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June 7, 2010

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PUBLIC SERVICE
COMMISSION

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

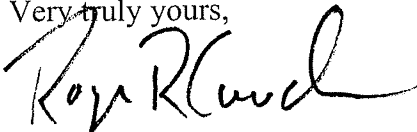
Re: Case No. 2010-00083

Dear Mr. Derouen:

Please find enclosed for filing with the Commission in the above-referenced case, an original and ten copies of the responses of East Kentucky Power Cooperative, Inc., to the Second Data Request of Commission Staff dated May 26, 2010.

If you have any questions or require additional information, please contact me.

Very truly yours,



Roger R. Cowden

Enclosures

250 West Main Street, Suite 2800 Lexington, Kentucky 40507-1749 (859) 231-0000 • (859) 231-0011 fax www.frostbrowntodd.com

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER	)	
COOPERATIVE, INC. FOR APPROVAL OF AN	)	**CASE NO.**
AMENDMENT TO ITS ENVIRONMENTAL	)	**2010-00083**
COMPLIANCE PLAN AND ENVIRONMENTAL	)	
SURCHARGE	)	

RESPONSE TO COMMISSION STAFF'S SECOND DATA REQUEST
TO EAST KENTUCKY POWER COOPERATIVE, INC.
DATED MAY 26, 2010

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER COOPERATIVE, INC. FOR APPROVAL OF AN AMENDMENT TO ITS ENVIRONMENTAL COMPLIANCE PLAN AND ENVIRONMENTAL SURCHARGE	)))))	**CASE NO. 2010-00083**

CERTIFICATE

STATE OF KENTUCKY)
)
COUNTY OF CLARK)

Craig A. Johnson, being duly sworn, states that he has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to the Public Service Commission Staff's Second Data Requests in the above-referenced case dated May 26, 2010, and that the matters and things set forth therein are true and accurate to the best of his knowledge, information and belief, formed after reasonable inquiry.

Craig A Johnson

Subscribed and sworn before me on this 7th day of June, 2010.

Notary Public

MY COMMISSION EXPIRES NOVEMBER 30, 2013
NOTARY ID #409352

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER COOPERATIVE, INC. FOR APPROVAL OF AN AMENDMENT TO ITS ENVIRONMENTAL COMPLIANCE PLAN AND ENVIRONMENTAL SURCHARGE	)))))	**CASE NO. 2010-00083**

CERTIFICATE

STATE OF KENTUCKY)
)
COUNTY OF CLARK)

Ann F. Wood, being duly sworn, states that she has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to the Public Service Commission Staff's Second Data Requests in the above-referenced case dated May 26, 2010, and that the matters and things set forth therein are true and accurate to the best of her knowledge, information and belief, formed after reasonable inquiry.

Ann F. Wood

Subscribed and sworn before me on this 4th day of June, 2010.

Notary Public

MY COMMISSION EXPIRES NOVEMBER 30, 2013
NOTARY ID #409352

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2010-00083
SECOND DATA REQUEST RESPONSE

COMMISSION STAFF'S SECOND DATA REQUEST DATED 05/26/10
REQUEST 1
RESPONSIBLE PERSON: Craig A. Johnson
COMPANY: East Kentucky Power Cooperative, Inc.

Request 1. Refer to the response to Item 1.b. of Commission Staffs First Data Request ("Staffs First Request").

a. In forecasting the load requirements for switchyard improvements for the scrubbers, explain whether EKPC forecasted any additional operating unit load requirements not related to the scrubbers to be served by these same switchyard improvements in the future and, if so, whether the upgrades were sized to realize economies of scale and avoid unnecessary duplication of assets.

b. If yes, provide a general description of the anticipated future load requirements and identify what portion, if any, of the proposed switchyard improvements should be allocated to future uses.

Response 1a. No future load requirements were forecasted in the sizing of the switchyard improvements.

Response 1b. This is not applicable. Please see the response to Request 1a.

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2010-00083
SECOND DATA REQUEST RESPONSE

COMMISSION STAFF'S SECOND DATA REQUEST DATED 05/26/10
REQUEST 2
RESPONSIBLE PERSON: **Ann F. Wood**
COMPANY: **East Kentucky Power Cooperative, Inc.**

Request 2. Refer to the response to Item 2.a. of Staffs First Request. EKPC did not provide a complete response. Explain why nothing was shown in the "Environmental Regulation" column for the switchyard improvements in Projects 7 and 8.

Response 2. In application Exhibit AFW-1, page 1 of 2, the environmental references associated with the Spurlock 1 and 2 scrubbers were intended to also apply to the switchyard improvements. In order to clarify this, EKPC repeated these environmental references as part of the response to Request 2b of Commission Staff's First Data Request.

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2010-00083
SECOND DATA REQUEST RESPONSE

COMMISSION STAFF'S SECOND DATA REQUEST DATED 05/26/10
REQUEST 3
RESPONSIBLE PERSON: **Ann F. Wood/Craig A. Johnson**
COMPANY: **East Kentucky Power Cooperative, Inc.**

Request 3. Refer to the response to Item 2.b. of Staffs First Request. Provide relevant sections of the environmental regulation now cited in Column 5 applicable to the Switchyard Improvements in Exhibit AFW-1 for Projects 7 and 8 which EKPC believes support including the upgrades in its Environmental Compliance Plan Amendment.

Response 3. CAN 04-34-KSF is provided on pages 2 through 74 of this response; paragraph 64 addresses the scrubber requirements for Spurlock 1 and 2. Clean Air Act Amendment ("CAAA") Sec 405 is provided on pages 75 through 84 of this response.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

UNITED STATES OF AMERICA Plaintiff, v. EAST KENTUCKY POWER COOPERATIVE, INC., Defendant.	)	Civil Action No. 04-34-KSF

CONSENT DECREE

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APPENDIX A – ENVIRONMENTAL PROJECTS REQUIREMENTS

WHEREAS, the United States of America ("the United States"), on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint against East Kentucky Power Cooperative, Inc. ("EKPC") pursuant to Sections 113(b) and 167 of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7413(b) and 7477, for injunctive relief and civil penalties for alleged violations of:

(a) the Prevention of Significant Deterioration provisions in Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-92;

(b) the New Source Performance Standards ("NSPS") 42 U.S.C. § 7411;

(c) Title V of the Act, 42 U.S.C. § 7661 *et seq.*;

(d) the federally-enforceable State Implementation Plan ("SIP") developed by the Commonwealth of Kentucky; and

WHEREAS, in its Complaint, Plaintiff alleges, *inter alia,* that EKPC failed to obtain the necessary permits and install the controls necessary under the Act to reduce its sulfur dioxide, nitrogen oxides, and/or particulate matter emissions, and that EKPC violated various operating permit conditions;

WHEREAS, the Complaint alleges claims upon which relief can be granted against EKPC under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and 28 U.S.C. § 1355;

WHEREAS, EKPC, a rural electric cooperative based in Winchester, Kentucky, has answered the Complaint filed by the United States;

WHEREAS EKPC has denied and continues to deny the violations alleged in the NOVs and the Complaint; maintains that it has been and remains in compliance with the Act and is not liable for civil penalties or injunctive relief; and states that it is agreeing to the obligations

imposed by this Decree solely to avoid the costs and uncertainties of litigation and to improve the environment;

WHEREAS, EPA provided EKPC and the Commonwealth of Kentucky with actual notices of violations pertaining to EKPC's alleged violations, in accordance with Section 113(a)(1) and (b) of the Act, 42 U.S.C. § 7413(a)(1) and (b);

WHEREAS, the Parties anticipate that the installation and operation of pollution control equipment pursuant to this Consent Decree will achieve significant reductions in SO_2, NO_x and PM emissions and thereby improve air quality;

WHEREAS, the United States and EKPC have agreed, and the Court by entering this Consent Decree finds: that this Consent Decree has been negotiated in good faith and at arms length; that this settlement is fair, reasonable, consistent with the goals of the Act, in the best interest of the Parties and in the public interest; and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

and

WHEREAS, the United States and EKPC have consented to entry of this Consent Decree without trial of any issue;

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Complaint, notices of violations and otherwise; it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477. Venue is proper under Section 113(b) of the Act,

42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). Solely for the purposes of this Consent Decree and the underlying Complaint, EKPC waives all objections and defenses that it may have to the Court's jurisdiction over this action, to the Court's jurisdiction over EKPC, and to venue in this District. EKPC shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. For purposes of the Complaint filed by the United States in this matter and resolved by the Consent Decree, and for purposes of entry and enforcement of this Consent Decree, EKPC waives any defense or objection based on standing. Except as expressly provided for herein, this Consent Decree shall not create any rights in any party other than the United States and EKPC. Except as provided in Section XXVI (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice.

II. APPLICABILITY

2. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the United States and EKPC, its successors and assigns, and EKPC's officers, employees, and agents solely in their capacities as such.

3. EKPC shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or other organization retained to perform any of the work required by this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, EKPC shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, EKPC shall not assert as a defense the failure of its officers, directors, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree, unless EKPC establishes that such failure resulted from a Force Majeure Event, as defined in Paragraph 143 of this Consent Decree.

III. DEFINITIONS

4. A "1-Hour Average NO_x Emission Rate" for a gas-fired, electric generating unit shall be expressed as the average concentration in parts per million ("ppm") by dry volume, corrected to 15% O_2, as averaged over one (1) hour. In determining the 1-Hour Average NO_x Emission Rate, EKPC shall use CEMS in accordance with the applicable reference methods specified in 40 C.F.R. Part 60 to calculate emissions for each 15 minute interval within each clock hour, except as provided in this Paragraph. Compliance with the 1-Hour Average NO_x Emission Rate shall be shown by averaging all 15-minute CEMS interval readings within a clock hour, except that any 15-minute CEMS interval that contains any part of a Start-up or Shut Down shall not be included in the calculation of that one-hour average. A minimum of two 15-minute CEMS interval readings within a clock hour, not including Start-up or Shut-Down intervals, is required to determine compliance with the 1-Hour Average NO_x Emission Rate. All emissions recorded by CEMS shall be reported in one hour averages.

5. A "30-Day Rolling Average Emission Rate" for a Unit or "Combined 30-Day Rolling Average Emission Rate" for the Spurlock Plant shall be expressed as lb/mmBTU and calculated in accordance with the following procedure: first, sum the total pounds of the pollutant in question emitted from the Unit (in the case of a 30-Day Rolling Average Emission Rate) or the Spurlock Plant (in the case of a Combined 30-Day Rolling Average Emission Rate) during an Operating Day and the previous twenty-nine (29) Operating Days; second, sum the total heat input to the Unit (in the case of a 30-Day Rolling Average Emission Rate) or the Spurlock Plant (in the case of a Combined 30-Day Rolling Average Emission Rate) in mmBTU during the Operating Day and the previous twenty-nine (29) Operating Days; and third, divide the total number of pounds of the pollutant emitted during the thirty (30) Operating Days by the total heat input during the thirty (30) Operating Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. A new Combined 30-Day Rolling

Average Emission Rate shall be calculated for each new Operating Day during which both Spurlock 1 and Spurlock 2 fire Fossil Fuel. Each 30-Day Rolling Average Emission Rate and Combined 30-Day Rolling Average Emission Rate shall include all emissions that occur during all periods of start-up, shutdown and Malfunction within an Operating Day, except as follows:

a. For emissions of NO_x from Spurlock 1 only, EKPC shall include all emissions commencing from the time Spurlock 1 is synchronized with a utility electric distribution system through the time that Spurlock 1 ceases to combust fossil fuel and the fire is out in the boiler;

b. Emissions of NO_x that occur during the fifth and subsequent Cold Start Up Period(s) that occur in any 30-day period shall be excluded from the calculation of the 30-Day Rolling Average Emission Rate and Combined 30-Day Rolling Average Emission Rate if inclusion of such emissions would result in a violation of any applicable 30-Day Rolling Average Emission Rate or Combined 30-Day Rolling Average Emission Rate, and if EKPC has installed, operated and maintained the SCR in question in accordance with manufacturers' specifications and good engineering practices. A "Cold Start Up Period" occurs whenever there has been no fire in the boiler of a Unit (no combustion of any fossil fuel) for a period of six hours or more. The emissions to be excluded during the fifth and subsequent Cold Start Up Period(s) shall be the less of (1) those NO_x emissions emitted during the eight hour period commencing when the Unit is synchronized with a utility electric distribution system and concluding eight hours later or (2) those emitted prior to the time that the flue gas has achieved the minimum SCR operational temperature as specified by the catalyst manufacturer;

c. For Cold Start Up Periods that occur at Spurlock 1 prior to April 1, 2008, emissions of NO_x that occur during the first and second Cold Start Up Period(s)

that occur in any 30-day period shall also be excluded from the calculation of the 30-Day Rolling Average Emission Rate and Combined 30-Day Rolling Average Emission Rate under the same terms and conditions as provided in Subparagraph b; and

d. Emissions that occur during a period of Malfunction shall be excluded from the calculation of the 30-Day Rolling Average Emission Rate and Combined 30-Day Rolling Average Emission Rate if EKPC provides notice of the Malfunction to EPA and takes all reasonable measures to minimize the duration of such Malfunction and prevent the recurrence of such Malfunctions in the future, in accordance with Paragraph 152 (Malfunction Events) of this Consent Decree.

6. "30-Day Rolling Average SO_2 Removal Efficiency" means the percent reduction in the mass of SO_2 achieved by a Unit's pollution control device over a 30-Operating Day period. This percent reduction shall be calculated by subtracting the outlet 30-Day Rolling Average Emission Rate from the inlet 30-Day Rolling Average Emission Rate, dividing that difference by the inlet 30-Day Rolling Average Emission Rate, and then multiplying by 100. In the event the 30-Day Rolling Average SO_2 Removal Efficiency does not meet the requirements of this consent decree, a 30-Day Rolling Average SO_2 emission rate of 0.100 lb/mmBTU or less shall satisfy the removal efficiency requirement. A new 30-Day Rolling Average SO_2 Removal Efficiency shall be calculated for each new Operating Day. EKPC may exclude Malfunctions from the calculation of a 30-Day Rolling Average SO_2 Removal Efficiency only to the extent that such Malfunctions have been excluded from the underlying 30-Day Rolling Average Emission Rates.

