

STATE OF INDIANA
BEFORE THE
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMMISSION'S)
INVESTIGATION, UNDER IC 8-1-2-58 AND 59,)
INTO THE PROPOSED TERMINATION OF THE)
OPERATING AGREEMENT BETWEEN PSI)
ENERGY, INC. AND CINCINNATI GAS &) CAUSE NO. 41954
ELECTRIC COMPANY APPROVED BY THE)
COMMISSION MARCH 29, 1994)
)
)
RESPONDENT: PSI ENERGY, INC.)

DIRECT TESTIMONY AND EXHIBITS
OF
BRUCE BIEWALD

ON BEHALF OF

CITIZENS ACTION COALITION OF INDIANA, INC.

JUNE 22, 2001

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Bruce Biewald. My business address is 22 Pearl Street,
3 Cambridge, Massachusetts 02139.

4

5 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

6 A. I am President of Synapse Energy Economics, Inc., a consulting company
7 specializing in economic and policy analysis of electricity restructuring,
8 particularly issues of market power, electricity market prices, consumer
9 protection, stranded costs, efficiency, renewable energy, environmental
10 quality, and nuclear power.

11

12 Q. WHAT ARE YOUR QUALIFICATIONS IN THE FIELDS OF ELECTRIC
13 UTILITY REGULATION AND ENERGY POLICY?

14 A. I graduated from the Massachusetts Institute of Technology in 1981, where I
15 studied energy use in buildings. I was employed for 15 years at the Tellus
16 Institute, where I was Manager of the Electricity Program, responsible for
17 studies on a broad range of electric system regulatory and policy issues. I
18 have testified on energy issues in more than seventy regulatory proceedings
19 in twenty-five states and two Canadian provinces. I have co-authored more
20 than one hundred reports, including studies for the Electric Power Research

1 Institute, the U.S. Department of Energy, the U.S. Environmental Protection
2 Agency, the Office of Technology Assessment, the New England Governors'
3 Conference, the New England Conference of Public Utility Commissioners,
4 and the National Association of Regulatory Utility Commissioners. My
5 papers have been published in the *Electricity Journal*, *Energy Journal*,
6 *Energy Policy*, *Public Utilities Fortnightly* and numerous conference
7 proceedings, and I have made presentations on the economic and
8 environmental dimensions of energy throughout the U.S. and internationally.
9 I also have consulted for federal agencies, including the Department of
10 Energy, the Department of Justice, the Environmental Protection Agency,
11 and the Federal Trade Commission. My resume is provided here as **Exhibit**
12 **CAC-2**.

13

14 Q. HAVE YOU PREVIOUSLY TESTIFIED IN INDIANA?

15 A. Yes. I previously testified before the Commission regarding NIPSCO system
16 reliability and excess capacity in Cause No. 38045 in November, 1986 and
17 regarding stranded costs in the Forum on Electric Industry Competition in
18 November, 1996. I also testified regarding various aspects of electric utility
19 restructuring before the Indiana Energy Conference in October, 1996 and the
20 Regulatory Flexibility Committee of the Indiana General Assembly in
21 September, 1997.

22

1 Q: ON WHOSE BEHALF DO YOU APPEAR IN THIS PROCEEDING?

2 A: On behalf of the Citizens Action Coalition of Indiana, Inc.

3

4 Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

5 A: The Citizens Action Coalition has asked me to summarize the current
6 Operating Agreement and the benefits it provides to PSI and its Indiana
7 customers. I will also describe the principal provisions of the interim
8 settlement reached among the parties in FERC Docket ER01-200-001
9 regarding termination of the Cinergy Operating Agreement. I have also been
10 requested to review and respond to the outline proposals filed in the FERC
11 docket on behalf of Cinergy regarding replacement generation and
12 transmission coordination agreements among PSI, Cincinnati Gas & Electric
13 Company (“CG&E”), Cinergy Power Investments, Inc. (“CPI”), and Cinergy
14 Services, Inc. Finally, I will comment on the report filed by the
15 Commission Staff on June 1, 2001, in this proceeding.

16

17 Q: PLEASE DESCRIBE THE CITIZENS ACTION COALITION OF
18 INDIANA, INC.?

19 A: Citizens Action Coalition of Indiana, Inc. is a not-for-profit membership
20 corporation organized under the laws of the State of Indiana. Its principal
21 office is located at 5420 North College Avenue, Indianapolis, Indiana, 46220.
22 The organization has over 300,000 members and contributors in the State of

1 Indiana. Its members and contributors are predominantly residential
2 customers, but also include business customers of Indiana electric utilities.
3 Its members and contributors purchase substantial amounts of electricity for
4 use in their homes and businesses from Cinergy's affiliate, PSI Energy, Inc.,
5 and they will be directly affected by Cinergy's termination of the Operating
6 Agreement, and therefore by the outcome of this proceeding. The
7 organization also was an intervener in the proceeding in which the IURC
8 approved the Operating Agreement in 1994. See In re Reorganization of PSI
9 Resources, Inc. and Cincinnati Gas & Electric Company into Cinergy Corp.,
10 Cause No. 39897 (Ind. Util. Reg. Comm'n, Mar. 29, 1994).

11

12 **CURRENT OPERATING AGREEMENT AND ITS BENEFITS TO PSI**

13 Q. PLEASE BRIEFLY SUMMARIZE THE CURRENT OPERATING
14 AGREEMENT.

15 A. Under the Operating Agreement, Cinergy Services provides centralized
16 dispatch of the PSI and CG&E utility systems, coordination of power
17 purchases and sales, central planning for new generation, coordinated
18 compliance with environmental regulations, coordinated transmission
19 services and planning, and an opportunity for capacity sales between the two
20 utilities. I describe each of these beneficial services below. A copy of the
21 Operating Agreement is included as **Exhibit CAC-3**.

22

1 Q. DOES PSI BENEFIT FROM CENTRALIZED DISPATCH?

2 A. Yes. Under Section 4.04 of the Operating Agreement, through coordinated,
3 centralized dispatch, PSI is able to take advantage of lower cost resources
4 from CG&E whenever those resources are available. This is probably the
5 most readily quantified benefit of the Operating Agreement.

