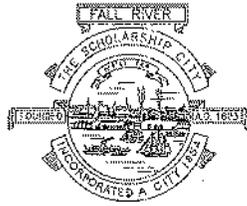


**City of Fall River**  
*Office of the Corporation Counsel*



**WILLIAM A. FLANAGAN**  
Mayor

**ELIZABETH SOUSA**  
Corporation Counsel

**GARY P. HOWAYECK**  
Assistant Corporation Counsel

**CHRISTY M. DIORIO**  
Assistant Corporation Counsel

April 22, 2014

Joseph Camara  
Council President  
City of Fall River  
One Government Center  
Fall River, MA 02722

Re: Dominion Energy Lawsuit Documents

Dear Council President Camara:

Enclosed please find copies of all court documents related to the Dominion Energy lawsuit.

After review of the enclosed documents any other documents are needed please do not hesitate to contact me with the request. Thank you for your attention to this matter.

Very truly yours,

  
Elizabeth Sousa

Enclosure

RECEIVED  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and )  
 )  
 THE CITY OF FALL RIVER, )  
 )  
 Plaintiff-Intervenor, )  
 )  
 v. )  
 )  
 DOMINION ENERGY, INC., DOMINION )  
 ENERGY BRAYTON POINT, LLC, AND )  
 KINCAID GENERATION, LLC. )  
 )  
 )  
 Defendants. )  
 )  
 )  
 )

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Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**PLAINTIFF-INTERVENOR CITY OF FALL RIVER MOTION TO INTERVENE**

Plaintiff-Intervenor City of Fall River ("Fall River") hereby moves this Court for leave to intervene in this action pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 24(a)(2), or in the alternative, Fed. R. Civ. P. 24(b). As addressed more fully in the accompanying Memorandum of in Support, Fall River has an interest in this action which would be significantly impaired if not first afforded the opportunity to adequately represent its interests. Furthermore, common questions of law and fact overlap between Fall River's interests, and those of the United States of America ("USA") in this action. Accordingly, Fall River respectfully requests the Court grant the instant motion for leave to intervene.

The United States of America (“United States”) commenced this action at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) against Defendants Dominion Energy, Dominion Energy Brayton Point, LLC and Kincaid Generation LLC (hereinafter collectively referred to as “Dominion”) for violations of the Clean Air Act (“CAA”). To avoid the costs of litigation, the United States and Dominion (collectively the “Original Parties”) executed a Consent Decree by which Dominion agreed to fund environmental remediation projects in the areas most affected by the alleged CAA violations. With respect to Dominion Energy Brayton Point, LLC (“Brayton Point”), located in Massachusetts, the Consent Decree requires Dominion spend \$1,600,000 for environmental mitigation projects, divided between the Town of Somerset (“Somerset”) and Fall River. (See Consent Decree App. A, Section XII, ¶ B.) The Consent Decree further requires that prior to spending the allocated funds on remediation projects, Dominion must first consult in good faith with both Somerset and Fall River to develop the remediation proposals. (See Consent Decree App. A, Section XII, ¶ A.) Finally, the Consent Decree requires Dominion to submit proposals for each project to the EPA for prior approval. Dominion is in violation of the Consent Decree because it failed to consult in good faith with Fall River to develop a remediation proposal. Dominion refuses to accept or submit Fall River’s shovel-ready remediation proposal to the EPA for consideration. Accordingly, Fall River seeks to intervene so that it may file a motion to modify the nonmaterial terms of the existing Consent Decree to provide for an extension of time under which Dominion may submit remediation proposals to the EPA for consideration.

As addressed more fully in the Memorandum in Support of this Motion and in Fall River’s proposed Complaint in Intervention, Fall River has the right to intervene pursuant to 42 U.S.C. §7604(b)(1)(B) under the CAA and its application is timely brought. Furthermore, Fall

River's interests will be severely prejudiced if not afforded the opportunity to intervene, and any such intervention will not unduly delay or prejudice the Original Parties' rights in this action. Alternatively, Fall River's claims against Dominion share a common question of law and fact with those asserted in the main action, and Fall River should be granted permission to intervene. As such, Fall River respectfully requests the Court grant the instant application for intervention as a matter of right, or in the alternative, grant it permission to intervene, along with such other and further relief as the Court may deem just and proper. A proposed Complaint in Intervention setting forth the grounds under which intervention is sought is attached to the instant Motion as Exhibit 1.

Fall River requested Defendants Dominion Energy, Inc., Dominion Energy Brayton Point, LLC and Kincaid Generation, LLC's (collectively referred to hereinafter as "Defendants") consent to so move, but did not obtain same.

Pursuant to Local Rule 7.1(A)(2), Fall River requests oral argument so as to address the complex nature of the facts and law asserted herein.

Dated: January 14, 2014

Respectfully submitted,

s/ Deanna R. Swits  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER MOTION TO INTERVENE** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER MOTION TO INTERVENE** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
Deanna R. Swits

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# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
and	)
	)
THE CITY OF FALL RIVER,	)
	)
Plaintiff-Intervenor,	)
	)
v.	)
	)
DOMINION ENERGY, INC., DOMINION	)
ENERGY BRAYTON POINT, LLC, AND	)
KINCAID GENERATION, LLC.	)
	)
	)
Defendants.	)
	)
	)
	)

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**[PROPOSED] COMPLAINT IN INTERVENTION**

Plaintiff-Intervenor City of Fall River alleges, upon information and belief:

1. Dominion Energy, Inc., Dominion Energy Brayton Point, LLC, Kincaid Generation, LLC, and Equipower Resources Corp. (together, "Defendants" or "Dominion") have, among other things, violated various emission standards and limitations designed to control emissions of sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxides (NO<sub>x</sub>), and Particulate Matter ("PM") as required by the Prevention of Significant Deterioration ("PSD") provisions of the Clean Air Act ("the Act" or "CAA"), 42 U.S.C. §§ 7470-92, Title V of the Act, 42 U.S.C. §§ 7661-7661(f), and the federally approved and enforceable State Implementation Plan ("SIP") adopted by the State of Massachusetts approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410.

2. Defendant Dominion Energy Brayton Point, LLC (“Dominion Brayton”) has violated opacity emissions limitations and monitoring requirements, acid rain monitoring requirements, and monitoring requirements for SO<sub>2</sub> and NO<sub>x</sub> and carbon dioxide at Brayton Point Power Station (“Brayton”) located at 1 Brayton Point Road, Somerset, Massachusetts approximately 2.5 kilometers across Mt. Hope Bay from the City of Fall River.

3. As a result of Defendants’ failure to comply with the terms of its Title V permit for its electricity generating unit at Brayton Point, large amounts of SO<sub>2</sub>, NO<sub>x</sub>, and carbon dioxide pollution each year have been, and are still being, released into the atmosphere and are causing direct harm to the environment and to the health and welfare of the inhabitants of the City of Fall River.

#### **A. JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to CAA Sections 113(b) and 167, 42 U.S.C. § 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 2201 and 2202. The relief requested by the Plaintiff and the Plaintiff-Intervenor is authorized by 42 U.S.C. §§ 7413 and 7604 and 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in this District pursuant to CAA Sections 304(c)(1), 42 U.S.C. §7413(b), and 28 U.S.C. §§ 1391(b)(2) because violations that are the subject of the Complaint occurred and are occurring within this District, and Defendants reside and conduct business within this District.

**B. NOTICES**

6. U.S. EPA issued a Notice and Finding of Violation (“NOV”) on April 16, 2009, with respect to alleged violations of the CAA, as required by Section 113(a)(1) of the Act, 42 U.S.C. §7413(a)(1).

7. The 30-day period between issuance of the NOV and commencement of a civil action, required under CAA Section 113, 42 U.S.C. § 7413, has elapsed.

8. Upon information and belief, Plaintiff United States provided notice of the commencement of this action to the appropriate State air pollution control agencies in Illinois, Indiana, and Massachusetts, as required by CAA Section 113(b), 42 U.S.C. § 7413(b).

**C. PARTIES**

9. Plaintiff is the United States of America.

10. Plaintiff-Intervenor is a municipality located within the Commonwealth of Massachusetts.

11. Defendant Dominion Energy, Inc., is a Virginia Corporation registered to do business in Massachusetts and Illinois, and is the parent corporation of, *inter alia*, Dominion Energy Brayton Point, LLC and Kincaid Generation, LLC. Dominion Energy Inc. and its subsidiary Kincaid Generation, LLC own and/or operate the Kincaid Power Station located in Kincaid, Illinois. Dominion Energy and its subsidiary Dominion Energy Brayton Point, LLC own and/or operate the Brayton Point Power Station located in Somerset, Massachusetts. Dominion Energy, Inc. also owns the State Line Power Station, located in Hammond, Indiana.

12. At all times pertinent to this civil action, Defendant Dominion Energy Inc. has been the owner and/or operator of the Brayton Point Power Station located in Somerset, Massachusetts across Mount Hope Bay from the City of Fall River. The Brayton Point Power Station consists of four steam electric generating units ("Boiler Units"). Boiler Units 1 and 2 are Combustion Engineering water-tube boilers fueled primarily by coal, but may fire natural gas at 25 percent as a secondary fuel and No. 6 or No. 2 fuel oil at 100 percent as a backup fuel. Boiler Units 1 and 2 were installed in 1963 and 1964, respectively. Boiler Unit 3 is a Babcock and Wilcox water-tube boiler, installed in 1968, that is fueled primarily with coal but may also fire natural gas at 10 percent as a secondary fuel and No. 6 or No. 2 fuel oil as a backup fuel. Unit 4 is a Riley Stoker water tube boiler, installed in 1974, that is fueled primarily by residual oil and natural gas. These Boiler Units have net design capacities of 255, 255, 633, and 446 Megawatts (MW), respectively.

13. Plaintiff-Intervenor and Defendants as identified above, are "persons" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7401(b)(1).

14. Plaintiff-Intervenor has standing because the acts and omissions alleged herein exposed and continue to expose the people of the City of Fall River who live, work, and recreate in the vicinity of the plant to harmful pollution that threatens their health and welfare, interferes with their use and enjoyment of property and the surrounding areas, injures their economic interests, denies them protection of their health and well-being protected by the Act and the Title V permits issued under the Act and the Massachusetts SIP, and negatively impacts their aesthetic and recreational interests. The relief requested herein will redress these injuries.

#### **D. STATUTORY BACKGROUND**

##### **1. The Clean Air Act**

15. The purpose of the Act is the protection and enhancement of the Nation's air resources to promote the public health and welfare and the productive capacity of its population. CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1).

16. The Act requires EPA to establish national ambient air quality standards ("NAAQS") that "allow[] an adequate margin of safety, requisite to protect the public health," and that are "requisite to protect the public welfare." CAA § 109(b), 42 U.S.C. § 7409(b). The Act mandates the use of certain emission control technologies to limit emissions of pollutants that EPA has determined "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." CAA § 108(a)(1)(A), 42 U.S.C. § 7408(a)(1)(A).

17. Fine particulate matter—particles with a size less than or equal to 2.5 micrometers in diameter, "PM2.5"—is one of the air pollutants for which the EPA has established a NAAQS. 40 C.F.R. § 50.7; 78 Fed. Reg. 3,086 (2013).

18. PM2.5 is a mixture of small particles, including organic chemicals, metals, and ash, which can cause severe health and environmental problems. Once inhaled, PM2.5 can affect the heart and lungs and cause serious health effects. See 78 Fed. Reg. 3,103–3,104 (2013); 52 Fed. Reg. 24,663 (1987).

19. Opacity, also known as visible emissions, is not a criteria pollutant; however, visible emissions standards were initially established as a surrogate for assuring compliance with particulate matter standards at a time when continuous emissions monitors for PM were not

considered technologically feasible. 76 Fed. Reg. 18,870, 18,872 (2011) (“Although opacity is not a criteria pollutant, opacity standards continue to be used as an indicator of the effectiveness of emission controls for PM emissions, or to assist with implementation and enforcement of PM emission standards for purposes of attaining PM NAAQS”).

20. Under the CAA, each state bears primary responsibility for assuring air quality within its geographic area by submitting an implementation plan for the State which specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in the State. CAA §§ 107, 110(a); 42 U.S.C. §§ 7407, 7410(a). The state implementation plan (“SIP”) must be submitted to the EPA Administrator for approval. CAA § 110(a), 42 U.S.C. § 7410(a).

