for the benefit of the current or former employees or directors of Cinergy or any of its subsidiaries and existing on the date of this Agreement or at any time subsequent thereto and, in the case of a Plan (as defined below) that is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations thereunder ("ERISA"), Section 412 of the Code or Title IV of ERISA, at any time during the five-year period preceding the date of this Agreement with respect to which Cinergy or any of its subsidiaries has or could reasonably be

expected to have any present or future actual or contingent liabilities;

(C) "Plan" means any employment, bonus, incentive compensation, deferred compensation, long term incentive, pension, profit sharing, retirement, stock purchase, stock option, stock ownership, stock appreciation rights, phantom stock, leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, medical, accident, disability, workmen's compensation or other insurance, severance, separation, termination, change of control or other benefit plan, agreement, practice, policy, program, scheme or arrangement of any kind, whether written or oral, including any "employee benefit plan" within the meaning of Section 3(3) of ERISA; and

(iii) No event has occurred, and there exists no condition or set of circumstances in connection with any Cinergy Employee Benefit Plan, that has had or could reasonably be expected to have a material adverse effect on Cinergy.

(iv) Section 3.01(l)(iv) of the Cinergy Disclosure Letter identifies each Cinergy Employee Benefit Plan that provides, upon the occurrence of a change in the ownership or effective control of Cinergy or its subsidiaries or a change in the ownership of all or a substantial portion of the assets of Cinergy or its subsidiaries, either alone or upon the occurrence of any additional or subsequent events and whether or not applicable to the transactions contemplated by this Agreement, for (A) an acceleration of the time of payment of or vesting in, or an increase in the amount of, compensation or benefits due any current or former employee, director or officer of Cinergy or its subsidiaries, (B) any forgiveness of indebtedness or obligation to fund benefits with respect to any such employee, director or officer, or (C) an entitlement of any such employee, director or officer to severance pay, unemployment compensation or any other payment or other benefit.

(m) Labor Matters. As of the date hereof, neither Cinergy nor any of its subsidiaries is a party to, bound by or in the process of negotiating any collective bargaining agreement or other labor agreement with any union or labor organization. As of the date of this Agreement, there are no disputes, grievances or arbitrations pending or, to the knowledge of Cinergy, threatened between Cinergy or any of its subsidiaries and any trade union or other representatives of its employees and there is no charge or complaint pending or threatened in writing against Cinergy or any of its subsidiaries before the National Labor Relations Board (the "NLRB") or any similar Governmental Authority, except in each case as, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy, and, to the knowledge of Cinergy, as of the date of this Agreement, there are no material organizational efforts presently being made involving any of the employees of Cinergy or any of its subsidiaries. From December 31, 2002, to the date of this Agreement, there has been no work stoppage, strike, slowdown or lockout by or affecting employees of Cinergy or any

of its subsidiaries and, to the knowledge of Cinergy, no such action has been threatened in writing, except in each case as, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy. Except as, individually or in the aggregate, has not had and could not reasonably be expected to have a material adverse effect on Cinergy: (A) there are no litigations, lawsuits, claims, charges, complaints, arbitrations, actions, investigations or proceedings pending or, to the knowledge of Cinergy, threatened between or involving Cinergy or any of its subsidiaries and any of their respective current or former employees, independent contractors, applicants for employment or classes of the foregoing; (B) Cinergy and its subsidiaries are in compliance with all applicable laws, orders, agreements, contracts and policies respecting employment and employment practices, including, without limitation, all legal requirements respecting terms and conditions of employment, equal opportunity, workplace health and safety, wages and hours, child labor, immigration, discrimination, disability rights or benefits, facility closures and layoffs, workers' compensation, labor relations, employee leaves and unemployment insurance; and (C) since January 1, 2002, neither Cinergy nor any of its subsidiaries has engaged in any "plant closing" or "mass layoff", as defined in the Worker Adjustment Retraining and Notification Act or any comparable state or local law (the "WARN Act"), without complying with the notice requirements of such laws.

(n) Environmental Matters.

