

Large Filing Separator Sheet

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Section: 3 of 3

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Severance Opportunity Plan for Non-Union Employees of Cinergy Corp. and (b) if the Executive receives such Severance Benefits as a result of his termination for Good Reason, as that term is defined in Section 4d(iv), Cinergy's obligations under Sections 5a(ii) and 5a(iii) shall be reduced by the amount of any benefits payable to the Executive under any short-term or long-term disability plan of Cinergy, the amount of which shall be determined by Cinergy in good faith.

7. **Full Settlement: Mitigation.** Except as otherwise provided herein, Cinergy's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations under this Agreement will not be affected by any set-off, counterclaim, recoupment, defense, or other claim, right, or action that Cinergy may have against the Executive or others. In no event will the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts (including amounts for damages for breach) payable to the Executive under any of the provisions of this Agreement and, except as provided in Sections 3e, 5a(ii)(3) and 5a(iii)(4), those amounts will not be reduced simply because the Executive obtains other employment. If the Executive finally prevails on the substantial claims brought with respect to any dispute between Cinergy and the Executive as to the interpretation, terms, validity, or enforceability of (including any dispute about the amount of any payment pursuant to) this Agreement, Cinergy agrees to pay all reasonable legal fees and expenses that the Executive may reasonably incur as a result of that dispute.

8. **Arbitration.** The parties agree that any dispute, claim, or controversy based on common law, equity, or any federal, state, or local statute, ordinance, or regulation (other than workers' compensation claims) arising out of or relating in any way to the Executive's employment, the terms, benefits, and conditions of employment, or concerning this Agreement or its termination and any resulting termination of employment, including whether such a dispute is arbitrable, shall be settled by arbitration. This agreement to arbitrate includes but is not limited to all claims for any form of illegal discrimination, improper or unfair treatment or dismissal, and all tort claims. The Executive will still have a right to file a discrimination charge with a federal or state agency, but the final resolution of any discrimination claim will be submitted to arbitration instead of a court or jury. The arbitration proceeding will be conducted under the employment dispute resolution arbitration rules of the American Arbitration Association in effect at the time a demand for arbitration under the rules is made, and such proceeding will be adjudicated in the state of Ohio in accordance with the laws of the state of Ohio, without regard to any applicable state's choice of law provisions. The decision of the arbitrator(s), including determination of the amount of any damages suffered, will be exclusive, final, and binding on all parties, their heirs, executors, administrators, successors and assigns. Each party will bear its own expenses in the arbitration for arbitrators' fees and attorneys' fees, for its witnesses, and for other expenses of presenting its case. Other arbitration costs, including administrative fees and fees for records or transcripts, will be borne equally by the parties. Notwithstanding anything in this Section to the contrary, if the Executive prevails with respect to any dispute submitted to arbitration under this Section, Cinergy will reimburse or pay all legal fees and expenses that the Executive may reasonably incur as a result of the dispute as required by Section 7.

9. **Confidential Information.** The Executive will hold in a fiduciary capacity for the benefit of Cinergy, as well as all of Cinergy's successors and assigns, all secret, confidential information, knowledge, or data relating to Cinergy, and its affiliated businesses, that the Executive obtains during the Executive's employment by Cinergy or any of its affiliated companies, and that has not been or subsequently becomes public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). During the Employment Period and thereafter, the Executive will not, without Cinergy's prior written consent or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge, or data to anyone other than Cinergy and those designated by it. The Executive understands that during the Employment Period, Cinergy may be required from time to time to make public disclosure of the terms or existence of the Executive's employment relationship to comply with various laws and legal requirements. In addition to all other remedies available to Cinergy in law and equity, this Agreement is subject to termination by Cinergy for Cause under Section 4b in the event the Executive violates any provision of this Section.

10. **Successors.**
 - a. This Agreement is personal to the Executive and, without Cinergy's prior written consent, cannot be assigned by the Executive other than Executive's designation of a beneficiary of any amounts payable hereunder after the Executive's death. This Agreement will inure to the benefit of and be enforceable by the Executive's legal representatives.
 - b. This Agreement will inure to the benefit of and be binding upon Cinergy and its successors and assigns.
 - c. Cinergy will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of Cinergy to assume expressly and agree to perform this Agreement in the same manner and to the same extent that Cinergy would be required to perform it if no succession had taken place. Cinergy's failure to obtain such an assumption and agreement prior to the effective date of a succession will be a breach of this Agreement and will entitle the Executive to compensation from Cinergy in the same amount and on the same terms as if the Executive were to terminate his employment for Good Reason upon a Change in Control, except that, for purposes of implementing the foregoing, the date on which any such succession becomes effective will be deemed the Date of Termination.

11. **Definitions.** As used in this Agreement, the following terms, when capitalized, will have the following meanings:
 - a. **Accounting Firm.** "Accounting Firm" means Cinergy's independent auditors.
 - b. **Accrued Obligations.** "Accrued Obligations" means the accrued obligations described in Section 5a(i).

- c. Agreement. "Agreement" means this Employment Agreement between Cinergy and the Executive.
- d. AIP Benefit. "AIP Benefit" means the Annual Incentive Plan benefit described in Section 5a(i).
- e. Annual Base Salary. "Annual Base Salary" means, except where otherwise specified herein, the annual base salary payable to the Executive pursuant to Section 3a.
- f. Annual Bonus. "Annual Bonus" has the meaning set forth in Section 5a(ii)(1).
- g. Annual Incentive Plan. "Annual Incentive Plan" means the Cinergy Corp. Annual Incentive Plan or any similar plan or successor to the Annual Incentive Plan.
- h. Board of Directors or Board. "Board of Directors" or "Board" means the board of directors of the Company.
- i. COBRA. "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.
- j. Cause. "Cause" has the meaning set forth in Section 4b.
- k. Change in Control. A "Change in Control" will be deemed to have occurred if any of the following events occur, after the Effective Date:
 - (i) Any Person is or becomes the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended ("1934 Act")), directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its affiliates) representing more than twenty percent (20%) of the combined voting power of the Company's then outstanding securities, excluding any Person who becomes such a beneficial owner in connection with a transaction described in Clause (1) of Paragraph (ii) below; or
 - (ii) There is consummated a merger or consolidation of the Company or any direct or indirect subsidiary of the Company with any other corporation, partnership or other entity, other than (1) a merger or consolidation that would result in the voting securities of the Company outstanding immediately prior to that merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least sixty percent (60%) of the combined voting power of the securities of the Company or the surviving entity or its parent outstanding immediately after the merger or consolidation, or (2) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person is or becomes the beneficial owner, directly or indirectly, of

securities of the Company (not including in the securities beneficially owned by such a Person any securities acquired directly from the Company or its affiliates other than in connection with the acquisition by the Company or its affiliates of a business) representing twenty percent (20%) or more of the combined voting power of the Company's then outstanding securities; or

- (iii) During any period of two (2) consecutive years, individuals who at the beginning of that period constitute the Board of Directors and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Company's stockholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of that period or whose appointment, election, or nomination for election was previously so approved or recommended cease for any reason to constitute a majority of the Board of Directors; or
- (iv) The stockholders of the Company approve a plan of complete liquidation or dissolution of the Company or there is consummated a sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least sixty percent (60%) of the combined voting power of the voting securities of which are owned by stockholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to the sale.

- l. Change in Control Bonus. "Change in Control Bonus" has the meaning set forth in Section 5a(iii)(1).
- m. Cinergy. "Cinergy" means the Company, its subsidiaries, and/or its affiliates, and any successors to the foregoing.
- n. Code. "Code" means the Internal Revenue Code of 1986, as amended, and interpretive rules and regulations.
- o. Committee. "Committee" means the duly designated compensation committee of Cinergy's Board of Directors.
- p. Common Stock. "Common Stock" means any authorized share of ownership of the Company represented by a common stock certificate, with par value of \$.01 per share, or any other appropriate instrument evidencing the same.
- q. Company. "Company" means Cinergy Corp.

- r. Date of Termination. "Date of Termination" means:
- (i) if the Executive's employment is terminated by Cinergy for Cause, or by the Executive with Good Reason, the date of receipt of the Notice of Termination or any later date specified in the notice, as the case may be;
 - (ii) if the Executive's employment is terminated by the Executive without Good Reason, thirty (30) days after the date on which the Executive notifies Cinergy of the termination;
 - (iii) if the Executive's employment is terminated by Cinergy other than for Cause, thirty (30) days after the date on which Cinergy notifies the Executive of the termination; and
 - (iv) if the Executive's employment is terminated by reason of death, the date of death.
- s. Deferred Compensation Agreement. "Deferred Compensation Agreement" means the deferred compensation agreement, dated December 16, 1992 and effective as of January 1, 1992, between the Executive and PSI Energy, Inc.
- t. Deferred Compensation Plan. "Deferred Compensation Plan" means the Cinergy Corp. Non-Qualified Deferred Incentive Compensation Plan or any similar plan or successor to that plan.
- u. Effective Date. "Effective Date" has the meaning given to that term in the first paragraph of this Agreement.
- v. Employment Period. "Employment Period" has the meaning set forth in Section 1b.
- w. Excise Tax. "Excise Tax" means any excise tax imposed by Code section 4999, together with any interest, penalties, additional tax or similar items that are incurred by the Executive with respect to the excise tax imposed by Code section 4999.
- x. Executive. "Executive" has the meaning given to that term in the first paragraph of this Agreement.
- y. Executive Retirement Plans. "Executive Retirement Plans" means the Pension Plan, the Cinergy Corp. Supplemental Executive Retirement Plan and the Cinergy Corp. Excess Pension Plan or any similar plans or successors to those plans.
- z. Executive Supplemental Life Program. "Executive Supplemental Life Program" means the Cinergy Corp. Executive Supplemental Life Insurance Program or any similar program or successor to the Executive Supplemental Life Program.

- aa. Fair Market Value. "Fair Market Value" means, as of any particular date with respect to a share of Common Stock, the average of the high and low sales prices of a share of Common Stock on such date, or on the preceding trading day if that date was not a trading date, as reported by the "NYSE -Composite Transactions" published in The Wall Street Journal.
- bb. 401(k) Excess Plan. "401(k) Excess Plan" means the Cinergy Corp. 401(k) Excess Plan, or any similar plan or successor to that plan.
- cc. Good Reason. "Good Reason" has the meaning set forth in Section 4d.
- dd. Gross-Up Payment. "Gross-Up Payment" has the meaning set forth in Section 5c.
- ee. Highest Average Earnings. "Highest Average Earnings" shall have the meaning given to such term in the Cinergy Corp. Supplemental Executive Retirement Plan (as modified where relevant by Section 3g(iv) hereof), provided, however, that any amount deferred by the Executive under the Deferred Compensation Agreement during any relevant period shall be included in the Executive's Highest Average Earnings. For purposes of clarity, the parties hereto acknowledge and agree that the Executive's Highest Average Earnings for any year shall not include any benefits received by the Executive pursuant to Section 5 of this Agreement, other than pursuant to Section 5a(i) of this Agreement.
- ff. Insurance Agreement. "Insurance Agreement" means the split dollar insurance agreement dated October 7, 1992 between the Executive and PSI Energy, Inc., as amended effective December 11, 1992 and June 1, 2000.
- gg. Long-Term Incentive Plan or LTIP. "Long-Term Incentive Plan" or "LTIP" means the long-term incentive plan implemented under the Cinergy Corp. 1996 Long-Term Incentive Compensation Plan or any successor to that plan.
- hh. M&W Plans. "M&W Plans" has the meaning set forth in Section 5a(ii)(3).
- ii. Maximum Annual Bonus. "Maximum Annual Bonus" has the meaning set forth in Section 3b.
- jj. Nonelective Employer Contribution. "Nonelective Employer Contribution" has the meaning set forth in the 401(k) Excess Plan.
- kk. Notice of Termination. "Notice of Termination" has the meaning set forth in Section 4f.
- ll. Payment or Payments. "Payment" or "Payments" has the meaning set forth in Section 5c.
- mm. Pension Plan. "Pension Plan" means the Cinergy Corp. Non-Union Employees' Pension Plan or any successor to that plan.

- nn. Performance Award. "Performance Award" has the meaning set forth in Section 3g.
- oo. Performance Share Awards. "Performance Share Awards" has the meaning set forth in Section 5a(ii)(2).
- pp. Person. "Person" has the meaning set forth in paragraph 3(a)(9) of the 1934 Act, as modified and used in subsections 13(d) and 14(d) of the 1934 Act; however, a Person will not include the following:
 - (i) Cinergy or any of its subsidiaries or affiliates;
 - (ii) A trustee or other fiduciary holding securities under an employee benefit plan of Cinergy or its subsidiaries or affiliates;
 - (iii) An underwriter temporarily holding securities pursuant to an offering of those securities; or
 - (iv) A corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.
- qq. Potential Change in Control. A "Potential Change in Control" means any period during which any of the following circumstances exist:
 - (i) The Company enters into an agreement, the consummation of which would result in the occurrence of a Change in Control; provided that a Potential Change in Control shall cease to exist upon the expiration or other termination of such agreement; or
 - (ii) The Company or any Person publicly announces an intention to take or to consider taking actions which, if consummated, would constitute a Change in Control; provided that a Potential Change in Control shall cease to exist when the Company or such Person publicly announces that it no longer has such an intention; or
 - (iii) Any Person who is or becomes the beneficial owner (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of securities of the Company representing ten percent (10%) or more of the combined voting power of the Company's then outstanding securities, increases such Person's beneficial ownership of such securities by an amount equal to five percent (5%) or more of the combined voting power of the Company's then outstanding securities; or
 - (iv) The Board of Directors adopts a resolution to the effect that, for purposes hereof, a Potential Change in Control has occurred.

Notwithstanding anything herein to the contrary, a Potential Change in Control shall cease to exist not later than the date that (i) the Board of Directors determines that the Potential Change in Control no longer exists, or (ii) a Change in Control occurs.

- rr. Prime Rate. "Prime Rate" means the prime rate of interest promulgated by Citibank, N.A. and in effect as of the Date of Termination.
- ss. Qualifying Termination. "Qualifying Termination" means (i) the termination by Cinergy of the Executive's employment with Cinergy during the Employment Period other than a termination for Cause or (ii) the termination by the Executive of the Executive's employment with Cinergy during the Employment Period for Good Reason.
- tt. Relocation Program. "Relocation Program" means the Cinergy Corp. Relocation Program, or any similar program or successor to that program, as in effect on the date of the Executive's termination of employment.
- uu. Severance Benefits. "Severance Benefits" means the payments and benefits payable to the Executive pursuant to Section 5.
- vv. Shares. "Shares" has the meaning set forth in Section 3g.
- ww. Spouse. "Spouse" means the Executive's lawfully married spouse. For this purpose, common law marriage or a similar arrangement will not be recognized unless otherwise required by federal law.
- xx. Stock Related Documents. "Stock Related Documents" means the LTIP, the Cinergy Corp. Stock Option Plan, and the Value Creation Plan and any applicable administrative guidelines and written agreements relating to those plans.
- yy. Target Annual Bonus. "Target Annual Bonus" has the meaning set forth in Section 3b.
- zz. Target LTIP Bonus. "Target LTIP Bonus" has the meaning set forth in Section 3b.
- aaa. Value Creation Plan. "Value Creation Plan" means the Value Creation Plan or any similar plan, or successor plan of the LTIP.
- bbb. Waiver and Release. "Waiver and Release" means a waiver and release, in substantially the form attached to this Agreement as Exhibit A.

12. Miscellaneous.

- a. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio, without reference to principles of conflict of laws. The captions of this Agreement are not part of its provisions and will have no force or effect.

This Agreement may not be amended, modified, repealed, waived, extended, or discharged except by an agreement in writing signed by the party against whom enforcement of the amendment, modification, repeal, waiver, extension, or discharge is sought. No person, other than pursuant to a resolution of the members of the Board of Directors (excluding the Executive) or a committee of the Board of Directors (excluding the Executive), will have authority on behalf of Cinergy to agree to amend, modify, repeal, waive, extend, or discharge any provision of this Agreement.

- b. All notices and other communications under this Agreement will be in writing and will be given by hand delivery to the other party or by Federal Express or other comparable national or international overnight delivery service, addressed in the name of such party at the following address, whichever is applicable:

If to the Executive:

Cinergy Corp.
221 East Fourth Street
Cincinnati, Ohio 45201-0960

If to Cinergy:

Cinergy Corp.
221 East Fourth Street
Cincinnati, Ohio 45201-0960
Attn: Chief Legal Officer

or to such other address as either party has furnished to the other in writing in accordance with this Agreement. All notices and communications will be effective when actually received by the addressee.

- c. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement.
- d. Cinergy may withhold from any amounts payable under this Agreement such federal, state, or local taxes as are required to be withheld pursuant to any applicable law or regulation.
- e. The Executive's or Cinergy's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or Cinergy may have under this Agreement, including without limitation the right of the Executive to terminate employment for Good Reason pursuant to Section 4d or the right of Cinergy to terminate the Executive's employment for Cause pursuant to Section 4b, will not be deemed to be a waiver of that provision or right or any other provision or right of this Agreement.
- f. References in this Agreement to the masculine include the feminine unless the context clearly indicates otherwise.

- g. This instrument contains the entire agreement of the Executive and Cinergy with respect to the subject matter of this Agreement; and subject to any agreements evidencing stock option or restricted stock grants described in Section 3b and the Stock Related Documents, all promises, representations, understandings, arrangements, and prior agreements are merged into this Agreement and accordingly superseded.
- h. This Agreement may be executed in counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument.
- i. Cinergy and the Executive agree that Cinergy Services, Inc. will be authorized to act for Cinergy with respect to all aspects pertaining to the administration and interpretation of this Agreement.

IN WITNESS WHEREOF, the Executive and the Company have caused this Agreement to be executed as of the Effective Date.

CINERGY SERVICES, INC.

By: /s/ Michael G. Browning
Michael G. Browning
Chairman, Compensation Committee of the Board
of Directors

EXECUTIVE

/s/ James E. Rogers
James E. Rogers

EXHIBIT A

WAIVER AND RELEASE AGREEMENT

THIS WAIVER AND RELEASE AGREEMENT (this "Waiver and Release") is entered into by and between James E. Rogers (the "Executive") and Cinergy Corp. ("Cinergy") (collectively, the "Parties").

WHEREAS, the Parties have entered into the Employment Agreement dated _____ (the "Employment Agreement");

WHEREAS, the Executive's employment has been terminated in accordance with the terms of the Employment Agreement;

WHEREAS, the Executive is required to sign this Waiver and Release in order to receive the payment of certain compensation under the Employment Agreement following termination of employment; and

WHEREAS, Cinergy has agreed to sign this Waiver and Release.

NOW, THEREFORE, in consideration of the promises and agreements contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. This Waiver and Release is effective on the date hereof and will continue in effect as provided herein.
2. In consideration of the payments to be made and the benefits to be received by the Executive pursuant to Section 5 of the Employment Agreement (the "Severance Benefits"), which the Executive acknowledges are in addition to payment and benefits to which the Executive would be entitled to but for the Employment Agreement, the Executive, on behalf of himself, his heirs, representatives, agents and assigns hereby COVENANTS NOT TO SUE OR OTHERWISE VOLUNTARILY PARTICIPATE IN ANY LAWSUIT AGAINST, FULLY RELEASES, INDEMNIFIES, HOLDS HARMLESS, and OTHERWISE FOREVER DISCHARGES (i) Cinergy, (ii) its subsidiary or affiliated entities, (iii) all of their present or former directors, officers, employees, shareholders, and agents as well as (iv) all predecessors, successors and assigns thereof (the persons listed in clauses (i) through (iv) hereof shall be referred to collectively as the "Company") from any and all actions, charges, claims, demands, damages or liabilities of any kind or character whatsoever, known or unknown, which Executive now has or may have had through the effective date of this Waiver and Release. Executive acknowledges and understands that he is not hereby prevented from filing a charge of discrimination with the Equal Employment Opportunity Commission or any state-equivalent agency or otherwise participate in any proceedings before such

Commissions. Executive also acknowledges and understands that in the event he does file such a charge, he shall be entitled to no remuneration, damages, back pay, front pay, or compensation whatsoever from the Company as a result of such charge.

3. Without limiting the generality of the foregoing release, it shall include: (i) all claims or potential claims arising under any federal, state or local laws relating to the Parties' employment relationship, including any claims Executive may have under the Civil Rights Acts of 1866 and 1964, as amended, 42 U.S.C. §§ 1981 and 2000(e) et seq.; the Civil Rights Act of 1991; the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 621 et seq.; the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12,101 et seq.; the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.; the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101, et seq.; the Ohio Civil Rights Act, Chapter 4112 et seq.; and any other federal, state or local law governing the Parties' employment relationship; (ii) any claims on account of, arising out of or in any way connected with Executive's employment with the Company or leaving of that employment; (iii) any claims alleged or which could have been alleged in any charge or complaint against the Company; (iv) any claims relating to the conduct of any employee, officer, director, agent or other representative of the Company; (v) any claims of discrimination or harassment on any basis; (vi) any claims arising from any legal restrictions on an employer's right to separate its employees; (vii) any claims for personal injury, compensatory or punitive damages or other forms of relief; and (viii) all other causes of action sounding in contract, tort or other common law basis, including: (a) the breach of any alleged oral or written contract; (b) negligent or intentional misrepresentations; (c) wrongful discharge; (d) just cause dismissal; (e) defamation; (f) interference with contract or business relationship; or (g) negligent or intentional infliction of emotional distress.
4. The Parties acknowledge that it is their mutual and specific intent that the above waiver fully complies with the requirements of the Older Workers Benefit Protection Act (29 U.S.C. § 626) and any similar law governing release of claims. Accordingly, Executive hereby acknowledges that:
 - (a) He has carefully read and fully understands all of the provisions of this Waiver and Release and that he has entered into this Waiver and Release knowingly and voluntarily after extensive negotiations and having consulted with his counsel;
 - (b) The Severance Benefits offered in exchange for Executive's release of claims exceed in kind and scope that to which he would have otherwise been legally entitled;
 - (c) Prior to signing this Waiver and Release, Executive had been advised in writing by this Waiver and Release as well as other writings to seek counsel from, and has in fact had an opportunity to consult with, an attorney of his choice concerning its terms and conditions; and
 - (d) He has been offered at least twenty-one (21) days within which to review and consider this Waiver and Release.

5. The Parties agree that this Waiver and Release shall not become effective and enforceable until the date this Waiver and Release is signed by both Parties or seven (7) calendar days after its execution by Executive, whichever is later. Executive may revoke this Waiver and Release for any reason by providing written notice of such intent to Cinergy within seven (7) days after he has signed this Waiver and Release, thereby forfeiting Executive's right to receive any Severance Benefits provided hereunder and rendering this Waiver and Release null and void in its entirety.
6. The Executive hereby affirms and acknowledges his continued obligations to comply with the post-termination covenants contained in his Employment Agreement, including but not limited to, the Confidential Information provisions of Section 9 of the Employment Agreement. Executive acknowledges that the restrictions contained therein are valid and reasonable in every respect, are necessary to protect the Company's legitimate business interests and hereby affirmatively waives any claim or defense to the contrary.
7. Executive specifically agrees and understands that the existence and terms of this Waiver and Release are strictly CONFIDENTIAL and that such confidentiality is a material term of this Waiver and Release. Accordingly, except as required by law or unless authorized to do so by Cinergy in writing, Executive agrees that he shall not communicate, display or otherwise reveal any of the contents of this Waiver and Release to anyone other than his spouse, primary legal counsel, tax advisor and financial advisor, provided, however, that they are first advised of the confidential nature of this Waiver and Release and Executive obtains their agreement to be bound by the same. Cinergy agrees that Executive may respond to legitimate inquiries regarding his employment with Cinergy by stating that he voluntarily resigned to pursue other opportunities, that the Parties terminated their relationship on an amicable basis and that the Parties have entered into a confidential Waiver and Release that prohibits him from further discussing the specifics of his separation. Nothing contained herein shall be construed to prevent Executive from discussing or otherwise advising subsequent employers of the existence of any obligations as set forth in his Employment Agreement. Further, nothing contained herein shall be construed to limit or otherwise restrict the Company's ability to disclose the terms and conditions of this Waiver and Release as may be required by business necessity.
8. In the event that Executive breaches or threatens to breach any provision of this Waiver and Release, he agrees that Cinergy shall be entitled to seek any and all equitable and legal relief provided by law, specifically including immediate and permanent injunctive relief. Executive hereby waives any claim that Cinergy has an adequate remedy at law. In addition, and to the extent not prohibited by law, Executive agrees that Cinergy shall be entitled to an award of all reasonable costs and attorneys' fees incurred by Cinergy in any successful effort to enforce the terms of this Waiver and Release. Executive agrees that the foregoing relief shall not be construed to limit or otherwise restrict Cinergy's ability to pursue any other remedy provided by law, including the recovery of any actual, compensatory or punitive damages. Moreover, if Executive pursues any claims against the Company subject to the foregoing Waiver and Release, Executive agrees to

immediately reimburse the Company for the value of all benefits received under this Waiver and Release to the fullest extent permitted by law.

9. Cinergy hereby releases the Executive, his heirs, representatives, agents and assigns from any and all known claims, causes of action, grievances, damages and demands of any kind or nature based on acts or omissions committed by the Executive during and in the course of his employment with Cinergy provided such act or omission was committed in good faith and occurred within the scope of his normal duties and responsibilities.
10. The Parties acknowledge that this Waiver and Release is entered into solely for the purpose of ending their employment relationship on an amicable basis and shall not be construed as an admission of liability or wrongdoing by either Party and that both Cinergy and Executive have expressly denied any such liability or wrongdoing.
11. Each of the promises and obligations shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, assigns and successors in interest of each of the Parties.
12. The Parties agree that each and every paragraph, sentence, clause, term and provision of this Waiver and Release is severable and that, if any portion of this Waiver and Release should be deemed not enforceable for any reason, such portion shall be stricken and the remaining portion or portions thereof should continue to be enforced to the fullest extent permitted by applicable law.
13. This Waiver and Release shall be governed by and interpreted in accordance with the laws of the State of Ohio without regard to any applicable state's choice of law provisions.
14. Executive represents and acknowledges that in signing this Waiver and Release he does not rely, and has not relied, upon any representation or statement made by Cinergy or by any of Cinergy's employees, officers, agents, stockholders, directors or attorneys with regard to the subject matter, basis or effect of this Waiver and Release other than those specifically contained herein.
15. This Waiver and Release represents the entire agreement between the Parties concerning the subject matter hereof, shall supercede any and all prior agreements which may otherwise exist between them concerning the subject matter hereof (specifically excluding, however, the post-termination obligations contained in any existing Employment Agreement or other legally-binding document), and shall not be altered, amended, modified or otherwise changed except by a writing executed by both Parties.
16. Cinergy Corp. and the Executive agree that Cinergy Services, Inc. will be authorized to act for Cinergy Corp. with respect to all aspects pertaining to the administration and interpretation of this Waiver and Release.

**PLEASE READ CAREFULLY. WITH RESPECT TO THE EXECUTIVE, THIS
WAIVER AND RELEASE INCLUDES A COMPLETE RELEASE OF ALL KNOWN
AND UNKNOWN CLAIMS.**

IN WITNESS WHEREOF, the Parties have themselves signed, or caused a duly authorized agent thereof to sign, this Waiver and Release on their behalf and thereby acknowledge their intent to be bound by its terms and conditions.

EXECUTIVE

CINERGY SERVICES, INC.

Signed: _____

By: _____

Printed: _____

Title: _____

Dated: _____

Dated: _____

EX-10.D 4 a04-1370_1ex10dd.htm EX-10.D

Exhibit 10.d

AMENDMENT TO EMPLOYMENT AGREEMENT

The Employment Agreement between Cinergy Corp., its subsidiaries and/or its affiliates ("Cinergy") and William J. Grealis (the "Executive") dated as of October 11, 2002 (the "Agreement") is hereby amended effective as of December 17, 2003.

AMENDMENTS

1. Section 3b(ii) of the Agreement is hereby amended by adding the following new subsection (4) at the end thereof:

"(4) Special Payment Election Without a Change in Control. Notwithstanding the foregoing, the Executive may make an election, on a form provided by Cinergy, to receive a single lump sum cash payment in an amount equal to one-half of the Actuarial Equivalent (as defined above in Section 3b(ii)(3)(D)) of his supplemental retirement benefit payable no later than 30 days after the date of his termination of employment. In order to be effective, the special payment election under this Section 3b(ii)(4) must be made either (A) at least one year prior to the termination of the Executive's employment with Cinergy or (B) during 2003 and at least six months prior to the termination of the Executive's employment with Cinergy. The lump sum amount payable pursuant to this Section 3b(ii)(4) shall be calculated in accordance with the provisions of Section 3b(ii)(3)(D). In the event an amount is paid to or on behalf of the Executive pursuant to this Section 3b(ii)(4), such payment shall discharge any liability under this Agreement to or on behalf of the Executive with respect to one-half of the Actuarial Equivalent (as defined above in Section 3b(ii)(3)(D)) of his supplemental retirement benefit."

