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**Securities Act of 1933**  
Sections 3(a)(9) and 4(3)  
Forms S-3, S-4, and S-8  
Rules 144, 145 and 174(b)

**Securities Exchange Act of 1934**  
Sections 13(a) and 15(d)  
Rules 12b-2 and 12g-3

March 30, 2006

Office of the Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Re: Duke Energy Corporation, Duke Energy  
Holding Corp., Cinergy Corp.

Ladies and Gentlemen:

We are writing on behalf of Duke Energy Corporation, a North Carolina corporation ("Duke Energy"), Duke Energy Holding Corp., a Delaware corporation and a wholly-owned subsidiary of Duke Energy ("Duke Energy Holding"), and Cinergy Corp., a Delaware corporation ("Cinergy"), to request the advice of the staff of the Office of the Chief Counsel, Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission" or the "SEC") with respect to a number of succession-related issues under the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), arising out of the pending combination of Duke Energy and Cinergy.

**I. Background**

Duke Energy Holding, Duke Energy, Cinergy, Deer Acquisition Corp., a North Carolina corporation and a wholly-owned subsidiary of Duke Energy Holding, and Cougar Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Duke Energy Holding, have entered into an Agreement and Plan of Merger, dated as of May 8, 2005 (as amended, the "Merger Agreement"), which provides, among other things, that (i) Deer Acquisition Corp. will merge with and into Duke Energy with Duke Energy as the surviving corporation (the "Duke Energy Merger"); (ii) immediately following the Duke Energy Merger, Duke Energy, as a wholly-owned subsidiary of Duke Energy Holding, intends to transfer ownership of Duke Capital LLC, a Delaware limited liability company and a wholly-owned subsidiary of Duke Energy, to Duke Energy Holding and, in connection with such transfer, Duke Energy Holding will cause Duke Energy to convert to a limited liability company pursuant to North Carolina law and will be renamed Duke Power Company LLC (the "Duke Energy Reorganization"); and (iii) following the Duke Energy Reorganization, Cougar Acquisition Corp. will merge with and into Cinergy, with Cinergy as the surviving corporation (the "Cinergy Merger" and, together with the Duke Energy Merger, the "Mergers"). As a result of the Mergers, Duke Energy and Cinergy will become wholly-owned subsidiaries of Duke Energy Holding, and Duke Energy Holding will operate the businesses of Duke Energy and Cinergy. In connection with the Mergers, Duke Energy Holding will change its name to Duke Energy Corporation. The transactions described above are collectively referred to herein as the "Transaction."

**A. Exchange of Shares**

The Merger Agreement contemplates, among other things, that (i) at the effective time of the Duke Energy Merger, each issued and outstanding share of Duke Energy common stock (other than those shares to be canceled and other than dissenting shares), without par value, will be converted into the right to receive one share of Duke Energy Holding common stock, without par value; (ii) at the effective time of the Duke Energy Merger, the aggregate of all shares of the capital stock of Deer Acquisition Corp. issued and outstanding immediately prior to the effective time of the Duke Energy Merger will be converted into 100 shares of common stock of Duke Energy, the surviving corporation in the Duke Energy Merger; (iii) at the effective time of the Cinergy Merger, each issued and outstanding share of Cinergy common stock (other than those shares to be canceled), par value \$0.01, will be converted into the right to receive 1.56 shares of Duke Energy Holding common stock, without par value; and (iv) at the effective time of the Cinergy Merger, the aggregate of all shares of the capital stock of Cougar Acquisition Corp. issued and outstanding immediately prior to the effective time of the Cinergy Merger will be converted into 100 shares of common stock of Cinergy, the surviving corporation in the Cinergy Merger. The Transaction does not involve the issuance of treasury shares, if

any, held by Duke Energy and Cinergy. Both the Duke Energy common stock and the Cinergy common stock are registered under Section 12(b) of the Exchange Act and are currently listed on the New York Stock Exchange (the "NYSE"). We have been advised by each of Duke Energy and Cinergy that it is current in its respective reporting obligations under Section 13 of the Exchange Act and that each of them is an "accelerated filer" as such term is defined in Exchange Act Rule 12b-2.

