

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STATE OF NEW JERSEY,)
)
 Plaintiff,)
)
 v.)
)
 RRI ENERGY MID-ATLANTIC)
 POWER HOLDINGS, LLC,)
 RRI ENERGY POWER)
 GENERATION, INC., and)
 SITHE ENERGIES, INC.,)
 now known as Dynegy, Inc.,)
)
 Defendants,)
)
 and)
)
 STATE OF CONNECTICUT,)
)
 Intervenor-Plaintiff,)
)
 v.)
)
 RRI ENERGY MID-ATLANTIC)
 POWER HOLDINGS, LLC,)
 RRI ENERGY POWER)
 GENERATION, INC., and)
 SITHE ENERGIES, INC.,)
 now known as Dynegy, Inc.,)
)
 Intervenor-Defendants.)

Civil Action
No. 07-CV-5298 (JKG)

CONSENT DECREE

WHEREAS, the State of New Jersey filed a complaint on December 18, 2007, against Reliant Energy Power Generation, Inc. (subsequently merged into GenOn Power Generation, LLC), Reliant Energy Mid-Atlantic Power Holdings, LLC (now known as GenOn REMA, LLC), and Sithe Energies, Inc. (collectively, the “Companies”), and several additional defendants, pursuant to Section 304 of the Clean Air Act (“the Act”), 42 U.S.C. § 7604, for injunctive relief and the assessment of civil penalties based on alleged violations of the Prevention of Significant Deterioration (“PSD”) provisions of the Act, 42 U.S.C. §§ 7470-92; the federally approved Pennsylvania State Implementation Plan (“SIP”); Title V of the Act, 42 U.S.C. §§ 7661-7661f; and the federally approved Pennsylvania Title V operating permit program, or any rule or permit issued thereunder (“Title V”), at Units 1 and 2 of the Portland Generating Station in Upper Mount Bethel Township, Northampton County, Portland, Pennsylvania;

WHEREAS, New Jersey filed an amended complaint on December 4, 2008, and a second amended complaint on October 14, 2011, alleging claims essentially similar to those in its original complaint;

WHEREAS, New Jersey issued letters providing notice to the United States, Pennsylvania, and the named defendants of its intent to bring suit under the citizen suit provisions of the Act, 42 U.S.C. § 7604, on November 16, 2005 and August 27, 2008 (“Notice Letters”).

WHEREAS, Connecticut filed a motion to intervene in this action on October 31, 2008, which was granted on March 24, 2009. Connecticut filed its original complaint (referred to as its first amended complaint) pursuant to Section 304 of the Act, 42 U.S.C. § 7604, on April 3, 2009, a revised first amended complaint on June 1, 2009, and a second amended complaint on October 14, 2011, alleging essentially the same violations as are alleged in New Jersey’s complaints;

WHEREAS, in their complaints (“Complaints”), New Jersey and Connecticut (“Plaintiffs”) allege, inter alia, that the Companies are responsible for the modification and operation of two electric generating units (Units 1 and 2) at the Portland Generating Station, without obtaining the necessary permits, and without installing and employing the best available control technology (“BACT”) to control emissions of nitrogen oxides (“NOx”) and/or sulfur dioxide (“SO₂”) as the Act requires;

WHEREAS, the Companies deny that they are responsible for or committed violations of the Clean Air Act or that any work performed at Portland Units 1 and 2 required a PSD permit or the installation of BACT, and nothing herein shall constitute an admission of liability;

WHEREAS, New Jersey, Connecticut, and the Companies (“Parties”) have agreed that settlement of this action is 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;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and at arm’s length and that this Consent Decree is fair, reasonable, consistent with the goals of the Act, and in the public interest;

WHEREAS, the Parties have consented to entry of this Consent Decree without trial of any issues;

WHEREAS, pursuant to Section 304 of the Act, 42 U.S.C. § 7604(c)(3), this Consent Decree is being forwarded to the United States Department of Justice and to the United States Environmental Protection Agency (“EPA”) for the statutorily-mandated forty-five (45) day review period;

NOW, THEREFORE, with the consent of the Parties and without any admission or adjudication of the violations alleged in the Complaints or the Notice Letters, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and the subject matter of the action pursuant to the citizen suit provisions in Section 304 of the Act, 42 U.S.C. § 7604, and pursuant to 28 U.S.C. § 1331.

2. Venue is proper in this judicial district under Section 304(c) of the Act, 42 U.S.C. § 7604(c), and under 28 U.S.C. § 1391.