6

7 Q: WHEN THE MERGER WAS UNDER CONSIDERATION IN 1993, DID
8 PSI PROJECT CENTRALIZED DISPATCH SAVINGS?

9 A: Yes. In 1993, PSI projected that its share of production cost savings during
10 the first ten years of the merger would be approximately \$95.7 million. Of
11 this amount, \$45.1 million would be realized over the last four years of the
12 forecast period. (PSI Exhibit MFM, at 16, PSI Exhibit MFM-2, Indiana
13 Utility Regulatory Commission Cause Nos. 39646 and 39584-S1).

14

15 Q: WHAT HAS ACTUALLY HAPPENED?

16 A: To date, actual savings are on track to exceed the projected savings. Cinergy
17 has estimated that since 1994, central dispatch has actually provided nearly
18 \$110 million in savings from the combined system, as follows:

19	1994	\$1,927,712 (November and December only)
20	1995	\$14,157,509
21	1996	\$10,167,617
22	1997	\$18,770,381
23	1998	\$13,100,850
24	1999	\$23,091,068
25	2000	\$27,875,606

1 (From OUCC-01-006 and CACI-CNG-5).

2 The annual average savings to PSI is approximately \$8.8 million. Thus, PSI
3 and its ratepayers have benefited significantly from centralized dispatch.

4

5 Q. DOES PSI BENEFIT FROM COORDINATED POWER PURCHASES
6 AND SALES UNDER THE OPERATING AGREEMENT?

7 A. Yes. Under Sections 4.04c and 4.05 of the Operating Agreement, when
8 opportunities arise to purchase or sell power at attractive terms, Cinergy is
9 able to combine and coordinate such purchases or sales based on the
10 combined needs of both PSI and CG&E and then share the costs or proceeds
11 on an equitable basis between both companies.

12

13 Q. WHAT ARE THE MONETARY BENEFITS OF COORDINATED
14 PURCHASES AND SALES TO PSI?

15 A. Cinergy's responses to our discovery requests have not provided a clean
16 breakdown of PSI's savings. However, based on the aggregate numbers
17 provided, these savings appear substantial. (Cinergy response to CACI-
18 CNG-6)

19

20 Q. DOES PSI BENEFIT FROM CENTRAL PLANNING FOR NEW
21 GENERATION UNDER THE OPERATING AGREEMENT?

1 A. Yes. Through coordinated central planning under Section 4.02a of the
2 Operating Agreement, Cinergy can plan new generation resources in a way
3 that reduces costs for both PSI and CG&E due to the greater size and
4 diversity of their combined systems. To be more specific, PSI testified to the
5 Indiana Utility Regulatory Commission that its planning reserve margin
6 could be reduced three (3) percent because of the merger with CG&E due to
7 the increased size and diversity of the combined generating system. (PSI
8 Exhibit DLJ, at 22-23, Indiana Utility Regulatory Commission Cause Nos.
9 39646 & 39584-S1).

10

11 Q: WHAT ARE THE BENEFITS OF A LOWER PLANNING RESERVE
12 MARGIN?

13 A: Due to a lowered reserve margin, the synergistic mix of PSI and CG&E
14 generation, and more economically sized future units, PSI projected that the
15 Cinergy merger would result in the cancellation or deferral of approximately
16 250 to 300 megawatts of new capacity over a twenty-year planning horizon.
17 (PSI Exhibit DLJ, at 28, Indiana Utility Regulatory Commission Cause Nos.
18 39646 & 39584-S1).

19

20 Q: WHAT ARE THE MONETARY BENEFITS OF CENTRALIZED
21 PLANNING?

1 A: PSI projected in 1993 that its share of the cumulative capacity savings over
2 the first ten years following the merger would total \$185 million. Of this
3 amount, \$109 million was expected to accrue in the last four years of the ten-
4 year forecast period. (PSI Exhibit MFM, at 12 and Ex. MFM-1, Indiana
5 Utility Regulatory Commission Cause Nos. 39646 & 39584 S-1).

6
7 Q. DOES PSI BENEFIT FROM COORDINATED ENVIRONMENTAL
8 COMPLIANCE PLANNING UNDER THE OPERATING AGREEMENT?

9 A. Yes.

10

11 Q. PLEASE EXPLAIN.

12 A. Understanding the benefits of coordinated environmental compliance
13 planning requires some explanation of the evolution of environmental
14 regulations. In the past, when environmental regulators focused on a
15 “command and control” approach to regulating specific power plants on an
16 individual basis, it may have been reasonable to think of environmental
17 compliance as being somewhat separate from system planning, and as
18 applying to the particular plants owned by each of the operating companies.
19 However, environmental regulations have increasingly allowed emission
20 allowance trading among utilities and other electric power generators, and
21 system-wide environmental compliance programs. Examples of systemwide
22 compliance programs include the sulfur dioxide “cap and trade” program in

1 the Federal Clean Air Act Amendments of 1990, and the U.S. Environmental
2 Protection Agency's recently promulgated nitrogen oxide control regulations.

3

4 Q: WHAT IMPLICATIONS DO THESE SYSTEMWIDE ENVIRONMENTAL
5 COMPLIANCE REQUIREMENTS HAVE FOR CINERGY?

6 A: At the time of the merger in 1994, PSI and CG&E committed in the
7 Operating Agreement (Section 4.01.d) to do post-2000 compliance on a
8 company-wide, least-cost basis. This company-wide approach allows
9 compliance planning to be integrated with system planning, and allows it to
10 be done in a way that achieves the most cost-effective opportunities to reduce
11 emissions of regulated pollutants. By sharing the costs of the Compliance
12 Plan, PSI and CG&E will be able to meet their obligations at less cost than if
13 each had developed its own plan. As I explain below, environmental
14 compliance costs are very high; therefore, the savings are significant.

15

16 Q. DOES PSI BENEFIT FROM CAPACITY PURCHASES AND SALES?

17 A. Yes. Section 4.03 of the Operating Agreement addresses capacity purchases
18 and sales. Although there have not been any capacity purchases or sales
19 between PSI and CG&E, in part due to a five-year moratorium on such
20 exchanges, this is a benefit that PSI could find extremely valuable in the
21 remaining four years of the Agreement.

22

1 Q: PLEASE EXPLAIN?

2 A: Under the Operating Agreement, these exchanges would be based on the
3 embedded cost of an existing peaker unit. When the Agreement terminates,
4 PSI will have to purchase capacity at market prices that, given recent
5 experience, are likely to be substantially higher than the cost of existing
6 generation units.

7

8 Q. GIVEN THESE BENEFITS UNDER THE CURRENT OPERATING
9 AGREEMENT, DO YOU HAVE CONCERNS REGARDING
10 TERMINATION OF THE AGREEMENT?