21. The CAA, in relevant part, mandates that the SIP shall include enforceable emissions limitations and other control measures, as well as periodic reports on emissions, as necessary to meet the requirements of the Act. CAA § 110(a), 42 U.S.C. § 7410(a)(2).

22. A SIP must satisfy the mandates of the CAA before it can receive EPA approval. 42 U.S.C. §§ 7410(a) and (k). See also 40 C.F.R. § 51.110, Appendix V.

## **2. Massachusetts Implementation of the Clean Air Act**

### ***i. The Massachusetts SIP***

23. Massachusetts submitted its SIP to EPA in January 1972. 40 C.F.R. § 52.1120(b). The MA SIP is codified at 40 C.F.R. Part 52, Subpart W. 40 C.F.R. § 52.1119 et seq.

24. Since then, Massachusetts, from time to time, has submitted state regulations to the EPA for approval as revisions to the MA SIP.

*ii. MA SIP Visible Emissions Provisions*

25. The Massachusetts SIP provision that establishes visible emissions limitations for stationary sources such as BRAYTON is set forth at 310 Mass. Code Regs. 7.06. The EPA has approved and incorporated 310 Mass. Code Regs. 7.06(1)(a)-(b) of Massachusetts' visible emissions regulations into the Massachusetts SIP. See 40 C.F.R. § 52.1120(c)(4); 37 Fed. Reg. 23,085 (1972).

26. Under 310 Mass. Code Regs. 7.06, opacity shall not "exceed twenty per cent (20%) opacity for a period or aggregate period of time in excess of two minutes during any one hour provided that, at no time during the said two minutes shall opacity exceed 40%." 310 Mass. Code Regs. 7.06(1)(b).

27. The Massachusetts SIP also prohibits the emission of smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time shall the shade, density or appearance be equal to or greater than No. 2 of the Ringelmann chart. 310 Mass. Code Regs. 7.06(1)(a).

28. As standards or limitations under the Massachusetts SIP, the visible emission standards cited in Paragraphs 25-27 above constitute "emission standards or limitations" under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a).

29. "Emissions standards" is defined in section 302(k) of the CAA as "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design,

equipment, work practice or operational standard promulgated under this chapter.” CAA § 302(k), 42 U.S.C. § 7602(k).

30. Continuous compliance is necessary because of the severe health impacts that may occur as a result of even short-term exposure to air pollution.

### *iii. MA SIP Monitoring Requirements*

31. The Massachusetts SIP provides that any person who owns or operates an emission source as described in 40 C.F.R. Part 51, Appendix P, shall continuously monitor emissions of opacity, nitrogen oxides (“NO<sub>x</sub>”), sulfur dioxide (“SO<sub>2</sub>”), and carbon dioxide (“CO<sub>2</sub>”). 310 Mass. Code Regs. 7.14(2). Appendix P applies to fossil fuel-fired steam generators, including Brayton. 40 C.F.R. Part 51, Appendix P.

32. The Massachusetts SIP also requires facilities with the potential to emit 50 tons per year or more of NO<sub>x</sub> to continuously monitor emissions of NO<sub>x</sub> and carbon monoxide (“CO”). 310 Mass. Code Regs. 7.19(13). Brayton is a facility with the potential to emit 50 tons per year or more of NO<sub>x</sub>.

33. As standards or limitations under the Massachusetts SIP, the monitoring requirements cited in Paragraphs 31–32 above constitute “emission standards or limitations” under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a).

### **3. The Massachusetts Title V Permit Program**

34. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources.” The purpose of Title V is to ensure that all “applicable requirements” for compliance with the Act, including opacity and SIP requirements, are collected in one place.

35. A "major source" for purposes of Title V is defined, among other things, as a source with a potential to emit greater than 100 tons per year of any criteria pollutant. 42 U.S.C. § 7661(2).

36. Massachusetts' Title V operating permit program was granted interim approval by EPA on May 15, 1996 (61 Fed. Reg. 24,460) and final approval on November 27, 2001. 66 Fed. Reg. 49,541 (2001). Massachusetts' Title V permit program is codified at 310 CMR 7.00: Appendix C.

37. Section 502(a) of the Act, 42 U.S.C. 7661a(a), and the Massachusetts Title V operating permit program have at all relevant times made it unlawful for any person to operate a major source except in compliance with a permit issued under Title V.

38. Section 503(c) of the Act, 42 U.S.C. § 7661b(c), the Title V regulations at 40 C.F.R. §§ 70.5(a), (c), and (d), and the Massachusetts Title V program, have at all relevant times required the owner or operator of a source to submit an application for a Title V permit that is timely and complete and which, among other things, identifies all applicable requirements (including any opacity monitoring requirements), certifies compliance with all applicable requirements, and contains a compliance plan for all applicable requirements for which the source is not in compliance.

39. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), implementing the regulations of the Act, 40 C.F.R. § 70.2, and the Massachusetts Title V operating permit program regulations have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance

with applicable requirements of the Clean Air Act and the requirements of the applicable SIP, including any applicable opacity requirements.

40. At all times relevant to this Complaint, Brayton operated under a federal enforceable Title V permit. From February 22, 2008 to July 25, 2011, Brayton operated under Title V Operating Permit No. 4V95056 (attached hereto as Exhibit A); from July 26, 2011, to the present, Brayton operated under Title V Operating Permit No. 4V04019 (attached hereto as Exhibit B) (collectively, "Title V Permits"). The Title V Permits incorporated applicable portions of the SIP as well as permit conditions from the earlier state approvals.

41. The Title V Permits limit all four Brayton Units to opacity emissions no greater than 20%, except that the units may emit at an opacity between 20% and 40% for equal to or less than 2 minutes during any one hour; the units are not to exceed 40% at any time. *See* Exhibit A and 5-7; Exhibit B at 9, 11, 12.

42. The Title V permit in effect from July 26, 2011 to the present also requires that opacity at Unit 3 shall not exceed 10% after installation of the dry scrubber and fabric filter, for a period or aggregate period in excess of 2 minutes during any one hour provided that at no time during the 2 minutes shall opacity exceed 20%. *See* Exhibit B at 11.

43. The Title V permits prohibit emissions of smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time shall the shade, density or appearance be equal to or greater than No. 2 of the Ringelmann chart at all four BPS Units. *See* Exhibit A at 5-7; Exhibit B at 9, 11, 12.

44. The Title V Permits incorporate the continuous monitoring, reporting and recordkeeping requirements established in 310 Mass. Code Regs. 7.14. *See* Exhibit A at 11–13; Exhibit B at 19–20.

45. The Title V Permits also require BPS to monitor flue gas volumetric flow with a Continuous Emission Monitoring System (“CEMS”) pursuant to the federal Acid Rain Program, 40 C.F.R. Part 72, and the Massachusetts Acid Rain Law, 310 Mass. Code Regs. 7.22. *See* Exhibit A at 11; Exhibit B at 19.

46. As standards or limitations established under a permit in effect pursuant to CAA Title V and/or the Massachusetts SIP, the visible emissions limitations and monitoring requirements contained in the Title V Permits (referenced at Paragraphs 41-45 above) constitute “emission standards or limitations” under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a)(1).

#### **E. ENFORCEMENT PROVISIONS**

47. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. §§ 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with CAA Section 113(b) whenever on the basis of any information available, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of, among other things: (1) Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or (3) the Massachusetts SIP or any permit issued thereunder.

48. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes EPA to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring before January 31, 1997; \$27,500 per day for

each violation occurring after January 31, 1997; \$32,500 per day for each violation occurring after March 15, 2004; and \$37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated or is in violation of, among other things, the requirements or prohibitions described in the preceding paragraph.

49. 40 C.F.R. § 52.23 provides, among other things, that any failure by a person to comply with any provisions of 40 C.F.R, Part 52, or with any approved regulatory provision of a SIP, shall render such person in violation of the applicable SIP, and subject to enforcement action pursuant to CAA Section 113, 42 U.S.C. § 7413.

50. Fed. R. Civ. P. 24 provides that, on timely motion, the Court must permit anyone to intervene in an action if such intervention is authorized by a federal statute; or “has an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24.

51. Section 304(b)(1)(B) of the Act, 42 U.S.C. § 7604(b) provides that: “No action may be commenced — (1) under subsection A of this section—[ ....] (B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation or order, *but in any such action in a court of the United States any person may intervene as a matter of right.*” 42 U.S.C. § 7604(b)(1)(B) (emphasis added). “Thus, Section 304(b)(1)(B) curtails the right to initiate a citizen suit under Section 304(a)(1), but permits intervention as a matter of right. *United States*

*v. Duke Energy Corp.*, 171 F. Supp. 2d 560, 563 (MD NC 2001) (granting environmental group's petition to intervene in federal enforcement action against utility who allegedly violated CAA permits); see also, *United States v. PG&E*, 776 F. Supp. 2d 1007, 1017 (ND Cal. 2011) (holding that Section 304 authorizes a party to intervene in a federal or state enforcement action for violations of the CAA). Accordingly, the Plaintiff-Intervenor City of Fall River is authorized under Fed. R. Civ. P. 24 and Section 304(b) of the Act to intervene in the instant action brought by U.S. EPA.

### **FIRST CLAIM FOR RELIEF**

(Opacity Violations of Massachusetts SIP and Title V Permit)

52. Paragraphs 1 – 51 are realleged and incorporated here by reference.

53. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions limitations contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 25-27 and 41-45 above.

54. Since at least June 9, 2008, Defendant has repeatedly emitted air pollution with opacity of greater than 20% for an aggregate of 2 minutes and emitted air pollution with opacity of greater than 40%.

55. The emissions described in the preceding paragraph exceed the visible emissions standards in the Massachusetts SIP and the Title V Permits.

56. These violations are well documented in Brayton's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation

reports, which the Defendant is required to provide to MassDEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

57. These violations of visible emissions standards in the Massachusetts SIP and the Title V permits constitute violations of “emissions standards and limitations” under the CAA that are redressable by enforcement action.

### **SECOND CLAIM FOR RELIEF**

(Smoke Emission Violations of Massachusetts SIP and Title V Permit)

58. Paragraphs 1 – 57 are realleged and incorporated here by reference.

59. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions limitations contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 27 and 45.

60. Since at least October 23, 2008, Defendant has repeatedly emitted smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for periods in excess of six minutes during an hour and smoke with a shade, density or appearance equal to or greater than No. 2 of the Ringelmann chart.

61. These violations are well documented in BPS’s quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 Mass. Code Regs. 7.14, and 40 C.F.R. Part 51, Appendix P.

62. These violations of visible emissions standards in the Massachusetts SIP and the Title V Permits constitute violations of “emissions standards and limitations” under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

### **THIRD CLAIM FOR RELIEF**

(Violations of Visible Emissions Monitoring Requirements)

63. Paragraphs 1 – 62 are realleged and incorporated here by reference.

64. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions monitoring requirements contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 31 and 46.

65. Since at least April 10, 2008, Defendant has repeatedly failed to monitor visible emissions for each unit.

66. These violations are well documented in BPS’s quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

67. These violations of the visible emissions monitoring requirements of the Massachusetts SIP and the Title V permits constitute violations of “emissions standards and limitations” under the CAA that are redressable by enforcement action.

### **FOURTH CLAIM FOR RELIEF**

(Violations of Monitoring Requirements for NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub>)

68. The allegations of paragraphs 1-67 are realleged incorporated here by reference.

69. Upon information and belief, Defendant repeatedly has violated and is in violation of the monitoring requirements for NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 31-32 and 47.

70. Since at least January 3, 2011, Defendant has repeatedly failed to monitor NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> emissions.

71. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

72. These violations of the NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> Monitoring Requirements of the Massachusetts SIP and the Title V permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

#### **FIFTH CLAIM FOR RELIEF**

(Violations of Acid Rain Monitoring Requirements)

73. The allegations of paragraph 1-72 are realleged and incorporated here by reference.

74. Upon information and belief, Defendant repeatedly has violated and is in violation of the Acid Rain Monitoring Requirements of the Title V Permits referenced in Paragraph 47.

