CINERGY.

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VIA OVERNIGHT MAIL

January 18, 2006

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

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

Dear Ms. O'Donnell:

The Commission's November 29, 2005 Order in the above-referenced case required ULH&P to file copies of merger approval orders from other jurisdictions and to report on whether such orders triggered the "most favored nation" provision of the settlement agreement in this case. ULH&P now reports that the Public Utilities Commission of Ohio and the Virginia State Corporation Commission have issued orders approving transfer of control of Cinergy's competitive local exchange companies in Ohio and Virginia to Duke Energy Holding Corp. These decisions do not trigger the "most favored nations" provision of the settlement approved by the Commission in this case. Copies of these orders are enclosed.

I have also enclosed a copy of the Comments of Cinergy Corp. filed on October 14, 2005 in FERC Docket No. RM05-32-000 (Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005). At an informal conference in this case on January 10, 2006, ULH&P proposed that it could comply with Merger Commitment No. 36 (filing of SEC reports) by filing with the Commission copies of the new FERC Form No. 60, which replaces SEC Form U-13-60. ULH&P also proposed that it not be required to file any replacement for SEC Form U-5S, which FERC has eliminated. At the informal conference, ULH&P agreed to provide the Commission with the above-referenced comments of Cinergy Corp., which demonstrate how the information formerly contained in SEC Form U-5S is available through other sources.

Beginning at page 4, the Cinergy Corp. comments address SEC Form U-5S report. To summarize, the Cinergy Corp. comments state that there is no need for the FERC to adopt any replacement form for the SEC Form U-5S, because most of the

information contained in the SEC Form U-5S is available in the Form 10-K filed with the SEC pursuant to the Securities Exchange Act of 1934. Accordingly, ULH&P proposes that it be permitted to comply with Merger Commitment No. 36 by filing with this Commission copies of the new FERC Form No. 60 (the replacement for SEC Form U-13-60) and New Duke Energy Corporation's Form 10-K reports (as a substitute for SEC Form U-5S). This would provide the Commission with the information it needs to monitor the activities of ULH&P and its affiliates, while allowing ULH&P to use existing reports and avoiding the burden of creating new reports.

Thank you for your consideration in this matter.

Sincerely,

John J. Finnigan, Jr.
Senior Counsel

JJF/sew

cc: All Parties of Record (with enclosures)

SCC-62

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, December 21, 2005

JOINT PETITION OF

CASE NO. PUC-2005-00153

CINERGY CORP.,

KDL OF VIRGINIA, INC.,

DUKE ENERGY HOLDING CORP.

and

DUKE ENERGY CORPORATION

For approval of Agreement and Plan of Merger
to transfer Cinergy Corp.'s indirect, ultimate control of KDL
of Virginia, Inc., to Duke Energy Holding Corp.

ORDER GRANTING APPROVAL

On November 1, 2005, Cinergy Corp. ("Cinergy") and Duke Energy Corporation ("Duke Energy") filed a joint petition pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code") with the State Corporation Commission ("Commission") for approval of an indirect transfer of control of KDL of Virginia, Inc., ("KDL"), from Cinergy to Duke Energy Holding Corp. ("Duke Energy Holding") upon completion of such proposed transaction involving the proposed Cinergy/Duke Energy merger. In connection with the proposed transfer, Cinergy and Duke have entered into an Agreement and Plan of Merger ("Plan of Merger") whereby Duke Energy Holding will acquire control of Cinergy and, therefore, indirectly gain ultimate control of KDL.[1]

[1] Since Cinergy does not hold a certificate of public convenience and necessity and does not provide utility services to customers in Virginia, approval of the transfer of control of Cinergy to Duke Energy does not require Commission approval.

On November 18, 2005, a Motion and Amendment was filed requesting that KDL, the regulated entity whose control is being transferred, and Duke Energy Holding, the entity acquiring control of a telephone company within the meaning of § 56-88.1 of the Code, be added as Petitioners. The Motion and Amendment also included the required verifications to complete the joint petition. The joint petition was deemed complete as of November 18, 2005. Cinergy, KDL, Duke Energy Holding, and Duke Energy are collectively referred to herein as "Petitioners."

Cinergy is a registered holding company under the Public Utility Holding Company Act of 1935 headquartered in Cincinnati, Ohio, with subsidiaries serving approximately 1.5 million retail electric customers and 500,000 retail gas customers in Ohio, Kentucky, and Indiana. In addition to regulated utility operations, Cinergy's subsidiaries are primarily involved in wholesale power generation and sales, energy marketing and trading, and other energy related businesses.