Duke Energy Holding, through its ownership of all the outstanding capital stock and other voting securities of Duke Energy and Cinergy upon completion of the Mergers, will indirectly succeed to substantially all of the businesses, assets and liabilities of Duke Energy and Cinergy and will have no other material businesses, assets or liabilities. Duke Energy Holding's consolidated financial statements subsequent to the completion of the Mergers will be substantially the same as those of Duke Energy and Cinergy combined, but will reflect the impact of purchase accounting adjustments resulting from the Transaction. The Transaction will be accounted for as a purchase of Cinergy by Duke Energy Holding. Based on the number of shares of Duke Energy and Cinergy outstanding on May 6, 2005, the last trading day prior to the public announcement of the Mergers, pursuant to the terms of the Merger Agreement, approximately 316 million shares of Duke Energy Holding common stock will be issued to the former shareholders of Cinergy and approximately 940 million shares of Duke Energy Holding common stock will be issued to the former shareholders of Duke Energy. It is anticipated that, prior to the completion of the Mergers, the Duke Energy Holding common stock to be issued in connection with the Mergers and reserved for issuance thereafter will have been approved for listing on the NYSE, subject to official notice of issuance.

A registration statement on Form S-4 (Commission File No. 333-126318) relating to the Duke Energy Holding common stock to be issued in connection with the Mergers (the "Registration Statement") was originally filed on July 1, 2005 and was declared effective by the Commission on February 2, 2006. A Joint Proxy Statement/Prospectus in connection with a special meeting of shareholders of Duke Energy and a special meeting of the shareholders of Cinergy each to be held on March 10, 2006 to consider and vote upon the proposals to approve and adopt the Merger Agreement was first mailed to the shareholders of each of Duke Energy and Cinergy on February 3, 2006. The shareholders of each of Duke Energy and Cinergy approved the Merger Agreement and the Mergers at special meetings of their respective shareholders on March 10, 2006. On March 24, 2006, the parties received the last of the regulatory approvals required to consummate the Mergers and the other transactions contemplated by the Merger Agreement. The Transaction is currently expected to be consummated on or about April 1, 2006.

B. Employee Benefit Matters

Shares of Duke Energy common stock and other employee benefit plan interests of Duke Energy are registered on Form S-8 for distribution pursuant to certain stock options (the "Duke Energy Employee Stock Options"), restricted stock (the "Duke Energy Restricted Stock"), and equity or equity-based awards (the "Duke Energy Awards," and together with the Duke Energy Employee Stock Options and the Duke Energy Restricted Stock, the "Duke Energy Existing Plans"). Shares of Cinergy common stock and other employee benefit plan interests of Cinergy are registered on Form S-8 for distribution pursuant to certain stock options (the "Cinergy Employee Stock Options"), restricted stock (the "Cinergy Restricted Stock"), and equity or equity-based awards (the "Cinergy Awards," and together with the Cinergy Employee Stock Options and the Cinergy Restricted Stock, the "Cinergy Existing Plans"). The Cinergy Existing Plans and the Duke Energy Existing Plans are collectively referred to herein as the "Existing Plans."

Certain rights under the Existing Plans that are outstanding upon consummation of the Mergers will become rights with respect to Duke Energy Holding common stock or other participation interests, and Duke Energy Holding will assume all obligations with respect to such rights, other than certain rights that are exempt from registration requirements, in accordance with the terms of the Existing Plans pursuant to which they were issued and the agreements by which they are evidenced. Duke Energy Holding will authorize conforming amendments necessary to reflect the assumption of such Existing Plans and, in certain cases, the extension of such plans to employees of Duke Energy Holding and its subsidiaries. The Existing Plans that will survive the consummation of the Mergers are referred to herein as the "Duke Energy Holding Plans."

Upon completion of the Mergers, each outstanding Duke Energy Employee Stock Option, whether vested or unvested, shall be converted into an option to acquire, on the same terms and conditions as were applicable under such Duke Energy Employee Stock Option after taking into account the Transaction, the same number of shares of Duke Energy Holding common stock at the same price per share of Duke Energy Holding common stock (each, as so adjusted, a "Duke Energy Adjusted Option"). Each outstanding Cinergy Employee Stock Option, 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 Transaction), a number of shares of Duke Energy Holding common stock equal to the number of shares of Cinergy common stock subject to such Cinergy Employee Stock Option immediately before the effective time of the Cinergy Merger multiplied by 1.56 (rounded to the nearest whole share) at a price per share of Duke Energy Holding common stock equal to the price per share under the Cinergy Stock Option divided by 1.56 (rounded to the nearest cent) (each

as so adjusted, a "Cinergy Adjusted Option," and together with the Duke Energy Adjusted Options, the "Adjusted Options").