75. Since at least January 3, 2011, Defendant has repeatedly failed to monitor the flue gas volumetric flow for each unit, as required by the Acid Rain Monitoring Requirements of the Title V permits.

76. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

77. These violations of the Acid Rain Monitoring Requirements of the Title V permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

#### **PRAYER FOR RELIEF**

WHEREFORE, based upon all the allegations set forth above, Plaintiff-Intervenor City of Fall River requests that this Court:

1. Declare that Defendant has violated and is continuing to violate the Clean Air Act by exceeding the visible emissions limitations contained in the Massachusetts SIP and the Title V Permits for Units 1-4;

2. Declare that Defendant has violated and continues to be in violation of monitoring requirements set forth in the Massachusetts SIP and the Title V Permits;

3. Enjoin Defendant from operating BPS, except in accordance with a compliance schedule that will prevent BPS from causing further violations of these standards and requirements;

4. Order Defendant to take all necessary steps to comply with emission standards, including, but not limited to, installing adequate pollution controls, conducting opacity audits, and developing protocols and processes to eliminate opacity violations;
5. Order Defendant to install continuous emissions monitors to measure filterable PM<sub>2.5</sub>;
6. Order Defendant to take all necessary steps to comply with monitoring requirements;
7. Order Defendant to pay civil penalties of up to \$32,500 per violation per day for emissions violations occurring on or after March 15, 2004 and up to \$37,500 per violation per day for violations occurring on or after January 12, 2009, consistent with the CAA (42 U.S.C. §§ 7413(b), 7413(e), and 7604(a); 40 C.F.R. §§ 19.2 and 19.4 (2008));
8. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to the public health and the environment caused by the violations of the CAA alleged above;
9. Award Plaintiff-Intervenor its costs of this action; and
10. Grant such other relief as the Court deems just and proper.

Dated: January \_\_\_\_, 2014

Respectfully submitted,

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# **EXHIBIT A**



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SOUTHEAST REGIONAL OFFICE  
20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

MITT ROMNEY  
Governor

ELLEN ROY HERZFELDER  
Secretary

KERRY HEALEY  
Lieutenant Governor

ROBERT W. GOLLEDGE, Jr.  
Commissioner

**FINAL AIR QUALITY OPERATING PERMIT  
MINOR MODIFICATION**

Issued by the Massachusetts Department of Environmental Protection ("The Department") pursuant to its authority under M.G.L. c. 111, §142B and §142D, 310 CMR 7.00 et seq., and in accordance with the provisions of 310 CMR 7.00: Appendix C.

**ISSUED TO ["the Permittee"]:**

USGen New England, Inc.  
Brayton Point Station  
Brayton Point Road  
Somerset, Massachusetts 02726

**INFORMATION RELIED UPON:**

Application No. 4V95056  
Transmittal No. 108001

**FACILITY LOCATION:**

Brayton Point Station  
Brayton Point Road  
Somerset, Massachusetts 02726

**FACILITY IDENTIFYING NUMBERS:**

SSEIS ID: 1200061  
FMF FAC NO. 311183  
FMF RO NO. 311263

**NATURE OF BUSINESS:**

Electric Power Generation

**STANDARD INDUSTRIAL CODE (SIC):**

4911

**RESPONSIBLE OFFICIAL:**

Name: Mark V. Carney  
Title: Vice President  
of Environmental Affairs

**FACILITY CONTACT PERSON:**

Name: Barry A. Ketschke  
Title: General Manager  
Phone: (508) 646-5236

This operating permit shall expire on 01/06/05.

For the Department of Environmental Protection, Bureau of Waste Prevention

**Minor Modification No. 4M04006**  
Regional Director

**09/09/04**  
Date

USGEN New England, Inc.  
 Brayton Point Station  
 Transmittal No. 108001  
 FINAL Operating Permit No. 4V95056  
 Minor Modification No. 4M040006  
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## SPECIAL CONDITIONS FOR OPERATING PERMIT

### 1. PERMITTED ACTIVITIES

In accordance with the provisions of 310 CMR 7.00:Appendix C and applicable rules and regulations, the Permittee is authorized to operate air emission units as shown in Table 1 and exempt, and insignificant activities as described in 310 CMR 7.00:Appendix C(5)(h) and (i). The units described in Table 1 are subject to the terms and conditions shown in Sections 4, 5, and 6 and to other terms and conditions as specified in this permit. Emissions from the exempt activities shall be included in the total facility emissions for the emission-based portion of the fee calculation described in 310 CMR 4.00 and this permit.

### 2. EMISSION UNIT IDENTIFICATION

The following emission units (Table 1) are subject to and regulated by this operating permit:

Table 1			
Emission Unit (EU#)	Description of Emission Unit	EU Design Capacity	Pollution Control Device (PCD)
EU 1	Unit 1: Combustion Engineering MFR # 19407 Type CC, Water Tube Boiler	2,250 MMBtu per hour	Electrostatic Precipitator With flue gas conditioning PCD-1
EU 2	Unit 2: Combustion Engineering MFR # 19617 Type CC, Water Tube Boiler	2,250 MMBtu per hour	Electrostatic Precipitator With flue gas conditioning PCD-2
EU 3	Unit 3: Babcock and Wilcox Model # UP-52 Water Tube Boiler	5,655 MMBtu per hour	Electrostatic Precipitator With flue gas conditioning PCD-3
EU 4	Unit 4: Riley Stoker Model # 1SR Water Tube Boiler	4,800 MMBtu per hour	Electrostatic Precipitator PCD-4

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<b>Table 1</b>			
<b>Emission Unit (EU#)</b>	<b>Description of Emission Unit</b>	<b>EU Design Capacity</b>	<b>Pollution Control Device (PCD)</b>
EU 5	Diesel Generator Unit No. 1: General Motors Model # 20-645-E44	28 MMBtu per hour	None
EU 6	Diesel Generator Unit No. 2: General Motors Model # 20-645-E44	28 MMBtu per hour	None
EU 7	Diesel Generator Unit No. 3: General Motors Model # 20-645-E44	28 MMBtu per hour	None
EU 8	Diesel Generator Unit No. 4: General Motors Model # 20-645-E44	28 MMBtu per hour	None
EU 9	CS 1: Coal Flyash Carbon Separation System	30 tons per hour	Fabric Filter PCD-5
EU 10	UT 1: Underground Gasoline Storage Tank	5000 gallons	Stage II Vapor Recovery PDC-6
EU 11	CP: 1 Coal Storage Pile	680,000 tons	Water Sprays, Dust Suppressant, Surface Sealant PCD-7

**Table 1 Key:**

- EU# = Emission Unit Number
- MMBtu = Million British Thermal Units
- PCD# = Pollution Control Device Number

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**3. IDENTIFICATION OF EXEMPT ACTIVITIES**

The following are considered exempt activities in accordance with the criteria contained in 310 CMR 7.00; Appendix C(5)(h):

Table 2	
Description of Current Exempt Activities	Reason
The list of current exempt activities is contained in the Operating Permit application and shall be updated by the Permittee to reflect changes at the facility over the permit term. An up-to-date copy of exempt activities list shall be kept on-site at the facility and a copy shall be submitted to the Department's Regional Office.	310 CMR 7.00:Appendix C(5)(h)

**4. APPLICABLE REQUIREMENTS**

**A. EMISSION LIMITS AND RESTRICTIONS**

The permittee is subject to the emission limits/restrictions as contained in Table 3 below:

Table 3				
EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2	Coal	NO <sub>x</sub>	≤ 0.38 lb/MMBtu (2)	4B93086 310 CMR 7.19(4)(a)
	No. 6 Fuel Oil		≤ 0.25 lb/MMBtu (2)	
	No. 2 Fuel Oil		≤ 0.25 lb/MMBtu (2)	
	Natural Gas		≤ 0.20 lb/MMBtu (2)	
	Co Firing Fuels		≤ PS <sub>NOx</sub> (1)(2)	310 CMR 7.19(15)
	All Fuels	CO	≤ 100 ppm by volume, dry basis at 3% O <sub>2</sub> (2)	4B93086
		PM	≤ 0.08 lb/MMBtu	4B88148
		Opacity	≤ 20%, except 20 to < 40% for ≤ 2 minutes during any one hour	310 CMR 7.06(1)(b)

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**Table 3**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2	All Fuels	Smoke	≤ No. 1 of the Chart (7), except No. 1 to No. 2 of the Chart for ≤ 6 minutes during any one hour	310 CMR 7.06(1)(a)
	Coal	S in Fuel	≤ 1.23 lb/MMBtu per calendar day ≤ 1.21 lb/MMBtu per 30 day rolling period	4B91064
	No. 6 Fuel Oil		≤ 1.21 lb/MMBtu	4B88148 and 310 CMR 7.05(1)(a)1.
	No. 2 Fuel Oil		≤ 0.17 lb/MMBtu	310 CMR 7.05(1)(a)2.
	Coal	SO <sub>2</sub>	≤ 2.46 lb/MMBtu per calendar day ≤ 2.42 lb/MMBtu per 30 day rolling period	4B91064
Ash in Fuel		May exceed 9% by weight, dry basis	4B88148	
EU 3	Coal	NO <sub>x</sub>	≤ 0.45 lb/MMBtu (2)	4B93086 310 CMR 7.19(4)(a)
	No. 6 Fuel Oil		≤ 0.28 lb/MMBtu (2)	
	No. 2 Fuel Oil		≤ 0.28 lb/MMBtu (2)	
	Natural Gas		≤ 0.28 lb/MMBtu (2)	
	Co Firing Fuels		≤ PS <sub>NOx</sub> (1)(2)	310 CMR 7.19(15)
	All Fuels	CO	≤ 200 ppm by volume, dry basis at 3% O <sub>2</sub> (2)	4B95073
		PM	≤ 0.08 lb/MMBtu	4B88148
		Opacity	≤ 20%, except 20 to < 40% for ≤ 2 minutes during any one hour	310 CMR 7.06(1)(b)
		Smoke	≤ No. 1 of the Chart (7), except No. 1 to No. 2 of the Chart for ≤ 6 minutes during any one hour	310 CMR 7.06(1)(a)
	Coal	S in Fuel	≤ 1.23 lb/MMBtu per calendar day ≤ 1.21 lb/MMBtu per 30 day rolling period	4B91064
No. 6 Fuel Oil			≤ 1.21 lb/MMBtu	4B88148 and 310 CMR 7.05(1)(a)1.

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**Table 3**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 3	No. 2 Fuel Oil	S in Fuel	≤ 0.17 lb/MMBtu	310 CMR 7.05(1)(a)2.
	Coal	SO <sub>2</sub>	≤ 2.46 lb/MMBtu per calendar day ≤ 2.42 lb/MMBtu per 30 day rolling period	4B91064
		Ash in Fuel	May exceed 9% by weight, dry basis	4B88148
EU 4	No. 6 Fuel Oil	NO <sub>x</sub>	≤ 0.27 lb/MMBtu (2)	4B94040 and 310 CMR 7.19(4)(a)
	No. 6 Fuel Oil and Natural Gas		≤ 0.27 lb/MMBtu (2)	
	Natural Gas		≤ 0.27 lb/MMBtu (2)	
	All Fuels	CO	≤ 100 ppm by volume, dry basis at 3% O <sub>2</sub> (2)	4B94040
		PM	≤ 0.03 lb/MMBtu	4B90187
		Opacity	≤ 20%, except 20 to < 40% for ≤ 2 minutes during any one hour	310 CMR 7.06(1)(b)
		Smoke	≤ No. 1 of the Chart (7), except No. 1 to No. 2 of the Chart for ≤ 6 minutes during any one hour	310 CMR 7.06(1)(a)
	Start Up No. 6 Fuel Oil (3)	S in Fuel	≤ 0.55 lb/MMBtu	4B90187
	No. 6 Fuel Oil		≤ 1.21 lb/MMBtu	4B90187 and 310 CMR 7.05(1)(a)
			N <sub>2</sub> in Fuel	≤ 0.4% by weight
EU 1	All Fuels	NO <sub>x</sub>	See Special Terms and Conditions Section 5.7	310 CMR 7.27 and 310 CMR 7.28
EU 2			See Special Terms and Conditions Section 5.9	40 CFR Part 76
EU 3 EU 4		SO <sub>2</sub>	See Special Terms and Conditions Section 5.8	40 CFR Part 72

