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John J. Finnigan, Jr.
Senior Counsel

VIA OVERNIGHT DELIVERY

July 14, 2005

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JUL 15 2005

PUBLIC SERVICE
COMMISSION

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: Joint Application of Duke Energy Corporation, Duke Energy Holding Corp., Cougar Acquisition Corp., Cinergy Corp., The Cincinnati Gas & Electric Company, and The Union Light, Heat and Power Company for Approval of a Transfer and Acquisition of Control
Case No. 2005-00228

Dear Ms. O'Donnell:

I have enclosed a copy of the Application for Authorization of Disposition of Jurisdictional Assets under Section 203 of the Federal Power Act. We filed this application with the Federal Energy Regulatory Commission on July 12, 2005. The application requests FERC approval related to the Duke/Cinergy merger.

If you have any questions, please do not hesitate to contact me at (513) 287-3601.

Sincerely,

John J. Finnigan, Jr.
Senior Counsel

JJF/sew

cc: Hon. Dennis G. Howard, II (w/encl.)
Hon. Robert M. Watt, III (w/encl.)

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PUBLIC SERVICE COMMISSION

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July 12, 2005

FILED
OFFICE OF THE SECRETARY
2005 JUL 12 P 4: 32
FEDERAL ENERGY REGULATORY COMMISSION

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

Re: Duke Energy Corporation, Cinergy Corp.,
Docket No. EC05- -000

EC05-103-000

Dear Secretary Salas:

Pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, Duke Energy Corporation and its subsidiaries that are public utilities subject to the Commission's jurisdiction ("Duke Energy ") and Cinergy Corp. and its subsidiaries that are public utilities subject to the Commission's jurisdiction ("Cinergy") (collectively Duke Energy and Cinergy are referred to herein as the "Applicants") hereby submit for filing an original and ten copies of an Application for Authorization for Disposition of Jurisdictional Assets, along with supporting testimony and exhibits. The Applicants are making this filing in connection with (1) the merger of Duke Energy and Cinergy; and (2) the subsequent internal restructuring and consolidation of Duke Energy's and Cinergy's subsidiaries to establish a more efficient corporate structure for the combined company. Please signify your receipt of this filing by file-stamping the extra copies.

The Application sets forth the information required by Part 33 of the Commission's regulations and is supported by the testimony of Dr. William Hieronymus,

who has conducted an analysis pursuant to Appendix A of the Commission's Merger Policy Statement.

Also included are the following materials:

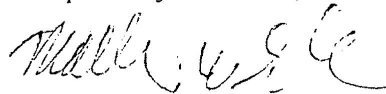
- Two cds containing, respectively: (1) Dr. Hieronymus' workpapers; and (2) the proprietary computer model that Dr. Hieronymus used to perform his Appendix A analysis.

- A proposed Protective Order, based on the Commission's Model Protective Order, that would apply to the cd containing Dr. Hieronymus' proprietary computer model. Upon issuance of this order by the Commission, the Applicants will, upon request, make this cd available to any party that executes the appropriate non-disclosure certificate contained in the order.

This letter should serve as a request for confidential treatment pursuant to Section 388.112 of the Commission's regulations of the cd containing Dr. Hieronymus' proprietary computer model. The model was developed on a proprietary basis by Charles River Associates and is not generally available to the public. In addition, the Applicants request that the maps contained in Exhibit K to the Application be treated as Confidential Energy Infrastructure Information. Pursuant to Section 388.112(d) of the Commission's regulations, I should be contacted regarding the request for confidential status of these materials at the above address and phone number.

Thank you very much for your assistance in this matter.

Respectfully submitted,



Mike Naeve

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Corporation	)	
Cinergy Corp.	)	**Docket No. EC05-______**

APPLICATION FOR AUTHORIZATION OF DISPOSITION OF JURISDICTIONAL ASSETS UNDER SECTION 203 OF THE FEDERAL POWER ACT

PUBLIC VERSION

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July 12, 2005

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Corporation	)	
Cinergy Corp.	)	**Docket No. EC05-_______**

APPLICATION FOR AUTHORIZATION OF DISPOSITION OF JURISDICTIONAL ASSETS UNDER SECTION 203 OF THE FEDERAL POWER ACT

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July 12, 2005

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. DESCRIPTION OF THE APPLICANTS 3

A. Duke Energy Corporation 3

B. Cinergy Corp. 6

III. DESCRIPTION OF THE TRANSACTION 8

A. The Merger Agreement 9

B. Benefits of the Transaction 12

1. Enhancement of Future Sustainability and Competitive Viability of the Applicants 12

2. Enhancement of the Joint and Common PJM/MISO Energy Markets 16

3. Shared Values 16

C. Transmission Path Used for Integration Purposes 18

IV. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST 19

A. Horizontal Competition Issues 20

1. Analysis of MISO and PJM Markets 21

2. Analysis of Duke Power and First-Tier Markets 25

3. Analysis of Other Geographic Markets 27

B. Vertical Market Power Issues 28

1. No Increased Potential for Abuse of Electric Transmission Market Power 28

2. No Potential for Abuse of Natural Gas Transportation Market Power 28

C. Consolidation of DENA Midwest Assets with CG&E 30

1. The Safety Net Theory Does Not Apply to an Arms-Length Transaction Between Non-Affiliates 31

2. CG&E Cannot Provide A "Safety Net" For The DENA Midwest Assets Because CG&E Does Not Have A Generation Rate Base 32

D. No Adverse Impact On Rates 35

E. No Adverse Impact On Regulation 36

1. No Adverse Impact on Federal Regulation 36

2. No Adverse Impact on State Regulation 36

V. INFORMATION REQUIRED BY PART 33 OF THE COMMISSION'S REGULATIONS 38

A. Section 33.2(a): Names and addresses of the principal business offices of the applicants. 38

B. Section 33.2(b): Names and addresses of persons authorized to receive notices and communications in respect to the Application. 39

C. Section 33.2(c): Description of Applicants 39

D. Section 33.2(d): Description of the jurisdictional facilities owned and operated or controlled by Applicants, their parents or affiliates 39

E. Section 33.2(e): Narrative description of the Transaction 39

F. Section 33.2(f): Contracts with respect to the Transaction 39

G. Section 33.2(g): Facts relied upon to show that the Transaction is in the public interest 40

H. Section 33.2(h): Physical property 40

I. Section 33.2(i): Status of actions before other regulatory bodies 40

J. Section 33.5: Accounting Entries 40

VI. CONCLUSION 41

APPENDIX 1 - DETAILED DESCRIPTION OF TRANSACTION

APPENDIX 2 - SUMMARY OF MERGER SYNERGIES

APPENDIX 3 - PRO FORMA ACCOUNTING ENTRIES

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Corporation	)	
Cinergy Corp.	)	**Docket No. EC05-_______**

APPLICATION FOR AUTHORIZATION OF DISPOSITION OF JURISDICTIONAL ASSETS UNDER SECTION 203 OF THE FEDERAL POWER ACT

Pursuant to Section 203 of the Federal Power Act ("FPA") and Part 33 of the Commission's Regulations, Duke Energy Corporation and its subsidiaries that are public utilities subject to the Commission's jurisdiction (collectively, "Duke Energy") and Cinergy Corp. and its subsidiaries that are public utilities subject to the Commission's jurisdiction (collectively, "Cinergy") (and together with Duke Energy, the "Applicants")[1] hereby request that the Commission approve a transaction ("Transaction") that includes: (1) the merger of Duke Energy and Cinergy; and (2) the subsequent internal restructuring and consolidation of the merged company to establish a more efficient corporate structure. As set forth in detail below, the proposed Transaction is consistent with the public interest and should be approved without a hearing. The Applicants request that the Commission grant its approval no later than January 12, 2006.

I. INTRODUCTION

Duke Energy is a diversified energy company that owns a regulated utility located in the Carolinas, a significant fleet of merchant generation, an extensive network of

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[1] The Applicants' affiliates and subsidiaries subject to the Commission's jurisdiction are identified in Exhibit B of this Application.

natural gas pipelines, extensive natural gas processing operations, and a significant portfolio of international generation and other energy-related assets. Cinergy is a leading utility company that provides service in Indiana, Ohio and Kentucky, and has been a principal participant in the creation of the Midwest Independent Transmission System Operator, Inc. ("MISO"), which is now the second-largest Regional Transmission Organization ("RTO") in the country.

The combination of Duke Energy and Cinergy will create one of the top five electric businesses in the United States and, when Duke Energy's gas operations are considered, the nation's largest diversified electric utility and gas energy company. The combined company will operate in approximately two-thirds of the United States, as well as Canada and Latin America. Both companies have outstanding records of providing reliable service to their customers at reasonable rates. The combined company will use best practices of both Duke Energy and Cinergy to improve upon this record of service excellence.

As the Commission is aware, events in the past few years have severely weakened, and even eliminated, a number of energy companies that were active in the various competitive markets in the United States. This has reduced market liquidity and impacted the competitiveness of the markets. The Transaction will strengthen the Applicants' ability to withstand future changes and disruptions that inevitably will occur in competitive energy markets, and will sustain the Applicants' ability to be dependable and steady participants in those markets.

The Transaction will do this by allowing the Applicants to diversify their businesses in a number of respects, including fuel sources, lines of businesses,

geographic location, and regulatory scope, thus providing a measure of protection from downturns or unanticipated developments that can affect various aspects of their business. The Transaction will also allow the combined company to achieve significant cost savings, which again will improve its sustainability and competitiveness. The public interest is served by the creation of stable market participants that are capable of serving customers when markets are stressed.

The Transaction easily satisfies the standards established by the Commission for determining whether a merger is consistent with the public interest. With the commitments made by the Applicants, the Transaction will not adversely affect rates, the scope of regulatory jurisdiction, or the competitiveness of wholesale electric markets. The overlap between the generation owned by the Applicants is negligible, and the markets in which the overlap occurs are large and unconcentrated. Although Duke Energy owns the Texas Eastern Pipeline that runs through the markets where Cinergy is located, the market for pipeline capacity is highly competitive, and Texas Eastern represents less than 10% of the total pipeline capacity in the relevant markets. For all these reasons, the Commission should grant its approval without conducting an evidentiary hearing so that the benefits of the Transaction may commence without unnecessary delay.