In addition, upon completion of the Mergers, each share of Duke Energy Restricted Stock shall be converted into a restricted share of Duke Energy Holding common stock, on the same terms and conditions as were applicable to such Duke Energy Restricted Stock after taking into account the Transaction (the "Duke Energy Adjusted Restricted Stock"). Each share of Cinergy Restricted Stock shall be converted into a number of restricted shares of Duke Energy Holding common stock equal to the number of restricted shares of Cinergy common stock multiplied by 1.56, on the same terms and conditions as were applicable to such Cinergy Restricted Stock, including vesting (taking into account any acceleration of vesting that may occur as a result of the Transaction) (the "Cinergy Adjusted Restricted Stock," and together with the Duke Energy Adjusted Restricted Stock, the "Adjusted Restricted Stock").

Furthermore, upon completion of the Mergers, each outstanding Duke Energy Award, whether vested or unvested as of immediately prior to the effective time of the Duke Energy Merger, shall be converted into an equity or equity-based award in respect of the same number of shares of Duke Energy Holding common stock, on the same terms and conditions as were applicable to such Duke Energy Award after taking into account the Transaction (the "Duke Energy Adjusted Awards"). Each outstanding Cinergy Award, whether vested or unvested, as of immediately prior to the effective time of the Cinergy Merger shall be converted into an equity or equity-based award in respect of a number of shares of Duke Energy Holding common stock equal to the number of shares of Cinergy Common Stock represented by such Cinergy Award multiplied by 1.56, on the same terms and conditions as were applicable to such Cinergy Award, including vesting (taking into account any acceleration of vesting that may occur as a result of the Transaction) (the "Cinergy Adjusted Awards" and together with the Duke Energy Adjusted Awards, the "Adjusted Awards").

C. Duke Energy Convertible Notes

As of the date hereof, Duke Energy has one outstanding series of publicly held convertible securities (the "Duke Energy Convertible Notes"), convertible into shares of Duke Energy common stock. The Duke Energy Convertible Notes are not listed on any exchange and such series is held by less than 300 holders of record as of both January 1, 2006 and the date of this letter. In connection with the Transaction, Duke Energy Holding intends, to the extent such Duke Energy Convertible Notes are still outstanding upon effectiveness of the Mergers, to execute contemporaneously with the effectiveness of the Mergers, supplemental indentures, pursuant to which, among other things, Duke Energy Holding will fully and unconditionally guarantee (the "Guarantees") the due and punctual payment of the principal of (and premium, if any) and interest on the Duke

Energy Convertible Notes. As required by the terms of the existing indenture, the supplemental indentures will also provide that the Duke Energy Convertible Notes will be convertible into shares of Duke Energy Holding common stock at the rate of one share of Duke Energy Holding common stock for each share of Duke Energy common stock into which the Duke Energy Convertible Notes were convertible immediately prior to the completion of the Mergers.

## II. Requests

We request your confirmation that the Staff would not raise any objection if Duke Energy Holding, Duke Energy and Cinergy take the actions or proceed under the assumptions set forth below.

### A. Availability of Rule 12g-3; Status as an "Accelerated Filer"

Duke Energy Holding requests that the Staff confirm that, upon completion of the Mergers, the Duke Energy Holding common stock will be properly registered under Section 12(b) of the Exchange Act in accordance with Rule 12g-3 under the Exchange Act without the need to file a registration statement on Form 10 or Form 8-A, and that Duke Energy Holding may fulfill the requirements of Rule 12g-3 under the Exchange Act by indicating that the Duke Energy Holding common stock is registered under Section 12(b) of the Exchange Act on a Form 8-K filed in connection with the Mergers and by filing the annual reports as may be required pursuant to Rule 12g-3(g) under the Exchange Act. Further, Duke Energy Holding requests that the Staff confirm that Duke Energy Holding will be, upon consummation of the Transaction, an "accelerated filer" as such term is defined under Rule 12b-2 under the Exchange Act.

### B. Availability of Form S-8

Duke Energy Holding requests that the Staff confirm that Duke Energy Holding may, prior to the filing of its initial Annual Report on Form 10-K, use Form S-8 or post-effective amendments to the Registration Statement (assuming a sufficient number of shares are included in the Registration Statement) to register the securities issuable pursuant to certain of the Duke Energy Holding Plans under the Securities Act.

