

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

|                                    |   |                                     |
|------------------------------------|---|-------------------------------------|
| UNITED STATES OF AMERICA           | ) |                                     |
|                                    | ) |                                     |
| Plaintiff,                         | ) |                                     |
|                                    | ) |                                     |
| and                                | ) |                                     |
|                                    | ) | Consolidated Cases:                 |
| STATE OF NEW YORK, ET AL.,         | ) | Civil Action No. C2-99-1182         |
|                                    | ) | Civil Action No. C2-99-1250         |
| Plaintiff-Intervenors,             | ) | JUDGE EDMUND A. SARGUS, JR.         |
|                                    | ) | Magistrate Judge Kimberly A. Jolson |
| v.                                 | ) |                                     |
|                                    | ) |                                     |
| AMERICAN ELECTRIC POWER            | ) |                                     |
| SERVICE CORP., ET AL.,             | ) |                                     |
|                                    | ) |                                     |
| Defendants.                        | ) |                                     |
|                                    | ) |                                     |
| <hr/> OHIO CITIZEN ACTION, ET AL., | ) | Civil Action No. C2-04-1098         |
|                                    | ) | JUDGE EDMUND A. SARGUS, JR.         |
| Plaintiffs,                        | ) | Magistrate Judge Kimberly A. Jolson |
|                                    | ) |                                     |
| v.                                 | ) |                                     |
|                                    | ) |                                     |
| AMERICAN ELECTRIC POWER            | ) |                                     |
| SERVICE CORP., ET AL.,             | ) |                                     |
|                                    | ) |                                     |
| Defendants.                        | ) |                                     |
|                                    | ) |                                     |
| <hr/> UNITED STATES OF AMERICA     | ) | Civil Action No. C2-05-360          |
|                                    | ) | JUDGE EDMUND A. SARGUS, JR.         |
| Plaintiff,                         | ) | Magistrate Judge Kimberly A. Jolson |
|                                    | ) |                                     |
| v.                                 | ) |                                     |
|                                    | ) |                                     |
| AMERICAN ELECTRIC POWER            | ) |                                     |
| SERVICE CORP., ET AL.,             | ) |                                     |
|                                    | ) |                                     |
| Defendants.                        | ) |                                     |
|                                    | ) |                                     |
| <hr/>                              | ) |                                     |

**ORDER**

This matter came before the Court on the Parties' Joint Motion to Enter the Fifth Joint Modification of Consent Decree (ECF No.). Having reviewed the submissions of all Parties and being fully advised of the positions therein, the Court hereby **GRANTS** the Joint Motion and **ORDERS** that the following Paragraphs of the Consent Decree entered in this case are modified as set forth herein.

**IT IS SO ORDERED.**

7-17-2019  
DATE

  
\_\_\_\_\_  
EDMUND A. SARGUS, JR.  
CHIEF UNITED STATES DISTRICT JUDGE

**FIFTH JOINT MODIFICATION TO  
CONSENT DECREE WITH ORDER MODIFYING CONSENT DECREE**

WHEREAS, On December 10, 2007, this Court entered a Consent Decree in the above-captioned matters (Case No. 99-1250, Docket # 363; Case No. 99-1182, Docket # 508).

WHEREAS, Paragraph 199 of the Consent Decree provides that the terms of the Consent Decree may be modified only by a subsequent written agreement signed by the Plaintiffs and Defendants. Material modifications shall be effective only upon written approval by the Court.

WHEREAS, pursuant to Paragraph 87 of the Consent Decree (Case No. 99-1250, Docket # 363), as modified by a Joint Modification to Consent Decree With Order Modifying Consent Decree filed on April 5, 2010 (Case No. 99-1250, Docket # 371), as modified by a Second Joint Modification to Consent Decree with Order Modifying Consent Decree filed on December 28, 2010 (Case No. 99-1250, Docket # 372), as modified by a Third Joint Modification With Order Modifying Consent Decree filed on May 14, 2013 (Case No. 99-1182, Docket # 548), and as modified by an Agreed Entry Approving Fourth Joint Modification to Consent Decree filed on January 23, 2017 (Case No. 99-1182, Docket # 553), no later than December 31, 2025, the American Electric Power (AEP) Defendants are required, *inter alia*, to install and continuously operate a Flue Gas Desulfurization (FGD) system on, or Retire, Refuel, or Re-Power one Unit at the Rockport Plant, and no later than December 31, 2028, the AEP Defendants are required to install and continuously operate a FGD system on, or Retire, Refuel, or Re-Power the second Unit at the Rockport Plant.

WHEREAS, the AEP Defendants filed a Motion for Fifth Modification of Consent Decree in Case No. 99-1182 on July 21, 2017 (Case No. 99-1182, Docket # 555) and in the related cases seeking to further modify the provisions of Paragraph 87 and make other changes.

