

or audits pending or threatened against, relating to or affecting, Duke or any of its subsidiaries or any of the Duke Joint Ventures or any of their respective assets and properties that, in each case, individually or in the aggregate, have had or could reasonably be expected to have a material adverse effect on Duke, and (ii) neither Duke nor any of its subsidiaries is subject to any order of any Governmental Authority that, individually or in the aggregate, has had or could reasonably be expected to have a material adverse effect on Duke.

(i) Information Supplied. None of the information supplied or to be supplied by Duke for inclusion or incorporation by reference in (i) the Form S-4 will, at the time the Form S-4 is filed with the SEC, at any time it is amended or supplemented or at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) the Joint Proxy Statement will, at the date it is first mailed to Cinergy's shareholders or Duke's shareholders or at the time of the Cinergy Shareholders Meeting or the Duke Shareholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Joint Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder, except that no representation is made by Duke with respect to statements made or incorporated by reference therein based on information supplied by or on behalf of Cinergy for inclusion or incorporation by reference in the Joint Proxy Statement.

(j) Permits; Compliance with Laws and Orders. Duke, its subsidiaries and the Duke Joint Ventures hold all Permits necessary for the lawful conduct of their respective businesses, except for failures to hold such Permits that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke. Duke, its subsidiaries and the Duke Joint Ventures are in compliance with the terms of their Permits, except failures so to comply that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke. Duke, its subsidiaries and the Duke Joint Ventures are not in violation of or default under any law or order of any Governmental Authority, except for such violations or defaults that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke. Duke is, and has been, in compliance in all material respects with (i) the provisions of SOX applicable to it on or prior to the date hereof and has implemented such programs and has taken all reasonable steps necessary to ensure Duke's future compliance (not later than the relevant statutory and regulatory deadlines therefore) with all provisions of SOX which shall become applicable to Duke after the date hereof and (ii) the applicable listing standards and corporate governance rules and regulations of the NYSE. This Section 3.02(j) does not relate to matters with respect to taxes, such matters being the subject of Section 3.02(k), Environmental Laws, such matters being the subject of Section 3.02(n), benefits plans, such matters being the subject of Section 3.02(l), and nuclear power plants, such matters being the subject of Section 3.02(o).

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

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

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

(iii) There is no audit, examination, deficiency, refund litigation, proposed adjustment or matter in controversy with respect to any Taxes or Tax Return of Duke or its subsidiaries, to the knowledge of Duke, neither Duke nor any of its subsidiaries has received written notice of any claim made by a governmental authority in a jurisdiction where Duke or any of its subsidiaries, as applicable, does not file a Tax Return, that Duke or such subsidiary is or may be subject to income taxation by that jurisdiction, no deficiency with respect to any Taxes has been proposed, asserted or assessed against Duke or any of its subsidiaries, and no requests for waivers of the time to assess any Taxes are pending.

(iv) The federal income Tax Returns of Duke and its subsidiaries have been examined by and settled with the IRS (or the applicable statutes of limitation have lapsed) for all years through 1994. All material assessments for Taxes due with respect to such completed and settled examinations or any concluded litigation have been fully paid.

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

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

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

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

(l) Employee Benefit Plans; ERISA.

(i) Except for such matters that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke, (A) all Duke Employee Benefit Plans (as defined below) are in compliance with all applicable requirements of law, including ERISA (as defined below) and the Code, and (B) there does not now exist, nor do any circumstances exist that could result in, any Controlled Group Liability that would be a liability of Duke or any of its subsidiaries. The only material employment agreements, severance agreements or severance policies applicable to Duke or any of its subsidiaries are the agreements and policies disclosed in Section 3.02(l)(i) of the Duke Disclosure Letter.

(ii) As used herein:

(A) "Duke Employee Benefit Plan" means any Plan entered into, established, maintained, sponsored, contributed to or required to be contributed to by Duke or any of its subsidiaries for the benefit of the current or former employees or directors of Duke or any of its subsidiaries and existing on the date of this Agreement or at any time subsequent thereto and in the case of a Plan that is subject to Part 3 of Title I of ERISA, Section 412 of the Code or Title IV of ERISA, at any time during the five-year period preceding the date of this Agreement with respect to which Duke or any of its subsidiaries has or could reasonably be expected to have any present or future actual or contingent liabilities;

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

(iv) Section 3.02(l)(iv) of the Duke Disclosure Letter identifies each Duke Employee Benefit Plan that provides, upon the occurrence of a change in the ownership or effective control of Duke or its subsidiaries or a change in the ownership of all or a substantial portion of the assets of Duke or its subsidiaries, either alone or upon the occurrence of any additional or subsequent events and whether or not applicable to the transactions contemplated by this Agreement, for (A) an acceleration of the time of payment of or vesting in, or an

increase in the amount of, compensation or benefits due any current or former employee, director or officer of Duke or its subsidiaries, (B) any forgiveness of indebtedness or obligation to fund benefits with respect to any such employee, director or officer, or (C) an entitlement of any such employee, director or officer to severance pay, unemployment compensation or any other payment or other benefit.

(m) Labor Matters. As of the date hereof, neither Duke nor any of its subsidiaries is a party to, bound by or in the process of negotiating any collective bargaining agreement or other labor agreement with any union or labor organization. As of the date of this Agreement, there are no disputes, grievances or arbitrations pending or, to the knowledge of Duke, threatened between Duke or any of its subsidiaries and any trade union or other representatives of its employees and there is no charge or complaint pending or threatened in writing against Duke or any of its subsidiaries before the NLRB or any similar Governmental Authority, except in each case as, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke, and, to the knowledge of Duke, as of the date of this Agreement, there are no material organizational efforts presently being made involving any of the employees of Duke or any of its subsidiaries. From December 31, 2002, to the date of this Agreement, there has been no work stoppage, strike, slowdown or lockout by or affecting employees of Duke or any of its subsidiaries and, to the knowledge of Duke, no such action has been threatened in writing, except in each case as, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke. Except as, individually or in the aggregate, has not had and could not reasonably be expected to have a material adverse effect on Duke: (A) there are no litigations, lawsuits, claims, charges, complaints, arbitrations, actions, investigations or proceedings pending or, to the knowledge of Duke, threatened between or involving Duke or any of its subsidiaries and any of their respective current or former employees, independent contractors, applicants for employment or classes of the foregoing; (B) Duke and its subsidiaries are in compliance with all applicable laws, orders, agreements, contracts and policies respecting employment and employment practices, including, without limitation, all legal requirements respecting terms and conditions of employment, equal opportunity, workplace health and safety, wages and hours, child labor, immigration, discrimination, disability rights or benefits, facility closures and layoffs, workers' compensation, labor relations, employee leaves and unemployment insurance; and (C) since January 1, 2002, neither Duke nor any of its subsidiaries has engaged in any "plant closing" or "mass layoff", as defined in the WARN Act, without complying with the notice requirements of such laws.

(n) Environmental Matters.

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

(ii) Each of Duke, its subsidiaries and the Duke Joint Ventures has obtained all Environmental Permits necessary for the construction of

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

(iii) There is no Environmental Claim pending

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

(B) to the knowledge of Duke, against any person or entity whose liability for such Environmental Claim has been retained or assumed either contractually or by operation of law by Duke or any of its subsidiaries or any of the Duke Joint Ventures; or

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

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

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

(o) Operations of Nuclear Power Plants. The operations of the nuclear generation stations owned, in whole or part, by Duke or its subsidiaries (collectively, the "Duke Nuclear Facilities") are and have been conducted in compliance with all applicable laws and Permits, except for such failures to comply that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke. Each of the Duke Nuclear Facilities maintains, and is in material compliance with, emergency plans designed to respond to an unplanned Release therefrom of radioactive materials and each such plan

conforms with the requirements of applicable law in all material respects. The plans for the decommissioning of each of the Duke Nuclear Facilities and for the storage of spent nuclear fuel conform with the requirements of applicable law in all material respects and, solely with respect to the portion of the Duke Nuclear Facilities owned, directly or indirectly, by Duke, are funded consistent with applicable law. The operations of the Duke Nuclear Facilities are not the subject of any outstanding notices of violation, any ongoing proceeding, NRC Diagnostic Team Inspections or requests for information from the NRC or any other agency with jurisdiction over such facility, except for such notices or requests for information that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke. No Duke Nuclear Facility is listed by the NRC in the Unacceptable Performance column of the NRC Action Matrix, as a part of NRC's Assessment of Licensee Performance. Liability insurance to the full extent required by law for operating the Duke Nuclear Facilities remains in full force and effect regarding such facilities, except for failures to maintain such insurance in full force and effect that, individually or in the aggregate, have not had and could not reasonably be expected to have a material adverse effect on Duke.

(p) Vote Required. Assuming the accuracy of the representation and warranty contained in Section 3.01(r), the affirmative vote of the holders of record of at least a majority of the outstanding shares of Duke Common Stock, with respect to the approval of this Agreement (the "Duke Shareholder Approval"), is the only vote of the holders of any class or series of the capital stock of Duke or its subsidiaries required to approve this Agreement, the Duke Merger and the other transactions contemplated hereby.

(q) Opinion of Financial Advisor. Duke has received the opinion of each of UBS Securities LLC and Lazard Frères & Co. LLC dated the date of this Agreement, to the effect that, as of the date of this Agreement, the Duke Exchange Ratio is fair from a financial point of view to Duke.

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

(s) Duke Rights Agreement. As of the date of this Agreement, Duke or the Board of Directors of Duke, as the case may be, has (i) taken all necessary actions so that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not result in a "Distribution Date" (as defined in the Duke Rights Agreement) and (ii) amended the Duke Rights Agreement to render it inapplicable to this Agreement, the Duke Merger and other transactions contemplated hereby.

(t) Articles 9 and 9A of the NCBCA Not Applicable. Duke has taken all necessary actions, if any, so that the provisions of Articles 9 and 9A of the NCBCA will not, before the termination of this Agreement, apply to this Agreement, the Duke Merger or the other transactions contemplated hereby. No "fair price", "merger moratorium", "control share acquisition", or other anti-takeover or similar statute or regulation applies or purports to apply to this Agreement, the Duke Merger or the other transactions contemplated hereby.