11 A. Yes. On a forward-going basis, there are risks that various types of cost
12 shifting will occur between the two companies. In general, these relate to
13 activities that would be performed by Cinergy Services as joint agent for the
14 Cinergy Operating Companies in performing its power coordination and
15 central dispatch roles. I discuss my particular concerns later in my
16 testimony in the context of Cinergy's proposals for replacement generation
17 and transmission coordination agreements. These concerns can only be
18 addressed if the current Operating Agreement is replaced by successor
19 generation and transmission coordination agreements with just and
20 reasonable terms and conditions.

21

22

1 **INTERIM SETTLEMENT**

2 Q. PLEASE DESCRIBE THE INTERIM SETTLEMENT REACHED BY THE
3 PARTIES IN THE FERC PROCEEDINGS?

4 A. The interim settlement reached by the parties in the FERC proceedings calls
5 for the current Operating Agreement to terminate only upon successor
6 Section 205 agreements being filed by Cinergy and being made effective by
7 FERC. The parties other than Cinergy reserved their rights to challenge at
8 FERC whether the terms and conditions of those successor agreements are
9 just and reasonable.

10 Cinergy committed to file proposed successor Section 205 agreements
11 and, as necessary, an amended Service Agreement with the IURC in this
12 cause on or before June 22, 2001. Cinergy also committed not to file
13 proposed successor Section 205 agreements at FERC before October 16,
14 2001. This provides the parties to this proceeding with the opportunity to
15 review and recommend changes to the proposed successor agreements prior
16 to their filing at FERC. It also provides the Indiana Commission with the
17 opportunity to review the proposed agreements, consider changes
18 recommended by the other parties, and either accept the proposed agreements
19 or endorse changes to them. Ultimately, however, the FERC will be the
20 ultimate arbiter of those terms and conditions of the successor agreements
21 that are within its exclusive jurisdiction.

1 From the date of termination of the existing Operating Agreement
2 through December 31, 2004, PSI will credit its wholesale and retail native
3 load customers an annualized aggregate amount of \$8.3 million to
4 compensate them for joint dispatch savings that would have been realized
5 during that period under the current Operating Agreement. Otherwise,
6 however, the non-Cinergy parties have agreed to forego any claim in any
7 forum for merger savings allegedly lost as a result of the replacement of the
8 Operating Agreement pursuant to the terms of the interim settlement.

9 The current FERC proceeding (i.e. Docket ER01-200-000) is resolved
10 by the settlement; all outstanding appeals of the FERC orders in that case will
11 be dismissed with prejudice within five business days after issuance of a
12 FERC order allowing the section 205 successor agreements to become
13 effective; no new appeals in Docket ER01-200-000 may be initiated by any
14 party. The current outstanding appeals will be held in abeyance pending the
15 issuance of a FERC order allowing the Section 205 successor agreements to
16 become effective.

17 After the filing of successor agreements at the IURC, and prior to the
18 filing of the successor agreement at the FERC, the parties (other than the
19 IURC) may not make any filings opposing the issuance by the IURC of an
20 order with the required statutory findings under the PUHCA necessary to
21 provide for the EWG status of CG&E generation assets transferred to the
22 Ohio Genco. PSI and/or CG&E will make the appropriate filings requesting

1 the required statutory findings on or after June 22, 2001 and the parties
2 agreed to work in good faith to establish a procedural schedule that permits
3 the parties other than PSI and/or CG&E to file testimony after October 16,
4 2001 and that facilitates an IURC decision on such filings as soon after
5 Cinergy files the successor agreements with FERC as practicable. Provided
6 that Cinergy files the successor agreements with FERC as contemplated by
7 this Settlement, the other parties will not oppose the requested PUHCA
8 statutory findings in any manner. Thereafter, none of the other parties will
9 oppose any FERC or SEC or other filings necessary to transfer the Ohio
10 assets. In addition, and to the extent necessary to implement the successor
11 agreements approved by the FERC, the other parties shall not oppose the
12 issuance by the IURC of an order with the required statutory findings under
13 the PUHCA necessary to provide for purchases and sales between PSI and
14 Genco, and none of the other parties will oppose such EWG findings. The
15 other parties will not take action to delay expeditious issuance of these IURC
16 orders. However, these commitments will cease to apply if the Operating
17 Agreement is not replaced by successor agreements in accordance with the
18 terms of the Settlement.

19 Nothing in the settlement agreement is intended to supersede or be
20 inconsistent with any agreements approved by the IURC in Cause No. 39897,
21 except as provided in the settlement with respect to the Operating Agreement
22 and the Service Agreement.

1 The settlement is an integrated package of compromises that are
2 nonseverable. If any party commits a material breach of any provision, the
3 nonbreaching party(ies) are no longer bound by the other provisions of the
4 settlement and may seek any remedy permitted by law for the breach. If the
5 FERC makes any material modification to any provision of the settlement,
6 any party may withdraw from the settlement by giving the other parties ten
7 days prior written notice.

8 A copy of the interim settlement is included as **Exhibit CAC-4**.

9 Q. HAS THE FERC APPROVED THE INTERIM SETTLEMENT?

10 A. The administrative law judge presiding over the FERC proceeding certified
11 the interim settlement to the FERC on May 23, 2001. By direction of the
12 Commission, FERC's Acting Secretary issued a letter ruling approving the
13 settlement on June 13, 2001. See **Exhibit CAC-5**.

14
15 **CINERGY PROPOSALS FOR SUCCESSOR AGREEMENTS**

16 Q. HAS CINERGY FILED THE SUCCESSOR AGREEMENTS
17 CONTEMPLATED BY THE INTERIM SETTLEMENT?

18 A. As of the prefilings of my testimony, Cinergy has not yet filed the successor
19 agreements contemplated by the interim settlement. While negotiations are
20 ongoing among the parties, no settlement has yet been reached. Thus, I
21 expect Cinergy to file proposed successor agreements with its testimony
22 contemporaneous with the other parties' prefilings on June 22.

1 Q. WHAT THEN IS THE BASIS FOR YOUR UNDERSTANDING OF
2 CINERGY'S PROPOSALS FOR SUCCESSOR AGREEMENTS?

3 A. The negotiations among the parties are confidential. Therefore, I am basing
4 my understanding of Cinergy's proposals on the testimony of Mssrs.
5 Esamann and Jackups in the FERC docket. This testimony is included as
6 Attachments 4 and 5 to the Staff Report filed June 1.

