

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. I:99-cv-1693-LJM-JMS
Plaintiff-Intervenors,)
)
v.) **FILED UNDER SEAL**
)
CINERGY CORP., CINERGY SERVICES,)
INC., PSI ENERGY, INC., and THE)
CINCINNATI GAS & ELECTRIC)
COMPANY,)
)
Defendants.)

AFFIDAVIT OF DEAN MOESSER

1. I, Dean M. Moesser, am employed as Associate General Counsel – Litigation for Duke Energy Corporation. I am submitting this declaration pursuant to 28 U.S.C. § 1746.
2. Following the Cinergy/Duke merger, I was asked to become involved in the supervision of this litigation, and I have served as counsel of record for Cinergy Corp., Cinergy Services, Inc., PSI Energy, Inc., and the Cincinnati Gas & Electric Co. (collectively, “Cinergy”) in the above-captioned matter.
3. During the May 2008 jury trial in the above-captioned matter, four current or former employees of Duke Energy or Cinergy testified for Cinergy: Jim Stanley, Barry Pulskamp, John Swez, and Robert Batdorf.

4. At the time he testified, Mr. Stanley was President of Duke Energy Indiana. In 2008, Mr. Stanley is due to receive a total compensation package (excluding benefits and social security employer payments) from Duke Energy in the amount of \$637,539.22.
5. At the time he testified, Mr. Pulskamp was Vice President of Regulated Fossil Hydrogenation at Duke Energy. In 2008, Mr. Pulskamp is due to receive a total compensation package (excluding benefits and social security employer payments) from Duke Energy in the amount of \$798,086.73.
6. At the time he testified, Mr. Swez was Director of Generation Dispatch and Bulk Power Marketing at Duke Energy. In 2008, Mr. Swez is due to receive a total compensation (excluding benefits and social security employer payments) package from Duke Energy of \$332,640.
7. At the time he testified, Mr. Batdorf was not an employee of Duke Energy or Cinergy. In 2005, he retired from Cinergy. Prior to his retirement, he served as station manager of the Cayuga, Wabash River, and Gibson generating stations. Mr. Batdorf was station and general manager of the Gibson generating station at the time he retired. At the time of retirement, Mr. Batdorf's annualized base salary was \$183,756, and he received bonuses and incentives in 2005 worth \$212,314.60, thereby giving him annualized total compensation for 2005 of \$396,070.60. His base salary for the year ending February 28, 2005 had been \$177,540.
8. At the time he retired, Mr. Batdorf was in the midst of providing multiple days of testimony as a 30(b)(6) witness for Cinergy. In fact, Mr. Batdorf was being deposed by Sarah Himmelhoch on July 1, 2005, his first day of retirement from Cinergy. *See* Deposition of Robert Batdorf (30(b)(6) witness), July 1, 2005, at 103:3-5 ("I'm sorry you had to spend your first day of retirement this way, but I wish you luck in the rest of your retirement."), a true and correct copy of which is attached as Exhibit B1 hereto.

9. I understand that a few months before Mr. Batdorf's retirement, Barry Pulskamp instructed the Cinergy HR department to prepare a consulting agreement between Mr. Batdorf and Cinergy that would compensate Mr. Batdorf for time spent working for Cinergy following his retirement. That "Consulting Services Agreement," effective July 1, 2005, was executed by Mr. Batdorf and Steve Allen, the General Manager of Human Resources for Cinergy. A true and correct copy of the agreement is attached hereto as Exhibit B2. It provided for compensation at \$88 per hour for work Mr. Batdorf performed for Cinergy on matters related to this case, as well as unrelated work. Although I was not involved in any way in preparing Mr. Batdorf's 2005 consulting agreement, I note that \$88 per hour roughly corresponds to Mr. Batdorf's base salary shortly before his retirement, divided by 2000 hours. Mr. Batdorf received a total of \$3346 in compensation (excluding expenses) under that agreement pursuant to two invoices that were submitted in September and December 2005. True and correct copies of those invoices, redacted for privilege, are attached as Exhibit B3 hereto.

10. In late 2007, I and our counsel began meeting with fact and expert witnesses to gather information, review documents and begin to prepare for trial. We met with Mr. Batdorf, as well as other potential fact and expert witnesses, both in Indiana and Washington, D.C., during this time period.