KDL is a Virginia public service corporation authorized to provide regulated retail local exchange and interexchange telecommunications services in Virginia pursuant to certificates of public convenience and necessity, Nos. T-615 and TT-194A, respectively. KDL is a direct wholly owned subsidiary of Kentucky Data Link, Inc., which, in turn, is a direct wholly owned subsidiary of Q-Comm Corporation ("Q-Comm"). Cinergy indirectly owns an approximately thirty percent (30%) equity interest in Q-Comm[2] and holds an ultimate ownership interest in KDL. KDL does not currently have any customers of regulated services in Virginia.[3] Duke Energy is a North Carolina

[2] The remaining 70% of Q-Comm is held by other third-party investors.

[3] While KDL does not have accepted local exchange tariffs on file with the Division of Communications, it does have accepted interexchange tariffs on file with the Division.

corporation with subsidiaries operating in gas and electric businesses, both regulated and non-regulated, and real estate. Duke Energy supplies, delivers, and processes energy for customers in the United States and selected international markets. Through its Duke Power business unit, it generates, transmits, distributes and sells electricity to approximately 2.2 million residential, commercial, and industrial customers in a service area that covers about 22,000 square miles in central and western North Carolina and western South Carolina. Duke Energy Holding is a newly created subsidiary of Duke Energy and was created solely for the purpose of consummating the proposed transaction.

As stated in the joint petition, Cinergy will continue to hold its indirect ownership interest in KDL, and KDL's business and operations will continue to be managed by the same companies and individuals. Petitioners state that the Plan of Merger does not call for the merger of any assets, operations, lines, plants, franchises or permits of KDL with assets, operations, lines, plants, franchises, or permits of any Duke Energy entity. After the proposed transaction takes place, KDL will become a sixth-tier subsidiary of Duke Energy Holding. The proposed transaction does not call for any change in any rates, terms, or conditions for the provision of any telecommunications services provided by KDL in Virginia.

NOW THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the above-described transfer of indirect, ultimate control of KDL from Cinergy to Duke Energy Holding will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

(1) The November 18, 2005 Motion and Amendment are hereby accepted.

(2) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Petitioners are hereby granted approval for the transfer of indirect, ultimate control of KDL from Cinergy to Duke Energy Holding under the terms and conditions and for the purpose as described herein.

(3) The Petitioners shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the transaction taking place, subject to the administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the transaction took place.

(4) There appearing nothing further to be done in this matter, it hereby is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Eric M. Page, Esq., LeClair Ryan, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; and the Commission's Division of Public Utility Accounting and Division of Communications.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of Duke Energy Corporation and Cinergy Corp. for Authority to Transfer Control of Cinergy Corp.'s Interests in Two Ohio Local Exchange Carriers, Namely, Cinergy Communications Company and Cinergy Telecommunications Networks – Ohio, Inc.	)))))))	Case No. 05-1329-TP-ACO

FINDING AND ORDER

The Commission finds:

(1) This case involves an application in which joint applicants, namely Cinergy Corp. (Cinergy) and Duke Energy Corporation (Duke Energy), are seeking Commission approval of the transaction that will cause partial ownership of Q-Comm Corporation (Q-Comm), a holding company for two Ohio competitive local exchange companies (CLECs), Cinergy Communications Company (CCC) and Cinergy Telecommunications Networks – Ohio, Inc. (CTN), to transfer from Cinergy to Duke Energy Holding Corp. (Duke Energy Holding).

(2) Jurisdiction for the Commission to review the joint application in this case is provided under Section 4905.402(B), Revised Code. That section provides, in division (B), as follows:

> No person shall acquire control, directly or indirectly of a domestic telephone company or a holding company controlling a domestic telephone company unless that person obtains the prior approval of the public utilities commission under this section. To obtain approval the person shall file an application with the commission demonstrating that the acquisition will promote public convenience and result in provision of adequate service for a reasonable rate, rental, toll, or charge. The application shall contain such information as the commission may require. If the commission considers a hearing necessary, it may fix a time and place for hearing. If, after review of

> the application and after any necessary hearing the commission is satisfied that approval of the application will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge, the commission shall approve the application and make such order as it considers proper. If the commission fails to issue an order within thirty days of the filing of the application, or within twenty days of the conclusion of a hearing, if one is held, the application shall be deemed approved by operation of law.