II. DESCRIPTION OF THE APPLICANTS

A. Duke Energy Corporation

Duke Energy is one of the leading energy companies in the United States. Its operations are conducted primarily through six business units: (1) Duke Power, also referred to as Franchised Electric, (2) Duke Energy North America ("DENA"), (3)

Natural Gas Transmission, (4) Field Services, (5) International Energy and (6) Crescent Resources, LLC ("Crescent"). A brief description of each of these business units is provided below.

1. **Duke Power**, a vertically-integrated utility, generates, transmits, distributes and sells electricity, and operates under franchise agreements with an obligation to serve all load within its franchised territory. Duke Power's service area covers about 22,000 square miles in central and western North Carolina and western South Carolina. Duke Power owns over 18,000 MW of generation,[2] and sells wholesale electric power to incorporated municipalities and electric cooperatives as well as to public and private utilities. Duke Power provides transmission service under its Open Access Transmission Tariff ("OATT").[3] In addition to this Commission, Duke Power's operations are subject to the jurisdiction of the North Carolina Utilities Commission ("NCUC") and the Public Service Commission of South Carolina ("PSCSC").

2. **DENA** manages power plants outside of Duke Energy's franchised utility business and markets electric power and natural gas related to these plants and other contractual positions. Through its affiliates and subsidiaries, DENA currently owns or operates approximately 10,000 MW of operating generation.[4] DENA conducts its

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[2] These generation facilities are listed in Exhibit J-4 to Dr. Hieronymus' testimony.

[3] Duke Power is discussing with stakeholders amendments to its OATT, including retaining an independent entity to assume various transmission functions and an independent monitor to review the manner in which transmission service is provided.

[4] DENA's generation facilities also are listed in Exhibit J-4 to Dr. Hieronymus' testimony.

marketing business throughout the U.S. and Canada through its 100% owned affiliates, Duke Energy Marketing America, LLC and Duke Energy Marketing Canada Corp, and through Duke Energy Trading and Marketing, LLC ("DETM"). DETM is 40% owned by ExxonMobil Corporation and 60% owned by Duke Energy.[5] DENA's power plants and marketing affiliates currently operate with market-based rate authority granted by the FERC.

3. **Natural Gas Transmission** provides transportation and storage of natural gas for customers along the eastern United States and in Canada. Natural Gas Transmission also provides natural gas sales and distribution service to retail customers in Ontario, and natural gas processing services to customers in Western Canada. Natural Gas Transmission does business primarily through Duke Energy Gas Transmission, LLC ("Gas Transmission"). A complete listing of the companies included in the Natural Gas Transmission business unit is included in Exhibit B. The only interstate natural gas pipeline company owned by Gas Transmission that runs through the markets analyzed in this Application is Texas Eastern Transmission, LP ("Texas Eastern").

4. **Field Services** gathers, compresses, treats, processes, transports, trades and markets, and stores natural gas; and fractionates, transports, trades and markets, and stores natural gas liquids ("NGLs"). It conducts operations primarily through Duke Energy Field Services, LLC ("DEFS"), which is 50% owned by ConocoPhillips and 50% owned by Duke Energy. Field Services gathers raw natural gas through gathering systems located in eight major natural gas producing regions: Permian Basin, Mid-

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[5] Duke Energy and ExxonMobil are in the process of winding down DETM.

Continent, ArklaTex, Gulf Coast, South, Central, Rocky Mountains and Western Canada. Field Services owns and operates approximately 59,000 miles of gathering and transmission pipe, with approximately 34,000 active receipt points. Field Services' natural gas processing operations separate raw natural gas that has been gathered on its own systems and third-party systems into condensate, NGLs and residue gas. Field Services processes the raw natural gas at 57 natural gas processing facilities that it owns and operates and at nine third-party operated facilities in which it has an equity interest.

5. **International Energy** operates and manages power generation facilities, and engages in sales and marketing of electric power and natural gas outside of the United States and Canada. It primarily conducts operations in Latin America through Duke Energy International, LLC ("DEI"). International Energy owns, operates or has substantial interest in approximately 4,000 MW of generation facilities.

6. **Crescent** develops and manages commercial, residential and multi-family real estate projects primarily in the southeastern and southwestern United States. Some of these projects are developed and managed through joint ventures. Crescent also manages land holdings in North Carolina and South Carolina.

B. Cinergy Corp.

Cinergy is a registered holding company under the Public Utility Holding Company Act of 1935, as amended ("PUHCA"). Cinergy was created as a result of the 1994 merger of The Cincinnati Gas & Electric Company ("CG&E") and the parent company of PSI Energy, Inc. ("PSI"). Collectively CG&E and PSI own over 12,000 MW

of generation capacity.[6] In addition to CG&E and PSI, Cinergy's other principal subsidiaries are Cinergy Services, Inc. ("Services") and Cinergy Investments, Inc. ("Investments"). Each of these subsidiaries is described briefly below.

1. CG&E is a combination electric and gas public utility and an exempt holding company under PUHCA that provides service in the southwestern portion of Ohio and, through its principal subsidiary The Union Light, Heat and Power Company ("ULH&P"), in northern Kentucky. CG&E and ULH&P generate, transmit, distribute and sell electricity, as well as distribute and sell natural gas. CG&E's Ohio operations are subject to Ohio's electric utility restructuring statute which, as described in more detail below, initiated retail competition in Ohio starting in 2001. CG&E and ULH&P provide natural gas transportation service for a limited amount of Cinergy-owned generation, but do not provide any service to unaffiliated generation. In addition to this Commission, CG&E is subject to regulation by the Public Utilities Commission of Ohio ("PUCO"), and ULH&P is subject to regulation by the Kentucky Public Service Commission ("KPSC").

CG&E also owns KO Transmission Company ("KO"), an interstate natural gas pipeline that extends from interconnections in Kentucky with Columbia Gulf Transmission Company and Tennessee Gas Pipeline Company to the city gates of CG&E and ULH&P. KO does not serve any competing generation, either directly or indirectly.

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6 Cinergy's generation is listed in Exhibit J-3 of Dr. Hieronymus' testimony.

2. **PSI** is a vertically-integrated, regulated electric utility that provides service across north central, central, and southern Indiana. In addition to this Commission, PSI is regulated by the Indiana Utility Regulatory Commission ("IURC").

3. **Services** is a service company that provides Cinergy's subsidiaries with a variety of centralized administrative, management, and support services.

4. **Investments** holds part of Cinergy's non-regulated, energy-related businesses and investments, including Cinergy's wholesale natural gas marketing and trading operations (primarily conducted through Cinergy Marketing and Trading, LP) and Cinergy's cogeneration business (primarily conducted through Cinergy Solutions Holding Company). Through EWG subsidiaries, Investments also holds approximately 900 MW of merchant generation located in Tennessee Valley Authority's ("TVA") control area in Mississippi and Tennessee.[7]

III. DESCRIPTION OF THE TRANSACTION

The Transaction will create an energy company with 3.7 million retail electric customers, and 1.7 million retail gas customers, in Ohio, Kentucky, Indiana, North Carolina, South Carolina and Ontario, Canada. The combined company will own over 45,000 MW of electric generation domestically and internationally – relying on a diverse fuel mix of nuclear, coal, natural gas and hydroelectric power to meet customers' needs. The combined entity also will operate more than 17,500 miles of natural gas transmission pipeline with 250 billion cubic feet of natural gas storage capacity and, through its joint venture with ConocoPhillips, serve as the largest producer of natural gas liquids in North

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[7] This generation also is listed in Exhibit J-4 to Dr. Hieronymus' testimony.

America. The combined company will have operations in two-thirds of the United States, as well as Canada and other international locations, primarily in Latin America.

A. The Merger Agreement

The Applicants have entered into the Agreement and Plan of Merger (attached as Exhibit I), dated as of May 8, 2005 ("Merger Agreement"). The Merger Agreement sets forth a series of mergers and restructuring transactions that will implement the business combination of Duke Energy and Cinergy. A detailed description of the various mergers and other transactions is provided in Appendix 1.

To summarize, prior to entering into the Merger Agreement, Duke Energy formed a new Delaware corporation, Duke Energy Holding Corp., which in turn formed two wholly-owned subsidiaries, Deer Acquisition Corp. and Cougar Acquisition Corp. The Merger Agreement contemplates that Deer Acquisition Corp. will merge with and into Duke Energy, with Duke Energy as the surviving corporation. In such merger, holders of Duke Energy common stock will receive the right to receive 1.0 share of Duke Energy Holding common stock for each share of Duke Energy common stock held. As a result, the current holders of Duke Energy common stock temporarily will become the holders of all of the outstanding shares of Duke Energy Holding common stock, and Duke Energy will become a wholly-owned subsidiary of Duke Energy Holding. This merger is referred to as the "Duke Energy merger".

Following Duke Energy's change to a holding company structure through the Duke Energy merger, the Merger Agreement contemplates that Cougar Acquisition Corp. will merge with and into Cinergy, with Cinergy as the surviving corporation. In such merger, holders of Cinergy common stock will receive the right to receive 1.56 shares of

Duke Energy Holding common stock for each share of Cinergy common stock held. As a result, the current holders of Cinergy common stock will become holders of Duke Energy Holding common stock, and Cinergy will become a wholly-owned subsidiary of Duke Energy Holding. This merger is referred to as the "Cinergy merger."

After the Duke Energy merger and the Cinergy merger, the two companies will have been combined into a single holding company structure with Duke Energy Holding as the parent company. Duke Energy Holding will be renamed Duke Energy Corporation, and the old Duke Energy will be renamed Duke Power Company LLC. The New Duke Energy Corporation will register as a holding company under PUHCA.

