1935. It imposes specific accounting requirements on a holding company and all of its subsidiaries and regulates the circumstances under which dividends may be paid by subsidiary companies. PUHCA 2005 does not grant the Commission new authority to regulate dividend payments. The Commission has existing authority over dividends paid by utility companies under Section 305 of the FPA and therefore no new rule is required in this area.

Rather than adopting Rule 26(d), which mandates the use of SEC document retention policy, holding companies should have the option of following either SEC or Commission document retention requirements. Cinergy will discuss this issue below in connection with SEC Rule 93.

Cinergy agrees with the adoption of Rule 26 (e) and (f).

Cinergy asserts that Rule 26(g) should not be adopted. This rule is merely a cross reference that is no longer relevant given Cinergy's other comments above. It provides that references in PUHCA 1935 or other SEC rules or regulations to a "uniform system of accounts" are deemed to refer to Rule 26. Cinergy is recommending that the provisions in Rule 26 relating to a uniform system of accounts (that is, Rule 26(b)) not be adopted and therefore this cross reference is not needed.

Rule 27 (17 C.F.R. § 250.27): Cinergy questions the need to retain Rule 27. It specifies systems of accounts for public utility companies under PUHCA 1935 not subject to the Commission's uniform system of accounts or a system of accounts specified by a state utility commission. It is questionable whether currently this rule applies to any companies. In the case of holding companies, it applies only to registered holding companies that also are public utility companies. There are no such companies.

It also is questionable whether there are any public utility companies under PUHCA 1935 that would not be not subject to the Commission's uniform system of accounts or the requirements of a state utility commission.[16]

In addition, the Rule 27 potentially is inconsistent with the waiver of Part 101 of the Commission's regulations commonly received in connection with an authorization to sell power at market-based rates. Rule 27 by its terms would subject to Part 101 any public utility under the FPA that is not required to comply with it. It therefore could be read to undo a Commission waiver of Part 101.

Rule 80 (17 C.F.R. § 250.80): Rule 80 defines the terms "service," "goods," and "construction" as used in SEC rules regulating intrasystem transactions. Cinergy agrees with the adoption of SEC Rule 80 by the Commission. References to Section 13 of PUHCA 1935 should be deleted from that rule, as Section 13 is being repealed.

Rule 93 (17 C.F.R. § 250.93): Rule 93 requires holding company system service companies to adopt the SEC uniform system of accounts found at 17 C.F.R. Part 256 and the document retention policies found at 17 C.F.R. Part 257. Cinergy does not object to the adoption of Rule 93, but believes that service companies should have the option of adopting and exclusively following the Commission's uniform system of accounts and the Commission's document retention policies. Cinergy and certain other registered holding companies have received express SEC authority to adopt and exclusively follow the Commission's system of accounts. Finally, Cinergy notes that the rule should be modified to delete the references to Section 13(b) of PUHCA 1935 and SEC Rule 88, both of which will be repealed.

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16 Rule 27 does not apply to EWGs, which are not public utility companies under PUHCA 1935.

Rule 94 (17 C.F.R. § 250.94): Rule 94 requires system service companies to file a Form U-13-60 annually. Cinergy agrees with the adoption of this rule, but it notes that the rule should be modified to delete the references to Section 13(b) of PUHCA 1935 and SEC Rule 88, both of which will be repealed. In addition, Form U-13-60 should be modified as discussed below.

17 C.F.R. § 259.313: This provision requires holding company system service companies to file a Form U-13-60 annually. Cinergy agrees, in principle, with this requirement. However, Cinergy also wishes to note that the current Form U-13-60 requires companies to file a substantial amount of information that is not relevant to the Commission's duties under PUHCA 2005. Although the Office of Management and Budget estimates that the time needed to complete Form U-13-60 is approximately 13 hours, this estimate does not square with reality. It has been Cinergy's experience that it requires some 200 to 240 hours over 25 to 30 days to complete Form U-13-60. Cinergy proposes that the balance sheet and income statement portions of the Form U-13-60 be retained, but that a number of accounts and schedules not relevant to cost allocation issues be eliminated. The schedules in question are time consuming to prepare and in some cases require invoice level detail to complete. The accounts and schedules that Cinergy proposes should be eliminated are as follows:

Account 920 (Departmental Analysis of Salaries)
Account 923 (Outside Services Employed)
Account 926 (Employee Pensions and Benefits)
Account 930.1 (General Advertising Expenses)
Account 930.2 (Miscellaneous General Expenses)
Account 931 (Rents)
Account 408 (Taxes Other Than Income Taxes)
Account 426.1 (Donations)
Account 426.5 (Other Deductions)
Schedule XIII (Current and Accrued Liabilities)

Finally, Cinergy proposes that the organization chart and the information on methods of allocation required by Form U-13-60 be retained.