7. "Boiler Island" means a Unit's (A) fuel combustion system (including bunker, coal pulverizers, crusher, stoker, and fuel burners); (B) combustion air system; (C) steam generating system (firebox, boiler tubes, and walls); and (D) draft system (excluding the stack), all as further described in "Interpretation of Reconstruction," by John B. Rasnic, U.S. EPA (November 25, 1986) and attachments thereto.

8. "Capital Expenditure" means all capital expenditures, as defined by Generally Accepted Accounting Principles ("GAAP"), excluding the cost of installing or upgrading pollution control devices.

9. "CEMS" or "Continuous Emission Monitoring System" means, for obligations involving NO_x and SO_2 under this Consent Decree, the devices defined in 40 C.F.R. § 72.2 and installed and maintained as required by 40 C.F.R. Part 75.

10. "Clean Air Act" or "Act" means the federal Clean Air Act, 42 U.S.C. §§7401-7671q, and its implementing regulations.

11. "Consent Decree" or "Decree" means this Consent Decree and the Appendix hereto, which is incorporated into this Consent Decree.

12. "Cooper Plant" means the John Sherman Cooper Power Station located near Somerset, Kentucky, consisting of the following coal-fired Units: Unit 1 (124 MW) ("Cooper 1") and Unit 2 (240 MW) ("Cooper 2").

13. "Dale Plant" means Unit 3 (80 MW) ("Dale 3") and Unit 4 (80 MW) ("Dale 4") (and shall exclude Units 1 and 2) of the William C. Dale Power Station, located near Winchester, Kentucky.

14. "EKPC System" means, collectively, the Spurlock Plant, Cooper Plant, and Dale Plant.

15. "EKPC System Unit" means a unit included in the EKPC System.

16. "Emission Rate" means the number of pounds of pollutant emitted per million BTU of heat input ("lb/mmBTU") or the average concentration of pollutant in parts per million by dry volume ("ppm") corrected to 15% O_2, measured in accordance with this Consent Decree.

17. "EPA" means the United States Environmental Protection Agency.

18. "Flue Gas Desulfurization System," or "FGD," means a pollution control device that employs flue gas desulfurization technology for the reduction of sulfur dioxide.

19. "Fossil Fuel" means any hydrocarbon fuel, including coal, petroleum coke, petroleum oil, or natural gas.

20. "Improved Unit" means, in the case of NO_x, an EKPC System Unit scheduled to begin year-round operation of SCR technology pursuant to Paragraph 52, or, following EKPC's election pursuant to Paragraph 50, scheduled to be retired or equipped with SCR (or equivalent NO_x control technology approved pursuant to Paragraph 54). In the case of SO_2, "Improved Unit" means an EKPC System Unit scheduled to be equipped with an FGD pursuant to Paragraph 64 (or equivalent SO_2 control technology approved pursuant to Paragraph 66) or, following EKPC's election pursuant to Paragraph 50, scheduled to be retired or equipped with FGD (or equivalent SO_2 control technology approved pursuant to Paragraph 66). Following EKPC's election pursuant to Paragraph 50, either, but not both, of (1) Cooper Unit 2, or (2) Dale Units 3 and 4, may be considered "Improved Units." Neither (1) Cooper Unit 2 nor (2) Dale

Units 3 and 4 shall be considered an "Improved Unit" unless and until an election is made pursuant to Paragraph 50.

21. "lb/mmBTU" means one pound of a pollutant per million British thermal units of heat input.

22. "Malfunction" means malfunction as that term is defined under 40 C.F.R.§ 60.2.

23. "MCR" means maximum continuous rating.

24. "MW" means a megawatt or one million Watts.

25. "National Ambient Air Quality Standards" or "NAAQS" means national ambient air quality standards that are promulgated pursuant to Section 109 of the Act, 42 U.S.C. § 7409.

26. "New Units" means the following coal-fired circulating fluidized bed ("CFB") Units that commenced operation after the filing of the Complaint in this action and/or commence operation after entry of this Consent Decree and are owned all or in part by EKPC: Spurlock Unit 3 (305 MW), Spurlock Unit 4 (315 MW), Smith Unit 1 (315 MW) and Smith Unit 2 (315 MW).

27. "NO_x" means oxides of nitrogen, measured in accordance with the provisions of this Consent Decree.

28. "Nonattainment NSR" means the nonattainment area New Source Review program under Part D of Subchapter I of the Act, 42 U.S.C. §§ 7501-7515, 40 C.F.R. Part 51.

29. "NSPS" means New Source Performance Standards within the meaning of Part A of Subchapter I, of the Clean Air Act, 42 U.S.C. § 7411, 40 C.F.R. Part 60.

30. “Operating Day” means any calendar day on which a Unit fires Fossil Fuel.

31. “Other Unit” means any EKPC System Unit that is not an Improved Unit for the pollutant in question.

32. “Ownership Interest” means all or part of EKPC's legal or equitable interest in any EKPC System Unit.

33. “Parties” means EKPC and the United States of America, and “Party” means either one of the two named “Parties.”

34. “Permitting State” means the Commonwealth of Kentucky.

35. “Plaintiff” means the United States of America.

36. “Pollution Control Upgrade Analysis” means the technical study, analysis, review, and selection of control technology recommendations (including an emission rate or removal efficiency) identical to that which would be performed in connection with an application for a federal PSD permit, taking into account the characteristics of the existing facility. Except as otherwise provided in this Consent Decree, such study, analysis, review, and selection of recommendations shall be carried out in accordance with applicable federal and state regulations and guidance describing the process and analysis for determining Best Available Control Technology (BACT), as that term is defined in 40 C.F.R. §52.21(b)(12), including, without limitation, the December 1, 1987 EPA Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, regarding Improving New Source Review (NSR) Implementation. Nothing in this Decree shall be construed either to: (A) alter the force and effect of statements known as or characterized as “guidance” or (B) permit the process or result

of a "Pollution Control Upgrade Analysis" to be considered BACT for any purpose under the Act.

37. "PM" means particulate matter, measured in accordance with the provisions of this Consent Decree.

38. "PM CEMS," "Mercury CEMS," "PM Continuous Emission Monitoring System," or "Mercury Continuous Emission Monitoring System" means, as specified in Section VII.C (PM and Mercury Monitoring) of this Consent Decree, the equipment that samples, analyzes, measures, and provides, by readings taken at frequent intervals, an electronic or paper record of PM or Mercury emissions.

39. "PM Control Device" means an electrostatic precipitator ("ESP") or a baghouse ("BH") or any other device which reduces emissions of particulate matter (PM).

40. "PM Emission Rate" means the number of pounds of PM emitted per million BTU of heat input (lb/mmBTU), as measured in annual (or biennial) stack tests in accordance with the reference method set forth in 40 C.F.R. Part 60, App. A, Method 5 (filterable portion only).

41. "PSD" means Prevention of Significant Deterioration within the meaning of Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470 - 7492 and 40 C.F.R. Part 52.

42. "Re-power" shall mean either (1) the replacement of an existing pulverized coal boiler through the construction of a new circulating fluidized bed ("CFB") boiler or other clean coal technology of equivalent environmental performance that at a minimum achieves and maintains a 30-Day Rolling Average Emission Rate not greater than 0.100 lb/mmBTU for SO_2 or a 30-Day Rolling Average SO_2 Removal Efficiency of at least ninety-five percent (95%); a 30-

Day Rolling Average Emission Rate not greater than 0.070 lb/mmBTU for NO_x, and a PM Emission Rate not greater than 0.015 lb/mmBTU; or (2) the modification of a Unit, or removal and replacement of Unit components, such that the modified or replaced Unit generates electricity through the use of new combined cycle combustion turbine technology fueled by natural gas containing no more than 0.5 grains of sulfur per 100 standard cubic feet of natural gas, and at a minimum achieves and maintains a 1-Hour Average NO_x Emission Rate not greater than 2.0 ppm.

43. "Selective Catalytic Reduction System" or "SCR" means a pollution control device that employs selective catalytic reduction technology for the reduction of NO_x emissions.

44. "SO_2" means sulfur dioxide, measured in accordance with the provisions of this Consent Decree.

45. "SO_2 Allowance" means "allowance" as defined at 42 U.S.C. § 7651a(3): "an authorization, allocated to an affected unit by the Administrator [of EPA] under [Subchapter IV of the Act], to emit, during or after a specified calendar year, one ton of sulfur dioxide."

46. "Spurlock Plant" means the Spurlock Power Station located near Maysville, Kentucky, consisting of the following coal-fired cogeneration Units: Unit 1 (344 MW) ("Spurlock 1") and Unit 2 (555 MW) ("Spurlock 2"). Spurlock 1 and 2 are each configured to supply thermal energy to an adjacent box manufacturing plant.

47. "System-Wide 12-Month Rolling Tonnage" means the sum of the tons of the pollutant in question emitted from the EKPC System in the most recent complete month and the previous eleven (11) months. A new System-Wide 12-Month Rolling Tonnage shall be calculated for each new complete month in accordance with the provisions of this Consent

Decree. The calculation of each System-Wide 12-Month Rolling Tonnage shall include the pollutants emitted during periods of startup, shutdown, and Malfunction within each calendar month, except as otherwise provided by the Force Majeure provisions of this Consent Decree.

48. "Title V Permit" means the permit required of EKPC's major sources under Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

49. "Unit" means, solely for the purposes of this Consent Decree, collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine and boiler, and all ancillary equipment, including pollution control equipment and systems necessary for the production of electricity.

IV. ELECTION TO EITHER INSTALL EMISSION CONTROLS AT COOPER 2 OR RETIRE OR RE-POWER DALE 3 AND 4

50. No later than December 31, 2009, EKPC shall elect in writing to Plaintiff to either (1) install and continuously operate NO_x emission controls at Cooper 2 by December 31, 2012, and SO_2 emissions controls by June 30, 2012, as required in Paragraphs 53 and 65, or (2) retire and permanently cease to operate Dale 3 and 4 by December 31, 2012. Should EKPC retire and cease to operate Dale 3 and 4 pursuant to Option (2), EKPC may resume operation of such Units only if EKPC first Re-powers the Units pursuant to Paragraph 42 of this Decree, commences commercial operation of such Re-powered Units by May 31, 2014, and thereafter continues to operate in compliance with the rates set forth in Paragraph 42. Should EKPC choose to Re-power Dale Units 3 and 4, EKPC shall timely apply for a preconstruction permit from the Permitting State under 401 Ky. Admin. Reg. 51:017 prior to commencing such Re-powering. In applying for such permit EKPC shall seek, as part of the permit, provisions requiring Emission Rates no greater than those set forth in Paragraph 42.

V. NO_x EMISSION REDUCTIONS AND CONTROLS

A. NO_x Emission Controls

51. Beginning 60 days after entry of this Consent decree, and continuing until December 31, 2012, EKPC shall operate year-round the SCR technology on Spurlock 1 and Spurlock 2 to achieve and maintain the Emission Rates required by this Paragraph. EKPC shall operate year-round the SCR technology on Spurlock 1 so as to achieve and maintain a 30-Day Rolling Average Emission Rate for NO_x not greater than 0.120 lb/mmBTU. EKPC shall operate year-round the SCR technology on Spurlock 2 so as to achieve and maintain a 30-Day Rolling Average Emission Rate for NO_x not greater than 0.100 lb/mmBTU. During periods when both Spurlock 1 and Spurlock 2 are operating, EKPC shall operate the SCR technology on both Spurlock 1 and 2 so as to achieve and maintain a Combined 30-Day Rolling Average Emission Rate for those two Units for NO_x not greater than 0.100 lb/mmBTU.

52. Beginning on January 1, 2013, and continuing thereafter, EKPC shall operate year-round the SCR technology on Spurlock 1 and 2 so as to achieve and maintain a NO_x 30-Day Rolling Average Emission Rate not greater than 0.100 lb/mmBTU for each Unit.

53. Pursuant to Paragraph 50, if EKPC elects to install and continuously operate emission controls at Cooper 2, then beginning on December 31, 2012, EKPC shall install and commence continuous operation of year-round SCR technology on Cooper 2 (or equivalent NO_x control technology approved pursuant to Paragraph 54) so as to achieve, and thereafter maintain, a NO_x 30-Day Rolling Average Emission Rate not greater than 0.080 lb/mmBTU.

54. With prior written notice to and written approval from EPA, EKPC may, in lieu of installing and operating an SCR at Cooper 2, install and operate equivalent NO_x control technology so long as such equivalent NO_x control technology is designed for at least a 90%

removal efficiency for NO_x and achieves and thereafter maintains a 30-Day Rolling Average Emission Rate no less stringent than 0.080 lb/mmBTU NO_x.

55. In accordance with the dates prescribed in Paragraphs 51, 52, and 53, EKPC shall continuously operate each SCR (or equivalent NO_x control technology approved pursuant to Paragraph 54) at all times that the Unit it serves is in operation, consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the SCR or equivalent technology, for minimizing emissions to the extent practicable.

56. Beginning 30 days from entry of this Consent Decree, EKPC shall also operate low NO_x burners ("LNB") on all of the units within the EKPC System and over-fire air on Spurlock Unit 2 at all times that the units are in operation.

