date of this Agreement (or as established or amended in accordance with or permitted by this Agreement) that apply to any current or former employee, or current or former director, of Cinergy or Duke or any of their subsidiaries; provided, however, that this undertaking is not intended to prevent the Company or its subsidiaries from enforcing such contracts, agreements, collective bargaining agreements, plans (as such may be amended in accordance with this Agreement) and 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. The Company acknowledges on behalf of itself and its subsidiaries that the Mergers and the transactions contemplated by this Agreement shall constitute a "Change of Control" or a "Change in Control," as applicable under the Cinergy Employee Stock Options and Cinergy Employee Benefit Plans. Until the first anniversary of the Effective Time, the Company shall provide, or shall 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 Cinergy Effective Time ("Cinergy Employees") compensation and benefits from time to time that are no less favorable, in the aggregate, than the compensation and benefits provided to Cinergy Employees immediately prior to the Effective time.

(b) At the Cinergy Effective Time, it shall be the intent of the Company, that (subject to obligations under applicable law and applicable collective bargaining agreements) (i) any reductions in the employee work force of the Company and its subsidiaries shall be made in light of the circumstances and the objectives to be achieved, giving consideration to previous work history, job experience and qualifications and such other factors as the Company and its subsidiaries consider appropriate, without regard to whether employment prior to the Effective Time was with Cinergy and its subsidiaries or Duke and its subsidiaries, and any employees whose employment is terminated or jobs are eliminated by the Company or any of its subsidiaries during such period shall be entitled to participate on a fair and equitable basis (as determined by the Company and its subsidiaries) in the job opportunity and employment placement programs offered by the Company or any of its subsidiaries for which they are eligible and (ii) employees shall be entitled to participate in all job training, career development and educational programs of the Company and its subsidiaries for which they are eligible, and shall be entitled to be considered for any job opportunities with the Company and its subsidiaries, in each case without regard to whether employment prior to the Cinergy Effective Time was with Cinergy and its subsidiaries or Duke and its subsidiaries. Until the later to occur of (w) the first anniversary of the Cinergy Effective Time and (x) December 31, 2007 (the "Severance Maintenance Period"), Cinergy Employees shall 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 (y) those provided to Cinergy Employees pursuant to policies in effect immediately prior to the Cinergy Effective Time, or (z) those provided to similarly situated employees of Duke or its subsidiaries immediately prior to the Effective Time pursuant to policies (other than the DENA Asset Partners, L.P. 2003-2005 Severance Benefits Plan) as in effect from time to time during the Severance Maintenance Period.

(c) Subject to its obligations under applicable law and applicable collective bargaining agreements, the Company and its subsidiaries shall give credit under each of their respective employee benefit plans,programs and arrangements to employees for all service prior to the Cinergy Effective Time with Cinergy or Duke or their respective subsidiaries, as applicable, or any predecessor employer (to the extent that such credit was given by Cinergy or Duke or any of their respective subsidiaries, as applicable)for all purposes for which such service was taken into account or recognized by Cinergy or Duke or their respective subsidiaries, as applicable, but not to the extent crediting such service would result in duplication of benefits (including for benefit accrual purposes under defined benefit pension plans).

Section 5.08 *Indemnification, Exculpation and Insurance.*

(a) Each of the Company, Cinergy, Duke, Merger Sub A and Merger Sub B agrees 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 Cinergy Effective Time now existing in favor of the current or former directors, officers, employees or fiduciaries under benefit plans currently indemnified of Cinergy and its subsidiaries or Duke 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 shall survive the Mergers and shall continue in full force and effect in accordance with their terms. In addition, from and after the Cinergy Effective Time, directors,officers, employees and fiduciaries under benefit plans currently indemnified of Cinergy or Duke or their respective subsidiaries who become directors, officers, employees or fiduciaries under benefit plans of the Company will be entitled to the indemnity rights and protections afforded to directors, officers, employees and fiduciaries under benefit plans of the Company.

(b) For six years after the Effective Time, the Company shall maintain in effect the directors' and officers' liability (and fiduciary) insurance policies currently maintained by Cinergy and Duke covering acts or omissions occurring on or prior to the Effective Time with respect to those persons who are currently covered by Cinergy's and Duke'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 this Agreement. If such no less favorable insurance coverage cannot be maintained, the Company shall maintain the most advantageous policies of directors' and officers' insurance otherwise obtainable. In addition, each of Duke and Cinergy may purchase a six-year "tail"prepaid policy prior to the Effective Time on terms and conditions no less advantageous to the Cinergy Indemnified Parties and Duke Indemnified Parties, or any other person entitled to the benefit of Sections 5.08(a) and (b), as applicable, than the existing directors' and officers' liability (and fiduciary) insurance maintained by Duke or Cinergy, as the case may be, covering without limitation the transactions contemplated hereby. If such "tail" prepaid policy has been obtained by Duke or Cinergy, as the case may be, prior to the Effective Time, the Company shall, and shall cause Duke or Cinergy, as the case may be,after the Effective Time, to maintain such policy in full force and effect, for its full term, and to continue to honor their respective obligations thereunder.

(c) From and after the Cinergy Effective Time, each of the Company and the corporation surviving the Cinergy Merger (the "Cinergy Surviving Corporation") agrees that it 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 hereof, and any person who becomes such a director or officer between the date hereof and the Cinergy Effective Time (collectively, the "Cinergy Indemnified Parties"), against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities (collectively, "Costs") 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 Cinergy Effective Time, whether asserted or claimed prior to, at or after the Cinergy Effective Time (including any matters arising in connection with the transactions contemplated by this Agreement), to the fullest extent permitted by applicable law (and the Company or the Cinergy Surviving Corporation shall 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); and provided, further, that any determination as to whether a Cinergy Indemnified Person is entitled to indemnification or advancement of expenses hereunder pursuant to applicable law shall be made by independent counsel jointly selected by the Cinergy Surviving Corporation and such Cinergy Indemnified Person.

(d) From and after the Duke Effective Time, each of the Company and Duke Power LLC, as the successor to the corporation surviving the Duke Merger, agrees that it will jointly and severally indemnify and hold harmless each present director and officer of Duke or any of its subsidiaries(in each case, for acts or failures to act in such capacity), determined as of the date hereof, and any person who becomes such director or officer between the date hereof and the Duke Effective Time (collectively, the "Duke Indemnified Parties"), against any Costs 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 Duke Effective Time, whether asserted or claimed prior to, at or after the Duke Effective Time (including any matters arising in connection with the transactions contemplated by this Agreement), to the fullest extent permitted by applicable law (and the Company or Duke Power LLC shall 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); and provided, further, that any determination as to whether a Duke Indemnified Person is entitled to indemnification or advancement of expenses hereunder pursuant to applicable law shall be made by independent counsel jointly selected by the Duke Power LLC and such Duke Indemnified Person.

(e) The obligations of the Company, the Cinergy Surviving Corporation and Duke Power LLC under this Section 5.08 shall not be terminated or modified by such parties in a manner so as to adversely affect any Cinergy Indemnified Party, Duke Indemnified Party, or any other person entitled to the benefit of Sections 5.08(a) and (b), as the case may be, to whom this Section 5.08 applies without the consent of the affected Cinergy Indemnified Party, Duke Indemnified Party, or such other person, as the case may be. If the Company, the Cinergy Surviving Corporation or Duke Power LLC or any of its respective successors or assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or Surviving Corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Company, the Cinergy Surviving Corporation or Duke Power LLC, as the case may be, shall assume all of the obligations set forth in this Section 5.08.

(f) The provisions of Section 5.08 are (i) intended to be for the benefit of, and will be enforceable by, each indemnified party, his or her heirs and his or her representatives and (ii) in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have by contract or otherwise.

Section 5.09 *Fees and Expenses.*

(a) Except as provided in this Section 5.09, all fees and expenses incurred in connection with the Mergers, this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such fees or expenses, whether or not the Mergers are consummated, except that each of Cinergy and Duke shall bear and pay one-half of the costs and expenses incurred in connection with (1) the filing, printing and mailing of the Form S-4and the Joint Proxy Statement (including SEC filing fees) and (2) the filings of the premerger notification and report forms under the HSR Act (including filing fees). The Company shall file any return with respect to, and shall pay, any state or local taxes (including any penalties or interest with respect thereto), if any, that are attributable to (i) the transfer of the beneficial ownership of Duke's real property and (ii) the transfer of Duke Common Stock pursuant to this Agreement as a result of the Mergers. Cinergy shall file any return with respect to, and shall pay, any state or local taxes (including penalties or interest with respect thereto), if any, that are attributable to (i) the transfer of the beneficial ownership of Cinergy's real property and (ii) the transfer of Cinergy Common Stock pursuant to this Agreement as a result of the Mergers. Cinergy, Duke and the Company shall cooperate with respect to the filing of such returns, including supplying any information that is reasonably necessary to complete such returns.

(b) In the event that (i) following the Cinergy Shareholder Approval, a Cinergy Takeover Proposal shall have been made known to Cinergy or any person shall have publicly announced an intention (whether or not conditional) to make a Cinergy Takeover Proposal and thereafter this Agreement is terminated by Cinergy pursuant to Section 7.01(b)(i), (ii) prior to or during the Cinergy Shareholders Meeting (or any subsequent meeting of Cinergy shareholders at which it is proposed that the Cinergy Merger be approved), a Cinergy Takeover Proposal shall have been publicly disclosed or any person shall have publicly announced an intention (whether or not conditional) to make a Cinergy Takeover Proposal, and thereafter this Agreement is terminated by either Cinergy or Duke pursuant to Section 7.01(b)(iii), (iii) this Agreement is terminated by Cinergy pursuant to Section 7.01(d), or (iv) this Agreement is terminated by Duke pursuant to Section 7.01(h)(i) or (iii), then Cinergy shall immediately pay Duke a fee equal to $300,000,000 (the "Cinergy Termination Fee") minus any amounts as may have been previously paid by Cinergy pursuant to Section 5.09(d), payable by wire transfer of same day funds; provided, however, that no Cinergy Termination Fee shall be payable to Duke (x) pursuant to clause (i) of this paragraph (b) unless and until within six months of such termination Cinergy or any of its subsidiaries enters into any Cinergy Acquisition Agreement or consummates any Cinergy Takeover Proposal, in either case with the person (or an affiliate of such person) that made the Cinergy Takeover Proposal referred to in clause (i) of this paragraph (b) or (y) pursuant to clause (ii) of this paragraph (b) unless and until within 18 months of such termination Cinergy or any of its subsidiaries enters into any Cinergy Acquisition Agreement or consummates any Cinergy Takeover Proposal, in either case with the person (or an affiliate of such person) that made the Cinergy Takeover Proposal referred to in clause (ii) of this paragraph (b) (for the purposes of the foregoing proviso the terms "Cinergy Acquisition Agreement" and "Cinergy Takeover Proposal" shall have the meanings assigned to such terms in Section 4.03 except that the reference to "20%" in the definition of "Cinergy Takeover Proposal" in Section 4.03(a) shall be deemed to be references to "35%"), in which event the Termination Fee shall be immediately payable upon the first to occur of such events, and provided, further, if this Agreement is terminated by Duke pursuant to Section 7.01(h)(i) as a result of the Board of Directors of Cinergy (or any committee thereof) having withdrawn or modified, or proposed publicly to withdraw or modify, the approval or recommendation by such Board of Directors of this Agreement or the Cinergy Merger primarily due to adverse conditions, events or actions of or relating to Duke, the Cinergy Termination Fee shall not be payable to Duke.

(c) In the event that (i) following the Duke Shareholder Approval, a Duke Takeover Proposal shall have been made known to Duke or any person shall have publicly announced an intention (whether or not conditional) to make a Duke Takeover Proposal and thereafter this Agreement is terminated by Duke pursuant to Section 7.01(b)(i), (ii) prior to or during the Duke Shareholders Meeting (or any subsequent meeting of Duke shareholders at which it is proposed that the Duke Merger be approved), a Duke Takeover Proposal shall have been publicly disclosed or any person shall have publicly announced an intention (whether or not conditional) to make a Duke Takeover Proposal, and thereafter this Agreement is terminated by either Cinergy or Duke pursuant to Section 7.01(b)(ii), (iii) this Agreement is terminated by Duke pursuant to Section 7.01(f), or (iv) this Agreement is terminated by Cinergy pursuant to Section 7.01(g)(i) or (iii), then Duke shall immediately pay Cinergy a fee equal to $500,000,000 (the "Duke Termination Fee") minus any amounts as may have been previously paid by Duke pursuant to Section 5.09(e), payable by wire transfer of same day funds; provided, however, that no Duke Termination Fee shall be payable to Cinergy (x) pursuant to clause (i) of this paragraph (c) unless and until within six months of such termination Duke or any of its subsidiaries enters into any Duke Acquisition Agreement or consummates any Duke Takeover Proposal, in either case with the person (or an affiliate of such person) that made the Duke Takeover Proposal referred to in clause (i) of this paragraph (c) or (y) pursuant to clause (ii) of this paragraph (c) unless and until within 18 months of such termination Duke or any of its subsidiaries enters into any Duke Acquisition Agreement or consummates any Duke Takeover Proposal, in either case with the person (or an affiliate of such person) that made the Duke Takeover Proposal referred to in clause (ii) of this paragraph (c) (for the purposes of the foregoing proviso the terms "Duke Acquisition Agreement" and

"Duke Takeover Proposal" shall have the meanings assigned to such terms in Section 4.04 except that the references to "20%" in the definition of "Duke Takeover Proposal" in Section 4.04(a) shall be deemed to be references to "35%"), in which event the Termination Fee shall be immediately payable upon the first to occur of such events, and provided, further, if this Agreement is terminated by Cinergy pursuant to Section 7.01(g)(i) as a result of the Board of Directors of Duke (or any committee thereof) having withdrawn or modified, or proposed publicly to withdraw or modify, the approval or recommendation by such Board of Directors of this Agreement or the Duke Merger primarily due to adverse conditions, events or actions of or relating to Cinergy, the Duke Termination Fee shall not be payable to Cinergy.

(d) If this Agreement is terminated by Cinergy pursuant to Section 7.01(b)(i) (and following the Cinergy Shareholder Approval a Cinergy Takeover Proposal shall have been made known to Cinergy or any person shall have publicly announced an intention (whether or not conditional) to make a Cinergy Takeover Proposal and in each case there shall not have been a bona fide withdrawal thereof) or by Cinergy or Duke pursuant to Section 7.01(b)(iii) (after the public disclosure of a Cinergy Takeover Proposal or the announcement by any person of the intention (whether or not conditional) to make a Cinergy Takeover Proposal and in each case there shall not have been a bona fide withdrawal thereof), Cinergy shall reimburse Duke promptly upon demand, but in no event later than three business days after the date of such demand, by wire transfer of same day funds, for all fees and expenses, incurred or paid by or on behalf of, Duke in connection with the Mergers, the Duke Conversion, the Restructuring Transactions or the transactions contemplated by this Agreement, including all fees and expenses of counsel, investment banking firms, accountants, experts and consultants to Duke; provided, however, that Cinergy shall not be obligated to make payments pursuant to this Section 5.09(d) in excess of $35,000,000 in the aggregate.

(e) If this Agreement is terminated by Duke pursuant to Section 7.01(b)(i) (and following the Duke Shareholder Approval a Duke Takeover Proposal shall have been made known to Duke or any person shall have publicly announced an intention (whether or not conditional) to make a bona fide Duke Takeover Proposal and in each case there shall not have been a bona fide withdrawal thereof) or by Cinergy or Duke pursuant to Section 7.01(b)(ii) (after the public disclosure of a bona fide Duke Takeover Proposal or the announcement by any person of the intention (whether or not conditional) to make a bona fide Duke Takeover Proposal and in each case there shall not have been a bona fide withdrawal thereof), Duke shall reimburse Cinergy promptly upon demand, but in no event later than three business days after the date of such demand, by wire transfer of same day funds, for all fees and expenses incurred, or paid by or on behalf of, Cinergy in connection with the Mergers or the transactions contemplated by this Agreement, including all fees and expenses of counsel, investment banking firms, accountants, experts and consultants to Cinergy; provided, however, that Duke shall not be obligated to make payments pursuant to this Section 5.09(e) in excess of $35,000,000 in the aggregate.

(f) Cinergy acknowledges that the agreements contained in Sections 5.09(b) and 5.09(d) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Duke would not enter into this Agreement; accordingly, if Cinergy fails promptly to pay the amount due pursuant to Section 5.09(b) or 5.09(d), and, in order to obtain such payment, Duke commences a suit that results in a judgment against Cinergy for the fees set forth in Section 5.09(b) or 5.09(d), Cinergy shall pay to Duke its costs and expenses (including attorneys' fees and expenses) in connection with such suit, together with interest on the amount of the fee at the prime rate of Citibank N.A. in effect on the date such payment was required to be made.

(g) Duke acknowledges that the agreements contained in Sections 5.09(c) and 5.09(e) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Cinergy would not enter into this Agreement; accordingly, if Duke fails promptly to pay the amount due pursuant to Section 5.09(c) or 5.09(e), and, in order to obtain such payment, Cinergy commences a

suit that results in a judgment against Duke for the fees set forth in Section 5.09(c) or 5.09(e), Duke shall pay to Cinergy its costs and expenses (including attorneys' fees and expenses) in connection with such suit, together with interest on the amount of the fee at the prime rate of Citibank N.A. in effect on the date such payment was required to be made.

Section 5.10 *Public Announcements.* Cinergy and Duke will consult with each other before issuing, and provide each other the reasonable opportunity to review, comment upon and concur with, any press release or other public statements with respect to the transactions contemplated by this Agreement, including the Mergers, and shall not issue any such press release or make any such public statement prior to such consultation, except as any party,after consultation with counsel, determines is required by applicable law or applicable rule or regulation of the NYSE.

Section 5.11 *Affiliates.* As soon as practicable after the date of this Agreement, Cinergy shall deliver to Duke, and Duke shall deliver to Cinergy, a letter identifying all persons who are, at the time this Agreement is submitted for adoption by the respective shareholders of Duke and Cinergy, "affiliates" of Cinergy or Duke, as the case may be, for purposes of Rule 145 under the Securities Act. Cinergy and Duke shall use their respective reasonable best efforts to cause each such person to deliver to the Company as of the Closing Date, a written agreement in mutually acceptable customary form.

Section 5.12 *NYSE Listing.* The Company shall use its reasonable best efforts to cause the shares of Company Common Stock issuable to Cinergy's shareholders and Duke's shareholders as contemplated by this Agreement to be approved for listing on the NYSE, subject to official notice of issuance, as promptly as practicable after the date of this Agreement, and in any event prior to the Closing Date.

Section 5.13 *Shareholder Litigation.* Each of Cinergy and Duke shall give the other the reasonable opportunity to consult concerning the defense of any shareholder litigation against Cinergy or Duke, as applicable, or any of their respective directors relating to the transactions contemplated by this Agreement.

Section 5.14 *Tax-Free Reorganization Treatment.* The parties to this Agreement intend that the Duke Reorganization will qualify as are organization under Section 368(a) of the Code and that the Cinergy Merger will qualify as a reorganization under Section 368(a) of the Code, and each shall not, and shall not permit any of their respective subsidiaries to, take any action, or fail to take any action, that would reasonably be expected to jeopardize the qualification of the Duke Reorganization or the Cinergy Merger as reorganizations under Section 368(a) of the Code.

Section 5.15 *Standstill Agreements; Confidentiality Agreements.* During the period from the date of this Agreement through the Effective Time, neither Cinergy nor Duke shall terminate, amend, modify or waive any provision of any confidentiality or standstill agreement to which it or any of its respective subsidiaries is a party unless required by applicable law or,in the case of a standstill agreement, during the Cinergy Applicable Period in the case of Cinergy or during the Duke Applicable Period in the case of Duke, unless the Board of Directors of the applicable party determines in good faith that failure to do so could reasonably be expected to result in a breach of its fiduciary obligations under applicable law. During such period, Cinergy or Duke, as the case may be, shall enforce, to the fullest extent permitted under applicable law or, in the case of a standstill agreement, during the Cinergy Applicable Period in the case of Cinergy or during the Duke Applicable Period in the case of Duke, unless the Board of Directors of the applicable party determines in good faith that failure to do so could reasonably be expected to result in a breach of its fiduciary obligations under applicable law, the provisions of any such agreement, including by seeking injunctions to prevent any breaches of such agreements and to enforce specifically the terms and provisions thereof.

ARTICLE VI

Conditions Precedent

Section 6.01 *Conditions to Each Party's Obligation to Effect the Mergers.* The respective obligation of each party to effect the Mergers is subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Shareholder Approvals. Each of the Duke Shareholder Approval and the Cinergy Shareholder Approval shall have been obtained.

(b) No Injunctions or Restraints. No (i) temporary restraining order or preliminary or permanent injunction or other order by any Federal or state court of competent jurisdiction preventing consummation of either of the Mergers or (ii) applicable Federal or state law prohibiting consummation of either of the Mergers (collectively, "Restraints") shall be in effect.

(c) Form S-4. The Form S-4 shall have become effective under the Securities Act and shall not be the subject of any stop order or proceedings seeking a stop order.

(d) NYSE Listing. The shares of Company Common Stock issuable to Cinergy's shareholders and Duke's shareholders as contemplated by this Agreement shall have been approved for listing on the NYSE, subject to official notice of issuance.

