

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, )  
) Civil Action No. 1:99-cv-1693-LJM-JMS  
Plaintiff-Intervenors, )  
)  
v. )  
)  
CINERGY CORP., PSI ENERGY, INC., and )  
THE CINCINNATI GAS & ELECTRIC )  
COMPANY, )  
)  
Defendants. )

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**DECLARATION OF THOMAS C. GREEN**

Thomas C. Green, being of legal age and pursuant to 28 U.S.C. § 1746, deposes and says:

1. I am a senior partner in the law firm of Sidley Austin. My office is located in Washington, DC. I was first admitted to practice in my home state of Minnesota in 1965. After my discharge from the United States Army and my return from Viet Nam, I was admitted to practice in the District of Columbia in 1967 and began my career as a trial attorney at that time while employed as an Assistant United States Attorney. Since then, I have been actively engaged in the trial of criminal and civil cases. Most of these cases were tried to a jury before United States District Courts throughout the nation. I have tried

hundreds of jury cases and received substantial recognition during my career. I have never been disciplined or cited for misconduct by any Court at any time in my career.

2. As the most senior and lead lawyer in the Cinergy trial I acknowledge my responsibility for the conduct of Cinergy's defense. I was responsible for many of the tactical decisions that were made that shaped Cinergy's presentation. For example, it was my decision to emphasize the theme that replacing an old part with a new part can never, in and of itself, cause a generating unit to emit more emissions. I also constructed our presentation on the theme that replacing a part does not itself cause a generating unit to run more, or for that matter less; instead, the decision to run a unit more or less depends on a myriad of factors, principally customer demand.

3. Based upon what I have learned about this case, in preparation for and during trial, Cinergy's trial strategy did not rely or depend on whether Bob Batdorf, or any other Cinergy witness, was paid or unpaid. Cinergy's trial strategy sought to contrast the real world experience and decisions of Cinergy's employees with the theoretical, after-the-fact formula created by the government's experts. Furthermore, based upon my knowledge of the case, I did not perceive the Government's trial theory as relying or depending in anyway upon a contrast between paid versus unpaid witnesses.

4. It was also my decision, made near the close of the government's case, to abandon all of Cinergy's experts and to try the case using only Cinergy personnel as witnesses. This would allow Cinergy to argue to the jury that more weight ought to be given to the testimony of Cinergy's engineers, who are responsible for operating and maintaining the units, than should be given to the government's outside experts who had no hands-on experience.

5. I never worked with Mr. Batdorf to prepare him for any of his depositions or for trial. At trial, I took responsibility for preparing Mr. Pulskamp and Mr. Hopson took responsibility for Mr. Batdorf.

6. Because I am preparing for another major trial which will commence in Puerto Rico on February 9, 2009, I was not going to have any role in the trial of the remedy phase.

7. At no time throughout the entirety of my work on the Cinergy matter did I become aware of any consulting contract entered into between the company and Mr. Batdorf. I only became aware of the 2008 consulting agreement when I was asked to read the government's motion for a new trial. I was subsequently asked for input and to read at least one draft of Cinergy's Opposition to Plaintiff's Motion for a New Trial. This was the only official involvement I had in the Cinergy litigation after the close of the liability phase.

8. I am not aware of any plan, effort, or discussion by the Cinergy legal team to conceal Mr. Batdorf's consulting agreements or to classify or characterize his relationship with Cinergy in anything but a truthful manner.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 9, 2009

s/Thomas C. Greene  
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