WHEREAS, the United States, the States, and Citizen Plaintiffs filed memoranda in

opposition to the motion by the AEP Defendants (Case No. 99-1182, Docket # 571 and 572, and Case No. 99-1250, Docket # 405) on September 1, 2017.

WHEREAS, the Parties made additional supplemental filings and engaged in settlement discussions and have reached agreement on a modification to the Consent Decree as set forth herein.

WHEREAS, the Parties have agreed, and this Court by entering this Fifth Joint Modification finds, that this Fifth Joint Modification has been negotiated in good faith and at arm's length; that this settlement is fair, reasonable, and in the public interest, and consistent with the goals of the Clean Air Act, 42 U.S.C. §7401, *et seq.*; and that entry of this Fifth Joint Modification without further litigation is the most appropriate means of resolving this matter.

WHEREAS, the Parties agree and acknowledge that final approval of the United States and entry of this Fifth Joint Modification is subject to the procedures set forth in 28 CFR § 50.7, which provides for notice of this Fifth Joint Modification 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 Fifth Joint Modification is inappropriate, improper, or inadequate. No Party will oppose entry of this Fifth Joint Modification by this Court or challenge any provision of this Fifth Joint Modification unless the United States has notified the Parties, in writing, that the United States no longer supports entry of the Fifth Joint Modification.

NOW THEREFORE, for good cause shown, without admission of any issue of fact or law raised in the Motion or the underlying litigation, the Parties hereby seek to modify the Consent Decree in this matter, and upon the filing of a Motion to Enter by the United States, move that the Court sign and enter the following Order:

*Modify the provisions of the Consent Decree, as amended by the first four modifications, as follows:*

*Add a new Paragraph 5A that states:*

5A. A “30-Day Rolling Average Emission Rate” for Rockport means, and 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 combined Rockport stack during a Day which is an Operating Day for either or both Rockport Units, and the previous twenty-nine (29) such Days; second, sum the total heat input to both Rockport Units in mmBTU during the Day which was an Operating Day for either or both Rockport Units, and the previous twenty-nine (29) such Days; and third, divide the total number of pounds of the pollutant emitted during the thirty (30) Days which were Operating Days for either or both Rockport Units by the total heat input during the thirty such Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Day which is an Operating Day for either or both Rockport Units. Each 30-Day Rolling Average Emission Rate shall include all emissions that occur during all periods of startup, shutdown, and Malfunction within an Operating Day, except as follows:

- a. Emissions and BTU inputs from both Rockport Units that occur during a period of Malfunction at either Rockport Unit shall be excluded from the calculation of the 30-Day Rolling Average Emission Rate if Defendants provide notice of the Malfunction to EPA in accordance with Paragraph 159 in Section XIV (Force Majeure) of this Consent Decree;
- b. Emissions of NO<sub>x</sub> and BTU inputs from both Rockport Units that occur during the fifth and subsequent Cold Start Up Period(s) that occur at a single Rockport Unit during any 30-Day period shall be excluded from the calculation of the 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 and Defendants have installed, operated, and maintained the SCR at the Unit 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 (6) hours or more. The NOx emissions to be excluded during the fifth and subsequent Cold Start Up Period(s) at a single unit shall be the lesser of (i) those NOx emissions emitted during the eight (8) hour period commencing when the Unit is synchronized with a utility electric distribution system and concluding eight (8) hours later, or (ii) those NOx emissions emitted prior to the time that the flue gas has achieved the minimum SCR operational temperature specified by the catalyst manufacturer; and

- c. For SO<sub>2</sub>, shall include all emissions and BTUs commencing from the time a single Rockport Unit is synchronized with a utility electric distribution system through the time that both Rockport Units cease to combust fossil fuel and the fire is out in both boilers.

*Paragraph 14 is replaced in its entirety and now reads as follows:*

14. "Continuously Operate" or "Continuous Operation" means that when an SCR, FGD, DSI, Enhanced DSI, ESP or other NOx Pollution Controls are used at a Unit, except during a Malfunction, they shall be operated at all times such Unit is in operation, consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for such equipment and the Unit so as to minimize emissions to the greatest extent practicable.

*Add a new Paragraph 20A that states:*

20A. “Enhanced Dry Sorbent Injection” or “Enhanced DSI” means a pollution control system in which a dry sorbent is injected into the flue gas prior to the NO<sub>x</sub> and particulate matter controls in order to provide additional mixing and improved SO<sub>2</sub> removal as compared to Dry Sorbent Injection.

