

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF PSI ENERGY, INC.)
CONCERNING: (1) CERTAIN AFFILIATE)
TRANSACTIONS, INCLUDING SERVICE)
AGREEMENTS, (2) THE SHARING OF MERGER-)
RELATED BENEFITS WITH CUSTOMERS, (3))
DEFERRED ACCOUNTING OF CERTAIN)
MERGER-RELATED COSTS, (4) AUTHORITY TO)
CONTINUE MAINTAINING CERTAIN BOOKS)
AND RECORDS OUTSIDE THE STATE OF)
INDIANA, AND (5) ANY AND ALL OTHER ISSUES)
RELATING TO THE MERGER OF CINERGY)
CORP., THE PARENT COMPANY OF PSI)
ENERGY, INC., AND DUKE ENERGY)
CORPORATION INTO A NEW PUBLIC UTILITY)
HOLDING COMPANY)

CAUSE NO. 42873

APPROVED: MAR 15 2006

BY THE COMMISSION:

David E. Ziegner, Commissioner
Scott R. Storms, Chief Administrative Law Judge

On June 15, 2005, PSI Energy, Inc. ("Petitioner" or "PSI") filed a Petition initiating this Cause with the Indiana Utility Regulatory Commission ("IURC" or "Commission"). In its Petition PSI sought the following relief relating to the impending merger ("Merger") of Cinergy Corp. ("Cinergy"), the parent company of PSI, and Duke Energy Corporation ("Duke"): 1) approval to share a portion of net Merger savings with its retail electric customers, and to defer certain Merger-related costs; 2) approval of new service agreements and other affiliate agreements; 3) opening a sub-docket to consider revisions to PSI's Affiliate Guidelines; 4) approval for PSI to continue to maintain certain books and records outside of the State of Indiana; and, 5) a finding that the Merger will not adversely impact PSI's customer service, reliability, rates, financial integrity, or other relevant performance.

On July 1, 2005 and on October 13, 2005, by docket entries, the Presiding Officers advised the parties that the Commission had designated certain members of its technical staff as Testimonial Staff ("IURC Testimonial Staff") for purposes of this proceeding pursuant to Ind. Code § 8-1-1-5(b). The following parties petitioned to intervene in this proceeding, which petitions were granted by the Presiding Officers: International Brotherhood of Electrical Workers, Local Union No. 1393 ("IBEW"); Wabash Valley Power Association, Inc. ("WVPA"); Steel Dynamics, Inc. ("SDI"); Nucor Corporation ("Nucor"); Hoosier Rural Electric Cooperative, Inc. ("Hoosier"); Citizens Acton Coalition of Indiana, Inc. ("CAC"); and PSI-Industrial Group ("PSI-IG").

On August 24, 2005, the Commission issued a Prehearing Conference Order in this matter in which it approved an agreed upon procedural schedule for the prefilings of evidence and

the holding of an Evidentiary Hearing in this Cause. On December 8, 2005, prior to the Evidentiary Hearing, counsel for the IURC Testimonial Staff filed a *Notice of Settlement in Principle and Joint Motion to Suspend and Reset Procedural Schedule* ("Notice") in this proceeding. On December 8, 2005, the Presiding Officers issued a Docket Entry suspending the current procedural schedule and setting December 9, 2005 as an Attorneys' Conference to consider the proposed procedural schedule in the Notice.

On December 15, 2005, PSI filed a Settlement Agreement ("Settlement Agreement") between PSI, the IURC Testimonial Staff, the Office of Utility Consumer Counselor ("OUCC") and PSI-IG (collectively referred to as the "Settling Parties") with the Commission. The Settlement Agreement completely resolves all issues among the Settling Parties in this proceeding.¹

A public Evidentiary Hearing in this proceeding was held beginning on January 20, 2006, at 10:30 a.m., EST, in Conference Center #32 in the Indiana Government Center South, Indianapolis, Indiana, and continued thereafter on January 24-26, 2006. PSI, OUCC, PSI-IG, CAC, Hoosier, Nucor, and IURC Testimonial Staff appeared and participated at the Evidentiary Hearing. No other persons or entities appeared or participated at the Evidentiary Hearing. Members of the general public were present during the Evidentiary Hearing.

At the Evidentiary Hearing, PSI offered the initial testimony and exhibits of James E. Rogers, Richard J. Osborne, Thomas J. Flaherty, Kay Pashos, John C. Procario, Lynn J. Good, Wendy L. Aumiller, Steven M. Fetter, Barry F. Blackwell and John P. Steffen. Hoosier offered the initial testimony of Thomas L. Bernardi. CAC offered the initial testimony and exhibits of Robert M. Fagan. PSI also offered the rebuttal testimony and exhibits of Thomas J. Flaherty, Kay Pashos, John C. Procario, Steven M. Fetter, Barry F. Blackwell and John P. Steffen. PSI offered the settlement supporting testimony and exhibits of Kay Pashos, John C. Procario, and John P. Steffen. OUCC offered the testimony of Robert M. Endris supporting the Settlement Agreement. CAC offered the settlement opposing testimony and exhibits of Robert M. Fagan. Finally, PSI offered the settlement supporting rebuttal testimony of Kay Pashos, Wendy L. Aumiller and Barry F. Blackwell. The IURC Testimonial Staff supported the settlement supporting testimony and exhibits offered by PSI and the OUCC. No other party offered or sponsored any other witnesses at the Evidentiary Hearing in this proceeding. At the close of the record, the parties were authorized to file proposed orders and briefs in support, as well as exceptions to proposed orders and reply briefs, in accordance with a procedural schedule established by the Presiding Officers.

The Presiding Commissioner and Chief Administrative Law Judge attended all of the Evidentiary Hearings in this proceeding and have thus observed the demeanor and credibility of the witnesses. This Commission has considered the evidence presented herein, including the Settlement Agreement, in making the findings and conclusions in this Order. Based on the applicable law and evidence presented herein, and being duly advised, this Commission now finds as follows:

¹ While IBEW, WVPA, Hoosier, CAC, Nucor and SDI are not parties to the Settlement Agreement, the only party to testify in opposition to the Settlement Agreement was the CAC.

1. **Notices and Jurisdiction.** Due, legal and timely notice of the filing of the Petition herein was given and published by PSI as required by law. Due, legal and timely notices of the Prehearing Conference and the Evidentiary Hearing in this proceeding were given and published by the Commission as required by law. PSI is a public utility within the meaning of Ind. Code § 8-1-2-1 and is subject to the jurisdiction of this Commission, in the manner and to the extent provided by the Indiana Public Service Commission Act, Ind. Code 8-1-2. This Commission has jurisdiction over PSI and the subject matter of this proceeding.

2. **PSI's Characteristics.** PSI is a public utility organized and existing under the laws of the State of Indiana, and has its principal office at 1000 East Main Street, Plainfield, Hendricks County, Indiana. PSI is engaged in rendering electric utility service in the State of Indiana, and owns, operates, manages and controls, among other things, plant and equipment within the State of Indiana used for the production, transmission, delivery and furnishing of such electric service to the public. PSI is a wholly-owned subsidiary of Cinergy.

3. **Duke's Characteristics.** Mr. Richard J. Osborne, Duke's Group Vice President for Public and Regulatory Policy, testified as to Duke's corporate structure and background. Mr. Osborne stated that Duke is a diversified energy company which operates a variety of regulated and unregulated natural gas and electric businesses throughout the Americas, and also operates a real estate company known as Crescent Resources. (Pet. Ex. B, pp. 3 and 6.) Mr. Osborne explained that Duke owns assets valued at \$55.5 billion, and has annual revenues of \$22.5 billion and net income of \$1.5 billion. Mr. Osborne indicated that Duke owns and operates generating stations of 32,000 megawatts ("MW"), and operates an additional 3,000 MW of generating assets for others. Mr. Osborne also stated that Duke owns 17,500 miles of natural gas transmission pipeline and co-owns 59,000 miles of gathering pipeline with ConocoPhillips. (Pet. Ex. B, pp. 3-4.)

Mr. Osborne further explained that Duke Power is a division of Duke and is headquartered in Charlotte, North Carolina. Mr. Osborne described Duke Power as one of the largest U.S. investor-owned utilities, with 2.2 million electric customers in its 22,000 square-mile service territory encompassing central and western North Carolina and western South Carolina. He stated that Duke Power owns and operates a diverse portfolio of generating assets consisting of eight coal-fired stations (7,754 MW), three nuclear stations (5,020 MW owned, 6,996 MW operated), 31 hydroelectric stations, with two pumped storage facilities (2,819 MW), two combustion turbine stations and several additional combustion turbine units (2,446 MW). (Pet. Ex. B, p. 4.)

Mr. Osborne also described Duke's other principal businesses. He stated that Duke Energy Gas Transmission ("DEGT") transports natural gas through 17,500 miles of transmission pipelines throughout the northeastern and southeastern United States, as well as the Pacific Northwest and Canada. Mr. Osborne also stated that these transmission pipelines include facilities located in the State of Indiana. DEGT owns 250 billion cubic feet of natural gas storage facilities and also owns two liquid natural gas storage and regasification plants. Mr. Osborne testified that DEGT also owns Union Gas, an integrated natural gas storage, transmission and distribution company based in Ontario, Canada, with 1.2 million retail gas customers. (Pet. Ex. B, pp. 4-5.)

Mr. Osborne stated that Duke Energy Americas consists of Duke Energy North America (“DENA”) and Duke Energy International (“DEI”). He explained that DENA owns and operates merchant power generating assets and markets electricity, natural gas and energy management services to North America wholesale customers. Mr. Osborne further stated that DEI owns and operates generating assets and sells power and natural gas in Latin America. (Pet. Ex. B, p. 5.)

According to Mr. Osborne, Duke’s other principal businesses include Duke Energy Field Services, a joint venture between Duke and ConocoPhillips, which is the largest North American producer, and one of the largest North American marketers, of natural gas liquids. He described Crescent Resources as the aforementioned real estate company which manages and develops property throughout a nine-state region. Mr. Osborne also testified that DukeNet develops and manages fiber optic communication systems for wireless, local and long-distance communications companies and large customers in the southeastern United States. (Pet. Ex. B, pp. 5-6.)

4. The Proposed Duke/Cinergy Merger. Mr. James E. Rogers, Chairman, President and Chief Executive Officer of Cinergy, will be the President and Chief Executive Officer of the new holding company to be created by the Merger, to be named Duke Energy Corporation (“New Duke Energy”). Mr. Rogers testified that the Merger will be consummated via an all-stock transaction at the holding company level. Mr. Rogers stated that, as a result of the Merger, PSI will continue to be a wholly-owned subsidiary of Cinergy and will become an indirect wholly-owned subsidiary of New Duke Energy. (Pet. Ex. A, p. 6.) Mr. Rogers stated that Cinergy’s shareholders will receive 1.56 shares of New Duke Energy common stock for each share of Cinergy common stock owned, amounting to a 13.4% premium for Cinergy shareholders based on Cinergy’s and Duke’s stock prices immediately prior to the May 9, 2005 Merger announcement. (Pet. Ex. A, p. 6.) Following the Merger, Mr. Rogers stated that New Duke Energy will be headquartered in Charlotte, North Carolina, and PSI will remain headquartered in Plainfield, Indiana. (Pet. Ex. A, p. 7.)

Ms. Kay Pashos, PSI’s President, testified that the Energy Policy Act of 2005 (“EPAAct of 2005”) repealed the Public Utility Holding Company Act of 1935 (“PUHCA”) effective six months after enactment of the EPAAct of 2005. (Pet. Ex. D, p. 4.) Ms. Pashos explained that Cinergy is currently a registered public utility holding company under the PUHCA and is subject to the U.S. Securities and Exchange Commission’s (“SEC”) regulatory authority. She stated that Cinergy and Duke will not file for SEC merger approval under PUHCA, due to PUHCA’s repeal. Nevertheless, Ms. Pashos stated that PSI will still enter into service agreements and other affiliate agreements, described below, similar to its present service agreements and affiliate agreements required under PUHCA. (Pet. Ex. D, pp. 4-5.)

5. The Settlement Agreement. A copy of the Settlement Agreement is attached to and incorporated into this Order. The Settlement Agreement’s major provisions (which are discussed in more detail in further Findings below) include:

(a) Additional Merger Commitments: In addition to the other specific provisions of the Settlement Agreement, PSI agreed to 42 specific Merger commitments, as set forth in Attachment 1 to the Settlement Agreement.

(b) Rate Credit: PSI will provide a retail electric rate credit of \$40 million dollars paid over one year after the Merger closing.

(c) Contributions to Community: PSI will contribute \$2.5 million dollars to the Indiana Center for Coal Technology Research and \$2.5 million dollars to the Low Income Home Energy Assistance Program (“LIHEAP”) for low income electric customers in PSI’s service territory.

(d) 1994 Cinergy Merger Costs: Starting June 1, 2008, PSI will reduce its retail electric rates by \$11.552 million dollars annually, representing the annual amortization of costs from the 1994 Cinergy merger, and will not seek any future retail electric rate recovery of such costs.

(e) Duke/Cinergy Merger Costs: PSI will not recover transaction costs associated with the Duke/Cinergy Merger from Indiana retail electric customers, but may reflect such costs on its books below-the-line. PSI may retain Merger savings in excess of the rate credit and the \$5 million dollars contribution to the community, subject to the Fuel Adjustment Clause (“FAC”) earnings test of Ind. Code § 8-1-2-42(d). PSI shall reflect actual Merger savings and actual PSI retail jurisdictional costs to achieve Merger savings in PSI’s FAC filings, except that, during the first two years after the Merger, PSI’s FAC filings shall reflect the lesser of the actual PSI retail jurisdictional costs to achieve Merger savings or \$42 million dollars. If PSI seeks to recover PSI retail jurisdictional costs to achieve Merger savings in its next base retail electric rate case, PSI must prove that such costs are prudent, reasonable and recurring.

(f) Affiliate Agreements and Audits: The Settlement Agreement provides for this Commission to approve the five affiliate agreements filed by PSI with its case-in-chief testimony in this proceeding. PSI agreed to fund and cooperate in a series of four independent audits of PSI’s compliance with its Affiliate Standards (see item (k) below), including an audit of the Affiliate Standards training and controls PSI has in place to prevent cross-subsidization, plus an additional audit of the five affiliate agreements. The Settlement Agreement also details related procedures, such as selecting the auditor, funding the audits, audit timing and challenging audit results.

(g) Service Quality Reliability and Customer Service: PSI shall file quarterly reports with this Commission on its actual performance on SAIDI (*i.e.*, the System Average Interruption Duration Index), SAIFI (*i.e.*, the System Average Interruption Frequency Index), CAIDI (*i.e.*, the Customer Average Interruption Duration Index) and average speed of answer as described in the Settlement Agreement. If PSI exceeds two or more of the specified benchmarks during any quarter for the first five years after the Merger, PSI will implement a Commission-approved remediation plan, after notice and hearing, at a cost of up to \$5 million dollars, at stepped-in levels depending on the number of missed benchmarks. PSI is also required to provide 30 days advance written notice to the Commission and the Settling Parties of any decision to close or move the Plainfield Call Center out of the State of Indiana, which notice shall include the business criteria used to make the decision. If the Plainfield Call Center is closed within three years after the Merger closing, PSI must contribute \$500,000 to the Indiana Economic Development Corporation or a successor fund with a similar purpose.

(h) Coordination of Regulation: After the Merger closing, PSI shall not challenge or seek review, based on a Federal Energy Regulatory Commission (“FERC”) preemption theory, of an Order of this Commission that changes, for Indiana retail ratemaking purposes only, the allocation factors applied to PSI in the Merger-related affiliate agreements. The Settlement Agreement provides that it should be applied so as to avoid stranding reasonable utility costs among the various regulatory jurisdictions where PSI and its utility affiliates operate. Additionally, the Settlement Agreement acknowledges that the respective rights of PSI and this Commission under Section 1275 of Subtitle F, Repeal of the Public Utility Holding Company Act of 1935 in Title XII of the Energy Policy Act of 2005 (“PUHCA 2005”) are expressly reserved.

(i) Books and Records: PSI may continue to locate its books and records outside the State of Indiana. PSI shall make its records and personnel available in the State of Indiana for any required audits or, in the alternative, shall pay travel expenses for the staffs and designated experts of this Commission and the OUCC.

(j) Integrated Resource Planning: PSI agrees to follow the procedures set forth in the Settlement Agreement for PSI’s planning for additional generating facilities and for obtaining this Commission’s approval for such generating facilities, including the use of clean coal technology and PSI’s environmental compliance plans. Under the terms of the Settlement Agreement, PSI shall also obtain Commission approval for any purchase of firm power or unit power from an affiliate for a term of five years or longer.

(k) Affiliate Standards: PSI shall follow the Affiliate Standards set forth in Attachment 2 to the Settlement Agreement, which shall replace PSI’s current Affiliate Guidelines effective immediately upon the Merger closing. After the Merger closing and finalization of the FERC’s PUHCA 2005 Final Rules in FERC Docket RM05-32-000, the Settling Parties shall work together to implement any necessary changes to PSI’s Affiliate Standards.

(l) Rate Design: The Settlement Agreement provides that in its next retail electric base rate case, PSI shall provide and fully support a cost of service and rate design for production plant using a four coincident peak (“4 CP”) methodology.

6. Commission Jurisdiction and Standards for Approval of the Settlement Agreement. This Commission has no jurisdiction to review or approve stock transactions at the holding company level, such as the Duke/Cinergy Merger; however, this Commission has jurisdiction to review the Merger’s impacts on PSI’s retail electric customers. *Indiana Bell Tel. Co. v. Indiana Util. Reg. Comm’n*, 715 N.E.2d 351 (Ind. 1999); *In re the Commission’s Investigation, under IC §§ 8-1-2-58 and 59, into the Proposed Termination of the 1951 Operating Agreement Between American Electric Power, Inc. and Indiana Michigan Power Company*, Cause No. 42045-S1 (Opinion and Order) (*Ind. Util. Reg. Comm’n*, April 28, 2004).

“It is the policy of the Commission to review and accept appropriate settlements.” 170 IAC 1-1.1-17(a). The Commission may approve a settlement agreement if it is supported by substantial evidence, and the Commission finds it to be in the public interest. In this case, the Commission is reviewing a Settlement Agreement entered into by PSI, the IURC Testimonial

Staff, the OUCC, and PSI-IG. It is a settlement of fewer than all the parties to this proceeding and fewer than all the parties that participated in the negotiations. Settlement agreements by less than all the parties may be submitted to this Commission pursuant to 170 IAC 1-1.1-17(b). This Commission may reject, in whole or in part, any proposed settlement if we determine the settlement is not in the public interest. 170 IAC 1-1.1-17(c).