17 C.F.R. Part 256: Cinergy agrees with the Commission's proposal to adopt the SEC's regulations concerning the uniform system of accounts for system service companies. However, this system of accounts closely tracks the requirements of Form U-13-60 and therefore includes a number of components that no longer will be relevant following repeal of PUHCA 1935. Cinergy recommends that the Commission only adopt those portions of 17 C.F.R. Part 256 that correspond to the information it recommends be included with Form U-13-60. Most importantly, as mentioned above, system service companies should have the option of adopting the Commission's uniform system of accounts instead of the SEC's.

17 C.F.R. Part 257: Cinergy agrees with the adoption of the records retention requirements found at 17 C.F.R. Part 257. However, Cinergy also believes that to avoid unnecessary burdens, holding companies should have the option of adopting these requirements for the time being or the Commission's record retention requirements found at Part 125 of its regulations. 18 C.F.R. Part 125 (2005). The two sets of requirements are similar in many respects. To the extent the coverage of the SEC requirements is broader than the Commission's, the additional requirements relate largely to securities matters that are no longer relevant under PUHCA 2005. There is no reason that any company that currently follows the Commission's document retention regulations should be required to adopt those found in 17 C.F.R. Part 257. The Commission could reconcile the differences between the two sets of requirements in a subsequent rulemaking.

C. Books and Records Access

The Commission should provide guidance on the requirements set forth in proposed Section 366.2(a) of its regulations. That section requires each holding company and each of its associate companies to maintain

> such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

This open-ended requirement leaves companies without any guidance with respect to the scope or content of their obligation. The Commission should provide some guidance on the types of information, if any, it may need under PUHCA 2005 that goes beyond the information it already collects from utilities. At a minimum, the Commission should clarify that it will initiate a notice-and-comment proceeding before expanding its current information collection under this provision.

D. Cost Allocation Issues

The Commission has invited comments on whether it should adopt an "at-cost" standard to the allocation of costs for non-power goods and services supplied to public utilities or whether the Commission should adopt a standard based on the lower of cost or market prices. Cinergy strongly supports permitting companies to continue to use the SEC at-cost standard that they have been subject to under PUHCA 1935. A number of considerations support this position.

The cost allocation factors contained in the current service agreements of Cinergy's system service company, Cinergy Services, Inc., have been established in cooperation with both the SEC and the Indiana, Kentucky, and Ohio commissions over many years. Those agreements incorporate the at-cost standard and have received State

commission approval. There is no evidence that the application of this standard has led to cross subsidization or other forms of abuse. On the contrary, in the experience of Cinergy, the at-cost standard has served both state and SEC efforts to audit costs and their allocation for ratemaking and other regulatory purposes. In addition, continuing to apply the requirements of these state-approved agreements is consistent with the requirements of Section 1275(c) of EPAct 2005, which specifies that Commission action not affect current state commission authority.

A market test can be difficult to apply for highly specialized goods or services. Often, there is no market for the services supplied by a system service company; determining a market proxy for such services is imprecise at best. Most services are not readily available in the market and, thus, it can be extremely difficult to calculate a market price for such services. None of these difficulties accompany the at-cost standard. The at-cost standard is an appropriate allocation which ensures that the service provider recovers its cost.

As the Commission knows, system service companies are not for profit entities, but rather are operated on a cost basis to provide maximum efficiencies for the system companies they serve. Even though overall a service company's provision of services may be economic (i.e., services are higher than market in some cases and lower than market in others), under the lower of cost or market standard, the service company never has the ability to make up the shortfall associated with providing services below cost. To explain, if the service company's cost to provide a particular service is higher than market, the service company does not recover its cost to provide that service. If the service company's cost to provide a service is lower than market, the service company only

recovers its cost. While the at-cost standard keeps the service company whole, the lower of cost or market can lead only to underrecovery.