II. APPLICABILITY

3. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the Parties, as well as the Parties' officers, employees, agents, successors and assigns solely in their capacity as such.

III. DEFINITIONS

4. 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 Consent Decree, every other term used in this Consent Decree that is also a term under the Act or the regulations implementing the Act shall mean in this Consent Decree what such term means under the Act or those implementing regulations.

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

b. "Companies" means GenOn Power Generation, LLC (formed by merger with RRI Energy Power Generation, Inc., which was formerly known as Reliant Energy Power

Generation, Inc.), GenOn REMA, LLC (formerly known as RRI Energy Mid-Atlantic Holdings, LLC, and Reliant Energy Mid-Atlantic Holdings, LLC), and Sithe Energies, Inc.

c. “Consent Decree” means this Consent Decree.

d. “Date of Entry” means the date this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court’s docket.

e. “Day” means calendar day, unless otherwise specified.

f. “GenOn REMA, LLC” or “GenOn REMA” is the owner and operator of Portland Units 1 and 2 and was formerly known as RRI Energy Mid-Atlantic Power Holdings, LLC, and Reliant Energy Mid-Atlantic Power Holdings, LLC. GenOn REMA, LLC is an indirect subsidiary of GenOn Power Generation, LLC, and NRG Energy, Inc.

g. “Nonattainment NSR” means the new source review program within the meaning of Part D of Subchapter I of the Act, 42 U.S.C. §§ 7501-7515 and 40 C.F.R. Part 51, and corresponding provisions of the federally enforceable Pennsylvania SIP.

h. “Parties” means the State of New Jersey, the State of Connecticut, and the Companies. “Party” means one of the named “Parties.”

i. “Portland Units 1 and 2” means Unit 1, a coal-fired electric generating unit with an approximate net megawatt rating of 158 MW, and Unit 2, a coal-fired electric generating unit with an approximate net megawatt rating of 243 MW, located at the Portland Generating Station, Upper Mount Bethel Township, Northampton County, Portland, Pennsylvania.

j. “Prevention of Significant Deterioration” or “PSD” means the prevention of significant deterioration of air quality program under Part C of Subchapter I of the Clean Air

Act, 42 U.S.C. §§ 7470-7492, and 40 C.F.R. Part 52, and corresponding provisions of the federally enforceable Pennsylvania SIP.

k. “Plaintiffs” means the State of New Jersey, including but not limited to the New Jersey Department of Environmental Protection and the Office of the Attorney General, and the State of Connecticut, including but not limited to the Connecticut Department of Energy and Environmental Protection and the Office of the Attorney General.

l. “SO₂ Allowance” means an authorization to emit a specified amount of SO₂ that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable State Implementation Plan and that is applicable to Portland Units 1 and 2 as of the Date of Entry of this Consent Decree.

m. “Surrender” means, for purposes of SO₂ Allowances, permanently surrendering allowances from the accounts administered by EPA and the State of Pennsylvania, if applicable, so that such allowances can never be used thereafter to meet any compliance requirements under the CAA, a state implementation plan, or this Consent Decree.

IV. CESSATION OF COAL COMBUSTION AT PORTLAND UNITS 1 AND 2

5. By no later than June 1, 2014, GenOn REMA shall cease generation of electricity through the combustion of coal at Portland Units 1 and 2.

6. Notwithstanding Paragraph 5 above, if PJM Interconnection, LLC (“PJM”), after consultation with the local transmission owner, determines that the deactivation of Portland Units 1 or 2, in accordance with established reliability criteria, would adversely affect the reliability of the transmission system absent upgrades to the transmission system pursuant to Section 113 of the PJM Open Access Transmission Tariff (“PJM Tariff”), or if the United States Department of Energy (“DOE”) or the Federal Energy Regulatory Commission (“FERC”) orders

the operation of Portland Units 1 or 2 to maintain reliability under Sections 202(c) or Sections 207 and 309 of the Federal Power Act, 16 U.S.C. §§ 824a(c), 824f, 825h, then the unit(s) necessary to alleviate the transmission system reliability impacts may remain available and generate electricity through the combustion of coal as directed by PJM, DOE or FERC, even if such generation occurs after the June 1, 2014.

a. Absent an order of DOE or of FERC under Sections 202(c), 207, or 309 of the Federal Power Act, in no event shall Portland Units 1 or 2 generate electricity through the combustion of coal after October 31, 2014.