11. At a meeting in early 2008, a question arose regarding providing Mr. Batdorf with reimbursement for his out of pocket expenses for travel. At the time, I asked Mr. Batdorf if he was being compensated for his time, as well as expenses, and he said no. He did not ask for compensation for his time, and in fact, he specifically stated that he did not want and was not seeking any compensation for his time.

12. Despite Mr. Batdorf's assertion that he was not seeking compensation for his time, I told Mr. Batdorf that I did not think it was fair or appropriate for him to spend substantial time on this case without a standard consulting agreement and that I would draft one. I recall calling the HR department to determine what Mr. Batdorf's total compensation had been during the last year of his employment to determine what would be a reasonable hourly rate. Mr. Batdorf did not request any particular hourly rate and I did not negotiate the rate with him. Instead, based upon his total annualized compensation at the time he retired of \$396,070.60, I proceeded to calculate an hourly rate to approximate the value of Mr. Batdorf's time by dividing that annualized figure by 2000 hours, which yields \$198.04. I rounded this to arrive at the rate of \$200 per hour. This struck me as a fair and reasonable rate.

13. I know that many retired senior managers and executives provide services and advice to Duke Energy and other major companies. It is a commonplace and standard arrangement for them to receive reimbursement for their time and expenses under consulting agreements. I personally have been involved in a number of legal matters, including litigation, in which former employees were operating under consulting agreements. I drafted the consulting agreement myself, with the intent of simply memorializing the relationship with Mr. Batdorf in order that tax and withholding, as well as logistical matters and the mechanical aspects of processing the invoices, properly could be addressed.

14. At the time I prepared the 2008 consulting agreement, I had never seen the July 2005 consulting agreement. Indeed, I was not involved in this litigation in July 2005 and Mr. Batdorf had not submitted any invoices or sought reimbursement under that agreement during my involvement in the case. I proceeded to draft an agreement because I understood that no agreement was in place.

15. On April 7, 2008, I signed an agreement with Mr. Batdorf engaging him as a consultant for Duke Energy in the above-captioned matter. A true and correct copy of that agreement is attached as Exhibit B4 hereto. Under this agreement, which I drafted, it was my expectation that Mr. Batdorf would review documents, provide information, answer questions, and probably testify as a fact witness at the liability trial. I drafted the agreement to reflect that Mr. Batdorf would be paid on an hourly basis for all time spent working on the case, including time spent at trial. The agreement is clear that Mr. Batdorf would be paid for the value of his lost time, not for his testimony. I never suggested to Mr. Batdorf—and certainly never believed—that his pay would, in any respect, be contingent upon the content of his testimony or the outcome of the litigation. The entry of the agreement was, from my perspective, entirely innocuous and simply a matter of logistics.

16. I was not aware before or at the time of the liability trial in this matter of any discovery request demanding a copy of consulting agreements. If I had been, I would have ensured that the agreement was produced. Although I was not familiar with every aspect of the overwhelming and voluminous discovery in this case, there was no request that I was aware of that sought compensation information for any fact witness or current or former employee. That being said, I believed then, and believe now, that the consulting agreement was not improper, unethical or anything other than routine compensation for time and expenses. There was never any intent to withhold or conceal the agreement. If the matter had been called to my attention and there was even a close question, I would have produced the agreement.

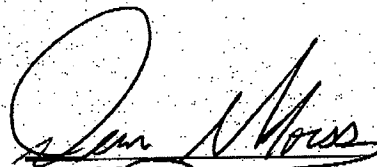
17. As the agreement reflects, Mr. Batdorf was entitled to be paid \$200 per hour by Duke Energy for the time he spent under the consulting agreement. Duke Energy also agreed to reimburse Mr. Batdorf for reasonable expenses incurred in connection with his performance

under the Agreement. Total payments to Mr. Batdorf under this consulting agreement were \$34,800 for under 200 hours of work, and \$500.97 for reimbursement of out-of-pocket expenses. Additional expenses, including hotels and some meals, were paid directly by Duke Energy. True and correct copies of these invoices issued pursuant to the 2008 consulting agreement, redacted for privilege, are attached as Exhibit B5 hereto.