Settlements presented to this Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When this Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. IPL Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, this Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order – including the approval of a settlement – must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). This Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before this Commission can approve the Settlement Agreement, we must determine whether the evidence in this proceeding sufficiently supports the conclusion that the Settlement Agreement serves the public interest and the customer rate credit is reasonable, just and not inconsistent with the purpose of the Indiana Public Service Commission Act, Ind. Code 8-1-2.

7. Additional Merger Commitments. The Settlement Agreement contains in Attachment 1 a list of 42 specific Merger commitments by PSI in addition to those set forth in the main part of the Settlement Agreement. These Merger commitments deal with areas such as reliability, customer service, ratemaking and accounting, affiliate transactions, financial insulation, the Midwest Independent Transmission System Operator, Inc., integrated coal gasification combined cycle generating facility, local presence/economic development, corporate governance/environmental stewardship and integrated resource planning. (Pet. Ex. K, p. 2.) These Merger commitments are intended to replace the merger commitments from the 1994 Cinergy merger, so that PSI’s Merger commitments will be clearly known and understood by all parties in the future. (Pet. Ex. K, p. 8.)

CAC witness Mr. Robert M. Fagan, Senior Associate at Synapse Energy Economics, Inc., testified that these additional Merger commitments do not adequately protect PSI’s customers, and that additional measures are necessary to adequately protect customers from incurring higher rates from the Merger. (CAC Ex. RMF-S, p. 19.) This practice of establishing conditions to protect a public utility from adverse financial impacts from its parent company’s and affiliates’ non-regulated businesses is sometimes called “ring-fencing.” Mr. Fagan raised several ring-fencing concerns. First, Mr. Fagan voiced concern about the impact of the Merger on future ratemaking outcomes in Indiana, including especially the capital structure and associated capital costs on which PSI earns a regulated return. He reasoned that PSI’s proposed Merger commitments were inadequate because, during PSI’s next rate case, New Duke Energy’s non-regulated businesses could cause PSI to have a higher cost of capital. (CAC Ex. RMF-S, pp. 20-21.) Second, Mr. Fagan recommended that PSI provide assurances that PSI’s customers will not

be exposed to any costs associated with non-jurisdictional investments made by PSI or its affiliate or parent companies. (CAC Ex. RMF-S, p. 21.) Third, Mr. Fagan claimed that the proposed additional Merger commitments did not adequately specify the manner in which this Commission can truly retain cost disallowance authority over PSI for costs intended to be allocated to ratepayers that this Commission may deem unreasonable, imprudent or unjust. (CAC Ex. RMF-S, pp. 22-23.)

Mr. Fagan stated that the larger scope and greater risk of New Duke Energy's non-regulated businesses will require investors to demand a higher return. (CAC Ex. RMF-S, p. 20.) He recommended that the Commission should aggressively ring-fence PSI from the adverse impacts of its affiliate relationships, and should adopt the regulatory conditions imposed by the North Carolina Utilities Commission Public Staff ("North Carolina Public Staff") in the corresponding North Carolina proceeding regarding the Cinergy/Duke Merger. (CAC Ex. RMF-S, pp. 19-20 and 23-25.) Mr. Fagan proposed that PSI should make additional commitments involving various matters such as financially insulating PSI from the adverse effects of: its affiliate relationships; PSI's power purchases from affiliates; the integrated resource planning process; generation acquisition; and allocation of purchased power costs to PSI's retail electric customers. (CAC Ex. RMF-S, pp. 25-28.) Mr. Fagan also proposed that PSI should affirmatively assert that this Commission is authorized to take various actions to protect PSI's customers from possible adverse effects from the Merger. (CAC Ex. RMF-S, p. 21.) Mr. Fagan contended that the Settlement Agreement provision addressing coordination of regulation is confusing and provides inadequate protection for customers. (CAC Ex. RMF-S, pp. 22-23.) Mr. Fagan provided a list of "hold harmless" Merger conditions, which he said were adapted from the settlement agreement between Duke Energy Corporation and the North Carolina Public Staff. (CAC Ex. RMF-S, pp. 25-26.) Mr. Fagan also provided a number of commitments relating to preemption, which primarily deal with wholesale market transactions, and which he adapted from the North Carolina settlement agreement. (CAC Ex. RMF-S, pp. 26-28.)

In her settlement supporting rebuttal testimony, Ms. Kay Pashos posited that Mr. Fagan's proposed additional Merger commitments and requirements are unnecessary because other provisions of the Settlement Agreement will adequately protect PSI's retail electric customers. (Pet. Ex. U, pp. 8-12.) Ms. Pashos pointed out that the Settlement Agreement's Affiliate Standards provide extensive protections against potentially harmful effects from PSI's affiliate transactions. (Pet. Ex. U, pp. 9-10.) Ms. Pashos stated that the Settlement Agreement also provides for PSI to make 42 additional Merger commitments in areas such as service reliability, customer service, ratemaking and accounting, and protecting PSI from the adverse effects of affiliate relationships. (Pet. Ex. U, pp. 10-11.) Ms. Pashos also noted that the Settlement Agreement contains additional Merger commitments in areas such as affiliate agreements and audits, service quality reliability and customer service, coordination of regulation and affiliate standards. (Pet. Ex. U, pp. 11-12.)

Ms. Wendy L. Aumiller, Cinergy's Vice President and Treasurer, also provided settlement supporting rebuttal testimony addressing Mr. Fagan's position relating to Merger commitments. As to Mr. Fagan's contention that New Duke Energy's larger scope and greater risk will require investors to demand greater returns, Ms. Aumiller noted that, in the instance of PSI and its current and prospective holding companies: (i) PSI operates (and will continue to operate) as legally separate from its holding company with PSI's creditors having priority claim over PSI's assets; (ii) no loans or guarantees exist (or will exist without this Commission's

approval) from PSI to its holding company; (iii) there are (and will continue to be) no cross-default provisions in PSI's loan agreements; (iv) PSI's holding company has provided (and will continue to provide) financial support, as needed, an especially important factor in light of the size of PSI's ongoing construction program. Ms. Aumiller observed that PSI raises its own capital, independent of its holding company and could access short-term borrowing markets if its holding company's financial condition deteriorates. (Pet Ex. V, pp. 3-4.)

Ms. Aumiller also responded to Mr. Fagan's recommendation that PSI should be aggressively ring-fenced or insulated from the financial risk arising from its affiliate relationships. Ms. Aumiller pointed out that this Commission submitted comments to the FERC, regarding the FERC's rulemaking on implementing the EAct of 2005, and recommended various protections for utilities involved in mergers where the holding company will have large non-regulated businesses. (Pet. Ex. V, p. 5.) Ms. Aumiller noted that the Settlement Agreement provides for each of the applicable protections recommended by the Commission in its comments to the FERC. The only protections that were not adopted directly by PSI were those recommendations that were directed and discussed in the context of future rulemakings that may be undertaken by the FERC. (Pet. Ex. V, pp. 5-7.) She also stated that PSI derives additional financial protection from the Cinergy companies' FERC-approved Codes of Conduct (and that similar Codes of Conduct will be in place under the Merger); from PSI's new Affiliate Standards included in the Settlement Agreement, which expand PSI's currently effective Affiliate Guidelines; and from the Settlement Agreement requirement for PSI to conduct independent audits of its compliance with the new Affiliate Standards. (Pet. Ex. V, p. 7.)

Ms. Aumiller also testified that she believes that aggressive ring fence protections could be harmful to PSI's retail customers. She stated that PSI's stand alone credit quality would have been adversely impacted in the past without the support of its affiliate, The Cincinnati Gas & Electric Company, on dividend relief and low cost borrowing through the Cinergy Utility Money Pool. She noted that Moody's Investors' Service recognized this support in its May 22, 2005 Liquidity Assessment Report concerning PSI. (Pet Ex. V, p. 7.)

In response to Mr. Fagan's statement that New Duke Energy's non-utility businesses would cause concern for PSI's retail customers, Ms. Aumiller responded that Duke Energy has announced that it will substantially exit the DENA marketing and trading business, which will improve Duke Energy's credit quality. (Pet. Ex. V, pp. 7-9.) Specifically in her settlement supporting rebuttal testimony, Petitioner's Exhibit V, Ms. Aumiller testified that Standard & Poor's ("S&P") addressed Duke Energy's announced sale of the majority of its non-regulated generating assets (*i.e.*, the DENA assets) and its electric and gas contracts (*i.e.*, the DENA book) and S&P's assignment of a stable outlook as follows:

The stable outlook reflects Standards & Poor's assessment that, once executed, Duke Energy's plan to sell 6,200 MW of merchant generation capacity in the western and northeastern U.S., along with the disposition of its book of electric and gas contracts, will improve Duke Energy's business risk profile, thereby providing support to its credit quality. The stable outlook also accounts for a measure of clarity in the combined company's corporate structure that alleviates earlier concerns arising from Duke Energy's assertion that the electric and gas businesses could be eventually separated.

Ms. Aumiller also testified that the January 10, 2006 announcement by Duke Energy Corporation that it had found a buyer (*i.e.*, LS Power Equity Partners) for 6,200 MW of merchant generation in the west and northeast United States (*i.e.*, DENA generating assets) resulted in the following favorable comments from S&P:

Duke Energy Corp.'s announcement that it is selling 6,200 MW of merchant generation assets in the west and northeast U.S. to LS Power Equity Partners is positive for credit quality but does not affect the company's ratings.

Duke's business risk profile improves to '6' (satisfactory) from '7' (weak) (business risk profiles are ranked from '1' (excellent) to '10' (vulnerable)).

This revision reflects that the merchant-asset sale, combined with the sale of the derivative and physical contracts, significantly moderates business risk by eliminating earnings and cash flow variability, reducing Duke's collateral requirement and reducing or eliminating the imputation of off-balance-sheet debt.

Given Duke's business-risk improvement, Standard & Poor's expects that, post-merger, the combined entity will likely also have a '6' consolidated business risk profile.

(Pet. Ex. V, pp. 8-9.)

Ms. Aumiller further testified that, in her opinion, the Merger will not have any material adverse impact upon the financial integrity of PSI. (Pet. Ex. G, pp. 22) Finally, Ms. Aumiller provided a point-by-point response to Mr. Fagan's recommendations for additional financial insulation for PSI. She noted that Mr. Fagan's recommendations which he adapted from North Carolina were not equally applicable to PSI due to the different regulatory environments in Indiana and North Carolina. (Pet. Ex. V, pp. 9-11.) Nevertheless, she identified the specific additional financial insulation commitments recommended by Mr. Fagan that PSI was willing to accept if so mandated by this Commission in this proceeding, in addition to the provisions of the Settlement Agreement. (Pet. Ex. V, pp. 11-13.)

Ms. Pashos testified that she believes that the Settlement Agreement, including Attachments 1 and 2, provides adequate protection of PSI's retail electric customers from potential adverse impacts of the Merger. Taking the three major components of the Settlement Agreement separately, she noted that the Affiliate Standards included as Attachment 2 to the Settlement Agreement are specific and detailed provisions addressing: (a) Cross-Subsidization Principles; (b) Access to Employees, Officers, Books and Records; (c) Accounting for Affiliate Transactions; (d) Precluded Affiliate Financial Undertakings; (e) Untariffed, Non-Utility Services Provided by PSI or the Service Company; (f) Goods or Services Provided by a Non-Utility Affiliate; (g) Independent Operations; (h) Precluded Property Ownership; (i) Market Information; (j) Use of Name or Logo; (k) No Tying or Conditioning; (l) Sharing of Office Space, Office Equipment, Computer Systems or Information Systems with Affiliated Wholesale Power Marketers; (m) Exception for Computer Systems and Information Systems; (n) Limitations on Corporate Support Services to Affiliates; (o) Availability of Goods or Service to Affiliates; (p) Documentation; (q) Contract for Affiliate Transactions and Personnel Information; (r) Contact for Service and Reliability; (s) Contact for State Regulatory Matters; (t) PSI's Affiliate Contract Filings; (u) Violations; (v) Independent Audits; (w) Public Utility Holding

Company Act of 2005; (x) No Impairment of Service Company Structure; (y) No Preclusion of Commission Approved Actions or FERC Pricing Requirements for Affiliate Transactions; and (z) Affiliate Firm or Unit Power Purchase by PSI for a Term of 5 Years or More. Ms. Pashos also noted that the Affiliate Standards include 36 individual definitions of terms used in the Affiliate Standards. She also stated that the Affiliate Standards include provisions for detailed Annual Informational Filings, Additional Annual informational Filings and Special Informational Filings with this Commission (with a copy to the OUCC). (Pet. Ex. U, pp. 8-10.)

Ms. Pashos next noted that Attachment 1 of the Settlement Agreement includes 42 separate Additional Merger Commitments. The primary topics addressed by these 42 Additional Merger Commitments are identified above in the first paragraph of this Finding No. 7. (Pet Ex. U, pp. 10-11.) Ms. Pashos next addressed the Settlement Agreement document itself (not including Attachments 1 and 2). She listed 14 of the specific major topics addressed by the Settlement Agreement document. Twelve of these major topics are outlined above in the first paragraph of Finding No. 5, and many of those topics are discussed in further Findings below. (Pet. Ex. U, pp. 11-12.)

Ms. Pashos testified that she believed that the above lists of topics addressed in the Settlement Agreement (the substance of which provisions are addressed in PSI's settlement supporting testimony), clearly show that the Settlement Agreement in its entirety constitutes an integrated and comprehensive resolution of the issues before this Commission in this proceeding. Ms. Pashos further testified that the provisions of the Settlement Agreement are designed to address the specific facts, circumstances and retail electric rates of PSI, in the context of the specific Indiana statutory and regulatory environment. She concluded that, while PSI has expressed a willingness to accept certain provisions suggested by Mr. Fagan if the Commission determines that such action is appropriate, she did not believe that it is either necessary or appropriate to now "bolt on" the additional provisions that Mr. Fagan has "adapted" from North Carolina and is proposing. (Pet. Ex. U, p. 12.)

Based on the testimony presented, while we do not accept all of the suggested changes presented by Mr. Fagan in his testimony, we are convinced that the inclusion of certain additional requirements presented by the CAC are important and applicable to the state of Indiana. Accordingly we hereby approve the following additional Merger requirements in this Cause:

PSI shall manage its business with the intention of maintaining at least an investment grade debt rating on all of its rated debt issuances with all of its debt rating agencies. If PSI's debt rating falls to the lowest level still considered investment grade at the time, PSI shall provide notice to the Commission and OUCC within five (5) days of such change and provide an explanation as to why the downgrade occurred. Within 45 days of such notice, PSI shall meet with the Commission and the OUCC and provide information regarding the steps it intends to take to maintain and improve its debt rating.

PSI shall limit cumulative distributions paid to Duke Energy Corporation subsequent to the Merger to (i) the amount of Retained Earnings on the day prior to the closure of the Merger, plus (ii) any future earnings recorded by PSI subsequent to the Merger.

PSI shall not invest in a non-regulated utility asset or any non-utility business venture exceeding \$50 million in purchase price or gross book value to PSI unless it provides 30 days' advance notice to the Commission. Purchases of assets, including land that will be held with a definite plan for future use in providing Electric Services in PSI's franchise area shall be excluded from this Advance Notice Requirement.

By April 15 of each year, PSI shall provide to the Commission and the OUCC a report summarizing PSI's investment in exempt wholesale generators (EWGs) and utility assets or companies in foreign countries in relation to its level of consolidated retained earnings and consolidated total capitalization at the end of the preceding year. (To be revised if the FERC does not continue to determine EWG status.)

Duke Energy Corporation and PSI shall adequately fund and maintain PSI's current and future generation, transmission, and distribution systems and otherwise meet the service needs of PSI's customers.

PSI may borrow short-term funds in the financial markets or through the "Utility Money Pool Agreement" (Utility MPA), provided that the Utility MPA (a) is modified to exclude Tri-State Improvement Company; and (b) continues to provide that no loans through the Utility Money Pool will be made to, and no borrowings through the Utility Money Pool will be made by Duke Energy Corporation and Cinergy Corporation. If, after December 31, 2008, certain of The Cincinnati Gas & Electric Company's generation assets are not dedicated to serving retail load in its service territory and are not subject to the rate stabilization plan (as approved in Case 03-93-ATA) or traditional regulation, then PSI shall obtain Commission approval to continue to participate in the Utility MPA. PSI shall acquire its long-term debt funds through the financial markets, and shall neither borrow from nor lend to, on a long-term basis, Duke Energy Corporation or any of its other Affiliates. To the extent that PSI borrows on short term or long-term bases in the financial markets and it is feasible to obtain a debt rating, its debt shall be rated under its own name.

If an Affiliate of PSI experiences a default of an obligation that is material to Duke Energy Corporation or files for bankruptcy, and such bankruptcy is material to Duke Energy Corporation, PSI shall notify the Commission in advance if possible, or as soon as possible, but not later than ten days from such event.

Accordingly, consistent with these additional requirements we find that the Merger commitments contained in the Settlement Agreement are fair, just and reasonable, and are in the public interest. Therefore, we approve the Merger commitments in the Settlement Agreement consistent with the additional requirements set forth herein.

8. Rate Credit. PSI presented detailed evidence in its case-in-chief on the estimated savings arising from the Merger, and on how the Merger savings and costs would be allocated among New Duke Energy's non-regulated businesses and regulated businesses, including PSI.

Mr. Thomas J. Flaherty, Senior Vice President with the Booz Allen Hamilton consulting firm, explained how the areas of savings were identified, how the amounts of estimated Merger savings and Merger costs were determined, and how the estimated savings and costs were developed. (Pet. Ex. C, pp. 11-12 and 16.) Mr. Barry F. Blackwell, Cinergy's Director of Management Reporting and Analysis, reviewed the proposed new Service Company Utility Service Agreement ("Service Agreement"), and discussed how the Merger savings and the Merger costs will be allocated to the various companies, including PSI. (Pet. Ex. I, pp. 4.)

Mr. John P. Steffen, Cinergy's Vice President Rates, testified that the \$40 million rate credit paid over one year after the Merger closing will reduce PSI's average retail electric rates by 2.6% for one year. (Pet. Ex. T, p. 4.) He opined that the terms of the Settlement Agreement relating to Merger savings and costs are reasonable because PSI's retail electric customers would immediately benefit from lower rates, which they would not receive absent the Settlement Agreement. (Pet. Ex. T, p. 4.) Ms. Pashos stated that the \$40 million rate credit and the \$5 million in contributions for coal technology research and LIHEAP provide for PSI to share 42% of net Merger savings with customers, and is consistent with the Merger savings sharing provisions approved by the South Carolina, Kentucky and Ohio utility commissions. (Pet. Ex. R, p. 6.) Ms. Pashos also testified that the settlement terms are reasonable and within the regulatory mainstream when viewed against recent merger settlements and orders as presented in the rebuttal testimony, Petitioner's Exhibit O, of Mr. Steven M. Fetter, President of the Regulation Unfettered consulting firm. (Pet. Ex. R, p. 10.) Mr. Robert M. Endris, the OUCC's Assistant Director of the Electric Division, testified on behalf of the OUCC supporting the settlement. Mr. Endris stated that the Settlement Agreement as a whole is fair and in the public interest because it fairly distributes Merger savings to customers and provides other important benefits. (Pub. Ex. S-1, p. 2.)