7 Q. WHAT IS YOUR UNDERSTANDING OF CINERGY'S PROPOSALS
8 BASED ON THE FERC TESTIMONY OF MSSRS. ESAMAN AND
9 JACKUPS?

10 A. Cinergy is proposing two successor agreements, a power coordination
11 agreement and a transmission administration agreement.

12 The power coordination agreement may or may not provide for joint
13 dispatch of the PSI and CG&E generating facilities. In either event, power
14 exchanges between PSI & CG&E (or CPI after transfer of the Ohio
15 generating assets pursuant to the provisions CG&E's generation deregulation
16 order) at market price rather than embedded cost. If the agreement calls for
17 joint dispatch, it would also permit Cinergy to discontinue joint dispatch
18 upon reasonable notice and without further regulatory review. However, PSI
19 and CG&E/CPI would continue to coordinate their purchases and sales of
20 power to the wholesale market when it was mutually advantageous to do so.
21 PSI and CG&E/CPI would plan future changes to their generating systems
22 separately. The Operating Companies would also comply with

1 environmental laws on a separate basis, except Cinergy would reserve the
2 option of engaging in joint compliance when environmental laws and
3 regulations treat them as a single system for compliance purposes. Cinergy
4 could terminate the power coordination agreement with six months notice
5 without regulatory review.

6 The transmission administration agreement would continue to provide
7 for operation of the PSI and CG&E transmission systems as a single system.
8 However, the costs and benefits of transmission system operation going
9 forward would be allocated somewhat differently between the Operating
10 Companies than at present.

11 Q. WHAT ARE YOUR PRINCIPAL CONCLUSIONS REGARDING
12 CINERGY'S PROPOSALS?

13 A. I conclude that the Cinergy proposals will not result in successor agreements
14 that are just and reasonable as contemplated by the interim settlement. In
15 particular, the proposed power coordination agreement is likely to cause
16 future harm to PSI if necessary financial and operational safeguards are not in
17 place to protect against cross-subsidization and conflict-of-interest problems
18 inherent in Cinergy Services serving simultaneously as agent for PSI, CG&E
19 and CPI. I also conclude that periodic reports should be filed with the FERC
20 and IURC in order to confirm that PSI will be treated fairly and that PSI's
21 customers will be protected. The reports also will serve the valuable purpose

1 of monitoring and documenting the extent to which PSI suffers harm due to
2 the future relationship among PSI, CG&E, CPI and Cinergy Services.

3

4 Q. WHAT IS YOUR OPINION OF CINERGY'S PROPOSED STANDARD
5 FOR AVOIDING HARM TO PSI UNDER ITS POWER COORDINATION
6 AGREEMENT?

7 A. As described in Mr. Esamann's testimony in the FERC proceeding, Cinergy's
8 proposal was that PSI would be "held harmless" as a result of the
9 replacement of the Operating Agreement so long as power exchanges
10 between PSI and CG&E are continued at a "market price." (CSI-1 at 4, 21-
11 23) This is an inappropriate standard and was effectively modified by the
12 parties in the interim settlement.

13

14 Q. HOW SHOULD PSI BE "HELD HARMLESS" FOR THE
15 REPLACEMENT OF THE OPERATING AGREEMENT?

16 A. As discussed in more detail below, PSI should be "held harmless" through: a)
17 the compensation provided in the interim settlement for termination of the
18 current Operating Agreement prior to December 31, 2004; and b) adequate
19 protections against cross-subsidy and conflict-of-interest on a "going
20 forward" basis after the current Operating Agreement is terminated and
21 successor agreements are in effect.

22

1 Q. SHOULD THE CURRENT OPERATING AGREEMENT BE REPLACED
2 RATHER THAN SIMPLY AMENDED?

3 A: Given the circumstances described in Cinergy's FERC testimony, yes, but
4 only if the operations of PSI, CG&E and CPI, and their relationship, are
5 subject to successor agreements which include the strict regulatory conditions
6 described in my testimony.

7

8 Q: WHAT DO YOU MEAN?

9 A: Cinergy's FERC testimony clearly establishes that it would be inappropriate
10 to continue the current Operating Agreement indefinitely and without major
11 change given the different regulatory structures and business plans under
12 which PSI and CG&E now operate. (CSI-1 at 3-4, 13-18; CSI-2 at 3; CSI-3
13 at 3-8). Likewise, any new relationship and agreements between the two
14 companies must be developed in light of these same regulatory and business
15 considerations. But, it is difficult to conceive of PSI and CG&E continuing
16 to function as the two principal operating companies of Cinergy without
17 approved successor agreements to replace the current Operating Agreement.
18 The interim settlement recognizes this reality. So does Cinergy's testimony
19 at FERC. But, Cinergy's proposals for successor agreements are flawed.

20

21 Q: PLEASE EXPLAIN.

1 A: In the first place, Cinergy's proposal to continue energy exchanges between
2 the two companies at a "market price" is problematic.

3

4 Q: WHY?

5 A: Without the capacity margin equalization requirement of the current
6 Operating Agreement, a significant imbalance in energy transfers between
7 PSI and CG&E could develop over time, especially if PSI is constructing new
8 installed capacity while CG&E is divesting it, as Cinergy is apparently
9 contemplating. (CSI-1 at 14, 18-19; CSI-3 at 5, 7) Additionally, Cinergy has
10 not demonstrated that its proposed "Cinergy Hub" market price is an
11 appropriate proxy to use for these exchanges. There are two related
12 concerns: first, does the "Cinergy Hub" have enough volume of transactions
13 to make it an appropriate proxy price; second, can CG&E or its affiliates
14 effectively influence the Cinergy Hub price through their own transactions.

15

16 Q. WHY DO YOU QUESTION THE ADEQUACY OF THE VOLUME OF
17 TRANSACTIONS AT THE "CINERGY HUB?"

18 A. We have only very limited data on the total volume of transactions for the
19 Cinergy Hub, and for Cinergy's share of those transactions. Therefore, I have
20 an insufficient basis to conclude that the volume of transactions is sufficient
21 to provide a reliable index for pricing energy exchange between PSI and

1 CG&E. There are also several other reasons to be concerned with Cinergy's
2 proposal to use the Cinergy Hub price.

3 First, is the lack of analysis provided on activity in the Cinergy
4 market. Cinergy should be required to provide sufficient analysis to allow
5 other parties and the Commission to understand whether and to what extent
6 the market is robust and whether and to what extent Cinergy's own trading
7 activities might influence the market price.