B. System-Wide NO_x Emission Limits

57. EKPC shall comply with the following System-Wide 12-Month Rolling Tonnage limitations for NO_x, which apply to all EKPC System Units collectively:

For the 12-Month Period Commencing on the Date Specified Below, and Each 12-Month Period Thereafter:	System-wide 12-Month Rolling Tonnage Limitation for NO_x
January 1, 2008	11,500 tons
January 1, 2013	8,500 tons
January 1, 2015	8,000 tons

58. The system-wide annual emissions limits for NO_x set forth in Paragraph 57 shall apply prospectively from the specified date on which a 12-month period commences, that is compliance with the cap shall first be determined 12 months following the commencement date

specified above, and shall end on the date that the subsequent system-wide limit, if any, takes effect. EKPC may not use NO_x Allowances to comply with these system-wide limitations.

C. Use of NO_x Allowances

59. Except as provided in this Consent Decree, EKPC shall not sell or trade any NO_x Allowances allocated to the EKPC System that would otherwise be available for sale or trade as a result of the actions taken by EKPC to comply with the requirements of this Consent Decree.

60. Except as provided in this Consent Decree, NO_x Allowances allocated to the EKPC System may be used by EKPC only to meet its own federal and/or State Clean Air Act regulatory requirements for any EKPC System Unit or New Unit.

61. Provided that EKPC is in compliance with the system-wide NO_x emission limitations of this Consent Decree, nothing in this Consent Decree shall preclude EKPC from selling or transferring NO_x Allowances allocated to the EKPC System that become available for sale or trade as a result of:

a. activities that reduce NO_x emissions at any EKPC System Unit prior to the date of entry of this Consent Decree;

b. the installation and operation of any NO_x pollution control technology or technique that is not otherwise required under this Consent Decree;

c. achievement and maintenance of NO_x emission rates below both (1) a NO_x 30-Day Rolling Average Emission Rate of 0.100 lb/mmBTU (for Spurlock 1 and 2) or 0.080 lb/mmBTU (for Cooper 2) and (2) the NO_x Combined 30-Day Rolling Average Emission Rate of 0.100 lb/mmBTU established by this Consent Decree; provided, however, that any achievement and maintenance of NO_x emission rates

resulting from the use of Subparagraph 5.c shall not be sold, traded or used by EKPC;

d. permanent shutdown or repowering of any EKPC System Unit not otherwise required by this Consent Decree;

e. a fuel change at a Unit that results in an emission reduction, provided that the emission reduction is made enforceable through modification of this Consent Decree; or

f. other emission reduction measures that are agreed to by the Parties and made enforceable through modification of this Consent Decree,

so long as EKPC timely reports the generation of such surplus NO_x Allowances in accordance with Section XII (Periodic Reporting) of this Consent Decree. EKPC shall be allowed to sell or transfer NO_x Allowances equal to the NO_x emissions reductions achieved for any given year by any of the actions specified in Subparagraphs 61.b. through 61.f. only to the extent that the total NO_x emissions from all EKPC System Units are below the System-Wide 12-Month Rolling Tonnage limitation for that year.

62. EKPC may not purchase or otherwise obtain NO_x Allowances from another source for purposes of complying with the requirements of this Consent Decree. However, nothing in this Consent Decree shall prevent EKPC from purchasing or otherwise obtaining NO_x Allowances from another source for purposes of complying with state or federal Clean Air Act requirements to the extent otherwise allowed by law.

D. General NO_x Provisions

63. In determining Emission Rates for NO_x, EKPC shall use CEMS in accordance with the procedures specified in 40 C.F.R. Part 75.

VI. SO_2 EMISSION REDUCTIONS AND CONTROLS

A. SO_2 Emission Controls

1. New FGD Installations

64. EKPC shall install and commence continuous operation of an FGD (or equivalent SO_2 control technology approved pursuant to Paragraph 66) on the following Units within the EKPC System so as to achieve, by the dates specified below, and thereafter maintain, a 30-Day Rolling Average Removal Efficiency for SO_2 of at least ninety-five percent (95%) or a 30-Day Rolling Average SO_2 Emission Rate of no greater than 0.100 lb/mmBTU:

Unit	Date by which EKPC must install and commence continuous operation of an FGD (or equivalent SO_2 control technology approved pursuant to Paragraph 66)	Date by which EKPC's FGD Must Achieve and Maintain 30-Day Rolling Average Removal Efficiency or Emission Rate for SO_2
Spurlock 2	October 1, 2008	January 1, 2009
Spurlock 1	June 30, 2011	June 30, 2011

65. Pursuant to Paragraph 50, if EKPC elects to install and continuously operate emission controls at Cooper 2, then beginning on June 30, 2012, EKPC shall install and commence continuous operation of FGD technology (or equivalent SO_2 control technology approved pursuant to Paragraph 66) on Cooper 2 so as to achieve, and thereafter maintain, a 30-day Rolling Average SO_2 Removal Efficiency of at least ninety-five percent (95%) for Cooper 2 or a 30-Day Rolling Average SO_2 Emission Rate of no greater than 0.100 lb/mmBTU.

66. With prior written notice to and written approval from EPA, EKPC may, in lieu of installing and operating an FGD at any Unit specified in Paragraph 64 and 65, install and operate equivalent SO_2 control technology so long as such equivalent SO_2 control technology achieves and maintains a 30-Day Rolling Average SO_2 Removal Efficiency of at least ninety-

five percent (95%) or a 30-Day Rolling Average SO_2 Emission Rate of no greater than 0.100 lb/mmBTU.

2. Continuous Operation of SO_2 Controls

67. EKPC shall continuously operate each FGD (or equivalent SO_2 control technology approved pursuant to Paragraph 66) covered under this Consent Decree at all times that the Unit it serves is in operation, consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the FGD or equivalent technology, for minimizing emissions to the extent practicable.

B. System-Wide SO_2 Emission Limits

68. EKPC shall comply with the following System-Wide 12-Month Rolling Tonnage limitations for SO_2, which apply to all EKPC System Units collectively:

For the 12-Month Period Commencing on the Date Specified Below, and Each 12-Month Period Thereafter:	System-Wide 12-Month Rolling Tonnage Limitation for SO_2
October 1, 2008	57,000 tons
July 1, 2011	40,000 tons
January 1, 2013	28,000 tons

69. Each of the system-wide annual emission limits for SO_2 set forth in Paragraph 68 shall apply prospectively from the specified date on which a 12-month period commences, that is compliance with the cap shall first be determined 12 months following the commencement date specified above, and shall end on the date that the subsequent system-wide limit, if any, takes effect. EKPC shall not use SO_2 allowances or credits to comply with these system-wide limitations.

C. Surrender of SO_2 Allowances

70. For purposes of this Subsection, the "surrender of allowances" means permanently surrendering allowances from the accounts administered by EPA for all units in the EKPC System, so that such allowances can never be used to meet any compliance requirement under the Clean Air Act, the Kentucky SIP, or this Consent Decree.

71. EKPC may use any SO_2 Allowances allocated by EPA to the EKPC System only to meet its own federal and/or State Clean Air Act regulatory requirements for any EKPC System Unit or New Unit. EKPC shall not sell or transfer any allocated EKPC System SO_2 Allowances to a third party, except as provided in Paragraphs 72, 73, and 76 below.

72. For each calendar year beginning with calendar year 2008, EKPC shall surrender to EPA, or transfer to a non-profit third party selected by EKPC for surrender, SO_2 Allowances allocated to EKPC System Units that are surplus to its Clean Air Act SO_2 Allowance-holding requirements for the EKPC System Units and New Units, collectively, for that year. EKPC shall make such surrender annually, within forty-five (45) days of EKPC's receipt from EPA of the Annual Deduction Reports for SO_2. Any surrender need not include the specific SO_2 Allowances that were allocated to EKPC System Units, so long as EKPC surrenders SO_2 Allowances that are from the same year or an earlier year and that are equal to the number required to be surrendered under this Paragraph 72.

73. If any allowances are transferred directly to a non-profit third party, EKPC shall include a description of such transfer in the next report submitted to EPA pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall: (i) provide the identity of the non-profit third-party recipient(s) of the SO_2 Allowances and a listing of the serial numbers of the transferred SO_2 Allowances; and (ii) include a certification by the third-party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the allowances and

will not use any of the SO_2 Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any SO_2 Allowances, EKPC shall include a statement that the third-party recipient(s) surrendered the SO_2 Allowances for permanent surrender to EPA in accordance with the provisions of Paragraph 74 within one (1) year after EKPC transferred the SO_2 Allowances to them. EKPC shall not have complied with the SO_2 Allowance surrender requirements of this Paragraph 73 until all third-party recipient(s) shall have actually surrendered the transferred SO_2 Allowances to EPA.

74. For all SO_2 Allowances surrendered to EPA, EKPC or the third-party recipient(s) (as the case may be) shall first submit an SO_2 Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such SO_2 Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. As part of submitting these transfer requests, EKPC or the third-party recipient(s) shall irrevocably authorize the transfer of these SO_2 Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the SO_2 Allowances being surrendered.

75. The requirements in Paragraphs 71, 72, 73, 74, and 76 of this Decree pertaining to EKPC's use and retirement of SO_2 Allowances are permanent injunctions not subject to any termination provision of this Decree. These provisions shall survive any termination of this Decree in whole or in part.

76. Provided that EKPC is in compliance with the system-wide SO_2 emissions limitations of this Consent Decree, nothing in this Consent Decree shall preclude EKPC from banking, selling or transferring SO_2 Allowances allocated to the EKPC System that become available for sale or trade as a result of:

a. activities that reduce SO_2 emissions at any EKPC System Unit prior to the date of entry of this Consent Decree;

b. the installation and operation of any SO_2 pollution control technology or technique that is not otherwise required under this Consent Decree;

c. achievement and maintenance of a 30-Day Rolling Average SO_2 Removal Efficiency at an Improved Unit that is below the applicable 30-Day Rolling Average SO_2 Removal Efficiency limit specified in Paragraphs 64 and 65;

d. permanent shutdown or repowering of any EKPC System Unit not otherwise required by the Consent Decree;

e. a fuel change at a Unit that results in an emission reduction, provided that the emission reduction is made enforceable through modification of this Consent Decree; or

f. other emission reduction measures that are agreed to by the Parties and made enforceable through modification of this Consent Decree,

so long as EKPC timely reports the generation of such surplus SO_2 Allowances in accordance with Section XII (Periodic Reporting) of this Consent Decree. EKPC shall be allowed to bank, sell or transfer SO_2 Allowances equal to the SO_2 emissions reductions achieved for any given year by any of the actions specified in Subparagraphs 76.b. through 76.f. only to the extent that the total SO_2 emissions from all EKPC System Units are below the System-Wide 12-Month Rolling Tonnage limitation for that year.

77. Nothing in this Consent Decree shall prevent EKPC from purchasing or otherwise obtaining SO_2 Allowances from another source for purposes of complying with state or federal Clean Air Act requirements to the extent otherwise allowed by law.

D. Fuel Limitations

78. EKPC shall not burn coal having a sulfur content greater than any amount authorized by regulation or State permit at any EKPC System Unit.

E. General SO_2 Provisions

79. In determining Emission Rates for SO_2, EKPC shall use CEMS in accordance with the procedures specified in 40 C.F.R. Part 75.

80. For Units that are required to be equipped with SO_2 control equipment and that are subject to the percent removal efficiency requirements of this Consent Decree, the outlet SO_2 Emission Rate and the inlet SO_2 Emission Rate shall be determined based on the data generated in accordance with 40 C.F.R. Part 75.15 (1999) (using SO_2 CEMS data from both the inlet and outlet of the control device).

VII. PM AND MERCURY EMISSION REDUCTIONS AND CONTROLS

A. Optimization of PM Emission Controls

81. Within ninety (90) days after entry of this Consent Decree and continuing thereafter, EKPC shall continuously operate each PM control device on its EKPC System Units to maximize PM emission reductions, consistent with manufacturers' specifications, the operational design and maintenance limitations of the Units and good engineering practices. Specifically, EKPC shall, at a minimum: (a) energize each section of the ESP for each Unit, regardless of whether that action is needed to comply with opacity limits; (b) maintain the energy or power levels delivered to the ESPs for each Unit to achieve the greatest possible

removal of PM; (c) make best efforts to expeditiously repair and return to service transformer-rectifier sets when they fail; and (d) inspect for, and schedule for repair, any openings in ESP casings and ductwork to minimize air leakage. Within two hundred seventy (270) days after entry of this Consent Decree and continuing thereafter, EKPC shall also optimize the plate-cleaning and discharge-electrode-cleaning systems for the ESPs at each EKPC System Unit by varying the cycle time, cycle frequency, rapper-vibrator intensity, and number of strikes per cleaning event, of these systems to minimize PM emissions.

B. Upgrade of Existing PM Emission Controls

82. Within 365 days of lodging of this Consent Decree, EKPC shall demonstrate that each of the EKPC System Units can achieve and maintain a PM Emission Rate of no greater than 0.030 lb/mmBTU in accordance with Paragraph 87. In the alternative and in lieu of demonstrating compliance with the PM Emission Rate applicable under this Paragraph 82, EKPC may elect to undertake an upgrade of the existing PM emissions control equipment for any such Unit based on a PM Pollution Control Upgrade Analysis for that Unit. The preparation, submission, and implementation of such PM Pollution Control Upgrade Analysis shall be undertaken and completed in accordance with the compliance schedules and procedures specified in Paragraph 84.

83. Demonstration and Compliance with PM Emission Limit. If EKPC demonstrates by the applicable date set forth in Paragraph 82 that a Unit can achieve and maintain a PM Emission Rate of no greater than 0.030 lb/mmBTU, EKPC shall thereafter operate that Unit to maximize PM emission reductions, consistent with the Unit's operational design and safety requirements, and shall achieve and maintain a PM Emission Rate no greater than 0.030 lb/mmBTU.