Mr. Fagan testified in response that he believes the rate credit is not fair as the Settlement Agreement provides no guarantee that PSI will file a rate case in a specified time period, which would allow customers to capture all the Merger savings attributable to PSI. As a result, he claimed that the rate credit could produce a worse result for customers than if PSI filed a rate case one or two years after the Merger. (CAC Ex. RMF-S, pp. 9-10.) Mr. Fagan also criticized the Settlement Agreement because it did not provide any mechanism for sharing Merger savings with customers during years six through ten after the Merger, absent a base rate case by PSI. (CAC Ex. RMF-S, p. 9.) He recommended that customers should receive 100% of the regulated Merger savings for the five-year period after the Merger and that this Commission should re-visit the issue at year six. (CAC Ex. RMF-S, p. 8.)

Mr. Fagan testified that this Commission would establish a poor precedent if it approved a Merger sharing mechanism which provides less than 50% of Merger savings for customers, and that this would be less than the proportion of Merger savings for customers approved in other merger cases as he described in this initial testimony at Exhibit RMF-4. (CAC Ex. RMF-S, pp. 8-9.) Mr. Fagan stated that the risk is low that New Duke Energy will not achieve the estimated Merger savings. (CAC Ex. RMF-S, pp. 9-10.) He noted that a due diligence document relating to the Merger suggests that an equitable sharing of Merger savings would be a 50/50 sharing of corporate and regulated savings with customers. (CAC Ex. RMF-S, p. 11.) Mr. Fagan pointed out that the same document provides for 65% regulated savings for Cinergy and 57% of the regulated savings for Duke Energy – for a total of 59% regulated gross savings. (CAC Ex. RMF-S, pp. 11-12.) Mr. Fagan claimed that this indicates that the Merger savings

allocated to PSI may be too low, because PSI has not established that this higher share of the regulated savings for Cinergy has been flowed through to PSI. (CAC Ex. RMF-S, pp. 11-12.)

In her settlement supporting rebuttal testimony, Ms. Pashos explained that the Settlement Agreement must be viewed as a whole, as part of a comprehensive negotiation among the Settling Parties, and that the rate credit was reasonable as part of an overall settlement which provides manifold customer benefits. (Pet. Ex. U, pp. 2-3.) Even if viewed in isolation, Ms. Pashos stated that the rate credit is well within the regulatory mainstream, as discussed in Mr. Fetter's rebuttal testimony, Petitioner's Exhibit O. (Pet. Ex. U, pp. 2-3.)

Addressing Mr. Fagan's claim that a pre-Merger document supported a 50/50 sharing of Merger savings with customers, Ms. Pashos testified that many changes have occurred since that time. For example, the merging companies have now omitted significant change in control costs from the calculation of net Merger savings. (Pet. Ex. U, pp. 3-4.) Second, the rate credit provides for customers to receive the Merger savings from the first five years on an up-front basis, in the first year after the Merger, which provides additional benefits that may not have been contemplated in the pre-Merger document. (Pet. Ex. U, p. 4.) Finally, Ms. Pashos noted that PSI will have certain earnings test exclusions for Merger-related costs and cannot defer transaction costs or recover costs to achieve Merger savings unless such costs fall within the test year of a rate case and are proven to be fair, just and reasonable. (Pet. Ex. U, p. 4.)

Upon cross examination, Mr. Flaherty made clear that the 50/50 assumption in the early Merger documents was a preliminary high level assumption only, and did not take into account all the other terms of a comprehensive settlement, such as that filed in this proceeding.

Mr. Barry F. Blackwell also provided settlement supporting rebuttal testimony on PSI's behalf. Mr. Blackwell testified that the actual allocation of Merger savings to the Duke/Cinergy regulated businesses was 63%, which is slightly higher than the 59% noted in the pre-Merger document relied upon by Mr. Fagan. (Pet. Ex. W, p. 2.) Mr. Flaherty testified on cross-examination that the original 59% estimate of corporate and shared service Merger savings going to the regulated businesses was simply a high level estimate using one allocation factor (*i.e.*, operation and maintenance expenses) and that subsequently Cinergy and Duke Energy performed additional analysis using the more comprehensive cost causation factors included in the proposed Service Company Utility Service Agreement ("Service Company Agreement") to come to a more accurate and detailed allocation. Mr. Blackwell also noted that 76% of the gross Merger savings attributable to corporate and shared services were allocated to the Cinergy regulated businesses in formulating the Settlement Agreement's rate credit, which is significantly better for PSI's customers than the 65% allocation noted in the pre-Merger document cited by Mr. Fagan. (Pet. Ex. W, pp. 2-3.)

9. Contributions to Community. The Settlement Agreement requires PSI, after the Merger closing, to make annual contributions of \$500,000 to the Indiana Center for Coal Technology and \$500,000 for LIHEAP to benefit low-income retail electric customers in PSI's service territory for a period of five years. (Pet. Ex. R-1, Section II(C).) No party offered any testimony opposing this provision of the Settlement Agreement.

10. Resolution of 1994 Cinergy Merger Issues. This provision of the Settlement Agreement requires PSI to reduce its retail electric base rates starting June 1, 2008 by \$11.552

million dollars annually, which represents the annual amortization of costs in PSI's current retail electric base rates relating to the 1994 Cinergy merger. (Pet. Ex. R-1, Section II(D).) No party offered any testimony opposing this provision of the Settlement Agreement.

11. Merger Costs. The Settlement Agreement provides that PSI will not defer or amortize any transaction costs related to the Merger. PSI is barred from reflecting transaction costs in the earnings and expense test calculations of its FAC filings. PSI is, however, permitted to book transaction costs below-the-line for financial accounting purposes. The Settlement Agreement also restricts PSI's ability to defer and to recover costs to achieve Merger savings. Regarding costs to achieve Merger savings, PSI has agreed to cap at \$42 million the amount of such costs that will be permitted to be reflected in the FAC earnings and expense tests for the first two years after consummation of the Merger. If PSI seeks to recover costs to achieve Merger savings in its next retail electric base rate case, the Settlement Agreement requires PSI to establish that such costs were prudent, reasonable and recurring. (Pet. Ex. R-1, Section II(E).) No party offered any testimony opposing this provision of the Settlement Agreement relating to PSI's accounting and ratemaking treatment of Merger costs.

12. Affiliate Agreements and Audits. The Settlement Agreement provides for PSI to fund and participate in four independent audits relating to its compliance with PSI's new Affiliate Standards. (Pet. Ex. R-1, Section II(F).) The Settlement Agreement also provides for this Commission to approve the five Merger-related affiliate agreements submitted with PSI's case-in-chief testimony. The Settlement Agreement further provides for an audit of the five affiliate agreements for reasonableness, including a review of the allocation factors in the Service Company Agreement, and details a procedure for presenting any issues arising from the audit to the Commission for review. Additionally, the parties agreed that any changes in the affiliate agreements as a result of the audit shall be for retail ratemaking purposes only, and not require actual changes in these multi-state agreements themselves, unless otherwise agreed to by the Settling Parties.

Mr. Blackwell testified that, after the Merger, New Duke Energy will form a subsidiary, Duke Services, to provide administrative, management and support services to the regulated operating companies, including PSI. (Pet. Ex. I, p. 3.) Ms. Pashos noted that, with the repeal of PUHCA, a service agreement between regulated operating companies and the service companies of utility holding company is no longer required. (Pet. Ex. D, pp. 4-5.) Ms. Pashos explained that PSI nevertheless will enter into the Service Company Agreement with Duke Services to govern these services. The Service Company Agreement provides for services from New Duke Energy Shared Services to the regulated operating companies to be priced at fully embedded cost for ratemaking purposes, the same transfer pricing methodology formerly required under PUHCA, except for purposes of Internal Revenue Code Section 482. (Pet. Ex. D, pp. 4-5 and 25; and Pet Ex. I, pp. 4-5.)

In addition to the Service Company Agreement discussed above, Ms. Pashos and other PSI witnesses described the following affiliate agreements which PSI requested this Commission accept for filing and approve, to the extent necessary: (1) Operating Company/Nonutility Companies Services Agreement; (2) Operating Companies Service Agreement; (3) Money Pool Agreement; and (4) Tax Sharing Agreement. (Pet. Ex. D, pp. 24-29.) Ms. Pashos explained that these agreements formerly were approved by the SEC under PUHCA, but SEC approval is no longer required due to the repeal of PUHCA. Ms. Pashos stated that the Operating

Company/Nonutility Companies Services Agreement allows PSI and various non-regulated affiliated companies to provide services to each other at fully embedded cost for ratemaking purposes. Ms. Pashos stated that the Operating Companies Service Agreement will allow PSI and its affiliated utility operating companies to provide services to each other at fully embedded cost for ratemaking purposes. (Pet. Ex. D, pp. 26-27.) Ms. Aumiller explained that the Money Pool Agreement is similar to the current Cinergy Money Pool Agreement, and will allow PSI and its affiliated utility operating companies and their subsidiaries, New Duke Energy and Duke Services, to make short-term loans to each other at lower rates than commercial short-term borrowing rates, yet higher than the lender would earn on a short-term investment. (Pet. Ex. G, pp. 15-17.) Ms. Lynn J. Good, Cinergy's Executive Vice President and Chief Financial Officer, stated that the Tax Sharing Agreement is similar to the current Cinergy Tax Sharing Agreement, and will allocate the consolidated income tax liabilities and benefits among the members of New Duke Energy participating in the consolidated income tax return. (Pet. Ex. F, pp. 9-10.)

CAC presented testimony opposing the Service Company Agreement, but did not offer any testimony opposing the other affiliate agreements. Mr. Fagan recommended that the proposed Service Company Agreement should incorporate various terms contained in the current service agreement which he asserted protected PSI's Indiana retail electric customers from being allocated unreasonable costs. (CAC Ex. RMF, p. 31.) Mr. Fagan also recommended that this Commission should implement a cost cap to ensure that no material shift of administrative, managerial and support costs will occur under the new Service Company Agreement. (CAC Ex. RMF, p. 31.) Mr. Fagan also stated that the new Service Company Agreement included cost of capital as a component of the at-cost pricing, but, failed to reference the old PUHCA provision which provided for such pricing. (CAC Ex. RMF, p. 30.)

Mr. Blackwell responded to Mr. Fagan's concern that the Service Company Agreement refers to a "cost of capital," by stating that the definition of costs used in the New Service Company Agreement includes the same components provided for under the old PUHCA – namely direct costs, indirect costs and costs of capital. The at-cost pricing will not result in Duke Services earning a profit on the services it provides to PSI. (Pet. Ex. P, pp. 7-8.) Mr. Blackwell and Ms. Pashos addressed Mr. Fagan's concerns about the extent of this Commission's oversight of the Service Company Agreement by pointing out that any amendments to the Service Company Agreement will be subject to Commission approval, and that PSI will participate in independent audits to assure that no cross-subsidization occurs. (Pet. Ex. P, pp. 8-9; and Pet. Ex. K, p. 5.) Mr. Endris testified that the Settlement Agreement's audit requirements will protect Indiana customers from potential abuse of affiliate relationships. (Pub. Ex. S-1, pp. 2-3.) He also testified that the Settlement Agreement as a whole contained adequate protections to mitigate the OUCC's earlier concerns about the potential that PSI would incur a higher cost of capital due to the Merger. (Pub. Ex. S-1, p. 4.)

13. Service Quality Reliability and Customer Service. The Settlement Agreement provides for PSI to file quarterly SAIDI, CAIDI, SAIFI, and Average Speed of Answer reports for the first five years following Merger closing. (Pet. Ex. R-1, Section II(G)(1) – (3).) PSI will calculate these indices for the prior twelve-month period, excluding major events (*e.g.*, Category 3 storms and above). The Settlement Agreement establishes the following reliability benchmarks:

Performance Measure	Benchmark
SAIDI	175 Minutes
CAIDI	115 Minutes
SAIFI	1.65 Interruptions
Average Speed of Answer	60 Seconds

These benchmarks are based on PSI's recent reliability performance, excluding major events. (Pet. Ex. R-1, Section II(G)(2).) The benchmarks will be updated based on rolling 12-month averages of PSI's performance. (Pet. Ex. R-1, Section II(G)(2).) If PSI does not meet two or more of these benchmarks for any quarter during the first five years following Merger closing, PSI must implement a Commission-approved remediation plan and spend up to \$5 million annually to correct identifiable reliability problems arising from causes within PSI's control.

Mr. John C. Procario, Cinergy's Senior Vice President and Chief Operating Officer, in his settlement supporting testimony explained that these benchmarks are based on PSI's actual reliability scores during the past ten years. (Pet. Ex. S, p. 3.) PSI has generally exceeded these reliability scores during the past ten years, but occasionally PSI has failed to meet one of the benchmarks during a given quarter. Mr. Endris stated that these reliability targets provide meaningful financial commitments from PSI and meaningful protection to customers against any possible degradation of service arising from the Merger. (Pub. Ex. S-1, p. 4.) Mr. Thomas L. Bernardi, Hoosier's Senior Vice President and Chief Financial Officer, testified that Hoosier believes that PSI has demonstrated that, post-Merger, PSI will continue its commitment to reliability concerning its transmission system and its commitment to cooperating with Hoosier on the "one system" approach which has historically been engaged in between Hoosier and PSI. (Hoosier Ex. A, pp. 6-7.) Mr. Fagan criticized PSI's earlier proposal for assuring reliable service following the Merger, and recommended certain minimum standards for reliability, but offered no testimony opposing the Settlement Agreement's reliability metrics and corresponding commitments relating to remedial measures. (CAC Ex. RMF, p. 37).

While the Settlement Agreement identifies minimum service levels and remedial steps, including a requirement that PSI implement a Commission-approved remediation plan and spend up to \$5 million annually to correct identifiable reliability problems, we note that any expenditures that may be necessary under an approved remediation plan must be independent of expenditures necessary for PSI to maintain adequate electric service in its territory. Accordingly, our approval of this provision of the Settlement Agreement should not be interpreted to shield PSI from the requirement to undertake any additional expenditures that may be necessary to fully address service quality issues that may arise. With this caveat, we find that these provisions of the Settlement Agreement are in the public interest, and are hereby approved.

14. Coordination of Regulation. Section II(H) of the Settlement Agreement prohibits PSI from challenging or seeking review of any Commission order that changes (for Indiana retail ratemaking purposes only) the allocation factors contained in the Merger-related affiliate agreements. The Settlement Agreement further provides that it should be applied so as to avoid stranding reasonable utility costs among the various New Duke Energy jurisdictions.

Finally, the Settlement Agreement provides that PSI and the Commission expressly reserve their respective rights under Section 1275 of Subtitle F, Repeal of PUHCA in Title XII of the EPAct of 2005 or any successor provision. (Pet. Ex. R-1, Section II(H).)

Ms. Pashos testified in her settlement supporting testimony that this provision is necessary to coordinate regulation between state and federal authorities. (Pet. Ex. R, p. 7.) She explained that the Settlement Agreement goes beyond requirements under existing law by requiring PSI to waive review on FERC preemption grounds of any Commission decision that changes (for state retail ratemaking purposes only) the allocation factors in the Merger-related affiliate agreements. (Pet. Ex. R, p. 7.) Mr. Fagan testified that this provision could be interpreted, when read together with other provisions of the Settlement Agreement, to require PSI's customers to pay for costs incurred by PSI's affiliates. (CAC Ex. RMF-S, p. 22.) In response, Mr. Pashos stated that a similar Merger commitment was agreed to by CAC in the 1994 Cinergy merger. (Pet. Ex. U, p. 14.) Ms. Pashos noted that PSI is not claiming that this Commission is precluded from finding costs unreasonable and imprudent in future regulatory proceedings. Rather, these provisions provide that costs that are found to be reasonable should not be left stranded between jurisdictions and therefore not recoverable.

15. Books and Records. The Settlement Agreement authorizes PSI to continue maintaining its books and records outside of the State of Indiana. PSI is required to make its records and personnel available for inquiry in Plainfield, Indiana for all audits in any type of regulatory proceeding. If PSI does not make its books and records or personnel available in Plainfield, then PSI must pay travel expenses for the staffs and outside consultants of this Commission and the OUCC. Neither the CAC nor any other party offered any testimony opposing this provision of the Settlement Agreement.

Pursuant to our May 26, 2004 Order in Cause No. 42594, PSI has been keeping its books and records outside of the State of Indiana, provided that PSI grants access to its books and records in the State of Indiana or, in the alternative, pays the reasonable expenses for this Commission and the OUCC to inspect PSI's books and records located outside of the State of Indiana.

16. Integrated Resource Planning. This provision of the Settlement Agreement requires PSI to follow certain procedures in planning for additional generating facilities and for obtaining Commission approval for such generating facilities, including the use of clean coal technology and PSI's environmental compliance plans. PSI is also required to obtain Commission approval for any purchase of firm power or unit power from an affiliate for a term of five years or longer. (Pet. Ex. R-1, Section (J)).

Mr. Fagan's testimony recommended various restrictions on PSI's right to purchase power from affiliates, and on PSI's integrated resource planning process, and he proposed a protocol for allocating PSI's system generating and purchased power resources. (CAC Ex. RMF-S, p. 26.) Ms. Pashos responded by noting that Mr. Fagan's recommendations are unnecessary or irrelevant to the Merger. (Pet. Ex. U, p. 7.) She explained that this Commission and the FERC have certain authority over affiliate power and capacity purchases, and resource adequacy, such that actual transactions are better addressed in the future when the actual facts of the transactions are known. (Pet. Ex. U, p. 7.) She asserted that issues relating to the matters raised by Mr. Fagan should be dealt with in the appropriate regulatory proceeding, such as a PSI

Certificate of Public Convenience and Necessity (“CPCN”) proceeding, an FAC proceeding, or a summer reliability tracker proceeding. (Pet. Ex. U, pp. 7-8.) Finally, Ms. Pashos noted that the Settlement Agreement’s integrated resource planning commitments are essentially identical to the corresponding commitments from the 1994 Cinergy merger, and have adequately protected customers since that time. (Pet. Ex. U, p. 8.)