8 Second, circumstances can change over time in ways that can make a
9 particular market indicator less useful. For example, NYMEX listings for
10 Cinergy Electricity, once active, now report "no recent trading activity" for
11 this market.

12 Third, the prices typically reported for electricity markets are for a
13 somewhat informal sampling of transactions. For example, the prices
14 reported in "Power Markets Week" are "collected exclusively by Power
15 Markets Week reporters in a daily survey of marketers, utilities and brokers."
16 They may represent only a small portion of the actual trades, and the reported
17 trades are not indexed or volume weighted. Similarly, Megawatt Daily's
18 Market Report lists prices for various electricity markets based upon surveys
19 of particular market participants. Such data may not be comprehensive or
20 entirely accurate. Also, it may be possible for an individual company to
21 influence the *reported* market price, even if it could not influence the *actual*
22 market price.

1 Finally, there is the lack of independent market monitoring.
2 Independent System Operators, such as those in PJM, New York, and New
3 England, have responsibility for monitoring market behavior and reporting
4 (or in some cases mitigating) market power. The lack of a market monitoring
5 function in the Cinergy market makes the Cinergy Hub prices unreliable for
6 purposes of pricing energy transactions between PSI and CG&E.

7

8 Q. WHY ARE YOU CONCERNED THAT CG&E OR ITS AFFILIATES
9 MIGHT BE ABLE TO INFLUENCE THE CINERGY HUB PRICE?

10 A. If CG&E or its affiliates represent a large share of the market activity at the
11 Cinergy Hub, then it is likely that their actions in the market will be able to
12 increase or decrease the price at the Cinergy Hub. There will be situations in
13 which shareholders of Cinergy as a whole would benefit from a higher
14 market price. For example, if CG&E were selling energy to PSI, then a
15 higher price for those transactions would tend to mean higher net revenue to
16 Cinergy shareholders, since the costs on the PSI side would generally be
17 recovered from regulated customers.

18 Conversely, in situations with PSI selling energy to CG&E, Cinergy
19 shareholders would tend to favor a lower market price for those transactions.
20 The pricing of power exchanges is, of course, only one reason of many that
21 Cinergy may prefer a higher or lower Cinergy Hub price at any particular
22 point in time -- but it is worrisome. If Cinergy has the ability and the

1 incentive to manipulate the price for the market index being used to price
2 inter-affiliate transactions, that is a problem for Indiana customers.

3

4 Q. ARE THERE OTHER EXAMPLES OF POTENTIAL PROBLEMS WITH
5 CINERGY'S PROPOSALS?

6 A. Yes. They include central dispatch, capacity sales between entities,
7 environmental compliance, and transmission system operations.

8

9 Q. WHAT ARE THE PROBLEMS RELATED TO CENTRAL DISPATCH?

10 A. On a day-to-day basis, even though the PSI and CG&E systems will no
11 longer be jointly dispatched based on marginal generation costs, system
12 operators in the central dispatch center will make decisions as to which
13 generation units at each Operating Company will run or not run and how
14 units will be ramped up and down. Longer-term decisions on when units can
15 take maintenance outages will also be made. All of these decisions,
16 previously made systemwide based on unit operating costs, performance
17 history, and with a formula for sharing savings among PSI, CG&E and their
18 affiliates, will now be made for each operating company using different but
19 unspecified criteria. Generation owned by PSI and its affiliates will still be
20 subject to cost-based rate regulation; generation owned by CG&E and its
21 affiliates will not; in fact CG&E may sell its generation assets to a subsidiary
22 or exit the generation business entirely. The Cinergy system operators will

1 face a “no win” situation, with each of their decisions subject to second-
2 guessing from the conflicting perspectives of generation owners who may
3 have benefited differently and significantly if an alternative choice had been
4 made. In essence, Cinergy Services’ system operators will have to decide
5 whether to maximize CG&E profits to the benefit of Cinergy shareholders or
6 to minimize PSI costs to the benefit of Indiana customers.

7

8 Q. WHAT ARE THE PROBLEMS RELATED TO CAPACITY SALES?

9 A. As with energy sales, a challenging issue is how to devise a system for
10 exchanges that is fair to both PSI, which Cinergy plans will retain a relatively
11 stable but increasing amount of installed capacity, and CG&E, which Cinergy
12 expects to have periodic fluctuations in its declining amount of installed
13 capacity due to losses of native load, sales of existing plants, and a calculated
14 decision to rely more heavily on market resources.

15

16 Q. WHAT DOES CINERGY PROPOSE?

17 A. Cinergy proposes to rely on a “market price” to determine the value of
18 capacity exchanges. (CSI-1 at 21-23; CSI-3 at 8).

19

20 Q. ARE THERE RISKS TO THIS APPROACH?

21 A. Yes, it can be subject to gaming by the entity that can vary its own capacity
22 commitments while having preferred access to another entity’s excess

1 capacity. Alternatively, one entity might devise a way to acquire a
2 substantial amount of available excess capacity and bid it at a high market
3 price to the detriment of other entities that must purchase all or a portion of
4 that excess capacity. Problems of this type have occurred in wholesale
5 electricity markets, specifically in the New England market.

6

7 Q. HAS FERC ADDRESSED THIS PROBLEM?

8 A. To date, FERC has been able to address this problem in New England only
9 on a prospective basis. The New England Independent System Operator used
10 its market monitoring authority to prevent some abuses but is still trying to
11 identify a long-term solution. (EL00-62-001/2 and ER00-2052-002/3, FERC
12 Order of 6/28/00) It is important to address the potential for abuse through
13 effective market structures and procedures that prevent gaming rather than
14 trying to identify and penalize gaming actions after the fact. The successor
15 power coordination agreement should expressly provide for such structures
16 and procedures.

17

18 Q. WHAT ARE YOUR CONCERNS WITH JOINT ENVIRONMENTAL
19 PLANNING AND COMPLIANCE AFTER TERMINATION OF THE
20 OPERATING AGREEMENT?