*Paragraph 67 is replaced in its entirety and now reads as follows:*

67. Notwithstanding any other provisions of this Consent Decree, except Section XIV (Force Majeure), during each calendar year specified in the table below, all Units in the AEP Eastern System, collectively, shall not emit NO<sub>x</sub> in excess of the following Eastern System-Wide Annual Tonnage Limitations:

| <b>Calendar Year</b>          | <b>Eastern System-Wide Annual Tonnage Limitations for NO<sub>x</sub></b> |
|-------------------------------|--|
| 2009                          | 96,000 tons  |
| 2010                          | 92,500 tons  |
| 2011                          | 92,500 tons  |
| 2012                          | 85,000 tons  |
| 2013                          | 85,000 tons  |
| 2014                          | 85,000 tons  |
| 2015                          | 75,000 tons  |
| 2016-2017                     | 72,000 tons per year   |
| 2018-2020                     | 62,000 tons per year   |
| 2021-2028                     | 52,000 tons per year   |
| 2029 and each year thereafter | 44,000 tons per year   |

*Paragraph 68 is replaced in its entirety and now reads as follows:*

68. No later than the dates set forth in the table below, Defendants shall install and

Continuously Operate SCR on each Unit identified therein, or, if indicated in the table, Retire, Retrofit, or Re-Power such Unit:

| Unit  | NO <sub>x</sub> Pollution Control | Date                                 |
|---|-----------------------------------|--------------------------------------|
| Amos Unit 1   | SCR                               | January 1, 2008                      |
| Amos Unit 2   | SCR                               | January 1, 2009                      |
| Amos Unit 3   | SCR                               | January 1, 2008                      |
| Big Sandy Unit 2  | SCR                               | January 1, 2009                      |
| Cardinal Unit 1   | SCR                               | January 1, 2009                      |
| Cardinal Unit 2   | SCR                               | January 1, 2009                      |
| Cardinal Unit 3   | SCR                               | January 1, 2009                      |
| Conesville Unit 1   | Retire, Retrofit, or Re-Power     | Date of Entry of this Consent Decree |
| Conesville Unit 2   | Retire, Retrofit, or Re-Power     | Date of Entry of this Consent Decree |
| Conesville Unit 3   | Retire, Retrofit, or Re-Power     | December 31, 2012                    |
| Conesville Unit 4   | SCR                               | December 31, 2010                    |
| Gavin Unit 1  | SCR                               | January 1, 2009                      |
| Gavin Unit 2  | SCR                               | January 1, 2009                      |
| Mitchell Unit 1   | SCR                               | January 1, 2009                      |
| Mitchell Unit 2   | SCR                               | January 1, 2009                      |
| Mountaineer Unit 1  | SCR                               | January 1, 2008                      |
| Muskingum River Units 1-4   | Retire, Retrofit, or Re-Power     | December 31, 2015                    |
| Muskingum River Unit 5  | SCR                               | January 1, 2008                      |
| Rockport Unit 1   | SCR                               | December 31, 2017                    |
| Rockport Unit 2   | SCR                               | June 1, 2020                         |
| Sporn Unit 5  | Retire, Retrofit, or Re-Power     | December 31, 2013                    |
| A total of at least 600 MW from the following list of Units: Sporn Units 1-4, Clinch River units 1-3, Tanners Creek Units 1-3 and/or Kammer Units 1-3 | Retire, Retrofit, or Re-Power     | December 31, 2018                    |

*Add a new Paragraph 68A that reads as follows:*

68A. 30-Day Rolling Average NO<sub>x</sub> Emission Rate at Rockport. Beginning on the thirtieth Day which is an Operating Day for either one or both Rockport Units in calendar year 2021, average



NOx emissions from the Rockport Units shall be limited to 0.090 lb/mmBTU on a 30-day Rolling Average Basis at the combined stack for the Rockport Units. Emissions shall be calculated in accordance with the provisions of Paragraph 5A and reported in accordance with the requirements of Paragraph J in Appendix B.

*Add a new Paragraph 68B that reads as follows:*

68B. Informational NOx Monitoring. During the ozone seasons (May 1 – September 30) in each of calendar years 2019 and 2020, prior to the effective date of the 30-Day Rolling Average NOx Rate at the Rockport Units in Paragraph 68A, the AEP Defendants shall provide an estimate of the 30-day rolling average NOx emissions from Rockport Unit 1, based on NOx concentrations and percent CO<sub>2</sub> measured at an uncertified NOx monitor in the duct from Unit 1 before the flue gases from Rockport Units 1 and 2 combine at the common stack. Hourly NOx rates shall be calculated for each hour for which valid data is available, using the following equation:

$$\text{NOx lb/mmBtu} = [(1.194 \times 10^{-7}) \times \text{NOx ppm} \times 1840 \text{ scf CO}_2 \text{ per mmBtu} \times 100] / \% \text{ CO}_2$$

The monitor shall be calibrated daily and maintained in accordance with good engineering and maintenance practices. If valid NOx or CO<sub>2</sub> data is not available for any hour, that hour shall not be used in the calculation of the informational data provided to Plaintiffs, including periods of monitor downtime, calibrations, and maintenance. For informational purposes only, NOx emission rate data for Rockport Unit 1 on a 30-Day Rolling Average Basis for May – June shall be reported to Plaintiffs by July 30, and NOx emission rate data for Rockport Unit 1 on a 30-Day Rolling Average Basis for July – September shall be reported to Plaintiffs by October 30. Nothing in this Paragraph shall be construed to establish a Unit-specific NOx Emission Rate for Rockport Unit 1, and these interim reporting obligations are not required to be incorporated into the Title V permit for the Rockport Plant.