Furthermore, the Merger Agreement contemplates a number of restructurings and transfers internal to the structure of the new holding company. Applicants request FERC authorization for these restructurings, described in detail in Appendix 1. Among these steps, DENA's ownership of generation facilities located in the Midwest (collectively, the "DENA Midwest Assets"), which are owned and operated by DENA subsidiaries (collectively, the "DENA Subsidiaries"), will be transferred to CG&E and operated together with CG&E's deregulated generation fleet.[8]

For purposes of requesting Section 203 authorization herein, transfer of the DENA Midwest Assets includes the jurisdictional facilities held by the DENA Subsidiaries – namely, interconnection facilities, tariffs, contracts, books and records. A description of these jurisdictional facilities is set forth in Exhibits B and G. The transfer of the DENA Midwest Assets will be subject to the receipt of any necessary approvals

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[8] Appendix 1 describes the DENA Midwest Assets and DENA Subsidiaries.

and consents other than those requested herein (*e.g.*, consents that may be required under power sales agreements). As described in Appendix 1, the transfer of the DENA Midwest Assets may be accomplished through the transfer to CG&E of a DENA Subsidiary's assets or the DENA Subsidiary itself, followed by a merger of the DENA Subsidiary into CG&E. In either event, CG&E will be the entity that owns and controls the DENA Midwest Assets so that the unregulated Midwestern fleet of the Applicants' generation plants can be operated efficiently on a combined basis.[9] Applicants request that the Commission authorize both means of transferring the DENA Midwest Assets. Once the transfers occur, Applicants commit to notify FERC which type of transfer was used to transfer the DENA Midwest Assets. As discussed in the next section, the transfer of the DENA Midwest Assets to CG&E will allow realization of operational efficiencies and synergies which will reduce operating costs for the combined generation fleet.[10]

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9 Duke Energy intends to effectuate the transfer of its DENA Midwest Assets as an equity infusion into CG&E at book value. In conjunction with the transfer of these assets, Duke Energy or another appropriate affiliate intends to enter into a financial arrangement with CG&E to eliminate any potential cash shortfalls that may result from owning and operating these assets.

10 Currently, CG&E and its regulated franchised utility affiliates, PSI and ULH&P, are authorized to engage in a form of joint economic dispatch of their generation fleets under two FERC-jurisdictional agreements, the Joint Generation Dispatch Agreement ("JGDA") between CG&E and PSI and the Purchase, Sale and Operation Agreement ("PSOA") between CG&E and ULH&P. Although FERC has approved the PSOA, no transactions have occurred to date because the underlying generation unit transfers upon which the PSOA is based have not yet occurred, pending authorization of this transaction by the SEC under PUHCA. Separate from considerations of the Transaction presented herein, Cinergy will be terminating the JGDA and PSOA in large part because the MISO Day 2 market has subsumed the benefits of joint dispatch. Cinergy will be notifying its state commissions of its plans to terminate the JGDA and the PSOA (on July 7, 2005, in its filing in IURC Cause No. 41954, PSI notified the IURC of its intent to terminate the JGDA). Cinergy also will be filing with FERC notices of termination of the

B. Benefits of the Transaction

The combination of Duke Energy and Cinergy will provide a number of benefits, described below, to the Applicants and more importantly to consumers.

1. Enhancement of Future Sustainability and Competitive Viability of the Applicants

The past few years, characterized by volatility in the electric power and fuel markets and turmoil in the capital markets, have posed significant challenges to energy companies. A number of large companies, including both regulated and merchant generation companies, have been forced into bankruptcy, and many others have had to cut back significantly on their market presence due to credit limitations or impaired financial strength. This, in turn, has reduced the number of serious, creditworthy participants in the various competitive wholesale markets in the United States, adversely affecting market liquidity and impacting those markets and the consumers who rely on them. Although both Applicants are financially sound companies on a stand alone basis, it is in the public interest for the Commission to allow Applicants to take steps to enhance their ability to withstand the inevitable volatility of energy markets and to sustain their ability over the long run to provide competitive service to wholesale and retail customers, a valuable consumer benefit.

JGDA and PSOA as required by FERC regulations. 18 CFR 35.15 (2004). Within the next month, Cinergy intends to make filings with FERC amending, terminating and establishing market based rate tariffs with requisite affiliate rule safeguards to ensure that CG&E's future marketing activities do not harm customers of Cinergy's franchised utility affiliates. Cinergy expects to request an effective date for such filings in advance of closing of the Transaction presented herein. The market based rate tariffs will be further amended prior to closing of the Transaction to include appropriate affiliate safeguards with respect to any relevant Duke Energy affiliates.

As explained in more detail below, this Transaction allows the Applicants to strengthen their combined balance sheet and to achieve significant cost savings and other operational efficiencies. It also allows them to diversify their complementary businesses in a way that provides protection from volatility in the future. As a result, the Applicants will be better equipped to compete in the various wholesale energy markets on an ongoing and sustainable basis. These benefits, in conjunction with the fact that the Transaction will have no adverse competitive effects, firmly establish that the Transaction is in the public interest.

Financial Strength. The Transaction will create a new company with a market capitalization of approximately $35 billion, assets totaling more than $70 billion, estimated annual revenues of approximately $27 billion, and net income of approximately $1.9 billion. The increased scale and scope of operations resulting from the Transaction will strengthen the balance sheet of the new company and increase its financial flexibility. The Applicants, and ultimately consumers, will benefit from the combined company's financial strength and access to financial markets, with each operating subsidiary also retaining the ability and financial strength to obtain financing on its own, subject to any necessary regulatory approval.

Cost Savings, Operating Efficiencies and Other Synergies. In addition to the synergies associated with the consolidation of the Applicants' merchant and trading functions, other synergies will result from the combination of the two companies. In particular, the Transaction will permit the elimination of duplicative functions and systems, with resulting cost efficiencies and economies of scale across the combined entity that ultimately will yield consumer benefits..

Moreover, the Transaction will allow the Applicants to achieve operating efficiencies through the sharing of best practices and otherwise. These efficiencies will further enhance the competitiveness of the combined company which, in turn, will benefit consumers.

Excluding the implementation period and implementation costs, the combination of the Applicants is expected to generate approximately $500 million in on-going annual cost savings from across corporate activities, regulated utilities and non-regulated marketing, trading and generation businesses. Approximately 53 percent of these savings are expected to be associated with the Applicants' regulated businesses, which should allow for lower rates than otherwise would be required. Attached as Appendix 2 is a more detailed explanation of the savings the Applicants expect to achieve.

Diversification. An important motivating factor for the Transaction is that the combination of the Applicants' businesses provides for a more diverse, efficient and competitive combined company. This is true in a number of respects.

For example, Cinergy depends upon coal as its main fuel source. DENA, on the other hand, owns approximately 3,500 MW of natural gas-fired generation located in MISO and PJM Interconnection, LLC ("PJM"). The Applicants intend that these DENA Midwest Assets will be transferred to CG&E as part of the Transaction, as described in more detail in Section III.A. above and Appendix 1. In addition, the operation of the merchant generation and trading businesses will be consolidated.

This combination of DENA's and CG&E's assets provides a number of important benefits. First, it diversifies the combined company's generation ownership, with the corresponding benefits of owning generation with differing cost and operating

characteristics. Second, diversification of generation ownership also enables the consolidated company to avoid a disproportionate reliance on particular fuel types, and mitigates its exposure to economic and environmental risks associated with each type of fuel. Third, consolidation of the ownership of generation located in the same region allows for more conventional types of savings resulting from the consolidation of operations and the elimination of duplicative functions.

The combination of the Applicants creates diversity and thus lowers their risk profile in other ways as well. For example, the combined company will have a portfolio of regulated energy companies and competitive merchant companies that will give it a base of more reliable regulated returns and a more stable balance sheet when there are downturns in the competitive markets. It will operate in a number of different wholesale electric and natural gas markets that should provide protection through diversification in the event of downturns in some of those markets. It includes significant gas and electric businesses that again balances the risks of the two industries. The diversity in fuel types of the Applicants' generation also provides for the diversification of the environmental risk that will be faced by the combined generation fleet.

As the above examples reveal, the diversity of the combined company will serve the Applicants well in the future. It will create a strong company that will be better able to withstand downturns in different markets and industries, which should in turn enhance the combined company's access to capital, even in difficult circumstances. The result will be a strong market participant with a sustainable presence in various energy markets no matter the circumstances, without creating any market power issues. Given the lack of adverse competitive effects, as discussed below, creation of a sustainable competitor and

the market liquidity thus provided can only benefit those markets which, in turn, will benefit consumers.

2. Enhancement of the Joint and Common PJM/MISO Energy Markets

The Transaction will result in the combined company having significant generation assets that straddle the seam between PJM and MISO with pricing optionality in both energy markets. The joint ownership and operation of these generation assets will contribute to the integration of the two markets by reducing inefficient or inappropriate pricing between them.

3. Shared Values

A final basis for the Applicants' decision to enter into the Transaction is that they found that they have shared values and the same vision with respect to many aspects of their operations, such as efficient operations, corporate responsibility, financial performance, and customer service. The Transaction should foster and even improve the Applicants' performance with respect to these values and will result in a combined company with the ability to use best practices of both Duke Energy and Cinergy.

a. Commitment to Operational Excellence

Duke Energy and Cinergy are both experienced utility companies with long-standing records of supplying superior quality, reliable service to their customers. Both Applicants have long traditions of providing exemplary customer service and have been nationally recognized for their excellence in this regard. Duke Power ranked 8th nationally in overall customer satisfaction in TQS Research, Inc.'s 2004 Key Account National Benchmark Survey of industrial and institutional customers and 4th in the J.D. Power and Associates' 2005 Business Customer Satisfaction Index. Similarly, in 2005,

Cinergy was recognized for call center operational excellence and customer satisfaction under the J.D. Power and Associates Certified Call Center Program. This solid history of providing superior customer service will continue as a result of the Transaction, and customers not only will continue to enjoy the same high level of service, but also will benefit from increased services resulting from the application of the combined companies' best practices.

b. Commitment to Stewardship and Citizenship

The Transaction will create a stronger platform from which to continue the Applicants' leadership in finding practical solutions to the environmental challenges facing the industry and the nation. The demonstrated commitment by the Applicants to proactively shape the climate change debate forms the basis for a substantial contribution to the development of a long-term carbon reduction strategy that will benefit both shareholders and the larger public interest.

Moreover, the combined entity will continue to build on the Applicants' demonstrated commitment to invest in community and economic development. The combination will build on the reputations of both Duke Energy and Cinergy as responsible corporate citizens, taxpayers, and employers in the localities where they operate. In 2004, consolidated community giving by the Applicants exceeded $20 million. Both Applicants are recognized as serving lead roles in economic development in the communities where they operate and the Applicants intend to maintain their focus on economic development after the Transaction.

C. Transmission Path Used for Integration Purposes

Under PUHCA, the various electric utility companies that make up a holding company system must demonstrate that they can engage in integrated operations either through directly interconnected facilities or through transmission service across third party systems. In order to satisfy the interconnection aspect of this requirement, the Applicants will satisfy this requirement either by procuring a firm transmission path of as much as 250 MW connecting their systems or will utilize a form of non-firm transmission service across PJM that allows transmission customers to pay congestion charges to avoid curtailment ("PJM LMP Transmission Service"). Applicants have applied for a firm transmission path from Duke Power to Cinergy.