17. Affiliate Standards. The Settlement Agreement provides for PSI to adopt new Affiliate Standards and also provides for PSI to work with interested stakeholders to modify these standards as necessary, following the FERC’s issuance of new rules in FERC Docket RM05-32-000, which deals with FERC’s new rules arising from the repeal of PUHCA and enactment of the EAct of 2005. The Settlement Agreement also provides for PSI to meet with this Commission’s Staff after the FERC’s rulemaking is finalized, to discuss whether PSI should be required to issue any additional reports to this Commission, in light of FERC’s final rule. (Pet. Ex. R-1, Section (K); and Pet. Ex. R-1, Attachment 2.)

Ms. Pashos testified that the Settlement Agreement’s Affiliate Standards are the same as proposed in Attachment K-2 to Ms. Pashos’ rebuttal testimony, and reflect a combination of PSI’s existing Affiliate Guidelines and certain affiliate provisions adopted from the settlement of the AEP/CSW merger. (Pet. Ex. R, p. 4.) Mr. Endris testified that the Settlement Agreement’s Affiliate Standards and audit requirements will protect Indiana customers from potential abuse of affiliate relationships. (Pub. Ex. S-1, pp. 2-3.)

Neither CAC nor any other party offered any testimony opposing this provision of the Settlement Agreement specifically addressed to the Affiliate Standards or audits. Mr. Fagan did generally testify to the need for certain additional measures to financially insulate PSI from its affiliates, which could be construed as requesting additional protections in PSI’s Affiliate Standards. (CAC Ex. RMF-S, pp. 23-31.)

18. Rate Design. The Settlement Agreement requires PSI to file and fully support a 4 CP methodology for the rate design for production plant in its next retail electric base rate case. (Pet. Ex. R-1, Section II(L).) The Settlement Agreement also provides that the OUCC will not object to the use of the 4 CP methodology for production plant in PSI’s next retail electric base rate case. Mr. Fagan objected to this provision on the grounds that this Commission should not approve the rate design for PSI’s next rate case in this Merger proceeding. (CAC Ex. RMF-S, p. 32.) Ms. Pashos, in response, noted that the 4 CP methodology for production plant is reasonable because PSI’s monthly loads are now consistently higher in the four summer months. She also pointed out that the Settlement Agreement does not request Commission approval of the 4 CP methodology in this case, but merely binds PSI to propose this methodology in its next rate case. Further, pursuant to the Settlement Agreement, PSI will provide a comparable 12 CP methodology to allow stakeholders and the Commission to compare the impacts of both approaches. (Pet. Ex. U, pp. 17-18.)

While the Settlement Agreement sets forth an agreed upon framework under which certain parties intend to address rate design issues in PSI’s next rate case, we agree with Mr. Fagan that as the issue is sufficiently unrelated to the matter presented to us for approval in this Cause it is not necessary or appropriate for the Commission to affirm this understanding and approach as part of this proceeding.

19. **Miscellaneous Issues.** CAC raised two miscellaneous issues in Mr. Fagan's settlement opposing testimony related to five gas-fired plants comprising 3,600 MW owned by DENA in the Midwest ("the DENA Midwest assets") and to energy efficiency.

Mr. Fagan relied on various confidential documents and a Morningstar report, that make statements about using the DENA Midwest assets to serve Cinergy load in Indiana and Ohio, to support his conclusion that PSI will purchase power from these plants or put them into rate base in the future. (CAC Ex. RMF-S, pp. 13-18).² He expressed concern that these plants' costs exceed their market value, and that PSI has an open generic CPCN case that could allow for expedited treatment for PSI to purchase one of the facilities. (CAC Ex. RMF-S, pp. 18-19.) Mr. Fagan therefore recommended that this Commission should: (i) cap the price of any future PSI capacity purchases at market; (ii) mandate careful scrutiny of the market valuation of any plant that serves PSI load because the costs of the DENA assets may be greater than market; and (iii) exclude the DENA Midwest assets from the generic CPCN proceeding. (CAC Ex. RMF-S, pp. 18-19.)

Ms. Pashos rebutted Mr. Fagan by noting that there is no existing plan to transfer the DENA Midwest assets to PSI or to use these plants to serve PSI's customers. (Pet. Ex. U, pp. 4-5.) Ms. Pashos also indicated on cross examination that any transaction that may yet occur under pending Cause No. 42469 would not involve an affiliate, which would exclude consideration of the DENA Midwest assets. (Tr. G-31.) She noted that, in the Duke/Cinergy Merger proceeding at the FERC, FERC approved the transfer of these plants to The Cincinnati Gas & Electric Company ("CG&E"). (Pet. Ex. U, p. 5.) Ms. Pashos also explained that, if PSI desired to purchase these plants from CG&E in the future, then PSI would need to obtain both FERC and Commission approval. (Pet. Ex. U, p. 5.) Ms. Pashos also noted that CG&E's FERC-approved market-based tariffs provide that CG&E may only sell power to PSI at a price no greater than the Midwest Independent Transmission System Operator, Inc.'s Day 2 Markets locational marginal price. (Pet. Ex. U, p. 6.)

We have considered Mr. Fagan's concerns relating to these plants and we conclude that this issue is not directly related to the Merger transaction. We also note that other regulatory protections and requirements exist, which would allow the Commission to directly review and consider the issues presented by the CAC in the context of a separate proceeding filed with the Commission. We therefore, find it unnecessary to adopt Mr. Fagan's recommended conditions relating to the DENA Midwest assets as part of our consideration of the issues presented in this Cause.

Mr. Fagan also made recommendations related to energy efficiency and demand-side-management. Mr. Fagan testified that PSI is responsible for aggressively promoting energy efficiency because Mr. Rogers is co-chair of the Energy Efficiency Action Plan, and the U.S. Environmental Protection Agency's "Energy Efficiency Fact Sheet" states that members of the Leadership Group, such as Mr. Rogers, "will also commit to take action within their own spheres of influence in the near term, as well as participate in a broader communications strategy to share business cases and create additional leadership opportunities during the summer of 2006." (CAC Ex. RMF-S, p. 32-33.) He therefore recommended that PSI should increase its demand-side

² We note that the confidential documents relied upon by Mr. Fagan pre-dated PSI's acquisition of the Wheatland Generating Station as approved by this Commission in Cause No. 42469 (*Ind. Util. Reg. Comm'n*, August 3, 2005).

management programs, with a goal of reducing forecasted retail sales by 1%. (CAC Ex. RMF-S, pp. 34.) Ms. Pashos stated that PSI has and will continue to aggressively pursue energy efficiency and demand-side management; however, she also indicated that she believes that these issues are irrelevant to this case.

Mr. Fagan also recommended that PSI should be required to incorporate its best forecast of carbon dioxide emissions credit prices into its base case or reference case planning assumptions. Mr. Fagan testified that while there is considerable uncertainty about the specifics of future regulation of carbon dioxide emissions, that uncertainty can be addressed by sensitivity analysis using low and high case assumptions. Mr. Fagan recommended that, at a minimum, PSI should update its IRP modeling processes with respect to the consideration of carbon dioxide issues. In response to this issue Ms. Pashos indicated that PSI has committed to continue to factor environmental issues into its IRP process going forward. According to Ms. Pashos, how PSI does this will naturally change as new federal and state environmental regulations are proposed and finalized. Ms. Pashos indicated that in PSI's recent environmental compliance plan case, PSI performed and presented a sensitivity analysis using carbon emission credit prices, and in future cases PSI will use its professional judgment on how to incorporate relevant environmental issues into its IRP. (Pet. Ex. U, p. 17.)

Energy efficiency, demand side management, and carbon dioxide emission issues, while important, are not directly related to the Merger presented to us for consideration in this Cause. PSI has indicated that it has and will continue to pursue energy efficiency and we accept this as an objective that the company must continue to pursue consistent with prior determinations of the Commission. We also anticipate and expect that PSI will actively focus on carbon dioxide emission issues in future proceedings in a manner that considers the possible future regulation of these emissions. However, in reaching these conclusions, we do not find that these issues are sufficiently related to the issues presented in this Cause to warrant modification of the Settlement Agreement in the manner proposed by the CAC.

20. Findings, Conclusions and Approval of Settlement Agreement. While this matter was resolved by agreement, or not disputed, by most of the parties to this proceeding, several specific issues were raised by the CAC which were considered as part of our review of the Settlement Agreement. Based on the findings set forth in this Order we find that the Settlement Agreement when taken as a whole, consistent with the additional findings recommended by the CAC and adopted by the Commission, is in the public interest and should be approved. In reaching this conclusion we note that the Settlement Agreement provides a credit to ratepayers that would not exist absent the merger. The Settlement Agreement establishes service quality standards that provide some protection to ratepayers against a reduction in service quality. The Settlement Agreement includes several specific affiliate standards that provide further protections to Indiana ratepayers. Further, the Settlement Agreement provides for certain audits of affiliate agreements that will provide the parties and this Commission with information that should facilitate the continued protection of Indiana ratepayers. Therefore, we find that the Settlement Agreement provides a reasonable balancing of interests and note that the Commission continues to have jurisdiction over PSI and therefore retains the authority to address any issues that arise in the future.

Based upon all of the evidence presented at the Evidentiary Hearing in this proceeding, and based upon the foregoing Findings of this Order, we find that the Settlement Agreement in its entirety constitutes an integrated and comprehensive resolution of the relevant issues before us in this proceeding, and is designed to address the specific facts, circumstances and retail electric rates of PSI, in the context of the specific Indiana statutory and regulatory environment. We also find that the Settlement Agreement provides adequate protection for PSI's retail electric customers from the potential material adverse impacts of the Merger. We recognize that the Settlement Agreement was the product of negotiations and constitutes a compromise by all the Settling Parties that involved give and take, and that, as a whole, the Settling Parties believe it is a just and reasonable resolution of the issues raised in this Cause. We find that the Settlement Agreement is just and reasonable, in the public interest, and not inconsistent with the purpose of the Indiana Public Service Commission Act. Accordingly, we find that the Settlement Agreement should be approved, consistent with the findings set forth herein.

The Settlement Agreement provides that the acceptance and approval of the Settlement Agreement by this Commission in accordance with its terms shall not establish any principles or precedent, or be cited as precedent by any Settling Party, except if necessary to enforce its terms before this Commission, or any state court of competent jurisdiction. We find that this provision of the Settlement Agreement is reasonable. With regard to future use, citation, or precedent of the Settlement Agreement, we find that our approval of the terms of the Settlement Agreement should be construed in a manner consistent with our finding in *In Re Richmond Power & Light*, Cause No. 40434 (*Ind. Util. Reg. Comm'n*, March 19, 1997).

21. Request for Confidential Treatment. PSI filed two Motions for Protection of Confidential and Proprietary Information, with Affidavits of Ms. Kay Pashos, and Messrs. Richard Osborne and William Tyndall, on August 13, 2005 and December 9, 2005, respectively. The Affidavits indicate that such confidential information has actual or potential independent economic value to competitors, the disclosure of the confidential information could provide competitors with an unfair advantage, and PSI and Duke and their affiliates have taken all reasonable steps to protect the confidential information from disclosure. No party objected to PSI's August 13, 2005 request for confidential treatment concerning certain coal contract information. In a September 8, 2005 Docket Entry the Presiding Officers found that such information should be subject to confidential procedures on a preliminary basis.

The CAC objected to PSI's request for confidential information which was the subject of PSI's December 9, 2005 Motion. The Presiding Officers granted preliminary confidential treatment in a January 6, 2006 Docket Entry and ordered an *in camera* review of the disputed documents. PSI and CAC worked to resolve the confidentiality dispute and were successful in coming to an agreement on various redacted versions of most documents, and maintaining confidential treatment for the remaining information, except for one document which remained in dispute. On January, 20, 2006, the Presiding Officers heard argument on the remaining confidential document and found that it was properly considered confidential trade secrets and entitled to confidential treatment.

Accordingly, pursuant to Ind. Code § 5-14-3-4(a)-(4), we find that the data concerning the confidential information presented in this proceeding constitutes "trade secrets" and should be afforded confidential treatment and continue to be held as confidential by this Commission.

We will note that where possible the confidential documents have also been produced and entered into evidence as cross-examination exhibits in public redacted form.

IT IS THEREFORE ORDERED BY THE INDIANA REGULATORY COMMISSION that:

1. The Settlement Agreement, including Attachments 1 and 2, is hereby, approved consistent with the findings set forth herein.

2. PSI is hereby, authorized to enter into the Service Company Agreement, the Operating Company/Nonutility Companies Service Agreement, the Operating Companies Service Agreement as set forth in Petitioner's Exhibit I, and subject to the modifications to the Service Agreement identified in Petitioner's Exhibit P. PSI should be, and is hereby, authorized to enter into the Money Pool Agreement as set forth in Petitioner's Exhibit G, and the Tax Sharing Agreement as set forth in Petitioner's Exhibit F. PSI shall submit copies of these agreements with the Electricity Division of this Commission within 30 days of executing the agreements following the Merger.

3. PSI is hereby authorized and directed to adopt the Affiliate Standards attached to the Settlement Agreement as Attachment 2. PSI shall file with this Commission's Electricity Division its revised Section 2 of its Retail Electric Tariff, containing these Affiliate Standards, within 30 days of Merger closing.

4. PSI is hereby authorized and directed to share Merger savings with its retail electric customers by providing a retail electric rate credit of \$40 million paid over one year following the Merger closing. PSI shall further file with this Commission's Electricity Division new tariffs reflecting the rate credit no later than ten days after the Merger closing.

5. PSI is hereby authorized and directed to reduce its retail electric rates by \$11.552 million annually to remove the annual amortization of costs from the 1994 Cinergy merger, beginning June 1, 2008. PSI shall file with this Commission's Electricity Division a new rider to its Retail Electric Tariff, containing the rate reduction, at least 30 days prior to June 1, 2008.

6. PSI is hereby authorized to locate its books and records outside of the State of Indiana, subject to the provisions of the Settlement Agreement.

7. The Merger commitments set forth in the Settlement Agreement and in Attachment 1 to the Settlement Agreement consistent with the findings set forth in this Order are hereby approved to take effect 30 days following the Merger closing. These Merger commitments shall replace the merger commitments agreed to by PSI in Cause No. 39897.

8. The Settling Parties are directed to begin discussions as soon as practicable as to whether the FERC's final rulemaking in Docket No. RM05-32-000 will require any changes to PSI's Affiliate Standards.

9. The confidential information presented in this proceeding is found to constitute trade secrets and is therefore excepted from public access.

10. This Order shall be effective on and after the date of its approval.

HARDY, HADLEY, SERVER, LANDIS AND ZIEGNER CONCUR:

APPROVED: MAR 15 2006

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



Brenda A. Howe

Acting Secretary to the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF PSI ENERGY, INC.)
 CONCERNING: (1) CERTAIN AFFILIATE)
 TRANSACTIONS, INCLUDING SERVICE)
 AGREEMENTS, (2) THE SHARING OF MERGER-)
 RELATED BENEFITS WITH CUSTOMERS, (3))
 DEFERRED ACCOUNTING OF CERTAIN)
 MERGER-RELATED COSTS, (4) AUTHORITY TO)
 CONTINUE MAINTAINING CERTAIN BOOKS)
 AND RECORDS OUTSIDE THE STATE OF)
 INDIANA, AND (5) ANY AND ALL OTHER ISSUES)
 RELATING TO THE MERGER OF CINERGY)
 CORP., THE PARENT COMPANY OF PSI)
 ENERGY, INC., AND DUKE ENERGY)
 CORPORATION INTO A NEW PUBLIC UTILITY)
 HOLDING COMPANY)

IURC
 PETITIONER'S R-1
 EXHIBIT NO. _____
 1-24-06 _____
 DATE REPORTER

CAUSE NO. 42873

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT, made as of the 15th day of December, 2005, is made and entered into by and among the duly authorized representatives of: (i) PSI Energy, Inc. ("PSI"), (ii) the Indiana Office of Utility Consumer Counselor ("OUCC"), (iii) the Indiana Utility Regulatory Commission Testimonial Staff ("IURC Testimonial Staff"); and (iv) the PSI Industrial Group ("PSI-IG"). The OUCC, IURC Testimonial Staff, and PSI-IG are hereinafter sometimes referred to individually as "Non-Cinergy Party" and collectively as "Non-Cinergy Parties" where appropriate. OUCC, IURC Testimonial Staff, PSI-IG and PSI are hereinafter sometimes referred to individually as "Settling Party" and collectively as "Settling Parties" where appropriate.

WHEREAS, in IURC Cause No. 42873, PSI filed for approval of certain affiliate agreements, the sharing of merger-related benefits with customers, and authority to maintain its books and records outside the State of Indiana, among other things, all related to the merger of PSI's parent company, Cinergy Corp. ("Cinergy") with the Duke Energy Corporation ("Duke Energy"); and

WHEREAS, the Settling Parties have met and conferred and exchanged information related to these issues, among others;

NOW THEREFORE, as a result of the aforementioned discussions, but subject in every particular to the conditions set forth in this Settlement Agreement, including the approval and acceptance by the IURC of this Settlement Agreement, in its entirety and without any change or condition that is unacceptable to any Settling Party, and with the understanding that each and every provision of this Settlement Agreement is in

consideration and support of each and every other provision of this Settlement Agreement, the Settling Parties have agreed as follows:

I. DEFINITIONS.

- A. 1994 Cinergy Merger Settlement Agreement:** The March 2, 1994 Settlement Agreement in IURC Cause No. 39897, concerning the 1994 merger of PSI Resources, Inc. and The Cincinnati Gas & Electric Company, creating the Cinergy Corp. public utility holding company.
- B. 1994 Cinergy Merger:** The 1994 merger of PSI Resources, Inc. and The Cincinnati Gas & Electric Company, creating the Cinergy Corp. public utility holding company.
- C. Costs to Achieve Merger Savings:** All Merger-related costs other than Transaction Costs, specifically the following costs: separation costs, relocation costs, retention costs, systems integration costs, facilities integration costs, internal and external communication expenses, regulatory process and compliance costs, transition costs, and directors and officers insurance coverage costs (as presented in PSI's case-in-chief testimony in Cause No. 42873, Petitioner's Exhibit C, pp. 61-66, and Petitioner's Exhibit C-3).
- D. IURC:** The Indiana Utility Regulatory Commission, or any successor governmental agency.
- E. Duke and Cinergy Section 203 Parties:** Duke Energy Corporation, and its subsidiaries that are public utilities subject to FERC jurisdiction, and Cinergy Corp., and its subsidiaries that are public utilities subject to FERC jurisdiction.
- F. FERC:** The Federal Energy Regulatory Commission, or any successor governmental agency.
- G. Merger:** The mergers, the conversion of Duke Energy Corporation into a limited liability company, the restructuring transactions, and all other transactions contemplated by the Agreement and Plan of Merger between Duke Energy Corporation and Cinergy Corp.
- H. Merger-Related Affiliate Agreements:** The five affiliate agreements between PSI and its affiliates filed by PSI in IURC Cause No. 42873: (i) the Service Company Utility Service Agreement, (ii) the Operating Company / Nonutility Companies Service Agreement, (iii) the Operating Companies Service Agreement, (iv) the Utility Money Pool Agreement, and (v) the Agreement for Filing Consolidated Income Tax Returns and For Allocation of Consolidated Income Tax Liabilities and Benefits.
- I. PUHCA:** The Public Utility Holding Company Act of 1935.