21 A. While joint compliance planning offers opportunities for savings, it does not
22 make sense in a context where the two operating companies have such

1 different and conflicting interests. Joint environmental compliance was
2 something that CACI and ELPC advocated at the time of the merger.
3 However, the advent of Ohio deregulation created mixed incentives for
4 Cinergy regarding environmental compliance, and it may no longer make
5 sense. The Ohio deregulation plan for CG&E basically fixes generation rates
6 during the transition period and allows the market to set them thereafter. So,
7 CG&E environmental compliance costs will be borne by Cinergy's
8 shareholders. By contrast, PSI remains rate regulated with statutory
9 provisions permitting the Company to recover through customer rates the
10 costs of environmental compliance measures taken in Indiana. Indeed, I
11 understand that Indiana law provides preferential rate treatment for
12 environmental compliance costs, permitting Construction Work In Progress
13 charges to be recovered and pre-approval to be obtained for certain categories
14 of compliance measures. So, Cinergy has a financial incentive to do and
15 spend on environmental compliance in Indiana rather than Ohio, at least
16 where compliance is a company-wide rather than state-by-state matter.

17

18 Q. CAN YOU PROVIDE EXAMPLES OF HOW COST SHIFTS FROM OHIO
19 TO INDIANA COULD OCCUR?

20 A. Yes. Two examples, below, involve compliance with the “New Source
21 Review “ EPA enforcement action under the Clean Air Act based on a
22 Cinergy “company-wide” compliance requirement.

1 In the first example, due to the incremental costs of emission control
2 installation at various units, CG&E "over complies" and PSI "under
3 complies" with the nitrogen oxide state requirements in meeting a system-
4 wide requirement. Let us assume that the marginal unit is CG&E Unit X. As
5 a result, Cinergy allocates the cost of CG&E "over compliance" to PSI
6 through a transfer payment. Subsequently, CG&E sells Unit X without
7 sharing the proceeds of the sale with PSI. Cinergy then determines that PSI
8 is in a state of undercompliance that requires installation of another piece of
9 pollution control equipment (selective catalytic reduction) at, say the Cayuga
10 1 plant, because "it can no longer lean on CG&E." Cinergy declares the
11 Cayuga emission control equipment to be a "PSI only" compliance measure,
12 with Indiana being assigned its entire cost.

13 In the second example, although none of PSI's Gibson units were
14 named in the EPA enforcement action, PSI agrees to installation of scrubbers
15 at two or three of those units as a major element of the settlement because of
16 EPA's and the Northeast states' willingness to "trade off" more stringent,
17 earlier compliance at units in Ohio named in the suit in order to obtain the
18 greater sulfur dioxide emission reductions available at Gibson. Cinergy
19 assigns the capital and operating costs of the Gibson scrubbers entirely to PSI
20 on the theory that the Gibson units are PSI "legacy units" and PSI will receive
21 the benefit of the additional sulfur dioxide allowances produced as a result.

22

1 Q. WHAT IS THE MAGNITUDE OF CINERGY'S ENVIRONMENTAL
2 COMPLIANCE COSTS?

3 A. These costs going forward are enormous. For example, Cinergy currently
4 estimates that its systemwide environmental compliance costs during
5 approximately the next decade will be nearly \$1.4 billion. See Cinergy's
6 December 2000 press release announcing the New Source Review settlement
7 in principle with the EPA, Exhibit CAC-6.

8

9 Q. WHAT DOES CINERGY'S TESTIMONY IN THE FERC CASE PROPOSE
10 WITH RESPECT TO ENVIRONMENTAL COMPLIANCE?

11 A. Mr. Esamann's FERC testimony addresses this issue. He states that "Given
12 the significant differences in business objectives between the regulated PSI
13 generation portfolio and the deregulated CG&E portfolio, there will be no
14 absolute commitment to plan for future environmental compliance on an
15 integrated basis" but he leaves the door open to joint compliance "in
16 instances where environmental laws and regulations treat the PSI and CG&E
17 generation as a single 'source' of pollutants or otherwise treat them as a
18 single system" (CSI-1 at 30). He claims that PSI will be protected from
19 bearing an inappropriate burden for environmental compliance costs because
20 the allocation will be subject to FERC's jurisdiction (CSI-1 at 30).

21

1 Q. DOES MR. ESAMANN'S FERC TESTIMONY ON ENVIRONMENTAL
2 COMPLIANCE CONVINCING YOU THAT PSI CUSTOMERS WILL BE
3 PROTECTED?

4 A. No. It is far too vague about how compliance will be handled and how costs
5 will be allocated—especially with the allocation of \$1.4 billion in
6 environmental compliance costs at stake. The general principle of least-cost
7 compliance sounds reasonable enough – but unfortunately it leaves too much
8 to Cinergy's discretion with respect to when compliance will be “system
9 specific” and when compliance will be “joint.” I am also concerned that a
10 particular compliance obligation not be characterized one way when
11 compliance plans are being developed and the other way when the time
12 comes to allocate the costs and benefits of the specific compliance measures
13 being implemented.

14 I am also pessimistic that, given their limited resources, state and
15 federal regulators will be able to adequately monitor and review compliance
16 costs and allocations. If we have two regulated companies, with reasonably
17 well aligned interests, then the benefits of joint compliance would be well
18 worth the risks of some occasional cost shifting. However, with the interests
19 of PSI and CG&E so different, it is important to have clear lines of effective
20 separation to avoid a situation where PSI customers bear more than their fair
21 share of the costs of environmental compliance.

1 I am particularly concerned that PSI customers could bear more than a
2 fair share of the costs associated with the settlement in principle described in
3 Exhibit CAC-6 that Cinergy has reached with the Environmental Protection
4 Agency, certain northeastern states, and two environmental groups in the
5 pending New Source Review enforcement action. This settlement presents
6 the risk of negotiated trade-offs that would not be consistent with least-cost
7 compliance for PSI especially (but not exclusively) because of the incentives
8 for the parties to agree on over and early compliance at PSI's Gibson units.
9 The plaintiffs are very interested in such compliance at Gibson because of the
10 large size and expected longevity of its five units and may well be able to
11 secure voluntary agreement to measures through settlement that could not be
12 mandated through litigation. Cinergy would have an incentive to agree to
13 such Indiana compliance in lieu of alternative (and potentially lower cost)
14 compliance at CG&E's Ohio facilities because environmental compliance
15 costs are recoverable through increases to customer rates in Indiana but not in
16 Ohio. I am particularly concerned about this cost-shifting risk because
17 Cinergy has been unable to provide a copy of the NSR settlement to the other
18 parties in this proceeding because of a pledge of confidentiality in the NSR
19 enforcement action.

20
21 Q. WHAT ARE THE PROBLEMS RELATED TO TRANSMISSION SYSTEM
22 OPERATION?

