

### *VIII. Internal Reorganization of Existing Investments*

#### *A. Nonutility Subsidiaries*

Applicants request authority for KeySpan to engage in internal corporate reorganizations to better organize Nonutility Subsidiaries and investments. Applicants request authority to sell or to cause any Subsidiary to sell or otherwise transfer (i) Nonutility Subsidiaries businesses, (ii) the securities of Nonutility Subsidiaries engaged in some or all of these businesses or (iii) nonutility investments which do not involve a Nonutility Subsidiary (*i.e.* less than 10% voting interest) to a different Subsidiary. Applicants also request authority to acquire the assets of nonutility businesses, Nonutility Subsidiaries or other then existing investment interests. Alternatively, transfers of these securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of these securities or assets to the receiving entity.

#### *IX. Exemption From Section 13(b)*

Applicants request authority for Nonutility Subsidiaries to provide other Nonutility Subsidiaries with (i) operations and management services ("O&M Services"); (ii) administrative services ("Administrative Services"); and (iii) consulting services ("Consulting Services"). These services are referred to collectively as "Affiliate Services."

Applicants state that O&M Services would include, for example, development, engineering, design, construction and construction management, pre-operational start-up, testing and commissioning, long-term operations and maintenance, fuel procurement, management and supervision, technical and training, administrative support, market analysis, consulting, coordination and any other managerial, technical, administrative or consulting required in connection with the business of owning or operating facilities used for the generation, transmission or distribution of electric energy and/or natural gas (including related facilities for the production, conversion, sale or distribution of thermal energy) or coordinating their operations in the power market.

Applicants state that Administrative Services would include, for example, corporate and project development and planning, management, administrative, employment, tax, legal, accounting, engineering, consulting, marketing, utility performance and electric data

processing services, and intellectual property development, marketing and other support services.

Applicants state that Consulting Services would include, for example, providing the Nonutility Subsidiary with technical capabilities and expertise primarily in the areas of electric power generation, transmission and distribution and ancillary operations.

Applicants state that Affiliate Services would generally be performed by Nonutility Subsidiaries for associate Nonutility Subsidiaries at cost. However, the Nonutility Subsidiaries request an exemption pursuant to section 13(b) from the at-cost standards of rules 90 and 91, for the Affiliate Services in any case in which the Nonutility Subsidiary purchasing services is:

(i) A FUCO or foreign EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) An EWG that sells electricity at market-based rates that have been approved by the Federal Energy Regulatory Commission ("FERC"), provided that the purchaser is not one of the Utility Subsidiaries;

(iii) A "qualifying facility" ("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") that sells electricity exclusively (a) at rates negotiated at arms-length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, and/or (b) to an electric utility company (other than a Utility Subsidiary) at the purchaser's "avoided cost" as determined in accordance with the regulations under PURPA;

(iv) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not one of the Utility Subsidiaries; or

(v) A Rule 58 Subsidiary or any other Nonutility Subsidiary that (a) is partially or wholly-owned, directly or indirectly, by KeySpan, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary (or any other entity within the KeySpan system whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (i) through (iv) immediately above; or (c) does not

derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

#### **Cinergy Corp. et al. (70-10172)**

Cinergy Corp. ("Cinergy"), a registered holding company, Cinergy's direct nonutility subsidiaries, Cinergy Investments, Inc. ("Cinergy Investments") and Cinergy Global Resources, Inc. ("Global Resources"), CinTec LLC ("CinTec"), Cinergy Technologies, Inc. ("Cinergy Technologies"), and Cinergy Wholesale Energy, Inc. ("Cinergy Wholesale Energy" and together, "Applicants") have filed an application-declaration with the Commission under sections 6(a), 7, 9(a), 10, 12(c), 12(f), 13, 32, 33 and 34 of the Act and rules 43, 45, 46, 54, 83, 87, 90 and 91.

#### *I. Background*

By order dated March 1, 1999 (HCAR No. 26984) ("1999 Order"), Cinergy<sup>10</sup> and its nonutility subsidiaries, Cinergy Investments and Cinergy Global Resources were authorized to establish one or more special-purpose subsidiaries ("Intermediate Parents")<sup>11</sup> through December 31, 2003, to hold Cinergy's direct or indirect interests in existing and future nonutility subsidiaries ("Nonutility Subsidiaries").<sup>12</sup>

Cinergy states that it now owns numerous Nonutility Subsidiaries, which it holds through, Cinergy

<sup>10</sup> Applicants state that Cinergy also directly or indirectly owns all the outstanding common stock of five public utility companies, PSI Energy, Inc. ("PSI"), The Cincinnati Gas & Electric Company ("CG&E"), The Union Light, Heat and Power Company, Lawrenceburg Gas Company, and Miami Power Corporation ("Utility Subsidiaries").

<sup>11</sup> Applicants state that certain of these "Intermediate Parents" were formed prior to the 1999 Order under express authorization of the Commission as noted in the 1999 Order.

<sup>12</sup> Applicants state that PSI and CG&E hold three businesses under a reservation of jurisdiction which are not included in the definition of "Nonutility Subsidiaries": KO Transmission Company ("KO"), South Construction Company, Inc. ("South Construction") and Tri-State Company ("Tri-State"). Applicants state that the retainability of these companies is subject to a Commission reservation of jurisdiction, originally by order dated October 21, 1994 (HCAR No. 26146) ("Merger Order"), the order authorizing the merger that created the Cinergy. The Commission extended this reservation of jurisdiction by order dated November 2, 1998 (HCAR No. 26934). Applicants assert that KO is an energy-related company under rule 58, which was enacted after the Merger Order. Applicants state that South Construction and Tri-State acquire and hold real estate in connection with the utility businesses of PSI and CG&E, respectively. South Construction and Tri-State are excluded from the scope of the proposed transactions in this application, except with respect to dividend authority as described fully below.