With the repeal of FPA Section 318, there is no longer any impediment to the Commission considering in jurisdictional rates costs associated with services provided among affiliates and denying costs deemed imprudent. The issue of cost versus market price was relevant for the Commission primarily as a result of the Ohio Power case.[17] That case involved purchases of coal, a commodity with a readily determinable market price, and preemption through Section 318 of the FPA of Commission authority to disallow certain coal purchases priced at cost. Section 318 of the FPA has been repealed and will no longer constitute a potential impediment to the exercise of the Commission's powers under Sections 205 and 206 of the FPA. Therefore, to the extent that the Commission deems an expenditure made at cost to be imprudent, it will be able to disallow it in a rate proceeding as inconsistent with the requirement that wholesale rates be just and reasonable.

Given the wide-spread success of arrangements based on the at-cost standard and the Commission's broad powers under the FPA, Cinergy submits that there is no reason for a fundamental revision of existing cost allocation practices at this time.

Section 1275(b) of PUHCA 2005 authorizes the Commission to review cost allocations for non-power goods and administrative or management services at the request of a state commission or a holding company system. The Commission should assert its statutory authority to determine cost allocation methodology only in cases where a holding company system or a state commission with jurisdiction over such

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17 *Ohio Power Co. v. FERC*, 954 F.2d 779 (D.C. Cir. 1992), *cert. denied*, 498 U.S. 73 (1992).

company petitions the Commission under Section 1275(b). In such cases, Commission action may be necessary to ensure that the holding company system is subject to consistent requirements among its state jurisdictions and to eliminate the possibility of trapped costs.

The Commission has asked whether a cost allocation agreement for non-power goods and services should be filed with it under Section 205 of the FPA and Section 4 of the NGA. Cinergy believes this should not be required. It would be entirely appropriate to file such an agreement with the Commission as a simple matter of public disclosure, for example as an exhibit to the revised Form 1 discussed above. In addition, filing would be appropriate where the terms of the agreement are relevant to a Commission rate proceeding. Cinergy does not believe there is any reason to file such an agreement separately under Section 205 of the FPA and Section 4 of the NGA. This view is consistent with the basic position of Cinergy that the Commission should, at least initially, permit continuation of existing arrangements approved by the SEC and State commissions. The agreements have been subject to substantial regulatory review, and there is no reason to undertake at this time additional review in a new proceeding.

The Commission notes that Section 1275(b) of PUHCA 2005 provides for Commission review and authorization of cost allocations for non-power goods and services provided by system services companies to public utilities under the FPA but not where such services are provided to gas utility companies under PUHCA 2005 or to natural gas companies. The Commission seeks comments on whether it should recommend to Congress that Section 1275(b) of PUHCA 2005 be clarified to include services provided to these latter companies. Cinergy believes that such a clarification

would be appropriate, as least insofar as holding companies with combined electric utility company and gas utility company systems are concerned. Cost allocations in such systems will affect both types of companies, and inclusion of both in Section 1275(b) therefore can help ensure that a consistent approach is applied throughout the system.

E. Previously Authorized Activities

Section 1271 of EPAct of 2005 continues financing authorizations under PUHCA 1935 existing on the date of enactment of EPAct of 2005. Cinergy recommends that the Commission in its rulemaking make a finding under Section 204 of the FPA authorizing registered holding company public utility subsidiaries to issue securities and assume liabilities following the effective date of PUHCA 2005, provided that they comply with the terms of their then-effective SEC financing authorization. Cinergy recommends that this authorization continue through the later of December 31, 2007 or the date on which the SEC order is set to expire.[18] With the repeal of Section 318 of the FPA, many additional public utilities will become subject to Commission jurisdiction under Section 204. Unless Cinergy's public utility subsidiaries can rely on their current SEC orders, it will be necessary for them to apply immediately for Commission authorization under Section 204 of the FPA. This would create a substantial burden for these companies. Since the requirement also will apply to the public utility subsidiaries of the other 31 registered holding companies, the result could be a surge in Section 204 applications at precisely the time that the Commission is burdened with implementing its new duties under EPAct 2005. Adopting existing SEC orders will help avoid these potential difficulties.

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[18] SEC general financing authorizations under PUHCA 1935 normally are valid for not more than three years.