- J. **PUHCA 2005:** The Public Utility Holding Company Act of 2005.
- K. **SEC:** The Securities and Exchange Commission, or any successor governmental agency.
- L. **Transaction Costs:** Amounts paid to investment banks for assistance in transaction structuring and negotiation and the provision of a fairness opinion related to the Merger (as presented in PSI's case-in-chief testimony in Cause No. 42873, Petitioner's Exhibit C, p. 66, and Petitioner's Exhibit C-3).

II. **SUBSTANTIVE PROVISIONS.**

A. **Merger Commitments.**

PSI agrees to the "Additional PSI Merger Commitments" contained in Petitioner's Rebuttal Exhibit K-1 in Cause No. 42873, and attached hereto as **Attachment 1** to this Settlement Agreement.

B. **One Time Rate Credit.**

Starting with the first retail electric billing cycle which begins no earlier than thirty (30) days, but no more than sixty (60) days, from and after the date of consummation of the Merger, PSI shall reduce the bills of its retail electric customers by providing a "one time" electric rate credit. This "one-time" retail electric rate credit shall total an aggregate amount of \$ 40,000,000 (for all customer classes), shall be paid over one year, shall be allocated to PSI's retail electric customer classes based on non-fuel operation and maintenance expense as reflected in IURC Cause No. 42359, and shall not be reconciled.

C. **Contributions to Community.**

Upon consummation of the Merger, PSI agrees to make an annual contribution of one million dollars (\$1,000,000) per year for five years starting in 2006 and ending 2010, five hundred thousand dollars (\$500,000) of which shall go to the Indiana Center for Coal Technology Research, established pursuant to Ind. Code 4-4-30. The remainder of the contribution shall be allocated to Low Income Home Energy Assistance Program ("LIHEAP") established under Indiana Code 12-14-11. and designated for electric customers in PSI's service territory. These amounts shall be booked below-the-line on PSI's books.

D. **Resolution of 1994 Cinergy Merger Issues.**

PSI's current retail electric revenue requirements based on its most recent retail electric rate case in IURC Cause No. 42359 includes approximately eleven

million five hundred fifty two thousand dollars (\$11,552,000) of amortization of the costs associated with the 1994 Cinergy Merger. PSI shall not seek recovery of such 1994 Cinergy Merger costs in any future retail electric rate proceeding. Moreover, contingent upon consummation of the Merger, starting June 1, 2008, PSI shall reduce the bills of its retail electric customers by \$11,552,000 annually, and any then unamortized balance of such 1994 Cinergy Merger costs shall never be recovered through PSI's retail electric rates. This rate reduction shall occur via a reduction in PSI's retail electric basic rates and charges. This rate reduction shall continue at least until the effective date of the setting of new retail electric basic rates and charges for PSI as a result of PSI's next retail electric base rate case (and PSI's new basic rates and charges shall not contain such 1994 Cinergy Merger costs). In the event that PSI's new basic retail electric rates and charges are effective prior to July 1, 2009, this \$11,552,000 rate reduction shall continue as a credit against PSI's new retail electric rates and charges until July 1, 2009. This retail electric basic rates and charges reduction shall be allocated to PSI's retail electric customer classes based on non-fuel operation and maintenance expense as reflected in IURC Cause No. 42359.

E. Merger Costs.

1. No Transaction Costs associated with the Merger, regardless of how denominated (for example, direct, indirect, allocated, distributed, capitalized or otherwise), whether deferred or not, and however occurring, shall be recovered from Indiana retail ratepayers. Such costs shall not be reflected in fuel clause ("FAC") filings under Ind. Code § 8-1-2-42(d). PSI may book Merger-related Transaction Costs below-the-line, so long as such a booking can be made while also accomplishing the provisions of this Subsection II.E.1.
2. Neither Costs to Achieve Merger Savings nor Transaction Costs associated with the Merger shall be deferred or recovered through retail electric rates except as provided in Subsection II.E.3 below. Subject to the FAC earnings test under Ind. Code § 8-1-2-42(d), PSI may retain Merger savings in excess of those returned to customers and contributed to the community via Section II.B, and II.C above, respectively. Actual Merger savings shall be reflected in PSI's FAC filings under Ind. Code § 8-1-2-42(d). Except for the first two years following consummation of the Merger, actual PSI retail jurisdictional Costs to Achieve Merger Savings shall be reflected in PSI's FAC filings under Ind. Code § 8-1-2-42(d). For the first two years following consummation of the Merger, PSI's FAC filings shall reflect the lesser of (i) the actual PSI retail jurisdictional Costs to Achieve Merger Savings, or (ii) forty two million dollars (\$42,000,000).

This requirement shall be met as follows: Upon the completion of the first two years following consummation of the Merger, any PSI retail jurisdictional Costs to Achieve Merger Savings above forty two million dollars (\$42,000,000) on an aggregate two-year basis shall be booked below-the-line, and the prior eight quarterly earnings test calculations shall be recalculated, attributing one-

eighth of the excess costs, if any, to each quarter. To the extent that any quarter results in an additional refund to customers under the FAC earnings test, such refund shall be made in subsequent FAC filings. The Settling Parties agree that such refunds, if any, will be done on a forward-looking basis and there will be no retroactive re-opening of the previous FAC cases or PSI's accounting books and records, as result of this Section II.E.2.

3. In the event PSI seeks recovery of PSI retail jurisdictional Costs to Achieve Merger Savings in its next base retail electric rate case (in the event any such costs are reflected in the test year), PSI must prove any such costs are also prudent, reasonable, and recurring.

F. Affiliate Agreements and Audits.

1. PSI agrees that, upon consummation of the Merger, it shall fund and fully cooperate in a series of four independent audits of its compliance with the Affiliate Standards proposed in PSI's rebuttal case in IURC Cause No. 42873 (and included as **Attachment 2** to this Settlement Agreement), including an audit of the Affiliate Standards training and controls that PSI has in place to prevent affiliate cross-subsidization (as set forth in Section II(A) of the Affiliate Standards). The Settling Parties shall mutually select the independent auditor (or, if they cannot mutually agree on the auditor, the IURC shall select the auditor upon the motion of any Settling Party or Settling Parties). The initial audit shall begin approximately twelve (12) months after the date of consummation of the Merger. Thereafter, such audits shall occur every two (2) years. PSI shall present a proposed audit plan to the Non-Cinergy Parties for their review prior to the initial audit, but the audit plan shall be determined by, and the auditor shall report to, the Non-Cinergy Parties and PSI contemporaneously. The audit plan shall be designed to be accomplished at a cost no greater than one hundred thousand dollars (\$100,000) per audit. Unless the Non-Cinergy Parties agree that a lesser amount will be sufficient to fund the cost of the audit, PSI shall provide one hundred thousand dollars (\$100,000) to the OUCC before the start of the audit, and such funds shall be deposited into a State account administered by the OUCC. The auditor shall present invoices to the OUCC, which shall pay the auditor upon such terms as are agreed to in the audit plan. To the extent the actual cost of an audit exceeds one hundred thousand dollars (\$100,000), PSI shall provide such additional sums to the OUCC for payment to the auditor. To the extent the sums provided by PSI exceed the cost of the audit, the OUCC shall refund such sums (including any interest) to PSI. To the extent sums paid by PSI exceed one hundred thousand dollars (\$100,000) in any audit, PSI may defer and recover such incremental amounts in its next retail electric base rate case.
2. The Settling Parties acknowledge and agree that the IURC, by approving this Settlement Agreement, has approved the revenue and expense allocations and

other components of the Merger-Related Affiliate Agreements. The Settling Parties acknowledge and agree that the IURC retains jurisdiction to review and require revisions to the Affiliate Agreements in the future. This Section II.F is designed to provide the Settling Parties with the information required to carefully review the Merger-Related Affiliate Agreements, and to provide a vehicle for changes deemed necessary.

- a. PSI agrees that, upon consummation of the Merger, it shall fund and fully cooperate in an independent audit/examination of the Merger-Related Affiliate Agreements. The audit/examination shall examine the Merger-Related Affiliate Agreements for reasonableness, in particular to PSI customers, and shall include a review of the allocation factors in the Service Company Utility Service Agreement. The audit/examination shall begin approximately eighteen (18) months after the date of consummation of the Merger. The Settling Parties shall mutually select the independent auditor (or, if they cannot mutually agree, the IURC shall select the auditor upon the motion of any Settling Party or Settling Parties). PSI shall present a proposed audit plan to the Non-Cinergy Parties for their review prior to the audit, but the audit plan shall be determined by, and the auditor shall report to, the Non-Cinergy Parties and PSI contemporaneously. Unless the Non-Cinergy Parties agree that a lesser amount shall be sufficient, PSI shall provide two hundred thousand dollars (\$200,000) to the OUCC before the start of the audit, and such funds shall be deposited in a State account administered by the OUCC. The auditor shall present invoices to the OUCC, which shall pay the auditor upon such terms as are agreed to in the audit plan. PSI may defer and recover the cost of this audit in its next retail electric base rate case. To the extent the sums provided by PSI exceed the cost of the audit, the OUCC shall refund such sums (including any interest) to PSI.
- b. Once the audit/examination is completed, if any of the Non-Cinergy Parties concludes that the method of allocation of costs is inappropriate or that the methodology leads to costs being inappropriately allocated to PSI, the Non-Cinergy Parties shall meet with PSI to discuss the issue(s). The Non-Cinergy Parties may petition to open a subdocket in IURC Cause No. 42873 to address such issues either through settlement or litigation. PSI agrees to not oppose the opening of a subdocket in IURC Cause No. 42873 for this purpose. If agreement is reached among the Settling Parties, it shall be presented to the IURC in the subdocket. If no agreement is reached between the Settling Parties, the Settling Parties shall notify the IURC and a procedural schedule shall be established for the IURC to consider and determine whether any changes should be made to the Merger-Related Affiliate Agreements.
- c. Unless otherwise agreed by the Settling Parties, no multi-state changes

to the Merger-Related Affiliate Agreements shall be required, but any change in methodology or inappropriate allocation shall be reallocated through adjustments through the state ratemaking process.

3. Except as otherwise provided in Subsections II.F.1 or II.F.2 above, there shall be no PSI funding of other parties' audits in retail rate cases.

G. Service Quality Reliability and Customer Service.

1. Upon consummation of the Merger, PSI shall file quarterly reports with the IURC on four (4) measures – SAIDI, SAIFI, CAIDI (as defined in 170 IAC 4-1-23), and average speed of answer including Category 1 and 2 storms.
2. The Settling Parties agree that PSI has historically provided, and currently provides, reasonably adequate and reliable electric utility service.

The following benchmarks are based on PSI's recent performance, shall be based on 12-month rolling averages, and include Category 1 and 2 storms:

Performance Measure	Benchmark
SAIDI	175 Minutes
CAIDI	115 Minutes
SAIFI	1.65 Interruptions
Average Speed of Answer	60 Seconds

3. If, during the first five years from and after the date of consummation of the Merger, two (2) or more of the benchmarks are exceeded in any quarter for reasons within PSI's control as determined by the IURC, PSI shall implement an IURC approved Service Remediation Plan. The total cost of all Service Remediation Plan(s) shall not exceed five million dollars (\$5,000,000) annually as described in Subsection II.G.4 below.
4. In the event a Service Remediation Plan is developed, the cost of such plan shall not exceed one million two hundred fifty thousand dollars (\$1,250,000) of incremental expenditures per quarter as follows:
 - a. If one (1) benchmark is missed in any quarter, no expenditures are required.
 - b. If two (2) benchmarks are missed in any quarter, required expenditures shall not exceed two hundred fifty thousand dollars (\$250,000).
 - c. If three (3) benchmarks are missed in any quarter, required expenditures shall not exceed five hundred thousand dollars (\$500,000).
 - d. If four (4) benchmarks are missed in any quarter, required expenditures shall not exceed one million two hundred fifty thousand dollars (\$1,250,000).

5. With each such missed benchmark, PSI shall have notice and an opportunity for a hearing before the IURC to explain the circumstances of the missed benchmarks before incurring expense under a Service Remediation Plan. In any such proceeding, the Non-Cinergy Parties would also have an opportunity to be heard and provide evidence. After hearing, the remediation expenditures could be eliminated or reduced at the discretion of the IURC.
6. While the Service Remediation Plan amounts listed in Subsection II.G.4 are designated on a per quarter basis, the Settling Parties agree that PSI is not required to spend the funds required by such Service Remediation Plan in one quarter.
7. Following consummation of the Merger, PSI shall provide at least 30-days' advance written notice to the IURC and the Non-Cinergy Parties of any decision to close or move the Plainfield Call Center out of the State of Indiana. Any decision to close or so move the Plainfield Call Center shall be based upon objective business criteria, including, but not necessarily limited to, cost and quality of performance. Such notice shall include an explanation of the objective business criteria used to make the decision. In the event the Plainfield Call Center is closed in less than three (3) years from the date of the consummation of the Merger, PSI shall make a contribution of five hundred thousand dollars (\$500,000) to the Indiana Economic Development Corporation, into the Indiana Promotions Fund, or a successor fund with a similar purpose, within ninety (90) days of such closing of the Plainfield Call Center. Such amount shall be booked below-the-line on PSI's books.
8. Nothing in this Section II.G is intended to limit or expand the IURC's jurisdiction to order remedial measures for service quality reliability and customer service beyond those set forth herein.

H. Coordination of Regulation.

1. Upon consummation of the Merger, PSI shall not thereafter challenge or seek review, based on any FERC preemption theory, of an IURC order that changes, for Indiana retail ratemaking purposes only, the allocation factors applied to PSI in the Merger-Related Affiliate Agreements.
2. Notwithstanding the provisions of Section II.F above, the Settling Parties agree that this Settlement Agreement shall be applied in such a manner as to avoid reasonable utility costs being left unallocated or stranded between various regulatory jurisdictions, resulting in the failure of timely recovery of such costs by PSI and/or its Utility Affiliates (as defined in PSI's Affiliate Standards); provided, however, that no more than one hundred percent (100%) of such costs shall be allocated on an aggregate basis to the various regulatory jurisdictions.

3. The Settling Parties agree that PSI and the IURC expressly reserve any rights each may have under Section 1275 of Subtitle F, Repeal of PUHCA in Title XII, of the Energy Policy Act of 2005, or successor provision.

I. Books and Records.

1. PSI may continue to maintain its books and records outside the State of Indiana.
2. PSI shall make its records and personnel available in Indiana not just for inquiry into the Affiliate Agreements, but for any other audit requirement (e.g., FAC, RTO, DSM, ECR, Summer Reliability Tracker, etc.), so that the audit may be performed in Plainfield.
3. PSI shall pay for travel of IURC/OUCC staff, and/or their agents, consultants or representatives, in the event that PSI does not make records and/or personnel available in Indiana.

J. Integrated Resource Planning.

Upon consummation of the Merger, PSI agrees to the 1994 Cinergy Merger Settlement Agreement commitments as stated below:

1. PSI agrees that with respect to the extent of application of the IURC's authority under Ind. Code 8-1-8.5, or any successor statute (hereinafter collectively referred to as "I.C. 8-1-8.5"):
 - a. Prior to participating in the construction, purchase or lease of a facility for the generation of electricity to be directly or indirectly used for the furnishing of electric utility service to PSI's retail electric customers, PSI shall seek the IURC's approval of such participation pursuant to the provisions of I.C. 8-1-8.5.
 - b. In the event that, pursuant to the provisions of I.C. 8-1-8.5, the IURC disapproves PSI's proposed participation in the construction, purchase or lease of a facility described in sub-item (a) above, PSI shall terminate or amend its plans relating to such participation, and shall obtain the IURC's approval of any such amended plans before going forward.
 - c. In the event that the IURC disapproves PSI's proposed participation in the construction, purchase or lease of a facility described in sub-item (a) above, and in the event that PSI has theretofore filed such proposed plans with the FERC and/or the SEC, PSI shall take such steps as are necessary to cause such FERC and/or SEC filing to be terminated or amended, whichever is appropriate.
 - d. PSI shall utilize the "ongoing review" procedures contained in I.C. 8-1-8.5

for PSI's participation in any construction, purchase or lease of a facility which receives the IURC's approval under I.C. 8-1-8.5.

2. PSI agrees that with respect to the extent of application of the IURC's authority under Ind. Code 8-1-8.7, or any successor statute (hereinafter collectively referred to as "I.C. 8-1-8.7"):
 - a. Prior to participating in the use of clean coal technology at a new or existing electric generating facility used for the furnishing of electric utility service to PSI's retail electric customers, PSI shall seek the IURC's approval of such use pursuant to the provisions of I.C. 8-1-8.7.
 - b. In the event that, pursuant to the provisions of I.C. 8-1-8.7, the IURC disapproves PSI's proposed participation in the use of clean coal technology at a facility described in sub-item (a) above, PSI shall terminate or amend its plans relating to such participation, and shall obtain the IURC's approval of any such amended plans before going forward.
 - c. In the event that the IURC disapproves PSI's proposed participation in the use of clean coal technology at a facility described in sub-item (a) above, and in the event that PSI has theretofore filed such proposed plans with the FERC and/or the SEC, PSI shall take such steps as are necessary to cause such FERC and/or SEC filing to be terminated or amended, whichever is appropriate.
 - d. PSI shall utilize the "ongoing review" procedures contained in I.C. 8-1-8.7 for PSI's participation in any use of clean coal technology at a facility which receives the IURC's approval under I.C. 8-1-8.7.
3. PSI agrees that with respect to the extent of application of the IURC's authority under Ind. Code 8-1-8-27, or any successor statute (hereinafter collectively referred to as "I.C. 8-1-27"):
 - a. Prior to participating in the implementation of a plan to comply with the requirements of the "Clean Air Act" (within the meaning of Ind. Code § 8-1-27-1) applicable to an electric generating facility used for the furnishing of electric utility service to PSI's retail electric customers, PSI shall exercise its right under I.C. 8-1-27 to voluntarily seek the IURC's approval of such participation pursuant to the provisions of I.C. 8-1-27.
 - b. In the event that, pursuant to the provisions of I.C. 8-1-27, the IURC rejects PSI's proposed participation in such compliance plan, PSI may, at its sole option, voluntarily submit to the IURC for its approval a modified compliance plan.