In order to provide the most conservative picture of the impact of the Transaction on competition, the Applicants have performed their Appendix A analysis as if a 250 MW firm transmission path from Duke Power to Cinergy were in effect.[11] If, in fact, the Applicants end up with a path smaller than 250 MW, then there would be less Duke Power generation deliverable in the MISO market, which would reduce the calculated post-Transaction market concentration in that market. Use of a 250 MW firm path therefore provides the most conservative picture possible with respect to the integration transmission path. This is demonstrated by a sensitivity performed by Dr. Hieronymus that assumes no firm transmission path whatsoever.

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[11] The Applicants also have conducted an alternate Appendix A screen analysis, as a sensitivity, in which they assumed a 250 MW firm path from Cinergy to Duke Power. Exh. J-1 at 6.

IV. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

Section 203 of the Federal Power Act provides that "if the Commission finds that the proposed disposition . . . will be consistent with the public interest, it shall approve the same." 16 U.S.C. § 824b (2000). Applicants need not show that a transaction positively benefits the public interest, but rather simply that it is "consistent with the public interest," i.e. that the transaction does not harm the public interest. See e.g., Texas-New Mexico Power Co., 105 FERC ¶ 61,028 at P 23 & n.14 (2003) (citing Pacific Power & Light Co. v. FPC, 111 F.2d 1014, 1016-17 (9th Cir. 1940)).

In determining whether a proposed disposition of jurisdictional facilities is consistent with the public interest, the Commission evaluates the impacts of the proposed disposition on competition, rates and regulation. See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, III FERC Stats. & Regs., Regs. Preambles ¶ 31,044 at 30,111 (1996), order on reconsideration, Order No. 592-A, 79 FERC ¶ 61,321 (1997) ("Merger Policy Statement"). Furthermore, when considering impacts on competition, the Commission reviews both horizontal competition issues resulting from increases in concentration in electric energy and capacity markets and vertical competition issues resulting from increases in the ability or incentive to leverage control over electric transmission and natural gas transportation facilities to enhance revenues in generation markets. See Revised Filing Requirements under Part 33 of the Commission's Regulations, Order No. 642, 1996-2000 FERC Stats. & Regs., Reg. Preambles ¶ 31,111 at 31,872 (2000) ("Order No. 642"). As demonstrated below, the Transaction does not raise any horizontal or vertical market power issues.

A. Horizontal Competition Issues

As an initial matter, the Applicants do not own or control significant amounts of generation in the same markets, as shown on the following chart:

Market	Duke Energy (MW)	Cinergy (MW)
MISO	420	12,510
PJM	3,057	0
Duke Power	18,390	0
TVA	0	894
WECC (CAISO and AZ)	5,238	0
NPCC (ISO-NE)	793	0
Canada	364	0
Total	28,262	13,404

The only market where the Applicants' generation directly overlaps is in the MISO market, and in that market the extent of the overlap (the addition of 420 MW to Cinergy's share) is minimal compared to the size of the MISO market, which is over 130,000 MW. Moreover, even if MISO and PJM were deemed to be a single integrated market, the overlap still is minimal compared to the size of the market, which would be made up of the two largest RTOs in the United States.

The MISO, PJM, TVA and Duke Power markets are sufficiently interconnected such that generation potentially could be delivered from each one of these markets to the others. Again, however, the total amount of generation that could be economically delivered into these markets is so large that the Applicants' share of potential imports is minimal. Thus, it is apparent that the Transaction raises no horizontal competition issues in any relevant geographic market.

Notwithstanding the relatively insignificant overlap of the Applicants' generation, the Applicants engaged Dr. Hieronymus of CRA International to perform an "Appendix

A" analysis[12] of the Transaction as required by the Commission's merger regulations in order to determine the impact of the Transaction on competition in the markets where there is some overlap. The results of this analysis are described in detail in the testimony of Dr. Hieronymus, attached hereto as Exhibit J, and summarized below. This analysis confirms that the Transaction raises no horizontal issues.

As Dr. Hieronymus explains, it is clear that the Duke Power market and first-tier markets to the Duke Power market are separate from the other markets involved. Exh. J-1 at 9, 25-27, 33-34. Dr. Hieronymus also examined the markets in MISO and PJM, where the most significant overlap occurs. Exh. J-1 at 32-35. Dr. Hieronymus' analysis of the impact of the Transaction on competition in each of these markets is summarized below.

1. Analysis of MISO and PJM Markets

a. <u>Determination of Relevant Geographic Market</u>

Cinergy is a member of MISO, which is a Commission-approved RTO. MISO began operating the second largest centrally-dispatched, competitive wholesale electricity market in the United States on April 1, 2005. <u>See</u> <u>Midwest Indep. Transmission Sys. Operator, Inc.</u>, 111 FERC ¶ 61,053 at P 3 & n.4 (2005). MISO has eliminated rate-pancaking within its footprint, and has eliminated through-and-out charges for transactions with the adjacent PJM RTO, thereby creating a broad market where buyers have access to some 250,000 MW of generating capacity. <u>See</u> <u>Midwest Indep.</u>

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[12] The Appendix A analysis was first described in the Merger Policy Statement at 30,130-35. The requirements of the Appendix A analysis have been incorporated into the Commission's regulations at 18 CFR § 33.3 (2004).

Transmission Sys. Operator, Inc., 109 FERC ¶ 61,168 at PP 1-2 & nn.1-4 (2004). Dr. Hieronymus therefore concluded that MISO is an appropriate relevant geographic market for purposes of his analysis. Exh. J-1 at 26, 32-35.

To be conservative, however, Dr. Hieronymus also considered two alternative relevant geographic markets. By considering these alternatives, Dr. Hieronymus was able to confirm that the Transaction does not create horizontal market power problems, regardless of how the relevant geographic markets are defined.

First, there may be transmission constraints within MISO that can cause market prices in certain areas within MISO to separate from the prevailing MISO prices. These areas include the Louisville Gas & Electric ("LG&E") control area, the Wisconsin-Upper Michigan System ("WUMS"), Iowa and Minnesota. In order to identify the smallest possible market in which the Applicants compete, Dr. Hieronymus therefore analyzed the competitive effects of the Transaction in MISO without LG&E, WUMS, Minnesota or Iowa. He calls this market the "MISO Submarket". Exh. J-1 at 31-32.

Second, because most of DENA's assets are located in PJM, Dr. Hieronymus also considered a broader relevant geographic market that includes: (a) the MISO Submarket; and (b) the western part of PJM inclusive of the areas in which DENA's PJM assets are located, but exclusive of that part of PJM east of Allegheny Energy, as well as Dominion. Dr. Hieronymus calls this market "MISO-PJM Midwest." Consideration of this market again is conservative because it is the smallest market that includes all of the Cinergy and Duke generation located in MISO and PJM. Exh. J-1 at 32.

b. <u>Assumptions Regarding Imports</u>

There is a lack of publicly available information that can be used to derive useful simultaneous import limits for the markets that Dr. Hieronymus studied. Ordinarily, in such circumstances the most conservative assumption to make is that there are no imports. Here, however, it is important to model some level of imports in order to capture the impact of imports of Duke Energy's capacity into the relevant geographic markets, both from DENA's PJM generation into the MISO and MISO Submarket markets, and from Duke Power into all three markets.

As a result, Dr. Hieronymus obtained a transmission study from Cinergy that relies on the NERC 2006 summer base case. Exh. J-1 at 41. He also used PJM's posted TTC to MISO to model deliveries from PJM to MISO. Id.

c. Treatment of Firm Integration Path

As explained above in Section III.C., the Applicants have applied for as much as 250 MW firm transmission from the Duke Power control area to the Cinergy control area. To satisfy PUHCA integration standards, Applicants may use less than a 250 MW path or, in the alternative, may rely on a type of non-firm transmission service available over PJM where the purchaser pays congestion charges to avoid curtailment (referred to herein as PJM LMP Transmission Service). As Dr. Hieronymus explains, his analysis takes the most conservative approach by assuming a 250 MW firm path will be utilized by Applicants. Exh. J-1 at 5-6, 47. Therefore, Dr. Hieronymus assumes that Duke Energy can deliver 250 MW of capacity into the Cinergy control area under all scenarios considered. This 250 MW is in addition to Duke Energy's share of imports calculated in accordance with the Appendix A requirements. Dr. Hieronymus conducted a sensitivity analysis assuming the use of a 100 MW path from Duke Power to Cinergy. Exh. J-1 at 5-

6, 47-48. To bookend this analysis, Dr. Hieronymus also conducted a sensitivity analysis that assumes that there is no firm transmission integration path; this sensitivity analysis also shows the impacts of the potential use of PJM LMP Transmission Service. Exh. J-1 at 47-48.

d. **Summary of Results**

As required by the Commission's Merger Regulations, Dr. Hieronymus performed an analysis both of Economic Capacity and Available Economic Capacity, for all three Midwestern markets described above. The results of this analysis confirm the conclusion that the Transaction will not adversely impact competition in these markets.

Economic Capacity. For Economic Capacity, Dr. Hieronymus shows that all the post-Transaction markets are unconcentrated in all time periods in each of the MISO, MISO Submarket and MISO-PJM Midwest markets. Exh. J-1 at 47-48. HHI changes are under 50 in all time periods in each market: MISO (HHI change not more than 14), MISO Submarket (HHI change not more than 25) and MISO-PJM Midwest (HHI change not more than 37). Exh. J-1 at 47-48. Under the Commission's Merger Regulations, such a result satisfies the Appendix A screen analysis. Order No. 642 at 31,896 n. 62.

Available Economic Capacity. Under the Available Economic Capacity measure, all three markets are unconcentrated both before and after the Transaction. Exh. J-1 at 50-51. HHI changes are no more than 39 points in MISO, no more than about 50 points in MISO Submarket, and no more than about 60 points in MISO-PJM Midwest. Exh. J-1 at 51. As a result, the Transaction passes the Available Economic Capacity test in all three relevant geographic markets analyzed. To account for retail access in Ohio

and CG&E's continuing load responsibilities, Dr. Hieronymus' analysis utilizes recent switching rates for utilities in certain retail access states. Exh. J-1 at 50.

