

Lazard compared these ranges to the current market price of \$40.15 per Cinergy share and the implied Cinergy merger consideration of \$45.79 per share of Cinergy common stock.

*Cinergy Discounted Cash Flow Analysis.* Using the Cinergy base case estimates for 2005 to 2008, Lazard performed an analysis of the present value of the unlevered free cash flows that Cinergy could generate from 2005 and beyond. In calculating the terminal value Lazard assumed perpetual growth rates of 2.00% to 2.50% for the projected free cash flows of Cinergy for periods subsequent to 2008. The projected cash flows were then discounted to present value using discount rates ranging from 5.75% to 6.25%, based on Cinergy's estimated weighted average cost of capital. The results of the analysis are set forth in the following table:

Discount Rate	Equity Value Per Share at Perpetual Growth Rate (1)		
	2.00%	2.25%	2.50%
5.75%	\$40.28	\$44.58	\$49.53
6.00%	36.23	39.96	44.23
6.25%	32.64	35.93	39.65

(1) Includes net present value of synfuel tax benefits of approximately \$200 million, or \$1 per share, valued separately on a discounted cash flow basis, as per Wall Street research estimates.

Based on the foregoing, Lazard calculated an implied price per share range for Cinergy common stock of \$38.00 to \$47.00, as compared to the current market price of \$40.15 per Cinergy share and the implied Cinergy merger consideration of \$45.79 per share of Cinergy common stock.

Lazard also calculated an implied price per share range following the methodology described above, but included in the calculation the pro rata value to Duke Energy, net of premium paid and cost-to-achieve, of synergies that Duke Energy management anticipates will result from the mergers. Based on the foregoing, Lazard calculated an implied price per share range for Cinergy common stock of \$41.00 to \$51.50, as compared to the current market price of \$40.15 per Cinergy share and the implied Cinergy merger consideration of \$45.79 per share of Cinergy common stock.

*Precedent Transaction Analysis.* Lazard reviewed and analyzed sixteen merger transactions since 1997 involving companies in the electric utility industry. The precedent transactions were (listed by acquiror followed by the acquired company and the date these transactions were publicly announced):

- Exelon Corporation / Public Service Enterprise Group Incorporated—December 20, 2004;
- Ameren Corporation / Illinois Power Company—February 3, 2004;
- Ameren Corporation / CILCORP Inc. (The AES Corporation)—April 28, 2002;
- Energy East Corporation / RGS Energy Group, Inc.—February 20, 2001;
- Potomac Electric Power Company / Conectiv—February 12, 2001;
- Public Service Company of New Mexico / Western Resources electric utility operation—November 9, 2000;
- National Grid Group Plc / Niagara Mohawk Holdings, Inc.—September 5, 2000;
- FirstEnergy Corp. / GPU, Inc.—August 8, 2000;
- The AES Corporation / IPALCO Enterprises, Inc.—July 17, 2000;
- PowerGen plc / LG&E Energy Corp.—February 28, 2000;
- Investor Group / MidAmerican Energy Holding Company—October 25, 1999;

- Carolina Power & Light Company / Florida Progress Corporation—August 23, 1999;
- Dynegey Inc. / Illinova Corporation—June 14, 1999;
- Scottish Power plc / PacifiCorp—December 7, 1998;
- CalEnergy Company, Inc. / MidAmerican Energy Holdings Company—August 12, 1998; and
- American Electric Power Company, Inc. / Central and South West Corporation—December 22, 1997.

Lazard calculated the following multiples for the selected transactions used in the analysis:

	<u>Range</u>	<u>Median</u>
<i>Multiple of Equity Purchase Price to:</i>		
Last Twelve Months (“LTM”) EBITDA . . . . .	5.5x – 9.5x	7.8x
LTM EBIT . . . . .	7.9 – 19.6	12.8
LTM Earnings . . . . .	12.1 – 28.2	17.0
Book Value . . . . .	0.4 – 3.1	1.9

Based on the foregoing, Lazard calculated an implied price per share range for Cinergy common stock of \$39.00 to \$41.00, as compared to the current market price of \$40.15 per Cinergy share and the implied Cinergy merger consideration of \$45.79 per share of Cinergy common stock. Lazard noted that most of the selected precedent transactions were announced between 1997 and 2001, which may minimize their relevance as an appropriate valuation reference, particularly as the public market trading multiples for companies in the electric utility industry have generally increased.

*Premium Paid Analysis.* Lazard also performed a premiums paid analysis based upon the premiums paid in the precedent transactions listed above. The analysis was based on the one day, one week and four week implied premiums of such transactions. The implied premiums in this analysis were calculated comparing the per share transaction price prior to the announcement of the transaction to the target company’s stock price one day, one week and one month prior to the announcement of the transaction. The results of these calculations are as follows:

	<u>Range</u>	<u>Median</u>
One-Day . . . . .	7.0% –57.8%(1)	24.5%(1)
One-Week . . . . .	4.9 –58.4 (1)	31.3 (1)
One-Month . . . . .	(44.9) –36.2 (2)	12.2 (2)

(1) Trading prices not available for Ameren / Illinois Power, Ameren / CILCORP and Public Service Co. of New Mexico / Western Resources Electric Utility.

(2) Trading prices not available for Ameren / Illinois Power and Ameren / CILCORP.

Based on the foregoing, Lazard calculated an implied price per share range for Cinergy common stock of \$45.00 to \$50.00, as compared to the current market price of \$40.15 per Cinergy share and the implied Cinergy merger consideration of \$45.79 per share of Cinergy common stock.

*Duke Energy Comparable Companies Analysis.* Lazard reviewed and compared certain public and internal financial information relating to Duke Energy to corresponding financial data for comparable publicly-traded companies to derive an implied valuation range for Duke Energy. Lazard selected companies that shared characteristics with Duke Energy's utility and gas transmission businesses.

The companies included in the Duke Energy comparable companies analysis were:

<u>Electric Utility</u>	<u>Gas Transmission</u>
<ul style="list-style-type: none"> <li>• American Electric Power Company, Inc.</li> <li>• Constellation Energy Group, Inc.</li> <li>• Dominion Resources, Inc.</li> <li>• Entergy Corporation</li> <li>• Exelon Corporation</li> <li>• FPL Group, Inc.</li> <li>• Progress Energy, Inc.</li> <li>• The Southern Company</li> </ul>	<ul style="list-style-type: none"> <li>• Enbridge Inc.</li> <li>• El Paso Corporation</li> <li>• Kinder Morgan, Inc.</li> <li>• Southern Union Company</li> <li>• TransCanada Corporation</li> <li>• The Williams Companies, Inc.</li> </ul>

In general, financial data used was as of March 31, 2005 or December 31, 2004, depending on the date of the most recently available information for each company, and market data was as of May 4, 2005. Projected earnings per share and long-term growth rates were based on median IBES estimates as of May 4, 2004. Other projected information was based on selected Wall Street equity research reports. The results of this review of comparable companies was as follows:

	<u>Electric Utility Peer Group Median</u>		<u>Gas Transmission Peer Group Median</u>	
	<u>Range</u>	<u>Median</u>	<u>Range</u>	<u>Median</u>
<i>Multiple of stock price to:</i>				
Estimated 2005 EPS . . . . .	13.8x-16.1x	15.5x	15.9x-20.3x	17.9x
Projected 2006 EPS . . . . .	13.2 -15.1	14.2	13.4 -18.7	16.7
Reported book value per share . . . . .	1.4 - 3.5	2.0	1.8 - 3.3	2.1
<i>Multiple of enterprise value to:</i>				
Estimated 2005 EBITDA . . . . .	7.4x-10.0x	8.6x	7.5x-12.8x	9.5x
Projected 2006 EBITDA . . . . .	7.2 - 9.5	8.1	7.1 -12.9	8.9
Estimated 2005 EBIT . . . . .	11.2 -15.7	12.1	11.3 -18.6	12.6
Projected 2006 EBIT . . . . .	10.4 -15.3	11.5	10.8 -18.8	11.7

Applying the representative ranges of multiples derived from the comparable companies analysis, Lazard calculated a range of implied equity values per share of Duke Energy. Lazard made separate calculations based on (1) estimates for Duke Energy results of operations from selected Wall Street equity research reports, and (2) internal estimates of Duke Energy's management.

Based on the foregoing analysis, Lazard derived the following ranges of implied equity values per share of Duke Energy common stock:

	<u>Implied Value per Share of Duke Energy</u>
<i>Based on:</i>	
Wall Street Estimates . . . . .	\$28.00–\$32.00
Duke Energy’s Management Estimates . . . . .	\$27.00–\$31.00

Lazard noted that the closing price of Duke Energy common stock on May 4, 2005 was \$29.35.

*Duke Energy Sum-of-the-Parts Valuation Analysis.* Lazard reviewed projections and other metrics for each of the following business segments of Duke Energy: Duke Power, Duke Energy Gas Transmission (DEGT), Duke Energy North America (DENA), Duke Energy Field Services (DEFS), Duke Energy International (DEI) and Crescent Resources LLC (Crescent). For DEGT, DEFS and DEI, Lazard analyzed projected 2006 EBITDA; for Duke Power, projected 2006 net income; for Crescent, book value as of December 31, 2004; and for DENA, EV/kW. The metrics reviewed by Lazard were based on Wall Street equity research reports and other publicly available information.

Based on a group of publicly-traded peer companies, Lazard applied relevant multiple ranges to the metrics listed above for each segment, to arrive at a range of enterprise values for each of those segments. Lazard calculated an implied enterprise value reference range of \$41.0 billion to \$45.8 billion for Duke Energy. Lazard further calculated an implied price per share range for Duke Energy common stock of \$27.68 to \$32.80, as compared to the \$29.35 price per share as of May 4, 2005.

*Duke Energy Discounted Cash Flow/Sum-of-the-Parts Valuation.* Using Duke Energy management’s internal estimates for 2005 to 2007, Lazard performed an analysis of the present value of the unlevered free cash flows that the Duke Power and DEGT segments could generate from 2005 and beyond. In calculating the terminal value of Duke Power and DEGT, Lazard assumed perpetual growth rates of 1.50% to 2.00% and 2.50% to 3.00%, respectively, for the projected free cash flows of each segment for periods subsequent to 2007. The projected cash flows were then discounted to present value using discount rates ranging from 5.75% to 6.25% for Duke Power, and 6.50% to 7.00% for DEGT, which were based on Duke Power’s and DEGT’s respective estimated weighted average cost of capital. Based on the foregoing, Lazard calculated an implied enterprise value range for each of the Duke Power and DEGT segments. Lazard combined such ranges of enterprise value with ranges of enterprise value it calculated for each of the DENA, DEFS, DEI and Crescent segments using the publicly-traded peer companies multiples it used in the sum-of-the part valuation analysis described under the heading “—Duke Energy Sum-of-the-Parts Valuation Analysis,” but applying to such ranges Duke Energy’s internal projections. Lazard calculated an implied enterprise value reference range of \$42.6 billion to \$48.8 billion for Duke Energy. Lazard further calculated an implied price per share range for Duke Energy common stock of \$29.22 to \$35.82, as compared to the \$29.35 price per share as of May 4, 2005.

*Contribution Analysis.* Lazard analyzed the relative contributions of Duke Energy and Cinergy to the combined company of (1) projected 2006 and 2007 revenues, (2) projected 2006 and 2007 EBITDA, (3) projected 2006 and 2007 EBIT, (4) projected 2006 and 2007 net income, and (5) book equity value as of March 31, 2005. All projections for Cinergy were based on the internal Cinergy base case estimates, and all Duke Energy projections were derived from the internal Duke Energy management projections.

The analysis indicated a range of contribution percentages of Cinergy from 23.0% to 29.2% in the mergers as compared to the pro-forma ownership of Cinergy resulting from the Cinergy exchange ratio of 25.0%:

	<u>Cinergy Percentage</u>	<u>Duke Energy Percentage</u>
<b>Revenues</b>		
Projected 2006 .....	29.2%	70.8%
Projected 2007 .....	29.0	71.0
<b>EBITDA</b>		
Projected 2006 .....	23.0%	77.0%
Projected 2007 .....	23.7	76.3
<b>EBIT</b>		
Projected 2006 .....	23.2%	76.8%
Projected 2007 .....	23.6	76.4
<b>Net Income</b>		
Projected 2006 .....	27.1%	72.9%
Projected 2007 .....	27.0	73.0
<b>Book Equity Value</b> .....	21.4%	78.6%
Equity Ownership at 1.56x exchange ratio .....	25.0%	75.0%

*Pro Forma Merger Analysis.* Lazard analyzed the potential pro forma effect of the mergers on Duke Energy's and Cinergy's projected earnings per share for calendar years 2006 and 2007 using the internal Duke Energy estimates and Cinergy base case estimates, and assuming a January 1, 2006 closing of the mergers. Lazard calculated the accretion/(dilution) to Duke Energy's and Cinergy's estimated earnings per share under three separate scenarios: (1) assuming no synergies from the mergers, (2) assuming synergies as projected by Duke Energy management, and (3) assuming synergies, but excluding one-time costs to achieve synergies, as projected by Duke Energy management. Lazard noted that the mergers are expected to be dilutive to Duke Energy earnings per share under scenario (1) in 2006 and 2007, and accretive in both years under scenarios (2) and (3). Lazard also noted that the mergers are expected to be dilutive to Cinergy 2006 and 2007 earnings per share under all three scenarios.

*Fees.* Duke Energy has agreed to pay Lazard a fee of \$3 million in connection with rendering its opinion, which fee became payable upon Lazard's delivery of its opinion to the Duke Energy board of directors. Duke Energy also has agreed to reimburse Lazard for its out-of-pocket expenses, including reasonable fees and expenses of legal counsel and any other advisor retained by Lazard, and to indemnify Lazard and its members, employees, agents, affiliates and controlling persons, if any, against liabilities, including liabilities under the federal securities laws, arising out of its engagement. Lazard in the past has provided investment banking and financial advisory services to Duke Energy and Cinergy, for which services Lazard has received customary fees. Lazard may also provide advisory and other services in the future to Duke Energy, Cinergy and the combined company.

Lazard provides a full range of financial advisory and other services and, in the course of its business, may from time to time effect transactions and hold securities, including derivative securities, of Duke Energy and Cinergy for its own account and for the account of clients and customers, and, accordingly, may hold a long or short position in such securities.

### **Interests of Duke Energy's Directors and Executive Officers in the Mergers**

Shareholders should note that some Duke Energy directors and executive officers have interests in the mergers as directors or officers that are different from, or in addition to, the interests of other Duke Energy shareholders. As provided in the merger agreement, at the completion of the mergers, the Duke Energy Holding board of directors will include 10 Duke Energy designees and 5 Cinergy designees. Accordingly, it is expected that certain current members of the Duke Energy board of directors will serve as directors of Duke Energy Holding upon completion of the merger. The merger agreement also provides that certain executive officers of Duke Energy may become officers of Duke Energy Holding when the mergers are consummated. Paul M. Anderson, the Chairman and Chief Executive Officer of Duke Energy, will become the Chairman of the Duke Energy Holding board of directors. Mr. Anderson has stated that he intends to serve in such capacity for at least one year following completion of the mergers.

The compensation committee of Duke Energy's board of directors has determined that the transactions contemplated by the merger agreement will not constitute a change in control within the meaning of the Duke Energy 1998 Long-Term Incentive Plan. Moreover, the transactions contemplated by the merger agreement will not constitute a change in control within the meaning of the employment and severance agreements of Duke Energy executive officers.

The merger agreement provides that, during any rolling twelve-month period, Duke Energy may grant discretionary bonus awards to directors and employees (including executive officers) in the form of cash or otherwise, in addition to any other payments made in the ordinary course of business consistent with past practice, with an aggregate value not in excess of \$60 million.

The merger agreement provides that Duke Energy may establish retention and/or project specific bonus plans that (in the aggregate over all such plans) provide for payments to directors and employees (including executive officers) not in excess of \$50 million during any rolling twelve-month period, provided that Duke Energy must notify the senior Cinergy Human Resources officer within five business days after making any individual such payment in excess of \$200,000. As of the date hereof, no such retention and/or project specific bonuses have been granted to any executive officers.

The merger agreement provides that Duke Energy and its subsidiaries may amend existing severance plans or establish new severance plans for employees (including executive officers, but in any event exclusive of severance arrangements applicable to only one individual) to provide additional severance benefits during any rolling twelve-month period with an aggregate value not in excess of \$50 million more than would have been provided had no such additional benefits been payable.

The merger agreement includes provisions relating to indemnification and insurance for directors and officers of Duke Energy. See “—Indemnification and Insurance” beginning on page 108.

### **Cinergy's Reasons for the Mergers and Recommendation of Cinergy's Board of Directors**

**The Cinergy board of directors has unanimously approved and adopted the merger agreement, has unanimously determined that the merger agreement and the transactions contemplated thereby, including the mergers, are advisable, fair to and in the best interests of Cinergy and the holders of Cinergy common stock, and unanimously recommends that Cinergy shareholders vote “FOR” the proposal to adopt the merger agreement and approve the mergers and the other transactions contemplated by the merger agreement.**

In reaching its determination to recommend the adoption of the merger agreement and approval of the transactions contemplated by the merger agreement, including the mergers, the Cinergy board of directors consulted with management, as well as Merrill Lynch, Cinergy's financial advisor, and Cinergy's internal and outside legal counsel, and considered various material factors, which are discussed below. The following discussion of the information and factors considered by the Cinergy board of directors is not intended to be exhaustive. In view of the wide variety of factors considered in

connection with the mergers, the Cinergy board of directors did not consider it practicable to, nor did it attempt to, quantify or otherwise assign relative weights to the specific material factors it considered in reaching its decision. In addition, individual members of the Cinergy board of directors may have given different weight to different factors. The Cinergy board of directors considered this information and these factors as a whole, and overall considered the relevant information and factors to be favorable to, and in support of, its determinations and recommendations. Among the material information and factors considered by the Cinergy board of directors were the following:

- *Strategic Considerations.* The Cinergy board of directors considered a number of factors pertaining to the strategic rationale for the mergers, including the following:
  - *Increased Scale and Scope, Diversification of Risk.* The Cinergy board of directors considered that the mergers will create a combined company with increased scale and scope in a variety of dimensions. The combined company will have greater diversification of markets and regulatory jurisdictions and more balance in its electric and gas delivery businesses and generation portfolio. By extending its operations across more states, the merger will diversify Cinergy's regulatory risk by subjecting the combined company's utility operations to the jurisdiction of multiple state regulators rather than only to the jurisdiction of Ohio, Kentucky, and Indiana regulators. The generation portfolio will have a greater balance in terms of fuel mix, as well as dispatch, and load-servicing capabilities.

The combined company will own and/or operate approximately 54,000 megawatts of electric generation domestically and internationally—relying on a diverse fuel mix of nuclear, coal, natural gas and hydroelectric power to meet customers' needs. Duke Energy also operates 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, is the largest producer of natural gas liquids (NGLs) in North America. The combined company will have operations in two-thirds of the United States, as well as Canada and several other international locations—primarily in Latin America.

The combined company will create a stronger portfolio of utility businesses with approximately 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 retail electric businesses will have more than 25,000 megawatts of generation and broad operational and regulatory experience. The Cinergy board of directors believes that the regulated businesses will contribute a substantial percentage of stable earnings and create the financial strength and scale to participate in the continuing consolidation of the utility sector, all at lower risk given the broader diversification described above.

- *Anticipated Financial Strength and Flexibility.* The combined company will have electric and gas businesses with stand-alone scale. Based on implied market capitalization, the electric business would be one of the top five in the United States; the gas business would be the largest in North America. The Cinergy board of directors considered that the increased scale and diversification of the combined company's operations are expected to provide improved earnings and cash flows, and therefore greater financial stability, for the combined company. Additionally, the Cinergy board of directors considered that certain of the combined company's assets would represent a smaller proportion of the combined company and that opportunities to monetize selected assets would increase.
- *Stronger Merchant Power Platform.* With more than 16,000 megawatts of unregulated generation, the Cinergy board of directors believed that the combined merchant power operation will benefit from increased fuel and market diversity. The Cinergy board of directors also considered that Duke Energy's gas-fired generation in the midwest complements Cinergy's coal-fired generation in that region.

- ***Shared Vision.*** The Cinergy board of directors considered that Cinergy and Duke Energy share a common vision of the future of consolidation in the utility sector and the present and future effect of deregulation on energy companies.
- ***Combined Expertise.*** The Cinergy board of directors considered that the mergers will combine complementary areas of expertise. The combined company is expected to be able to draw upon the intellectual capital, technical expertise, and experience of a deeper, more diverse workforce.
- ***Common Regulatory Framework.*** The Cinergy board of directors considered that the regulatory frameworks applicable to the combined companies' franchised service areas are generally favorable, diversify regulatory risk as identified above, and provide additional scale for the two companies' expertise in dealing with the complexities of regulation and the interplay of regulation and deregulation at state and federal levels.
- ***Cost Savings and Synergies.*** The Cinergy board of directors considered that, although no assurance can be given that any particular level of cost synergies will be achieved, management has estimated that, not including implementation costs, the combination will generate approximately \$400 million in annual gross synergies when fully realized in year three from across corporate activities, regulated utilities and non-regulated marketing, trading and generation businesses. These cost savings are expected to result from elimination of duplicate spending and overlapping functions, improved sourcing strategies, avoidance of planned expenditures and the consolidation of non-regulated business unit operations. The companies anticipate that upon review with state commissions, regulated savings will be shared between customers and shareholders over time in an equitable manner. The Cinergy board of directors took note of the fact that the cost synergy numbers were estimates, that they may change and that achieving the cost synergies is subject to a number of uncertainties.
- ***Share Prices and Tax-Free Exchange.*** The Cinergy board of directors took note of the historical stock prices of Cinergy and Duke Energy, including that the Cinergy exchange ratio represented a 13.4% premium over the closing price of Cinergy's common stock on May 6, 2005, the last trading day prior to the announcement of the business combination. The Cinergy board of directors considered the potential for appreciation in value of Duke Energy Holding common stock following the completion of the mergers, and the opportunity for Cinergy shareholders receiving shares of Duke Energy Holding common stock in the Cinergy merger to participate in this appreciation. The Cinergy board of directors also took into account the fact that the Cinergy merger is intended to be tax-free to the holders of Cinergy common stock.
- ***Financial Considerations.*** The Cinergy board of directors considered the expected financial impact of the Cinergy merger on Cinergy, including that the Cinergy merger is expected to be accretive to Cinergy shareholders by the second full year following the Cinergy merger. In particular, the Cinergy board of directors considered the anticipated impact of the Cinergy merger on the combined company's earnings per share and the financial prospects of Cinergy and Duke Energy. The Cinergy board of directors also considered historical trading information for shares of Cinergy common stock and Duke Energy common stock and the historical financial condition, operating results and businesses of Cinergy and Duke Energy, including information with respect to their respective earnings histories, return on capital and cash flow as well as comparisons of historical operational measures for Cinergy and Duke Energy. The Cinergy board of directors considered that, assuming Duke Energy raises its quarterly dividend as announced and the combined company maintains that dividend rate, the combined company dividend to be received by holders of Cinergy common stock at the 1.56 exchange ratio would be higher than the dividend they currently receive on their Cinergy shares. The Cinergy board of directors also considered that Cinergy shareholders would have the opportunity to participate in any potential separation of Duke Energy's gas operations after the mergers, should such a



separation occur. The Cinergy board of directors considered the long-term aspects of the mergers compared to other strategic alternatives.

- *Opinion of Financial Advisor.* The Cinergy board of directors considered the opinion of Merrill Lynch to the effect that as of May 8, 2005 and subject to and based upon assumptions made, matters considered and limitations set forth in its written opinion the Cinergy exchange ratio was fair, from a financial point of view, to the holders of Cinergy's common stock. See "—Opinion of Cinergy's Financial Advisor" beginning on page 91.
- *Recommendation of Management.* The Cinergy board of directors considered management's recommendation in support of the Cinergy merger.
- *Stand-Alone Strategy.* The Cinergy board of directors considered the prospects inherent in Cinergy's stand-alone business plan. The Cinergy board of directors considered that the benefits of the Cinergy merger are likely to be achieved on a more accelerated basis and with less uncertainty of execution than the stand-alone business plan.
- *Terms of the Merger Agreement.* The Cinergy board of directors reviewed the terms of the merger agreement, including the degree of mutuality and symmetry of representations, obligations and rights of the parties under the merger agreement, the conditions to each party's obligation to complete the mergers, the instances in which each party is permitted to terminate the merger agreement and the related termination fees payable by each party in the event of termination of the merger agreement under specified circumstances. See "The Merger Agreement" beginning on page 128 for a detailed discussion of the terms and conditions of the merger agreement.
- *Due Diligence.* The Cinergy board of directors considered the scope of the due diligence investigation conducted by management and Cinergy's outside advisors and evaluated the results thereof.
- *Employee Matters.* The Cinergy board of directors considered that Duke Energy has agreed that the combined company will give fair and equitable consideration to workforce reductions and job opportunities in the combined company. Duke Energy also has agreed in the merger agreement that the combined company will honor Cinergy's collective bargaining agreements and benefit plans and that Duke Energy intends to continue to provide for one year compensation and benefits which, in the aggregate, are no less favorable than those provided to employees of Cinergy immediately prior to the Cinergy merger. The Cinergy board of directors also considered the provisions of the term sheet governing Mr. Rogers' proposed amendment to his employment agreement and the amendments to employment agreements that approximately ten executives would sign.

The Cinergy board of directors also considered the potential risks of the Cinergy merger, including the following:

- *Fixed Exchange Ratio.* The Cinergy board of directors considered that the fixed Cinergy exchange ratio would not adjust upwards to compensate for declines, or downwards to compensate for increases, in the price of Duke Energy common stock prior to the closing of the Cinergy merger, and that the terms of the merger agreement did not include termination rights triggered expressly by a decrease in the value of the merger consideration due to a decline in the market price of Duke Energy common stock. The Cinergy board of directors determined that this structure was appropriate and the risk acceptable in view of: the Cinergy board of directors' focus on the relative intrinsic values and financial performance of Duke Energy and Cinergy and the percentage of the combined company to be owned by former holders of Cinergy common stock; and the inclusion in the merger agreement of other structural protections such as the ability to terminate the merger agreement in the event of a material adverse change in Duke Energy's business.

- *Duke Energy Business Risks.* The Cinergy board of directors considered certain risks inherent in Duke Energy's business and operations, including risks relating to future rates and returns associated with Duke Energy's regulated business operations, Duke Energy's nuclear generating facilities, Duke Energy's DENA operations and Duke Energy's environmental and other contingent liabilities. Based on reports of management and outside advisors regarding the due diligence process, the Cinergy board of directors believed that these risks were manageable as part of the ongoing business of the combined company.
- *Restrictions on Interim Operations.* The Cinergy board of directors considered the provisions of the merger agreement placing restrictions on Cinergy's operations until completion of the Cinergy merger, and the extent of those restrictions as negotiated between the parties.
- *Termination Fee.* The Cinergy board of directors considered the risk that although Cinergy has the right under certain limited circumstances to consider and participate in negotiations with respect to alternative acquisition proposals, the provisions of the merger agreement relating to the potential payment of a termination fee of \$300 million or expenses of \$35 million to Duke Energy may have the effect of discouraging such proposals. See "The Merger Agreement—Termination Fees; Reimbursement of Expenses" beginning on page 134 for further information.
- *Integration.* The Cinergy board of directors evaluated the challenges inherent in the combination of two business enterprises of the size and scope of Cinergy and Duke Energy, including the possibility the anticipated cost synergies and other benefits sought to be obtained from the mergers might not be achieved on the time frame contemplated or at all.
- *Shareholders.* The Cinergy board of directors considered the fact that Cinergy shareholders will hold approximately 24% of the common stock of the combined company after completion of the mergers and will therefore not control the combined company.
- *Personnel.* The Cinergy board of directors considered the adverse impact that business uncertainty pending completion of the Cinergy merger could have on the ability to attract, retain and motivate key personnel until the Cinergy merger is completed. The Cinergy board of directors also considered the level and impact of job reductions as a result of merger-related synergies.
- *Corporate Governance.* The Cinergy board of directors considered the corporate governance provisions of the merger agreement and the certificate of incorporation and by-laws to be adopted by Duke Energy Holding upon completion of the mergers, including that upon completion of the mergers and for a fixed period of time thereafter, the Duke Energy Holding board of directors will be comprised of five former Cinergy directors and ten former Duke directors.
- *Interests of Directors and Officers.* The Cinergy board of directors considered the interests that certain executive officers and directors of Cinergy may have with respect to the Cinergy merger in addition to their interests as shareholders of Cinergy, including that Mr. Rogers was expected to be Chief Executive Officer and President of the combined company and that the Cinergy merger would be considered a change in control under Cinergy's benefit and incentive plans and in the employment agreements of certain employees. See "—Interests of Cinergy's Directors and Executive Officers in the Mergers" beginning on page 103 for further information.

The Cinergy board of directors believed that, overall, the potential benefits of the mergers to Cinergy and Cinergy's shareholders outweighed the risks, many of which are mentioned above.

The Cinergy board of directors realized that there can be no assurance about future results, including results considered or expected as described in the factors listed above. It should be noted that this explanation of the Cinergy board of directors' reasoning and all other information presented in this section are forward-looking in nature and, therefore, should be read in light of the factors discussed under the heading "Forward-Looking Statements" beginning on page 43.

## Opinion of Cinergy's Financial Advisor

### *Opinion of Merrill Lynch, Pierce, Fenner & Smith Incorporated*

On May 8, 2005, Merrill Lynch delivered to the Cinergy board of directors its oral opinion, which opinion was subsequently confirmed in writing, to the effect that, as of that date and based upon the assumptions made, matters considered and limits of review set forth in its written opinion, the exchange ratio of 1.56 pursuant to the Cinergy merger was fair, from a financial point of view, to the holders of Cinergy common stock. A copy of Merrill Lynch's written opinion is attached to this joint proxy statement/prospectus as Annex D.