Section 6.02 *Conditions to Obligations of Cinergy.* The obligation of Cinergy to effect the Cinergy Merger is further subject to satisfaction or waiver of the following conditions:

(a) Representations and Warranties. The representations and warranties of Duke set forth herein shall be true and correct both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to "materiality" or "material adverse effect" set forth therein) does not have, and could not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Duke.

(b) Performance of Obligations of Duke. Duke shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(c) Tax Opinion. Cinergy shall have received 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 are organization under Section 368(a) of the Code. Such counsel shall be entitled to rely upon representation letters from each of the Company, Duke, Duke Power LLC, Cinergy, Merger Sub A, Merger Sub B and others, in each case, in form and substance reasonably satisfactory to such counsel. Each such representation letter shall be dated as of the date of such opinion. The opinion condition referred to in this Section 6.2(c) shall not be waivable after receipt of the Cinergy Shareholder Approval, unless further approval of the shareholders of Cinergy is obtained with appropriate disclosure.

(d) Statutory Approvals. The Cinergy Required Statutory Approvals and the Duke Required Statutory Approvals shall have been obtained (including, in each case, the expiration or termination of the waiting periods (and any extensions thereof) under the HSR Act applicable to the Mergers and the transactions contemplated by this Agreement) at or prior to the Effective Time, such approvals shall have become Final Orders (as defined below) and such Final Orders shall not impose terms or conditions that, individually or in the aggregate, could reasonably be expected to have a material adverse effect on (i) the Company and its prospective subsidiaries taken as a whole, (ii) Cinergy and its subsidiaries taken as a whole, or (iii) Duke and its subsidiaries taken as a whole, provided that for the purposes of determining whether such terms and conditions could have a material adverse effect for

the purposes of this Section 6.02(d), each of the Company, Cinergy and Duke and their respective subsidiaries, taken as a whole, shall each be deemed to be a consolidated group of entities of the size and scale of Cinergy and its subsidiaries, taken as a whole. A "Final Order" means action by the relevant Governmental Authority that has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired (a "Final Order Waiting Period"), and as to which all conditions to the consummation of such transactions prescribed by law, regulation or order have been satisfied.

(e) No Material Adverse Effect. Except as disclosed in the Duke SEC Reports filed on or after January 1, 2004 and prior to the date hereof or in any specific section of the Duke Disclosure Letter corresponding to Section 3.02, since December 31, 2004, there shall not have been 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.

(f) Closing Certificates. Cinergy shall have received a certificate signed by an executive officer of Duke, dated the Effective Time, to the effect that, to such officer's knowledge, the conditions set forth in Sections 6.02(a), 6.02(b) and 6.02(e) have been satisfied.

Section 6.03 *Conditions to Obligations of Duke.* The obligation of Duke to effect the Duke Merger, the Duke Conversion and the Restructuring Transactions is further subject to satisfaction or waiver of the following conditions:

(a) Representations and Warranties. The representations and warranties of Cinergy set forth herein shall be true and correct both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to "materiality" or "material adverse effect" set forth therein) does not have, and could not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Cinergy.

(b) Performance of Obligations of Cinergy. Cinergy shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(c) Tax Opinion. Duke shall have received a written opinion from Skadden, Arps, Slate, Meagher & Flom LLP, counsel to Duke, dated as of the Closing Date, to the effect that the Duke 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. Such counsel shall be entitled to rely upon representation letters from each of the Company, Duke, Duke Power LLC, Cinergy, Merger Sub A and Merger Sub B and others, in each case, in form and substance reasonably satisfactory to such counsel. Each such representation letter shall be dated as of the date of such opinion. The opinion condition referred to in this Section 6.3(c) shall not be waivable after receipt of the Duke Shareholder Approval, unless further approval of the shareholders of Duke is obtained with appropriate disclosure.

(d) Statutory Approvals. The Cinergy Required Statutory Approvals and the Duke Required Statutory Approvals shall have been obtained (including, in each case, the expiration or termination of the waiting periods (and any extensions thereof) under the HSR Act applicable to the Mergers and the transactions contemplated by this Agreement) at or prior to the Effective Time, such approvals shall have become Final Orders and such Final Orders shall not impose terms or conditions that, individually or in the aggregate, could reasonably be expected to have a material adverse effect on (i) the Company and its prospective subsidiaries taken as a whole, (ii) Cinergy and its subsidiaries taken as a whole, or (iii) Duke and its subsidiaries taken as a whole, provided that for the purposes of determining whether such terms and conditions could have a material adverse effect for the purposes of this Section 6.03(d),

each of the Company, Cinergy and Duke and their respective subsidiaries, taken as a whole, shall each be deemed to be a consolidated group of entities of the size and scale of Cinergy and its subsidiaries, taken as a whole.

(e) No Material Adverse Effect. Except as disclosed in the Cinergy SEC Reports filed on or after January 1, 2004 and prior to the date hereof or in any specific section of the Cinergy Disclosure Letter corresponding to Section 3.01, since December 31, 2004, there shall not have been 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 Cinergy.

(f) Closing Certificates. Duke shall have received a certificate signed by an executive officer of Cinergy, dated the Effective Time, to the effect that, to such officer's knowledge, the conditions set forth in Sections 6.03(a), 6.03(b) and 6.03(e) have been satisfied.

Section 6.04 *Frustration of Closing Conditions.* Neither Cinergy nor Duke may rely on the failure of any condition set forth in Section 6.01, 6.02 or 6.03, as the case may be, to be satisfied if such failure was caused by such party's failure to use reasonable best efforts to consummate the Mergers and the other transactions contemplated by this Agreement, to the extent required by and subject to Section 5.05.

ARTICLE VII

Termination, Amendment and Waiver

Section 7.01 *Termination.* This Agreement may be terminated at any time prior to the Effective Time, whether before or (other than pursuant to clauses (d), (f), (g) or (h) below) after the Duke Shareholder Approval or the Cinergy Shareholder Approval:

(a) by mutual written consent of Cinergy and Duke;

(b) by either Cinergy or Duke:

(i) if the Mergers shall not have been consummated by the 12-month anniversary of the date of this Agreement (the "Initial Termination Date"); provided, however, that the right to terminate this Agreement pursuant to this Section 7.01(b)(i) shall not be available to any party whose failure to perform any of its obligations under this Agreement results in the failure of the Mergers to be consummated by such time; and provided, further, that, (A) if on the Initial Termination Date the conditions to the Closing set forth in Sections 6.01(b), 6.02(d) and/or 6.03(d) shall not have been fulfilled but all other conditions to the Closing shall have been fulfilled or shall be capable of being fulfilled, then either party may (on one or more occasions) extend the Initial Termination Date up to the 15-month anniversary of the date of this Agreement and (B) if the Initial Termination Date (as it may be extended pursuant to clause (A) of this Section 7.01(b)(i)(A)) shall occur during any Final Order Waiting Period, the Initial Termination Date shall be extended until the third business day after the expiration of such Final Order Waiting Period;

(ii) if the Duke Shareholder Approval shall not have been obtained at a Duke Shareholders Meeting duly convened therefor or at any adjournment or postponement thereof;

(iii) if the Cinergy Shareholder Approval shall not have been obtained at a Cinergy Shareholders Meeting duly convened therefor or at any adjournment or postponement thereof;

(iv) if any Restraint having any of the effects set forth in Section 6.01(b) shall be in effect and shall have become final and nonappealable; provided that the party seeking to terminate this Agreement pursuant to this Section 7.01(b)(iv) shall have used its reasonable best efforts to prevent the entry of and to remove such Restraint; or

(v) if any condition to the obligation of such party to consummate the Cinergy Merger or the Duke Merger, as applicable, set forth in Section 6.02 (in the case of Cinergy) or in Section 6.03 (in the case of Duke) becomes incapable of satisfaction prior to the Initial Termination Date (or, if the Initial Termination Date is extended in accordance with the second proviso to Section 7.01(b)(i), such date as extended); provided, however, in the case of Section 6.02(d) and 6.03(d), the Initial Termination Date shall refer to such date as it may be extended pursuant to the second proviso to Section 7.01(b)(i); and provided further, that the failure of any such condition to be capable of satisfaction is not the result of a material breach of this Agreement by the party seeking to terminate this Agreement.

(c) by Cinergy, if Duke shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 6.02(a) or (b), and (B) is incapable of being cured by Duke or is not cured by Duke within 105 days following receipt of written notice from Cinergy of such breach or failure to perform;

(d) by Cinergy in accordance with Section 4.03(b); provided, that, in order for the termination of this Agreement pursuant to this paragraph (d) to be deemed effective, Cinergy shall have complied with Section 4.03 and with applicable requirements, including the payment of the Cinergy Termination Fee, of Section 5.09;

(e) by Duke, if Cinergy shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 6.03(a) or (b), and (B) is incapable of being cured by Cinergy or is not cured by Cinergy within 105 days following receipt of written notice from Duke of such breach or failure to perform;

(f) by Duke in accordance with Section 4.04(b); provided, that, in order for the termination of this Agreement pursuant to this paragraph (f) to be deemed effective, Duke shall have complied with Section 4.04 and with applicable requirements, including the payment of the Duke Termination Fee, of Section 5.09;

(g) by Cinergy, if the Board of Directors of Duke (or any committee thereof) (i) shall have withdrawn or modified, or proposed publicly to withdraw or modify, the approval or recommendation by such Board of Directors of this Agreement or the Duke Merger, (ii) shall fail to reaffirm such approval or recommendation within 15 business days of receipt of Cinergy's written request at any time when a Duke Takeover Proposal shall have been made and not rejected by the Board of Directors of Duke, provided, that, such 15-business day period shall be extended for ten business days following any material modification to such Duke Takeover Proposal occurring after the receipt of Cinergy's written request and provided, further, that such 15-business day period shall recommence each time a Duke Takeover Proposal has been made following the receipt of Cinergy's written request by a person that had not made a Duke Takeover Proposal prior to the receipt of Cinergy's written request, or (iii) shall have approved or recommended, or proposed to approve or recommend, a Duke Takeover Proposal; or

(h) by Duke, if the Board of Directors of Cinergy (or any committee thereof) (i) shall have withdrawn or modified, or proposed publicly to withdraw or modify, the approval or recommendation by such Board of Directors of this Agreement or the Cinergy Merger, (ii) shall fail to reaffirm such approval or recommendation within 15 business days of receipt of Duke's written request at any time when a Cinergy Takeover Proposal shall have been made and not rejected by the Board of Directors of Cinergy, provided, that, such 15-business day period shall be extended for ten business days following any material modification to such Cinergy Takeover Proposal occurring after the receipt of Duke's written request and provided, further, that such 15-business day period shall recommence each time a Cinergy Takeover Proposal has been made following the receipt of Duke's written request by a person that had not made a Cinergy Takeover Proposal prior to the receipt of Duke's written request, or (iii) shall have approved or recommended, or proposed to approve or recommend, a Cinergy Takeover Proposal.

Section 7.02 *Effect of Termination.*

(a) In the event of termination of this Agreement by either Duke or Cinergy as provided in Section 7.01, this Agreement shall forthwith become null and void and have no effect, without any liability or obligation on the part of Cinergy or Duke, other than the provisions of Section 5.09, this Section 7.02 and Article VIII, which provisions shall survive such termination, and except to the extent that such termination results from the willful and material breach by a party of any of its representations, warranties, covenants or agreements set forth in this Agreement, in which case such termination shall not relieve any party of any liability or damages resulting from its willful and material breach of this Agreement (including any such case in which a Cinergy Termination Fee or a Duke Termination Fee, as the case may be, is, or any expenses of Cinergy or Duke in connection with the transactions contemplated by this Agreement are, payable pursuant to Section 5.09 to Cinergy or Duke, as the case may be (the "Injured Party"), to the extent any such liability or damage suffered by the Injured Party exceeds the amount of the Cinergy Termination Fee, in the circumstance in which Duke is the Injured Party, or the Duke Termination Fee, in the circumstance in which Cinergy is the Injured Party and any expenses payable pursuant to Section 5.09 to the Injured Party, it being the intent that any Cinergy Termination Fee, Duke Termination Fee and any expenses paid to the Injured Party shall serve as a credit against and off-set any liability or damage suffered by the Injured Party to the extent of such payment).

(b) In the event Duke terminates this Agreement pursuant to Section 7.01(h)(i) as a result of the Board of Directors of Cinergy having withdrawn or modified, or proposed to publicly withdraw or modify, the approval or recommendation by such Board of Directors of this Agreement or the Cinergy Merger that was made primarily due to adverse conditions, events or actions of or relating to Duke, in any judicial, court or tribunal proceeding in which the payment of the Cinergy Termination Fee is at issue, whether brought or initiated by Duke or Cinergy, Cinergy shall have the burden of proving that the Board of Directors of Cinergy withdrew or modified, or proposed publicly to withdraw or modify, the approval or recommendation by such Board of Directors of this Agreement or the Cinergy Merger primarily due to adverse conditions, events or actions of or relating to Duke.

(c) In the event Cinergy terminates this Agreement pursuant to Section 7.01(g)(i) as a result of the Board of Directors of Duke having withdrawn or modified, or proposed to publicly withdraw or modify, the approval or recommendation by such Board of Directors of this Agreement or the Duke Merger that was made primarily due to adverse conditions, events or actions of or relating to Cinergy, in any judicial, court or tribunal proceeding in which the payment of the Duke Termination Fee is at issue, whether brought or initiated by Cinergy or Duke, Duke shall have the burden of proving that the Board of Directors of Duke withdrew or modified, or proposed publicly to withdraw or modify, the approval or recommendation by such Board of Directors of this Agreement or the Duke Merger primarily due to adverse conditions, events or actions of or relating to Cinergy.

Section 7.03 *Amendment.* This Agreement may be amended by the parties at any time before or after the Cinergy Shareholder Approval or the Duke Shareholder Approval; provided, however, that after any such approval, there shall not be made any amendment that by law requires further approval by the shareholders of Cinergy or Duke without the further approval of such shareholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

Section 7.04 *Extension; Waiver.* At any time prior to the Effective Time, a party may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties of the other parties contained in this Agreement or in any document delivered pursuant to this Agreement or (c) subject to the proviso of Section 7.03, waive compliance by the other parties with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE VIII

General Provisions

Section 8.01 *Nonsurvival of Representations and Warranties.* None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time. This Section 8.01 shall not limit any covenant or agreement of the parties that by its terms contemplates performance after the Effective Time and such provisions shall survive the Effective Time.

Section 8.02 *Notices.* All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed given (as of the time of delivery or, in the case of a telecopied communication, of confirmation) if delivered personally, telecopied (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Cinergy, to:

Cinergy Corp.
139 East 4th Street
Cincinnati, Ohio 45201

Telecopy No.: (513) 287-2433

Attention: Marc E. Manly
Executive Vice President
and Chief Legal Officer

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019

Telecopy No.: (212) 403-2000

Attention: Steven A. Rosenblum
Stephanie J. Seligman

(b) if to Duke, to:

Duke Energy Corporation
526 S. Church Street
Charlotte, North Carolina 28202

Telecopy No.:

Attention: General Counsel

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, New York 10036

Telecopy No.: (212) 735-2000

Attention: Peter Allan Atkins
Sheldon S. Adler

Section 8.03 *Definitions.* For purposes of this Agreement:

(a) an "affiliate" of any person means another person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where "control" means the possession, directly or indirectly, of the power to director cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise;

(b) "capital stock" or "shares of capital stock" means (a) with respect to a corporation, as determined under the laws of the jurisdiction of organization of such entity, capital stock or such shares of capital stock; (b) with respect to a partnership, limited liability company, or similar entity, as determined under the laws of the jurisdiction of organization of such entity, units, interests, or other partnership or limited liability company interests; or (c) any other equity ownership or participation;

(c) "material adverse change" or "material adverse effect" means, when used in connection with Cinergy, Duke or the Company, as the case may be, any change, effect, event, occurrence or state of facts (i) that is materially adverse to the business, assets, properties, financial condition or results of operations of such person and its subsidiaries taken as a whole but excluding any of the foregoing resulting from (A) changes in international or national political or regulatory conditions generally (in each case, to the extent not disproportionately affecting the applicable person as compared to similarly situated persons), (B) changes or conditions generally affecting the U.S. economy or financial markets or generally affecting any of the segments of the industry in which the applicable person or any of its subsidiaries operates (in each case, to the extent not disproportionately affecting the applicable person as compared to similarly situated persons) or (C) the announcement or consummation of this Agreement or (ii) that prevents or materially delays such person from performing its material obligations under this Agreement or consummation of the transactions contemplated hereby;

(d) "person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity; and

(e) "subsidiary" means, with respect to any person, any other person, whether incorporated or unincorporated, of which more than 50% of either the equity interests in, or the voting control of, such other person is, directly or indirectly through subsidiaries or otherwise, beneficially owned by such first person. Each of Ohio Sub and Indiana Sub shall be considered wholly-owned subsidiaries of Cinergy.

Section 8.04 *Interpretation and Other Matters.*

(a) When a reference is made in this Agreement to an Article, Section or Exhibit, such reference shall be to an Article or Section of, or an Exhibit to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns.

(b) Each of the Cinergy and Duke has or may have set forth information in its respective disclosure letter in a section thereof that corresponds to the section of this Agreement to which it relates. A matter set forth in one section of a disclosure letter need not be set forth in any other section of the disclosure letter so long as its relevance to the latter section of the disclosure letter or section of the Agreement is readily apparent on the face of the information disclosed in the disclosure letter to the person to which such disclosure is being made. The fact that any item of information is disclosed in a disclosure letter to this Agreement shall not be construed to mean that such information is required to be disclosed by this Agreement. Such information and the dollar thresholds set forth herein shall not be used as a basis for interpreting the terms "material," "material adverse effect" or other similar terms in this Agreement.

(c) Duke agrees to cause each of the Company, Merger Sub A and Merger Sub B to comply with its respective obligations under this Agreement.

Section 8.05 *Counterparts.* This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to the other parties.

Section 8.06 *Entire Agreement; No Third-Party Beneficiaries.* This Agreement (including the documents and instruments referred to herein) and the Confidentiality Agreement (i) constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement and (ii) except for the provisions of Section 5.08 (which shall be enforceable by the Indemnified Parties), are not intended to confer upon any person other than the parties any rights or remedies.

Section 8.07 *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, regardless of the laws that might otherwise govern under applicable principles of conflict of laws, except that matters related to the Cinergy Merger and the fiduciary obligations of the Cinergy Board of Directors shall be governed by the laws of the State of Delaware and that matters related to the Duke Merger and the fiduciary obligations of the Duke Board of Directors shall be governed by the laws of the State of North Carolina.

Section 8.08 *Assignment.* Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other party. Any attempted or purported assignment in violation of the preceding sentence shall be null and void and of no effect whatsoever. Subject to the preceding two sentences, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 8.09 *Enforcement.* The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Federal court located in the Borough of Manhattan in The City of New York, this being in addition to any other remedy to which they are entitled at law or in equity. In addition, each of the parties hereto (a) consents to submit itself to the personal jurisdiction of the Federal court located in the Borough of Manhattan in The City of New York in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than a Federal court sitting in the Borough of Manhattan in The City of New York.

Section 8.10 *Severability.* If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 8.11 *Waiver of Jury Trial.* Each party to this Agreement waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any action, suit or proceeding arising out of or relating to this Agreement.

Section 8.12 *Alternative Structure*

The parties agree that in the event that it becomes reasonably likely that it will not be possible to obtain any of the Cinergy Required Statutory Approvals or Duke Required Statutory Approvals in a manner that will result in the satisfaction of the conditions set forth in Section 6.02(d) and Section 6.03(d) prior to the Initial Termination Date (assuming the Initial Termination Date is extended in accordance with the second proviso to Section 7.01(b)(i)) 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 hereby to be satisfied by the Initial Termination Date, the parties shall use reasonable best efforts to modify the structure of the Mergers, the Restructuring Transactions and the other transactions contemplated hereby in order to permit the Mergers to be consummated without altering the Duke Ratio, the Cinergy Ratio or the anticipated United States federal income tax consequences to Duke, Cinergy or their shareholders as promptly as practicable in accordance with their respective terms. The parties agree that completion of any Restructuring Transactions will not be a condition to consummation of the Mergers and that Duke will not effect any Restructuring Transactions that would prevent satisfaction of the conditions set forth in Article VI.

IN WITNESS WHEREOF, Duke, Cinergy, the Company, Merger Sub A and Merger Sub B have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

DUKE ENERGY CORPORATION

By: /s/ PAUL M. ANDERSON
Name: PAUL M. ANDERSON
Title: Chairman and Chief Executive Officer

CINERGY CORP.

By: /s/ JAMES E. ROGERS
Name: JAMES E. ROGERS
Title: Chairman, President and Chief Executive Officer

DEER HOLDING CORP.

By: /s/ JIM W. MOGG
Name: JIM W. MOGG
Title: Director

DEER ACQUISITION CORP.

By: /s/ B. KEITH TRENT
Name: B. KEITH TRENT
Title: Director

COUGAR ACQUISITION CORP.

By: /s/ B. KEITH TRENT
Name: B. KEITH TRENT
Title: Director

SIGNATURE PAGE TO THE MERGER AGREEMENT

Exhibit A
To The Merger Agreement

FORM OF CERTIFICATE OF INCORPORATION OF THE COMPANY AS OF THE EFFECTIVE TIME

RESTATED CERTIFICATE OF INCORPORATION

OF

DUKE ENERGY CORPORATION

DUKE ENERGY CORPORATION, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the corporation is Duke Energy Corporation and the name under which the corporation was originally incorporated was Deer Holding Corp. The original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on May 3, 2005.