*Paragraph 86 is replaced in its entirety and now reads as follows:*

86. Notwithstanding any other provisions of this Consent Decree, except Section XIV (Force Majeure), during each calendar year specified in the table below, all Units in the AEP Eastern System, collectively, shall not emit SO<sub>2</sub> in excess of the following Eastern System-Wide Annual Tonnage Limitations:

| <b>Calendar Year</b>           | <b>Eastern System-Wide Annual Tonnage Limitations for SO<sub>2</sub></b> |
|--------------------------------|--|
| 2010                           | 450,000 tons   |
| 2011                           | 450,000 tons   |
| 2012                           | 420,000 tons   |
| 2013                           | 350,000 tons   |
| 2014                           | 340,000 tons   |
| 2015                           | 275,000 tons   |
| 2016                           | 145,000 tons   |
| 2017                           | 145,000 tons   |
| 2018                           | 145,000 tons   |
| 2019-2020                      | 113,000 tons per year  |
| 2021-2028                      | 94,000 tons per year   |
| 2029, and each year thereafter | 89,000 tons per year   |

*Paragraph 87 is replaced in its entirety and now reads as follows:*

87. No later than the dates set forth in the table below, Defendants shall install and Continuously Operate an FGD, Dry Sorbent Injection, or Enhanced Dry Sorbent Injection system on each Unit identified therein, or, if indicated in the table, Cease Burning Coal, Retire,

## Retrofit, Re-power, or Refuel such Unit:

| Unit                      | SO <sub>2</sub> Pollution Control   | Date   |
|---------------------------|---|--|
| Amos Unit 1               | FGD   | February 15, 2011  |
| Amos Unit 2               | FGD   | April 2, 2010  |
| Amos Unit 3               | FGD   | December 31, 2009  |
| Big Sandy Unit 2          | Retrofit, Retire, Re-Power or Refuel  | December 31, 2015  |
| Cardinal Units 1 and 2    | FGD   | December 31, 2008  |
| Cardinal Unit 3           | FGD   | December 31, 2012  |
| Conesville Units 1 and 2  | Retire, Retrofit, or Re-power   | Date of Entry  |
| Conesville Unit 3         | Retire, Retrofit, or Re-power   | December 31, 2012  |
| Conesville Unit 4         | FGD   | December 31, 2010  |
| Conesville Unit 5         | Upgrade existing FGD and meet a 95% 30-day Rolling Average Removal Efficiency | December 31, 2009  |
| Conesville Unit 6         | Upgrade existing FGD and meet a 95% 30-day Rolling Average Removal Efficiency | December 31, 2009  |
| Gavin Units 1 and 2       | FGD   | Date of Entry  |
| Mitchell Units 1 and 2    | FGD   | December 31, 2007  |
| Mountaineer Unit 1        | FGD   | December 31, 2007  |
| Muskingum River Units 1-4 | Retire, Retrofit, or Re-power   | December 31, 2015  |
| Muskingum River Unit 5    | Cease Burning Coal and Retire<br>Or<br>Cease Burning Coal and Refuel          | December 15, 2015<br><br>December 31, 2015, unless the Refueling project is not completed in which case the Unit |

| Unit  | SO <sub>2</sub> Pollution Control  | Date   |
|---|--|--|
|   |  | will be taken out of service no later than December 31, 2015, and will not restart until the Refueling project is completed. The refueling project must be completed by June 30, 2017. |
| Rockport Unit 1   | <p>Dry Sorbent Injection and</p> <p>Enhanced DSI, and beginning in calendar year 2021 meet an Emission Rate of 0.15 lb/mmBTU of SO<sub>2</sub> on a 30-Day Rolling Average Basis at the Rockport combined stack</p> <p>And</p> <p>Retrofit, Refuel, or Re-Power, but must satisfy the provisions of Paragraphs 133 and 140</p> | <p>April 16, 2015</p> <p>December 31, 2020</p> <p>December 31, 2028</p>  |
| Rockport Unit 2   | <p>Dry Sorbent Injection and</p> <p>Enhanced DSI, and beginning in calendar year 2021 meet an Emission Rate of 0.15 lb/mmBTU of SO<sub>2</sub> on a 30-Day Rolling Average Basis at the Rockport combined stack</p>  | <p>April 16, 2015</p> <p>June 1, 2020</p>  |
| Sporn Unit 5  | Retire, Retrofit, or Re-power  | December 31, 2013  |
| A total of at least 600 MW from the following list of Units: Sporn Units 1-4, Clinch River Units 1-3, | Retire, Retrofit, or Re-power  | December 31, 2018  |

| Unit   | SO <sub>2</sub> Pollution Control | Date |
|--|-----------------------------------|------|
| Tanners Creek Units 1-3, and/or Kammer Units 1-3 |                                   |      |