**Merrill Lynch's written opinion sets forth the assumptions made, matters considered and limits on the scope of review undertaken by Merrill Lynch. Each holder of Cinergy common stock is encouraged to read Merrill Lynch's opinion in its entirety. Merrill Lynch's opinion was intended for the use and benefit of the Cinergy board of directors, does not address the merits of the underlying decision by Cinergy to enter into the merger agreement or any of the transactions contemplated thereby, including the Cinergy merger, and does not constitute a recommendation to any shareholder as to how that shareholder should vote on the Cinergy merger or any related matter. Merrill Lynch was not asked to address nor does its opinion address the fairness to, or any other consideration of, the holders of any class of securities, creditors or other constituencies of Cinergy, other than the holders of Cinergy common stock. This summary of Merrill Lynch's opinion is qualified in its entirety by reference to the full text of the opinion attached to this joint proxy statement/prospectus as Annex D.**

In arriving at its opinion, Merrill Lynch, among other things:

- Reviewed certain publicly available business and financial information relating to Cinergy and Duke Energy that it deemed to be relevant;
- Reviewed certain information, including financial forecasts, relating to the business, earnings, cash flow, assets, liabilities and prospects of Cinergy and Duke Energy as furnished to it by Cinergy and Duke Energy, respectively, as well as the amount and timing of the cost savings and related expenses and retained synergies expected to result from the transaction, which are referred to as the "Expected Synergies," furnished to it by Cinergy;
- Conducted discussions with members of senior management and representatives of Cinergy and Duke Energy concerning the matters described in the preceding two bullet points, as well as their respective businesses and prospects before and after giving effect to the transaction and the Expected Synergies;
- Reviewed the market prices and valuation multiples for Cinergy common stock and Duke Energy common stock and compared them with those of certain publicly-traded companies that it deemed to be relevant;
- Reviewed the results of operations of Cinergy and Duke Energy and compared them with those of certain publicly-traded companies that it deemed to be relevant;
- Compared the proposed financial terms of the transaction with the financial terms of certain other transactions that it deemed to be relevant;
- Participated in certain discussions and negotiations among representatives of Cinergy and Duke Energy and their financial and legal advisors;
- Reviewed the potential pro forma impact of the transaction;
- Reviewed the merger agreement; and
- Reviewed such other financial studies and analyses and took into account such other matters as were deemed necessary, including an assessment of general economic, market and monetary conditions.

In preparing its opinion, Merrill Lynch assumed and relied on the accuracy and completeness of all information supplied or otherwise made available to it, discussed with or reviewed by or for it, or publicly available, and Merrill Lynch did not assume any responsibility for independently verifying such information or undertake an independent evaluation or appraisal of any of the assets or liabilities of Cinergy or Duke Energy and was not furnished with any such evaluation or appraisal, nor did it evaluate the solvency or fair value of Cinergy or Duke Energy, under any state or federal laws relating to bankruptcy, insolvency or similar matters. In addition, Merrill Lynch did not assume any obligation to conduct any physical inspection of the properties or facilities of Cinergy or Duke Energy. With respect to the financial forecast information and the Expected Synergies furnished to or discussed with Merrill Lynch by Cinergy or Duke Energy, Merrill Lynch assumed that such forecasts were reasonably prepared and reflected the best currently available estimates and judgment of Cinergy's or Duke Energy's management as to the expected future financial performance of Cinergy or Duke Energy, as the case may be, and the Expected Synergies. Merrill Lynch further assumed that the Duke Energy merger and the Cinergy merger would each qualify as a reorganization within the meaning of Section 368(a) of the Code.

Merrill Lynch's opinion was necessarily based upon market, economic and other conditions as they existed and could be evaluated on, and on the information made available to it as of, the date thereof. Merrill Lynch assumed that in the course of obtaining the necessary regulatory or other consents or approvals (contractual or otherwise) for the transaction, no restrictions, including any divestiture requirements or amendments or modifications, would be imposed that would have a material adverse effect on the contemplated benefits of the transaction.

In connection with the preparation of its opinion, Merrill Lynch was not authorized by Cinergy or the Cinergy board of directors to solicit, nor did it solicit, third-party indications of interest for the acquisition of all or any part of Cinergy.

Merrill Lynch's opinion did not express any opinion as to the prices at which Cinergy common stock or Duke Energy Holding common stock will trade following the announcement or consummation of the transaction, as the case may be.

The following is a summary of the material financial and comparative analyses performed by Merrill Lynch that were presented to the Cinergy board of directors in connection with the delivery of its opinion. Some of the financial analyses summarized below include information presented in a tabular format. In order to fully understand Merrill Lynch's financial analyses, the tables must be read together with the text of the summary. The tables alone do not constitute a complete description of the financial analyses. Considering the data set forth below in tables without considering the full narrative description of the financial analyses, including the methodologies and assumptions underlying the analyses, could create a misleading or incomplete view of the financial analyses performed by Merrill Lynch.

#### **Transaction Overview**

Based upon the \$29.36 closing price of Duke Energy common stock on May 6, 2005, the last full trading day prior to the public announcement of the mergers, and the Cinergy exchange ratio, Merrill Lynch noted that the implied value of the consideration to be received in the Cinergy merger per share of Cinergy common stock as of that date was \$45.80, which is referred to as the "implied consideration value." Based upon the implied consideration value, approximately 199.1 million diluted shares of Cinergy common stock outstanding (calculated using the treasury stock method), and approximately \$4.852 billion of net debt and liquidation value of preferred stock, Merrill Lynch also noted that the Cinergy merger implied a net offer value of approximately \$9.120 billion, and a transaction value of approximately \$13.971 billion, which is referred to as the "implied transaction value."

Merrill Lynch compared the implied consideration value to the closing price of Cinergy common stock on May 6, 2005 and to the average daily closing prices of Cinergy common stock for various time periods ending on that date and noted the following implied offer premia:

<u>Time Period</u>	<u>Cinergy common stock price</u>	<u>Implied Premium*</u>
Current (May 6, 2005) . . . . .	\$40.38	13.4%
1 week average . . . . .	\$40.10	14.2%
4 week average . . . . .	\$39.84	15.0%
8 week average . . . . .	\$39.86	14.9%
12 week average . . . . .	\$40.12	14.1%
52 week average . . . . .	\$39.63	15.6%

\* Based upon the implied consideration value of \$45.80

### **Analysis of Cinergy**

#### *Historical Trading Performance*

Merrill Lynch reviewed the historical trading prices for the Cinergy common stock separately and in relation to Duke Energy common stock and the Philadelphia Utility Sector Index of publicly-traded utilities. This review indicated that during the 52-week period ending May 6, 2005, the Cinergy common stock traded as low as \$34.92 per share and as high as \$42.63 per share, and during the 3-month period ending May 6, 2005, the Cinergy common stock traded as low as \$38.75 and as high as \$41.69. These trading prices compared to the closing price of Cinergy common stock on May 6, 2005 of \$40.38 and the implied consideration value of \$45.80.

#### *Comparable Public Companies Analysis*

Using publicly available information, Merrill Lynch compared certain financial and operating information and ratios for Cinergy with corresponding financial and operating information and ratios for the following six utility companies:

- Ameren Corp.,
- Constellation Energy Group, Inc.,
- DPL Inc.,
- FirstEnergy Corp.,
- PPL Corp., and
- Wisconsin Energy Corp.

Using publicly available information and research analyst estimates, Merrill Lynch reviewed for each of these companies:

- stock price as a multiple of estimated earnings per share for fiscal year 2005, which is referred to below as “2005E P/E”; and
- stock price as a multiple of estimated earnings per share for fiscal year 2006, which is referred to below as “2006E P/E.”

This analysis showed the following:

**Cinergy Comparable Public Companies Analysis**

<u>Multiple</u>	<u>High</u>	<u>Low</u>	<u>Mean</u>
2005E P/E .....	17.2x	13.5x	15.7x
2006E P/E .....	16.3x	12.4x	14.3x

Using both financial forecasts provided by Cinergy management, which are referred to as the “Cinergy Management Case,” and selected publicly available equity research reports and consensus earnings per share estimates published by First Call for the period 2004 through 2006, and projected earnings per share and long term growth rates published by First Call and selected equity research reports and discussions with Cinergy management for the period 2007 through 2009, which are collectively referred to as the “Cinergy Street Case,” Merrill Lynch also reviewed:

- the implied transaction value as a multiple of estimated earnings before interest, taxes, depreciation and amortization, or EBITDA, for fiscal year 2005, which is referred to below as “Implied transaction value/2005E EBITDA”;
- the implied transaction value as a multiple of EBITDA for fiscal year 2006, which is referred to below as “Implied transaction value/2006E EBITDA”;
- the implied consideration value as a multiple of estimated earnings per share for fiscal year 2005, which is referred to below as “2005E Implied P/E”;
- the implied consideration value as a multiple of estimated earnings per share for fiscal year 2006, which is referred to below as “2006E Implied P/E”; and
- the implied consideration value as a multiple of estimated earnings per share for fiscal year 2007, which is referred to below as “2007E Implied P/E.”

For purposes of Merrill Lynch’s analyses, to compare the multiples implied by the Cinergy Management Case and the Cinergy Street Case to Public Utility Companies (see table below), the Cinergy Management Case and the Cinergy Street Case were adjusted to exclude the financial performance (including the related tax credit under Section 29 of the Code) from Cinergy’s synthetic fuel production facilities, which are referred to collectively as the Cinergy synthetic fuel facility, through 2007, because such federal income tax credits generated by the Cinergy synthetic fuel facility expire at such time, and the implied transaction value and the implied consideration value were reduced by \$0.69 per share of Cinergy common stock, which amount represents the estimated net present value of the projected cash flows from the Cinergy synthetic fuel facility using a discounted cash flow analysis.

Merrill Lynch compared these multiples to the corresponding multiples for the group of six public utility companies listed above based upon their respective enterprise values (equity value plus

indebtedness minus cash plus liquidation value of preferred stock and minority interest) and share prices. This analysis showed the following:

<u>Multiple</u>	<u>Cinergy Management Case</u>	<u>Cinergy Street Case</u>	<u>Public Utility Companies*</u>
Implied transaction value/2005E EBITDA . . . . .	8.6x	9.1x	8.1x
Implied transaction value/2006E EBITDA . . . . .	7.9x	8.4x	—
2005E Implied P/E . . . . .	18.0x	18.0x	15.7x
2006E Implied P/E . . . . .	16.3x	16.7x	14.3x
2007E Implied P/E . . . . .	14.7x	15.6x	12.9x

\* Mean multiple

Merrill Lynch estimated the following implied equity value per share ranges of Cinergy common stock, before giving effect to the Expected Synergies, based upon the Cinergy Management Case and the Cinergy Street Case, in each case, excluding projected earnings from the Cinergy synthetic fuel facility, using the reference ranges shown below, plus the \$0.69 per share which represented the discounted cash flow from the Cinergy synthetic fuel facility. These implied equity values compared to the closing price of Cinergy common stock on May 6, 2005 of \$40.38 and the implied consideration value of \$45.80.

<u>Multiple</u>	<u>Reference Range</u>	<u>Implied Equity Value per Share of Cinergy Common Stock</u>	
		<u>Cinergy Management Case</u>	<u>Cinergy Street Case</u>
2005E P/E . . . . .	14.0x–16.0x	\$ 35.75–\$40.75	\$ 35.75–\$40.75
2006E P/E . . . . .	13.0x–15.0x	\$ 36.75–\$42.25	\$ 35.75–\$41.25

*Discounted Cash Flow Analysis*

Merrill Lynch performed a discounted cash flow, or DCF, analysis for Cinergy, valuing Cinergy as the sum of the DCF values of the following business segments:

- commercial business (including wholesale generation, energy marketing and trading activities), and
- regulated business (including regulated generation, transmission and distribution operations).

Merrill Lynch estimated the present value of the stand-alone, unlevered, after-tax free cash flows that these business segments could produce over the fiscal years 2005 to 2009 on a stand-alone basis before giving effect to the Expected Synergies. Estimated financial data for each of the business segments were based upon the Cinergy Management Case. The range of terminal values was derived by applying a range of multiples to fiscal year 2009 estimated EBITDA for each of the business segments. In order to derive implied equity value per share ranges for Cinergy, Merrill Lynch discounted the free cash flows and terminal values to present value using a range of discount rates and then subtracted net debt. The relevant discount rates and multiples used were as follows:

<u>Cinergy Business Segment</u>	<u>Discount Rate</u>	<u>2009E Terminal Multiple Range</u>
Commercial Business . . . . .	7.5%	7.5x–8.5x EBITDA
Regulated Business . . . . .	6.5%	7.5x–8.5x EBITDA

For purposes of this analysis, the projected cash flows through 2007 from Cinergy’s synthetic fuel facility were separately valued using a discounted cash flow analysis and a discount rate of 7.5%, and

Cinergy's power technology and infrastructure services business was separately valued based on book value.

This analysis indicated an implied equity value per share range of Cinergy common stock from approximately \$39.25 to \$46.75, compared to the closing price of Cinergy common stock on May 6, 2005 of \$40.38 and the implied consideration value of \$45.80.

#### *Research Analyst Price Targets*

Merrill Lynch reviewed the most recent Wall Street research equity analyst per share target prices for Cinergy common stock, which ranged from \$41.00 to \$46.00, compared to the closing price of Cinergy common stock on May 6, 2005 of \$40.38 and the implied consideration value of \$45.80.

#### **Analysis of Duke Energy**

##### *Historical Trading Performance*

Merrill Lynch reviewed the historical trading prices for the Duke Energy common stock. This review indicated that during the 52-week period ending May 6, 2005, the Duke Energy common stock traded as low as \$18.85 per share and as high as \$29.52 per share, and during the 3-month period ending May 6, 2005, the Duke Energy common stock traded as low as \$25.62 and as high as \$29.52. These trading prices compared to the closing price of Duke Energy common stock on May 6, 2005 of \$29.36.

##### *Comparable Public Companies Analysis*

Using publicly available information, Merrill Lynch compared certain financial and operating information and ratios for Duke Energy with corresponding financial and operating information and ratios for the following nine energy and power companies:

- Dominion Resources, Inc.,
- Edison International,
- Entergy Corp.,
- Exelon Corp.,
- FPL Group, Inc.,
- Kinder Morgan, Inc.,
- NiSource, Inc.,
- Southern Company Inc., and
- TXU Corp.

Using publicly available information and research analyst estimates, Merrill Lynch reviewed for each of these companies:

- stock price as a multiple of estimated earnings per share for fiscal year 2005, which is referred to below as "2005E P/E"; and
- stock price as a multiple of estimated earnings per share for fiscal year 2006, which is referred to below as "2006E P/E."



This analysis showed the following:

### Duke Energy Comparable Public Companies Analysis

<u>Multiple</u>	<u>High</u>	<u>Low</u>	<u>Mean</u>
2005E P/E .....	17.9x	12.6x	15.5x
2006E P/E .....	16.4x	10.6x	14.3x

Using publicly available information and research analyst estimates, Merrill Lynch also reviewed the historical trading prices for the Duke Energy common stock in relation to a composite index consisting of the nine public energy and power companies listed above on May 6, 2005 and for various time periods ending on that date. Merrill Lynch compared the Duke Energy common stock trading prices during those periods as a multiple of estimated earnings per share for the next twelve months, as published by First Call, which is referred to as "Forward P/E," to the Forward P/E for such other companies, and noted the differential between the Forward P/E for Duke Energy and such other companies. This analysis showed the following:

### Duke Energy Forward P/E Analysis

<u>Time Period</u>	<u>Duke Energy Forward P/E</u>	<u>Public Company Composite Index Forward P/E</u>	<u>Differential</u>
Current (May 6, 2005) .....	18.3x	15.2x	3.1x
One month average .....	18.1x	15.2x	2.8x
Three month average .....	17.7x	15.1x	2.6x
Six month average .....	17.5x	14.8x	2.7x
One year average .....	17.4x	14.0x	3.4x
Two year average .....	16.3x	13.5x	2.8x
Three year average .....	14.4x	12.7x	1.6x
Five year average .....	14.8x	12.9x	1.9x
Ten year average .....	14.7x	13.0x	1.7x

Using the reference ranges noted below, Merrill Lynch estimated the following implied equity value ranges per share of Duke Energy common stock, before giving effect to the Expected Synergies, based upon financial forecasts provided by Duke Energy management, as adjusted by Cinergy management, which are referred to as the "Duke Adjusted Case," and selected publicly available equity research reports for the period 2004 through 2006, and projected earnings per share and long term growth rates published by First Call and selected equity research reports for the period 2007 through 2009, which are collectively referred to as the "Duke Street Case." These implied equity values compared to the closing price of Duke Energy common stock on May 6, 2005 of \$29.36:

<u>Benchmark</u>	<u>Reference Range</u>	<u>Implied Equity Value per Share of Duke Energy common stock</u>	
		<u>Duke Adjusted Case</u>	<u>Duke Street Case</u>
2005E P/E .....	17.0x-19.0x	\$ 26.50-\$29.75	\$ 26.25-\$29.50
2006E P/E .....	16.0x-18.0x	\$ 26.00-\$29.25	\$ 27.25-\$30.50

*Discounted Cash Flow Analysis*

Merrill Lynch performed a DCF analysis for Duke Energy, valuing Duke Energy as the sum of the DCF values of the following five principal business entities:

- Duke Power,
- Duke Energy Gas Transmission,
- Duke Energy Field Services,
- Duke Energy North America, and
- Duke Energy International.

Merrill Lynch estimated the present value of the stand-alone, unlevered, after-tax free cash flows that these business entities could produce over the fiscal years 2005 to 2009 on a stand-alone basis before giving effect to the Expected Synergies. Estimated financial data for each of the business entities were based on the Duke Adjusted Case.

The range of terminal values was derived by applying a range of multiples to fiscal year 2009 estimated EBITDA for each of the relevant business entities. In order to derive implied equity value per share ranges for Duke Energy, Merrill Lynch discounted the free cash flows and terminal values to present value using a range of discount rates and then subtracted net debt. The relevant discount rates and multiples used were as follows:

<u>Duke Energy Business Segment</u>	<u>Discount Rate</u>	<u>2009E Terminal Multiple Range</u>
Duke Power . . . . .	6.0%	8.0x–9.0x EBITDA
Duke Energy Gas Transmission . . . . .	7.5%	8.0x–9.0x EBITDA
Duke Energy Field Services . . . . .	9.0%	7.0x–8.0x EBITDA
Duke Energy North America . . . . .	9.0%	8.0x–9.0x EBITDA
Duke Energy International . . . . .	9.5%	6.0x–7.0x EBITDA

For purposes of this analysis, Duke Energy’s Crescent Resources, LLC was separately valued using a sum-of-the-parts asset valuation.

This analysis indicated an implied equity value per share range of Duke Energy common stock from approximately \$27.25 to \$32.00, compared to the closing price of Duke Energy common stock on May 6, 2005 of \$29.36.

*Research Analyst Price Targets*

Merrill Lynch reviewed the most recent Wall Street research equity analyst per share target prices for Duke Energy common stock, which ranged from \$24.00 to \$33.00, compared to the closing price of Duke Energy common stock on May 6, 2005 of \$29.36.

**Exchange Ratio Analysis**

*Historical Implied Exchange Ratio Trading Analysis*

Merrill Lynch reviewed the per share daily closing trading prices for the Cinergy common stock and the Duke Energy common stock for the three-year period ending May 6, 2005, and calculated the historical implied exchange ratios by dividing the daily closing prices of Cinergy common stock by those of Duke Energy common stock. This analysis showed the following:

	<u>Implied Exchange Ratios</u>		
	<u>Low</u>	<u>Mean</u>	<u>High</u>
Current (05/07/05) . . . . .	1.375x	1.375x	1.375x
One Month . . . . .	1.357	1.386	1.414
Three Months . . . . .	1.357	1.441	1.544
Six Months . . . . .	1.357	1.510	1.702
One Year . . . . .	1.357	1.665	1.939
Two Years . . . . .	1.357	1.794	2.123
Three Years . . . . .	0.951	1.745	2.598

In addition, Merrill Lynch compared the Cinergy exchange ratio to the low, mean and high implied exchange ratios over the same time periods and noted the amount by which the Cinergy exchange ratio

constituted a premium (or discount) to the implied exchange ratios for such periods. This analysis showed the following:

	Implied Premium/(Discount)		
	Low	Mean	High
Current (05/07/05) . . . . .	13.4%	13.4%	13.4%
One Month . . . . .	15.0%	12.6%	10.3%
Three Months . . . . .	15.0%	8.3%	1.1%
Six Months . . . . .	15.0%	3.3%	(8.3%)
One Year . . . . .	15.0%	(6.3%)	(19.5%)
Two Years . . . . .	15.0%	(13.1%)	(26.5%)
Three Years . . . . .	64.1%	(10.6%)	(40.0%)

Based upon the 52-week and 3-month high and low trading prices for the Cinergy common stock and the Duke Energy common stock noted above, Merrill Lynch calculated a range of implied exchange ratios of a share of Cinergy common stock to a share of Duke Energy common stock, in each case compared to the Cinergy exchange ratio. This analysis showed the following:

	Implied Exchange Ratio	
	Low to High*	High to Low**
52-Week High/Low . . . . .	1.183	2.262
3-Month High/Low . . . . .	1.313	1.627

\* Calculated by dividing the low trading price of Cinergy common stock by the high trading price of Duke Energy common stock.

\*\* Calculated by dividing the high trading price of Cinergy common stock by the low trading price of Duke Energy common stock.

*Relative Comparable Public Companies Analysis*

Based upon the implied equity values per share of Duke Energy common stock and Cinergy common stock that were estimated using the comparable public companies analyses described above, Merrill Lynch calculated a range of implied exchange ratios of a share of Cinergy common stock to a share of Duke Energy common stock, based upon

- the Cinergy Management Case and the Duke Adjusted Case, and
- the Cinergy Street Case and the Duke Street Case.

This analysis yielded the following implied exchange ratios, compared to the Cinergy exchange ratio:

	Range of Implied Exchange Ratio	
	Low to High*	High to Low**
Cinergy Management Case and Duke Adjusted Case . . .	1.202	1.625
Cinergy Street Case and Duke Street Case . . . . .	1.172	1.552

\* Calculated by dividing the low estimated valuation of Cinergy common stock by the high estimated valuation of Duke Energy common stock.

\*\* Calculated by dividing the high estimated valuation of Cinergy common stock by the low estimated valuation of Duke Energy common stock.

*Relative DCF Analysis*

Based upon the implied equity values per share of Duke Energy common stock and Cinergy common stock that were estimated using the DCF methodologies described above, Merrill Lynch calculated a range of implied exchange ratios of a share of Cinergy common stock to a share of Duke Energy common stock, based upon the Cinergy Management Case and the Duke Adjusted Case. This analysis yielded the following implied exchange ratios, compared to the Cinergy exchange ratio:

Range of Implied Exchange Ratio	
Low to High*	High to Low**
1.227	1.716

\* Calculated by dividing the low estimated valuation of Cinergy common stock by the high estimated valuation of Duke Energy common stock.

\*\* Calculated by dividing the high estimated valuation of Cinergy common stock by the low estimated valuation of Duke Energy common stock.

*Relative Contribution Analysis*

Merrill Lynch calculated the relative contributions of Cinergy and Duke Energy to the combined company of projected EBITDA and net income for fiscal years 2005 to 2009, based upon the Cinergy Management Case and the Duke Adjusted Case, and the Cinergy Street Case and the Duke Street Case, respectively, in each case before giving effect to the Expected Synergies.

This analysis yielded the following implied exchange ratios, compared to the Cinergy exchange ratio:

	Range of Implied Exchange Ratio	
	Low to High*	High to Low**
Cinergy Management Case and Duke Adjusted Case . . .	1.494	2.100
Cinergy Street Case and Duke Street Case . . . . .	1.419	1.742

\* Calculated by dividing the low estimated valuation of Cinergy common stock by the high estimated valuation of Duke Energy common stock.

\*\* Calculated by dividing the high estimated valuation of Cinergy common stock by the low estimated valuation of Duke Energy common stock.

*Pro Forma Analysis*

Merrill Lynch analyzed the potential pro forma effect of the mergers on Cinergy shareholders for the years 2007 and 2008 using the Cinergy Management Case and the Duke Adjusted Case. These projections assumed, among other factors, estimates of retained synergies provided by Cinergy management. The pro forma impact was found to be dilutive to earnings in 2007 and accretive to earnings in 2008 to Cinergy shareholders.

The summary set forth above summarizes the material analyses performed by Merrill Lynch but does not purport to be a complete description of the analyses underlying the Merrill Lynch opinion or the presentation made by Merrill Lynch to the Cinergy board of directors. The preparation of a fairness opinion is a complex analytic process and is not necessarily susceptible to partial or summary description. Accordingly, Merrill Lynch believes that its analyses must be considered as a whole and that selecting portions of its analyses and the factors considered by Merrill Lynch, without considering all analyses and factors, could create an incomplete view of the processes underlying the Merrill Lynch opinion. Merrill Lynch did not assign relative weights to any of its analyses in preparing its opinion.

The matters considered by Merrill Lynch in its analyses were based on numerous macroeconomic, operating and financial assumptions with respect to industry performance, general business and economic conditions and other matters, many of which are beyond the control of Cinergy and Merrill Lynch, and involve the application of complex methodologies and educated judgments. In addition, no company utilized as a comparison in the analyses described above is identical to Cinergy or Duke Energy.

Any estimates contained in the analyses performed by Merrill Lynch are not necessarily indicative of actual values or future results, which may be significantly more or less favorable than suggested by such analyses. Additionally, estimates of the value of businesses or securities do not purport to be appraisals or to reflect the prices at which such businesses or securities might actually be sold. Accordingly, such analyses and estimates are inherently subject to substantial uncertainty. In addition, as described above, the Merrill Lynch opinion was among several factors taken into consideration by the Cinergy board of directors in making its determination to approve the merger agreement and the mergers. Consequently, Merrill Lynch's analyses should not be viewed as determinative of the decision of the Cinergy board of directors with respect to the fairness to Cinergy of the Cinergy exchange ratio.

The Cinergy board of directors selected Merrill Lynch to render a fairness opinion because Merrill Lynch is an internationally recognized investment banking firm with substantial experience in transactions similar to the mergers. As part of its investment banking business, Merrill Lynch is continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, leveraged buyouts, negotiated underwritings, secondary distributions of listed and unlisted securities and private placements.

Merrill Lynch acted as financial advisor to Cinergy in connection with the transaction and will receive a fee from Cinergy for its services pursuant to a letter agreement dated as of March 28, 2005. Pursuant to this letter agreement, Cinergy has agreed to pay Merrill Lynch for its services in connection with the Cinergy merger a fee of approximately \$5,900,000 in cash upon public announcement of the merger agreement, and has agreed to pay to Merrill Lynch an additional fee in cash equal to the greater of (a) 0.17% of the Purchase Price (as defined below) and (b) \$22,000,000, a portion of which will be payable upon adoption of the merger agreement by Cinergy shareholders and the balance of which will be payable contingent upon closing of the Cinergy merger, against which the fee payable to Merrill Lynch upon the public announcement of the merger agreement will be credited. For purposes of Merrill Lynch's engagement in connection with the Cinergy merger, "Purchase Price" means an amount equal to the sum of (a) the aggregate fair market value of the Duke Energy Holding common stock issued to Cinergy shareholders in connection with the Cinergy merger, (b) the amount of all indebtedness and preferred stock of Cinergy that is assumed, acquired, retired or defeased in connection with the Cinergy merger and (c) the fair market value of any assets of Cinergy (including working capital items) retained by Cinergy or any extraordinary dividends declared or paid by Cinergy. The fair market value of the Duke Energy Holding common stock and any other non-cash consideration delivered or retained in connection with the Cinergy merger will be the value determined by Cinergy and Merrill Lynch upon the closing of the Cinergy merger. Cinergy has also agreed to pay Merrill Lynch an amount in cash equal to 10% of any break-up, termination, topping, expense reimbursement or similar fee or payment received by Cinergy (net of any taxes payable by Cinergy in respect of such amounts), in connection with termination of the merger agreement, less the amount of any fee previously paid to Merrill Lynch, but in no event exceeding 33% of the success fee that was expected to be paid upon the closing of the Cinergy merger. Cinergy has also agreed to reimburse Merrill Lynch for its reasonable expenses, including attorneys' fees and disbursements.

Merrill Lynch has, in the past, provided financial advisory and financing services to Cinergy and Duke Energy and/or its affiliates and has received customary fees for such services. Merrill Lynch continues to provide such services to Cinergy and Duke Energy and will receive fees for the rendering of such services. In addition, in the ordinary course of its business, Merrill Lynch may actively trade the Cinergy common stock and other securities of Cinergy, as well as the Duke Energy common stock and

other securities of Duke Energy, for its own account and for the accounts of its customers and for Duke Energy and, accordingly, may at any time hold a long or short position in such securities.

#### **Interests of Cinergy's Directors and Executive Officers in the Mergers**

In considering the recommendation of the Cinergy board of directors with respect to the merger agreement, Cinergy's shareholders should be aware that some of Cinergy's executive officers and directors have interests in the mergers and have arrangements that are different from, or in addition to, those of Cinergy's shareholders generally. The Cinergy board of directors was aware of these interests and considered them, among other matters, in reaching its decisions to approve and adopt the merger agreement and to recommend that Cinergy's shareholders vote in favor of adopting the merger agreement and approving the mergers. Messrs. Duncan and Grealis, two of Cinergy's former executive officers, are no longer employed with Cinergy, and therefore their interests are not described separately below. See "—Former Executive Officers," on page 107.

*Equity Compensation Awards.* The merger agreement provides that upon completion of the mergers, each Cinergy stock option, including those held by executive officers and directors of Cinergy, will be converted into Duke Energy Holding stock options based on the Cinergy exchange ratio. In addition, the merger agreement provides that, upon completion of the Cinergy merger, each share of restricted stock or phantom stock and other equity award based upon shares of Cinergy common stock, including those held by executive officers and directors of Cinergy, will be converted into shares of restricted stock or awards based upon shares of Duke Energy Holding common stock based on the Cinergy exchange ratio. Upon completion of the Cinergy merger, each stock option and share of restricted stock or phantom stock held by executive officers and granted prior to the date of the merger agreement will vest in full. Equity compensation awards, including stock options and restricted stock, granted after the date of the merger agreement will not vest upon completion of the Cinergy merger, but will vest in accordance with their normal vesting schedule or, depending on the terms of the applicable award agreement, upon an earlier involuntary termination of employment without "cause" or a voluntary termination of employment for "good reason" (as each such term is defined in the applicable award agreement). Based on Cinergy equity compensation awards held by executive officers and directors of Cinergy as of May 9, 2005 and assuming a closing date of June 1, 2006, upon completion of the Cinergy merger, Messrs. Rogers, Cyrus and Turner, and the remaining executive officers and directors, as a group, respectively, would vest, as of completion of the Cinergy merger, in respect of 275,900, 51,900, and 39,600 and 369,800 shares of Cinergy common stock subject to their stock options and 129,049, 9,948, and 11,145 and 49,782 shares of Cinergy restricted stock and phantom stock. Under the employment agreements (described below), in the event that an executive officer terminates employment during the two-year period following a change in control, such as completion of the Cinergy merger, each of the executive officer's stock options will remain exercisable until the shorter of three months following termination of employment or the remaining term of the stock option (determined without regard to the termination of employment).

*LTIP Performance Share Awards.* Upon completion of the Cinergy merger, each performance share award granted under the Long-Term Incentive Compensation Program prior to the date of the merger agreement will be paid based on maximum performance levels without proration, which will result in a payout of 200% of the target award. In the absence of the Cinergy merger, the performance shares would be paid out based on Cinergy's actual level of achievement of the applicable performance measures, but without any assurance that the maximum achievement level would be reached. Upon completion of the Cinergy merger, each performance share award granted after the date of the merger agreement and prior to completion of the Cinergy merger, will be paid based on the greater of target performance or actual performance pro rated through completion of the Cinergy merger. Based on Cinergy performance share awards held by executive officers of Cinergy as of May 9, 2005 and assuming a closing date of June 1, 2006, upon completion of the mergers, Messrs. Rogers, Cyrus and Turner and the remaining executive officers, as a group, respectively, would be provided, as of completion of the Cinergy merger, 307,462, 57,782, and 44,110 and 210,724 shares of Cinergy common stock (or their cash equivalent) in connection with their performance share awards, plus accrued dividends. With respect to performance shares granted after the date of the merger agreement and prior to completion of the Cinergy merger, if, following completion of the Cinergy merger, during the period that the performance period was scheduled to occur, a participant in Cinergy's performance share program incurs an involuntary termination of employment without "cause" or a voluntary termination of employment for "good reason" (as each such term is defined in the applicable award agreement), such participant will receive a non-pro rated payment of such performance share awards based on target performance (reduced by the amount paid to such participant upon completion of the Cinergy merger with respect to such performance period).