1 A. The current method of allocating costs and revenues under the Agreement is
2 to assign costs associated with existing transmission to the owner of that
3 transmission and to allocate the costs of new transmission based on the
4 proportion of new generation owned by each entity. As discussed above, it is
5 uncertain whether CG&E and its affiliates will construct any new generation
6 facilities in the future, thereby rendering the methodology used in the current
7 Operating Agreement obsolete.

8

9 Q. WHAT IS CINERGY'S PROPOSAL?

10 A. Mr. Jackups recommends that the current methodology be replaced with a
11 new methodology based largely on load ratio share. (CSI-2 at 7-9)

12

13 Q. DO YOU HAVE CONCERNS WITH A METHODOLOGY BASED ON
14 LOAD RATIO SHARE?

15 A. Allocating costs and revenues based on load ratio share could be an
16 appropriate methodology. Mr. Jackups' FERC testimony raises concerns
17 based on what appears to be a lack of symmetry between allocating costs and
18 allocating revenues. He recommends that costs be allocated based on
19 comparing each entity's total proportional investment in the bulk
20 transmission system to its load ratio share. For revenues, he recommends
21 that revenues from grandfathered contracts reside with the entity associated
22 with the contracts and that revenues from the open access transmission tariff

1 be allocated on a load ratio share, except for those revenues attributable to
2 Ohio deregulation, which will be assigned to CG&E. CSI-2 at 7-9. Based
3 on this limited description, one could conclude that the methodology is
4 unfair. In addition, Mr. Jackups does not provide a definition of an entity's
5 "peak load share" or adequately explain the required comparison between
6 "load ratio share" and "proportional transmission investment."
7

8 Q. WHAT IS YOUR RECOMMENDATION?

9 A. FERC Orders 888/889 and 2000 envision an integrated bulk power
10 transmission system on a regional, inter-company basis that was not
11 contemplated at the time that the current Operating Agreement was
12 developed in 1993. It is still uncertain how open-access transmission tariffs
13 and Regional Transmission Organizations will ultimately influence the
14 development of new business organizations; particularly as vertically
15 integrated electric utilities explore the myriad options presented by wholesale
16 and retail restructuring of the industry. It is possible that Cinergy may
17 eventually develop or transfer its transmission assets to a transmission-only
18 entity that has no generation assets or load obligations. But, Cinergy is not
19 proposing such an entity at this time and the Midwest Independent System
20 Operator of which Cinergy will be a part is expected to be operational by
21 December 15, 2001. As a result, it would certainly seem appropriate for
22 Cinergy to have definite plans and procedures in place not only for the

1 interim period before but also the subsequent period after the Midwest
2 Independent System Operator becomes operational. The successor
3 transmission agreement should address both periods.

4

5 Q. DO YOU HAVE ADDITIONAL CONCERNS WITH CINERGY'S
6 PROPOSALS REGARDING REPLACEMENT OF THE OPERATING
7 AGREEMENT?

8 A. Yes. The Operating Agreement references a companion Service Agreement,
9 a copy of which is included as Exhibit CAC-7. Under its terms, Cinergy
10 Services conducts power system planning, control center operations,
11 marketing and customer relations, electric system maintenance, and procures
12 and maintains meters, vehicles, and equipment for both PSI and CG&E on a
13 joint, centralized basis. Given Cinergy's decision to replace the Operating
14 Agreement due to the increasingly divergent interests of PSI and CG&E, it
15 would be inappropriate for Cinergy Services to continue these types of
16 activities in the future on behalf of both PSI and CG&E without new, very
17 specific guidelines on how decisions would be made and costs allocated.

18

19 Q: WHY?

20 A: Without specific guidelines, there could be inadvertent or intentional cost
21 shifts. For example, in an effort to reduce overall costs, CG&E may defer
22 maintenance on its vehicles for several years and then incur substantially

1 higher costs due to that neglect. It would be inappropriate for PSI to pay a
2 fixed annual “pro rata” maintenance charge under such a scenario. An
3 additional example is in the area of customer relations and marketing. In
4 light of the radically different regulatory requirements and incentives for PSI
5 and CG&E, and the fact that PSI will maintain a relatively stable customer
6 base while CG&E will see an erosion of customers, joint marketing and
7 customer relations activities would be inappropriate.

8

9 Q. DOES CINERGY INTEND TO AMEND OR REPLACE THE SERVICE
10 AGREEMENT?

11 A. I am not aware of any proposal or filing from Cinergy on this matter to date.
12 However, the interim settlement commits Cinergy to file any amendments to
13 the Service Agreement it deems appropriate in this proceeding along with its
14 proposed successor Section 205 agreements. Hopefully, Cinergy will deem
15 such an amendment appropriate and file it with the Indiana Commission on a
16 timely basis.

17

18 Q. ARE THERE STEPS THAT CAN BE TAKEN TO PREVENT THE
19 PROBLEMS WITH CINERGY’S PROPOSALS THAT YOU HAVE
20 DESCRIBED IN YOUR TESTIMONY?

21 A. There are numerous approaches that have been tried, including efforts by the
22 FERC, to limit if not completely prevent, the misallocation of costs and

1 benefits between customers and shareholders or between one group of
2 ratepayers and another group. Unfortunately, there is no certainty that even
3 rigorous, strictly enforced codes of conduct are sufficient to stop all abuses.
4 Actions that can cause harm are not limited to malfeasance, i.e., someone
5 intentionally trying to shift costs or benefits from one entity to another.
6 Inadvertent errors can result in allocations that are inappropriate. More
7 importantly, daily operations decisions frequently involve choices that
8 require the allocation of the output from one generator or contract to several
9 entities.

10

11 Q. WHAT ARE YOUR RECOMMENDATIONS FOR THE OPERATION OF
12 CINERGY GOING FORWARD?

13 A. First, PSI needs to be compensated as called for in the interim settlement for
14 the merger benefits it loses due to the termination of the current Operating
15 Agreement as a result of Ohio deregulation. Second, PSI needs to be
16 compensated for any increased operating costs that it will incur going
17 forward due to the future separation of certain functions now performed on a
18 joint basis. These could include a new dispatch center (or at least duplicated
19 dispatch facilities within the current center), as well as additional personnel
20 to engage in power purchases and sales, new generation planning,
21 environmental compliance, and transmission operations and planning.