(i) Each of Cinergy, its subsidiaries and the Cinergy Joint Ventures has been and is in compliance with all applicable Environmental Laws (as hereinafter defined), except where the failure to be in such compliance, individually or in the aggregate, has not had and could not reasonably be expected to have a material adverse effect on Cinergy.

(ii) Each of Cinergy, its subsidiaries and the Cinergy Joint Ventures has obtained all environmental Permits (collectively, the "Environmental Permits") necessary for the construction of their facilities and the conduct of their operations as of the date of this Agreement, as applicable, and all such Environmental Permits are in good standing or, where applicable, a renewal application has been timely filed and is pending agency approval, and Cinergy, its subsidiaries and the Cinergy Joint Ventures are in compliance with all terms and conditions of the Environmental Permits, except where the failure to obtain such Environmental Permits, of such Permits to be in good standing or, where applicable, of a renewal application to have been timely filed and be pending or to be in such compliance, individually or in the aggregate, has not had and could not reasonably be expected to have a material adverse effect on Cinergy.

(iii) There is no Environmental Claim (as hereinafter defined) pending:

(A) against Cinergy or any of its subsidiaries or any of the Cinergy Joint Ventures;

(B) to the knowledge of Cinergy, against any person or entity whose liability for such Environmental

Claim has been retained or assumed either contractually or by operation of law by Cinergy or any of its subsidiaries or any of the Cinergy Joint Ventures; or

(C) against any real or personal property or operations that Cinergy or any of its subsidiaries or any of the Cinergy Joint Ventures owns, leases or manages, in whole or in part, or, to the knowledge of Cinergy, formerly owned, leased or managed, in whole or in part,

except in the case of clause (A), (B) or (C) for such Environmental Claims that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy.

(iv) To the knowledge of Cinergy, there have not been any Releases (as hereinafter defined) of any Hazardous Material (as hereinafter defined) that would be reasonably likely to form the basis of any Environmental Claim against Cinergy or any of its subsidiaries or any of the Cinergy Joint Ventures, in each case, except for such Releases that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy.

(v) As used in this Section 3.01(n) and in Section 3.02(n):

(A) “Environmental Claim” means any and all administrative, regulatory or judicial actions, suits, orders, demands, demand letters, directives, claims, liens, investigations, proceedings or notices of noncompliance, liability or violation (written or oral) by any person or entity (including any Governmental Authority) alleging potential liability (including potential responsibility or liability for enforcement, investigatory costs, cleanup costs, governmental response costs, removal costs, remedial costs, natural resources damages, property damages, personal injuries or penalties) arising out of, based on or resulting from

(1) the presence or Release into the environment of any Hazardous Materials at any location;

(2) circumstances forming the basis of any actual or alleged violation of, or liability under, any Environmental Law or Environmental Permit; or

(3) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the presence or Release of, or exposure to, any Hazardous Materials;

(B) “Environmental Laws” means all domestic or foreign Federal, state and local laws, principles of common law and orders relating to pollution, the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or protection of human health as it relates to the environment including laws relating to the presence or Release of Hazardous Materials, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of, or exposure to, Hazardous Materials;

(C) “Hazardous Materials” means
(a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and polychlorinated biphenyls; and
(b) any chemical, material, substance or waste that is now prohibited, limited or regulated under any Environmental Law; and

(D) “Release” means any actual or threatened release, spill, emission, leaking, injection, deposit, disposal, discharge, dispersal, leaching or migration into the atmosphere, soil, surface water, groundwater or property.

(o) No Ownership of Nuclear Power Plants. None of Cinergy, any of its subsidiaries or any Cinergy Joint Venture owns, directly or indirectly, any interest in any nuclear generation station or manages or operates any nuclear generation station.

(p) Vote Required. Assuming the accuracy of the representation and warranty contained in Section 3.02(r), the affirmative vote of the holders of record of at least a majority of the outstanding shares of Cinergy Common Stock, with respect to the approval of this Agreement (the “Cinergy Shareholder Approval”), is the only vote of the holders of any class or series of the capital stock of Cinergy or its subsidiaries required to approve this Agreement, the Cinergy Merger and the other transactions contemplated hereby.