IN WITNESS WHEREOF, the Executive and Cinergy have caused this Amendment to the Agreement to be executed as of the date first specified above.

CINERGY SERVICES, INC.

By: /s/ James E. Rogers
James E. Rogers
Chairman and
Chief Executive Officer

EXECUTIVE

/s/ William J. Grealis
William J. Grealis

EX-10.G 5 a04-1370_1ex10dg.htm EX-10.G

Exhibit 10.g

AMENDMENT TO EMPLOYMENT AGREEMENT

The Employment Agreement between Cinergy Corp., its subsidiaries and/or its affiliates ("Cinergy") and Michael J. Cyrus (the "Executive") dated as of September 12, 2002 (the "Agreement") is hereby amended effective as of December 17, 2003.

AMENDMENTS

1. Section 3b(ii) of the Agreement is hereby amended by adding the following new subsection (4) at the end thereof:

"(4) Special Payment Election Without a Change in Control. Notwithstanding the foregoing, the Executive may make an election, on a form provided by Cinergy, to receive a single lump sum cash payment in an amount equal to one-half of the Actuarial Equivalent (as defined above in Section 3b(ii)(3)(D)) of his supplemental retirement benefit payable no later than 30 days after the date of his termination of employment. In order to be effective, the special payment election under this Section 3b(ii)(4) must be made either (A) at least one year prior to the termination of the Executive's employment with Cinergy or (B) during 2003 and at least six months prior to the termination of the Executive's employment with Cinergy. The lump sum amount payable pursuant to this Section 3b(ii)(4) shall be calculated in accordance with the provisions of Section 3b(ii)(3)(D). In the event an amount is paid to or on behalf of the Executive pursuant to this Section 3b(ii)(4), such payment shall discharge any liability under this Agreement to or on behalf of the Executive with respect to one-half of the Actuarial Equivalent (as defined above in Section 3b(ii)(3)(D)) of his supplemental retirement benefit."

IN WITNESS WHEREOF, the Executive and Cinergy have caused this Amendment to the Agreement to be executed as of the date first specified above.

CINERGY SERVICES, INC.

By: /s/ James E. Rogers
James E. Rogers
Chairman and
Chief Executive Officer

EXECUTIVE

/s/ Michael J. Cyrus
Michael J. Cyrus

EX-10.I 6 a04-1370_1ex10di.htm EX-10.I

Exhibit 10.i

AMENDMENT TO EMPLOYMENT AGREEMENT

The Employment Agreement between Cinergy Corp., its subsidiaries and/or its affiliates ("Cinergy") and James L. Turner (the "Executive") dated as of September 24, 2002 (the "Agreement") is hereby amended effective as of December 17, 2003.

AMENDMENTS

1. Section 3b(ii) of the Agreement is hereby amended by adding the following new subsection (4) at the end thereof:

"(4) Special Payment Election Without a Change in Control. Notwithstanding the foregoing, the Executive may make an election, on a form provided by Cinergy, to receive a single lump sum cash payment in an amount equal to one-half of the Actuarial Equivalent (as defined above in Section 3b(ii)(3)(D)) of his supplemental retirement benefit payable no later than 30 days after the date of his termination of employment. In order to be effective, the special payment election under this Section 3b(ii)(4) must be made either (A) at least one year prior to the termination of the Executive's employment with Cinergy or (B) during 2003 and at least six months prior to the termination of the Executive's employment with Cinergy. The lump sum amount payable pursuant to this Section 3b(ii)(4) shall be calculated in accordance with the provisions of Section 3b(ii)(3)(D). In the event an amount is paid to or on behalf of the Executive pursuant to this Section 3b(ii)(4), such payment shall discharge any liability under this Agreement to or on behalf of the Executive with respect to one-half of the Actuarial Equivalent (as defined above in Section 3b(ii)(3)(D)) of his supplemental retirement benefit."

IN WITNESS WHEREOF, the Executive and Cinergy have caused this Amendment to the Agreement to be executed as of the date first specified above.

CINERGY SERVICES, INC.

By: /s/ James E. Rogers

James E. Rogers

Chairman and

Chief Executive Officer

EXECUTIVE

/s/ James L. Turner

James L. Turner

EX-10.K 7 a04-1370_1ex10dk.htm EX-10.K

Exhibit 10.k

AMENDMENT TO EMPLOYMENT AGREEMENT

The Employment Agreement between Cinergy Corp., its subsidiaries and/or its affiliates ("Cinergy") and R. Foster Duncan (the "Executive") dated as of January 1, 2002 (the "Agreement") is hereby amended effective as of December 17, 2003.

AMENDMENTS

1. Section 3b(ii) of the Agreement is hereby amended by adding the following new subsection (4) at the end thereof:

"(4) Special Payment Election Without a Change in Control. Notwithstanding the foregoing, the Executive may make an election, on a form provided by Cinergy, to receive a single lump sum cash payment in an amount equal to one-half of the Actuarial Equivalent (as defined above in Section 3b(ii)(3)(D)) of his supplemental retirement benefit payable no later than 30 days after the date of his termination of employment. In order to be effective, the special payment election under this Section 3b(ii)(4) must be made either (A) at least one year prior to the termination of the Executive's employment with Cinergy or (B) during 2003 and at least six months prior to the termination of the Executive's employment with Cinergy. The lump sum amount payable pursuant to this Section 3b(ii)(4) shall be calculated in accordance with the provisions of Section 3b(ii)(3)(D). In the event an amount is paid to or on behalf of the Executive pursuant to this Section 3b(ii)(4), such payment shall discharge any liability under this Agreement to or on behalf of the Executive with respect to one-half of the Actuarial Equivalent (as defined above in Section 3b(ii)(3)(D)) of his supplemental retirement benefit."

IN WITNESS WHEREOF, the Executive and Cinergy have caused this Amendment to the Agreement to be executed as of the date first specified above.

CINERGY SERVICES, INC.

By: /s/ James E. Rogers
James E. Rogers
Chairman and
Chief Executive Officer

EXECUTIVE

/s/ R. Foster Duncan
R. Foster Duncan

EX-10.L 8 a04-1370_1ex10dl.htm EX-10.L

Exhibit 10.1

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT is made and entered into as of the 15th day of November, 2002 (the "Effective Date"), by and between Cinergy and Marc E. Manly (the "Executive"). This Agreement replaces and supersedes any and all prior employment agreements between Cinergy and the Executive. The capitalized words and terms used throughout this Agreement are defined in Section 11.

Recitals

- A. The Executive is currently serving as Executive Vice President and Chief Legal Officer of the Company, and Cinergy desires to secure the continued employment of the Executive in accordance with this Agreement.
- B. The Executive is willing to continue to remain in the employ of Cinergy on the terms and conditions set forth in this Agreement.
- C. The parties intend that this Agreement will replace and supersede any and all prior employment agreements between Cinergy (or any component company or business unit of Cinergy) and the Executive.

Agreement

In consideration of the mutual promises, covenants and agreements set forth below, the parties agree as follows:

1. Employment and Term.

- a. Cinergy agrees to employ the Executive, and the Executive agrees to remain in the employ of Cinergy, in accordance with the terms and provisions of this Agreement, for the Employment Period set forth in Section 1b. The parties agree that the Company will be responsible for carrying out all of the promises, covenants, and agreements of Cinergy set forth in this Agreement.
- b. The Employment Period of this Agreement will commence as of the Effective Date and continue until December 31, 2005; provided that, commencing on December 31, 2003, and on each subsequent December 31, the Employment Period will be extended for one (1) additional year unless either party gives the other party written notice not to extend this Agreement at least ninety (90) days before the extension would otherwise become effective.

2. Duties and Powers of Executive.

- a. Position. The Executive will serve Cinergy as Executive Vice President and Chief Legal Officer of the Company and he will have such responsibilities, duties, and authority as are customary for someone of that position and such additional duties, consistent with his position, as may be assigned to him from time to time during the Employment Period by the Board of Directors or the Chief Executive Officer. Executive shall devote substantially all of Executive's business time, efforts and attention to the performance of Executive's duties under this Agreement; provided, however, that this requirement shall not preclude Executive from reasonable participation in civic, charitable or professional activities or the management of Executive's passive investments, so long as such activities do not materially interfere with the performance of Executive's duties under this Agreement.
- b. Place of Performance. In connection with the Executive's employment, the Executive will be based at the principal executive offices of Cinergy, 221 East Fourth Street, Cincinnati, Ohio. Except for required business travel to an extent substantially consistent with the present business travel obligations of Cinergy executives who have positions of authority comparable to that of the Executive, the Executive will not be required to relocate to a new principal place of business that is more than thirty (30) miles from such location.

3. Compensation. The Executive will receive the following compensation for his services under this Agreement.

- a. Salary. The Executive's Annual Base Salary, payable in pro rata installments not less often than semi-monthly, will be at the annual rate of not less than \$475,008. Any increase in the Annual Base Salary will not serve to limit or reduce any other obligation of Cinergy under this Agreement. The Annual Base Salary will not be reduced except for across-the-board salary reductions similarly affecting all Cinergy management personnel. If Annual Base Salary is increased or reduced during the Employment Period, then such adjusted salary will thereafter be the Annual Base Salary for all purposes under this Agreement.
- b. Retirement, Incentive, Welfare Benefit Plans and Other Benefits.
 - (i) During the Employment Period, the Executive will be eligible, and Cinergy will take all necessary action to cause the Executive to become eligible, to participate in short-term and long-term incentive, stock option, restricted stock, performance unit, savings, retirement and welfare plans, practices, policies and programs applicable generally to other senior executives of Cinergy who are considered Tier II executives for compensation purposes, except with respect to any plan, practice, policy or program to which the Executive has waived his rights in writing. The Executive will be a participant in the Senior Executive Supplement portion of the Cinergy Corp. Supplemental Executive Retirement Plan (the "SERP") and the Executive will receive a supplemental retirement benefit hereunder in an amount equal to the excess of the amount that he would be entitled to receive under the terms of the SERP if his "Total Pay Replacement Percentage" thereunder were equal to the product of five percent (5%) and the number of his years of "Senior Executive Service" not in excess of 15 (in whole years) as of the applicable date over the amount to which the Executive is actually entitled pursuant to the terms of the SERP as

of the applicable date. The supplemental retirement benefit described in the preceding sentence shall be payable in accordance with the terms of the SERP (including any applicable vesting schedule) and shall be treated hereunder (including for purposes of Section 5a(iii)(3)) as if it were payable under the SERP. Notwithstanding the foregoing, in no event shall the sum of the supplemental retirement benefit described in this Section 3b(i) and the Executive's total aggregate annual benefit under the SERP exceed 60% of the Executive's Highest Average Earnings.

(ii) Supplemental Retirement Benefit.

- (1) Amount, Form, Timing and Method of Payment. If the Executive retires from Cinergy after reaching age 62, the Executive will be entitled and fully vested in a supplemental retirement benefit in an amount which, when expressed as an annual amount payable during the life of the Executive, shall equal the excess of (1) 60% of the Executive's Highest Average Earnings over (2) his total aggregate annual benefit, payable in the form of a single life annuity to the Executive, under Section 3b(i) hereof and under all Executive Retirement Plans. Except as described below, the form (e.g., the 100% joint and survivor annuity form of benefit), timing, and method of payment of the supplemental retirement benefit payable under this Paragraph will be the same as those elected by the Executive under the Pension Plan, and the amount of such benefit shall be calculated after taking into account the actuarial factors contained in the Pension Plan, provided, however, that such benefit shall not be actuarially reduced for early commencement.
- (2) Death Benefit. If the Executive dies after reaching age 62 but prior to his retirement from Cinergy, and if his Spouse, on the date of his death, is living on the date the first installment of the supplemental retirement benefit would be payable under this Paragraph, the Spouse will be entitled to receive the supplemental retirement benefit as a Spouse's benefit. The form, timing, and method of payment of any Spouse's benefit under this Paragraph will be the same as those applicable to the Spouse under the Pension Plan, and the amount of such benefit shall be calculated after taking into account the actuarial factors contained in the Pension Plan, provided, however, that such benefit shall not be actuarially reduced for early commencement.
- (3) Special Payment Election Effective Upon a Change in Control. Notwithstanding the foregoing, the Executive may make a special payment election with respect to his supplemental retirement benefit (if any) in accordance with the following provisions:
 - (A) The Executive may elect, on a form provided by Cinergy, to receive a single lump sum cash payment in an amount equal to the Actuarial Equivalent (as defined below) of his supplemental retirement benefit (or the Actuarial Equivalent of the remaining payments to be made in connection with his supplemental retirement benefit in the event that payment of his supplemental retirement benefit has already commenced) payable no later than 30 days after the later of the occurrence of a Change in Control or the date of his termination of employment.
 - (B) Such special payment election shall become operative only upon the occurrence of a Change in Control and only if the Executive's termination of employment occurs either (1) prior to the occurrence of a Change in Control or (2) during the 24-month period commencing upon the

occurrence of a Change in Control. Once operative, such special payment election shall override any other payment election made by the Executive with respect to his supplemental retirement benefit.

- (C) In order to be effective, a special payment election (or withdrawal of that election) must be made either prior to the occurrence of a Potential Change in Control or, with the consent of Cinergy, during the 30-day period commencing upon the occurrence of a Potential Change in Control. In the event that a Potential Change in Control occurs and subsequently ceases to exist, other than as a result of a Change in Control, such Potential Change in Control shall be disregarded for purposes of this Section.
 - (D) In the event that the Executive makes a special payment election and pursuant to that election he becomes entitled to receive a single lump sum cash payment pursuant to this Section payable prior to the commencement of his supplemental retirement benefit in another form of payment, the Actuarial Equivalent of his supplemental retirement benefit shall be calculated based on the following assumptions:
 - (I) The form of payment for each of the Executive's retirement benefits under Section 3b(i) hereof and under the Executive Retirement Plans and the Executive's supplemental retirement benefit shall be a single life annuity;
 - (II) The commencement date for each of the Executive's retirement benefits under Section 3b(i) hereof and under the Executive Retirement Plans and the Executive's supplemental retirement benefit shall be the first day of the calendar month coincident with or next following his termination of employment;
 - (III) The term "Actuarial Equivalent" has the meaning given to that term in the Pension Plan with respect to lump sum payments; and
 - (IV) The amount of the Executive's supplemental retirement benefit shall not be actuarially reduced for early commencement.
 - (E) In the event that the Executive makes a special payment election and pursuant to that election he is entitled to receive a single lump sum cash payment payable after the commencement of his supplemental retirement benefit in another form of payment, his lump sum cash payment shall be equal to the Actuarial Equivalent (as that term is used in the Pension Plan with respect to lump sum payments) of the remaining payments to be made in connection with his supplemental retirement benefit.
- (4) Except as provided in Section 3b(ii)(3), the supplemental retirement benefit shall not be payable in the form of a single lump sum.
- (iii) Upon his retirement on or after having become fully vested in his benefit under the Pension Plan, the Executive will be eligible for comprehensive medical and dental benefits which are not materially different from the benefits provided to retirees under the Cinergy Corp. Welfare Benefits Program or any similar program or successor to that program. For purposes of

determining the amount of the monthly premiums due from the Executive, the Executive will receive from Cinergy the maximum subsidy available as of the date of his retirement to an active Cinergy employee with the same medical benefits classification/eligibility as the Executive's medical benefits classification/eligibility on the date of his retirement.

- (iv) The Executive will be a participant in the Annual Incentive Plan and will be paid pursuant to the terms and conditions of that plan, subject to the following: (1) The maximum annual bonus shall be not less than one hundred five percent (105%) of the Executive's Annual Base Salary (the "Maximum Annual Bonus"); and (2) The target annual bonus shall be not less than sixty percent (60%) of the Executive's Annual Base Salary (the "Target Annual Bonus").
 - (v) The Executive will be a participant in the Long-Term Incentive Plan (the "LTIP"), and the Executive's annualized target award opportunity under the LTIP will be equal to no less than ninety percent (90%) of his Annual Base Salary (the "Target LTIP Bonus").
 - (vi) For purposes of Sections 3b(iv) and 3b(v), the Executive's Annual Base Salary for any calendar year shall be increased by the amount of any Nonelective Employer Contributions made on behalf of the Executive during such calendar year under the 401(k) Excess Plan.
- c. Fringe Benefits and Perquisites. During the Employment Period, the Executive will be entitled to the following additional fringe benefits in accordance with the terms and conditions of Cinergy's policies and practices for such fringe benefits:
- (i) Cinergy will furnish to the Executive an automobile appropriate for the Executive's level of position, or, at Cinergy's discretion, a cash allowance of equivalent value. Cinergy will also pay all of the related expenses for gasoline, insurance, maintenance, and repairs, or provide for such expenses within the cash allowance. All benefits provided pursuant to this Section 3c(i) shall be provided in accordance with generally applicable procedures established from time to time by Cinergy in its sole discretion.
 - (ii) Cinergy will pay the initiation fee and the annual dues, assessments, and other membership charges of the Executive for membership in a country club selected by the Executive.
 - (iii) Cinergy will provide paid vacation for four (4) weeks per year (or such longer period for which Executive is otherwise eligible under Cinergy's policy).
 - (iv) Cinergy will furnish to the Executive annual financial planning and tax preparation services, provided, however, that the cost to Cinergy of such services shall not exceed \$15,000 during any thirty-six (36) consecutive month period. Notwithstanding the preceding sentence, in the event any payment to the Executive pursuant to this Section 3c(iv) is subject to any federal, state, or local income or employment taxes, Cinergy shall provide to the Executive an additional payment in an amount necessary such that after payment by the Executive of all such taxes (calculated after assuming that the Executive pays such taxes for the year in which the benefit occurs at the highest marginal tax rate applicable), including the taxes imposed on the additional payment, the Executive retains an amount equal to the benefit provided pursuant to this Section 3c(iv).
 - (v) Cinergy will pay to relocate the Executive and his immediate family to the Cincinnati, Ohio area

under the terms of the Relocation Program.

- (v) Cinergy will provide other fringe benefits in accordance with Cinergy plans, practices, programs, and policies in effect from time to time, commensurate with his position and at least comparable to those received by other Cinergy Tier II executives.
- d. Expenses. Cinergy agrees to reimburse the Executive for all expenses, including those for travel and entertainment, properly incurred by him in the performance of his duties under this Agreement in accordance with the policies established from time to time by the Board of Directors.
- e. Relocation Benefits. Following termination of the Executive's employment for any reason (other than death), the Executive will be entitled to reimbursement from Cinergy for the reasonable costs of relocating from the Cincinnati, Ohio, area to a new primary residence in a manner that is consistent with the terms of the Relocation Program. Notwithstanding the foregoing, if the Executive becomes employed by another employer and is eligible to receive relocation benefits under another employer-provided plan, any benefits provided to the Executive under this Section 3e will be secondary to those provided under the other employer-provided relocation plan. The Executive must report to Cinergy any such relocation benefits that he actually receives under another employer-provided plan.
- f. Stock Options and Stock Appreciation Rights. Notwithstanding Section 5d, upon the occurrence of a Change in Control, any stock options or stock appreciation rights then held by the Executive pursuant to the LTIP or Cinergy Corp. Stock Option Plan shall, to the extent not otherwise provided in the applicable Stock Related Documents, become immediately exercisable. If the Executive terminates employment for any reason during the twenty-four (24) month period commencing upon the occurrence of a Change in Control, notwithstanding Section 5d, any stock options or stock appreciation rights then held by the Executive pursuant to the LTIP or Cinergy Corp. Stock Option Plan shall, to the extent not otherwise provided in the applicable Stock Related Documents, remain exercisable in accordance with their terms but in no event for a period less than the lesser of (i) three months following such termination of employment or (ii) the remaining term of such stock option or stock appreciation right (which remaining term shall be determined without regard to such termination of employment).

4. Termination of Employment.

- a. Death. The Executive's employment will terminate automatically upon the Executive's death during the Employment Period.
- b. By Cinergy for Cause. Cinergy may terminate the Executive's employment during the Employment Period for Cause. For purposes of this Employment Agreement, "Cause" means the following:
 - (i) The willful and continued failure by the Executive to substantially perform the Executive's duties with Cinergy (other than any such failure resulting from the Executive's incapacity due to physical or mental illness) that, if curable, has not been cured within 30 days after the Board of Directors or the Chief Executive Officer has delivered to the Executive a written demand for substantial performance, which demand specifically identifies the manner in which the Executive has not substantially performed his duties. This event will constitute Cause even if the Executive issues a Notice of Termination for Good Reason pursuant to Section 4d after the Board of Directors or Chief Executive Officer delivers a written demand for substantial performance.
 - (ii) The breach by the Executive of the confidentiality provisions set forth in Section 9.
 - (iii) The conviction of the Executive for the commission of a felony, including the entry of a guilty or nolo contendere plea, or any willful or grossly negligent action or inaction by the Executive that has a materially adverse effect on Cinergy. For purposes of this definition of Cause, no act, or failure to act, on the Executive's part will be deemed "willful" unless it is done, or omitted to be done, by the Executive in bad faith and without reasonable belief that the Executive's act, or failure to act, was in the best interest of Cinergy.
 - (iv) Notwithstanding the foregoing, Cinergy shall be deemed to have not terminated the employment of the Executive for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the affirmative vote of not less than a majority of the Board then in office at a meeting of the Board called and held for such purpose (after reasonable notice to the Executive and an opportunity for the Executive, together with his counsel, to be heard by the Board), finding that, in the good faith opinion of the Board, the Executive had committed an act set forth above in this Section 4b and specifying the particulars thereof in detail.

- c. By Cinergy Without Cause. Cinergy may, upon at least 30 days advance written notice to the Executive, terminate the Executive's employment during the Employment Period for a reason other than Cause, but the obligations placed upon Cinergy in Section 5 will apply.
- d. By the Executive for Good Reason. The Executive may terminate his employment during the Employment Period for Good Reason. For purposes of this Agreement, "Good Reason" means the following:
 - (i) (1) A reduction in the Executive's Annual Base Salary, except for across-the-board salary reductions similarly affecting all Cinergy management personnel, (2) a reduction in the amount of the Executive's Maximum Annual Bonus under the Annual Incentive Plan, except for across-the-board Maximum Annual Bonus reductions similarly affecting all Cinergy management personnel, or (3) a reduction in any other benefit or payment described in Section 3 of this Agreement, except for changes to the employee benefits programs generally affecting Cinergy management personnel, provided that those changes, in the aggregate, will not result in a material adverse change with respect to the benefits to which the Executive was entitled as of the Effective Date.
 - (ii) (1) The material reduction without his consent of the Executive's title, authority, duties, or responsibilities from those in effect immediately prior to the reduction, (2) in the event the Executive is or becomes a member of the Board during the Employment Period, the failure by Cinergy without the consent of the Executive to nominate the Executive for re-election to the Board, or (3) a material adverse change in the Executive's reporting responsibilities.
 - (iii) Any breach by Cinergy of any other material provision of this Agreement (including but not limited to the place of performance as specified in Section 2b).
 - (iv) The Executive's disability due to physical or mental illness or injury that precludes the Executive from performing any job for which he is qualified and able to perform based upon his education, training or experience.
 - (v) A failure by the Company to require any successor entity to the Company specifically to assume in writing all of the Company's obligations to the Executive under this Agreement.

For purposes of determining whether Good Reason exists with respect to a Qualifying Termination occurring on or within 24 months following a Change in Control, any claim by the Executive that Good Reason exists shall be presumed to be correct unless the Company establishes to the Board by clear and convincing evidence that Good Reason does not exist.

- e. By the Executive Without Good Reason. The Executive may terminate his employment without Good Reason upon prior written notice to the Company.

- f. Notice of Termination. Any termination of the Executive's employment by Cinergy or by the Executive during the Employment Period (other than a termination due to the Executive's death) will be communicated by a written Notice of Termination to the other party to this Agreement in accordance with Section 12b. For purposes of this Agreement, a "Notice of Termination" means a written notice that specifies the particular provision of this Agreement relied upon and that sets forth in reasonable detail the facts and circumstances claimed to provide a basis for terminating the Executive's employment under the specified provision. The failure by the Executive or Cinergy to set forth in the Notice of Termination any fact or circumstance that contributes to a showing of Good Reason or Cause will not waive any right of the Executive or Cinergy under this Agreement or preclude the Executive or Cinergy from asserting that fact or circumstance in enforcing rights under this Agreement.
- g. Sale of Company Stock. The Executive acknowledges and agrees that he shall not sell or otherwise dispose of any shares of Company stock acquired pursuant to the exercise of a stock option, other than shares sold in order to pay an option exercise price or the related tax withholding obligation, until 90 days after the Date of Termination. Notwithstanding the foregoing, Cinergy, in its sole discretion, may waive the restrictions contained in the previous sentence.

5. Obligations of Cinergy Upon Termination.

- a. Certain Terminations.
 - (i) If a Qualifying Termination occurs during the Employment Period, Cinergy will pay to the Executive a lump sum amount, in cash, equal to the sum of the following Accrued Obligations:
 - (1) the pro-rated portion of the Executive's Annual Base Salary payable through the Date of Termination, to the extent not previously paid.
 - (2) any amount payable to the Executive under the Annual Incentive Plan in respect of the most recently completed fiscal year, to the extent not theretofore paid.
 - (3) an amount equal to the AIP Benefit for the fiscal year that includes the Date of Termination multiplied by a fraction, the numerator of which is the number of days from the beginning of that fiscal year to and including the Date of Termination and the denominator of which is three hundred and sixty-five (365). The AIP Benefit component of the calculation will be equal to the annual bonus that would have been earned by the Executive pursuant to any annual bonus or incentive plan maintained by Cinergy in respect of the fiscal year in which occurs the Date of Termination, determined by projecting Cinergy's performance and other applicable goals and objectives for the entire fiscal year based on Cinergy's performance during the period of such fiscal year occurring prior to the Date of Termination, and based on such other assumptions and rates as Cinergy deems reasonable.
 - (4) the Accrued Obligations described in this Section 5a(i) will be paid within thirty (30) days after the Date of Termination. These Accrued Obligations are payable to the Executive regardless of whether a Change in Control has occurred.

- (ii) In the event of a Qualifying Termination either prior to the occurrence of a Change in Control, or more than twenty-four (24) months following the occurrence of a Change in Control, Cinergy will pay the Accrued Obligations, and Cinergy will have the following additional obligations described in this Section 5a(ii); provided, however, that each of the benefits described below in this Section 5a(ii) shall only be provided to the Executive if, upon presentation to the Executive following a Qualifying Termination, the Executive timely executes and does not timely revoke the Waiver and Release.
 - (1) Cinergy will pay to the Executive a lump sum amount, in cash, equal to three (3) times the sum of the Annual Base Salary and the Annual Bonus. For this purpose, the Annual Base Salary will be at the rate in effect at the time Notice of Termination is given (without giving effect to any reduction in Annual Base Salary, if any, prior to the termination, other than across-the-board reductions), and shall include the amount of any Nonelective Employer Contributions made on behalf of the Executive under the 401(k) Excess Plan during the fiscal year in which the Executive's Qualifying Termination occurs, and the Annual Bonus will be the higher of (A) the annual bonus earned by the Executive pursuant to any annual bonus or incentive plan maintained by Cinergy in respect of the year ending immediately prior to the fiscal year in which occurs the Date of Termination, and (B) the annual bonus that would have been earned by the Executive pursuant to any annual bonus or incentive plan maintained by Cinergy in respect of the fiscal year in which occurs the Date of Termination, calculated by projecting Cinergy's performance and other applicable goals and objectives for the entire fiscal year based on Cinergy's performance during the period of such fiscal year occurring prior to the Date of Termination, and based on such other assumptions and rates as Cinergy deems reasonable; provided, however that for purposes of this Section 5a(ii)(1)(B), the Annual Bonus shall not be less than the Target Annual Bonus, nor greater than the Maximum Annual Bonus for the year in which the Date of Termination occurs. This lump sum will be paid within thirty (30) days after the expiration of the revocation period contained in the Waiver and Release.
 - (2) Subject to Clauses (A), (B) and (C) below, Cinergy will provide, until the end of the Employment Period, medical and dental benefits to the Executive and/or the Executive's dependents at least equal to those that would have been provided if the Executive's employment had not been terminated (excluding benefits to which the Executive has waived his rights in writing). The benefits described in the preceding sentence will be in accordance with the medical and welfare benefit plans, practices, programs, or policies of Cinergy (the "M&W Plans") as then currently in effect and applicable generally to other Cinergy senior executives and their families. In the event that any medical or dental benefits or payments provided pursuant to this Section 5a(ii)(2)(B) are subject to federal, state, or local income or employment taxes, Cinergy shall provide the Executive with an additional payment in the amount necessary such that after payment by the Executive of all such taxes (calculated after assuming that the Executive pays such taxes for the year in which the payment or benefit occurs at the highest marginal tax rate applicable), including the taxes imposed on the additional payment, the Executive retains an amount equal to the medical or dental benefits or payments provided pursuant to this Section 5a(ii)(2)(B).
 - (A) If, as of the Executive's Date of Termination, the Executive meets the eligibility requirements for Cinergy's retiree medical and welfare benefit plans, the provision of those retiree medical and

welfare benefit plans to the Executive will satisfy Cinergy's obligation under this Section 5a(ii)(2).