84. PM Emission Control Upgrade. For each EKPC System Unit for which EKPC does not elect to meet a PM Emission Rate of 0.030 lb/mmBTU, EKPC shall prepare, submit, and implement a PM Pollution Control Upgrade Analysis in accordance with this Paragraph 84. Such PM Pollution Control Upgrade Analysis shall include proposed upgrades to the PM pollution control device and a proposed alternate PM Emission Rate that the Unit shall meet upon completion of such upgrade. For each Unit for which such a PM Pollution Control Upgrade Analysis is required, EKPC shall deliver such PM Pollution Control Upgrade Analysis to EPA for approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree within 180 days of the date on which the particular EKPC System Unit is unable to make the demonstration required by Paragraph 83.

a. In conducting the PM Pollution Control Upgrade Analysis for any Unit, EKPC need not consider any of the following PM control measures:

i. the complete replacement of the existing ESP with a new ESP, FGD, or baghouse, or

ii. the upgrade of the existing ESP controls through the installation of a supplemental PM Control Device, through the refurbishment of existing PM Control Devices, or through other measures, if the costs of such upgrade are equal to or greater than the costs of a replacement ESP, FGD, or baghouse (on a total dollar-per-ton-of-pollutant-removed basis).

With each PM Pollution Control Upgrade Analysis delivered to EPA, EKPC shall simultaneously deliver all documents that support or were considered in preparing such PM Pollution Control Upgrade Analysis. EKPC shall retain a qualified

contractor to assist in the performance and completion of each PM Pollution Control Upgrade Analysis.

b. Beginning one (1) year after EPA approval of the recommendation(s) made in a PM Pollution Control Upgrade Analysis for a Unit, EKPC shall not operate that Unit unless all equipment called for in the recommendation(s) of the Pollution Control Upgrade Analysis has been installed. An installation period longer than one year may be allowed if EKPC makes such a request in the PM Pollution Control Upgrade Analysis and EPA determines such additional time is necessary due to factors such as the magnitude of the PM control project or the need to address reliability concerns that could result from multiple EKPC System Unit outages. Upon installation of all equipment recommended under an approved PM Pollution Control Upgrade Analysis, EKPC shall operate such equipment in compliance with the recommendation(s) of the approved PM Pollution Control Upgrade Analysis, including compliance with any PM Emission Rate specified by the recommendation(s).

85. EKPC shall continuously operate each ESP in the EKPC System at all times that the Unit it serves is combusting Fossil Fuel, in compliance with manufacturers' specifications, the operational design and maintenance limitations of the Unit, and good engineering practices.

C. PM and Mercury Monitoring

1. PM Stack Tests

86. Beginning in calendar year 2008, and continuing annually thereafter, EKPC shall conduct a PM performance test on each EKPC System Unit. The annual stack test requirement imposed on each EKPC System Unit by this Paragraph 86 may be satisfied by stack tests conducted by EKPC as required by its permits from the Kentucky Natural Resources and

Environmental Protection Cabinet for any year that such stack tests are required under the permits. EKPC may perform biennial rather than annual testing provided that (a) two of the most recently completed test results from tests conducted in accordance with 40 C.F.R. Part 60, Appendix A-1, Method 5 demonstrate that the PM emissions are equal to or less than 0.015 lb/mmBTU, or (b) the Unit is equipped with a PM CEMS in accordance with Paragraphs 88 through 95. EKPC shall perform annual rather than biennial testing the year immediately following any test result demonstrating that the particulate matter emissions are greater than 0.015 lb/mmBTU, unless the Unit is equipped with a PM CEMS in accordance with Paragraphs 88 through 95.

87. The reference and monitoring methods and procedures for determining compliance with PM Emission Rates shall be those specified in 40 C.F.R. Part 60, Appendix A-1, Method 5. Use of any particular method shall conform to the EPA requirements specified in 40 C.F.R. Part 60, Appendix A and 40 C.F.R. § 60.48a (b) and (e), or any federally approved method contained in the Kentucky SIP. EKPC shall calculate the PM Emission Rates from the stack test results in accordance with 40 C.F.R. § 60.8(f). The results of each PM stack test shall be submitted to EPA within 30 days of completion of each test.

2. <u>PM CEMS</u>

88. EKPC shall install and operate PM CEMS in accordance with Paragraphs 89 through 95. Operation of such PM CEMS shall be in accordance with 40 C.F.R. Part 60, App. B, Performance Specification 11, and App. F Procedure 2. Each PM CEMS shall comprise a continuous particle mass monitor measuring PM concentration, directly or indirectly, on an hourly average basis and a diluent monitor used to convert the concentration to units of lb/mmBTU. EKPC shall maintain, in an electronic database, the hourly average emission

values of all PM CEMS in lb/mmBTU. EKPC shall use reasonable efforts to keep each PM CEMS running and producing data whenever any Unit served by the PM CEMS is operating.

89. No later than six (6) months after entry of this Consent Decree, EKPC shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree a plan for the installation and certification of each PM CEMS.

90. EKPC shall install, certify, and operate PM CEMS on two (2) Units, stacks or common stacks in accordance with the following schedule:

Stack	Deadline to Commence Operation of PM CEMS
Spurlock 2	10/1/08
Cooper 1	12/31/12

91. No later than one hundred twenty (120) days prior to the deadline to commence operation of each PM CEMS, EKPC shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree a proposed Quality Assurance/Quality Control ("QA/QC") protocol that shall be followed in calibrating such PM CEMS. Following EPA's approval of the protocol, EKPC shall thereafter operate each PM CEMS in accordance with the approved protocol.

92. In developing both the plan for installation and certification of the PM CEMS and the QA/QC protocol, EKPC shall use the criteria set forth in 40 C.F.R. Part 60, App. B, Performance Specification 11, and App. F Procedure 2. EKPC shall include in its QA/QC protocol a description of any periods in which it proposes that the PM CEMS may not be in operation in accordance with Performance Specification 11.

93. No later than ninety (90) days after EKPC begins operation of the PM CEMS, EKPC shall conduct tests of each PM CEMS to demonstrate compliance with the PM CEMS installation and certification plan submitted to and approved by EPA in accordance with Paragraph 89.

94. EKPC shall operate the PM CEMS for at least two (2) years on each of the Units specified in Paragraph 90. After two (2) years of operation, EKPC may attempt to demonstrate that it is infeasible to continue operating PM CEMS. As part of that demonstration, EKPC shall submit an alternative PM monitoring plan for review and approval by the United States. The plan shall explain the basis for stopping operation of the PM CEMS and propose an alternative-monitoring plan. If the United States disapproves the alternative PM monitoring plan, or if the United States rejects EKPC's claim that it is infeasible to continue operating PM CEMS, such disagreement is subject to Section XVI (Dispute Resolution).

95. Operation of a PM CEMS shall be considered no longer feasible if (a) the PM CEMS cannot be kept in proper condition for sufficient periods of time to produce reliable, adequate, or useful data consistent with the QA/QC protocol; or (b) EKPC demonstrates that recurring, chronic, or unusual equipment adjustment or servicing needs in relation to other types of continuous emission monitors cannot be resolved through reasonable expenditures of resources. If EPA determines that operation is no longer feasible, EKPC shall be entitled to discontinue operation of and remove the PM CEMS.

3. Mercury CEMS

96. EKPC shall install and operate Mercury CEMS in accordance with Paragraphs 97 through 102. The Mercury CEMS shall continuously measure mercury emission concentration, directly or indirectly, on an hourly average basis, in units of pounds per trillion BTU ("lb/TBTU"). EKPC shall maintain, in an electronic database, the hourly average emission

values of all Mercury CEMS in lb/TBTU. EKPC shall use reasonable efforts to keep each Mercury CEMS running and producing data whenever any Unit served by the Mercury CEMS is operating.

97. No later than six (6) months after entry of this Consent Decree, EKPC shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree a plan for the installation and certification of the Mercury CEMS.

98. EKPC shall install, certify, and operate the Mercury CEMS on the following Unit in accordance with the following schedule:

Unit	Deadline to Commence Operation of Mercury CEMS
Spurlock 1 or 2	10/1/08

No later than six (6) months after entry of this Consent Decree, EKPC may submit to EPA for review and approval an alternative Unit on which to install the Mercury CEMS required by this Paragraph 98.

99. No later than one hundred twenty (120) days prior to the deadline to commence operation of each Mercury CEMS, EKPC shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree a proposed QA/QC protocol that shall be followed in calibrating such Mercury CEMS. Following EPA's approval of the protocol, EKPC shall thereafter operate the Mercury CEMS in accordance with the approved protocol.

100. No later than ninety (90) days after EKPC begins operation of the Mercury CEMS, EKPC shall conduct tests of the Mercury CEMS to demonstrate compliance with the

Mercury CEMS installation and certification plan submitted to and approved by EPA in accordance with Paragraph 97.

101. EKPC shall operate the Mercury CEMS for at least two (2) years on the Unit specified in Paragraph 98. After two (2) years of operation, EKPC may attempt to demonstrate that it is infeasible to continue operating Mercury CEMS. As part of that demonstration, EKPC shall submit an alternative Mercury monitoring plan for review and approval by the United States. The plan shall explain the basis for stopping operation of the Mercury CEMS and propose an alternative-monitoring plan. If the EPA disapproves the alternative Mercury monitoring plan, or if the EPA rejects EKPC's claim that it is infeasible to continue operating Mercury CEMS, such disagreement is subject to Section XVI (Dispute Resolution).

102. Operation of a Mercury CEMS shall be considered no longer feasible if (a) the Mercury CEMS cannot be kept in proper condition for sufficient periods of time to produce reliable, adequate, or useful data consistent with the QA/QC protocol; or (b) EKPC demonstrates that recurring, chronic, or unusual equipment adjustment or servicing needs in relation to other types of continuous emission monitors cannot be resolved through reasonable expenditures of resources. If EPA determines that operation is no longer feasible, EKPC shall be entitled to discontinue operation of and remove the Mercury CEMS.

4. PM and Mercury Reporting

103. Following the installation of each PM and Mercury CEMS, EKPC shall begin and continue to report to EPA, pursuant to Section XII (Periodic Reporting), the data recorded by the PM and Mercury CEMS, expressed in lb/mmBTU and lb/TBTU, respectively, on a 3-hour, 24-hour, 30-day, and 365-day rolling average basis in electronic format, as required in Paragraphs 88 and 96.

D. General PM Provisions

104. Although stack testing shall be used to determine compliance with the PM Emission Rate established by this Consent Decree, data from the PM CEMS shall be used, at a minimum, to monitor progress in reducing PM emissions. Nothing in this Consent Decree is intended to, or shall, alter or waive any applicable law (including any defenses, entitlements, challenges, or clarifications related to the Credible Evidence Rule, 62 Fed. Reg. 8315 (Feb. 27, 1997)) concerning the use of data for any purpose under the Act, generated either by the reference methods specified herein or otherwise.

VIII. PROHIBITION ON NETTING CREDITS OR OFFSETS FROM REQUIRED CONTROLS

105. Emission reductions generated by EKPC to comply with the requirements of this Consent Decree shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a netting credit under the Clean Air Act's Nonattainment NSR and PSD programs.

106. The limitations on the generation and use of netting credits or offsets set forth in the previous Paragraph 105 do not apply to emission reductions achieved by EKPC System Units that are greater than those required under this Consent Decree. For purposes of this Paragraph 106, emission reductions from an EKPC System Unit are greater than those required under this Consent Decree if they result from EKPC compliance with federally-enforceable emission limits that are more stringent than those limits imposed on EKPC System Units under this Consent Decree and under applicable provisions of the Clean Air Act or the Kentucky SIP.

107. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by the Commonwealth of Kentucky or EPA as creditable contemporaneous emission decreases for the purpose of attainment

demonstrations submitted pursuant to § 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on NAAQS, PSD increment, or air quality related values, including visibility, in a Class I area.

IX. ENVIRONMENTAL PROJECTS

108. EKPC shall implement the Environmental Project ("Project") described in Appendix A in compliance with the approved plans and schedules for such Project and other terms of this Consent Decree. EKPC shall submit plans for the Project to the United States for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree in accordance with the schedules set forth in Appendix A. EKPC shall maintain, and present to the United States, upon request, all documents to substantiate the cost of the Project and shall provide these documents to the United States within thirty (30) days of a request by the United States for the documents.

109. All plans and reports prepared by EKPC pursuant to the requirements of this Section of the Consent Decree shall be publicly available without charge.

110. EKPC shall certify, as part of each plan submitted to the United States for any Project, that EKPC is not otherwise required by law to perform the Project described in the plan, that EKPC is unaware of any other person who is required by law to perform the Project, and that EKPC will not use any Project, or portion thereof, to satisfy any obligations that it may have under other applicable requirements of law, including any applicable renewable portfolio standards.

111. EKPC shall use good faith efforts to secure as much benefit as possible for the Project, consistent with the applicable requirements and limits of this Consent Decree.

112. If EKPC elects (where such an election is allowed) to undertake a Project by contributing funds to another person or instrumentality that will carry out the Project, that person or instrumentality must in writing: (a) identify its legal authority for accepting such funding; and (b) identify its legal authority to conduct the Project for which EKPC contributes the funds. Regardless of whether EKPC elected (where such election is allowed) to undertake a Project by itself or to do so by contributing funds to another person or instrumentality that will carry out the Project, EKPC acknowledges that it will receive credit for the expenditure of such funds only if EKPC demonstrates that the funds have been actually spent by either EKPC or by the person or instrumentality receiving them (or, in the case of internal costs, have actually been incurred by EKPC), and that such expenditures met all requirements of this Consent Decree.

113. Within sixty (60) days following the completion of the Project required under this Consent Decree, EKPC shall submit to the United States a report that documents the date that the Project was completed, EKPC's results of implementing the Project, including the emission reductions or other environmental benefits achieved, and the costs incurred by EKPC in implementing the Project.

114. EKPC shall not financially benefit to a greater extent than any other member of the general public from the sale or transfer of technology obtained in the course of implementing any Project.

115. Beginning one (1) year after entry of this Consent Decree, EKPC shall provide the United States with semi-annual updates concerning the progress of each Project.