(u) Joint Venture Representations. Each representation or warranty made by Duke in this Section 3.02 relating to a Duke Joint Venture that is neither operated nor managed by Duke or a Duke subsidiary shall be deemed made only to the knowledge of Duke.

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

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

ARTICLE IV

Covenants

Section 4.01 Covenants of Cinergy. From and after the date of this Agreement until the Cinergy Effective Time, Cinergy covenants and agrees as to itself and its subsidiaries that (except as expressly contemplated or permitted by this Agreement, as set forth in Section 4.01 of the Cinergy Disclosure Letter, for transactions (other than those set forth in Section 4.01(d) to the extent relating to the capital stock of Cinergy) solely involving Cinergy and one or more of its direct or indirect wholly-owned subsidiaries or between two or more direct or indirect wholly-owned subsidiaries of Cinergy, or to the extent that Duke shall otherwise previously consent in writing, such consent not to be unreasonably withheld or delayed):

(a) Ordinary Course. Cinergy and each of its subsidiaries shall conduct their businesses in all material respects in the ordinary course of business consistent with past practice. Without limiting the generality of the foregoing, Cinergy and its subsidiaries shall use commercially reasonable efforts to preserve intact in all material respects their present business organizations, to maintain in effect all existing Permits, subject to prudent management of workforce and business needs, to keep available the services of their key officers and employees, to maintain their assets and properties in good working order and condition, ordinary wear and tear excepted, to preserve their relationships with Governmental Authorities, customers and suppliers and others having significant business dealings with them and to comply in all material respects with all laws, orders and Permits of all Governmental Authorities applicable to them.

(b) Charter Documents. Cinergy shall not amend or propose to amend its certificate of incorporation or, other than in a manner that would not materially restrict the operation of their businesses, its by-laws or its subsidiaries' certificate of incorporation or by-laws (or other comparable organizational documents).

(c) Dividends. Cinergy shall not, nor shall it permit any of its subsidiaries to,

(i) declare, set aside or pay any dividends on or make other distributions in respect of any of its capital stock or share capital, except:

(A) that Cinergy may continue the declaration and payment of regular quarterly cash dividends on Cinergy Common Stock, not to exceed \$0.48 per share, with usual record and payment dates for such dividends in accordance with past dividend practice; provided, that if the Cinergy Effective Time does not occur between a record date and payment date of a regular quarterly dividend, a special dividend may be declared and paid in respect of Cinergy Common Stock with respect to the quarter in which the Cinergy Effective Time occurs with a record date in such quarter and on or prior to the date on which the Cinergy Effective Time occurs, which dividend does not exceed an amount equal to the product of (i) a fraction the (x) numerator of which is equal to the number of days between the last payment date of a regular quarterly dividend and the record date of such special dividend (excluding such last payment date but including the record date of such special dividend) and (y) the denominator of which is equal to the number of days between the last payment date of a regular quarterly dividend and the same calendar day in the third month after the month in which such last payment date occurred (excluding such last payment date but including such same calendar day), multiplied by (ii) the then permitted quarterly dividend per share, and

(B) for the declaration and payment of dividends by a direct or indirect wholly-owned subsidiary solely to its parent, or by a direct or indirect partially owned subsidiary of Cinergy (provided that Cinergy or the Cinergy subsidiary receives or is to receive its proportionate share of such dividend or distribution), and

(C) for the declaration and payment of regular cash dividends with respect to preferred stock of Cinergy's subsidiaries outstanding as of the date of the Agreement or permitted to be issued under the terms of this Agreement, and

(D) to the extent advisable in the exercise of the fiduciary duties of the Board of Directors of Cinergy, for the declaration and payment of a customary share purchase rights plan, provided, that, (1) Cinergy shall provide Duke prior notice of any such declaration or payment and (2) in connection with any such declaration or payment, the Board of Directors of Cinergy and Cinergy shall cause (x) this Agreement and the transactions contemplated hereby to not result in a "Distribution Date" (as such term may be defined in any such share purchase rights plan) or similar event under such share purchase rights plan and (y) any such share purchase rights plan to be inapplicable in all respects to this Agreement, the Duke Merger, the Cinergy Merger and the other transactions contemplated hereby; and

(ii) split, combine, reclassify or take similar action with respect to any of its capital stock or share capital or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or comprised in its share capital,

(iii) adopt a plan of complete or partial liquidation or resolutions providing for or authorizing such liquidation or a dissolution, merger, consolidation, restructuring, recapitalization or other reorganization, or

(iv) except as disclosed in Section 4.01(c)(iv) of the Cinergy Disclosure Letter, directly or indirectly redeem, repurchase or otherwise acquire any shares of its capital stock or any Option with respect thereto except:

(A) in connection with intercompany purchases of capital stock or share capital, or

(B) for the purpose of funding the Cinergy Employee Stock Option Plans or employee stock ownership or dividend reinvestment and stock purchase plans, or

(C) mandatory repurchases or redemptions of preferred stock of Cinergy's subsidiaries in accordance with the terms thereof.

(d) Share Issuances. Cinergy shall not, nor shall it permit any of its subsidiaries to issue, deliver or sell, or authorize or propose the issuance, delivery or sale of, any shares of its capital stock or any Option with respect thereto (other than (i) the issuance of Cinergy Common Stock upon the exercise of Cinergy Employee Stock Options outstanding as of the date hereof or issued after the date hereof in accordance with the terms of this Agreement in accordance with their terms, (ii) the issuance of Cinergy Common Stock in respect of other equity compensation awards granted under the Cinergy Employee Stock Option Plans outstanding as of the date hereof or issued after the date hereof in accordance with the terms of this Agreement in accordance with their terms, (iii) the issuance of Cinergy Employee Stock Options and the grant of other equity compensation awards pursuant to the Cinergy Employee Stock Option Plans in accordance with their terms providing, in aggregate, up to an additional 2,000,000 shares of Cinergy Common Stock in any 12-month period following the date hereof, provided, however, that any Cinergy Employee Stock Options and equity awards granted after the date of this Agreement shall, subject to paragraph 4 of Section 4.01(i) of the Cinergy Disclosure Letter, be granted on terms pursuant to which such Cinergy Employee Stock Options and equity awards shall not vest on the Cinergy Shareholder Approval or otherwise on the occurrence of the transactions contemplated hereby, provided, further, however, that Cinergy Employee Stock Options and equity awards granted after the date of this Agreement may vest upon termination of employment by the Company or any of its subsidiaries without "cause" or by the participants for "good reason" (each as defined in the applicable agreement), in each case, within the two-year period following the Cinergy Effective Time, and shall, at the Cinergy Effective Time, be converted into options or equity-based awards to acquire or in respect of, as applicable, Company Common Stock in the manner contemplated by Section 5.06, and (iv) the pro rata issuance by a subsidiary of its capital stock to its shareholders, provided, further, subject to Section 4.01(d) of the Cinergy Disclosure Letter, that any shares of Cinergy Common Stock that Cinergy or its subsidiaries shall contribute, directly or indirectly, to any employee benefit plan (including any plan intended to satisfy the requirements of Section 401(a) of the Code) or that Cinergy or its subsidiaries shall make subject to any dividend reinvestment or similar plan shall be shares purchased in open-market or privately negotiated transactions, but shall not constitute newly issued shares of Cinergy Common Stock), or modify or amend any right of any holder of outstanding shares of its capital stock or any Option with respect thereto other than to give effect to Section 5.06.

(e) Acquisitions; Capital Expenditures. Except for (x) acquisitions of, or capital expenditures relating to, the entities, assets and facilities identified in Section 4.01(e) of the Cinergy Disclosure Letter, (y) expenditures of amounts set forth in Cinergy's capital expenditure plan included in Section 4.01(e) of the Cinergy Disclosure Letter, and (z) capital expenditures (1) required by law or Governmental Authorities or (2) incurred in connection with the repair or replacement of facilities destroyed or damaged due to casualty or accident (whether or not covered by insurance), Cinergy shall not, nor shall it permit any of its subsidiaries to, make any capital expenditures, or acquire or agree to acquire (whether by merger, consolidation, purchase or otherwise) any person or assets, if (A) the expected gross expenditures and commitments pursuant thereto (including the amount of any indebtedness and

amounts received for negative trading positions assumed) exceeds or may exceed (i) \$100,000,000, in the case of any acquisition or series of related acquisitions of any person, asset or property located in the United States, or (ii) \$50,000,000 in the case of any acquisition or series of related acquisitions of any person, asset or property located outside of the United States (each acquisition or series of related acquisitions described in (i) and (ii), a "Cinergy Threshold Acquisition"). (B) the expected gross expenditures and commitments pursuant thereto (including the amount of any indebtedness and amounts received for negative trading positions assumed) exceeds or may exceed, in the aggregate, \$100,000,000 excluding all Cinergy Threshold Acquisitions identified in Section 4.01(e) of the Cinergy Disclosure Letter or to which Duke has previously consented in writing, (C) any such acquisition or capital expenditure constitutes any line of business that is not conducted by Cinergy, its subsidiaries or the Cinergy Joint Ventures as of the date of this Agreement or extends any line of business of Cinergy, its subsidiaries or the Cinergy Joint Ventures into any geographic region outside of the continental United States or Canada in which Cinergy, its subsidiaries or the Cinergy Joint Ventures do not conduct business as of the date of this Agreement, or (D) any such acquisition or capital expenditure is reasonably likely, individually or in the aggregate, to materially delay the satisfaction of the conditions set forth in Sections 6.02(d) or Sections 6.03(d) or prevent the satisfaction of such conditions.