2. Analysis of Duke Power and First-Tier Markets

a. Determination of Relevant Geographic Markets

Because Duke Power is not a member of an RTO, Dr. Hieronymus analyzed the Duke Power control area as a separate destination market. As is required by the Commission's merger regulations in those circumstances, Dr. Hieronymus also analyzed all first-tier control areas, i.e. all control areas that are directly interconnected with the Duke Power control area. See 18 C.F.R. § 33.3(c)(2); Exh. J-1 at 26, 32.

b. Assumptions Regarding Imports

With respect to import limits, Dr. Hieronymus used OASIS postings of the various entities involved, consistent with the Commission's Merger Policy Statement. He also used simultaneous import limits calculated by Duke Power in its market-based rate compliance filing as well as in studies contained in the compliance filings of other market participants. Exh. J-1 at 42.

c. Treatment of Integration Transmission Path

Dr. Hieronymus adjusted his analysis of the 250 MW firm transmission path from the way that it was modeled for the MISO and PJM markets, in two respects. First, because the proposed path is firm only from Duke Power to Cinergy, it does not confer any preferential rights to deliver power from Cinergy to the Duke Power control area. As a result, Dr. Hieronymus used his standard methodology for allocating import capacity into the Duke Power control area and allocated import capacity to Cinergy on the same basis that he allocated import capacity to all other potential suppliers. Exh. J-1 at 42.

Second, although Dr. Hieronymus assumed in his analysis of the MISO and PJM markets that 250 MW of Duke Energy's capacity is being delivered into the Midwest markets, he assumed in his analysis of the Duke Power and first-tier markets that no capacity is being delivered from Duke Power over the path into Cinergy. This has the conservative effect of leaving the 250 MW of Duke Power capacity that otherwise would be delivered into Cinergy in the Duke Power control area, which in turn increases Duke Energy's market share in the markets studied. Exh. J-1 at 12, 49. Indeed, the Transaction would be deemed to have a deconcentrating effect on the market if Dr. Hieronymus were to have assumed that 250 MW of Duke Power's capacity was being transmitted through the firm transmission path and delivered into the Cinergy control area. Id.

As noted in Section III.C., Dr. Hieronymus has conducted a sensitivity analysis, included in his workpapers, using a 250 MW firm path from Cinergy to Duke Power. Exh. J-1 at 6.

d. **Summary of Results**

Economic Capacity. Dr. Hieronymus' analysis shows that the HHIs in the Duke Power control area are above 1,800 both before and after the Transaction under the Economic Capacity measure and thus is deemed to be highly concentrated.[13] Exh. J-1 at

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[13] The Appendix A analysis performed by Dr. Hieronymus is different from the market power analysis that the Commission conducts for the purposes of determining whether an entity is entitled to charge market-based rates. In Docket Nos ER96-110 et al., Duke Energy set forth evidence to show that Duke Power does not have generation market power in its control area. However, the Commission recently issued an order in that docket revoking Duke Power's market-based rate authority in the Duke Power control area. Duke Power, 111 FERC ¶ 61,506 (2005). That order has no effect on the Appendix A analysis and does not alter the conclusion that the Transaction will have no adverse effect on competition.

49. However, the HHI changes are well below 50 (the highest change is 10), so the Transaction does not cause any screen failures. Exh. J-1 at 52.

Dr. Hieronymus' analysis also shows that there are no screen failures in any of the other first-tier markets. Applicants' market share ranges from 1 percent to less than 20 percent in these markets and the screen analysis readily is passed in all time periods. Most of the HHI changes were in the single digits and all HHI changes were well below 50 points. Exh. J-1 at 49.

Available Economic Capacity. Under the Available Economic Capacity Measure, the Duke Power control area is either moderately or highly concentrated (with one time period unconcentrated), depending on the load conditions. In one time period when 39 MW of Cinergy supply results in an HHI change of 65 points. Dr. Hieronymus, finds, however, that there is no systematic pattern of large HHI changes and hence no concerns are raised. Exh. J-1 at 52.

In the first-tier markets to the Duke Power control area, the competitive screen analysis is passed readily with most markets unconcentrated in most time periods. Exh. J-1 at 52.

3. Analysis of Other Geographic Markets

As explained above, there is no overlap of generation capacity in any of the other markets where the Applicants own capacity. See also Exh. J-1 at 27, 52. As a result, there is no potential for the Transaction to impact competition in these markets, and no Appendix A analysis is required. See 18 C.F.R. § 33.3(a)(2)(i).

B. Vertical Market Power Issues

1. No Increased Potential for Abuse of Electric Transmission Market Power

The Transaction does not in any respect increase any potential ability of the Applicants to abuse their ownership of transmission facilities to give themselves an advantage in energy markets. See Exh. J-1 at 6, 55. As a result, no transmission-related vertical market power issues are raised by the Transaction.

Moreover, Cinergy's public utility subsidiaries' transmission systems are operated on an integrated, single-system basis pursuant to MISO's tariff on file with the Commission. Duke Power's transmission is subject to its OATT. Further, Cinergy does not control any generation served by Duke Power's transmission. Exh. J-1 at 6.

2. No Potential for Abuse of Natural Gas Transportation Market Power

The Commission's Merger Policy and Merger Regulations address the issue of the potential abuse of market power in the transportation of natural gas to gain a competitive advantage in energy markets. The concern is that when the ownership of natural gas assets serving electric generation facilities is combined with the ownership of electric generation facilities, the potential is created for the resulting merged company to use its control over the natural gas facilities to disadvantage the competing owners of the electric generation facilities. See Order No. 642 at 31,904; see also 18 C.F.R. § 33.4 (defining the Commission's vertical competitive analysis standards). Under the Commission's precedent, it is well-established that "both highly concentrated common upstream and downstream markets are necessary in order to allow effective strategies of foreclosure or raising rivals' costs." Engage Energy Am., LLC, 98 FERC ¶ 61,207 at 61,750 (2002)

(citing El Paso Energy Corp., 92 FERC ¶ 61,076 at 61,332 (2000)); accord Order No. 642 at 31,904; Energy East Corp., 96 FERC ¶ 61,322 at 62,229 (2001).

The Transaction requires consideration of this issue because of Duke Energy's ownership of the Texas Eastern pipeline, which runs through the PJM and MISO markets and serves a limited amount of gas-fired generation capacity.[14] Again, however, there is no potential that the Transaction could have an adverse impact on competition. This is because there are a number of pipelines serving MISO and PJM in addition to Texas Eastern. Dr. Hieronymus has calculated that Texas Eastern represents less than 10% of the total pipeline capacity in the relevant markets, which means that the combined company has no ability to foreclose competition in these markets through its control of Texas Eastern. Exh. J-1 at 7, 56.

Nevertheless, Dr. Hieronymus performed the vertical market power analysis required by Section 33.4 of the Commission's Regulations. As Dr. Hieronymus explains, this analysis demonstrates that both the upstream and downstream markets are unconcentrated. Exh. J-1 at 7, 66. Dr. Hieronymus also concludes that no vertical market power issues arise with respect to Cinergy's ownership of local gas distribution companies ("LDCs") and KO Transmission, an interstate pipeline system delivering to the citygates of its LDCs. Exh. J-1 at 7.

[14] Although Cinergy also owns the KO Pipeline, as noted above, this pipeline does not serve any competing generation facilities, either directly or indirectly. As a result, no vertical market power issues are raised as a consequence of Cinergy's ownership of the KO Pipeline. Similarly, Duke Energy's ownership of other pipelines does not raise any vertical market power issues because these pipelines do not serve any markets in which Cinergy generation assets are located.

Dr. Hieronymus found no other barriers to entry that raise concerns; Applicants do not have dominant control over generating sites and there has been substantial entry into relevant markets. Exh. J-1 at 7, 67. In sum, no vertical market power concerns are raised by the Transaction.

C. Consolidation of DENA Midwest Assets with CG&E

As described above, the Applicants intend to transfer the DENA Midwest Assets to CG&E as part of the Transaction in order to achieve operating efficiencies and to diversify fuel risk. The two generation fleets are complementary and together form a more balanced generation portfolio. When combined, these assets will provide CG&E a range of generation and fuel options to efficiently meet its competitive supply obligations and respond dynamically to changing market conditions. Moreover, the companies will enjoy efficiencies and economies of scale as responsibility for operation of these assets is consolidated. The opportunity to consolidate these assets was an important factor in the Applicants' decision to enter into the Transaction.

This transfer of generation assets to CG&E will not implicate the Commission's recent "safety net" cases involving such transfers from merchant generation companies to affiliated franchised electric utilities. See Cinergy Servs., Inc., 102 FERC ¶ 61,128 at P 23 (2003) ("Cinergy"), reh'g denied 108 FERC ¶ 61,250 (2004); Ameren Energy Gen. Co., 108 FERC ¶ 61,081 (2004) ("Ameren"). There is no safety net issue involved for two principal reasons. First, the transfer of assets from DENA to CG&E was negotiated as part of the arms' length negotiations between the Applicants – who at the time were unaffiliated – that led to this proposed Transaction. The Commission has never suggested that its safety net concern applies to transactions between unaffiliated

companies. Second, CG&E cannot represent a "safety net" for DENA's assets in any event because under Ohio's restructuring statute, CG&E does not charge regulated cost-based generation rates, and no customer, retail or otherwise, can be required to pay costs attributed to the asset transfer.

1. The Safety Net Theory Does Not Apply to an Arms-Length Transaction Between Non-Affiliates

In Ameren, the Commission announced that, as a general policy matter, it would apply its Edgar decision standard[15] to "section 203 applications that involve the acquisition of an affiliate's assets." Ameren at P 59 (emphasis added). The Commission explained that "[p]referential procurement of an affiliate asset" may harm competition by "raising entry barriers, increasing market power and impeding market efficiency." Id. at P 60 (emphasis added). The issue of barriers to entry posited in Ameren is the possibility that potential investors will fear the advantage that an affiliated generator may have by virtue of its affiliation: "Potential non-affiliated generators that perceive that affiliated generators have a 'safety net' available to them may be discouraged from entering the market." Id. at P 61.

The concern in Ameren does not apply here, however, because the Transaction is not an affiliate transaction, but rather an arms-length transaction between non-affiliates. No non-affiliate would have perceived that DENA had a safety net advantage over them because, at the time the Applicants agreed to enter into the Transaction, DENA was not affiliated with CG&E. Any market participant not affiliated with CG&E had the same

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[15] Boston Edison Co. Re: Edgar Electric Co., 55 FERC ¶ 61,382 (1991).

ability as DENA to enter into a generation transaction with CG&E.[16] Dr. Hieronymus discusses the fact that CG&E is buying unaffiliated assets and concludes that this is not a matter of harming competition. Exh. J-1 at 71.