*Retention Bonuses.* Prior to completion of the Cinergy merger, the merger agreement provides that Cinergy may provide for retention and/or project specific bonuses to employees, including executive officers, not in excess of \$50 million in the aggregate, except that Cinergy must obtain the prior approval of Duke Energy if retention and/or project specific bonuses exceed \$20 million in the aggregate during any twelve-month rolling period or if any such bonus exceeds \$200,000 for any one individual. As of the date hereof, no such retention and/or project specific bonuses have been granted to any executive officers.

*Employment Agreements.* Except for two executive officers, one of whom has no employment agreement and one of whom has an employment agreement that provides for two years of additional salary and welfare benefits in the event the executive's employment is involuntarily terminated without "cause" or is voluntarily terminated for "good reason" (as each term is defined in the agreement), each of Cinergy's executive officers, including Messrs. Rogers, Cyrus and Turner, is party to an employment agreement with a term that renews annually such that the term is never less than two years (absent a notice of non-renewal). Under the terms of the employment agreement, in the event that, within two years following a change in control, such as completion of the Cinergy merger, the executive's employment is involuntarily terminated without "cause" or is voluntarily terminated for "good reason" (as each term is defined in the agreements), the executive officer will be entitled to (1) a lump sum payment equal to three times the sum of (a) the executive's annual base salary and (b) the greatest of (I) the executive's target bonus for the year in which the date of termination occurs, (II) the annual bonus earned by the executive for the year immediately preceding the year in which the date of termination occurs, (III) the annual bonus earned by the executive for the year immediately preceding the year in which the change in control occurs, or (IV) the annual bonus that would have been earned by the executive for the year in which the date of termination occurs; (2) a lump sum equal to any benefits under Cinergy's supplemental life insurance program as of the date of termination, calculated as if the executive was fully vested as of the date of termination; (3) three additional years of age and service credit for purposes of determining the executive's entire supplemental retirement benefit as of the date of termination, the ability to elect to receive the actuarial equivalent of their entire supplemental retirement benefit in a lump sum, and full vesting in the executive's accrued benefits as



of the date of termination under the Cinergy retirement plans (i.e., the excess pension plan and supplemental executive retirement plan); (4) a lump sum payment, grossed up for taxes, equal to 36 months of premiums under Cinergy's life, disability, accident and health insurance benefit plans; (5) a lump sum payment of \$15,000, grossed up for taxes, in order to cover tax counseling services from an agency selected by the executive; (6) a lump sum payment of \$60,000, \$50,000 or \$35,000 (depending on the terms of the executive's agreement), grossed up for taxes, in lieu of any other rights with respect to the executive's automobile; (7) outplacement services and (8) a prorated annual bonus for the year of termination (unless the termination occurs in the same year as the change in control).

In the event that the executive would be subject to the excise tax under Section 4999 of the Code, the executive will receive an additional payment such that he or she is placed in the same after-tax position as if no excise tax had been imposed.

Unless waived by Cinergy, under the terms of the employment agreements, the executive officers are not permitted to sell or otherwise dispose of any shares of Cinergy's stock acquired pursuant to the exercise of a stock option, other than to pay the option exercise price or the related tax withholding obligation, until 90 days after termination of employment. In connection with the Cinergy merger and in consideration for the amendments to the employment agreements described below, Cinergy's board of directors has reserved the right to consider this provision such that following completion of the Cinergy merger and consistent with then-current Duke Energy policies and requirements, no such restriction might apply. Duke Energy's then-current minimum stock ownership policy, however, will continue to apply.

In connection with the signing of the merger agreement, Cinergy entered into amendments to the employment agreements with certain of its executive officers, including each of Messrs. Cyrus and Turner pursuant to which each of the executives has agreed to waive his or her right to resign for good reason and be entitled to severance benefits solely as a result of being required to relocate to Charlotte, North Carolina or, for some executives, Houston, Texas in connection with the Cinergy merger. In addition, the good reason definitions were amended to eliminate the executives' right to resign for good reason and collect severance due to changes in the executives' titles that may arise as a result of the Cinergy merger and to add a right to resign for good reason and collect severance pay in the event that Mr. Rogers fails to continue to serve as Chief Executive Officer of Duke Energy Holding following completion of the mergers (other than as a result of his death, disability, termination for "cause" or his voluntary resignation without "good reason").

Assuming that the Cinergy merger is completed on June 1, 2006 and each of the executive officers' employment is involuntarily terminated without "cause" or is voluntarily terminated for "good reason" immediately after completion, the estimated amount of additional cash severance (based upon current base salaries and maximum bonus opportunities and excluding supplemental retirement benefits and continued medical and welfare benefits) that would be payable to each of Messrs. Rogers, Cyrus and Turner, and the remaining executive officers, respectively, as a group, is approximately \$11,438,892, \$4,325,558, and \$3,670,182 and \$17,165,198, and the estimated lump sum actuarial equivalent of the enhanced supplemental retirement benefits payable as a result of the mergers to each of Messrs. Rogers, Cyrus and Turner, and the remaining executive officers, respectively, as a group is \$7,042,514, \$2,652,949, and \$1,361,747 and \$10,137,944. These estimates do not include excise tax gross-up payments which, depending on a variety of factors, Cinergy may be required to make.

*Term Sheet with James E. Rogers.* At the completion of the Cinergy merger, James E. Rogers will become President and Chief Executive Officer of Duke Energy Holding. In connection with adoption of the merger agreement, Duke Energy, Cinergy, Duke Energy Holding and Mr. Rogers executed a term sheet pursuant to which the parties agreed to amend Mr. Rogers' existing employment agreement, as described above, in certain respects to reflect the merger agreement and the transactions contemplated thereby. Mr. Rogers' employment agreement will be assumed by Duke Energy Holding

effective upon the completion of the Cinergy merger and will provide for a three-year term of employment commencing upon completion of the mergers, which will renew automatically for subsequent one-year periods thereafter if neither Mr. Rogers nor Duke Energy Holding gives notice prior to or as of a specified date.

Under the term sheet, Mr. Rogers has agreed to waive his right to claim “good reason” for a termination as a result of his required relocation to Charlotte, North Carolina. In addition, Mr. Rogers’ term sheet provides that the parties will negotiate in good faith to restructure the current compensation arrangements for Mr. Rogers to provide that he will be paid substantially in the form of equity compensation by which the current Duke Energy Chief Executive Officer is presently compensated, in any event on economic terms no less favorable than Mr. Rogers’ existing compensation arrangements.

If Mr. Rogers’ employment is involuntarily terminated without “cause” or Mr. Rogers resigns for “good reason” on or prior to the second anniversary of the completion of the Cinergy merger, or within two years following a change in control of Duke Energy Holding, then he will receive an amount no less than the economic value to which he would otherwise be entitled under his existing employment agreement had he terminated employment under such circumstances immediately following the completion of the Cinergy merger. If such termination of employment occurs at any time following the second anniversary of the completion of the Cinergy merger (other than within two years following a change in control of Duke Energy Holding), then he will receive an amount no less than the economic value to which he would otherwise be entitled under his existing employment agreement had he terminated employment immediately prior to the completion of the mergers (and, in either case, such economic value will be determined without regard to the form of his then-restructured compensation arrangements).

Under the term sheet, the parties have agreed to quantify the present value of Mr. Rogers’ supplemental retirement benefits (i.e., SERP benefits) immediately prior to the completion of the Cinergy merger and provide for the deferral of such amount. The parties also agreed to reimburse Mr. Rogers for the costs he incurs to relocate to Charlotte, North Carolina and to remove the restriction on the sale of stock acquired upon the exercise of stock options, provided that Mr. Rogers will be subject to applicable stock ownership guidelines.

*Annual Incentive Plan (Management Employees).* Upon a change in control, such as completion of the Cinergy merger, each corporate target goal and individual goal under the Annual Incentive Plan for management employees will be deemed to have been fully satisfied at the maximum level and each participant who is employed by Cinergy at the time of the change in control will be entitled to receive an annual performance award in the same manner as though the maximum incentive level had been obtained for the full performance period. In the absence of the Cinergy merger, the Annual Incentive Plan amounts would be paid out based on the actual level of achievement of the applicable performance measures, but without any assurance that the maximum incentive levels would be reached. In the event that Cinergy has not adopted an annual program in the year in which a change in control occurs, then each participant who is employed by Cinergy will be entitled to receive an annual performance award in the same manner as though the prior year’s annual program were in effect and the maximum incentive level had been obtained for the full performance period. Upon a change in control, the estimated amount of the annual incentive plan award (based upon the current base salaries and maximum bonus opportunities) that would be payable as a result of the mergers to each of Messrs. Rogers, Cyrus and Turner, and the remaining executive officers, respectively, as a group is \$2,405,005, \$676,229, and \$567,000 and \$2,437,718.

*Directors’ Plans.* Following a change in control, such as completion of the Cinergy merger, each director who participates in the Retirement Plan for Directors will be entitled to receive a lump sum payment of the actuarial equivalent of the benefits accrued and remaining unpaid as of the date of the change in control. The lump sum equivalent will be calculated assuming the interest rate used by the

Pension Benefit Guaranty Corporation in determining the value of immediate benefits as of the immediately preceding January 1. Following a change in control, such as completion of the Cinergy merger, each director's account under the Directors' Equity Compensation Plan, and, at the discretion of the compensation committee of the board of directors of Cinergy, amounts deferred by each director under the Directors' Deferred Compensation Plan or otherwise, become immediately payable.

*Nonqualified Executive Plans.* Upon a change in control, such as completion of the Cinergy merger, the compensation committee of the board of directors of Cinergy in its sole discretion may elect to accelerate the distribution of a participant's benefits under the Excess Pension Plan, Supplemental Executive Retirement Plan, 401(k) Excess Plan, Excess Profit Sharing Plan and Nonqualified Deferred Incentive Compensation Plan so that a participant's benefits will be distributed to the participant in a single lump sum payment no later than 30 days after the change in control. In addition, selected executive officers who participate in such plans have been provided the opportunity to elect to receive their benefits thereunder (and the supplemental retirement benefits provided under their employment agreements) in a lump sum in the event of termination of employment following the change in control.

*Non-Union Employees' Pension Plan.* During the three year period following a change in control, such as completion of the Cinergy merger, participants in the Non-Union Employees' Pension Plan, including the executive officers, are entitled to certain protections, including in the event that such plan is merged or consolidated with any other plan or a portion of its assets and liabilities are transferred to another plan, and the plan may not be amended in any manner that would adversely affect the computation or amount of, or the entitlement to, retirement benefits under the plan.

*Service of Directors.* As noted below, in the section entitled "The Mergers—Continuing Board and Management Positions," five of the 15 directors of Duke Energy Holding upon completion of the mergers will be individuals who were directors of Cinergy before completion of the mergers. Accordingly, it is expected that certain current members of the Cinergy board of directors will serve as directors of Duke Energy Holding upon completion of the merger.

*Indemnification.* The merger agreement includes provisions relating to indemnification and insurance for directors and officers of Cinergy. See "—Indemnification and Insurance" beginning on page 108.

*Former Executive Officers.* Mr. William J. Grealis retired from Cinergy effective as of June 1, 2005. For a description of his retirement and consulting agreement, see Exhibit 10-ffff to Cinergy's Quarterly Report on Form 10-Q for the period ended March 31, 2005, filed with the SEC on May 10, 2005. In addition to the benefit to which Mr. Grealis is entitled pursuant to the terms of his retirement and consulting agreement, assuming a closing date of June 1, 2006, upon completion of the Cinergy merger Mr. Grealis would be provided 17,562 shares of Cinergy common stock (or their cash equivalent) in connection with the performance share awards he held as of May 9, 2005 pursuant to the terms of the performance share agreements. Mr. R. Foster Duncan resigned from Cinergy effective as of June 30 2005; he and Cinergy are currently negotiating a mutually acceptable severance agreement that resolves all the parties' rights and obligations with respect to his employment at Cinergy.

#### **Continuing Board and Management Positions**

The Duke Energy Holding board of directors will consist initially of 10 directors designated by Duke Energy and 5 directors designated by Cinergy. Committee members and chairpersons will be chosen from among the members of the board of directors without regard to whether a director was formerly a director of Duke Energy or formerly a director of Cinergy. Under the merger agreement, prior to the first annual meeting of shareholders of Duke Energy Holding at which Directors are

elected following the effective date of the mergers, the size of the board of Duke Energy Holding may not be increased or decreased without the affirmative vote of at least 80% of the entire board.

The merger agreement provides that Mr. Rogers will be the President and Chief Executive Officer of Duke Energy Holding and Mr. Anderson will be the Chairman of the board of directors of Duke Energy Holding. In addition to the duties of the Chairman of the board of directors attendant to such position set forth in the by-laws of Duke Energy Holding, Mr. Anderson will have management responsibilities for analyzing potential strategic alternatives regarding the separation of Duke Energy Holding's gas and electric business, and, if approved by Duke Energy Holding's board of directors, the implementation of such separation. Accordingly, the President or other chief officer of the gas business will report directly to the Chairman of the board of directors (as well as to the President and CEO). In his capacity as President and CEO, Mr. Rogers will have all duties customary to such position.

Mr. Anderson and Mr. Rogers will jointly evaluate candidates to fill the 25 most senior officer positions at Duke Energy Holding, although in the event they cannot agree on a candidate, Mr. Rogers will select the individual to serve. These officer positions, however, will be subject to the approval (as a slate) of the pro forma board of directors of Duke Energy Holding.

As of the date of this joint proxy statement/prospectus, neither Duke Energy nor Cinergy has determined which directors will be appointed to the Duke Energy Holding board of directors, nor have Duke Energy, Cinergy, Duke Energy Holding, Mr. Anderson or Mr. Rogers determined who will be appointed to serve as the executive officers of Duke Energy Holding, except that Duke Energy and Cinergy have announced that Fred Fowler will lead the gas operations of Duke Energy Holding.

#### **Indemnification and Insurance**

Each of the parties to the merger agreement agreed that, to the fullest extent permitted under applicable law, all rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the consummation of the Cinergy merger existing as of the date of the merger agreement in favor of the current or former directors, officers, employees or fiduciaries under benefit plans currently indemnified by Cinergy and its subsidiaries or Duke Energy and its subsidiaries, as the case may be, as provided in their respective certificate or articles of incorporation, by-laws (or comparable organizational documents) or other agreements providing indemnification will survive the mergers and will continue in full force and effect in accordance with their terms. In addition, from and after the consummation of the Cinergy merger, directors, officers, employees and fiduciaries under benefit plans currently indemnified of Cinergy or Duke Energy or their respective subsidiaries who become directors, officers, employees or fiduciaries under benefit plans of Duke Energy Holding will be entitled to the indemnity rights and protections afforded to directors, officers, employees and fiduciaries under benefit plans of Duke Energy Holding.

Further, the merger agreement provides that for six years after the consummation of the mergers, Duke Energy Holding will maintain in effect the directors' and officers' liability (and fiduciary) insurance policies currently maintained by Cinergy and Duke Energy covering acts or omissions occurring on or prior to the consummation of the mergers with respect to those persons who are currently covered by Cinergy's and Duke Energy's respective directors' and officers' liability (and fiduciary) insurance policies on terms with respect to such coverage and in amounts no less favorable than those set forth in the relevant policy in effect on the date of the merger agreement. If such insurance coverage cannot be maintained, Duke Energy Holding will maintain the most advantageous policies of directors' and officers' insurance otherwise obtainable. In addition, each of Duke Energy and Cinergy may purchase a six-year "tail" prepaid policy prior to the consummation of the mergers on terms and conditions no less advantageous to the parties entitled to indemnification than the existing directors' and officers' liability (and fiduciary) insurance maintained by Duke Energy or Cinergy, as the case may be, covering without limitation the transactions contemplated by the merger agreement,

including the mergers. If Duke Energy or Cinergy purchases a “tail” prepaid policy prior to the consummation of the mergers, Duke Energy Holding will, and will cause Duke Energy and Cinergy, as the case may be, after the consummation of the mergers, to maintain such policy in full force and effect, for its full term, and to continue to honor their respective obligations under such policy.

The merger agreement also provides that from and after the consummation of the Cinergy merger, each of Duke Energy Holding and the corporation surviving the Cinergy merger will jointly and severally indemnify and hold harmless each present director and officer of Cinergy or any of its subsidiaries (in each case, for acts or failures to act in such capacity), determined as of the date of the merger agreement, and any person who becomes such a director or officer between the date of the merger agreement and the consummation of the Cinergy merger, against any costs or expenses (including reasonable attorneys’ fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of matters existing or occurring at or prior to the consummation of the Cinergy merger, whether asserted or claimed prior to, at or after the consummation of the Cinergy merger (including any matters arising in connection with the transactions contemplated by the merger agreement), to the fullest extent permitted by applicable law (and Duke Energy Holding and the surviving company in the Cinergy merger will also advance expenses as incurred to the fullest extent permitted under applicable law, provided that if required by applicable law the person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such person is not entitled to indemnification).

The merger agreement further provides that from and after the consummation of the Duke Energy merger, each of Duke Energy Holding and Duke Power, as the successor to the corporation surviving the Duke Energy merger, will jointly and severally indemnify and hold harmless each present director and officer of Duke Energy or any of its subsidiaries (in each case, for acts or failures to act in such capacity), determined as of the date of the merger agreement, and any person who becomes such director or officer between the date of the merger agreement and the consummation of the Duke Energy merger, against any costs or expenses (including reasonable attorneys’ fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of matters existing or occurring at or prior to the consummation of the Duke Energy merger, whether asserted or claimed prior to, at or after the consummation of the Duke Energy merger (including any matters arising in connection with the transactions contemplated by the merger agreement), to the fullest extent permitted by applicable law (and Duke Energy Holding or Duke Power will also advance expenses as incurred to the fullest extent permitted under applicable law, provided that if required by applicable law the person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such person is not entitled to indemnification).

The obligations of Duke Energy Holding, the surviving company in the Cinergy merger and Duke Power will not be terminated or modified by such parties in a manner so as to adversely affect any of the persons entitled to indemnification without the consent of such affected persons. If Duke Energy Holding, the surviving company in the Cinergy merger or Duke Power or any of their respective successors or assigns (i) consolidates with or merges into any other corporation or entity and is not to be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions will be made so that the successors and assigns of Duke Energy Holding, the surviving company in the Cinergy merger or Duke Power Company LLC, as the case may be, assumes all of the foregoing indemnification obligations.

### **Listing of Duke Energy Holding Common Stock**

It is a condition to the completion of the mergers that the Duke Energy Holding common stock issuable to Duke Energy and Cinergy shareholders pursuant to the merger agreement be approved for listing on the NYSE, subject to official notice of issuance.

### **Deregistration and Delisting of Duke Energy and Cinergy Common Stock**

If the mergers are completed, Duke Energy and Cinergy will delist their respective common stock from the NYSE and may deregister their respective common stock under the Exchange Act. The shareholders of each of Duke Energy and Cinergy will become shareholders of Duke Energy Holding and their rights as shareholders will be governed by Delaware law and by Duke Energy Holding's certificate of incorporation and by-laws. See "Comparison of Shareholder Rights" beginning on page 159.

Duke Energy and Cinergy may cease filing periodic reports pursuant to the Exchange Act with the SEC following deregistration of their common stock, subject to securities laws requirements. It is currently anticipated, however, that Duke Power, Duke Capital, Cinergy and Cinergy's utility subsidiaries will continue to engage in selected financing activities and likely will continue to issue securities registered pursuant to the Securities Act, and thus will continue to file periodic reports pursuant to the Exchange Act for some period of time, as required by the Exchange Act.

### **Dividends**

In accordance with the merger agreement, on June 29, 2005, Duke Energy increased its regular quarterly dividend to \$0.31 per share of common stock payable on September 16, 2005. Accordingly, Duke Energy's current dividend is \$1.24 per share of common stock on an annual basis. The most recent quarterly dividend declared by Cinergy was \$0.48 per share payable on May 15, 2005. Cinergy's current dividend is \$1.92 per share of common stock on an annual basis.

The merger agreement provides that Cinergy may continue to pay its regular quarterly cash dividend, not to exceed \$0.48 per share, and does not currently anticipate making any changes to its dividend policies prior to the consummation of the mergers, and pursuant to the merger agreement is not permitted to increase its dividend absent the consent of Duke Energy.

The boards of directors of Duke Energy and Cinergy will continue to evaluate their respective dividend policies in light of business, financial and regulatory considerations.

After the mergers, Duke Energy Holding expects to pay dividends in an amount equal to the annual dividends of Cinergy in effect immediately prior to the consummation of the mergers. The payment of dividends by Duke Energy Holding, however, will be subject to approval and declaration by the Duke Energy Holding board of directors and will depend on a variety of factors, including business, financial and regulatory considerations and the amount of dividends paid to it by its subsidiaries.

### **Material U.S. Federal Income Tax Consequences of the Duke Energy Reorganization and the Cinergy Merger**

The following is a discussion of the material U.S. federal income tax consequences of the Duke Energy reorganization and the Cinergy merger to U.S. persons who hold Duke Energy common stock or Cinergy common stock. The discussion which follows is based on the Code, Treasury regulations issued under the Code, and judicial and administrative interpretations thereof, all as in effect as of the date of this joint proxy statement/prospectus, all of which are subject to change at any time, possibly with retroactive effect. The discussion applies only to shareholders who hold Duke Energy common stock or Cinergy common stock as a capital asset within the meaning of Section 1221 of the Code. The discussion assumes that the Duke Energy reorganization and the Cinergy merger will be consummated

in accordance with the merger agreement and as further described in this joint proxy statement/prospectus. This summary is not a complete description of all of the consequences of the Duke Energy reorganization and the Cinergy merger, and, in particular, may not address U.S. federal income tax considerations applicable to Duke Energy shareholders and Cinergy shareholders subject to special treatment under U.S. federal income tax law, including, without limitation:

- financial institutions or insurance companies;
- mutual funds;
- tax-exempt organizations;
- shareholders who are not citizens or residents of the United States;
- pass-through entities or investors in such entities;
- dealers or brokers in securities or foreign currencies;
- shareholders who hold individual retirement or other tax-deferred accounts;
- traders in securities who elect to apply a mark-to-market method of accounting;
- shareholders who hold Duke Energy or Cinergy common stock as part of a hedge, appreciated financial position, straddle, constructive sale or conversion transaction;
- shareholders who exercises dissenters' rights; or
- shareholders who acquired their shares of Duke Energy or Cinergy common stock pursuant to the exercise of employee stock options or otherwise as compensation.

In addition, tax consequences under state, local and foreign laws or under federal laws other than federal income tax laws are not addressed in this joint proxy statement/prospectus.

**Duke Energy shareholders and Cinergy shareholders are strongly urged to consult with their own tax advisors regarding the tax consequences of the Duke Energy reorganization and the Cinergy merger to them, as applicable, including the effects of U.S. federal, state, local, foreign and other tax laws.**

#### ***U.S. Federal Income Tax Consequences to Duke Energy Shareholders***

It is a condition to the obligation of Duke Energy to effect the Duke Energy reorganization that Duke Energy receive a written opinion from Skadden, Arps, Slate, Meagher & Flom LLP, counsel to Duke Energy, dated as of the closing date, to the effect that the Duke Energy reorganization will qualify as a reorganization under Section 368(a) of the Code and that the Cinergy merger will qualify as a reorganization under Section 368(a) of the Code. The condition relating to such opinions is not waivable by Duke Energy after receipt of the Duke Energy shareholder approval unless further shareholder approval is obtained with appropriate disclosure. The opinion will rely on assumptions, representations and covenants, which may include assumptions regarding the absence of changes in existing facts and law and the completion of the Duke Energy reorganization and the Cinergy merger in the manner contemplated by the merger agreement and representations contained in representation letters of officers of Duke Energy, Cinergy, Duke Energy Holding, Deer Acquisition Corp. and Cougar Acquisition Corp. If any of those representations, covenants or assumptions is inaccurate, counsel may be unable to render the required opinions and the tax consequences of the Duke Energy reorganization could differ from those discussed here. An opinion of counsel represents counsel's best legal judgment and is not binding on the IRS or any court, nor does it preclude the IRS from adopting a contrary position. No ruling has been or will be sought from the IRS on the U.S. federal income tax consequences of the Duke Energy reorganization or the Cinergy merger.

Assuming that the Duke Energy reorganization qualifies as a reorganization within the meaning of Section 368(a) of the Code, for U.S. federal income tax purposes, in general:

- a Duke Energy shareholder whose shares of Duke Energy common stock are exchanged in the Duke Energy reorganization for shares of Duke Energy Holding common stock will not recognize gain or loss, except to the extent of cash, if any, received in lieu of a fractional share of Duke Energy Holding common stock;
- a Duke Energy shareholder's aggregate tax basis in shares of Duke Energy Holding common stock received in the Duke Energy reorganization will equal (i) the aggregate tax basis of Duke Energy common stock surrendered in the Duke Energy reorganization, less (ii) the portion of that aggregate tax basis allocable to a fractional share of Duke Energy Holding common stock for which cash is received (as described below), if any;
- a Duke Energy shareholder's holding period for shares of Duke Energy Holding common stock received in the Duke Energy reorganization will include the shareholder's holding period for the shares of Duke Energy common stock surrendered in the Duke Energy reorganization; and
- a Duke Energy shareholder who receives cash instead of fractional shares of Duke Energy Holding common stock in the Duke Energy reorganization will be treated as having received these fractional shares in the Duke Energy reorganization and then as having received the cash in exchange for these fractional shares and should generally recognize capital gain or loss equal to the difference between the amount of the cash received instead of fractional shares and the shareholder's tax basis allocable to such fractional shares. Any such capital gain or loss will be a long-term capital gain or loss if the Duke Energy common stock exchanged for the fractional shares of Duke Energy Holding common stock was held for more than one year at the time of the Duke Energy reorganization.

Duke Energy shareholders who hold their Duke Energy common stock with differing bases or holding periods should consult their tax advisors with regard to identifying the bases or holding periods of the particular shares of Duke Energy Holding common stock received in the Duke Energy reorganization.

#### ***U.S. Federal Income Tax Consequences to Cinergy Shareholders***

It is a condition to the obligation of Cinergy to complete the Cinergy merger that Cinergy receive a written opinion from Wachtell, Lipton, Rosen & Katz, counsel to Cinergy, dated as of the closing date, to the effect that the Cinergy merger will qualify as a reorganization under Section 368(a) of the Code. The condition relating to that opinion is not waivable by Cinergy after receipt of the Cinergy shareholder approval unless further shareholder approval is obtained with appropriate disclosure. The opinion will rely on assumptions, representations and covenants, which may include assumptions regarding the absence of changes in existing facts and law and the completion of the Duke Energy reorganization and the Cinergy merger in the manner contemplated by the merger agreement and representations contained in representation letters of officers of Duke Energy, Cinergy, Duke Energy Holding, Deer Acquisition Corp. and Cougar Acquisition Corp. If any of those representations, covenants or assumptions is inaccurate, counsel may be unable to render the required opinion and the tax consequences of the Cinergy merger could differ from those discussed here. An opinion of counsel represents counsel's best legal judgment and is not binding on the IRS or any court, nor does it preclude the IRS from adopting a contrary position. No ruling has been or will be sought from the IRS on the U.S. federal income tax consequences of the Cinergy merger.



Assuming that the Cinergy merger qualifies as a reorganization within the meaning of Section 368(a) of the Code, for U.S. federal income tax purposes, in general:

- a Cinergy shareholder whose shares of Cinergy common stock are exchanged in the Cinergy merger for shares of Duke Energy Holding common stock will not recognize gain or loss, except to the extent of cash, if any, received in lieu of a fractional share of Duke Energy Holding common stock;
- a Cinergy shareholder's aggregate tax basis in shares of Duke Energy Holding common stock received in the Cinergy merger will equal (i) the aggregate tax basis of the Cinergy common stock surrendered in the Cinergy merger, less (ii) the portion of that tax aggregate basis allocable to a fractional share of Duke Energy Holding common stock for which cash is received (as described below), if any;
- a Cinergy shareholder's holding period for shares of Duke Energy Holding common stock received in the Cinergy merger will include the shareholder's holding period for the shares of Cinergy common stock surrendered in the Cinergy merger; and
- a Cinergy shareholder who receives cash instead of fractional shares of Duke Energy Holding common stock in the Cinergy merger will be treated as having received these fractional shares in the Cinergy merger and then as having received the cash in exchange for these fractional shares and should generally recognize capital gain or loss equal to the difference between the amount of the cash received instead of fractional shares and the shareholder's tax basis allocable to such fractional shares. Any such capital gain or loss will be a long-term capital gain or loss if the Cinergy common stock exchanged for the fractional shares of Duke Energy Holding common stock was held for more than one year at the time of the Cinergy merger.

Cinergy shareholders who hold their Cinergy common stock with differing bases or holding periods should consult their tax advisors with regard to identifying the bases or holding periods of the particular shares of Duke Energy Holding common stock received in the Cinergy merger.

The summary of material U.S. federal income tax consequences set forth above is not intended to be a complete analysis or description of all potential United States federal income tax consequences of the Duke Energy reorganization and the Cinergy merger. Moreover, the summary set forth above does not address tax consequences that may vary with, or are contingent upon, individual circumstances. In addition, the summary set forth above does not address any non-income tax or any foreign, state or local tax consequences of the Duke Energy reorganization or the Cinergy merger and does not address the tax consequences of any transaction other than the Duke Energy reorganization and the Cinergy merger.

## **Accounting Treatment**

The Cinergy merger will be accounted for as a purchase by Duke Energy Holding under accounting principles generally accepted in the United States of America. Under the purchase method of accounting, the assets and liabilities of Cinergy will be recorded, as of completion of the Cinergy merger, at their respective fair values and added to those of Duke Energy Holding. The reported financial condition and results of operations of Duke Energy Holding issued after completion of the Cinergy merger will reflect Cinergy's balances and results after completion of the Cinergy merger, but will not be restated retroactively to reflect the historical financial position or results of operations of Cinergy. Following completion of the Cinergy merger, the earnings of the combined company will reflect purchase accounting adjustments, including increased amortization and depreciation expense for acquired assets.

## **Dissenters' or Appraisal Rights**

### *Duke Energy*

The merger agreement provides, and North Carolina law requires, that Duke Energy shareholders will have dissenters' rights in connection with the Duke Energy merger. Therefore, any Duke Energy shareholder may elect to be paid for such shareholder's shares in accordance with the procedures set forth in the North Carolina Business Corporation Act, or NCBCA.