- (B) If, as of the Executive's Date of Termination, the provision to the Executive of the M&W Plan benefits described in this Section 5a(ii)(2) would either (1) violate the terms of the M&W Plans (or any related insurance policies) or (2) violate any of the Code's nondiscrimination requirements applicable to the M&W Plans, then Cinergy, in its sole discretion, may elect to pay the Executive, in lieu of the M&W Plan benefits described under this Section 5a(ii)(2), a lump sum cash payment equal to the total monthly premiums (or in the case of a self funded plan, the cost of COBRA continuation coverage) that would have been paid by Cinergy for the Executive under the M&W Plans from the Date of Termination through the end of the Employment Period. Nothing in this Clause will affect the Executive's right to elect COBRA continuation coverage under a M&W Plan in accordance with applicable law, and Cinergy will make the payment described in this Clause whether or not the Executive elects COBRA continuation coverage, and whether or not the Executive receives health coverage from another employer.
 - (C) If the Executive becomes employed by another employer and is eligible to receive medical or other welfare benefits under another employer-provided plan, any benefits provided to the Executive under the M&W Plans will be secondary to those provided under the other employer-provided plan during the Executive's applicable period of eligibility.
- (3) Cinergy will pay the Executive a lump sum amount, in cash, equal to \$15,000 in order to cover tax counseling services through an agency selected by the Executive. In the event any payment to the Executive pursuant to this Section 5a(ii)(3) is subject to any federal, state, or local income or employment taxes, Cinergy shall provide to the Executive an additional payment in an amount necessary such that after payment by the Executive of all such taxes (calculated after assuming that the Executive pays such taxes for the year in which his Date of Termination occurs at the highest marginal tax rate applicable), including the taxes imposed on the additional payment, the Executive retains an amount equal to the payment provided pursuant to this Section 5a(ii)(3). Such payment will be transferred to the Executive within thirty (30) days of the expiration of the revocation period contained in the Waiver and Release.
- (iii) In the event of a Qualifying Termination during the twenty-four (24) month period beginning upon the occurrence of a Change in Control, Cinergy will pay the Accrued Obligations listed in Sections 5a(i)(1) and (2), Cinergy will pay the Accrued Obligations listed in Section 5a(i)(3) (but only if such Qualifying Termination occurs after the calendar year in which occurs such Change in Control) and Cinergy will have the following additional obligations described in this Section 5a (iii); provided, however, that each of the benefits described below in this Section 5a(iii) shall only be provided to the Executive if, upon presentation to the Executive following a Qualifying Termination, the Executive timely executes and does not timely revoke the Waiver and Release.
- (1) Cinergy will pay to the Executive a lump sum severance payment, in cash, equal to three (3) times the higher of (x) the sum of the Executive's current Annual Base Salary and Target Annual Bonus and (y) the sum of the Executive's Annual Base Salary in effect immediately prior to the Change in Control and the Change in Control Bonus. For purposes of the preceding sentence, the Executive's Annual Base Salary on any given date shall include the amount of any

Nonelective Employer Contributions made on behalf of the Executive under the 401(k) Excess Plan during the fiscal year in which such date occurs. For purposes of this Agreement, the Change in Control Bonus shall mean the higher of (A) the annual bonus earned by the Executive pursuant to any annual bonus or incentive plan maintained by Cinergy in respect of the year ending immediately prior to the fiscal year in which occurs the Date of Termination or, if higher, immediately prior to the fiscal year in which occurs the Change in Control, and (B) the annual bonus that would have been earned by the Executive pursuant to any annual bonus or incentive plan maintained by Cinergy in respect of the year in which occurs the Date of Termination, calculated by projecting Cinergy's performance and other applicable goals and objective for the entire fiscal year based on Cinergy's performance during the period of such fiscal year occurring prior to the Date of Termination, and based on such other assumptions and rates as Cinergy deems reasonable, provided, however, that for purposes of this Section 5a(iii)(1)(B), such Change in Control Bonus shall not be less than the Target Annual Bonus, nor greater than the Maximum Annual Bonus. This lump sum will be paid within thirty (30) days of the expiration of the revocation period contained in the Waiver and Release. Nothing in this Section 5a(iii)(1) shall preclude the Executive from receiving the amount, if any, to which he is entitled in accordance with the terms of the Annual Incentive Plan for the fiscal year that includes the Date of Termination.

- (2) Cinergy will pay to the Executive the lump sum present value of any benefits under the Executive Supplemental Life Program under the terms of the applicable plan or program as of the Date of Termination, calculated as if the Executive was fully vested as of the Date of Termination. The lump sum present value, assuming commencement at age 50 or the Executive's age as of the Date of Termination if later, will be determined using the interest rate applicable to lump sum payments in the Cinergy Corp. Non-Union Employees' Pension Plan or any successor to that plan for the plan year that includes the Date of Termination. To the extent no such interest rate is provided therein, the annual interest rate applicable under Section 417(e)(3) of the Code, or any successor provision thereto, for the second full calendar month preceding the first day of the calendar year that includes the Date of Termination will be used. This lump sum will be paid within thirty (30) days of the expiration of the revocation period contained in the Waiver and Release.
- (3) The Executive shall be fully vested in his accrued benefits as of the Date of Termination under the Executive Retirement Plans and the last three sentences of Section 3b(i) of this Agreement and, and his aggregate accrued benefits thereunder and under Section 3b(ii) of this Agreement will be calculated, and he will be treated for all purposes, as if he was credited with three (3) additional years of age and service as of the Date of Termination, provided, however, that to the extent a calculation is made regarding the actuarial equivalent amount of any alternate form of benefit, the Executive will not be credited with three additional years of age for purposes of such calculation. However, Cinergy will not commence payment of such benefits prior to the date that the Executive has attained, or is treated (after taking into account the preceding sentence) as if he had attained, age 50.
- (4) For a thirty-six (36) month period after the Date of Termination, Cinergy will arrange to provide to the Executive and/or the Executive's dependents life, disability, accident, and health insurance benefits substantially similar to those that the Executive and/or the Executive's dependents are

receiving immediately prior to the Notice of Termination at a substantially similar cost to the Executive (without giving effect to any reduction in those benefits subsequent to a Change in Control that constitutes Good Reason), except for any benefits that were waived by the Executive in writing. If Cinergy arranges to provide the Executive and/or the Executive's dependents with life, disability, accident, and health insurance benefits, those benefits will be reduced to the extent comparable benefits are actually received by or made available to the Executive and/or the Executive's dependents during the thirty-six (36) month period following the Executive's Date of Termination. The Executive must report to Cinergy any such benefits that he or his dependents actually receives or that are made available to him or his dependents. In lieu of the benefits described in the preceding sentences, Cinergy, in its sole discretion, may elect to pay to the Executive a lump sum cash payment equal to thirty-six (36) times the monthly premiums (or in the case of a self funded plan, the cost of COBRA continuation coverage) that would have been paid by Cinergy to provide those benefits to the Executive and/or the Executive's dependents. Nothing in this Section 5a(iii)(4) will affect the Executive's right to elect COBRA continuation coverage in accordance with applicable law, and Cinergy will provide the benefits or make the payment described in this Clause whether or not the Executive elects COBRA continuation coverage, and whether or not the Executive receives health coverage from another employer. In the event that any benefits or payments provided pursuant to this Section 5a(iii)(4) are subject to federal, state, or local income or employment taxes, Cinergy shall provide the Executive with an additional payment in the amount necessary such that after payment by the Executive of all such taxes (calculated after assuming that the Executive pays such taxes for the year in which the payment or benefit occurs at the highest marginal tax rate applicable), including the taxes imposed on the additional payment, the Executive retains an amount equal to the benefits or payments provided pursuant to this Section 5a(iii)(4).

- (5) In lieu of any and all other rights with respect to the automobile assigned by Cinergy to the Executive, Cinergy will provide the Executive with a lump sum payment in the amount of \$50,000. In the event any payment to the Executive pursuant to this Section 5a(iii)(5) is subject to any federal, state, or local income or employment taxes, Cinergy shall provide to the Executive an additional payment in an amount necessary such that after payment by the Executive of all such taxes (calculated after assuming that the Executive pays such taxes for the year in which his Date of Termination occurs at the highest marginal tax rate applicable), including the taxes imposed on the additional payment, the Executive retains an amount equal to the payment provided pursuant to this Section 5a(iii)(5). Such payment will be transferred to the Executive within thirty (30) days of the expiration of the revocation period contained in the Waiver and Release.
- (6) Cinergy will pay the Executive a lump sum amount, in cash, equal to \$15,000 in order to cover tax counseling services through an agency selected by the Executive. In the event any payment to the Executive pursuant to this Section 5a(iii)(6) is subject to any federal, state, or local income or employment taxes, Cinergy shall provide to the Executive an additional payment in an amount necessary such that after payment by the Executive of all such taxes (calculated after assuming that the Executive pays such taxes for the year in which his Date of Termination occurs at the highest marginal tax rate applicable), including the taxes imposed on the additional payment, the Executive retains an amount equal to the payment provided pursuant to this Section 5a(iii)(6). Such payment will be transferred to the Executive within thirty (30) days of the expiration of the

revocation period contained in the Waiver and Release.

- (7) Cinergy will provide annual dues and assessments of the Executive for membership in a country club selected by the Executive until the end of the Employment Period.
- (8) Cinergy will provide outplacement services suitable to the Executive's position until the end of the Employment Period or, if earlier, until the first acceptance by the Executive of an offer of employment. At the Executive's discretion, 15% of Annual Base Salary may be paid in lieu of outplacement services, which payment will be transferred to the Executive within thirty (30) days of the expiration of the revocation period contained in the Waiver and Release.

For purposes of this Section 5a(iii), the Executive will be deemed to have incurred a Qualifying Termination upon a Change in Control if the Executive's employment is terminated prior to a Change in Control, without Cause at the direction of a Person who has entered into an agreement with Cinergy, the consummation of which will constitute a Change in Control, or if the Executive terminates his employment for Good Reason prior to a Change in Control if the circumstances or event that constitutes Good Reason occurs at the direction of such a Person.

- b. Termination by Cinergy for Cause or by the Executive Other Than for Good Reason. Subject to the provisions of Section 7, and notwithstanding any other provisions of this Agreement, if the Executive's employment is terminated for Cause during the Employment Period, or if the Executive terminates employment during the Employment Period other than a termination for Good Reason, Cinergy will have no further obligations to the Executive under this Agreement other than the obligation to pay to the Executive the Accrued Obligations, plus any other earned but unpaid compensation, in each case to the extent not previously paid.
- c. Certain Tax Consequences.
 - (i) In the event that any benefits paid or payable to the Executive or for his benefit pursuant to the terms of this Agreement or any other plan or arrangement in connection with, or arising out of, his employment with Cinergy or a change in ownership or effective control of Cinergy or of a substantial portion of its assets (a "Payment" or "Payments") would be subject to any Excise Tax, then the Executive will be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest, penalties, additional tax, or similar items imposed with respect thereto and the Excise Tax), including any Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon or assessable against the Executive due to the Payments.
 - (ii) Subject to the provisions of Section 5c, all determinations required to be made under this Section 5c, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the Accounting Firm, which shall provide detailed supporting calculations both to the Company and the Executive within fifteen (15) business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. If the Accounting Firm determines that no Excise Tax is payable by the Executive, it shall, at the

same time as it makes such determination, furnish the Executive with an opinion that he has substantial authority not to report any Excise Tax on his federal income tax return. All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 5c, shall be paid by Cinergy to the Executive within five (5) days of the receipt of the Accounting Firm's determination. Any determination by the Accounting Firm shall be binding upon Cinergy and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by Cinergy should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event of any Underpayment, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by Cinergy to or for the benefit of the Executive, and Cinergy shall indemnify and hold harmless the Executive for any such Underpayment, on an after-tax basis, including interest and penalties with respect thereto. In the event that the Excise Tax is subsequently determined to be less than the amount taken into account hereunder at the time of termination of the Executive's employment, the Executive shall repay to the Company, at the time that the amount of such reduction in Excise Tax is finally determined, the portion of the Gross-Up Payment attributable to such reduction (plus that portion of the Gross-Up Payment attributable to the Excise Tax and federal, state and local income and employment tax imposed on the Gross-Up Payment being repaid by the Executive to the extent that such repayment results in a reduction in Excise Tax and/or a federal, state or local income or employment tax deduction) plus interest on the amount of such repayment at the rate provided in Code Section 1274(b)(2)(B).

- (iii) The value of any non-cash benefits or any deferred payment or benefit paid or payable to the Executive will be determined in accordance with the principles of Code Sections 280G(d)(3) and (4). For purposes of determining the amount of the Gross-Up Payment, the Executive will be deemed to pay federal income taxes at the highest marginal rate of federal income taxation in the calendar year in which the Gross-Up Payment is to be made and applicable state and local income taxes at the highest marginal rate of taxation in the state and locality of the Executive's residence on the Date of Termination, net of the maximum reduction in federal income taxes that would be obtained from deduction of those state and local taxes.
- (iv) Notwithstanding anything contained in this Agreement to the contrary, in the event that, according to the Accounting Firm's determination, an Excise Tax will be imposed on any Payment or Payments, Cinergy will pay to the applicable government taxing authorities as Excise Tax withholding, the amount of the Excise Tax that Cinergy has actually withheld from the Payment or Payments in accordance with law.

- d. Value Creation Plan and Stock Options. Upon the Executive's termination of employment for any reason, the Executive's entitlement to restricted shares and performance shares under the Value Creation Plan and any stock options granted under the Cinergy Corp. Stock Option Plan, the LTIP or any other stock option plan will be determined under the terms of the appropriate plan and any applicable administrative guidelines and written agreements, provided, however, that following the occurrence of a Change in Control the terms of any such plan, administrative guideline or written agreement shall not be amended in a manner that would adversely affect the

Executive with respect to awards granted to the Executive prior to the Change in Control.

- e. **Benefit Plans in General.** Upon the Executive's termination of employment for any reason, the Executive's entitlements, if any, under all benefit plans of Cinergy, including but not limited to the Deferred Compensation Plan, 401(k) Excess Plan, Cinergy Corp. Supplemental Executive Retirement Plan, Cinergy Corp. Excess Profit Sharing Plan and any vacation policy, shall be determined under the terms of such plans, policies and any applicable administrative guidelines and written agreements, provided, however, that following the occurrence of a Change in Control the terms of such plans and policies and any applicable administrative guidelines and written agreements shall not be amended in a manner that would adversely affect the Executive with respect to benefits earned by the Executive prior to the Change in Control.
 - f. **Other Fees and Expenses.** Cinergy will also reimburse the Executive for all reasonable legal fees and expenses incurred by the Executive (i) in successfully disputing a Qualifying Termination that entitles the Executive to Severance Benefits or (ii) in reasonably disputing whether or not Cinergy has terminated his employment for Cause. Payment will be made within five (5) business days after delivery of the Executive's written request for payment accompanied by such evidence of fees and expenses incurred as Cinergy reasonably may require.
6. **Non-Exclusivity of Rights.** Nothing in this Agreement will prevent or limit the Executive's continuing or future participation in any benefit, plan, program, policy, or practice provided by Cinergy and for which the Executive may qualify, except with respect to any benefit to which the Executive has waived his rights in writing or any plan, program, policy, or practice that expressly excludes the Executive from participation. In addition, nothing in this Agreement will limit or otherwise affect the rights the Executive may have under any other contract or agreement with Cinergy entered into after the Effective Date. Amounts that are vested benefits or that the Executive is otherwise entitled to receive under any benefit, plan, program, policy, or practice of, or any contract or agreement entered into after the Effective Date with Cinergy, at or subsequent to the Date of Termination, will be payable in accordance with that benefit, plan, program, policy or practice, or that contract or agreement, except as explicitly modified by this Agreement. Notwithstanding the above, in the event that the Executive receives Severance Benefits under Section 5a(ii) or 5a(iii), (a) the Executive shall not be entitled to any benefits under any severance plan of Cinergy, including but not limited to the Severance Opportunity Plan for Non-Union Employees of Cinergy Corp. and (b) if the Executive receives such Severance Benefits as a result of his termination for Good Reason, as that term is defined in Section 4d(iv), Cinergy's obligations under Sections 5a(ii) and 5a(iii) shall be reduced by the amount of any benefits payable to the Executive under any short-term or long-term disability plan of Cinergy, the amount of which shall be determined by Cinergy in good faith.
 7. **Full Settlement: Mitigation.** Except as otherwise provided herein, Cinergy's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations under this Agreement will not be affected by any set-off, counterclaim, recoupment, defense, or other claim, right, or action that Cinergy may have against the Executive or others. In no event will the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts (including amounts for damages for breach) payable to the Executive under any of the provisions of this Agreement and, except as provided in Sections 3e, 5a(ii)(2)

and 5a(iii)(4), those amounts will not be reduced simply because the Executive obtains other employment. If the Executive finally prevails on the substantial claims brought with respect to any dispute between Cinergy and the Executive as to the interpretation, terms, validity, or enforceability of (including any dispute about the amount of any payment pursuant to) this Agreement, Cinergy agrees to pay all reasonable legal fees and expenses that the Executive may reasonably incur as a result of that dispute.

8. **Arbitration.** The parties agree that any dispute, claim, or controversy based on common law, equity, or any federal, state, or local statute, ordinance, or regulation (other than workers' compensation claims) arising out of or relating in any way to the Executive's employment, the terms, benefits, and conditions of employment, or concerning this Agreement or its termination and any resulting termination of employment, including whether such a dispute is arbitrable, shall be settled by arbitration. This agreement to arbitrate includes but is not limited to all claims for any form of illegal discrimination, improper or unfair treatment or dismissal, and all tort claims. The Executive will still have a right to file a discrimination charge with a federal or state agency, but the final resolution of any discrimination claim will be submitted to arbitration instead of a court or jury. The arbitration proceeding will be conducted under the employment dispute resolution arbitration rules of the American Arbitration Association in effect at the time a demand for arbitration under the rules is made, and such proceeding will be adjudicated in the state of Ohio in accordance with the laws of the state of Ohio. The decision of the arbitrator(s), including determination of the amount of any damages suffered, will be exclusive, final, and binding on all parties, their heirs, executors, administrators, successors and assigns. Each party will bear its own expenses in the arbitration for arbitrators' fees and attorneys' fees, for its witnesses, and for other expenses of presenting its case. Other arbitration costs, including administrative fees and fees for records or transcripts, will be borne equally by the parties. Notwithstanding anything in this Section to the contrary, if the Executive prevails with respect to any dispute submitted to arbitration under this Section, Cinergy will reimburse or pay all legal fees and expenses that the Executive may reasonably incur as a result of the dispute as required by Section 7.
9. **Confidential Information.** The Executive will hold in a fiduciary capacity for the benefit of Cinergy, as well as all of Cinergy's successors and assigns, all secret, confidential information, knowledge, or data relating to Cinergy, and its affiliated businesses, that the Executive obtains during the Executive's employment by Cinergy or any of its affiliated companies, and that has not been or subsequently becomes public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). During the Employment Period and thereafter, the Executive will not, without Cinergy's prior written consent or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge, or data to anyone other than Cinergy and those designated by it. The Executive understands that during the Employment Period, Cinergy may be required from time to time to make public disclosure of the terms or existence of the Executive's employment relationship to comply with various laws and legal requirements. In addition to all other remedies available to Cinergy in law and equity, this Agreement is subject to termination by Cinergy for Cause under Section 4b in the event the Executive violates any provision of this Section.

10. Successors.

- a. This Agreement is personal to the Executive and, without Cinergy's prior written consent, cannot be assigned by the Executive other than Executive's designation of a beneficiary of any amounts payable hereunder after the Executive's death. This Agreement will inure to the benefit of and be enforceable by the Executive's legal representatives.
- b. This Agreement will inure to the benefit of and be binding upon Cinergy and its successors and assigns.
- c. Cinergy will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of Cinergy to assume expressly and agree to perform this Agreement in the same manner and to the same extent that Cinergy would be required to perform it if no succession had taken place. Cinergy's failure to obtain such an assumption and agreement prior to the effective date of a succession will be a breach of this Agreement and will entitle the Executive to compensation from Cinergy in the same amount and on the same terms as if the Executive were to terminate his employment for Good Reason upon a Change in Control, except that, for purposes of implementing the foregoing, the date on which any such succession becomes effective will be deemed the Date of Termination.

11. **Definitions.** As used in this Agreement, the following terms, when capitalized, will have the following meanings:
- a. Accounting Firm. "Accounting Firm" means Cinergy's independent auditors.
 - b. Accrued Obligations. "Accrued Obligations" means the accrued obligations described in Section 5a(i).
 - c. Agreement. "Agreement" means this Employment Agreement between Cinergy and the Executive.
 - d. AIP Benefit. "AIP Benefit" means the Annual Incentive Plan benefit described in Section 5a(i).
 - e. Annual Base Salary. "Annual Base Salary" means, except where otherwise specified herein, the annual base salary payable to the Executive pursuant to Section 3a.
 - f. Annual Bonus. "Annual Bonus" has the meaning set forth in Section 5a(ii)(1).
 - g. Annual Incentive Plan. "Annual Incentive Plan" means the Cinergy Corp. Annual Incentive Plan or any similar plan or successor to the Annual Incentive Plan.
 - h. Board of Directors or Board. "Board of Directors" or "Board" means the board of directors of the Company.
 - i. COBRA. "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.
 - j. Cause. "Cause" has the meaning set forth in Section 4b.
 - k. Change in Control. A "Change in Control" will be deemed to have occurred if any of the following events occur, after the Effective Date:
 - (i) Any Person is or becomes the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended ("1934 Act")), directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its affiliates) representing more than twenty percent (20%) of the combined voting power of the Company's then outstanding securities, excluding any Person who becomes such a beneficial owner in connection with a transaction described in Clause (1) of Paragraph (ii) below; or
 - (ii) There is consummated a merger or consolidation of the Company or any direct or indirect subsidiary of the Company with any other corporation, partnership or other entity, other than (1) a merger or consolidation that would result in the voting securities of the Company outstanding immediately prior to that merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least sixty percent (60%) of the combined voting power of the securities of the Company or the surviving entity or its parent outstanding immediately after the merger or consolidation, or (2) a

merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person is or becomes the beneficial owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such a Person any securities acquired directly from the Company or its affiliates other than in connection with the acquisition by the Company or its affiliates of a business) representing twenty percent (20%) or more of the combined voting power of the Company's then outstanding securities; or

- (iii) During any period of two (2) consecutive years, individuals who at the beginning of that period constitute the Board of Directors and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Company's stockholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of that period or whose appointment, election, or nomination for election was previously so approved or recommended cease for any reason to constitute a majority of the Board of Directors; or
- (iv) The stockholders of the Company approve a plan of complete liquidation or dissolution of the Company or there is consummated a sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least sixty percent (60%) of the combined voting power of the voting securities of which are owned by stockholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to the sale.

- l. Change in Control Bonus. "Change in Control Bonus" has the meaning set forth in Section 5a(iii)(1).
- m. Chief Executive Officer. "Chief Executive Officer" means the individual who, at any relevant time, is then serving as the chief executive officer of the Company.
- n. Cinergy. "Cinergy" means the Company, its subsidiaries, and/or its affiliates, and any successors to the foregoing.
- o. Code. "Code" means the Internal Revenue Code of 1986, as amended, and interpretive rules and regulations.
- p. Company. "Company" means Cinergy Corp.
- q. Date of Termination. "Date of Termination" means:
 - (i) if the Executive's employment is terminated by Cinergy for Cause, or by the Executive with Good Reason, the date of receipt of the Notice of Termination or any later date specified in the notice, as the case may be;
 - (ii) if the Executive's employment is terminated by the Executive without Good Reason, thirty (30) days after the date on which the Executive notifies Cinergy of the termination;

- (iii) if the Executive's employment is terminated by Cinergy other than for Cause, thirty (30) days after the date on which Cinergy notifies the Executive of the termination; and
- (iv) if the Executive's employment is terminated by reason of death, the date of death.
- r. Deferred Compensation Plan. "Deferred Compensation Plan" means the Cinergy Corp. Non-Qualified Deferred Incentive Compensation Plan or any similar plan or successor to that plan.
- s. Effective Date. "Effective Date" has the meaning given to that term in the first paragraph of this Agreement.
- t. Employment Period. "Employment Period" has the meaning set forth in Section 1b.
- u. Excise Tax. "Excise Tax" means any excise tax imposed by Code section 4999, together with any interest, penalties, additional tax or similar items that are incurred by the Executive with respect to the excise tax imposed by Code section 4999.
- v. Executive. "Executive" has the meaning given to that term in the first paragraph of this Agreement.
- w. Executive Retirement Plans. "Executive Retirement Plans" means the Pension Plan, the Cinergy Corp. Supplemental Executive Retirement Plan and the Cinergy Corp. Excess Pension Plan or any similar plans or successors to those plans.
- x. Executive Supplemental Life Program. "Executive Supplemental Life Program" means the Cinergy Corp. Executive Supplemental Life Insurance Program or any similar program or successor to the Executive Supplemental Life Program.
- y. 401(k) Excess Plan. "401(k) Excess Plan" means the Cinergy Corp. 401(k) Excess Plan, or any similar plan or successor to that plan.
- z. Good Reason. "Good Reason" has the meaning set forth in Section 4d.
- aa. Gross-Up Payment. "Gross-Up Payment" has the meaning set forth in Section 5c.
- bb. Highest Average Earnings. "Highest Average Earnings" shall have the meaning given to such term in the Cinergy Corp. Supplemental Executive Retirement Plan. For purposes of clarity, the parties hereto acknowledge and agree that the Executive's Highest Average Earnings for any year shall not include any benefits received by the Executive pursuant to Section 5 of this Agreement, other than pursuant to Section 5a(i) of this Agreement.
- cc. Long-Term Incentive Plan or LTIP. "Long-Term Incentive Plan" or "LTIP" means the long-term incentive plan implemented under the Cinergy Corp. 1996 Long-Term Incentive Compensation Plan or any successor to that plan.
- dd. M&W Plans. "M&W Plans" has the meaning set forth in Section 5a(ii)(2).
- ee. Maximum Annual Bonus. "Maximum Annual Bonus" has the meaning set forth in Section 3b.

- ff. Nonelective Employer Contribution. "Nonelective Employer Contribution" has the meaning set forth in the 401(k) Excess Plan.
- gg. Notice of Termination. "Notice of Termination" has the meaning set forth in Section 4f.
- hh. Payment or Payments. "Payment" or "Payments" has the meaning set forth in Section 5c.
- ii. Pension Plan. "Pension Plan" means the Cinergy Corp. Non-Union Employees' Pension Plan or any successor to that plan.
- jj. Person. "Person" has the meaning set forth in paragraph 3(a)(9) of the 1934 Act, as modified and used in subsections 13(d) and 14(d) of the 1934 Act; however, a Person will not include the following:
 - (i) Cinergy or any of its subsidiaries or affiliates;
 - (ii) A trustee or other fiduciary holding securities under an employee benefit plan of Cinergy or its subsidiaries or affiliates;
 - (iii) An underwriter temporarily holding securities pursuant to an offering of those securities; or
 - (iv) A corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.
- kk. Potential Change in Control. A "Potential Change in Control" means any period during which any of the following circumstances exist:
 - (i) The Company enters into an agreement, the consummation of which would result in the occurrence of a Change in Control; provided that a Potential Change in Control shall cease to exist upon the expiration or other termination of such agreement; or
 - (ii) The Company or any Person publicly announces an intention to take or to consider taking actions which, if consummated, would constitute a Change in Control; provided that a Potential Change in Control shall cease to exist when the Company or such Person publicly announces that it no longer has such an intention; or
 - (iii) Any Person who is or becomes the beneficial owner (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of securities of the Company representing ten percent (10%) or more of the combined voting power of the Company's then outstanding securities, increases such Person's beneficial ownership of such securities by an amount equal to five percent (5%) or more of the combined voting power of the Company's then outstanding securities; or
 - (iv) The Board of Directors adopts a resolution to the effect that, for purposes hereof, a Potential Change in Control has occurred.

