

estimated at 5 minutes at the time of an initial filing and 3 minutes when completed as part of the tax exemption renewal process.

**ADDITIONAL INFORMATION OR COMMENTS:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,  
Clearance Officer.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26615]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 27, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 23, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### *Cinergy Corp., et al. (70-8933)*

Cinergy Corp. ("Cinergy"), a registered holding company, its wholly-owned nonutility holding company subsidiary, Cinergy Investments, Inc. ("Investments"), and Cinergy's wholly-owned service company subsidiary, Cinergy Services, Inc. ("Cinergy Services"), all located at 139 East Fourth Street, Cincinnati, Ohio 45202, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54, 90 and 91 thereunder.

Cinergy and Investments request authorization to form and provide guaranties in respect of a new wholly-owned nonutility subsidiary, expected to be named Cinergy Solutions, Inc. ("Solutions"), which will market a wide variety of energy-related products and services exclusively to nonassociate commercial/industrial customers (including governmental, institutional and utility companies) and residential customers. Applicants state that Solutions will offer an integrated package of "value-added" energy-related products and services to enable customers to reduce energy costs, improve energy efficiency and increase productivity. Such services/products will be marketed to nonassociates on a local, regional, nationwide and, as opportunities develop, international basis. The services would be priced based on competitive market rates. Solutions will also develop, acquire, own and operate certain energy-related projects.

Applicants request authorization to conduct its proposed business activities directly through Solutions, wholly-owned subsidiaries of Solutions, and subsidiaries of Solutions jointly owned with joint venture nonassociates. As part of Solutions' project development and ownership activities, Applicants further request authority for Solutions to acquire, directly or indirectly through subsidiaries, securities or assets of nonassociate companies that derive substantially all their revenues from the development, ownership or operation of such projects. Finally, in connection with the formation of Solutions and its contemplated business activities, Cinergy Services requests authorization to provide an expanded range of support services to Solutions (including any subsidiary thereof) and other system nonutility companies pursuant to an amendment to the existing Cinergy system nonutility service agreement ("NUSA").

Solutions intends to offer a complete menu of energy management and efficiency services and related

consulting services, often on a turnkey basis. These activities (collectively, "Energy Management Services") may also entail the marketing, installation, operation and maintenance of various products and services designed to implement the solutions recommended in the course of providing these services. Solutions will market Energy Management Services primarily to commercial/industrial customers, but also on a smaller scale to residential customers. Specifically, Energy Management Services will include: (1) Identification (through energy audits or otherwise) of energy and other resource (water, labor, maintenance, materials, etc.) cost reduction or efficiency opportunities; (2) design of facility and process modifications or enhancements to realize such opportunities; (3) management, or direct construction and instillation, of energy conservation or efficiency equipment; (4) training of client personnel in the operation of equipment; (5) maintenance of energy systems; (6) design, management or direct construction and installation of new and retrofit heating, ventilating, and air conditioning ("HVAC"), electrical and power systems, motors, pumps, lighting, water and plumbing systems, and related structures, to realize energy and other resource efficiency goals or to otherwise meet a customer's energy-related needs; (7) system commissioning (i.e., monitoring the operation of an installed system to ensure that it meets design specifications); (8) reporting of system results; (9) design of energy conservation programs; (10) implementation of energy conservation programs; (11) provision of conditioned power services (i.e., services designed to prevent, control or mitigate adverse effects of power disturbances on a customer's electrical system to ensure the level of power quality required by the customer, particularly with respect to sensitive electronic equipment); and (12) other similar or related activities.

Solutions also proposes to market comprehensive asset management services ("Asset Management Services") on a turnkey basis or otherwise, in respect of energy-related systems, facilities and equipment (e.g., electric utility systems and assets, including distribution systems and substations; transmission facilities; electric generation facilities, including standby generation facilities and self-generation facilities; boilers; chillers, i.e., refrigeration and coolant equipment; HVAC; and lighting systems) located on or adjacent to premises of commercial/industrial customers and used by such

customers in connection with their business activities. Likewise, these services would be marketed to other owners of utility assets or systems such as municipalities and electric cooperatives. Additionally, these services would be marketed to developers, owners and operators of nonassociate independent power production facilities ("IPPs"), including both qualifying and non-qualifying cogeneration or small power production facilities within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") (such qualifying facilities, "QFs") and exempt wholesale generators and foreign utility companies within the meaning of the Act, as well as to developers, owners and operators of nonassociate district thermal energy systems, i.e., energy systems consisting of central production plants that distribute steam, hot water and/or chilled water through underground pipes to customer buildings.