X. CIVIL PENALTY

116. Within thirty (30) calendar days after entry of this Consent Decree, EKPC shall pay to the United States a civil penalty in the amount of $750,000. The civil penalty shall be

paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number 2007Z00290 and 2004V00107 and DOJ Case Number 90-5-2-1-08085 and the civil action case name and case number of this action. The costs of such EFT shall be EKPC's responsibility. Payment shall be made in accordance with instructions provided to EKPC by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Kentucky, Lexington Division. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, EKPC shall provide notice of payment, referencing the USAO File Number, the DOJ Case Number, and the civil action case name and case number, to the Department of Justice and to EPA in accordance with Section XIX (Notices) of this Consent Decree.

117. Failure to timely pay the civil penalty shall subject EKPC to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961, and shall render EKPC liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment.

118. Payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures for purposes of federal law.

XI. RESOLUTION OF CLAIMS

A. RESOLUTION OF U.S. CIVIL CLAIMS

119. Claims Based on Modifications Occurring Before the Lodging of Decree.

Entry of this Decree shall resolve all civil claims of the United States under either:

a. Parts C or D of Subchapter I of the Clean Air Act,

b. Section 111 of the Clean Air Act and 40 C.F.R. Section 60.14,

c. Sections 502(a) and 504(a) of the Clean Air Act, but only to the extent that such claims are either (i) based on EKPC's failure to obtain an operating permit that reflects applicable requirements imposed under Parts C or D of Subchapter I, or Section 111, of the Clean Air Act; or (ii) EKPC's operation of Spurlock 2 at a heat input above that listed in the 1982 Spurlock Operating Permit No. 0-82-270 and 1999 Spurlock Title V permit V-97-050,

d. 401 KAR 51:017 and all relevant prior versions of these regulations,

e. 401 KAR 52:020 and all relevant prior versions of these regulations, but only to the extent that such claims are based on either (i) EKPC's failure to obtain an operating permit that reflects applicable requirements imposed under 401 KAR 51:017, or (ii) EKPC's operation of Spurlock 2 at a heat input above that listed in the 1982 Spurlock Operating Permit No. 0-82-270 and 1999 Spurlock Title V permit V-97-050,

that arose from any modifications that commenced at any EKPC System Unit prior to the date of lodging of this Decree, including but not limited to those modifications alleged in the Complaint in this civil action.

120. Claims Based on Modifications After the Lodging of Decree.

Entry of this Decree also shall resolve all civil claims of the United States for pollutants regulated under Parts C or D of Subchapter I of the Clean Air Act, and under regulations promulgated thereunder as of the date of lodging of this Decree, where such claims are based on a modification completed before December 31, 2015 and:

a. commenced at any EKPC System Unit after lodging of this Decree; or

b. that this Consent Decree expressly directs EKPC to undertake.

The term "modification" as used in this Paragraph 120 shall have the meaning that term is given under the Clean Air Act statute as it existed on the date of lodging of this Decree.

121. Reopener. The resolution of the civil claims of the United States provided by this Subsection is subject to the provisions of Section B of this Section.

B. PURSUIT OF U.S. CIVIL CLAIMS OTHERWISE RESOLVED

122. Bases for Pursuing Resolved Claims Across EKPC System. If EKPC violates Paragraph 57 (System-wide NO_x Rolling Tonnage Limits); Paragraph 68 (System-wide SO_2 Rolling Tonnage Limits); or Paragraph 78 (Fuel Limitations); exceeds any 30-Day Rolling Average Emission Rate or 30-Day Rolling Average SO_2 Removal Efficiency for more than 60 consecutive days, or fails by more than ninety days to complete installation or upgrade and commence operation of any emission control device required pursuant to Paragraphs 51, 52, 53, 64, or 65; or fails by more than ninety days to retire and permanently cease to operate or Re-power EKPC System Units pursuant to Paragraph 50, then the United States may pursue any claim at any EKPC System Unit that is otherwise covered by the resolution of claims under Subsection A of this Section, subject to (a) and (b) below.

a. For any claims based on modifications undertaken at an Other Unit (any EKPC System Unit that is not an Improved Unit for the pollutant in question), claims may be pursued only where the modification(s) on which such claim is based was commenced within the five (5) years preceding the violation or failure specified in this Paragraph 122.

b. For any claims based on modifications undertaken at an Improved Unit, claims may be pursued only where the modification(s) on which such claim is based was commenced (i) after lodging of the Consent Decree and (ii) within the five years preceding the violation or failure specified in this Paragraph 122.

123. Additional Bases for Pursuing Resolved Claims for Modifications at an Improved Unit. Solely with respect to Improved Units, the United States may also pursue claims arising from a modification (or collection of modifications) at an Improved Unit that are otherwise covered by the resolution of claims under Subsection A of this Section, if the modification (or collection of modifications) at the Improved Unit on which such claims are based (i) was commenced after lodging of this Consent Decree, and (ii) individually (or collectively) increased the maximum hourly emission rate of that Unit for NO_x or SO_2 (as measured by 40 C.F.R. § 60.14 (b) and (h)) by more than ten percent (10%).

124. Additional Bases for Pursuing Resolved Claims for Modifications at an Other Unit. Solely with respect to Other Units, the United States may also pursue claims arising from a modification (or collection of modifications) at an Other Unit that are otherwise covered by the resolution of claims under Subsection (a) of this Section, if the modification (or collection of modifications) at the Other Unit on which the claim is based was commenced within the five (5) years preceding any of the following events:

a. a modification (or collection of modifications) at such Other Unit commenced after lodging of this Consent Decree increases the maximum hourly emission rate for such Other Unit for the relevant pollutant (NO_x or SO_2) (as measured by 40 C.F.R. § 60.14(b) and (h));

b. the aggregate of all Capital Expenditures made at such Other Unit exceed $125/KW on the Unit's Boiler Island (based on the generating capacities identified in Paragraph 12 or 13) during either of the following periods: the date of lodging of this Decree through December 31, 2010; January 1, 2011 through December 31, 2015. (Capital Expenditures shall be measured in calendar year

2004 constant dollars, as adjusted by the McGraw-Hill Engineering News-Record Construction Cost Index); or

c. a modification (or collection of modifications) at such Other Unit commenced after lodging of this Consent Decree results in an emissions increase of NO_x and/or SO_2 at such Other Unit, and such increase:

   i. presents, by itself, or in combination with other emissions or sources, "an imminent and substantial endangerment" within the meaning of Section 303 of the Act, 42 U.S.C. §7603;

   ii. causes or contributes to violation of a NAAQS in any Air Quality Control Area that is in attainment with that NAAQS;

   iii. causes or contributes to violation of a PSD increment; or

   iv. causes or contributes to any adverse impact on any formally-recognized air quality and related values in any Class I area.

d. Solely for purposes of Paragraph 124, Subparagraph (c), the determination of whether there was an emissions increase must take into account any emissions changes relevant to the modeling domain that have occurred or will occur under this Decree at other EKPC System Units. In addition, an emissions increase shall not be deemed to have occurred at an Other Unit unless the annual emissions of the relevant pollutant (NO_x or SO_2) from the plant at which such modification(s) occurred exceed the annual emissions from that plant for calendar year 2003.

e. The introduction of any new or changed NAAQS shall not, standing alone, provide the showing needed under Paragraph 124, Subparagraphs (c)(ii) or

(c)(iii), to pursue any claim for a modification at an Other Unit resolved under Subsection A of this Section.

XII. PERIODIC REPORTING

125. Within one hundred eighty (180) days after each date established by Paragraphs 51, 52, 53, 64 and 65 of this Consent Decree for EKPC to achieve and maintain a certain Emission Rate or 30-Day Rolling Average SO_2 Removal Efficiency at any EKPC System Unit, EKPC shall conduct a performance test that demonstrates compliance with the Emission Rate or Removal Efficiency required by this Consent Decree. Within forty-five (45) days of each such performance test, EKPC shall submit the results of the performance test to EPA at the addresses specified in Section XIX (Notices) of this Consent Decree.

126. Beginning thirty (30) days after the end of the first full calendar quarter following the entry of this Consent Decree, continuing on a semi-annual basis until December 31, 2015, and in addition to any other express reporting requirement in this Consent Decree, EKPC shall submit to EPA a progress report.

127. The progress report shall contain the following information:

a. all information necessary to determine compliance with this Consent Decree;

b. all information relating to emission allowances and credits that EKPC claims to have generated in accordance with Paragraphs 61 or 76 by compliance beyond the requirements of this Consent Decree; and

c. all information indicating that the installation and commencement of operation for a pollution control device may be delayed, including the nature and cause of the delay, and any steps taken by EKPC to mitigate such delay.

128. In any periodic progress report submitted pursuant to this Section, EKPC may incorporate by reference information previously submitted under its Title V permitting requirements, provided that EKPC attaches the Title V permit report and provides a specific reference to the provisions of the Title V permit report that are responsive to the information required in the periodic progress report.

129. In addition to the progress reports required pursuant to this Section, EKPC shall provide a written report to EPA of any violation of the requirements of this Consent Decree, including exceedances of the Unit-specific 30-Day Rolling Average Emission Rates, Unit-specific 30-Day Rolling Average SO_2 Removal Efficiencies, Combined 30-Day Rolling Average Emission Rate, 1-Hour Average NO_x Emission Rate, and System-Wide 12-Month Rolling Tonnage limitations, within ten (10) business days of when EKPC knew or should have known of any such violation. In this report, EKPC shall explain the cause or causes of the violation and all measures taken or to be taken by EKPC to prevent such violations in the future.

130. Each EKPC report shall be signed by EKPC's Environmental Manager, or, in his or her absence, the Vice President for Generation and Transmission Operations, or higher ranking official, and shall contain the following certification:

> This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

131. If any allowances are surrendered to any third party pursuant to Section VI.C (Surrender of SO_2 Allowances) of this Consent Decree, the third party's certification pursuant to Paragraph 73 shall be signed by a managing officer of the third party and shall contain the following language:

> I certify under penalty of law that,_____________ [name of third party] will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

XIII. REVIEW AND APPROVAL OF SUBMITTALS

132. EKPC shall submit each plan, report, or other submission to EPA whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. EPA may approve the submittal or decline to approve it and provide written comments. Within sixty (60) days of receiving written comments from EPA, EKPC shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal for final approval to EPA; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XVI (Dispute Resolution) of this Consent Decree.

133. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, EKPC shall implement the approved submittal in accordance with the schedule specified therein.

XIV. STIPULATED PENALTIES

134. For any failure by EKPC to comply with the terms of this Consent Decree, and subject to the provisions of Sections XV (Force Majeure) and XVI (Dispute Resolution), EKPC

shall pay, within thirty (30) days after receipt of written demand to EKPC by the United States, the following stipulated penalties to the United States:

Consent Decree Violation	Stipulated Penalty (Per day per violation, unless otherwise specified)
a. Failure to pay the civil penalty as specified in Section X (Civil Penalty) of this Consent Decree	\$10,000
b. Failure to comply with any applicable Combined 30-Day Rolling Average Emission Rate for NO_x, 30-Day Rolling Average Emission Rate for NO_x or SO_2, 30-Day Rolling Average SO_2 Removal Efficiency, or Emission Rate for PM, where the violation is less than 5% in excess of the limits set forth in this Consent Decree	\$2,500
c. Failure to comply with any applicable Combined 30-Day Rolling Average Emission Rate for NO_x, 30-Day Rolling Average Emission Rate for NO_x or SO_2, 30-Day Rolling Average SO_2 Removal Efficiency, or Emission Rate for PM, where the violation is equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree	\$5,000
d. Failure to comply with any applicable Combined 30-Day Rolling Average Emission Rate for NO_x, 30-Day Rolling Average Emission Rate for NO_x or SO_2, 30-Day Rolling Average SO_2 Removal Efficiency, or Emission Rate for PM, where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree	\$10,000
e. Failure to comply with any 1-Hour Average NO_x Emission Rate, where the violation is equal to or less than 3 ppm.	\$1000 per violation
f. Failure to comply with any 1-Hour Average NO_x Emission Rate, where the violation is greater than 3 ppm.	\$5000 per violation
g. Reserved.	Reserved.
h. Failure to comply with the System-wide 12-Month Rolling SO_2 and NO_x Tonnage Limits	\$5,000 per ton per month for the first 100 tons over the limit, and \$10,000 per ton per month for each additional ton over the limit
i. Failure to install, commence operation, or continue operation of the NO_x, SO_2, and PM pollution control devices on any Unit, or failure to retire a Unit	\$10,000 during the first 30 days, \$27,500 thereafter
j. Failure to comply with the fuel limitations at a unit, as required by Paragraph 78	\$10,000

k. Failure to install or operate CEMS as required in Paragraphs 88 through 102	$1,000
l. Failure to conduct annual or biennial stack tests of PM emissions, as required in Paragraph 86	$1,000
m. Failure to apply for any permit required by Section XVII	$1,000
n. Failure to timely submit, modify, or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	$750 during the first ten days, $1,000 thereafter
o. Using, selling, or transferring SO_2 Allowances, except as permitted by Paragraphs 71, 72, and 76	the surrender, pursuant to the procedures set forth in Paragraphs 70, 73, and 74 of this Consent Decree, of SO_2 Allowances in an amount equal to four times the number of SO_2 Allowances used, sold, or transferred in violation of this Consent Decree
p. Using, selling or transferring NO_x Allowances except as permitted by Paragraphs 59, 60 and 61	the surrender of NO_x Allowances in an amount equal to four times the number of NO_x Allowances used, sold, or transferred in violation of this Consent Decree
q. Failure to surrender an SO_2 Allowance as required by Paragraph 72	(a) $27,500 plus (b) $1,000 per SO_2 Allowance
r. Failure to demonstrate the third-party surrender of an SO_2 Allowance in accordance with Paragraph 73	$2,500
s. Failure to undertake and complete any of the Environmental Projects in compliance with Section IX (Environmental Projects) of this Consent Decree	$1,000 during the first 30 days, $5,000 thereafter
t. Any other violation of this Consent Decree	$1,000

135. Violation of an Emission Rate or removal efficiency that is based on a 30-Day Rolling Average is a violation on every day on which the average is based. Violation of

System-Wide 12-Month Rolling Tonnage limitations is a violation each month on which the average is based.