18. I have undertaken a diligent search for all post-retirement invoices and consulting agreements involving Bob Batdorf, and I am confident that I have located every such item. Each invoice and consulting agreement I have located is attached hereto as one of the above-referenced exhibits. The only modifications I have made to these documents is to redact the descriptions of the work Bob Batdorf performed. Those descriptions include material reflecting interactions with counsel that are covered by the attorney-client privilege and the work product doctrine. If the Court wishes to see the unredacted versions, I will, of course, arrange for their submission to the Court under seal for *in camera* inspection.

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

Executed on Nov. 10, 2008.


Dean Moessler

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

UNITED STATES OF AMERICA, et al.)

Plaintiffs,)

v.)

CINERGY CORP., et al.)

Defendants.)

Civil Action No.:
1:99-cv-1693-LJM-JMS

FILED UNDER SEAL

**CINERGY'S OPPOSITION TO PLAINTIFFS' MOTION FOR NEW TRIAL DUE TO
PARTY MISCONDUCT, OR IN THE ALTERNATIVE, FOR EXPEDITED DISCOVERY
AND AN EVIDENTIARY HEARING**

EXHIBIT B1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF INDIANA
3 INDIANAPOLIS DIVISION
4 CAUSE NO. IP99-1693 C-M/S

5 UNITED STATES OF AMERICA,)

6 Plaintiffs,)

7 STATE OF NEW YORK,)

8 STATE OF NEW JERSEY,)

9 STATE OF CONNECTICUT,)

10 HOOSIER ENVIRONMENTAL COUNCIL,)

11 and OHIO ENVIRONMENTAL COUNCIL,)

12 Plaintiff-Intervenors,)

13 -vs-)

14 CINERGY CORP., PSI ENERGY,)

15 INC., and THE CINCINNATI GAS &)

16 ELECTRIC COMPANY,)

17 Defendants.)

18 The confidential videotaped deposition upon
19 oral examination of ROBERT BATDORF, a witness
20 produced and sworn before me, Virginia K. Donovan,
21 RMR, a Notary Public in and for the County of
22 Hancock, State of Indiana, taken on behalf of the
23 Plaintiffs at the offices of Sommer Barnard &
24 Ackerson, 3500 One Indiana Square, Indianapolis,
25 Marion County, Indiana, on the 1st day of July,
2005, pursuant to the Federal Rules of Civil
Procedure.

CIRCLE CITY REPORTING
2050 First Indiana Plaza
135 North Pennsylvania
Indianapolis, IN 46204
(317) 635-7857

1 deposition transcripts.

2 MS. HIMMELHOCH: I appreciate your time and
3 I'm sorry you had to spend your first day of
4 retirement this way, but I wish you luck in the
5 rest of your retirement.

6 THE WITNESS: Thank you very much.

7 MS. HIMMELHOCH: Let's go off the record.

8 THE VIDEOGRAPHER: We are going off record.
9 It is 11:53.

10

AND FURTHER THE DEPONENT SAITH NOT.

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ROBERT BATDORF

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CONSULTING SERVICES AGREEMENT

THIS AGREEMENT, effective July 1, 2005, is between CINERGY SERVICES, INC. ("Cinergy Services") and BOB BATDORF ("Consultant").

WHEREAS, Cinergy Services desires to obtain various consulting services; and

WHEREAS, the Consultant represents that he is willing to provide consulting services.

NOW, THEREFORE, in consideration of the mutual agreements set forth in this Agreement, the parties agree as follows:

SECTION 1 SCOPE OF WORK

The Consultant shall perform consulting services for Cinergy Services as may from time to time be requested by Cinergy Services. The services requested may include, but are not necessarily limited to, assisting with the NSR proceedings, the FGD restructuring, and the WRS/WVPA contract. The Consultant shall report directly to Barry Pulskamp with regard to such consulting assignments. The Consultant will not have any authority to act as an agent or representative of Cinergy Services, Cinergy Corp., or any subsidiary of Cinergy Corp., except to the extent expressly authorized in writing by Cinergy Services.

Authorization for the Consultant to begin specific work under this Agreement shall be by Cinergy Services' General Manager, Human Resources for the Commercial Business Unit, or his designate.