(q) Opinion of Financial Advisor. Cinergy has received the opinion of Merrill Lynch, Pierce, Fenner & Smith Incorporated, dated the date of this Agreement, to the effect that, as of the date of this Agreement, the Cinergy Exchange Ratio is fair from a financial point of view to the holders of Cinergy Common Stock.

(r) Ownership of Duke Capital Stock. Neither Cinergy nor any of its subsidiaries or other affiliates beneficially owns any shares of Duke capital stock.

(s) Section 203 of the DGCL Not Applicable; Other Statutes. Cinergy has taken all necessary actions, if any, so that the provisions of Section 203 of the DGCL will not, before the termination of this Agreement, apply to this Agreement, the Cinergy Merger or the other transactions contemplated hereby. No “fair price”, “merger moratorium”, “control

share acquisition", or other anti-takeover or similar statute or regulation applies or purports to apply to this Agreement, the Cinergy Merger or the other transactions contemplated hereby.

(t) Joint Venture Representations. Each representation or warranty made by Cinergy in this Section 3.01 relating to a Cinergy Joint Venture that is neither operated nor managed by Cinergy or a Cinergy subsidiary shall be deemed made only to the knowledge of Cinergy.

(u) Insurance. Except for failures to maintain insurance or self-insurance that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Cinergy, from January 1, 2004, through the date of this Agreement, each of Cinergy and its subsidiaries has been continuously insured with financially responsible insurers or has self-insured, in each case in such amounts and with respect to such risks and losses as are customary for companies in the United States conducting the business conducted by Cinergy and its subsidiaries during such time period. Neither Cinergy nor any of its subsidiaries has received any notice of cancellation or termination with respect to any insurance policy of Cinergy or any of its subsidiaries, except with respect to any cancellation or termination that, individually or in the aggregate, has not had and could not reasonably be expected to have a material adverse effect on Cinergy.

(v) Trading. Cinergy has established risk parameters, limits and guidelines in compliance with the risk management policy approved by Cinergy's Board of Directors (the "Cinergy Trading Guidelines") to restrict the level of risk that Cinergy and its subsidiaries are authorized to take with respect to, among other things, the net position resulting from all physical commodity transactions, exchange-traded futures and options transactions, over-the-counter transactions and derivatives thereof and similar transactions (the "Net Cinergy Position") and monitors compliance by Cinergy and its subsidiaries with such risk parameters. Cinergy has provided the Cinergy Trading Guidelines to Duke prior to the date of this Agreement. As of the date of this Agreement, (i) the Net Cinergy Position is within the risk parameters that are set forth in the Cinergy Trading Guidelines and (ii) the exposure of Cinergy and its subsidiaries with respect to the Net Cinergy Position resulting from all such transactions is not material to Cinergy and its subsidiaries taken as a whole. From December 31, 2004 to the date of this Agreement, neither Cinergy nor any of its subsidiaries has, in accordance with its mark to market accounting policies, experienced an aggregate net loss in its trading and related operations that would be material to Cinergy and its subsidiaries taken as a whole.

Section 3.02 Representations and Warranties of Duke. Except as set forth in the letter dated the date of this Agreement and delivered to Cinergy by Duke concurrently with the execution and delivery of this Agreement (the "Duke Disclosure Letter") or, to the extent the qualifying nature of such disclosure is readily apparent therefrom, as set forth in the Duke SEC Reports (as defined in Section 3.02(e)) filed on or after January 1, 2004 and prior to the date hereof, Duke represents and warrants to Cinergy as follows:

(a) Organization and Qualification.