In particular, Asset Management Services will include development; engineering; design; construction and construction management; pre-operational start-up testing and commissioning; long-term operations and maintenance, including system overhaul; load control and network control; fuel procurement, transportation and storage; fly-ash and other waste disposal; management and supervision; technical, training and administrative support; and any other managerial or technical services required to operate, maintain and manage energy-related assets physically associated with customer premises or to operate, maintain and manage municipality or electric cooperative-owned utility systems, IPPs and district thermal energy systems. Without obtaining the prior approval of the Commission in a separate filing, Solutions will not undertake any Asset Management Service if, as a result thereof, Solutions would become a "public utility company" within the meaning of the Act.

Solutions further proposes; to market to nonassociates, primarily commercial/industrial customers, general technical consulting services with respect to energy-related matters ("Consulting Services"). Specifically, the Consulting Services will include technical and consulting services involving technology assessments, power factor correction and harmonics mitigation analysis, commercialization of electro-technologies, meter reading and repair, rate schedule analysis and design, environmental services, engineering services, billing services including

conjunctive billing, summary billing for customers with multiple locations and bill auditing, risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, feasibility studies, and other similar or related services.

Solutions also proposes to develop, acquire, own and operate "Projects," i.e.: (a) QFs and facilities necessary or incidental thereto, including thermal energy utilization facilities purchased or constructed primarily to enable the QF to satisfy the useful thermal output requirements under PURPA; and (b) district thermal energy systems and other facilities used for the production, conversion and distribution of thermal energy products, such as steam, heat, hot water and chilled water. Project development activities will include Project due diligence and design review; market studies; site inspection; preparation of bid proposals (including posting of bid bonds, cash deposits and the like); applications for required permits or regulatory approvals; acquisitions of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "host" users, fuel suppliers and other Project contractors; negotiation and execution of related financing commitments and agreements; engineering and construction of Projects; and similar activities antecedent to the acquisition, ownership and operation of a Project. In connection with its Project development and ownership activities, Applicants request authorization for Solutions to acquire securities or assets of nonassociate companies that derive substantially all their revenues from the development, ownership or operation of Projects.

Solutions would also market energy-related services and products ("Consumer Services") exclusively to residential and small commercial customers: (1) Service lines repair/extended warranties—repair of underground utility service lines owned by and located on the customer's property and extended service warranties covering the cost of such repairs; (2) surge protection—meter-based and plug-in equipment to protect customer household appliances and electronic equipment from power surges, including due to lightning; (3) appliances merchandising/repair/extended warranties—marketing of HVAC and other energy-related household appliances and, in

connection therewith or separately, marketing of appliance inspection and repair services and extended service warranties covering the cost of repairing customers' appliances; (4) utility bill insurance—utility bill payment protection, for a monthly fee for a specified number of months, in the event the customer becomes unemployed, disabled or dies; (5) gas pilot lighting of pilot lights for customers; and (6) other similar or related services.

Applicants further propose that Solutions furnish its own or broker nonassociate third-party financing to commercial, industrial and residential customers, both to support sales to customers of goods and services included within Energy Management Services, Asset Management Services and Consumer Services and in connection with sales of energy-related equipment where the customer is not otherwise purchasing goods and services promoted by Solutions. Customer financing will take the form of direct loans, installment purchases, operating or finance lease arrangements (including sublease arrangements) and loan guarantees.<sup>1</sup> Interest on loans and imputed interest on lease payments will be based on prevailing market rates. The obligations will have terms of one to thirty years and will be secured or unsecured. Solutions also may assign obligations acquired from customers to banks, leasing companies or other financial institutions, with or without recourse.

Applicants request authorization for Solutions to undertake the proposed business activities on its own, either directly or through one or more wholly-owned direct or indirect subsidiaries of Solutions, formed as corporations, partnerships, limited liability companies or other legal entities. Applicants state that the decision in particular cases whether to conduct specific business activities directly through Solutions or indirectly through one or more wholly-owned subsidiaries of Solutions will hinge on applicable business, legal, tax, accounting and strategic considerations. In addition, to mitigate risk or access skills and relationships that Solutions may require, applicants expect that Solutions will pursue proposed business activities in certain instances through alliances with nonassociates. Certain of these alliances may be relatively informal, not

<sup>1</sup> As discussed below, Cinergy and Investments expect to invest up to \$100 million in Solutions (and its subsidiaries) to finance the proposed activities. The amount of funds that may be made available for the proposed customer financing activities is included in the \$100 million.

involving the formation of any new entities.

Others may encompass formal joint ventures, possibly involving the formation of one or more wholly- or partly-owned subsidiaries of Solutions. Applicants also request authorization for Solutions to form any such joint venture subsidiaries, as in the preceding case solely for the purpose of implementing Solutions' proposed business activities. As noted above, as part of Solutions' proposed Project development and ownership activities, applicants request authority for Solutions to acquire securities or assets of nonassociate companies deriving substantially all their revenues from the development, ownership or operation of Projects.