2. This Restated Certificate of Incorporation, having been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL") and by the unanimous written consent of the stockholders of the Corporation in accordance with Section 228 of the DGCL, restates and integrates and further amends the provisions of the Certificate of Incorporation as amended or supplemented heretofore. As so restated and integrated and further amended, the Restated Certificate of Incorporation (hereinafter, this "Certificate of Incorporation") reads as follows:

ARTICLE FIRST

Name

The name of the corporation is Duke Energy Corporation.

ARTICLE SECOND

Registered Office

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

ARTICLE THIRD

Purpose

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL.

ARTICLE FOURTH

Capital Stock

(a) The aggregate number of shares of stock that the Corporation shall have authority to issue is [ ] shares, consisting of [ ] shares of Common Stock, no par value per share (the "Common Stock"), and [ ] shares of Preferred Stock, no par value per share (the "Preferred Stock").

(b) The Board of Directors of the Corporation shall have 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 hereafter 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.

(c) Subject to applicable law and the rights, if any, of the holders of any class or series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to the payment of dividends, dividends may be declared and paid on the Common Stock at such times and in such amounts as the Board of Directors of the Corporation in its discretion shall determine. Nothing in this ARTICLE FOURTH shall limit the power of the Board of Directors to create a class or series of Preferred Stock with dividends the rate of which is calculated by reference to, and the payment of which is concurrent with, dividends on shares of Common Stock.

(d) In the event of the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, subject to the rights of the holders of any class or series of the Preferred Stock, the net assets of the Corporation available for distribution to stockholders of the Corporation shall be distributed pro rata to the holders of the Common Stock in accordance with their respective rights and interests. If the assets of the Corporation are not sufficient to pay the amounts, if any, owing to holders of shares of Preferred Stock in full, holders of all shares of Preferred Stock will participate in the distribution of assets ratably in proportion to the full amounts to which they are entitled or in such order or priority, if any, as will have been fixed in the resolution or resolutions providing for the issue of the class or series of Preferred Stock. Neither the merger or consolidation of the Corporation into or with any other corporation, nor a sale, transfer or lease of all or part of its assets, will be deemed a liquidation, dissolution or winding up of the Corporation within the meaning of this paragraph, except to the extent specifically provided in any certificate of designation for any class or series of Preferred Stock. Nothing in this ARTICLE FOURTH shall limit the power of the Board of Directors to create a class or series of Preferred Stock for which the amount to be distributed upon any liquidation, dissolution or winding up of the Corporation is calculated by reference to, and the payment of which is concurrent with, the amount to be distributed to the holders of shares of Common Stock.

(e) Except as otherwise required by law, as otherwise provided herein or as otherwise determined by the Board of Directors as to the shares of any class or series of Preferred Stock, the holders of Preferred Stock shall have no voting rights and shall not be entitled to any notice of meetings of stockholders.

(f) 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 stockholders are entitled to vote or to which stockholders are entitled to give consent, the holders of any outstanding shares of Common Stock shall vote together as a class, and every holder of Common Stock shall be entitled to cast thereon one vote in person or by proxy for each share of Common Stock standing in such holder's name on the books of the Corporation; provided, however, that, except as otherwise required by law, or unless provided in any certificate of designation for any class or series of Preferred Stock, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any certificate of designations relating to any class or series of Preferred Stock) that relates solely to the terms of one or more outstanding classes or series of Preferred Stock if the holders of such affected class or series are entitled, either separately or together with the holders of

one or more other such classes or series, to vote thereon pursuant to this Certificate of Incorporation (including any certificate of designations relating to any class or series of Preferred Stock) or pursuant to applicable law. Subject to the rights of the holders of any class or series of Preferred Stock, stockholders of the Corporation shall not have any preemptive rights to subscribe for additional issues of stock of the Corporation and no stockholder will be permitted to cumulate votes at any election of directors.

ARTICLE FIFTH

Board of Directors

(a) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

(b) Except as otherwise fixed by or pursuant to provisions of ARTICLE FOURTH relating to the rights of the holders of any series of Preferred Stock, the number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws so provide. A director may be removed from office with or without cause; provided, however, 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.

(c) In addition to the powers and authority herein before or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate of Incorporation, and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

ARTICLE SIXTH

Action by Stockholders; Books of the Corporation

(a) Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

(b) Any action required or permitted to be taken at any Annual or Special Meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote only if consent in writing setting forth the action so taken is signed by all the holders of the Corporation's issued and outstanding capital stock entitled to vote thereon.

ARTICLE SEVENTH

Amendment of Certificate of Incorporation

The Corporation reserves the right to supplement, amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware and this Certificate of Incorporation, and all rights conferred upon stockholders, directors and officers herein are granted subject to this reservation.

ARTICLE EIGHTH

Amendment of By-laws

In furtherance and not in limitation of the powers conferred upon it by law, the Board of Directors of the Corporation is expressly authorized to adopt, repeal, alter or amend the By-laws of the Corporation.

ARTICLE NINTH

Limitation of Liability

Except to the extent elimination or limitation of liability is not permitted by applicable law, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty in such capacity. Any repeal or modification of this ARTICLE NINTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

ARTICLE TENTH

Liability of Stockholders

The holders of the capital stock of the Corporation shall not be personally liable for the payment of the Corporation's debts, and the private property of the holders of the capital stock of the Corporation shall not be subject to the payment of debts of the Corporation to any extent whatsoever.

IN WITNESS WHEREOF, THE UNDERSIGNED, being the [INSERT TITLE], has executed this Restated Certificate of Incorporation as of the [ ] day of [ ], 200[ ], and DOES HEREBY CERTIFY under the penalties of perjury that the facts stated in this Restated Certificate of Incorporation are true.

By: _____

Name:
Title:

Exhibit B
To The Merger Agreement

FORM OF BY-LAWS OF THE COMPANY AS OF THE EFFECTIVE TIME

AMENDED AND RESTATED

BY-LAWS

of

DUKE ENERGY CORPORATION

Effective as of [•], [•]

TABLE OF CONTENTS

AMENDED AND RESTATED BY-LAWS

of

DUKE ENERGY CORPORATION

(A CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF DELAWARE, THE "CORPORATION")
(EFFECTIVE AS OF o, o)

ARTICLE I

Offices

Section 1.01. *Principal Office.* The principal office of the Corporation shall be located in Charlotte, North Carolina.

Section 1.02. *Registered Office and Agent.* The address of the registered office of the Corporation in the State of Delaware shall be 1209 Orange Street, Wilmington, Delaware 19801. The name of the registered agent is The Corporation Trust Company. Such registered agent has a business office identical with such registered office.

Section 1.03. *Other Offices.* The Corporation may have such other offices either within or without the State of Delaware as the Board of Directors (the "Board" and each member thereof, a "Director") may designate or as the business of the Corporation may from time to time require.

ARTICLE II

Stockholders

Section 2.01. *Place of Stockholders' Meetings.* All meetings of the stockholders of the Corporation shall be held at such place or places, within or outside the State of Delaware, as may be fixed by the Board from time to time or as shall be in the respective notices thereof. The Board may, in its sole discretion, determine that a meeting of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication in the manner authorized by the General Corporation Law of the State of Delaware (the "DGCL").

Section 2.02. *Day and Time of Annual Meetings of Stockholders.* An annual meeting of stockholders shall be held at such date and hour as shall be determined by the Board and designated in the notice thereof. Any previously scheduled annual meeting of stockholders may be postponed by action of the Board taken prior to the time previously scheduled for such annual meeting of stockholders.

Section 2.03. *Purposes of Annual Meetings.*

(a) Subject to the rights of the holders of any series of Preferred Stock of the Corporation, at each annual meeting, the stockholders shall elect the Directors. At any such annual meeting any other business properly brought before the meeting may be transacted.

(b) To be properly brought before an annual meeting, business must be (i) specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Board, (ii) otherwise properly brought before the meeting by or at the direction of the Board or (iii) otherwise properly brought before the meeting by a stockholder who is a holder of record at the time of the giving of notice provided for in this Section 2.03(b), who is entitled to vote at the meeting and who complies with the procedures set forth in this Section 2.03(b). For business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action under applicable law and the stockholder must have given written notice thereof, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Corporation at the principal

executive offices of the Corporation, not less than 90 days nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting provided, that the first such anniversary date occurring after the effective date of these By-Laws shall be deemed to be o, o and provided, further, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so received not later than the tenth day following the day on which notice of the date of the annual meeting was mailed or public announcement of the date of such meeting is first made by the Corporation, whichever occurs first. In no event shall the public announcement of an adjournment of an annual meeting of shareholders commence a new time period for the giving of a shareholder's notice as described above. Any such notice shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, and, in the event that such business includes a proposal to amend either the Restated Certificate of Incorporation of the Corporation (the "Certificate") or these By-Laws, the text of the proposed amendment; (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business; (iii) the class and number of shares of the Corporation that are beneficially owned by the stockholder; (iv) any material interest of the stockholder in such business, and (v) if the stockholder intends to solicit proxies in support of such stockholder's proposal, a representation to that effect. The foregoing notice requirements shall be deemed satisfied by a stockholder if the stockholder has notified the Corporation of his or her intention to present a proposal at an annual meeting and such stockholder's proposal has been included in a proxy statement that has been prepared by management of the Corporation to solicit proxies for such annual meeting; provided, however, that if such stockholder does not appear or send a qualified representative to present such proposal at such annual meeting, the Corporation need not present such proposal for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation. No business shall be conducted at an annual meeting of stockholders except in accordance with this Section 2.03(b), and the presiding officer of any annual meeting of stockholders may refuse to permit any business to be brought before an annual meeting without compliance with the foregoing procedures or if the stockholder solicits proxies in support of such stockholder's proposal without such stockholder having made the representation required by clause (v) of the second preceding sentence.

Section 2.04. *Special Meetings of Stockholders.*

(a) Except as otherwise expressly required by the Certificate or applicable law and subject to the rights of the holders of any series of Preferred Stock of the Corporation, special meetings of the stockholders or of any class or series entitled to vote may be called for any purpose or purposes by the Chairman of the Board or by the Board of Directors pursuant to a resolution stating the purpose or purposes thereof, to be held at such place (within or without the State of Delaware), date and hour as shall be determined by the Chairman or the Board, as applicable, and designated in the notice thereof. At any such special meeting any business properly brought before the meeting may be transacted.

(b) To be properly brought before a special meeting, business must be (i) specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Board or (ii) otherwise properly brought before the meeting by or at the direction of the Board. No business shall be conducted at a special meeting of stockholders except in accordance with this Section 2.04(b) or as required by applicable law.

Section 2.05. *Notice of Meetings of Stockholders.* Whenever stockholders are required or permitted to take any action at a meeting, unless notice is waived in writing by all stockholders entitled to vote at the meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called.

In lieu of and/or in addition to the foregoing, notice of any meeting of the stockholders of the Corporation may be given via electronic transmission, to the fullest extent permitted by Section 232 of the DGCL. To be valid, such electronic transmission notice must be in a form of electronic transmission to which the stockholder has consented. Any stockholder can revoke consent to receive notice by a form of electronic transmission by written notice to the Corporation. Such consent shall be deemed revoked after two consecutive electronic transmissions by the Corporation are returned as undeliverable; provided, however, the inadvertent failure to treat any such undeliverable notices as a revocation shall not invalidate any meeting or other action. "Electronic transmission" shall mean any form of communication, not directly involving the physical transmission of paper, that creates a record and that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Unless otherwise provided by law, and except as to any stockholder duly waiving notice, the written notice of any meeting shall be given personally, by mail, or by a form of electronic transmission consented to by the stockholder to whom notice is given, not less than 10 days nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the records of the Corporation. If by a form of electronic transmission, notice shall be deemed given when transmitted to the stockholder in accordance with the provisions set forth herein; provided, however, that if the electronic transmission notice is posted on an electronic network (e.g., a website or chatroom), notice shall be deemed given upon the later of (A) such posting and (B) the giving of separate notice of the posting to the stockholder.

Except as otherwise expressly required by applicable law, notice of any adjourned meeting of stockholders need not be given if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken.

Section 2.06. *Quorum of Stockholders.*

(a) Unless otherwise expressly required by the Certificate or applicable law, at any meeting of the stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of the votes entitled to be cast thereat shall constitute a quorum for the entire meeting, notwithstanding the withdrawal of stockholders entitled to cast a sufficient number of votes in person or by proxy to reduce the number of votes represented at the meeting below a quorum. Shares of the Corporation's stock belonging to the Corporation 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 the Corporation, shall neither be counted for the purpose of determining the presence of a quorum nor be entitled to vote at any meeting of the stockholders; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including its own stock, held by it in a fiduciary capacity.

(b) At any meeting of the stockholders at which a quorum shall be present, a majority of those present in person or by proxy may adjourn the meeting from time to time. Whether or not a quorum is present, the officer presiding thereat shall have power to adjourn the meeting from time to time. Except as otherwise expressly required by applicable law, notice of any adjourned meeting other than announcement at the meeting at which an adjournment is taken shall not be required to be given.

(c) At any adjourned meeting, any business may be transacted that might have been transacted at the meeting originally called, but only those stockholders entitled to vote at the meeting as originally noticed shall been titled to vote at any adjournment or adjournments thereof unless a new record date is fixed by the Board.

Section 2.07. *Presiding Officer and Secretary of Meeting; Conduct of Meetings.*

(a) The Chairman of the Board or, in his or her absence, another officer of the Corporation designated by the Chairman of the Board, shall preside at meetings of the stockholders. The Secretary or an Assistant Secretary of the Corporation shall act as secretary of the meeting, or if neither is present, then the presiding officer may appoint a person to act as secretary of the meeting.

(b) The Board may to the extent not prohibited by law adopt such rules and regulations for the conduct of the meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the presiding officer of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding officer, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding officer of the meeting, may to the extent not prohibited by law include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the presiding officer of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless, and to the extent, determined by the Board or the presiding officer of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 2.08. *Voting by Stockholders.*

(a) Except as otherwise expressly required by the Certificate or applicable law, at every meeting of the stockholders each stockholder of record shall be entitled to the number of votes specified in the Certificate (or, with respect to any class or series of Preferred Stock, in the applicable certificate of designations providing for the creation of such class or series), in person or by proxy, for each share of stock standing in his or her name on the books of the Corporation on the date fixed pursuant to the provisions of Section 2.11 of these By-Laws as the record date for the determination of the stockholders who shall be entitled to receive notice of and to vote at such meeting.

(b) When a quorum is present at any meeting of the stockholders, all questions shall be decided by the vote of a majority of the total number of votes of the Corporation's capital stock represented and entitled to vote at such meeting, unless the question is one upon which by express provision of law, the rules or regulations of any stock exchange or governmental or regulatory body applicable to the Corporation, the Certificate or these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Such votes may be cast in person or by proxy as provided in Section 209.

(c) Except as otherwise expressly required by applicable law, the vote at any meeting of stockholders on any question need not be by ballot, unless so directed by the presiding officer of the meeting.

Section 2.09. *Proxies.* Each stockholder entitled to vote at a meeting of the stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder as proxy, but no such proxy shall be voted upon after three years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such

person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information on which they relied.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided, however, that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.10. *Inspector.* In advance of any meeting of the stockholders, the Board or the Chairman of the Board shall appoint one or more inspectors to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of the stockholders, the presiding officer of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by applicable law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by applicable law.

Section 2.11. *List of Stockholders.*

(a) At least ten days before every meeting of stockholders, the officer who has charge of the stock ledger of the Corporation shall cause to be prepared and made a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder.

(b) For such ten-day period through the conclusion of the meeting, such list shall be open to examination by any stockholder for any purpose germane to the meeting as required by applicable law (i) on a reasonably accessible electronic network provided that the information required to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

(c) The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section 2.11 or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 2.12. *Fixing of Record Date for Determination of Stockholders of Record.*

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than ten days before the date of such meeting.

If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board, and prior action by the Board is required by law, the record date for determining the stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolutions taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

ARTICLE III

Directors

Section 3.01. *Number and Qualifications.* The number of Directors constituting the Board shall be not less than nine nor more than 18, as may be fixed from time to time by the Board in accordance with Section 3.07. A director must be a shareholder of the Corporation. On the effective date of these By-Laws, the number of Directors constituting the Board shall be 15 (the "Initial Board"). Notwithstanding any provision in these By-Laws or the Certificate to the contrary, prior to the first annual meeting of stockholders at which Directors are elected following the effective date of these By-Laws, the size of the Initial Board shall not be increased or decreased without the affirmative vote of at least 80% of the entire Board.

Section 3.02. *Board Representation.* On the effective date of these By-Laws, the Initial Board shall consist of ten Duke Directors and five Cinergy Directors (as such terms are defined below). The term "Duke Director" means any person serving as a director of Duke Energy Corporation prior to the

Duke Effective Time and who becomes a Director of the Corporation on the effective date of these By-Laws and the term "Cinergy Director" means any person serving as a director of Cinergy Corp. prior to the Cinergy Effective Time and who becomes a Director of the Corporation on the effective date of these By-Laws. The terms "Cinergy Effective Time" and "Duke Effective Time" have the meanings ascribed to such terms in that certain Agreement and Plan of Merger, dated as of May 8, 2005, by and among the Corporation, Duke Energy Corporation, Cinergy, Deer Acquisition Corp. and Cougar Acquisition Corp. Other than the constitution of the Initial Board pursuant to Sections 3.01 and 3.02, the By-Laws shall apply without regard to whether a Director is a Cinergy Director or a Duke Director.

Section 3.03. *Election and Term of Directors.* Subject to the rights of the holders of any class or series of Preferred Stock of the Corporation, nominations of persons for election as Directors may be made by the Board or by any stockholder who is a stockholder of record at the time of giving of the notice of nomination provided for in this Section 3.03 and who is entitled to vote for the election of Directors. Any stockholder of record entitled to vote for the election of Directors at a meeting may nominate a person or persons for election as Directors only if written notice of such stockholder's intent to make such nomination is given, either by personal delivery or by United States mail, postage prepaid, to the Secretary at the principal executive offices of the Corporation, not later than (i) with respect to an election to be held at an annual meeting of stockholders, not less than 90 nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting provided, that the first such anniversary date occurring after the effective date of these By-Laws shall be deemed to be • , • and provided, further, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so received not later than the tenth day following the day on which notice of the date of the annual meeting was mailed or public announcement of the date of such meeting is first made by the Corporation, whichever occurs first and (ii) with respect to an election to be held at a special meeting of stockholders for the election of Directors, not earlier than the 90th day prior to such special meeting and not later than the close of business on the later of the 60th day prior to such special meeting or the tenth day following the day on which public announcement of the date of the special meeting and of the nominees to be elected at such meeting is first made. Each such notice shall set forth: (a) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated; (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (d) such other information regarding each nominee proposed by such stockholder as would have been required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had each nominee been nominated, or intended to be nominated, by the Board; (e) the consent of each nominee to serve as a Director if so elected; and (f) if the stockholder intends to solicit proxies in support of such stockholder's nominee(s), a representation to that effect. The presiding officer of any meeting of stockholders to elect Directors and the Board may refuse to acknowledge any attempted nomination of any person not made in compliance with the foregoing procedure or if the stockholder solicits proxies in support of such stockholder's nominee(s) without such stockholder having made the representation required by clause (f) of the preceding sentence. Only such persons who are nominated in accordance with the procedures set forth in this Section 3.03 shall be eligible to serve as Directors of the Corporation.

At each meeting of the stockholders 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, shall be the Directors. Each Director so elected shall hold office until the next annual meeting of stockholders and until such Director's successor is duly elected and qualified or until such Director's earlier death, resignation or removal.

Section 3.04. *Newly Created Directorships; Vacancies.* Subject to the rights of holders of any class or series of Preferred Stock and unless otherwise required by the Certificate, 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 shall 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, and any Director so chosen shall hold office until the next annual meeting of stockholders 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 shall shorten the term of any incumbent Director.

Section 3.05. *Resignation.* Any Director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 3.06. *Meetings of the Board.*

(a) The Board may hold its meetings, both regular and special, either within or outside the State of Delaware, at such places as from time to time may be determined by the Board or as may be designated in the respective notices or waivers of notice thereof.

(b) Regular meetings of the Board shall be held at such times and at such places as from time to time shall be determined by the Board.

(c) The first meeting of each newly elected Board shall beheld as soon as practicable after the annual meeting of the stockholders and shall be for the election of officers and the transaction of such other business as may come before such meeting.

(d) Special meetings of the Board shall be held whenever called by direction of the Chairman of the Board or at the request of Directors constituting a majority of the number of Directors then in office.

(e) Members of the Board or any Committee of the Board may participate in a meeting of the Board or such Committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and by any other means of remote communication permitted by applicable law, and such participation shall constitute presence in person at such meeting.

(f) A regular meeting of the Board of Directors shall be held without other notice than this By-Law as soon as practicable after the annual meeting of shareholders. The Board of Directors may, by resolution, provide the time and place for the holding of additional regular meetings without other notice than such resolution. Notice of any special meeting of directors shall be given to each director at such director's business or residence in writing by hand delivery, first-class or overnight mail or courier service, facsimile transmission or orally by telephone. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least 5 calendar days before such meeting. If by overnight mail or courier service, such notice shall be deemed adequately delivered when the notice is delivered to the overnight mail or courier service company at least 24 hours before such meeting. If by facsimile transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least 12 hours before such meeting. If by telephone or by hand delivery, the notice shall be given at least 12 hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting. Any and all business may be transacted at any meeting of the Board. No notice of any adjourned meeting need be given. No notice to or waiver by any Director shall be required with respect to any meeting at which

the Director is present except when such Director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened.