For purposes of this statute, "control" is defined by division (A)(1) as

> the possession of the power to direct the management and policies of a domestic telephone company or a holding company of a domestic telephone company . . . through the ownership of voting securities, by contract, or otherwise. . . . Control is presumed to exist if any person, directly or indirectly, owns, controls, holds the power to vote, or holds with the power to vote proxies that constitute, twenty percent or more of the total voting power of the domestic company or utility or the holding company.

(3) On November 22, 2005, the Commission issued an order in this case by which it suspended this matter for the purpose of ensuring that the joint application should not be deemed approved by operation of law on the thirty-first day subsequent to its filing. The Commission observes that at no time has any person or entity filed comments or sought to intervene in this proceeding. The Commission finds that a hearing is not necessary in this case.

(4) The joint applicants, Cinergy and Duke Energy, are involved in completing a proposed merger that was recently approved by the Commission by finding and order issued on December 21, 2005, in Case No. 05-732-EL-MER, *In the Matter of the Joint Application of Cinergy, Corp., on Behalf of The Cincinnati Gas & Electric Company, and Duke Energy Holding Corp. for Consent and*

Approval of a Change of Control of The Cincinnati Gas & Electric Company.

(5) As noted above, CCC and CTN are CLECs authorized to conduct business in Ohio. CCC is a direct, wholly owned subsidiary of Q-Comm. CTN is an indirect, wholly owned subsidiary of Q-Comm. Through a series of subsidiary corporations, Cinergy holds an indirect minority interest (approximately 30 percent) in Q-Comm. Even upon completion of the Cinergy and Duke Energy merger, Q-Comm will continue to be the sole owner of CCC and CTN. However, as a result of certain mergers and reorganizations contemplated by the Cinergy-Duke Energy merger transaction, the current shareholders of Duke Energy and Cinergy will be the shareholders of Duke Energy Holding, Duke Energy and Cinergy will be wholly owned subsidiaries of Duke Energy Holding, and Duke Energy Holding will have become the ultimate owner of the interest in Q-Comm currently owned by Cinergy. Since approximately 70 percent of Q-Comm is owned by parties other than Cinergy, Duke Energy, or any of their respective affiliates, Q-Comm is not now controlled by Cinergy, and will not be controlled by Duke Energy Holding as a result of the Cinergy-Duke Energy merger transaction.

(6) The joint applicants assert that the proposed transfer of minority ownership of Q-Comm will not involve a transfer of operating authority, will not affect the identity of CCC and CTN, and will not affect the services, rates, terms or conditions under which CCC and CTN currently offer services in Ohio. Rather, the transaction will be transparent to the consumers and customers of CCC and/or CTN in Ohio.

(7) We find the joint application submitted in this case to be both complete and reasonable. Upon review of the joint application and, indeed, of the record as a whole, the Commission is satisfied that approval of the joint application will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll or charge. Therefore, we hereby approve the joint application submitted in this case.

It is, therefore,

ORDERED, That the joint application submitted in this case is hereby approved and that this case is hereby closed of record. It is, further,

ORDERED, That a copy of this order be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

Clarence D. Rogers, Jr.

DEF;geb

Entered in the Journal

JAN 04 2006

Reneé J. Jenkins
Secretary

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005	)	Docket No. RM05-32-000

COMMENTS OF CINERGY CORP.

Pursuant to the Commission's Notice of Proposed Rulemaking issued on September 16, 2005 in the above-captioned docket, Cinergy Corp. ("Cinergy") hereby respectfully submits comments on the Commission's proposed rules implementing the repeal of the Public Utility Holding Company Act of 1935 ("PUHCA 1935") and the enactment of the Public Utility Holding Company Act of 2005 ("PUHCA 2005"). *See Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* 112 FERC ¶ 61,300 (2005) ("NOPR").

I. COMMUNICATIONS

Correspondence or communication with respect to these comments may be addressed as follows:

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II. EXECUTIVE SUMMARY

Cinergy welcomes the opportunity to respond to the Commission's NOPR regarding the repeal of PUHCA 1935 and the implementation of PUHCA 2005. The Commission seeks comment on, among other things, its need for access to books and records of holding companies and their subsidiaries, the adoption of certain SEC rules issued under PUHCA 1935, and the allocation of costs of non-power goods and services.