(f) Dispositions. Except for (x) dispositions set forth in Section 4.01(f) of the Cinergy Disclosure Letter, (y) dispositions of obsolete equipment or assets or dispositions of assets being replaced, in each case in the ordinary course of business consistent with past practice and (z) dispositions by Cinergy or its subsidiaries of its assets in accordance with the terms of restructuring and divestiture plans mandated or approved by applicable local or state regulatory agencies, Cinergy shall not, nor shall it permit any of its subsidiaries to, sell, lease, grant any security interest in or otherwise dispose of or encumber any of its assets or properties if (A) the value of such disposition exceeds or may exceed (i) \$100,000,000, in the case of any disposition or series of related dispositions of any person, asset or property located in the United States, or (ii) \$50,000,000 in the case of any disposition or series of related dispositions of any person, asset or property located outside of the United States (each disposition or series of related dispositions described in (i) and (ii), a "Cinergy Threshold Disposition") or (B) the aggregate value of all such dispositions, excluding all Cinergy Threshold Dispositions identified in Section 4.01(f) of the Cinergy Disclosure Letter or to which Duke has previously consented in writing, exceeds or may exceed, in the aggregate, \$100,000,000. For the purposes of this Section 4.01(f), the value of any disposition or series of related dispositions shall mean the greater of (i) the book value or (ii) the sales price, in each case of the person, asset or property which is the subject of such disposition and, in each case, together with the indebtedness and amounts paid for negative trading positions transferred by Cinergy or its subsidiaries in connection with such disposition.

(g) Indebtedness. Except as disclosed in Section 4.01(g) of the Cinergy Disclosure Letter, Cinergy shall not, nor shall it permit any of its subsidiaries to, (A) incur or guarantee any indebtedness or enter into any "keep well" or other agreement to maintain any financial condition of another person or enter into any arrangement having the economic effect of any of the foregoing (including any capital leases, "synthetic" leases or conditional sale or other title retention agreements) other than (i) short-term borrowings incurred in the ordinary course of business, (ii) letters of credit obtained in the ordinary course of business, (iii) borrowings made in connection with the refunding of existing indebtedness (x) at

maturity or upon final mandatory redemption (without the need for the occurrence of any special event) or (y) at a lower cost of funds, (iv) borrowings to finance capital expenditures or acquisitions permitted pursuant to Section 4.01(e) or indebtedness assumed pursuant thereto, (v) other borrowings in an aggregate principal amount not to exceed \$150,000,000 outstanding at any time, (vi) guarantees or other credit support issued pursuant to trading or marketing positions established prior to the date of this Agreement and (vii) in addition to the guarantees or other credit support contemplated by subsection (vi) of this Section 4.01(g), additional guarantees or other credit support issued in connection with trading or marketing activities in the ordinary course of business or (B) make any loans or advances to any other person, other than (i) in the ordinary course of business consistent with past practice, (ii) to any direct or indirect wholly-owned subsidiary of Cinergy, or, in the case of a subsidiary of Cinergy, to Cinergy or (iii) as required pursuant to any obligation in effect as of the date of this Agreement.

(h) Marketing of Energy; Trading. Cinergy shall not, nor shall it permit any of its subsidiaries to, (i) permit any material change in policies governing or otherwise relating to the trading or marketing of energy other than as a result of acquisitions or capital expenditures permitted pursuant to Section 4.01(e) or to increase the existing aggregate VaR limit as established by the Risk Policy Committee or (ii) enter into any physical commodity transactions, exchange-traded futures and options transactions, over-the-counter transactions and derivatives thereof or similar transactions other than as permitted by the Cinergy Trading Guidelines.

(i) Employee Benefits. Except as required by law or the terms of any collective bargaining agreement or any Cinergy Employee Benefit Plan, or as disclosed in Section 4.01(i) of the Cinergy Disclosure Letter, Cinergy shall not, nor shall it permit any of its subsidiaries to, enter into, adopt, amend or terminate any Cinergy Employee Benefit Plan, or other agreement, arrangement, plan or policy between Cinergy or one of its subsidiaries and one or more of its directors, officers or employees (other than any amendment that is immaterial or administrative in nature), or except for normal increases in the ordinary course of business consistent with past practice, increase in any manner the compensation or fringe benefits of any director, executive officer or other employee, or, except for normal payments in the ordinary course of business consistent with past practice, pay any benefit not required by any plan or arrangement in effect as of the date of this Agreement, provided, however, that the foregoing shall not restrict Cinergy or its subsidiaries from (i) entering into or making available to newly hired officers and employees or to officers and employees in the context of promotions based on job performance or workplace requirements in the ordinary course of business consistent with past practice, plans, agreements, benefits and compensation arrangements (including incentive grants) that have, consistent with past practice, been made available to newly hired or promoted officers and employees, or (ii) entering into or amending collective bargaining agreements with existing collective bargaining representatives or newly certified bargaining units regarding mandatory subjects of bargaining under applicable law, in each case in a manner consistent with past practice to the extent permitted by law.

(j) Regulatory Status. Except as disclosed in Section 4.01(j) of the Cinergy Disclosure Letter, Cinergy shall not, nor shall it permit any of its subsidiaries to, agree or consent to any material agreements or material modifications of existing agreements or course of dealings with any Governmental Authority in respect of the operations of their businesses

outside the ordinary course of business, except (i) as required by law to renew Permits or agreements in the ordinary course of business consistent with past practice, (ii) as may be necessary or required in connection with the consummation of any acquisition permitted pursuant to Section 4.01(e), or (iii) to effect the consummation of the transactions contemplated hereby.

(k) Accounting. Cinergy shall not, nor shall it permit any of its subsidiaries to, make any changes in their accounting methods materially affecting the reported consolidated assets, liabilities or results of operations of Cinergy, except as required by law or GAAP.

(l) Insurance. Cinergy shall, and shall cause its subsidiaries to, maintain with financially responsible insurance companies (or through self-insurance, consistent with past practice) insurance in such amounts and against such risks and losses as are customary for companies engaged in their respective businesses.

(m) Taxes. Except as could not reasonably be expected to have a material adverse effect on Cinergy, Cinergy shall not, nor shall it permit any of its subsidiaries to, (i) settle any claim, action or proceeding relating to Taxes or (ii) make any Tax election (this clause (m) being the sole provision of this Section 4.01 governing Tax matters).

Section 4.02 Covenants of Duke. From and after the date of this Agreement until the Effective Time, Duke covenants and agrees as to itself and its subsidiaries (which shall be deemed at all times to include the Company and its subsidiaries) that (except as expressly contemplated or permitted by this Agreement, as set forth in Section 4.02 of the Duke Disclosure Letter, for transactions (other than those set forth in Section 4.01(d) to the extent relating to capital stock of Duke) solely involving Duke and one or more of its direct or indirect wholly-owned subsidiaries or between two or more direct or indirect wholly-owned subsidiaries of Duke, or to the extent that Cinergy shall otherwise previously consent in writing, such consent not to be unreasonably withheld or delayed):

(a) Ordinary Course. Duke and each of its subsidiaries shall conduct their businesses in all material respects in the ordinary course of business consistent with past practice. Without limiting the generality of the foregoing, Duke and its subsidiaries shall use commercially reasonable efforts to preserve intact in all material respects their present business organizations, to maintain in effect all existing Permits, subject to prudent management of workforce and business needs, to keep available the services of their key officers and employees, to maintain their assets and properties in good working order and condition, ordinary wear and tear excepted, to preserve their relationships with Governmental Authorities, customers and suppliers and others having significant business dealings with them and to comply in all material respects with all laws, orders and Permits of all Governmental Authorities applicable to them.

(b) Charter Documents. Duke shall not amend or propose to amend its articles of incorporation or, other than in a manner that would not materially restrict the operation of their businesses, its by-laws or its subsidiaries' articles of incorporation or by-laws (or other comparable organizational documents).

(c) Dividends. Duke shall not, nor shall it permit any of its subsidiaries to, (i) declare, set aside or pay any dividends on or make other distributions in respect of any of its capital stock or share capital, except:

(A) that Duke may continue the declaration and payment of regular quarterly cash dividends on Duke Common Stock, not to exceed \$0.275 per share, with usual record and payment dates for such dividends in accordance with past dividend practice; provided, that (1) Duke may increase its regular quarterly cash dividend to an amount not to exceed \$0.31 per share between the date hereof and the Duke Effective Time and (2) if the Duke Effective Time does not occur between a record date and payment date of a regular quarterly dividend, a special dividend may be declared and paid in respect of Duke Common Stock with respect to the quarter in which the Duke Effective Time occurs with a record date in such quarter and on or prior to the date on which the Duke Effective Time occurs, which dividend does not exceed an amount equal to the product of (i) a fraction the (x) numerator of which is equal to the number of days between the last payment date of a regular quarterly dividend and the record date of such special dividend (excluding such last payment date but including the record date of such special dividend) and (y) the denominator of which is equal to the number of days between the last payment date of a regular quarterly dividend and the same calendar day in the third month after the month in which such last payment date occurred (excluding such last payment date but including such same calendar day), multiplied by (ii) the then permitted quarterly dividend per share, and

(B) for the declaration and payment of dividends by a direct or indirect wholly-owned subsidiary of Duke solely to its parent, or by a direct or indirect partially owned subsidiary of Duke (provided, that Duke or a Duke subsidiary receives or is to receive its proportionate share of such dividend or distribution), and

(C) for the declaration and payment of regular cash dividends with respect to preferred stock of Duke or its subsidiaries outstanding as of the date of the Agreement or permitted to be issued under the terms of this Agreement, and

(ii) split, combine, reclassify or take similar action with respect to any of its capital stock or share capital or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or comprised in its share capital, (iii) adopt a plan of complete or partial liquidation or resolutions providing for or authorizing such

liquidation or a dissolution, merger, consolidation, restructuring, recapitalization or other reorganization, or (iv) except as disclosed in Section 4.02(c)(iv) of the Duke Disclosure Letter directly or indirectly redeem, repurchase or otherwise acquire any shares of its capital stock or any Option with respect thereto except:

(A) in connection with intercompany purchases of capital stock or share capital, or

(B) for the purpose of funding the Duke Option Plan or employee stock ownership or dividend reinvestment and stock purchase plans, or

(C) mandatory repurchases or redemptions of preferred stock of Duke or its subsidiaries in accordance with the terms thereof, or

(D) the redemptions by Duke of Duke Preferred Stock and Duke Preferred Stock A as contemplated by Section 4.07.