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**Table 3**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2 EU 3 EU 4	All Fuels	SO <sub>2</sub>	See Special Terms and Conditions Section 5.9	40 CFR Part 76
System Wide	All Fuels	SO <sub>2</sub>	≤ 1.21 lb/MMBtu (4)	4B90147 and 310 CMR 7.22
EU 5 EU 6 EU 7 EU 8	No. 2 Fuel Oil	NO <sub>x</sub>	≤ 2.831 lb/MMBtu (5)	4B94073 and 310 CMR 7.19(8)(d)
		S in Fuel	≤ 0.17 lb/MMBtu	310 CMR 7.05(1)(a)2.
	All Fuels	PM	≤ 0.12 lb/MMBtu	310 CMR 7.02(8)(d) Table 3
		Opacity	≤ 20%, except 20 to < 40% for ≤ 2 minutes during any one hour	310 CMR 7.06(1)(b)
		Smoke	≤ No. 1 of the Chart (7), except No. 1 to No. 2 of the Chart for ≤ 6 minutes during any one hour	310 CMR 7.06(1)(a)
EU 9	Coal Fly ash	PM	0.01 gr/dscf and 0.48 lb/hr Minimum PM Control Efficiency = 99.95%	4P97017
EU 10	Gasoline	VOC	Submerged Fill	310 CMR 7.24(3)(a)
			Stage I Vapor Recovery	310 CMR 7.24(3)(b)
			Stage II Vapor Recovery	310 CMR 7.24(6)(a)2.
EU 11	Coal	PM	Standard Operating and Maintenance Procedures Coal Handling and Measurement Systems	4B91064

**Table 3 Notes:****1. For EU1, EU2:**

$$PS_{NOx} = \frac{0.38 \times (HI_1) + 0.25 \times (HI_2) + 0.25 \times (HI_3) + 0.20 \times (HI_4)}{(HI_1 + HI_2 + HI_3 + HI_4)}$$

$PS_{NOx}$	=	prorated $NO_x$ emission limit when burning different fuels, lb/MMBtu
$HI_1$	=	heat input for Coal, MMBtu
$HI_2$	=	heat input for No. 6 Fuel Oil, MMBtu
$HI_3$	=	heat input for No. 2 Fuel Oil, MMBtu
$HI_4$	=	heat input for Natural Gas, MMBtu

**For EU3:**

$$PS_{NOx} = \frac{0.45 \times (HI_1) + 0.28 \times (HI_2) + 0.28 \times (HI_3) + 0.28 \times (HI_4)}{(HI_1 + HI_2 + HI_3 + HI_4)}$$

$PS_{NOx}$	=	prorated $NO_x$ emission limit when burning different fuels, lb/MMBtu
$HI_1$	=	heat input for Coal, MMBtu
$HI_2$	=	heat input for No. 6 Fuel Oil, MMBtu
$HI_3$	=	heat input for No. 2 Fuel Oil, MMBtu
$HI_4$	=	heat input for Natural Gas, MMBtu

The  $PS_{NOx}$  limit applies only when the combined annual heat input of all cofired fuels (other than primary fuel) exceeds 5% of the total annual heat input of an EU, based on a twelve month rolling average.

2.  $NO_x$  and CO emission limits are based on a one calendar day averaging time.
3. In accordance with Approval No. 4B90187, EU4 shall start-up utilizing No. 6 Fuel Oil having a maximum sulfur content of 0.55 lb/MMBtu heat release potential.
4. In accordance with 310 CMR 7.22(3)(b) and Approval No. 4B90147, compliance is based on averaging the emissions from the Permittee's Brayton Point Station (EU1, EU2, EU3, and EU4) and Salem Harbor Station (EU1, EU2, EU3, and EU4) facilities and qualified Demand Side Management (DSM) credits utilizing a one (1) calendar year averaging time.
5.  $NO_x$  emissions with 4 degree ignition timing retard technology will be a maximum of 10 gm  $NO_x$ /Brake Hp-hr. EU5, EU6, EU7, and EU8 shall comply with all requirements contained in 310 CMR 7.19(8)(c) or 7.19(8)(d) based on hours of operation per twelve (12) month rolling average. Compliance with Emission Limits/Standards shall be based on a one hour averaging time.

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6. In accordance with Approval No. 4B88066, EU1, EU2, EU3, and EU4 are approved to burn Used Oil Fuel provided that:
- a. the Permittee adheres to all emission limits for the EU as identified in Table 3; and,
  - b. the Permittee is in possession of the appropriate and active Recycling Permit(s) obtained from the Department (**State Only**); and,
  - c. the Permittee abides by all conditions stated in such Recycling Permit(s), plan approvals, Operating Permit, and regulations concerning the handling, recycling and burning of Used Oil Fuel (**State Only**).
7. Chart means the Ringelmann Scale for grading the density of smoke, as published by the United States Bureau of Mines and as referred to in the Bureau of Mines Information Circular No. 8333, or any smoke inspection guide approved by the Department.

**Table 3 Key:**

CO	= Carbon Monoxide
EU#	= Emission Unit Number
gr/dscf	= grains per dry standard cubic foot
lb/MMBtu	= pounds per million British Thermal Units
lb/hr	= pounds per hour
N <sub>2</sub>	= Nitrogen
NO <sub>x</sub>	= Nitrogen Oxides
O <sub>2</sub>	= Oxygen
PM	= Particulate Matter
ppm	= parts per million
S	= Sulfur
SO <sub>2</sub>	= Sulfur Dioxide
VOC	= Volatile Organic Compounds
<	= less than
≤	= less than or equal to
%	= percent

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**B. COMPLIANCE DEMONSTRATION**

The permittee is subject to the monitoring/testing, record keeping, and reporting requirements as contained in Tables 4, 5, and 6 below and 310 CMR 7.00 Appendix C (9) and (10) and applicable requirements contained in Table 3:

<b>Table 4</b>	
<b>EU #</b>	<b>MONITORING/TESTING REQUIREMENTS</b>
EU 1	In accordance with 310 CMR 7.14(2) and 310 CMR 7.19(13)(a)1., compliance with NO <sub>x</sub> emission limits/standards shall be demonstrated with Continuous Emissions Monitoring Systems (CEMS). The NO <sub>x</sub> CEMS shall meet the requirements specified in 310 CMR 7.19(13)(b). In accordance with the Acid Rain Program 40 CFR Part 72, monitor NO <sub>x</sub> emissions pursuant to 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control in order to determine compliance with 310 CMR 7.19, except that the missing data routine and bias adjustment factors contained in 40 CFR Part 75 need not be applied. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
EU 2	In accordance with 310 CMR 7.27(11), monitor NO <sub>x</sub> emissions with CEMS. The NO <sub>x</sub> CEMS shall meet the requirements of 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control.
EU 3	In accordance with 310 CMR 7.19(13)(a)1., compliance with CO emission limits/standards shall be demonstrated with Continuous Emissions Monitoring Systems (CEMS) as specified in 310 CMR 7.19(13)(b). CO emissions shall be monitored as specified in 310 CMR 7.19(13)(b)1., through 7.19(13)(b)12. Monitor CO emissions with CEMS certified in accordance with the performance specifications contained in 40 CFR Part 60, Appendix B and use the procedures contained in 40 CFR Part 60, Appendix F to comply, provide quality assurance and quality control.
EU 4	In accordance with 310 CMR 7.14(2) and the Acid Rain Program 40 CFR Part 72, monitor SO <sub>2</sub> emissions with CEMS meeting the requirements of 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
	In accordance with the Acid Rain Program 40 CFR Part 72 and 310 CMR 7.27(11)(b), monitor flue gas volumetric flow with a CEMS flow monitoring system pursuant to 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control.

**Table 4**

EU #	MONITORING/TESTING REQUIREMENTS
	In accordance with 4B01049 and 310 CMR 7.28(11)(a)(1), any person who owns, leases, operates or controls a budget unit that commences operation before January 1, 2002 shall install, operate and successfully complete all applicable certification testing requirements for monitoring heat input, NO <sub>x</sub> emission rate and NO <sub>x</sub> mass emissions pursuant to the requirements of 40 CFR Part 75 Subpart H by May 1, 2002.
	In accordance with 4B01049 and 310 CMR 7.28(11)(a)(4), all monitoring systems are subject to initial performance testing and periodic calibration, accuracy testing and quality assurance/quality control testing as specified in 40 CFR Part 75 Subpart H.
	As required by 4B01049 and 310 CMR 7.28(11)(a)(5), during a period when valid data is not being recorded by a monitoring system approved under 310 CMR 7.28, the missing or invalid data must be replaced with default data in accordance with the provisions of 40 CFR 75.70(f). The applicable missing data procedures are specified in 40 CFR Part 75 for NO <sub>x</sub> emission rate (in lb/MMBtu), heat input, stack gas volumetric flow rate, oil density, GCV or fuel flow rate.
EU 1	In accordance with 4B01049 and 310 CMR 7.28(11)(a)(6), NO <sub>x</sub> emissions data must be reported to the NO <sub>x</sub> Emissions Tracking System (NETS) in accordance with 310 CMR 7.28(13).
EU 2	
EU 3	In accordance with 4B01049 and 310 CMR 7.28(11)(a)(7), budget units must report data pursuant to the requirements of 310 CMR 7.28(11) for every hour.
EU 4	In accordance with 4B01049 and 310 CMR 7.28(11)(b), any person who owns, leases, operates or controls a budget unit subject to 310 CMR 7.28 must comply with the notification requirements in 40 CFR 75.61, where applicable.
	In accordance with Approval No. 4B90147, compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 shall be demonstrated through monitoring of the quantity of each fuel burned, the heating value or heat input of each fuel burned and SO <sub>2</sub> emissions. SO <sub>2</sub> emissions and heat input of each fuel burned shall be monitored with CEMS that meet the requirements of 40 CFR Part 75.
	In accordance with 310 CMR 7.14(2) and the Acid Rain Program 40 CFR Part 72, measure O <sub>2</sub> or carbon dioxide (CO <sub>2</sub> ) in the flue gas with CEMS. The O <sub>2</sub> or CO <sub>2</sub> CEMS shall meet the requirements of 40 CFR Part 75 in order to convert SO <sub>2</sub> and NO <sub>x</sub> continuous emission monitoring data to units of the applicable emission standards as specified in Table 3. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
	In the event that CEMS are inoperative, comply with 40 CFR Part 75, Subpart D for CO <sub>2</sub> emissions and heat input missing data substitution.