- c. PSI shall utilize the "ongoing review" procedures contained in I.C. 8-1-27 or any compliance plan approved by the IURC.
4. PSI agrees to factor into its integrated resource planning process risks resulting from the future enactment of environmental statutes and regulations that PSI believes to be significant ("Environmental Risks"). PSI shall meet this obligation by systematically evaluating the impacts of such Environmental Risks on supply-side and demand-side resource options through the use of sensitivity analyses or other accepted techniques which PSI deems appropriate to its integrated resource planning process. PSI also agrees to consider in its resource planning process any material differences in carbon dioxide, mercury and criteria pollutants for which PSI believes significant prospects exist for future regulation, associated with alternative resource plans. PSI further agrees to continue the enhancements it has made to its resource planning process by continuing to assume a leadership role in developing and implementing, as appropriate, innovative methodologies for factoring Environmental Risks into its integrated resource planning process. PSI shall also consider flexibility in evaluating supply-side and demand-side resource alternatives.
5. PSI shall file with the IURC for the IURC's acceptance and approval any proposed purchase of firm power or unit power by PSI from an Affiliate (as defined in PSI's Affiliate Standards, **Attachment 2** to this Settlement Agreement) for a term of five (5) years or more.

K. Affiliate Standards.

1. Upon consummation of the Merger, PSI agrees to abide by the Affiliate Standards proposed in PSI's rebuttal testimony in IURC Cause No. 42873, Petitioner's Exhibit K-2, and attached as **Attachment 2** to this Settlement Agreement, which shall replace and supersede PSI's current Affiliate Guidelines, contained in Section Two of PSI's Retail Electric Tariff, and shall go into effect immediately upon consummation of the Merger. The Non-Cinergy Parties have not yet comprehensively reviewed and discussed such Affiliate Standards.
2. Upon consummation of the Merger, and after FERC's PUHCA 2005 Final Rules are established in FERC Docket RM05-32-000, PSI and the Non-Cinergy Parties shall work in good faith on such modifications of the Affiliate Standards as may be appropriate to ensure that PSI ratepayers do not subsidize any other PSI affiliate, and vice versa. PSI agrees that it shall not ask FERC or the IURC to revise any term of the Affiliate Standards on the grounds that they are more stringent than required by the Final Rules, unless such revision is agreed to by the Non-Cinergy Parties. If the Non-Cinergy Parties do not propose changes to the Affiliate Standards within sixty (60) days of the date of consummation of the Merger or the adoption of the FERC's Final Rules in that rulemaking proceeding, whichever is later, then the Settling Parties agree that the Affiliate Standards proposed in PSI's rebuttal case, shall be the final Affiliate Standards.

3. Nothing in this Settlement Agreement shall require the Non-Cinergy Parties to seek changes to the Affiliate Standards as a result of such Final Rules, but PSI shall not oppose a request by any Settling Party to open a subdocket to Cause No. 42873 which requests modification of the Affiliate Standards.
4. After the FERC issues final reporting requirements in FERC Docket No. RM05-32-000, PSI and the IURC Testimonial Staff shall meet to discuss and reach agreement on whether additional reporting is required to satisfy the IURC's information needs.

L. Rate Design.

1. PSI commits that, in its next proceeding to set its retail electric basic rates and charges, PSI will provide its cost of service and rate design for production plant using a four (4) coincident peak ("4 CP") methodology. PSI believes that a 4 CP methodology is appropriate for use in its cost of service and rate design for production plant, and will file testimony supporting its use for production plant in its next proceeding to set its retail electric basic rates and charges. PSI agrees to fully support the 4 CP methodology for production plant in all elements of such proceeding, including written testimony, examination of witnesses and proposed orders. PSI shall also provide a cost of service and rate design utilizing the twelve coincident peak ("12 CP") methodology for production plant, for comparison purposes.
2. The OUCC agrees that it shall not oppose the use of the 4 CP methodology for production plant in PSI's next proceeding to set its retail electric basic rates and charges.

M. Other Proceedings.

1. Any Non-Cinergy Party who has filed a request in FERC Docket No. EC05-103-000, for the establishment of a settlement conference, or the commencement of a hearing by the FERC, or any other protest, shall, within five (5) business days of execution of this Settlement Agreement, either move to withdraw such request at the FERC, or inform the FERC that such Non-Cinergy Party has reached a Settlement Agreement with PSI, which upon approval by the IURC resolves any issues or concerns that such Non-Cinergy Party may have raised in such filing with the FERC.
2. With respect to the proceeding in FERC Docket No. EC05-103-000, this Settlement Agreement settles and resolves all issues, contentions, rights, obligations and remedies as between PSI and the Duke and Cinergy Section 203 Parties on one hand and the Non-Cinergy Parties, or any of them, on the other hand which PSI, the Duke and Cinergy Section 203 Parties and/or the Non-Cinergy Parties, or any of them, may have concerning such proceeding and the FERC's approval of the Application For Authorization Of Disposition Of

Jurisdictional Assets under Section 203 of the Federal Power Act by the Duke and Cinergy Section 203 Parties to consummate the Merger.

3. With respect to the proceeding in IURC Cause No. 42873, this Settlement Agreement settles and resolves all issues, contentions, rights, obligations and remedies as between PSI and the Non-Cinergy Parties which PSI and/or the Non-Cinergy Parties, or any of them, may have concerning such proceeding, the IURC's approval and acceptance of this Settlement Agreement and/or the issues, contentions, rights, obligations and remedies settled and resolved by this Settlement Agreement.
4. The Settling Parties agree that, as between the Settling Parties, effective upon IURC approval of this Settlement Agreement without any change or condition(s) unacceptable to any Settling Party, this Settlement Agreement supersedes and replaces in its entirety the 1994 Cinergy Merger Settlement Agreement. The Settling Parties further agree that, effective upon IURC approval of the Settlement Agreement without any change or condition(s) unacceptable to any Settling Party, as between the Settling Parties, from and after the date of consummation of the Merger the provisions of the 1994 Cinergy Merger Settlement Agreement shall be null and of no force and effect. The Settling Parties further agree that they shall support a request that the IURC find that this Settlement Agreement supersedes and replaces in its entirety the 1994 Cinergy Merger Settlement Agreement.
5. This Subsection II.M.5 is effective upon IURC approval of this Settlement Agreement without any change or condition(s) unacceptable to any Settling Party. The Settling Parties agree that, as between the Settling Parties, this Settlement Agreement supersedes and replaces in its entirety the March 1994 Indiana Joint Stipulation & Agreement in FERC Docket No. EC93-6-000. The Settling Parties further agree that, as between the Settling Parties, from and after the date of consummation of the Merger the provisions of such Indiana Joint Stipulation & Agreement shall be null and void and of no force and effect.

N. Proceedings in IURC Cause No. 42873 / Consummation of the Merger.

1. The Settling Parties shall support this Settlement Agreement before the IURC in Cause No. 42873 and request that the IURC expeditiously accept and approve this Settlement Agreement without any change or condition(s) unacceptable to any Settling Party. If the IURC fails to approve this Settlement Agreement in its entirety without any changes or condition(s) unacceptable to any Settling Party, this Settlement Agreement and any supplemental supporting evidence filed after the execution of this Settlement Agreement by any Settling Party shall be withdrawn, and the IURC shall continue with IURC Cause No. 42873 at the point where the litigation proceedings were suspended.

2. A final, non-appealable IURC Order approving this Settlement Agreement shall be effective immediately, unconditionally and shall be effective and binding on all Settling Parties as an Order of the IURC. Except for Sections II.M, II.N, II.O and II.P of this Settlement Agreement, all other agreed provisions shall be effective only after consummation of the Merger. Except as otherwise noted therein, Sections II.M, II.N, II.O and II.P shall be effective after execution of the Settlement Agreement.
3. All of the Settling Parties shall attend any conference or hearing that the IURC may hold concerning this Settlement Agreement, and actively support the proposed procedure; the Settling Parties' presentation at any such conference or hearing shall be discussed and agreed upon in advance by all of the Settling Parties.
4. All of the Settling Parties shall actively support this Settlement Agreement before the IURC and request that the IURC accept and approve this Settlement Agreement in its entirety without any change or condition that is unacceptable to any Settling Party. In the proceeding(s) before the IURC requesting that the IURC accept and approve this Settlement Agreement:
 - a. PSI shall offer for introduction into evidence its initial case-in-chief testimony and exhibits that PSI prefiled on August 1, 2005, and the proofs of publications prefiled on October 12, 2005 in IURC Cause No. 42873;
 - b. The Non-Cinergy Parties shall not offer into evidence the testimony and exhibits that were prefiled by any of them on November 8, 2005;
 - c. PSI shall offer for introduction into evidence its rebuttal testimony and exhibits that PSI prefiled on November 30, 2005, as modified to remove testimony which specifically rebuts the Non-Cinergy Parties prefiled testimony and exhibits that shall not be offered into evidence pursuant to this Settlement Agreement. PSI shall submit such modified rebuttal testimony to the Non-Cinergy Parties for review and approval prior to submission into evidence;
 - d. PSI shall draft additional testimony and exhibits in support of this Settlement Agreement, which testimony and exhibits shall be submitted to the Non-Cinergy Parties for their review and approval prior to pre-filing of such evidence. The Settling Parties shall jointly sponsor or support such additional testimony and exhibits in support of this Settlement Agreement;
 - e. The Non-Cinergy Parties shall agree and stipulate to the admissibility of the prefiled testimony and exhibits of PSI and such additional testimony and exhibits in support of this Settlement Agreement in IURC Cause No. 42873, and, except as mutually agreed otherwise, the Settling Parties

waive their individual and collective cross-examination rights of such testimony and associated exhibits in IURC Cause No. 42873;

- f. Unless agreed to in advance by PSI, no Non-Cinergy Party shall offer any other evidence for introduction into evidence in IURC Cause No. 42873; and
 - g. All of the Settling Parties shall actively and jointly support this Settlement Agreement in proposed orders, briefs, motions and other pleadings in IURC Cause No. 42873.
 - h. The Settling Parties agree that the evidence proffered in support of this Settlement Agreement constitutes substantial evidence sufficient to support the Settlement Agreement and provides an adequate evidentiary basis upon which the IURC can make any findings of fact and conclusions of law necessary for the approval of this Settlement Agreement, in its entirety without any change or condition that is unacceptable to any Settling Party.
5. If the IURC by Order(s) accepts and approves this Settlement Agreement in its entirety without any change or condition that is unacceptable to any Settling Party, then all of the Settling Parties individually and collectively waive their right(s) to appeal or seek reconsideration, rehearing or further hearing of such Order(s).
6. If some entity or person not a Settling Party under this Settlement Agreement appeals or seeks reconsideration, rehearing or further hearing of any Order(s) of the IURC approving and accepting this Settlement Agreement in its entirety without any change or condition that is unacceptable to any Settling Party, then the Settling Parties individually and collectively shall actively support the IURC Order(s) on appeal, rehearing, reconsideration or further hearing, which support may include the submission of appropriate briefs and motions and other pleadings in support of such Order(s).

O. Role of IURC Testimonial Staff.

Certain members of IURC staff participated as IURC Testimonial Staff in the discussions which resulted in this Settlement Agreement. Such participation was in conjunction with the other Non-Cinergy Parties and was pursuant to the authorization and direction of the IURC. The members of IURC staff who participated in such discussions participated therein pursuant to such authorization and direction, and pursuant to the provisions of Ind. Code § 8-1-1-5(b), among others. From time to time, the IURC may appoint additional or different members of the IURC's staff as IURC Testimonial Staff to fulfill the obligations of the IURC Testimonial Staff in this Settlement Agreement.

P. Conditions.

1. The making of this Settlement Agreement shall not constitute in any respect an admission by the Non-Cinergy Parties, PSI or the Duke and Cinergy Section 203 Parties.
2. The making of this Settlement Agreement is based upon the express understanding of the Settling Parties that it constitutes a negotiated settlement between PSI and the Non-Cinergy Parties.
3. Neither the making of this Settlement Agreement (or any of the other documents or pleadings required to effectuate the provisions of this Settlement Agreement), nor the provisions hereof, nor the entry by the IURC of an Order or Orders in IURC Cause No. 42873 shall establish any principles or precedent, or be cited as precedent by any Settling Party, except if necessary to enforce its terms before the IURC, or any state court of competent jurisdiction on these particular issues. This Settlement Agreement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Settling Parties may take with respect to any or all of the items resolved in this Settlement Agreement and in any future regulatory or other proceedings.
4. The communications and discussions, and materials produced and exchanged, during the negotiations and conferences which have produced this Settlement Agreement have been conducted on the explicit understanding that they are, or relate to, offers of settlement and shall be privileged, shall be without prejudice to the positions of any Settling Party, and are not to be used in any manner in connection with any proceeding or otherwise.
5. The descriptive headings of the various sections in this Settlement Agreement have been inserted for convenience of reference only and shall not define, modify, restrict, construe or otherwise affect the construction or interpretation of any Section or provision of this Settlement Agreement.
6. The provisions of this Settlement Agreement shall be enforceable by any Settling Party, and any state court of competent jurisdiction.
7. The Settling Parties shall each bind its successors and assignees to all terms of the Settlement Agreement.
8. This Settlement Agreement shall be construed in accordance with and be governed by the laws of the State of Indiana and suit concerning this Settlement Agreement, if any, must be brought in the State of Indiana.
9. Unless expressly modified or supplanted by the express terms of this Settlement Agreement, all existing laws, rules, guidelines, and orders that are generally applicable to PSI that are in effect as of the date of approval of this Settlement

Agreement shall remain applicable to PSI, absent an IURC order modifying such regulatory requirements. Nothing in this Settlement Agreement is intended to limit or prevent the IURC from fulfilling its statutory obligations and carrying out any mandates under applicable state or federal laws, not otherwise specifically addressed herein. The IURC shall retain all jurisdiction over PSI that is not expressly declined or supplanted by the express provisions of this Settlement Agreement.

10. The Settling Parties have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated entities who will be bound thereby.

IN WITNESS WHEREOF, OUCC, IURC Testimonial Staff, PSI-IG and PSI have caused their duly authorized representatives to execute this Settlement Agreement, on their respective behalves, as of the day, month and year first above written.

OFFICE OF UTILITY CONSUMER COUNSELOR (OUCC)

By: Susan L. Macey
Susan Macey, Indiana Consumer Counselor

[This is a signature page to the December 15, 2005 Settlement Agreement in IURC Cause No. 42873.]

INDIANA UTILITY REGULATORY COMMISSION TESTIMONIAL STAFF (IURC Testimonial Staff)

By: Kristina Kern Wheeler
Kristina Kern Wheeler, General Counsel

By: Joseph M. Sutherland
Joseph Sutherland, Executive Director

[This is a signature page to the December 15, 2005 Settlement Agreement in IURC Cause No. 42873.]

PSI INDUSTRIAL GROUP (PSI-IG)

By: _____

J. M. [unclear], JR

[This is a signature page to the December 15, 2005 Settlement Agreement in IURC Cause No. 42873.]

PSI ENERGY, INC.

By:

Kay Pashos

Kay Pashos, President

[This is a signature page to the December 15, 2005 Settlement Agreement in IURC Cause No. 42873.]

ATTACHMENT 1
(Settlement Agreement in IURC Cause No. 42873)

Additional PSI Merger Commitments

Reliability

1. PSI Energy, Inc. ("PSI") has a continuing commitment to providing safe, reliable electric utility service.
2. PSI commits that it will not achieve savings resulting from the merger of Cinergy Corp. ("Cinergy") and Duke Energy Corporation ("Duke Energy") ("Merger") at the expense of material degradation in the adequacy and reliability of its retail electric service.

Customer Service

3. PSI is committed to quality customer service, and the Merger will only strengthen that commitment.
4. PSI commits to minimize, to the extent possible, any negative impacts on its retail customer service and customer satisfaction levels resulting from workforce reductions due to the Merger.
5. PSI is committed to providing a variety of customer programs and services that enable its customers to better manage their energy bills based on the varied needs of its customers. PSI will continue to offer a variety of service options that provide accessibility and convenience, as well as consistent customer service experience, regardless of the service channel.
6. PSI will continue to have qualified and skilled customer service representatives available 24 hours a day, to respond to power outage calls. Customers will also have access to utility's online services and automated telephone service, 24 hours a day, to perform routine interactions or to obtain general billing and customer information.
7. PSI will continue to staff qualified and skilled customer service representatives during core business hours to handle all types of customer inquiries, and will continue its commitment to a Quality Assurance process.
8. PSI will continue to survey its customers regarding their satisfaction and will integrate this information into its processes, programs, and services that impact our customers.

Ratemaking and Accounting

9. No change in control payments will be allocated to the retail customers of PSI.
10. The payment for Cinergy's stock shall be recorded on the new Duke Energy Corporation's ("New Duke Energy") books, and shall be excluded from the books of PSI for retail ratemaking purposes.

11. Any acquisition premium paid by Duke Energy for Cinergy stock shall not be "pushed down" to PSI for retail ratemaking purposes. PSI commits that it will not seek a return on or a return of any acquisition premium associated with the Merger.

12. No purchase accounting adjustments resulting from the Merger are expected to be reflected for PSI's ratemaking purposes.

13. PSI commits that the accounting and reporting system used by PSI will be adequate to provide assurance that directly assignable utility and non-utility costs are accounted for properly and that reports on the utility and non-utility operations are accurately presented.

14. PSI commits to implement and maintain cost allocation procedures that will accomplish the objective of preventing cross-subsidization, and be prepared to fully disclose all allocated costs, the portion allocated to PSI, complete details of the allocation methods, and justification for the amount and method.

Affiliate Transactions

15. PSI will provide access to its affiliates' books and records, to the extent necessary to verify transactions with PSI.

16. PSI commits to protect against cross-subsidization in transactions with affiliates.

17. All PSI affiliate transactions will remain subject to the Commission's ratemaking authority.

Financial Insulation

18. PSI will not loan any funds (or advance any credit or indemnity) to New Duke Energy, Cinergy, or other affiliates without the prior authorization of the Commission, except as provided for in the Utility Money Pool Agreement.

19. PSI will not declare and pay dividends out of capital or unearned surplus without the prior authorization of the Commission.

20. Before PSI can issue long-term debt, it must receive approval of the Commission.

21. PSI will not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance any part of Duke Energy's acquisition of Cinergy.

22. PSI agrees that the Commission has continuing authority over PSI's capital structure, financings and cost of capital for ratemaking purposes sufficient to enable the Commission to protect PSI's retail electric customers from any material adverse effects that may result from PSI's, Cinergy's, or New Duke Energy's participation in non-utility businesses or in public utility businesses outside of the United States.

23. PSI will not guarantee the credit of any of its affiliates unless specifically approved by the Commission.

24. All debt at the New Duke Energy and Cinergy levels will be non-recourse to PSI.

Midwest Independent Transmission System Operator, Inc. ("Midwest ISO")

25. PSI remains committed to the Midwest ISO and the Merger will have no impact on PSI's participation in the Midwest ISO.