SEC financing orders under PUHCA 2005 have always had as their primary goal the protection of the financial integrity of holding company system public utility companies. In addition to establishing sound financing parameters for public utility companies, they also have served to prevent financial cross-subsidization to the detriment of system public utility companies. SEC financing authorizations under PUHCA 1935 take into consideration the factors specified in Section 204 of the FPA, which requires that an issuance of securities or assumption of liabilities:

> (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes.[19]

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[19] Section 6 of PUHCA 1935 requires registered holding companies and their subsidiaries to seek SEC approval, unless otherwise exempted by rule or regulation, to issue or sell securities. The SEC interprets this requirement broadly to cover guarantees and other assumptions of liability. Securities issuances and sales must meet the standards set forth in Section 7(c) and (d) of PUHCA 1935.

Section 7(c)(1) prohibits the SEC from authorizing issuances or sales of (1) common stock, (2) bonds, (3) guarantees, or (4) certain certificates unless certain conditions intended to protect investors and consumers are met. Section 7(c)(2) prohibits the issuance or sale of any other type of security unless the proceeds will be used to refund existing debt, finance the business of the applicant as a public utility company, finance the business of an applicant that is neither a holding company or a public utility company, and/or and for urgent corporate purposes. The SEC has interpreted the requirements of Section 7(c)(2) to apply to the securities specified in Section 7(c)(1). These requirements coincide with the requirements of clause (a) of Section 204 set forth above.

If section 7(c) is satisfied, the SEC must make additional findings under Section 7(d). In particular the SEC must find that the proposed security is "reasonably adapted" to the capital structure of the company and the holding company system; the security is "reasonably adapted" to the earning power of the company issuing it; the security is necessary for the "economical and efficient operation" of the company and the holding company system; the fees to be paid with respect to the issuance or sale are reasonable; the risks associated with any guarantee are reasonable; and, the terms and conditions of the issuance or sale of the security are not detrimental to the interests of investors and consumers. These

To the degree it deems necessary, the Commission could condition its acceptance of SEC financing authorizations on specific requirements related to the provisions of FPA Section 204, such as the restrictions on secured and unsecured debt set forth in *Westar Energy, Inc.*, 102 FERC ¶ 61,186 (2003).

Finally, Cinergy notes that the reference to the Public Utility Holding Company Act of 2005 in the first sentence of proposed section 366.5 of its regulations should be changed to the Public Utility Holding Company Act of 1935. This change is consistent with the language of Section 1271(a) of EPAct 2005.

F. Exempt Wholesale Generators

The Commission proposes to cease making case-by-case determinations of EWG status. It states that while PUHCA 2005 preserves the definition of an EWG found in Section 32 of PUHCA, it does not reenact that section, and therefore the "most reasonable interpretation" of the new statute is that Congress "did not intend the Commission to continue to make case-by-case determinations of [EWG] status in the future. . . ." Cinergy does not believe that this is the most reasonable interpretation of the statute for a number of reasons.

First, by preserving the definition of an EWG found in PUHCA 1935, Congress in essence preserved Section 32(a) of that statute. The definition of an EWG set forth in that section contains four basic elements set forth in paragraphs (1) through (4). Section 32(a)(1) defines an EWG, in part, as a company that the Commission determines to be an EWG. Thus the Commission's case-by-case determination process is incorporated directly in the definition, and preservation of the definition also preserves the process.

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requirements coincide with the requirements of both clause (a) and clause (b) of Section 204 set forth above.

The Commission has acknowledged explicitly that "Section 32(a) requires [it] to promulgate rules implementing procedures for determining EWG status. . . ."[20] To state that an EWG is a company that the Commission determines to be an EWG, but that the Commission will make no such determinations going forward is contradictory and reads the definition and its procedural requirements out of the statute.

This leads one to a further contradiction. Failure to make additional EWG determinations in effect reads the exemption from the requirements of Section 1264 of EPAct 2005 (relating to Federal access to books and records) set forth in Section 1266(a) out of the statute. If the Commission does not make new EWG determinations, a company that would qualify for the exemption found in Section 1266(a) today would lose the exemption if it were to acquire a new project through a company that might otherwise qualify for EWG status. Given the dynamic nature of the electric power industry, it is likely that the Section 1266(a) exemption would become a dead letter in short order in the absence of new EWG determinations. Congress would not have gone to the trouble of creating an exemption if it did not believe that the exemption would have ongoing practical significance.

