

Investments, Cinergy Global Resources, CinTec, Cinergy Technologies and Cinergy Wholesale Energy, each of which is a direct, wholly owned Nonutility Subsidiary of Cinergy formed to act as an Intermediate Parent. Applicants state that through authority granted in previous orders,¹³ applicable provisions of the Act and rules under the Act, Applicants have authority to invest in a variety of nonutility businesses, including:

- (1) Exempt wholesale generator ("EWG"), as that term is defined in section 32 of the Act;
- (2) Foreign utility company ("FUCO"), as that term is defined in section 33 of the Act;
- (3) Exempt telecommunications company ("ETC"), as that term is defined in section 34 of the Act;
- (4) Nonutility company, which, upon acquisition, would qualify for exemption from the Act under rule 58 ("Rule 58 Company");
- (5) Companies providing certain infrastructure services ("IS Company");
- (6) Companies providing energy management services and energy-related consulting services outside the United States;
- (7) Companies brokering and marketing energy commodities in Canada and Mexico; and
- (8) Certain nonutility energy-related assets ("Energy-Related Asset").

Applicants state that, (i) an "Authorized Nonutility Business" means any nonutility business in which Cinergy is currently authorized or may hereafter become authorized under the Act to invest, and includes, without limitation, the types of nonutility businesses enumerated in (1) through (8) above; (ii) a "Nonutility Subsidiary" means any existing or future associate company of Cinergy (including any Intermediate Subsidiary) formed for the purpose of engaging in an Authorized Nonutility Business; and (iii) a "Nonutility Investment" means any existing or future Authorized Nonutility Business in which Cinergy invests, but which investment does not cause such Authorized Nonutility Business to become an associate company of Cinergy.

II. Current Request

A. Overview

Applicants request authorization for Authorized Nonutility Businesses to engage in the following activities

through March 31, 2007 ("Authorization Period):

- (i) Acquire the securities of corporations, limited liability companies, partnerships, trusts or other entities that would be formed exclusively to acquire, hold, finance or facilitate the acquisition of, and/or sell goods, services or construction to Nonutility Subsidiaries and/or Nonutility Investments, whether directly or indirectly through one or more subsidiaries thereof formed exclusively for the same purpose ("Intermediate Subsidiaries");¹⁴
- (ii) Undertake internal corporate reorganizations or restructurings of Nonutility Subsidiaries and Nonutility Investments;
- (iii) Declaration and payment by Nonutility Subsidiaries and KO, South Construction, and Tri-State dividends out of capital or unearned surplus, subject to certain conditions; and
- (iv) Enter into agreements to perform certain services for certain specified categories of Nonutility Subsidiaries at other than cost under an exemption from section 13(b) under the cost standards of rules 90 and 91.

B. Acquisition of Intermediate Subsidiaries

Applicants request authority to acquire Intermediate Subsidiaries. Applicants propose that an Intermediate Subsidiary may be organized, among other things: (i) In order to facilitate the making of bids or proposals to develop or acquire an interest in any exempt wholesale generator ("EWG"), as that term is defined in section 32 of the Act, foreign utility company ("FUCO"), as that term is defined in section 33 of the Act, exempt telecommunications company ("ETC"), as that term is defined in section 34 of the Act, or other nonutility company which, upon acquisition, would qualify for exemption from the Act under rule 58 ("Rule 58 Company") or other Authorized Nonutility Business; (ii) after the award of a bid proposal, in order to facilitate closing on the purchase or financing of the acquired company; (iii) at any time subsequent to the consummation of an acquisition of an interest in any of these companies in order, among other things, to effect an adjustment in the respective ownership interests in the business held by Cinergy and non-affiliated investors; (iv) to facilitate the sale of ownership interests

in one or more acquired Authorized Nonutility Business; (v) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (vi) as a part of tax planning in order to limit Cinergy's exposure to U.S. and foreign taxes; (vii) to insulate Cinergy and its utility subsidiaries from operational or other business risks that may be associated with investments in Authorized Nonutility Business; or (viii) for other lawful business purposes.

Applicants state that investments in Intermediate Subsidiaries may take the form of (i) purchases of capital shares, partnership interests, membership interests in limited liability companies, trust certificates or other forms of voting or non-voting equity interests; (ii) capital contributions; (iii) loans; or (iv) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Applicants state that Cinergy will obtain funds for initial and subsequent investments in Intermediate Subsidiaries from available internal sources or external sources involving issuances of its securities under the June 2000 Order (or any future order supplementing or superseding that order in whole or in part). The other Applicants will obtain funds for initial and subsequent investments in Intermediate Subsidiaries from available cash, capital contributions or loans from Cinergy, or external borrowings or sales of capital stock under the exemption afforded by rule 52(b). To the extent that Cinergy provides funds directly or indirectly to an Intermediate Subsidiary that are used for an investment in an EWG or FUCO, a Rule 58 Company, an IS Company or an Energy-Related Asset, the amount of the funds will be included in Cinergy's "aggregate investment" in the appropriate entity, as calculated in accordance with rule 53 or rule 58, as applicable, or the terms of the Commission order authorizing Cinergy's investment in an IS Company or Energy-Related Asset, as applicable.

C. Nonutility Reorganizations

Applicants seek authority to effect corporate reorganizations or restructurings of Nonutility Subsidiaries and Nonutility Investments. Specifically Applicants request authority (i) for each Nonutility Subsidiary to sell or otherwise transfer the securities or assets (in whole or in part) of any Nonutility Subsidiary or Nonutility Investment to any other Nonutility Subsidiary or Nonutility Investment, and (ii) for each Nonutility Subsidiary to acquire these securities or assets.

¹³ See HCAR No. 27400 (May 18, 2001), HCAR No. 27581 (October 23, 2002), HCAR No. 27393 (May 4, 2001), HCAR No. 27506 (May 21, 2002), HCAR No. 27717 (August 29, 2003).

¹⁴ Applicants state that the term Intermediate Subsidiary also includes any Intermediate Parents formed under authority from the 1999 Order and any other Nonutility Subsidiaries performing a corresponding function formed by Cinergy under prior Commission orders.