The following is a summary of the material terms of the statutory procedures to be followed by holders of Duke Energy common stock in order to dissent from the Duke Energy merger and perfect dissenters' rights under the NCBCA. The following discussion is not a complete description of the law relating to dissenters' rights available under North Carolina law and is qualified in its entirety by the full text of Article 13 of the NCBCA, which is reprinted in its entirety as Annex E to this joint proxy statement/prospectus. If you wish to exercise dissenters' rights, you should review carefully the following discussion and Annex E; Duke Energy urges you to consult a lawyer before electing or attempting to exercise these rights.

If the Duke Energy merger is completed, and you are a shareholder of record of Duke Energy who objects to the mergers and who fully complies with Article 13 of the NCBCA, you will be entitled to demand and receive payment in cash of an amount equal to the fair value of all, but not less than all, of your shares of Duke Energy common stock. The amount you would receive in connection with the exercise of statutory dissenters' rights would be the fair value of your common stock immediately before the Duke Energy merger completion date, excluding any appreciation or depreciation in anticipation of the Duke Energy merger unless exclusion would be inequitable.

Under Article 13, all shareholders entitled to dissenters' rights in the Duke Energy merger must be notified in the meeting notice relating to the Duke Energy merger that shareholders are entitled to assert dissenters' rights. This joint proxy statement/prospectus constitutes that notice.

If you are a Duke Energy shareholder and desire to dissent and receive cash payment of the fair value of your Duke Energy common stock, you must:

- deliver to Duke Energy (and Duke Energy must actually receive), prior to the shareholder vote on the merger agreement, a written notice of your intent to demand payment for your shares if the Duke Energy merger is completed; and
- not vote your Duke Energy shares in favor of the approval of the merger agreement.

Except as described in the following sentence, the notice of intent to demand payment for your Duke Energy shares must be executed by the holder of record of shares of Duke Energy common stock as to which dissenters' rights are to be exercised. A beneficial owner who is not the holder of record may assert dissenters' rights only if it (i) submits to Duke Energy the record holder's consent to the dissent not later than the time the beneficial holder asserts dissenters' rights and (ii) dissents with

respect to all shares of Duke Energy common stock of which such person is the beneficial owner. A record owner, such as a broker or bank, who holds shares of Duke Energy common stock as a nominee for others, may exercise dissenters' rights with respect to the shares held for all or less than all beneficial owners of shares as to which it is the record owner, provided the record owner dissents with respect to all shares of Duke Energy common stock beneficially owned by any one person. In this case, the demand notice submitted by the broker or bank, as record owner, must set forth the name and address of the beneficial owner on whose behalf the record holder asserts dissenters' rights.

If the Duke Energy merger is approved by Duke Energy's shareholders, Duke Energy will be required to mail by registered or certified mail, return receipt requested, a written dissenters' notice to all Duke Energy shareholders who have satisfied the above requirements. The dissenters' notice must be sent no later than 10 days after shareholder approval of the mergers is obtained, and it must:

- state where the payment demand described below must be sent and where and when certificates for shares of common stock must be deposited;
- supply a form for demanding payment;
- set a date by which the corporation must receive the payment demand (not fewer than 30 days nor more than 60 days after the dissenters' notice is mailed); and
- include a copy of Article 13 of the NCBCA.

A Duke Energy shareholder who receives a dissenters' notice must demand payment and deposit the shareholder's Duke Energy share certificates in accordance with the terms of the dissenters' notice. A Duke Energy shareholder who demands payment and deposits share certificates retains all other rights of a Duke Energy shareholder until those rights are canceled or modified by the effectiveness of the Duke Energy merger. A Duke Energy shareholder who does not demand payment or deposit its Duke Energy share certificates where required, each by the date set forth in the dissenters' notice, is not entitled to payment for its Duke Energy shares under the NCBCA.

As soon as the Duke Energy merger is completed or within 30 days after receipt of a payment demand from a dissenting Duke Energy shareholder who has complied with the statutory requirements, whichever is later, Duke Energy will pay the dissenter the amount that Duke Energy estimates to be the fair value of the dissenting shareholder's Duke Energy shares, plus accrued interest. Duke Energy's payment will be accompanied by:

- Duke Energy's balance sheet as of the end of a fiscal year ended not more than 16 months before the date of the payment, an income statement for that year, a statement of cash flows for that year and the latest available interim financial statements, if any;
- an explanation of the estimation of the fair value of the shares;
- an explanation of how the interest was calculated;
- a statement of the dissenting shareholder's right to demand payment of a different amount under Section 55-13-28 of the NCBCA; and
- a copy of the dissenters' rights provisions of the NCBCA.

Within 30 days after Duke Energy pays the estimated fair value of the Duke Energy shares of a dissenting shareholder, or within 30 days of Duke Energy failing to timely act in accordance with the NCBCA, the dissenting Duke Energy shareholder may notify Duke Energy that he or she does not accept the estimate of fair value of the Duke Energy shares and interest due on that fair value and that the Duke Energy shareholder demands payment in the amount of the Duke Energy shareholder's own estimate of the fair value of the Duke Energy shares and interest due. If a dissenting shareholder does not demand payment of the Duke Energy shareholder's own estimate of the fair value of the Duke

Energy shares and the interest due within the 30-day period described above, the Duke Energy shareholder will be deemed to have withdrawn his dissent and demand for payment.

If, within 60 days of Duke Energy's payment or a dissenting Duke Energy shareholder's demand for payment of a different amount, whichever is earlier, the payment amount has not been settled, the dissenting Duke Energy shareholder may file an action in the Superior Court Division of the North Carolina General Court of Justice requesting that the fair value of the dissenting shareholder's Duke Energy shares and the accrued interest be determined. The dissenting Duke Energy shareholder will not have the right to a jury trial. The court will have discretion to make all dissenting Duke Energy shareholders whose demands remain unsettled parties to the proceeding.

If you do not follow precisely the steps required by the NCBCA for perfecting dissenters' rights, you may lose those rights. In view of the complexity of these provisions and the requirement that they be strictly complied with, if you hold Duke Energy common stock and are considering dissenting from the approval of the merger agreement and the mergers and exercising your dissenters' rights under the NCBCA, you should consult a lawyer promptly.

The NCBCA provides that the exercise of dissenters' rights will be the exclusive method for a Duke Energy shareholder to challenge the mergers in the absence of a showing that the mergers are either unlawful or fraudulent as to that shareholder.

All written communications from shareholders with respect to the exercise of dissenters' rights should be mailed to:

Duke Energy Corporation  
526 South Church Street  
Charlotte, North Carolina 28202  
Attention: B. Keith Trent, Group Vice President—General Counsel and Secretary

Duke Energy recommends that such communications be sent by registered or certified mail, return receipt requested.

Voting against, abstaining from voting or failing to vote on the proposal to approve the merger agreement is not sufficient to perfect your dissenters' rights and receive the fair value of your Duke Energy shares, plus accrued interest. You must also comply with all other conditions set forth in Article 13 of the NCBCA, including the conditions relating to the separate written notice of intent to dissent to the Duke Energy merger, the separate written demand for payment of the fair value of your shares of Duke Energy common stock, the deposit of your Duke Energy stock certificates, and the separate notification and demand for payment in excess of an initial payment made by Duke Energy.

### ***Cinergy***

Under the Delaware General Corporation Law, Cinergy shareholders will not have any appraisal or dissenters' rights as a result of the mergers.

### **Principal Corporate Offices**

After completion of the mergers, Duke Energy Holding will maintain its headquarters and principal corporate offices in Charlotte, North Carolina. Each of Duke Power, The Cincinnati Gas & Electric Company, PSI Energy, Inc. and The Union Light, Heat and Power Company will maintain its utility headquarters in its present location.

## **Workforce and Employee Benefit Matters**

### ***Continuation of Agreements***

After the completion of the Cinergy merger, Duke Energy Holding will, or as applicable, will cause its subsidiaries to, honor all obligations of the respective employer under any employment contracts, agreements, collective bargaining agreements, plans (as they may be amended in accordance with the merger agreement) and commitments of Duke Energy and Cinergy and their respective subsidiaries existing as of the date of the merger agreement (or as established or amended in accordance with the merger agreement) that apply to any current or former employee, or current or former director of Cinergy or Duke Energy or any of their subsidiaries, provided that neither Duke Energy Holding nor its subsidiaries will be prevented from enforcing such contracts, agreements, collective bargaining agreements, plans (as they may be amended in accordance with the merger agreement) or commitments in accordance with their terms, including any reserved right to amend, modify, suspend, revoke or terminate any such contract, agreement, collective bargaining agreement or commitment. Until the first anniversary of the mergers, Duke Energy Holding will provide, or will cause to be provided, to each individual who is an employee of Cinergy or its subsidiaries (exclusive of any individual who is employed subject to a collective bargaining agreement) immediately prior to the mergers such compensation and benefits from time to time that are no less favorable, in the aggregate, than the compensation and benefits provided to those employees immediately prior to the mergers.

### ***Workforce Reductions***

Subject to obligations under applicable law and applicable collective bargaining agreements, Duke Energy Holding's current intention is that:

- any reductions in the employee work force of Duke Energy Holding and its subsidiaries will be made in light of the circumstances and the objectives to be achieved. Duke Energy Holding and its subsidiaries will give consideration to previous work history, job experience and qualifications and such other factors as Duke Energy Holding and its subsidiaries consider appropriate, without regard to whether employment prior to the completion of the mergers was with Cinergy and its subsidiaries or with Duke Energy and its subsidiaries, and any employees whose employment is terminated or jobs are eliminated by Duke Energy Holding or any of its subsidiaries during such period will be entitled to participate (as determined by Duke Energy Holding and its subsidiaries) in the job opportunity and employment placement programs offered by Duke Energy Holding or any of its subsidiaries for which they are eligible; and
- employees of Duke Energy Holding and its subsidiaries will be able to participate in all job training, career development and educational programs of Duke Energy Holding and its subsidiaries for which they are eligible, and employees also will be entitled to fair and equitable consideration in connection with any job opportunities with Duke Energy Holding and its subsidiaries, in either case without regard to whether the employment of such employees prior to the completion of the mergers was with Cinergy and its subsidiaries or with Duke Energy and its subsidiaries.

Further, until the later of (1) the first anniversary of the completion of the Cinergy merger and (2) December 31, 2007, individuals who were employees of Cinergy immediately before the completion of the Cinergy merger will be eligible to receive severance benefits (exclusive of severance benefits provided pursuant to individual agreements or pursuant to arrangements covering only select highly compensated or management employees) in amounts and on terms and conditions no less favorable than the more favorable of (x) those provided to Cinergy employees pursuant to policies in effect immediately prior to the completion of the Cinergy merger or (y) those provided to similarly situated employees of Duke Energy and its subsidiaries immediately prior to the completion of the mergers pursuant to policies (other than DENA Asset Partners, L.P. 2003-2005 Severance Benefits Plan) as in effect from time to time during such time period.

### ***Employee Benefit Plans***

Subject to applicable law and applicable collective bargaining agreements, Duke Energy Holding and its subsidiaries will give credit under all employee benefit plans, programs and arrangements to employees for all service prior to the mergers with Duke Energy or Cinergy or their respective subsidiaries, or any predecessor employer (but in each case only to the extent that such credit was given by Duke Energy or Cinergy or any of their respective subsidiaries) for all purposes for which such service was taken into account or recognized by Duke Energy or Cinergy or their respective subsidiaries. Credit will not be given if and to the extent crediting such service would result in duplication of benefits, including for benefit accrual purposes under defined benefit pension plans.

### **Effect on Awards Outstanding Under Stock Plans**

#### ***Duke Energy***

At the time of the mergers, each outstanding stock option granted under the Duke Energy stock option plans, whether vested or unvested, will be converted into an option to acquire, on the same terms and conditions as were applicable under such Duke Energy stock option (after taking into account the transactions contemplated by the merger agreement), the same number of shares of Duke Energy Holding common stock at the same price per share. Likewise, at the time of the mergers, each restricted share of Duke Energy common stock will be converted into the same number of restricted shares of Duke Energy Holding common stock on the same terms and conditions as were applicable to such share of Duke Energy common stock (after taking into account the transactions contemplated by the merger agreement), and all outstanding Duke Energy equity or equity-based awards other than such Duke Energy stock options and restricted stock, whether vested or unvested, as of immediately prior to the mergers will be converted into an equity or equity-based award in respect of the same number of shares of Duke Energy Holding common stock on the same terms and conditions as were applicable to such Duke Energy equity or equity-based award (after taking into account the transactions contemplated by the merger agreement).

#### ***Cinergy***

At the time of the mergers, each outstanding stock option granted under the Cinergy stock option plans, whether vested or unvested, will be converted into an option to acquire, on the same terms and conditions as were applicable under such Cinergy stock option, including vesting (taking into account any acceleration of vesting that may occur as a result of the transactions contemplated by the merger agreement), a number of shares of Duke Energy Holding common stock equal to the number of shares of Cinergy common stock subject to the option immediately before the Cinergy merger multiplied by 1.56 (rounded to the nearest whole share) at a price per share of Duke Energy Holding common stock equal to the price per share under such Cinergy option divided by 1.56 (rounded to the nearest cent). Likewise, at the time of the mergers, each restricted share of Cinergy common stock will be converted into a number of restricted shares of Duke Energy Holding common stock equal to the number of restricted shares of Cinergy common stock multiplied by 1.56, on the same terms and conditions as were applicable to such share of Cinergy common stock, including vesting (taking into account any acceleration of vesting that may occur as a result of the transactions contemplated by the merger agreement), and all outstanding Cinergy equity or equity-based awards other than such Cinergy stock options and restricted stock, whether vested or unvested, as of immediately prior to the Cinergy merger will be converted into an equity or equity-based award in respect of a number of shares of Duke Energy Holding common stock equal to the number of Cinergy common stock represented by such award multiplied by 1.56, on the same terms and conditions as were applicable to such Cinergy equity or equity-based award, including vesting (taking into account any acceleration of vesting that may occur as a result of the transactions contemplated by the merger agreement).

### ***General***

Except as otherwise contemplated by the merger agreement and except to the extent required under the respective terms of the Cinergy and Duke Energy stock options, all restrictions or limitations on transfer and vesting with respect to such stock options awarded under the Cinergy and Duke Energy equity incentive compensation plans or any other plan, program or arrangement of Cinergy, Duke Energy or any of their subsidiaries, to the extent that such restrictions or limitations shall not have already lapsed, will remain in full force and effect with respect to such stock options after giving effect to the mergers and the assumption by Duke Energy Holding as described above.

### **Resale of Duke Energy Holding Common Stock**

Duke Energy Holding common stock issued in the mergers will not be subject to any restrictions on transfer arising under the Securities Act of 1933, as amended, except for shares issued to any Duke Energy or Cinergy shareholder who is, or is expected to be, an “affiliate” of Duke Energy or Cinergy for purposes of Rule 145 under the Securities Act. Duke Energy Holding expects that these shareholders will agree not to transfer any Duke Energy Holding common stock received in the mergers except pursuant to an effective registration statement under the Securities Act or in a transaction not required to be registered under the Securities Act. The merger agreement requires each of Duke Energy and Cinergy to use reasonable best efforts to cause its shareholders who are, or are expected to be, affiliates to enter into these agreements as of the closing date. This joint proxy statement/prospectus does not cover resales of Duke Energy Holding common stock received by any person upon completion of the mergers, and no person is authorized to make any use of this joint proxy statement/prospectus in connection with any resale.

**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS, DIRECTORS AND EXECUTIVE OFFICERS**

**Security Ownership of Certain Beneficial Owners and Management of Duke Energy**

The table below provides the number of shares of Duke Energy common stock beneficially owned by current directors, nominees and certain executive officers of Duke Energy, as of May 20, 2005, as well as the aggregate number of shares of Duke Energy common stock beneficially owned by such individuals together with the other executive officers as a group. This information has been furnished by each individual. Each individual has sole voting and investment power, unless otherwise indicated. All directors, nominees and executive officers as a group beneficially own less than 1% of the outstanding shares of Duke Energy common stock.

<u>Name of Beneficial Owner</u>	<u>Shares of Common Stock Beneficially Owned<sup>1</sup></u>	<u>% of Class</u>
R. Agnelli . . . . .	214	
P.M. Anderson . . . . .	753,421	*
G.A. Bernhardt, Sr. . . . .	22,682	*
W.T. Esrey . . . . .	82,476	*
F.J. Fowler . . . . .	1,092,611	*
A.M. Gray . . . . .	61,954	*
James H. Hance, Jr.(3) . . . . .	20,000	*
D.L. Hauser . . . . .	195,510	*
D.R. Hendrix(2) . . . . .	301,021	*
A.M. Lennon . . . . .	24,592	*
J.G. Martin . . . . .	22,850	*
J.W. Mogg . . . . .	433,155	*
M.E.J. Phelps . . . . .	47,358	*
J.T. Rhodes . . . . .	17,721	*
R.G. Shaw . . . . .	558,606	*
Directors and executive officers as a group (21 persons) . . . . .	4,570,340	*

\* Represents less than 1% of Duke Energy common stock outstanding.

- (1) Includes the following number of shares with respect to which the directors and executive officers have the right to acquire beneficial ownership within sixty days of May 20, 2005, including conversion of vested stock equivalents and exercise of vested options upon voluntary termination: P.M. Anderson—591,667; G.A. Bernhardt, Sr.—19,080; W.T. Esrey—42,097; F.J. Fowler—953,369; A.M. Gray—41,973; D.L. Hauser—171,918; D.R. Hendrix—11,760; A.M. Lennon—23,220; J.G. Martin—16,480; J.W. Mogg—369,288; M.E.J. Phelps—46,801; J.T. Rhodes—6,777; R.G. Shaw—540,225; directors and executive officers as a group (21 persons), 3,619,664. Number of shares that directors have a right to acquire based on conversion of phantom stock is based on the closing price of Duke Energy Common Stock on May 20, 2005.
- (2) Mr. Hendrix disclaims beneficial ownership of 20,895 shares.
- (3) Mr. Hance was appointed to the Duke Energy board of directors on June 29, 2005. His beneficial ownership information is presented as of that date.



## Security Ownership of Certain Beneficial Owners and Management of Cinergy

The table below provides the number of shares of Cinergy common stock beneficially owned by current directors, nominees and certain executive officers of Cinergy, as of May 6, 2005, as well as the aggregate number of shares of Cinergy common stock beneficially owned by such individuals together with the other executive officers as a group. This information has been furnished by each individual. Each individual has sole voting and investment power, unless otherwise indicated. All directors, nominees and executive officers as a group beneficially own approximately 1.71% of the outstanding shares of Cinergy common stock.

Name of Beneficial Owner	Shares of Common Stock Beneficially Owned <sup>1</sup>	% of Class
Michael G. Browning . . . . .	124,463	
Phillip R. Cox . . . . .	15,743	*
Michael J. Cyrus . . . . .	251,595	*
R. Foster Duncan(2) . . . . .	251,531	*
William J. Grealis(3) . . . . .	470,792	*
George C. Juilfs . . . . .	48,939	*
Thomas E. Petry . . . . .	32,201	*
James E. Rogers . . . . .	1,656,869	*
Mary L. Schapiro . . . . .	26,566	*
John J. Schiff, Jr. . . . .	64,711	*
Philip R. Sharp . . . . .	8,344	*
Dudley S. Taft . . . . .	44,235	*
James L. Turner . . . . .	160,064	*
All directors and executive officers as a group (21 persons) . . . . .	3,396,127	1.71%

\* Represents less than 1%.

- (1) Includes shares there is a right to acquire within 60 days of May 6, 2005 in the following amounts: Mr. Browning—10,000; Mr. Cox—10,000; Mr. Cyrus—141,799; Mr. Duncan—213,500; Mr. Grealis—312,502; Mr. Juilfs—10,000; Mr. Petry—10,000; Mr. Rogers—970,300; Ms. Schapiro—22,500; Mr. Schiff—2,000; Mr. Taft—10,000; Mr. Turner—101,626; and all directors and executive officers as a group—1,852,327.
- (2) Mr. Duncan resigned from the Company effective June 30, 2005.
- (3) Mr. Grealis retired from the Company effective June 1, 2005.

## REGULATORY MATTERS

To complete the mergers, Cinergy and Duke Energy must obtain approvals or consents from, or make filings with a number of United States federal and state public utility, antitrust and other regulatory authorities as well as authorities in various foreign jurisdictions. The material United States and Canadian federal and state approvals, consents and filings are described below. Cinergy and Duke Energy are not currently aware of any other material governmental consents, approvals or filings that are required prior to the parties' consummation of the mergers other than those described below. If additional approvals, consents and filings are required to complete the mergers, Cinergy and Duke Energy contemplate that such consents, approvals and filings will be sought or made.

Cinergy and Duke Energy will seek to consummate the mergers by mid-2006. Although Cinergy and Duke Energy believe that they will receive the required consents and approvals described below to complete the mergers, there can be no assurance as to the timing of these consents and approvals or as to Cinergy's and Duke Energy's ultimate ability to obtain such consents or approvals (or any additional consents or approvals which may otherwise become necessary) or that such consents or approvals will be obtained on terms and subject to conditions satisfactory to Duke Energy, Cinergy and Duke Energy Holding.

### **Hart-Scott-Rodino Act**

The mergers are subject to the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or HSR Act, and the rules and regulations promulgated thereunder, which provide that certain acquisition transactions may not be consummated until required information has been furnished to the Antitrust Division of the Department of Justice and the Federal Trade Commission (FTC,) and until certain waiting periods have been terminated or have expired. The expiration or earlier termination of the HSR Act waiting period would not preclude the Antitrust Division or the FTC from challenging the mergers on antitrust grounds and seeking to preliminarily or permanently enjoin the proposed mergers. Neither Duke Energy nor Cinergy believes that the mergers will violate federal antitrust laws, but there can be no guarantee that the Antitrust Division or the FTC will not take a different position. If the mergers are not consummated within 12 months after the expiration or earlier termination of the initial HSR Act waiting period, Duke Energy and Cinergy will be required to submit new information to the Antitrust Division and the FTC, and a new HSR Act waiting period will have to expire or be earlier terminated before the mergers could be consummated. Duke Energy and Cinergy currently intend to file their premerger notifications in summer 2005.

### **Federal Power Act**

Section 203 of the Federal Power Act, or FPA, provides that no public utility may sell or otherwise dispose of its jurisdictional facilities, directly or indirectly merge or consolidate its jurisdictional facilities with those of any other person, or acquire any security of any other public utility without first having obtained authorization from the FERC. Because Cinergy and Duke Energy own "jurisdictional facilities" under the Federal Power Act, the approval of the FERC under Section 203 is required before Cinergy and Duke Energy may consummate the mergers. Section 203 provides that the FERC is required to grant its approval if the mergers are found to be "consistent with the public interest."

The FERC stated in its 1996 Merger Policy Statement that, in analyzing a merger under Section 203, it will evaluate the following criteria:

- the effect of the merger on competition in electric power markets;
- the effect of the merger on the applicants' wholesale rates; and
- the effect of the merger on state and federal regulation of the applicants.

The FERC will review these factors to determine whether the mergers are consistent with the public interest. If the FERC finds that the mergers would adversely affect competition, wholesale rates, or regulation, it may, pursuant to the FPA, deny approval of the mergers or impose remedial conditions intended to mitigate such effects. In the event the FERC chooses to impose remedial conditions, Cinergy and Duke Energy would then review such conditions and decide whether to accept them. Based on FERC precedent, Cinergy and Duke Energy believe that the mergers should satisfy the FERC's merger guidelines and that any mitigation conditions imposed by the FERC would not have a material adverse effect on the anticipated benefits of the transactions. However, there can be no guarantee that the FERC will agree with the parties' characterization of FERC precedent or that the FERC will not change its analytic framework in a manner adverse to the parties. The companies and their public utility subsidiaries expect to file their application under Section 203 in summer 2005.

Section 205 of the FPA requires that public utilities have on file with FERC tariff schedules showing all rates and charges for any transmission or sale of electric energy subject to FERC's jurisdiction and the classification, practices, and regulations affecting such rates, together with all contracts which in any manner affect or relate to such rates, charges, classifications and services. Section 205 requires that such FERC jurisdictional rates, charges, classifications, practices and regulations be just and reasonable. Duke Energy has been developing a proposal it is considering filing with FERC that would provide for the administration by an independent entity of certain aspects of transmission service on Duke Energy's transmission system. Although it is not possible to predict the outcome of the related proceeding, if any, Duke Energy and Cinergy believe that, based on FERC precedent, Duke Energy will be able to obtain FERC approval of Duke Energy's transmission proposal in a form acceptable to Duke Energy and interested state regulators.

#### **Nuclear Regulatory Commission**

Under the Atomic Energy Act of 1954, as amended, and NRC regulations, an NRC power plant licensee must seek and obtain prior NRC consent for the indirect transfer of its NRC licenses resulting from the transfer of control over the licensee in a merger. Duke Energy holds licenses issued by the NRC with respect to its ownership and operational interests in the Oconee, McGuire and Catawba nuclear power plants. As a result of the Duke Energy merger, Duke Energy, the current licensee will become a wholly-owned subsidiary of Duke Energy Holding. The transfer of control of the license to Duke Energy Holding requires prior NRC approval.

In reviewing a license transfer application, the NRC assesses, among other things, the transferee's technical and financial qualifications to own and operate the nuclear facilities, whether there is assurance that adequate decommissioning funds will be available to safely decommission the facilities at the end of their useful lives and whether the transfer is otherwise consistent with the applicable provisions of laws, regulations and orders of the NRC. Financial qualifications are presumed by the NRC for state rate-regulated utilities such as Duke Energy that are authorized to recover the costs and operating expenses of their nuclear facilities through state approved rates. The NRC also permits state rate-regulated entities like Duke Energy to provide decommissioning funding assurance through the use of external sinking funds.

Typically, NRC approvals of license transfers take approximately six to eight months to complete. The timing of NRC approval may be extended in the event issues are raised by intervenors as part of the license transfer proceeding. Duke Energy intends to file an application with the NRC requesting its approval of the indirect license transfers in summer 2005. Given that there will be no material changes with respect to nuclear management and the operation of the facilities in question, and given Duke Energy, as Duke Power, will continue to recover each facilities' costs as a state rate-regulated utility and continue to fund its future decommissioning liabilities using its existing external sinking funds, Cinergy and Duke Energy have no reason to believe that the NRC will not approve the license transfer.

## State Regulatory Approvals

Duke Energy is currently subject to regulation by the utility commissions of North Carolina and South Carolina. Cinergy (through its public utility subsidiaries) is currently subject to regulation by the public utility commissions of Indiana, Kentucky and Ohio. The following is a brief description of state regulatory jurisdiction over the mergers and required approvals:

- The Cincinnati Gas & Electric Company, a wholly-owned subsidiary of Cinergy, is subject to regulation by the Public Utilities Commission of Ohio, or PUCO. Ohio law confers upon the PUCO jurisdiction to review and approve the Cinergy merger. The statutory standard the PUCO will use in reviewing the Cinergy merger is whether the Cinergy merger “will promote public convenience and result in the provision of adequate service of a reasonable rate, rental, toll or charge.” Cinergy has filed its application with the PUCO.
- PSI Energy, Inc., a wholly-owned subsidiary of Cinergy, is subject to regulation by the Indiana Utility Regulatory Commission, or IURC. Under Indiana law, the indirect upstream transfer of ownership in PSI to Duke Energy Holding contemplated by the Cinergy merger does not require the approval of the IURC. However, the IURC has jurisdiction over various affiliate agreements that may be proposed as a result of the mergers, and PSI Energy will file a petition with the IURC for approval and/or acceptance of any such agreements.
- The Union Light, Heat and Power Company, a wholly-owned subsidiary of The Cincinnati Gas & Electric Company, is subject to regulation by the Kentucky Public Service Commission, or KPSC. Kentucky law confers upon the KPSC jurisdiction to review the Cinergy merger. Provided that the KPSC determines that Duke Energy Holding will have the requisite financial, technical, and managerial abilities to provide reasonable service, the KPSC must approve the Cinergy merger application if it is made in accordance with the law, for a proper purpose, and is consistent with the public interest. Cinergy and Duke Energy expects to file an application in summer 2005 with the KPSC requesting approval of the Cinergy.
- Duke Energy is subject to regulation by the NCUC. North Carolina law provides for NCUC jurisdiction to review and approve the mergers. The statutory standard the NCUC will use in approving the mergers is whether the mergers are “justified by the public convenience and necessity.” The NCUC has found that standard is met if:
  - a merger would have no known adverse impact on the rates and service of North Carolina ratepayers;
  - the ratepayers would be protected as much as possible from potential harm; and
  - the ratepayers would receive enough benefit from the merger to offset any potential costs, risks, and harms.

Factors considered by the NCUC in evaluating benefits include measurable cost savings as well as less quantifiable financial, competitive, employment, tax base and service reliability benefits accrued from the increased size and diversity offered by merging companies.

- Duke Energy is subject to regulation by the Public Service Commission of South Carolina, or PSCSC. South Carolina law provides for PSCSC jurisdiction to review and approve the mergers. The PSCSC generally seeks to ensure that South Carolina retail electric customers are held harmless from any adverse effects of the mergers and that they receive no fewer benefits from the transaction than are received by electric customers in other jurisdictions. Factors considered by the PSCSC in evaluating a merger include impacts on retail rates, retail cost of service, and jurisdictional revenues and expenses.

The sharing of the anticipated merger-related savings and related costs to achieve such savings allocated among various ratepayers and the shareholders of Duke Energy Holding will either be considered by the IURC, KPSC, NCUC, PUCO, and PSCSC as a part of their respective merger proceedings or will be considered by them as a part of future rate proceedings. Cinergy and Duke Energy will seek to work with each state utility commission in a collaborative process to allocate merger-related savings and costs applicable to each jurisdiction between ratepayers and shareholders.

#### **Federal Communications Commission**

Under the provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, an entity holding licenses for the provision of telecommunications services must obtain the approval of the FCC before the transfer of control or assignment of those licenses. Affiliates of both Duke Energy and Cinergy hold certain FCC licenses for the provision of telecommunications services in the United States and, thus, must obtain prior FCC approval to assign or transfer control of those licenses.

Immediately following the completion of the Duke Energy merger, Duke Energy intends to convert into a limited liability company organized under the laws of the State of North Carolina. Prior FCC approval is required for this transfer of control of the FCC licenses held by affiliates of Duke Energy. As a result of the Cinergy merger, Cinergy will become a wholly-owned subsidiary of Duke Energy Holding. Prior FCC approval, therefore, also is required for the transfer of control of these Cinergy licenses from Cinergy to Duke Energy Holding. FCC approval for the Duke Energy license transfers and the Cinergy license transfers ordinarily would be expected to be obtained within 30 days from the date of filing of the applications unless significant public interest concerns are raised by outside parties.