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**Table 4**

EU #	MONITORING/TESTING REQUIREMENTS
	<p>In accordance with 310 CMR 7.00: Appendix-C(9)(b)2., monitor sulfur content of each new shipment of fuel received. Compliance with Approval Nos. 4B88148, 4B90187, 4B91064, and/or 310 CMR 7.05(1)(f) for sulfur content of the fuel can be demonstrated through monitoring of SO<sub>2</sub> emissions with CEMS which meet the requirements of 40 CFR Part 75 or fuel analysis. The analysis of sulfur content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by the Department and EPA. Fuel sulfur information may be provided by fuel suppliers.</p>
	<p>In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor ash content of each new shipment of fuel received. Compliance with Approval No. 4B88148 and/or 310 CMR 7.05(4)(a) for ash content of the fuel can be demonstrated through fuel analysis. The fuel analysis or shipment certification of ash content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by the Department and EPA. Fuel ash information may be provided by fuel suppliers.</p>
EU 1	<p>In accordance with 310 CMR 7.19(13)(d)5., 310 CMR 7.19(13)(d)6., and Approval No. 4B90187, monitor nitrogen content of each new shipment of No. 6 Fuel Oil</p>
EU 2	<p>received, by one of the following methods:</p>
EU 3	<p>(1) monitor through obtaining a certification from the fuel oil supplier that includes</p>
EU 4	<p>the following information:</p> <ul style="list-style-type: none"> <li>a. the name of the fuel oil supplier;</li> <li>b. the nitrogen content * of each oil shipment; and</li> <li>c. the location where the sample was drawn for analysis to determine the nitrogen content of the fuel oil, specifically including whether the fuel oil was sampled as delivered to the Permittee's facility or whether the sample was drawn from fuel oil in storage at the fuel oil supplier's or fuel oil refiner's facility or another location.</li> </ul> <p>(2) sample and analyze the fuel oil for nitrogen content * immediately after the fuel oil tank is filled and before any fuel oil is combusted.</p> <p>* The shipment certification or analysis of nitrogen content of the fuel oil shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by the Department and EPA.</p>
	<p>In accordance with Approval No. 4B88066, monitor the quantities of Used Oil Fuel burned.</p>

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**Table 4**

EU #	MONITORING/TESTING REQUIREMENTS
EU 1	In accordance with 310 CMR 7.04(4)(a), inspect and maintain fuel utilization facility in accordance with manufacturer's recommendations and test for efficient operation at least annually.
EU 2	
EU 3	In accordance with 310 CMR 7.04(5), operate and maintain automatic viscosity controllers of a type approved by the Department to control the viscosity of No. 6 Fuel Oil to the burners.
EU 4	
EU 5	In accordance with 310 CMR 7.19(13)(d)3., measure for each unit on a daily basis: type fuel(s) burned each day, heat content of each fuel, the total heating value of the fuel consumed for each day, and the allowable NOx and CO emission rates.
EU 6	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor sulfur content of each new shipment of fuel received. Compliance with 310 CMR 7.05(1)(f)4., for sulfur content of the fuel can be demonstrated through fuel analysis or maintaining a shipping receipt from the fuel supplier. The analysis of sulfur content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by the Department and EPA.
EU 7	
EU 8	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor ash content of each new shipment of fuel received. Compliance with 310 CMR 7.05(4) for ash content of the fuel can be demonstrated through fuel analysis or maintaining a shipping receipt from the fuel supplier. The fuel analysis or shipment certification of ash content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by the Department and EPA.
EU 9	In accordance with 310 CMR 7.04(4)(a), inspect and maintain fuel utilization facility in accordance with manufacturer's recommendations and test for efficient operation at least annually.
EU 10	In accordance with Approval No. 4B94073 and 310 CMR 7.19(8)(d)3., monitor the hours of operation of each EU.
EU 11	In accordance with Approval No. 4B97017 monitor operations of the Unit 1, 2, and 3 fly ash handling system for system upsets, malfunction, proper operation.
EU 12	In accordance with 310 CMR 7.24(3)(f), install, maintain, and properly operate a Stage I vapor recovery system.
EU 13	In accordance with 310 CMR 7.24(6)(c), install and properly operate a certified Stage II vapor collection and control system.
EU 14	In accordance with Approval No. 4B91064, monitor the operation of the Unloader-Stacker, coal pile dust control system, coal transfer to powerhouse and silos, and coal dust collection system operating parameters.

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<b>Table 4</b>	
<b>EU #</b>	<b>MONITORING/TESTING REQUIREMENTS</b>
Facility Wide	<p>In accordance with 310 CMR 7.13(1), any person owning, leasing, operating or controlling a facility for which the Department has determined that stack testing is necessary to ascertain compliance with the Department's regulations or design approval provisos shall cause such stack testing:</p> <p>(a) to be conducted by a person knowledgeable in stack testing,</p> <p>(b) to be conducted in accordance with procedures contained in a test protocol which has been approved by the Department, and</p> <p>(c) be conducted in the presence of a representative of the Department when such is deemed necessary.</p> <p>Conduct any other testing or testing methodology if and when requested by the Department or EPA.</p> <p>Monitor operations such that information may be compiled for the annual preparation of a Source Registration/Emission Statement Form as required by 310 CMR 7.12.</p>

<b>Table 5</b>	
<b>EU #</b>	<b>RECORD KEEPING REQUIREMENTS</b>
	Record on a continuous basis emissions of NOx in accordance with the requirements of 310 CMR 7.19(13)(a)1., and 40 CFR Part 75.
	In accordance with 310 CMR 7.27(12), record all measurements, data, reports and other information required by 310 CMR 7.27.
EU 1	In accordance with 40 CFR 60, 40 CFR 72, 40 CFR 75 and 310 CMR 7.28 comply with all applicable recordkeeping requirements.
EU 2	In accordance with 4B01049 and 310 CMR 7.28(8)(e), information on the
EU 3	Authorized Account Representative (AAR) Form must be kept current.
EU 4	In accordance with 4B01049 and 310 CMR 7.28(12), any person who owns, leases, operates or controls a budget unit must keep all measurements, data, reports and other information required by 310 CMR 7.28 for five years, or any other period consistent with the budget unit's operating permit
	Record on a continuous basis emissions of CO in accordance with the requirements of 310 CMR 7.19(13)(b)1., through 7.19(13)(b)12., 40 CFR Part 60, Appendix B, and 40 CFR Part 60 Appendix F.

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**Table 5**

EU #	RECORD-KEEPING REQUIREMENTS
	Record on a continuous basis emissions of SO <sub>2</sub> in accordance with the requirements of 40 CFR Part 75.
	Record on a continuous basis flue gas volumetric flow in accordance with the requirements of 40 CFR Part 75.
	In accordance with Approval No. 4B90147 (Revised on March 4, 1996), compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 shall be demonstrated by recording the quantity of each fuel burned, heating value or heat input of each fuel burned and SO <sub>2</sub> emissions. SO <sub>2</sub> emissions and heat input of each fuel burned shall be recorded with CEMS that meet the requirements of 40 CFR Part 75.
	Record on a continuous basis O <sub>2</sub> or CO <sub>2</sub> in the flue gas in accordance with the requirements of 40 CFR Part 75.
	In accordance with the Unit 1, Unit 2 and Unit 3 SOMP, record ESP performance (voltage and amperage) continuously. In accordance with the Unit 4 SOMP, record ESP performance (voltage and amperage) once per shift.
EU 1	Record on a continuous basis opacity in accordance with the requirements of 40 CFR Part 75 and 40 CFR Part 60, Appendix B.
EU 2	Record opacity determined in accordance with EPA Test Method 9, as specified in
EU 3	40 CFR Part 60, Appendix A in the event of a COMS malfunction. This method shall also apply to any detached plumes.
EU 4	Record opacity determined in accordance with EPA Test Method 9, as specified in
	40 CFR Part 60, Appendix A in the event of a COMS malfunction. This method shall also apply to any detached plumes.
	Maintain records of Smoke Density Indicator Recording Charts required by 310 CMR 7.04(2)(a) or COMS records required by 40 CFR Part 75 and 40 CFR Part 60, Appendix B.
	Record operating time of each EU and the date and amount of time that any CEMS or COMS are inoperative.
	Record any occurrences when visible emissions (opacity and/or smoke exclusive of uncombined water) and emission rates of NO <sub>x</sub> , CO and SO <sub>2</sub> are in excess of the emission limits/standards contained in Table 3.
	In accordance with 310 CMR 7.19(13)(d)3., record for each unit on a daily basis the type(s) of fuel burned, heat content of each fuel, total heating value of the fuel consumed, actual emission rate (for emission units demonstrating compliance with CEMS), and allowable emission rate for CO and NO <sub>x</sub> .
	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain SO <sub>2</sub> CEMS records or fuel analysis results used to demonstrate compliance with fuel sulfur content requirements.

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**Table 5**

EU #	RECORD KEEPING REQUIREMENTS
	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain fuel analysis results used to demonstrate compliance with fuel ash content requirements.
	In accordance with 310 CMR 7.19(13)(d)7., maintain records of the nitrogen content of each new shipment of No. 6 Fuel Oil received. Such records shall include fuel analysis results and/or fuel oil supplier certifications that includes the name of the fuel oil supplier and the location where the sample was drawn for analysis to determine the nitrogen content
	In accordance with Approval No. 4B88066, record the quantities of Used Oil Fuel burned.
EU 1	In accordance with 310 CMR 7.04(4)(a), maintain results of fuel utilization facility inspection, maintenance, and testing and the date upon which it was performed
EU 2	posted conspicuously on or near the facility.
EU 3	In accordance with 310 CMR 7.19(13)(d)1., maintain a record of all measurements,
EU 4	performance evaluations, calibration checks, and maintenance or adjustments for each CEM.
	In accordance with 310 CMR 7.19(13)(d)8., all records required by 310 CMR 7.19(13)(d), including computer retained and generated data, shall be kept in a permanently bound log book or any other form acceptable to the Department.
	Maintain records required by 40 CFR Part 75, Subpart F.
	Keep copies of Source Registration/Emission Statement Forms submitted annually to the Department as required per 310 CMR 7.12(1)(d).
	Maintain on-site, at all times, a copy of the Standard Operating and Maintenance Procedure (SOMP) for the subject emission units.
EU 5	In accordance with 310 CMR 7.19(13)(d)3., record for each unit on a daily basis: type fuel(s) burned each day, heat content of each fuel, the total heating value of the fuel consumed for each day, and the allowable NOx and CO emission rates.
EU 6	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain fuel analysis results or fuel purchase receipts used to demonstrate compliance with fuel sulfur content requirements.
EU 7	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain fuel analysis results or fuel purchase receipts used to demonstrate compliance with fuel ash content requirements.
EU 8	In accordance with 310 CMR 7.04(4)(a), maintain results of fuel utilization facility inspection, maintenance, and testing and the date upon which it was performed posted conspicuously on or near the facility.

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**Table 5**

EU #	RECORD KEEPING REQUIREMENTS
EU 5 EU 6	In accordance with Approval No. 4B94073 and 310 CMR 7.19(8)(d)3., record the hours of operation of each EU.
EU 7 EU 8	In accordance with 310 CMR 7.19(13)(d)8., all records required by 310 CMR 7.19(13)(d), including computer retained and generated data, shall be kept in a permanently bound log book or any other form acceptable to the Department.
EU 9	<p>In accordance with Approval No. 4P97017, all records required, including the following:</p> <ol style="list-style-type: none"> <li>1. A record of all malfunctions including the date and time the malfunction occurred, a description of the malfunction, corrective action taken, the date and time corrective actions were initiated, the date and time corrective actions were completed and the facility returned to compliance.</li> <li>2. Records shall be maintained documenting air contaminant emissions.</li> <li>3. Records shall be kept on site for five (5) years from date of record and shall be made available to the Department upon request.</li> </ol>
EU 10	<p>In accordance with 310 CMR 7.24(3)(f), maintain records of the following:</p> <ol style="list-style-type: none"> <li>1. All maintenance performed, including the type of maintenance performed, and the date maintenance was performed;</li> <li>2. All malfunctions, including the type of malfunction, the date the malfunction was observed, and the date the malfunction was repaired;</li> <li>3. Maintain records of the daily throughput of any organic material with a true vapor pressure of 1.5 psia or greater under actual storage conditions.</li> </ol>
Facility Wide	<p>Maintain the test results of any stack testing performed in accordance with 310 CMR 7.13(1) or of any other testing or testing methodology required by the Department or EPA.</p> <p>Maintain records for the annual preparation of a Source Registration/Emission Statement Form as required by 310 CMR 7.12.</p> <p>In accordance with 310 CMR 7.00: Appendix C(10)(b), maintain records of all monitoring data and supporting information required by this operating permit on site for five (5) years from the date of the monitoring sample, measurement, report or initial operating permit application.</p>