Cinergy notes that a number of states provide exemptions from state law based on EWG status. Failure to make additional EWG determinations would deprive companies of the intended benefits of those laws.[21]

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20 *Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status*, Order No. 550, FERC Statutes and Regulations, Regulations Preambles 1991-1996 ¶ 30,964 at p. 30,767.

21 The following states have statutes that explicitly create exemptions for EWGs: Arkansas, California, Connecticut, Maryland, New Hampshire, and Texas. Minnesota, Nebraska, and New Jersey have statues that create exemptions for

Finally, Cinergy notes that there is some inconsistency between the Commission's approach here and its approach to a related problem in its proposed rules implementing amendments to Section 203 of the FPA.[22] In the present case, the Commission is seeking to read the provisions of Section 32(a) of PUHCA 1935 out of PUHCA 2005, even though Congress explicitly incorporated those provisions into the statute. On the other hand, in its Section 203 notice of proposed rule making, the Commission is proposing to incorporate into amended Section 203(a)(2) of the FPA the definition of an "electric utility company" found in Section 1262(5) of PUHCA 2005, even though Congress did not do so when drafting the definitional provision found in amended FPA Section 203(a)(6).[23] Cinergy does not object to this latter proposal. However, it notes that to the extent it is appropriate to adopt a definition that Congress did not choose to incorporate into a statute, it is even more appropriate to adopt all the elements of a definition that Congress did choose to incorporate into a statute.

Cinergy therefore believes that the Commission should retain Part 365 of its regulations and continue to make EWG determinations based on its existing practice. To the extent that the Commission concludes that EPAct 2005 injects uncertainty into this process, it should recommend technical and conforming amendments to Congress pursuant to Section 1272(2) of EPAct 2005.

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companies that do not engage in retail sales. In these states, EWG status provides conclusive evidence of entitlement to the exemption.

22 *Transactions Subject to FPA Section 203*, 113 FERC ¶ 61, 006 (2005).

23 *Id.* At P. 40.

G. Cross Subsidization and Encumbrances of Utility Assets

The Commission notes that PUHCA 2005 is primarily a "books and records" statute that does not give the Commission new substantive authorities other than the provision of Section 1275 of EPAct 2005, which requires the Commission to review and determine certain cost allocations upon request. The Commission notes its far-reaching substantive powers under the FPA and NGA but asks whether in light of repeal of PUHCA 1935 it should promulgate additional rules or adopt additional policies to protect against inappropriate cross-subsidization or encumbrances of utility assets. Specifically, the Commission asks whether it should issue rules regarding holding company diversification into non-utility businesses and the possible need to modify the Commission's existing cash management rules to include holding companies.

Cinergy believes that there is no need to extend the Commission's current cash management rules to apply to holding companies. In effect, the rules already apply to holding companies. Where a jurisdictional utility is a participant in a cash management arrangement with a holding company, that arrangement must comply with Commission cash management rules and the agreement must be filed. The only "extension" of the rules could be to require a holding company to comply with the rule in a cash management arrangement that involved only non-utility companies. This would be an inappropriate expansion of Commission authority. Otherwise, Cinergy does not believe any other Commission action is required in connection with cross subsidization or encumbrances of utility assets. The Commission's existing powers, in combination with those of the state commissions, are broad and sufficient to deal with these issues. Cinergy is not aware of any related issue on which a general policy determination is

required at this time. The Commission therefore should deal with cross subsidization and encumbrances of utility assets on a case-by-case basis.

Finally, Cinergy believes that rules limiting holding company diversification would be highly inappropriate and beyond the Commission's statutory authority. In repealing PUHCA 1935, and more particularly Section 11(b)(1) of that statute, Congress repealed the investment diversification limitations that have been applicable to registered holding companies. Nothing in PUHCA 2005 suggests an intent to limit or condition this repeal, and therefore Commission rules that would have this effect are contrary to the policy underlying EPAct 2005.