Section 3.07. *Quorum and Action.* Except as otherwise expressly required by the Certificate, these By-Laws or applicable law, at any meeting of the Board, the presence of at least a majority of the number of Directors fixed pursuant to these By-Laws shall constitute a quorum for the transaction of business; but if there shall be less than a quorum at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. Unless otherwise provided by applicable law, the Certificate or these By-Laws, the vote of a majority of the Directors present at any meeting at which a quorum is present shall be necessary for the approval and adoption of any resolution or the approval of any act of the Board.

Section 3.08. *Presiding Officer and Secretary of Meeting.* The Chairman of the Board or, in the absence of the Chairman of the Board, the Lead Director, or in the absence of the Chairman of the Board and the Lead Director, the Chief Executive Officer, or in the absence of the Chairman of the Board, the Lead Director and the Chief Executive Officer, a member of the Board selected by the members present, shall preside at meetings of the Board. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the presiding officer may appoint a secretary of the meeting.

Section 3.09. *Action by Consent without Meeting.* Any action required or permitted to be taken at any meeting of the Board or of any Committee thereof may be taken without a meeting if all of the Directors or members of such Committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board or such Committee.

Section 3.10. *Compensation of Directors.* Directors, as such, may receive, pursuant to resolution of the Board, fixed fees and other compensation for their services as Directors, including, without limitation, their services as members of a Committee of the Board.

Section 3.11. *Committees of the Board and Powers.* The Board may designate one or more Committees of the Board, which shall consist of two or more Directors. Any such Committee may to the extent permitted by applicable law exercise such powers and shall have such responsibilities as shall be specified in the designating resolution. A Committee of the Board may not (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by law to be submitted to stockholders for approval or (ii) adopt, amend or repeal any bylaw of the corporation. The Board shall have power at any time to fill vacancies in, to change the membership of, or to dissolve any such Committee. Nothing herein shall be deemed to prevent the Board from appointing one or more Committees consisting in whole or in part of persons who are not Directors; provided, however, that no such Committee shall have or may exercise any authority of the Board.

Section 3.12. *Meetings of Committees.* Regular meetings of any Committee may be held without notice at such time and at such place, within or outside the State of Delaware, as from time to time shall be determined by such Committee. The Chairman of the Board, the Board or the Committee by vote at a meeting, or by two members of any Committee in writing without a meeting, may call a special meeting of any such Committee by giving notice to each member of the Committee in the manner provided for in Section 3.06(f) hereof. Unless otherwise provided in the Certificate, these By-Laws or by applicable law, neither business to be transacted at, nor the purpose of, any regular or special meeting of any such Committee need be specified in the notice or any waiver of notice.

Section 3.13. *Quorum of Committee; Manner of Action.* At all meetings of any Committee a majority of the total number of its members shall constitute a quorum for the transaction of business. Except in cases in which it is by applicable law, by the Certificate, by these By-Laws, or by resolution of

the Board otherwise provided, a majority of such quorum shall decide any questions that may come before the meeting. In the absence of a quorum, the members of the Committee present by majority vote may adjourn the meeting from time to time, without notice other than by verbal announcement at the meeting, until a quorum shall attend. A Committee may also act by the written consent of all members thereof although not convened in a meeting provided that such written consent is filed with the minute books of the Committee.

ARTICLE IV

Officers

Section 4.01. *Elected Officers.* The elected officers of the Corporation shall be a Chairman of the Board, a Chief Executive Officer, a President, a Secretary, a Treasurer, a Controller and such other officers (including, without limitation, Executive Vice Presidents and Senior Vice Presidents and Vice Presidents) as the Board may deem proper. The Chairman of the Board shall be chosen from among the Directors. Any two or more offices may be held simultaneously by the same person, except as otherwise expressly required by applicable law. The Board may if the positions of Chairman of the Board and Chief Executive Officer are held by the same individual elect a Lead Director from among the independent (as such term is defined by applicable SEC rule or regulation) members of the Board, who will serve as a liaison between the Board and the Chairman of the Board and Chief Executive Officer. Elected officers shall have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article IV. Such officers shall also have such powers and duties as from time to time may be conferred by the Board or by any Committee thereof. The Board or the Chief Executive Officer may from time to time appoint such other officers (including one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers), as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in these By-Laws or, to the extent consistent with these By-Laws, as may be prescribed by the Board or the Chief Executive Officer. The Executive Officers of the Corporation shall consist of such officers as the Board may designate as Executive Officers from time to time, who may or may not be "executive officers" as defined under rules of the Securities and Exchange Commission.

Section 4.02. *Election and Term of Office.* Executive Officers of the Corporation shall be elected by the Board at the regular meeting of the Board held after the annual meeting of stockholders and at such other times as the Board may deem necessary. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as practicable. Officers who are not Executive Officers may be elected from time to time by the Board or appointed by the Chief Executive Officer. Each officer shall hold office until such person's successor shall have been duty elected and shall have qualified or until such person's death or until he or she shall resign or shall be removed pursuant to Section 4.11.

Section 4.03. *Chairman of the Board.* The Chairman of the Board shall perform all duties incidental to such person's office which may be required by law and all such other duties as are properly required of the Chairman of the Board by the Board. The Chairman of the Board shall preside at all meetings of shareholders and of the Board and shall make reports to the Board and the shareholders, and shall see that all orders and resolutions of the Board and of any Committee thereof are carried into effect. The Chairman of the Board shall have such other duties and Executive Officers reporting directly to him as set forth in a resolution of the Board.

Section 4.04. *Chief Executive Officer.* The Chief Executive Officer shall be responsible for the general management of the affairs of the Corporation and shall perform all duties incidental to such person's office which may be required by law and all such other duties as are properly required of the Chief Executive Officer by the Board. The Chief Executive Officer shall report to the Board of

Directors. The Chief Executive Officer shall, in the absence or inability to act of the Chairman of the Board and the Lead Director (if elected), perform all duties of the Chairman of the Board and preside at all meetings of shareholders and of the Board.

Section 4.05. *President.* The President shall act in a general executive capacity and shall assist the Chief Executive Officer and the Chairman of the Board, if so designated by the Board, in the administration and operation of the Corporation's business and general supervision of its policies and affairs.

Section 4.06. *Vice Presidents.* The Executive Vice Presidents, the Senior Vice Presidents and the Vice Presidents shall have such powers and duties as may be prescribed for them, respectively, by the Board of Directors or the Chief Executive Officer. Each of such officers shall report to the Chief Executive Officer or such other officer as the Chief Executive Officer shall direct or to the Chairman of the Board, if so designated by the Board.

Section 4.07. *Secretary.* The Secretary shall attend all meetings of the shareholders and of the Board, shall keep a true and faithful record thereof in proper books and shall have the custody and care of the corporate seal, records, minute books and stock books of the Corporation and of such other books and papers as in the practical business operations of the Corporation shall naturally belong in the office or custody of the Secretary or as shall be placed in the Secretary's custody by order of the Board. The Secretary shall cause to be kept a suitable record of the addresses of shareholders and shall, except as may be otherwise required by statute or these By-Laws, sign and issue all notices required for meetings of shareholders or of the Board. The Secretary shall sign all papers to which the Secretary's signature may be necessary or appropriate, shall affix and attest the seal of the Corporation to all instruments requiring the seal, shall have the authority to certify the By-Laws, resolutions of the shareholders and the Board and other documents of the Corporation as true and correct copies thereof and shall have such other powers and duties as are commonly incidental to the office of Secretary and as may be prescribed by the Board or the Chief Executive Officer.

Section 4.08. *Treasurer.* The Treasurer shall have charge of and supervision over and be responsible for the funds, securities, receipts and disbursements of the Corporation; cause the moneys and other valuable effects of the Corporation to be deposited in the name and to the credit of the Corporation in such banks or trust companies or with such bankers or other depositories as shall be selected in accordance with resolutions adopted by the Board; cause the funds of the Corporation to be disbursed by checks or drafts upon the authorized depositories of the Corporation, and cause to be taken and preserved proper vouchers for all moneys disbursed; render to the proper officers and to the Board and any duly constituted committee of the Board responsible for financial matters, whenever requested, a statement of the financial condition of the Corporation and of all his or her transactions as Treasurer; cause to be kept at the principal executive offices of the Corporation correct books of account of all its business and transactions; and, in general, perform all duties incident to the office of Treasurer and such other duties as are given to him or her by the By-Laws or as may be assigned to him or her by the Chief Executive Officer or the Board.

Section 4.09. *Controller.* The Controller shall be the chief accounting officer of the Corporation; shall keep full and accurate accounts of all assets, liabilities, commitments, revenues, costs and expenses, and other financial transactions of the Corporation in books belonging to the Corporation, and conform them to sound accounting principles with adequate internal control; shall cause regular audits of these books and records to be made; shall see that all expenditures are made in accordance with procedures duly established, from time to time, by the Corporation; shall render financial statements upon the request of the Board; and, in general, shall perform all the duties ordinarily connected with the office of Controller and such other duties as may be assigned to him or her by the Chief Executive Officer or the Board.

Section 4.10. *Assistant Secretaries, Assistant Treasurers and Assistant Controllers.* Assistant Secretaries, Assistant Treasurers and Assistant Controllers, when elected or appointed, shall respectively assist the Secretary, the Treasurer and the Controller in the performance of the respective duties assigned to such principal officers, and in assisting such principal officer, each of such assistant officers shall for such purpose have the powers of such principal officer; and, in case of the absence, disability, death, resignation or removal from office of any principal officer, such principal officer's duties shall, except as otherwise ordered by the Board, temporarily devolve upon such assistant officer as shall be designated by the Chief Executive Officer.

Section 4.11. *Removal.* Any officer or agent may be removed by the affirmative vote of a majority of the directors then in office whenever, in their judgment, the best interests of the Corporation would be served thereby. In addition, any officer or agent appointed by the Chief Executive Officer may be removed by the Chief Executive Officer whenever, in his or her judgment, the best interests of the Corporation would be served thereby. Any removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4.12. *Vacancies.* A newly created elected office and a vacancy in any elected office because of death, resignation or removal may be filled by the Board for the unexpired portion of the term at any meeting of the Board. Any vacancy in an office appointed by the Chief Executive Officer because of death, resignation or removal may be filled by the Chief Executive Officer.

ARTICLE V

Indemnification

Section 5.01. *Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation.* Subject to Section 5.03, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), 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 the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Section 5.02. *Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation.* Subject to Section 5.03, the Corporation shall 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 the Corporation 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 the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no

indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 5.03. *Authorization of Indemnification.* Any indemnification under this Article V (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former Director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 5.01 or Section 5.02, as the case may be. Such determination shall be made, with respect to a person who is a Director or officer at the time of such determination, (i) by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or(ii) by a committee of such Directors designated by a majority vote of such Directors, even though less than a quorum, or (iii) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion, or (iv) by the stockholders. Such determination shall be made, with respect to former Directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former Director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 5.04. *Good Faith Defined.* For purposes of any determination under Section 5.03, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 5.04 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 5.01 or Section 5.02, as the case may be.

Section 5.05. *Indemnification by a Court.* Notwithstanding any contrary determination in the specific case under Section 5.03, and notwithstanding the absence of any determination thereunder, any Director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 5.01 or Section 5.02. The basis of such indemnification by a court shall be a determination by such court that indemnification of the Director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 5.01 or Section 5.02, as the case may be. Neither a contrary determination in the specific case under Section 5.03 nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the Director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5.05 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the Director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 5.06. *Expenses Payable in Advance.* Expenses (including attorneys' fees) incurred by a Director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suitor proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article V. Such expenses (including attorneys' fees) incurred by former Directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 5.07. *Nonexclusivity of Indemnification and Advancement of Expenses.* The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate, these By-Laws, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 5.01 and Section 5.02 shall be made to the fullest extent permitted by law. The provisions of this Article V shall not be deemed to preclude the indemnification of any person who is not specified in Section 5.01or Section 5.02 but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

Section 5.08. *Insurance.* The Corporation may purchase and maintain insurance on behalf of any person who 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 the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article V.

Section 5.09. *Certain Definitions.* For purposes of this Article V, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article V with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term "another enterprise" as used in this Article V shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article V, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such direct or or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article V.

Section 5.10. *Survival of Indemnification and Advancement of Expenses.* The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 5.11. *Limitation on Indemnification.* Notwithstanding anything contained in this Article V to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5.05), the Corporation shall not be obligated to indemnify any Director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board.

Section 5.12. *Indemnification of Employees and Agents.* The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation and employees or agents of the Corporation that are or were serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, similar to those conferred in this Article V to Directors and officers of the Corporation.

ARTICLE VI

Capital Stock

Section 6.01. *Stock Certificates.* The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. If shares are represented by certificates, each certificate shall be signed by, or in the name of, the Corporation by the Chairman of the Board, the Chief Executive Officer, the President or any Vice President, and by the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary. In addition, such certificates may be signed by a transfer agent of a registrar (other than the Corporation itself) and may be sealed with the seal of the Corporation or a facsimile thereof. Any or all of the signatures on such certificates may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of its issuance.

Each certificate representing shares shall state upon the face thereof: the name of the Corporation; that the Corporation is organized under the laws of Delaware; the name of the person or persons to whom issued; the number and class of shares and the designation of the series, if any, which such certificate represents; and the par value of each share represented by such certificate or a statement that the shares are without par value.

Section 6.02. *Record Ownership.* A record of the name of the person, firm or corporation and address of such holder of each certificate, the number of shares represented thereby and the date of issue thereof shall be made on the Corporation's books. The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof, and accordingly shall not be bound to recognize any equitable or other claim to or interest in any share on the part of any person, whether or not it shall have express or other notice thereof, except as otherwise expressly required by applicable law.

Section 6.03. *Transfer of Record Ownership.* Transfers of stock shall be made on the books of the Corporation only by direction of the person named in the certificate or such person's attorney, lawfully constituted in writing, and only upon the surrender of the certificate therefor and a written assignment of the shares evidenced thereby. Whenever any transfer of stock shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the Corporation for transfer, both the transferor and transferee request the Corporation to do so.

Section 6.04. *Transfer Agent; Registrar; Rules Respecting Certificates.* The Corporation shall maintain one or more transfer offices or agencies (which may include the Corporation) where stock of the Corporation shall be transferable. The Corporation shall also maintain one or more registry offices (which may include the Corporation) where such stock shall be registered. The Board may make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of stock certificates in accordance with applicable law.

Section 6.05. *Lost, Stolen or Destroyed Certificates.* No certificate for shares of stock in the Corporation shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the Corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board or any financial officer may in its or such person's discretion require. A new certificate may be issued without requiring any bond if the Board or such financial officer so determines.

ARTICLE VII

Contracts, Checks and Drafts, Deposits and Proxies

Section 7.01. *Contracts.* The Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances.

Section 7.02. *Checks and Drafts.* All checks, drafts or other orders for the payment of money, issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by the Board.

Section 7.03. *Deposits.* All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories as may be selected by or under the authority of the Board.

Section 7.04. *Proxies.* Unless otherwise provided by the Board, the Chairman of the Board, the Chief Executive Officer, the President or any Executive Vice President, Senior Vice President or Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper in the premises.

ARTICLE VIII

General Provisions

Section 8.01. *Dividends.* Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate, if any, may be declared by the Board at any regular or special meeting of the Board (or any action by written consent in lieu thereof in accordance with Section 3.09 hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing

or maintaining any property of the Corporation, or for any proper purpose, and the Board may modify or abolish any such reserve.

Section 8.02. *Fiscal Year.* The fiscal year of the Corporation shall begin on the first day of January in each year and shall end on the thirty-first day of December of such year.

Section 8.03. *Seal.* The corporate seal of the Corporation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board, the name of the Corporation, the year of its incorporation and the words "Corporate Seal" and "Delaware". The corporate seal may be used by causing it or a facsimile thereof to be impressed or reproduce or otherwise.

Section 8.04. *Waivers of Notice.* Whenever any notice is required by applicable law, the Certificate or these By-Laws, to be given to any Director, member of a Committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, or a waiver by electronic transmission by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of stockholders or any regular or special meeting of the Board or members of a Committee of the Board need be specified in any written waiver of notice unless so required by law, the Certificate or these By-Laws.

ARTICLE IX

Amendment of By-Laws

Section 9.01. *Amendment.* Except as otherwise expressly provided in the Certificate, these 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.

Section 9.02. *Entire Board of Directors.* As used in this Article IX and in these By-Laws generally, the terms "entire Board" or "entire Board of Directors" mean the total number of Directors which the Corporation would have if there were no vacancies.

ARTICLE X

Emergency Provisions

Section 10.01. *General.* The provisions of this Article X shall be operative only during a national emergency declared by the President of the United States or the person performing the President's functions, or in the event of a nuclear, atomic or other attack on the United States or on a locality in which the Corporation conducts its principal business or customarily holds meetings of its Board or its stockholders, or during the existence of any other catastrophic event or similar emergency, as a result of which a quorum of the Board cannot readily be assembled for action. Said provisions in such event shall override all other By-Laws of the Corporation in conflict with any provisions of this Article X and shall remain operative during such emergency, but thereafter shall be inoperative; provided, that, all actions taken in good faith pursuant to such provisions shall thereafter remain in full force and effect unless and until revoked by action taken pursuant to the provisions of the By-Laws other than those contained in this Article X.

Section 10.02. *Unavailable Directors.* All Directors who are not available to perform their duties as Directors by reason of physical or mental incapacity or for any other reason or who arc unwilling to perform their duties or whose whereabouts are unknown shall automatically cease to be Directors, with like effect as if such persons had resigned as Directors, so long as such unavailability continues.

Section 10.03. *Authorized Number of Directors.* The authorized number of Directors shall be the number of Directors remaining after eliminating those who have ceased to be Directors pursuant to Section 10.02, or the minimum number required by applicable law, whichever number is greater.

Section 10.04. *Quorum.* The number of Directors necessary to constitute a quorum shall be one-third of the authorized number of Directors as specified in Section 10.03, or such other minimum number as, pursuant to the law or lawful decree then in force, it is possible for the by-laws of a corporation to specify.

Section 10.05. *Creation of Emergency Committee.* In the event the number of Directors remaining after eliminating those who have ceased to be directors pursuant to Section 10.02 is less than the minimum number of authorized directors required by law, then until the appointment of additional Directors to make up such required minimum, all the powers and authorities which the Board could by law delegate, including all powers and authorities which the Board could delegate to a Committee, shall be automatically vested in an emergency committee, and the emergency committee shall thereafter manage the affairs of the Corporation pursuant to such powers and authorities and shall have all other powers and authorities as may by law or lawful decree be conferred on any person or body of persons during a period of emergency.

Section 10.06. *Constitution of Emergency Committee.* The emergency committee shall consist of all the Directors remaining after eliminating those who have ceased to be directors pursuant to Section 10.02, provided that such remaining Directors are not less than three in number. In the event such remaining Directors are less than three in number, the emergency committee shall consist of three persons, who shall be the remaining Director or Directors and either one or two officers or employees of the Corporation, as the remaining Director or Directors may in writing designate. If there is no remaining Director, the emergency committee shall consist of the three most senior officers of the Corporation who are available to serve, and if and to the extent that officers are not available, the most senior employees of the Corporation. Seniority shall be determined in accordance with any designation of seniority in the minutes of the proceedings of the Board, and in the absence of such designation, shall be determined by rate of remuneration.

Section 10.07. *Powers of Emergency Committee.* The emergency committee, once appointed, shall govern its own procedures and shall have power to increase the number of members thereof beyond the original number, and in the event of a vacancy or vacancies therein, arising at any time, the remaining member or members of the emergency committee shall have the power to fill such vacancy or vacancies. In the event at any time after its appointment all members of the emergency committee shall die or resign or become unavailable to act for any reason whatsoever, a new emergency committee shall be appointed in accordance with the foregoing provisions of this Article X.

Section 10.08. *Directors Becoming Available.* Any person who has ceased to be a Director pursuant to the provisions of Section 10.02 and who thereafter becomes available to serve as a Director shall automatically become a member of the emergency committee.

Section 10.09. *Election of Board of Directors.* The emergency committee shall, as soon after its appointment as is practicable, take all requisite action to secure the election of Directors, and upon such election all the powers and authorities of the emergency committee shall cease.

Section 10.10. *Termination of Emergency Committee.* In the event, after the appointment of an emergency committee, a sufficient number of persons who ceased to be Directors pursuant to Section 10.02 become available to serve as Directors, so that if they had not ceased to be Directors as aforesaid, there would be sufficient Directors to constitute the minimum number of Directors required by law, then all such persons shall automatically be deemed to be reappointed as Directors and the powers and authorities of the emergency committee shall terminate.

Section 10.11. *Nonexclusive Powers.* The emergency powers provided in this Article X shall be in addition to any powers provided by applicable law.

Exhibit C
To The Merger Agreement

Board of Directors of the Company

As of the Effective Time, in accordance with the By-Laws of the Company to be effective as of the Effective Time set forth on Exhibit B to the Merger Agreement (the "Company By-Laws"), the number of Directors constituting the Board of Directors shall be 15, comprised of ten Duke Directors (as defined in the Company By-Laws) and five Cinergy Directors (as defined in the Company By-Laws).