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**Table 6**

EU #	REPORTING REQUIREMENTS
	<p>In accordance with 310 CMR 7.14(2) and 310 CMR 7.19(13)(d)2., submit CEM Excess Emission Reports for each calendar quarter by the thirtieth (30th) day of April, July, October, and January covering the previous calendar periods of January through March, April through June, July through September, and October through December, respectively. Such reports shall contain visible emissions (opacity and/or smoke exclusive of uncombined water) and emission rates of NO<sub>x</sub>, CO and SO<sub>2</sub> in excess of the emission limits/standards contained in Table 3. Start up periods shall be reported in accordance with "The Department Response to Comments on Proposed Amendments to 310 CMR 7.00: RACT for NO<sub>x</sub>", dated June 1994. Start-up periods are not included in the calendar day NO<sub>x</sub> and CO emission rate compliance averaging time as long as the mass emission rate, in pounds of NO<sub>x</sub> and/or CO per hour, from the emission unit does not exceed the mass emission rate that would occur at the maximum firing rate. Start-up begins with when the first burner is lit and ends when all available or required burners are in service. The Permittee shall notify the Department if start-ups last longer than twenty four (24) hours.</p>
<p>EU 1                      EU 2                      EU 3                      EU 4</p>	<p>In accordance with 310 CMR 7.27(13)(a)1., 310 CMR 7.27(13)(b), and 310 CMR 7.27(13)(c) submit to the USEPA Acid Rain Division all NO<sub>x</sub> emissions and operating information for each calendar quarter of each year in accordance with the standards specified in 40 CFR Part 75, Subpart G. The submission must be in an electronic format which meets the requirements of EPA's Electronic Data Reporting (EDR) convention. Quarterly reports must contain NO<sub>x</sub> emissions in pounds per hour for every hour, and cumulative quarterly and seasonal NO<sub>x</sub> emissions data in pounds, in a format consistent with the EDR convention. Submit quarterly reports as part of the quarterly reports submitted to EPA to comply with 40 CFR Part 75.</p>
	<p>In accordance with 40 CFR 60, 40 CFR 72, 40 CFR 75 and 310 CMR 7.28, comply with all applicable reporting requirements.</p>
	<p>As required by 4B01049 and 310 CMR 7.28(13)(a)(1), for units commencing operation prior to May 1, 2002, the AAR must submit quarterly reports for each calendar quarter beginning with: the earlier of the calendar quarter that includes the date of initial certification or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of certification or the first hour on May 1, 2002.</p>
	<p>In accordance with 4B01049 and 310 CMR 7.28(13)(b), the AAR for each budget unit using CEMS must submit to the Administrator all emissions and operating information for each calendar quarter of each year in accordance with the standards specified in 40 CFR Part 75 Subpart H and 40 CFR 75.64.</p>

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**Table 6**

EU #	REPORTING REQUIREMENTS
	In accordance with 4B01049 and 310 CMR 7.28(13)(c)(1), for units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in 40 CFR Part 75 Subpart H for each NO <sub>x</sub> Budget unit (or group of units using a common stack) as well as information required in 40 CFR Part 75 Subpart G.
	In accordance with the requirements of 4B01049 and 310 CMR 7.28(13), NO <sub>x</sub> emissions data must be reported pursuant to the requirements of 310 CMR 7.28(11)(a)(6), (a)(7) and (b).
	NO <sub>x</sub> emissions data should be reported directly to EPA's National Computer Center mainframe computer in a method acceptable to EPA. The deadline to submit data to EPA is 30 days after the end of each calendar quarter.
EU 1 EU 2	In accordance with 4B01049 and 310 CMR 7.28(13)(d), should a budget unit be permanently shut down, the Department will grant an exemption from the requirements of 310 CMR 7.28 upon request from the budget unit's AAR, and provided the shutdown is part of an approved emission control plan or approved under 310 CMR 7.00, Appendix B. The request must include an identification of the budget unit being shut down, and the date of shutdown. Department approval of the request for shutdown exemption will be sent to the AAR, and the Administrator, and may contain conditions as deemed necessary by the Department.
EU 3	In accordance with 4B01049 and 310 CMR 7.28(13)(e), by October 15 of each year,
EU 4	any person who owns, leases, operates or controls a new or existing budget unit must report to the Department each facility's metered net electric and useful steam output for that year's control period. Net electric output must be reported in megawatt-hours, and steam output in MMBtu. If data for steam output is not available, the person may report heat input providing useful steam output as a surrogate for steam output. (See special condition #4).
	In accordance with 4B01049 and 310 CMR 7.28(15)(a), for each control period, the AAR for the budget unit shall submit by November 30 of each year, an annual compliance certification report to the Department and the NATS Administrator. In accordance with 310 CMR 7.28(15)(b), the compliance certification report shall be submitted no later than November 30 <sup>th</sup> of each year. The compliance certification shall contain, at a minimum, the items listed in 310 CMR 7.28(15)(c)1 through 8.
	Notification of QA testing is required for Relative Accuracy Test Audits (RATAs) and AppendixE/LME (Low Mass Emission) unit tests. Notification must be made at least 21 days prior to the scheduled test date to the EPA as required by 40 CFR 75.61, to the DEP Lawrence office at DEP, Wall Experiment Station, 37 Shattuck Street, Lawrence, MA 01843-1398 Attn: Source Monitoring Section, and to the DEP Regional office, Attn: BWP Permit Chief. If tests must be rescheduled, 24 hours notice must be given, as specified in 40 CFR 75.61(a)(5).

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**Table 6**

EU #	REPORTING REQUIREMENTS
	<p>A previously approved RATA protocol may be referenced at the time of test notification provided that the referenced protocol was completed in accordance with current 40 CFR Part 75 procedures, addresses all previous DEP protocol comments to the satisfaction of the DEP, and none of the information has changed. If a revised protocol must be submitted, it must be submitted at least 21 days prior to the scheduled test date.</p>
	<p>A hardcopy of the QA RATA or Appendix E/LME test results must be submitted to both the DEP Lawrence and DEP Regional offices within 45 days of completion of tests. The electronic results must be submitted in the quarterly electronic data report (EDR).</p>
	<p>Results from QA daily Calibrations, quarterly Linearity checks and Appendix D Fuel Flowmeter tests must be reported electronically in the EDR submittal for the quarter in which the testing occurs.</p>
<p>EU 1                      EU 2                      EU 3                      EU 4</p>	<p>Submit SO<sub>2</sub> emission reports to verify compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 for each calendar quarter by the thirtieth (30th) day of April, July, October, and January covering the previous calendar periods of January through March, April through June, July through September, and October through December, respectively. Such reports shall contain, on a quarterly basis, for each EU defined in the Permittee's SO<sub>2</sub> compound emission rate averaging system encompassing the Salem Harbor Station and Brayton Point Station facilities: total heating value or heat input of fuel consumed in BTUs and mass SO<sub>2</sub> emission rate in pounds. The quarterly report shall also contain system-wide totals of the latter information for the Permittee's entire SO<sub>2</sub> compound emission rate averaging system encompassing the Salem Harbor Station and Brayton Point Station facilities. The fourth quarterly report shall contain an annual summary of the reportable information.</p>
	<p>In accordance with Approval No. 4B88066, report the quantity of Used Oil Fuel burned for each calendar year.</p>
	<p>In accordance with 310 CMR 7.19(13)(d)9., submit compliance records within ten (10) days of written request by the Department or EPA.</p>
	<p>Report as required by 40 CFR Part 75, Subpart G.</p>
	<p>In accordance with 310 CMR 7.02(2) updated versions of the Standard Operating and Maintenance Procedures (SOMP) shall be submitted to the Department. The Department must approve of significant changes to the SOMP prior to the change becoming effective. The updated SOMP shall supersede prior versions of the SOMP.</p>

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Table 6	
EU #	REPORTING REQUIREMENTS
EU 5	In accordance with Approval No. 4B94073 and 310 CMR 7.19(8)(d)3., report the hours of operation of each EU on a Source Registration/Emission Statement Form as required by 310 CMR 7.12.
EU 6	
EU 7	
EU 8	In accordance with 310 CMR 7.19(13)(d)9., submit compliance records within ten (10) days of written request by the Department or EPA.
EU 9	In accordance with Approval No. 4P97017, report emissions as required by 310 CMR 7.12.
Facility Wide	Submit Emissions Compliance Testing (Stack Testing) Reports in accordance with 310 CMR 7.19(13)(c).
	Submit a Source Registration/Emission Statement Form to the Department on an annual basis in accordance with 310 CMR 7.12.
	Submit by February 15 and August 15 for the previous six months respectively, a summary of all monitoring data and related supporting information to the Department as required by 310 CMR 7.00: Appendix C(10)(c).
	Promptly report to the Department all instances of deviations from permit requirements which are not otherwise reported to the Department by telephone or fax, within three days of discovery of such deviation, as provided in 310 CMR 7.00: Appendix C(10)(f). (See General Condition 25).
	All required reports must be certified by a responsible official as provided in 310 CMR 7.00: Appendix C(10)(h).

C. GENERAL APPLICABLE REQUIREMENTS

The Permittee shall comply with all generally applicable requirements contained in 310 CMR 7.00 et seq. and 310 CMR 8.00 et seq., when subject.

D. REQUIREMENTS NOT CURRENTLY APPLICABLE

The Permittee is currently not subject to the following requirements:

Table 7	
REGULATION	REASON
310 CMR 7.16	Reduction of Single Occupant Commuter Vehicle Use
42 USC 7401 Section 112(r)	Prevention of Accidental Releases

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## 5. SPECIAL TERMS AND CONDITIONS

The Permittee is subject to the following special terms and conditions that are not contained in Table 3, 4, 5, and 6:

### Emission Units No. 1, 2, 3, and 4:

1. The Permittee shall comply with the requirements of Standard Operating Procedure, Section 3.0 Coal Handling and Measurement Systems contained in Approval No. 4B91064 dated February 28, 1992.
2. The Permittee shall comply with the requirements of Standard Operating Procedure, Section 4.0 Ash Handling Systems contained in Approval No. 4B91064 dated February 28, 1992.
3. Unit No. 1 Stack Parameters:

Stack Height	=	351.7 feet
Exit Diameter	=	174.0 inches
4. Unit No. 2 Stack Parameters:

Stack Height	=	351.7 feet
Exit Diameter	=	174.0 inches
5. Unit No. 3 Stack Parameters:

Stack Height	=	351.7 feet
Exit Diameter	=	233.8 inches
6. Unit No. 4 Stack Parameters:

Stack Height	=	500.0 feet
Exit Diameter	=	222.0 inches

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7. State NO<sub>x</sub> Allowance Program

- A. Brayton Point EU1, EU2, EU3, and EU4 are subject to the requirements of the NO<sub>x</sub> Allowance Program 310 CMR 7.27. The Department issued the Phase I Emission Control Plan (ECP) Final Approval for this facility on November 14, 1997, the Phase II ECP Final Approval on March 6, 2002 and the Phase III ECP Final Approval on March 26, 2002.
- B. As per 310 CMR 7.27(6), The Authorized Account Representative (AAR) may buy, sell, trade, or transfer allowances for or between NO<sub>x</sub> Allowance Tracking System (NATS) compliance accounts at any time, up until December 31 of the corresponding ozone season. By December 31st of each year, the AAR must hold in the NO<sub>x</sub> NATS compliance account for each EU at least one allowance for each ton of NO<sub>x</sub> emitted during the corresponding ozone season (May 1 through September 30). The number of allowances actually held in a NATS compliance account for an affected EU may differ from the number allocated by the Department.
- C. EU1, EU2, EU3, and EU4 are classified as "utility units" as per 310 CMR 7.27(6). Utility unit allocations are determined on the percentage basis listed in 310 CMR 7.27(6) Table 3 and by the procedures listed in 310 CMR 7.27(6). The percentage share for utility unit allowance allocation for Brayton Point Station are identified below:

ORISPL Number	YEAR			
	1999	2000	2001	2002
01619	32.83	32.83	32.83	32.83

- D. By May 1, 2003, the NO<sub>x</sub> allowance allocation for each NATS compliance account will be amended according to the new State allowance cap.

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E. As per 310 CMR 7.27(8)(c), NO<sub>x</sub> Allowance transfers must occur as follows:

1. The transfer request must be on a form, or electronic media in a format determined by the NO<sub>x</sub> Allowance Tracking System. Requests must be submitted to the EPA and include at a minimum; the account numbers identifying both the originating account and the acquiring account; and, the names and addresses associated with the owners of the originating account and the acquiring account; and the serial number for each allowance being transferred. The transfer request must be authorized and certified by the Authorized Account Representative for the originating account. To be considered correctly submitted, the request must include the statement of certification contained in 310 CMR 7.27(8)(c)2., verbatim.
2. As per 310 CMR 7.27(8)(i), any budget unit must make available to the Department, upon request, information regarding transaction cost and allowance price.
3. As per 310 CMR 7.27(14)(b), each year during the period from November 1 through December 31, inclusive, the Authorized Account Representative for each budget unit must request the NATS administrator to deduct current year allowances from the compliance account equivalent to the NO<sub>x</sub> emissions from the budget unit in the current control period. The request must be submitted by the AAR to the NATS Administrator no later than December 31. The request must identify the compliance account from which the deductions should be made, and if desired, the serial numbers of the allowances to be deducted.
4. As per 310 CMR 7.27(15), for each control period the Authorized Account Representative for the budget unit must submit by December 31st of each year an annual compliance certification. The Compliance Certification shall contain, at a minimum, the items listed in 310 CMR 7.27(15)(c)1. through 6..