(d) Share Issuances. Duke shall not, nor shall it permit any of its subsidiaries to issue, deliver or sell, or authorize or propose the issuance, delivery or sale of, any shares of its capital stock or any Option with respect thereto (other than (i) the issuance of Duke Common Stock upon the exercise of Duke Employee Stock Options outstanding as of the date of hereof or issued after the date hereof in accordance with the terms of this Agreement in accordance with their terms, (ii) the issuance of Duke Common Stock in respect of other equity compensation awards granted under the Duke Option Plans outstanding as of the date hereof or issued after the date hereof in accordance with the terms of this Agreement in accordance with their terms, (iii) the issuance of Duke Employee Stock Options and the grant of other equity compensation awards pursuant to the Duke Option Plans in accordance with their terms providing, in aggregate, up to 5,000,000 shares of Duke Common Stock in any 12-month period following the date of this Agreement, provided, however, that any Duke Employee Stock Options and equity awards granted after the date of this Agreement shall be granted on terms pursuant to which such Duke Employee Stock Options and equity awards shall not vest on the Duke Shareholder Approval or otherwise on the occurrence of the transactions contemplated hereby and shall, at the Duke Effective Time, be converted into options or equity based awards to acquire or in respect of, as applicable, Company Common Stock in the manner contemplated by Section 5.06, and (iv) the pro rata issuance by a subsidiary of its capital stock to its shareholders, provided, further, that any shares of Duke Common Stock that Duke or its subsidiaries shall contribute, directly or indirectly, to any employee benefit plan (including any plan intended to satisfy the requirements of Section 401(a) of the Code) or that Duke or its subsidiaries shall make subject to any dividend reinvestment or similar plan shall be shares purchased in open-market or privately negotiated transactions, but shall not constitute newly issued shares of Duke Common Stock), or modify or amend any right of any holder of outstanding shares of its capital stock or any Option with respect thereto other than to give effect to Section 5.06.

(e) Acquisitions; Capital Expenditures. Except for (x) acquisitions of, or capital expenditures relating to, the entities, assets and facilities identified in Section 4.02(e) of the Duke Disclosure Letter, (y) expenditures of amounts set forth in Duke's capital expenditure plan included in Section 4.02(e) of the Duke Disclosure Letter, and (z) capital expenditures (1) required by law or Governmental Authorities or (2) incurred in connection with the repair or replacement of facilities destroyed or damaged due to casualty or accident (whether or not covered by insurance), Duke shall not, nor shall it permit any of its subsidiaries to, make any capital expenditures, or acquire or agree to acquire (whether by merger, consolidation, purchase or otherwise) any person or assets, if (A) the expected gross expenditures and commitments pursuant thereto (including the amount of any indebtedness and amounts received for negative trading positions assumed) exceeds or may exceed (i) \$300,000,000, in the case of any acquisition or series of related acquisitions of any person, asset or property located in the United States, or (ii) \$150,000,000 in the case of any acquisition or series of related acquisitions of any person, asset or property located outside of the United States (each acquisition or series of related acquisitions described in (i) and (ii), a "Duke Threshold Acquisition"), (B) the expected gross expenditures and commitments pursuant thereto (including the amount of any indebtedness and amounts received for negative trading positions assumed) exceeds or may exceed, in the aggregate, \$300,000,000 excluding all Duke Threshold Acquisitions identified in Section 4.02(e) of the Duke Disclosure Letter or to which Cinergy has previously consented in writing, (C) any such acquisition or capital expenditure constitutes any line of business that is not conducted by Duke, its subsidiaries or the Duke Joint Ventures as of the date of this Agreement or extends any line of business of Duke, its subsidiaries or the Duke Joint Ventures into any geographic region outside of the continental United States or Canada in which Duke, its subsidiaries or the Duke Joint Ventures do not conduct business as of the date of this Agreement, or (D) any such acquisition or capital expenditure is reasonably likely, individually or in the aggregate, to materially delay the satisfaction of the conditions set forth in Sections 6.02(d) or Sections 6.03(d) or prevent the satisfaction of such conditions.

(f) Dispositions. Except for (x) dispositions set forth in Section 4.02(f) of the Duke Disclosure Letter, (y) dispositions of obsolete equipment or assets or dispositions of assets being replaced, in each case in the ordinary course of business consistent with past practice and (z) dispositions by Duke or its subsidiaries of its assets in accordance with the terms of restructuring and divestiture plans mandated or approved by applicable local or state regulatory agencies, Duke shall not, nor shall it permit any of its subsidiaries to, sell, lease, grant any security interest in or otherwise dispose of or encumber any of its assets or properties if (A) the value of such disposition exceeds or may exceed (i) \$300,000,000, in the case of any disposition or series of related dispositions of any person, asset or property located in the United States, or (ii) \$150,000,000 in the case of any disposition or series of related dispositions of any person, asset or property located outside of the United States (each disposition or series of related dispositions described in (i) and (ii), a "Duke Threshold Disposition") or (B) the aggregate value of all such dispositions, excluding all Duke Threshold Dispositions identified in Section 4.02(f) of the Duke Disclosure Letter or to which Cinergy has previously consented in writing, exceeds or may exceed, in the aggregate, \$300,000,000. For the purposes of this Section 4.02(f), the value of any disposition or series of related dispositions shall mean the greater of (i) the book value or (ii) the sales price, in each case of the person, asset or property which is the subject of such disposition and, in each case, together with the indebtedness and amounts paid for negative trading positions transferred by Duke or its subsidiaries in connection with such disposition.

(g) Indebtedness. Except as disclosed in Section 4.02(g) of the Duke Disclosure Letter, Duke shall not, nor shall it permit any of its subsidiaries to, (A) incur or guarantee any indebtedness or enter into any "keep well" or other agreement to maintain any financial condition of another person or enter into any arrangement having the economic effect of any of the foregoing (including any capital leases, "synthetic" leases or conditional sale or other title retention agreements) other than (i) short-term borrowings incurred in the ordinary course of business, (ii) letters of credit obtained in the ordinary course of business, (iii) borrowings made in connection with the refunding of existing indebtedness (x) at maturity or upon final mandatory redemption (without the need for the occurrence of any special event) or (y) at a lower cost of funds, (iv) borrowings to finance capital expenditures or acquisitions permitted pursuant to Section 4.02(e) or indebtedness assumed pursuant thereto, (v) other borrowings in an aggregate principal amount not to exceed \$500,000,000 outstanding at any time, (vi) guarantees or other credit support issued pursuant to trading or marketing positions established prior to the date of this Agreement and (vii) in addition to the guarantees or other credit support contemplated by subsection (vi) of this Section 4.02(g), additional guarantees or other credit support issued in connection with trading or marketing activities in the ordinary course of business at any one time or (B) make any loans or advances to any other person, other than (i) in the ordinary course of business consistent with past practice (ii) to any direct or indirect wholly-owned subsidiary of Duke, or, in the case of a subsidiary of Duke, to Duke or (iii) as required pursuant to any obligation in effect as of the date of this Agreement.

(h) Marketing of Energy Trading. Duke shall not, nor shall it permit any of its subsidiaries to, (i) permit any material change in policies governing or otherwise relating to the trading or marketing of energy other than as a result of acquisitions or capital expenditures permitted pursuant to Section 4.02(e) or (ii) enter into any physical commodity transactions, exchange-traded futures and options transactions, over-the-counter transactions and derivatives thereof or similar transactions other than as permitted by the Duke Trading Guidelines.

(i) Employee Benefits. Except as required by law or the terms of any collective bargaining agreement or any Duke Employee Benefit Plan, or as disclosed in Section 4.02(i) of the Duke Disclosure Letter, Duke shall not, nor shall it permit any of its subsidiaries to, enter into, adopt, amend or terminate any Duke Employee Benefit Plan, or other agreement, arrangement, plan or policy between Duke or one of its subsidiaries and one or more of its directors, officers or employees (other than any amendment that is immaterial or administrative in nature), or except for normal increases in the ordinary course of business consistent with past practice, increase in any manner the compensation or fringe benefits of any director, executive officer or other employee, or, except for normal payments in the ordinary course of business consistent with past practice, pay any benefit not required by any plan or arrangement in effect as of the date of this Agreement, provided, however, that the foregoing shall not restrict Duke or its subsidiaries from (i) entering into or making available to newly hired officers and employees or to officers and employees in the context of promotions based on job performance or workplace requirements in the ordinary course of business consistent with past practice, plans, agreements, benefits and compensation arrangements (including incentive grants) that have, consistent with past practice, been made available to newly hired or promoted officers and employees, or (ii) entering into or amending collective bargaining agreements with existing collective bargaining representatives or newly certified bargaining units regarding

mandatory subjects of bargaining under applicable law, in each case in a manner consistent with past practice to the extent permitted by law.

(j) Regulatory Status. Except as disclosed in Section 4.02(j) of the Duke Disclosure Letter, Duke shall not, nor shall it permit any of its subsidiaries to, agree or consent to any material agreements or material modifications of existing agreements or course of dealings with any Governmental Authority in respect of the operations of their businesses, except (i) as required by law to renew Permits or agreements in the ordinary course of business consistent with past practice, (ii) as may be necessary or required in connection with the consummation of any acquisition permitted pursuant to Section 4.02(e), or (iii) to effect the consummation of the transactions contemplated hereby.

(k) Accounting. Duke shall not, nor shall it permit any of its subsidiaries to, make any changes in their accounting methods materially affecting the reported consolidated assets, liabilities or results of operations of Duke, except as required by law or GAAP.

(l) Insurance. Duke shall, and shall cause its subsidiaries to, maintain with financially responsible insurance companies (or through self-insurance, consistent with past practice) insurance in such amounts and against such risks and losses as are customary for companies engaged in their respective businesses.

(m) Taxes. Except as could not reasonably be expected to have a material adverse effect on Duke, Duke shall not, nor shall it permit any of its subsidiaries to, (i) settle any claim, action or proceeding relating to Taxes or (ii) make any Tax election (this clause (m) being the sole provision of this Section 4.02 governing Tax matters).

(n) Company Actions. Duke shall not permit the Company or any of its subsidiaries to take, or to commit to take, any action after the Duke Effective Time and prior to the Cinergy Effective Time, except for the actions expressly set forth in this Agreement as actions to be taken by any such person during such period.