The Consultant agrees that his first priority is to provide consulting services to Cinergy Services, as requested, and will use his best efforts to do so. If Consultant is previously engaged on a matter for another client, he will endeavor to schedule that matter so that he can devote adequate time to the Cinergy Services project as his first priority. If the Consultant fails to provide satisfactory services to Cinergy Services, Cinergy Services may terminate this Agreement as provided in Section 6.

Consultant agrees that the services to be provided under this Agreement shall be provided by Bob Batdorf.

The Consultant's relationship shall be that of an independent contractor and not as an employee or agent. Nothing in this Agreement shall be construed as inconsistent with the Consultant's independent contractor status.

SECTION 2
TERM OF THE AGREEMENT

The term of this Agreement shall commence July 1, 2005, and end July 1, 2006, unless otherwise terminated as specified in Sections 4 or 6. However, beginning July 1, 2006, and on the first of each month thereafter (the "Renewal Date"), the term of this Agreement shall be automatically extended on a monthly basis if neither party shall have given the other at least thirty (30) days prior to the Renewal Date, written notice of its intent to terminate this Agreement.

SECTION 3
FEES

During the term of this Agreement, Cinergy Services shall pay Consultant the sum of Eight-Eight Dollars (\$88.00) per hour for each hour the Consultant performs consulting services under this Agreement. The Consultant shall submit to Cinergy Services statements of consulting services performed on a bi-weekly basis in the form and with the frequency as Cinergy Services may determine in its sole discretion.

During the term of this Agreement, Cinergy Services shall reimburse the Consultant at cost for all actual, necessary and reasonable out-of-pocket business travel expenses incurred in connection with travel authorized by Cinergy Services, except for mileage relating to Consultant's normal commute. Mileage (other than in connection with Consultant's normal commute) shall be reimbursed using the Internal Revenue Service standard rate. The Consultant shall obtain, retain and submit to Cinergy Services reasonable and customary documentation substantiating his expenses in the form and with the frequency as Cinergy Services may determine in its sole discretion.

The amounts payable under this Agreement shall be paid by Cinergy Services within thirty (30) business days after an itemized statement and reasonable and customary documentation of expenses have been submitted to Cinergy Services by the Consultant in accordance with procedures established pursuant to this Section.

SECTION 4
CONDITIONS OF ENTITLEMENT

During the term of this Agreement, the Consultant shall not represent, or accept any employment as an employee or an independent contractor with an entity which would further an interest which Cinergy Services reasonably determines is adverse to its interests. If Cinergy Services determines that the Consultant is representing or has accepted any employment as an employee or an independent contractor with an entity which furthers an interest adverse to its own, then Cinergy Services shall provide written notification to the Consultant as promptly as possible.

If the Consultant fails to discontinue the conflicting representation or employment within ten (10) days of receipt of Cinergy Services' written notification, this Agreement shall terminate as of the date specified by Cinergy Services in its written notification.

SECTION 5
CONSULTANT'S PERFORMANCE OF SERVICES

During the term of this Agreement, the Consultant shall (a) devote his best skill, knowledge, judgment, and efforts to advance the interests of Cinergy Services; (b) exercise reasonable and ordinary care and diligence in the application of his skill, knowledge, judgment, and efforts in performing the services for which he has been retained; and (c) be available to Cinergy Services for whatever reasonable period of time is necessary to perform services hereunder.

SECTION 6
RIGHT OF TERMINATION

If the Consultant violates any of the provisions of this Agreement, or refuses to perform the services required, or performs any unauthorized act by which Cinergy Services incurs liability, then this Agreement may be terminated at Cinergy Services' option.

If Cinergy Services violates any provision of this Agreement, then this Agreement may be terminated at the Consultant's option.

The contractual rights to terminate this Agreement shall not be construed as a limitation of any other legal rights that the parties may have to terminate this Agreement.

Either party may terminate this Agreement at any time by providing thirty (30) days written notification.

SECTION 7
INDEMNITY

Consultant shall indemnify, save and hold harmless, and defend Cinergy Services from any and all claims, losses, demands, suits, actions, causes of action, damages, costs and expenses, including attorney's fees, payments, judgments and any and all liabilities arising, or alleged to arise, in whole or in part, from or out of, in any manner whatsoever, the negligent or willful misconduct of Consultant relating to any service performed by the Consultant under this Agreement. The provisions of this Section shall continue in full force and effect notwithstanding termination of this Agreement pursuant to Section 6 of this Agreement or otherwise. If any part of this provision is adjudged by a court of competent jurisdiction to be contrary to law, then this provision shall, in all other respects, remain effective and binding to the full extent permitted by law.