Chairman of the Board of Directors and President and Chief Executive Officer of the Company

Chairman of the Board of Directors: Paul M. Anderson. In addition to the duties of the Chairman of the Board of Directors attendant to such position set forth in the Company By-Laws, Mr. Anderson shall have management responsibilities for analyzing potential strategic alternatives regarding the separation of the Company's gas and electric businesses, and, if approved by the Board of Directors of the Company, the implementation thereof, and in such capacity the President or other chief officer of the gas business shall report directly to the Chairman of the Board of Directors of the Company (as well as to the President and Chief Executive Officer). Any employment or other agreement or arrangement between Mr. Anderson and the Company consistent with the terms of this Exhibit C and the Company By-Laws shall contain such other terms and conditions as are agreed to by Mr. Anderson and the Company.

President and Chief Executive Officer: James E. Rogers

Selection of Senior Officers of the Company

From the date of the Agreement to immediately prior to the Closing, as necessary, Mr. Anderson and Mr. Rogers will consult with one another and cooperate to select officers of the Company as of the Effective Time. With respect to the 25 most senior officers (the "Senior Management Team"), in the event Mr. Anderson and Mr. Rogers are unable to agree on the appointment of a particular person to any office included in the Senior Management Team, Mr. Rogers' appointment to such office shall control. Upon the completion of the selection process set forth in this Exhibit C, Mr. Anderson and Mr. Rogers shall submit their selection of the Senior Management Team to the 15 individuals who will comprise the Board of Directors of the Company as of the Effective Time (the "Pro Forma Board") as and when the Pro Forma Board has been identified. Notwithstanding the foregoing selection process, the Senior Management Team, as an entirety, will be subject to the review and approval by the Pro Forma Board. In the event the Pro Forma Board does not approve any Senior Management Team submitted by Mr. Anderson and Mr. Rogers, the Pro Forma Board may suggest changes to the Senior Management Team and Mr. Anderson and Mr. Rogers will consult with one another and cooperate to submit a revised Senior Management Team for the review and approval of the Pro Forma Board in accordance with the foregoing procedures on one or more occasions until a Senior Management Team is approved by the Pro Forma Board. The selection process set forth in this Exhibit C shall terminate as of the Effective Time.

Exhibit D
To The Merger Agreement

EMPLOYMENT AGREEMENT
TERM SHEET
JAMES E. ROGERS

1. Basic premise—No changes to be made to Mr. Rogers' existing agreement unless:
   (a) required to reflect changes mandated by the transactions (the "Merger") contemplated by the Agreement and Plan of Merger by and among Duke Energy Corporation, Cinergy Corp., Deer Holding Corp., Deer Acquisition Corp. and Cougar Acquisition Corp. (the "Merger Agreement")
   (b) as specifically reflected in this term sheet
2. Changes mandated by the corporate transaction
   (a) References to Cinergy Corp. ("Cinergy") shall automatically refer to Deer Holding Corp. ("Holdco") as of the Closing Date
   (b) Required move to Charlotte
      (i) principal executive offices in Charlotte to be specified as the principal place of performance post-closing (§.2(b)[1])
      (ii) will not constitute a "Good Reason" trigger (§§.2(b) and 4(d)(iii))
   (c) Mr. Rogers to be named as President and CEO of Holdco effective upon the closing of the corporate transaction
      (i) Duties and Powers—modify the current positions, duties and responsibilities of Mr. Rogers (§.2(a)) to reflect post-closing status as Holdco President and CEO, subject to Exhibit C to the Merger Agreement
   (d) Compensation
      (i) Unless otherwise agreed by the parties, Mr. Rogers' compensation arrangements will remain in place post-closing
      (ii) The parties will negotiate in good faith to restructure the current compensation arrangements to provide that Mr. Rogers will be paid substantially in the form of equity compensation by which Duke Energy Corporation CEO is presently compensated; it being understood that Mr. Rogers' restructured compensation will be no less favorable in economic value than his existing compensation arrangements. The valuation determination will be made by an independent nationally recognized human resources consulting firm mutually selected by Holdco and Mr. Rogers, or, in the absence of agreement on the firm to be selected, such consulting firm as shall be selected by an arbitrator appointed in accordance with the rules of the American Arbitration Association then in effect
      (iii) SERP benefit—The present value of the SERP benefit (§.3(b)(ii)) will be quantified immediately prior to the closing of the Merger and will be deferred, with market-based earnings credited thereon, in compliance with §.409A of the Internal Revenue Code. If it is determined at any time prior to or following the closing that the SERP benefit should

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(1) Note that section references are to Mr. Rogers' existing agreement

fail to comply with §.409A for any reason, Mr. Rogers and Cinergy or Holdco (as applicable) in good faith shall negotiate to restructure the SERP benefit so as to make it compliant, provided that, in no event will such restructuring adversely affect such pre-tax present value of the SERP benefit

(e) Arbitration clause (§.8) should be modified to provide for any proceeding to take place in Charlotte, NC

(f) Governing law (§.12(a))—change from Ohio to North Carolina

(g) Notice provision—update to reflect Charlotte address of Holdco

3. Other changes/Comments

(a) Three-year term of employment commencing upon closing of the Merger, with back-end consecutive one-year "evergreen" renewals if neither party gives notice prior to a specified date (e.g., six months) prior to the end of the three-year employment term (or extended one-year term, as applicable)

(b) Severance—Unless otherwise agreed by the parties, if Mr. Rogers is involuntarily terminated without Cause or quits for Good Reason on or prior to the second anniversary of the closing of the Merger or within two years following a change in control of Holdco, 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 closing of the transaction; provided, however, that if his termination of employment occurs at any time following the second anniversary of the closing of the Merger (other than within two years following a change in control of Holdco), 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 occurrence of a change in control of Cinergy (and, in either case, such economic value shall be determined without regard to the form of his then restructured compensation arrangements)

(c) Relocation benefits—Mr. Rogers will be reimbursed for all direct and indirect relocation costs

(d) Stock sale limitations—remove limitation on the sale, during employment, of Cinergy shares acquired upon exercise of stock options (§.4(g)), such removal to be effective as of the closing of the transaction (but Mr. Rogers shall remain subject to Duke Energy Corporation/Holdco stock ownership guidelines which have been represented to Mr. Rogers as being a 100,000 share minimum)

As soon as reasonably practicable following the execution of this term sheet but in any event prior to the closing of the corporate transaction, Cinergy, Duke Energy Corporation and Holdco will each take such action (or cause their respective affiliates to take such action) as may be necessary and appropriate to effectuate the foregoing in a new or amended employment agreement to be entered into or assumed by Holdco for Mr. Rogers, which agreement shall take effect as of the effective date of the closing of the mergers contemplated by the Merger Agreement; provided, however, that §.2(d)(iii) hereof shall take effect immediately upon the execution of this term sheet. Until such time as a new or amended employment agreement becomes effective, this term sheet shall govern the respective parties' rights and obligations and shall constitute an amendment of Mr. Rogers' employment agreement when deemed effective as provided hereinabove.

IN WITNESS WHEREOF, the parties signing hereinbelow have executed this term sheet this 8th day of May, 2005, intending to be legally bound thereby.

CINERGY CORP.

By: /s/ MARC E. MANLY
MARC E. MANLY

DUKE ENERGY CORPORATION

By: /s/ PAUL M. ANDERSON
PAUL M. ANDERSON

DEER HOLDING CORP.

By: /s/ JIM W. MOGG
JIM W. MOGG

/s/ JAMES E. ROGERS
JAMES E. ROGERS

ANNEX B

[Letterhead of UBS Securities LLC]

May 7, 2005

The Board of Directors
Duke Energy Corporation
526 S. Church Street
Charlotte, NC 28202

Dear Members of the Board:

We understand that Duke Energy Corporation, a North Carolina corporation ("Duke"), is considering a transaction whereby each of Duke and Cinergy Corp., a Delaware corporation ("Cinergy"), would be merged with a separate newly-formed subsidiary of a newly-formed corporation to be organized by Duke under Delaware law ("Holdco"), whereby Duke and Cinergy would become wholly-owned subsidiaries of Holdco (collectively, the "Transaction"). Pursuant to the terms of a draft Agreement and Plan of Merger (the "Merger Agreement"), by and among Duke and Cinergy, each issued and outstanding share (other than certain shares specified in the Merger Agreement) of common stock of Cinergy, par value of $.01 per share ("Cinergy Common Stock"), will be converted into the right to receive 1.56 shares of Common Stock (the "Cinergy Exchange Ratio"), no par value per share, of Holdco (the "Holdco Common Stock") and each issued and outstanding share (other than certain shares specified in the Merger Agreement) of common stock of Duke, no par value per share (the "Duke Common Stock"), will be converted into the right to receive 1.0 share of Holdco Common Stock. No fractional shares of Holdco Common Stock will be issued to holders of Cinergy Common Stock or Duke Common Stock. The terms and conditions of the Transaction are more fully set forth in the Merger Agreement.

You have requested our opinion as to the fairness from a financial point of view to Duke of the Cinergy Exchange Ratio in the Transaction.

UBS Securities LLC ("UBS") has acted as financial advisor to the Board of Directors of Duke in connection with the Transaction and will receive a fee for its services, a significant portion of which is contingent upon consummation of the Transaction. UBS also will receive a fee in connection with delivery of this opinion. In addition, Duke has agreed to indemnify us for certain liabilities arising out of our engagement. In the past, UBS and its predecessors have provided investment banking services to Duke and Cinergy and received customary compensation for the rendering of such services. In addition, UBS is currently a lender to Cinergy in two credit facilities and is providing financial advisory services to Cinergy unrelated to this Transaction. In the ordinary course of business, UBS, its successors and affiliates may trade and have traded securities of Duke or Cinergy for their own accounts and the accounts of their customers and, accordingly, may at any time hold a long or short position in such securities.

Our opinion does not address Duke's underlying business decision to effect the Transaction or constitute a recommendation to any shareholder of Duke as to how such shareholder should vote or act with respect to the Transaction or any other matter. At your direction, we have not been asked to, nor do we, offer any opinion as to the material terms of the Merger Agreement or the form of the Transaction. We express no opinion as to what the value of Holdco Common Stock will be when issued pursuant to the Merger Agreement or the prices at which Duke Common Stock, Cinergy Common Stock or Holdco Common Stock will trade in the future. In rendering this opinion, we have assumed, with your consent, that the final executed form of the Merger Agreement does not differ in any material respect from the draft dated May 7, 2005 that we have examined and that Duke and Cinergy

will comply with all the material terms of the Merger Agreement (without waiver, modification or amendment in any material respect).

In arriving at our opinion, we have, among other things: (i) reviewed certain publicly available business and historical financial information relating to Duke and Cinergy, (ii) reviewed certain internal financial information and other data relating to the business and financial prospects of Duke, including estimates and financial forecasts prepared by management of Duke, that were provided to us by Duke and not publicly available, (iii) reviewed certain internal financial information and other data relating to the business and financial prospects of Cinergy, including estimates and financial forecasts prepared by management of Cinergy as adjusted by management of Duke, that were provided to us and not publicly available, (iv) reviewed certain estimates of cost savings and synergies expected to result from the Transaction and related expenses as prepared by Duke management and furnished to us by Duke (the "Synergies"), (v) conducted discussions with members of the senior managements of Duke and Cinergy concerning the businesses and financial prospects of Duke and Cinergy and the Synergies, (vi) reviewed publicly available financial and stock market data with respect to certain other companies in lines of business we believe to be generally comparable to those of Duke and Cinergy, (vii) compared the financial terms of the Transaction with the publicly available financial terms of certain other transactions which we believe to be generally relevant, (viii) considered certain pro forma effects of the Transaction on Duke's and Holdco's financial statements, (ix) reviewed a draft of the Merger Agreement dated May 7, 2005, and (x) conducted such other financial studies, analyses, and investigations, and considered such other information, as we deemed necessary or appropriate.

In connection with our review, with your consent, we have not assumed any responsibility for independent verification of any of the information reviewed by us for the purpose of this opinion and have, with your consent, relied on such information being complete and accurate in all material respects. In addition, with your consent, we have not made any independent evaluation or appraisal of any of the assets or liabilities (contingent or otherwise) of Duke or Cinergy, nor have we been furnished with any such evaluation or appraisal. With respect to the financial forecasts, estimates, pro forma effects and Synergies referred to above, we have assumed, at your direction, that they have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of Duke. In addition, we have assumed at your direction that the future financial results referred to above will be achieved and the Synergies referred to above will be realized at the times and in the amounts projected by Duke management. We have also assumed, with your consent, that the Transaction will qualify as a tax-free reorganization for U.S. federal income tax purposes. We have also assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the Transaction will be obtained without any material adverse effect on Duke, Cinergy, Holdco and/or the Transaction. Our opinion is necessarily based on economic, monetary, market and other conditions as in effect on, and the information made available to us as of, the date hereof.

Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the Cinergy Exchange Ratio in the Transaction is fair, from a financial point of view, to Duke.

Very truly yours,

UBS SECURITIES LLC

Annex C

[Letterhead of Lazard Frères & Co. LLC]

May 8, 2005

The Board of Directors
Duke Energy Corporation
526 S. Church Street
Charlotte, North Carolina 28202

Dear Members of the Board:

We understand that Duke Energy Corporation, a North Carolina corporation ("Duke"), Cinergy Corp., a Delaware corporation ("Cinergy"), Deer Holding Corp., a Delaware corporation (the "Company") and a wholly-owned subsidiary of Duke, Deer Acquisition Corp., a North Carolina corporation and a wholly-owned subsidiary of the Company ("Merger Sub A"), and Cougar Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of the Company ("Merger Sub B"), have entered into an Agreement and Plan of Merger, dated as of May 8, 2005 (the "Agreement"). The Agreement provides, among other things, for (i) the merger of Merger Sub A with and into Duke, with Duke continuing as the surviving corporation (the "Duke Merger") and (ii) the merger of Merger Sub B with and into Cinergy, with Cinergy continuing as the surviving corporation (the "Cinergy Merger" and, together with the Duke Merger, the "Merger"), as a result of which Duke and Cinergy will become wholly-owned subsidiaries of the Company. Pursuant to the Merger (x) each outstanding share of common stock, no par value per share, of Duke ("Duke Common Stock"), will be converted, subject to certain exceptions and limitations set forth in the Agreement, into one share of common stock, no par value per share, of the Company ("Company Common Stock"), and (y) each share of common stock, par value $0.01 per share, of Cinergy ("Cinergy Common Stock"), will be converted, subject to certain exceptions and limitations set forth in the Agreement, into 1.56 shares (the "Exchange Ratio") of Company Common Stock. The terms and conditions of the Merger are more fully set forth in the Agreement.

You have requested our opinion as to the fairness, from a financial point of view, to Duke of the Exchange Ratio pursuant to the Agreement. In connection with this opinion, we have:

(i) Reviewed the financial terms and conditions of the Agreement;

(ii) Analyzed certain publicly available historical business and financial information relating to Duke and Cinergy;

(iii) Reviewed various internal financial forecasts and other data provided to us by Duke and Cinergy relating to their respective businesses, as well as adjustments by Duke's management to the internal financial forecasts provided by Cinergy;

(iv) Held discussions with members of the senior management of Duke with respect to the businesses and prospects of Duke and Cinergy, the strategic objectives of each, and possible benefits (including estimates of synergies) which might be realized following the Merger;

(v) Reviewed public information with respect to certain other companies in lines of businesses we believe to be generally comparable to the businesses of Duke and Cinergy;

(vi) Reviewed the financial terms of certain business combinations involving companies in lines of businesses we believe to be generally comparable to those of Duke and Cinergy, and in other industries generally;

(vii) Reviewed the historical stock prices and trading volumes of Duke Common Stock and Cinergy Common Stock; and

(viii) Conducted such other financial studies, analyses and investigations as we deemed appropriate.

We have relied upon the accuracy and completeness of the foregoing information, and have not assumed any responsibility for any independent verification of such information or any independent valuation or appraisal of any of the assets or liabilities of Duke or Cinergy, or concerning the solvency or fair value of either of the foregoing entities, and have not been furnished with any such valuation or appraisal. With respect to financial forecasts, including projected synergies and other anticipated strategic, financial and operational benefits of the Merger, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of management of Duke and Cinergy as to the future financial performance of Duke, Cinergy and the combined company, as the case may be, and we have assumed that such forecasts and projections (including synergies) will be realized in the amounts and at the times contemplated thereby. We assume no responsibility for and express no view as to such forecasts or the assumptions on which they are based.

Further, our opinion is necessarily based on economic, monetary, market and other conditions as in effect on, and the information made available to us as of, the date hereof. We assume no responsibility for updating or revising our opinion based on circumstances or events occurring after the date hereof.

In rendering our opinion, we have assumed that the Merger and the other transactions contemplated in the Agreement will be consummated on the terms described in the Agreement, including, among other things, that the Merger and the related transactions described in the Agreement will be treated as a tax-free reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended, and that the Merger will be consummated without any waiver of any material terms or conditions. In addition, we have assumed that obtaining the necessary regulatory and third-party approvals for the Merger and the other transactions contemplated in the Agreement will not have an adverse effect on the combined company. We do not express any opinion as to any tax or other consequences that might result from the Merger, nor does our opinion address any legal, tax, regulatory or accounting matters, as to which we understand that Duke obtained such advice as it deemed necessary from qualified professionals.

We do not express any opinion as to the price at which shares of Duke Common Stock or shares of Cinergy Common Stock may trade subsequent to the announcement of the Merger or as to the price at which shares of Company Common Stock may trade subsequent to the consummation of the Merger.

Lazard Frères & Co. LLC is acting as investment banker to Duke in connection with the Merger and will receive a fee for our services, a substantial portion of which we will receive upon delivery of this opinion. Also, as you are aware, we have from time to time in the past provided investment banking and financial advisory services to Duke and Cinergy for which we have received fees. We may also provide advisory and other services in the future to Duke, Cinergy or the combined company. Lazard Frères & Co. LLC provides a full range of financial advisory and other services and, in the course of our business, may from time to time effect transactions and hold securities, including derivative securities, of Duke or Cinergy for our own account and for the accounts of clients and customers, and, accordingly, may hold a long or short position in such securities.

Our engagement and the opinion expressed herein are for the benefit of Duke's Board of Directors and are not on behalf of, and are not intended to confer rights or remedies upon, Cinergy, any stockholders of Duke, Cinergy or the Company, or any other person. Our opinion does not address the merits of the underlying decision by Duke to engage in the Merger or the relative merits of the Merger as compared to other business strategies that might be available to Duke. We express no

opinion or recommendation as to how the shareholders of Duke should vote at any shareholders meeting to be held in connection with the Merger.

Based on and subject to the foregoing, we are of the opinion that, as of the date hereof, the Exchange Ratio is fair from a financial point of view to Duke.

VERY TRULY YOURS,

LAZARD FRERES & CO. LLC

By: /s/ GEORGE W. BILICIC

George W. Bilicic
Managing Director

Global Markets & Investment Banking

May 8, 2005

Board of Directors
Cinergy Corp.
139 East Fourth Street
Cincinnati, OH 45202

Members of the Board of Directors:

Cinergy Corp. (the "Company"), Duke Energy Corporation (the "Merger Partner"), Deer Holding Corp., a wholly-owned subsidiary of the Merger Partner (the "Parent"), Deer Acquisition Corp., a wholly-owned subsidiary of the Parent ("Merger Sub A"), and Cougar Acquisition Corp., a wholly-owned subsidiary of the Parent ("Merger Sub B"), propose to enter into an Agreement and Plan of Merger dated as of May 8, 2005 (the "Agreement"), pursuant to which Merger Sub A will merge with the Merger Partner (the "Merger Partner Merger"), and Merger Sub B will merge with the Company (the "Company Merger", and together with the Merger Partner Merger, the "Transaction") in a transaction in which, among other things (i) each outstanding share of the Merger Partner's common stock, no par value per share (the "Merger Partner Common Stock"), other than any Merger Partner Common Stock owned by the Company, the Merger Partner or the Parent, all of which shall be canceled, will be converted into the right to receive one share of Parent's common stock, no par value per share (the "Parent Common Stock"), and (ii) each outstanding share of the Company's common stock, par value $0.01 per share (the "Company Common Stock"), other than any Company Common Stock owned by the Company, the Merger Partner or the Parent, all of which shall be canceled, will be converted into the right to receive 1.56 shares (the "Exchange Ratio") of the Parent Common Stock. As a result of the Transaction, the Company and the Merger Partner will become wholly-owned subsidiaries of the Parent.

You have asked us whether, in our opinion, the Exchange Ratio is fair from a financial point of view to the holders of the Company Common Stock.

In arriving at the opinion set forth below, we have, among other things:

(1) Reviewed certain publicly available business and financial information relating to the Company and the Merger Partner that we deemed to be relevant;

(2) Reviewed certain information, including financial forecasts, relating to the business, earnings, cash flow, assets, liabilities and prospects of the Company and the Merger Partner as furnished to us by the Company and the Merger Partner, respectively, as well as the amount and timing of the cost savings and related expenses and retained synergies expected to result from the Transaction (the "Expected Synergies") furnished to us by the Company;

(3) Conducted discussions with members of senior management and representatives of the Company and the Merger Partner concerning the matters described in clauses 1 and 2 above, as well as their respective businesses and prospects before and after giving effect to the Transaction and the Expected Synergies;

(4) Reviewed the market prices and valuation multiples for the Company Common Stock and the Merger Partner Common Stock and compared them with those of certain publicly traded companies that we deemed to be relevant;

(5) Reviewed the results of operations of the Company and the Merger Partner and compared them with those of certain publicly traded companies that we deemed to be relevant;

(6) Compared the proposed financial terms of the Transaction with the financial terms of certain other transactions that we deemed to be relevant;

(7) Participated in certain discussions and negotiations among representatives of the Company and the Merger Partner and their financial and legal advisors;

(8) Reviewed the potential pro forma impact of the Transaction;

(9) Reviewed the Agreement; and

(10) Reviewed such other financial studies and analyses and took into account such other matters as we deemed necessary, including our assessment of general economic, market and monetary conditions.