Section 4.03 No Solicitation by Cinergy.

(a) Cinergy shall not, nor shall it permit any of its subsidiaries to, nor shall it authorize or permit any of its directors, officers or employees to, and shall use its reasonable best efforts to cause any investment banker, financial advisor, attorney, accountant or other representative retained by it or any of its subsidiaries not to, directly or indirectly, (i) solicit, initiate or knowingly encourage (including by way of furnishing information), or knowingly take any other action designed to facilitate, any inquiries or the making of any proposal that constitutes a Cinergy Takeover Proposal (as defined below) or (ii) participate in any negotiations or substantive discussions regarding any Cinergy Takeover Proposal; provided, however, that if, at any time prior to receipt of the Cinergy Shareholder Approval (the "Cinergy Applicable Period"), the Board of Directors of Cinergy determines in good faith, after consultation with its legal and financial advisors, that a Cinergy Takeover Proposal that was not solicited by it and that did not otherwise result from a breach (other than in immaterial respects) of this Section 4.03(a) is, or is reasonably likely to result in, a Cinergy Superior Proposal (as

defined in Section 4.03(b)), and subject to providing prior written notice of its decision to take such action to Duke and compliance with Section 4.03(c), Cinergy may (x) furnish information with respect to Cinergy and its subsidiaries to the person making such proposal (and its representatives) pursuant to a customary confidentiality agreement containing terms no less favorable to Cinergy than those set forth in the Confidentiality Agreement (the "Confidentiality Agreement") dated November 10, 2004, between Cinergy and Duke (provided, that such confidentiality agreement shall not in any way restrict Cinergy from complying with its disclosure obligations under this Agreement, including with respect to such proposal, but such confidentiality agreement may allow such party to submit to Cinergy a proposal or offer relating to a transaction) and (y) participate in discussions or negotiations regarding such proposal. Cinergy, its subsidiaries and their representatives immediately shall cease and cause to be terminated any existing activities, discussions or negotiations with any parties with respect to any Cinergy Takeover Proposal. For purposes of this Agreement, "Cinergy Takeover Proposal" means any bona fide inquiry, proposal or offer from any person relating to (i) any direct or indirect acquisition or purchase of a business (a "Cinergy Material Business") that constitutes 20% or more of the net revenues, net income or the assets (including equity securities) of Cinergy and its subsidiaries, taken as a whole, (ii) any direct or indirect acquisition or purchase of 20% or more of any class of voting securities of Cinergy or 20% or more of the voting power of any class of stock of any subsidiary of Cinergy owning, operating or controlling a Cinergy Material Business, (iii) any tender offer or exchange offer that if consummated would result in any person beneficially owning 20% or more of any class of voting securities of Cinergy or 20% or more of the voting power of any class of stock of any subsidiary of Cinergy owning, operating or controlling a Cinergy Material Business, or (iv) any merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving Cinergy or any such subsidiary of Cinergy owning, operating or controlling a Cinergy Material Business, in each case other than the transactions contemplated by this Agreement.

(b) Except as contemplated by this Section 4.03, neither the Board of Directors of Cinergy nor any committee thereof shall (i) withdraw or modify, or propose publicly to withdraw or modify, in a manner adverse to Duke, the approval or recommendation by such Board of Directors or such committee of this Agreement or the Cinergy Merger, (ii) approve or recommend, or propose publicly to approve or recommend, any Cinergy Takeover Proposal, or (iii) cause Cinergy to enter into any letter of intent, agreement in principle, acquisition agreement or other similar agreement (each, a "Cinergy Acquisition Agreement") related to any Cinergy Takeover Proposal. Notwithstanding the foregoing:

(i) in response to a Cinergy Takeover Proposal that was not solicited by it and that did not otherwise result from a breach (other than in immaterial respects) of Section 4.03(a), during the Cinergy Applicable Period, the Board of Directors of Cinergy may, if it determines in good faith, after consulting with outside counsel, that the failure to take such action would be reasonably likely to result in a breach of the Board of Directors' fiduciary obligations under applicable law, (A) withdraw or modify, or propose publicly to withdraw or modify, the approval or recommendation by such Board of Directors or any committee thereof of this Agreement or the Cinergy Merger, (B) approve or recommend, or propose to approve or recommend, any Cinergy Superior Proposal, or (C) terminate this Agreement pursuant to Section 7.01(d), but only

after (1) in the case of each of clauses (B) or (C), such Board of Directors has determined in good faith that such Cinergy Takeover Proposal constitutes a Cinergy Superior Proposal, and (2) in the case of clause (C), (1) Cinergy has notified Duke in writing of the determination that such Cinergy Takeover Proposal constitutes a Cinergy Superior Proposal and (II) at least five business days following receipt by Duke of such notice, the Board of Directors of Cinergy has determined that such Cinergy Superior Proposal remains a Cinergy Superior Proposal; and

(ii) in circumstances other than as provided in Section 4.03(b)(i), during the Cinergy Applicable Period, the Board of Directors of Cinergy may, if it determines in good faith, after consulting with outside counsel, that the failure to take such action would be reasonably likely to result in a breach of the Board of Directors' fiduciary obligations under applicable law, withdraw or modify, or propose publicly to withdraw or modify, the approval or recommendation by such Board of Directors or any committee thereof of this Agreement or the Cinergy Merger, but only after (1) Cinergy has notified Duke in writing that the Board of Directors of Cinergy is prepared to make the determination set forth in this clause (ii) setting forth the reasons therefore in sufficient detail, (2) for a period of five business days following Duke's receipt of the notice set forth in clause (1) of this sentence, Cinergy negotiates with Duke in good faith to make such adjustments to the terms and conditions of this Agreement, the Mergers and the other transactions contemplated hereby as would enable the Cinergy Board of Directors to proceed with its recommendation of this Agreement, the Cinergy Merger and the other transactions contemplated hereby and (3) at the end of such five-business day period the Board of Directors of Cinergy maintains its determination described in this clause (ii) (after taking into account Duke's proposed adjustments to the terms and conditions of this Agreement, the Mergers and the other transactions contemplated hereby).

For purposes of this Agreement, "Cinergy Superior Proposal" means any written Cinergy Takeover Proposal that the Board of Directors of Cinergy determines in good faith (after consultation with a financial advisor of nationally recognized reputation) to be more favorable (taking into account (i) all financial and strategic considerations, including relevant legal, financial, regulatory and other aspects of such Cinergy Takeover Proposal and the Mergers and the other transactions contemplated by this Agreement deemed relevant by the Board of Directors, (ii) the identity of the third party making such Cinergy Takeover Proposal, and (iii) the conditions and prospects for completion of such Cinergy Takeover Proposal) to Cinergy's shareholders than the Cinergy Merger, the Duke Merger and the other transactions contemplated by this Agreement (taking into account all of the terms of any proposal by Duke to amend or modify the terms of the Cinergy Merger and the other transactions contemplated by this Agreement), except that (x) the reference to "20%" in clauses (i), (ii) and (iii) of the definition of "Cinergy Takeover Proposal" in Section 4.03(a) shall be deemed to be a reference to "50%", (y) a "Cinergy Takeover Proposal" shall only be deemed to refer to a transaction involving Cinergy, and not any of its subsidiaries or Cinergy Material Businesses alone, and (z) the references to "or any subsidiary of Cinergy owning, operating or controlling a Cinergy Material Business" in clauses (ii), (iii) and (iv) shall be deemed to be deleted.

(c) In addition to the obligations of Cinergy set forth in paragraphs (a) and (b) of this Section 4.03, Cinergy shall as promptly as practicable advise Duke, orally and in writing, of any request for information or of any Cinergy Takeover Proposal (and in any case within 24 hours of such request or the receipt of such Cinergy Takeover Proposal), the principal terms and conditions of such request or Cinergy Takeover Proposal and the identity of the person making such request or Cinergy Takeover Proposal. Cinergy shall keep Duke informed of the status and details (including amendments or proposed amendments) of any such request or Cinergy Takeover Proposal. Contemporaneously with any termination by Cinergy of this Agreement pursuant to Section 7.01(b)(i), Cinergy shall provide Duke with a written verification that it has complied with its obligations pursuant to this Section 4.03(c) (other than noncompliance which is immaterial).

(d) Nothing contained in this Section 4.03 shall prohibit Cinergy from (i) taking and disclosing to its shareholders a position contemplated by Rule 14e-2(a) promulgated under the Exchange Act or from making any disclosure to Cinergy's shareholders if, in the good faith judgment of the Board of Directors of Cinergy, after consultation with outside counsel, failure so to disclose would be inconsistent with its obligations under applicable law or (ii) taking actions permitted by Section 4.01(f).

Section 4.04 No Solicitation by Duke.