(i) Each of Duke and its subsidiaries is duly organized, validly existing and in good standing (with respect to jurisdictions that recognize

the concept of good standing) under the laws of its jurisdiction of organization and has full power and authority to conduct its business as and to the extent now conducted and to own, use and lease its assets and properties, except for such failures to be so organized, existing and in good standing (with respect to jurisdictions that recognize the concept of good standing) or to have such power and authority that, individually or in the aggregate, have not had and could not be reasonably expected to have a material adverse effect (as defined in Section 8.03) on Duke. Each of Duke and its subsidiaries is duly qualified, licensed or admitted to do business and is in good standing (with respect to jurisdictions that recognize the concept of good standing) in each jurisdiction in which the ownership, use or leasing of its assets and properties, or the conduct or nature of its business, makes such qualification, licensing or admission necessary, except for such failures to be so qualified, licensed or admitted and in good standing (with respect to jurisdictions that recognize the concept of good standing) that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke. Section 3.02(a) of the Duke Disclosure Letter sets forth as of the date of this Agreement the name and jurisdiction of organization of each subsidiary of Duke. Each of the Company, Merger Sub A and Merger Sub B is a newly formed corporation and has engaged in no activities except as contemplated by this Agreement.

(ii) Section 3.02(a) of the Duke Disclosure Letter sets forth a description as of the date of this Agreement, of all Duke Joint Ventures, including (x) the name of each such entity and (y) a brief description of the principal line or lines of business conducted by each such entity.

(iii) Except for interests in the subsidiaries of Duke, the Duke Joint Ventures and interests acquired after the date of this Agreement without violating any covenant or agreement set forth herein, Duke does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any equity or similar interest in, any person, in which the invested capital associated with such interest individually as of the date of this Agreement exceeds \$100,000,000.

(b) Capital Stock.

(i) The authorized capital stock of Duke consists of:

(A) 2,000,000,000 shares of Duke Common Stock, of which 926,431,621 shares were outstanding as of the close of business on May 6, 2005;

(B) 1,500,000 shares of Preference Stock, par value \$100 per share (“Duke Preference Stock”), none of which were outstanding as of the date of this Agreement;

(C) 20,000,000 shares of Serial Preferred Stock, no par value, none of which were outstanding as of the date of this Agreement;

(D) 12,500,000 shares of Duke Preferred Stock, of which 1,234,984 shares were outstanding as of the date of this Agreement, issued in the following series:

- (1) 175,000 shares of 4.5% Cumulative Preferred Stock, Series C;
- (2) 300,000 shares of 7.85% Cumulative Preferred Stock, Series S;
- (3) 249,989 shares of 7.0% Cumulative Preferred Stock, Series W; and
- (4) 299,995 shares of 7.04% Cumulative Preferred Stock, Series Y; and

(E) 10,000,000 shares of Duke Preferred Stock A, of which 1,257,185 shares were outstanding as of the date of this Agreement, issued as 6.375% Cumulative Preferred Stock A.

As of the date of this Agreement, no shares of Duke Common Stock are held in the treasury of Duke. As of the date of this Agreement, (x) 1,500,000 shares of Duke Preference Stock are designated Series A Participating Preference Stock (the "Duke Series A Preference Stock") and are reserved for issuance in accordance with the Rights Agreement dated as of December 17, 1998, as amended, by and between Duke and The Bank of New York, as Rights Agent, pursuant to which Duke has issued rights (the "Duke Rights") to purchase such shares of Duke Series A Preference Stock and (y) 26,635,301 shares of Duke Common Stock were subject to outstanding Duke Employee Stock Options (as defined in Section 5.06(b)), and 24,294,199 additional shares of Duke Common Stock were reserved for issuance pursuant to the Duke Power Company Stock Incentive Plan and the Duke 1998 Long-Term Incentive Plan and any other compensatory plan, program or arrangement under which shares of Duke Common Stock are reserved for issuance (collectively, the "Duke Option Plans"). All of the issued and outstanding shares of Duke Common Stock are, and all shares reserved for issuance will be, upon issuance in accordance with the terms specified in the instruments or agreements pursuant to which they are issuable, duly authorized, validly issued, fully paid and nonassessable. Except as disclosed in this Section 3.02(b), on the date of this Agreement there are no outstanding Options obligating Duke or any of its subsidiaries to issue or sell any shares of capital stock of Duke or to grant, extend or enter into any Option with respect thereto.