F. Brayton Point EU1, EU2, EU3, and EU4 are subject to the requirements of the NO<sub>x</sub> Allowance Program 310 CMR 7.28. The Department issued the Phase I and Phase II Emission Control Plan (ECP) Final Approval for this facility on July 23, 2002.

G. NO<sub>x</sub> Allowance use and transfer must comply with 310 CMR 7.28(10).

H. In accordance with 310 CMR 7.28(14), each year by November 30, for each budget unit, the total number of banked or current year allowances in its compliance or overdraft account must equal or exceed the NO<sub>x</sub> emissions from the budget unit in the current control period.

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1. Each budget unit shall meter electric and/or steam output in accordance with the approved monitoring methodology contained in Table II and Table III of the ECP Approval No. 4B01049.

#### Electric Output Meters

1. In the case where billing meters are used to determine output, no QA/QC activities beyond those already performed are required. To qualify as a billing meter, the measurement device must be used to measure electric or thermal output for commercial billing under a contract. The facility selling the electric or thermal output must have different owners from the owners of the party purchasing the electric or thermal output. Any electric or thermal output values that the facility reports must be the same as the values used in billing for the output.
2. In the case where non-billing meters are used to determine output, if the facility decides to adopt a system approach to accuracy then a system accuracy of 10.0% must be achieved. If testing an output measurement system shows that the output readings are not accurate to 10.0% or less, then the measurement equipment must be retested or replaced, and meet that requirement. If the facility decides to adopt a component approach to accuracy, then a component accuracy of 3.0% must be achieved. If testing a piece of output measurement equipment shows that the output readings are not accurate to 3.0% or less of the full scale, then the measurement equipment must be retested or replaced, and meet that requirement. When a non-billing system fails to meet the 10% or 3% requirement, data should be considered invalid, prospectively, for purposes of determining allocations. Data remain invalid until the output measurement equipment passes an accuracy test or is replaced with another piece of equipment that passes the accuracy test. The invalid data must be omitted and either zero or an output value that is likely to be lower than a measured value must be reported.
3. Output measurement equipment must be tested for accuracy or recalibrated at least once every two years, in accordance with applicable consensus or NIST traceable standards, unless a standard allows for less frequent calibrations or accuracy tests.

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8. Federal Acid Rain Program, Phase I Acid Rain Permit

- A. Brayton Point EU1, EU2, EU3, and EU4 are affected sources for Phase I of the Federal Acid Rain Program, pursuant to the "compensating unit" provisions of 40 CFR 72.43. As such, these EUs are subject to the requirements of the US EPA Phase I Acid Rain Permit, issued to Brayton Point for the period of January 1, 1995 to December 31, 1999, as revised on January 22, 1996. By January 30th of each year, the permittee must hold in the SO<sub>2</sub> allowance account for each EU at least one allowance for each ton of SO<sub>2</sub> emitted the previous year, provided the Permittee elected that its EUs participate as compensating units for that year. The Permittee's designated representative may buy, sell, trade, or transfer allowances for or between EU accounts at any time, except between January 30th and the completion of the annual SO<sub>2</sub> allowance reconciliation for the preceding year(s).
- B. The yearly SO<sub>2</sub> allowance allocations found in the Statement of Basis, Part B, of the Phase I Acid Rain Permit for each of the Brayton Point Station EUs are identified below:

EU#/Type	YEAR				
	1995	1996	1997	1998	1999
EU1, EU2, EU3, EU4/ Table I, 40 CFR 73.10; Phase I Extension 40 CFR 72.42; Substitution 40 CFR 72.41	NA	NA	NA	NA	NA
EU1/Reduced Utilization 40 CFR 72.43	15,085	15,085	15,085	15,085	15,085
EU2/Reduced Utilization 40 CFR 72.43	15,838	15,838	15,838	15,838	15,838
EU3/Reduced Utilization 40 CFR 72.43	32,977	32,977	32,977	32,977	32,977
EU4/Reduced Utilization 40 CFR 72.43	21,238	21,238	21,238	21,238	21,238

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9. Federal Acid Rain Program, Phase II Acid Rain Permit

- A. Brayton Point EU1, EU2, EU3, and EU4 are subject to the requirements of Phase II of the Federal Acid Rain Program as defined by EPA in 40 CFR Part 72. Pursuant to 40 CFR 72.71, 40 CFR 72.73, and 310 CMR 7.00, Appendix C(3)(n), the Department is the permitting authority for Phase II Acid Rain Permits. The Department issued the initial Phase II Acid Rain Permit No. 4B97105 to Brayton Point Station on December 30, 1997 and renewed said permit on February 28, 2003.
- B. Within 60 days of the end of each calendar year, the facility shall hold in its SO<sub>2</sub> allowance account at least one allowance for each ton of SO<sub>2</sub> emitted during the previous year. An allowance is a limited authorization to emit SO<sub>2</sub> in accordance with the Acid Rain Program.
- C. If the facility has excess emissions in any calendar year, it shall submit a proposed offset plan as required under 40 CFR Part 77. In addition, the Permittee shall pay any penalties specified in 40 CFR Part 77 and comply with the terms of an approved offset plan.
- D. In accordance with 40 CFR Part 73, the Permittee's designated representative may buy, sell, trade, or transfer allowances between EU accounts at any time, except between 60 days of the end of the calendar year and the completion of the annual SO<sub>2</sub> allowance reconciliation for the preceding year(s).
- E. The yearly allowance allocations as identified in 40 CFR 73, Tables 2, 3, and 4, and Phase II Acid Rain Permit No. 4B97105 are identified below:

EU#	YEAR				
	1998	1999	2000	2001	2002
EU1	NA	NA	8,478	8,478	8,478
EU2	NA	NA	8,908	8,908	8,908
EU3	NA	NA	18,618	18,618	18,618
EU4	NA	NA	12,135	12,135	12,135

By January 1, 1999, the Phase II Acid Rain Permit will be reopened to add NO<sub>x</sub> requirements in accordance with 40 CFR 76 and Section 407 of the Clean Air Act.

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- F. The yearly allowance allocations as identified in 40 CFR 73, Tables 2, 3, and 4 (as amended) and the Phase II Acid Rain Permit No. 4B97105 Renewal dated February 28, 2003 are identified below:

EU #	Allowances	YEAR				
		2003	2004	2005	2006	2007
EU 1	SO <sub>2</sub>	8481	8481	8481	8481	8481
	NO <sub>x</sub>	Standard annual average emission limitation of 0.40 lb/MMBtu for Phase II tangentially fired boiler				
EU 2	SO <sub>2</sub>	8911	8911	8911	8911	8911
	NO <sub>x</sub>	Standard annual average emission limitation of 0.40 lb/MMBtu for Phase II tangentially fired boiler				
EU 3	SO <sub>2</sub>	18625	18625	18625	18625	18625
	NO <sub>x</sub>	Standard annual average emission limitation of 0.46 lb/MMBtu for Phase II dry bottom wall-fired boiler				
EU 4	SO <sub>2</sub>	12139	12139	12139	12139	12139

- G. Within 60 days of the end of each calendar year the designated representative shall submit to the Department an annual compliance certification report pursuant to 40 CFR Part 72.9 Subpart I.
- H. Acid Rain Approval No. 4B97105 is incorporated by reference into Operating Permit No. 4V95056.
- I. After January 1, 1999 but only until such time as the Department amends 310 CMR 7.00: Appendix C to incorporate by reference 40 CFR Part 76, compliance with 310 CMR 7.19(4)(a) shall be considered compliance with 40 CFR Part 76. Emission reduction credits approved under 310 CMR 7.00: Appendix B(3) shall not be used to comply with the requirements of 310 CMR 7.19 (NO<sub>x</sub> RACT) if actual emissions from the affected units exceed the applicable limits contained in 40 CFR Part 76. The requirements contained in 40 CFR Part 76 are solely federally enforceable until such time as the Department amends the regulations and notifies the facility of that action. The notice shall be appended to the operating permit.

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10. The Permittee is subject to, and has stated in the operating permit application (Application No. 4V95056, Transmittal No. 108001) that it is in compliance with the requirements of 40 CFR 82: Protection of Stratospheric Ozone. These requirements are applicable to this facility and the United States Environmental Protection Agency enforces these requirements.

## 6. ALTERNATIVE OPERATING SCENARIOS

The Permittee did not request alternative operating scenarios in its operating permit application.

## 7. EMISSIONS TRADING

### (a) Intra-facility emission trading

The Permittee is currently authorized to engage in emissions trading under the following federal and state regulatory programs:

- 40 CFR 72, 73, and 74 - SO<sub>2</sub> Allowance System;
- 310 CMR 7.22 - SO<sub>2</sub> Emissions Reductions for the Purpose of Reducing Acid Rain
- 310 CMR 7.27 - NO<sub>x</sub> Allowance Program;
- 310 CMR 7.28 - NO<sub>x</sub> Allowance Trading Program;
- 310 CMR 7.00, Appendix A - Emission Offsets; and
- 310 CMR 7.00, Appendix B - Emission Reduction Credits

Pursuant to 310 CMR 7.00: Appendix C(7)(b), emission trades, provided for in this permit, may be implemented provided the Permittee notifies The United States Environmental Protection Agency (EPA) and the Department at least fifteen (15) days in advance of the proposed changes and the Permittee provides the information required in 310 CMR 7.00: Appendix C(7)(b)3.

Any intra-facility change that does not qualify pursuant to 310 CMR 7.00: Appendix C(7)(b)2. is required to be submitted to the Department pursuant to 310 CMR 7.00: Appendix B.

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(b) Inter-facility emission trading

The Permittee is currently authorized to engage in emissions trading under the following federal and state regulatory programs:

- 40 CFR 72, 73, and 74 - SO<sub>2</sub> Allowance System;
- 310 CMR 7.22 - SO<sub>2</sub> Emissions Reductions for the Purpose of Reducing Acid Rain
- 310 CMR 7.27 - NO<sub>x</sub> Allowance Program;
- 310 CMR 7.28 - NO<sub>x</sub> Allowance Trading Program;
- 310 CMR 7.00, Appendix A - Emission Offsets; and
- 310 CMR 7.00, Appendix B - Emission Reduction Credits

All increases in emissions due to emission trading, must be authorized under the applicable requirements of 310 CMR 7.00: Appendix B (the "Emissions Trading Program") and the 42 U.S.C. §7401 et seq. (the "Act"), and provided for in this permit.

**8. COMPLIANCE SCHEDULE**

The Permittee has indicated that the facility is in compliance and shall remain in compliance with the applicable requirements contained in Sections 4 and 5. In addition, the Permittee shall comply with any applicable requirements that become effective during the permit term.

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## GENERAL CONDITIONS FOR OPERATING PERMIT

### 9. FEES

The permittee has paid the permit application processing fee and shall pay the annual compliance fee in accordance with the fee schedule pursuant to 310 CMR 4.00.

### 10. COMPLIANCE CERTIFICATION

All documents submitted to the Department shall contain certification by the responsible official of truth, accuracy, and completeness. Such certification shall be in compliance with 310 CMR 7.01(2) and contain the following language:

"I certify that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment."

The "Operating Permit Reporting Kit" contains instructions and the Annual Compliance Report and Certification and the Semi-Annual Monitoring Summary Report and Certification. The "Operating Permit Reporting Kit" is available to the Permittee via the Department's web site, <http://www.state.ma.us/dep/bwp/daqc/aqforms.htm>.

#### (a) Annual Compliance Report and Certification

The Responsible Official shall certify, annually for the calendar year, that the facility is in compliance with the requirements of this permit. The report shall be postmarked or delivered by January 30 to the Department and to the Regional Administrator, U.S. Environmental Protection Agency - New England Region. The report shall be submitted in compliance with the submission requirements below.

The compliance certification and report shall describe:

- i. the terms and conditions of the permit that are the basis of the certification;
- ii. the current compliance status and whether compliance was continuous or intermittent during the reporting period;
- iii. the methods used for determining compliance, including a description of the monitoring, record keeping, and reporting requirements and test methods; and
- iv. any additional information required by the Department to determine the compliance status of the source.