Cinergy believes that it is important to bear in mind that PUHCA 2005 serves to supplement the Commission's already broad authority under the Federal Power Act ("FPA") and the Natural Gas Act ("NGA"). In repealing PUHCA 1935, Congress was mindful that this statute imposed duplicative and burdensome regulation on the electric and gas utility industries. Cinergy is especially concerned that any new Commission requirements designed to implement PUHCA 2005 not repeat the needless regulation of PUHCA 1935. Cinergy's comments seek to explain how the Commission can carry out its new responsibilities under PUHCA 2005 without imposing new unnecessary burdens and expense.

The Commission has proposed to adopt a number of Securities and Exchange Commission ("SEC") rules and forms created under PUHCA 1935. Cinergy strongly opposes the adoption of some of these requirements, in particular 17 C.F.R. Section 250.1 and Section 259.5S. These regulations require the filing of information that can be found in other public filings, such as the Commission's Form 1 and the SEC's Form 10-K. The adoption of other SEC requirements is appropriate with certain modifications, e.g., the filing of a modified Form U-13-60. Some SEC rules proposed by the Commission should not be adopted simply because they no longer have any practical relevance, even under PUHCA 1935. This is the case for the requirements of 17 C.F.R. Section 250.27.

Cinergy strongly supports the continued use of the SEC at-cost standard for the sales of non-power goods and services by holding company system service companies. The at-cost standard applicable to registered holding company system service companies has been implemented with the cooperation of state utility commissions over many years and there is no evidence that it has been detrimental to retail ratepayers.

Finally, Cinergy urges the Commission in its rulemaking to make a finding under Section 204 of the FPA authorizing registered holding company public utility subsidiaries to issue securities and assume liabilities for a limited period following the effective date of PUHCA 2005, provided that they comply with the terms of their then-effective SEC financing authorization. This will aid both the Commission and the public utilities in question by obviating a near term surge in financing applications while affording a smooth transition to Commission regulation of financings by these companies.

III. BACKGROUND

(a) NOPR Proceeding

On September 16, 2005, in Docket No. RM05-32-000, the Commission issued a NOPR concerning implementation of rules relating to the repeal of PUHCA 1935 and the enactment of PUHCA 2005. The Commission proposes in the NOPR to remove Part 365 of its regulations and to add a new Part 366 that will contain regulations under PUHCA 2005. The Commission seeks public comments on these proposed actions and related issues.

(b) Interest of Cinergy

Cinergy is a registered holding company under PUHCA 1935. It has three franchised utility affiliates, The Cincinnati Gas & Electric Company ("CG&E"), PSI Energy, Inc. ("PSI"), and The Union Light, Heat and Power Company ("ULH&P").

Cinergy has extensive experience with and knowledge of PUHCA 1935 and related issues discussed in the NOPR. Because Cinergy will be a holding company under PUHCA 2005, the issues raised in the NOPR have considerable importance both for it and its affiliates.

IV. COMMENTS

A. General Observations

Congress passed PUHCA 2005 to deal with a limited number of holding company issues it judged required attention following the repeal of PUHCA 1935. However, in repealing PUHCA 1935, Congress also acknowledged that the statute imposed unnecessary and often duplicative regulatory burdens on the utility industry. EPAct 2005 gives the Commission only four months to develop regulations dealing with important aspects of this historic change. Given this short time-frame, Cinergy agrees with the Commission that the most practical approach to resolving many of the issues raised in the NOPR is to start with the practices established under PUHCA 1935 that remain relevant under PUHCA 2005. This will permit a smooth transition to the new regulatory environment, after which the Commission can refine its administration of PUHCA 2005 through subsequent rulemakings, information gathered in technical conferences, and policies developed on a case-by-case basis as it gains more experience with PUHCA 2005. However, the repeal of PUHCA 1935 makes irrelevant much in the SEC rules that the Commission proposes to adopt. Cinergy's comments will identify SEC requirements that repeal of PUHCA 1935 has made irrelevant and that can therefore be dispensed with.

B. Adoption of Certain SEC Regulations

The Commission is proposing to adopt certain SEC rules that impose accounting, cost allocation, and record keeping requirements applicable to registered holding companies and their system service companies. Specifically, the Commission proposes to adopt 17 C.F.R. Sections 250.1, 250.26, 250.27, 250.80, 250.93, 250.94, 259.5S, and 259.313 and 17 C.F.R. Parts 256 and 257. Cinergy submits that 17 C.F.R. Section 250.1 and Section 259.5S should not be adopted. It would be appropriate to adopt the remaining provisions, although in all cases they require modification to adapt them for use under PUHCA 2005.