Notwithstanding anything herein to the contrary, a Potential Change in Control shall cease to exist not later than the date that (i) the Board of Directors

determines that the Potential Change in Control no longer exists, or (ii) a Change in Control occurs.

- ll. Qualifying Termination. "Qualifying Termination" means (i) the termination by Cinergy of the Executive's employment with Cinergy during the Employment Period other than a termination for Cause or (ii) the termination by the Executive of the Executive's employment with Cinergy during the Employment Period for Good Reason.
- mm. Relocation Program. "Relocation Program" means the Cinergy Corp. Relocation Program, or any similar program or successor to that program, as in effect on the date of the Executive's termination of employment.
- nn. Severance Benefits. "Severance Benefits" means the payments and benefits payable to the Executive pursuant to Section 5.
- oo. Spouse. "Spouse" means the Executive's lawfully married spouse. For this purpose, common law marriage or a similar arrangement will not be recognized unless otherwise required by federal law.
- pp. Stock Related Documents. "Stock Related Documents" means the LTIP, the Cinergy Corp. Stock Option Plan, and the Value Creation Plan and any applicable administrative guidelines and written agreements relating to those plans.
- qq. Target Annual Bonus. "Target Annual Bonus" has the meaning set forth in Section 3b.
- rr. Target LTIP Bonus. "Target LTIP Bonus" has the meaning set forth in Section 3b.
- ss. Value Creation Plan. "Value Creation Plan" means the Value Creation Plan or any similar plan, or successor plan of the LTIP.
- tt. Waiver and Release. "Waiver and Release" means a waiver and release, in substantially the form attached to this Agreement as Exhibit A.

12. Miscellaneous.

- a. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio, without reference to principles of conflict of laws. The captions of this Agreement are not part of its provisions and will have no force or effect. This Agreement may not be amended, modified, repealed, waived, extended, or discharged except by an agreement in writing signed by the party against whom enforcement of the amendment, modification, repeal, waiver, extension, or discharge is sought. Only the Chief Executive Officer or his designee will have authority on behalf of Cinergy to agree to amend, modify, repeal, waive, extend, or discharge any provision of this Agreement.
- b. All notices and other communications under this Agreement will be in writing and will be given by hand delivery to the other party or by Federal Express or other comparable national or international overnight delivery service, addressed in the name of such party at the following

address, whichever is applicable:

If to the Executive:

Cinergy Corp.
221 East Fourth Street
Cincinnati, Ohio 45201-0960

If to Cinergy:

Cinergy Corp.
221 East Fourth Street
Cincinnati, Ohio 45201-0960
Attn: Chief Executive Officer

or to such other address as either party has furnished to the other in writing in accordance with this Agreement. All notices and communications will be effective when actually received by the addressee.

- c. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement.
- d. Cinergy may withhold from any amounts payable under this Agreement such federal, state, or local taxes as are required to be withheld pursuant to any applicable law or regulation.
- e. The Executive's or Cinergy's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or Cinergy may have under this Agreement, including without limitation the right of the Executive to terminate employment for Good Reason pursuant to Section 4d or the right of Cinergy to terminate the Executive's employment for Cause pursuant to Section 4b, will not be deemed to be a waiver of that provision or right or any other provision or right of this Agreement.
- f. References in this Agreement to the masculine include the feminine unless the context clearly indicates otherwise.
- g. This instrument contains the entire agreement of the Executive and Cinergy with respect to the subject matter of this Agreement; and subject to any agreements evidencing stock option or restricted stock grants described in Section 3b and the Stock Related Documents, all promises, representations, understandings, arrangements, and prior agreements are merged into this Agreement and accordingly superseded.
- h. This Agreement may be executed in counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument.
- i. Cinergy and the Executive agree that Cinergy Services, Inc. will be authorized to act for Cinergy with respect to all aspects pertaining to the administration and interpretation of this Agreement.

IN WITNESS WHEREOF, the Executive and the Company have caused this Agreement to be executed as of the Effective Date.

CINERGY SERVICES, INC.

By: /s/ James E. Rogers

James E. Rogers
Chairman and
Chief Executive Officer

EXECUTIVE

/s/ Marc E. Manly

Marc E. Manly

EXHIBIT A

WAIVER AND RELEASE AGREEMENT

THIS WAIVER AND RELEASE AGREEMENT (this "Waiver and Release") is entered into by and between Marc E. Manly (the "Executive") and Cinergy Corp. ("Cinergy") (collectively, the "Parties").

WHEREAS, the Parties have entered into the Employment Agreement dated _____ (the "Employment Agreement");

WHEREAS, the Executive's employment has been terminated in accordance with the terms of the Employment Agreement;

WHEREAS, the Executive is required to sign this Waiver and Release in order to receive the payment of certain compensation under the Employment Agreement following termination of employment; and

WHEREAS, Cinergy has agreed to sign this Waiver and Release.

NOW, THEREFORE, in consideration of the promises and agreements contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. This Waiver and Release is effective on the date hereof and will continue in effect as provided herein.
2. In consideration of the payments to be made and the benefits to be received by the Executive pursuant to Section 5 of the Employment Agreement (the "Severance Benefits"), which the Executive acknowledges are in addition to payment and benefits to which the Executive would be entitled to but for the Employment Agreement, the Executive, on behalf of himself, his heirs, representatives, agents and assigns hereby COVENANTS NOT TO SUE OR OTHERWISE VOLUNTARILY PARTICIPATE IN ANY LAWSUIT AGAINST, FULLY RELEASES, INDEMNIFIES, HOLDS HARMLESS, and OTHERWISE FOREVER DISCHARGES (i) Cinergy, (ii) its subsidiary or affiliated entities, (iii) all of their present or former directors, officers, employees, shareholders, and agents as well as (iv) all predecessors, successors and assigns thereof (the persons listed in clauses (i) through (iv) hereof shall be referred to collectively as the "Company") from any and all actions, charges, claims, demands, damages or liabilities of any kind or character whatsoever, known or unknown, which Executive now has or may have had through the effective date of this Waiver and Release. Executive acknowledges and understands that he is not hereby prevented from filing a charge of discrimination with the Equal Employment Opportunity Commission or any state-equivalent agency or otherwise participate in any proceedings before such Commissions. Executive also acknowledges and understands that in the event he does file such a charge, he shall be entitled to no remuneration,

damages, back pay, front pay, or compensation whatsoever from the Company as a result of such charge.

3. Without limiting the generality of the foregoing release, it shall include: (i) all claims or potential claims arising under any federal, state or local laws relating to the Parties' employment relationship, including any claims Executive may have under the Civil Rights Acts of 1866 and 1964, as amended, 42 U.S.C. §§ 1981 and 2000(e) et seq.; the Civil Rights Act of 1991; the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 621 et seq.; the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12,101 et seq.; the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.; the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101, et seq.; the Ohio Civil Rights Act, Chapter 4112 et seq.; and any other federal, state or local law governing the Parties' employment relationship; (ii) any claims on account of, arising out of or in any way connected with Executive's employment with the Company or leaving of that employment; (iii) any claims alleged or which could have been alleged in any charge or complaint against the Company; (iv) any claims relating to the conduct of any employee, officer, director, agent or other representative of the Company; (v) any claims of discrimination or harassment on any basis; (vi) any claims arising from any legal restrictions on an employer's right to separate its employees; (vii) any claims for personal injury, compensatory or punitive damages or other forms of relief; and (viii) all other causes of action sounding in contract, tort or other common law basis, including: (a) the breach of any alleged oral or written contract; (b) negligent or intentional misrepresentations; (c) wrongful discharge; (d) just cause dismissal; (e) defamation; (f) interference with contract or business relationship; or (g) negligent or intentional infliction of emotional distress.
4. The Parties acknowledge that it is their mutual and specific intent that the above waiver fully complies with the requirements of the Older Workers Benefit Protection Act (29 U.S.C. § 626) and any similar law governing release of claims. Accordingly, Executive hereby acknowledges that:
 - (a) He has carefully read and fully understands all of the provisions of this Waiver and Release and that he has entered into this Waiver and Release knowingly and voluntarily after extensive negotiations and having consulted with his counsel;
 - (b) The Severance Benefits offered in exchange for Executive's release of claims exceed in kind and scope that to which he would have otherwise been legally entitled;
 - (c) Prior to signing this Waiver and Release, Executive had been advised in writing by this Waiver and Release as well as other writings to seek counsel from, and has in fact had an opportunity to consult with, an attorney of his choice concerning its terms and conditions; and
 - (d) He has been offered at least twenty-one (21) days within which to review and consider this Waiver and Release.
5. The Parties agree that this Waiver and Release shall not become effective and enforceable until the date this Waiver and Release is signed by both Parties or seven (7) calendar days after its execution by Executive, whichever is later. Executive may revoke this Waiver and Release for

any reason by providing written notice of such intent to Cinergy within seven (7) days after he has signed this Waiver and Release, thereby forfeiting Executive's right to receive any Severance Benefits provided hereunder and rendering this Waiver and Release null and void in its entirety.

6. The Executive hereby affirms and acknowledges his continued obligations to comply with the post-termination covenants contained in his Employment Agreement, including but not limited to, the Confidential Information provisions of Section 9 of the Employment Agreement. Executive acknowledges that the restrictions contained therein are valid and reasonable in every respect, are necessary to protect the Company's legitimate business interests and hereby affirmatively waives any claim or defense to the contrary.
7. Executive specifically agrees and understands that the existence and terms of this Waiver and Release are strictly CONFIDENTIAL and that such confidentiality is a material term of this Waiver and Release. Accordingly, except as required by law or unless authorized to do so by Cinergy in writing, Executive agrees that he shall not communicate, display or otherwise reveal any of the contents of this Waiver and Release to anyone other than his spouse, primary legal counsel or financial advisor, provided, however, that they are first advised of the confidential nature of this Waiver and Release and Executive obtains their agreement to be bound by the same. Cinergy agrees that Executive may respond to legitimate inquiries regarding his employment with Cinergy by stating that he voluntarily resigned to pursue other opportunities, that the Parties terminated their relationship on an amicable basis and that the Parties have entered into a confidential Waiver and Release that prohibits him from further discussing the specifics of his separation. Nothing contained herein shall be construed to prevent Executive from discussing or otherwise advising subsequent employers of the existence of any obligations as set forth in his Employment Agreement. Further, nothing contained herein shall be construed to limit or otherwise restrict the Company's ability to disclose the terms and conditions of this Waiver and Release as may be required by business necessity.
8. In the event that Executive breaches or threatens to breach any provision of this Waiver and Release, he agrees that Cinergy shall be entitled to seek any and all equitable and legal relief provided by law, specifically including immediate and permanent injunctive relief. Executive hereby waives any claim that Cinergy has an adequate remedy at law. In addition, and to the extent not prohibited by law, Executive agrees that Cinergy shall be entitled to an award of all costs and attorneys' fees incurred by Cinergy in any successful effort to enforce the terms of this Waiver and Release. Executive agrees that the foregoing relief shall not be construed to limit or otherwise restrict Cinergy's ability to pursue any other remedy provided by law, including the recovery of any actual, compensatory or punitive damages. Moreover, if Executive pursues any claims against the Company subject to the foregoing Waiver and Release, Executive agrees to immediately reimburse the Company for the value of all benefits received under this Waiver and Release to the fullest extent permitted by law.
9. Cinergy hereby releases the Executive, his heirs, representatives, agents and assigns from any and all known claims, causes of action, grievances, damages and demands of any kind or nature based on acts or omissions committed by the Executive during and in the course of his employment with Cinergy provided such act or omission was committed in good faith and occurred within the scope of his normal duties and responsibilities.

10. The Parties acknowledge that this Waiver and Release is entered into solely for the purpose of ending their employment relationship on an amicable basis and shall not be construed as an admission of liability or wrongdoing by either Party and that both Cinergy and Executive have expressly denied any such liability or wrongdoing.
11. Each of the promises and obligations shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, assigns and successors in interest of each of the Parties.
12. The Parties agree that each and every paragraph, sentence, clause, term and provision of this Waiver and Release is severable and that, if any portion of this Waiver and Release should be deemed not enforceable for any reason, such portion shall be stricken and the remaining portion or portions thereof should continue to be enforced to the fullest extent permitted by applicable law.
13. This Waiver and Release shall be governed by and interpreted in accordance with the laws of the State of Ohio without regard to any applicable state's choice of law provisions.
14. Executive represents and acknowledges that in signing this Waiver and Release he does not rely, and has not relied, upon any representation or statement made by Cinergy or by any of Cinergy's employees, officers, agents, stockholders, directors or attorneys with regard to the subject matter, basis or effect of this Waiver and Release other than those specifically contained herein.
15. This Waiver and Release represents the entire agreement between the Parties concerning the subject matter hereof, shall supercede any and all prior agreements which may otherwise exist between them concerning the subject matter hereof (specifically excluding, however, the post-termination obligations contained in any existing Employment Agreement or other legally-binding document), and shall not be altered, amended, modified or otherwise changed except by a writing executed by both Parties.
16. Cinergy Corp. and the Executive agree that Cinergy Services, Inc. will be authorized to act for Cinergy Corp. with respect to all aspects pertaining to the administration and interpretation of this Waiver and Release.

**PLEASE READ CAREFULLY. WITH RESPECT TO THE EXECUTIVE, THIS
WAIVER AND RELEASE INCLUDES A COMPLETE RELEASE OF ALL KNOWN
AND UNKNOWN CLAIMS.**

IN WITNESS WHEREOF, the Parties have themselves signed, or caused a duly authorized agent thereof to sign, this Waiver and Release on their behalf and thereby acknowledge their intent to be bound by its terms and conditions.

EXECUTIVE

CINERGY SERVICES, INC.

Signed: _____ By: _____

Printed: Marc E. Manly Title: _____

Dated: _____ Dated: _____

EX-10.X 9 a04-1370_1ex10dx.htm EX-10.X

Exhibit 10.x

Adopted by the Cinergy Corp.
Benefits Committee on October 10, 2003

AMENDMENT TO THE
CINERGY CORP. SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN

The Cinergy Corp. Supplemental Executive Retirement Plan, as amended and restated effective as of January 1, 1999, as amended from time to time (the "Plan"), is hereby amended effective as of January 1, 2003.

(1) Explanation of Amendment

The Plan is amended to clarify the relationship between the Plan, the Cinergy Corp. Non-Union Employees' Pension Plan and the Cinergy Corp. Excess Pension Plan in light of the Retirement Choice program and to ensure that benefits under the Plan are not payable in the form of a single sum (other than under the "small benefits" and "change in control" provisions). The Plan is also amended to make certain non-substantive changes.

(2) Amendment

- (a) The first paragraph of Section 3.3 of the Plan is hereby amended by deleting the phrase "under Cinergy's Pension Plan and Cinergy's Excess Pension Plan," where it appears therein and substituting therefor the phrase "under Cinergy's Pension Plan and Cinergy's Excess Pension Plan based in each case on the formula for a participant who is not a Cash Balance Participant (as defined under Cinergy's Pension Plan),"
- (b) Section 3.3 of the Plan is hereby amended by deleting the word "and" from the end of paragraph (a) thereof, by re-lettering paragraph (b) thereof as paragraph (c) and by adding a new paragraph (b) to provide as follows:

“(b) for a Participant who is classified as a “Cash Balance Participant” under Cinergy’s Pension Plan, 100 percent of the annual amount of pension that is payable to the Participant as a straight-life annuity for the Participant commencing as of the Participant’s age (not less than Age 62) on the date of the commencement of benefits on the Participant’s behalf under Cinergy’s Pension Plan, where such pension is the Actuarial Equivalent (calculated on the basis of the conversion factors used in Cinergy’s Pension Plan to convert a cash balance account to an annuity of the aggregate account balance that the Participant would have had under the Cinergy Corp. Non-Union Employees’ 401(k) Plan and the Cinergy Corp. Excess Profit Sharing Plan (the “DC Plans”) based on the following assumptions (collectively, the “DC Plan Assumptions”): (i) Cinergy is deemed to have contributed, during the period over which the Participant

was entitled to receive profit sharing contributions to his account under the DC Plans, profit sharing contributions at the "target level," (ii) Interest Credits (as defined under Cinergy's Pension Plan) are deemed to have been credited to the Participant's accounts under the DC Plans, in lieu of any other earnings, at the time, in the manner and as if each such account had been a Cash Balance Account (as defined under Cinergy's Pension Plan) and (iii) no other amounts are credited to the Participant's accounts under the DC Plans; and"

- (c) Section 4.3 of the Plan is hereby amended by deleting the word "and" from the end of paragraph (c) thereof, by re-lettering paragraph (d) thereof as paragraph (e) and by adding a new paragraph (d) to provide as follows:

"(d) for a Participant who is classified as a "Cash Balance Participant" under Cinergy's Pension Plan, 100 percent of the annual amount of pension that is payable to the Participant as a straight-life annuity for the Participant commencing as of the Participant's age (not less than Age 62) on the date of the commencement of benefits on the Participant's behalf under Cinergy's Pension Plan, where such pension is the Actuarial Equivalent (calculated on the basis of the conversion factors used in Cinergy's Pension Plan to convert a cash balance account to an annuity) of the aggregate account balance that the Participant would have had under the DC Plans based on the DC Plan Assumptions; and"

- (d) The second sentence of Section 4.4(b) of the Plan is hereby amended to provide as follows:

"If the Employee elects under Cinergy's Pension Plan to have the benefit begin before Age 62, the amount of the Employee's Nonforfeitable annual pension under Section 4.3 will be multiplied by the appropriate early payment factor, if any, that is applicable (to a participant in Cinergy's Pension Plan who is not classified as a "Cash Balance Participant" under Cinergy's Pension Plan) under Section 4.4 of Cinergy's Pension Plan (General Method of Computing Annual Pension for Retirement at Early Retirement Date)."

- (e) The first paragraph of Section 5.3(a) of the Plan is hereby amended by deleting the phrase "under Cinergy's Pension Plan and Cinergy's Excess Pension Plan," where it appears therein and substituting therefor the phrase "under Cinergy's Pension Plan and Cinergy's Excess Pension Plan based in each case on the formula for a participant who is not a Cash Balance Participant (as defined under Cinergy's Pension Plan),"
- (f) Section 5.3(a) of the Plan is hereby amended by deleting the word "and" from the end of paragraph (1) thereof, by re-numbering paragraph (2) thereof as paragraph (3) and by adding a new paragraph (2) to provide as follows:

“(2) for a Participant who is classified as a “Cash Balance Participant” under Cinergy’s Pension Plan, 100 percent of the annual amount of pension that is payable to the Participant as a straight-life annuity for the Participant commencing as of the Participant’s Age 62, where such pension is the Actuarial Equivalent (calculated on the basis of the conversion factors used in Cinergy’s Pension Plan to convert a cash balance account to an annuity) of the aggregate account balance that the Participant would have had under the DC Plans based on the DC Plan Assumptions; and”

- (g) Section 5.3(b) of the Plan is hereby amended by deleting the phrase “on any date on or after his 50th birthday and before he reaches Age 62” where it appears therein and substituting therefor the phrase “on a date before he reaches Age 62”.

- (h) Section 5.4(a) of the Plan is amended by deleting the word “and” from the end of paragraph (3), re-numbering paragraph (4) as paragraph (5) and by adding a new paragraph (4) to provide as follows:

“(4) for a Participant who is classified as a “Cash Balance Participant” under Cinergy’s Pension Plan, 100 percent of the annual amount of pension that is payable to the Participant as a straight-life annuity for the Participant commencing as of the Participant’s Age 62, where such pension is the Actuarial Equivalent (calculated on the basis of the conversion factors used in Cinergy’s Pension Plan to convert a cash balance account to an annuity) of the aggregate account balance that the Participant would have had under the DC Plans based on the DC Plan Assumptions; and”

- (i) The first sentence of Section 5.4(b) of the Plan is amended to provide as follows:

“A disabled Participant may elect under Cinergy’s Pension Plan to begin receiving his pension on a date before he reaches Age 62.”

- (j) The first sentence of Section 6.1 of the Plan is hereby amended by deleting the phrase “terminated before the Participant reached age 50,” where it appears therein and substituting therefor the phrase “had terminated prior to the date of his death,”

- (k) Section 6.1(a) of the Plan is hereby amended in its entirety to read as follows:

“(a) If, at the date of his death, the Participant was either an Eligible Active Participant or an Eligible Former Participant who had reached age 50, the Spouse’s Benefit will be equal to the annual amount of pension that would have been payable to the Spouse under the provisions of Cinergy’s Pension Plan and Cinergy’s Excess Pension Plan based in each case on the

formula for a participant who is not a Cash Balance Participant (as defined under Cinergy's Pension Plan), as in effect on the date of the Participant's death, if the Participant's years of "participation" as defined under Cinergy's Pension Plan were equal to the Participant's years of Participation under this Plan, reduced by:

(1) 100 percent of the annual death benefit actually payable to the Participant's Spouse under Cinergy's Pension Plan and Cinergy's Excess Pension Plan (or would have been payable to the Participant's Spouse if the Participant's Spouse were the Participant's Beneficiary under Cinergy's Pension Plan and Cinergy's Excess Pension Plan), as in effect on the date of the Participant's death;

(2) for a Participant who is classified as a "Cash Balance Participant" under Cinergy's Pension Plan, 100 percent of the annual amount of pension that is payable to the Participant's Spouse as a straight-life annuity for the Spouse commencing as of the date of the Participant's death, where such pension is the Actuarial Equivalent (calculated on the basis of the conversion factors used in Cinergy's Pension Plan to convert a cash balance account to an annuity) of the aggregate account balance that the Participant would have had under the DC Plans based on the DC Plan Assumptions; and

(3) 50 percent of the Participant's Reduced Primary Social Security Benefit, calculated as of the date of the Participant's death."

(l) Section 6.1(c) of the Plan is hereby amended in its entirety to read as follows:

"(c) If, at the date of his death, the Participant was either an Eligible Active Participant or an Eligible Former Participant who, in either case, had not reached age 50, the annual amount of the Spouse's Benefit under Subsection (a) will be calculated in the manner prescribed by Subsection 6.1(c) of Cinergy's Pension Plan (Determination of Spouse's Benefit), with the reductions prescribed in Subsection (a)(1)-(3) (calculated as if the Participant had survived until age 50 and died at such time) and the early payment factor prescribed by Subsection 6.1(c) of Cinergy's Pension Plan (Determination of Spouse's Benefit)."

(m) The first sentence of Section 6.2 of the Plan is hereby amended by deleting the phrase "terminated before the Participant reached age 50, and whose pension had not yet begun" where it appears therein and substituting therefor the phrase "had terminated prior to the date of his death, and whose pension under the Plan had not yet begun."

- (n) Section 6.2(a)(3) and 6.2(a)(4) of the Plan are hereby amended in their entirety to read as follows:

“(3) 100 percent of the annual death benefit actually payable to the Participant’s Spouse under Cinergy’s Pension Plan and Cinergy’s Excess Pension Plan (or would have been payable to the Participant’s Spouse if the Participant’s Spouse were the Participant’s Beneficiary under Cinergy’s Pension Plan and Cinergy’s Excess Pension Plan), as in effect on the date of the Participant’s death;

(4) for a Participant who is classified as a “Cash Balance Participant” under Cinergy’s Pension Plan, 100 percent of the annual amount of pension that is payable to the Participant’s Spouse as a straight-life annuity for the Spouse commencing as of the date of the Participant’s death, where such pension is the Actuarial Equivalent (calculated on the basis of the conversion factors used in Cinergy’s Pension Plan to convert a cash balance account to an annuity) of the aggregate account balance that the Participant would have had under the DC Plans based on the DC Plan Assumptions; and

(5) 50 percent of the Participant’s Reduced Primary Social Security Benefit, calculated as of the date of the Participant’s death.”

- (o) Section 6.2(c) of the Plan is hereby amended in its entirety to read as follows:

“(c) If, at the date of his death, the Participant was either an Eligible Active Participant or an Eligible Former Participant who, in either case, had not reached age 50, the annual amount of the Spouse’s Benefit under Subsection (a) will be calculated in the manner prescribed by Subsection 6.1(c) of Cinergy’s Pension Plan (Determination of Spouse’s Benefit), with the reductions prescribed in Subsection (a)(3)-(5) (calculated as if the Participant had survived until age 50 and died at such time) and the early payment factor prescribed by Subsection 6.1(c) of Cinergy’s Pension Plan (Determination of Spouse’s Benefit).”

- (p) Article 7 of the Plan is hereby amended by adding the following at the end thereof:

“Notwithstanding the foregoing, the following shall apply:

(a) Except as otherwise provided in Sections 8.3 and 8.6, no amount shall be payable under the Plan in the form of a single lump sum cash payment.

(b) In the event that a Participant who is classified as a "Cash Balance Participant" under Cinergy's Pension Plan elects to receive his benefits thereunder in the form of a single lump sum cash payment, such Participant's benefits under the Plan shall be payable in the applicable normal form of pension specified in Section 7.1 of Cinergy's Pension Plan."

(q) Sections 8.6(e)(I) and 8.6(e)(II) of the Plan are hereby amended in their entirety to read as follows:

"(I) The form of payment for each of the Selected Participant's retirement benefits under the Plan, Cinergy's Pension Plan, Cinergy's Excess Pension Plan and the aggregate account balance that the Selected Participant would have had under the DC Plans based on the DC Plan Assumptions shall be a single life annuity;

(II) The commencement date for each of the Selected Participant's retirement benefits under the Plan, Cinergy's Pension Plan, Cinergy's Excess Pension Plan and the DC Plans shall be the first day of the calendar month coincident with or next following the later of his Severance from Service Date or his 50th birthday; and"

(r) The last sentence of Article 11 of the Plan is hereby deleted in its entirety.

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer effective as of the date set forth herein.

By: /s/ Timothy J. Verhagen

Timothy J. Verhagen
Vice President of Human Resources

EX-10.Y 10 a04-1370_1ex10dy.htm EX-10.Y

Exhibit 10.y

AMENDMENT TO THE
CINERGY CORP. SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN

The Cinergy Corp. Supplemental Executive Retirement Plan, as amended and restated effective as of January 1, 1999 and as further amended from time to time (the "Plan"), is hereby amended effective as of December 15, 2003.

(1) Explanation of Amendment

The Plan is amended to provide designated participants with the opportunity to elect to receive one-half of their Plan benefits in a single lump sum under certain circumstances. The Plan is further amended by revising its definition of "Highest Average Earnings" to provide that the Compensation Committee of the Board of Directors may from time to time designate specific amounts that shall be included in a specified Participant's Highest Average Earnings.

(2) Amendment

- (a) Section 1.23 of the Plan is hereby amended by adding the following at the end thereof:

"The Compensation Committee of the Board of Directors from time to time, in its sole discretion, may designate other amounts that shall be taken into account when calculating the Highest Average Earnings for one or more Participant's specified by the Compensation Committee of the Board of Directors."

- (b) Section 8.6 of the Plan is hereby amended by adding the following new subsection (i) at the end thereof:

"(i) Special Payment Election Without a Change in Control. Notwithstanding the foregoing, each Participant who is designated as a "Designated Participant" by the Committee (a "Designated Participant") may make an election, on a form provided by the Committee, to receive a single lump sum cash payment in an amount equal to one-half of the Actuarial Equivalent (as defined above in Section 8.6(e)) of his benefits under the Plan payable no later than 30 days after his Severance from Service Date. In order to be effective, the special payment election under this Section 8.6(i) must be made either (A) at least one year prior to the Participant's Severance from Service Date or (B) during the 2003 Plan Year and at least six months prior to the Participant's Severance from Service Date. The lump sum amount payable pursuant to this Section 8.6 (i) shall be calculated in accordance with the provisions of Section 8.6(e). In the event an amount is paid to or on behalf of a Designated Participant pursuant to this Section 8.6(i), such payment shall discharge any liability under the Plan to or on behalf of the Designated Participant with respect to one-half of the Actuarial Equivalent (as defined above in Section 8.6(e)) of his benefits under the Plan."

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer as of the date set forth above.