136. Where a violation of a 30-Day Rolling Average Emission Rate or 30-Day Rolling Average SO_2 Removal Efficiency (for the same pollutant and from the same source) recurs within periods of less than thirty (30) days, EKPC shall not pay a daily stipulated penalty for any day of the recurrence for which a stipulated penalty has already been paid.

137. All stipulated penalties shall begin to accrue on the day after the performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

138. EKPC shall pay all stipulated penalties to the United States within thirty (30) days of receipt of written demand to EKPC from the United States, and shall continue to make such payments every thirty (30) days thereafter until the violation(s) no longer continues, unless EKPC elects within 20 days of receipt of written demand to EKPC from the United States to dispute the accrual of stipulated penalties in accordance with the provisions in Section XVI (Dispute Resolution) of this Consent Decree.

139. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 137 during any dispute, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement, or by a decision of Plaintiffs pursuant to Section XVI (Dispute Resolution) of this Consent Decree that is not appealed to

the Court, accrued stipulated penalties agreed or determined to be owing, together with accrued interest, shall be paid within thirty (30) days of the effective date of the agreement or of the receipt of EPA's decision;

b. If the dispute is appealed to the Court and Plaintiffs prevail in whole or in part, EKPC shall, within sixty (60) days of receipt of the Court's decision or order, pay all accrued stipulated penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph 139.c.;

c. If the Court's decision is appealed by either Party, EKPC shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owing, together with accrued interest.

For purposes of this Paragraph, the accrued stipulated penalties agreed by the Parties, or determined by the Plaintiffs through Dispute Resolution, to be owing may be less than the stipulated penalty amounts set forth in Paragraph 134.

140. All stipulated penalties shall be paid in the manner set forth in Section X (Civil Penalty) of this Consent Decree.

141. Should EKPC fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.

142. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States by reason of EKPC's failure to comply with any requirement of this Consent Decree or applicable law, except that for any violation of the Act for which this Consent Decree provides for payment of a stipulated

penalty, EKPC shall be allowed a credit for stipulated penalties paid against any statutory penalties also imposed for such violation.

XV. FORCE MAJEURE

143. For purposes of this Consent Decree, a "Force Majeure Event" shall mean an event that has been or will be caused by circumstances beyond the control of EKPC, its contractors, or any entity controlled by EKPC that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite EKPC's best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay or violation is minimized to the greatest extent possible.

144. Notice of Force Majeure Events. If any event occurs or has occurred that may delay compliance with or otherwise cause a violation of any obligation under this Consent Decree, as to which EKPC intends to assert a claim of Force Majeure, EKPC shall notify the United States in writing as soon as practicable, but in no event later than twenty-one (21) days following the date that the event occurred. In this notice, EKPC shall reference this Paragraph 144 of this Consent Decree and describe the anticipated length of time that the delay or violation may persist, the cause or causes of the delay or violation, all measures taken or to be taken by EKPC to prevent or minimize the delay or violation, the schedule by which EKPC proposes to implement those measures, and EKPC's rationale for attributing a delay or violation to a Force Majeure Event. EKPC shall adopt all reasonable measures to avoid or minimize such delays or violations. EKPC shall be deemed to know of any circumstance which EKPC, its contractors, or any entity controlled by EKPC knew.

145. Failure to Give Notice. If EKPC fails to comply with the notice requirements of this Section, the Plaintiff may void EKPC's claim for Force Majeure as to the specific event for which EKPC has failed to comply with such notice requirement.

146. Plaintiff's Response. The Plaintiff shall notify EKPC in writing regarding EKPC's claim of Force Majeure within twenty (20) business days of receipt of the notice provided under Paragraph 144. If the Plaintiff agrees that a delay in performance has been or will be caused by a Force Majeure Event, the Parties shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay actually caused by the event. In such circumstances, an appropriate modification shall be made pursuant to Section XXIII (Modification) of this Consent Decree.

147. Disagreement. If the Plaintiff does not accept EKPC's claim of Force Majeure, or if the Parties cannot agree on the length of the delay actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XVI (Dispute Resolution) of this Consent Decree.

148. Burden of Proof. In any dispute regarding Force Majeure, EKPC shall bear the burden of proving that any delay in performance or any other violation of any requirement of this Consent Decree was caused by or will be caused by a Force Majeure Event. EKPC shall also bear the burden of proving that EKPC gave the notice required by this Section and the burden of proving the anticipated duration and extent of any delay(s) attributable to a Force Majeure Event. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

149. Events Excluded. Unanticipated or increased costs or expenses associated with the performance of EKPC's obligations under this Consent Decree shall not constitute a Force Majeure Event.

150. Potential Force Majeure Events. The Parties agree that, depending upon the circumstances related to an event and EKPC's response to such circumstances, the kinds of events listed below are among those that could qualify as Force Majeure Events within the meaning of this Section: construction, labor, or equipment delays; Malfunction of a Unit or emission control device; natural gas supply interruption; acts of God; acts of war or terrorism; and orders by a government official, government agency, or other regulatory body acting under and authorized by applicable law that directs EKPC to supply electricity in response to a system-wide (state-wide or regional) emergency. Depending upon the circumstances and EKPC's response to such circumstances, failure of a permitting authority or the Kentucky Public Service Commission to issue a necessary permit or order with sufficient time for EKPC to achieve compliance with the requirements of this Consent Decree may constitute a Force Majeure Event where the failure of the authority to act is beyond the control of EKPC and EKPC has taken all steps available to it to obtain the necessary permit or order, including, but not limited to: submitting a complete application or request; responding to requests for additional information by the authority in a timely fashion; and accepting lawful terms and conditions after expeditiously exhausting any legal rights to appeal terms and conditions imposed by the authority.

151. As part of the resolution of any matter submitted to this Court under Section XVI (Dispute Resolution) of this Consent Decree regarding a claim of Force Majeure, the Parties by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work

that occurred as a result of any delay agreed to by the United States or approved by the Court. EKPC shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

152. Malfunction Events. If EKPC intends to exclude a period of Malfunction, as defined in Paragraph 22, from the calculation of any 30-Day Rolling Average Emission Rate, Combined 30-Day Rolling Average Emission Rate, or 30-Day Rolling Average SO_2 Removal Efficiency, EKPC shall notify the United States in writing as soon as practicable, but in no event later than twenty one (21) days following the date the Malfunction occurs.

a. In this notice, EKPC shall describe the anticipated length of time that the Malfunction may persist, the cause or causes of the Malfunction, all measures taken or to be taken by EKPC to minimize the duration of the Malfunction, and the schedule by which EKPC proposes to implement those measures. EKPC shall adopt all reasonable measures to minimize the duration of such Malfunctions, and to prevent the recurrence of such Malfunctions in the future.

b. A Malfunction, as defined in Paragraph 22 of this Consent Decree, does not constitute a Force Majeure Event unless the Malfunction also meets the definition of a Force Majeure Event, as provided in this Section. Conversely, a period of Malfunction may be excluded by EKPC from the calculations of emission rates and removal efficiencies, as allowed under this Paragraph, regardless of whether the Malfunction constitutes a Force Majeure Event.

XVI. DISPUTE RESOLUTION

153. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Party.

154. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Party advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice.

155. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations among the disputing Parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting among the disputing Parties' representatives unless they agree in writing to shorten or extend this period. During the informal negotiations period, the disputing Parties may also submit their dispute to a mutually-agreed-upon alternative dispute resolution (ADR) forum if the Parties agree that the ADR activities can be completed within the 30-day informal negotiations period (or such longer period as the Parties may agree to in writing).

156. If the disputing Parties are unable to reach agreement during the informal negotiation period, the EPA shall provide EKPC with a written summary of their position regarding the dispute. The written position provided by EPA shall be considered binding unless, within forty-five (45) calendar days thereafter, EKPC seeks judicial resolution of the dispute by filing a petition with this Court. The EPA may respond to the petition within forty-five (45) calendar days of filing.

157. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon motion of one of the Parties to the dispute.

158. This Court shall not draw any inferences nor establish any presumptions adverse to any disputing Party as a result of invocation of this Section or the disputing Parties' inability to reach agreement.

159. As part of the resolution of any dispute under this Section, in appropriate circumstances the disputing Parties may agree, or this Court may order, an extension or modification of the schedule for the completion of the activities required under this Consent Decree to account for the delay that occurred as a result of dispute resolution. EKPC shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that EKPC shall not be precluded from asserting that a Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

160. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their initial filings with the Court under Paragraph 156, the disputing Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

XVII. PERMITS

161. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires EKPC to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under state law, EKPC shall make such application in a timely

manner. EPA will use its best efforts to expeditiously review all permit applications submitted by EKPC in order to meet the requirements of this Consent Decree.

162. Notwithstanding Paragraph 161, nothing in this Consent Decree shall be construed to require EKPC to apply for or obtain a PSD or Nonattainment NSR permit for physical changes in, or changes in the method of operation of, any EKPC System Unit that would give rise to claims resolved by Section XI (Resolution of Claims) of this Consent Decree.

163. When permits are required as described in Paragraph 161, EKPC shall complete and submit applications for such permits to the appropriate authorities to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by the permitting authorities. Any failure by EKPC to submit a timely permit application for any EKPC System Unit shall bar any use by EKPC of Section XV (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.

164. Notwithstanding the reference to Title V or other federally enforceable permits in this Consent Decree, the enforcement of such permits shall be in accordance with their own terms and the Act. The Title V or other federally enforceable permits shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V or other federally enforceable permit, subject to the terms of Section XXVII (Conditional Termination of Enforcement Under Decree) of this Consent Decree.

165. Within one hundred eighty (180) days after entry of this Consent Decree, EKPC shall apply for amendment of its Title V permit for the Spurlock Plant to incorporate an MCR of 5600 mmBTU/hr for Spurlock Unit 2. EPA will use its best efforts to expeditiously review such

application submitted by EKPC and will not object to amendment of EKPC's Title V permit for the Spurlock Plant to specify an MCR of 5600 mmBTU/hr for Spurlock Unit 2.

166. Within one hundred eighty (180) days after entry of this Consent Decree, EKPC shall amend any applicable Title V permit application, or apply for amendments of its Title V permits, to include a schedule for all Unit-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, emission rates, removal efficiencies, fuel limitations, tonnage limitations, and the requirement in Paragraph 72 pertaining to the surrender of SO_2 Allowances.

167. Within one (1) year from the commencement of operation of each pollution control device to be installed, upgraded, or operated on an Improved Unit under this Consent Decree, EKPC shall apply to include the requirements and limitations enumerated in this Consent Decree in either a federally enforceable operating permit issued under the Kentucky SIP or amendments to the Kentucky SIP. The permit or SIP amendment shall require compliance with the following: (a) any applicable 30-Day Rolling Average Emission Rate, 1-Hour Average NO_x Emission Rate, or 30-Day Rolling Average SO_2 Removal Efficiency, (b) the allowance surrender requirements set forth in this Consent Decree, and (c) any applicable tonnage limitations set forth in this Consent Decree.

168. Prior to January 1, 2015, EKPC shall either: (a) apply for a federally enforceable operating permit issued under the Kentucky SIP for each plant in the EKPC System to include a provision, which shall be identical for each permit, that contains the allowance surrender requirements and the System-Wide 12-Month Rolling Tonnage limitations set forth in this Consent Decree; or (b) apply for amendments to the Kentucky SIP to include such requirements and limitations. If EKPC elects to apply for a federally enforceable permit, or if EKPC applies to amend the Kentucky SIP on a plant-specific basis, then EKPC shall include a provision in

each such application that makes violation of the allowance surrender requirements and System-Wide 12-Month Rolling Tonnage limitations a violation of each permit, or plant-specific Kentucky SIP provision, for each plant in the EKPC System to which such requirements apply.

169. For each EKPC System Unit, EKPC shall provide EPA with a copy of each application for a permit to address or comply with any provision of this Consent Decree, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity.

170. If EKPC sells or transfers to an entity unrelated to EKPC ("Third Party Purchaser") part or all of its Ownership Interest in a EKPC System Unit covered under this Consent Decree, EKPC shall comply with the requirements of Paragraphs 166 through 168 with regard to that Unit prior to any such sale or transfer unless, following any such sale or transfer, EKPC remains the holder of the Title V or other federally enforceable permit for such facility.

XVIII. INFORMATION COLLECTION AND RETENTION

171. Any authorized representative of the United States or Permitting State Agency, including their attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of any facility in the EKPC System at any reasonable time for the purpose of:

a. monitoring the progress of activities required under this Consent Decree;

b. verifying any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtaining samples and, upon request, splits of any samples taken by EKPC or its representatives, contractors, or consultants; and

d. assessing EKPC's compliance with this Consent Decree.

172. EKPC shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) now in its or its contractors' or agents' possession or control, and that directly relate to EKPC's performance of its obligations under this Consent Decree for the following periods: (a) until December 31, 2020 for records concerning modifications undertaken in accordance with Paragraph 120; and (b) until December 31, 2017 for all other records. This record retention requirement shall apply regardless of any corporate document retention policy to the contrary.

173. All information and documents submitted by EKPC pursuant to this Consent Decree shall be subject to any requests under applicable law providing public disclosure of documents unless (a) the information and documents are subject to legal privileges or protection or (b) EKPC claims and substantiates in accordance with 40 C.F.R. Part 2 that the information and documents contain confidential business information.

174. Nothing in this Consent Decree shall limit the authority of the EPA to conduct tests and inspections at EKPC's facilities under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal or state laws, regulations or permits.