In connection with its incorporation and initial capitalization, Solutions is expected to issue and sell up to 100 shares of no par value common stock to Investments for nominal cash consideration (not to exceed \$1,000). Thereafter, from time to time through December 31, 2001, in order to assist in the financing of Solutions' proposed business activities, Cinergy and Investments do not expect to invest more than \$100 million in Solutions (including any subsidiaries of Solutions), either by acquiring securities of Solutions or making cash capital contributions to Solutions, in exempt transactions pursuant to rules 52 and 45(b)(4).

Cinergy and Investments request authority through December 31, 2001 to guarantee debt and other obligations of Solutions (including any subsidiaries of Solutions) incurred in the ordinary course of business in a maximum principal amount at any one time outstanding not to exceed \$250 million. Debt financing of Solutions proposed to be guaranteed by Cinergy or Investments (a) will not exceed a term of 15 years, and (b) will bear interest (1) at a floating rate not in excess of 200 basis points over the prime rate, London Interbank Offered Rate or other appropriate index in effect from time to time, or (2) at a fixed rate not in excess of 250 basis points above the yield at the time of issuance of U.S. Treasury obligations of a comparable maturity. Any commitment and other fees on the debt will not exceed 75 basis points per annum on the total amount of debt financing. Other obligations incurred by Solutions in the ordinary course of its business as to which Cinergy and Investments propose to guarantee or otherwise act as indemnitor or surety are expected often to involve Solutions' obligation to perform under contracts with customers to which it is a party.

Guarantees issued by Cinergy or Investments in these circumstances may take the form of procuring bid bonds and the like or guaranteeing Solutions' performance or other similar direct or indirect guarantees of Solutions' contractual or other obligations. Applicants anticipate that these parent company "backstops" will be required to establish Solutions' financial credibility to certain customers as a prerequisite to obtaining the customer's business and/or on the most favorable terms.

Cinergy states that it will not seek recovery through higher rates to customers of Cinergy's utility subsidiaries in order to compensate it or Investments for any potential losses they may sustain, or inadequate returns they may realize, resulting from investments in Solutions or guarantees of Solutions' debt or other obligations.

Initially, Solutions is expected to have limited full-time staff, primarily executive, management, and administrative personnel. Applicants expect that Solutions will make extensive use of outside contractors and consultants in performing its proposed business activities.

Applicants propose that Cinergy Services render an expanded range of support services to Solutions (including any subsidiaries thereof) and the other Cinergy system nonutility companies. Pursuant to the NUSA, which was authorized by the Commission in its 1994 order approving the merger that created Cinergy and certain ancillary transactions including the formation of Cinergy Services (HCAR 26146, Oct. 21, 1994), Cinergy Services may provide certain services, primarily administrative and management-type services, to Cinergy's nonutility subsidiaries, priced at cost for the domestic nonutility subsidiaries, as determined pursuant to rule 90 under the Act, and at fair market value for certain foreign subsidiaries of Cinergy pursuant to section 13(b)(1) and rule 83, and otherwise in accordance with applicable rules and regulations promulgated by the Commission pursuant to Section 13(b) of the Act. Specifically, the services that Cinergy Services may currently render to its nonutility associates are as follows: (1) Information systems, (2) transportation, (3) human resources, (4) facilities, (5) accounting, (6) public affairs, (7) legal, (8) finance, (9) internal audit, (10) investor relations, (11) planning and (12) executive. Under the Cinergy system Utility Service Agreement ("USA"), also approved in the Commission's 1994 merger order and pursuant to which Cinergy Services

renders services at cost to Cinergy's utility subsidiaries, a much broader range of services are made available. In addition to the same 12 services made available to the client companies under the NUSA, the following additional services may be provided by Cinergy Services to the utility subsidiaries: (1) Electric system maintenance, (2) marketing and customer relations, (3) electric transmission and distribution engineering and construction, (4) power engineering and construction, (5) materials management, (6) power planning, (7) rates, (8) rights of way, (9) environmental affairs and (10) fuels.

Applicants request authorization for Cinergy Services to provide certain additional services under the NUSA, priced in accordance with the Commission's 1994 merger order and otherwise rendered in conformance with Section 13(b) of the Act and the applicable rules and regulations thereunder. Applicants state that the proposed additional services are in general very similar to those additional services under the USA (enumerated above) that are not currently available under the NUSA and that the proposed additional services are intended to accommodate the scope of Solutions' proposed business activities as well as that of the Cinergy system's other nonutility subsidiaries.

Specifically, the proposed additional services (collectively, "Additional NUSA Services") are as follows: (1) Energy-related facility maintenance, (2) engineering and construction, (3) marketing and customer relations, (4) materials management, (5) fuels, (6) environmental affairs, (7) rates, (8) rights of way and (9) energy-related system operations.