b. GenOn REMA will provide notice to Plaintiffs of the submission to FERC seeking compensation or cost recovery under the Federal Power Act or the PJM Tariff arising from the designation of Portland Units 1 and/or 2 as reliability units as described in this Paragraph 6, within 14 days after making such submission. GenOn REMA will not object to Plaintiffs seeking additional information from PJM regarding any period of operation by Portland Units 1 or 2 after June 1, 2014.

c. Nothing in this Consent Decree shall affect any compensation or cost recovery due GenOn REMA under the Federal Power Act or the PJM Tariff arising from the designation of Portland Units 1 and/or 2 as reliability units as described in this Paragraph 6.

7. Nothing in this Section IV, or in any other provision of this Consent Decree, shall prevent the future operation of Portland Units 1 and 2 for the purpose of generating electricity through the combustion of fuel other than coal. If GenOn REMA elects to convert Portland Unit 1 and/or Unit 2 to operate using one or more alternative fuel sources other than coal, GenOn REMA shall apply for and obtain any necessary Clean Air Act permits, including any appropriate PSD or Nonattainment NSR permits.

8. Nothing in this Consent Decree shall affect any obligations applicable to Portland Units 1 or 2 under EPA's Final Response to Petition from New Jersey under Section 126(b) of the Clean Air Act Regarding SO₂ Emissions from the Portland Generating Station, 76 Fed. Reg. 69,052 (Nov. 7, 2011), on appeal to the United States Court of Appeals for the Third Circuit, Case No. 12-1022.

V. ENVIRONMENTAL MITIGATION PROJECTS

9. GenOn REMA shall contribute no more than \$1,000,000.00, in the manner described in this Section V (Environmental Mitigation Projects), for the purpose of benefitting the environment in New Jersey and Connecticut.

10. Plaintiffs may seek as part of GenOn REMA's contribution of \$1,000,000.00 under this Section V (Environmental Mitigation Projects) the Surrender of SO₂ Allowances allocated to Portland Units 1 or 2 in a dollar amount not to exceed \$500,000.00.

a. If Plaintiffs intend to seek the Surrender of SO₂ Allowances allocated to Portland Units 1 or 2 as allowed under this Paragraph 10, Plaintiffs shall provide notice to GenOn REMA within thirty (30) days of the Date of Entry of this Consent Decree of the dollar value amount of SO₂ Allowances requested to be Surrendered.

b. If Plaintiffs make a timely request for the Surrender of SO₂ Allowances allocated to Portland Units 1 or 2 under Paragraph 10.a., GenOn REMA shall Surrender any SO₂ Allowances allocated to Portland Units 1 or 2 that are not needed in order to meet federal or state air regulatory requirements for those units in an amount up to the dollar amount requested by Plaintiffs and in compliance with Paragraph 11 of this Consent Decree. GenOn REMA shall have no obligation under this Paragraph 10 to Surrender any SO₂ Allowances allocated to other generating units.

11. GenOn REMA will complete any Surrender of SO₂ Allowances under Paragraph 10 of this Consent Decree by no later than June 30, 2015.

a. For any SO₂ Allowances to be Surrendered pursuant to Paragraph 10 of this Consent Decree, GenOn REMA shall submit a SO₂ Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such SO₂ Allowances to the New Jersey Surrender Account, Account No. NJ0000000301. Such SO₂ Allowance transfer requests may be made in an electronic manner using the EPA's Clean Air Markets Division Business System or similar system provided by EPA. As part of submitting these transfer requests, GenOn REMA shall irrevocably authorize the transfer of these SO₂ Allowances and identify -- by name of account and any applicable serial or other identification numbers or station names -- the source and location of the SO₂ Allowances being Surrendered.

b. The dollar value amount of any SO₂ Allowances Surrendered will be the market price reported for Acid Rain Program SO₂ Allowances in Argus Air Daily as of the close of business on May 15, 2013.

12. If GenOn REMA Surrenders SO₂ Allowances with a value less than the dollar amount requested by Plaintiffs under Paragraph 10.a., GenOn REMA will make a monetary payment to Plaintiffs in the amount of any difference between the dollar amount of the SO₂ Allowances requested to be Surrendered and the value of any SO₂ Allowances actually Surrendered pursuant to Paragraphs 10 and 11. Any such payment shall be made by GenOn REMA in the manner specified in Paragraph 13 of this Consent Decree, and shall be used by Plaintiffs as directed by Paragraph 14 of this Consent Decree. In the event that a payment is required under this Paragraph 12, submission of the payment by GenOn REMA shall fully

satisfy and complete the obligations of GenOn REMA under Section V (Environmental Mitigation Projects) of this Consent Decree.

