

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, <i>et al.</i> ,	)	Miscellaneous No. 02-0480 (PLF/AK)
Plaintiffs,	)	
v.	)	Civil Action No. 1:00 CV 1262
DUKE ENERGY CORPORATION,	)	United States District Court for
Defendant.	)	the Middle District of North Carolina
	)	
UNITED STATES OF AMERICA, <i>et al.</i> ,	)	
Plaintiffs,	)	
v.	)	Civil Action No. C2-99-1181
OHIO EDISON COMPANY, <i>et al.</i> ,	)	United States District Court for
Defendants.	)	the Southern District of Ohio
	)	
UNITED STATES OF AMERICA, <i>et al.</i> ,	)	
Plaintiffs,	)	
v.	)	Civil Action No. IP99-1692-C-M/F
SOUTHERN INDIANA GAS AND	)	United States District Court for
ELECTRIC COMPANY,	)	the Southern District of Indiana
Defendant.	)	
	)	
UNITED STATES OF AMERICA, <i>et al.</i> ,	)	Miscellaneous No. 04-0065 (PLF/AK)
Plaintiffs,	)	
v.	)	Civil Action No. IP99-1693 C-M/S 1:00 CV
CINERGY CORPORATION, PSI	)	United States District Court for
ENERGY, INCORPORATED,	)	the Southern District of Indiana
CINCINNATI GAS & ELECTRICAL	)	
COMPANY,	)	
Defendants.	)	
	)	
UNITED STATES OF AMERICA, <i>et al.</i> ,	)	
Plaintiffs,	)	
and	)	
STATE OF NEW YORK, <i>et al.</i> ,	)	
Plaintiff-Intervenors,	)	
v.	)	Civil Action No. C2-99-1182; C2-99-1250
AMERICAN ELECTRICAL POWER	)	United States District Court for
SERVICE CORPORATION, <i>et al.</i> ,	)	the Southern District of Ohio
Defendants.	)	
	)	

## MEMORANDUM OPINION AND ORDER

This matter is before the Court in these consolidated cases for consideration of Magistrate Judge Alan Kay's Report and Recommendation [Docket No. 57 in ms02-480] of March 30, 2005.<sup>1</sup> The United States objected to the March 30, 2005 Report on April 18, 2005 [58]. Non-party Utility Air Regulatory Group ("UARG") responded to the government's objections [59], and the government replied [60].

Under 28 U.S.C. § 636(b)(1), Rule 72(a) of the Federal Rules of Civil Procedure and Local Civil Rule 72.3(b), an aggrieved party may file objections to or seek reconsideration of a magistrate judge's ruling or report and recommendation regarding non-dispositive matters within ten days of the issuance thereof. Upon consideration of such objections, the district court may modify or set aside any portion of the magistrate judge's order or recommendation if it is "clearly erroneous or contrary to law." Rule 72(a), Fed. R. Civ. P.; see also LCvR 72.2(c); In re United Mine Workers of America Employee Benefit Plans Litigation, 159 F.R.D. 307, 308 (D.D.C. 1994); FSLIC v. Commonwealth Land Title Insurance Co., 130 F.R.D. 507, 508 (D.D.C. 1990).

In his earlier Reports and Recommendations, Magistrate Judge Kay set out a procedure for review of assertedly privileged documents by a Special Master. This Court adopted the previous Reports from Magistrate Judge Kay on January 3, 2005 [55]. The documents were then reviewed by a Special Master who was agreed on by the parties, Judge

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<sup>1</sup> Unless otherwise noted, all docket document number citations herein refer to the docket in *United States v. Duke Energy*, Misc. Case No. 02-0480 (PLF/AK), rather than the docket in the consolidated case of *United States v. Cinergy Corp.*, Misc. Case No.04-0065 (PLF/AK).

Richard A. Levie (Retired). The Special Master prepared a report dated March 7, 2005, which was reviewed *in camera* by Magistrate Judge Kay. As a result of this review, Magistrate Judge Kay recommends in his March 30 Report that: (1) the Special Master's Report and Recommendation be adopted by this Court and the privilege be upheld with respect to the documents withheld from production; (2) the Special Master's Report be unsealed and turned over to the parties since it does not disclose the actual substance of and communications deemed to be privileged or protected; and (3) the Government's motion to compel [Docket No. 1 in Duke Energy and Docket No. 1 in Cinergy] be denied, with the government and UARG each to bear their own costs.

Upon careful consideration of the Report and Recommendation of Magistrate Judge Kay, a review of Judge Levie's report, and the entire record in this matter, it is hereby

ORDERED that the Report and Recommendation [57]of Magistrate Judge Alan Kay is ADOPTED and APPROVED: it is

FURTHER ORDERED that the report of the Special Master be unsealed and made available to the parties; it is

FURTHER ORDERED that the Special Master's Report and Recommendation is adopted by this Court; it is

FURTHER ORDERED that the United States' motions to compel compliance with subpoenas [Docket #1 in ms02-0480; Docket #1 in ms04-0065] are DENIED; and it is

FURTHER ORDERED that all other pending motions are DENIED as moot.

SO ORDERED.

DATE: August 31, 2006

/s/  
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PAUL L. FRIEDMAN  
United States District Judge