SECTION 8
CONFIDENTIALITY

The Consultant shall not, at any time without Cinergy Services' prior written consent, directly or indirectly, use any trade secrets, confidential or proprietary information of Cinergy Services, its subsidiaries or affiliates for his benefit or the benefit of any other person or, directly or indirectly, disclose any such trade secrets, confidential or proprietary information of Cinergy Services to any other person or entity. Any information or material concerning Cinergy Services which is obtained by the Consultant during performance of, or in connection with, his services is to be considered confidential. Upon termination of this Agreement, Consultant shall return all confidential or proprietary information to Cinergy Services.

SECTION 9
NOTICES

All notices under this Agreement shall be given in writing by serving the party to whom the notice is addressed personally or by registered mail at Cinergy Services' corporate office address and the Consultant's corporate office address.

SECTION 10
ASSIGNMENT

The Consultant agrees that he will not assign his interest in this Agreement without Cinergy Services' prior written consent. However, the Consultant, without obtaining Cinergy Services' prior written consent, may incorporate or form a professional services corporation or similar artificial entity if he determines that it is in his best interest to do so. Such an event, however, will not affect the Consultant's obligation to personally provide consulting services.

This Agreement shall be binding upon and shall inure to the benefit of the successors, assigns, and personal representatives of the parties.

SECTION 11
GOVERNING LAW

This Agreement shall be governed by the laws of the State of Ohio.

SECTION 12
WAIVER

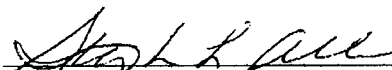
No delay or omission by Cinergy Services or the Consultant to exercise any contractual right shall be construed as a waiver unless the waiver is in writing. No waiver by either party of any breach of this Agreement on the part of the other shall be construed as a waiver of any subsequent breach.

SECTION 13
COMPLETE AGREEMENT

The foregoing terms of this Agreement constitute the entire agreement between the parties and supersedes all previous communications, representations, and agreements, oral or written, between the parties with respect to the Agreement's subject matter. No agreement or understanding modifying this Agreement shall be binding on either party unless signed by an authorized representative of the party sought to be bound. Nothing in this Agreement is intended to confer upon any person other than the parties to this Agreement, their permitted assigns and their successors, any rights or remedies under or by reason of this Agreement.

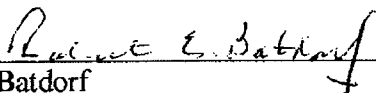
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, effective as of the day, month and year first written above.

CINERGY SERVICES, INC.

By: 
Steve Allen
General Manager, Human Resources
Commercial Business Unit

Dated: 7-26-05

CONSULTANT

By: 
Bob Batdorf

Dated: 07-02-05

INVOICE

Please find attached to this invoice for \$ 1,907.19, a table and summary reflecting time and expenscs incurred in accordance with the provisions stipulated in the Consulting Service Agreement. Dates, time, and expenses are reflected for each of the assignments where services were requested by Cinergy Services Inc.

This invoice begins with time incurred in September and is for the full month rather than the bi-weekly basis referenced in the Consulting Agreement. Billing on a monthly period appears to be more reasonable for both parties, due to requests for services varying.

REDACTED

Should you have any questions relative to the costs reflected, I can be contacted via email at reb@cinergy.com or by telephone at 812-729-7863.

Thank you.

INVOICE

12-05-05

Please find below time and expenses incurred in accordance with the provisions stipulated in the Consulting Service Agreement. Dates, time, and expenses are reflected for each of the assignments where services were requested by Cinergy Services Inc.

The total invoice of \$1757.85 includes time @ \$1,672.00 and expenses @ \$85.85 for services requested and incurred since the last billing, and are for a longer period than the bi-weekly basis referenced in the Consulting Agreement. Billing on a monthly or bi-monthly period appears to be more reasonable for both parties, due to random and intermittent requests for services varying widely.