13. Within 90 days of the Date of Entry of this Consent Decree, GenOn REMA will make payment to Plaintiffs in the amount of \$1,000,000.00 less the dollar amount of any SO₂ Allowances requested to be surrendered by GenOn REMA pursuant to Section 10 above. Payment shall be made by certified check or wire transfer payable to “Treasurer, State of New Jersey” and shall be submitted to:

New Jersey Department of Environmental Protection
Director, Air & Hazardous Materials, Compliance and Enforcement
401 E. State Street
Mail Code 401-04B
P.O. Box 420
Trenton, NJ 08625-0420.

14. Plaintiffs shall use all monies received from GenOn REMA pursuant to Paragraphs 12 and 13 of this Consent Decree for the sole purpose of undertaking projects to benefit the environment in New Jersey and Connecticut. Allocation of mitigation funds among Plaintiffs shall be set forth in a side agreement between New Jersey and Connecticut. Plaintiffs shall maintain records of all project plans, activities and expenditures that are funded through this Section V (Environmental Mitigation Projects) and make such records available to the public upon reasonable request.

VI. RESOLUTION OF PLAINTIFFS’ CLAIMS

15. Entry of this Consent Decree shall resolve all civil liability of the Companies, and any parents, subsidiaries, affiliates or other related entities, that may have arisen from any physical or operational changes commenced at Portland Units 1 or 2 prior to the Date of Entry of this Consent Decree, including but not limited to those alleged physical or operational changes identified in Plaintiffs’ Complaints and Notice Letters, under the citizen suit provisions of the

Clean Air Act, 42 U.S.C. § 7604, and any or all of: (a) Parts C or D of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, 7501-7515; (b) Section 111 of the Act, 42 U.S.C. § 7411, and 40 C.F.R. § 60.14; (c) the federally-approved and enforceable Pennsylvania State Implementation Plan; or (d) Sections 502(a) and 504(a) of Title V of the Act, 42 U.S.C. §§ 7611(a) and 7611(c), but only to the extent that such Title V claims are based on the Companies' failure to obtain an operating permit that reflects applicable requirements imposed under Parts C or D of Subchapter I, or Section 111 of the Act.

VII. REPORTING

16. By no later than July 1, 2014, GenOn REMA shall provide Plaintiffs with notice of GenOn REMA's compliance with the requirement in Paragraph 5 to cease burning coal at Portland Units 1 and 2.

17. If coal combustion is required to continue for system reliability reasons as set forth in Paragraph 6 at Portland Unit 1 or Unit 2, after the June 1, 2014 date set forth in Paragraph 5, GenOn REMA shall provide a report to Plaintiffs within 30 days of the end of each calendar quarter (beginning with the third quarter of 2014) identifying the number of hours of operation and the megawatt hours generated for that quarter through the combustion of coal. Such report shall also describe, subject to any obligations of confidentiality, any communications with PJM, DOE or FERC during that quarter regarding the anticipated future need for further operation of Portland Units 1 or 2 for system reliability.

VIII. NOTICES

18. 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 Plaintiff the State of New Jersey:

Administrator, Air Compliance & Enforcement
New Jersey Department of Environmental Protection
401 East State Street
Mail code 401-04B, P.O. Box 420
Trenton, New Jersey 08625-0420

Deputy Attorney General, Section Chief
Environmental Enforcement
Division of Law
P.O. Box 093
25 Market Street
Trenton, New Jersey 08625-0093

As to Plaintiff the State of Connecticut:

Scott N. Koschwitz
Assistant Attorney General
Office of the Attorney General
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
scott.koschwitz@ct.gov

As to GenOn Power Generation, LLC, and GenOn REMA, LLC:

General Counsel
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540

As to Sithe Energies, Inc:

Sithe Energies, Inc.
601 Travis Street, Suite 1400
Houston, Texas 77002
Attention: General Counsel

19. All notifications, communications or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or overnight delivery service, or (b) certified or registered mail, return receipt requested, and in each instance also delivered electronically by e-mail. 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.

20. Any Party may, by written notice to the other Parties, change its designated notice recipient, notice address or means of transmittal to it (*e.g.*, to electronic format).