I. 17 C.F.R. § 259.5S

Section 259.5S is perhaps the most burdensome SEC provision that the Commission proposes to adopt. The extent to which the Commission adopts all or part of that Section will have significant implications for how the Commission incorporates many of the other SEC requirements that it proposes to adopt. Section 259.5S requires registered holding companies to file a Form U5S annually with the SEC. That form calls for extensive information concerning the holding company, its subsidiary companies, and transactions in which they have engaged. Although the Office of Management and Budget estimates that the time to complete the Form U5S is approximately 13 hours, that estimate does not square with Cinergy's experience. Cinergy spends in excess of 900 hours annually completing the U5S for the nearly 175 companies covered by this filing. Given that much of the information required by Form U5S is contained in other public filings, including the Commission's Form 1, the Form U5S creates substantial

unnecessary expense.[1] Other information included in the Form U5S relates to matters that repeal of PUHCA 1935 has made irrelevant and that holding companies no longer should be required to file.

For these reasons, Cinergy strongly recommends that holding companies not be required to file Form U5S. Instead, the Form 1 that public utility subsidiaries of holding companies file with the Commission should be supplemented to include certain information concerning the parent holding company and the holding company system. All holding company systems, both exempt and registered, are familiar with the Commission's forms, but only the registered holding companies have experience with the SEC's forms under PUHCA 1935. Cinergy therefore believes that utilizing Commission forms to the maximum extent possible represents the most efficient and equitable approach to implementing PUHCA 2005 filing requirements.

For the most part, any information required by Form U5S that remains relevant under PUHCA 2005 is readily available in other public filings, such as the Annual Report on Form 10-K filed with the SEC pursuant to the Securities Exchange Act of 1934.[2] Generally, a Form 10-K is filed for the holding company and any subsidiary of the holding company with publicly-traded securities. Among other things, Cinergy

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1 In addition, Form U5S has developed little since 1935, whereas the Form 10-K requirements have evolved continuously to meet modern conditions. In general, therefore, Form 10-K represents a superior source of general information for a holding company. Cinergy notes that in addition to Form 1, Forms 2 and 2A also provide relevant information.

2 The Form 10-K filing requirements are found in SEC Regulation S-K. 17 C.F.R. Part 229 (2005). Form 10-K, which generally applies to all companies with publicly-traded securities, provides a comprehensive overview of the company's business, management, and financial condition and includes audited financial statements.

recommends that a Form 1 filed by a subsidiary company of a holding company include the holding company Form 10-K as an exhibit.

To support Cinergy's recommendation that Form U5S not be adopted, the following discussion briefly identifies the information required by that form, the relevance of that information to PUHCA 2005, and alternate sources for any relevant information.

Item 1 of Form U5S requires the holding company to list all system subsidiaries, *i.e.*, all companies in which the holding company holds, directly or indirectly, a 10 percent or greater voting interest. Similar information is included as an exhibit to Form 10-K, and can be provided to the Commission by including the Form 10-K as an exhibit to the Commission's Form 1.

Item 2 of Form U5S requires holding companies to list acquisitions and sales of utility assets during the reporting period, to the extent these transactions are not reported pursuant to SEC Rule 24 under PUHCA 1935.[3] The requirement covers sales of assets under construction and that therefore technically are not "utility assets" as defined in Section 2(a)(18) of PUHCA 1935.[4] Sales of assets for consideration of less than $1 million are excluded from the reporting requirement, but under current conditions, this

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[3] Rule 24, 17 C.F.R. § 250.24 (2005), requires, among other things, submission of reports of the consummation of transactions approved by SEC order. Since Rule 24 no longer would apply, retaining the U5S Item 2 filing requirement would expand that requirement in practice. Given that the information in question will be available from other public sources, this is a further reason for eliminating the requirement.

[4] Section 2(a)(18) defines utility assets as "facilities, in place, of any electric utility company or any gas utility company for the production, transmission, transportation, or distribution of electric energy or natural or manufactured gas." The phrase "in place" is understood to mean facilities completed and used in utility operations.

exception has little practical effect. The Item 2 reporting requirement permits the SEC to monitor such things as utility acquisitions that are exempt from SEC approval under Section 9(a)(1) pursuant to Section 9(b) of PUHCA 1935 and sales of utility assets that are exempt from SEC approval under Section 12(d) pursuant to Section 32(c)(B). These provisions have been repealed.