XIX. NOTICES

175. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States of America:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
DJ# 90-5-2-1-08085

and

Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building [2242A]
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

and

Regional Administrator
U.S. EPA Region IV
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

As to EKPC:

Environmental Manager
East Kentucky Power Cooperative
4775 Lexington Road
PO Box 707
Winchester, KY 40392-0707

and

General Counsel
East Kentucky Power Cooperative
4775 Lexington Road
PO Box 707
Winchester, KY 40392-0707

176. All notifications, communications or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or delivery service; (b) certified or registered mail, return receipt requested; or (c) electronic transmission, unless the recipient is not able to review the transmission in electronic form. All notifications, communications and transmissions (a) sent

by overnight, certified or registered mail shall be deemed submitted on the date they are postmarked, or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service. All notifications, communications, and submissions made by electronic means shall be electronically signed and certified, and shall be deemed submitted on the date that EKPC receives written acknowledgment of receipt of such transmission.

177. Either Party may change either the notice recipient or the address for providing notices to it by serving the other Party with a notice setting forth such new notice recipient or address.

XX. SALES OR TRANSFERS OF OWNERSHIP INTERESTS

178. If EKPC proposes to sell or transfer an Ownership Interest to a Third Party Purchaser, it shall advise the Third Party Purchaser in writing of the existence of this Consent Decree prior to such sale or transfer, and shall send a copy of such written notification to the Plaintiff pursuant to Section XIX (Notices) of this Consent Decree at least sixty (60) days before such proposed sale or transfer.

179. No sale or transfer of an Ownership Interest shall take place before the Third Party Purchaser and EPA have executed, and the Court has approved, a modification pursuant to Section XXIII (Modification) of this Consent Decree making the Third Party Purchaser a party defendant to this Consent Decree and jointly and severally liable with EKPC for all the requirements of this Decree that may be applicable to the transferred or purchased Ownership Interests, except as provided in Paragraph 181.

180. This Consent Decree shall not be construed to impede the transfer of any Ownership Interests between EKPC and any Third Party Purchaser as long the requirements of this Consent Decree are met. This Consent Decree shall not be construed to prohibit a

contractual allocation – as between EKPC and any Third Party Purchaser of Ownership Interests – of the burdens of compliance with this Decree, provided that both EKPC and such Third Party Purchaser shall remain jointly and severally liable to EPA for the obligations of the Decree applicable to the transferred or purchased Ownership Interests, except as provided in Paragraph 181.

181. If EPA agrees, EPA, EKPC, and the Third Party Purchaser that has become a party defendant to this Consent Decree pursuant to Paragraph 179, may execute a modification that relieves EKPC of its liability under this Consent Decree for, and makes the Third Party Purchaser liable for, all obligations and liabilities applicable to the purchased or transferred Ownership Interests. Notwithstanding the foregoing, however, EKPC may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Ownership Interests, including the obligations set forth in Sections IX (Environmental Projects) and X (Civil Penalty). EKPC may propose and the EPA may agree to restrict the scope of joint and several liability of any purchaser or transferee for any obligations of this Consent Decree that are not specific to the transferred or purchased Ownership Interests, to the extent such obligations may be adequately separated in an enforceable manner.

XXI. EFFECTIVE DATE

182. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XXII. RETENTION OF JURISDICTION

183. Continuing Jurisdiction. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, modification, or adjudication of disputes. During the term of this Consent Decree,

either Party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XXIII. MODIFICATION

184. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by both Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

XXIV. GENERAL PROVISIONS

185. This Consent Decree is not a permit. Compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws or regulations. The emission rates set forth herein do not relieve EKPC from any obligation to comply with other state and federal requirements under the Clean Air Act, including EKPC's obligation to satisfy any state modeling requirements set forth in the Kentucky SIP.

186. This Consent Decree does not apply to any claim(s) of alleged criminal liability.

187. In any subsequent administrative or judicial action initiated by the United States for injunctive relief or civil penalties relating to the facilities covered by this Consent Decree, EKPC shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by the United States in the subsequent proceeding were brought, or should have been brought, in the instant case; provided, however, that nothing in this Paragraph 187 is intended to affect the validity of Section XI (Resolution of Claims).

188. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve EKPC of its obligation to comply with all applicable federal, state, and local

laws and regulations. Subject to the provisions in Section XI (Resolution of Claims), nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.

189. Every term expressly defined by this Consent Decree shall have the meaning given to that term by this Consent Decree and, except as otherwise provided in this Decree, every other term used in this Decree that is also a term under the Act or the regulations implementing the Act shall mean in this Decree what such term means under the Act or those implementing regulations.

190. Nothing in this Consent Decree is intended to, or shall, alter or waive any applicable law (including but not limited to any defenses, entitlements, challenges, or clarifications related to the Credible Evidence Rule, 62 Fed. Reg. 8315 (Feb. 27, 1997)) concerning the use of data for any purpose under the Act, generated either by the reference methods specified herein or otherwise.

191. Each limit and/or other requirement established by or under this Decree is a separate, independent requirement.

192. Performance standards, emissions limits, and other quantitative standards set by or under this Consent Decree must be met to the number of significant digits in which the standard or limit is expressed. For example, an Emission Rate of 0.100 is not met if the actual Emission Rate is 0.101. EKPC shall round the fourth significant digit to the nearest third significant digit, or the third significant digit to the nearest second significant digit, depending upon whether the limit is expressed to three or two significant digits. For example, if an actual Emission Rate is 0.1004, that shall be reported as 0.100, and shall be in compliance with an

Emission Rate of 0.100, and if an actual Emission Rate is 0.1005, that shall be reported as 0.101, and shall not be in compliance with an Emission Rate of 0.100. EKPC shall report data to the number of significant digits in which the standard or limit is expressed.

193. This Consent Decree does not limit, enlarge or affect the rights of either Party to this Consent Decree as against any third parties.

194. This Consent Decree constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree, and supercedes all prior agreements and understandings between the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise constitutes any part of this Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

195. Each Party to this action shall bear its own costs and attorneys' fees.

XXV. SIGNATORIES AND SERVICE

196. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind to this document the Party he or she represents.

197. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

198. Each Party hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXVI. PUBLIC COMMENT

199. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. EKPC shall not oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified EKPC, in writing, that the United States no longer supports entry of the Consent Decree.

XXVII. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER DECREE

200. Termination as to Completed Tasks. As soon as EKPC completes a construction project or any other requirement of this Consent Decree that is not ongoing or recurring, EKPC may, by motion to this Court, seek termination of the provision or provisions of this Consent Decree that imposed the requirement.

201. Conditional Termination of Enforcement Through the Consent Decree. After EKPC:

a. has successfully completed construction, and has maintained operation, of all pollution controls as required by this Consent Decree;

b. has obtained final Title V permits and has obtained federally enforceable permits or SIP amendments (i) as required by the terms of this Consent Decree; (ii) that cover all units in this Consent Decree; and (iii) that include as enforceable permit terms all of the unit performance and other requirements specified in Section XVII (Permits) of this Consent Decree; and

c. certifies that the date is later than December 31, 2015;

then EKPC may so certify these facts to the Plaintiff and this Court. If the Plaintiff does not object in writing with specific reasons within forty-five (45) days of receipt of EKPC's certification, then, for any Consent Decree violations that occur after EKPC's certification, the Plaintiff shall pursue enforcement of the requirements contained in the Title V or other federally enforceable permit through the permit and not through this Consent Decree.

202. Resort to Enforcement under this Consent Decree. Notwithstanding Paragraph 201, if enforcement of a provision in this Decree cannot be pursued by a Party under the applicable Title V permit, or if a Decree requirement was intended to be part of a Title V Permit and did not become or remain part of such permit, then such requirement may be enforced under the terms of this Decree at any time.

XXVIII. FINAL JUDGMENT

203. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment in the above-captioned matter between the Plaintiff and EKPC.

SO ORDERED, THIS _____ DAY OF _______________, 2007.

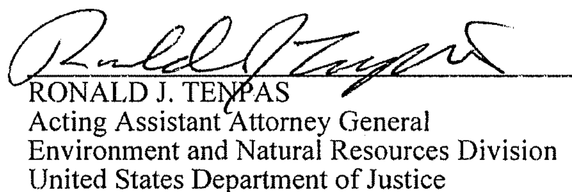
____

THE HONORABLE KARL S. FORESTER
UNITED STATES DISTRICT COURT JUDGE

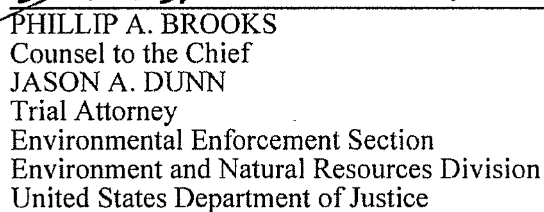
Signature Page for Consent Decree in:

United States of America
v.
East Kentucky Power Cooperative, No. 04-34-KSF (E.D. Ky.)

FOR THE UNITED STATES OF AMERICA:



RONALD J. TENPAS
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice



PHILLIP A. BROOKS
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JASON A. DUNN
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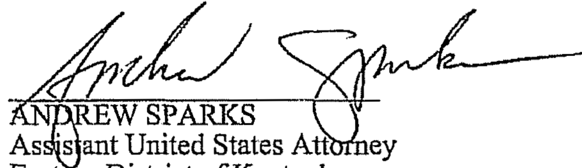
United States Department of Justice

Signature Page for Consent Decree in:

United States of America
v.
East Kentucky Power Cooperative, No. 04-34-KSF (E.D. Ky.)

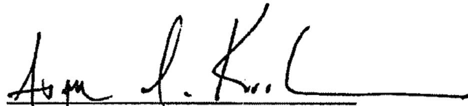


ANDREW SPARKS
Assistant United States Attorney
Eastern District of Kentucky
United States Department of Justice

Signature Page for Consent Decree in:

United States of America
v.
East Kentucky Power Cooperative, No. 04-34-KSF (E.D. Ky.)

CATHERINE R. MCCABE
Principal Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency



ADAM M. KUSHNER
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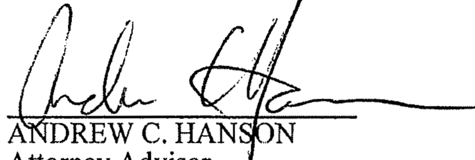
United States Environmental Protection Agency



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United States Environmental Protection Agency

Signature Page for Consent Decree in:

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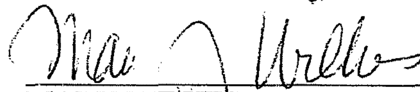

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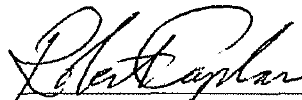

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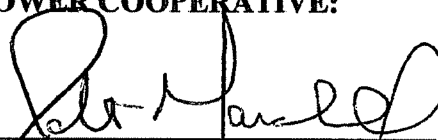
Signature Page for Consent Decree in:

United States of America
v.
East Kentucky Power Cooperative, No. 04-34-KSF (E.D. Ky.)

FOR DEFENDANT EAST KENTUCKY POWER COOPERATIVE:



ROBERT MARSHALL
President & CEO
East Kentucky Power Cooperative

APPENDIX A - ENVIRONMENTAL PROJECTS REQUIREMENTS

In compliance with and in addition to the requirements in Section IX of the Consent Decree, EKPC shall comply with the requirements of this Appendix to ensure that the benefits of the Environmental Project is achieved.

I. Spurlock Plant Wet Electrostatic Precipitator Project

A. Within sixty days of entry of the Consent Decree, EKPC shall submit a plan to the Plaintiff for review and approval for the performance of the Spurlock Plant Wet Electrostatic Precipitators (WESP) Project. The project will result in the installation of WESPs that will control sulfuric acid emissions from Spurlock Units 1 and 2, with a goal of achieving an emissions rate no greater than 0.005 lbs sulfuric acid mist per mmBTU heat input. EKPC shall install and operate the Spurlock Unit 1 and 2 WESPs on the same schedule as is required for the Spurlock Unit 1 and 2 FGDs pursuant to Paragraph 64 of this Consent Decree. EKPC shall install, operate and maintain the WESPs in accordance with manufacturers' specifications and good engineering practices, so as to minimize emissions to the maximum extent practicable. For purposes of the Consent Decree, the expected $47 million capital cost for construction and installation of the WESPs shall be deemed to satisfy the Environmental Projects requirements of Section IX upon commencement of operation of this control technology, provided that EKPC continues to operate the control technology for at least five (5) years.

B. The proposed plan shall satisfy the following criteria:

1. Describe how the work or project to be performed is consistent with the requirements of Section I.A, above.
2. Include a general schedule and budget for completion of the construction of the WESPs, along with a plan for the submittal of periodic reports to the Plaintiff on the progress of the work through completion of the construction and operation of the WESPs.
3. Require at a minimum that the WESPs be designed to achieve an emissions rate no greater than 0.020 lbs sulfuric acid mist per mmBTU heat input.
4. Require that EKPC shall provide the Plaintiff, upon completion of the construction and continuing annually thereafter, with the results of annual stack tests performed pursuant to 40 C.F.R. Appendix A, Method 8. EKPC shall, in accordance with manufacturers' specifications and good engineering practices, operate the WESPs so as to minimize emissions to the maximum extent practicable and so as to meet the emission rate goal set forth in the proposed plan, and in any event shall demonstrate in such annual stack tests an emissions rate no greater than 0.020 lbs sulfuric acid mist per mmBTU heat input.
5. Describe generally the expected environmental benefit for the project.

C. Performance - Upon approval of the plan by the Plaintiff, EKPC shall complete the Spurlock WESP Project according to the approved plan and schedule.