Project Assignment	Date	Hours@\$88/hr	Expenses	Comments
Insurance Claim – State Farm Paint Damage (Cavanaugh)	10/06/05	1@\$88 = \$ 88	NA	RETRACTED
WRS #1 Contract (Klopfstein)	10/10/05	1.5@\$88 = \$132	NA	
Insurance Claim (Cavanaugh)	10/10/05	1@\$88 = \$ 88	NA	
NSR Litigation (Ezell)	10/21/05	3@\$88 = \$ 264	NA	
NSR Litigation (Ezell)	11/02/05	3@\$88 = \$ 264	NA	
NSR Litigation (Ezell)	11/03/05	6@\$88 = \$ 528	177@.485= \$85.85	
Sr. PTM & PTM Restructuring	11/06/05	2@\$88 = \$ 176	NA	
Sr. PTM & PTM Restructuring	11/07/05	1.5@\$88 = \$ 132	NA	
Total		\$1,672	\$85.85	
Total Hours & Expenses			\$1757.85	



Dean M. Moesser
Associate General Counsel - Litigation
713-375-0888 (direct)
713-375-0883 (facsimile)

April 3, 2008

Mr. Robert Batdorf
6531 West Wispering Creek Dr.
Owensville, IN 47665

RE: Consulting Services re: USA v. Cinergy (NSR)

Dear Bob:

I understand that while you were employed by Cinergy and its predecessor companies, you dealt with issues that are relevant to the above-referenced litigation. Because of your personal knowledge and expertise regarding those matters, Cinergy Corp. ("Cinergy") would like to engage you as an independent consultant in the above-referenced litigation. This letter will evidence our agreement (hereafter referred to as the "Agreement") for the provision of those consulting services (the "Services") as an independent contractor. This Agreement will remain in effect until December 31, 2008, unless extended by written agreement between you and Cinergy or unless terminated sooner as provided below.

During the term of this Agreement, you agree to provide such time to perform the Services as may be reasonably requested by Cinergy. You will be required to provide advice and live testimony in the above-referenced litigation. Cinergy will provide you with reasonable advance notice of any hearing, trial or other proceeding that may require your attendance and you agree to assist Cinergy in adequately preparing for and attending such proceedings as requested. In performing your consulting services under this Agreement, you will receive assignments from Dean Moesser, Julie Ezell and/or their designees, which shall include outside counsel at the Sidley & Austin law firm in Washington D.C.

You will be paid \$200 per hour for time spent in performance of the Services contemplated herein. Should an extension of this Agreement be agreed upon by you and Cinergy, Cinergy agrees to pay you such amount as may be mutually agreed upon by you and Cinergy at the time of the extension. In addition, you will be reimbursed for any and all actual reasonable expenses incurred by you in connection with the Services rendered hereunder. You will be reimbursed for car expenses incurred in your performance of Services at the standard mileage rates set by the United States Internal Revenue Service. You warrant that you have the legally required insurance on any motor vehicle which you will use in the performance of duties under this Agreement.

Mr. Robert Batdorf
April 3, 2008
Page 2

Cinergy will not furnish any compensation or any other privileges in connection with this Agreement except as expressly set out herein. You will provide us with an invoice on at least a quarterly basis detailing the number of hours you have provided Services. Such invoice shall also detail reimbursable reasonable expenses, if any, incurred by you in connection with the Services rendered during such period, including, but not limited to, business travel, hotel accommodations, and meals, provided, however, in no event shall the amount paid by Cinergy to you for expenses exceed the actual amount of expenses incurred. You agree to provide such information on the invoice as Cinergy may require. You will be paid within forty-five (45) days of the receipt of your invoices.

In the event of termination of this Agreement in accordance with the provisions below, you shall be entitled to all payments due you for work performed through the effective date of the termination, but shall be entitled to no further payments under this Agreement. It is understood and agreed that you will be an independent contractor rather than an employee, servant, or agent of Cinergy or any of its affiliates in the performance of the Services undertaken to be performed hereunder and you will have the authority and responsibility to select the means, manner, and method of performing the obligations assumed hereunder, provided that any such means, manner, and methods comply with all federal, state, and local laws, rules, and regulations and conform with Cinergy's rules and policies that are now or may in the future become applicable to the performance of Services under this Agreement or the business practices of those who act on behalf of or perform services for Cinergy. You will be responsible for payment of all taxes, including federal, state, and local taxes arising out of your activities under this Agreement, including, but not limited to, income tax, social security tax, and unemployment insurance tax that might be due.