Applicants state that the Additional NUSA Services would be implemented by means of a restatement of existing Appendix A to the NUSA (which lists and describes the currently available services under the NUSA). Applicants do not otherwise in any respect propose to amend the NUSA.

Applicants state that the Additional NUSA Services are roughly parallel to the additional functions already made available to Cinergy's utility subsidiaries under the USA. Consequently, applicants do not anticipate a need to add any new employees to Cinergy Services solely to implement the Additional NUSA Services. Applicants represent that the provision of the Additional NUSA Services will not impair Cinergy Services' ability to provide the full range of services that it currently provides to the system utility companies under the USA. All costs associated

with Cinergy Services personnel rendering any Additional NUSA Services (including compensation, benefits and overhead) will be fully reimbursed by Solutions and other system companies that request and receive such services in accordance with section 13(b) of the Act and the applicable rules and regulations thereunder, including rules 90 and 91.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 96-30811 Filed 12-3-96; 8:45 am]

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[Release No. 34-37988; File No. SR-CBOE-96-71]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Closing Time for Equity and Narrow-Based Index Options**

November 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 20, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its rules governing the hours of trading in equity options and narrow-based index options. After the change, the Exchange will close trading in equity and narrow-based index options at 3:02 p.m. (Chicago time) instead of at 3:10 p.m. (Chicago time), as is the case now. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included

statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

The purpose of the proposed rule change is to change the close of the normal trading hours in equity and narrow-based index options from 3:10 p.m. (Chicago time) to 3:02 p.m. (Chicago time). After the change, the time of the close of trading in these CBOE options will more closely correspond to the normal time set for the close of trading on the primary exchanges listing the stocks underlying the CBOE options. The primary exchanges generally close at 3:00 p.m. (Chicago time).

When the Exchange determined to change its closing time for equity options and narrow-based index options, it determined that there were still reasons to continue trading options for some period of time after the close of trading of the primary markets for the underlying securities. Specifically, the extended period allows options traders to respond to late reports of closing prices over the consolidated tape. If the price of a late reported trade on an underlying security was substantially different from the previous reported price, the extended trading session would give options traders the opportunity to bring options quotes into line with the closing price of the underlying security. However, because of improvements in the processing and reporting of transactions, there are usually no significant delays in the reporting of closing prices. Therefore, a ten minute session is no longer needed to trade options after the underlying securities close trading.

The Exchange believes the need to continue trading options for some period of time after the close of trading on the primary markets for the underlying securities outweighs the obvious problems with continuing to trade options while stocks are longer traded. The Exchange has learned through experience with a 3:10 close that pricing aberrations can occur if an option is traded when the underlying stock is no longer trading. There is

obviously a close relationship in the price of the underlying stock and the overlying option. As a result, it is difficult for the market to price options accurately when the underlying security is not trading. It is for this reason that the halt of trading in an underlying security is a factor to be considered in determining whether to halt trading in the overlying option under CBOE Rule 6.3.

In recent weeks, the Exchange has become particularly cognizant of the pricing problems that result when the Exchange remains open after the close of the primary exchange for the underlying stocks. A number of issuers have adopted the practice of disseminating important corporate news after the close of trading on the primary exchange. Issuers often wait until after 3:00 p.m. Chicago time to release the news because they realize that the news might have a short-term disruptive effect on the market price of the stock that can be minimized if investors are able to digest the significance of the news after the markets have closed and overnight. However, despite efforts of the Exchange to remind issuers that most Exchange products trade until 3:10 p.m., important corporate news is often disseminated between 3:00 p.m. and 3:10 p.m. As a result, the Exchange is often deluged with option orders after a significant news announcement after 3:00 p.m., most often between 3:02 p.m. and 3:10 p.m. These orders have a disruptive effect on the market at a time when the Exchange is attempting to close in a fair and orderly fashion.<sup>3</sup> Among the possible deleterious effects is that customer orders might not be filled as quickly as they might otherwise be filled in more normal conditions. In addition, orders regularly are routed through the Exchange's Retail Automatic Execution System ("RAES") and are executed in rapid succession on markets that have not had a chance to be updated to reflect the significant news.<sup>4</sup> Weighing the benefits to be

<sup>3</sup> Although the Exchange has the ability to call a "fast" market under current Exchange Rule 6.6 in an effort to deal with the problems caused by news announcements after 3:00 p.m., this procedure requires the assessment of the situation by two Floor Officials. As a result, the Rule 6.6 procedure does not permit the Exchange to act quickly enough to prevent the possible deleterious effects of an unexpected news announcement.

<sup>4</sup> Orders routed through the RAES system are assigned execution prices instantaneously as determined by the prevailing market quotes that exist at the time of the order's entry into the system. As a result, these orders might be assigned a price before the market-makers will have had the chance to update the quotes based upon the unexpected news announcement. To respond to the problem presented when issuers make significant news

Continued

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.