Under Section 203 of the FPA, as amended by EPAct 2005, the Commission must approve significant (i.e., over $10 million in value) sales or purchases of utility assets by public utilities, other than transactions limited to electric distribution assets. Significant purchases or sales of electric distribution assets are almost always subject to approval by a state regulatory commission, as are purchases and sales of utility assets by gas utility companies. In addition, all material transactions are reported in the holding company's Form 10-K or 8-K filings with the SEC. In addition to the Form 10-K, any Form 8-K reporting a utility asset purchase or sale could be filed as an exhibit to the Commission's Form 1 if the Commission concludes that such information is needed for the administration of PUHCA 2005. Given the availability of extensive information on purchases and sales of utility assets in these alternate public sources, there is no reason to file comparable information on Form U5S. If the Commission determines that it needs additional information, it could request it on a case-by-case basis.

Item 3 of Form U5S requires holding companies to provide a "description of issuances, sales or pledges of securities of system companies or guaranty or assumption by system companies of securities of other persons, including system companies or

exempted subsidiaries. . . ."[5] The information filed under Item 3 is relevant to the SEC's administration of Sections 6 and 7 of PUHCA 1935. Those sections deal with approval of the issuance and sale of securities by holding companies and all their subsidiary companies, other than exempt wholesale generators ("EWGs"), foreign utility companies ("FUCOs"), and exempt telecommunications companies ("ETCs") under PUHCA 1935. Those sections are being repealed, and PUHCA 2005 contains no substitute provisions concerning the issuance and sale of securities.[6] No grounds therefore exist to require the information specified in Item 3 of Form U5S to be filed with the Commission under PUHCA 2005. Cinergy notes that both the Commission and state utility commissions have jurisdiction over securities issuances by public utilities and receive information on such issuances in that connection. Item No. 7 of the Commission's Form 1 already requires public utilities to file information similar to that required by Item 3 of Form U5S. In addition, most of the information required by Item 3 is contained in Form 10-K.

Item 4 of Form U5S requires a description of "any system securities acquired, redeemed, or retired" during the reporting period. This requirement raises difficulties similar to those raised by Item 3. Under PUHCA 1935 it applied to all system companies, other than EWGs, FUCOs, and ETCs, not just public utility companies. Its primary

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5 The form instructions exempt information provided pursuant to Rule 24. Since Rule 24 will no longer be in effect, the extent of reporting under Item 3 could be expanded considerably. Given that the information question is not relevant to the Commission's duties under PUHCA 2005, this is an additional reason to eliminate the reporting requirement.

6 The Commission, of course, has authority under Section 204 of the FPA to receive information concerning securities transactions by public utilities. A Form U5S filing serves no purpose in this connection, however, as Item No. 7 of the Commission's Form 1 already requires public utilities to file information similar to that required by Item 3 of Form U5S.

purpose was to permit the SEC to monitor transactions exempt from approval under PUHCA 1935 pursuant to SEC Rule 42 under that statute.[7] Rule 42 exempts from approval under Sections 9(a), 10, and 12(c) of PUHCA 1935 most acquisitions, retirements, or redemptions by a registered holding company, or a subsidiary company, of its own securities. Sections 9(a), 10, and 12(c) of PUHCA 1935 are being repealed, which makes Rule 42 irrelevant. PUHCA 2005 contains no corresponding provisions. For these reasons, there are no grounds for requiring holding companies to continue reporting the information specified in Item 4 of Form U5S.

Item 5 of Form U5S requires the listing of "securities representing obligations of customers incurred in the ordinary course of business and temporary cash report as of the end of the year. . . ." This requirement permits the SEC to monitor transactions exempt from approval under Section 9(a) of PUHCA 1935 pursuant to Section 9(c)(3) and SEC Rule 40(a)(4).[8] Rule 40(a)(4) exempts from approval under Section 9(a) "any evidence of indebtedness executed by [a subsidiary company's] customers in consideration of utility or other services . . . executed in connection with the sale of goods or of real property other than utility assets."[9] Section 9(c)(3) is being repealed, which makes Rule 40 irrelevant. PUHCA 2005 contains no provisions dealing with this subject matter. No

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7 17 C.F.R. § 250.42.

8 17 C.F.R. § 250.40(a)(4).

9 The requirement to list the "securities representing obligations of customers incurred in the ordinary course of business" applies to two basic situations. The first is the common situation where a commercial or industrial customer provides a note to the public utility evidencing its obligation to pay an accrued electric or gas bill. The second is where a customer has provided a note to the public utility in the context of the customer's bankruptcy.

grounds therefore exist to require holding companies to file with the Commission the information specified in Item 5 of Form U5S.