(ii) Except as permitted by this Agreement, all of the outstanding shares of capital stock of each subsidiary of Duke are duly authorized, validly issued, fully paid and nonassessable and are owned,

beneficially and of record, by Duke or a subsidiary, free and clear of any Liens, except for any of the foregoing that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke. All of the outstanding shares of capital stock of the Company, Merger Sub A and Merger Sub B are duly authorized, validly issued, fully paid and nonassessable and are owned, beneficially and of record, by Duke (in the case of shares of capital stock of the Company) or by the Company (in the case of capital stock of Merger Sub A and Merger Sub B). The shares of the Company owned by Duke, and the shares of each of Merger Sub A and Merger Sub B owned by the Company, are owned free and clear of any Lien. There are no (A) outstanding Options obligating Duke or any of its subsidiaries to issue or sell any shares of capital stock of any subsidiary of Duke or to grant, extend or enter into any such Option or (B) voting trusts, proxies or other commitments, understandings, restrictions or arrangements in favor of any person other than Duke or a subsidiary wholly-owned, directly or indirectly, by Duke with respect to the voting of or the right to participate in dividends or other earnings on any capital stock of any subsidiary of Duke.

(iii) As of the date of this Agreement, none of the subsidiaries of Duke or the Duke Joint Ventures is a "public utility company", a "holding company", a "subsidiary company" or an "affiliate" of any holding company within the meaning of Section 2(a)(5), 2(a)(7), 2(a)(8) or 2(a)(11) of the 1935 Act, respectively. None of Duke, its subsidiaries and the Duke Joint Ventures is registered under the 1935 Act.

(iv) As of the date of this Agreement, no bonds, debentures, notes or other indebtedness of Duke or any of its subsidiaries having the right to vote (or which are convertible into or exercisable for securities having the right to vote) (collectively, "Duke Voting Debt") on any matters on which Duke shareholders may vote are issued or outstanding nor are there any outstanding Options obligating Duke or any of its subsidiaries to issue or sell any Duke Voting Debt or to grant, extend or enter into any Option with respect thereto.

(v) Each share of Company Common Stock to be issued in either the Duke Merger or the Cinergy Merger shall be duly authorized, validly issued, fully paid and nonassessable and free and clear of any Liens.

(c) Authority. Duke has full corporate power and authority to enter into this Agreement, to perform its obligations hereunder and, subject to obtaining Duke Shareholder Approval (as defined in Section 3.02(p)), to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Duke and the consummation by Duke of the transactions contemplated hereby have been duly and validly adopted and approved by the Board of Directors of Duke, the Board of Directors of Duke has recommended approval of this Agreement by the shareholders of Duke and directed that this Agreement be submitted to the shareholders of Duke for their approval, and no other corporate proceedings on the part of Duke or its shareholders are necessary to authorize the execution,

delivery and performance of this Agreement by Duke and the consummation by Duke of the Duke Merger, the Duke Conversion, the Restructuring Transactions and the other transactions contemplated hereby, other than obtaining Duke Shareholders Approval. This Agreement has been duly and validly executed and delivered by Duke and constitutes a legal, valid and binding obligation of Duke enforceable against Duke in accordance with its terms.

(d) No Conflicts; Approvals and Consents.

(i) The execution and delivery of this Agreement by Duke do not, and the performance by Duke of its obligations hereunder and the consummation of the Mergers, the Duke Conversion, the Restructuring Transactions and the other transactions contemplated hereby will not, conflict with, result in a violation or breach of, constitute (with or without notice or lapse of time or both) a default under, result in or give to any person any right of payment or reimbursement, termination, cancellation, modification or acceleration of, or result in the creation or imposition of any Lien upon any of the assets or properties of Duke or any of its subsidiaries or any of the Duke Joint Ventures under, any of the terms, conditions or provisions of (A) the certificates or articles of incorporation or by-laws (or other comparable organizational documents) of Duke or any of its subsidiaries or any of the Duke Joint Ventures, or (B) subject to the obtaining of Duke Shareholder Approval and the taking of the actions described in paragraph (ii) of this Section 3.02(d) and obtaining the Cinergy Required Statutory Approvals, (x) any laws or orders of any Governmental Authority applicable to Duke or any of its subsidiaries or any of the Duke Joint Ventures or any of their respective assets or properties, or (y) any note, bond, mortgage, security agreement, agreement, indenture, license, franchise, permit, concession, contract, lease or other instrument to which Duke or any of its subsidiaries or any of the Duke Joint Ventures is a party or by which Duke or any of its subsidiaries or any of the Duke Joint Ventures or any of their respective assets or properties is bound, excluding from the foregoing clauses (x) and (y) such items that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke.