IX. RETENTION OF JURISDICTION

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

X. MODIFICATION

22. Modifications to this Consent Decree may be made only upon written agreement of the Parties which shall be filed with the Court.

XI. COSTS

23. Each Party to this action shall bear all of its own costs and attorneys' fees.

XII. COMPLETE AGREEMENT; SIGNATORIES AND SERVICE

24. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and supersedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise

constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

25. 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 such Party to this document.

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

XIII. REVIEW BY THE UNITED STATES

27. Pursuant to 42 U.S.C. § 7604(c)(3), this Consent Decree shall be lodged with the Court and simultaneously provided to the United States Department of Justice and the United States Environmental Protection Agency (collectively, the “United States”) for review and comment for a period not to exceed forty-five (45) days from receipt.

28. If the United States does not object or intervene within forty-five (45) days of receipt, the Parties shall submit a joint motion to the Court seeking entry of the Consent Decree.

XIV. TERMINATION

29. This Consent Decree is subject to termination upon completion of the obligations of GenOn REMA set forth in Sections IV and V of this Consent Decree.

30. Upon completion of the final obligation, GenOn REMA may provide a certification of the completion of all tasks to Plaintiffs and to this Court. If Plaintiffs do not object in writing with specific reasons within thirty (30) days of receiving the certification, the Consent Decree shall be deemed terminated.

XV. FINAL JUDGMENT

31. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment among the Plaintiffs and the Companies.

SO ORDERED, THIS _____ DAY OF _____, 2013.

HONORABLE JAMES KNOLL GARDNER
UNITED STATES DISTRICT COURT JUDGE

Signature Page for Consent Decree

State of New Jersey et al. v. RRI Energy Mid-Atlantic Holdings, LLC, et al.,

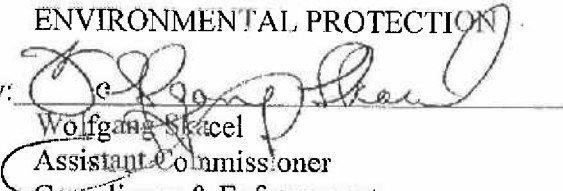
Civil Action No. 07-CV-05298 (JKG)

For Plaintiff the State of New Jersey

Dated: May 14, 2013

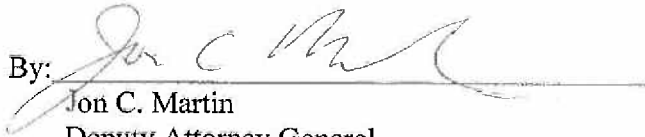
BOB MARTIN, COMMISSIONER
NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By:


Wolfgang Skacel
Assistant Commissioner
Compliance & Enforcement
401 E. State Street
Mail Code 401-04B, P.O. Box 420
Trenton, New Jersey 08625-0420

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By:


Jon C. Martin
Deputy Attorney General
P.O. Box 093
25 Market Street
Trenton, NJ 08625-0093

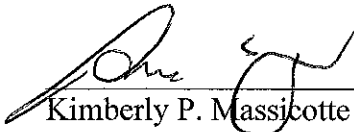
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State of New Jersey et al. v. RRI Energy Mid-Atlantic Holdings, LLC, et al.,

Civil Action No. 07-CV-05298 (JKG)

For Plaintiff the State of Connecticut

Dated: May 14, 2013



Kimberly P. Massicotte
Scott N. Koschwitz
Assistant Attorneys General
Office of the Attorney General
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120

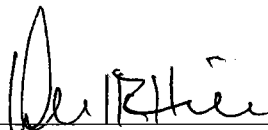
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State of New Jersey et al. v. RRI Energy Mid-Atlantic Holdings, LLC, et al.,

Civil Action No. 07-CV-05298 (JKG)

**For GenOn REMA, LLC (formerly known as RRI Energy Mid-Atlantic Holdings, LLC),
and GenOn Power Generation, LLC (formed by merger with RRI Energy Power
Generation, Inc.)**

Dated: MAY 14, 2013



David Hill
Executive Vice President and General Counsel
NRG ENERGY, INC.


Signature Page for Consent Decree

State of New Jersey et al. v. RRI Energy Mid-Atlantic Holdings, LLC, et al.,

Civil Action No. 07-CV-05298 (JKG)

For Defendant Sithe Energies, Inc.

Dated: May 14, 2013



Catherine B. Callaway
Executive Vice President and General Counsel
SITHE ENERGIES, INC.