(a) Duke shall not, nor shall it permit any of its subsidiaries to, nor shall it authorize or permit any of its directors, officers or employees to, and shall use its reasonable best efforts to cause any investment banker, financial advisor, attorney, accountant or other representative retained by it or any of its subsidiaries not to, directly or indirectly, (i) solicit, initiate or knowingly encourage (including by way of furnishing information), or knowingly take any other action designed to facilitate, any inquiries or the making of any proposal that constitutes a Duke Takeover Proposal (as defined below) or (ii) participate in any negotiations or substantive discussions regarding any Duke Takeover Proposal; provided, however, that if, at any time prior to receipt of the Duke Shareholder Approval (the "Duke Applicable Period"), the Board of Directors of Duke determines in good faith, after consultation with its legal and financial advisors, that a Duke Takeover Proposal that was not solicited by it and that did not otherwise result from a breach (other than in immaterial respects) of this Section 4.04(a) is, or is reasonably likely to result in, a Duke Superior Proposal (as defined in Section 4.04(b)), and subject to providing prior written notice of its decision to take such action to Cinergy and compliance with Section 4.04(c), Duke may (x) furnish information with respect to Duke and its subsidiaries to the person making such proposal (and its representatives) pursuant to a customary confidentiality agreement containing terms no less favorable to Duke than those set forth in the Confidentiality Agreement (provided, that such confidentiality agreement shall not in any way restrict Duke from complying with its disclosure obligations under this Agreement, including with respect to such proposal, but such confidentiality agreement may allow such party to submit to Duke a proposal or offer relating to a transaction) and (y) participate in discussions or negotiations regarding such proposal. Duke, its subsidiaries and their representatives immediately shall cease and cause to be terminated any existing activities, discussions or negotiations with any parties with respect to any Duke Takeover Proposal. For purposes of this Agreement, "Duke Takeover Proposal" means any bona fide inquiry, proposal or offer from any person relating to (i) any direct or indirect acquisition or purchase of a business (a "Duke

Material Business”) that constitutes 20% or more of the net revenues, net income or the assets (including equity securities) of Duke and its subsidiaries, taken as a whole, (ii) any direct or indirect acquisition or purchase of 20% or more of any class of voting securities of Duke or 20% or more of the voting power of any class of stock of any subsidiary of Duke owning, operating or controlling a Duke Material Business, (iii) any tender offer or exchange offer that if consummated would result in any person beneficially owning 20% or more of any class of voting securities of Duke or 20% or more of the voting power of any class of stock of any subsidiary of Duke owning, operating or controlling a Duke Material Business, or (iv) any merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving Duke or any such subsidiary of Duke owning, operating or controlling a Duke Material Business, in each case other than the transactions contemplated by this Agreement.

(b) Except as contemplated by this Section 4.04, neither the Board of Directors of Duke nor any committee thereof shall (i) withdraw or modify, or propose publicly to withdraw or modify, in a manner adverse to Cinergy, the approval or recommendation by such Board of Directors or such committee of this Agreement or the Duke Merger, (ii) approve or recommend, or propose publicly to approve or recommend, any Duke Takeover Proposal, or (iii) cause Duke to enter into any letter of intent, agreement in principle, acquisition agreement or other similar agreement (each, a “Duke Acquisition Agreement”) related to any Duke Takeover Proposal. Notwithstanding the foregoing:

(i) in response to a Duke Takeover Proposal that was not solicited by it and that did not otherwise result from a breach (other than in immaterial respects) of Section 4.04(a), during the Duke Applicable Period, the Board of Directors of Duke may, if it determines in good faith, after consulting with outside counsel, that the failure to take such action would be reasonably likely to result in a breach of the Board of Directors’ fiduciary obligations under applicable law, (A) withdraw or modify, or propose publicly to withdraw or modify, the approval or recommendation by such Board of Directors or any committee thereof of this Agreement or the Duke Merger, (B) approve or recommend, or propose to approve or recommend, any Duke Superior Proposal, or (C) terminate this Agreement pursuant to Section 7.01(f), but only after (1) in the case of each of clauses (B) or (C), such Board of Directors has determined in good faith that such Duke Takeover Proposal constitutes a Duke Superior Proposal, and (2) in the case of clause (C), (I) Duke has notified Cinergy in writing of the determination that such Duke Takeover Proposal constitutes a Duke Superior Proposal and (II) at least five business days following receipt by Cinergy of such notice, the Board of Directors of Duke has determined that such Duke Superior Proposal remains a Duke Superior Proposal; and

(ii) in circumstances other than as provided in Section 4.04(b)(i), during the Duke Applicable Period, the Board of Directors of Duke may, if it determines in good faith, after consulting with outside counsel, that the failure to take such action would be reasonably likely to result in a breach of the Board of Directors’ fiduciary obligations under applicable law, withdraw or modify, or propose publicly to withdraw or modify, the approval or

recommendation by such Board of Directors or any committee thereof of this Agreement or the Duke Merger, but only after (1) Duke has notified Cinergy in writing that the Board of Directors of Duke is prepared to make the determination set forth in this clause (ii) setting forth the reasons therefor in sufficient detail, (2) for a period of five business days following Cinergy's receipt of the notice set forth in clause (1) of this sentence, Duke negotiates with Cinergy in good faith to make such adjustments to the terms and conditions of this Agreement, the Mergers and the other transactions contemplated hereby as would enable the Duke Board of Directors to proceed with its recommendation of this Agreement, the Duke Merger and the other transactions contemplated hereby and (3) at the end of such five-business day period the Board of Directors of Duke maintains its determination described in this clause (ii) (after taking into account Cinergy's proposed adjustments to the terms and conditions of this Agreement, the Mergers and the other transactions contemplated hereby).

For purposes of this Agreement, a "Duke Superior Proposal" means any written Duke Takeover Proposal that the Board of Directors of Duke determines in good faith (after consultation with a financial advisor of nationally recognized reputation) to be more favorable (taking into account (i) all financial and strategic considerations, including relevant legal, financial, regulatory and other aspects of such Duke Takeover Proposal and the Mergers and the other transactions contemplated by this Agreement deemed relevant by the Board of Directors, (ii) the identity of the third party making such Duke Takeover Proposal, and (iii) the conditions and prospects for completion of such Duke Takeover Proposal) to Duke's shareholders than the Duke Merger and the other transactions contemplated by this Agreement (taking into account all of the terms of any proposal by Cinergy to amend or modify the terms of the Duke Merger, the Cinergy Merger and the other transactions contemplated by this Agreement), except that (x) the reference to "20%" in clauses (i), (ii) and (iii) of the definition of "Duke Takeover Proposal" in Section 4.04(a) shall be deemed to be a reference to "50%", (y) a "Duke Takeover Proposal" shall only be deemed to refer to a transaction involving Duke, and not any of its subsidiaries or Duke Material Businesses alone, and (z) the references to "or any subsidiary of Duke owning, operating or controlling a Duke Material Business" in clauses (ii), (iii) and (iv) shall be deemed to be deleted.

(c) In addition to the obligations of Duke set forth in paragraphs (a) and (b) of this Section 4.04, Duke shall as promptly as practicable advise Cinergy, orally and in writing, of any request for information or of any Duke Takeover Proposal (and in any case within 24 hours of such request or the receipt of such Duke Takeover Proposal), the principal terms and conditions of such request or Duke Takeover Proposal and the identity of the person making such request or Duke Takeover Proposal. Duke shall keep Cinergy informed of the status and details (including amendments or proposed amendments) of any such request or Duke Takeover Proposal. Contemporaneously with any termination by Duke of this Agreement pursuant to Section 7.01(b)(i), Duke shall provide Cinergy with a written verification that it has complied with its obligations pursuant to this Section 4.03(c) (other than noncompliance which is immaterial).

(d) Nothing contained in this Section 4.04 shall prohibit Duke from (i) taking and disclosing to its shareholders a position contemplated by Rule 14e-2(a) promulgated

under the Exchange Act or from making any disclosure to Duke's shareholders if, in the good faith judgment of the Board of Directors of Duke, after consultation with outside counsel, failure so to disclose would be inconsistent with its obligations under applicable law or (ii) taking actions permitted by Section 4.02(f).

Section 4.05 Other Actions. Each of Cinergy and Duke shall use its reasonable best efforts not to, and shall use its reasonable best efforts not to permit any of their respective subsidiaries to, take any action that would, or that could reasonably be expected to, result in (i) any of the representations and warranties of such party set forth in this Agreement that is qualified as to materiality becoming untrue, (ii) any of such representations and warranties that is not so qualified becoming untrue in any material respect, or (iii) any condition to the Mergers set forth in Article VI not being satisfied.

Section 4.06 Coordination of Dividends. From the date of this Agreement until the Effective Time, Duke and Cinergy shall coordinate with each other regarding the declaration and payment of dividends in respect of the shares of Cinergy Common Stock and Duke Common Stock and the record dates and payment dates relating thereto, including, if applicable, through the payment of the special dividend contemplated by Sections 4.01(c)(i)(A) and 4.02(c)(i)(A), it being the intention of Cinergy and Duke that no holder of Cinergy Common Stock, Duke Common Stock or Company Common Stock shall receive two dividends, or fail to receive one dividend, for any single calendar quarter with respect to its shares of Cinergy Common Stock or Duke Common Stock, as the case may be, and/or any shares of Company Common Stock any such holder receives in exchange therefor pursuant to the Mergers.

Section 4.07 Redemption of Duke Preferred Stock and Duke Preferred Stock A. Prior to the Duke Effective Time, Duke shall call for redemption all outstanding shares of Duke Preferred Stock and Duke Preferred Stock A at a redemption price equal to the amounts then required to be paid upon redemption of the applicable series of Duke Preferred Stock or Duke Preferred Stock A, as the case may be, pursuant to the term of each such series, together with all dividends accrued and unpaid to the date of such redemption. Duke shall use its reasonable best efforts to redeem all shares of Duke Preferred Stock and Duke Preferred Stock A so that no such shares shall be deemed to be outstanding as of the Duke Effective Time.

Section 4.08 Transfer of Certain Assets. Each of Duke, Cinergy and the Company shall, and shall cause each of their subsidiaries to, use their reasonable best efforts prior to the Closing to obtain all consents and approvals necessary to distribute at the Closing, or as soon as reasonably possible thereafter, the generation stations set forth on Section 4.08 of the Duke Disclosure Letter, (together the "Transferred Assets") to the Company and subsequently to contribute the Transferred Assets to The Cincinnati Gas & Electric and shall effect such distribution and contribution as promptly as practicable following the Cinergy Effective Time, subject to the receipt of all such necessary consents and approvals.

ARTICLE V

Additional Agreements

Section 5.01 Preparation of the Form S-4 and the Joint Proxy Statement;
Shareholders Meetings.

