

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 NOx 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

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