#### **Securities and Exchange Commission Approval Pursuant to PUHCA**

Under Sections 9(a)(2) and 10 of PUHCA, the SEC must approve the mergers before they take place. We expect to file our application in summer 2005 with the SEC under PUHCA requesting its approval of the mergers. Under the applicable standards, the SEC is directed to approve a proposed acquisition unless it makes certain findings, including that:

- the acquisition will tend towards interlocking relations or the concentration of control of public utilities that is detrimental to the public interest or the interest of investors or consumers;
- the consideration, including all fees, commissions and other remuneration to whomever paid, direct or indirect, in connection with the acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets or the utility assets underlying the securities to be acquired;
- the acquisition will unduly complicate the capital structure of the applicant's holding company system or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of that system; or
- the acquisition will violate applicable state law, except to the extent the SEC finds that compliance with applicable state law will be detrimental to the carrying out of the provisions of Section 11 of PUHCA.

In order to approve a proposed acquisition, the SEC also must find that the acquisition would tend towards the development of "a single integrated public utility system" and that the resulting holding company system otherwise would conform to the standards of Section 11 of PUHCA governing corporate structure and retention of non-utility businesses. In order to find that electric utility assets of the combined company constitute an integrated public utility system, the SEC must find, among other

things, that the combined company's electric utility assets are (1) interconnected and (2) located in a single area or region.

With respect to the interconnection requirement of PUHCA's integrated public utility system definition, in other recent merger transactions subject to SEC approval under PUHCA, merging utilities with non-contiguous electric assets have demonstrated interconnection sufficient to satisfy the SEC through such measures as direct physical interconnection, contractual arrangements or common RTO membership. We believe that we can similarly demonstrate interconnection with respect to the mergers. Nevertheless, there can be no assurance that the SEC will agree with our characterization of the SEC precedent as applied to the mergers or that the SEC will not change its position in a manner adverse to us.

With respect to the single area or region requirement of PUHCA's integrated public utility system definition, a recent initial decision by an SEC administrative law judge found that the holding company system resulting from the merger of American Electric Power Company, Inc. and Central and South West Corporation did not satisfy the integration requirements because the electric utility assets of the combined company were not located in a single area or region within the meaning of PUHCA. The initial decision has been appealed to the SEC. If upheld, the effect of the decision upon future enforcement of the integration requirements of PUHCA is uncertain. Although we believe that the combined company will satisfy the single area requirement, Duke Energy's and Cinergy's electric utility assets are not geographically coextensive, and thus the ruling, if upheld on appeal, could have negative implications for the mergers.

We believe that Duke Energy Holding will not qualify for an exemption from registration under PUHCA, and thus Duke Energy Holding will be required to register as a holding company with the SEC under PUHCA upon completion of the mergers, subject to any changes in or repeal of PUHCA that may be enacted by Congress.

As a registered holding company, Duke Energy Holding will become subject to the restrictions that PUHCA imposes on registered holding company systems. These restrictions include:

- requirements that the SEC approve issuances of certain securities, and sales and acquisitions of utility assets or securities of public utility companies; and
- limits on the ability of a registered holding company to engage in non-utility businesses and on the rendering of services by holding company affiliates (including any holding company system service company) to other system companies.

Duke Energy currently holds interests in various non-utility businesses, such as Crescent Resources LLC and Duke Energy's gas transmission and field services business, some of which it may be required to divest in order to comply with restrictions upon non-utility investments. In the event the SEC does require such a divestiture, it typically provides for the divestiture to take place over a reasonable period of time. Consequently, we do not expect PUHCA restrictions to have a material adverse impact on the non-utility business of Duke Energy Holding, as Cinergy is currently a registered holding company and Duke Energy expects that its non-utility investments and transactions will either be permitted by the SEC under the statute and its implementing regulations or reasonable time will be given by the SEC to effect any required divestiture. However, there can be no assurance that the SEC will agree with our characterization of SEC precedent or that the SEC will not change its position in a manner adverse to the parties.

Congress is currently considering legislation providing for the repeal of PUHCA and varying levels of increased merger review authority by the FERC. Such legislation is similar to legislation that has been considered but ultimately not passed in recent sessions of Congress. We cannot predict whether such legislation will actually be passed, the extent to which it will repeal PUHCA or whether it will be made effective within the time frame to affect the mergers.

**Canadian Competition Act**

The mergers are subject to the requirements of the Canadian Competition Act, and the rules and regulations promulgated thereunder, which provide that certain acquisition transactions may not be consummated until required information has been furnished to the Canadian Competition Bureau and until certain waiting periods have been terminated or have expired. The expiration or earlier termination of the applicable waiting period under the Canadian Competition Act would not preclude the Commissioner of Competition under the Act from challenging the mergers in Canada on Canadian antitrust grounds.

The parties intend to file the requisite premerger notification in summer 2005.

**Other International Approvals**

The mergers may also be subject to the antitrust laws, rules and regulations of other governmental authorities, which may provide that certain acquisition transactions may not be consummated until required information has been furnished to the appropriate entity that regulates antitrust matters and until certain waiting periods have been terminated or have expired.

## **THE MERGER AGREEMENT**

The following is a summary of the material terms of the merger agreement. This summary does not purport to describe all the terms of the merger agreement and is qualified in its entirety by reference to the complete merger agreement which is attached as Annex A to this joint proxy statement/prospectus and incorporated by reference herein. All shareholders of Duke Energy and Cinergy are urged to read the merger agreement carefully and in its entirety to understand the rights and obligations of Duke Energy and Cinergy under the merger agreement.

### **The Mergers and the Restructuring Transactions**

#### ***Duke Energy Preferred Stock and Preferred Stock A***

Prior to the effective time of the Duke Energy merger, each issued and outstanding share of Preferred Stock, par value \$100 per share, of Duke Energy and each issued and outstanding share of Preferred Stock A, par value \$25 per share, of Duke Energy, will be redeemed at a redemption price equal to the amounts required to be paid upon redemption of any applicable series, pursuant to the term of each such series, plus all dividends accrued and unpaid to the redemption date.

#### ***The Duke Energy Merger***

At the effective time of the Duke Energy merger, Deer Acquisition Corp. will be merged with and into Duke Energy in accordance with the NCBCA. Duke Energy will be the surviving corporation and will continue its corporate existence under the laws of North Carolina and will succeed to and assume all of the rights and obligations of Duke Energy and Deer Acquisition Corp. in accordance with the NCBCA. As a result of the Duke Energy merger, Duke Energy will become a wholly-owned subsidiary of Duke Energy Holding. Immediately after the effective time of the Duke Energy merger, all shares of Duke Energy Holding common stock owned by Duke Energy will be canceled.

#### ***The Duke Energy Conversion***

Immediately following the effectiveness of the Duke Energy merger, Duke Energy intends to convert to a limited liability company pursuant to a plan of conversion adopted pursuant to Section 55-11A-11 of the NCBCA and Section 57C-9A-02 of the North Carolina Limited Liability Company Act. In the conversion, Duke Energy will be renamed Duke Power Company LLC and will be a limited liability company, all of whose membership or other equity interests will be held by Duke Energy Holding.

#### ***The Duke Energy Restructuring***

Immediately following the effectiveness of the Duke Energy reorganization, it is expected that Duke Power will distribute to Duke Energy Holding the membership interests in Duke Capital, after which Duke Capital will be a direct wholly-owned subsidiary of Duke Energy Holding. It is also possible that select business units will be transferred from Duke Capital to Duke Power. Duke Energy will provide prior notice to Cinergy of this restructuring transaction, and any other restructuring that it proposes to effect in connection with the completion of the mergers. The merger agreement provides that the Duke Energy restructuring transactions are not a condition to the completion of the mergers and Duke Energy is not permitted to effect any restructuring transaction that would prevent the satisfaction of any of the conditions to the closing under the merger agreement.

#### ***The Cinergy Merger***

Immediately following the completion of the latest of the Duke Energy merger, the Duke Energy conversion and the Duke Energy restructurings, if any, at the effective time of the Cinergy merger, Cougar Acquisition Corp. will be merged with and into Cinergy in accordance with the Delaware General Corporation Law, or DGCL. Cinergy will be the surviving corporation and will continue its



corporate existence under the laws of Delaware and will succeed to and assume all of the rights and obligations of Cinergy and Cougar Acquisition Corp. in accordance with the DGCL. As a result of the Cinergy merger, Cinergy will become a wholly-owned subsidiary of Duke Energy Holding.

#### **Timing of Closing**

The closing of the mergers, conversion and the restructuring transactions described above will take place at 10:00 am, local time, on a date to be specified by the parties, which will be no later than the second business day after satisfaction or waiver of the conditions to closing set forth in the merger agreement (other than those conditions that by their terms are to be satisfied at the closing, but subject to the satisfaction or waiver or such conditions at the time of closing), unless another time or date is agreed to by the parties. The closing will be held at a location in the City of New York agreed to by the parties.

#### **Merger Consideration**

##### ***Cancellation of Certain Duke Energy Common Stock in the Duke Energy Merger***

At the effective time of the Duke Energy merger, each share of Duke Energy common stock that is owned by Duke Energy, Cinergy or Duke Energy Holding will automatically be canceled and no consideration will be delivered in exchange therefor.

##### ***Conversion of Duke Energy Common Stock in the Duke Energy Merger***

At the effective time of the Duke Energy merger, each issued and outstanding share of Duke Energy common stock (other than those shares to be canceled and other than dissenting shares) will be converted into the right to receive one fully paid and nonassessable share of Duke Energy Holding common stock. Based on the number of shares of Cinergy and Duke Energy common stock outstanding on May 6, 2005, the last trading day prior to the announcement of the business combination, former Cinergy shareholders will own approximately 24% of the common equity of the new company, and former Duke Energy shareholders will own approximately 76%.

##### ***Conversion of Deer Acquisition Corp. Common Stock in the Duke Energy Merger***

At the effective time of the Duke Energy merger, the aggregate of all shares of the capital stock of Deer Acquisition Corp. issued and outstanding immediately prior to the effective time of the Duke Energy merger will be converted into 100 shares of common stock of Duke Energy, as the surviving corporation in the Duke Energy merger.

##### ***Cancellation of Certain Cinergy Common Stock in the Cinergy Merger***

At the effective time of the Cinergy merger, each share of Cinergy common stock that is owned by Cinergy, Duke Energy or Duke Energy Holding immediately prior to the effective time of the Cinergy merger will automatically be canceled and no consideration will be delivered in exchange therefor.

##### ***Conversion of Cinergy Common Stock in the Cinergy Merger***

At the effective time of the Cinergy merger, each issued and outstanding share of Cinergy common stock (other than those share to be canceled) will be converted into the right to receive 1.56 fully paid and nonassessable shares of Duke Energy Holding common stock.

##### ***Conversion of Cougar Acquisition Corp. Common Stock in the Cinergy Merger***

At the effective time of the Cinergy merger, the aggregate of all shares of the capital stock of Cougar Acquisition Corp. issued and outstanding immediately prior to the effective time of the Cinergy merger will be converted into 100 shares of common stock of Cinergy, as the surviving corporation in the Cinergy merger.

***Exchangeable Shares of Duke Energy Canada Exchangeco, Inc.***

As of the effective time of the Duke Energy merger, each issued and outstanding exchangeable share of Duke Energy Canada Exchangeco, Inc., a corporation incorporated under the laws of Canada and indirect subsidiary of Duke Energy, will become exchangeable for one share of Duke Energy Holding common stock, and one share of Duke Energy Holding common stock will be issuable upon a redemption or retraction of each exchangeable share, in each case in accordance with the terms of the provisions relating to such shares immediately prior to the effective time of the Duke Energy merger. Following the effective time of the Cinergy merger, Duke Energy Holding will execute such assignment and assumption agreements and documentation as are necessary to cause Duke Energy Holding to be bound by the terms and provisions of the support agreement among Duke Energy, Duke Energy Canada Call Co. and Duke Energy Canada Exchangeco, dated March 14, 2002, and the voting and exchange trust agreement among Duke Energy, Duke Energy Canada Exchangeco and Computershare Trust Company of Canada, dated March 14, 2002.

**Procedures for Exchange of Share Certificates; Fractional Shares**

Duke Energy and Cinergy will choose an exchange agent who will be engaged by Duke Energy Holding. As soon as is reasonably practicable after the effective time of the mergers, the exchange agent will mail to each holder of record, immediately prior to the effective time of the mergers, who is entitled to receive Duke Energy Holding common stock:

- a letter of transmittal (which will specify that delivery will be effected, and risk of loss and title to the certificates will pass, only upon delivery of the certificates to the exchange agent and will be in such form and have such other provisions as the parties may reasonably specify); and
- instructions for use in surrendering the certificates in exchange for whole shares of Duke Energy Holding common stock (which shares will be in uncertificated book-entry form unless a physical certificate is requested by the holder), cash in lieu of fractional shares and any dividends or other distributions payable.

Upon surrender of a certificate for cancellation to the exchange agent, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the exchange agent, the holder will be entitled to receive in exchange therefor that number of whole shares of Duke Energy Holding common stock (which shares will be in uncertificated book-entry form unless a physical certificate is requested by such holder), cash in lieu of fractional shares and certain other dividends or distributions. In the event of a transfer of ownership of Duke Energy common stock or Cinergy common stock that is not registered in the transfer records of Duke Energy or Cinergy, as the case may be, the proper number of shares of Duke Energy Holding common stock may be issued to a person other than the person in whose name the certificate so surrendered is registered if such certificate is properly endorsed or otherwise in proper form for transfer and the person requesting such issuance will pay any transfer or other taxes required by reason of the issuance of shares of Duke Energy Holding common stock to a person other than the registered holder of such certificate or establish to the satisfaction of Duke Energy Holding that such tax has been paid or is not applicable. Until surrendered as described, each certificate will be deemed at any time after the effective time of the Duke Energy merger or the effective time of the Cinergy merger, as the case may be, to represent only the right to receive the consideration upon such surrender which the holder has the right to receive, cash in lieu of fractional shares and certain other dividends or distributions. No interest will be paid or will accrue on any consideration payable to holders of certificates.

Duke Energy Holding will not issue any fractional shares of its common stock upon the surrender of any certificates, except that fractional shares will be issued in connection with shares of Duke Energy and Cinergy common stock held in each of Duke Energy's and Cinergy's dividend reinvestment plans to be rolled over into a dividend reinvestment plan to be established by Duke Energy Holding. Holders of shares of Duke Energy and Cinergy common stock will receive cash in lieu of fractional shares.

As promptly as practicable after the effective time of the Cinergy merger, the exchange agent will sell on the New York Stock Exchange the excess of the number of whole shares of Duke Energy Holding common stock delivered to the exchange agent over the aggregate number of whole shares of Duke Energy Holding common stock to be distributed to former holders of Cinergy. As promptly as practicable after the effective time of the Duke Energy merger, the exchange agent will sell on the New York Stock Exchange the excess of the number of whole shares of Duke Energy Holding common stock delivered to the exchange agent over the aggregate number of whole shares of Duke Energy Holding common stock to be distributed to former holders of Duke Energy. The exchange agent will pay to each former Duke Energy and Cinergy shareholder, as the case may be, a portion of the sale proceeds based upon the ratio of each shareholder's fractional share interest to the aggregate amount of fractional share interests to which all former Duke Energy and Cinergy shareholders, as the case may be, are entitled.

#### **Conditions to the Completion of the Mergers**

The merger agreement contains customary closing conditions, including the following conditions that apply to the obligations of both Duke Energy and Cinergy:

- Duke Energy and Cinergy shareholder approval or adoption of the merger agreement and the transactions contemplated thereby;
- the absence of governmental action preventing the consummation of the transactions contemplated by the merger agreement;
- the effectiveness of the registration statement on Form S-4 of which this prospectus is a part;
- the approval for listing on the New York Stock Exchange, or NYSE, of the shares of common stock of Duke Energy Holding that will be issuable pursuant to the mergers;
- the truth and accuracy of the representations and warranties of the other party, except where such failure to be true and accurate would not have a material adverse effect;
- the performance in all material respects of the other party's obligations under the merger agreement;
- the receipt by each party of a tax opinion from such party's legal counsel;
- the receipt by each party of all required statutory approvals on terms that would not have a material adverse effect on the combined company and its prospective subsidiaries, on Cinergy and its subsidiaries, or on Duke Energy and its subsidiaries, in each case, taken as a whole;
- the receipt by each party of the required closing certificate from the other party; and
- the absence of any change, event, occurrence or development that, individually or in the aggregate, has had or could reasonably be expected to have a material adverse effect on Duke Energy or Cinergy.

The merger agreement further provides that in the event that it becomes reasonably likely that it will not be possible to obtain any required statutory approval in a manner that will result in the satisfaction of the respective closing conditions prior to the initial termination date (i.e., the 12-month anniversary of the date of the merger agreement, subject to extension to the 15-month anniversary as further described below), or reasonably likely that it will not be possible for any other condition to the obligations of any of the parties to consummate the transactions contemplated by the merger agreement, the parties will use reasonable best efforts to modify the structure of the mergers and the other transactions contemplated by the merger agreement in order to permit the mergers to be consummated without altering the Cinergy exchange ratio or the exchange ratio in the Duke Energy merger, or the anticipated United States federal income tax consequences to Duke Energy, Cinergy or their respective shareholders as promptly as practicable in accordance with their respective terms.

### **Termination of the Merger Agreement**

The merger agreement may be terminated at any time prior to the completion of the mergers, whether before or (unless otherwise noted below) after the Duke Energy shareholders approve the merger agreement or the Cinergy shareholders adopt the merger agreement:

- by mutual written consent of Duke Energy and Cinergy;
- by either Duke Energy or Cinergy if:
  - the mergers have not been consummated by the 12-month anniversary of the date of the merger agreement (the initial termination date); provided that the right to terminate will not be available to any party whose failure to perform any of its obligations under the merger agreement results in the failure of the mergers to be consummated by such initial termination date, and provided, further, that, if on that date, all conditions to closing have been fulfilled or are capable of being fulfilled, other than receipt of the required statutory approvals and/or the absence of injunctions on or restraints to the consummation of the mergers, then either party may (on one or more occasions) extend the initial termination date up to the 15-month anniversary of the date of the merger agreement. Furthermore, if the initial termination date occurs during any waiting period prescribed by law before the transactions contemplated by the merger agreement can be consummated, then the initial termination date will be extended until the 3rd business day after the expiration of such waiting period. In addition, on or about the date that is the 12-month anniversary of the date of the merger agreement, the parties will mutually determine in good faith whether the failure to extend the otherwise applicable termination dates (i.e., the 12-month and 15-month anniversary dates) would be reasonably likely to result in the failure to receive the required consents and approvals from governmental authorities in light of the facts and circumstances in existence on or about the 12-month anniversary of the date of the merger agreement, and if the parties determine that such an extension is appropriate, they will negotiate the terms of such extension in good faith;
  - the Duke Energy shareholders or the Cinergy shareholders do not approve or adopt the merger agreement;
  - any final and nonappealable order or injunction by any Federal or state court of competent jurisdiction or applicable Federal or state law that prevents the consummation of either of the mergers is in effect, provided that the party seeking to terminate the merger agreement has used its reasonable best efforts to prevent the entry of and to remove any such order, injunction or law;
  - any closing condition becomes incapable of satisfaction prior to the otherwise applicable termination date (whether initial or extended) provided that the failure of such closing condition to be capable of satisfaction is not a result of a material breach of the merger agreement by the terminating party;
  - the other party materially breaches the merger agreement or fails to perform its obligations in any material respect which breach or failure to perform would give rise to the failure to satisfy a closing condition and the breach or failure to perform is incapable of being or is not cured within 105 days following receipt of written notice from the other party specifying the breach or failure to perform; or
  - prior to the approval or adoption of the merger agreement by such party's shareholders, in response to a third-party takeover proposal (as defined below) of such party that was not solicited and that did not otherwise result in a breach (other than in immaterial respects) of such party's non-solicitation obligations under the merger agreement, such party's board of directors determines in good faith, after consulting with outside counsel, that the failure to terminate the merger agreement in response to the third-party takeover proposal would be

reasonably likely to result in a breach of the board of directors' fiduciary obligations under applicable law, provided that the terminating party notifies the other party that such party has determined that the third-party takeover proposal is a superior proposal (as defined below) and at least five business days following receipt by the other party of such notice, the board of directors of the terminating party has determined that such third-party takeover proposal remains a superior proposal.

A "third-party takeover proposal" means a bona fide inquiry, proposal or offer from any person relating to (i) any direct or indirect acquisition or purchase of a business (a "material business") that constitutes 20% or more of the net revenues, net income or the assets of the subject company and their subsidiaries, (ii) any direct or indirect acquisition or purchase of 20% or more of any class of voting securities of the subject company or 20% or more of the voting power of any class of stock of any subsidiary of the subject company owning, operating or controlling a material business, (iii) any tender offer or exchange offer that if consummated would result in any person beneficially owning 20% or more of any class of voting securities of the subject company or 20% or more of the voting power of any class of stock of any subsidiary of the subject company owning, operating or controlling a material business, or (iv) any merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the subject company or any subsidiary of the subject company owning, operating or controlling a material business, in each case other than the transactions contemplated by the merger agreement.

A "superior proposal" means any written third-party takeover proposal of a party that such party's board of directors determines in good faith (after consultation with a financial advisor of nationally recognized reputation) to be more favorable (taking into account (i) all financial and strategic considerations, including relevant legal, financial, regulatory and other aspects of such third-party takeover proposal and the mergers and the other transactions contemplated by the merger agreement deemed relevant by such party's board of directors, (ii) the identity of the third-party making such third-party takeover proposal, and (iii) the conditions and prospects for completion of such third-party takeover proposal) to such party's shareholders than the mergers and the other transactions contemplated by the merger agreement (taking into account all of the terms of any proposal by the other party to amend or modify the terms of the Cinergy merger or the Duke merger, as the case may be, and the other transactions contemplated by the merger agreement), except that (1) the reference to "20%" in (i), (ii) and (iii) of the definition of third-party takeover proposal set forth above is replaced by "50%", (2) a superior proposal only means a transaction involving Cinergy or Duke Energy, and not involving any of their respective material businesses alone, and (3) the references to any subsidiary of either company owning, operating or controlling a material business in (ii), (iii) and (iv) of the definition of third-party takeover proposal set forth above are deemed to be deleted.

- by either Duke Energy or Cinergy (prior to the approval or adoption of the merger agreement by such party's shareholders), if the board of directors of the other party:
  - withdraws or modifies, or proposes publicly to withdraw or modify, its approval or recommendation of the merger agreement or the mergers;
  - fails to reaffirm its approval or recommendation within 15 business days of receipt of a written request for reaffirmation by the other party when such party is in receipt of a third-party takeover proposal that has not been rejected, provided that the 15-business day period will be extended for an additional 10 business days following any material modification to the third-party takeover proposal occurring after the receipt of the written request to reaffirm. In addition, the 15-business day period will recommence each time a third-party takeover proposal is made following the receipt of a written request from the other party from a person that had not previously made a third-party takeover proposal prior to the receipt of the written request from the other party; or

- has approved or recommended, or proposed to approve or recommend, a third-party takeover proposal.

### **Termination Fees; Reimbursement of Expenses**

Under the circumstances described below, Duke Energy or Cinergy, as applicable, would be required to (i) reimburse the other party for the other party's fees and expenses in an amount not to exceed \$35 million and/or (ii) pay a termination fee of \$300 million in the case of a termination fee payable by Cinergy to Duke Energy and a termination fee of \$500 million in the case of a termination fee payable by Duke Energy to Cinergy provided that any termination fee payable will be reduced by any amount of any fees and expenses previously reimbursed.

#### **(1) *Termination due to Third-Party Takeover Proposal Following Shareholder Approval***

- (a) Fees and expenses would be reimbursed by a party if (i) after that party's shareholders approve the merger agreement and the mergers, (ii) a third-party takeover proposal of that party is made known to that party or the intention to make such a takeover proposal is publicly announced (whether or not conditional), (iii) the merger agreement is thereafter terminated by that party because the closing has not occurred on or prior to the 12-month anniversary of the date of the merger agreement (subject to extension as described herein) and (iv) there is no bona fide withdrawal of the third-party takeover proposal.
- (b) A termination fee would be payable by a party if the conditions in 1(a)(i), 1(a)(ii) and 1(a)(iii) above are met with respect to that party, provided that the termination fee will not be payable by that party unless and until within 6 months of termination that party consummates any takeover proposal or enters into any acquisition agreement, in either case, with the person (or an affiliate of the person) that made the third-party takeover proposal.

#### **(2) *Termination due to Third-Party Takeover Proposal Prior to or During Shareholders Meeting***

- (a) Fees and expenses would be reimbursed by a party if (i) a third-party takeover proposal has been publicly disclosed or any person has announced its intention (whether or not conditional) to make a third-party takeover proposal, (ii) the merger agreement is terminated by either party due to the failure of the party who received the third-party takeover proposal to receive the approval of its shareholders in respect of the merger agreement and the mergers and (iii) there is no bona fide withdrawal of the third-party takeover proposal.
- (b) A termination fee would be payable by a party if the conditions in 2(a)(i) and 2(a)(ii) above are met with respect to such party, provided that the termination fee will not be payable unless and until within 18 months of termination by either party, the party that received the third-party takeover proposal consummates any takeover proposal or enters into any acquisition agreement, in either case, with the person (or an affiliate of the person) that made the third-party takeover proposal.

#### **(3) *Termination due to Superior Proposal***

A termination fee would be payable by a party if (i) prior to that party's receipt of its shareholders approval, (ii) that party receives an unsolicited written third-party takeover proposal, (iii) that party's board of directors determines in good faith, after consulting with outside counsel, that failure to terminate the merger agreement in response to the third-party takeover proposal would be reasonably likely to result in a breach of its fiduciary obligations under applicable law, (iv) that party's board of directors determines, in good faith that such third-party takeover proposal constitutes a superior proposal, (v) that party notifies the other party in writing of the determination that the alternative takeover proposal is a superior proposal, (vi) at least 5 days after receipt of that notice by the other party, the party that received the third-party takeover proposal determines that the third-party takeover proposal remains a superior proposal and (vii) that party terminates the merger agreement because of the receipt of that superior proposal.

**(4) *Termination due to Change in Board of Directors Approval***

A termination fee would be payable by the other party if a party terminates the merger agreement because the other party's board of directors (i) withdraws or modifies, or proposes publicly to withdraw or modify, its approval or recommendation of the merger agreement and the mergers (whether or not in connection with a competing proposal), unless the approval is withdrawn or modified primarily due to adverse conditions, events or action of or relating to the terminating party, or (ii) approves or recommends, or proposes to approve or recommend, a third-party takeover proposal. With respect to (i) above, the party whose board of directors withdraws or modifies its approval or recommendation bears the burden of proof in any court proceeding or arbitration to establish that it did so primarily because of adverse conditions, events or actions of or relating to the terminating party.

**No Solicitation**

Each party agreed in the merger agreement that it will not solicit, initiate or knowingly encourage, or knowingly take any other action designed to facilitate, any inquiries or the making of any third-party takeover proposal or participate in any negotiations or substantive discussions regarding any third-party takeover proposal. Notwithstanding this prohibition, if, at any time prior to receipt of a party's shareholder approval, that party's board of directors determines in good faith, after consultation with its legal and financial advisors, that a third-party takeover proposal that was not solicited by such party and that did not otherwise result from a breach of such party's non-solicitation obligations (other than in immaterial respects) is, or is reasonably likely to lead to, a superior proposal, then, after providing prior written notice of its decision to take such action to the other party and otherwise complying with these provisions, the party may:

- (i) furnish information with respect to itself and its subsidiaries to the person making the proposal pursuant to a customary confidentiality agreement containing terms no less favorable than those set forth in the confidentiality agreement between Duke Energy and Cinergy; and
- (ii) participate in discussions or negotiations regarding the proposal.

Neither the board of directors of Duke Energy or Cinergy nor any committee thereof may:

- (i) withdraw or modify, or propose publicly to withdraw or modify, in a manner adverse to the other party, the approval or recommendation of the merger agreement and the mergers;
- (ii) approve or recommend, or propose publicly to approve or recommend, any third-party takeover proposal; or
- (iii) cause such party to enter into any letter of intent, agreement in principle, acquisition agreement or similar agreement related to a third-party takeover proposal.

Notwithstanding these prohibitions, in response to a third-party takeover proposal that was not solicited by the party and that did not otherwise result from a breach of that party's non-solicitation obligations (other than in immaterial respects), at any time prior to receipt of that party's shareholder approval, the board of directors of that party may, if it determines in good faith, after consulting with outside counsel, that the failure to take such action would be reasonably likely to result in a breach of the board of directors' fiduciary obligations under applicable law:

- (i) withdraw or modify, or propose publicly to withdraw or modify, the approval or recommendation by the board of directors or any committee thereof of the merger agreement and the mergers;
- (ii) approve or recommend, or propose to approve or recommend, any superior proposal; or
- (iii) terminate the merger agreement.

However, in the case of the foregoing (ii) and (iii), the board of directors must first have determined in good faith that the third-party takeover proposal constitutes a superior proposal and in the case of the foregoing (iii), the party must have notified the other party in writing of its determination that the third-party takeover proposal constitutes a superior proposal and, at least 5 business days following receipt by the other party of the notice, the board of directors of that party determines that the superior proposal remains a superior proposal.

In circumstances other than in connection with a third-party takeover proposal, at any time prior to receipt of a party's shareholder approval, the board of directors of such party may, if it determines in good faith, after consulting with outside counsel, that the failure to take such action would be reasonably likely to result in a breach of the board of directors' fiduciary obligations under applicable law, withdraw or modify, or propose publicly to withdraw or modify, the approval or recommendation by such board of directors or any committee thereof of the merger agreement or the mergers, but only after:

- (i) the party notifies the other party in writing that the party's board of directors is prepared to make the above-referenced determination, setting forth the reasons for that determination in sufficient detail;
- (ii) for a period of 5 business days following the other party's receipt of the notice set forth in the foregoing (i), the party negotiates with the other party in good faith to make adjustments to the terms and conditions of the merger agreement, the mergers and the other transactions contemplated thereby as would enable the party's board of directors to proceed with its recommendation; and
- (iii) at the end of such 5-business day period such party's board of directors maintains its determination described in this paragraph (after taking into account the other party's proposed adjustments to the terms and conditions of the merger agreement, the mergers and the other transactions contemplated thereby).

In addition to the foregoing obligations, the party will as promptly as practicable advise the other party, orally and in writing, of any request for information or of any third-party takeover proposal (and in any case within 24 hours of such request or the receipt of such third-party takeover proposal), the principal terms and conditions of such request or third-party takeover proposal and the identity of the person making such request or third-party takeover proposal. The party will keep the other party informed of the status and details (including amendments and proposed amendments) of any such request or third-party takeover proposal. Contemporaneously with any termination of the merger agreement, the terminating party will provide the other party with a written verification that it has complied with its obligations pursuant to this paragraph (other than noncompliance which is immaterial).