2. CG&E Cannot Provide A "Safety Net" For The DENA Midwest Assets Because CG&E Does Not Have A Generation Rate Base

Looking beyond the fact that the transfer of DENA's assets is an arms' length transaction negotiated between unaffiliated entities, the safety net theory simply does not apply to this aspect of the Transaction. When the Commission first posited the safety net concern in the Cinergy proceeding, the Commission suggested that the ability to move a merchant generation company's generating assets into an affiliated franchised utility provides a "likelihood of recovery of capital investment through rate base treatment" which confers a competitive advantage to the affiliated merchant generation company that is not available to competing merchant generators without affiliated franchised utilities located in the region. Cinergy at P 23. This in turn arguably could represent "a barrier to entry that harms the competitive process in general and raises prices to customers in the long run because affiliated merchant generation with a safety net option will not be subject to the price discipline of a competitive market." Id. Dr. Hieronymus discusses this issue and concludes that none of the Commission's safety net concerns are presented by the transfer of the DENA Midwest Assets. Exh. J-1 at 8, 69-71.

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[16] Indeed, the Commission recently approved just such an acquisition involving the Wheatland Facility. See Cinergy Services, Inc., 111 FERC ¶ 62,306 (2005). The agreement for that transaction was executed just two days before the Merger Agreement.

This concern does not apply here because there is no "likelihood of recovery of capital investment through rate base treatment" for the DENA generation assets being transferred to CG&E. Cinergy at P 23. Under the Ohio restructuring statute, CG&E's competitive generation rates are unrelated to changes in CG&E's generation portfolio. The statute does not permit rate base treatment for any of CG&E's generation assets, whether they are already owned by CG&E or acquired from DENA.

The Ohio statutes, and the resulting case law precedent, clearly dissolve any link between the market price for generation service, defined by statute as a "competitive retail electric service," and capital investment in rate base. Ohio Rev. Code Ann. §§ 4928.03, 4928.05, 4928.14 (Baldwin 2005). This has been confirmed both by the PUCO and the Ohio Supreme Court. See In re CG&E's RSP, Case No. 03-93-EL-ATA, 2004 Ohio PUC LEXIS 564 (Entry on Rehearing at ¶ 19) (Nov. 23, 2004); Constellation New Energy Inc. v. Pub. Util. Comm'n, 104 Ohio St. 3d 530, 539, 820 N.E.2d 885, 893 (2004).

At the end of the market development period, rates for generation are to be market-based,[17] and set pursuant to a competitive process that is unrelated to traditional cost of service regulation.[18] This may be through a negotiated process,[19] or a competitive

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17 See Ohio Revised Code § 4928.14(A).

18 In re Application of Columbus Southern Power Co. and Ohio Power Co. for Approval of a Post-Market Development Period Rate Stabilization Plan, Case No. 04-169-EL-UNC, 2005 Ohio PUC LEXIS 32 at 44-45 (Jan. 6, 2005).

19 In re CG&E's RSP, Case No. 03-93-EL-ATA (Entry on Rehearing) (Nov. 23, 2004).

solicitation process.[20] Indeed, the PUCO already has held competitive auctions for several electric distribution utilities in the state and could require an auction of competitive retail services for CG&E.[21] This means that the generation component of CG&E's retail rate is established like the generation component of a market-based wholesale contract, and will not be based on the fixed costs of any CG&E assets.

CG&E has established, through a negotiation process that resulted in a PUCO-approved settlement, its market-based rates for the first three years following the market development period. Notably, that process concluded in 2004, well before the Merger Agreement was reached in May of 2005. The order approving the settlement contemplates that service will be provided in part from CG&E's then-existing generation,[22] but the associated retail rates (a) were not determined through rate base/rate of return regulation, (b) were not derived based on any expectation of acquiring the DENA Midwest Assets, and (c) do not contain variable components through which costs associated with the DENA Midwest Assets can be passed through to ratepayers.

After CG&E's current negotiated rates expire at the end of 2008, CG&E cannot "put" the costs of the DENA Midwest Assets to its competitive retail electric service consumers, and such consumers will not have a "call" on those assets. In short, in Ohio there is no safety net. As a result, this aspect of the Transaction will not "cause[] less efficient generation to be used and more efficient capacity to exit or not enter the market,"

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20 Ohio Revised Code § 4928.14(B).

21 Id.

22 In re CG&E's RSP, Case No. 03-93-EL-ATA (Entry on Rehearing at ¶¶ 14-16) (Nov. 23, 2004).

meaning that "the costs of providing power" will not be "unnecessarily higher." Ameren at P 62.

D. No Adverse Impact On Rates

In considering the impacts of a merger on rates, the Commission looks primarily at impacts on transmission rates and on rates for long-term wholesale requirements customers. The Transaction will not have an adverse impact on either of these categories of rates.

With respect to each category of rates, the Applicants propose a "hold harmless" commitment, i.e. they will not seek to include merger-related costs in their rates or filed transmission revenue requirements for a period of five years after the Transaction is consummated unless there are offsetting merger-related savings equal to or in excess of the merger-related costs so included. The Commission has approved this type of commitment in its Merger Policy Statement and in a number of subsequent cases. Merger Policy Statement at 30,124. See also PNM Resources, Inc., 110 FERC ¶ 61,204 (2005)(approving 5-year hold harmless commitment); Unisource Energy Corp., 109 FERC ¶ 61,047 (2004) (same); Ameren Corp., 108 FERC ¶ 61,094 (2004)(same).

In order to effectuate this commitment, the Applicants request that the Commission specifically authorize deferral of the merger related costs to achieve savings to the extent not otherwise deferred under generally accepted accounting principles. The deferred costs not otherwise deferred under generally accepted accounting principles will be amortized over a five-year period beginning on the date of the merger and ending at the end of the hold harmless commitment.

E. No Adverse Impact On Regulation

1. No Adverse Impact on Federal Regulation

The Commission's primary focus in considering the impact of a transaction on federal regulation is whether the Transaction will create a registered holding company under PUHCA and thus cause the Commission to lose jurisdiction over intra-holding company transfers under Ohio Power. Ohio Power Co. v. FERC, 954 F.2d 779 (D.C. Cir. 1992). Here, although the Transaction will result in the creation of a new registered holding company, the Applicants commit to waive any claim of Ohio Power preemption of the Commission's ability to regulate intra-company transactions within a registered public utility holding company system. Such a commitment fully addresses the Commission's concerns. Merger Policy Statement at 30,124-25.

2. No Adverse Impact on State Regulation

The Commission does not consider the impact of a transaction on state regulation when the affected state commission has the ability to review and approve the Transaction. Merger Policy Statement at 30,125. Here, the Applicants are filing applications for approval of the Transaction at four of the five affected state commissions: the NCUC, the PSCSC, the PUCO and the KPSC. These commissions therefore will have the ability to protect their own jurisdiction. As a result, the Commission need not consider the impact of the Transaction on state regulation in those states.

Although the IURC will not approve the overall merger of the companies, the IURC will have the opportunity to approve various agreements and accounting treatment associated with the merger as well as certain aspects of the Transaction. Specifically, the IURC will have the opportunity to consider PSI's request, filed on June 15, 2005 in Cause

No. 42873, for approval and/or acceptance of various affiliate agreements related to the Transaction and for accounting deferral for certain merger-related costs. The IURC will be able to protect its interests in that proceeding. In addition, the transfer of DENA's 75% undivided interest in the Vermillion Energy Facility[23] to CG&E may require IURC approval and/or declination of jurisdiction over CG&E.

However, to the extent that the Commission questions whether this review by the IURC is adequate to satisfy its Merger Policy, it nevertheless is the case that the Transaction will have no impact on regulation in Indiana. There are only two of the Applicants' subsidiaries that are subject to the jurisdiction of the IURC: PSI and Duke Vermillion. However, because the Vermillion Energy Facility is a merchant generating plant, and does not provide retail electric service within the State of Indiana, the IURC has declined to exercise its jurisdiction over Duke Vermillion with respect to the construction, ownership and operation of the Vermillion Energy Facility.[24] Likewise, after the transfer of the Vermillion Energy Facility to CG&E, CG&E will not provide retail electric service within the State of Indiana, and, if required, CG&E will request the IURC to decline to exercise its jurisdiction over CG&E's subsequent ownership and operation of the Vermillion Energy Facility to the same extent that the IURC has declined to exercise its jurisdiction over Duke Vermillion. With respect to PSI, the Transaction

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23 Duke Energy Vermillion, LLC ("Duke Vermillion"), an indirect, wholly-owned subsidiary of DENA, has an undivided 75% interest in and operates the Vermillion Energy Facility, a 648 MW gas-fired generation facility located in Vermillion County, Indiana. Duke Vermillion is one of the DENA Midwest Assets, as described in Appendix 1.

24 *In re Duke Energy Vermillion, LLC,* Cause No. 41388 (IURC; April 7, 1999).

should not have any impact on PSI's regulation under Indiana law because the Transaction does not change PSI, its business, its assets, or its regulatory status in any fashion. The IURC will have the same jurisdiction to regulate PSI after the Transaction that it currently has today, before the Transaction. Thus, the Transaction will have no adverse impact on state regulation in Indiana.

V. INFORMATION REQUIRED BY PART 33 OF THE COMMISSION'S REGULATIONS

Applicants submit the following information pursuant to Part 33 of the Commission's regulations.

A. Section 33.2(a): Names and addresses of the principal business offices of the applicants.

Duke Energy Corporation's principal executive offices are located at 526 South Church Street, Charlotte, North Carolina 28202.

Cinergy Corp.'s principal executive offices are located at 139 East Fourth Street, Cincinnati, Ohio 45201.

B. Section 33.2(b): Names and addresses of persons authorized to receive notices and communications in respect to the Application.

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James B. Gainer
Vice President and General Counsel, Regulated Businesses
Cinergy Corp.
139 East Fourth Street, EA025
Cincinnati, OH

C. Section 33.2(c): Description of Applicants

See Section II, and Exhibits A through F, attached.

D. Section 33.2(d): Description of the jurisdictional facilities owned and operated or controlled by Applicants, their parents or affiliates

See Section II and the testimony of Dr. Hieronymus.

E. Section 33.2(e): Narrative description of the Transaction

A narrative description of the Transaction is provided in Part III of this Application.

F. Section 33.2(f): Contracts with respect to the Transaction

See Exhibit I.