Item 6 of Form U5S requires holding companies to list officers and directors of system companies and to provide, among other things, information concerning their affiliation with financial institutions. This requirement existed to facilitate the SEC administration of Section 17 of PUHCA 1935, which concerns holding company officers and directors generally, and SEC Rule 70 under that statute, which restricts interlocks involving officers and directors of financial institutions.[10] Congress has repealed Section 17 of PUHCA 1935. PUHCA 2005 contains no provisions regarding officers and directors, and the statute provides no basis for requiring holding companies to report information concerning them. Moreover, Form 10-K contains information on holding company officers and directors, and Part 45 of the Commission's regulations regulates interlocks involving officers and directors of public utilities and those of financial institutions authorized to underwrite or market public utility securities.[11] Schedules 4 and 5 to Form 1 also provide information on officers and directors. The Commission therefore will have considerable information on officers and directors, and there is no reason for holding companies to remain subject to a filing requirement based on Section 17 of PUHCA 1935.

Item 7 of Form U5S requires registered holding companies to report their political contributions and public relations expenses. This information was required to assist the SEC in administering Sections 12(h) and 12(i) of PUHCA 1935. These sections deal

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10 17 C.F.R. § 250.70. Proxy materials filed with the SEC on Schedule 14A also contain extensive information on officers and directors.

11 18 C.F.R. Part 45 (2005).

with limitations on political contributions by holding companies and other activities aimed at influencing public policy. Section 12 of PUHCA 1935 is being repealed, and PUHCA 2005 contains no provisions dealing with this subject matter. Moreover, other Federal and state laws, such as the Federal Election Campaign Act, impose extensive reporting requirements regarding political contributions. There thus is no reason to require holding companies to file with the Commission the information required by Item 7 of Form U5S.

Item 8 of Form U5S requires the filing of information regarding service, sales and, construction contracts not reported on Form U-13-60 and certain related information. The Item 8 reporting requirement has become insignificant, as most relevant information is included on Form U-13-60. Cinergy proposes that Form U-13-60, in the modified form described below, be filed with the Commission in connection with its review of cost allocations pursuant to Section 1275(b) of PUHCA 2005. The revised Form U-13-60 should provide the information necessary for the Commission to perform that task, and any additional necessary information could be filed with the Commission on a case-by-case basis. There is thus no reason to require holding companies to file the information specified in Item 8 of Form U5S.

Item 9 of Form U5S requires the filing of information concerning holding company interests in EWGs and FUCOs, in particular, financial information. This filing requirement is related largely to the financing provisions of Sections 32 and 33 of PUHCA 1935 applicable to registered holding companies, in particular Sections 32(h) and 33(c)(2). These provisions have been repealed by PUHCA 2005, and holding companies therefore should not be required to continue filing information relevant to

them. However, Cinergy believes it is appropriate to file information on contracts for non-power goods and services between an EWG or FUCO and an affiliate that is a traditional public utility in the United States with retail or wholesale customers served under cost-based rate regulation.[12] Such information could be included as an exhibit to Form 1.

Item 10 of Form U5S requires the filing of extensive financial information concerning the holding company and its subsidiaries. Cinergy's Form 10-K contains consolidated financial statements for itself, CG&E, and PSI (as well as individual financial statements for ULH&P, Cinergy's remaining principal public utility subsidiary, which itself has no subsidiaries). Preparing individual financial statements for other system subsidiaries, all of which are reflected at a consolidated level in Cinergy's financial statements, is the single most burdensome task in preparing the U5S, in terms of time and expense. The annual preparation and filing of these additional financial statements serves no purpose under PUHCA 2005 and Cinergy strongly urges the Commission to forego any such requirement.

Most of the other information required by Item 10 also is not relevant to the Commission's duties under PUHCA 2005. For example, Form U5S requires as exhibits the following documents for the holding company and each company in which it holds, directly or indirectly a 10 percent or greater voting interest: a copy of the charter, articles of incorporation, trust agreement, voting trust agreement or other fundamental document

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12 In the event that new EWG and/or FUCO determinations will not be made following the date PUHCA 1935 is repealed, Cinergy believes it is appropriate to file information on contracts for non-power goods and services between a company that previously would have qualified as an EWG or FUCO and an affiliate that is a traditional public utility in the United States with retail or wholesale customers served under cost-based rate regulation.

of organization, and a copy of its bylaws, rules and regulations, or corresponding instruments. It is extremely burdensome to assemble this information, and nothing in PUHCA 2005 indicates that filing it annually or otherwise should be required. Cinergy notes that to the extent this information is relevant to jurisdictional rates, it would be available to the Commission or a state commission under the books and records access provisions of PUHCA 2005.