*Paragraph 89A is replaced in its entirety and now reads as follows:*

89A. Plant-Wide Annual Tonnage Limitation and 30-Day Rolling Average Emission Rate for SO<sub>2</sub> at Rockport. For each of the calendar years set forth in the table below, AEP Defendants shall limit their total annual SO<sub>2</sub> emissions from Rockport Units 1 and 2 to the Plant-Wide Annual Tonnage Limitation for SO<sub>2</sub> as follows:

| Calendar Years                 | Plant-Wide Annual Tonnage Limitation for SO <sub>2</sub> |
|--------------------------------|--|
| 2016-2017                      | 28,000 tons per year                                     |
| 2018-2019                      | 26,000 tons per year                                     |
| 2020                           | 22,000 tons per year                                     |
| 2021-2028                      | 10,000 tons per year                                     |
| 2029, and each year thereafter | 5,000 tons per year                                      |

In addition to the Plant-Wide Annual Tonnage Limitation for SO<sub>2</sub> at Rockport, beginning on the thirtieth Day which is an Operating Day for either or both Rockport Units in calendar year 2021, SO<sub>2</sub> emissions from the Rockport Units shall be limited to 0.15 lb/mmBTU on a 30-Day Rolling Average Basis at the Rockport combined stack (30-Day Rolling Average Emission Rate for SO<sub>2</sub> at Rockport). Emissions shall be calculated in accordance with the provisions of Paragraph 5A and reported in accordance with the requirements of Paragraph J in Appendix B. Nothing in this Consent Decree shall be construed to prohibit the AEP Defendants from further optimizing the Enhanced DSI system, utilizing alternative sorbents, or upgrading the SO<sub>2</sub> removal technology at

the Rockport Units so long as the Units maintain compliance with the 30-day Rolling Average Emission Rate for SO<sub>2</sub> at Rockport and the 30-day Rolling Average Emission Rate for NO<sub>x</sub> at Rockport.

*Paragraph 127 is replaced in its entirety and now reads as follows:*

127. The States, by and through their respective Attorneys General, shall jointly submit to Defendants Projects within the categories identified in this Subsection B for funding in amounts not to exceed \$4.8 million per calendar year for no less than five (5) years following the Date of Entry of this Consent Decree beginning as early as calendar year 2008, and for an additional amount not to exceed \$6.0 million in 2013. The funds for these Projects will be apportioned by and among the States, and Defendants shall not have approval rights for the Projects or the apportionment. Defendants shall pay proceeds as designated by the States in accordance with the Projects submitted for funding each year within seventy-five (75) days after being notified by the States in writing. Notwithstanding the maximum annual funding limitations above, if the total costs of the projects submitted in any one or more years is less than the maximum annual amount, the difference between the amount requested and the maximum annual amount for that year will be available for funding by the Defendants of new and previously submitted projects in the following years, except that all amounts not requested by and paid to the States within eleven (11) years after the Date of Entry of this Consent Decree shall expire.

Pursuant to the Fifth Joint Modification Indiana Michigan Power Company ("I&M") will provide as restitution or as funds to come into compliance with the law \$4 million in additional funding for the States to support projects identified in Section VIII, Subsection B during the period from 2019 through 2021. I&M shall provide the funding within seventy-five (75) days of receipt of a written request for payment and in accordance with instructions from counsel for the States.

*Paragraph 128B is replaced in its entirety and now reads as follows:*

128B. Citizen Plaintiffs' Mitigation Projects. I&M will provide \$2.5 million in mitigation funding as directed by the Citizen Plaintiffs for projects in Indiana that include diesel retrofits, health and safety home repairs, solar water heaters, outdoor wood boilers, land acquisition projects, and small renewable energy projects (less than 0.5 MW) located on customer premises that are eligible for net metering or similar interconnection arrangements on or before December 31, 2014. I&M shall make payments to fund such Projects within seventy-five (75) days after being notified by the Citizen Plaintiffs in writing of the nature of the Project, the amount of funding requested, the identity and mailing address of the recipient of the funds, payment instructions, including taxpayer identification numbers and routing instructions for electronic payments, and any other information necessary to process the requested payments. Defendants shall not have approval rights for the Projects or the amount of funding requested, but in no event shall the cumulative amount of funding provided pursuant to this Paragraph 128B exceed \$2.5 million.