## **Legal Proceeding Related to the Mergers**

Cinergy and its directors have been named as defendants in a purported class action filed in the Common Pleas Court, Hamilton County, Ohio, brought on behalf of a proposed class consisting of holders of Cinergy common stock excluding defendants and their affiliates and captioned NECA-IBEW Pension Fund v. Cinergy Corp., et al., C.A. No A0504123 (Action). The complaint in the Action alleges, among other things, that the merger agreement was the product of breaches of fiduciary duty by the defendants, in that it allegedly does not provide for full and fair value for Cinergy's public shareholders; and that the merger agreement and the Cinergy merger were approved as the result, allegedly, of improper self-dealing by certain defendants who would receive certain alleged employment compensation benefits and continued employment pursuant to the merger agreement. As relief, the complaint in the Action seeks, among things, rescission of the Cinergy merger if it is consummated, an order requiring the defendants to "obtain a transaction which is in the best interests of Cinergy's shareholders," imposition of a constructive trust upon certain benefits to be received by certain defendants pursuant to the merger agreement and other agreements and benefit arrangements, a declaration that the merger agreement was entered into in breach of the defendants' duties, and an injunction against consummation of the Cinergy merger "unless and until [Cinergy] adopts and implements a procedure or process to obtain the highest possible price for shareholders." Cinergy believes that the allegations of the complaint in the Action are without merit and that it has substantial meritorious defenses to the claims made in the Action.

## **Other Expenses**

All expenses incurred in connection with the merger agreement and the transactions contemplated thereby will be paid by the party incurring such expenses, whether or not the mergers are consummated, except that each of Duke Energy and Cinergy will bear and pay one-half of the costs and expenses incurred in connection with:

- the filing, printing and mailing of the registration statement on Form S-4 of which this joint proxy statement/prospectus is a part (including SEC filing fees); and
- the filings of the premerger notification and report forms under the HSR Act (including filing fees).

Duke Energy Holding will pay taxes, if any, attributable to (i) the transfer of beneficial ownership of Duke Energy's real property and (ii) the transfer of Duke Energy common stock pursuant to the merger agreement. Cinergy will pay taxes, if any, attributable to (i) the transfer of the beneficial ownership of Cinergy's real property and (ii) the transfer of Cinergy common stock pursuant to the merger agreement. Cinergy, Duke Energy and Duke Energy Holding will cooperate with respect to the filing of tax returns.

## **Transition Committee**

Duke Energy and Cinergy will establish a transition committee to examine various alternatives regarding the manner in which to best organize and manage the business of Duke Energy Holding after the effective time of the mergers. The transition committee will be co-chaired by Paul Anderson and James Rogers and will be composed of two additional Duke Energy designees and one additional Cinergy designee.

## **Name of the New Company**

A new company incorporated in Delaware, currently named Duke Energy Holding Corp. (formerly named Deer Holding Corp.) will hold what today are Duke Energy's and Cinergy's independent

businesses. Upon consummation of the mergers, the new company will be renamed Duke Energy Corporation.

### **Charitable Contributions**

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

### **Amendment; Extension and Waiver**

The merger agreement may be amended by the parties at any time before or after the Cinergy shareholders approve the merger agreement or the Duke Energy shareholders approve the merger agreement; provided, however, that after any such approval, there will not be made any amendment that by law requires further approval by the shareholders of Duke Energy or Cinergy without the further approval of those shareholders. The merger agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

At any time prior to the effective time of the mergers, a party may:

- extend the time for the performance of any of the obligations or other acts of the other parties;
- waive any inaccuracies in the representations and warranties of the other parties contained in the merger agreement or in any document delivered pursuant to the merger agreement; or
- subject to the proviso set out in the immediately preceding paragraph, waive compliance by the other parties with any of the agreements or conditions contained in the merger agreement.

Any agreement on the part of a party to any such extension or waiver will be valid only if set forth in an instrument in writing signed on behalf of that party. The failure of any party to the merger agreement to assert any of its rights under the merger agreement or otherwise will not constitute a waiver of such rights.

### **Representations and Warranties**

The merger agreement contains substantially reciprocal customary representations and warranties made by Duke Energy and Cinergy to each other. These representations and warranties are subject to qualifications and limitations agreed to by Duke Energy and Cinergy in connection with negotiating the terms of the merger agreement. Some of the more significant of these relate to:

- corporate organization and qualification;
- capital structure;
- corporate authority to enter into the merger agreement and the transactions contemplated thereby;
- absence of any breach of organizational documents, law or material agreements as a result of the transactions contemplated by the merger agreement;
- government approvals required in connection with the transactions contemplated by the merger agreement;

- SEC filings, financial statements and compliance with the Sarbanes-Oxley Act of 2002;
- absence of changes or events that have had or could reasonably be expected to have a material adverse effect;
- absence of undisclosed liabilities;
- absence of litigation that has had or could reasonably be expected to have a material adverse effect;
- truth and accuracy of certain information supplied in connection with the preparation of this joint proxy statement/prospectus and the registration statement on Form S-4 of which this joint proxy statement/prospectus is a part;
- possession of requisite permits and compliance with laws;
- proper filing of tax returns and certain other tax matters;
- certain employee benefits matters and compliance with the Employment Retirement Income Security Act of 1974;
- certain labor and employee relations matters;
- compliance with environmental laws and certain other environmental matters;
- shareholder vote required to approve the merger agreement and the transactions contemplated thereby;
- opinion of the financial advisors;
- ownership of Duke Energy and Cinergy capital stock;
- inapplicability of state anti-takeover statutes;
- maintenance of adequate insurance; and
- establishment of and compliance with policies with respect to energy trading.

Representations made only by Duke Energy:

- operations of nuclear power plants by Duke Energy are in compliance with all applicable laws and permits, and
- Duke Energy has taken all necessary actions so that the execution and delivery of the merger agreement and the consummation of the transactions contemplated thereby do not trigger the Duke Energy Rights Agreement.

Representation made only by Cinergy:

- no ownership of nuclear power plants.

THE DESCRIPTION OF THE MERGER AGREEMENT IN THIS JOINT PROXY STATEMENT/PROSPECTUS HAS BEEN INCLUDED TO PROVIDE YOU WITH INFORMATION REGARDING ITS TERMS. THE MERGER AGREEMENT CONTAINS REPRESENTATIONS AND WARRANTIES MADE BY AND TO THE PARTIES THERETO AS OF SPECIFIC DATES. THE STATEMENTS EMBODIED IN THOSE REPRESENTATIONS AND WARRANTIES WERE MADE FOR PURPOSES OF THE CONTRACT BETWEEN THE PARTIES THERETO AND ARE SUBJECT TO QUALIFICATIONS AND LIMITATIONS AGREED BY THE PARTIES THERETO IN CONNECTION WITH NEGOTIATING THE TERMS OF THAT CONTRACT. IN ADDITION, CERTAIN REPRESENTATIONS AND WARRANTIES WERE MADE AS OF A SPECIFIED DATE, MAY BE SUBJECT TO A CONTRACTUAL STANDARD OF

**MATERIALITY DIFFERENT FROM THOSE GENERALLY APPLICABLE TO SHAREHOLDERS, OR MAY HAVE BEEN USED FOR THE PURPOSE OF ALLOCATING RISK BETWEEN THE PARTIES RATHER THAN ESTABLISHING MATTERS AS FACTS.**

**Covenants of Duke Energy and Cinergy**

Pending the consummation of the transactions contemplated by the merger agreement, except as expressly contemplated or permitted by the merger agreement, for transactions solely involving one or more of a party's direct or indirect wholly-owned subsidiaries or between two or more direct or indirect wholly-owned subsidiaries of a party, or to the extent that the other party previously consents in writing (such consent not to be unreasonably withheld or delayed):

- each party and each of its subsidiaries will conduct its respective business in all material respects in the ordinary course of business consistent with past practice. Each party and its subsidiaries will use commercially reasonable efforts to preserve intact in all material respects its present business organizations, to maintain in effect all existing permits, subject to prudent management of workforce and business needs, to keep available the services of its key officers and employees, to maintain its assets and properties in good working order and condition, ordinary wear and tear excepted, to preserve its relationships with governmental authorities, customers and suppliers and others having significant business dealings with it and to comply in all material respects with all laws, orders and permits of all governmental authorities applicable to it;
- neither party will amend or propose to amend its certificate of incorporation, or, other than in a manner that would not materially restrict the operation of its business, its bylaws or its subsidiaries' certificates of incorporation or bylaws (or other comparable organizational documents);
- Cinergy may not, nor will it permit any of its subsidiaries to, declare, set aside or pay any dividends on or make other distributions in respect of any of its capital stock, except:
  - for the declaration and payment of regularly quarterly cash dividends on Cinergy common stock, not to exceed its current dividend of \$0.48 per share, with normal record and payment dates for such dividends in accordance with past dividend practice, and Cinergy may pay a special pro rata dividend on Cinergy common stock if the Cinergy merger is completed between a record date and payment date of a regular quarterly dividend;
  - for the declaration and payment of dividends by a direct or indirect wholly-owned subsidiary of Cinergy solely to its parent, or by a direct or indirect partially owned subsidiary of Cinergy (provided that Cinergy or the Cinergy subsidiary receives or is to receive its proportionate share of such dividend or distribution);
  - for the declaration and payment of regularly cash dividends with respect to preferred stock of Cinergy's subsidiaries outstanding as of the date of the merger agreement or permitted to be issued under the terms of the merger agreement; and
  - to the extent advisable in the exercise of the fiduciary duties of Cinergy's board of directors, for the declaration and payment of a customary share purchase rights plan, provided that Cinergy provides Duke Energy with prior notice of any such declaration or payment and in connection with any such declaration or payment, the Cinergy board of directors causes (i) the merger agreement and the transactions contemplated by the merger agreement to not result in a "distribution date" or similar event under such share purchase rights plan and (ii) any share rights purchase plan to be inapplicable in all respects to the merger agreement and the transactions contemplated by the merger agreement, including the Duke Energy merger and the Cinergy merger;

- Duke Energy may not, and will not permit any of its subsidiaries to declare, set aside or pay any dividends on or make other distributions in respect of any of its capital stock, except:
  - for the declaration and payment of regularly quarterly cash dividends on Duke Energy common stock, not to exceed \$0.275 per share, with usual record and payment dates, provided that Duke Energy (i) may increase its regular quarterly dividend to an amount not to exceed \$0.31 per share between the date of the merger agreement and the effective time of the Duke Energy merger and (ii) may pay a special pro rata dividend on Duke Energy common stock if the Duke Energy merger is completed between a record date and payment date of a regular quarterly dividend;
  - for the declaration and payment of dividends by a direct or indirect wholly-owned subsidiary of Duke Energy solely to its parent, or by a direct or indirect partially owned subsidiary of Duke Energy (provided that Duke Energy or the Duke Energy subsidiary receives or is to receive its proportionate share of such dividend or distribution); and
  - for the declaration and payment of regularly cash dividends with respect to preferred stock of Duke Energy or its subsidiaries outstanding as of the date of the merger agreement or permitted to be issued under the terms of the merger agreement;
- neither party will, nor will it permit any of its subsidiaries to split, combine, reclassify or take similar action with respect to any of its capital stock or share capital or issue or authorize or propose the issuance of any other securities in respect of, in lieu of, or in substitution for shares of its capital stock or comprised in its share capital;
- neither party may (i) redeem or repurchase any shares of its capital stock other than to fund certain benefit plans or as required by the terms of preferred stock; however, Duke Energy may redeem all of its outstanding series of preferred stock, (ii) adopt a plan of complete or partial liquidation or resolutions providing for or authorizing such liquidation or a dissolution, merger, consolidation, restructuring, recapitalization or other reorganization, and (iii) except as expressly permitted by the merger agreement, directly or indirectly redeem, repurchase or otherwise acquire any shares of its capital stock or any option with respect thereto, except (1) in connection with intercompany purchases of capital stock or share capital, (2) for the purpose of funding certain employee equity compensation plans and dividend reinvestment plans or stock purchase plans, (3) mandatory repurchases or redemptions of preferred stock of a party's subsidiaries (and in the case of Duke Energy, preferred stock of Duke Energy), and (4) in the case of Duke Energy, the redemption by Duke Energy of Duke Energy Preferred Stock and Duke Energy Preferred A stock (as described in more detail under "The Merger Agreement—The Mergers and Restructuring Transactions" beginning on page 128;
- neither party will, nor will it permit any of its subsidiaries to, issue, deliver or sell, or authorize or propose the issuance, delivery or sale of, any shares of its capital stock or any option with respect thereto (other than issuances relating to employee equity compensation arrangements, subject to certain restrictions and conditions, and the pro rata issuance by a subsidiary of its capital stock to its shareholders), or modify or amend any right of any holder of outstanding shares of their capital stock or any option with respect thereto, other than in connection with equity-based benefit plans and restricted stock and equity awards under certain circumstances. Further, any shares of Duke Energy common stock or Cinergy common stock that Duke Energy or Cinergy, as the case may be, contributes, directly or indirectly, to any employee benefit plan (including any plan intended to satisfy the requirements of Section 401(a) of the Code) or that Duke Energy or Cinergy, as the case may be, makes subject to any dividend reinvestment or similar plan will be shares purchased in open-market or privately negotiated transactions, but will not constitute newly issued shares of Duke Energy common stock or Cinergy common stock, as the case may be;

- except for capital expenditures required by law or governmental authorities or incurred in connection with the repair or replacement of facilities destroyed or damaged due to casualty or accident (whether or not covered by insurance) and except as otherwise permitted under the merger agreement, neither party will, nor will it permit any of its subsidiaries to, make capital expenditures or acquire or agree to acquire (whether by merger, consolidation, purchase or otherwise) any person or assets if:
  - (1) the expected gross expenditures and commitments pursuant thereto (including the amount of any indebtedness and amounts received for negative trading positions assumes) exceeds or may exceed:
    - in the case of Cinergy, (i) \$100 million in the case of any acquisition or series of related acquisitions of any person, asset or property located in the United States (ii) \$50,000,000 in the case of any acquisition or series of related acquisitions of any person, asset or property located outside the United States or (iii) \$100,000,000 in the aggregate (excluding certain acquisitions expressly permitted by the merger agreement and acquisitions to which Duke Energy expressly consents in writing), and
    - in the case of Duke Energy, (i) \$300 million in the case of any acquisition or series of related acquisitions of any person, asset or property located in the United States (ii) \$150,000,000 in the case of any acquisition or series of related acquisitions of any person, asset or property located outside the United States or (iii) \$300,000,000 in the aggregate (excluding certain acquisitions expressly permitted by the merger agreement and acquisitions to which Cinergy expressly consents in writing), and;
  - (2) any such acquisition or capital expenditure constitutes any line of business that is not currently conducted by the party, its subsidiaries or joint ventures of the parties as of the date of the merger agreement or extends any line of business of such party, its subsidiaries or the joint ventures into any geographic region outside of the continental United States or Canada which such party, its subsidiaries or joint ventures do not conduct business as of the date of the merger agreement; or
  - (3) such acquisition or capital expenditure is reasonably likely, individually or in the aggregate, to materially delay the receipt of required statutory approvals or prevent the satisfaction of related closing conditions;
- except for dispositions of obsolete equipment or assets or dispositions of assets being replaced, in each case in the ordinary course of business consistent with past practice, dispositions by the parties or their subsidiaries of assets in accordance with the terms of restructuring and divestiture plans mandated or approved by applicable local or state regulatory agencies, and except as expressly permitted by the merger agreement, neither party will, nor will permit either of its subsidiaries to, sell, lease, grant any security interest in or otherwise dispose of or encumber any of its assets or properties:
  - if, in the case of Cinergy, (i) \$100 million in the case of any dispositions or series of related dispositions of any person, asset or property located in the United States (ii) \$50,000,000 in the case of any disposition or series of related dispositions of any person, asset or property located outside the United States or (iii) \$100,000,000 in the aggregate (excluding certain dispositions expressly permitted by the merger agreement and dispositions to which Duke Energy expressly consents in writing), and
  - if, in the case of Duke Energy, (i) \$300 million in the case of any disposition or series of related dispositions of any person, asset or property located in the United States (ii) \$150,000,000 in the case of any disposition or series of related dispositions of any person, asset or property located outside the United States or (iii) \$300,000,000 in the

aggregate (excluding certain dispositions expressly permitted by the merger agreement and dispositions to which Cinergy expressly consents in writing), and;

- except as expressly permitted by the merger agreement, neither party will, nor will it permit any of its subsidiaries to incur or guarantee any indebtedness or enter into any “keep well” or other agreement to maintain any financial condition of another person or enter into any arrangement having the economic effect of any of the foregoing (including any capital leases, “synthetic” leases or conditional sale or other title retention agreements) other than (i) short-term borrowings incurred in the ordinary course of business, (ii) letters of credit obtained in the ordinary course of business, (iii) borrowings made in connection with the refunding of existing indebtedness at maturity or upon final mandatory redemption (without the need for the occurrence of any special event) or at a lower cost of funds, (iv) borrowings to finance capital expenditures permitted by the merger agreement or indebtedness assumed in relation thereto, (v) other borrowings in an aggregate principal amount not to exceed, in the case of Cinergy, \$150,000,000, and, in the case of Duke Energy, \$500 million, outstanding at any time, (vi) guarantees or other credit support issued pursuant to trading or marketing positions established prior to the date of the merger agreement and (vii) in addition to the guarantees or other credit support contemplated by (vi) above, additional guarantees or other credit support issued in connection with trading or marketing activities in the ordinary course of business.
- except as expressly permitted by the merger agreement, neither party will, nor will it permit any of its subsidiaries to make any loans or advances to any other person, other than (i) in the ordinary course of business consistent with past practice, (ii) to any direct or indirect wholly-owned subsidiary of a party, or, in the case of a subsidiary of a party, to such party or (iii) as required pursuant to any obligation in effect as of the date of the merger agreement;
- neither party will nor will permit any of its subsidiaries to (i) permit any material change in policies governing or otherwise relating to the trading or marketing of energy other than as a result of permitted acquisitions or capital expenditures or, in the case of Cinergy, to increase the existing aggregate value-at-risk limit as established by the Risk Policy Committee, or (ii) enter into any physical commodity transactions, exchange-traded futures and options transactions, over-the-counter transactions and derivatives thereof or similar transactions other than as permitted in the respective party’s trading guidelines;
- except as required by law or the terms of any collective bargaining agreement or employee benefit plan of either of the parties, neither party will, nor will permit any of its subsidiaries to, enter into, adopt, amend or terminate any employee benefit plan, or other agreement, arrangement, plan or policy between the party or one of its subsidiaries and one or more of its directors, officers or employees (other than any amendment that is immaterial or administrative in nature), or except for normal increases in the ordinary course of business consistent with past practice, increase in any manner the compensation or fringe benefits of any director, executive officer or other employee, or, except for normal payments in the ordinary course of business consistent with past practice, pay any benefit not required by any plan or arrangement in effect as of the date of the merger agreement, provided that, the foregoing restrictions will not restrict the parties and their respective subsidiaries from (i) entering into or making available to newly hired officers and employees or to officers and employees in the context of promotions based on job performance or workplace requirements in the ordinary course of business consistent with past practice, plans, agreements, benefits and compensation arrangements (including incentive grants) that have, consistent with past practice, been made available to newly hired or promoted officers and employees, or (ii) entering into or amending collective bargaining agreements with existing collective bargaining representatives or newly certified bargaining units regarding mandatory subjects of bargaining under applicable law, in each case in a manner consistent with past practice to the extent permitted by law;

- neither party will, nor will permit any of its subsidiaries to, agree or consent to any material agreements or modifications to existing agreements or course of dealings with any governmental authority in respect of its business operations except as required by law, to renew permits or agreements in the ordinary course, as may be necessary in connection with the consummation of permitted acquisitions or to effect the transactions contemplated by the merger agreement;
- neither party will, nor will it permit any of its subsidiaries to, make any changes in its accounting methods materially affecting the reported consolidated assets, liabilities or results of operations of such party, except as required by law or GAAP;
- each party will, and will cause its subsidiaries to, maintain with financially responsible insurance companies (or through self-insurance, consistent with past practice) insurance in such amounts and against such risks and losses as are customary for companies engaged in their respective businesses; and
- except as could not reasonably be expected to have a material adverse effect on such party, neither party will, nor will permit any of its subsidiaries to, settle any tax claim, action or proceeding, or make any tax election.

Duke Energy will not permit Duke Energy Holding or any of its subsidiaries to take, or to commit to take, any action after the effective time of the Duke Energy merger and prior to the effective time of the Cinergy merger, except for the actions expressly set forth in the merger agreement as actions to be taken by any such person during such period.

From the date of the merger agreement, until it is consummated, Duke and Cinergy will coordinate with the other regarding the declaration and payment of dividends in respect of the shares of Duke Energy common stock and Cinergy common stock and the record dates and payment dates relating thereto, including, if applicable, through the payment of the special dividend contemplated by the merger agreement.

Duke, Cinergy and Duke Energy Holding shall and shall cause each of their subsidiaries to use their reasonable best efforts prior to the closing to obtain all consents and approvals necessary to transfer at the closing, or as soon as reasonably possible thereafter, certain generation stations to The Cincinnati Gas & Electric Company and shall effect such transfer as promptly as practicable following the consummation of the mergers, subject to the receipt of all such necessary consents and approvals.

Each party will use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things reasonably necessary or advisable to consummate and make effective, in the most expeditious manner reasonably practicable, the mergers and the other transactions contemplated by the merger agreement; provided however, “reasonable best efforts” will not require any party to (i) sell, or agree to sell, hold or agree to hold separate, or otherwise dispose or agree to dispose of any asset, in each case if such sale, separation or disposition or agreement with respect thereto would, individually or in the aggregate, reasonably be expected to have a material adverse effect on Duke Energy Holding, Cinergy or Duke Energy (in addition to certain specified dispositions) or (ii) conduct or agree to conduct its business in any particular manner if such conduct or agreement with respect thereto would, individually or in the aggregate, reasonably be expected to have a material adverse effect on Duke Energy Holding, Cinergy or Duke Energy.



## COMPARATIVE STOCK PRICES AND DIVIDENDS

Duke Energy common stock is listed for trading on the NYSE under the symbol “DUK,” and Cinergy common stock is listed for trading on the NYSE under the symbol “CIN.” The following table sets forth, for the periods indicated, dividends and the high and low intra-day sales prices per share of Duke Energy common stock and Cinergy common stock on the New York Stock Exchange composite transaction reporting system. For current price information, you should consult publicly available sources. See also “The Mergers—Dividends” on page 110.

Calendar Period	Duke Energy Common Stock			Cinergy Common Stock		
	High	Low	Dividends Paid	High	Low	Dividends Paid
<b>2002</b>						
First Quarter . . . . .	\$40.00	\$31.99	\$0.275	\$35.75	\$31.00	\$0.45
Second Quarter . . . . .	\$39.60	\$28.50	\$0.275	\$37.19	\$34.25	\$0.45
Third Quarter . . . . .	\$31.09	\$17.81	\$0.275	\$36.21	\$25.40	\$0.45
Fourth Quarter . . . . .	\$22.00	\$16.42	\$0.275	\$34.19	\$28.25	\$0.45
<b>2003</b>						
First Quarter . . . . .	\$21.57	\$12.21	\$0.275	\$35.87	\$29.77	\$0.46
Second Quarter . . . . .	\$20.75	\$13.51	\$0.275	\$38.75	\$33.50	\$0.46
Third Quarter . . . . .	\$19.70	\$16.75	\$0.275	\$36.99	\$33.14	\$0.46
Fourth Quarter . . . . .	\$20.89	\$17.08	\$0.275	\$38.86	\$35.19	\$0.46
<b>2004</b>						
First Quarter . . . . .	\$22.70	\$19.86	\$0.275	\$41.10	\$37.17	\$0.47
Second Quarter . . . . .	\$22.90	\$18.85	\$0.275	\$41.04	\$34.92	\$0.47
Third Quarter . . . . .	\$23.00	\$19.84	\$0.275	\$40.75	\$36.95	\$0.47
Fourth Quarter . . . . .	\$26.16	\$22.85	\$0.275	\$42.63	\$38.08	\$0.47
<b>2005</b>						
First Quarter . . . . .	\$28.20	\$24.37	\$0.275	\$41.70	\$39.05	\$0.48
Second Quarter (through June 29, 2005) . . . . .	\$29.85	\$27.34	\$0.275	\$44.94	\$38.75	\$0.48

The following table sets forth the high and low sales prices per share of Duke Energy common stock and Cinergy common stock on the NYSE Composite Transaction reporting system on May 6, 2005, the last full trading day prior to the public announcement of the mergers, and on June 29, 2005, the last trading day for which this information could be calculated prior to the filing of this joint proxy statement/prospectus:

	Duke Energy Common Stock		Cinergy Common Stock		Cinergy Equivalent Per Share(1)	
	High	Low	High	Low	High	Low
May 6, 2005 . . . . .	\$29.50	\$29.16	\$40.52	\$40.18	\$46.02	\$45.49
June 29, 2005 . . . . .	\$29.85	\$29.51	\$44.93	\$44.50	\$46.57	\$46.04

(1) The equivalent per share data for Cinergy common stock has been determined by multiplying the market price of a share of Duke Energy common stock on each of the dates by the exchange ratio of 1.56.

On March 18, 2005, Duke Energy and Merrill Lynch International, an affiliate of Merrill Lynch, entered into an accelerated share repurchase agreement whereby Duke Energy repurchased 30 million shares of its common stock from Merrill Lynch International, with Merrill Lynch International purchasing an equivalent number of common shares of Duke Energy in the open market during the term of the purchase agreement. The purchase agreement provides for a contingent purchase price

adjustment, final settlement of which is expected by November 8, 2005, whereby Duke Energy will receive from, or pay to, Merrill Lynch International an amount reflecting the prices actually paid by Merrill Lynch International for its open-market purchases. As disclosed in Duke Energy's Form 10-Q for the quarter ended March 31, 2005, as of April 30, 2005, Merrill Lynch International had purchased 6.6 million shares at a weighted average price of \$28.25 per share. From March 18, 2005 to June 23, 2005, Merrill Lynch International had purchased 18.7 million shares at a weighted average price of \$28.1526 per share, including 12.1 million shares purchased at a weighted average price of \$28.1014 per share from May 9, 2005, the first day of trading following public announcement of the merger agreement to June 23, 2005. The purchase agreement between Duke Energy and Merrill Lynch International is filed as Exhibit 10.4 to Duke Energy's Form 10-Q for the quarter ended March 31, 2005 and is incorporated herein by reference.

Duke Energy also entered into a separate open market purchase plan with Merrill Lynch International on March 18, 2005 to repurchase up to an additional 20 million shares of its common stock through December 27, 2005. Duke Energy may terminate this plan at any time, without penalty. The timing of any repurchase of shares by Merrill Lynch International pursuant to this plan is dependent upon certain specified factors, including the market price of Duke Energy's common stock. At May 6, 2005, Duke Energy had repurchased 2.6 million shares of its common stock through this plan at a weighted average price of \$28.97 per share. On May 9, 2005, Duke Energy announced plans to suspend additional repurchases under the open market purchase plan pending further assessment.

## DUKE ENERGY HOLDING CORP.

### UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

The Unaudited Pro Forma Condensed Combined Financial Statements have been prepared to reflect the mergers of Duke Energy and Cinergy. Prior to entering into the merger agreement, Duke Energy formed Duke Energy Holding Corp. (formerly Deer Holding Corp.). At the closing, Duke Energy Holding's two newly-formed wholly-owned subsidiaries, Deer Acquisition Corp. and Cougar Acquisition Corp., will merge with and into Duke Energy and Cinergy, respectively, as a result of which each of Duke Energy and Cinergy will become wholly-owned subsidiaries of Duke Energy Holding. After the mergers, the current shareholders of Duke Energy and Cinergy will be the shareholders of Duke Energy Holding (other than those Duke Energy shareholders who properly perfect their dissenter's rights pursuant to North Carolina law) and Duke Energy Holding will be renamed Duke Energy Corporation. The completion of the mergers is currently expected to occur by mid-2006 depending on all consents and approvals being received, although we cannot predict the actual timing.

The Unaudited Pro Forma Condensed Combined Statements of Operations combine the historical consolidated statements of operations for Duke Energy and Cinergy, giving effect to the mergers as if they had occurred on January 1, 2004. The Unaudited Pro Forma Condensed Combined Balance Sheet combines the historical consolidated balance sheets of Duke Energy and Cinergy, giving effect to the mergers as if they had been consummated on March 31, 2005. You should read these unaudited combined pro forma financial statements in conjunction with the:

- accompanying notes to the Unaudited Pro Forma Condensed Combined Financial Statements;
- separate unaudited historical financial statements of Duke Energy as of and for the three-month period ended March 31, 2005, included in the Duke Energy Quarterly Report on Form 10-Q for the three months ended March 31, 2005, which is incorporated by reference into this document;
- separate historical financial statements of Duke Energy as of and for the fiscal year ended December 31, 2004, included in the Duke Energy Annual Report on Form 10-K for the fiscal year ended December 31, 2004, which is incorporated by reference into this document;
- separate unaudited historical financial statements of Cinergy as of and for the three-month period ended March 31, 2005, included in the Cinergy Quarterly Report on Form 10-Q for the three months ended March 31, 2005, which is incorporated by reference into this document; and
- separate historical financial statements of Cinergy as of and for the year ended December 31, 2004, included in the Cinergy Annual Report on Form 10-K for the year ended December 31, 2004, which is incorporated by reference into this document.

The historical financial information of Duke Energy and Cinergy as of and for the three months ended March 31, 2005 is unaudited. The historical financial information of Duke Energy and Cinergy for the year ended December 31, 2004 is derived from the audited financial statements of Duke Energy and Cinergy, respectively, but does not include all disclosures required by accounting principles generally accepted in the United States of America. The unaudited pro forma condensed combined financial information is provided for informational purposes only. The pro forma information is not necessarily indicative of what the combined companies' financial position or results of operations actually would have been had the mergers been completed at the dates indicated. In addition, the unaudited pro forma condensed combined financial information does not purport to project the future financial position or operating results of the combined company.

The unaudited pro forma condensed combined financial information was prepared using the purchase method of accounting with Duke Energy treated as the acquirer. Accordingly, we have adjusted the historical consolidated financial information to give effect to the impact of the consideration issued in connection with the mergers. In the Unaudited Pro Forma Condensed

Combined Balance Sheet, Duke Energy's cost to acquire Cinergy has been allocated to the assets to be acquired and liabilities to be assumed based upon Duke Energy's and Cinergy's managements' preliminary estimate of their respective fair values. Any differences between the fair value of the consideration to be issued and the fair value of the assets and liabilities to be acquired will be recorded as goodwill. The amounts allocated to the assets acquired and liabilities assumed in the Unaudited Pro Forma Condensed Combined Financial Statements are based on management's preliminary internal valuation estimates. Definitive allocations will be performed and finalized based upon valuations and other studies that will be performed following the closing date of the mergers. Accordingly, the pro forma purchase allocation adjustments are preliminary and have been made solely for the purpose of providing unaudited pro forma condensed combined financial information and are subject to revision based on a final determination of fair value following the closing of the mergers. Final determinations of fair value may differ materially from those presented herein. The Unaudited Pro Forma Condensed Combined Statements of Operations also include certain purchase accounting adjustments, including items expected to have a continuing impact on the combined results, such as increased depreciation and amortization expense on acquired assets. The purchase method of accounting applied to the mergers is based on current accounting literature. The Financial Accounting Standards Board is currently engaged in a project reviewing the rules governing the application of purchase accounting. We cannot predict if this project will result in changes to current purchase accounting rules prior to the completion of the mergers.