### C. Availability of Forms S-3, S-4 and S-8 Generally

Duke Energy Holding also requests that the Staff confirm that, upon completion of the Mergers, Duke Energy Holding may include the prior activities and status of Duke Energy and Cinergy in determining whether Duke Energy Holding meets the eligibility requirements of Forms S-3, S-4, and S-8.

D. Availability of Rules 144 and 145

Duke Energy Holding requests that the Staff confirm that, for purposes of Rules 144 and 145 under the Securities Act, Duke Energy Holding, upon completion of the Mergers, may include the prior reporting history of Duke Energy and Cinergy in determining whether Duke Energy Holding has complied with the public information requirements of Rule 144(c)(1) under the Securities Act, including for purposes of its satisfaction of Rule 145(d)(1), and that Duke Energy Holding's financial information and publicly available information will satisfy the obligations with respect to Duke Energy and Cinergy set forth in Rule 144(c) under the Securities Act.

E. Section 4(3) Prospectus Delivery Requirement and Rule 174(b)

Duke Energy Holding requests that the Staff confirm that, in accordance with Rule 174(b) under the Securities Act, Duke Energy Holding need not comply with the prospectus delivery requirements of Section 4(3) of the Securities Act.

F. Availability of Section 3(a)(9) Exemption

Duke Energy Holding requests that the Staff confirm, based on our opinion that such exemption is available, that the shares of Duke Energy Holding common stock issuable upon conversion of the Duke Energy Convertible Notes after completion of the Mergers may be issued without registration under the Securities Act pursuant to the exemption provided by Section 3(a)(9) of the Securities Act.

III. Discussion

A. Availability of Rule 12g-3; Continuation of "Accelerated Filer" Status

Duke Energy Holding requests that the Staff confirm that the Duke Energy Holding common stock issued to shareholders of Duke Energy and Cinergy upon completion of the Mergers shall be deemed registered under Section 12(b) of the Exchange Act in accordance with Rule 12g-3(c) under the Exchange Act, and that Duke Energy Holding may fulfill the requirements of Rule 12g-3 under the Exchange Act by indicating that the Duke Energy Holding common stock is registered under Section 12(b) of the Exchange Act on a Form 8-K filed in connection with the Mergers and by filing the annual reports as may be required pursuant to Rule 12g-3(g) under the Exchange Act.<sup>1</sup>

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<sup>1</sup> We note that Duke Energy filed its Annual Report on Form 10-K for the year ended December 31, 2005 on March 6, 2006 and Cinergy filed its Annual Report on Form 10-K for the year ended December 31, 2005 on March 2, 2006.

Rule 12g-3(c) under the Exchange Act provides that where, in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered pursuant to Section 12 of the Exchange Act, such as the Duke Energy Holding common stock, are issued to the holders of classes of securities of two or more other issuers that are each registered pursuant to Section 12 of the Exchange Act, such as Duke Energy common stock and Cinergy common stock (both registered under Section 12(b) of the Exchange Act), the class of securities so issued shall be deemed registered under the same paragraph of Section 12 of the Exchange Act. Rule 12g-3(f) provides that the issuer of the securities deemed registered under Section 12 of the Exchange Act pursuant to Rule 12g-3(c) shall indicate on the Form 8-K report filed in connection with the succession the paragraph of Section 12 of the Exchange Act under which such class of securities is deemed registered.

The definition of "succession" in Rule 12b-2 under the Exchange Act contemplates the direct acquisition of the assets comprising a going business by merger. We have assumed that the merger process used to effect the Mergers will not prevent Duke Energy Holding from being deemed to have made a "direct acquisition" of the businesses of Duke Energy and Cinergy and thus to be a successor to such companies. The Staff has taken similar positions with respect to succession in the context of transactions similar to the Transaction. *See Royal Dutch Petroleum Company, N.V.* (available May 17, 2005); *Friedman, Billings, Ramsey Group Inc.* (available March 25, 2003); *AT&T Comcast Corporation* (available November 18, 2002); *ConocoPhillips* (available August 23, 2002); *Kerr-McGee Corporation* (available July 31, 2001); *AOL Time Warner Inc.* (available November 15, 2000); *NSTAR* (available July 29, 1999); *Central Maine Power Company* (available October 28, 1998); *Central Hudson Gas & Electric Company* (available September 16, 1998). Accordingly, we are of the opinion that, upon issuance of the Duke Holding common stock and the filing of the Form 8-K described above, Duke Energy Holding common stock will be deemed registered under Section 12(b) of the Exchange Act.