In addition to the \$2.5 million provided in 2014, pursuant to the Fifth Joint Modification I&M will provide as restitution or as funds to come into compliance with the law \$3.5 million in funding for Citizen Plaintiffs to support projects that will promote energy efficiency, distributed generation, and pollution reduction measures for nonprofits, governmental entities, low income residents and/or other entities selected by Citizen Plaintiffs. I&M shall provide the \$3.5 million in funding within seventy-five (75) days of the Date of Entry of the Fifth Joint Modification of the Consent Decree by the Court in accordance with instructions from counsel for Citizen Plaintiffs.

*Paragraph 133 is replaced in its entirety and now reads as follows:*

133. Claims Based on Modifications after the Date of Lodging of This Consent Decree. Entry of this Consent Decree shall resolve all civil claims of the United States against Defendants that

arise based on a modification commenced before December 31, 2018, or, solely for Rockport Unit 1, before December 31, 2028, or, solely for Rockport Unit 2, before June 1, 2020, for all pollutants, except Particulate Matter, 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 Consent Decree, and:

- a. where such modification is commenced at any AEP Eastern System Unit after the Date of Lodging of the original Consent Decree; or
- b. where such modification is one this Consent Decree expressly directs Defendants to undertake.

With respect to Rockport Unit 1, the United States agrees that the AEP Defendants' obligation to Retrofit, Re-Power, or Refuel Rockport Unit 1 would be satisfied if, by no later than December 31, 2028, the AEP Defendants Retrofit Rockport Unit 1 by installing and commencing continuous operation of FGD technology consistent with the definition in Paragraph 56 of the Third Joint Modification of the Consent Decree, Re-Power the Unit consistent with the definition in Paragraph 54 of the Consent Decree, or Refuel the Unit consistent with the provisions of Paragraph 53A of the Third Joint Modification of the Consent Decree. If the AEP Defendants elect to Retire Rockport Unit 1 by December 31, 2028, that would also satisfy the requirements of this Paragraph and fulfill the AEP Defendants' obligations with regard to Rockport Unit 1 under this Consent Decree. The term "modification" as used in this paragraph shall have the meaning that term is given under the Clean Air Act and under the regulations in effect as of the Date of Lodging of this Consent Decree, as alleged in the complaints in *AEP I* and *AEP II*.

*Paragraph 140 is replaced in its entirety and now reads as follows:*

140. With respect to the States and Citizen Plaintiffs, except as specifically set forth in this Paragraph, the States and Citizen Plaintiffs expressly do not join in giving the Defendants the



covenant provided by the United States in Paragraph 133 of this Consent Decree, do not release any claims under the Clean Air Act and its implementing regulations arising after the Date of Lodging of the original Consent Decree, and reserve their rights, if any, to bring any actions against Defendants pursuant to 42 U.S.C. §7604 for any claims arising after the Date of the Lodging of the original Consent Decree. AEP, the States, and Citizen Plaintiffs also recognize that I&M informed state regulators in its most recent base rate proceedings that the most realistic date through which Rockport Unit 1 can be expected to be in operation with any reasonable degree of certainty is December 2028, and the Indiana Utility Regulatory Commission and the Michigan Public Service Commission have approved depreciation rates for I&M's share of Rockport Unit 1 to be consistent with the retirement of Unit 1 in December 2028. Notwithstanding the existence of any other compliance options in Paragraphs 87 and 133, AEP Defendants must Retire Rockport Unit 1 by no later than December 31, 2028. AEP Defendants and the States and Citizen Plaintiffs agree that Paragraph 140 prevails in any conflict between it and Paragraphs 87 and/or 133.

a. On or before March 31, 2025, AEP Defendants shall submit to PJM Interconnection, LLC, or any other regional transmission organization with jurisdiction over the Rockport Units, notification of the planned retirement of Rockport Unit 1 by no later than December 31, 2028, and a request for such regional transmission organization to evaluate and identify any reliability concerns associated with such retirement.

*Paragraph 180 is replaced in its entirety and now reads as follows:*

180. Within one (1) year from commencement of operation of each pollution control device to be installed, upgraded, and/or operated under this Consent Decree, Defendants shall apply to include the requirements and limitations enumerated in this Consent Decree into federally-enforceable non-Title V permits and/or site-specific amendments to the applicable state

implementation plans to reflect all new requirements applicable to each Unit in the AEP Eastern System, the Plant-Wide Annual Rolling Average Tonnage Limitation for SO<sub>2</sub> at Clinch River, the Plant-Wide Annual Tonnage Limitation for SO<sub>2</sub> at Kammer, and the Plant-Wide Annual Tonnage Limitation for SO<sub>2</sub> at Rockport.