In preparing our opinion, we have assumed and relied on the accuracy and completeness of all information supplied or otherwise made available to us, discussed with or reviewed by or for us, or publicly available, and we have not assumed any responsibility for independently verifying such information or undertaken an independent evaluation or appraisal of any of the assets or liabilities of the Company or the Merger Partner or been furnished with any such evaluation or appraisal, nor have we evaluated the solvency or fair value of the Company or the Merger Partner under any state or federal laws relating to bankruptcy, insolvency or similar matters. In addition, we have not assumed any obligation to conduct any physical inspection of the properties or facilities of the Company or the Merger Partner. With respect to the financial forecast information and the Expected Synergies furnished to or discussed with us by the Company or the Merger Partner, we have assumed that they have been reasonably prepared and reflect the best currently available estimates and judgment of the Company's or the Merger Partner's management as to the expected future financial performance of the Company or the Merger Partner, as the case may be, and the Expected Synergies. We have further assumed that the Merger Partner Merger and the Company Merger will each qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended.

Our opinion is necessarily based upon market, economic and other conditions as they exist and can be evaluated on, and on the information made available to us as of, the date hereof. We have 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, will be imposed that will have a material adverse effect on the contemplated benefits of the Transaction.

In connection with the preparation of this opinion, we have not been authorized by the Company or the Beard of Directors to solicit, nor have we solicited, third-party indications of interest for the acquisition of all or any part of the Company.

We are acting as financial advisor to the Company in connection with the Transaction and will receive a fee from the Company for our services, a significant portion of which is contingent upon the consummation of the Transaction. In addition, the Company has agreed to indemnify us for certain liabilities arising out of our engagement. We have, in the past, provided financial advisory and financing services to the Company and the Merger Partner and/or its affiliates and may continue to so and have received, and may receive, fees for the rendering of such services. In addition, in the ordinary course of

our business, we may actively trade the Company Common Stock and other securities of the Company, as well as the Merger Partner Common Stock and other securities of the Merger Partner, for our own account and for the accounts of customers and, accordingly, may at any time hold a long or short position in such securities.

This opinion is for the use and benefit of the Board of Directors of the Company. Our opinion does not address the merits of the underlying decision by the Company to engage in the Transaction and does not constitute a recommendation to any shareholder as to how such shareholder should vote on the proposed Company Merger or any matter related thereto. In addition, you have not asked us to address, and this opinion does not address, the fairness to, or any other consideration of, the holders of any class of securities, creditors or other constituencies of the Company, other than the holders of the Company Common Stock.

We are not expressing any opinion herein as to the prices at which the Company Common Stock or the Parent Common Stock will trade following the announcement or consummation of the Transaction, as the case may be.

On the basis of and subject to the foregoing, we are of the opinion that, as of the date hereof, the Exchange Ratio is fair front a financial point of view to the holders of the Company Common Stock.

Very truly yours,

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

Article 13 of the North Carolina Business Corporation Act

GENERAL STATUTES OF NORTH CAROLINA
CHAPTER 55. NORTH CAROLINA
BUSINESS CORPORATION ACT
ARTICLE 13. DISSENTERS' RIGHTS

Part I. Right to Dissent and Obtain Payments for Shares

§ 55-13-01 Definitions

In this Article:

(1) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under G.S. 55-13-02 and who exercises that right when and in the manner required by G.S. 55-13-20 through 55-13-28.

(2a) Consummation of a plan of conversion pursuant to Part 2 of Article 11A of this Chapter:

(3) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the corporate action until the date of payment, at a rate that is fair and equitable under all the circumstances, giving due consideration to the rate currently paid by the corporation on its principal bank loans, if any, but not less than the rate provided by G.S. 24-1.

(5) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

§ 55-13-02 Right to dissent

(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation (other than a parent corporation in a merger whose are shares not affected under G.S. 55-11-04) is a party unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, unless such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(2a) Consummation of a plan of conversion pursuant to Part 2 of Article 11A of this Chapter;

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than as permitted by G.S. 55-12-01, including a sale in dissolution, but not including a sale pursuant to court order or a sale pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed in cash to the shareholders within one year after the date of sale;

(4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it

(i) alters or abolishes a preferential right of the shares;

(ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;

(iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than an amendment of the articles of incorporation permitting action without meeting to be taken by less than all shareholders entitled to vote, without advance notice, or both, as provided in G.S. 55-7-04;

(v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under G.S. 55-6-04; or

(vi) changes the corporation into a nonprofit corporation or cooperative organization; or

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) A shareholder entitled to dissent and obtain payment for his shares under this Article may not challenge the corporate action creating his entitlement, including without limitation a merger solely or partly in exchange for cash or other property, unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(c) Notwithstanding any other provision of this Article, there shall be no right of shareholders to dissent from, or obtain payment of the fair value of the shares in the event of, the corporate actions set forth in subdivisions (1), (2), or (3) of subsection (a) of this section if the affected shares are any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or share exchange or the sale or exchange of property is to be acted on, were (i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or (ii) held by at least 2,000 record shareholders. This subsection does not apply in cases in which either:

(1) The articles of incorporation, bylaws, or a resolution of the board of directors of the corporation issuing the shares provide otherwise; or

(2) In the case of a plan of merger or share exchange, the holders of the class or series are required under the plan of merger or share exchange to accept for the shares anything except:

a. Cash;

b. Shares, or shares and cash in lieu of fractional shares of the surviving or acquiring corporation, or of any other corporation which, at the record date fixed to determine the

shareholders entitled to receive notice of and vote at the meeting at which the plan of merger or share exchange is to be acted on, were either listed subject to notice of issuance on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or held by at least 2,000 record shareholders; or

c. A combination of cash and shares as set forth in sub-subdivisions a. and b. of this subdivision.

§ 55-13-03 Dissent by nominees and beneficial owners

(a) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(b) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(1) He submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(2) He does so with respect to all shares of which he is the beneficial shareholder.

Part 2. Procedure for Exercise of Dissenter's Rights

§ 55-13-20 Notice of dissenters' rights

(a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is submitted to a vote at a shareholders meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this Article and be accompanied by a copy of this Article.

(b) If corporate action creating dissenters' rights under G.S. 55-13-02 is taken without a vote of shareholders or is taken by shareholder action without meeting under G.S. 55-7-04, the corporation shall no later than 10 days thereafter notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in G.S. 55-13-22. A shareholder who consents to shareholder action taken without meeting under G.S. 55-7-04 approving a corporate action is not entitled to payment for the shareholder's shares under this Article with respect to that corporate action.

(c) If a corporation fails to comply with the requirements of this section, such failure shall not invalidate any corporate action taken; but any shareholder may recover from the corporation any damage which he suffered from such failure in a civil action brought in his own name within three years after the taking of the corporate action creating dissenters' rights under G.S. 55-13-02 unless he voted for such corporate action.

§ 55-13-21 Notice of intent to demand payment

(a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is submitted to a vote at a shareholders meeting, a shareholder who wishes to assert dissenters' rights:

(1) Must give to the corporation, and the corporation must actually receive, before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated; and

(2) Must not vote his shares in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment for his shares under this Article.

§ 55-13-22 Dissenters' notice

(a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is authorized at a shareholders meeting, the corporation shall mail by registered or certified mail, return receipt requested, a written dissenters' notice to all shareholders who satisfied the requirements of G.S. 55-13-21.

(b) The dissenters' notice must be sent no later than 10 days after shareholder approval, or if no shareholder approval is required, after the approval of the board of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) Supply a form for demanding payment;

(4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and

(5) Be accompanied by a copy of this Article.

§ 55-13-23 Duty to demand payment

(a) A shareholder sent a dissenters' notice described in G.S. 55-13-22 must demand payment and deposit his share certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits his share certificates under subsection (a) retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

(c) A shareholder who does not demand payment or deposit his share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his shares under this Article.

§ 55-13-24 Share restrictions

(a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under G.S. 55-13-26.

(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

§ 55-13-25 Payment

(a) As soon as the proposed corporate action is taken, or within 30 days after receipt of a payment demand, the corporation shall pay each dissenter who complied with G.S. 55-13-23 the amount the corporation estimates to be the fair value of his shares, plus interest accrued to the date of payment.

(b) The payment shall be accompanied by:

(1) The corporation's most recent available balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of cash flows for that year, and the latest available interim financial statements, if any;

(2) An explanation of how the corporation estimated the fair value of the shares;

(3) An explanation of how the interest was calculated;

(4) A statement of the dissenter's right to demand payment under G.S. 55-13-28; and

(5) A copy of this Article.

§ 55-13-26 Failure to take action

(a) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under G.S. 55-13-22 and repeat the payment demand procedure.

§ 55-13-27 [Reserved for future codification purposes]

§ 55-13-28 Procedure if shareholder dissatisfied with corporation's payment or failure to perform

(a) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of the amount in excess of the payment by the corporation under G.S. 55-13-25 for the fair value of his shares and interest due, if:

(1) The dissenter believes that the amount paid under G.S. 55-13-25 is less than the fair value of his shares or that the interest due is incorrectly calculated;

(2) The corporation fails to make payment under G.S. 55-13-25; or

(3) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing (i) under subdivision (a)(1) within 30 days after the corporation made payment for his shares or (ii) under subdivisions (a)(2) and (a)(3) within 30 days after the corporation has failed to perform timely. A dissenter who fails to notify the corporation of his demand under subsection (a) within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

§ 55-13-29 Reserved

Part 3. Judicial Appraisal of Shares

§ 55-13-30 Court action

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the earlier of (i) the date payment is made under G.S. 55-13-25, or (ii) the date of the dissenter's payment demand under G.S. 55-13-28 by filing a complaint with the

Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. A dissenter who takes no action within the 60-day period shall be deemed to have withdrawn his dissent and demand for payment.

(al) (Repealed by S.L. 97-202, L. '97, eff. 10-1-97.)

(b) [Reserved for future codification purposes.]

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the complaint. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the superior court in which the proceeding is commenced under subsection (a) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. The proceeding shall be tried as in other civil actions. However, in a proceeding by a dissenter in a corporation that was a public corporation immediately prior to consummation of the corporate action giving rise to the right of dissent under G.S. 55-13-02, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation.

§ 55-13-31 Court costs and counsel fees

(a) The court in an appraisal proceeding commenced under G.S. 55-13-30 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court, and shall assess the costs as it finds equitable.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of G.S. 55-13-20 through 55-13-28; or

(2) Against either the corporation or a dissenter, in favor of either or any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this Article.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

PART II INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 20. Indemnification of Directors and Officers

Delaware law permits a corporation to adopt a provision in its certificate of incorporation eliminating or limiting the personal liability of a director, but not an officer in his or her capacity as such, to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except that such provision shall not limit the liability of a director for (i) any breach of the director's duty of loyalty to the corporation or its shareholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) liability under section 174 of the Delaware General Corporation Law for unlawful payment of dividends or stock purchases or redemptions, or (iv) any transaction from which the director derived an improper personal benefit. The Duke Energy Holding certificate of incorporation provides that no director of Duke Energy Holding shall be personally liable to Duke Energy Holding or its shareholders for monetary damages for breach of fiduciary duty as a director, except to the extent such an exemption from liability or limitation thereof is not permitted under applicable law.

Under Delaware law, a corporation may indemnify any person made a party or threatened to be made a party to any type of proceeding, other than action by or in the right of the corporation, because he or she is or was an officer, director, employee or agent of the corporation or was serving at the request of the corporation as an officer, director, employee or agent of another corporation or entity against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such proceeding: (1) if he or she acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation; or (2) in the case of a criminal proceeding, he or she had no reasonable cause to believe that his or her conduct was unlawful. A corporation may indemnify any person made a party or threatened to be made a party to any threatened, pending or completed action or suit brought by or in the right of the corporation because he or she was an officer, director, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other entity, against expenses actually and reasonably incurred in connection with such action or suit if he or she 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, provided that such indemnification will be denied if the person is found liable to the corporation unless, in such a case, the court determines the person is entitled to indemnification for such expenses in any event. A corporation must indemnify a present or former director or officer who successfully defends himself or herself in a proceeding to which he or she was a party because he or she was a director or officer of the corporation against expenses actually and reasonably incurred by him or her. Expenses incurred by an officer or director, or any employees or agents as deemed appropriate by the board of directors, in defending civil or criminal proceedings may be paid by the corporation in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the corporation. The Delaware law regarding indemnification and expense advancement is not exclusive of any other rights which may be granted by the Duke Energy Holding certificate of incorporation or by-laws, a vote of shareholders or disinterested directors, agreement or otherwise.

Under the DGCL, termination of any proceeding by conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that such person is prohibited from being indemnified.

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, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of Duke Energy Holding), by reason of the fact that such person is or was a director

or officer of Duke Energy Holding, or is or was a director or officer of Duke Energy Holding 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, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and 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 such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, will not, of itself, create a presumption that the person did not act in good faith and in a manner which 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 reasonable cause to believe that such person's conduct was unlawful.

Duke Energy Holding's by-laws further 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 Duke Energy Holding, or is or was a director or officer of Duke Energy Holding 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, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith, and in a manner such person reasonably believed to be in or not opposed to the best interests of Duke Energy Holding except that no indemnification will be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to Duke Energy Holding unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

However, Duke Energy Holding's by-laws provide that Duke Energy Holding will only provide indemnification pursuant to the by-laws (unless ordered by a court) if such indemnification is authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in the by-laws. Such determination is to be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of directors who are not parties to such action, suit or proceeding designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iv) by the shareholders. Such determination is to be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of Duke Energy Holding. To the extent, however, that a present or former director or officer of Duke Energy Holding has been successful on the merits or otherwise in defense of any action, suit or proceeding, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Duke Energy Holding's by-laws further provide that except for proceedings to enforce rights to indemnification, Duke Energy Holding will not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the board of directors.

The indemnification and advancement of expenses provided by, or granted pursuant to, Duke Energy Holding's by-laws are not deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation, by-laws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. It is Duke Energy Holdings's policy that indemnification shall generally be made to the fullest extent permitted by law. Duke Energy Holding's by-laws do not preclude indemnifying persons in addition to those specified in the by-laws but whom Duke Energy Holding has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

Duke Energy Holding may also purchase and maintain insurance on behalf of any person who is or was a director or officer, or is or was a director or officer 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 against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not Duke Energy Holding would have the power or the obligation to indemnify such person against such liability under the provisions of the by-laws.

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 of 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 no less favorable 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, as the case may be, assumes all of the foregoing indemnification obligations.

Item 21. Exhibits and Financial Statement Schedules

(a) See Exhibit Index.

(b) Not Applicable.

(c) Opinion of UBS Securities LLC (included as Annex B to this joint proxy statement/prospectus which is a part of this registration statement).

Opinion of Lazard Frères & Co. LLC (included as Annex C to this joint proxy statement/ prospectus which is a part of this registration statement).

Opinion of Merrill Lynch, Pierce, Fenner & Smith Incorporated (included as Annex D to this joint proxy statement/prospectus which is a part of this registration statement).

Item 22. Undertakings

(a) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(b) (1) The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(2) The registrant undertakes that every prospectus: (i) that is filed pursuant to paragraph 1 immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(d) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11 or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(e) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Duke Energy Holding Corp. has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Charlotte, state of North Carolina, on June 30, 2005.

DUKE ENERGY HOLDING CORP.
(Registrant)

By: /s/ JIM W. MOGG
Name: Jim W. Mogg
Title: President

Each person whose signature appears below hereby constitutes and appoints David L. Hauser, Jim W. Mogg and B. Keith Trent, and each of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including, without limitation, post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, and hereby grants to such attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agents, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
/s/ JIM W. MOGG Jim W. Mogg	Director	June 30, 2005
/s/ DAVID L. HAUSER David L. Hauser	Director and Chief Financial Officer	June 30, 2005
/s/ B. KEITH TRENT B. Keith Trent	Director	June 30, 2005

EXHIBIT INDEX

Exhibit Number	Description
2.1	Agreement and Plan of Merger dated as of May 8, 2005 (attached as Annex A to the joint proxy statement/prospectus)
3.1	Form of Certificate of Incorporation of Duke Energy Holding Corp. to be in effect as of the effective time of the mergers (included as Exhibit A to Annex A to the joint proxy statement/ prospectus which is a part of this registration statement)
3.2	Form of By-laws of Duke Energy Holding Corp. to be in effect as of the effective time of the mergers (included as Exhibit B to Annex A to the joint proxy statement/prospectus which is a part of this registration statement)
*5.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP regarding the legality of the securities being registered
*8.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP as to tax matters
*8.2	Opinion of Wachtell, Lipton, Rosen & Katz as to tax matters
10.1	Employment Term Sheet dated as of May 8, 2005, between Duke Energy Holding Corp. and James E. Rogers (incorporated by reference to Exhibit 10.1 to Cinergy Corp.'s Current Report on Form 8-K filed on May 10, 2005)
23.1	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm for Duke Energy Corporation
23.2	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm for Cinergy Corp.
*23.3	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibits 5.1 and 8.1)
*23.4	Consent of Wachtell, Lipton, Rosen & Katz (included in Exhibit 8.2)
24.1	Power of Attorney (included in signature pages)
99.1	Consent of UBS Securities LLC
99.2	Consent of Lazard Frères & Co. LLC
99.3	Consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated
99.4	Consent of James E. Rogers
99.5	Consent of Paul M. Anderson

* To be filed by amendment.

FILED

JUN 15 2005

INDIANA UTILITY REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF PSI ENERGY, INC. CONCERNING: (1) CERTAIN AFFILIATE TRANSACTIONS, INCLUDING SERVICE AGREEMENTS, (2) THE SHARING OF MERGER-RELATED BENEFITS WITH CUSTOMERS, (3) DEFERRED ACCOUNTING OF CERTAIN MERGER-RELATED COSTS, (4) AUTHORITY TO CONTINUE MAINTAINING CERTAIN BOOKS AND RECORDS OUTSIDE THE STATE OF INDIANA, AND (5) ANY AND ALL OTHER ISSUES RELATING TO THE MERGER OF CINERGY CORP., THE PARENT COMPANY OF PSI ENERGY, INC., AND DUKE ENERGY CORPORATION INTO A NEW PUBLIC UTILITY HOLDING COMPANY	)	**42873** **CAUSE NO. _____**

VERIFIED PETITION

TO THE INDIANA UTILITY REGULATORY COMMISSION:

PSI Energy, Inc. ("PSI" or "Petitioner") respectfully represents and shows to the Indiana Utility Regulatory Commission ("Commission") that:

1. **Petitioner's Organization and Business.** Petitioner is a public utility organized and existing under the laws of the State of Indiana, and has its principal office at 1000 East Main Street, Plainfield, Indiana. It is engaged in rendering electric utility service in the State of Indiana, and owns, operates, manages and controls, among other things, plant and equipment within the State of Indiana used for the production, transmission, delivery and furnishing of such electric service to the public. Petitioner directly supplies electric energy to over 700,000 customers located in 69 counties in the central, north central and southern parts of the State of Indiana, and supplies steam service to one customer from its Cayuga Generating Station. PSI's

retail electric service territory spans 22,000 square miles, and PSI owns 6,801 megawatts (summer rating) of electric generation located in Indiana and Ohio. Petitioner is subject to the jurisdiction of this Commission in the manner and to the extent provided by the Public Service Commission Act, Ind. Code § 8-1-2. As of October 24, 1994, PSI became a wholly-owned subsidiary of Cinergy Corp. ("Cinergy"). Cinergy and its affiliates currently employ approximately 2,700 persons in Indiana, and have approximately 7,400 employees overall.

2. **Cinergy Corp.** Cinergy Corp. is a Delaware corporation and a registered public utility holding company under the Public Utility Holding Company Act of 1935, as amended ("PUHCA"). Cinergy was created as part of the October 1994 merger of The Cincinnati Gas & Electric Company and the former parent company of PSI.

3. **Duke Energy Corporation.** Duke Energy Corporation ("Duke Energy") is a corporation duly organized and existing under the laws of the State of North Carolina. It is a leading U.S. energy company which supplies, delivers and processes energy for customers in North America and selected international markets. Through its subsidiaries, it owns approximately 32,000 megawatts of regulated and unregulated generation. It conducts its regulated electric operations through Duke Power Company ("Duke Power") and serves approximately 2.2 million retail electric customers in an approximately 22,000 square mile service area within central and western North Carolina and western South Carolina. Its regulated generating capacity in the Carolinas is comprised of 5,020 megawatts nuclear, 7,754 megawatts coal, 2,447 megawatts natural gas and oil, and 2,810 megawatts hydroelectric.

Duke Energy also operates a natural gas transmission business that provides transportation and storage of natural gas for customers along the United States East Coast, the Southeast, and in Canada. Additionally, it provides natural gas sales and distribution service to

1.2 million retail customers in Ontario, Canada, and natural gas processing services to customers in Western Canada.