26. PSI is committed to supporting regional transmission organizations and their role in transmission grid reliability for PSI's customers.

Integrated Coal Gasification Combined Cycle ("IGCC") Generating Facility

27. PSI remains committed to investigating possibilities for IGCC in Indiana.

Local Presence / Economic Development

28. PSI has a continuing commitment to maintain its local presence throughout its Indiana service territory, and to continue its record of being a leader in economic development in the communities where PSI serves.

29. PSI commits to continue its proactive stance on economic development in the state and support of economic development activities throughout its service territory.

30. New Duke Energy expects to maintain the commitment to economic development initiatives within Indiana.

31. PSI has a continuing commitment to philanthropy in Indiana. New Duke Energy expects the tradition of charitable giving and civic leadership to continue in all communities where New Duke Energy conducts business.

32. PSI commits, that for at least two years following the Merger, PSI will maintain a substantial level of involvement in community activities, through annual charitable and other contributions, comparable to PSI's participation levels prior to the date of the Merger.

33. The composition of PSI's board of directors will continue to include Indiana representation.

34. PSI's corporate headquarters will remain in Indiana.

35. PSI agrees that in producing the projected benefits of the Merger neither PSI nor any entity or agent acting on behalf of PSI shall act with adverse distinction as to any contractor, supplier, vendor or manufacturer solely on the basis that Indiana is the state of

incorporation or principal place of business of such contractor, supplier, vendor or manufacturer.

Corporate Governance/Environmental Stewardship

36. New Duke Energy will be committed to strong corporate governance and business ethics.

37. New Duke Energy will be proactive in shaping climate change policy and continue to strive to contribute to the well-being of our communities and environment.

38. New Duke Energy will maintain a commitment to environmental stewardship.

Continuation of Certain Commitments from 1994 Cinergy Merger re: Integrated Resource Planning

39. PSI agrees that with respect to the extent of application of the IURC's authority under Ind. Code 8-1-8.5, or any successor statute (hereinafter collectively referred to as "I.C. 8-1-8.5"):

- (A) Prior to participating in the construction, purchase or lease of a facility for the generation of electricity to be directly or indirectly used for the furnishing of electric utility service to PSI's retail electric customers, PSI shall seek the IURC's approval of such participation pursuant to the provisions of I.C. 8-1-8.5.
- (B) In the event that, pursuant to the provisions of I.C. 8-1-8.5, the IURC disapproves PSI's proposed participation in the construction, purchase or lease of a facility described in sub-item (A) above, PSI shall terminate or amend its plans relating to such participation, and shall obtain the IURC's approval of any such amended plans before going forward.
- (C) In the event that the IURC disapproves PSI's proposed participation in the construction, purchase or lease of a facility described in sub-item (A) above, and in the event that PSI has theretofore filed such proposed plans with the FERC and/or the Securities and Exchange Commission ("SEC"), PSI shall take such steps as are necessary to cause such FERC and/or SEC filing to be terminated or amended, whichever is appropriate.
- (D) PSI shall utilize the "ongoing review" procedures contained in I.C. 8-1-8.5 for PSI's participation in any construction, purchase or lease of a facility which receives the IURC's approval under I.C. 8-1-8.5.

40. PSI agrees that with respect to the extent of the IURC's authority under Ind. Code 8-1-8.7, or any successor statute (hereinafter collectively referred to as "I.C. 8-1-8.7"):

- (A) Prior to participating in the use of clean coal technology at a new or existing electric generating facility used for the furnishing of electric utility service to PSI's retail electric customers, PSI shall seek the IURC's approval of such use pursuant to the provisions of I.C. 8-1-8.7.
- (B) In the event that, pursuant to the provisions of I.C. 8-1-8.7, the IURC disapproves PSI's proposed participation in the use of clean coal technology at a facility described in sub-item (A) above, PSI shall terminate

or amend its plans relating to such participation, and shall obtain the IURC's approval of any such amended plans before going forward.

- (C) In the event that the IURC disapproves PSI's proposed participation in the use of clean coal technology at a facility described in sub-item (A) above, and in the event that PSI has theretofore filed such proposed plans with the FERC and/or the SEC, PSI shall take such steps as are necessary to cause such FERC and/or SEC filing to be terminated or amended, whichever is appropriate.
- (D) PSI shall utilize the "ongoing review" procedures contained in I.C. 8-1-8.7 for PSI's participation in any use of clean coal technology at a facility which receives the IURC's approval under I.C. 8-1-8.7.

41. PSI agrees that with respect to the extent of application of the IURC's authority under Ind. Code 8-1-8.27, or any successor statute (hereinafter collectively referred to as "I.C. 8-1-27"):

- (A) Prior to participating in the implementation of a plan to comply with the requirements of the "Clean Air Act" (within the meaning of Ind. Code § 8-1-27-1) applicable to an electric generating facility used for the furnishing of electric utility service to PSI's retail electric customers, PSI shall exercise its right under I.C. 8-1-27 to voluntarily seek the IURC's approval of such participation pursuant to the provisions of I.C. 8-1-27.
- (B) In the event that, pursuant to the provisions of I.C. 8-1-27, the IURC rejects PSI's proposed participation in such compliance plan, PSI may, at its sole option, voluntarily submit to the IURC for its approval a modified compliance plan.
- (C) PSI shall utilize the "ongoing review" procedures contained in I.C. 8-1-27 for any compliance plan approved by the IURC.

42. PSI agrees to factor into its integrated resource planning process risks resulting from the future enactment of environmental statutes and regulations that PSI believes to be significant ("Environmental Risks"). PSI will meet this obligation by systematically evaluating the impacts of such Environmental Risks on supply-side and demand-side resource options through the use of sensitivity analyses or other accepted techniques which PSI deems appropriate to its integrated resource planning process. PSI also agrees to consider in its resource planning process any material differences in carbon dioxide, mercury and criteria pollutants for which PSI believes significant prospects exist for future regulation, associated with alternative resource plans. PSI further agrees to continue the enhancements it has made to its resource planning process by continuing to assume a leadership role in developing and implementing, as appropriate, innovative methodologies for factoring Environmental Risks into its integrated resource planning process. PSI will also consider flexibility in evaluating supply-side and demand-side resource alternatives.

PSI ENERGY, INC. AFFILIATE STANDARDS
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PSI ENERGY, INC. AFFILIATE STANDARDS

I. APPLICABILITY

These Affiliate Standards shall apply from and after the effective date of the later of (i) the date of the consummation of the Merger, and (ii) the effective date of the Commission's order approving these Affiliate Standards, until the date when new affiliate standards imposed by Indiana legislation or Commission action become effective. Changes to these Affiliate Standards may be proposed from time to time by either PSI or the OUC, subject to the approval of the Commission; provided, however, that PSI and the OUC shall meet and discuss any such proposed changes prior to the submission of such changes to the Commission by either PSI or the OUC.

II. SUBSTANTIVE PROVISIONS

(A) Cross-Subsidization Principles

The financial policies and guidelines for transactions between PSI and its Affiliates shall reflect the following principles:

1. PSI's retail customers shall not subsidize the activities of PSI's Non-Utility Affiliates or its Utility Affiliates.
2. Neither PSI's Non-Utility Affiliates nor PSI's Utility Affiliates shall subsidize the public utility activities of PSI.
3. PSI's costs for jurisdictional rate purposes shall reflect only those costs attributable to its jurisdictional customers.
4. These principles shall be applied to avoid costs found to be just and reasonable for ratemaking purposes by a particular utility regulatory commission being left unallocated or stranded between various regulatory jurisdictions, resulting in the failure of the opportunity for timely recovery of such costs by PSI and/or its Utility Affiliates; provided, however, that no more than one hundred percent (100%) of such costs shall be allocated on an aggregate basis to the various regulatory jurisdictions.
5. These principles are not intended to, and shall not be interpreted to, alter, modify or change in any way the law in the State of Indiana with respect to the impact of the filing of

a consolidated income tax return on PSI's income tax expense allocable to jurisdictional customers.

6. PSI shall maintain and utilize accounting systems and records that identify and appropriately allocate costs among PSI and its Affiliates, consistent with these principles.

(B) Access to Employees, Officers, Books and Records

1. The Commission shall have access to the employees, officers, books and records of any Affiliate of PSI to the same extent and in like manner that the Commission has over PSI to the extent that the Affiliate engages in direct or indirect transactions with PSI. If such employees, officers, books and records cannot be reasonably made available to the Commission, then upon request of the Commission, PSI shall, in accordance with applicable Indiana reimbursement rules, reimburse the Commission for appropriate out-of-state travel expenses incurred in accessing the employees, officers, books and records. PSI shall maintain, in accordance with generally accepted accounting principles, books, records, and accounts that are separate from the books, records, and accounts of its Affiliates, consistent with Part 101 – Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. Any objections to providing all books and records must be raised before the Commission and the burden of showing that the request is unreasonable or unrelated to the proceeding is on PSI. The confidentiality of competitively sensitive information shall be maintained in accordance with the Commission's rules, regulations and orders.
2. Upon the written request of the OUCC, PSI shall make available to the OUCC at reasonable times and places the books and records, and employees and officers of each applicable Affiliate of PSI, including the Service Company, as are required to assure compliance with these Affiliate Standards. The confidentiality of competitively sensitive information shall be maintained in accordance with the Commission's rules, regulations and orders.
3. Upon the written request of the OUCC, PSI shall make available to the OUCC at reasonable times and places copies, which have not otherwise been furnished to the OUCC, of any Affiliate-related filings made by PSI with the

SEC and/or the FERC during the preceding calendar year. The confidentiality of competitively sensitive information shall be maintained in accordance with the Commission's rules, regulations and orders.

4. PSI shall have the right either to seek a protective order from the Commission, the FERC, if applicable, the SEC, if applicable, or a court of competent jurisdiction, or to require the OUCC to enter into a reasonable confidentiality agreement, to protect and safeguard confidential, proprietary and/or competitively sensitive information concerning its Affiliates.

(C) Accounting for Affiliate Transactions

In accordance with generally accepted accounting principles and consistent with state and federal guidelines, PSI shall record all transactions with its Affiliates, whether direct or indirect. PSI and its Affiliates shall maintain sufficient records to allow for an audit of the transactions involving PSI and its Affiliates. Goods and Services provided by PSI to a Non-Utility Affiliate, and Goods and Services provided by a Non-Utility Affiliate to PSI, shall be accounted for in accordance with current requirements issued by the SEC or the FERC, whichever is applicable, or other statutory requirements if neither the SEC nor the FERC has jurisdiction. Asset transfers from PSI to a Non-Utility Affiliate, and asset transfers from a Non-Utility Affiliate to PSI, shall be accounted for in accordance with current requirements issued by the SEC or the FERC, whichever is applicable, or other statutory requirements if neither the SEC nor the FERC has jurisdiction.

(D) Precluded Affiliate Financial Undertakings

PSI shall not allow a Non-Utility Affiliate to obtain credit under any arrangement that would permit a creditor, upon default of the Non-Utility Affiliate, to have recourse to PSI's assets. The financial arrangements of PSI's Affiliates are subject to the following restrictions unless otherwise approved by the Commission:

1. Any indebtedness incurred by a Non-Utility Affiliate shall be without recourse to PSI.
2. PSI shall not enter into any agreements under terms of which PSI is obligated to commit funds in order to maintain the financial viability of a Non-Utility Affiliate.

3. PSI shall not make any investment in a Non-Utility Affiliate under circumstances in which PSI would be liable for the debts and/or liabilities of the Non-Utility Affiliate incurred as a result of acts or omissions of a Non-Utility Affiliate.
4. PSI shall not issue any security for the purpose of financing the acquisition, ownership, or operation of a Non-Utility Affiliate.
5. PSI shall not assume any obligation or liability as guarantor, endorser, surety, or otherwise in respect of any security of a Non-Utility Affiliate.
6. PSI shall not pledge, mortgage or otherwise use as collateral any assets of PSI for the benefit of a Non-Utility Affiliate.
7. PSI shall hold harmless the retail customers of PSI from any adverse effects of PSI credit rating declines caused by the actions of Non-Utility Affiliates.

(E) Untariffed, Non-Utility Services Provided by PSI or the Service Company

Any untariffed, Non-Utility Services provided by PSI or the Service Company to any Affiliate shall be itemized in accounting entries (including electronic entries) pursuant to a written contract or written arrangement. PSI and the Service Company shall maintain and keep available for inspection by the Commission copies of all accounting entries and each contract and arrangement between PSI or the Service Company and PSI's Affiliates that relate to the provision of such untariffed, Non-Utility Services.

(F) Goods or Services Provided by a Non-Utility Affiliate

Any Goods or Services provided by a Non-Utility Affiliate to PSI shall be itemized in accounting entries (including electronic entries) pursuant to a written contract or written arrangement. PSI and Non-Utility Affiliates shall maintain and keep available for inspection by the Commission copies of all accounting entries and each contract and arrangement between PSI and its Non-Utility Affiliates that relate to the provision of such Goods and Services in accordance with the Commission's retention requirements.

(G) Independent Operations

Employees responsible for directing, organizing and executing the

business decisions of PSI's wholesale merchant or generation functions and those employees of Affiliated Wholesale Power Marketers shall operate independently of one another, to the maximum extent practical. PSI shall document all employee movement between and among PSI and its Affiliates. Such information shall be made available to the Commission and the OUCC upon request.

(H) Precluded Property Ownership

Except as provided in Paragraph (L) or Paragraph (M) of this Section II, PSI may not own property in common with an Affiliated Wholesale Power Marketer.

(I) Market Information

No market information (within the meaning of the FERC's code of conduct requirements) obtained by PSI in the conduct of its public utility business may be shared with an Affiliated Wholesale Power Marketer, except where such information has been publicly disseminated or simultaneously shared with and made available to all non-affiliated Entities who have requested such information. Customer specific information shall not be made available by PSI to an Affiliated Wholesale Power Marketer except under the same terms as such information would be made available to a non-affiliated Entity, and only with the written consent of the customer specifying the information to be released.

(J) Use of Name or Logo

A Non-Utility Affiliate may use PSI's name or logo only if, in connection with such use, the Non-Utility Affiliate makes adequate disclosures to the effect that: (i) the two Entities are separate; (ii) it is not necessary to purchase the Non-Regulated Goods or Services to obtain public utility service from PSI; and (iii) the customer will gain no advantage from PSI by buying from the Affiliate.

(K) No Tying or Conditioning

PSI shall not condition or tie the provision of any Goods, Services, pricing benefit, or waiver of associated terms or conditions, to the purchase of any Goods or Services from an Affiliated Wholesale Power Marketer.

(L) Sharing of Office Space, Office Equipment, Computer Systems or Information Systems with Affiliated Wholesale Power Marketers

Except as provided in Paragraph (M) of this Section II and to the maximum extent practical, employees responsible for directing, organizing and executing the business decisions of Affiliated Wholesale Power Marketers' wholesale merchant or generation functions generally shall not share office space, office equipment, computer systems or information systems with those similarly employed employees of PSI; provided, however, that computer systems and information systems may be so shared if the systems are secured such that Affiliated Wholesale Power Marketers cannot access PSI operating data, and office space may be so shared under a lease or other ownership arrangement if the office space is secured such that employees of one company cannot access the designated office area of the other.

(M) Exception for Computer Systems and Information Systems

1. Computer systems and information systems may be shared between PSI and Non-Utility Affiliates only to the extent necessary for the provision of corporate support services or other shared services; provided, however, PSI shall ensure that the proper security access and other safeguards are in place to ensure full compliance with these Affiliate Standards.
2. These Affiliate Standards are not intended to, and shall not be interpreted to, preclude the sharing of computer systems and information systems between PSI and its Affiliates as necessary for the provision of Services consistent with Service Agreements now or hereafter approved by the Commission, including, but not limited to, the Service Agreements identified as Petitioner's Exhibits I-1, I-2 and I-3 in Cause No. 42873 before the Commission.

(N) Limitations on Corporate Support Services Affiliate Transactions

PSI may engage in transactions directly related to the provision of corporate support services with its Affiliates in accordance with requirements relating to the Service Agreements. As a general principle, such provision of corporate support services shall not allow or provide a means for the transfer of confidential information from PSI to its Affiliates, create the opportunity for preferential

treatment or unfair competitive advantage, create opportunities for cross-subsidization of Affiliates, or otherwise provide any means to circumvent these Affiliate Standards.

(O) Availability of Goods or Services to Affiliates

Except as provided in Paragraph (N) of this Section II, PSI may only make Goods or Services available to an Affiliated Wholesale Power Marketer if the Goods or Services are equally available to all Non-Affiliated Wholesale Power Marketers on the same terms, conditions and prices, and at the same time. PSI shall process all requests for Goods or Services from Affiliated and Non-Affiliated Wholesale Power Marketers on a non-discriminatory basis.

(P) Documentation

If PSI provides both Regulated and Non-Regulated Services or Goods, or if an Affiliate provides Services or Goods to PSI, PSI and such Affiliate shall maintain documentation in the form of written agreements, an organization chart (depicting PSI and all of its Affiliates), accounting bulletins, procedure and work order manuals, or other related documents, which describe how costs are allocated between Regulated and Non-Regulated Services or Goods. Such documentation shall be available, subject to requests for confidential treatment, for review by the Commission in accordance with Paragraph (B) of this Section II.

(Q) Contact for Affiliate Transaction and Personnel Information

PSI shall designate an employee who will act as a contact for the Commission and the OUCC seeking data and information regarding PSI's Affiliate-related transactions and personnel transfers. Such employee shall be responsible for providing data and information requested by the Commission for any and all transactions between PSI and its Affiliates, regardless of the Affiliate(s) from which the information is sought.

(R) Contact for Service and Reliability Concerns

PSI shall designate an employee or agent who will act as a contact for the Commission concerning retail consumer issues regarding service and reliability concerns. Such PSI representative shall be able to deal with billing, maintenance and service reliability issues.

(S) Contact for State Regulatory Matters

PSI shall provide the Commission a current list of employees or agents that are designated to work with the Commission and the OUCC concerning state regulatory matters, including, but not limited to, rate cases, consumer complaints and billing issues.