(ii) Except for (A) compliance with, and filings under, the HSR Act; (B) the filing with, and to the extent required, the declaration of effectiveness by, the SEC of (1) the Joint Proxy Statement with the SEC pursuant to the Exchange Act, (2) the Form S-4 and (3) such reports under the Exchange Act as may be required in connection with this Agreement and the transactions contemplated hereby; (C) the filing of documents with various state securities authorities that may be required in connection with the transactions contemplated hereby; (D) such filings with and approvals of the NYSE to permit the shares of Company Common Stock that are to be issued pursuant to Article II to be listed on the NYSE; (E) the registration, consents, approvals and notices required under the 1935 Act; (F) notice to, and the consent and approval of, FERC under Section 203 of the Power Act, or an order under the Power Act disclaiming jurisdiction over the transactions contemplated hereby; (G) the filing of an application to, and consent and approval of, and issuance of any required licenses

and license amendments by, the NRC under the Atomic Energy Act; (H) the filing of the Duke Articles of Merger, the Duke Articles of Conversion and other appropriate merger documents required by the NCBCA and the NCLLCA with the Secretary of State of the State of North Carolina and appropriate documents with the relevant authorities of other states in which Duke is qualified to do business; (I) compliance with and such filings as may be required under applicable Environmental Laws; (J) to the extent required, notice to and the approval of, the Applicable PSCs; (K) the FCC Pre-Approvals; (L) such other items as disclosed in Section 3.02(d) of the Duke Disclosure Letter; and (M) compliance with, and filings under, antitrust or competition laws of any foreign jurisdiction, including the Competition Act (Canada), Investment Canada Act, and other applicable Canadian federal and provincial regulatory requirements (the items set forth above in clauses (A) through (H) and (J) collectively, the "Duke Required Statutory Approvals"), no Consents or action of, registration, declaration or filing with or notice to any Governmental Authority is necessary or required to be obtained or made in connection with the execution and delivery of this Agreement by Duke, the performance by Duke of its obligations hereunder or the consummation of the Mergers, the Duke Conversion, the Restructuring Transactions and the other transactions contemplated hereby, other than such items that the failure to make or obtain, as the case may be, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on Duke.

(e) SEC Reports, Financial Statements and Utility Reports.

(i) Duke and its subsidiaries have filed each form, report, schedule, registration statement, registration exemption, if applicable, definitive proxy statement and other document (together with all amendments thereof and supplements thereto) required to be filed by Duke or any of its subsidiaries pursuant to the Securities Act or the Exchange Act with the SEC since January 1, 2002 (as such documents have since the time of their filing been amended or supplemented, the "Duke SEC Reports"). As of their respective dates, after giving effect to any amendments or supplements thereto, the Duke SEC Reports (A) complied as to form in all material respects with the requirements of the Securities Act or the Exchange Act, if applicable, as the case may be, and, to the extent in effect applicable, SOX and (B) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(ii) Each of the principal executive officer of Duke and the principal financial officer of Duke (or each former principal executive officer of Duke and each former principal financial officer of Duke, as applicable) has made all certifications required by Rule 13a-14 or 15d-14 under the Exchange Act or Sections 302 and 906 of SOX and the rules and regulations of the SEC promulgated thereunder with respect to the Duke SEC Reports. For purposes of the preceding sentence, "principal executive officer" and "principal financial

officer" shall have the meanings given to such terms in SOX. Since the effectiveness of SOX, neither Duke nor any of its subsidiaries has arranged any outstanding "extensions of credit" to directors or executive officers within the meaning of Section 402 of SOX.