Duke Energy Holding further requests that the Staff confirm that, upon consummation of the Transaction, Duke Energy Holding, as the successor to Duke Energy and Cinergy, will inherit Duke Energy's and Cinergy's status as an "accelerated filer," as such term is defined in Rule 12b-2 under the Exchange Act. The Staff has taken this position on prior occasions with respect to successor registrants. *See Aether Systems, Inc.* (available April 26, 2005); *Matria Healthcare, Inc.* (available February 10, 2005); *Johnson Controls, Inc.* (available January 28, 2005).

In accordance with previous no-action positions taken by the Staff, Duke Energy Holding plans to include in a Form 8-K filed in connection with the Mergers a statement that the Duke Energy Holding common stock being issued in connection therewith is



registered under Section 12(b) of the Exchange Act. We believe that upon completion of the Mergers and the filing of such Form 8-K, Duke Energy Holding common stock will be properly registered under Section 12(b) of the Exchange Act without the need to file a registration statement on Form 10 or Form 8-A.

B. Availability of Form S-8

Duke Energy Holding intends to file registration statements on Form S-8 or post-effective amendments to the Registration Statement (assuming a sufficient number of shares are included in the Registration Statement) to register the securities issuable pursuant to certain of the Duke Energy Holding Plans. In order for such Duke Energy Holding Plans to be operational upon completion of the Mergers, Duke Energy Holding, subject to a favorable response to this letter, intends such registration statements or post-effective amendments to be filed and to become effective prior to or upon completion of the Mergers and prior to the filing by Duke Energy Holding of its initial Annual Report on Form 10-K.

As stated above, both Duke Energy common stock and Cinergy common stock and other participation interests are registered on Form S-8 for distribution pursuant to the Existing Plans. All options, rights and benefits granted under the Existing Plans will become options, rights and benefits with respect to Duke Energy Holding common stock and the Existing Plans will be assumed, effective upon the effectiveness of the Mergers, as the Duke Energy Holding Plans, as described above.

The Staff has previously taken the position that a successor issuer may fulfill registration requirements with respect to employee stock option, restricted stock and similar benefit plans by filing a registration statement with respect thereto prior to or following the completion of the succession transaction. *See Friedman, Billings, Ramsey Group Inc., supra; ConocoPhillips, supra; Kerr-McGee Corporation, supra; AOL Time Warner Inc., supra; NSTAR, supra; Science Applications Int'l Corp.* (available August 13, 1997); *Texas Utilities Company* (available June 4, 1997); *Time Warner Inc.* (available October 10, 1996) ("Time Warner III").

In particular, the Staff has taken the position that a successor issuer may register securities issuable pursuant to employee benefit plans on Form S-8, as appropriate, if (i) the opportunity to participate in the plans subject to a Form S-8 registration statement will be offered only to existing, and qualified former, employees of the two companies subject to the transaction and their subsidiaries; and (ii) no securities will be sold or issued pursuant to such registration statements until the effective time of the transaction. *See Friedman, Billings, Ramsey Group Inc., supra; ConocoPhillips, supra; Kerr-McGee Corporation, supra; AOL Time Warner Inc., supra; NSTAR, supra; Science Applications Int'l Corp., supra; Texas Utilities Company; Time Warner III, supra.* Accordingly, Duke Energy Holding will limit the opportunity to participate in the Duke Energy Holding

Plans subject to a Form S-8 registration statement to existing employees and qualified former employees<sup>2</sup> of Duke Energy and Cinergy and their respective subsidiaries. Finally, Duke Energy Holding will not issue or sell any securities pursuant to the Duke Energy Holding Plans under Form S-8 or the Registration Statement prior to the effective time of the Mergers.

