UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA, Plaintiff, and SIERRA CLUB, Intervenor-Plaintiff, v. DTE ENERGY COMPANY AND DETROIT EDISON COMPANY, Defendants.	Civil Action No. 2:10-cv-13101 Judge Bernard A. Friedman Magistrate Judge R. Steven Whalen

CONSENT DECREE

TABLE OF CONTENTS

I. JURISDICTION AND VENUE 3
II. APPLICABILITY 3
III. DEFINITIONS 4
IV. COMPLIANCE REQUIREMENTS 14
V. PROHIBITION ON NETTING CREDITS OR OFFSETS 25
VI. ENVIRONMENTAL MITIGATION PROJECT 25
VII. CIVIL PENALTY 27
VIII. RESOLUTION OF CIVIL CLAIMS 28
IX. PERIODIC REPORTING 31
X. REVIEW AND APPROVAL OF SUBMITTALS 33
XI. STIPULATED PENALTIES 34
XII. FORCE MAJEURE 42
XIII. DISPUTE RESOLUTION 46
XIV. PERMITS 48
XV. INFORMATION COLLECTION AND RETENTION 50
XVI. NOTICES 51
XVII. SALES OR TRANSFERS OF OPERATIONAL OR OWNERSHIP INTERESTS 54
XVIII. EFFECTIVE DATE 54
XIX. RETENTION OF JURISDICTION 55
XX. MODIFICATION 55
XXI. GENERAL PROVISIONS 55
XXII. SIGNATORIES AND SERVICE 58
XXIII. PUBLIC COMMENT/AGENCY REVIEW 58
XXIV. TERMINATION 59
XXV. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION 61
XXVI. FINAL JUDGMENT 62

APPENDIX A -- ENVIRONMENTAL MITIGATION PROJECT

A. Plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint in this action on August 5, 2010. The Court granted Plaintiff-Intervenor Sierra Club's motion to intervene on November 23, 2010. The United States and Sierra Club (collectively "Plaintiffs") later amended their complaints, and the Court granted leave to file the amended complaints ("Complaints") on April 9, 2014. The Complaints allege violations of the Clean Air Act ("CAA" or "the Act") against DTE Energy and Detroit Edison Company ("Defendants").

B. The Complaints sought injunctive relief and civil penalties pursuant to Sections 113(b) and 167 of the Act 42, U.S.C. §§ 7413(b) and 7477, alleging that Defendants violated: (a) the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-7492; (b) the nonattainment New Source Review ("Nonattainment NSR") provisions of the Act, 42 U.S.C. §§ 7501-7515; (c) applicable federal PSD and Nonattainment NSR regulations; and (d) the State Implementation Plan adopted by the State of Michigan and approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410 ("Michigan SIP"). The Complaints allege that, *inter alia*, Defendants made major modifications to major emitting facilities, and failed to obtain the necessary permits and install and operate the controls necessary under the Act to reduce sulfur dioxide ("SO_2") and/or oxides of nitrogen ("NO_x"), at certain electricity generating stations located in Michigan, and that such emissions damage human health and the environment.

C. Statement of the United States: The Complaints alleged major modifications at several of Defendants' units, including a major modification at Monroe Unit 2 in 2010. While the Consent Decree resolves that claim and releases Defendants from any liability for it, none of

the relief in this Consent Decree is attributable to the United States' Monroe Unit 2 2010 claim. It is the position of the United States that this is an appropriate exercise of its prosecutorial discretion in light of the specific circumstances of this case. In 2017, EPA issued a policy memorandum noting that the 2013 and 2017 appellate decisions in this case "have created uncertainty regarding the applicability of NSR permitting requirements in circumstances where the owner or operator of an existing major stationary source projects that proposed construction will not cause an increase in actual emissions that triggers NSR requirements" and concluding that it would therefore no longer pursue cases factually similar to the 2010 Monroe Unit 2 claim. *See* EPA Administrator, *Memorandum Regarding New Source Review Preconstruction Permitting Requirements* (Dec. 7, 2017). The Department in its independent judgment as a matter of prosecutorial discretion, has decided to apply EPA's rationale to the 2010 Monroe Unit 2 claim as well as take to heart the litigation history, which may implicate cases such as *General Elec. Co. v. EPA*, 53 F.3d 1324 (D.C. Circ. 1995). The specific circumstances described above are not raised by the other claims in the Complaints.

D. Defendants opted to retire St. Clair Unit 1 and have permanently ceased operation of that unit as of March 31, 2019.

E. Defendants do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaints.

F. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid further litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, 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, 1355, and 1367, and pursuant to Sections 113, 167, and 304 of the Act, 42 U.S.C. §§ 7413, 7477, and 7604. Venue is proper in this District pursuant to Sections 113(b) and 304(c) of the Act, 42 U.S.C. §§ 7413(b) and 7604(c), and 28 U.S.C. §§ 1391(b) and (c). For purposes of this Decree, or any action to enforce this Decree, Defendants consent to (i) the Court's jurisdiction over this Decree and any such action and over Defendants and (ii) venue in in this judicial district. Except as expressly provided for herein, this Consent Decree shall not create any rights in or obligations of any party other than the Parties to this Consent Decree. Except as provided in Section XXIII (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice. Notwithstanding the foregoing, should this Consent Decree not be entered by this Court, then the waivers and consents set forth in this Section I (Jurisdiction and Venue) shall be null and void and of no effect.

II. APPLICABILITY

2. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the United States, Sierra Club, and Defendants and their respective successors, assigns, or other entities or persons otherwise bound by law.

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