In your capacity as an independent contractor pursuant to the terms of this Agreement, you have had or will have disclosed to you certain confidential information or trade secrets concerning the finances, plans, operations, or activities of Cinergy and its affiliates and subsidiaries. In that regard, you agree not to use information which has been so disclosed or of which you became aware, other than information which is in the public domain, for any purpose other than the performance of consulting services to Cinergy pursuant to this Agreement. Moreover, you shall not disclose such information except to those employees of Cinergy or its affiliates with whom you are working directly and you shall treat such information as confidential at all times during, as well as after, the term of this Agreement, or until such information is in the public domain. You also agree to execute any reasonable confidentiality agreement which may be required by Cinergy to protect such confidential information or trade secrets until such information is in the public domain. Cinergy shall have full title and all rights in and to all data, reports and information of any nature ("data") whatsoever made or prepared by you during the performance of the Services under this Agreement

Mr. Robert Batdorf
April 3, 2008
Page 3

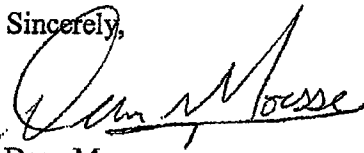
You represent and warrant to Cinergy that you have the full right, power and authority to execute and perform the Services under this Agreement and that the execution and performance by you of the Services under this Agreement will not violate any agreement or employment arrangement to which you are now a party. In connection with the performance of the Services hereunder, you agree not to divulge to Cinergy any confidential or proprietary information of your current or any future employer.

Unless or until a conflict arises, a Cinergy attorney or its outside legal counsel will act as your attorney in any proceedings relating to this engagement. **This Agreement may be terminated by you or Cinergy on no fewer than ten (10) days prior written notice. Following such termination, Cinergy shall not be liable for any payment under this Agreement or otherwise. Invoices under this Agreement should reference "USA v. Cinergy (NSR), Matter No. 2005-LIT-000574," and be sent to: Debbie Gates, Duke Energy Corporation, 221 East Fourth Street, Cincinnati, OH 45202, with a copy to Dean Moesser, Duke Energy Corporation, 5555 San Felipe, Suite 1245, Houston, TX 77056.**

This Agreement constitutes and expresses the complete understanding of the parties hereto and there are no understandings or commitments not expressly stated herein. No revision, modification or amendment of this Agreement shall be valid unless in writing and signed by both parties hereto. None of the rights or obligations of this Agreement may be assigned without prior written consent of the non-assigning party. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

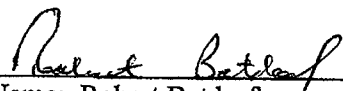
If the foregoing reflects your understanding of our Agreement, please so acknowledge by signing one copy of this Agreement in the appropriate space below and returning it to us for our files.

Sincerely,



Dean Moesser

ACCEPTED AND AGREED TO:
this 7th day of April, 2008

By: 
Name: Robert Batdorf

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

UNITED STATES OF AMERICA, et al.)

Plaintiffs,)

v.)

CINERGY CORP., et al.)

Defendants.)

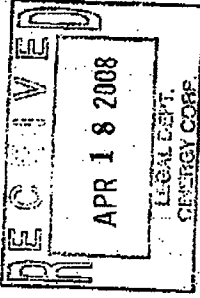
Civil Action No.:
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FILED UNDER SEAL

**CINERGY'S OPPOSITION TO PLAINTIFFS' MOTION FOR NEW TRIAL DUE TO
PARTY MISCONDUCT, OR IN THE ALTERNATIVE, FOR EXPEDITED DISCOVERY
AND AN EVIDENTIARY HEARING**

EXHIBIT B5

April 3, 2004



TO:
 Duke Energy Corporation
 Attn: Debbie Gates
 221 East Fourth Street, EA025
 Cincinnati, OH 45202

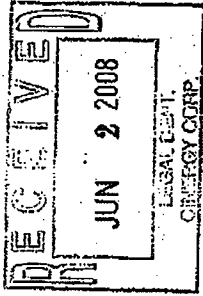
INVOICE FOR SERVICES RENDERED 3/03/2008 through 3/31/2008
USA v. Cinergy (NSR); 2005-LIT-000574