In view of the foregoing, including the limitations described above, we request that the Staff confirm that Duke Energy Holding may file registration statements on Form S-8 or post-effective amendments to the Registration Statement (assuming a sufficient number of shares are included in the Registration Statement) to register the securities issuable pursuant to certain of the Duke Energy Holding Plans and allow them to become effective prior to or upon the completion of the Mergers. The Staff has taken this position in other cases involving similarly structured transactions. *See Friedman, Billings, Ramsey Group Inc., supra; ConocoPhillips, supra; Kerr-McGee Corporation, supra; AOL Time Warner Inc., supra; NSTAR, supra; Science Applications Int'l Corp., supra; Texas Utilities Company; Time Warner III, supra.*

C. Availability of Forms S-3, S-4 and S-8 Generally

Duke Energy Holding is also requesting that the Staff confirm that, upon the completion of the Mergers, Duke Energy Holding may include the prior activities and status of Duke Energy and Cinergy in determining whether Duke Energy Holding meets the eligibility requirements of Forms S-3, S-4 and S-8. General Instruction I.A.7(b) to Form S-3 under the Securities Act deems a successor registrant to have met the conditions for eligibility to use Form S-3 set forth in General Instruction I.A.1, 2, 3 and 5 to Form S-3 if all predecessors meet the conditions at the time of succession and the registrant has continued to do so since the succession. Consistent with General Instruction I.A.7(b) to Form S-3, each of Duke Energy and Cinergy currently meets the eligibility conditions of Forms S-3 and S-4 and expects to do so immediately prior to the completion of the Mergers. In addition, any Form S-3 filed by Duke Energy Holding prior to the filing of its initial Annual Report on Form 10-K will incorporate by reference documents of the predecessor companies containing all information required by

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<sup>2</sup> General Instruction A.1(a) to Form S-8. Former employees of Duke Energy and Cinergy and their subsidiaries who are continuing participants in the Existing Plans ("qualified former employees") will be afforded the same opportunity under the Duke Energy Holding Plans to exercise employee benefit plan stock options, to subsequently sell the securities and to acquire Duke Energy Holding securities pursuant to the terms of the Existing Plans. Pursuant to General Instruction A.1(a)(3), such persons are within the Form S-8 definition of employees, and references herein to "employees" include these persons. *See, e.g., Friedman, Billings, Ramsey Group Inc., supra; ConocoPhillips, supra; AOL Time Warner Inc., supra; Science Applications Int'l Corp., supra.*

Regulation S-X. See *Friedman, Billings, Ramsey Group Inc., supra*; *ConocoPhillips, supra*.

Accordingly, we are of the opinion that after the completion of the Mergers Duke Energy Holding may take into account the activities and status of Duke Energy and Cinergy prior to the completion of the Mergers in determining whether Duke Energy Holding meets the eligibility conditions of Form S-3, and in determining whether Duke Energy Holding "meets the requirements for use of Form S-3" as such phrase is used in the General Instructions of Form S-4 and "satisfies the registrant requirements for use of Form S-3" as such phrase is used in the General Instructions of Form S-8 and, assuming Duke Energy Holding meets all of the requirements for the use of Form S-3, Duke Energy Holding will be eligible immediately after the completion of the Mergers to use Forms S-3 and S-4. The Staff has taken similar positions with respect to satisfaction of the eligibility conditions of Forms S-3 and S-4 in the context of transactions similar to the Transaction. See *Friedman, Billings, Ramsey Group Inc., supra*; *ConocoPhillips, supra*; *Kerr-McGee Corporation, supra*; *AOL Time Warner Inc., supra*; *NSTAR, supra*; *Texas Utilities Company, supra*.

Similarly, it is our opinion that Duke Energy Holding, upon completion of the Mergers, will be entitled to rely on the prior activities and Exchange Act reports of Duke Energy and Cinergy in determining whether it shall be deemed to have met the requirements of General Instruction A to Form S-8. We note, as discussed above, that the Staff has on numerous occasions permitted a holding company to file registration statements on Form S-8 or post-effective amendments to a Form S-4 following a succession transaction to register shares to be issued pursuant to assumed employee benefit plans. See, e.g., *News Corporation Limited and News Corporation, Inc., supra*; *Friedman, Billings, Ramsey Group Inc., supra*; *ConocoPhillips, supra*; *Kerr-McGee Corporation, supra*; *AOL Time Warner Inc., supra*; *NSTAR, supra*.

