

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiffs,)
)
STATE OF NEW YORK, STATE OF NEW)
JERSEY, STATE OF CONNECTICUT,)
HOOSIER ENVIRONMENTAL COUNCIL,)
and OHIO ENVIRONMENTAL COUNCIL,)
)
Plaintiff-Intervenors,) Civil Action No. 1:99-cv-1693-LJM-JMS
)
)
v.)
)
)
CINERGY CORP., PSI ENERGY, INC., and)
THE CINCINNATI GAS & ELECTRIC)
COMPANY,)
)
Defendants.

AFFIDAVIT OF SAMUEL B. BOXERMAN

1. I am Samuel B. Boxerman. I am providing this affidavit in response to the Court's Order to Show Cause of December 18, 2008 because I was one of the attorneys' of record for Cinergy in the matter of *United States v. Cinergy* as of May 5, 2008.

2. I received a B.A. in Economics from the University of Illinois in 1983 and graduated with a J.D. from the Harvard Law School in 1986. After graduation, I clerked for Judge Bernard M. Decker, Senior Judge for the United States District Court for the Northern District of Illinois. Upon completing my clerkship, I served as a trial attorney for the Environmental Enforcement Section of the United States Department of Justice for four years, before joining the law firm of Sidley &

Austin in December 1991. I am currently a partner with the firm, now organized as Sidley Austin LLP.

3. My involvement in the Cinergy case did not begin in any significant way until mid-2004. My pre-trial role was to take discovery of the federal and state plaintiffs and to develop certain expert testimony in response to anticipated testimony by experts retained by Plaintiffs, primarily on the emissions issue. My role did not include responding to the fact discovery requests posed by the Plaintiffs. I also did not defend any of the depositions of Cinergy employees.

4. I do not recall meeting Mr. Robert Batdorf until the start of the liability trial in May 2008. I did not participate in, and am not aware of, any effort to characterize Mr. Batdorf's employment relationship with Cinergy in any particular manner, or to otherwise state or imply that Mr. Batdorf was not compensated for the time he spent related to this litigation.

5. I do not recall becoming aware of either the 2005 agreement or 2008 agreement between Mr. Batdorf and Cinergy until the issue arose in connection with the discovery dispute during the remedy phase of this case.

6. I recently was provided a copy of an email chain consisting of six emails all dated August 19, 2005. The chain identifies me as a recipient of two of the three latest emails of that date (at the "top" of the email chain) and not as an author any of the six emails. The earliest email (at the "bottom" of the email chain) – on which I was not listed as a direct recipient or as receiving a copy – is an email from Mr. Batdorf that references a "Consulting Services Agreement." I do not have any recollection of seeing or reading the August 19, 2005 email chain at that time. My recent review of this six email chain does not change my own recollection described in this Affidavit that I

first became aware of the 2005 agreement between Mr. Batdorf and Cinergy when the discovery dispute arose during the remedy phase.

7. During the liability trial, I helped prepare Mr. Batdorf for cross examination, but do not recall ever discussing either the 2005 agreement or the 2008 agreement with Mr. Batdorf or anyone else.



SAMUEL B. BOXERMAN
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Sworn to and subscribed in my presence this 8th day of January 2009.



Notary Public

EVANGELINA R. BUTLER-SHERMAN
Notary Public, District of Columbia
My Commission Expires Feb. 14, 2011