The Unaudited Pro Forma Condensed Combined Statements of Operations do not include the impacts of any revenue, cost or other operating synergies that may result from the merger. Duke Energy currently expects the transaction to generate approximately \$400 million of annual pre-tax cost savings by the attainment of steady-state operations in the third year after the closing of the transactions. Savings are anticipated to be split approximately evenly between the regulated and unregulated operations, with savings related to the regulated operations expected to be shared with customers, subject to regulatory approval. Approximately half of the savings are expected to come from work force reduction, including attrition, early retirements and severance programs. The remainder of the savings is expected to come largely from realization of economies of scale and integrating overlapping or duplicative functions.

The Unaudited Pro Forma Condensed Combined Financial Statements do not reflect the impact of financing, liquidity or other balance sheet repositioning that may be undertaken in connection with or subsequent to the mergers, nor does it reflect any other changes that might occur regarding the Duke Energy and Cinergy combined portfolios of businesses.

Except as discussed at note (h) to the Unaudited Pro Forma Condensed Combined Balance Sheet, the Unaudited Pro Forma Condensed Combined Financial Statements do not reflect any nonrecurring charges expected to result from the mergers. The majority of nonrecurring charges resulting from the mergers are anticipated to be comprised of executive separation, employee termination costs and other exit costs related to the Cinergy business that will be recognized in the opening balance sheet in accordance with Emerging Issues Task Force (EITF) Issue No 95-3, "Recognition of Liabilities in Connection with a Purchase Business Combination." Other merger-related charges may be incurred that do not meet the criteria in EITF Issue No 95-3, including employee termination and exit costs related to the Duke Energy business, other integration-related costs, and the impacts of potential divestitures, if any, that may be required by governmental authorities. Duke Energy and Cinergy have just recently begun collecting information in order to formulate detailed integration plans to deliver planned synergies. However, at this time, the status of the integration plans and the merger-related costs, except as discussed at note (h) to the Unaudited Pro Forma Condensed Combined Balance Sheet are too uncertain to include in the pro forma financial information.

Based on Duke Energy's review of Cinergy's summary of significant accounting policies disclosed in Cinergy's financial statements, the nature and amount of any adjustments to the historical financial

statements of Cinergy to conform their accounting policies to those of Duke Energy are not expected to be significant. Upon consummation of the mergers, further review of Cinergy's accounting policies and financial statements may result in required revisions to Cinergy's policies and classifications to conform to those of Duke Energy.

As disclosed in the Duke Energy Quarterly Report on Form 10-Q for the three months ended March 31, 2005, in February 2005, Duke Energy executed an agreement with ConocoPhillips whereby Duke Energy has agreed to transfer a 19.7% interest in Duke Energy Field Services (DEFS) to ConocoPhillips for direct and indirect monetary and nonmonetary consideration of approximately \$1.1 billion. This transaction is currently anticipated to close in the second half of 2005. Subsequent to the closing of this transaction, Duke Energy expects to account for its resulting 50% interest in DEFS under the equity method of accounting, and therefore DEFS will no longer be consolidated into Duke Energy's historical consolidated financial statements. Duke Energy's historical consolidated statements of operations for the year ended December 31, 2004 and the three months ended March 31, 2005, and Duke Energy's unaudited historical balance sheet as of March 31, 2005, have not been adjusted to reflect the pro forma effect of this transaction because the transaction is not anticipated to have a significant effect on Duke Energy's consolidated net earnings or total common stockholders' equity. For 2004, DEFS generated unaffiliated revenues of approximately \$10.1 billion which is included in non-regulated electric, natural gas and natural gas liquids in the Unaudited Pro Forma Condensed Combined Statements of Operations, and in the first quarter of 2005, DEFS generated approximately \$2.6 billion of unaffiliated revenues with approximately \$2.5 billion included in non-regulated electric, natural gas and natural gas liquids and approximately \$50 million included in regulated natural gas in the Unaudited Pro Forma Condensed Combined Statements of Operations.

Except for an adjustment related to pension and other postretirement benefit obligations, as mandated by Statement of Financial Accounting Standards (SFAS) Nos. 87, "Employers' Accounting for Pensions" and 106, "Employers' Accounting for Postretirement Benefits Other Than Pensions" and as discussed in note (j) to the Unaudited Pro Forma Condensed Combined Balance Sheet, the Unaudited Pro Forma Condensed Combined Financial Statements do not reflect any pro forma adjustments related to Cinergy's regulated operations that are accounted for pursuant to SFAS No. 71 "Accounting for the Effects of Certain Types of Regulation," which are comprised of PSI, ULH&P and CG&E's transmission and distribution operations. Under the rate setting and recovery provisions currently in place for these regulated operations which provide revenues derived from cost, the fair values of the individual tangible and intangible assets and liabilities are estimated to approximate their carrying values. However, these estimates of fair value could change following further analysis of this matter. The estimated fair values of the assets and liabilities of these operations could also be materially affected by the rate structure of Cinergy's utilities upon completion of the mergers.

**DUKE ENERGY HOLDING CORP.**  
**Unaudited Pro Forma Condensed Combined Statement of Operations**  
**For the Three Months Ended March 31, 2005**  
(In millions, except per-share amounts)

	Duke Energy Historical	(a) Cinergy Historical	Pro Forma Adjustments	Duke Energy Holding Pro Forma
<b>Operating Revenues</b>				
Non-regulated electric, natural gas, natural gas liquids and other . . . . .	\$3,324	\$ 461	\$ 14 (b) 6 (h)	\$3,805
Regulated electric . . . . .	1,274	577		1,851
Regulated natural gas and natural gas liquids . . . . .	1,151	306		1,457
Total operating revenues . . . . .	<u>5,749</u>	<u>1,344</u>	<u>20</u>	<u>7,113</u>
<b>Operating Expenses</b>				
Natural gas and petroleum products purchased . . . . .	3,023	209	(18)(h)	3,214
Costs of fuel resold . . . . .	—	85		85
Operation, maintenance and other . . . . .	864	332		1,196
Fuel used in electric generation and purchased power . . . . .	432	305	39 (b)	776
Depreciation and amortization . . . . .	506	126	(1)(c)	631
Property and other taxes . . . . .	160	79		239
Impairment and other charges . . . . .	121	—		121
Total operating expenses . . . . .	<u>5,106</u>	<u>1,136</u>	<u>20</u>	<u>6,262</u>
<b>Gains on Sales of Investments in Commercial and Multi-Family Real Estate . . . . .</b>				
	42	—		42
<b>Gains (Losses) on Sales of Other Assets, net . . . . .</b>				
	33	—		33
<b>Operating Income . . . . .</b>	<u>718</u>	<u>208</u>	<u>—</u>	<u>926</u>
<b>Other Income and Expenses</b>				
Equity in earnings of unconsolidated affiliates . . . . .	41	5	(3)(d)	43
Gains (Losses) on sales and impairments of equity investments . . . . .	1,239	(7)		1,232
Other income and expenses, net . . . . .	25	9	(1)(e)	33
Total other income and expenses . . . . .	<u>1,305</u>	<u>7</u>	<u>(4)</u>	<u>1,308</u>
<b>Interest Expense . . . . .</b>	293	64	(4)(f) (1)(g)	352
<b>Minority Interest Expense . . . . .</b>	416	1		417
<b>Earnings From Continuing Operations Before Income Taxes . . . . .</b>				
	1,314	150	1	1,465
<b>Income Tax Expense from Continuing Operations . . . . .</b>				
	447	33	— (i)	480
<b>Income From Continuing Operations . . . . .</b>	867	117	1	985
<b>Dividends and Premiums on Redemption of Preferred and Preference Stock . . . . .</b>				
	2	—	(2)(j)	—
<b>Income from Continuing Operations Available For Common Stockholders . . . . .</b>	<u>\$ 865</u>	<u>\$ 117</u>	<u>\$ 3</u>	<u>\$ 985</u>
<b>Common Stock Data</b>				
Weighted-average shares outstanding				
Basic . . . . .	954	196		1,260(k)
Diluted . . . . .	990	197		1,297(k)
Earnings per share (from continuing operations)				
Basic . . . . .	\$ 0.91	\$ 0.60		\$ 0.78
Diluted . . . . .	\$ 0.88	\$ 0.60		\$ 0.76

See accompanying Notes to Duke Energy Holding Corp. Unaudited Pro Forma Condensed Combined Statement of Operations, which are an integral part of these statements.

**DUKE ENERGY HOLDING CORP.**  
**Unaudited Pro Forma Condensed Combined Statement of Operations**  
**For the Year Ended December 31, 2004**  
(In millions, except per-share amounts)

	Duke Energy Historical	(a) Cinergy Historical	Pro Forma Adjustments	Duke Energy Holding Pro Forma
<b>Operating Revenues</b>				
Non-regulated electric, natural gas, natural gas liquids and other . . . . .	\$14,275	\$1,671	\$ 145 (b) (24)(h)	\$16,067
Regulated electric . . . . .	5,111	2,326		7,437
Regulated natural gas and natural gas liquids . . . . .	3,117	691	(6) (h)	3,802
Total operating revenues . . . . .	<u>22,503</u>	<u>4,688</u>	<u>115</u>	<u>27,306</u>
<b>Operating Expenses</b>				
Natural gas and petroleum products purchased . . . . .	11,335	428	(52)(h)	11,711
Costs of fuel resold . . . . .	—	281		281
Operation, maintenance and other . . . . .	3,568	1,282		4,850
Fuel used in electric generation and purchased power . . . . .	2,098	1,244	232 (b)	3,574
Depreciation and amortization . . . . .	1,851	461	(3)(c)	2,309
Property and other taxes . . . . .	539	254		793
Impairment and other charges . . . . .	65	—		65
Total operating expenses . . . . .	<u>19,456</u>	<u>3,950</u>	<u>177</u>	<u>23,583</u>
<b>Gains on Sales of Investments in Commercial and Multi-Family Real Estate . . . . .</b>				
	192	—		192
<b>Gains (Losses) on Sales of Other Assets, net . . . . .</b>				
	(225)	—		(225)
<b>Operating Income . . . . .</b>	<u>3,014</u>	<u>738</u>	<u>(62)</u>	<u>3,690</u>
<b>Other Income and Expenses</b>				
Equity in earnings of unconsolidated affiliates . . . . .	161	48	(10)(d)	199
Losses on sales and impairments of equity investments . . . . .	(4)	—		(4)
Other income and expenses, net . . . . .	145	(3)	(4)(e)	138
Total other income and expenses . . . . .	<u>302</u>	<u>45</u>	<u>(14)</u>	<u>333</u>
<b>Interest Expense . . . . .</b>	1,349	275	(17)(f) (5)(g)	1,602
<b>Minority Interest Expense . . . . .</b>	195	3		198
<b>Earnings From Continuing Operations Before Income Taxes . . . . .</b>				
	1,772	505	(54)	2,223
<b>Income Tax Expense from Continuing Operations . . . . .</b>				
	540	104	(22)(i)	622
<b>Income From Continuing Operations . . . . .</b>	<u>1,232</u>	<u>401</u>	<u>(32)</u>	<u>1,601</u>
<b>Dividends and Premiums on Redemption of Preferred and Preference Stock . . . . .</b>				
	9	—	(9)(j)	—
<b>Income from Continuing Operations Available For Common Stockholders . . . . .</b>	<u>\$ 1,223</u>	<u>\$ 401</u>	<u>\$ (23)</u>	<u>\$ 1,601</u>
<b>Common Stock Data</b>				
Weighted-average shares outstanding				
Basic . . . . .	931	181		1,213 (k)
Diluted . . . . .	966	184		1,253 (k)
Earnings per share (from continuing operations)				
Basic . . . . .	\$ 1.31	\$ 2.22		\$ 1.32
Diluted . . . . .	\$ 1.27	\$ 2.18		\$ 1.28

See accompanying Notes to Duke Energy Holding Corp. Unaudited Pro Forma Condensed Combined Statement of Operations, which are an integral part of these statements.

**Duke Energy Holding Corp.**  
**Notes to Unaudited Pro Forma Condensed**  
**Combined Statements of Operations**

- (a) *Cinergy Historical Presentation*—Certain adjustments have been made to Cinergy’s historical presentation in order to conform to Duke Energy’s historical presentation. These adjustments had no impact on the historical income from continuing operations reported by Cinergy. All utility revenues are presented as either regulated electric or gas, respectively, with one exception for CG&E electric generation. CG&E’s electric generation business is presented as non-regulated electric revenues. Revenues derived from CG&E’s retail electric generation business are approved through a public service commission order through 2008; however, CG&E generation does not follow Statement of Financial Accounting Standards No. 71, “Accounting for the Effects of Certain Types of Regulation” and is therefore presented as non-regulated.
- (b) *Operating Revenues and Fuel used in Electric Generation and Purchased Power*—Represents the pro forma adjustments required to reflect the net incremental operating revenue and net incremental fuel and emission allowance expenses resulting from (1) the amortization of the fair value adjustments related to certain of Cinergy’s fuel contracts and power sale agreements (see balance sheet note (k)) and (2) the adjustment of emission allowances to fair value which increases the expense recognition of emission allowances consumed (see balance sheet note (d)).
- (c) *Depreciation and Amortization Expense*—Represents the pro forma adjustment required to reflect the net incremental depreciation and amortization expense resulting from the fair valuation of Cinergy’s power generating assets. As discussed in balance sheet note (c), the amount of this adjustment is based on preliminary estimates of the fair values of the related assets.
- (d) *Equity in Earnings of Unconsolidated Affiliates*—Represents the pro forma adjustment required to reflect a net decrease in equity in earnings of unconsolidated investments in domestic and foreign entities, joint ventures and partnerships (see balance sheet note (e)) resulting from the basis difference in the equity method investments being amortized over the average remaining life of the related long-lived assets of those investments.
- (e) *Interest Income*—Represents the pro forma adjustment to interest income resulting from the fair value adjustment of Cinergy’s notes receivable (see balance sheet note (f)). The final fair value determination of the notes receivable will be based on prevailing market interest rates at the completion of the mergers and the necessary adjustment will be amortized as a reduction (in the case of a premium to book value) or an increase (in the case of a discount to book value) to interest income over the remaining life of the individual notes receivable.
- (f) *Interest Expense*—Represents the pro forma adjustment to interest expense resulting from the fair valuation of Cinergy’s third-party debt related to its non-regulated operations (see balance sheet note (i)). The final fair value determination of the debt will be based on prevailing market interest rates, adjusted for estimated issuance costs, at the completion of the mergers and the necessary adjustment will be amortized as a reduction (in the case of a premium to book value) or an increase (in the case of a discount to book value) to interest expense over the remaining life of the individual debt issues.
- (g) *Interest Expense*—Represents the pro forma adjustment to interest expense to reflect the elimination of historical amortization of deferred debt costs for debt related to Cinergy’s non-regulated operations (see balance sheet note (g)).
- (h) *Intercompany Transactions*—Represents the pro forma adjustments required for transactions between Duke Energy and Cinergy included in each company’s historical statements of operations. The underlying amounts in these adjustments relate primarily to purchases and sales of power and gas between the companies. The pro forma adjustments for intercompany transactions do not net



to zero due to differing accounting designations by Duke Energy and Cinergy for certain derivative instruments.

- (i) *Income Tax Provision*—Represents the pro forma tax effect of the above adjustments determined based on an estimated prospective statutory tax rate of approximately 40%. This estimate could change based on changes in the applicable tax rates and finalization of the combined company's tax position.
- (j) *Dividends and Premiums on Redemptions of Preferred and Preference Stock*—Income from continuing operations available for common stockholders was increased to reflect the redemption of Duke Energy's preferred and preference stock as required by the merger agreement, and therefore no amounts related to dividends and premiums on redemption of preferred and preference stock were included in pro forma income from continuing operations available for common stockholders (see balance sheet note (m)).
- (k) *Earnings Per Share and Shares Outstanding*—The pro forma weighted average number of basic and diluted shares outstanding is calculated by adding Duke Energy's weighted average number of basic and diluted shares of common stock outstanding for the three months ended March 31, 2005 or the year ended December 31, 2004, as applicable, and Cinergy's weighted average number of basic and diluted shares of common stock outstanding for those same periods multiplied by the exchange ratio of 1.56:

<u>Description</u>	<u>For the Three Months Ended March 31, 2005</u>	<u>For the Year Ended December 31, 2004</u>
Basic:		
Duke Energy weighted average common shares . . . . .	954	931
Cinergy weighted average common shares . . . . .	196	181
Exchange ratio . . . . .	<u>1.56</u>	<u>1.56</u>
	306	282
Pro forma weighted average common shares . . . . .	<u>1,260</u>	<u>1,213</u>
Diluted:		
Duke Energy weighted average common shares . . . . .	990	966
Cinergy weighted average common shares . . . . .	197	184
Exchange ratio . . . . .	<u>1.56</u>	<u>1.56</u>
	307	287
Pro forma weighted average diluted shares . . . . .	<u>1,297</u>	<u>1,253</u>

**DUKE ENERGY HOLDING CORP.**  
**UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET**  
**March 31, 2005**  
**(In millions)**

	<u>Duke Energy Historical</u>	<u>(a) Cinergy Historical</u>	<u>Pro Forma Adjustments</u>	<u>Duke Energy Holding Pro Forma</u>
<b>ASSETS</b>				
<b>Current Assets</b> . . . . .	\$ 8,277	\$ 2,312	\$ (134)(m) 128 (k) 22 (l) 3 (f) 49 (d)	\$10,657
<b>Goodwill</b> . . . . .	4,141	48	4,222 (b)	8,411
<b>Investments and Other Assets</b> . . . . .	7,591	1,570	224 (e) 918 (d) 47 (k) 32 (f) (49)(j)	10,333
<b>Property, Plant and Equipment, net</b> . . . . .	33,391	10,043	(95)(c)	43,339
<b>Regulatory Assets and Deferred Debits</b> . . . . .	2,508	1,058	(28)(g) 228 (j)	3,766
<b>Total Assets</b> . . . . .	<u>\$55,908</u>	<u>\$15,031</u>	<u>\$ 5,567</u>	<u>\$76,506</u>
<b>LIABILITIES AND COMMON STOCKHOLDERS' EQUITY</b>				
<b>Current Liabilities</b> . . . . .	\$ 7,121	\$ 2,814	\$ 14 (i) 139 (k) 82 (h)	\$10,170
<b>Long-term Debt</b> . . . . .	16,934	4,240	95 (i)	21,269
<b>Deferred Credits and Other Liabilities</b> . . . . .	13,338	3,418	496 (j) 260 (l) 93 (k)	17,605
<b>Minority Interests</b> . . . . .	1,897	63	—	1,960
<b>Preferred and preference stock without sinking fund requirements</b> . . . . .	134	—	(134)(m)	—
<b>Common Stockholders' Equity</b>				
<b>Common stock</b> . . . . .	10,436	2	(2)(n) 9,018 (b)	19,454
<b>Paid-in capital</b> . . . . .	—	2,920	(2,920)(n)	—
<b>Retained earnings</b> . . . . .	5,149	1,639	(1,639)(n)	5,149
<b>Treasury shares at cost</b> . . . . .	—	(5)	5 (n)	—
<b>Accumulated other comprehensive income</b> . . . . .	899	(60)	60 (n)	899
<b>Total common stockholders' equity</b> . . . . .	<u>16,484</u>	<u>4,496</u>	<u>4,522</u>	<u>25,502</u>
<b>Total Liabilities and Common Stockholders' Equity</b> . .	<u>\$55,908</u>	<u>\$15,031</u>	<u>\$ 5,567</u>	<u>\$76,506</u>

See accompanying Notes to Duke Energy Holding Corp. Unaudited Pro Forma Condensed Combined Balance Sheet which are an integral part of these statements.

**Duke Energy Holding Corp.**  
**Notes to Unaudited Pro Forma Condensed**  
**Combined Balance Sheet**

- (a) *Cinergy Historical Presentation*—Certain adjustments have been made to Cinergy’s historical presentation in order to conform to Duke Energy’s historical presentation.
- (b) *Goodwill*—The estimated total purchase price of the mergers, based on the market price of Duke Energy common stock during the period including the two trading days before through the two trading days after May 9, 2005, the date Duke Energy and Cinergy agreed to and announced the mergers, and the excess of purchase price over the book values of the assets acquired and liabilities assumed is as follows (\$ in millions):

Value of Duke Energy common stock issued . . . . .	\$ 8,880
Value of Cinergy stock compensation assumed . . . . .	138
Total estimated purchase price . . . . .	9,018
Less: Book value of Cinergy assets acquired and liabilities assumed . . . . .	<u>(4,496)</u>
Excess of purchase price over net book value of assets acquired . . . . .	<u>\$ 4,522</u>

Under the purchase method of accounting, the total estimated purchase price, as shown in the table above, is allocated to Cinergy’s net tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values as of March 31, 2005. The fair value of these assets and liabilities is preliminary and is subject to change pending additional information that may come to our knowledge and restructuring decisions made upon completion of the mergers. The preliminary adjustments to the assets acquired and liabilities assumed are as follows (\$ in millions):

Excess of purchase price over net book value of assets acquired . . . . .	\$4,522
Adjustments to goodwill related to:	
Power generating assets . . . . .	95
Emission allowances . . . . .	(967)
Investments . . . . .	(224)
Regulatory assets . . . . .	(228)
Deferred tax assets . . . . .	(22)
Other assets and liabilities . . . . .	(7)
Accrued expenses (transaction costs directly related to the mergers) . . . . .	82
Pension and postretirement benefit obligations, net . . . . .	545
Long-term debt and notes payable . . . . .	109
Power supply and fuel contracts . . . . .	57
Deferred tax liabilities . . . . .	260
Total adjustments . . . . .	<u>(300)</u>
Total adjustment to goodwill . . . . .	<u>\$4,222</u>

Pursuant to SFAS No. 142, “Goodwill and Other Intangible Assets,” goodwill is not amortized; rather, impairment tests are performed at least annually or more frequently if circumstances indicate an impairment may have occurred. If an impairment exists, the goodwill is immediately written down to its fair value through a current charge to earnings. Accordingly, the goodwill arising from the mergers will be subject to an impairment test at least annually.

- (c) *Power Generating Assets*—Represents the pro forma adjustment required to record Cinergy’s non-regulated power generating assets at estimated fair value. This adjustment was determined based on Duke Energy’s and Cinergy’s managements’ estimates of fair value based on estimates of current replacement cost and discounted cash flows.

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The preliminary analyses indicated fair value estimates of Cinergy's non-regulated generating facilities ranging from approximately \$1.7 billion to approximately \$2.5 billion. These analyses are significantly affected by assumptions regarding environmental regulation, operating costs and the expected market prices for electricity, fuel and emission allowances. The \$(0.1) billion adjustment reflects the difference between an average of estimates within the range and the \$2.1 billion book value of the facilities as of March 31, 2005, as Duke Energy and Cinergy management believe this to be an appropriate estimate of the fair value of the underlying assets.

These adjustments will be depreciated over the estimated remaining useful lives of the underlying assets, and could be materially affected by changes in fair value prior to the closing of the mergers.

- (d) *Emission allowances*—Represents the pro forma adjustment (\$49 million to inventory and \$918 million to noncurrent assets) to record at fair value the emission allowances held by Cinergy's non-regulated operations at March 31, 2005. This adjustment was determined based on market information and a discounted cash flow analysis. This adjustment could be materially affected by changes in market prices of emission allowances.
- (e) *Investments*—Represents the pro forma adjustment required to record at fair value Cinergy's non-consolidated equity investments in domestic and foreign entities, joint ventures, partnerships, and other cost method investments. The adjustment was determined primarily based on discounted cash flow analyses. Until independent third-party valuations are received on each of the underlying investments, Duke Energy and Cinergy management believe the adjustment to be a reasonable approximation of fair value.  
These adjustments could be materially affected primarily by changes in interest rates, commodity prices and third-party appraisals.
- (f) *Notes receivable*—Represents the pro forma adjustment required to record Cinergy's notes receivable at estimated fair value. The adjustment was determined based upon credit-adjusted market rates of interest.
- (g) *Deferred debt costs*—Represents the pro forma adjustment to eliminate Cinergy's deferred debt costs related to its non-regulated operations.
- (h) *Accrued expenses*—Represents the pro forma adjustment related to costs incurred by Duke Energy that are directly attributable to the mergers of approximately \$32 million and certain payments to be made to Cinergy employees as a result of the mergers of approximately \$50 million.
- (i) *Long-term debt and notes payable*—Represents the pro forma adjustment (\$14 million for short-term notes payable and the current portion of long-term debt, and \$95 million for the non-current portion of long-term debt) required to record Cinergy's third-party debt related to its non-regulated operations at estimated fair value. The increase in the fair value of the debt will be amortized through interest expense over the remaining life of the debt. The final fair value determination will be based on prevailing market interest rates, adjusted for estimated issuance costs, at the completion of the mergers and the necessary adjustment will be amortized as a reduction (in the case of a premium to book value) or an increase (in the case of a discount to book value) to interest expense over the remaining life of the individual debt issues.
- (j) *Pension and Postretirement Benefit Obligations*—Represents the pro forma adjustment required to record Cinergy's pension and postretirement benefit obligations to reflect the difference between the present value of the estimated accumulated obligations and the estimated fair values of any related plan assets, including elimination of previously deferred gains and losses, and the related historical intangible asset of \$49 million and deferred tax asset of \$57 million. \$228 million of the adjustment to record Cinergy's pension and postretirement obligations at fair value was recorded

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as a regulatory asset as Duke Energy's and Cinergy's managements' believe that those amounts are probable of recovery in regulated rates at PSI and ULH&P

The final determination of the pension and postretirement benefit obligations adjustment may differ materially, largely due to potential changes in discount rates, return on plan assets up to the date of completion of the mergers and the potential conforming of certain Duke Energy and Cinergy assumptions surrounding the determination of these obligations. Additionally, this adjustment could be materially affected by the rate structure of the Cinergy's utilities upon completion of the mergers.

- (k) *Power and Fuel Contracts*—Represents the pro forma adjustment required to record, at estimated fair market value, Cinergy's fuel contracts and power sale contracts (including CG&E's Rate Stabilization Plan) that do not qualify as derivatives or are accounted for as "normal purchase, normal sale" transactions under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended.

These adjustments will be amortized to earnings based on the remaining lives of the underlying contracts.

These adjustments were determined based on market information, where available, as well as Duke Energy's and Cinergy's managements' view of the forward market curves for energy prices. This adjustment could be materially affected by changes in prices of power and coal and changes in contract terms.

- (l) *Deferred Income Taxes*—The net current deferred tax asset represents the estimated impact on the allocation of purchase price to current assets and liabilities. The net non-current deferred tax liability represents the estimated impact on the allocation of purchase price to non-current assets and liabilities. These estimates are based on an estimated prospective statutory tax rate of approximately 40% and could change based on changes in the applicable tax rates and finalization of the combined company's tax position.
- (m) *Duke Energy Preferred and Preference Stock*—Represents the pro forma adjustment to reflect the redemption for cash of Duke Energy's preferred and preference stock. Duke Energy's use of its reasonable best efforts to redeem all of the preferred and preference stock prior to the mergers is a condition stipulated in the merger agreement.
- (n) *Common Stockholders' Equity*—Represents pro forma adjustments to eliminate the historical common stockholders' equity of Cinergy.

## DESCRIPTION OF DUKE ENERGY HOLDING CAPITAL STOCK

The following summary of the capital stock of Duke Energy Holding is subject in all respects to the applicable provisions of the Delaware General Corporation Law, or DGCL, and the Duke Energy Holding certificate of incorporation to be in effect on the effective date of the mergers. See “Comparison of Shareholder Rights” beginning on page 159 and “Where You Can Find More Information” beginning on page 178. At the effective time of the mergers, Duke Energy Holding will adopt an amended and restated certificate of incorporation and amended and restated by-laws. The following discussion is a summary of the amended and restated certificate of incorporation and by-laws of Duke Energy Holding that will be in effect following consummation of the mergers and is qualified in its entirety by reference to the forms thereof as of the effective time of the mergers attached as Exhibits A and B, respectively, to Annex A to this joint proxy/statement prospectus.

### General

The total number of authorized shares of capital stock of Duke Energy Holding consists of [ • ] shares of common stock, no par value per share, and [ • ] shares of preferred stock, no par value per share.

### Common Stock

Except as otherwise required by law and subject to the rights of the holders of any class or series of preferred stock, with respect to all matters upon which shareholders are entitled to vote or to which shareholders are entitled to give consent, the holders of any outstanding shares of common stock will vote together as a class, and every holder of common stock will be entitled to cast one vote in person or by proxy for each share of common stock standing in such holder’s name on the books of Duke Energy Holding. Duke Energy Holding does not have a classified board of directors nor does it permit cumulative voting.

Holders of Duke Energy Holding common stock are not entitled to any preemptive rights to subscribe for additional shares of Duke Energy Holding common stock nor are they liable to further capital calls or to assessments by Duke Energy Holding.

Subject to applicable law and the rights, if any, of the holders of any class or series of preferred stock having a preference over the rights to participate with the common stock with respect to the payment of dividends, holders of Duke Energy Holding common stock are entitled to receive dividends or other distributions as declared by the Duke Energy Holding board of directors at its discretion.

The board of directors may create a class or series of preferred stock with dividends the rate of which is calculated by reference to, and payment of which is concurrent with, dividends on shares of common stock.

### Preferred Stock

The Duke Energy Holding board of directors has the full authority permitted by law, at any time and from time to time, to divide the authorized and unissued shares of preferred stock into one or more classes or series and, with respect to each such class or series, to determine by resolution or resolutions the number of shares constituting such class or series and the designation of such class or series, the voting powers, if any, of the shares of such class or series, and the preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of any such class or series of preferred stock to the full extent now or as may in the future be permitted by the law of the State of Delaware. The powers, preferences and relative, participating, optional and other special rights of each class or series of preferred stock and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other

classes or series at any time outstanding. Except as otherwise required by law, as provided in the certificate of incorporation or as determined by the Duke Energy Holding board of directors, holders of preferred stock will not have any voting rights and will not be entitled to any notice of shareholder meetings.

#### **Provisions that Have or May Have the Effect of Delaying or Prohibiting a Change in Control**

Under its certificate of incorporation, the Duke Energy Holding board of directors has the full authority permitted by Delaware law to determine the voting rights, if any, and designations, preferences, limitations and special rights of any class or any series of any class of the preferred stock. The certificate of incorporation also provides that a director may be removed from office with or without cause. However, subject to applicable law, any director elected by the holders of any series of preferred stock may be removed without cause only by the holders of a majority of the shares of such series of preferred stock.

The Duke Energy Holding by-laws provide that prior to the first annual meeting of shareholders where directors are elected, the size of the initial board may not be increased or decreased without the affirmative vote of at least 80% of the entire board.