(a) As soon as practicable following the date of this Agreement, Cinergy and Duke shall prepare and file with the SEC the Joint Proxy Statement and Cinergy, Duke and the Company shall prepare and file with the SEC the Form S-4, in which the Joint Proxy Statement will be included. Each of Cinergy, Duke and the Company shall use its reasonable best efforts to have the Form S-4 declared effective under the Securities Act as promptly as practicable after such filing. Cinergy will use its reasonable best efforts to cause the Joint Proxy Statement to be mailed to Cinergy's shareholders, and Duke will use its reasonable best efforts to cause the Joint Proxy Statement to be mailed to Duke's shareholders, in each case as promptly as practicable after the Form S-4 is declared effective under the Securities Act. Each party hereto shall also take any action required to be taken under any applicable state or provincial securities laws in connection with the issuance of Company Common Stock in the Mergers and each party shall furnish all information concerning itself and its shareholders as may be reasonably requested in connection with any such action. Each party will advise the others, promptly after it receives notice thereof, of the time when the Form S-4 has become effective or any supplement or amendment has been filed, the issuance of any stop order, the suspension of the qualification of the Company Common Stock issuable in connection with the Mergers for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Joint Proxy Statement or the Form S-4 or comments thereon and responses thereto or requests by the SEC for additional information. If prior to the Effective Time any event occurs with respect to Cinergy, Duke or any subsidiary of Cinergy or Duke, respectively, or any change occurs with respect to information supplied by or on behalf of Cinergy or Duke, respectively, for inclusion in the Joint Proxy Statement or the Form S-4 that, in each case, is required to be described in an amendment of, or a supplement to, the Joint Proxy Statement or the Form S-4, Cinergy or Duke, as applicable, shall promptly notify the other and the Company of such event, and Cinergy or Duke, as applicable, shall cooperate with the Company in the prompt filing with the SEC of any necessary amendment or supplement to the Joint Proxy Statement and the Form S-4 and, as required by law, in disseminating the information contained in such amendment or supplement to Cinergy's shareholders and to Duke's shareholders.

(b) Cinergy shall, as soon as reasonably practicable following the date of this Agreement, duly call, give notice of, convene and hold a meeting of its shareholders (the "Cinergy Shareholders Meeting") for the purpose of obtaining the Cinergy Shareholder Approval. Without limiting the generality of the foregoing, Cinergy agrees that its obligations pursuant to the first sentence of this Section 5.01(b) shall not be affected by (i) the commencement, public proposal, public disclosure or communication to Cinergy of any Cinergy Takeover Proposal, (ii) the withdrawal or modification by the Board of Directors of Cinergy of its approval or recommendation of this Agreement, the Cinergy Merger or the other transactions contemplated hereby, or (iii) the approval or recommendation of any Cinergy Superior Proposal. Notwithstanding any of the events set forth in clauses (i), (ii) and (iii) of the immediately preceding sentence, in the event Cinergy fulfills its obligations pursuant to this Section 5.01(b) and the Cinergy Shareholder Approval is not obtained at the Cinergy Shareholders Meeting, Duke shall not thereafter have the right to terminate this Agreement pursuant to Sections 7.01(h)(i) as a result of the Board of Directors of Cinergy (or any committee thereof) having, pursuant to Section 4.03(b)(ii), 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, provided Duke shall retain all other rights to terminate this Agreement set forth in Section 7.01.

(c) Duke shall, as soon as reasonably practicable following the date of this Agreement, duly call, give notice of, convene and hold a meeting of its shareholders (the "Duke Shareholders Meeting") for the purpose of obtaining the Duke Shareholder Approval. Without limiting the generality of the foregoing, Duke agrees that its obligations pursuant to the first sentence of this Section 5.01(c) shall not be affected by (i) the commencement, public proposal, public disclosure or communication to Duke of any Duke Takeover Proposal, (ii) the withdrawal or modification by the Board of Directors of Duke of its approval or recommendation of this Agreement, the Duke Merger or the other transactions contemplated hereby, or (iii) the approval or recommendation of any Duke Superior Proposal. Notwithstanding any of the events set forth in clauses (i), (ii) and (iii) of the immediately preceding sentence, in the event Duke fulfills its obligations pursuant to this Section 5.01(c) and the Duke Shareholder Approval is not obtained at the Duke Shareholders Meeting, Cinergy shall not thereafter have the right to terminate this Agreement pursuant to Sections 7.01(g)(i) as a result of the Board of Directors of Duke (or any committee thereof) having, pursuant to Section 4.04(b)(ii), 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, provided Cinergy shall retain all other rights to terminate this Agreement set forth in Section 7.01.

(d) Cinergy and Duke will use their reasonable best efforts to hold the Duke Shareholders Meeting and the Cinergy Shareholders Meeting on the same date and as soon as practicable after the date of this Agreement.

Section 5.02 Letters of Cinergy's Accountants. Cinergy shall use its reasonable best efforts to cause to be delivered to Duke two letters from Cinergy's independent accountants, one dated a date within two business days before the date on which the Form S-4 shall become effective and one dated a date within two business days before the Closing Date, each addressed to Duke, in form and substance reasonably satisfactory to Duke and customary in scope and substance for comfort letters delivered by independent public accountants in connection with registration statements similar to the Form S-4.

Section 5.03 Letters of Duke's Accountants. Duke shall use its reasonable best efforts to cause to be delivered to Cinergy two letters from Duke's independent accountants, one dated a date within two business days before the date on which the Form S-4 shall become effective and one dated a date within two business days before the Closing Date, each addressed to Cinergy, in form and substance reasonably satisfactory to Cinergy and customary in scope and substance for comfort letters delivered by independent public accountants in connection with registration statements similar to the Form S-4.

Section 5.04 Access to Information; Effect of Review.

(a) Access. Subject to the Confidentiality Agreement, to the extent permitted by applicable law, each of Cinergy and Duke shall, and shall cause each of its respective subsidiaries to, and, so long as consistent with its confidentiality obligations under its

applicable agreements, shall use its respective reasonable best efforts to cause the Cinergy Joint Ventures and Duke Joint Ventures, respectively, to, afford to the other party and to the officers, employees, accountants, counsel, financial advisors and other representatives of such other party reasonable access during normal business hours during the period prior to the Effective Time to all their respective properties, books, contracts, commitments, personnel and records and, during such period, to the extent permitted by applicable law, each of Cinergy and Duke shall, and shall cause each of its respective subsidiaries to, and, so long as consistent with its confidentiality obligations under its applicable agreements, shall use its respective reasonable best efforts to cause the Cinergy Joint Ventures and Duke Joint Ventures, respectively, to, (i) confer on a regular and frequent basis with one or more representatives of the other party to discuss material operational and regulatory matters and the general status of its ongoing operations, (ii) advise the other party of any change or event that has had or could reasonably be expected to have a material adverse effect on such party, and (iii) furnish promptly all other information concerning its business, properties and personnel, in each case as such other party may reasonably request; provided, however, that no actions shall be taken pursuant to this Section 5.04(a) that would result in a waiver of the attorney/client privilege. Notwithstanding the foregoing, if a party requests access to proprietary information of the other party, the disclosure of which would have a material adverse effect on the other party if the Closing were not to occur (giving effect to the requesting party's obligations under the Confidentiality Agreement), such information shall only be disclosed to the extent reasonably agreed upon by the chief financial officers (or their designees) of Cinergy and Duke. All information exchanged pursuant to this Section 5.04(a) shall be subject to the Confidentiality Agreement.

(b) Effect of Review. No review pursuant to this Section 5.04 shall have any effect for the purpose of determining the accuracy of any representation or warranty given by any of the parties hereto to any of the other parties hereto.

Section 5.05 Regulatory Matters; Reasonable Best Efforts.

(a) Regulatory Approvals. Each party hereto shall cooperate and promptly prepare and file all necessary documentation, to effect all necessary applications, notices, petitions and filings, and shall use reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things in order to obtain all approvals and authorizations of all Governmental Authorities, necessary or advisable to consummate and make effective, in the most expeditious manner reasonably practicable, the Mergers and the other transactions contemplated by this Agreement, including the Cinergy Required Statutory Approvals and the Duke Required Statutory Approvals; provided, however, that Cinergy shall have primary responsibility for the preparation and filing of any related applications, filings or other materials with the PUCO, the IURC and the KPSC and, provided, further, that Duke shall have primary responsibility for the preparation and filing of any related applications, filings or other materials with the NCUC and the PSCSC. Cinergy shall have the right to review and approve in advance all characterizations of the information relating to Cinergy, on the one hand, and Duke shall have the right to review and approve in advance all characterizations of the information relating to Duke, on the other hand, in either case, that appear in any application, notice, petition or filing made in connection with the Mergers or the other transactions contemplated by this Agreement. Cinergy and Duke agree that they will consult and cooperate with each other with respect to the obtaining of all such necessary approvals and authorizations of Governmental Authorities. On or

about the date which is the twelve-month anniversary of the date of this Agreement, the parties shall mutually determine in good faith whether the failure to extend the dates set forth in Section 7.01(b)(i) would be reasonably likely to result in the failure to receive required consents and approvals from Governmental Authorities in light of the facts and circumstances in existence on or about such twelve-month anniversary, and if the parties determine that such an extension is appropriate, they shall negotiate the terms and length of such extension in good faith.

(b) Further Actions. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things reasonably necessary or advisable to consummate and make effective, in the most expeditious manner reasonably practicable, the Mergers and the other transactions contemplated by this Agreement, including (i) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated by this Agreement, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed, and (ii) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing, as used in this Section 5.05, "reasonable best efforts" shall not include nor require any party, except as set forth in Section 5.05(b) of the Duke Disclosure Letter, to (A) sell, or agree to sell, hold or agree to hold separate, or otherwise dispose or agree to dispose of any asset, in each case if such sale, separation or disposition or agreement with respect thereto (i) would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Company, Cinergy or Duke (provided that for the purposes of determining whether a potential adverse effect would constitute a material adverse effect for the purposes of this clause (i), 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), (ii) would involve any capital stock of Duke Energy Gas Transmission Corporation or any capital stock of its subsidiaries or any of their respective assets, other than a de minimis amount of such assets or (iii) is of the Transferred Assets or with respect to the Transferred Assets and as a result of such sale, separation, disposition or agreement with respect thereto, thereafter the remaining Transferred Assets held by Duke or its subsidiaries would include less than 1,500 megawatts, or (B) conduct or agree to conduct its business in any particular manner if such conduct or agreement with respect thereto would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Company, Cinergy, or Duke (provided that for the purposes of determining whether a potential adverse effect would constitute a material adverse effect for the purposes of this clause (ii), each of the Company, Cinergy and Duke and their respective subsidiaries, taken as a whole, shall be deemed to be a consolidated group of entities of the size and scale of Cinergy and its subsidiaries, taken as a whole).