G. Section 33.2(g): Facts relied upon to show that the Transaction is in the public interest

The facts relied upon to show that the Transaction is consistent with the public interest are set forth in Part IV of this Application and in Exhibit J-1, Testimony of Dr. Hieronymus.

H. Section 33.2(h): Physical property

See Exhibit K.

I. Section 33.2(i): Status of actions before other regulatory bodies

See Exhibit L.

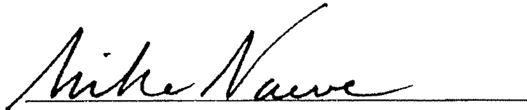
J. Section 33.5: Accounting Entries

Attached as Appendix 3 are pro forma accounting entries showing the proposed accounting for the Transaction.

VI. CONCLUSION

As demonstrated above, as well as in the attached testimony and exhibits, the Transaction is consistent with the public interest under Section 203 of the Federal Power Act, as defined by the Commission in its Merger Policy Statement, Part 33 regulations, and merger precedent. The Applicants request that the Commission approve the Transaction, without a hearing, no later than January 12, 2006.

Respectfully submitted,



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(513) 287-3369

Counsel for Cinergy Corp.

July 12, 2005

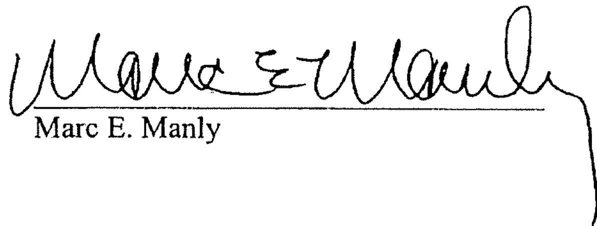
UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Corporation	)	
Cinergy Corp.	)	**Docket No. EC05-______**

VERIFICATION

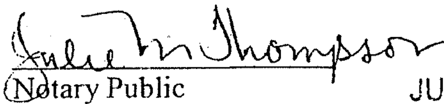
State of Ohio	)
	)
County of Hamilton	)

I, MARC E. MANLY, being first duly sworn, attest that I am Executive Vice President and Chief Legal Officer of Cinergy Corp., and that I have authority to verify the foregoing application. I have read the foregoing application and I affirm that the facts, representations and statements set forth therein with respect to Cinergy Corp. and its subsidiaries and affiliates are true and correct to the best of my knowledge, information and belief.



Marc E. Manly

Subscribed and sworn before me
This 8th day of July, 2005:



Notary Public

JULIE M.THOMPSON
Notary Public, State of Ohio

My Commission expires on: My Commission Expires Nov 19 2005

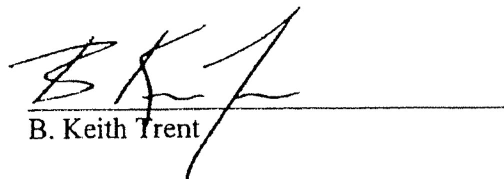
UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Corporation	)	
Cinergy Corp.	)	**Docket No. EC05-______**

VERIFICATION

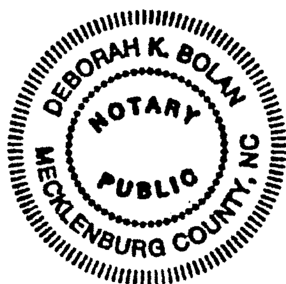
State of North Carolina	)
	)
County of Mecklenburg	)

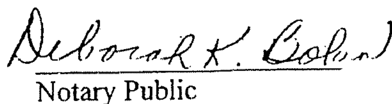
I, B. KEITH TRENT, being first duly sworn, attest that I am Group Vice President General Counsel and Secretary of Duke Energy Corporation, and that I have authority to verify the foregoing application. I have read the foregoing application and I affirm that the facts, representations and statements set forth therein with respect to Duke Energy Corporation and its subsidiaries and affiliates are true and correct to the best of my knowledge, information and belief.



B. Keith Trent

Subscribed and sworn before me
This 11 th day of July, 2005:





Notary Public

My Commission expires on: 10-24-07

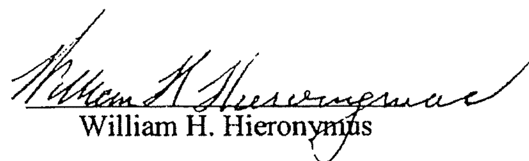
UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Corporation	)	
	)	**Docket No. EC05-___**
Cinergy Corporation	)	

AFFIDAVIT

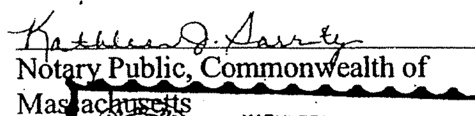
County of Suffolk	§
Commonwealth of Massachusetts	§
	§

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

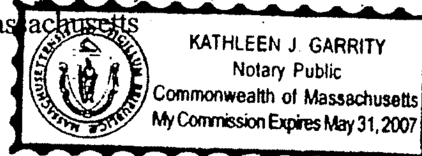


William H. Hieronymus

SUBSCRIBED AND SWORN TO BEFORE ME, this the 8th day of July 2005.



Notary Public, Commonwealth of Massachusetts



APPENDIX 1
DETAILED DESCRIPTION OF TRANSACTION

The Applicants have entered into the Agreement and Plan of Merger by and among Duke Energy, Cinergy, Duke Energy Holding Corp., a Delaware corporation ("Holdings")[25], Deer Acquisition Corp.[26], a North Carolina Corporation ("Deer Acquisition") and Cougar Acquisition Corp.[27], a Delaware corporation ("Cougar Acquisition"), dated as of May 8, 2005 ("Plan of Merger"). The Plan of Merger (attached as Exhibit I) sets forth a series of mergers and restructuring transactions as described below that will implement the business combination of Duke Energy and Cinergy.

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.

Following the Preferred Stock Redemption, Duke Energy will be merged with and into Deer Acquisition (the "Deer Acquisition Merger") in accordance with the North Carolina Business Corporation Act (the "NCBCA"). As part of the transaction, the common stock shareholders of Duke Energy will receive shares of Holdings common stock on a one-for-one

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[25] 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.

[26] 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

[27] 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.

basis. Duke Energy will be the surviving corporation and will continue its corporate existence under the laws of the State of North Carolina. It also will become a wholly-owned subsidiary of Holdings.

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 a tax 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 below. Following the Duke Energy Conversion, Duke Power Company LLC will remain a wholly owned subsidiary of Holdings in that all of the limited liability company interests in Duke Power Company LLC will be held by Holdings. Additionally, Duke Power will remain a public utility subject to this Commission's jurisdiction.

Immediately following the effectiveness of the Duke Energy Conversion, Duke Power Company LLC 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.

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 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 Merger and will continue its corporate existence

under the laws of the State of Delaware. As a result of the Cougar Merger, Cinergy will become a wholly-owned subsidiary of Holdings.

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 Holdings' common stock and current Cinergy shareholders will own approximately 24 percent of Holdings' common stock. New Duke Energy will maintain its headquarters in Charlotte, North Carolina.

As a result of the merger, New Duke Energy will establish a services company to be named Duke Energy Shared Services LLC ("DESS"), to provide goods and services to its utility and non-utility subsidiaries. DESS either will be formed from the existing service company, Cinergy Services, Inc., currently owned by Cinergy, or established as an entirely new company.

At the same time or shortly thereafter, ownership of a number of generation facilities located in the Midwest (collectively, the "DENA Midwest Assets") which are owned and operated by DENA subsidiaries (collectively, the "DENA Subsidiaries") are intended to be transferred to CG&E, subject to the receipt of necessary approvals and consents.[28] These transfers will allow operational efficiencies and synergies that should significantly reduce operating costs for the combined generation fleet.

The DENA Midwest Assets and DENA Subsidiaries are:

- the Fayette Energy Facility, a natural gas-fired combined cycle generating facility located near Masontown, Pennsylvania with a

[28] The transfer of the DENA Midwest Assets could take place on a piecemeal basis as necessary approvals and consents are received.

nominal capacity of 620 MW, owned and operated by Duke Energy Fayette ("Duke Fayette"), a direct, wholly-owned subsidiary of DENA;

- the Hanging Rock Energy Facility, a natural gas-fired electric generation plant located in Lawrence County, Ohio with a nominal capacity of 1,240 MW, operated by Duke Energy Hanging Rock, LLC ("Duke Hanging Rock"), a direct, wholly-owned subsidiary of DENA;
- the Lee Energy Facility, a natural gas-fired, simple cycle electric generation plant located in Lee County, Illinois with a nominal capacity of 640 MW, owned and operated by Duke Energy Lee, LLC ("Duke Lee"), an indirect, wholly-owned subsidiary of DENA;[29]
- an undivided 75% interest in the Vermillion Energy Facility, a 648 MW gas-fired generation facility located in Vermillion County, Indiana, with such interest and corresponding entitlements owned and operated by Duke Energy Vermillion, LLC ("Duke Vermillion"), an indirect, wholly-owned subsidiary of DENA;[30] and
- the Washington Energy Facility, a natural gas-fired electric generation facility located in Washington County, Ohio with a nominal capacity of 620 MW, owned and operated by Duke Energy Washington, LLC ("Duke Washington"), a direct, wholly-owned subsidiary of DENA.

For purposes of requesting Section 203 authorization herein, reference to transferring the DENA Midwest Assets includes the jurisdictional facilities held by the DENA Subsidiaries – namely, interconnection facilities, tariffs, contracts, books and records. The transfer of ownership of the DENA Midwest Assets will be accomplished either as a transfer of the assets to CG&E by the appropriate DENA Subsidiary, or as a transfer of the DENA Subsidiary itself. In the more likely event that transfer is accomplished as a transfer of the DENA Subsidiary itself, such transfer could be accomplished by having the owner of the DENA Subsidiary transfer its

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[29] Duke Lee is a direct, wholly-owned subsidiary of Duke Energy Lee Holding, Inc. which, in turn, is a direct, wholly-owned subsidiary of DENA.