H. Additional Technical or Conforming Amendments

In addition to the corrections regarding EWGs discussed above, the Commission should recommend that Section 1274(a) of PUHCA 2005 be amended to specify that the savings provisions of Section 1271 are effective as of the date EPAct 2005 was enacted. Section 1274(a) states that, except for Section 1272 (which requires the Commission to implement certain rules), PUHCA 2005 takes effect six months after passage of EPAct 2005. Section 1271 permits registered holding companies to rely on SEC orders issued under PUHCA 1935 until PUHCA 2005 becomes effective. The failure of Congress to include a reference to Section 1271 has led some parties to read the statute as, at best, contradictory. Unless the statute is amended to make clear that Section 1271 is effective as of the date EPAct 2005 was enacted, it will remain unclear whether registered holding companies will in fact be entitled to rely on existing SEC orders as contemplated by Section 1271.

V. CONCLUSION

For the foregoing reasons, Cinergy respectfully requests that the Commission adopt the above recommendations.

Respectfully submitted,

/s/ Mike Naeve

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October 14, 2005

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding.

Dated October 14, 2005, at Washington, D.C.

/s/ Paul Silverman

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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

REQUEST OF CINERGY CORP. FOR CLARIFICATION OR IN THE ALTERNATIVE REHEARING

Pursuant to the Federal Energy Regulatory Commission's ("Commission") notice of proposed rulemaking issued on September 16, 2005 ("NOPR") and its final rule issued on December 8, 2005 (the "Final Rule") in the above-captioned docket, as well as Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2005), Cinergy Corp. ("Cinergy") hereby respectfully submits this request for clarification or, in the alternative, rehearing with respect to one issue raised by the Final Rule. Specifically, Cinergy seeks clarification that the at-cost standard for non-power goods and services supplied by centralized service companies will apply both to existing centralized service companies that currently utilize the at-cost standard established by the Securities and Exchange Commission and to similar centralized service companies formed after the effective date of repeal of the Public Utility Holding Company Act of 1935 ("PUHCA 1935"). If the Commission is not able to provide this clarification, Cinergy requests a rehearing to establish that the at-cost standard for non-power goods and services will apply both to existing centralized service companies and centralized service companies formed after the effective date of PUHCA 1935 repeal.

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II. STATEMENT OF ISSUES

1. Cinergy seeks clarification that both existing and newly formed centralized service companies will be allowed to use an at-cost standard for sales of non-power goods and services to regulated affiliates or, in the alternative, Cinergy seeks a rehearing to establish that the at-cost standard will apply to sales of non-power goods and services to regulated affiliates by both existing and newly formed centralized service companies.

III. REQUEST FOR CLARIFICATION OR REHEARING

Cinergy commends the Commission for implementing its new rules under the Public Utility Holding Company Act of 2005 ("PUHCA 2005") in such a short time frame. This task has required the Commission to deal with many complex matters, and the Final Rule represents a major achievement in the Commission's overall task of implementing the electricity title of the Energy Policy Act of 2005. Indeed, Cinergy is in substantial agreement with all of the determinations made by the Commission in the Final Rule and only seeks clarification of one point. Specifically, Cinergy seeks clarification from the Commission that both existing and newly formed centralized service companies will be permitted to use an at-cost standard for sales of non-power goods and services to regulated utility affiliates. Cinergy believes that the Commission intended to take this

position in the Final Rule, but because of an apparent ambiguity in the Final Rule, Cinergy seeks clarification on this point. In the alternative, if the Commission intended that only existing centralized service companies would be allowed to utilize an at-cost standard for the sales in question, Cinergy requests a rehearing and maintains that no distinction should be made between existing and newly formed centralized service companies with respect to entitlement to utilize an at-cost standard.

In the NOPR, the Commission invited comments on whether it should adopt an "at-cost" standard for the allocation of costs for non-power goods and services supplied to public utilities or whether it should adopt a standard based on the lower of cost or market prices.[1] Cinergy supported the use of the at-cost standard by centralized service companies in such transactions. The Commission determined in the Final Rule that it "will not require traditional, centralized service companies *currently using* the SEC's at-cost standard to comply with the Commission's market standard for their sales of non-fuel, non-power goods and services to regulated affiliates."[2]

As stated, this determination could be read to apply only to the service companies of current registered holding companies rather than to such companies and similar centralized service companies formed after the effective date of PUHCA 1935 repeal. However, Cinergy believes that this was not the Commission's intention. A number of factors support this view.