Holding companies also are required to file with respect to each outstanding class of funded debt a copy of the indenture or other fundamental document defining the rights of security holders, and a copy of each contract or other instrument evidencing the liability of the parent holding company or a subsidiary company as an endorser or guarantor of the security.[13] This information was filed to assist the SEC in administering Sections 6, 7, and 12 of PUHCA 1935, which related to securities issuances by registered holding companies and their subsidiaries, as well as intrasystem extensions of credit.[14] These sections have been repealed, and to the extent that their subject matter remains relevant to a Commission inquiry under PUHCA 2005, the holding company Form 10-K provides information comparable to what is found in Form U5S. Therefore, the requirements of Item 10 of Form U5S no longer should apply.[15]

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13 Cinergy notes that, if material, this information is available in Form 10-K.

14 Theses sections also are relevant to tax allocation agreements, which must be filed as Exhibit D to Item 10, and documents filed with Exhibit E, e.g., documents specified in Rule 48(b) relating to loans to employees.

15 The management discussion and analysis report that accompanies the financial statements in a Form 10-K typically provides information to explain, among other things, the amount of affiliated sales by a public utility company in a holding company system. In addition, the account entitled "Receivables" in a public utility balance sheet will contain subheadings entitled "Affiliated Companies" and

II. Other SEC Rules

As noted above, Cinergy's comments on Form U5S underpins its comments on the other SEC rules that the Commission proposes to adopt. Cinergy's comments on these other rules are set forth below.

Rule 1 (17 C.F.R. § 250.1): Rule 1 establishes the basic filing requirements connected with registration as a holding company under PUHCA 1935. It requires new registered holding companies to file a notification of registration on Form U5A. Within 90 days thereafter, new registered holding companies must follow up with a filing of detailed system information on Form U5B. Finally, Rule 1 requires registered holding companies to update their U5B through the annual filing of Form U5S.

Cinergy agrees with the Commission's decision not to "reimpose the registration requirement contained in 17 CFR 250.1" but rather to replace it with "a requirement that all entities falling within the definition of 'holding company' in PUHCA 2005 notify the Commission of their status as a holding company and whether they qualify for exemption pursuant to section 1266 of EPAct 2005." NOPR P. 6, n. 12. However, this intention is inconsistent with the adoption of Rule 1 and its three basic filing requirements. Cinergy has already explained in detail why it believes Form U5S no longer should be filed. Form U5B covers essentially the same information as Form U5S and serves as the initial filing of that information following registration. Holding companies should not be required to file Form U5B for the same reasons they should not be required to file Form U5S.

"Other Accounts and Notes Receivable" that should provide information relevant to a Commission inquiry into intrasystem extensions of credit.

Form U5A is less burdensome than either Form U5B or U5S. It requires submission of the following information for the holding company and each subsidiary company of the holding company: company name, type of company (*i.e.*, corporation, partnership, etc.), state of organization, and type of business. Filing this information goes beyond the Commission's stated intent of simply requiring notification of holding company status and qualification for an exemption pursuant to section 1266 of EPAct 2005. Such a notification can be made through a simple notice filing that does not require a specific form. The notification should not require a listing of all system subsidiaries, including non-utility companies, as required by Form U5A. Holding companies should be required simply to identify themselves, state the basis of their holding company status, *i.e.*, the public utility companies in which they have a direct or indirect voting interest of 10 percent or more, and the basis for any claim to exemption they may wish to assert. Because Rule 1 deals exclusively with the requirement to file Forms U5A, U5B, and U5S, none of which should be adopted, there is no reason to adopt SEC Rule 1 under PUHCA 1935.

Rule 26 (17 C.F.R. § 250.26): Rule 26 establishes certain financial statement and record keeping requirements for holding companies and their subsidiaries. Rule 26(a) requires revision to delete the reference to "registered" holding companies, as the rule would apply to all holding companies not exempt under Section 1266 of EPAct 2005. Consistent with its recommendations concerning Form U5S, Cinergy submits that Rule 26(b), which deals with information to be supplied with Form U5S, should be deleted.

Similarly, Rule 26(c) should not be adopted by the Commission. This provision was adopted by the SEC pursuant to its authority under Section 12(c) and 14 of PUHCA