[30] Duke Vermillion is a direct, wholly-owned subsidiary of Duke Energy Trenton, LLC ("Duke Trenton"). Duke Trenton is a direct, wholly-owned subsidiary of DE Power Generating, LLC which, in turn, is a direct, wholly-owned subsidiary of DE Power Generating Holdings, LLC ("DPGH"). DPGH is a direct, wholly-owned subsidiary of Catawba River Investments II, LLC which, in turn, is a direct, wholly-owned subsidiary of DENA.

rights, title, and interest directly to CG&E or through a multiple-step process where, for business reasons, the DENA Subsidiary could be transferred momentarily to one or more Duke Energy entities before being transferred to CG&E. Once a DENA Subsidiary has been transferred to CG&E, the DENA Subsidiary may be merged with CG&E, with CG&E remaining as the surviving entity. Regardless of whether the transfer of the DENA Midwest Assets is accomplished through the transfer of a DENA Subsidiary's assets or the entire DENA Subsidiary, CG&E will be the entity that owns and controls the DENA Midwest Assets.

Duke Energy intends to effectuate the transfer of its DENA Midwest Assets as an equity infusion into CG&E at book value. In conjunction with the transfer of these assets, Duke Energy or another appropriate affiliate intends to enter into a financial arrangement with CG&E to eliminate any potential cash shortfalls that may result from owning and operating these assets.

APPENDIX 2
SUMMARY OF MERGER SYNERGIES

The combination of Duke Energy and Cinergy (the "Applicants") enables the succeeding company to realize substantial benefits in the form of economies, efficiencies and operating effectiveness across the corporate, shared services, regulated, and certain non-regulated operating areas of the Applicants. These synergies relate to a variety of operational functions and will result in benefits that will accrue to customers. These potential savings areas are directly attributable to the merger and would not occur in the absence of the merger.

As the following table illustrates, approximately $2.1 billion in total gross cost savings (corporate, shared services, regulated, and non-regulated functions) are possible over the first five years following the close of the transaction, as a direct result of the merger. This amount includes approximately $780 million in gross cost savings that are directly attributable to the non-regulated business segment.

Approximately $840 million in costs-to-achieve associated with closing the transaction or with realizing the identified total gross cost savings, and one other offset to these identified savings, explained more fully below, have been identified. Of this amount, approximately $61 million in costs-to-achieve relate solely to the non-regulated business.

TABLE 1: Total Savings

($ in thousands)

Five Year Total Potential Savings Summary

Potential Areas ($ in 000s)						
Regulated and Corporate:	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Five-year Total**
Staffing Savings	$59,415	$96,154	$110,311	$116,904	$123,788	**$506,572**
Corporate & Administrative Programs Savings	$60,594	$73,506	$77,979	$81.269	$84,730	**$378,077**
Information Technology Savings	$16,011	$28,889	$44,084	$58.937	$72,396	**$220,318**
Supply Chain Savings	$26,888	$31,824	$36,875	$42.043	$47,330	**$184,960**
Fuel Savings	$6.992	$7,642	$8.296	$8,489	$8.686	**$40,106**
Total Gross Corp/Regulated Savings	**$169,901**	**$238,016**	**$277,546**	**$307,642**	**$336,929**	**$1,330,034**
Corp/Regulated Costs-to-Achieve	($457.968)	($138.229)	($72.328)	($48.723)	($48.744)	**($765.992)**
Corp/Regulated Pre-Merger Initiatives	($1.912)	($1.956)	($2.002)	($2.048)	($2.096)	**($10.014)**
Net Corporate and Regulated Savings	($289.979)	$97.830	$203.216	$256.871	$286.089	$554.027
Non-Regulated:						
Non-Regulated Savings	$127,942	$154,014	$159,879	$165.976	$172.313	$780,123
Non-Regulated Costs-to-Achieve	($48 570)	($12.690)	$0	$0	$0	($61.260)
Net Non-Regulated Savings	$79,372	$141,324	$159,879	$165,976	$172,313	$718,863
Summary						
Total Gross Savings	**$297,842**	**$392,030**	**$437,425**	**$473,618**	**$509,242**	**$2,110,157**
Total Costs-to-Achieve / Pre-Merger Initiative	($508.450)	($152,876)	($74,330)	($50.772)	($50,840)	($837.267)
Total Net Savings	($210.608)	$239,154	$363,095	$422,847	$458,403	$1,272,890

With respect to the regulated business segment, the merger of the Companies is anticipated to result in cost savings that will permit rates in the future to be below the level that otherwise would have been necessary on a stand-alone basis for either of the two Companies. As shown in Table 1, approximately $1.3 billion of estimated gross cost savings from the corporate, shared services and regulated business segments have been identified over the first five-years following the close of the transaction. In addition, approximately $766 million of out-of-pocket costs-to-achieve these savings and approximately $10 million of cost cutting measures planned or initiated by Cinergy prior to the merger (pre-merger initiatives) were identified as offsets to savings. Netting these cost-to-achieve and pre-merger initiatives against the gross cost savings results in $554 million in net savings for this five-year period. These net savings are expected to benefit all stakeholders, including customers and shareholders, and result in a stronger, more

competitive company. These savings generally arise from the common corporate, shared services, and regulated business back-office support functions and are allocated appropriately among all regulated jurisdictions and non-regulated operations. Attaining these savings will not result in any adverse impact to service quality, reliability or safety. Although the cost savings estimated over the period generally will continue into perpetuity, only a five-year period has been used to present these savings as this period fully illustrates the ramp-up in savings realization.

The expected savings categories are described below:

Corporate and Headquarters Staffing – This category captures position reductions due to redundancies in staffing levels associated with corporate and administrative functions, such as finance and accounting and human resources among others.

Utility Support Staffing –Position reductions in operating support areas, such as asset management, operations planning, customer care and other business unit support related to redundancies in staffing levels are reflected in this category. These reductions will not adversely affect service quality, reliability or safety.

Corporate Programs - Reductions in non-labor programs and expenses, such as insurance and shareholder services, resulting from economies of scale and cost avoidance are contained in this category. Savings were identified and quantified in the following areas: administrative and general overhead, association dues, benefits, directors' fees, facilities, insurance, inventory, professional services, shareholder services, and transportation.

Information Technology – This category captures consolidation of operating environments including data centers, network servers, workstations and applications, among other areas, from the selection of a single operating platform.

Supply Chain – Reduction in supply chain costs will be possible due to improved strategic sourcing of materials and contract services from specification standardization, vendor consolidation, rationalization of requirements, and aggregation of spend for purchasing. The combined company can achieve savings through the centralization of purchasing and inventory functions related to the construction, operation and maintenance of generating plants, service centers, warehouses and headquarters.

Coal Supply - Consolidation of commodity supply requirements from alignment of sources, assessment of coal specification requirements, and aggregation of contracts will be possible from

the merger.

Overall Costs-to-Achieve

Costs are incurred in all mergers from the process of combining the two entities and attaining the identified cost savings. These costs reflect out-of-pocket cash payments and usually are one-time payouts incurred as a result of the merger. The expected cost categories are described below:

Separation – Costs incurred in conjunction with position eliminations associated with the merger, along with other associated expenditures related to fair and equitable treatment of employees.

Relocation – Costs necessary to provide for efficient consolidation of certain functional areas across the locations of the Applicants.

Directors' and Officers Coverage - The level of incremental insurance expense incurred on behalf of the departing directors and officers.

Systems Integration – Costs incurred in the integration of the information technology and services functions of the Applicants. A principal element of these costs relates to integrating the diverse applications of the Applicants. In addition, the voice, data and video networks will also be integrated through expanded telecommunications capabilities, and the data centers will be consolidated and elements of the network such as servers will be rescaled to meet the needs of the business.

Regulatory Process and Compliance – Costs incurred for preparation and pursuit of regulatory filings, such as those related to SEC, FERC, NRC, FCC and DOJ filings and the merger cases before the various state regulatory jurisdictions. In addition, certain costs were incurred to satisfy expanded compliance and fiduciary requirements, such as in due diligence.

Internal / External Communications - Communication expenses that arise from the need to disseminate merger information to the various stakeholders of the individual organizations and combined company.

Transition Costs - Out-of-pocket travel costs of internal employee groups in accomplishing the integration and relate to air, lodging and per diem expense, as well as the cost of external assistance.

Facilities – Costs associated with consolidation of facilities resulting from reduction in total staffing and the efficient consolidation of functions.

Contract Path - Costs related to the establishment of a direct transmission interconnection between the Duke Power and Cinergy service territories to physically comply with the requirements of interconnection under the Public Utility Holding Company Act of 1935.

Transaction Costs – Costs incurred for assistance from investment bankers with certain aspects of the merger.

Cost –Benefit Assessment

As explained above, approximately $1.3 billion in gross cost savings have been identified in the corporate, shared services and regulated business support areas over the first five years following the close of the merger. Approximately $766 million in out-of-pocket costs-to-achieve (most of which are one-time, non-recurring expenditures) and $10 million in pre-merger initiatives were also identified related to the close of the merger and the realization of the estimated cost savings. These offsets to the estimated savings are incurred before and soon after the close of the merger. Consequently, approximately $554 million in net cost savings are created by the merger beyond any associated costs in the first five years following the close of the merger.

APPENDIX 3
PRO FORMA ACCOUNTING ENTRIES

The Applicants are providing pro forma accounting entries as indicated below showing the proposed accounting for the Transaction on the books of Duke Power and CG&E, the entities subject to the Commission's jurisdiction that are required to use the Commission's Uniform System of Accounts and whose books will be affected by the Transaction. The amounts used to determine these entries were based on the book values of the Applicants' assets and liabilities as of March 31, 2005.

Applicants are working through the specific mechanics of certain transfers that will take place as part of the Transaction, including the anticipated consolidation of DENA's Midwest Generation Assets with CG&E as described in Section IV.B of the Application and the anticipated distribution by Duke Power Company LLC of the limited liability interests in Duke Capital LLC as described in Appendix 1 of the Application. Although various financing structures are being evaluated, Applicants do not intend to use "push down" accounting in a manner that will detrimentally affect the ratepayers of the Applicants' operating companies.[1] The proposed accounting entries reflect the Applicants' best present assessment of the manner in which the Transaction will ultimately be recorded for accounting purposes. To the extent necessary, Applicants respectfully requests waiver of the obligation under 18 C.F.R. § 33.5 to submit accounting entries showing the effect of the Transaction on the regulated entities' income statements or other relevant financial statements. Duke Energy will submit proposed final accounting within six months of the consummation of the merger showing all merger-related accounting entries made on the books and records of jurisdictional facilities required to use the

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1 See, e.g., SFPP, L.P., 111 FERC ¶ 61,334, at PP 65-67 (2005) (holding that "push down accounting" is consistent with GAAP and FERC precedent, but that it "cannot be reflected in rates absent a showing of specific benefits to ratepayers").