*Paragraph 182 is replaced in its entirety and now reads as follows:*

182. Prior to termination of this Consent Decree, Defendants shall obtain enforceable provisions in their Title V permits for the AEP Eastern System that incorporate (a) any Unit-specific requirements and limitations of this Consent Decree, such as performance, operational, maintenance, and control technology requirements, (b) the Plant-Wide Annual Rolling Average Tonnage Limitation for SO<sub>2</sub> at Clinch River, the Plant-Wide Annual Tonnage Limitation for SO<sub>2</sub> at Kammer, and the Plant-Wide Annual Tonnage Limitation for SO<sub>2</sub> at Rockport, and (c) the Eastern System-Wide Annual Tonnage Limitations for SO<sub>2</sub> and NO<sub>x</sub>. If Defendants do not obtain enforceable provisions for the Eastern System-Wide Annual Tonnage Limitations for SO<sub>2</sub> and NO<sub>x</sub> in such Title V permits, then the requirements in Paragraphs 86 and 67 shall remain enforceable under this Consent Decree and shall not be subject to termination.

*Paragraph 188 is modified as follows to update the information required in order to provide required notices under the Consent Decree:*

188.

As to the United States:

Case Management Unit  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044-7611  
DJ# 90-5-2-1-06893  
[eescdcopy.enrd@usdoj.gov](mailto:eescdcopy.enrd@usdoj.gov)

Phillip Brooks  
Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
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and

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For all notices to EPA, Defendants shall register for the CDX electronic system and upload such notices at <https://cdx.gov/epa-home.asp>.

As to the State of Connecticut:

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As to the State of New Jersey:

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and

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As to Gavin Buyer:

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*Add a new Paragraph 205A that reads as follows:*

205A. 26 U.S.C. Section 162(f)(2)(A)(ii) Identification. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), with respect to obligations incurred under this Fifth Joint Modification, performance of Section II (Applicability), Paragraph 3; Section IV (NO<sub>x</sub> Emission Reductions and Controls), Paragraphs 67, 68, 68A, and 68B; Section V (SO<sub>2</sub> Emission Reductions and Controls), Paragraphs 86, 87, and 89A; Section VII (Prohibition on Netting Credits or Offsets from Required Controls), Paragraph 117; Section XI (Periodic Reporting), Paragraphs 143 – 147; Section XII (Review and Approval of Submittals), Paragraphs 148 and 149 (except with respect to dispute resolution); Section XVI (Permits), Paragraphs 175, 177, 179, and 180 – 183; Section XVII (Information Collection and Retention), Paragraphs 184 and 185; Section XXIII (General Provisions), Paragraph 207; and Appendix B; is restitution or required to come into compliance with law.

*Modify Appendix B (Reporting Requirements) as follows:*

*Section I Paragraph O is replaced in its entirety and now reads as follows:*

- O. Plant-Wide Annual Tonnage Limitation and Emission Rate for SO<sub>2</sub> at Rockport.

Beginning March 31, 2017, and continuing annually thereafter, Defendants shall report: (a) the actual tons of SO<sub>2</sub> emitted from Units 1 and 2 at the Rockport Plant for the prior calendar year; (b) the Plant-Wide Annual Tonnage Limitation for SO<sub>2</sub> at the Rockport Plant for the prior calendar year as set forth in Paragraph 89A of the Consent Decree; and (c) for the annual reports for calendar years 2015 - 2020, Defendants shall report the daily sorbent deliveries to the Rockport Plant by weight. Beginning in calendar year 2021, the annual reports shall report the 30-day rolling average SO<sub>2</sub> Emissions Rate at the Rockport stack as required under Section I, Paragraph J of Appendix B, and reporting of daily sorbent deliveries will no longer be required.

*Section I Paragraph S. is replaced in its entirety and now reads as follows:*

S. Notification of Retirement of Rockport Unit 1.

AEP Defendants shall provide to the Plaintiffs a copy of the notification submitted to PJM Interconnection, LLC, or any other regional transmission organization pursuant to Paragraph 140.a, and a copy of any response received from PJM Interconnection, LLC, or any other the regional transmission organization.

*Delete Paragraphs T and U from Section I of Appendix B.*

Except as specifically provided in this Order, all other terms and conditions of the Consent Decree remain unchanged and in full effect.

SO ORDERED, THIS 17<sup>th</sup> DAY OF July, 2019.

  
\_\_\_\_\_  
HONORABLE EDMUND A. SARGUS, JR.  
UNITED STATES DISTRICT JUDGE



**SIGNATURE PAGE FOR THE  
FIFTH JOINT MODIFICATION OF THE CONSENT DECREE**

in

*United States v. American Electric Power Service Corp., et al.*  
**Civil Action No. 99-CV-1182 and consolidated cases**

FOR THE UNITED STATES

Handwritten signature of Myles E. Flint, II in cursive script.