By: /s/ Timothy J. Verhagen

Timothy J. Verhagen
Vice President of Human Resources

EX-10.M 11 a04-1370_1ex10dm.htm EX-10.M

Exhibit 10.m

AMENDMENT TO EMPLOYMENT AGREEMENT

The Employment Agreement between Cinergy Corp., its subsidiaries and/or its affiliates ("Cinergy") and Marc E. Manly (the "Executive") dated as of November 15, 2002 (the "Agreement") is hereby amended effective as of December 17, 2003.

AMENDMENTS

1. Section 3b(ii)(4) of the Agreement is hereby amended and restated to read, in its entirety, as follows:

"Except as provided in Sections 3b(ii)(3) and 3b(ii)(5), the supplemental retirement benefit shall not be payable in the form of a single lump sum."

2. Section 3b(ii) of the Agreement is hereby amended by adding the following new subsection (5) at the end thereof:

"(5) Special Payment Election Without a Change in Control. Notwithstanding the foregoing, the Executive may make an election, on a form provided by Cinergy, to receive a single lump sum cash payment in an amount equal to one-half of the Actuarial Equivalent (as defined above in Section 3b(ii)(3)(D)) of his supplemental retirement benefit payable no later than 30 days after the date of his termination of employment. In order to be effective, the special payment election under this Section 3b(ii)(5) must be made either (A) at least one year prior to the termination of the Executive's employment with Cinergy or (B) during 2003 and at least six months prior to the termination of the Executive's employment with Cinergy. The lump sum amount payable pursuant to this Section 3b(ii)(5) shall be calculated in accordance with the provisions of Section 3b(ii)(3)(D). In the event an amount is paid to or on behalf of the Executive pursuant to this Section 3b(ii)(5), such payment shall discharge any liability under this Agreement to or on behalf of the Executive with respect to one-half of the Actuarial Equivalent (as defined above in Section 3b(ii)(3)(D)) of his supplemental retirement benefit."

IN WITNESS WHEREOF, the Executive and Cinergy have caused this Amendment to the Agreement to be executed as of the date first specified above.

CINERGY SERVICES, INC.

By: /s/ James E. Rogers

James E. Rogers
Chairman and
Chief Executive Officer

EXECUTIVE

/s/ Marc E. Manly

Marc E. Manly

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Exhibit 10.mm

CINERGY CORP. EXECUTIVE LIFE INSURANCE PLAN

ARTICLE I
NATURE AND PURPOSE OF PLAN

- 1.1 Type of Plan. The name of this Plan is the Cinergy Corp. Executive Life Insurance Plan, effective January 1, 2004. The Plan is maintained by the Company as an insured welfare plan for a select group of the Employer's management or highly-compensated employees.
- 1.2 Purpose of Plan. The purpose of the Plan is to provide executives with a portable and flexible insurance benefit.

ARTICLE II
DEFINITIONS AND RULES OF CONSTRUCTION

- 2.1 Definitions. As used in the Plan, the following words and phrases, when capitalized, have the following meanings except when used in a context that plainly requires a different meaning:
- (a) "Base Salary" means the annual base rate of cash compensation payable by the Employer to a Participant.
 - (b) "Board of Directors" means the duly constituted board of directors of the Company on the applicable date.
 - (c) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and interpretive rules and regulations thereunder.
 - (d) "Committee" means the Benefits Committee of the Company.
 - (e) "Company" means Cinergy Corp., a Delaware corporation, and any corporation that shall succeed to its business and adopt the Plan.
 - (f) "Eligible Employee" means a management or highly compensated Employee who is selected by the Committee to participate in this Plan.
 - (g) "Employee" means any person employed by the Employer as a common law employee, including officers of the Company or a Related Employer.
 - (h) "Employer" means the Company and any Related Employer.
 - (i) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and interpretative rules and regulations thereunder.
 - (j) "Insurance Policy" means one or more life insurance contracts issued by the Insurer on the life of a Participant.

- (k) "Insurer" means the insurance company or companies selected by the Company to which a Participant shall apply for insurance on the Participant's life.
- (l) "Participant" means an Eligible Employee, or an Employee who is a former Eligible Employee, who has purchased an Insurance Policy pursuant to Section 4.1.
- (m) "Plan" means this instrument, as amended from time to time, and the insured welfare benefit plan so established.
- (n) "Plan Year" means each calendar year commencing on or after January 1, 2004.
- (o) "Related Employer" means any affiliate of the Company that employs an Eligible Employee.
- (p) "Target Annual Bonus" means the annual target cash incentive compensation payable pursuant to the Cinergy Corp. Annual Incentive Plan or any other annual incentive compensation plan of the Company or an affiliate in which an Eligible Employee participates.
- (q) "Termination of Employment" means, with respect to a Participant, the cessation of the relationship of Employer and Employee between the Participant and the Employer for any reason. A Participant shall not be treated as having incurred a Termination of Employment until the employment relationship between the Participant and all Related Employers has terminated.

2.2 Rules of Construction. The following rules of construction shall govern in interpreting the Plan. The provisions of this Plan shall be construed and governed in all respects under and by the internal laws of the State of Ohio, to the extent not preempted by federal law. Words used in the masculine gender shall be construed to include the feminine gender, where appropriate, and vice versa. Words used in the singular shall be construed to include the plural, where appropriate, and vice versa. The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan. If any provision of the Plan shall be held to be illegal or invalid for any reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

ARTICLE III ELIGIBILITY AND PARTICIPATION

3.1 Eligibility. Participation in the Plan is limited to Eligible Employees. It is intended that participation be limited to Employees who will qualify as members of a "select group of management or highly compensated employees" under Title I of ERISA.

- 3.2 Initial Participation. An Employee may begin participation in the Plan by purchasing an Insurance Policy pursuant to Section 4.1 at any time after being selected as an Eligible Employee.
- 3.3 Status Change. Upon the date an Employee is determined to no longer be an Eligible Employee, the Employer shall no longer have an obligation to provide premium payments pursuant to Section 4.1 below.
- 3.4 Termination of Employment. Upon a Participant's Termination of Employment, his participation in the Plan shall cease and the Employer shall have no further obligation concerning his Insurance Policy. Such person shall not be required to sell or otherwise relinquish ownership of the Insurance Policy.

ARTICLE IV
INSURANCE POLICY

- 4.1 Basic Coverage.
- (a) Purchase, Initial Coverage. In accordance with procedures prescribed by the Committee, a Participant shall apply to the Insurer for the purchase of an Insurance Policy providing a death benefit equal to the Participant's Base Salary plus Target Annual Bonus, which amount shall be determined as of the time of application.
 - (b) Premium Payments. While a Participant is an Eligible Employee, any premium payment due and payable under the Participant's Insurance Policy for the basic coverage described in Section 4.1(a) shall be paid by his Employer. On or before the due date of each Insurance Policy premium, the Employer shall forward to the Insurer the full amount of the premium then due for each Participant. If the Participant ceases to be an Eligible Employee, the Employer's obligation to provide premium payments shall cease.
 - (c) Coverage Adjustment. If the Participant's Base Salary or Target Annual Bonus increase at any time after the Participant applies for an Insurance Policy, the Committee may from time to time, but is not required to, increase the basic coverage offered under the Participant's Insurance Policy and pay the corresponding increase in premiums.
- 4.2 Supplemental Coverage.
- (a) Purchase. An Eligible Employee may purchase supplemental coverage from the Insurer in accordance with procedures prescribed by the Committee.
 - (b) Premium Payments. The Eligible Employee shall pay any premium amounts associated with any supplemental coverage. The Eligible Employee may, pursuant to procedures prescribed by the Committee, authorize his Employer to

make such payments on his behalf using any resources provided by his Employer (including but not limited to withholding from Base Salary or using amounts credited to his financial planning allowance).

- 4.3 Incidents of Ownership. Neither the Company nor any Employer shall have any rights or incidents of ownership with respect to any Insurance Policy. Each Participant shall own his Insurance Policy and shall be entitled to exercise all rights of ownership concerning such Insurance Policy.

ARTICLE V ADMINISTRATION

- 5.1 Administrator. The Committee shall be the administrator of the Plan.
- 5.2 Notices. Any notice or filing required or permitted to be given to the Committee under the Plan shall be sufficient if it is in writing and hand delivered, or sent by registered or certified mail, to any member of the Committee or its designate. The notice or filing shall be deemed made as of the date of delivery, or if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.
- 5.3 Powers and Duties of the Committee. Subject to the specific limitations stated in this Plan, the Committee shall have the following powers, duties, and responsibilities: to carry out the general administration of the Plan; to cause to be prepared all forms necessary or appropriate for the administration of the Plan; to keep appropriate books and records; to determine amounts to be distributed to Insurers under the provisions of the Plan; to determine, consistent with the provisions of this instrument, all questions of eligibility, rights, and status of Participants under the Plan; to issue, amend, and rescind rules relating to the administration of the Plan, including a claims procedure, to the extent those rules are consistent with the provisions of this document; to exercise all other powers and duties specifically conferred upon the Committee elsewhere in this document; and to interpret, with discretionary authority, the provisions of this Plan and to resolve, with discretionary authority, all disputed questions of Plan interpretation and benefit eligibility.

ARTICLE VI AMENDMENT AND TERMINATION

- 6.1 Amendment. The Company reserves the right to amend the Plan at any time by action of the Board of Directors or the Committee, with written notice given to each Participant in the Plan.
- 6.2 Termination. The Company reserves the right to terminate the Plan, by action of the Board of Directors or the Committee, at any time it deems appropriate. Upon termination of the Plan, no further premiums shall be made by any Employer to the Insurer.

ARTICLE VII
MISCELLANEOUS

- 7.1 Relationship. Notwithstanding any other provision of this Plan, this Plan and action taken pursuant to it shall not be deemed or construed to establish a trust or fiduciary relationship of any kind between or among the Company, Participants or any other persons. The Plan is intended to be unfunded for purposes of the Code and ERISA. The rights of Insurers to receive payment and of Participants to have payments made on their behalf under the Plan is strictly a contractual right of payment. This Plan does not grant, nor shall it be deemed to grant Insurers, Participants or any other person any interest or right to any of the funds, property, or assets of the Employer other than as an unsecured general creditor of the Employer.
- 7.2 Other Benefits and Plans. Nothing in this Plan shall be deemed to prevent Participants from receiving, in addition to the benefits provided for under this Plan, any benefits that may be provided to them at any time under any other present or future retirement or incentive plan of the Employer.
- 7.3 Anticipation of Benefits. Any premium payments that may be made under this Plan shall not be subject to attachment, garnishment, execution, or be transferable by operation of law in the event of bankruptcy, insolvency, or otherwise.
- 7.4 No Guarantee of Continued Employment. Nothing contained in this Plan or any action taken under the Plan shall be construed as a contract of employment or as giving any Participant any right to be retained in employment with the Employer. The Employer specifically reserves the right to terminate any Participant's employment at any time with or without cause, and with or without notice or assigning a reason, subject to the terms of any written employment agreement between the Participant and the Employer.
- 7.5 Waiver of Breach. The Company's or the Committee's waiver of any Plan provision shall not operate or be construed as a waiver of any subsequent breach by the Participant.
- 7.6 Protective Provisions. Each Participant shall cooperate with the Company and the Committee by furnishing any and all information requested by the Company or the Committee in order to facilitate the payment of benefits under the Plan, and by taking any other relevant action as may be requested by the Company or the Committee. If any Participant refuses so to cooperate, the Company shall have no further obligation to the Participant under this Plan.
- 7.7 Benefit. This Plan shall be binding upon and inure to the benefit of the Employer and its successors and assigns.
- 7.8 Responsibility for Legal Effect. Neither the Committee nor the Company makes any recommendations or warranties, express or implied, or assumes any responsibility concerning the legal context or other implications or effects of this Plan or of any Insurance Policy.

- 7.9 Tax Withholding. The Employer may withhold from any premiums payable hereunder, or any other available sources, any amounts required to be withheld under applicable tax laws.

Cinergy Corp. has caused this document to be executed by its duly authorized officer, as of the 18th day of December, 2003.

By: /s/ Timothy J. Verhagen

Timothy J. Verhagen
Vice President of Human Resources

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Exhibit 10.vv

Adopted pursuant to resolutions of the
Cinergy Corp. Benefits Committee on October 10, 2003

AMENDMENT TO THE
CINERGY CORP. NON-UNION EMPLOYEES' PENSION PLAN

The Cinergy Corp. Non-Union Employees' Pension Plan, as amended and restated effective January 1, 2003, is hereby amended, effective as of May 1, 2003, as follows.

(1) **Explanation of Amendment**

The Amendment renumbers Section 4.10 as Section 4.11 and adds a new Section 4.10, effective as of May 1, 2003, to provide enhanced benefits under the Plan for those eligible participants who elect between May 1, 2003 and June 16, 2003 (or such other period specified by an Employer) to retire during an open window retirement period.

(2) **Section 4.10 as Added**

- (a) Section 4.10 is hereby renumbered as Section 4.11.
- (b) A new Section 4.10, as hereby added, reads as follows:

"4.10 2003 Voluntary Early Retirement Program

(a) **Eligibility**

The provisions of this Section, which govern the 2003 Voluntary Early Retirement Program ("2003 VERP"), apply to an individual who:

- (1) is a Participant in the Plan who is classified by the Employer as a "full-time" employee and who is not an officer of an Employer;
- (2) attains age 54 on or before December 31, 2003;
- (3) attains at least five years of Service with an Employer on or before July 1, 2003 (or September 1, 2003 for certain designated Participants) (or would have attained at least five years of Service with an Employer on or before July 1, 2003 (or September 1, 2003 for certain designated Participants) if he had remained employed with an Employer until such date);
- (4) on a form provided by Cinergy, elects between May 1, 2003 and June 16, 2003 (or such other period specified by an Employer) to incur a Severance from Service on July 31, 2003 (or such other date selected by his

Employer), agrees that his Employer may select the Severance from Service Date and remains employed until such date;

- (5) has been selected by an Employer for participation in the 2003 VERP based on job classification; and
- (6) signs and does not revoke a waiver of claims in the form specified by his Employer.

(b) 2003 VERP Benefits

(1) Waiver of Early Payment Factor

For each Participant who elects to incur a Severance from Service under the provisions of this Section and whose Nonforfeitable Annual Pension is otherwise computed pursuant to the terms of Section 4.4 (General Method of Computing Annual Pension for Retirement at Early Retirement Date), the Nonforfeitable Annual Pension will be calculated without applying an early payment factor.

(2) Special Supplemental Benefit

Each Participant who elects to incur a Severance from Service under the provisions of this Section will receive a special supplemental benefit equal to the Actuarial Equivalent of the product of two times his weekly Base Salary or weekly Base Wage as of his Severance from Service Date multiplied by his whole years of Service as of his Severance from Service Date, payable in accordance with Section 7.1 (Normal Forms of Pension). The Participant may elect to receive his special supplemental benefit in any optional form of payment provided in Section 7.2 (Optional Forms of Retirement Income) other than those described in Subsections 7.2(d), (e) and (f).

(3) Lump Sum Payment Available in Lieu of Annuity

- (A) In lieu of the normal form of payment that would otherwise apply to the special supplemental benefit payable to the Participant under Article 7 (Forms of Pension), his Spouse or any other Beneficiary or Contingent Annuitant under the Plan, a lump sum distribution of the special supplemental benefit is available at the eligible Participant's election with spousal consent in accordance with Section 7.2 (Optional Forms of Retirement Income).

- (B) The lump sum distribution of the special supplemental benefit will be in an amount equal to the Actuarial Equivalent of the special supplemental benefit.

(C) Time of Payment

The lump sum distribution of the special supplemental benefit will be payable as of the Participant's Annuity Starting Date or as soon as administratively feasible thereafter.

(D) Election Period

A lump sum distribution of the special supplemental benefit must be elected within the 90 day period ending on the Participant's Annuity Starting Date. If the Participant chooses an annuity option and selects a Beneficiary other than a Spouse for the special supplemental benefit, the Participant must do so in writing and confirm or withdraw that election within 90 days preceding the Annuity Starting Date.

(E) Beneficiary

A Participant's Beneficiary of the lump sum distribution of the special supplemental benefit will be his Spouse unless the Participant's Spouse has consented to another Beneficiary pursuant to Section 7.2 (Optional Forms of Retirement Income). A Participant who elects a lump sum distribution of the special supplemental benefit may designate one Beneficiary for the special supplemental benefit in the event the Participant dies before the lump sum is distributed. A married Participant's designation of a Beneficiary other than the Participant's Spouse will not be effective unless the Participant's Spouse consents to the election and designation in accordance with Section 7.2 (Optional Forms of Retirement Income).

(F) Death of a Participant

In the event of the death of a Participant who elected a lump sum distribution of the special supplemental benefit prior to the distribution date, the lump sum will be distributed as soon as administratively feasible following the Participant's death. If the Participant's Spouse is his Beneficiary, the Spouse may elect payment in the form of a lump sum or in the form that applies to other benefits payable to the Spouse under the Plan after the Participant's death.

(4) Actuarial Equivalent. For purposes of calculating the Actuarial Equivalent amount of the benefit described in Sections 4.10(b)(2) and (3), "Actuarial Equivalent" means a benefit having the same actuarially determined value as the benefit that the Actuarial Equivalent replaces, calculated using the "applicable mortality table" described in Section 417(e)(3)(A)(ii)(I) of the Code and the "applicable interest rate" described in Section 417(e)(3)(A)(ii)(II) of the Code for the calendar month specified by the Plan in Section 1.5(c) for purposes of calculating the Actuarial Equivalent amount of any lump sum payment.

(c) Construction of the 2003 VERP Provisions

The benefits provided under the 2003 VERP will be paid in accordance with and consistent with Plan provisions that apply to the payment of normal or early retirement benefits, except where specific exceptions or provisions are included in this Section.

(d) Special Eligibility Rule

Any Retired Participant who incurred a Severance from Service between January 1, 2003 and July 1, 2003, is eligible to receive the 2003 VERP benefits described in Subsection 4.10(b) if he meets the applicable eligibility and participation requirements described in Subsection 4.10(a) and he returns to his Employer any termination related benefits previously received.

(e) Election Information

Prior to electing to participate in the 2003 VERP, an eligible Participant will be provided with a written explanation of the terms and conditions of the survivor annuity which will be paid to the Participant's Spouse if the Participant dies without electing a lump sum distribution of the special supplemental benefit, the Participant's right to elect a lump sum distribution in lieu of a survivor annuity of this benefit and the effect of such an election, the rights of the Participant's Spouse described in Section 7.2 (Optional Forms of Retirement Income), and the right of a Participant to revoke and the effect of revoking such an election."

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer effective as of the date set forth herein.

By: /s/ Timothy J. Verhagen

Timothy J. Verhagen
Vice President of Human Resources

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Exhibit 10.ww

Adopted pursuant to resolutions of the
Cinergy Corp. Benefits Committee on October 10, 2003

AMENDMENT TO THE
CINERGY CORP. NON-UNION EMPLOYEES' PENSION PLAN

The Cinergy Corp. Non-Union Employees' Pension Plan, as amended and restated effective January 1, 2003, is hereby amended, effective for compensation received after December 1, 2003.

(1) **Explanation of Amendment**

The amendment caps the amount of annual "EMBU" bonuses included in earnings under the Plan.

(2) **Amendment**

Section 1.12 of the Plan is hereby amended to provide as follows:

"“Annual Performance Cash Award” means, with respect to an Employee, the cash award received by the Employee under the provisions of an Employer’s annual bonus or incentive pay plan or program, including, but without limitation because of enumeration, the Cinergy Annual Incentive Plan, the Cinergy Non-Union Employees’ Incentive Plan, or any successor plan; except that for an Employee who is a participant in the Energy Merchant Business Unit Annual Incentive Plan, (i) the amount of the “Annual Performance Cash Award” that may be taken into account under the Plan for a Plan Year shall not exceed the Employee’s rate of annual Base Salary or rate of annual Base Wage, as applicable, as of the last day of the performance period for which the Annual Performance Cash Award is calculated and (ii) for purposes of clarity, any amount payable under the Energy Merchant Business Unit Annual Incentive Plan that is automatically deferred until a subsequent Plan Year shall not be considered as part of the Employee’s “Annual Performance Cash Award.”

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer, effective as of the date set forth herein.

By: /s/ Timothy J. Verhagen

Timothy J. Verhagen
Vice President of Human Resources

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Exhibit 10.bbb

Adopted pursuant to resolutions of the
Cinergy Corp. Benefits Committee on October 10, 2003

AMENDMENT TO THE
CINERGY CORP. NON-UNION EMPLOYEES' 401(K) PLAN

The Cinergy Corp. Non-Union Employees' 401(k) Plan, as amended and restated effective January 1, 2003, is hereby amended, effective for compensation received after December 1, 2003.

(1) **Explanation of Amendment**

The amendment caps the amount of annual "EMBU" bonuses included in profit sharing earnings under the Plan.

(2) **Amendment**

Subsection 4.10(c)(3)(I) of the Plan is hereby amended to provide as follows:

"“Annual Performance Cash Award” means, with respect to an Employee, the cash award received by the Employee under the provisions of an Employer’s annual bonus or incentive pay plan or program, including, but without limitation because of enumeration, the Cinergy Annual Incentive Plan, the Cinergy Non-Union Employees’ Incentive Plan, or any successor plan; except that for an Employee who is a participant in the Energy Merchant Business Unit Annual Incentive Plan, (i) the amount of the “Annual Performance Cash Award” that may be taken into account under the Plan for a Plan Year shall not exceed the Employee’s rate of annual Base Salary or rate of annual Base Wage, as applicable, as of the last day of the performance period for which the Annual Performance Cash Award is calculated and (ii) for purposes of clarity, any amount payable under the Energy Merchant Business Unit Annual Incentive Plan that is automatically deferred until a subsequent Plan Year shall not be considered as part of the Employee’s “Annual Performance Cash Award.”

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer, effective as of the date set forth herein.

By: /s/ Timothy J. Verhagen

Timothy J. Verhagen
Vice President of Human Resources

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Exhibit 10.ccc

Adopted pursuant to resolutions of the Cinergy Corp.
Benefits Committee on December 16, 2003

AMENDMENT TO THE
CINERGY CORP. NON-UNION EMPLOYEES' 401(K) PLAN

The Cinergy Corp. Non-Union Employees' 401(k) Plan, as amended and restated effective January 1, 2003, and as subsequently amended, is hereby amended, effective as of January 1, 2004.

Explanation of Amendment

The amendment (i) provides that the portion of each participant's Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock is to be at all times fully vested, (ii) permits investment diversification at any time with respect to the portion of each participant's Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock and (iii) clarifies when investment diversification is permitted with respect to Profit Sharing Contributions made to the Plan.

Amendment

- (a) Section 5.2 of the Plan is hereby amended and restated in its entirety to provide as follows:

"5.2 Profit Sharing Contributions Account.

A Member shall be fully vested and have a nonforfeitable interest in his Profit Sharing Contributions Account upon the earlier of (i) completion of three Years of Service or (ii) after reaching age 65 while an Employee. Notwithstanding the immediately preceding sentence, a Member shall at all times be fully vested and have a nonforfeitable interest in that portion of his Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock."

- (b) Section 7.2(b) of the Plan is hereby amended and restated in its entirety to provide as follows:

"(b) **Investment Transfers.** Except as otherwise provided in this section, assets in the Member's Matching Contributions Account and Profit Sharing Contributions Account will remain invested in the Cinergy Stock Fund until distributed under Article 6, and may not be reallocated among the Investment Funds.

- (1) A Member who has attained age 50 may reallocate assets in the Matching Contributions Account and Profit Sharing Contributions Account among the Investment Funds, in accordance with the provisions of Subsection 7.1(b).

- (2) At any time a Member may reallocate among the Investment Funds, in accordance with the provisions of Subsection 7.1(b), that portion of his Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock.
- (3) At any time after March 1 of the third Plan Year following the Plan Year during which a Profit Sharing Contribution is made on behalf of a Member, the Member may reallocate among the Investment Funds, in accordance with the provisions of Subsection 7.1(b), that portion of his Profit Sharing Contributions Account that is attributable to such Profit Sharing Contribution.”

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer, effective as of the date set forth herein.

By: /s/ Timothy J. Verhagen

Timothy J. Verhagen
Vice President of Human Resources

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Exhibit 10.fff

Adopted pursuant to resolutions of the Cinergy Corp.
Benefits Committee on December 16, 2003

AMENDMENT TO THE
CINERGY CORP. UNION EMPLOYEES' 401(K) PLAN

The Cinergy Corp. Union Employees' 401(k) Plan, as amended and restated effective January 1, 2003, is hereby amended, effective as of January 1, 2004.

Explanation of Amendment

The amendment (i) provides that the portion of each participant's Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock is to be at all times fully vested, (ii) permits investment diversification at any time with respect to the portion of each participant's Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock and (iii) clarifies when investment diversification is permitted with respect to Profit Sharing Contributions made to the Plan.

Amendment

- (a) Section 5.2 of the Plan is hereby amended and restated in its entirety to provide as follows:

"5.2 Profit Sharing Contributions Account.

A Member shall be fully vested and have a nonforfeitable interest in his Profit Sharing Contributions Account upon the earlier of (i) completion of three Years of Service or (ii) after reaching age 65 while an Employee. Notwithstanding the immediately preceding sentence, a Member shall at all times be fully vested and have a nonforfeitable interest in that portion of his Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock."

- (b) Section 7.2(b) of the Plan is hereby amended and restated in its entirety to provide as follows:

"(b) Investment Transfers. Except as otherwise provided in this section, assets in the Member's Matching Contributions Account and Profit Sharing Contributions Account will remain invested in the Cinergy Stock Fund until distributed under Article 6, and may not be reallocated among the Investment Funds.

- (1) A Member who has attained age 50 may reallocate assets in the Matching Contributions Account and Profit Sharing Contributions Account among the Investment Funds, in accordance with the provisions of Subsection 7.1(b).

- (2) At any time a Member may reallocate among the Investment Funds, in accordance with the provisions of Subsection 7.1(b), that portion of his Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock.
- (3) At any time after March 1 of the third Plan Year following the Plan Year during which a Profit Sharing Contribution is made on behalf of a Member, the Member may reallocate among the Investment Funds, in accordance with the provisions of Subsection 7.1(b), that portion of his Profit Sharing Contributions Account that is attributable to such Profit Sharing Contribution."

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer, effective as of the date set forth herein.

By: /s/ Timothy J. Verhagen

Timothy J. Verhagen
Vice President of Human Resources

EX-10.III 18 a04-1370_1ex10diii.htm EX-10.III

Exhibit 10.iii

Adopted pursuant to resolutions of the Cinergy Corp.
Benefits Committee on December 16, 2003

AMENDMENT TO THE
CINERGY CORP. UNION EMPLOYEES' SAVINGS INCENTIVE PLAN

The Cinergy Corp. Union Employees' Savings Incentive Plan, as amended and restated effective January 1, 2003, is hereby amended, effective as of January 1, 2004.

Explanation of Amendment

The amendment (i) provides that the portion of each participant's Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock is to be at all times fully vested, (ii) permits investment diversification at any time with respect to the portion of each participant's Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock and (iii) clarifies when investment diversification is permitted with respect to Profit Sharing Contributions made to the Plan.

Amendment

- (a) Section 5.2 of the Plan is hereby amended and restated in its entirety to provide as follows:

"5.2 Profit Sharing Contributions Account.

A Member shall be fully vested and have a nonforfeitable interest in his Profit Sharing Contributions Account upon the earlier of (i) completion of three Years of Service or (ii) after reaching age 65 while an Employee. Notwithstanding the immediately preceding sentence, a Member shall at all times be fully vested and have a nonforfeitable interest in that portion of his Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock."

- (b) Section 7.2(b) of the Plan is hereby amended and restated in its entirety to provide as follows:

"(b) **Investment Transfers.** Except as otherwise provided in this section, assets in the Member's Matching Contributions Account and Profit Sharing Contributions Account will remain invested in the Cinergy Stock Fund until distributed under Article 6, and may not be reallocated among the Investment Funds.

- (1) A Member who has attained age 50 may reallocate assets in the Matching Contributions Account and Profit Sharing Contributions Account among the Investment Funds, in accordance with the provisions of Subsection 7.1(b).

- (2) At any time a Member may reallocate among the Investment Funds, in accordance with the provisions of Subsection 7.1(b), that portion of his Profit Sharing Contributions Account that is attributable to dividends on Cinergy Stock.
- (3) At any time after March 1 of the third Plan Year following the Plan Year during which a Profit Sharing Contribution is made on behalf of a Member, the Member may reallocate among the Investment Funds, in accordance with the provisions of Subsection 7.1(b), that portion of his Profit Sharing Contributions Account that is attributable to such Profit Sharing Contribution."