C

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter IV-A. Acid Deposition Control (Refs & Annos)
→ **§ 7651d. Phase II sulfur dioxide requirements**

(a) Applicability

(1) After January 1, 2000, each existing utility unit as provided below is subject to the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subchapter. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate. The owner or operator of any unit operated in violation of this section shall be fully liable under this chapter for fulfilling the obligations specified in section 7651j of this title.

(2) In addition to basic Phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall allocate up to 530,000 Phase II bonus allowances pursuant to subsections (b)(2), (c)(4), (d)(3)(A) and (B), and (h)(2) of this section and section 7651e of this title. Not later than June 1, 1998, the Administrator shall calculate, for each unit granted an extension pursuant to section 7651h of this title the difference between (A) the number of allowances allocated for the unit in calendar year 2000, and (B) the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2000, and sum the computations. In each year, beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall deduct from each unit's basic Phase II allowance allocation its pro rata share of 10 percent of the sum calculated pursuant to the preceding sentence.

(3) In addition to basic Phase II allowance allocations and Phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on Table A in section 7651c of this title (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky, or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on Table A (other than units at Kyger Creek, Clifty Creek, and Joppa Steam). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 7651b(a) of this title.

(b) Units equal to, or above, 75 MWe and 1.20 lbs/mmBtu

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal

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to or greater than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 7407 of this title for any pollutant subject to the requirements of section 7409 of this title to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(4) After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980 and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of allowances allocated for the unit pursuant to paragraph (1): *Provided,* That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

(c) Coal or oil-fired units below 75 MWe and above 1.20 lbs/mmBtu

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu

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(excluding units subject to section 7411 of this title or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of November 15, 1990, to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit not less than the units [FN1] total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions.

(4) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which is part of an electric utility system which, as of November 15, 1990, (A) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices, (B) has more than 10 percent of its fossil-fuel capacity consisting of coal-fired units of less than 75 MWe, and (C) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions.

(d) Coal-fired units below 1.20 lbs/mmBtu

(1) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allow-

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able 1985 sulfur dioxide emissions rate is less than 0.60 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(3)(A) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the amount by which (i) the product of the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations.

(B) In addition to allowances allocated pursuant to paragraph (2) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the amount by which (i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 7651b(a)(1) of this title as basic Phase II allowance allocations.

(C) An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

(4) Notwithstanding any other provision of this section, at the election of the owner or operator, after January 1, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1), (2), (3), (5), or (6), allowances for a unit subject to the emissions limitation requirements of this subsection which commenced commercial operation on or after January 1, 1981 and before December 31, 1985, which was subject to, and in compliance with, section 7411 of this title in an amount equal to the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 emissions rate, divided by 2,000.

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(5) For the purposes of this section, in the case of an oil- and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2000, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(e) Oil and gas-fired units equal to or greater than 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu

After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(f) Oil and gas-fired units less than 0.60 lbs/mmBtu

(1) After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowable 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) as basic Phase II allowance allocations and section 7651b(a)(1) of this title, beginning January 1, 2000, the Administrator shall, in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Administrator shall allocate for each unit in the utility its pro rata share of 7,000 allowances and for each unit in the State authority its pro rata share of 2,000 allowances.

(g) Units that commence operation between 1986 and December 31, 1995

(1) After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, the Administrator shall allocate allowances pursuant to section 7651b of this title to each unit which is listed in table B of this paragraph in an annual amount equal to the amount specified in table B.

TABLE B

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Unit	Allowances
Brandon Shores	8,907
Miller 4	9,197
TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, Provided [FN2] that the owner or operator of a unit listed on Table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

(3) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial operation, on or after October 1, 1990, but not later than December 31, 1992 allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(4) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993 and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985 and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq., repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions.

(6)(A) [FN3] Unless the Administrator has approved a designation of such facility under section 7651i of this title, the provisions of this subchapter shall not apply to a "qualifying small power production facility" or "qualifying cogeneration facility" (within the meaning of section 796(17)(C) or 796(18)(B) of Title 16) or to a "new independent power pro-

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duction facility" as defined in section 7651*o* of this title except that clause (iii) [FN4] of such definition in section 7651*o* of this title shall not apply for purposes of this paragraph if, as of November 15, 1990,

(i) an applicable power sales agreement has been executed;

(ii) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

(iii) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

(iv) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

(h) Oil and gas-fired units less than 10 percent oil consumed

(1) After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(3) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title, beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(i) Units in high growth States

(1) In addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that--

(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981-1988 allocated by the United States Department of Commerce, and

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(B) had an installed electrical generating capacity of more than 30,000,000 kw in 1988,

in an amount equal to the difference between (A) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator and (B) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section: *Provided,* That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the 40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

(2) Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1) of this section, (A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990, (B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000, (C) which commenced operation after January 1, 1970, (D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between calendar year 1980 and November 15, 1990, and (E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 per centum or more from 1980 to 1988, allowances in an amount equal to the difference between (i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) of this section adjusted to reflect the unit's annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator and (ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) of this section: *Provided,* That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000-allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

(j) Certain municipally owned power plants

Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe, the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

CREDIT(S)

(July 14, 1955, c. 360, Title IV, § 405, as added Nov. 15, 1990, Pub.L. 101-549, Title IV, § 401, 104 Stat. 2605.)

[FN1] So in original. Probably should be "unit's".

[FN2] So in original. Probably should not be capitalized.

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[FN3] So in original. No subpar. (B) has been enacted.

[FN4] So in original. Probably means clause "(C)".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1990 Acts. Senate Report No. 101-228, House Conference Report No. 101-952, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 3385.

References in Text

Section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978, referred to in subsec. (g)(5), is section 301(b) of Pub.L. 95-620, which is classified to section 8341(b) of this title. A prior section 301(b) of Pub.L. 95-620, Title III, Nov. 9, 1978, 92 Stat. 3305 which was formerly classified to section 8341(b) of this title, was repealed by Pub.L. 97-35, Title X, § 1021(a), Aug. 13, 1981, 95 Stat. 614.

Effective and Applicability Provisions

1990 Acts. Section effective Nov. 15, 1990, except as otherwise provided, see section 711(b) of Pub.L. 101-549, set out as a note under section 7401 of this title.

Savings Provisions

Suits, actions or proceedings commenced under this chapter as in effect prior to Nov. 15, 1990, not to abate by reason of the taking effect of amendments by Pub.L. 101-549, except as otherwise provided for, see section 711(a) of Pub.L. 101-549, set out as a note under section 7401 of this title.

LIBRARY REFERENCES

American Digest System

Environmental Law 280.
Key Number System Topic No. 149E.

RESEARCH REFERENCES

Encyclopedias

Am. Jur. 2d Pollution Control § 370, Phase II Repowering Allowances.

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Forms

Federal Procedural Forms § 29:96, Sulfur Dioxide Emission Allowance System.

NOTES OF DECISIONS

Bonus emission allowances 1
New facility allowances 2

1. Bonus emission allowances

Environmental Protection Agency (EPA) failed to furnish reasoned basis for its denial of electric utility's request for bonus sulphur dioxide emissions allowances, since EPA was required to furnish more than merely threadbare reasons for resolving ambiguous statutory language against utility, when it found that utility did not qualify as "utility operating company whose aggregate * * * capacity" exceeded 250 megawatts, based on its determination utility's aggregate could not include that of two electric plants of which utility was 22 percent owner. Madison Gas & Elec. Co. v. U.S. E.P.A., C.A.7 1994, 25 F.3d 526. Administrative Law And Procedure 507; Environmental Law 280

2. New facility allowances

Environmental Protection Agency's (EPA) notice establishing guidelines for requests for emissions allowances under CAA marketable permit system for facilities not included in prior EPA database had to apply to facilities commencing operation in year after deadline and, thus, EPA reasonably denied new facility allowances based on electric utility's failure to submit available information and seek allowances prior to deadline for submissions for final allowance database; utility unreasonably interpreted notice to specify 36 types of information necessary to change data for existing facility but to offer no guidance on what new facility would have to submit. Texas Mun. Power Agency v. E.P.A., C.A.D.C.1996, 89 F.3d 858, 319 U.S.App.D.C. 217. Environmental Law 292

42 U.S.C.A. § 7651d, 42 USCA § 7651d

Current through P.L. 111-172 (excluding P.L. 111-148, 111-152, 111-159, and 111-171) approved 5-24-10

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EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2010-00083

SECOND DATA REQUEST RESPONSE

COMMISSION STAFF'S SECOND DATA REQUEST DATED 05/26/10

REQUEST 4

RESPONSIBLE PERSON: **Ann F. Wood**

COMPANY: **East Kentucky Power Cooperative, Inc.**

Request 4. Refer to the response to Item 2.c. of Staffs First Request. With regard to costs associated with Project 8 - Spurlock 1 Switchyard Improvements, EKPC is seeking recovery of $1.3 million in its Environmental Compliance Plan Amendment Application. However, in the response, EKPC states that the costs are now known to be $9.8 million. Clarify the amount of costs for Project 8 - Spurlock 1 Switchyard Improvements that EKPC is seeking to include in its amendment to its Environmental Compliance Plan.

Response 4. As indicated in the response to Request 2c in Commission Staff's First Data Request, EKPC initially sought recovery of $1.3 million. Since final project costs are known, EKPC now seeks to include the full $9.8 million relating to the Spurlock 1 switchyard improvements (Project 8). Please see the revised Exhibit AFW-1 on pages 2 and 3 of this response.

EAST KENTUCKY POWER COOPERATIVE, INC
ENVIRONMENTAL COMPLIANCE PLAN
PURSUANT TO ENVIRONMENTAL SURCHARGE LAW

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Project	Pollutant or Waste/By-Product To be Controlled	Control Facility	Generating Station	Environmental Regulation	Environmental Permit	Actual or Scheduled Completion	Actual (A) or Estimated (E) Project Cost
1.	Fly Ash/Particulate NOx & SO2	Boiler SNCR Baghouse Flash Dry Absorber	Gilbert	401 KAR Ch. 45 CAAA Sec.404 40 CFR Part 72 401 KAR 50:035 CAAA Sec.407 40 CFR Part 76	081-0005 V-97-050 Rev. 1	2005	$69.6 M (A)
2.	Particulate	Precipitator	Spurlock 1	401 KAR 61:015	V-95-050 (Revision 1)	2003	$24.3 (A)
3.	NOx	SCR	Spurlock 1	CAAA Sec. 407 40 CFR Part 76	V-97-050	2003	$84.4 M (A)
4.	NOx	SCR	Spurlock 2	CAAA Sec. 407 40 CFR Part 76	V-97-050	2002 Fall 2007 & Spring 2008	$47.2 (A)
5.	NOx	Low NOx Burner	Dale	CAN:06-cv-00211 40 CFR Part 76.7 Title IV-A, 42 USC 7651-7651o, Sect 502, 401KAR51:160	V-04-038	Fall 2007	$2.0 M (A)
6.	NOx	NOx Reduction Equipment	Spurlock 1	40 CFR Part 76.7 CAN 04-34-KSF	V-06-007	Spring 2009	$3.09 M (A)
7	SO2	Scrubber	Spurlock 2	CAN 04-34-KSF CAAA Sec 405	V-97-050 Rev. 1	Oct. 2008	$194.1 M (A)
		Switchyard Improvements		CAN 04-34-KSF CAAA Sec 405	V-97-050 Rev. 1	In Svce	$8.396 M (A)
		Isolation Valve	Spurlock 2 Scrubber	40CFR Part 76.7 CAN 04-34-KSF CAAA Sec 405 CAAA Sec 404	V-06-007, Rev 2	Fall 2010	$634,000 (E)
8.	SO2	Scrubber	Spurlock 1	CAN 04-34-KSF CAAA Sec 404	V-97-050 Rev. 1	Spring 2009	$145.8 M (A)
		Switchyard Improvements		CAN 04-34-KSF CAAA Sec 404	V-97-050 Rev. 1	In Svce	$9.807 M (A)
		Isolation Valve	Spurlock 1 Scrubber	40CFR Part 76.7 CAN 04-34-KSF CAAA Sec 405 CAAA Sec 404	V-06-007, Rev 2	Spring 2011	$507,000 (E)
9.	Fly Ash/Particulate NOx & SO2	Boiler SNCR Baghouse Flash Dry Absorber	Spurlock 4	401 KAR Ch. 45 CAAA Sec.404 40 CFR Part 72 401 KAR 50:035 CAAA Sec.407 40 CFR Part 76	V-06-007	April 2009	$84.8 M (A)
		Ash Silos	Spurlock 4	401 KAR 63:010	V-06-007	Summer 2010	$12.0 M (E)

EAST KENTUCKY POWER COOPERATIVE, INC
ENVIRONMENTAL COMPLIANCE PLAN
PURSUANT TO ENVIRONMENTAL SURCHARGE LAW

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Project	Pollutant or Waste/By-Product To be Controlled	Control Facility	Generating Station	Environmental Regulation	Environmental Permit	Actual or Scheduled Completion	Actual (A) or Estimated (E) Project Cost
10.	PM & Mercury CEMS	Stack Emissions Monitoring	Spurlock Dale Cooper	40 CFR Part 60 App. B, PS 11, & App. F Proced. 2. CD para 97-102. 40 CFR 75	CAN 04-34-KSF	Spring 2010	$3.7 M (E)
11	NOx and SO2, Particulate Matter	Air Quality Control System	Cooper 2	Consent Decree CAN 04-34-KSF KY BART SIP	V-05-082 R1	Summer 2012	$324 M (E)
12	Coal Combustion by-products (CCB)	Landfill Area C Expansion and Sediment Pond Construction	Spurlock 1, 2, 4, Gilbert; Spur 1, 2 Scrubbers	Clean Water Act (CWA) Section 404	KPDES No. KY0022250	Fall 2010	$6.5 M (E)
13	SOx, H2SO4, Mercury	Replacement of Retired Ductwork	Spurlock Unit #2	CFR Title 40, Part 51 CFR Title 40, Part 52 (New Source Review)	V-06-007	Spring 2010	$2,100,500 (E)