4. **Merger of Cinergy Corp. and Duke Energy Corporation.** In accordance with the Agreement and Plan of Merger by and among Duke Energy, Cinergy, Deer Holding Corp. ("Holding"), Deer Acquisition Corp. and Cougar Acquisition Corp. dated May 8, 2005, Duke Energy and Cinergy propose to merge, with such combination to be accomplished in several steps. Prior to entering into the merger agreement, Duke Energy formed a new Delaware corporation, Holding, which in turn formed two wholly-owned subsidiaries, Deer Acquisition Corp. and Cougar Acquisition Corp. At the closing of the transaction, Deer Acquisition Corp. and Cougar Acquisition Corp. will merge with and into Duke Energy and Cinergy, respectively, with the result that Duke Energy and Cinergy will become wholly-owned subsidiaries of Holding. By virtue of the mergers, the current shareholders of Duke Energy and Cinergy will become the shareholders of Holding, which will be renamed Duke Energy Corporation.[1] In connection with the mergers, each Duke Energy shareholder will receive one share of Holding common stock for each share of Duke Energy common stock that he or she owns, and each Cinergy shareholder will receive 1.56 shares of Holding common stock for each share of Cinergy common stock that he or she owns. Immediately following the mergers, based upon the number of shares outstanding as of May 8, 2005, current Duke Energy shareholders will own approximately 76 percent of Holding's common stock and current Cinergy shareholders will own approximately 24 percent of Holding's common stock.

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[1] Immediately following the Duke Energy - Deer Acquisition Corp. merger, Duke Energy will convert to a limited liability company to be called Duke Power Company, LLC.

5. **Related Governmental Filings.** In addition to the filings with this Commission, several steps are necessary to satisfy the requirements of other governmental entities with respect to the merger. Duke Energy and Cinergy, either jointly or individually, have made or will make filings with the following governmental entities: the Federal Energy Regulatory Commission ("FERC"), the Securities and Exchange Commission ("SEC"), the Federal Communications Commission, the Nuclear Regulatory Commission, the United States Department of Justice, the Federal Trade Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the North Carolina Utilities Commission, and the Public Service Commission of South Carolina.

6. **Corporate and Regulated Status of PSI Following the Merger.** Following consummation of the merger, PSI will continue to exist as a separate and distinct Indiana corporation and public utility company, operating as a subsidiary of the new Duke Energy Corporation. Likewise, Cinergy's other public utility subsidiaries, The Cincinnati Gas & Electric Company ("CG&E") and The Union Light Heat & Power Company, will continue to exist as separate and distinct public utility companies in the States of Ohio and Kentucky, respectively. Importantly, just as today, PSI will continue to be regulated by the Commission with respect to retail rates, service and accounts, the issuance of securities, the acquisition and sale of utility property, and other matters as provided by Indiana law. PSI will continue to be regulated by the FERC with respect to the classification of accounts, the wholesale sale of electricity, the transmission of electricity in interstate commerce, the issuance of securities not regulated by this Commission, the acquisition and sale of certain utility property, and interconnection and operating agreements. PSI will remain subject to regulation by the SEC as a subsidiary of a registered public utility holding company under PUHCA. In effect, the only

thing that will change with respect to PSI is its registered holding company parent will become the new Duke Energy Corporation, in place of Cinergy.

7. **Requested Relief.**

A. **Impact of the Merger on PSI and Customers.** In its testimony and other evidence, PSI will demonstrate that the new Duke Energy Corporation will have the technical, managerial, and financial expertise to own and operate PSI. Through Duke Power, Duke Energy currently serves approximately 2.2 million retail electric customers in North and South Carolina. It is an experienced utility company that provides high quality, reliable service to its customers. The combination will create one enterprise with a broad knowledge base and an exceptional range of experience that will be shared throughout the organization. A broader knowledge base, and an increased number of employees upon whom PSI may rely, will have a positive impact on consumers and benefit the public interest.

Additionally, both Cinergy and Duke Energy have a long tradition of superior customer service, and both companies have been nationally recognized for their excellence. Neither Cinergy's nor Duke's demonstrable commitment to superior customer service will change as a result of the merger, and customers will continue to enjoy the same high level of service.

PSI intends to address the following issues in its testimony and other evidence:

(i). **Quality of Customer Service and System Reliability.** PSI will demonstrate that the merger of Cinergy and Duke Energy will have no adverse impact upon customer service or reliability for PSI's electric customers in Indiana. PSI will continue to provide its customers with high quality customer service and a reliable supply of electricity, along with the staffing, experience and resources necessary to operate and maintain PSI's utility infrastructure and address any service interruptions in a timely manner.

(ii). **Cost Savings Resulting from the Merger.** PSI will demonstrate that the merger will have no adverse impact upon the electric rates of PSI's customers in Indiana. In particular, the significant synergies created by the merger will lower the overall cost structure of the combined company. These synergies include reduced costs that will result from the elimination of duplicative spending and overlapping functions, increased purchasing power, the avoidance of planned expenditures, and the consolidation of certain operations. The combination of these synergies will translate into increased productivity and lower costs over time. PSI commits to share with its Indiana retail customers the portion of the net savings created by the merger that are allocable to PSI's retail electric operations. PSI will demonstrate what cost savings are expected as a result of the transaction, where those savings will be generated, the time period used to measure the anticipated savings, how those cost savings will be allocated among various entities involved in the transaction, and to what degree (and in what fashion) cost savings resulting from the merger will benefit PSI's retail electric customers.

(iii). **Financial Integrity of PSI.** PSI will demonstrate that the merger will have no adverse impact upon the financial integrity of PSI. The increased scale and scope of operations that will result from the merger will strengthen the balance sheet of the new company and increase its financial flexibility. PSI will benefit from the new company's financial strength and access to financial markets. PSI will retain the ability to obtain financing on its own, subject to any necessary regulatory approval. Furthermore, consistent with SEC regulations, PSI will not guarantee the credit of any of its affiliates. PSI will not issue any security, incur any debt, or pledge any assets to finance any part of the purchase price paid for Cinergy's shares.

(iv). **Economic Development.** PSI will demonstrate that the merger will have no adverse impact upon PSI's commitment to economic development in Indiana. Cinergy and

PSI will continue to employ a substantial number of employees in Indiana – at local offices, generating stations, as well as in Plainfield, Indiana, which will remain PSI's corporate headquarters. PSI will maintain its commitment to a strong economic development effort in Indiana, dedicated to working with State and local economic development officials to assist in attracting new and expanded business to the State. For example, PSI's current economic development riders will not be impacted or altered as a result of the merger.

The increased financial stability created by the merger will help ensure that PSI remains a reliable and low cost provider of electricity that is well positioned to attract business to Indiana. The merger will translate into additional employment opportunities over the long-term. To recognize the synergies created by the combination, there will be some short-term reduction of jobs resulting from the elimination of overlapping functions and redundant systems. However, the anticipated reduction in workforce is expected to be only about 1,500 employees, or approximately 5% of the existing 29,000 employees of the two separate entities. This reduction in force is expected to be achieved primarily through attrition, early retirements, and other efforts designed to minimize the impacts upon employees. More importantly, although the merger will result in a short-term reduction in employment, the ultimate impact of the merger will position the new Duke Energy Corporation for future growth opportunities, which in turn will translate into increased long-term employment opportunities and economic development for Indiana.

(v). **Local Community Presence.** PSI will demonstrate that the merger will have no adverse impact upon PSI's local community presence in Indiana, and its commitment to its local Indiana communities. The Cinergy Foundation (or a successor foundation) will continue to make substantial philanthropic contributions to its communities. Notably, like Cinergy, Duke Energy shares a rich history of corporate giving and citizenship. Like Cinergy's employees,

Duke Energy's employees are actively involved in supporting their local communities in a variety of ways. The commitment to community support that PSI has shown over the years will be enhanced when backed by the financial strength and shared values of the combined company.

The fact that the corporate headquarters of the new holding company will be in Charlotte, North Carolina, rather than Cincinnati, Ohio, will in no way change PSI's ongoing commitment to the communities it serves. As noted, PSI's corporate offices will remain in Plainfield, Indiana. PSI will also maintain a presence in Indiana through its various field customer service and operational offices, and PSI's employees will continue their strong track record of volunteerism and giving back to the communities PSI serves.

(vi). **Regional Transmission Organization Development.** PSI will demonstrate that the transaction will not adversely affect the development of the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"). Cinergy and Duke Energy will engage in power sales and will be purchasing transmission service to deliver power between and among their regulated public utility operating companies. Additional power transfers across the Midwest ISO and the PJM Interconnection, L.L.C., which separate the Cinergy and Duke Energy service areas, will support the continued success of the Midwest ISO. PSI is currently a member of the Midwest ISO, and after the merger, PSI will remain so.

B. **Affiliate Transactions.** As part of the merger, a service company, similar to Cinergy Services, Inc., will be the service company for the combined companies and will provide services to the regulated and unregulated affiliates of Duke Energy and Cinergy. The allocation of service company costs will comply with the SEC's requirements, and the service company will render appropriate reports in a manner similar to the current practice of Cinergy Services, Inc. Safeguards related to affiliate transactions will be detailed in PSI's testimony in

this Cause. Petitioner requests that the Commission accept for filing or approve, as necessary, the continued use of several affiliate agreements that are the same as or similar to the affiliate agreements approved and accepted as part of the CG&E/PSI merger in 1994. At this time, Petitioner expects that it will continue to use or will enter into the following affiliate contracts: (1) Utility Service Agreement (allows service company to perform services for each of the public utilities); (2) Services Agreement (allows the utility and non-utility affiliates to perform various services for each other); (3) Money Pool Agreement (allows for inter-company loans among the utility affiliates, service company, and Holding); and (4) Tax Sharing Agreement (allows for joint filing of federal tax returns).

In addition, PSI requests the Commission accept for filing, as necessary, affiliate agreements with Duke Power, Duke Energy's electric public utility company in North and South Carolina, providing for energy transfers (day-ahead and real-time) at applicable verifiable market prices. Such transfers will occur over a firm transmission path that will be established to connect Duke Power with the Cinergy utility companies in Ohio, Kentucky and Indiana.

Finally, PSI commits to proposing new, comprehensive affiliate guidelines. However, in light of PSI's request for an expedited schedule in this Cause as discussed in Section 10, PSI believes that such new affiliate guidelines should be addressed in a subdocket of this Cause, with such subdocket to proceed after a final order is issued in this Cause. In the interim, PSI commits to abide by its current Affiliate Guidelines contained in Section 2 of its Retail Electric Tariff for all affiliated companies.

PSI will present testimony and other evidence supporting the reasonableness of these affiliate transactions.

C. **Accounting Deferrals.** Petitioner requests that the Commission approve deferred ratemaking treatment of certain merger related costs, including transaction costs and costs to achieve merger savings. Those costs include, but are not limited to, the following: merger case expense, systems' integration expense, external advisors, and external legal fees. Petitioner notes that certain synergies will result from the combination of these two companies and commits to share a portion of the merger savings (net of merger costs) allocable to PSI's retail electric operations with its Indiana retail electric customers. PSI seeks authority to use deferred accounting with respect to the merger transaction costs and the merger costs that result in achievement of these various cost reductions and avoidances. PSI proposes to account for the deferred costs to be netted against merger savings as a regulatory asset.

D. **Continued Authority to Maintain Books and Records Outside of Indiana.** Petitioner seeks Commission approval, to the extent necessary, to continue to maintain its books and records outside the State of Indiana. In Cause No. 42594, PSI requested and received Commission approval to maintain certain of its books and records outside of the State of Indiana. Therein, the Commission approved a Settlement Agreement, finding that: "PSI's request for authority to locate certain of its books and records outside of the State of Indiana, at the location of the Department that is responsible for maintaining the respective books and records, is hereby approved."[2] The location of certain books and records could change as result of the merger. PSI agrees to abide by the same commitments made in Cause No. 42594, with respect to producing and providing access to its books and records in Indiana, or otherwise reimbursing the Commission and the Indiana Office of the Utility Consumer Counselor for

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[2] *Verified Petition of PSI Energy, Inc.*, Cause No. 42594, p. 4 (IURC; May 26, 2004).

reasonable expenses incurred in the course of reviewing PSI's books or records outside of Indiana.

8. **Applicable Statutes and Regulations.** Petitioner believes that Indiana Code §§ 8-1-2-12, -14, -15, -38, -42, -49, -52, -58, -61, -83 and Ind. Code § 8-1-2.5 *et seq.*, among others, are or may be applicable to the subject matter of this proceeding.

9. **Request for Designation of Commission Staff Negotiating Team.** PSI respectfully requests that the Commission appoint Commission testimonial/negotiating Staff to this Cause. The merger proceedings surrounding PSI's parent company and CG&E were benefited by the involvement of negotiating Staff and PSI believes that Staff could assist in a negotiated outcome in this Cause, which would increase administrative efficiency. PSI also requests that the procedural schedule of this Cause provide for technical conferences and negotiating sessions.

10. **Time is of the Essence.** PSI requests the Commission set a procedural schedule that expedites the hearing and order in this Cause so that the merger can be consummated as soon as possible after all governmental approvals have been obtained. To that end, PSI requests a prehearing conference within 30 days of the filing of this Verified Petition.

11. **Petitioner's Counsel.** The names and addresses of Petitioner's attorneys in this matter are Kelley A. Karn, Ronald J. Brothers, Michael E. Allen and James R. Pope, 1000 East Main Street, Plainfield, Indiana, 46168. Each of these attorneys is duly authorized to accept service of papers in this Cause on behalf of Petitioner.

WHEREFORE, Petitioner respectfully requests that the Commission expeditiously set and hold a prehearing conference in this Cause within 30 days, and after an evidentiary hearing

make and enter an Order: (1) accepting for filing and approving, as necessary, the service agreements and other affiliate transactions; (2) setting up a subdocket of this Cause to consider modifications to PSI's Affiliate Guidelines; (3) authorizing PSI to share a portion of net merger savings with customers; (4) authorizing deferred accounting for merger-related costs; (5) authorizing PSI to continue to maintain certain books and records outside of Indiana; (6) finding that the merger will not have adverse impacts on PSI's customer service, reliability, rates, financial integrity, or other relevant performance; and (7) granting Petitioner such other and further relief in the premises as may be appropriate and proper.

Dated this 15th day of June, 2005

Respectfully submitted,

PSI ENERGY, INC.

Kelley A. Karn, Counsel for Petitioner

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VERIFICATION

STATE OF INDIANA)
) **SS:**
COUNTY OF HENDRICKS)

The undersigned, Kay Pashos, being first duly sworn on her oath, says that she is President of PSI Energy, Inc.; that she has read the foregoing Verified Petition; and that the matters set forth therein are true and correct to the best of her knowledge, information and belief.

Kay Pashos

Kay Pashos

Subscribed and sworn to before me, a Notary Public, this 15th day of June, 2005.

Kathy L. Cobb

Signature

Kathy L. Cobb

Printed Name

My Commission Expires:

05.01.07

My County of Residence:

Morgan

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Verified Petition was delivered or mailed, postage prepaid, in the United States mail this 15th day of June, 2005 to:

Indiana Office of the Utility Consumer Counselor
Indiana Government Center North
100 North Senate Avenue, Room N501
Indianapolis, Indiana 46204-2208

Counsel for Petitioner

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

Joint Application of CINERGY CORP. ON BEHALF OF THE CINCINNATI GAS & ELECTRIC COMPANY and DEER HOLDING CORP. For Consent and Approval of a Change of Control of The Cincinnati Gas & Electric Company	)	Case No. 05-732-EL-MER
The Application of THE CINCINNATI GAS & ELECTRIC COMPANY	)	Case No. 05-733-EL-AAM
For Authority To Modify Current Accounting Procedures In Order To Defer Costs Incurred In Order To Realize Cost Savings As A Result Of The Merger Transaction	)	

I. Introduction

Cinergy Corp. ("Cinergy") and Deer Holding Corp.[1] ("Holding") (collectively, the "Joint Applicants"), pursuant to Section 4905.402 of the Ohio Revised Code ("ORC"), hereby submit this Application to the Public Utilities Commission of Ohio ("Commission") for authorization to consummate a business combination in which Holding will acquire

[1] As discussed in greater detail herein, Duke Energy Corporation has formed Deer Holding Corp. in order to effectuate the merger. Specifically, Deer Holding will acquire Cinergy Corp. and upon conclusion of the merger, Deer Holding Corp. will be renamed Duke Energy Corporation. Accordingly, Deer Holding Corp. is the party in interest in this case.

Cinergy in an all-stock transaction. Holding will become a registered holding company under the Public Utility Holding Company Act of 1935 ("PUHCA"). Cinergy is the parent holding company of The Cincinnati Gas & Electric Company ("CG&E"), a gas and electric provider in Ohio.[2] As discussed below, the transaction is structured as a holding company reorganization over the existing Duke Energy Corporation ("Duke Energy") and Cinergy businesses. Accordingly, it will not result in a change in the corporate structure of CG&E, which will continue in its current form.

The transaction will be seamless and transparent for CG&E's Ohio customers and will have no adverse effect on rates or the reliable service that CG&E provides and will continue to provide. To the contrary, this combination creates the largest diversified electric and gas operations company in North America, presenting opportunities for operations across a larger platform, creating economies of scale, and enhancing CG&E's ability to supply reliable electric and gas service to its customers at rates that are among the lowest in the United States. Furthermore, the transaction combines two companies with complementary strengths and creates a single enterprise that is more diversified and therefore financially stronger.

Ohio Rev. Code § 4905.402(B) provides that the Commission shall approve the change in control of a "domestic electric utility or a holding company controlling a domestic utility" if "the acquisition will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll or charge." As demonstrated herein, the

[2] Cinergy Solutions of Cincinnati, LLC, a chilled water provider with a franchise agreement with the City of Cincinnati, is an indirect subsidiary of Cinergy and an Ohio public utility. It appears Ohio law does not require Cinergy Solutions of Cincinnati to obtain separate approval for the merger. However, to the extent this Commission requires any such approval, Cinergy Solutions of Cincinnati is hereby incorporated as a party to this Application and requests that the Commission issue any necessary approvals.

acquisition of Cinergy by Holding and transfer of ownership and control to Holding promotes the public convenience and provides for continued reliable service at reasonable rates. Accordingly, Joint Applicants request that the Commission approve the acquisition without an evidentiary hearing, based upon the information provided in this Joint Application, attached documents, and the testimony that will be filed at a later date.

II. Description of the Joint Applicants

A. Holding

Duke Energy has created Holding, a Delaware corporation, as a subsidiary solely for the purposes of achieving the merger described in Section IV of this Application. Following the merger, Holding will own Duke Energy and Cinergy as wholly-owned subsidiaries. It will be renamed Duke Energy Corporation and the entity presently known by the same name will be converted to a North Carolina limited liability company called Duke Power Company LLC. Holding will have no significant assets other than the stock of its subsidiaries and will be a registered public utility holding company under PUHCA. As such, Holding and its subsidiaries will generally be subject to the broad regulatory provisions of PUHCA.

Duke Energy is a corporation duly organized and existing under the laws of the State of North Carolina. It is a leading energy company located in the Americas which supplies, delivers and processes energy for customers in North America and selected international markets. It owns approximately 32,000 megawatts of regulated and unregulated generation. It conducts its regulated electric operations through Duke Power and serves approximately 2.2 million retail electric customers in an approximately 22,000 square mile service area within central and western North Carolina and western South Carolina. Its regulated

generating capacity in the Carolinas is comprised of 5,020 megawatts nuclear, 7,754 megawatts coal, 2,446 megawatts gas, and 2,810 megawatts hydroelectric.

Duke Energy also operates a natural gas transmission business that provides transportation and storage of natural gas for customers along the United States East Coast, the Southeast, and in Canada. Additionally, it provides natural gas sales and distribution service to 1.2 million retail customers in Ontario, Canada, and natural gas processing services to customers in Western Canada.

B. Cinergy

Cinergy is a Delaware corporation and a registered public utility holding company under PUHCA. Cinergy was created as part of the October 1994 merger of CG&E and the parent company of PSI Energy Inc. ("PSI"). Cinergy owns 6,947 megawatts of regulated generation located in Indiana and Ohio through its subsidiary PSI. Cinergy's unregulated generation consists of 6,107 megawatts of generating capacity owned by CG&E and located in Ohio and Kentucky, and 964 megawatts of peaking capacity in Tennessee and Mississippi. In addition, CG&E expects to transfer 1,200 megawatts of its generation located in Ohio and Kentucky to its Kentucky public utility subsidiary, The Union Light Heat and Power Company ("ULH&P").[3] A portion of CG&E's generating capacity identified above consists of shares of generation capacity jointly-owned with and located within the control areas of American Electric Power Corporation and The Dayton Power & Light Company.

[3] As this Commission is aware, and wholly unrelated to this merger, CG&E has obtained approval from the FERC and conditional approval from the Kentucky Public Service Commission to transfer certain of its generating assets to ULH&P. *See, e.g., In re CG&E's MBSSO*, Case No. 03-93-EL-ATA ("Rate Stabilization Plan Proceeding") (Opinion and Order at 33-35) (September 29, 2004). CG&E is currently awaiting approval from the SEC and anticipates transferring the generating assets by August 1, 2005.