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer, effective as of the date set forth herein.

By: /s/ Timothy J. Verhagen

Timothy J. Verhagen
Vice President of Human Resources

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CINERGY CORP. EXCESS PROFIT SHARING PLAN

(Effective as of January 1, 2003)

(Note: This Table of Contents is not part of the Cinergy Corp. Excess Profit Sharing Plan; instead, this Table of Contents is merely for convenience of reference.)

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CINERGY CORP. EXCESS PROFIT SHARING PLAN

ARTICLE I
NATURE AND PURPOSE OF PLAN

- 1.1 **Type of Plan.** The name of this Plan is the Cinergy Corp. Excess Profit Sharing Plan, effective January 1, 2003. The Plan is maintained by the Company as an unfunded, nonqualified deferred compensation plan for a select group of the Employer's management or highly-compensated employees.
- 1.2 **Purpose of Plan.** The purpose of the Plan is to restore the additional employer profit sharing contributions that an Eligible Employee would have received under the Qualified Plan if the limitations of Code Subsection 415(c) and Code Paragraph 401(a)(17) were not imposed to limit the Eligible Employee's employer profit sharing contributions under the Qualified Plan.

ARTICLE II
DEFINITIONS AND RULES OF CONSTRUCTION

- 2.1 **Definitions.** As used in the Plan, the following words and phrases, when capitalized, have the following meanings except when used in a context that plainly requires a different meaning:
- (a) "Account" means the record of a Participant's total interest in the Plan.
 - (b) "Beneficiary" means, with respect to a Participant, the person or persons designated pursuant to Section 5.4 to receive benefits under the Plan in the event of the Participant's death.
 - (c) "Board of Directors" means the duly constituted board of directors of the Company on the applicable date.
 - (d) "Change in Control" means an event described in Subsection 5.2(c).
 - (e) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and interpretive rules and regulations thereunder.
 - (f) "Committee" means a committee composed of those members of the Compensation Committee of the Board of Directors who are not Participants in the Plan. To the extent authority to administer the Plan has been delegated to the Cinergy Corp. Benefits Committee, the term "Committee" shall mean the Cinergy Corp. Benefits Committee.
 - (g) "Company" means Cinergy Corp., a Delaware Corporation, and any corporation that shall succeed to its business and adopt the Plan.

- (h) "Effective Date" means January 1, 2003.
- (i) "Eligible Employee" means a management or highly compensated Employee who is selected by the Committee to participate in this Plan.
- (j) "Employee" means any person who is classified by the Employer as an employee, including officers of the Company or a Related Employer.
- (k) "Employer" means the Company and any Related Employer.
- (l) "Employer Profit Sharing Contribution" means, with respect to a Participant, the contribution made by the Employer on behalf of a Participant pursuant to Section 3.2.
- (m) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and interpretative rules and regulations thereunder.
- (n) "Insolvent" means, with respect to the Company, the Company being unable to pay its debts as they are due, or the Company being subject to a pending proceeding as a debtor under the United States Bankruptcy Code.
- (o) "Investment Options" means, with respect to any period, the investment options that the Committee makes available to Participants under the Plan. The Committee, in its sole discretion, may from time to time establish procedures under which one or more Investment Options are made available, in accordance with terms and conditions established by the Committee, only to certain Participants and/or only for certain periods.
- (p) "Participant" means an Eligible Employee or former Eligible Employee who has an interest in the Plan pursuant to Section 3.2.
- (q) "Plan" means this instrument, as amended from time to time, and the nonqualified deferred compensation plan so established.
- (r) "Plan Year" means a calendar year commencing on or after January 1, 2003.
- (s) "Qualified Plan" means collectively the defined contribution plan(s) intended to meet the qualification requirements of Code Subsection 401(a) that the Committee, in its sole discretion, may designate from time to time, and which shall initially be limited to the Cinergy Corp. Non-Union Employees' 401(k) Plan.

- (t) "Rabbi Trust" means the grantor trust that the Company, in its sole discretion, may establish pursuant to Subsection 4.4(b) for the deposit of funds to be used for the Employers' purpose of paying benefits accrued under the Plan, subject to the claims of the Employers' general creditors in the event that any Employer becomes Insolvent.
 - (u) "Related Employer" means any Employer that, together with the Company, is under common control or a member of an affiliated service group, as determined under Code Subsections 414(b), (c), (m), and (o).
 - (v) "Termination of Employment" means, with respect to a Participant, the cessation of the relationship of Employer and Employee between the Participant and the Employer for any reason other than the Participant's death. A Participant shall not be treated as having incurred a Termination of Employment until the employment relationship between the Participant and all Related Employers has terminated.
 - (w) "Trustee" means the trustee of the Rabbi Trust that the Company, in its sole discretion, may establish pursuant to Subsection 4.4(b).
- 2.2 Rules of Construction. The following rules of construction shall govern in interpreting the Plan. The provisions of this Plan shall be construed and governed in all respects under and by the internal laws of the State of Ohio, to the extent not preempted by federal law. Words used in the masculine gender shall be construed to include the feminine gender, where appropriate, and vice versa. Words used in the singular shall be construed to include the plural, where appropriate, and vice versa. The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan. If any provision of the Plan shall be held to be illegal or invalid for any reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

ARTICLE III ELIGIBILITY AND PARTICIPATION

- 3.1 Eligibility. Participation in the Plan is limited to Eligible Employees. It is intended that participation be limited to Employees who will qualify as members of a "select group of management or highly compensated employees" under Title I of ERISA.
- 3.2 Employer Profit Sharing Contributions. If an Eligible Employee is credited with an employer profit sharing contribution under the Qualified Plan for a Plan Year, to the extent applicable the Employer shall credit an Employer Profit Sharing Contribution to the Participant's Account equal to the additional employer profit sharing contribution that the Eligible Employee would have had credited to his

account in the Qualified Plan for the Plan Year if the limitations of Code Subsection 415(c) and Code Paragraph 401(a)(17) were not imposed to limit the Eligible Employee's employer profit sharing contribution under the Qualified Plan.

- 3.3 Cessation of Participation. Any Participant who ceases to be an Eligible Employee, but continues to be an Employee, shall cease to be eligible to receive contributions under this Article but shall continue to have an Account, shall continue to be credited with earnings and losses on his Account under Section 4.2 (until the Account is fully distributed pursuant to Article V) and shall be entitled to receive benefits under Article V.

ARTICLE IV PARTICIPANTS' ACCOUNT

- 4.1 Establishment of Account. The Committee shall create and maintain adequate records to disclose the interest in the Plan of each Participant and Beneficiary. Records shall be in the form of individual bookkeeping accounts, which shall be credited with contributions pursuant to Sections 3.2 and earnings and losses pursuant to Section 4.2, and debited with any payments pursuant to Article V. The Participant shall have the same vested interest in his Account under the Plan as he has with respect to employer profit sharing contributions under the Qualified Plan, and all determinations regarding the Participant's vested interest in his Account under the Plan shall be made by the Committee in accordance with the terms of the Qualified Plan. Notwithstanding the preceding sentence, the Participant's interest in his Account shall be subject to the claims of the Employers' general creditors in the event the Employer becomes Insolvent.

4.2 Earnings and Losses.

- (a) Deemed Investment of Accounts. During each Plan Year, a Participant's Account shall be credited with earnings and losses as though they are invested, pursuant to Subsection (b), Subsection (c) or both, as applicable, in one or more of the Investment Options. The deemed investment of a Participant's Account among the Investment Options is solely the measure of the investment performance of the Account. It does not give the Participant any ownership interest in any Investment Option, nor does it bind the Company, the Committee, or the Trustee as to the investment of any Rabbi Trust or any other amounts represented by the Account.
- (b) Initial Deemed Investment. Each Employer Profit Sharing Contribution initially shall be deemed invested in such Investment Option(s) as the Committee, in its sole discretion, may from time to time designate in investment procedures, and which initially shall be the Investment Option known as the Cinergy Corp. Common Stock Fund. The Employer Profit Sharing Contribution for each Plan Year and earnings and losses thereon

shall remain deemed invested in such Investment Option(s) until the Employer Profit Sharing Contribution for the Plan Year (and earnings thereon) becomes subject to Participant direction, which shall occur at such time or times as the Committee, in its sole discretion, may from time to time prescribe in investment procedures, and which initially shall be the earlier of (i) the date on which the Participant attains age 50 or (ii) the date that is three years from the date that the Employer Profit Sharing Contribution for the Plan Year is credited to the Participant's Account. An Employer Profit Sharing Contribution that is subject to Participant direction shall be deemed invested in accordance with Subsection (c).

- (c) Election Procedure. Each Participant may make elections, on a form provided by the Committee, to allocate the portion, if any, of his Account that is subject to Participant direction among the Investment Options. If the Participant fails to make an election with respect to his Account, he shall be deemed to have elected to allocate the portion of his Account that is subject to Participant direction to the Investment Option(s) as the Committee, in its sole discretion, may from time to time designate in investment procedures. The Committee, in its sole discretion, may establish from time to time investment procedures for a Participant to change his Investment Option designations (for his future amounts subject to Participant direction, his existing amounts subject to Participant direction, or both). Until a Participant timely files a new investment election form, his prior Investment Option designations shall control.

4.3 Credits to Account. The Employer Profit Sharing Contribution shall be credited to a Participant's Account in terms of cash on the same date(s) as employer profit sharing contributions are credited to participants' accounts under the Qualified Plan.

4.4 Accounts Unfunded.

- (a) Accounts shall be accounting accruals, in the names of Participants, on the Employer's books. Accounts shall be unfunded, so that the Employer's obligation to pay benefits under the Plan is merely a contractual duty to make payments when due under the Plan. The Employer's promise to pay benefits under the Plan shall not be secured in any way, and except as provided in Subsection (b), the Company shall not set aside or segregate assets for the purpose of paying amounts credited to Participants' Account.
- (b) Notwithstanding the provisions of Subsection (a), the Company, in its sole discretion, may establish a Rabbi Trust. The Employer, in its sole discretion, may make such contributions to the Rabbi Trust as the Committee determines are appropriate to enable the Employer to pay benefits under the Plan. Any Rabbi Trust established under this Section

shall be created pursuant to a written trust document that conforms to the model form of rabbi trust agreement approved by the Internal Revenue Service in Revenue Procedure 92-64 (as amended from time to time).

ARTICLE V
DISTRIBUTION OF BENEFITS

5.1 General Distribution Rules.

- (a) General Provisions. Except as otherwise provided in Sections 5.2 and Section 5.3, a Participant's Account shall be distributed to the Participant (or to his Beneficiary in the event of his death) as provided in this Section.
- (b) Participant's Election. A Participant may elect, on a form provided by the Committee and from among the options described in this Section, the form for the payment of his Account. Notwithstanding the payment terms designated by a Participant on any prior election form, a Participant may elect to change the form of payment of his Account to a form of payment otherwise permitted under this Section; provided that such election shall be made on a form provided by the Committee, and provided further that any such election made less than one year prior to the Participant's Termination of Employment shall not be valid, and in such case, the distribution of his Account shall be made in accordance with the latest valid election or elections of the Participant.
 - (1) Form of Distribution. A Participant may elect to have his contributions (and attributable earnings) for a Plan Year distributed in one of the following forms:
 - (A) A lump sum payment; or
 - (B) Substantially equal annual installments over a specified number of two to ten years.
 - (2) Time of Distribution. Distribution of a Participant's interest in his Account shall commence as soon as reasonably practicable after the earlier of the Participant's death or his Termination of Employment. Subsequent installments shall be payable on or as soon as administratively feasible following the first business day of each succeeding year.
- (c) Default Procedure. If a Participant fails to make an election pursuant to this Section, then, except as otherwise provided in Section 5.2 and Section 5.3, the Participant's Account (and attributable earnings) shall be distributed in five substantially equal annual installments commencing as

soon as reasonably practicable after the earlier of the Participant's death or his Termination of Employment.

- (d) Distribution in Cash. All distributions from the Plan shall be made in the form of cash.
- (e) Small Accounts. Notwithstanding a Participant's election regarding the form of payment of his Account, in the event that a Participant's Account has an aggregate value of less than \$50,000 as of his Termination of Employment, the Committee shall have the discretion to distribute the Participant's entire interest in his Account in a single lump sum payment in cash.

5.2 Distribution Upon a Change in Control.

- (a) Election for a Lump Sum Payment. Each Participant who is designated as a "Selected Participant" by the Committee of the Company (a "Selected Participant") shall be entitled to make a special payment election in accordance with the provisions of this Section 5.2(a).
 - (i) Distribution Pursuant to Special Payment Election. A Selected Participant may elect, on a form provided by the Committee, to receive a distribution of his Account in a single lump sum payable no later than 30 days after the later of (1) the occurrence of a Change in Control or (2) the date of his Termination of Employment.
 - (ii) Effectiveness of Special Payment Election. An election made pursuant to this Section 5.2(a) shall become operative only upon the occurrence of a Change in Control. Once operative, an election made pursuant to this Section 5.2(a) shall override any other payment election made by the Selected Participant pursuant to Section 5.1(b), but only if the Selected Participant's Termination of Employment occurs either (1) prior to the occurrence of a Change in Control or (2) during the 24-month period commencing upon the occurrence of a Change in Control.
 - (iii) Deadline for Special Payment Election. In order to be effective, an election made pursuant to this Section 5.2(a) must be made either:
 - (1) Prior to the occurrence of a Potential Change in Control; or
 - (2) With the consent of the Committee, during the thirty-day period commencing upon the occurrence of a Potential Change in Control.

In the event that a Potential Change in Control occurs and subsequently ceases to exist, other than as a result of a Change in Control, such Potential Change in Control shall be disregarded for purposes of this Section 5.2(a)(iii).

- (iv) Withdrawal of Special Payment Election. A Selected Participant may withdraw, on a form provided by the Committee, a special payment election made by him pursuant to this Section 5.2 (a) at anytime specified in Section 5.2(a)(iii)(1) or (2).
- (b) Committee Discretion for a Lump Sum Payment. Notwithstanding any other Section, if a Change in Control occurs, the Committee in its sole discretion may elect to accelerate the distribution of a Participant's Account so that a Participant's Account shall be distributed to the Participant (or, in the event of his death, to his Beneficiary) in a single lump sum payment no later than 30 days after the Change in Control occurs.
- (c) Definition of Change in Control. A "Change in Control" of the Company will be deemed to have occurred if any of the following events occur:
 - (i) Any Person is or becomes the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended ("1934 Act")), directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its affiliates) representing more than twenty percent (20%) of the combined voting power of the Company's then outstanding securities, excluding any Person who becomes such a beneficial owner in connection with a transaction described in Clause (1) of Paragraph (ii) below; or
 - (ii) There is consummated a merger or consolidation of the Company or any direct or indirect subsidiary of the Company with any other corporation, partnership or other entity, other than (1) a merger or consolidation that would result in the voting securities of the Company outstanding immediately prior to that merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least sixty percent (60%) of the combined voting power of the securities of the Company or the surviving entity or its parent outstanding immediately after the merger or consolidation, or (2) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person is or becomes the beneficial owner, directly or indirectly, of securities of the Company (not including in the

securities beneficially owned by such a Person any securities acquired directly from the Company or its affiliates other than in connection with the acquisition by the Company or its affiliates of a business) representing twenty percent (20%) or more of the combined voting power of the Company's then outstanding securities; or

- (iii) During any period of two (2) consecutive years, individuals who at the beginning of that period constitute the Board of Directors and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Company's stockholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of that period or whose appointment, election, or nomination for election was previously so approved or recommended cease for any reason to constitute a majority of the Board of Directors; or
 - (iv) The stockholders of the Company approve a plan of complete liquidation or dissolution of the Company or there is consummated a sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least sixty percent (60%) of the combined voting power of the voting securities of which are owned by stockholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to the sale.
- (d) Definition of Potential Change in Control. A "Potential Change in Control" means any period during which any of the following circumstances exist:
- (i) The Company enters into an agreement, the consummation of which would result in the occurrence of a Change in Control; provided that a Potential Change in Control shall cease to exist upon the expiration or other termination of such agreement; or
 - (ii) The Company or any Person publicly announces an intention to take or to consider taking actions which, if consummated, would constitute a Change in Control; provided that a Potential Change in Control shall cease to exist when the Company or such Person publicly announces that it no longer has such an intention; or
 - (iii) Any Person who is or becomes the beneficial owner (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of securities

of the Company representing ten percent (10%) or more of the combined voting power of the Company's then outstanding securities, increases such Person's beneficial ownership of such securities by an amount equal to five percent (5%) or more of the combined voting power of the Company's then outstanding securities; or

- (iv) The Board of Directors adopts a resolution to the effect that, for purposes hereof, a Potential Change in Control has occurred.

Notwithstanding anything herein to the contrary, a Potential Change in Control shall cease to exist not later than the date that (i) the Board of Directors determines that the Potential Change in Control no longer exists, or (ii) a Change in Control occurs.

- (e) Definition of Person. "Person" has the meaning set forth in paragraph 3(a)(9) of the 1934 Act, as modified and used in subsections 13(d) and 14(d) of the 1934 Act; however, a Person will not include the following: (1) the Company or any of its subsidiaries or affiliates; (2) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any of its subsidiaries or affiliates; (3) an underwriter temporarily holding securities pursuant to an offering of those securities; or (4) a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

5.3 Death Benefits. In the event that a Participant dies before his Account is completely distributed, his Beneficiary shall be entitled to a death benefit equal to the amount credited to the Participant's Account immediately before his death. The form and timing of the payment of the death benefit shall be determined pursuant to Section 5.1.

5.4 Designation of Beneficiary. A Participant's Beneficiary shall be the person or persons, including a trustee, designated by the Participant pursuant to the practices of, or rules prescribed by, the Committee, as the recipient of any benefits payable under the Plan following the Participant's death. To be effective, a Beneficiary designation must be filed with the Committee during the Participant's life on a form prescribed by the Committee; provided, however, that finalized divorce or marriage (other than a common law marriage) shall automatically revoke a previously filed Beneficiary designation, unless in the case of divorce the former spouse was not designated as the Beneficiary or in the case of marriage the Participant's new spouse is already the designated Beneficiary. If the Participant designates more than one Beneficiary, any payments under this Article to each Beneficiary shall be made in equal shares unless the Participant has designated otherwise, in which case the payments shall be made in the shares designated by the Participant. If no person has been

designated as the Participant's Beneficiary, if a Participant's Beneficiary designation has been revoked by marriage or divorce, or if no person designated as Beneficiary survives the Participant, the Participant's estate shall be his Beneficiary.

ARTICLE VI
ADMINISTRATION

- 6.1 **Administrator.** The Cinergy Corp. Benefits Committee shall be the Administrator of the Plan. All decisions of the Committee shall be by a vote of a majority of its members and shall be final and binding.
- 6.2 **Notices.** Any notice or filing required or permitted to be given to the Committee under the Plan shall be sufficient if it is in writing and is hand delivered, or sent by registered or certified mail, to any member of the Committee or its designate. The notice or filing shall be deemed made as of the date of delivery, or if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.
- 6.3 **Powers and Duties of the Committee.** Subject to the specific limitations stated in this Plan, the Committee shall have the following powers, duties, and responsibilities: to carry out the general administration of the Plan; to cause to be prepared all forms necessary or appropriate for the administration of the Plan; to keep appropriate books and records; to determine amounts to be distributed to Participants and Beneficiaries under the provisions of the Plan; to determine, consistent with the provisions of this instrument, all questions of eligibility, rights, and status of Participants and Beneficiaries under the Plan; to issue, amend, and rescind rules relating to the administration of the Plan, to the extent those rules are consistent with the provisions of this document; to exercise all other powers and duties specifically conferred upon the Committee elsewhere in this document; and to interpret, with discretionary authority, the provisions of this Plan and to resolve, with discretionary authority, all disputed questions of Plan interpretation and benefit eligibility.

ARTICLE VII
AMENDMENT AND TERMINATION

- 7.1 **Amendment.** The Company reserves the right to amend the Plan at any time by action of the Board of Directors or the Committee. The Company, however, may not make any amendment that reduces a Participant's benefits accrued as of the date of the amendment unless the Participant consents in writing to the amendment. Notwithstanding the foregoing, the Company may not amend any of the provisions of Section 5.2 within three years of a Change in Control.
- 7.2 **Termination.** The Company reserves the right to terminate the Plan, by action of the Board of Directors or the Committee, at any time it deems appropriate. Upon

termination of the Plan, no further contribution shall be made to the Plan. Subject to Section 5.2, distribution following termination of the Plan shall be made at the time and under the terms and conditions as the Company, in its sole discretion, shall determine, which shall commence no later than the earlier of a Participant's death or Termination of Employment.

ARTICLE VIII
MISCELLANEOUS

- 8.1 Relationship. Notwithstanding any other provision of this Plan, this Plan and action taken pursuant to it shall not be deemed or construed to establish a trust or fiduciary relationship of any kind between or among the Company, Participants, Beneficiaries or any other persons. The Plan is intended to be unfunded for purposes of the Code and ERISA. The rights of Participants and Beneficiaries to receive payment of deferred compensation under the Plan is strictly a contractual right of payment, and this Plan does not grant, nor shall it be deemed to grant Participants, Beneficiaries, or any other person any interest or right to any of the funds, property, or assets of the Employer other than as an unsecured general creditor of the Employer.
- 8.2 Other Benefits and Plans. Nothing in this Plan shall be deemed to prevent Participants from receiving, in addition to the benefits provided for under this Plan, any funds that may be distributable to them at any time under any other present or future retirement or incentive plan of the Employer.
- 8.3 Anticipation of Benefits. Neither Participants nor Beneficiaries shall have the power to transfer, assign, anticipate, pledge, alienate, or otherwise encumber in advance any of the payments that may become due under this Plan, and any attempt to do so shall be void. Any payments that may become due under this Plan shall not be subject to attachment, garnishment, execution, or be transferable by operation of law in the event of bankruptcy, insolvency, or otherwise.
- 8.4 No Guarantee of Continued Employment. Nothing contained in this Plan or any action taken under the Plan shall be construed as a contract of employment or as giving any Participant any right to be retained in employment with the Employer. The Employer specifically reserves the right to terminate any Participant's employment at any time with or without cause, and with or without notice or assigning a reason, subject to the terms of any written employment agreement between the Participant and the Employer.
- 8.5 Waiver of Breach. The Company's or the Committee's waiver of any Plan provision shall not operate or be construed as a waiver of any subsequent breach by the Participant.

- 8.6 Protective Provisions. Each Participant shall cooperate with the Company and the Committee by furnishing any and all information requested by the Company or the Committee in order to facilitate the payment of benefits under the Plan, and by taking any other relevant action as may be requested by the Company or the Committee. If any Participant refuses so to cooperate, the Company shall have no further obligation to the Participant or his Beneficiary under this Plan, other than to distribute to the Participant the cumulative contributions that have been made on his behalf, pursuant to the Plan; provided, however, that the Committee may determine that benefits may be payable in an amount reduced to compensate the Company for any loss, cost, damage, or expense suffered or incurred by the Company as a result in any way of the Participant's action or failure to act.
- 8.7 Benefit. This Plan shall be binding upon and inure to the benefit of the Employer and its successors and assigns.
- 8.8 Responsibility for Legal Effect. Neither the Committee nor the Company makes any recommendations or warranties, express or implied, or assumes any responsibility concerning the legal context or other implications or effects of this Plan.
- 8.9 Tax Withholding. The Employer shall withhold from any contributions or from any payment made under the Plan such amount or amounts as may be required by applicable federal, State, or local laws.

Cinergy Corp. has caused this document to be executed by its duly authorized officer, as of the 20th day of December, 2002.

By: /s/ Timothy J. Verhagen
Timothy J. Verhagen
Vice President
Human Resources

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(NOTE: THIS TABLE OF CONTENTS IS NOT PART OF THE CINERGY CORP. EXCESS PENSION PLAN; INSTEAD, THIS TABLE OF CONTENTS IS MERELY FOR CONVENIENCE OF REFERENCE.)

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Adopted by the Board of Directors

CINERGY CORP.
EXCESS PENSION PLAN

(As Amended and Restated Effective January 1, 1998)

INTRODUCTION

Effective January 1, 1986, PSI Energy, Inc. (formerly Public Service Company of Indiana, Inc. ("PSI")), adopted an excess benefit plan intended to provide to employees benefits that were above the level of benefits available under PSI's qualified pension plan. This plan was originally named the "PSI Energy, Inc. Supplemental Pension Plan." Effective January 1, 1989, the Plan was restated and renamed the "PSI Energy, Inc. Excess Benefit Plan."

As a result of a corporate reorganization and merger that became effective October 24, 1994 (the "Merger"), PSI and The Cincinnati Gas & Electric Company ("CG&E") became wholly-owned subsidiaries of Cinergy Corp. ("Cinergy"), a public utility holding company under the Public Utility Holding Company Act of 1935. Effective January 1, 1997, the PSI Energy, Inc. Excess Benefit Plan was renamed the "Cinergy Corp. Excess Pension Plan" (the "Plan"), and the Plan became applicable to Cinergy and any employer (as defined in the Plan) that adopts the Plan with the consent of Cinergy. PSI became a participating employer effective January 1, 1986. CG&E, Union Light, Heat & Power Company, and Lawrenceburg Gas Company became participating employers effective January 1, 1997, and Cinergy Resources, Inc., Cinergy Services, Inc., Cinergy Capital & Trading, Inc., and Cinergy Solutions, Inc. became participating employers effective January 1, 1998.

The purpose of the Plan is to restore benefits earned, but not available, to certain Employees because of certain legal limits imposed on qualified retirement plan benefits by the Code. The Plan is a nonqualified plan.

This document is a continuation of and complete restatement of the Plan. The Plan, as effective January 1, 1998, is set forth in its entirety.

ARTICLE 1
DEFINITIONS

As used in the document, the following words and phrases, when capitalized, will have the meanings set forth below, unless a different meaning is plainly required by the context:

- 1.1 "Actuarial Equivalent" means "Actuarial Equivalent" as defined in Cinergy's Pension Plan.
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- 1.2 "Affiliate" means any employer that together with an Employer is under common control or a member of an affiliated service group as determined under Code subsections 414(b), (c), (m) and (o).
- 1.3 "Beneficiary" means, with respect to each Participant, the person or persons who are entitled to receive benefits under the Plan after the Participant's death.
- 1.4 "Board of Directors" means the duly constituted board of directors of Cinergy on the applicable date.
- 1.5 "Change in Control" means "Change in Control" as defined in Cinergy's Pension Plan.
- 1.6 "Cinergy" means Cinergy Corp., a Delaware corporation, and any corporation that succeeds to its business and adopts the Plan.
- 1.7 "Cinergy's Pension Plan" means the Code qualified pension plan known as the "Cinergy Corp. Non-Union Employees' Pension Plan," as amended from time to time.
- 1.8 "Claimant" means a person submitting a claim for benefits under the Plan.
- 1.9 "Code" means the Internal Revenue Code of 1986, as amended from time to time, and interpretive rulings and regulations.
- 1.10 "Committee" means the benefits committee established pursuant to Article 8 (Administration) to serve as administrator of the Plan.
- 1.11 "Contingent Annuitant" means, with respect to any Participant electing a contingent pension option under Cinergy's Pension Plan, the person designated by the Participant to receive a contingent pension after the Participant's death.
- 1.12 "Employee" means any person employed by an Employer.
- 1.13 "Employer" means Cinergy and any Affiliate which, with the consent of the Board of Directors, elects to participate in the Plan pursuant to Section 15.1 (Adoption of Plan) and any successor corporation or other organization or entity that adopts the Plan pursuant to Article 16 (Continuance by a Successor). If an Affiliate withdraws from participation in the Plan pursuant to Section 15.2 (Withdrawal from Participation), that Affiliate will cease to be an Employer.
- 1.14 "Insolvent" means, with respect to Cinergy, Cinergy being unable to pay its debts as they are due, or Cinergy being subject to a pending proceeding as a debtor under the United States Bankruptcy Code.
- 1.15 "Maximum Benefit" means the monthly equivalent of the maximum benefit permitted after applying Code subsections 415(b) and (e) and Code paragraph 401(a)(17) payable to a Participant under Cinergy's Pension Plan.