D. Availability of Rules 144 and 145

Rules 144 and 145 under the Securities Act provide a safe harbor exemption from the registration requirements of the Securities Act for the sale of "restricted" securities and the sale of securities by or for the account of "affiliates" of an issuer, provided certain conditions set forth in the rules are satisfied. Rule 144(c) under the Securities Act requires that current public information be available with respect to an issuer at the time of a transfer of securities pursuant to such rule. In furtherance thereof, Rule 144(c)(1) under the Securities Act requires that the issuer either (i) have securities registered pursuant to Section 12 of the Exchange Act, have been subject to the reporting requirements of Section 13 of the Exchange Act for a period of at least 90 days preceding the sale of securities and have filed all the reports required to be filed thereunder for the 12 months preceding such sale or (ii) have securities registered pursuant to the Securities Act, have been subject to the reporting requirements of Section 15(d) of the Exchange

Act for a period of at least 90 days immediately preceding the sale of securities and have filed all the reports required to be filed thereunder for the 12 months preceding such sale. Finally, Rule 145(d)(1) under the Securities Act requires that the issuer comply with the public information requirements under Rule 144(c) under the Securities Act.

Duke Energy Holding hereby requests that the Staff confirm that, for purposes of Rules 144 and 145 under the Securities Act, Duke Energy Holding may include the prior reporting history of Duke Energy and Cinergy in determining whether it has complied with the public information requirements of Rule 144(c)(1) under the Securities Act, including for purposes of its satisfaction of Rule 145(d)(1), and that Duke Energy Holding's publicly available information and financial information, to the extent it is required, will satisfy the obligations with respect to Duke Energy and Cinergy set forth in Rule 144(c) under the Securities Act. We believe these requests are appropriate because Duke Energy Holding will, on a consolidated basis, have the same assets, businesses and operations as Duke Energy and Cinergy prior to the completion of the Mergers and will be the successor to Duke Energy and Cinergy. Each of Duke Energy and Cinergy has been subject to, and (we have been advised) has complied with, the reporting requirements of Section 13 of the Exchange Act for a period significantly in excess of the prior 12 months. *See Royal Dutch Petroleum Company, N.V., supra; Friedman, Billings, Ramsey Group Inc., supra; AT&T Comcast Corporation, supra; ConocoPhillips, supra; Kerr-McGee Corporation, supra; AOL Time Warner Inc., supra; NSTAR, supra.*

E. Section 4(3) Prospectus Delivery Requirement and Rule 174(b)

Rule 174(b) under the Securities Act provides that no prospectus need be delivered pursuant to Section 4(3) of the Securities Act if the issuer is a reporting company under the Exchange Act immediately prior to the filing of the registration statement. As noted earlier, Duke Energy and Cinergy are reporting companies under the Exchange Act. Because Duke Energy Holding will, immediately after the completion of the Mergers, have, on a consolidated basis, the same assets, liabilities, businesses and operations that Duke Energy and Cinergy had, on a consolidated basis, immediately before the completion of the Mergers, and will be the successor-in-interest to Duke Energy and Cinergy, it is our opinion that Duke Energy Holding should be exempt from the prospectus delivery requirements of Section 4(3) of the Securities Act by reason of Rule 174(b). The Staff has taken similar positions with respect to Section 4(3) in the context of transactions similar to the Transaction. *See Royal Dutch Petroleum Company, N.V., supra; Friedman, Billings, Ramsey Group Inc., supra; AT&T Comcast Corporation, supra; ConocoPhillips, supra; Kerr-McGee Corporation, supra; AOL Time Warner Inc., supra; NSTAR, supra.*

F. Availability of Section 3(a)(9) Exemption

The issuances of shares of Duke Energy Holding common stock upon conversion of the Duke Energy Convertible Notes will constitute "sales" under Section 2(a)(3) of the Securities Act. However, as to such issuances upon conversion, Section 3(a)(9) of the Securities Act provides an exemption from registration for "any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange." Under Section 2(a)(1) of the Securities Act, the term "security" is defined to include the guarantee of any other security. Consequently, the Guarantees of Duke Energy Holding relating to the Duke Energy Convertible Notes will be securities issued by Duke Energy Holding. Thus, the essence of the conversion is the exchange of such Guarantees for shares of Duke Energy Holding common stock. Such transactions are exchanges of Duke Energy Holding securities for other Duke Energy Holding securities where no commission or other remuneration is paid or given for soliciting such exchanges.