Through its subsidiary CG&E, Cinergy is engaged in the production, transmission, distribution, and sale of electricity and the sale and transportation of natural gas in the southwestern portion of Ohio. The area served with electricity, gas, or both covers approximately 3,200 square miles and has an estimated population of 2 million. CG&E is a public utility in Ohio. Cinergy currently employs approximately 3,600 in Ohio, and has approximately 7,400 employees overall.

III. Designation of Contacts

For Duke Energy and Any of its Affiliated Entities:

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IV. Description of the Proposed Transaction

In accordance with the Agreement and Plan of Merger by and among Duke Energy, Cinergy, Holding, Deer Acquisition Corp. and Cougar Acquisition Corp. dated May 8, 2005 (Exhibit A hereto), the combination of Duke Energy and Cinergy will be accomplished in several steps. Prior to entering into the merger agreement, Duke Energy formed a new Delaware corporation, Holding, which in turn formed two wholly-owned subsidiaries, Deer Acquisition Corp. and Cougar Acquisition Corp. At the closing of the transaction, Deer Acquisition Corp. and Cougar Acquisition Corp. will merge with and into Duke Energy and Cinergy, respectively, with the result that Duke Energy and Cinergy will become wholly-owned subsidiaries of Holding. By virtue of the mergers, the current shareholders of Duke Energy and Cinergy will become the shareholders of Holding, which will be renamed Duke Energy Corporation.[4] In connection with the mergers, each Duke Energy shareholder will receive one share of Holding common stock for each share of Duke Energy common stock that he or she owns, and each Cinergy shareholder will receive 1.56 shares of Holding common stock for each share of Cinergy common stock that he or she owns. Immediately following the mergers, based upon the number of shares outstanding as of May 8, 2005, current Duke Energy shareholders will own approximately 76 percent of Holding's common stock and current Cinergy shareholders will own approximately 24 percent of Holding's common stock.[5]

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[4] Immediately following the Duke Energy - Deer Acquisition Corp. merger, Duke Energy will convert to a limited liability company to be called Duke Power Company, LLC.

[5] For more information with respect to the transaction structure, *see* Agreement and Plan of Merger, Articles I and II.

V. The Transaction Will Promote the Public Convenience

Joint Applicants request that this Commission approve the combination of Duke Energy and Cinergy because it will be consistent with and fully promote the public convenience. The transaction will create one of the preeminent energy companies in North America, with 3.7 million retail electric customers in Ohio, Kentucky, Indiana, North Carolina, and South Carolina, and 1.7 million retail gas customers in Ohio and Ontario, Canada. The regulated electric businesses will have more than 25,000 megawatts of generation. In addition, the combined company will control more than 20,000 megawatts of unregulated generation.

The proposed transaction will have no adverse impact upon rates or quality of service for Cinergy's electric and gas customers in Ohio, and will otherwise promote the public convenience. Because the transaction involves creation of a new holding company over Cinergy's existing utility businesses, Cinergy's customers will experience a seamless transition and will not experience a change in the type or quality of public utility services they currently receive. Cinergy will become part of a larger, stronger entity with a greater presence in the State, in the region, and nationally. The combination will present opportunities for optimizing operations across a larger platform and creating economies of scale that will enhance Cinergy's ability to supply reliable service at low costs, as compared to any objective measure of service standards and rates throughout the county.

A. Benefit to Customers.

Cinergy has demonstrated a commitment to providing reliable service to its Ohio customers at just and reasonable rates. This commitment will not change as a result of the

merger. In fact, Cinergy will be able to continue to provide reliable service to its customers by merging with a larger entity that shares these principles.

After the transaction closes, CG&E will continue to own and operate all of its electric distribution and transmission facilities, and its current commercial generating facilities. CG&E will continue to provide electric and gas service to customers within its service territory. There will be no sale, assignment, pledge, transfer, or lease of CG&E's public utility franchise. Indeed, the operational and corporate headquarters for CG&E will remain in Cincinnati, Ohio. CG&E will continue to provide the same level of service it has historically achieved.

For example, CG&E is subject to Ohio's Electric Service and Safety Standards ("ESS Standards") set forth in Section 4901:1-10 et seq. of the Ohio Administrative Code. The ESS Standards are an objective indicator of CG&E's reliability and safety performance. Since the promulgation of ESS Standards, CG&E has consistently exceeded each applicable target. Because CG&E will continue to own transmission and distribution facilities after the merger, CG&E will still continue to be subject to the ESS Standards. Thus, the Commission will continue to have an objective indicator by which to judge CG&E's safety and reliability performance. CG&E fully anticipates that there will be no change to its provision of reliable and safe service after the merger.

As discussed in more detail in Part B, certain synergies will result from the combination of these two companies. The transaction permits duplicative functions and systems to be eliminated, and both companies will recognize cost efficiencies. Cinergy has committed to share a portion of the efficiencies attributable to CG&E's gas and electric operations with its Ohio customers. Although the synergies will result in more efficient

operations and tangible savings, the economic savings and benefits are not immediate but necessarily accrue over time. Accordingly, the public benefits will be recognized over time as well.[6]

In addition to cost synergies, several operational synergies will result from the combination of Duke Energy and Cinergy. For example, a broader employee base located in a larger geographic area will allow each utility to provide mutual assistance in the event of severe weather. Although both Duke Energy and Cinergy are located in the same geographic and socio-economic region, each service territory experiences different weather patterns and it is unlikely that both service territories will experience severe weather at the same time. The diversity in climate and larger employee base allow for a greater capability for mutual assistance and storm restoration in Ohio, as well as in Indiana, Kentucky, and the Carolinas.

Duke Energy currently serves approximately 2.2 million retail electric customers in North and South Carolina. It is an experienced utility company that likewise provides high quality, reliable service to its customers. Duke Energy's breadth of experience, coupled with Cinergy's longstanding tradition of providing reliable services, can only have a positive impact on Ohio consumers. The combination will create one enterprise with a broad knowledge base and an exceptional range of experiences that will be shared throughout the organization. A broader knowledge base and increasing the number of employees upon whom a company may rely, certainly benefits the public interest.

In addition, the transaction will further the development of the Midwest Independent Transmission System Operator ("MISO"). Cinergy and Duke Energy will engage in power sales and will be purchasing transmission service to deliver power between and among their

[6] The specific efficiencies resulting from the merger and the appropriate sharing mechanism will be detailed in supporting testimony.

regulated public utility operating companies. Additional power transfers across the MISO and PJM, which separate the Cinergy and Duke Energy control areas, supports the continued success of MISO. Cinergy is currently a member of the MISO, and after the merger, Cinergy's commitment to the MISO will remain.

Finally, both companies have a long tradition of superior customer service and have been nationally recognized for their excellence. In fact, earlier this year Cinergy was recognized for call center operational excellence and customer satisfaction under the J.D. Power and Associates Certified Call Center Program. Duke Energy has also been recognized nationally for its customer service. For example, a recent national survey of commercial and industrial customers ranked Duke Energy first in overall customer satisfaction. Duke Energy also was rated fourth in customer satisfaction by J.D. Power. This solid history of providing superior customer service will not change as a result of the merger, and customers will continue to enjoy the same high level of service.

B. Financial Strength

The merger of Duke Energy and Cinergy will create a larger, diversified, financially stronger company that will affirmatively benefit the public. The annual reports for each Applicant are attached hereto as Exhibit B. By combining the two organizations, a new company will emerge with a market capitalization of approximately $36 billion,[7] assets totaling more than $70 billion, estimated annual revenues of approximately $27 billion, and net income of approximately $1.9 billion. Based upon these estimates, Holding will have one of the top five electric businesses in the United States on a stand-alone basis, and

[7] As of the close of the stock market on May 6, 2005.

combined with the gas operations, will be the largest diversified utility and gas operations company in the United States.

The increased scale and scope of operations that result from the merger will strengthen the balance sheet of the new company and increase its financial flexibility. In particular, the significant synergies created by the merger will lower the overall cost structure of the combined company. These synergies include reduced costs resulting from the elimination of duplicative spending and overlapping functions, increased purchasing power, the avoidance of planned expenditures, and the consolidation of certain operations. The combination of all of these synergies translates into increased productivity and lower costs, which creates a financially sound organization. At this time, excluding implementation costs to be incurred in the first three years after the merger, it is anticipated that the merger will generate approximately $400 million in annual gross synergies across all parts of the combined companies. Similarly, the increased scale of the combined company, combined with increased diversification which lowers its risk, will provide superior access to capital markets than would otherwise exist for either company standing alone.

Cinergy will benefit from the new company's financial strength and access to financial markets. Alternatively, CG&E will retain the ability to obtain financing on its own, subject to any necessary regulatory approval. Furthermore, consistent with Ohio and SEC regulations, CG&E will not guarantee the credit of any of its affiliates. Cinergy and CG&E will not issue any security, incur any debt, or pledge any assets to finance any part of the purchase price paid for Cinergy's shares, except in connection with the transaction described in Section IV, above.

This combination of Duke Energy and Cinergy, and the synergies that result, will create a new, diversified, financially strong company with increased financial flexibility, efficiencies, productivity and revenue, and lower costs. It is in the public interest to support this combination.

C. Benefits to Investors of Both Companies

The merger creates additional benefits for investors in Duke Energy and Cinergy. Duke Energy's board of directors currently intends to increase Duke Energy's dividend by 12.7% or 14 cents per year, for an annual dividend of $1.24. This increase will be effective with the September 2005 disbursement. As a result of the merger and Duke Energy's dividend increase, Cinergy shareholders will be kept whole at closing with respect to their current dividend. Furthermore, as explained in the summary of the proposed transaction, each common share of Cinergy stock will be converted into 1.56 shares of Holding. Cinergy shareholders will receive a premium of 13.4% over the closing price prevailing immediately before the announcement of the transaction. Following the merger, Cinergy shareholders, many of whom reside in Ohio, will own approximately 24% of Holding's outstanding shares. Employees of Cinergy constitute the largest single shareholder of Cinergy stock, 7.6 million shares of Cinergy stock are directly held by Ohio shareholders, and 4.5 million shares are owned by Ohio-based investment firms. Thus, Cinergy employees and Ohio investors will financially benefit from the merger. Finally, the synergies created by the combination will create a more financially healthy company that will be better able to attract capital for investment in plant, equipment, employee training and other assets, all of which in turn will be beneficial to shareholders, employees, and the company's customers.

D. Economic Development

The combination of Duke Energy and Cinergy will create a new organization well positioned for secure growth and financial stability. Although certain corporate functions will be moving from Cincinnati to Charlotte, Cinergy and CG&E will maintain a strong corporate and operational presence in Ohio. The corporate headquarters for the new company will be in Charlotte, North Carolina. Cinergy, however, will maintain a strong corporate presence in Ohio as the operational headquarters for its operating utilities, CG&E, PSI, and ULH&P, will remain in Cincinnati. In addition, CG&E's corporate headquarters will remain in Cincinnati. Notably, for the last 6 consecutive years, Cinergy has been named as one of the top 10 companies for economic development by *Site Selection* magazine. In addition, CG&E has recently filed economic development tariffs with this Commission.[8] These tariffs demonstrate CG&E's commitment to support economic development within Ohio.

The increased financial stability created by the merger will translate into additional employment opportunities and employment growth over the long term. To recognize the synergies created by the combination, there will be some short-term reduction of jobs resulting from the elimination of overlapping functions and redundant systems. However, the anticipated reduction in workforce is expected to be only about 1,500 employees, or approximately 5% of the existing 29,000 employees of the two separate entities. This reduction in force will be achieved through the combination of attrition, early retirements, and other efforts designed to minimize the impacts upon the employees of both companies. More importantly, although the merger will result in a short-term reduction in employment,

[8] *In re CG&E's Economic Development Rider*, Case No. 05-633-EL-ATA (Application) (May 13, 2005).

the ultimate impact of the merger will position the new Duke Energy for future growth opportunities, which in turn will translate into increased long-term employment opportunities and economic development for Ohio.

E. Benefits to Competition

The merger will have no adverse impact upon competition in Ohio. Ohio currently permits retail competition and numerous providers are competing to provide retail electric service to consumers within Cinergy's service territory. The transaction will have absolutely no impact on these competitive circumstances. CG&E will continue to provide reliable retail electric and gas service to Ohio consumers at just and reasonable rates. Likewise, Duke Energy will continue to provide reliable retail electric service to North and South Carolina at just and reasonable rates.

In fact, competition in Ohio will benefit from the combination of Duke Energy and Cinergy. Cinergy's subsidiary, Cinergy Retail Sales, LLC ("CRS"), is a certified retail supplier in Ohio. Although it has been certified to engage in retail sales in the state by the Commission, CRS is currently inactive and has no retail customers. Duke Energy has an extensive national deregulated business, including commercial generation facilities located in the region, and within Ohio. To date, neither Duke Energy nor any Duke Energy affiliate has sought certification as a retail supplier in Ohio. The merger creates the potential for CRS to participate in auctions or direct retail sales, utilizing the diverse supply created by the combination of the unregulated generation assets of Duke Energy North America, LLC, an affiliate of Duke Energy, and CG&E's fleet of competitive generating facilities.[9] Thus, both

[9] Any wholesale sale of power from CG&E to CRS would necessarily be at a market price, approved by the FERC. Both CRS and CG&E are subject to state and federal codes of conduct regarding affiliate transactions.

wholesale and retail competition within the State will be enhanced by additional participation in the competitive market.

In addition, the transaction will further the development of the wholesale competitive market for electricity. Cinergy and Duke Energy will engage in power sales and will be purchasing transmission service to deliver power between its regulated public utility operating companies. Additional power transfers across the MISO advances the development of wholesale competition. Further, as will be detailed in the Joint Applicants' application to the FERC, there are no market power issues involved with this combination. Thus, the transaction has no detrimental impact on the wholesale market, but rather, furthers its development.

F. Corporate Citizenship

Both Duke Energy and Cinergy share a common dedication and commitment to the communities they serve, to sustainability, to the environment, and to corporate citizenship. After the merger, this dedication and commitment will not change. The Cinergy Foundation will contribute $6.5 million to its communities in 2005, and Cinergy's ongoing commitment to the naming rights for the Cincinnati Convention Center will continue. Like Cinergy, Duke Energy shares a rich history of corporate giving and citizenship. In 2004, Duke Energy's consolidated giving exceeded $27 million and its philanthropic efforts were widely recognized, including specific recognition by organizations such as the Red Cross, Audubon International, Coastal America, and the Corporate Angels Network. Like Cinergy's employees, Duke Energy's employees have organized tsunami relief drives and been active in community service projects. The spirit of giving and community activism will only

become stronger by the combination of these two community-focused companies, backed by the resulting financial strength of the combined company.

The fact that the corporate headquarters of the combined company will be in Charlotte, North Carolina, will not undercut Cinergy's and CG&E's commitment to citizenship within its service territory. Cinergy's operational headquarters for its utilities, such as CG&E, will remain in Cincinnati and the corporate offices for CG&E will remain there as well. Cinergy's continued presence in the region reinforces its continued commitment to the communities it serves.

VI. Affiliate Transactions

Following the merger, CG&E and Duke Power will continue to operate as public utilities, will keep their respective books and records as prescribed by law, and will make accounting entries in accordance with the required accounting standards. In addition, CG&E will continue to follow the Ohio Code of Conduct and the FERC Standards of Conduct. As part of the merger, a service company similar to Cinergy Services, Inc., will be the service company for the combined companies and will provide services to the regulated and unregulated affiliates of Duke Energy and Cinergy. The allocation of Service Company costs will comply with the SEC requirements and the company and will render appropriate reports in a manner similar to the current practice of Cinergy Services. All of the safeguards related to affiliate transactions will be detailed in the upcoming testimony supporting this Application.

Joint Applicants request that this Commission approve several affiliate agreements that are similar to the affiliate agreements this Commission has approved and accepted as part of the CG&E/PSI merger in 1994. At this time, Joint Applicants expect that they will

enter into the following affiliate contracts: (1) Utility Service Agreement (allows service company to perform services for each of the public utilities); (2) Services Agreements (allow the utilities and non-utility affiliates to perform various services for each other); (3) Money Pool Agreement (allows for inter-company loans among the utility affiliates, service company, and Holding); and (4) Tax Sharing Agreement (allows for joint filing of federal tax returns).

VII. Accounting Deferrals

Joint Applicant's requests that the Commission approve in this proceeding the recovery of the costs, net of savings, incurred by CG&E related to consummating the transaction discussed herein, including transaction costs and costs to achieve merger savings. Those net costs include, but are not limited to, the following: merger case expense, systems' integration expense, asset transfer expense, external advisors, and external legal fees. CG&E proposes that the deferred costs to be recovered will be accounted for as a regulatory asset. The regulatory assets will be apportioned jurisdictionally between CG&E's gas and electric utility services as determined in the appropriate retail base rate cases.

VIII. No Effect on Commission Jurisdiction

Following the merger, this Commission will retain the same regulatory authority over CG&E, the utility authorized to supply regulated electric and gas services within Ohio. Upon completion of the merger, CG&E will continue to be owned by Cinergy, and only the ultimate corporate holding company of CG&E will change. As a result, the Commission's authority over these entities will remain unaffected.

Public discussion of any potential issues arising from the merger of Cinergy and Duke Energy is in the public interest. To advance those discussions, Joint Applicants request

that the Commission solicit comments from interested parties regarding the issues set forth in Joint Applicants' proposed Appendix A, Proposed Issues. Thereafter, Joint Applicants request that the Commission notify FERC and the SEC of its approval of the merger pursuant to the terms and conditions contained herein, or as revised by Joint Applicants and filed in this docket. In addition, Joint Applicants have proposed the Procedural Schedule, Attached as Exhibit C, and request that the Commission adopt this Procedural Schedule.

IX. Related Governmental Filings

In addition to the filings with this Commission, the Joint Applicants are taking steps to satisfy the requirements of other governmental entities with respect to the merger. The Joint Applicants, either jointly or individually, have or will make filings with the following governmental entities: the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Federal Communications Commission, the Federal Trade Commission, the Nuclear Regulatory Commission, the United States Department of Justice, the Kentucky Public Service Commission, the Indiana Utility Regulatory Commission, the North Carolina Utilities Commission, and the Public Service Commission of South Carolina.

X. Submitted Appendix/Exhibits

Joint Applicants have attached the following Appendix and Exhibits to this Application and each such Appendix and Exhibit is incorporated herein by reference and filed herewith:

Appendix A – Proposed Issues

Exhibit A – The Plan of Merger

Exhibit B – Annual Reports of Cinergy and Duke Energy

Exhibit C – Proposed Procedural Schedule

XI. Conclusion

The merger of Duke Energy and Cinergy will have no adverse impact upon the customers of Cinergy's operating subsidiaries. The merger is merely a change in control at the holding company level and does not directly impact CG&E's status as a utility provider in Ohio. The merger will have no adverse effect on Cinergy's customers in Ohio, and will neither affect the rates, terms and conditions under which CG&E provides service, nor affect the jurisdiction of this Commission.

To the contrary, the merger creates synergies for both companies including operational improvements and a reduced cost structure. In addition, the transaction provides the combined company with greater diversification in generation and fuel sources, an increased knowledge base, and the ability to continue high levels of customer service and community support. Retail and wholesale competition, as permitted under the existing regulatory structure, will be unaffected, if not enhanced. In sum, the combination creates an enterprise that will enjoy increased productivity, lower costs, and which remains fully committed to superior customer service and corporate citizenship.

For the forgoing reasons, Joint Applicants respectfully request that the Commission find that the proposed merger advances the public interest and convenience, and:

A. Exercise its statutory discretion and conclude and therefore ORDER that discovery be stayed in this matter until such time as this Commission defines the topics upon which this matter shall proceed and therefore upon which discovery is to be had;

B. ENTER the procedural schedule proposed by the Joint Applicants in Exhibit C;

C. Exercise its statutory discretion and conclude and therefore ORDER that an evidentiary hearing upon Joint Applicants' Petition is unnecessary and that this matter be submitted for Commission consideration on the basis of the record developed by

the parties through pre-filed written testimony, rebuttal testimony, and briefs upon the issues designated by this Commission;

D. APPROVE the merger between Duke Energy and Cinergy on the basis that Duke's acquisition of control of Cinergy and (indirectly) of Cinergy's regulated subsidiaries will promote the public convenience and result in the provision of adequate service for a reasonable rate, rental, toll or charge;

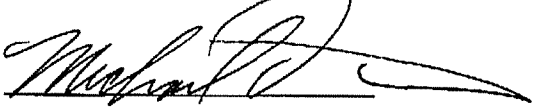
E. CERTIFY to the Securities and Exchange Commission under Section 33(a)(2) of the Public Utilities Holding Company Act that this Commission has the authority and resources to protect the ratepayers of Cinergy subject to its jurisdiction and that it has exercised its authority by approving the merger between Duke Energy and Cinergy;

F. INFORM the Federal Energy Regulatory Commission that this Commission has approved the merger between Duke Energy and Cinergy;

G. APPROVE the following agreements made by and between CG&E and its affiliates (1) Utility Service Agreement (allows service company to perform transactions for each of the public utilities); (2) Services Agreements (allows the utilities and non-utility affiliates to perform various services for each other); (3) Money Pool Agreement (allows for inter-company loans among the utility affiliates, service company and Holding); and (4) Tax Sharing Agreement (allows for joint filing of federal tax returns); and,

H. APPROVE The Cincinnati Gas & Electric Company's application for authority to modify current accounting procedures in order to defer costs incurred in order to realize cost savings as a result of the merger transaction.

Respectfully Submitted on behalf of Joint Applicants,

By: 

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