(c) State Anti-Takeover Statutes. Without limiting the generality of Section 5.05(b), Cinergy and Duke shall (i) take all action necessary to ensure that no state anti-takeover statute or similar statute or regulation is or becomes applicable to the Mergers, this Agreement or any of the other transactions contemplated by this Agreement and (ii) if any state anti-takeover statute or similar statute or regulation becomes applicable to the Mergers, this Agreement or any other transaction contemplated by this Agreement, take all action necessary to

ensure that the Mergers and the other transactions contemplated by this Agreement may be consummated as promptly as reasonably practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such statute or regulation on the Mergers and the other transactions contemplated by this Agreement.

Section 5.06 Stock Options; Restricted Stock and Equity Awards; Stock Plans.

(a)

(i) At the Effective Time, all outstanding stock options (the "Cinergy Employee Stock Options") granted under the Cinergy Employee Stock Option Plans, whether vested or unvested, shall be converted into an option to acquire, on the same terms and conditions as were applicable under such Cinergy Employee Stock Option, including vesting (taking into account any acceleration of vesting that may occur as a result of the transactions contemplated hereby), a number of shares of Company Common Stock equal to the number of shares of Cinergy Common Stock subject to such Cinergy Employee Stock Option immediately before the Cinergy Effective Time multiplied by the Cinergy Ratio (rounded to the nearest whole share) at a price per share of Company Common Stock equal to the price per share under such Cinergy Stock Option divided by the Cinergy Ratio (rounded to the nearest cent) (each, as so adjusted, a "Cinergy Adjusted Option");

(ii) Prior to the Effective Time, Cinergy shall make such other changes to the Cinergy Employee Stock Option Plans as Cinergy and Duke may agree are appropriate to give effect to the Cinergy Merger;

(iii) At the Effective Time, each restricted share of Cinergy Common Stock ("Cinergy Restricted Stock") shall be converted into a number of restricted shares of Company Common Stock equal to the number of restricted shares of Cinergy Common Stock multiplied by the Cinergy Ratio, on the same terms and conditions as were applicable to such share of Cinergy Common Stock, including vesting (taking into account any acceleration of vesting that may occur as a result of the transactions contemplated hereby) ("Cinergy Adjusted Restricted Stock"); and

(iv) except as disclosed in Section 5.06(a) of the Cinergy Disclosure Letter, all outstanding Cinergy equity or equity-based awards other than Cinergy Employee Stock Options and Cinergy Restricted Stock (together, "Cinergy Awards"), whether vested or unvested, as of immediately prior to the Cinergy Effective Time shall be converted into an equity or equity-based award in respect of a number of shares of Company Common Stock equal to the number of Cinergy Common Stock represented by such award multiplied by the Cinergy Ratio, on the same terms and conditions as were applicable to such Cinergy equity or equity-based award, including vesting (taking into account any acceleration of vesting that may occur as a result of the transactions contemplated hereby) ("Cinergy Adjusted Awards").

(v) Prior to the Cinergy Effective Time, the Board of Directors of Cinergy (or, if appropriate, any committee administering the Cinergy Employee Stock Option Plans) shall adopt such resolutions or take such other actions as may be required to effect the foregoing and to ensure that the conversion pursuant to Section 2.01(b) of the Cinergy Common Stock held by any director or officer of Cinergy and the conversion pursuant to this Section 5.06(a) into Cinergy Adjusted Options of Cinergy Employee Stock Options, Cinergy Adjusted Restricted Stock of Cinergy Restricted Stock and Cinergy Adjusted Awards of Cinergy Awards held by any director or officer of Cinergy will be eligible for exemption under Rule 16b-3(c) under the Exchange Act. Notwithstanding anything in Section 5.06(a) to the contrary, to the extent that the adjustments set forth in Section 5.06(a) would otherwise result in the adjustment being treated as a new grant of stock options or deferred compensation under Section 409A of the Code, the number of shares subject to any Cinergy Adjusted Option, Cinergy Adjusted Restricted Stock or Cinergy Adjusted Awards converted pursuant to Section 5.06(a) and the exercise price per share of any Cinergy Adjusted Option converted pursuant to Section 5.06(a) shall be determined in a manner that will not result in such conversions being treated as a new grant of stock options or deferred compensation under Section 409A of the Code and most closely reflects the economics of the adjustment pursuant to Section 5.06(a).

(b)

(i) At the Duke Effective Time, all outstanding stock options (the "Duke Employee Stock Options") granted under the Duke Option Plans, whether vested or unvested, shall be converted into an option to acquire, on the same terms and conditions as were applicable under such Duke Employee Stock Option after taking into account the transactions contemplated hereby, the same number of shares of Company Common Stock at the same price per share of Company Common Stock (each, as so adjusted, a "Duke Adjusted Option", and, together with the Cinergy Adjusted Options, the "Adjusted Options");

(ii) Prior to the Duke Effective Time, Duke shall make such other changes to the Duke Option Plans as Cinergy and Duke may agree are appropriate to give effect to the Duke Merger;

(iii) At the Duke Effective Time, each restricted share of Duke Common Stock (the "Duke Restricted Stock") shall be converted into a restricted share of Company Common Stock, on the same terms and conditions as were applicable to such share of Duke Common Stock after taking into account the transactions contemplated hereby (the "Duke Adjusted Restricted Stock"); and

(iv) except as disclosed in Section 5.06(b) of the Duke Disclosure Letter, all outstanding Duke equity or equity-based awards other than Duke Employee Stock Options and Duke Restricted Stock (together, "Duke Awards"), whether vested or unvested, as of immediately prior to the Duke

Effective Time shall be converted into an equity or equity-based award in respect of the same number of shares of Company Common Stock, on the same terms and conditions as were applicable to such Duke equity or equity-based award after taking into account the transactions contemplated hereby ("Duke Adjusted Awards").

(v) Prior to the Duke Effective Time, the Board of Directors of Duke (or, if appropriate, any committee administering the Duke Option Plans) shall adopt such resolutions or take such other actions as may be required to effect the foregoing and to ensure that the conversion pursuant to Section 2.01(a) of the Duke Common Stock held by any director or officer of Cinergy and the conversion pursuant to this Section 5.06(b) into Duke Adjusted Options of Duke Employee Stock Options, Duke Adjusted Restricted Stock of Duke Restricted Stock and Duke Adjusted Awards of Duke Awards held by any director or officer of Duke will be eligible for exemption under Rule 16b-3(e) under the Exchange Act. Notwithstanding anything in Section 5.06(b) to the contrary, to the extent that the adjustments set forth in Section 5.06(b) would otherwise result in the adjustment being treated as a new grant of stock options or deferred compensation under Section 409A of the Code, the number of shares subject to any Duke Adjusted Option, Duke Adjusted Restricted Stock or Duke Adjusted Awards converted pursuant to Section 5.06(b) and the exercise price per share of any Duke Adjusted Option converted pursuant to Section 5.06(b) shall be determined in a manner that will not result in such conversions being treated as a new grant of stock options or deferred compensation under Section 409A of the Code and most closely reflects the economics of the adjustment pursuant to Section 5.06(b).

(c) Prior to the Duke Effective Time, the Board of Directors of the Company shall adopt such resolutions or take such other actions as may be required to ensure to the maximum extent permitted by law that the conversion pursuant to Section 2.01(b) of the Duke Common Stock held by any director or officer of Duke, the conversions pursuant to Section 5.06(b), the conversion pursuant to Section 2.01(a) of the Cinergy Common Stock held by any director or officer of Cinergy and the conversion pursuant to Section 5.06(a) will be eligible for exemption under Rule 16b-3(e) under the Exchange Act. Prior to the Cinergy Effective Time or the Duke Effective Time, as the case may be, Duke and Cinergy, as applicable, shall each deliver to the holders of Cinergy Employee Stock Options and Duke Employee Stock Options (collectively, the "Stock Options") appropriate notices setting forth such holders' rights pursuant to the respective Cinergy Employee Stock Option Plans or Duke Option Plans, as the case may be (collectively, the "Stock Plans"), and the agreements evidencing the grants of such Stock Options, and that such Stock Options and agreements shall be assumed by the Company and shall continue in effect on the same terms and conditions (subject to the adjustments required by this Section 5.06 after giving effect to the Mergers).

(d) Except as otherwise contemplated by this Agreement and except to the extent required under the respective terms of the Stock Options, all restrictions or limitations on transfer and vesting with respect to Stock Options awarded under the Stock Plans, or any other plan, program or arrangement of Cinergy, Duke or any of their subsidiaries, to the extent

that such restrictions or limitations shall not have already lapsed, shall remain in full force and effect with respect to such Stock Options after giving effect to the Mergers and the assumption by the Company as set forth above.

(e) At the Cinergy Effective Time, by virtue of the Mergers, the Stock Plans shall be assumed by the Company, with the result that all obligations of Cinergy and Duke under the Stock Plans, including with respect to awards outstanding at the Effective Time under each Stock Plan, shall be obligations of the Company following the Effective Time. Prior to the Cinergy Effective Time, the Company shall take all necessary actions for the assumption of the Stock Plans, including the reservation, issuance and listing of Company Common Stock in a number at least equal to the number of shares of Company Common Stock that will be subject to Adjusted Options. As promptly as practicable following the Cinergy Effective Time, the Company shall prepare and file with the SEC a registration statement on Form S-8 (or another appropriate form) registering a number of shares of Company Common Stock determined in accordance with the preceding sentence. Such registration statement shall be kept effective (and the current status of the prospectus or prospectuses required thereby shall be maintained) at least for so long as Adjusted Options remain outstanding.

Section 5.07 Employee Matters.

(a) Following the Cinergy Effective Time, the Company will (subject to this Section 5.07 and Section 5.08), or, as applicable, will cause its subsidiaries to, honor all obligations under any contracts, agreements, collective bargaining agreements, plans (as such may be amended in accordance with this Agreement) and commitments of Cinergy and Duke and their respective subsidiaries that exist on the 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-4 and 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 references 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 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, 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 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, 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 direct or 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.