- 1.16 "Participant" means any Employee who has met the eligibility requirements set forth in Article 3 (Eligibility and Participation) and for whom benefits are to be provided under the Plan.
- 1.17 "Plan" means the unfunded excess pension plan known as the "Cinergy Corp. Excess Pension Plan," as amended from time to time. Effective January 1, 1998, this document sets forth the Plan.
- 1.18 "Plan Year" means the calendar year.
- 1.19 "Rabbi Trust" means the grantor trust that Cinergy, in its sole discretion, may establish pursuant to Article 10 (Funding Policy and Method) for the deposit of funds to be used for the exclusive purpose of paying benefits accrued under the Plan, subject to the claims of Cinergy's general creditors in the event Cinergy becomes Insolvent.
- 1.20 "Retirement Date" means, with respect to any Participant, the same date as the Participant's "normal retirement date," "early retirement date," or "severance from service date" (as those terms are defined in Cinergy's Pension Plan), whichever is applicable to the Participant, under Cinergy's Pension Plan.
- 1.21 "Spouse" means, with respect to any Participant, the Participant's lawfully married Spouse, if any, on the applicable date. The Plan will not recognize common law marriages or similar arrangements unless required to do so by federal law.
- 1.22 "Unrestricted Benefit" means, with respect to any Participant, the monthly equivalent of the benefit to which the Participant would have been entitled under Cinergy's Pension Plan, if that benefit had been determined without regard to the limitations imposed on qualified retirement plan benefits under Code subsections 415(b) and (e), and the limitation imposed on qualified retirement plan compensation under Code paragraph 401(a)(17).

The uses of singular and masculine words are for practical purposes only and will be deemed to include the plural and feminine, respectively, unless the context plainly indicates a distinction. Certain other definitions, as required, appear in the following Articles of the Plan.

ARTICLE 2

EFFECTIVE DATE OF PLAN

The effective date of this restated Plan is January 1, 1998, as to Cinergy and will be effective with respect to any other Employer as of the date that Employer elects to participate in the Plan pursuant to Article 15 (Participation by Other Employers).

This restated Plan applies only to Employees who are credited with at least one "hour of service" (as defined in Cinergy's Pension Plan) on or after January 1, 1998. This restated Plan will not affect the rights of former Participants (and their Beneficiaries) who retired, died, or

otherwise terminated their employment with an Employer prior to January 1, 1998. The rights, if any, of those former Participants (and their Beneficiaries), and the amount of their benefits, if any, will be governed by the Plan's provisions as the same were in effect prior to January 1, 1998.

ARTICLE 3
ELIGIBILITY AND PARTICIPATION

Any Employee who is a participant in Cinergy's Pension Plan on or after January 1, 1986, and whose Unrestricted Benefit would exceed his Maximum Benefit, is eligible to participate in the Plan.

ARTICLE 4
BENEFITS

Upon a Participant's Retirement Date, the Participant will be entitled to a monthly benefit under this Plan that is equal in amount to the difference between his Unrestricted Benefit and his Maximum Benefit. The benefit payable under this Plan will be calculated after the Participant's benefits payable under Cinergy's Pension Plan are calculated, but before benefits payable under Cinergy's supplemental executive retirement plan known as the "Cinergy Corp. Supplemental Executive Retirement Plan," as amended from time to time, are calculated.

ARTICLE 5
SPOUSE'S BENEFIT

5.1 Determination of Spouse's Benefit

Upon a Participant's death, if his Spouse is entitled to receive a Spouse's benefit under Article 6 of Cinergy's Pension Plan, his Spouse will be entitled to receive an annual benefit under this Plan that is equal to the amount the Participant would have received under Article 4 (Benefits).

5.2 Method of Payment of Spouse's Benefit

Any excess pension benefits payable under this Article to a Spouse will be payable in equal monthly installments, each installment being equal to 1/12th of the annul amount as determined pursuant to this Article. If at the date of his death a Participant had reached age 50, the first monthly installment will be payable to the Participant's Spouse on the first day of the calendar month coincident with or following the date of the Participant's death, if his Spouse is then living. If at the date of his death the Participant had not reached age 50, the first monthly installment will be payable to the Participant's Spouse on the first day of the calendar month coincident with or following the date the Participant would have reached age 50, had he survived until that date if his Spouse is then living. In either event, subsequent monthly installments will

be payable on the first day of each month and will cease upon the payment of the installment due on the first day of the calendar month in which the Spouse dies.

ARTICLE 6 **MANNER OF PAYMENT**

6.1 Form of Payment

The form of an excess pension payable under the Plan to a Participant will be the same form in which the pension is payable to the Participant under Article 7 of Cinergy's Pension Plan.

6.2 Timing of Payment

The payment of a Participant's excess pension benefits under this Plan will begin as of the same date his benefits under Cinergy's Pension Plan begin.

6.3 Method of Payments

The method of payment of an excess pension payable to a Participant under the Plan will be the same method of payment applicable to the Participant under Article 8 of Cinergy's Pension Plan.

6.4 Small Benefits

Notwithstanding any other provision of the Plan, where the Actuarial Equivalent present value of a Participant's or Spouse's excess pension payable under this Plan does not exceed \$5,000, the Committee or its designee will pay the excess pension in a single-sum cash payment equal to the Actuarial Equivalent of the excess pension otherwise payable.

6.5 Facility of Payment

If any benefit under the Plan is payable to a person whom the Committee knows is a minor or otherwise under legal incapacity, the Committee or its designee may have the payment made to the legal guardian of that person or to the person or organization as a court of competent jurisdiction may direct. To the extent permitted by law, any payment under this Section will be a complete discharge of any liability under the Plan to that person.

ARTICLE 7 **NONALIENATION OF BENEFITS**

The Plan will not in any manner be liable for, or subject to, the debts or liabilities of any Participant, Beneficiary, Contingent Annuitant, Spouse, or any other person entitled to any Plan benefit. No Payee may assign any payment due him under the Plan. No pension or other

benefits at any time payable under the Plan will be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, attachment, garnishment, levy, execution, or other legal or equitable process, or encumbrance of any kind. Any attempt to alienate, sell, transfer, assign, or otherwise encumber any such benefit, whether presently or thereafter payable, will be void.

ARTICLE 8

ADMINISTRATION

8.1 Administrator

The Benefits Committee will be the administrator of the Plan. The Committee will consist of the number of members, not fewer than three, that is specified from time to time by the Board of Directors or its designee. All members of the Committee will be employees or officers of an Employer. All members of the Committee will serve without compensation.

8.2 Removal and Replacement of Committee Members

The members of the Committee will serve at the pleasure of the Board of Directors and may be removed by the Board of Directors with or without cause. Any vacancy among the members will be filled by the Board of Directors or its designee.

8.3 Disqualification and Resignation

On the date when a Committee member is neither an Employee nor an officer of an Employer, he will be disqualified from membership on the Committee. A member of the Committee may resign by delivering his written resignation to any other member of the Committee. A resignation will become effective on the date specified in the instrument of resignation.

8.4 Chairperson, Services, and Counsel

The members of the Committee will elect one of their members as Chairperson and will elect a Secretary, who may be, but need not be, one of the members of the Committee. Cinergy will provide the Committee, at Cinergy's expense, with such clerical, accounting, actuarial, and other services as may be reasonably required by the Committee in carrying out its responsibilities. The Committee may employ counsel, who may be, but need not be, counsel to Cinergy.

8.5 Meetings

The Committee will hold meetings upon such notice, at the places, and at the times as the Committee may from time to time determine.

8.6 Quorum

A majority of the members of the Committee at the time holding office will constitute a quorum for the transaction of business. All resolutions and other action taken by the Committee at any meeting will be by the vote of the majority of the members of the Committee present at the meeting.

8.7 Action Without Meeting

Any decision, order, direction, or other action made in writing signed by a majority of the members of the Committee at the time holding office will constitute valid and effective action of the Committee, whether or not the matter to which that decision, order, directions, or other action pertains had already been acted upon at a duly called and held meeting of the Committee.

8.8 Correction of Defects

The Committee may correct any defect or supply any omission or reconcile any error or inconsistency in its previous proceedings, decisions, orders, directions, or other actions in the manner and to the extent as it deems advisable to carry out the Plan's purposes.

8.9 Reliance Upon Legal Counsel

The members of the Committee, and Cinergy and its officers and directors, will be entitled to rely upon all opinions given by legal counsel selected by the Committee.

8.10 Expenses

In the performance of its duties, the Committee is authorized to incur reasonable expenses, including counsel fees, which will be paid by Employers.

8.11 Indemnification

Cinergy agrees to indemnify and hold harmless each member of the Committee against any cost, expenses, or liability (including any sum paid in settlement of any claim with the approval of the Board of Directors) arising out of any act or omission to act as a member of the Committee, except only acts and omissions representing willful misconduct, fraud, or lack of good faith.

8.12 Powers and Duties of Committee

Subject to the specific limitations stated in this document, the Committee will have the following powers, duties, and responsibilities.

- (a) to carry out the Plan's general administration;

- (b) to cause to be prepared all forms necessary or appropriate for the Plan's administration;
- (c) to keep appropriate books and records, including minutes of the Committee's meetings;
- (d) to give directions as to the amounts to be disbursed to Participant and others under the Plan's provisions;
- (e) to determine, with discretionary authority and consistent with the provisions of this document, all questions of the eligibility, rights, and status of Participants and others under the Plan;
- (f) to exercise all other powers and duties specifically conferred upon the Committee elsewhere in this document;
- (g) to interpret, with discretionary authority, the provisions of the Plan and to resolve, with discretionary authority, all disputed questions of Plan interpretation and benefit eligibility; and
- (h) to employ agents to assist it in performing its administrative duties.

The Committee will at all times make similar decisions on similar questions involving similar circumstances. Subject to the provisions of Article 9 (Benefit Claims Procedures), all decisions of the Committee made in good faith on all matters within the scope of its authority under the provisions of this document will be final and binding upon all persons.

ARTICLE 9 **BENEFIT CLAIMS PROCEDURES**

Claims for benefits under the Plan will be made in writing to the Committee or its designee. If a claim for benefits is wholly or partially denied, the Committee or its designee will notify the Claimant of the claim's denial within a reasonable period of time. The Committee or its designee is authorized to develop more fully the Plan's benefit claims procedures by establishing from time to time various rules and procedures.

Within 60 days after the Claimant's receipt of written notice of the claim's denial, the Claimant, or his duly authorized representative, may file a written request with the Committee requesting a full and fair review of the denial of the Claimant's claim for benefits. In connection with the Claimant's appeal of the denial of his claim for benefits, the Claimant may review pertinent documents in the Committee's possession and may submit issues and comments in writing. The Committee will make a decision on review promptly after receipt of the Claimant's request for review. The decision on review will be in writing and written in a manner calculated to be understood by the Claimant, and will set forth the specific reason or reasons for the decision and will contain a specific reference to the pertinent Plan provisions on which the

decision is based. If the decision on review is not furnished to the Claimant within 60 days of receipt of the request for review, the claim will be deemed denied on review.

ARTICLE 10
FUNDING POLICY AND METHOD

The Plan will be totally unfunded, so that the Employer's obligation to pay benefits under the Plan is merely a contractual duty to make payments when due under the Plan. The Employer's promise to pay benefits under the Plan will be unsecured, will be paid out of the Employer's general assets and, except as provided in the following Paragraph, Cinergy will not set aside or segregate assets for the purpose of paying benefits under the Plan.

Notwithstanding the preceding paragraph, Cinergy, in its sole discretion, may establish a Rabbi Trust. The Employer, in its sole discretion, may make such contributions to the Rabbi Trust as the Committee determines are appropriate to enable the Employer to pay benefits under the Plan. Any Rabbi Trust established under this Article will be created pursuant to a written trust document that substantially conforms to the model form of rabbi trust agreement approved by the Internal Revenue Service in Revenue Procedure 92-64 (as amended from time to time).

ARTICLE 11
CONTRIBUTIONS

No contributions to the Plan by Participants will be required or permitted under the Plan.

During the continuance of the Plan and for purposes of providing the benefits contemplated under the Plan, each Employer intends to pay out of its general assets, from time to time, those sums of money which the Committee deems sufficient to provide the benefits under the Plan.

ARTICLE 12
MISCELLANEOUS

12.1 No Enlargement of Employee Benefits

This Plan is strictly a voluntary undertaking on the part of each Employer and will not be deemed to constitute a contract between the Employer and any Employee or to be consideration for, or an inducement to, or a condition of, the employment of any Employee. Nothing contained in the Plan will be deemed to give any Employee the right to be retained in the service of any Employer or to interfere with the right of any Employer to discharge any Employee at any time. No person will have any right to benefits except to the extent provided in the Plan.

12.2 Notice of Address

Each Participant, former Participant, Beneficiary, Contingent Annuitant, and Spouse entitled to benefits under the Plan must submit to the Committee or its designee his post office address and each change of post office address. Any communication, statement or notice addressed to a person at his latest post office address as filed with the Committee or its designee will, upon deposit in the United States mail with postage prepaid, be binding upon that person for all Plan purposes, and the Committee will not be obligated to search for, or to ascertain the whereabouts of, any person, except as otherwise required by law.

12.3 Data

Participants, former Participants, Beneficiaries, Contingent Annuitants, and Spouses must furnish to the Committee or its designee any documents, evidence, or information that the Committee considers necessary or desirable for the purpose of administering the Plan, or to protect the Committee; and it will be a condition of the Plan that each person must furnish this information promptly and sign required documents before any benefits become payable under the Plan.

12.4 No Individual Liability

It is the express purpose and intention of the Plan that no individual liability whatever will attach to, or be incurred by, the shareholders, officers, or members of the board of directors of any Employer, or the Committee or its members, or any fiduciary designated pursuant to Section 8.12 (Powers and Duties of Committee), or any representative appointed by Cinergy, under or by reason of any of the terms or conditions of the Plan.

12.5 Governing Laws

The Plan will be construed and administered according to the internal laws of the State of Ohio to the extent that those laws are not preempted by federal law.

12.6 Severability

If any part of the Plan is adjudged by a court of competent jurisdiction to be contrary to the laws governing the Plan, then the Plan will, in all other respects, be and remain legally effective and binding to the full extent permissible under the law.

12.7 Interpretation and Regulation of Plan

Cinergy, by action of the Committee, reserves the right to interpret and regulate the Plan, by exercise of discretionary authority, and its interpretation and regulations will be legally effective and binding on all parties concerned.

12.8 Communication by Participants

All communications by Participants, former Participants and other concerned parties concerning the Plan must be in writing and directed to Cinergy's General Manager, Benefits, 1000 East Main Street, Plainfield, Indiana 46168.

12.9 Headings

The headings of Articles, Sections, Subsections, and Paragraphs, or other parts of the Plan are for convenience of references only and do not define, limit, construe, or otherwise affect the contents of this document.

ARTICLE 13
CONTINUED APPROVAL OF CINERGY'S PENSION PLAN

The Plan, as set forth in this document, is intended to provide retirement benefits supplemental to those provided under Cinergy's Pension Plan. The Plan's implementation and continuance are expressly conditioned upon the absence of any disqualifying effects of implementation and continuance upon Cinergy's Pension Plan under the Code. Any modification, amendment, or termination of the Plan may be made, retroactive or otherwise, as necessary or appropriate to maintain the qualification of Cinergy's Pension Plan under the Code or to otherwise cause Cinergy's Pension Plan to comply with any applicable requirements of the Employee Retirement Income Security Act of 1974, as amended from time to time.

ARTICLE 14
AMENDMENT AND TERMINATION

14.1 Authority to Amend

Cinergy, by resolution of the Board of Directors or by any person or persons duly authorized by resolution by Cinergy's Board of Directors, will have the right, authority, and power to alter, amend, modify, revoke, or terminate the Plan, and Cinergy, by resolution of the Board of Directors or by any person or persons duly authorized by resolution by the Board of Directors, will also have the right, authority, and power to terminate the Plan and to discontinue or suspend the payment of benefits under the Plan.

14.2 Merger, Consolidation, or Change in Control

If Cinergy should be reorganized by merger, consolidation, transfer of assets, or otherwise, so that a corporation, partnership, or person shall succeed to all or substantially all of Cinergy's business, or a Change in Control occurs, then the obligations and responsibilities of Cinergy under the Plan will be assumed by any successor, acquiring corporation, or controlling entity, and all of the rights, privileges, and benefits of the Participants under the Plan will continue. Notwithstanding the provisions of Section 14.1 (Authority to Amend), the provisions

of this Section may not be amended by an amendment to the Plan effective within three years of the occurrence of any of the events described in the preceding sentence.

ARTICLE 15
PARTICIPATION BY OTHER EMPLOYERS

15.1 Adoption of the Plan

With Cinergy's consent, any Affiliate may become a participating Employer under the Plan by (a) taking any action necessary to adopt the Plan, (b) filing with Cinergy a duly certified copy of the Plan as adopted by the Affiliate, and (c) executing and delivering any documents and taking any other action as may be necessary or desirable to put the Plan into effect with respect to that corporation or entity.

15.2 Withdrawal from Participation

Any Employer, may with Cinergy's consent, withdraw from participation in the Plan at any time by filing with Cinergy a duly certified copy of a resolution of its board of directors to that effect and giving notice of its intended withdrawal to Cinergy prior to the effective date of withdrawal.

15.3 Cinergy as Agent for Employers

Each Affiliate that becomes a participating Employer pursuant to Section 15.1 (Adoption of the Plan) or Article 16 (Continuance by a Successor) by so doing will be deemed to have appointed Cinergy its agent to exercise on its behalf all of the powers and authorities conferred upon Cinergy by the terms of the Plan, including, but not limited to, the power to amend and terminate the Plan. Each Employer must, from time to time, upon Cinergy's request, furnish to Cinergy any data and information as Cinergy requires in the performance of its duties.

ARTICLE 16
CONTINUANCE BY A SUCCESSOR

If Cinergy or any other Employee is reorganized by way of merger, consolidation, transfer of assets, or otherwise, so that a corporation, partnership, or person other than an Employer succeeds to all or substantially all of an Employer's business, the successor may be substituted for the Employer under the Plan by adopting the Plan. Benefit payments by the Employer will be automatically suspended from the effective date of any reorganization until the date upon which the substitution of the successor corporation for the Employer under the Plan becomes effective. If, within 90 days following the effective date of any reorganization, the successor has not elected to become a party to the Plan, or if the Employer adopts a plan of complete liquidation other than in connection with a reorganization, the Plan will be automatically terminated with respect to employees of that Employer as of the close of business

on the 90th day following the effective date of the reorganization or as of the close of business on the date of adoption of the plan of complete liquidation, as the case may be.

IN WITNESS WHEREOF, Cinergy Corp. has caused this Plan document to be executed and approved by its duly authorized officers, effective as of January 1, 1998.

BY: /s/ Madeleine W. Ludlow
Madeleine W. Ludlow
Vice President and Chief Financial Officer

Dated: January 1, 1998

APPROVED:
/s/ Jerome A. Vennemann
Jerome A. Vennemann
Acting General Counsel and
Assistant Corporate Secretary

Dated: January 1, 1998

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Exhibit 10-III

Adopted by the Cinergy Corp.
Benefits Committee on August 29, 2002

AMENDMENT TO THE
CINERGY CORP. EXCESS PENSION PLAN

The Cinergy Corp. Excess Pension Plan, as amended and restated effective as of January 1, 1998 (the "Plan"), is hereby amended effective as of August 29, 2002.

(1) **Explanation of Amendment**

The Plan is amended to provide certain participants with the opportunity to make an election to receive their Plan benefits in a single lump sum under certain circumstances following a Change in Control. The Plan is further amended to provide that nonelective employer contributions made on behalf of a participant under the Cinergy Corp. Excess 401(k) Plan shall be taken into account when determining a participant's Unrestricted Benefit, but only to the extent specifically provided by the Committee.

(2) **Amendment**

- (a) Section 1.22 of the Plan is hereby amended by adding the following at the end thereof:

"Notwithstanding the preceding sentence, but only to the extent specified by the Committee, (a) any nonelective employer contributions (other than matching contributions) made on behalf of a Participant under the Cinergy Corp. 401(k) Excess Plan during any applicable period shall be taken into account when calculating such Participant's Unrestricted Benefit and (b) any Participant who receives nonelective employer contributions (other than matching contributions) under the Cinergy Corp. 401(k) Excess Plan during the year in which occurs his Severance from Service Date (as defined in Cinergy's Pension Plan) shall be treated, for purposes of calculating his Unrestricted Benefit, as if he had received Sabbatical Vacation Pay (as defined in Cinergy's Pension Plan) in the amount that he would have received if such nonelective employer contributions were part of his Base Salary (as defined in Cinergy's Pension Plan) during the year in which occurs his Severance from Service Date."

- (b) Article 1 of the Plan is hereby amended by adding the following new Section 1.23 immediately following Section 1.22:

"1.23 "Potential Change in Control" means any period during which any of the following circumstances exist:

- (a) Cinergy enters into an agreement, the consummation of which would result in the occurrence of a Change in Control; provided that a Potential Change in Control shall cease to exist upon the expiration or other termination of such agreement; or
- (b) Cinergy or any Person publicly announces an intention to take or to consider taking actions which, if consummated, would constitute a Change in Control; provided that a Potential Change in Control shall cease to exist when Cinergy or such Person publicly announces that it no longer has such an intention; or
- (c) Any Person who is or becomes the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act), directly or indirectly, of securities of Cinergy representing ten percent (10%) or more of the combined voting power of Cinergy's then outstanding securities, increases such Person's beneficial ownership of such securities by an amount equal to five percent (5%) or more of the combined voting power of Cinergy's then outstanding securities; or
- (d) The Board of Directors adopts a resolution to the effect that, for purposes hereof, a Potential Change in Control has occurred.

Notwithstanding anything herein to the contrary, a Potential Change in Control shall cease to exist not later than the date that (i) the Board of Directors determines that the Potential Change in Control no longer exists, or (ii) a Change in Control occurs.

The terms "Person" and "Securities Exchange Act" where used herein shall have the meaning given to such terms in the Cinergy's Pension Plan."

- (c) Article 6 of the Plan is hereby amended by adding the following new Section 6.6 at the end thereof:

"6.6 Special Payment Election Effective Upon a Change in Control.

Notwithstanding any other provision of this Plan, each Participant who is designated as a "Selected Participant" by the Committee (a "Selected Participant") shall be entitled to make a special payment election in accordance with the provisions of this Section 6.6.

- (a) Distribution Pursuant to Special Payment Election. A Selected Participant may elect, on a form provided by the Committee, to receive a single lump sum cash payment in an amount equal to the Actuarial Equivalent (as defined below) of his benefits under the

Plan (or the Actuarial Equivalent of his remaining benefits under the Plan in the event that payment of his benefits under the Plan has already commenced) payable no later than 30 days after the later of the occurrence of a Change in Control or the date of his termination of employment with Cinergy and its Affiliates.

- (b) Effectiveness of Special Payment Election. An election made pursuant to this Section shall become operative only upon the occurrence of a Change in Control and only if the Participant's termination of employment with Cinergy and its Affiliates occurs either (1) prior to the occurrence of a Change in Control or (2) during the 24-month period commencing upon the occurrence of a Change in Control. Once operative, such special payment election shall override any other payment election made by the Participant with respect to his benefits under the Plan.
- (c) Deadline for Special Payment Election. In order to be effective, an election made pursuant to this Section must be made either prior to the occurrence of a Potential Change in Control or, with the consent of the Committee, during the thirty-day period commencing upon the occurrence of a Potential Change in Control. In the event that a Potential Change in Control occurs and subsequently ceases to exist, other than as a result of a Change in Control, such Potential Change in Control shall be disregarded for purposes of this Section.
- (d) Withdrawal of Special Payment Election. A Selected Participant may withdraw, on a form provided by the Committee, a special payment election made by him pursuant to this Section at anytime specified in the first sentence of Section 6.6(c).
- (e) In the event a Selected Participant makes a special payment election and pursuant to that election becomes entitled to receive a single lump sum cash payment pursuant to this Section payable prior to the commencement of the payment of his benefits, for purposes of this Section the Actuarial Equivalent of his benefits under the Plan shall be calculated based on the following assumptions:
 - (I) The form of payment for each of the Selected Participant's retirement benefits under the Plan and Cinergy's Pension Plan shall be a single life annuity;
 - (II) The commencement date for each of the Selected Participant's retirement benefits under the Plan and Cinergy's Pension Plan shall be the first day of the calendar

month coincident with or next following the later of his Severance from Service Date (as defined in Cinergy's Pension Plan) or his 50th birthday; and

- (III) The term "Actuarial Equivalent" has the meaning given to that term in Cinergy's Pension Plan with respect to lump sum payments.
- (f) In the event a Selected Participant makes a special payment election pursuant to this Section and pursuant to that election becomes entitled to receive a single lump sum cash payment payable after the commencement of the payment of his benefits, his lump sum cash payment shall be equal to the Actuarial Equivalent (as that term is used in Cinergy's Pension Plan with respect to lump sum payments) of his remaining benefits under the Plan.
- (g) The payment of a single lump sum in cash, pursuant to this Section, to or on behalf of a Participant shall completely discharge any liability under the Plan to or on behalf of that Participant.
- (h) Committee Discretion for a Lump Sum Payment. Notwithstanding any other Section, if a Change in Control occurs, the Committee in its sole discretion may elect to accelerate the distribution of a Participant's benefits under the Plan so that the Actuarial Equivalent of such benefits shall be distributed to the Participant (or, in the event of his death, to his Beneficiary) in a single lump sum payment no later than 30 days after the Change in Control occurs."

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer as of August 29, 2002.

By: /s/ Timothy J. Verhagen
Timothy J. Verhagen
Vice President, Human Resources

EX-10.MMM 22 a04-1370_1ex10dmmm.htm EX-10.MMM

Exhibit 10.mmm

Adopted by the Cinergy Corp.
Benefits Committee on October 10, 2003

**AMENDMENT TO THE
CINERGY CORP. EXCESS PENSION PLAN**

The Cinergy Corp. Excess Pension Plan, as amended and restated effective as of January 1, 1998, and as amended from time to time (the "Plan"), is hereby amended effective as of January 1, 2003.

(1) Explanation of Amendment

The Plan is amended to clarify the relationship between the Plan and the Cinergy Corp. Non-Union Employees' Pension Plan in light of the Retirement Choice program. The Plan is also amended to make certain non-substantive changes.

(2) Amendment

- (a) Article 5 of the Plan is hereby amended by deleting the phrase "Spouse's Benefit" in the title thereof and substituting therefor the phrase "Death Benefit."
- (b) Article 5 of the Plan is hereby amended by adding the following Section 5.3 at the end thereof:

"5.3 Cash Balance Participant's Death Benefit

The following rules shall apply upon the death of a Participant who is classified as a "Cash Balance Participant" under Cinergy's Pension Plan:

- (a) Spouse Beneficiary. If a death benefit is payable under Article 6 of Cinergy's Pension Plan on account of the Participant's death and the Participant's Beneficiary (as defined in Cinergy's Pension Plan) at the date of the Participant's death is his Spouse, such Spouse shall receive a death benefit in an amount equal to the Actuarial Equivalent (as defined in Cinergy's Pension Plan) of the benefits that would otherwise have been payable to the Participant under the Plan. The form of the death benefit payable to the Spouse under the Plan shall be the same form in which the Spouse's benefit is payable under Cinergy's Pension Plan. The payment of the Spouse's death benefit under the Plan shall be made, or shall commence, as of the same date as the Spouse's benefit under Cinergy's Pension Plan is made or commences.
- (b) Non-Spouse Beneficiary. If a death benefit is payable under Article 6 of Cinergy's Pension Plan on account of the Participant's death and the

Participant's Beneficiary (as defined in Cinergy's Pension Plan) at the date of the Participant's death is any person other than the Participant's Spouse, such Beneficiary shall receive a death benefit in an amount equal to the Actuarial Equivalent (as defined in Cinergy's Pension Plan) of the benefits that would otherwise have been payable to the Participant under the Plan. The death benefit shall be payable in the form of a single lump sum cash payment and shall be made as soon as administratively practicable following the Participant's death.

- (c) The first sentence of Section 5.2 of the Plan is hereby amended by deleting the word "annul" where it appears therein and substituting therefor the word "annual." The first sentence of Article 16 of the Plan is hereby amended by deleting the word "Employee" where it appears therein and substituting therefor the word "Employer." The last sentence of Article 9 of the Plan is hereby deleted.

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer effective as of the date set forth herein.

By: /s/ Timothy J. Verhagen
Timothy J. Verhagen
Vice President of Human Resources

EX-10.NNN 23 a04-1370_1ex10dnnn.htm EX-10.NNN

Exhibit 10.nnn

**AMENDMENT TO THE
CINERGY CORP. EXCESS PENSION PLAN**

The Cinergy Corp. Excess Pension Plan, as amended and restated effective as of January 1, 1998 and as further amended from time to time (the "Plan"), is hereby amended effective as of December 15, 2003.