DATE	HOURS	MILEAGE	EXPENSE	DESCRIPTION SERVICE	AMOUNT
03/03/08	4	No Charge	-		\$800.00
03/04/08	5.5	175 x .505 \$88.37	-		\$1100.00
03/08/08	2.5	-	-		\$500.00
03/13/08	14	24 x .505 \$12.12	\$19.00 taxi		\$2831.12
03/14/08	8.5	-	-		\$1700.00
03/15/08	5	24 x .505 \$12.12	\$14.00 parking		\$1026.12
03/18/08	3	-	-		\$600.00
03/19/08	1.5	-	-		\$300.00
03/20/08	2	-	-		\$400.00

REDACTED

DATE	HOURS	MILEAGE	EXPENSE	DESCRIPTION SERVICE	AMOUNT
03/21/08	1	-	-	REDACTED	\$200.00
03/25/08	1.5	-	-		\$300.00
03/26/08	2	-	-		\$400.00
03/27/08	1.5	-	-		\$300.00
03/31/08	1	-	-		\$200.00
TOTAL INVOICE FOR MARCH PERIOD					

Remit to:
 Robert Batdorf
 6531 West Whispering Creek Drive
 Owensville, IN 47665
 (812) 729-7863
 Tax ID No. 172-40-9860



TO: Duke Energy Corporation
 Attn: Debbie Gates
 221 East Fourth Street, EA025
 Cincinnati, OH 45202

INVOICE FOR SERVICES RENDERED 04/01/2008 through 04/30/2008
 USA v. Cinergy (NSR); 2005-LIT-000574

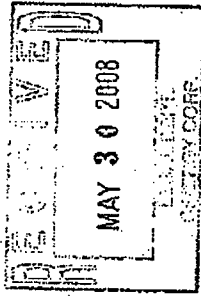
DATE	HOURS	MILEAGE	EXPENSE	DESCRIPTION SERVICE	AMOUNT
4/8/08	3.5	27x.505= \$13.63	-		\$713.64
4/11/08	2	-	-		\$400.00
4/14/08	2	-	-		\$400.00
4/17/08	12	24x.505= \$12.12	(\$18.00 Taxi)		\$2430.12
4/18/08	10	24X.505= \$12.12	(\$9.75Parking)		\$2021.87
4/22/08	2.5	-	-		\$500.00
4/23/08	2.5	-	-		\$500.00
4/29/08	2	-	-		\$400.00
4/30/08	2.5	-	-		\$500.00
REDACTED					
TOTAL INVOICE FOR MARCH PERIOD					\$7865.63

Remit to:

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Tax ID No. 172-40-9860

TO:

Duke Energy Corporation
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 221 East Fourth Street, EA025
 Cincinnati, OH 45202



INVOICE FOR SERVICES RENDERED 04/01/2008 through 04/30/2008
USA v. Cinergy (NSR); 2005-LIT-000574

DATE	HOURS	MILEAGE	EXPENSE	DESCRIPTION SERVICE	AMOUNT
5/5/08	2.5	-	-		\$500.00
5/7/08	8	-	-		\$1600.00
5/8/08	3	-	-		\$600.00
5/9/08	9.5	.505x160= \$80.80	\$2 (Parking)		\$1982.80
5/10/08	6.5	.505x160= \$80.80	\$3 (Parking)		\$1383.80
5/12/08	2.5	-	-		\$500.00
5/13/08	5	.505x160= \$80.80	-		\$1080.80
5/14/08	6.5	.505x160= \$80.80	\$5 (Parking)		\$1385.80
5/15/08	4	-	-		\$800.00
5/16/08	4	-	-		\$800.00
5/18/08	6.5	.505x160= \$80.80	\$4 (Parking)		\$1384.80
5/19/08	8	-	\$6 (Parking)		\$1606.00
5/20/08	8	-	\$6 (Parking) \$33.90 (Meal)		\$1639.90

REDACTED

DATE	QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL	TAX
5/21/08	8				\$800.00
5/22/08	8	.505x160=			
		\$80.80			
		\$5 (Parking)			
REDACTED					
TOTAL INVOICE FOR MARCH PERIOD					\$16863.90

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