(T) PSI's Affiliate Contract Filings

Any filings of Affiliate Contracts which PSI is required to make with the Commission, the SEC and/or the FERC shall be made consistent with the following procedures:

1. For any Affiliate Contract which PSI is required to file with the Commission pursuant to Ind. Code § 8-1-2-49 (but not required to be filed by PSI with the Commission pursuant Ind. Code §§ 8-1-2-83, 84 or any other Indiana statute), PSI shall, thirty (30) days prior to any required filing of such Affiliate Contract (including Service Agreements) with the SEC or the FERC for such agency's approval or acceptance, submit to the Commission Staff and the OUCC a copy of the proposed filing.
 - (i) If the Commission Staff clears such Affiliate Contract for filing, or does not comment upon it, and no objections are submitted by the OUCC to PSI (a copy of any such objections to be provided to Commission Staff) during the Review Period for such contract, then PSI may file such contract with the Commission and the SEC or the FERC, whichever is applicable. The contract shall become effective upon the receipt of all necessary regulatory authorizations and shall continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary regulatory authorizations.
 - (ii) If during, or upon the expiration of, the Review Period for such Affiliate Contract, the Commission Staff recommends that the Commission reject, disapprove or establish a proceeding to review such contract, or if an objection(s) is submitted by the OUCC to PSI (with a copy to Commission Staff), then PSI may file the contract with the Commission, but shall not file the contract with the SEC or the FERC, whichever is applicable, until at least thirty (30) days after the date that it is filed with the Commission; provided, further, that both such filings shall disclose the Commission Staff's recommendation or the objection(s) regarding

the contract. The contract shall become effective upon receipt of all necessary regulatory authorizations and shall continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary regulatory authorizations.

2. For any Affiliate Contract which PSI is required to file with the Commission pursuant to Ind. Code § 8-1-2-49 (but not required to be filed by PSI with the Commission pursuant Ind. Code §§ 8-1-2-83, 84 or any other Indiana statute) and which PSI is not required to file with the SEC or the FERC, PSI shall, prior to filing the contract with the Commission, submit to the Commission Staff, and provide to the OUCC, a copy of the contract.

(i) If the Commission Staff clears such Affiliate Contract for filing, or does not comment upon it, and no objections are submitted by the OUCC to PSI (a copy of any such objections to be provided to Commission Staff) during the Review Period for such contract, then PSI may file such contract with the Commission. To the extent that the effectiveness of such contract is not subject to any other necessary regulatory authorizations, such contract shall become effective as of the date that it is filed with the Commission; otherwise, such contract shall become effective as of the first day on which all such necessary regulatory authorizations are received. After becoming effective, such contract shall continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary regulatory authorizations.

(ii) If during, or upon the expiration of, the Review Period for such Affiliate Contract, the Commission Staff recommends that the Commission reject, disapprove or establish a proceeding to review such contract, or if an objection(s) is submitted by the OUCC to PSI (with a copy to Commission Staff), then PSI may file the contract with the Commission, but such contract shall provide for an effective date no earlier than thirty (30) days after such contract is filed with the Commission. The contract shall become effective upon receipt of all necessary regulatory authorizations and shall

continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary regulatory authorizations.

3. For any Affiliate Contract which PSI is required to file with the Commission pursuant to Ind. Code §§8-1-2-83, 84, or any other applicable Indiana statute which requires specific Commission approval (this does not include Ind. Code §8-1-2-49), PSI shall file such contract with the Commission under a separate docket and such filing shall be handled through the normal procedures established by the Commission for obtaining Commission approval thereof. PSI shall either obtain Commission approval of such contract prior to any required filing of such contract with the SEC or the FERC for such agency's approval or acceptance, or otherwise request that the effective date of such agency's approval or acceptance be no earlier than the date of the Commission's approval of such contract.
4. After an Affiliate Contract has been filed by PSI with the Commission, the Commission may in accordance with Indiana law approve or disapprove the contract. If such contract is also required to be filed by PSI with the SEC or the FERC for such agency's approval or acceptance, then upon any Commission disapproval of the contract:
 - (i) If the required approval or acceptance of such contract by the SEC or the FERC, whichever is applicable, has not yet been received by PSI, then PSI will seek to withdraw its filing requesting such agency's approval or acceptance; or
 - (ii) If the required approval or acceptance of such contract by the SEC or the FERC, whichever is applicable, has been received and none of the other contracting parties are Utility Affiliates of PSI subject to any other state utility regulatory commission's jurisdiction, then PSI will:
 - (a) Terminate such contract pursuant to its terms; or
 - (b) At its sole option, take such steps as are necessary to cause such contract to be amended in order to remedy the Commission's

adverse determination with respect to such contract; or

(iii) If the required approval or acceptance of such contract by the SEC or the FERC, whichever is applicable, has been received and one or more of the other contracting parties are Utility Affiliates of PSI subject to another state utility regulatory commission's jurisdiction, then PSI will make a good faith effort to terminate or amend such contract in a manner which remedies the Commission's adverse determination with respect to such contract. If agreement can be reached to terminate or amend the contract in a manner satisfactory to the contracting parties and the representatives of each affected state commission, then PSI shall:

- (a) File any such agreed upon amended contract with the Commission and the SEC or the FERC, whichever is applicable, pursuant to this Paragraph (T); or
- (b) Make a filing with the Commission, and the SEC or the FERC, whichever is applicable, to terminate the contract.

If no agreement can be reached satisfactory to each contracting party and to each affected state commission, after good faith negotiations, then PSI shall have no further obligations under these Affiliate Standards with respect to such contract.

5. Nothing in these Affiliate Standards affects, modifies or alters in any way the rights and duties of the Commission under applicable state and federal law.

(U) Violations

Any violation of the provisions of these Affiliate Standards shall be subject to the enforcement powers and penalties of the Commission.

(V) Independent Audits

PSI shall fund the cost of four (4) independent audits (up to a total of \$400,000) after Merger consummation of PSI's Affiliate-related

transactions to determine compliance with these Affiliate Standards, and to determine that PSI has sufficient controls and training in place to enable compliance with these Affiliate Standards. The results of such audits shall be filed with the Commission.

(W) Public Utility Holding Company Act of 2005

If the Public Utility Holding Company Act of 2005 is repealed or materially amended during the time that these Affiliate Standards are in effect and equivalent jurisdiction is not given to another federal agency, then PSI will work with the Commission to ensure that PSI continues to furnish the Commission with the appropriate information to regulate PSI. The Commission may establish its reporting requirements regarding the nature of intercompany transactions concerning PSI and a description of the basis upon which cost allocations and transfer pricing have been established in these transactions.

(X) No Impairment of Service Company Structure

These Affiliate Standards are not intended to, and shall not be interpreted to, prohibit or impair the continued existence and operation of the Service Company structure of PSI's Holding Company.

(Y) No Preclusion of Commission Approved Actions or FERC Pricing Requirements for Affiliate Transactions

These Affiliate Standards are not intended to, and shall not be interpreted to, preclude PSI from providing to, or receiving from, its Affiliates any Goods, Services, or other resources pursuant to: (i) the provisions of Service Agreements now or hereafter approved by the Commission, including, but not limited to, the Service Agreements identified as Petitioner's Exhibits I-1, I-2 and I-3 in Cause No. 42873 before the Commission; (ii) specific approval of the Commission; or (iii) the FERC's pricing requirements for PSI's Affiliate-related transactions.

(Z) Affiliate Firm or Unit Power Purchase by PSI for a Term of 5 Years or More

PSI shall file with the Commission for the Commission's acceptance and approval any proposed purchase of firm power or unit power by PSI from an Affiliate for a term of five (5) years or more.

III. INFORMATIONAL FILINGS

(A) Annual Informational Filings

On an annual basis, PSI shall file with the Commission (and provide to the OUCC) the following information concerning each PSI Affiliate that is: (i) PSI's Holding Company, (ii) a Subsidiary of PSI, (iii) a Utility Affiliate, (iv) a Subsidiary of a Utility Affiliate, or (v) a first tier Subsidiary of PSI's Holding Company:

1. The names and business addresses of the officers and directors of each such Affiliate.
2. A description of each such Affiliate's business purpose(s), including a description of any diversification policy.
3. An organization chart showing PSI, such Affiliates, and their relationship to each other.
4. A description of the method(s) used to identify, value, and record transfers of Assets, Goods and Services between PSI and such Affiliates.
5. A description of the method used to allocate federal and state income tax expense, payments and refunds to PSI and such Affiliates.
6. A description of specific transfers of Assets, Goods or Services between PSI and such Affiliates during the applicable period, and a description of the transfer value(s) utilized for such transfers.
7. A description of specific transfers of personnel between PSI and such Affiliates during the applicable period, and a description of the transfer value(s) utilized for such transfers.

These annual informational filings shall be made as of the last day of April of each calendar year that these Affiliate Standards are in effect.

(B) Additional Annual Informational Filings

On an annual basis, PSI shall file with the Commission (and provide to the OUCC) the following information concerning each

PSI Affiliate that is: (i) PSI's Holding Company, (ii) a Subsidiary of PSI, (iii) a Utility Affiliate, (iv) a Subsidiary of a Utility Affiliate, or (v) a first tier Subsidiary of PSI's Holding Company:

1. The capital structure of each such Affiliate as of the end of the applicable period.
2. A statement of the changes in the capital structure of each such Affiliate during the applicable period.
3. An assessment of the effects on PSI's capital structure and PSI's ability to attract capital due to the activities of each such Affiliate during the applicable period.
4. If requested by the Commission or the OUCC, the names and job descriptions of any employees of PSI transferred to, or for whom seventy-five percent (75%) or more of their time has been allocated to, such an Affiliate during the applicable period.
5. Any amendments to the Utility Money Pool Agreement made in the previous calendar year.

These additional annual informational filings shall be made as of the last day of April of each calendar year that these Affiliate Standards are in effect.

(C) Special Informational Filing

1. In addition to the other filings required by Paragraphs (A) and (B) of this Section III, PSI shall make a special informational filing detailing the transfer by PSI to a Non-Utility Affiliate of: (i) any confidential public utility information, including customer lists, to be used for non-utility purposes; or (ii) any intellectual property whose original cost exceeds \$500,000. Such a special informational filing shall address any covered transfers during the applicable period
2. These special informational filings shall be made as of the last day April of each calendar year that these Affiliate Standards are in effect.

(D) Confidentiality Agreement and Protective Orders

PSI shall have the right either to seek a protective order from the

Commission or a court of competent jurisdiction, or to require the OUCC to enter into a reasonable confidentiality agreement, to protect and safeguard confidential, proprietary or competitively sensitive information concerning its Affiliates that may be contained in any of the filings required by this Section III.

IV. DEFINITIONS

When used in these Affiliate Standards, the following terms shall have the respective meanings set forth below, and when the defined meaning is intended the term is initially capitalized.

- (A) "Affiliate" means an Entity that is PSI's Holding Company, a Subsidiary of PSI or a Subsidiary of any tier of PSI's Holding Company (other than PSI).
- (B) "Affiliate Contract" means an Affiliate Operating Contract, an Affiliate Sales Contract, an Affiliate Surety Contract, a Section 205 Contract, or an amendment to any such contract; provided, however, that "Affiliate Contract" does not include the Service Agreements identified as Petitioner's Exhibits I-1, I-2 and I-3 in Cause No. 42873 before the Commission, but "Affiliate Contract" does include amendments to such Service Agreements.
- (C) "Affiliate Operating Contract" means a contract, other than a Section 205 Contract, between PSI and one or more of its Affiliates providing for the operation of any part of PSI's generating, transmission and/or distribution facilities by such Affiliate(s).
- (D) "Affiliate Sales Contract" means a contract, other than an Affiliate Operating Contract or a Section 205 Contract, between PSI and one or more of its Affiliates involving the purchase or sale of Assets, Goods or Services.
- (E) "Affiliate Surety Contract" means a contract between PSI and one or more of its Affiliates involving the assumption by PSI of any liability as guarantor, endorser, surety, or otherwise in respect of any security or contract of an Affiliate.
- (F) "Affiliated Wholesale Power Marketer" means: (i) an Affiliate that is an Exempt Wholesale Generator; (ii) an Affiliate that is a Power Marketer; and (iii) CG&E's electric wholesale merchant and electric generation functions to the extent that such electric wholesale merchant and electric generation functions remain subject to Am. Sub. S.B. 3, Gen. Assem. (Ohio 1999), codified primarily at Ohio

Rev. Code Ann. §4928.01 *et seq.*, to restructure Ohio's electric utility industry so as to achieve retail competition in the electric generation component of public utility service, as in effect on the date of consummation of the Merger, but "Affiliated Wholesale Power Marketer" shall not include CG&E's electric transmission and distribution functions.

- (G) "Assets" means any land, plant, equipment, franchises, licenses, or other intangibles, or rights to use assets.
- (H) "CG&E" means The Cincinnati Gas & Electric Company, or any successor in interest.
- (I) "Commission" means the Indiana Utility Regulatory Commission, or any successor governmental agency.
- (J) "Commission Staff" means the staff of the Commission.
- (K) "Entity" means a corporation, limited liability company or a natural person.
- (L) "Exempt Wholesale Generator" means an Entity which is engaged, directly or indirectly through one or more affiliated Entities, exclusively in the business of owning or operating all or part of a facility for generating electricity and selling electricity at wholesale and who: (i) does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to affect a sale of electricity at wholesale; and (ii) has applied to the FERC for a determination under 15 U.S.C. 79z-5a.
- (M) "FERC" means the Federal Energy Regulatory Commission, or any successor governmental agency.
- (N) "Federal Power Act" means 16 U.S.C. 792 *et seq.*, or any successor statute.
- (O) "Goods" means any goods, inventory, products, materials, supplies, appliances, or similar property (but not electric energy and/or capacity)
- (P) "Merger" means the merger of Cinergy Corp. and Duke Energy Corporation.
- (Q) "Non-Affiliated Wholesale Power Marketer" means: (i) an Exempt Wholesale Generator that is not an Affiliate; and (ii) a Power

Marketer that is not an Affiliate.

- (R) "Non-Regulated" means not regulated by a state utility regulatory commission with respect to rates, charges or prices paid by an end-use customer.
- (S) "Non-Utility" means not a public utility.
- (T) "Non-Utility Affiliate" means an Affiliate which is neither a public utility nor a Utility Service Company.
- (U) "OUCC" means the Indiana Office of Utility Consumer Counselor, or any successor governmental agency.
- (V) "Power Marketer" means an Entity which: (i) becomes an owner or broker of electricity for the purpose of selling electricity at wholesale; (ii) does not own electric transmission or distribution facilities in a state; (iii) does not have a certified retail electric service area; and (iv) has been granted authority by the FERC to sell electricity at market-based rates.
- (W) "PSI" means PSI Energy, Inc., or any successor in interest.
- (X) "PSI's Holding Company" means Cinergy Corp. and Duke Energy Corporation, or their respective successors in interest, or any Entity that owns directly or indirectly ten percent (10%) or more of the voting capital stock of Cinergy Corp. or Duke Energy Corporation, or their respective successors in interest; provided, however, for purposes of Section II(B) and Section III of these Affiliate Standards such "ten percent (10%) or more" voting capital stock requirement shall be "fifty percent (50%) or more".
- (Y) "Public Utility Holding Company Act of 2005" means Pub. L. No. 109-58, 119 Stat. 594 (2005), §§ 1261 *et seq.*, or any successor statute.
- (Z) "Regulated" means regulated by a state utility regulatory commission with respect to rates, charges or prices paid by an end-use customer.
- (AA) "Review Period" means a period of thirty (30)-consecutive calendar days commencing on the first day immediately following the date that PSI submits an Affiliate Contract to the Commission's Chief Operating Officer (or such other person as the Commission may designate from time to time) for the Commission's Staff's review, which period precedes PSI's filing of such Affiliate Contract with the

Commission pursuant to Ind. Code § 8-1-2-49, or any successor statute.

- (BB) "SEC" means the Securities and Exchange Commission, or any successor governmental agency.
- (CC) "Section 205 Contract" means an interconnection, interchange, pooling, operating, transmission, power sale or ancillary power services contract or similar contract entered into between PSI and a Utility Affiliate and/or a Utility Service Company and subject to regulation by the FERC pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, or any successor statute.
- (DD) "Service Agreement" means a contract under which a Utility Service Company provides Services.
- (EE) "Service Company" means a Utility Service Company.
- (FF) "Services" means the performance of activities having value to one party, such as managerial, financial, accounting, legal, engineering, construction, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, and other similar services (but not public utility services).
- (GG) "Subsidiary" means any corporation ten percent (10%) or more of whose voting capital stock is controlled by another Entity; Subsidiaries of PSI are those corporations in which PSI owns directly or indirectly (or in combination with PSI's other Affiliates) ten percent (10%) or more of such corporation's voting capital stock; provided, however, for purposes of Section II(B) and Section III of these Affiliate Standards such "ten percent (10%) or more" voting capital stock requirement shall be "fifty percent (50%) or more".
- (HH) "Utility Affiliate" means an Affiliate of PSI which is also a public utility.
- (II) "Utility Money Pool Agreement" means the agreement identified as Petitioner's Exhibit G-2 in Cause No. 42873 before the Commission.
- (JJ) "Utility Service Company" means an Affiliate whose primary business purpose is to provide administrative and general or operating Services to PSI and Utility Affiliate(s).

V. MISCELLANEOUS

(A) Headings

The descriptive headings of the various Sections, Paragraphs, and other provisions of these Affiliate Standards have been inserted for convenience of reference only and shall not define, modify, restrict, construe, or otherwise affect the construction or interpretation of any provisions of these Affiliate Standards.

(B) Changes

No changes to these Affiliate Standards shall be effective unless and until approved by order of the Commission. The effective date of any change to these Affiliate Standards shall be the effective date of the Commission's order approving such change.

(C) Certain Effective Affiliate Contracts

The following Affiliate Contracts shall be effective as of the effective date of the Commission's order approving these Affiliate Standards:

1. The Affiliate Contract identified as Petitioner's Exhibit I-1 in Cause No. 42873 before the Commission;
2. The Affiliate Contract identified as Petitioner's Exhibit I-2 in Cause No. 42873 before the Commission;
3. The Affiliate Contract identified as Petitioner's Exhibit I-3 in Cause No. 42873 before the Commission;
4. The Affiliate Contract identified as Petitioner's Exhibit F-1 in Cause No. 42873 before the Commission; and
5. The Affiliate Contract identified as Petitioner's Exhibit G-2 in Cause No. 42873 before the Commission.

(D) Replacement for Affiliate Guidelines

As of the effective date of these Affiliate Standards, these Affiliate Standards replace and supersede the Affiliate Guidelines included as Section Two of PSI's Retail Electric Tariff, IURC No. 14. PSI shall include these Affiliate Standards as Section Two of its applicable Retail Electric Tariff.

(E) No Affect on Federal Rights

Nothing in these Affiliate Standards shall be interpreted to affect, modify or alter in any way the rights of any Entity to petition the SEC regarding any Affiliate Contract, or to file a complaint with the FERC under Section 206 of the Federal Power Act regarding any Affiliate Contract, or to exercise any right under Section 1275(b) of the Public Utility Holding Company Act of 2005 regarding any Affiliate Contract.