---

Myles E. Flint, II  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20530  
(202) 307-1859

**SIGNATURE PAGE FOR THE  
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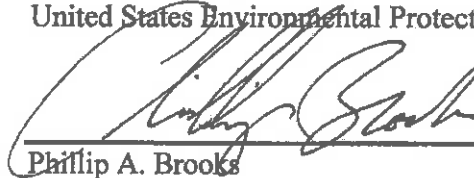
**in**

***United States v. American Electric Power Service Corp., et al.***  
**Civil Action No. 99-CV-1182 and consolidated cases**

FOR THE UNITED STATES



Rosemarie A. Kelley  
Director  
Office of Civil Enforcement  
United States Environmental Protection Agency



Phillip A. Brooks  
Director, Air Enforcement Division  
Office of Civil Enforcement  
United States Environmental Protection Agency



Sabrina Argentieri  
Attorney-Advisor  
Office of Civil Enforcement  
Civil Enforcement Division  
United States Environmental Protection Agency

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FOR THE STATE OF CONNECTICUT

WILLIAM TONG  
ATTORNEY GENERAL

By:

  
\_\_\_\_\_

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**FOR THE STATE OF MARYLAND:**

**BRIAN E. FROSH**  
Attorney General

By: 

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**FOR THE COMMONWEALTH OF  
MASSACHUSETTS**

**MAURA HEALEY  
ATTORNEY GENERAL**



---

**Christophe Courchesne  
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Office of the Attorney General  
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**FOR THE STATE OF NEW HAMPSHIRE**

**GORDON J. MACDONALD  
ATTORNEY GENERAL**



---

**K. Allen Brooks  
Senior Assistant Attorney General  
Office of the Attorney General  
33 Capitol Street  
Concord, New Hampshire 03301**

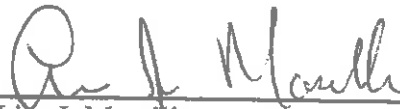
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**Civil Action No. 99-CV-1182 and consolidated cases**

FOR THE STATE OF NEW JERSEY

GURBIR S. GREWAL  
ATTORNEY GENERAL



---

Lisa J. Morelji  
Deputy Attorney General  
Dept. of Law & Public Safety  
Division of Law  
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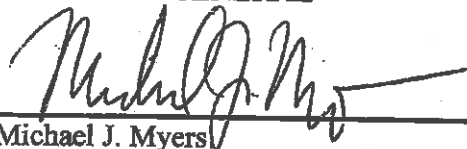
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**FOR THE STATE OF NEW YORK**

**LETITIA JAMES  
ATTORNEY GENERAL**

A handwritten signature in black ink, appearing to read "Michael J. Myers", is written over a solid horizontal line.

**Michael J. Myers**  
**Senior Counsel**  
**Environmental Protection Bureau**  
**New York State Attorney General**  
**The Capitol**  
**Albany, NY 12224**



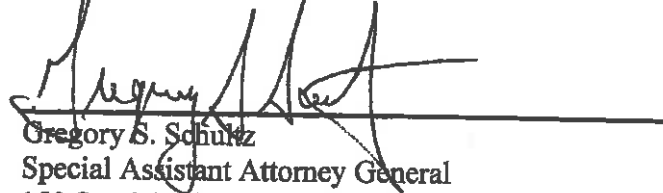
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**FOR THE STATE OF RHODE ISLAND**

**PETER F. NERONHA  
ATTORNEY GENERAL**

A handwritten signature in black ink, appearing to read "Gregory S. Schultz", is written over a horizontal line. The signature is stylized and extends above and below the line.

**Gregory S. Schultz  
Special Assistant Attorney General  
150 South Main Street  
Providence, RI 02903**

**SIGNATURE PAGE FOR THE  
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FOR THE STATE OF VERMONT

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'Thea Schwartz', is written over a horizontal line.

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***United States v. American Electric Power Service Corp., et al.***  
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FOR NATURAL RESOURCES DEFENSE  
COUNCIL, INC.

*Nancy S Marks*

---

Nancy S. Marks  
Natural Resources Defense Council, Inc.  
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New York, NY 10011

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FOR SIERRA CLUB



---

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FOR OHIO CITIZEN ACTION, CITIZENS ACTION  
COALITION OF INDIANA, HOOSIER  
ENVIRONMENTAL COUNCIL, OHIO VALLEY  
ENVIRONMENTAL COALITION, WEST VIRGINIA  
ENVIRONMENTAL COUNCIL, CLEAN AIR  
COUNCIL, IZAAK WALTON LEAGUE OF  
AMERICA, ENVIRONMENT AMERICA,  
NATIONAL WILDLIFE FEDERATION, INDIANA  
WILDLIFE FEDERATION, AND LEAGUE OF OHIO  
SPORTSMEN



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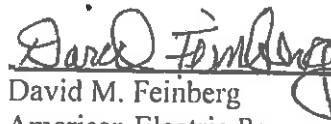
Margrethe Kearney  
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**FOR THE AEP COMPANIES**

A handwritten signature in black ink, appearing to read "David M. Feinberg", is written over a solid horizontal line.

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