The Duke Energy Holding certificate of incorporation provides that any action required to be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice only if consent in writing setting forth the action to be taken is signed by all the holders of Duke Energy Holding's issued and outstanding capital stock entitled to vote in respect of such action.

The Duke Energy Holding by-laws provide that, except as expressly required by the certificate of incorporation or by applicable law, and subject to the rights of the holders of any series of preferred stock, special meetings of the shareholders or of any series entitled to vote may be called for any purpose or purposes only by the Chairman of the board of directors or by the board of directors. Shareholders are not entitled to call special meetings.

The provisions of Duke Energy Holding's certificate of incorporation and by-laws conferring on the Duke Energy Holding board of directors the full authority to issue preferred stock, the restrictions on removing directors elected by holders of preferred stock, the provision requiring a vote of 80% of the entire board of directors to change the size of the board of directors prior to the first annual meeting of shareholders, the requirement that shareholders act at a meeting unless all shareholders agree in writing, and the inability of shareholders to call a special meeting, in certain instances could have the effect of delaying, deferring or preventing a change in control of Duke Energy Holding or the removal of existing management.

## COMPARISON OF SHAREHOLDER RIGHTS

Upon completion of the mergers, Cinergy and Duke Energy shareholders will receive shares of common stock of Duke Energy Holding in exchange for their shares of Cinergy common stock and shares of Duke Energy common stock, respectively.

- The rights of Duke Energy Holding shareholders will be governed by the DGCL, Duke Energy Holding's certificate of incorporation and its by-laws.
- The rights of Duke Energy shareholders are governed by the NCBCA, Duke Energy's amended and restated articles of incorporation and its amended and restated by-laws.
- The rights of Cinergy shareholders are governed by the DGCL, Cinergy's amended and restated certificate of incorporation and its by-laws.

The following is a summary of material differences between the rights of holders of Cinergy common stock, Duke Energy common stock, and Duke Energy Holding common stock. This summary is qualified in its entirety by reference to the DGCL, the NCBCA, the certificate of incorporation and by-laws of Cinergy, the articles of incorporation and by-laws of Duke Energy, and the certificate of incorporation and by-laws of Duke Energy Holding. For a more complete understanding of the differences between being a shareholder of Cinergy, Duke Energy, and Duke Energy Holding, you should carefully read this entire joint proxy statement/prospectus and the relevant provisions of the DGCL and the NCBCA, the certificate of incorporation and by-laws of Cinergy, the articles of incorporation and by-laws of Duke Energy, and the certificate of incorporation and by-laws of Duke Energy Holding, which are incorporated by reference into this joint proxy statement/prospectus.

### Authorized Capital Stock; Authority to Issue Capital Stock

#### *Duke Energy Holding*

The authorized capital stock of Duke Energy Holding consists of [ • ] shares of common stock, no par value per share, and [ • ] shares of preferred stock, no par value per share. After consummation of the mergers, Duke Energy Holding expects that approximately [ • ] shares of Duke Energy Holding common stock will be issued and outstanding and no shares of Duke Energy Holding preferred stock will be outstanding. Duke Energy Holding's board of directors may cause the issuance of additional shares of authorized common stock without further action by shareholders, subject to the approval requirements of any stock exchange on which shares of Duke Energy Holding common stock are then listed.

#### *Duke Energy*

Duke Energy's articles of incorporation authorize it to issue up to 2 billion shares of common stock, no par value per share, of which 926,431,621 shares were outstanding as of the close of business on May 6, 2005; 1.5 million shares of Preference Stock, par value \$100 per share, none of which are outstanding as of the date of this joint proxy statement/prospectus; 20 million shares of Serial Preferred Stock, no par value per share, none of which are outstanding as of the date of this joint proxy statement/prospectus; 12.5 million shares of Duke Energy Preferred Stock, par value \$100, issued in four series outstanding as of the date of this joint proxy statement/prospectus, of which 1,234,984 shares were outstanding as of May 6, 2005; and 10 million shares of Duke Energy Preferred Stock A, par value \$25, of which 1,257,185 were outstanding as of the date of this joint proxy statement/prospectus. Duke Energy's board of directors may cause the issuance of additional shares of authorized common stock without further action by shareholders, subject to the approval requirements of the NYSE.

#### *Cinergy*

The authorized capital stock of Cinergy consists of 600 million shares of common stock, par value \$.01 per share, of which 198,360,398 shares were outstanding as of the close of business on May 6,



2005, and 10 million shares of preferred stock, par value \$.01 per share, none of which were outstanding as of May 6, 2005.

#### **Shareholder Rights Plan**

##### ***Duke Energy Holding***

Duke Energy Holding does not have a shareholder rights plan.

##### ***Duke Energy***

Duke Energy has in place a shareholder rights plan containing customary terms and conditions. In connection with the execution of the merger agreement, the shareholder rights plan was amended to exempt the merger agreement and the transactions contemplated by the merger agreement from the shareholder rights plan.

##### ***Cinergy***

Cinergy does not have a shareholder rights plan.

#### **Number of Directors; Classification of Board of Directors**

##### ***Duke Energy Holding***

The DGCL provides that a corporation's board of directors must consist of one or more individuals, with the number fixed by, or in the manner provided in, the by-laws, unless the certificate of incorporation fixes the number, in which case a change in the number of directors shall be made only by amendment of the certificate. The DGCL further provides that directors need not be shareholders of the corporation unless the corporation's certificate of incorporation or by-laws so provide. The certificate of incorporation and by-laws may also prescribe other qualifications for directors.

The Duke Energy Holding certificate of incorporation provides that except as otherwise fixed or pursuant to the rights of the holders of any series of preferred stock, the number of directors shall be as from time to time fixed by or in the manner provided in the by-laws. The by-laws provide that the number of directors constituting the board will not be less than 9 nor more than 18, as may be fixed from time to time by the board. A director must be a shareholder of Duke Energy Holding. After completion of the mergers, Duke Energy Holding's board of directors will consist of 15 directors, of whom 10 will be designated by Duke Energy and will be people who were serving as directors of Duke Energy prior to the consummation of the Duke Energy merger and 5 will be designated by Cinergy and will be people who were serving as directors of Cinergy prior to the consummation of the Cinergy merger. The Duke Energy Holding board of directors is not classified, and the term of each member of the board expires at the next annual meeting of shareholders. Prior to the first annual meeting of shareholders at which directors are elected following the consummation of the mergers, the size of the board may not be increased or decreased without the affirmative vote of at least 80% of the entire board.

##### ***Duke Energy***

The NCBCA provides that a corporation's board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws. The Duke Energy by-laws provide that there may not be less than 9 nor more than 18 directors, as may be fixed from time to time by the board of directors. Duke Energy currently has 11 directors. As a result, the Duke Energy board of directors could increase the number of directors and elect directors friendly to management in the event of a non-negotiated takeover attempt. Until the annual meeting of shareholders to be held in 2006, the board of directors of Duke Energy is classified, with the board divided into three classes. As a result, approximately one third of the board positions become

open each year. Beginning with the 2006 annual meeting, the board will no longer be classified and all directors, other than those who may be elected by the holders of any class or series of stock having preference over the common stock as to dividends or upon liquidation to elect directors under specified circumstances, will be elected to one-year terms. If at any time dividends on the Preferred Stock or the Preferred Stock A are in arrears in an amount equivalent to the aggregate dividends required to be paid on such stock in any period of 12 calendar months, the holders of the Preferred Stock as a class have the exclusive right to elect a majority of the board, the holders of the Preferred Stock A as a class have the exclusive right to elect 2 members of the board, and the holders of the common stock have the right to elect the remaining members of the board. These voting rights are in effect, however, only until the accrued and unpaid dividends have been paid in full. The holders of Preference Stock have the exclusive right to elect 2 members of the board if, and for as long as, six or more quarterly dividends, whether consecutive or not, on any series of the Preference Stock are in arrears and unpaid, or the corporation has failed to make or set aside payments due under the requirements of any sinking fund for the purchase or redemption of shares of any series of the Preference Stock.

#### ***Cinergy***

The provisions of the DGCL with respect to number of directors, as described above, apply to Cinergy. The Cinergy by-laws provide that the number of directors may not be less than 7 nor more than 23, as determined by a vote of not less than 75% of the full board of directors including any vacancies. Any such determination made by the board of directors will continue in effect unless and until changed by the board of directors by the required 75% vote, but no such change will affect the term of any director in office. Cinergy currently has 9 directors. Cinergy's board of directors is divided into three classes each of which consists of 3 directors. The Cinergy by-laws further provide that the classes will be as determined by the board of directors and all classes should be as nearly equal in number as possible. Each director serves from the time of election and qualification until the third annual meeting following election and until a successor has been elected and qualified or until his earlier resignation, removal from office or death.

#### **Vacancies on the Board and Newly Created Directorships**

##### ***Duke Energy Holding***

The DGCL provides that, unless otherwise provided in the certificate of incorporation or by-laws, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. The Duke Energy Holding by-laws provide that subject to the rights of holders of any class or series of preferred stock and unless otherwise required by the certificate of incorporation, newly created directorships resulting from any increase in the number of directors and any vacancies on the board resulting from death, resignation, disqualification, removal or other cause will be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the board. Any director elected to fill a vacancy on the board will hold office until the next annual meeting of shareholders at which directors are elected and until their successors are duly elected and qualified, or until their earlier death, resignation or removal. No decrease in the number of directors constituting the board of directors will shorten the term of any incumbent director.

##### ***Duke Energy***

The NCBCA provides that unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including, without limitation, a vacancy resulting from an increase in the number of directors or from the failure by the shareholders to elect the full authorized number of directors the shareholders may fill the vacancy; or the board of directors may fill the vacancy; or if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by

the affirmative vote of a majority of all the directors, or by the sole director, remaining in office. The Duke Energy by-laws provide that, except as otherwise provided in the articles of incorporation relating to the rights of holders of any class of preferred stock or preference stock, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the board of directors. Any person elected to fill a vacancy in the board will hold office until the expiration of the full term of the class for which such director is elected and until such director's successor will have been elected and qualified. No decrease in the number of directors constituting the board of directors shall shorten the term of any incumbent director.

#### *Cinergy*

The provisions of the DGCL with respect to vacancies on the board, as described above, apply to Cinergy. Cinergy's by-laws provide that vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by election at a meeting of shareholders. Cinergy's by-laws further provide that, except as otherwise provided by law, the remaining directors, whether or not constituting a majority of the whole authorized number of directors, may, by not less than a 75% vote of the full board of directors (or by a unanimous vote of the remaining directors if a 75% vote of the full board of directors is not obtainable because of the number of vacancies on the board of directors) fill any vacancy in the board of directors, however arising, for the unexpired term thereof. Any person elected to fill a vacancy in the board will hold office until the expiration of the term of office for the class to which he or she is elected and until a successor is elected and qualified or until his or her earlier resignation, removal from office or death.

#### **Removal of Directors**

##### *Duke Energy Holding*

The DGCL provides that any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except in certain circumstances. Duke Energy Holding's certificate of incorporation provides that a director may be removed by shareholders with or without cause, provided that subject to applicable law, any director elected by the holders of any series of preferred stock may be removed without cause only by the holders of a majority of the shares of such series of preferred stock.

##### *Duke Energy*

Under Section 55-8-08 of the NCBCA, the shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that the directors may be removed only for cause. Except for directors elected under specified circumstances by holders of any stock class or series having a dividend or liquidation preference over Duke Energy common stock, Duke Energy directors may be removed only for cause, which is defined in the Duke Energy articles of incorporation and by-laws as fraudulent or dishonest acts or gross abuse of authority in the discharge of duties to the corporation and must be established after written notice of specific charges and an opportunity to refute such charges.

##### *Cinergy*

The provisions of the DGCL with respect to removal of directors as described above govern Cinergy. Cinergy's certificate of incorporation provides that any or all of the directors may be removed at any time, with or without cause, only by an affirmative vote of the holders of at least 80% of the issued and outstanding shares of common stock of Cinergy.

## **Quorum for Meetings of Shareholders**

### ***Duke Energy Holding***

The DGCL generally provides that a quorum for a shareholders meeting consists of a majority of shares entitled to vote present in person or represented by proxy at such meeting, unless the certificate of incorporation or by-laws of the corporation provide otherwise.

Duke Energy Holding's by-laws provide that unless otherwise expressly required by the certificate of incorporation or applicable law, at any meeting of the shareholders, the presence in person or by proxy of shareholders entitled to cast a majority of the votes entitled to be cast at such meeting will constitute a quorum for the entire meeting notwithstanding the withdrawal of shareholders entitled to cast a sufficient number of votes in person by proxy to reduce the number of votes represented at the meeting below a quorum. Shares of Duke Energy Holding's capital stock belonging to Duke Energy Holding (other than in a fiduciary capacity) or to another corporation, if a majority of the shares entitled to vote in an election of the directors of such other corporation is held by Duke Energy Holding (other than in a fiduciary capacity) are neither to be counted for the purpose of determining the presence of a quorum nor entitled to vote at any meeting of the shareholders; provided, however, that the foregoing shall not limit the right of Duke Energy Holding to vote stock, including stock of Duke Energy Holding, held in a fiduciary capacity.

### ***Duke Energy***

The NCBCA provides that unless the articles of incorporation, a bylaw adopted by the shareholders, or the NCBCA provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter. Shares entitled to vote as a separate voting group may take action on a matter at a meeting of shareholders only if a quorum of that voting group exists. Unless otherwise required by law, the articles of incorporation or a by-law adopted by the shareholders, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting. In the absence of a quorum at the opening of any meeting of shareholders, such meeting may be adjourned from time to time by the vote of a majority of the votes cast on the motion to adjourn; and subject to the by-laws, at any adjourned meeting any business may be transacted that might have been transacted at the original meeting if a quorum exists with respect to the matter proposed.

### ***Cinergy***

The provisions of the DGCL with respect to a quorum at a shareholders meeting, as described above, apply to Cinergy. Cinergy's by-laws provide that except as otherwise provided by law or the certificate of incorporation or elsewhere in the by-laws in respect of a vote required for a specified action, at any meeting of shareholders, the holders of a majority of the outstanding stock entitled to vote thereof, either present in person or represented by proxy, will constitute a quorum for the transaction of any business.

## **Voting Rights and Required Vote Generally**

### ***Duke Energy Holding***

The DGCL provides that unless otherwise provided in a corporation's certificate of incorporation, each shareholder is entitled to one vote for each share of capital stock held by such shareholder. The DGCL further provides that unless a corporation's certificate of incorporation or by-laws otherwise provides, directors of a corporation are elected by a plurality of the votes of the shares present in person or represented by proxy and entitled to vote in the election at a shareholders meeting at which

a quorum is present. Except as otherwise required by the DGCL or by the certificate of incorporation or by-laws, under the DGCL, all matters brought before a shareholders meeting require the affirmative vote of the majority of the shares present in person or represented by proxy and entitled to vote at that meeting at a shareholders meeting at which a quorum is present.

Duke Energy Holding's by-laws provide that when a quorum is present at any meeting of shareholders, all matters are to be decided by the vote of a majority of the total number of votes represented and entitled to vote at such meeting, unless the matter is one upon which by express provision of law, the rules or regulations of any stock exchange or governmental or regulatory body applicable to Duke Energy Holding, the certificate of incorporation or by-laws, a different vote is required. The Duke Energy Holding by-laws provide that at each meeting of shareholders for the election of directors at which a quorum is present, the persons receiving the greatest number of votes, up to the number of directors to be elected, will be the directors.

#### ***Duke Energy***

The NCBCA provides that, unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders meeting, except that absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation. The NCBCA further provides that, unless a corporation's articles of incorporation, a by-law adopted by the shareholders, or the NCBCA requires a greater number of votes, if a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action. With respect to election of directors, unless otherwise provided in the articles of incorporation or a valid shareholders agreement, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

Pursuant to the Duke Energy by-laws, except in the election of directors, the vote of a majority of shares voted on any matter at a meeting of shareholders at which a quorum is present shall be the act of the shareholders on that matter, unless the vote of a greater number is required by law or by the articles of incorporation. Election of directors at all meetings of the shareholders at which directors are to be elected shall be by ballot, and, subject to the rights of the holders of any class of stock having a preference over the common stock as to dividends or upon liquidation to elect directors under specified circumstances, those nominees for election as directors who receive the highest number of votes at a meeting at which a quorum is present up to the maximum number of directors to be elected at such meeting shall be deemed to have been elected.

#### ***Cinergy***

The provisions of the DGCL with respect to the required shareholder vote for certain shareholder actions, as described above, apply to Cinergy. The Cinergy by-laws provide that whenever directors are to be elected at a meeting, they are to be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote thereon. The Cinergy by-laws further provide that whenever any corporate action, other than election of directors, is to be taken by vote of shareholders at a meeting, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote thereon is necessary to authorize such action, except as otherwise required by law, or by Cinergy's certificate of incorporation or by-laws.

### **Votes on Mergers, Consolidations, Sales or Leases of Assets and Certain Other Transactions**

#### ***Duke Energy Holding***

Under the DGCL, a merger, consolidation or sale of all or substantially all of a corporation's assets must be approved by a majority of the outstanding stock of the corporation entitled to vote.

However, unless required by its certificate of incorporation, approval is not required by the holders of the outstanding stock of a constituent corporation surviving a merger if:

- the merger agreement does not amend in any respect its certificate of incorporation;
- each share of its stock outstanding prior to the merger will be an identical share of stock following the merger; and
- either no shares of the surviving corporation's common stock and no securities convertible into such stock will be issued pursuant to the merger, or the authorized unissued shares or treasury shares of the surviving corporation's common stock to be issued pursuant to the merger plus those initially issuable upon conversion of any other securities to be issued pursuant to the merger do not exceed 20% of the shares of the surviving corporation's common stock outstanding immediately prior to the effective date of the merger.

Shareholder approval is not required for either the acquired or, in most cases, the acquiring corporation in a merger if the corporation surviving the merger is at least the 90% parent of the acquired corporation. If the 90% parent is not the surviving corporation, however, the otherwise required vote of at least a majority of the parent's outstanding stock entitled to vote is required to approve the merger. No vote of the holders of the subsidiary's outstanding stock is required in these circumstances. In addition, unless required by its certificate of incorporation, approval of the holders of a corporation will not be required to approve a holding company reorganization of the corporation pursuant to the merger of that corporation with or into a single direct or indirect wholly-owned subsidiary of that corporation, if the merger complies with certain provisions of the DGCL applicable to "holding company" mergers.

The Duke Energy Holding certificate of incorporation and by-laws do not modify these provisions of the DGCL.

#### *Duke Energy*

The NCBCA requires that certain types of mergers, a share exchange, a sale of all or substantially all of a corporation's assets or a voluntary dissolution be approved by the holders of a majority of the votes entitled to vote thereon, unless a greater vote is required by the corporation's articles or as otherwise provided by law.

The Duke Energy articles of incorporation provide that as long as any of the Preferred Stock or the Preferred Stock A is outstanding, the consent of the holders of at least two-thirds of each, voting as classes, are necessary for the approval of a sale or exchange of all or substantially all of the property and assets of Duke Energy, or the mergers or consolidation of Duke Energy with any other entity. These special voting rights, however, do not apply to the purchase of franchises or other assets of another corporation or any mergers or consolidation with a subsidiary of Duke Energy or a merger ordered or authorized by the Federal Power Commission or any successor regulatory authority. Accordingly, the vote or approval of the holders of the Preferred Stock and the Preferred Stock A is not required to approve the merger agreement or the mergers.

### *Cinergy*

The provisions of the DGCL with respect to the required shareholder vote for certain shareholder actions, as described above, apply to Cinergy. The Cinergy certificate of incorporation and by-laws do not modify these provisions of the DGCL.

### **Business Combination Statutes**

#### *Duke Energy Holding*

Section 203 of the DGCL is Delaware's business combination statute. Section 203 is designed to protect publicly-traded Delaware corporations, such as Duke Energy Holding, from hostile takeovers, by prohibiting a Delaware corporation from engaging in a "business combination" with a person beneficially owning 15% or more of the corporation's voting stock for three years following the time that person becomes a 15% beneficial owner, with certain exceptions. A corporation may elect not to be governed by Section 203 of the DGCL.

Duke Energy Holding has not opted out of the protections of Section 203 of the DGCL.

#### *Duke Energy*

North Carolina has two anti-takeover statutes: The North Carolina Shareholder Protection Act and The North Carolina Control Share Acquisition Act. These statutes restrict business combinations with, and the accumulation of shares of voting stock of, certain North Carolina corporations. In accordance with the provisions of these statutes, Duke Energy elected not to be covered by the restrictions imposed by these statutes. As a result, these statutes do not apply to Duke Energy or to the merger agreement or the mergers.

### *Cinergy*

Section 203 of the DGCL as described above, applies to Cinergy. Cinergy has not opted out of the protections of Section 203 of the DGCL.

### **Shareholder Action by Written Consent**

#### *Duke Energy Holding*

The DGCL provides that unless otherwise provided in the certificate of incorporation, any action required to be taken at any annual or special meeting of shareholders of a corporation, or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. The Duke Energy Holding certificate of incorporation allows for shareholder action by written consent if it is signed by all the holders of Duke Energy Holding's issued and outstanding capital stock entitled to vote thereon.

#### *Duke Energy*

There is no provision for shareholder action by written consent in either the articles of incorporation or the by-laws. However, § 55-7-04 of the NCBCA provides for action by unanimous written consent regardless of whether or not there is a provision authorizing such action.

### *Cinergy*

The provisions of the DGCL relating to shareholder action by written consent, as described above, apply to Cinergy. The Cinergy certificate of incorporation allows for shareholder action by written consent if it is signed by all the holders of Cinergy's issued and outstanding capital stock entitled to vote thereon.

### **Special Meetings of Shareholders**

#### *Duke Energy Holding*

The DGCL provides that special meetings of the shareholders may be called by the board of directors or by such persons as may be authorized by the certificate of incorporation or by the by-laws. The Duke Energy Holding by-laws provide that except as otherwise expressly required by the certificate of incorporation or applicable law and subject to the rights of the holders of any series of preferred stock of Duke Energy Holding, special meetings of the shareholders or of any class or series entitled to vote may be called for any purpose or purposes by the Chairman of the board of directors or by the board of directors pursuant to a resolution stating the purpose of the meeting. Any business properly brought before the meeting may be transacted at a special meeting.

#### *Duke Energy*

The NCBCA provides that a corporation will hold a special meeting of shareholders if called for by its board of directors or the person or persons authorized to do so by the articles of incorporation or the by-laws. The Duke Energy by-laws provide that, except as otherwise required by law and subject to the rights of the holders of any class or series of shares of preferred stock, a special meeting may be called only by the board of directors pursuant to a resolution stating the purpose of the meeting or by the Chairman of the board of directors. No business other than that stated in the notice shall be transacted at any special meeting.

### *Cinergy*

The provisions of the DGCL with respect to special meetings of shareholders, as described above, apply to Cinergy. Cinergy's by-laws provide that special meetings may be called by the Chairman of the board of directors or by the President, by a majority of the members of the board of directors then in office, or by holders representing 50% of all shares outstanding and entitled to vote. No business other than that stated in the notice shall be transacted at any special meeting.

### **Amendments to Governing Documents**

#### *Duke Energy Holding*

The DGCL provides that an amendment to a corporation's certificate of incorporation requires that the board of directors adopt a resolution setting forth the proposed amendment and that the shareholders must approve the amendment by a majority of outstanding shares entitled to vote (and a majority of the outstanding shares of each class entitled to vote, if any). The Duke Energy Holding certificate of incorporation provides that Duke Energy Holding may supplement, amend, alter, change or repeal any provision contained in the Duke Energy Holding certificate of incorporation in the manner then prescribed by Delaware law and the certificate of incorporation.

The Duke Energy Holding by-laws provide that except as otherwise expressly provided in the certificate of incorporation, the by-laws, or any of them, may from time to time be supplemented, amended or repealed, or new by-laws may be adopted, by the board at any regular or special meeting of the board, if such supplement, amendment, repeal or adoption is approved by a majority of the entire board (meaning such number of directors as Duke Energy Holding would have absent any



vacancies). The Duke Energy Holding board's power to amend the by-laws includes the ability to amend by-laws adopted by the shareholders.

### *Duke Energy*

Under the NCBCA, an amendment to the articles of incorporation generally requires the board to recommend the amendment, and either a majority of all shares entitled to vote thereon or a majority of the votes cast thereon, to approve the amendment, depending on the amendment's nature. If the amendment affects the shares of a certain class or series of stock in a particular way, that class or series must approve the amendment separately. In accordance with the NCBCA, Duke Energy's board may condition the proposed amendment's submission on any basis. Notwithstanding the foregoing, the provisions of Article VIII (which address the number, classification, and removal of directors and amendment of the articles of incorporation) may not be altered, amended or repealed unless approved by the affirmative vote of the holders of at least 80% of the combined voting power of the then outstanding shares of stock of all classes of Duke Energy entitled to vote generally in the election of directors, voting together as a single class.

An amendment to Duke Energy's by-laws generally requires the approval of either the shareholders or the board; however, the board may not amend any by-law the shareholders have adopted, and no by-law adopted, amended or repealed by the shareholders may be readopted, amended or repealed by the board of directors unless Duke Energy's articles of incorporation or a by-law adopted by the shareholders authorizes the board to adopt, amend or repeal that particular by-law or the by-laws generally.

### *Cinergy*

The provisions of the DGCL with respect to amendments to governing documents as described above apply to Cinergy.

The Cinergy by-laws provide that except for certain specified matters, the by-laws may be amended or repealed by the board of directors or by the affirmative vote of the holders of a majority of the issued and outstanding shares of common stock of Cinergy, or by the unanimous written consent of the holders of the issued and outstanding shares of common stock of Cinergy. The affirmative vote of the holders of at least 80% of the issued and outstanding shares of common stock of Cinergy shall be required to amend, alter or repeal or adopt any provision inconsistent with the by-laws relating to special meetings, number of directors, election and term of directors, vacancies and newly created directorships and amendments to the by-laws, in addition to any requirements of law and any provisions of the certificate of incorporation, and any by-law, or any resolution of the board of directors adopted pursuant to the certificate of incorporation (and notwithstanding that a lesser percentage may be specified by law, the certificate of incorporation, the by-laws, such resolution, or otherwise). Further, the by-laws provide that the affirmative vote of a majority of the holders of the issued and outstanding shares of Cinergy common stock is required to amend, alter or repeal, or adopt any provision inconsistent with any provision in the by-laws requiring a supermajority vote of the board of directors or the responsibilities of the Chief Executive Officer or President as set forth in the by-laws, and the board of directors may not recommend any such amendment to such provisions to the shareholders unless the proposed amendment is approved by 75% of the full board of directors.

Cinergy's certificate of incorporation provides that the directors have the power to make, alter or repeal the by-laws (subject to any shareholder approvals required in the certificate of incorporation or the by-laws) except as may be otherwise provided in the certificate of incorporation or by-laws. The certificate of incorporation also provides that the affirmative vote of the holders of at least 80% of the issued and outstanding shares of common stock of Cinergy is required to amend, alter or repeal or adopt any provision inconsistent with the by-laws relating to special meetings, number of directors,

election and term of directors, vacancies and newly created directorships, and amendment to the by-law requiring the above referenced 80% shareholder approval requirement.

#### **Indemnification of Directors and Officers**

##### ***Duke Energy Holding***

The DGCL provides that a corporation may indemnify its officers, directors, employees and agents against liabilities and expenses incurred in proceedings if the person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action, had no reasonable cause to believe that the person's conduct was unlawful. The DGCL further provides that no indemnification is available in respect of a claim as to which the person has been adjudged to be liable to the corporation, unless and only to the extent that a court determines that in view of all the circumstances, such person is fairly and reasonably entitled to indemnity for such expenses that the court deems proper. Under the DGCL, a Delaware corporation must indemnify its present or former directors and officers against expenses (including attorneys' fees) actually and reasonably incurred to the extent that the officer or director has been successful on the merits or otherwise in defense of any action, suit or proceeding brought against him or her by reason of the fact that he or she is or was a director or officer of the corporation.

The Duke Energy Holding by-laws provide that Duke Energy Holding will indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of Duke Energy Holding to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the corporation, or is or was a director or officer of the corporation serving at the request of Duke Energy Holding as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise if such person acted in good faith, in a manner such person reasonably believed to be in or not opposed to the best interests of Duke Energy Holding, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

##### ***Duke Energy***

The NCBCA provides that a corporation must indemnify a director or officer who is wholly successful in his defense of a proceeding to which he is a party because of his status as a director or officer, unless limited by the articles of incorporation and the corporation may indemnify a director or officer if he is not wholly successful in that defense, if it is determined as provided in the NCBCA that the director or officer meets a prescribed standard of conduct.

The Duke Energy by-laws provide that Duke Energy will indemnify, to the fullest extent permitted by law, any person who is or was a director, officer, employee or agent of Duke Energy against liability and expenses incurred by such person in connection with any action, suit or proceeding arising out of such person's status as a director, officer, employee or agent of Duke Energy.

##### ***Cinergy***

The provisions of the DGCL with respect to indemnification of directors and officers, as described above, apply to Cinergy.

The Cinergy by-laws contain provisions relating to indemnification substantially the same as those contained in the DGCL.

## **Limitation on Personal Liability of Directors**

### ***Duke Energy Holding***

The DGCL provides that a corporation may include in its certificate of incorporation a provision eliminating the liability of a director to the corporation or its shareholders for monetary damages for a breach of the director's fiduciary duties, except liability for any breach of the director's duty of loyalty to the corporation's shareholders, for acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law, under Section 174 of the DGCL (which deals generally with unlawful payments of dividends, stock repurchases and redemptions), and for any transaction from which the director derived an improper personal benefit.

The Duke Energy Holding certificate of incorporation provides that except to the extent elimination or limitation of liability is not permitted by applicable law, no director of Duke Energy Holding will be personally liable to Duke Energy Holding or its shareholders for monetary damages for any breach of fiduciary duty in such capacity. Any repeal or modification of this provision by the shareholders of Duke Energy Holding will not adversely affect any right or protection of a director of Duke Energy Holding existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

### ***Duke Energy***

The NCBCA does not permit eliminating liability with respect to acts or omissions that the director at the time of the breach knew or believed were clearly in conflict with the best interests of the corporation; any liability for unlawful distributions; any transaction from which the director derived an improper personal benefit; or acts or omissions occurring prior to the date the provisions became effective.

The Duke Energy certificate of incorporation provides that a director of Duke Energy will not be personally liable for monetary damage for breach of fiduciary duty as a director except to the extent such exemption from liability or limitation is not permitted under the North Carolina General Statutes. Any repeal or modification of this provision by the shareholders of Duke Energy will not adversely affect any right or protection of a director of Duke Energy existing at the time of such repeal or modification.

### ***Cinergy***

The provisions of the DGCL with respect to limitation on director liability, as described above, apply to Cinergy.

The Cinergy certificate of incorporation provides that a director of the corporation will not be personally liable to Cinergy or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived any improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. No repeal or modification of this provision of the certificate of incorporation will apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such repeal or modification.