1 Third, PSI ratepayers and shareholders need to be adequately
2 protected in any successor agreements with Cinergy Services. These
3 protections should include a fundamental “no harm” principle, appropriate
4 separations of generation, transmission, and planning functions, re-evaluation
5 of cost and benefit allocation criteria, and the implementation of code-of-
6 conduct procedures.

7 Finally, there need to be periodic reports filed with FERC and the
8 IURC. These reports are necessary to ensure that Cinergy’s actual operations
9 conform to all the conditions proposed by Cinergy and any additional
10 requirements imposed by the FERC or the IURC.

11

12 Q. ARE THESE REASONABLE REQUIRMENTS?

13 A. Yes. The inclusion of the these recommended terms and conditions in the
14 power coordination and transmission administration agreements would help
15 to meet Cinergy’s pledge in its FERC testimony that replacement of the
16 Operating Agreement will not result in any harm to PSI or its customers. The
17 reports can help assure compliance with the terms and conditions in the
18 agreements required to make them just and reasonable. Examples of
19 information reporting that would be critical to compliance assurance would
20 be the timing, duration and pricing of power exchanges between PSI and
21 CG&E/CPI.

1 Q. WHAT ABOUT UNILATERAL TERMINATION BY CINERGY OF THE
2 SUCCESSOR AGREEMENTS; IS THAT SOMETHING YOU
3 RECOMMEND?

4 A. Cinergy makes such a recommendation in its FERC testimony. (CSI-1 at 32-
5 33). But, the Commission should reject unilateral termination by Cinergy of
6 successor agreements, whether now or in the future.

7 It seems virtually impossible that the PSI and CG&E transmission
8 systems will ever again be operated separately; thus, termination--let alone
9 unilaterally--of a successor transmission agreement seems wholly
10 inappropriate. It is very doubtful that complete separation of the generation
11 planning, operation and support functions of the operating companies is
12 feasible (or desirable) within the same holding company structure. What
13 would be feasible and preferable is a limited separation with independent
14 performance of some functions and continued joint performance of others.
15 This determination regarding the future degree of separation is something
16 that should be left open for further discussion between the parties and
17 regulatory review prior to implementation. Certainly, avoidance of cross
18 subsidy and conflict of interest should be particularly critical topics of such
19 further discussions.

20 This would be true for any future successor agreement, whether it is a
21 successor agreement that immediately amends or replaces the current
22 Operating Agreement or a later agreement that amends or replaces an

1 immediate successor agreement. Each of these agreements should require
2 approval from both the FERC and the IURC. As contemplated in Section
3 8.05 of the current Operating Agreement, the Indiana Joint Stipulation and
4 Agreement, the Indiana Settlement Agreement, and PSI's Affiliate
5 Guidelines, Indiana Commission review and approval should also precede the
6 filing of any successor agreement with the FERC. Moreover, any successor
7 agreement should expressly provide for prior Indiana Commission review
8 and approval of any amendment or replacement agreement.

9
10 **STAFF REPORT**

11 Q. DO YOU HAVE ANY COMMENTS ON THE STAFF REPORT FILED IN
12 THIS PROCEEDING?

13 A. The Staff Report makes an essential and valuable contribution to the record
14 of this proceeding by explaining in detail the historical context for the current
15 Operating Agreement (see Attachment I to the Report). I believe it is
16 particularly important that the Indiana Commission remember that the
17 Operating Agreement was but one of a series of inter-related agreements
18 approved as part of an overall Indiana Settlement. In particular, in Cause No.
19 39897, the IURC reviewed and approved the following agreements:

- 20 1. Indiana Settlement Agreement;
21 2. PSI's Affiliate Guidelines;
22 3. The Operating Agreement;

- 1 4. The Service Agreement; and
- 2 5. The Indiana Joint Stipulation and Agreement.

3 See In re Reorganization of PSI Resources, Inc. and Cincinnati Gas &
4 Electric Company into Cinergy Corp., Cause No. 39897 (Ind. Util. Reg.
5 Comm'n, Mar. 29, 1994).

6 This context is especially important because the interim settlement
7 expressly provides that it does not change the terms of the Indiana
8 Settlement. It is also important to remember that all parties, including
9 Cinergy, committed as part of the Indiana Settlement to a plan for
10 coordinated regulation among the IURC, FERC and the SEC. The
11 deregulation of Cinergy's Ohio generation does not eliminate either the
12 desirability or the feasibility of such coordinated regulation in Indiana.
13 Indiana customers still prefer an Indiana to a federal forum and the Indiana
14 Commission still wants to protect its jurisdiction from federal pre-emption.
15 Neither the Indiana parties nor the Indiana Commission has done anything of
16 which I am aware to violate or abuse the coordinated regulation plan
17 approved in 1994. Cinergy would seriously undermine its credibility to claim
18 Ohio deregulation as the justification for disavowing at this juncture a plan
19 for coordinated regulation in which the Company enthusiastically joined at
20 the time of its formation.

21 The Staff Report also identifies what I believe to be the principal
22 substantive and procedural issues that must be resolved in the successor

1 agreements filed by Cinergy (see Section IV). It also recommends a structure
2 and procedure (see pp. 9-10) that merits serious consideration for addressing,
3 at least in part, the most crucial cross-subsidy and conflict-of-interest
4 problems associated with Cinergy's market pricing proposal. The
5 establishment and monitoring of a properly functioning Generation
6 Administrative Committee and power exchange protocol is essential if the
7 market pricing proposal is to be just and reasonable.

8

9 Q. DO YOU HAVE ANY CONCERNS REGARDING THE STAFF REPORT?

10 A. I have two relatively minor concerns. First, the Staff recommends (p. 14)
11 that the Commission enter an order in this cause directing the parties to
12 negotiate appropriate affiliate rules and codes later this year—perhaps by
13 October 1, 2001. I would note that this recommendation is only practical if
14 the parties reach a settlement on the merits that the Commission approves
15 following the scheduled settlement hearing on July 9. If the parties should
16 fail to reach a settlement, the hearing on the merits is not scheduled to be held
17 until September 10 and 11, which would make very unlikely both entry of a
18 Commission order and negotiation of appropriate affiliate rules and codes by
19 October 1. Second, the Staff seems to characterize (p. 11) Cinergy's
20 proposal as “dispatching at market-based prices.” However, as I understand
21 Cinergy's proposal, the PSI and CG&E's generating resources would still be
22 dispatched in real time based on incremental cost, but power transfers

1 between the Operating Companies would be valued after-the-fact at market-
2 based prices.

3

4 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

5 A. Yes.