(1) Explanation of Amendment

The Plan is amended to provide designated participants with the opportunity to elect to receive one-half of the actuarial equivalent of their Plan benefits in a single lump sum under certain circumstances. The Plan is further amended to provide that the Compensation Committee of the Board of Directors may from time to time designate specific amounts that shall be included in pensionable earnings for purposes of determining a specified Participant's Plan benefits.

(2) Amendment

- (a) Section 1.22 of the Plan is hereby amended by adding the following at the end thereof:

"The Compensation Committee of the Board of Directors from time to time, in its sole discretion, may designate other amounts that shall be taken into account when calculating a Participant's Unrestricted Benefit."

- (b) Section 6.1 of the Plan is hereby amended in its entirety to read as follows:

"Except as otherwise provided in Section 6.4 and Section 6.6 hereof, the form of an excess pension payable under the Plan to a Participant will be the same form in which the pension is payable to a Participant under Article 7 of Cinergy's Pension Plan."

- (c) Section 6.6 of the Plan is hereby amended by adding the following new subsection (i) at the end thereof:

"(i) Special Payment Election Without a Change in Control. Notwithstanding the foregoing, each Participant who is designated as a "Designated Participant" by the Committee (a "Designated Participant") may make an election, on a form provided by the Committee, to receive a single lump sum cash payment in an amount equal to one-half of the Actuarial Equivalent (as defined above in Section 6.6(e)) of his benefits under the Plan payable no later than 30 days after the date of his termination of employment with Cinergy and its Affiliates. In order to be effective, the special payment election under this Section 6.6(i) must be made either (A) at least one year prior to the termination of the Participant's employment with Cinergy and its Affiliates or (B) during the 2003 Plan Year and at least six months prior to the termination of the Participant's employment with

Cinergy and its Affiliates. The lump sum amount payable pursuant to this Section 6.6(i) shall be calculated in accordance with the provisions of Section 6.6(e). In the event an amount is paid to or on behalf of a Designated Participant pursuant to this Section 6.6(i), such payment shall discharge any liability under the Plan to or on behalf of the Designated Participant with respect to one-half of the Actuarial Equivalent (as defined above in Section 6.6(e)) of his benefits under the Plan.”

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer as of the date set forth above.

By: /s/ Timothy J. Verhagen
Timothy J. Verhagen
Vice President of Human
Resources

EX-10.000 24 a04-1370_1ex10dooo.htm EX-10.000

Exhibit 10.000

Adopted by the Benefits Committee
of Cinergy Corp. on December 16, 2003

**AMENDMENT TO THE
CINERGY CORP. EXCESS PENSION PLAN**

The Cinergy Corp. Excess Pension Plan, as amended and restated effective as of January 1, 1998, and as amended from time to time (the "Plan"), is hereby amended effective for compensation received on or after January 1, 2004.

(1) Explanation of Amendment

The Plan is amended to provide that the benefits under the Plan shall be calculated with a cap on the amount of any bonus received on or after January 1, 2004 that will be included in eligible earnings for employees in the Cinergy Corp. Commercial Business Unit (formerly known as the Energy Merchant Business Unit).

(2) Amendment

Article 4 of the Plan is hereby amended by adding the following at the end thereof:

"Effective with respect to amounts received on or after January 1, 2004, notwithstanding any other provision of the Plan, for purposes of calculating the Maximum Benefit and Unrestricted Benefit of any Participant who is an employee in the Commercial Business Unit: (i) the amount of the Annual Performance Cash Award (as defined in Cinergy's Pension Plan) that is to be taken into account under Cinergy's Pension Plan for a Plan Year shall not exceed the Participant's rate of annual Base Salary or Base Wage (as those terms are defined in Cinergy's Pension Plan), as applicable, as of the last day of the performance period for which the Annual Performance Cash Award (as defined in Cinergy's Pension Plan) is calculated and (ii) for purposes of clarity, any amount payable under the Commercial Business Unit Annual Incentive Plan (formerly known as the Energy Merchant Business Unit Annual Incentive Plan) or any other annual incentive plan maintained by the Commercial Business Unit that is automatically deferred until a subsequent Plan Year shall not be considered as part of the Participant's Annual Performance Cash Award (as defined in Cinergy's Pension Plan), provided, however, that the limitations contained in this sentence shall not apply to amounts payable under the Cinergy Corp. Annual Incentive Plan."

IN WITNESS WHEREOF, Cinergy Corp. has caused this Amendment to be executed and approved by its duly authorized officer as of the date set forth above.

By: /s/ Timothy J. Verhagen

Timothy J. Verhagen

Vice President of Human Resources

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Exhibit 21

Subsidiary Listing

As of December 31, 2003, the following is a listing of the subsidiaries of each registrant in which Cinergy Corp. has a greater than 10% ownership interest in and their state or country of incorporation or organization indented to show degree of remoteness from registrant.

Name of Company (Indentation indicates subsidiary relationship)	State or Country of Organization or Incorporation
Cinergy Corp. (1)	Delaware
Cinergy Services, Inc.	Delaware
CC Funding Trust I	Delaware
CC Funding Trust II	Delaware
Cinergy Receivables Company LLC	Delaware
The Cincinnati Gas & Electric Company (1)	Ohio
Cinergy Power Investments, Inc.	Ohio
CPI Allowance Management, LLC	Delaware
CPI Investments, LLC	Delaware
The Union Light, Heat and Power Company (1)	Kentucky
Tri-State Improvement Company	Ohio
Lawrenceburg Gas Company	Indiana
Miami Power Corporation	Indiana
KO Transmission Company	Kentucky
PSI Energy, Inc. (1)	Indiana
South Construction Company, Inc.	Indiana
Cinergy Investments, Inc.	Delaware
Cinergy-Cadence, Inc.	Indiana
Cadence Network, Inc.	Delaware
Cinergy Capital & Trading, Inc.	Indiana
Brownsville Power I, LLC	Delaware
Caledonia Power I, LLC	Delaware
CinPower I, LLC	Delaware
Cinergy Canada, Inc.	Canada
Cinergy Climate Change Investments LLC	Delaware
Cinergy Limited Holdings, LLC	Delaware
Cinergy Marketing & Trading, LP	Delaware
Ohio River Valley Propane, LLC	Delaware
Cinergy General Holdings, LLC	Delaware
Cinergy Retail Power Limited, Inc.	Delaware
Cinergy Retail Power, L.P.	Delaware
Cinergy Retail Power General, Inc.	Texas
Cinergy Retail Sales, LLC	Delaware
CinFuel Resources, Inc.	Delaware
LH1, LLC	Delaware
Oak Mountain Products, LLC	Delaware
Cinergy Transportation, LLC	Delaware
SynCap II, LLC	Delaware

(1) Companies indicated are registrants with the Securities and Exchange Commission.

Cinergy Telecommunications Holding Company, Inc.	Delaware
Q-Comm Corporation	Nevada
QCC, Inc.	Nevada
Cinergy Communications Company	Kentucky
Cinergy MetroNet, Inc.	Indiana
Kentucky Data Link, Inc.	Kentucky
Chattanooga Data Link, Inc.	Tennessee
Cincinnati Data Link, Inc.	Ohio
Cinergy Telecommunication Networks – Indiana, Inc.	Indiana
Cinergy Telecommunication Networks – Ohio, Inc.	Ohio
Indianapolis Data Link, Inc.	Indiana
KDL Holdings, LLC	Delaware
Knoxville Data Link, Inc.	Tennessee
Lexington Data Link, Inc.	Kentucky
Louisville Data Link, Inc.	Kentucky
Memphis Data Link, Inc.	Tennessee
Nashville Data Link, Inc.	Tennessee
Lattice Communications, LLC	Delaware
LB Tower Company, LLC	Delaware
Cinergy Engineering, Inc.	Ohio
Cinergy-Centrus, Inc.	Delaware
Cinergy-Centrus Communications, Inc.	Delaware
Cinergy Solutions Holding Company, Inc.	Delaware
3036243 Nova Scotia Company	Canada
Cinergy Solutions Limited Partnership	Canada
3075959 Nova Scotia Company	Canada
1388368 Ontario Inc.	Canada
Vestar, Inc.	Delaware
Vestar Limited	Canada
Keen Rose Technology Group Limited	Canada
Optimira Controls, Inc.	Canada
Cinergy EPCOM, LLC	Delaware
Cinergy EPCOM College Park, LLC	Delaware
Cinergy Solutions, Inc.	Delaware
BSPE Holdings, LLC	Delaware
BSPE Limited, LLC	Delaware
BSPE, L.P.	Delaware
BSPE General, LLC	Texas
Cinergy Energy Solutions, Inc.	Delaware
U.S. Energy Biogas Corp	Delaware
Biogas Financial Corporation	Connecticut
ZFC Energy, Inc.	Delaware
Power Generation (Suffolk), Inc.	Delaware
Suffolk Energy Partners, L.P.	Virginia
Suffolk Biogas, Inc.	Delaware
Lafayette Energy Partners, L.P.	New Jersey
Taylor Energy Partners, L.P.	Pennsylvania
Resources Generating Systems, Inc.	New York
Hoffman Road Energy Partners, LLC	Delaware
Illinois Electrical Generation Partners, L.P.	Delaware
Zapco Illinois Energy, Inc.	Delaware
Avon Energy Partners, L.L.C.	Illinois
Devonshire Power Partners, L.L.C.	Illinois
Riverside Resource Recovery, L.L.C.	Illinois
Illinois Electrical Generation Partners II L.P.	Delaware
BMC Energy, LLC	Delaware
Brookhaven Energy Partners, LLC	New York
Countryside Genco, L.L.C.	Delaware
Morris Genco, L.L.C.	Delaware
Brickyard Energy Partners, LLC	Delaware

Dixon/Lee Energy Partners, LLC	Delaware
Roxanna Resource Recovery L.L.C.	Illinois
Streator Energy Partners, LLC	Delaware
Upper Rock Energy Partners, LLC	Delaware
Barre Energy Partners, L.P.	Delaware
Biomass New Jersey L.L.C.	New Jersey
Brown County Energy Associates, LLC	Delaware
Burlington Energy, Inc.	Vermont
Cape May Energy Associates, L.P.	Delaware
Dunbarton Energy Partners, Limited Partnership	New Hampshire
Garland Energy Development, LLC	Delaware
Oceanside Energy, Inc.	New York
Onondaga Energy Partners, L.P.	New York
Oyster Bay Energy Partners, L.P.	New York
Smithtown Energy Partners, L.P.	New York
Springfield Energy Associates Limited Partnership	Vermont
Suffolk Transmission Partner, L.P.	Delaware
Tucson Energy Partners LP	Delaware
Zapco Broome Nanticoke Corp.	New York
Zapco Development Corporation	Delaware
Zapco Energy Tactics Corporation	Delaware
Zapco Readville Cogeneration, Inc.	Delaware
ZFC Royalty Partners, A Connecticut Limited Partnership	Connecticut
ZMG, Inc.	Delaware
Cinergy GASCO Solutions, LLC	Delaware
Countryside Landfill Gasco., L.L.C.	Delaware
Morris Gasco, L.L.C.	Delaware
Brown County Landfill Gas Associates, L.P.	Delaware
Cinergy Solutions of Monaca, LLC	Delaware
Cinergy Solutions of Narrows, LLC	Delaware
Cinergy Solutions of Rock Hill, LLC	Delaware
Cinergy Solutions of St. Bernard, LLC	Delaware
Cinergy Solutions Operating Services of Lansing, LLC	Delaware
Cinergy Solutions Operating Services of Shreveport, LLC	Delaware
Cinergy Solutions Operating Services of Oklahoma, LLC	Delaware
Cinergy Solutions of Philadelphia, LLC	Delaware
Cinergy Solutions Partners, LLC	Delaware
CST Limited, LLC	Delaware
CST Green Power, L.P.	Delaware
Green Power Holdings, LLC	Delaware
Green Power Limited, LLC	Delaware
South Houston Green Power, L.P.	Delaware
Green Power G.P., LLC	Texas
CST General, LLC	Delaware
CSGP of Southeast Texas, LLC	Delaware
CSGP Limited, LLC	Delaware
CSGP Services, L.P.	Delaware
CSGP General, LLC	Texas
Lansing Grand River Utilities, LLC	Delaware
Oklahoma Arcadian Utilities, LLC	Delaware
Shreveport Red River Utilities, LLC	Delaware
Cinergy Solutions of Tuscola, Inc.	Delaware
Delta Township Utilities, LLC	Delaware
Energy Equipment Leasing LLC	Delaware
Trigen-Cinergy Solutions LLC	Delaware
Trigen-Cinergy Solutions of Ashtabula LLC	Delaware
Cinergy Solutions of Boca Raton, LLC	Delaware
Cinergy Solutions of Cincinnati LLC	Ohio
Trigen-Cinergy Solutions of Lansing LLC	Delaware
Trigen/Cinergy – USFOS of Lansing LLC	Delaware

Trigen-Cinergy Solutions of Orlando LLC

Delaware

Trigen-Cinergy Solutions of Owings Mills LLC	Delaware
Trigen-Cinergy Solutions of Owings Mills Energy Equipment Leasing, LLC	Delaware
Trigen-Cinergy Solutions of Rochester LLC	Delaware
Trigen-Cinergy Solutions of San Diego LLC	Delaware
Trigen-Cinergy Solutions of Silver Grove LLC	Delaware
Trigen-Cinergy Solutions of the Southeast LLC	Delaware
Cinergy Solutions of St. Paul LLC	Delaware
Environmental Wood Supply, LLC	Minnesota
St. Paul Cogeneration LLC	Minnesota
Trigen-Cinergy Solutions of Tuscola, LLC	Delaware
Cinergy Supply Network, Inc.	Delaware
Reliant Services, LLC	Indiana
MP Acquisitions Corp., Inc.	Indiana
Miller Pipeline Corporation	Indiana
Fiber Link, LLC	Indiana
Cinergy Technology, Inc.	Indiana
Cinergy Global Resources, Inc.	Delaware
Cinergy UK, Inc.	Delaware
Cinergy Global Power, Inc.	Delaware
CGP Global Greece Holdings, SA	Greece
Attiki Denmark ApS	Denmark
Attiki Gas Supply Company SA	Greece
Cinergy Global Chandler Holding, Inc.	Delaware
Cinergy Global Chandler I, Inc.	Delaware
Cinergy Global Ely, Inc.	Delaware
EPR Ely Power Limited	England
EPR Ely Limited	England
Ely Power Limited	England
Anglian Straw Limited	England
Anglian Ash Limited	England
Cinergy Global Foote Creek, Inc.	Delaware
Cinergy Global Foote Creek II, Inc.	Delaware
Cinergy Global Foote Creek IV, Inc.	Delaware
Cinergy Global Peetz Table I, Inc.	Delaware
Cinergy Global Power Services Limited	England
Cinergy Global Power (UK) Limited	England
Cinergy Global Trading Limited	England
Cinergy Trading and Marketing Limited	England & Wales
Commercial Electricity Supplies Limited	England
Cinergy Renewable Trading Limited	England
UK Electric Power Limited	England
Cinergy Global Power Iberia, S.A.	Spain
Cinergy Global Holdings, Inc.	Delaware
Cinergy Holdings B.V.	The Netherlands
Cinergetika U/L a.s.	Czech Republic
Cinergy Global Polska Sp. Z.o.o.	Poland
Cinergy Zambia B.V.	The Netherlands
Copperbelt Energy Corporation PLC	Republic of Zambia
Power Sports Limited	Republic of Zambia
Moravske Teplarny a.s.	Czech Republic
Cinergy Global (Cayman) Holdings, Inc.	Cayman Islands
Cinergy Global Hydrocarbons Pakistan	Cayman Islands
Cinergy Global Tsavo Power	Cayman Islands
IPS-Cinergy Power Limited	Kenya
Tsavo Power Company Limited	Kenya
Cinergy MPI V, Inc.	Cayman Islands
Cinergy Global One, Inc.	Delaware
CZECHPOL ENERGY spol, s.r.o.	Czech Republic
eVent Resources Overseas I, LLC	Delaware

Midlands Hydrocarbons (Bangladesh) Limited	England
Cinergy Global Power Africa (Proprietary) Limited	South Africa
CinTec LLC	Delaware
CinTec I LLC	Delaware
eVent Resources I LLC	Delaware
eVent Resources Holdings LLC	Delaware
CinTec II LLC	Delaware
Cinergy Technologies, Inc.	Delaware
Cinergy Broadband, LLC	Delaware
CCB Communications, LLC	Delaware
CCB Indiana, LLC	Delaware
CCB Kentucky, LLC	Delaware
CCB Ohio, LLC	Delaware
National BPL, LLC	Delaware
Cinergy Ventures, LLC	Delaware
Configured Energy Systems, Inc.	Delaware
Maximum Performance Group, Inc.	Delaware
Kreiss Johnson Technologies, Inc.	California
Cinergy Ventures II, LLC	Delaware
Catalytic Solutions, Inc.	California
Electric City Corp.	Delaware
Cinergy e-Supply Network, LLC	Delaware
Pantellos	Delaware
Cinergy One, Inc.	Delaware
Cinergy Two, Inc.	Delaware
Cinergy Wholesale Energy, Inc.	Ohio
Cinergy Power Generation Services, LLC	Delaware
Cinergy Origination & Trade, LLC	Delaware
Cinergy Foundation, Inc.	Indiana

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Exhibit 23

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in Cinergy Corp.'s Registration Statement Nos. 33-55267, 33-55713, 33-56089, 33-56091, 33-56093, 33-56095, 333-51484, 333-83461, 333-83467, 333-72898, 333-72900, 333-72902, 333-81770, 333-101707 and 333-102515 of our report dated February 16, 2004 (which expresses an unqualified opinion on the Company's consolidated financial statements and includes an explanatory paragraph referring to the Company's change effective in 2002 in its method of accounting for goodwill; change effective January 1, 2003 in its accounting for stock based compensation; change effective January 1, 2003 in its accounting for energy trading and derivative contracts with the adoption of EITF 02-3; change effective January 1, 2003 in its accounting method for asset retirement obligations; and change effective July 1, 2003 in its accounting for the consolidation of variable interest entities), appearing in this Annual Report on Form 10-K of Cinergy Corp. for the year ended December 31, 2003.

Deloitte & Touche LLP
Cincinnati, Ohio
February 25, 2004

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in PSI Energy, Inc.'s Registration Statement No. 333-103304 of our report dated February 16, 2004 (which expresses an unqualified opinion on the Company's consolidated financial statements and includes an explanatory paragraph referring to the Company's change effective January 1, 2003 in its accounting for energy trading and derivative contracts with the adoption of EITF 02-3 and change effective January 1, 2003 in its accounting method for asset retirement obligations), appearing in this Annual Report on Form 10-K of PSI Energy, Inc. for the year ended December 31, 2003.

Deloitte & Touche LLP
Cincinnati, Ohio
February 25, 2004

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in The Cincinnati Gas & Electric Company's Registration Statement No. 333-103200 of our report dated February 16, 2004 (which expresses an unqualified opinion on the Company's consolidated financial statements and includes an explanatory paragraph referring to the Company's change effective January 1, 2003 in its accounting for energy trading and derivative contracts with the adoption of EITF 02-3 and change effective January 1, 2003 in its accounting method for asset retirement obligations), appearing in this Annual Report on Form 10-K of The Cincinnati Gas & Electric Company for the year ended December 31, 2003.

Deloitte & Touche LLP
Cincinnati, Ohio
February 25, 2004

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in The Union Light, Heat and Power Company's Registration Statement Nos. 33-40245 and 333-83381 of our report dated February 16, 2004 (which expresses an unqualified opinion on the Company's financial statements and includes an explanatory paragraph referring to the Company's change effective January 1, 2003 in its accounting method for asset retirement obligations), appearing in this Annual Report on Form 10-K of The Union Light, Heat and Power Company for the year ended December 31, 2003.

Deloitte & Touche LLP
Cincinnati, Ohio
February 25, 2004

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Exhibit 24

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that the undersigned hereby constitutes and appoints James E. Rogers and R. Foster Duncan, or either of them with full power to act without the other, the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to execute for and on behalf of the undersigned, in the undersigned's capacity as a director of each of Cinergy Corp. and PSI Energy, Inc., the Form 10-K Annual Report of each corporation for the fiscal year ended December 31, 2003, and to deliver said Form 10-K Annual Reports so signed for filing with the Securities and Exchange Commission.

The undersigned does hereby ratify and confirm all that said attorneys-in-fact and agents, and each of them, shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Power of Attorney to be executed on this 18th day of February, 2004.

/s/ Michael G. Browning
Michael G. Browning

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that the undersigned hereby constitutes and appoints James E. Rogers and R. Foster Duncan, or either of them with full power to act without the other, the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to execute for and on behalf of the undersigned, in the undersigned's capacity as a director of Cinergy Corp., the Form 10-K Annual Report of said corporation for the fiscal year ended December 31, 2003, and to deliver said Form 10-K Annual Report so signed for filing with the Securities and Exchange Commission.

The undersigned does hereby ratify and confirm all that said attorneys-in-fact and agents, and each of them, shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Power of Attorney to be executed on this 24th day of February, 2004.

/s/ Phillip R. Cox

Phillip R. Cox

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that the undersigned hereby constitutes and appoints James E. Rogers and R. Foster Duncan, or either of them with full power to act without the other, the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to execute for and on behalf of the undersigned, in the undersigned's capacity as a director of PSI Energy, Inc., the Form 10-K Annual Report of said corporation for the fiscal year ended December 31, 2003, and to deliver said Form 10-K Annual Report so signed for filing with the Securities and Exchange Commission.

The undersigned does hereby ratify and confirm all that said attorneys-in-fact and agents, and each of them, shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Power of Attorney to be executed on this 20th day of February, 2004.

/s/ Douglas F. Esamann
Douglas F. Esamann

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that the undersigned hereby constitutes and appoints James E. Rogers and R. Foster Duncan, or either of them with full power to act without the other, the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to execute for and on behalf of the undersigned, in the undersigned's capacity as a director of Cinergy Corp., the Form 10-K Annual Report of said corporation for the fiscal year ended December 31, 2003, and to deliver said Form 10-K Annual Report so signed for filing with the Securities and Exchange Commission.

The undersigned does hereby ratify and confirm all that said attorneys-in-fact and agents, and each of them, shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Power of Attorney to be executed on this 20th day of February, 2004.

/s/ George C. Juilfs
George C. Juilfs

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that the undersigned hereby constitutes and appoints James E. Rogers and R. Foster Duncan, or either of them with full power to act without the other, the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to execute for and on behalf of the undersigned, in the undersigned's capacity as a director of Cinergy Corp., the Form 10-K Annual Report of said corporation for the fiscal year ended December 31, 2003, and to deliver said Form 10-K Annual Report so signed for filing with the Securities and Exchange Commission.

The undersigned does hereby ratify and confirm all that said attorneys-in-fact and agents, and each of them, shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Power of Attorney to be executed on this 19th day of February, 2004.

/s/ Thomas E. Petry
Thomas E. Petry

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that the undersigned hereby constitutes and appoints James E. Rogers and R. Foster Duncan, or either of them with full power to act without the other, the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to execute for and on behalf of the undersigned, in the undersigned's capacity as a director of Cinergy Corp., the Form 10-K Annual Report of said corporation for the fiscal year ended December 31, 2003, and to deliver said Form 10-K Annual Report so signed for filing with the Securities and Exchange Commission.

The undersigned does hereby ratify and confirm all that said attorneys-in-fact and agents, and each of them, shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Power of Attorney to be executed on this 17th day of February, 2004.

/s/ Mary L. Schapiro
Mary L. Schapiro

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that the undersigned hereby constitutes and appoints James E. Rogers and R. Foster Duncan, or either of them with full power to act without the other, the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to execute for and on behalf of the undersigned, in the undersigned's capacity as a director of Cinergy Corp., the Form 10-K Annual Report of said corporation for the fiscal year ended December 31, 2003, and to deliver said Form 10-K Annual Report so signed for filing with the Securities and Exchange Commission.

The undersigned does hereby ratify and confirm all that said attorneys-in-fact and agents, and each of them, shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Power of Attorney to be executed on this 18th day of February, 2004.

/s/ John J. Schiff, Jr.
John J. Schiff, Jr.

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that the undersigned hereby constitutes and appoints James E. Rogers and R. Foster Duncan, or either of them with full power to act without the other, the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to execute for and on behalf of the undersigned, in the undersigned's capacity as a director of Cinergy Corp., the Form 10-K Annual Report of said corporation for the fiscal year ended December 31, 2003, and to deliver said Form 10-K Annual Report so signed for filing with the Securities and Exchange Commission.

The undersigned does hereby ratify and confirm all that said attorneys-in-fact and agents, and each of them, shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Power of Attorney to be executed on this 17th day of February, 2004.

/s/ Philip R. Sharp
Philip R. Sharp

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that the undersigned hereby constitutes and appoints James E. Rogers and R. Foster Duncan, or either of them with full power to act without the other, the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to execute for and on behalf of the undersigned, in the undersigned's capacity as a director of Cinergy Corp., the Form 10-K Annual Report of said corporation for the fiscal year ended December 31, 2003, and to deliver said Form 10-K Annual Report so signed for filing with the Securities and Exchange Commission.

The undersigned does hereby ratify and confirm all that said attorneys-in-fact and agents, and each of them, shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Power of Attorney to be executed on this 24th day of February, 2004.

/s/ Dudley S. Taft
Dudley S. Taft

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that the undersigned hereby constitutes and appoints James E. Rogers and R. Foster Duncan, or either of them with full power to act without the other, the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, to execute for and on behalf of the undersigned, in the undersigned's capacity as a director of each of The Cincinnati Gas & Electric Company and The Union Light, Heat and Power Company, the Form 10-K Annual Report of each corporation for the fiscal year ended December 31, 2003, and to deliver said Form 10-K Annual Reports so signed for filing with the Securities and Exchange Commission.

The undersigned does hereby ratify and confirm all that said attorneys-in-fact and agents, and each of them, shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Power of Attorney to be executed on this 24th day of February, 2004.

/s/ James L. Turner
James L. Turner

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Exhibit 31.a

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER

PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, James E. Rogers, certify that:

1. I have reviewed this annual report on Form 10-K of Cinergy Corp., The Cincinnati Gas & Electric Company, PSI Energy, Inc., and The Union Light, Heat and Power Company;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrants as of, and for, the periods presented in this report;

4. The registrants' other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrants and have:

- a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrants, including their consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
- b) Evaluated the effectiveness of the registrants' disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- c) Disclosed in this report any change in the registrants' internal control over financial reporting that occurred during the registrants' most recent fiscal quarter (the registrants' fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrants' internal control over financial reporting; and

5. The registrants' other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrants' auditors and the audit committee of the registrants' board of directors (or persons performing the equivalent functions):

- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrants' ability to record, process, summarize and report financial information; and
- b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrants' internal control over financial reporting.

Date: March 3, 2004

/s/ James E. Rogers

James E. Rogers
Chief Executive Officer

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Exhibit 31-b

CERTIFICATION OF THE CHIEF FINANCIAL OFFICER

PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, R. Foster Duncan, certify that:

1. I have reviewed this annual report on Form 10-K of Cinergy Corp., The Cincinnati Gas & Electric Company, PSI Energy, Inc., and The Union Light, Heat and Power Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrants as of, and for, the periods presented in this report;
4. The registrants' other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrants and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrants, including their consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Evaluated the effectiveness of the registrants' disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c) Disclosed in this report any change in the registrants' internal control over financial reporting that occurred during the registrants' most recent fiscal quarter (the registrants' fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrants' internal control over financial reporting; and
5. The registrants' other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrants' auditors and the audit committee of the registrants' board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrants' ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrants' internal control over financial reporting.

Date: March 3, 2004

/s/ R. Foster Duncan

R. Foster Duncan
Chief Financial Officer

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Exhibit 32.a

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Cinergy Corp., The Cincinnati Gas & Electric Company, PSI Energy, Inc. and The Union Light, Heat and Power Company (the "Companies") on Form 10-K for the period ending December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James E. Rogers, Chief Executive Officer of the Companies, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge and belief, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Companies.

/s/ James E.
Rogers

James E. Rogers
Chief Executive Officer
March 3, 2004

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Exhibit 32.b

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Cinergy Corp., The Cincinnati Gas & Electric Company, PSI Energy, Inc. and The Union Light, Heat and Power Company (the "Companies") on Form 10-K for the period ending December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, R. Foster Duncan, Chief Financial Officer of the Companies, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge and belief, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Companies.

/s/ R. Foster
Duncan

R. Foster Duncan
Chief Financial Officer
March 3, 2004