In the past, the Staff has taken a no-action position on the basis of Section 3(a)(9) in situations involving guaranteed securities that are similar to the situation presented in this letter. See *Weatherford International Inc.* (available June 25, 2002); *Nabors Industries, Inc.* (available April 29, 2002); *Kerr-McGee Corporation, supra*; *World Access, Inc.* (available October 28, 1998); *Time Warner III, supra*; *FHC-CompCare, Inc.*, (available October 12, 1989); *Saatchi & Saatchi* (available May 18, 1989); *Daisy Systems Corporation* (available April 10, 1989). In taking such a position, the Staff has noted that (i) the indentures pursuant to which the convertible securities were issued did not require the issuer to, and the issuer did not, solicit the consent or vote of the holders of the convertible securities with respect to the subject transaction, the guarantee of the convertible securities or the adjustment of the conversion feature; (ii) the indenture under which the convertible securities were issued permitted the issuer and the trustee to execute a supplemental indenture to guarantee the convertible securities without the consent or vote of the holders of the convertible securities; and (iii) no commission or other remuneration was paid or given, directly or indirectly, in connection with the conversion of the convertible securities. See *FHC-CompCare, Inc., supra*.

We note that the indenture pursuant to which the Duke Energy Convertible Notes were issued does not require, and neither Duke Energy Holding nor Duke Energy will solicit, the consent or vote of the holders of the Duke Energy Convertible Notes with respect to the Transaction, the Guarantees of the Duke Energy Convertible Notes or the adjustment of the conversion features of such securities, including with respect to the substitution of Duke Energy Holding common stock for Duke Energy common stock issuable upon the conversion of the Duke Energy Convertible Notes. Such indenture permits a supplemental indenture for the Guarantees to be executed by Duke Energy Holding, the relevant trustee and Duke Energy without the consent or vote of the holders

of the Duke Energy Convertible Notes. Finally, no commission or other remuneration will be paid or given, directly or indirectly, to any person in connection with the Guarantees thereof or the conversion thereof into Duke Energy Holding common stock.

As a practical matter, the holders of the Duke Energy Convertible Notes will look to the credit quality of Duke Energy Holding in evaluating the Duke Energy Convertible Notes. Consequently, the holders of the Duke Energy Convertible Notes will regard the substance of their investments to be in the Guarantees related to the Duke Energy Convertible Notes and will regard the exchanges of such Guarantees for shares of Duke Energy Holding common stock as the substance of their conversion rights. In summary, the holders of the Duke Energy Convertible Notes properly have the same expectations, and for purposes of Section 3(a)(9) should be treated in the same manner, as would holders of securities of Duke Energy Holding that are convertible into shares of Duke Energy Holding common stock.

Accordingly, it is our opinion that the shares of Duke Energy Holding common stock issuable upon conversion of the Duke Energy Convertible Notes after completion of the Mergers may be issued without registration under the Securities Act pursuant to the exemption provided by Section 3(a)(9) of the Securities Act.

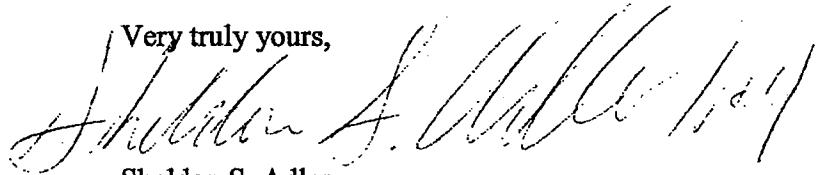
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**IV. Conclusion**

On behalf of Duke Energy Holding Corp., Duke Energy Corporation and Cinergy Corp., we respectfully request the concurrence of the Staff in our conclusion for each of the requests set forth in this letter. In drawing our conclusions and expressing our opinions set forth above, we have relied in part upon requests for no-action letters and/or interpretive opinions, and responses of the Staff to such requests, in reference to transactions that were substantially similar to the Transaction, including the requests for no-action letters and/or interpretive opinions cited herein. If you require any further information, please contact the undersigned at (212) 735-2136. If your conclusions should differ from our own, we would appreciate it if you would contact the undersigned prior to making any written response to this letter so that we may be given the opportunity to clarify our views.

Thank you for your attention to this matter. In accordance with Release No. 33-6269, seven additional copies of this letter are enclosed. Please acknowledge receipt of this letter and its enclosures by date-stamping the enclosed receipt copy and returning it in the stamped, self-addressed envelope attached hereto.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sheldon S. Adler", with a date "1/24" written at the end of the signature.

Sheldon S. Adler