(iii) The audited consolidated financial statements and unaudited interim consolidated financial statements (including, in each case, the notes, if any, thereto) included in the Duke SEC Reports (the "Duke Financial Statements") complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto and except with respect to unaudited statements as permitted by Form 10-Q of the SEC) and fairly present (subject, in the case of the unaudited interim financial statements, to normal, recurring year-end audit adjustments that were not or are not expected to be, individually or in the aggregate, materially adverse to Duke) the consolidated financial position of Duke and its consolidated subsidiaries as of the respective dates thereof and the consolidated results of their operations and cash flows for the respective periods then ended.

(iv) All filings (other than immaterial filings) required to be made by Duke or any of its subsidiaries since January 1, 2002, under the 1935 Act, the Power Act, the Atomic Energy Act, the Natural Gas Act, the Natural Gas Policy Act of 1978, the Communications Act of 1934 and applicable state laws and regulations, have been filed with the SEC, the FERC, the DOE, the NRC, the FCC or any applicable state public utility commissions (including, to the extent required, NCUC and PSCSC), as the case may be, including all forms, statements, reports, agreements (oral or written) and all documents, exhibits, amendments and supplements appertaining thereto, including all rates, tariffs, franchises, service agreements and related documents and all such filings complied, as of their respective dates, with all applicable requirements of the applicable statute and the rules and regulations thereunder, except for filings the failure of which to make or the failure of which to make in compliance with all requirements of the applicable statute and the rules and regulations thereunder, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke.

(v) The management of Duke has (x) designed disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act), or caused such disclosure controls and procedures to be designed under their supervision to ensure that material information relating to Duke, including its consolidated subsidiaries, is made known to the management of Duke by others within those entities, and (y) has disclosed, based on its most recent evaluation of internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act), to Duke's outside auditors and the audit committee of the Board of Directors of Duke (A) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are

reasonably likely to adversely affect Duke's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Duke's internal control over financial reporting. Since December 31, 2004, any material change in internal control over financial reporting required to be disclosed in any Duke SEC Report has been so disclosed.

(vi) Since December 31, 2004, (x) neither Duke nor any of its subsidiaries nor, to the knowledge of the Executive Officers (for the purpose of this Section 3.02(e)(vi), as such term is defined in Section 3b-7 of the Exchange Act) of Duke, any director, officer, employee, auditor, accountant or representative of Duke or any of its subsidiaries has received or otherwise obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of Duke or any of its subsidiaries or their respective internal accounting controls relating to periods after December 31, 2004, including any material complaint, allegation, assertion or claim that Duke or any of its subsidiaries has engaged in questionable accounting or auditing practices (except for any of the foregoing after the date hereof which have no reasonable basis), and (y) to the knowledge of the Executive Officers of Duke, no attorney representing Duke or any of its subsidiaries, whether or not employed by Duke or any of its subsidiaries, has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation, relating to periods after December 31, 2004, by Duke or any of its officers, directors, employees or agents to the Board of Directors of Duke or any committee thereof or, to any director or Executive Officer of Duke.

(f) Absence of Certain Changes or Events. Since December 31, 2004 through the date hereof, there has not been any change, event or development that, individually or in the aggregate, has had or could reasonably be expected to have a material adverse effect on Duke.

(g) Absence of Undisclosed Liabilities. Except for matters reflected or reserved against in the balance sheet (or notes thereto) as of December 31, 2004, included in the Duke Financial Statements, as of the date of this Agreement, neither Duke nor any of its subsidiaries has any liabilities or obligations (whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due) of any nature that would be required by GAAP to be reflected on a consolidated balance sheet of Duke and its consolidated subsidiaries (including the notes thereto), except liabilities or obligations (i) that were incurred in the ordinary course of business consistent with past practice since December 31, 2004, or (ii) that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke.

(h) Legal Proceedings. Except for environmental matters, which are the subject of Section 3.02(n), as of the date of this Agreement, (i) there are no actions, suits, arbitrations or proceedings pending or, to the knowledge of Duke, threatened against, relating to or affecting, nor to the knowledge of Duke are there any Governmental Authority investigations