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1 NOPR at P 15.

2 Final Rule at P 169 (emphasis supplied); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Comments of Cinergy Corp. at p. 3, Docket No. RM05-32-000 (filed Oct. 14, 2005).

First, the Commission stated in the Final Rule that it "will not re-create the PUHCA 1935 distinction between 'exempt' and 'registered' holding companies."[3] All holding companies under PUHCA 2005 will be subject to the same requirements unless they are exempted or the requirements are waived by the Commission. The Commission also determined that service companies in formerly exempt systems would be subject to the same filing requirements as service companies in formerly registered holding companies.[4] This implies that not only will all holding companies be subject to the same standards, so will their centralized service companies. Cinergy believes that these standards should include those used in the pricing of goods and services, which means that service companies of current exempt holding companies should be permitted to use an at-cost standard. If such service companies can use an at-cost standard, newly-formed centralized service companies also should be entitled to use it.

Second, the Commission agreed with various commenters that the "centralized provision of accounting, human resources, legal, tax and other such services benefits ratepayers through increased efficiency and economies of scale" and that "it is frequently difficult to define the market value of the specialized services provided by centralized service companies."[5] In short, the Commission has recognized that centralized service companies can provide benefits for ratepayers and that the at-cost standard is essential to the functioning of these companies. Cinergy does not believe that the Commission intended that only the ratepayers of the current registered holding companies should be

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3 *Id.* at P 10.

4 *Id.* at P 38.

5 *Id.* at P 169.

able to benefit from the economies and efficiencies created by centralized service companies, and therefore it does not believe that the Commission intended that only the service companies of those holding companies would be eligible to use the at-cost standard. Cinergy, of course, acknowledges that all service companies using an at-cost standard would be subject to the same additional requirements and policies applicable in such situations, such as the rebuttable presumption that at-cost pricing is reasonable.

Cinergy has a particular interest in this issue, as it expects that a new centralized system service company will be formed upon completion of its merger with Duke Energy Corporation.[6] This service company would function in a manner similar in all material respects to Cinergy's current system service company, and like the current Cinergy service company, it would work in close cooperation with the state commissions that have jurisdiction over the holding company's regulated public utility company subsidiaries.[7] Because there will be no material differences between Cinergy's current

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6 The Commission recently approved this merger in *Duke Energy Corp.*, 113 FERC ¶ 61,297 (2005).

7 In that regard, as part of the various applications Cinergy filed with the applicable state utility commissions seeking approval of its merger with Duke Energy Corporation, Cinergy also sought approval of an at-cost pricing standard for the new service company. The Public Utilities Commission of Ohio and the Kentucky Public Service Commission, in their orders approving the merger, have approved at-cost pricing for the new service company. Further, the parties to a settlement agreement pending before the Indiana Utility Regulatory Commission have also agreed to at-cost pricing for the new service company. *In re 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*, Case No. 05-732-EL-MER et al., (Finding and Order) (December 21, 2005); *Joint Application of Duke Energy Corporation, Duke Energy Holding Corp., Deer Acquisition Corp., Cougar Acquisition 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 (Order) (November 29, 2005); *Verified Petition of PSI Energy Inc., Concerning (1) Certain Affiliate*

system service company and the proposed new system service company, Cinergy believes that the new company should receive the same treatment from the Commission as that which would apply to Cinergy's current system service company.

IV. CONCLUSION

For the foregoing reasons, Cinergy respectfully requests that the Commission clarify that both existing and newly formed centralized service companies will be allowed to use an at-cost standard for their sales of non-power goods and services to regulated affiliates. If the Commission is not able to provide this clarification, Cinergy requests a rehearing to establish that the at-cost standard will apply to sales of non-power goods and services to regulated affiliates by both existing and newly formed centralized service companies.

Respectfully submitted,

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Transactions, Including Service Agreements, (2) The Sharing of Merger Related benefits with Customers, (3) Deferred Accounting of Certain Merger-Related Costs, (4) Authority to Continue Maintaining Certain Books and Records Outside the State of Indiana and (5) Any and All Other Issues Relating to the Merger Cinergy Corp., The Parent Company of PSI Energy Inc., and Duke Energy Corporation into a new Public Utility Holding Company, Cause No. 42873, (Submission of Settlement Agreement) (December 15, 2005).