#### (b) Semi-Annual Monitoring Summary Report and Certification

The Responsible Official shall certify, semi-annually on the calendar year, that the facility is in compliance with the requirements of this permit. The report shall be postmarked or delivered by January 30 and July 30 to the Department. The report shall be submitted in compliance with the submission requirements below.

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The compliance certification and report shall describe:

- i. the terms and conditions of the permit that are the basis of the certification;
- ii. the current compliance status during the reporting period;
- iii. the methods used for determining compliance, including a description of the monitoring, record keeping, and reporting requirements and test methods;
- iv. whether there were any deviations during the reporting period;
- v. if there are any outstanding deviations at the time of reporting, and the Corrective Action Plan to remedy said deviation;
- vi. whether deviations in the reporting period were previously reported;
- vii. if there are any outstanding deviations at the time of reporting, the proposed date of return to compliance;
- viii. if the deviations in the reporting period have returned to compliance and date of such return to compliance; and
- ix. any additional information required by the Department to determine the compliance status of the source.

## **11. NONCOMPLIANCE**

Any noncompliance with a permit condition constitutes a violation of 310 CMR 7.00; Appendix C and the Clean Air Act, and is grounds for enforcement action, for permit termination or revocation, or for denial of an operating permit renewal application by the Department and/or EPA. Noncompliance may also be grounds for assessment of administrative or civil penalties under M.G.L. c.21A, §16 and 310 CMR 5.00; and civil penalties under M.G.L. c.111, §142A and 142B. This permit does not relieve the permittee from the obligation to comply with any other provisions of 310 CMR 7.00 or the Act, or to obtain any other necessary authorizations from other governmental agencies, or to comply with all other applicable Federal, State, or Local rules and regulations, not addressed in this permit.

## **12. PERMIT SHIELD**

(a) This facility has a permit shield provided that it operates in compliance with the terms and conditions of this permit. Compliance with the terms and conditions of this permit shall be deemed compliance with all applicable requirements specifically identified in Sections 4, 5, 6, and 7, for the emission units as described in the permittee's application and as identified in this permit.

Where there is a conflict between the terms and conditions of this permit and any earlier approval or permit, the terms and conditions of this permit control.

(b) The Department has determined that the permittee is not currently subject to the requirements listed in Section 4, Table 7.

(c) Nothing in this permit shall alter or affect the following:

- (i) the liability of the source for any violation of applicable requirements prior to or at the time of permit issuance.

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- (ii) the applicable requirements of the Acid Rain Program, consistent with 42 U.S.C. §7401, §408(a); or
- (iii) the ability of EPA to obtain information under 42 U.S.C. §7401, §114 or §303 of the Act.

### **13. ENFORCEMENT**

The following regulations found at 310 CMR 7.02(8)(h) Table 6 for wood fuel, 7.02(8)(i), 7.04(9), 7.05(8), 7.09 (odor), 7.10 (noise), 7.18(1)(b), 7.21, 7.22 and any condition(s) designated as "state only" are not federally enforceable because they are not required under the Act or under any of its applicable requirements. These regulations and conditions are not enforceable by the EPA. Citizens may seek equitable or declaratory relief to enforce these regulations and conditions pursuant to Massachusetts General Law Chapter 214, Section 7A

All other terms and conditions contained in this permit, including any provisions designed to limit a facility's potential to emit, are enforceable by the Department, EPA and citizens as defined under the Act.

A Permittee shall not claim as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### **14. PERMIT TERM**

This permit shall expire on the date specified on the cover page of this permit, which shall not be later than the date 5 years after issuance of this permit.

Permit expiration terminates the permittee's right to operate the facility's emission units, control equipment or associated equipment covered by this permit, unless a timely and complete renewal application is submitted at least 6 months before the expiration date.

### **15. PERMIT RENEWAL**

Upon the Department's receipt of a complete and timely application for renewal, this facility may continue to operate subject to final action by the Department on the renewal application.

In the event the Department has not taken final action on the operating permit renewal application prior to this permit's expiration date, this permit shall remain in effect until the Department takes final action on the renewal application, provided that a timely and complete renewal application has been submitted in accordance with 310 CMR 7.00: Appendix C(13).

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## **16. REOPENING FOR CAUSE**

This permit may be modified, revoked, reopened, and reissued, or terminated for cause by the Department and/or EPA. The responsible official of the facility may request that the Department terminate the facility's operating permit for cause. The Department will reopen and amend this permit in accordance with the conditions and procedures under 310 CMR 7.00: Appendix C(14).

The filing of a request by the permittee for an operating permit revision, revocation and reissuance, or termination, or a notification of a planned change or anticipated noncompliance does not stay any operating permit condition.

## **17. DUTY TO PROVIDE INFORMATION**

Upon the Department's written request, the permittee shall furnish, within a reasonable time, any information necessary for determining whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall furnish to the Department copies of records that the permittee is required to retain by this permit.

## **18. DUTY TO SUPPLEMENT**

The permittee, upon becoming aware that any relevant facts were omitted or incorrect information was submitted in the permit application, shall promptly submit such supplementary facts or corrected information. The permittee shall also provide additional information as necessary to address any requirements that become applicable to the facility after the date a complete renewal application was submitted but prior to release of a draft permit.

The permittee shall promptly, on discovery, report to the Department a material error or omission in any records, reports, plans, or other documents previously provided to the Department.

## **19. TRANSFER OF OWNERSHIP OR OPERATION**

This permit is not transferable by the permittee unless done in accordance with 310 CMR 7.00: Appendix C(8)(a). A change in ownership or operation control is considered an administrative permit amendment if no other change in the permit is necessary and provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between current and new permittee, has been submitted to the Department.

## **20. PROPERTY RIGHTS**

This permit does not convey any property rights of any sort, or any exclusive privilege.

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## **21. INSPECTION AND ENTRY**

Upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the Department, and EPA to perform the following:

- (a) enter upon the permittee's premises where an operating permit source activity is located or emissions-related activity is conducted, or where records must be kept under the conditions of this permit;
- (b) have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) Sample or monitor at reasonable times any substances or parameters for the purpose of assuring compliance with the operating permit or applicable requirements as per 310 CMR 7.00 Appendix C(3)(g)(12).

## **22. PERMIT AVAILABILITY**

The permittee shall have available at the facility, at all times, a copy of the materials listed under 310 CMR 7.00: Appendix C(10)(e) and shall provide a copy of the permit, including any amendments or attachments thereto, upon request by the Department or EPA.

## **23. SEVERABILITY CLAUSE**

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

## **24. EMERGENCY CONDITIONS**

The permittee shall be shielded from enforcement action brought for noncompliance with technology based<sup>1</sup> emission limitations specified in this permit as a result of an emergency<sup>2</sup>. In order to use emergency as an affirmative defense to an action brought for

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<sup>1</sup> Technology based emission limits are those established on the basis of emission reductions achievable with various control measures or process changes (e.g., a new source performance standard) rather than those established to attain health based air quality standards.

<sup>2</sup> An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation would require immediate corrective action to restore normal operation, and that causes the source to exceed a technology based limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operations, operator error or decision to keep operating despite knowledge of any of these things.

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noncompliance, the permittee shall demonstrate the affirmative defense through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (a) an emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (b) the permitted facility was at the time being properly operated;
- (c) during the period of the emergency, the permittee took all reasonable steps as expeditiously as possible, to minimize levels of emissions that exceeded the emissions standards, or other requirements in this permit; and
- (d) the permittee submitted notice of the emergency to the Department within two (2) business days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emission, and corrective actions taken.

If an emergency episode requires immediate notification to the Bureau of Waste Site Cleanup/Emergency Response immediate notification to the appropriate parties should be made as required by law.

## **25. PERMIT DEVIATION**

Deviations are instances where any permit condition is violated and not reported as an emergency pursuant to section 24 of this permit. Reporting a permit deviation is not an affirmative defense for action brought for noncompliance. Any reporting requirements listed in Table 6. of this Operating Permit shall supercede the following deviation reporting requirements, if applicable.

The Permittee shall report to the Department's Regional Bureau of Waste Prevention the following deviations from permit requirements, by telephone or fax, within three (3) days of discovery of such deviation:

- Unpermitted pollutant releases, excess emissions or opacity exceedances measured directly by CEMS/COMS, by EPA reference methods or by other credible evidence, which are ten percent (10%) or more above the emission limit.
- Exceedances of parameter limits established by your Operating Permit or other approvals, where the parameter limit is identified by the permit or approval as surrogate for an emission limit.
- Exceedances of permit operational limitations directly correlated to excess emissions.
- Failure to capture valid emissions or opacity monitoring data or to maintain monitoring equipment as required by statutes, regulations, your Operating Permit, or other approvals.
- Failure to perform QA/QC measures as required by your Operating Permit or other approvals for instruments that directly monitor compliance.

For all other deviations, three (3) day notification is waived and is satisfied by the documentation required in the subsequent Semi-Annual Monitoring Summary and Certification. Instructions and forms for reporting deviations are found in the

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Massachusetts Department of Environmental Protection Bureau of Waste Prevention Air Operating Permit Reporting Kit, which is available to the Permittee via the Department's web site, <http://www.state.ma.us/dep/bwp/dagc/aqforms.htm>.

This report shall include the deviation, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and the corrective actions or preventative measures taken.

Deviations that were reported by telephone or fax within 3 days of discovery, said deviations shall also be submitted in writing via the Operating Permit Deviation Report to the regional Bureau of Waste Prevention within ten (10) days of discovery. For deviations, which do not require 3-day verbal notification, follow-up reporting requirements are satisfied by the documentation required in the aforementioned Semi-Annual Monitoring Summary and Certification.

## **26. OPERATIONAL FLEXIBILITY**

The permittee is allowed to make changes at the facility consistent with 42 U.S.C. §7401, §502(b)(10) not specifically prohibited by the permit and in compliance with all applicable requirements provided the permittee gives the EPA and the Department written notice fifteen days prior to said change; notification is not required for exempt activities listed at 310 CMR 7.00: Appendix C(5)(i). The notice shall comply with the requirements stated at 310 CMR 7.00: Appendix C(7)(a) and will be appended to the facility's permit. The permit shield allowed for at 310 CMR 7.00: Appendix C(12) shall not apply to these changes.

## **27. MODIFICATIONS**

(a) Administrative Amendments - The permittee may make changes at the facility which are considered administrative amendments pursuant to 310 CMR 7.00: Appendix C(8)(a)1., provided they comply with the requirements established at 310 CMR 7.00: Appendix C(8)(b).

(b) Minor Modifications - The permittee may make changes at the facility which are considered minor modifications pursuant to 310 CMR 7.00: Appendix C(8)(a)2., provided they comply with the requirements established at 310 CMR 7.00: Appendix C(8)(d).

(c) Significant Modifications - The permittee may make changes at the facility which are considered significant modifications pursuant to 310 CMR 7.00: Appendix C(8)(a)3., provided they comply with the requirements established at 310 CMR 7.00: Appendix C(8)(c).

(d) No permit revision shall be required, under any approved economic incentives program, marketable permits program, emission trading program and other similar programs or processes, for changes that are provided in this operating permit. A revision to the permit is not required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program under Title IV of the Act, provided that such increases do not require an operating permit revision under any other applicable requirement.

USGEN New England, Inc.  
Brayton Point Station  
Transmittal No. 108001  
FINAL Operating Permit No. 4V95056  
Minor Modification No. 4M040006  
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## APPEAL CONDITIONS FOR OPERATING PERMIT

This permit is an action of the Department. If you are aggrieved by this action, you may request an adjudicatory hearing within 21 days of issuance of this permit. In addition, any person who participates in any public participation process required by the Federal Clean Air Act, 42 U.S.C. §7401, §502(b)(6) or under 310 CMR 7.00: Appendix C(6), with respect to the Department's final action on operating permits governing air emissions, and who has standing to sue with respect to the matter pursuant to federal constitutional law, may initiate an adjudicatory hearing pursuant to Chapter 30A, and may obtain judicial review, pursuant to Chapter 30A, of a final decision therein.

If an adjudicatory hearing is requested, the facility must continue to comply with all existing federal and state applicable requirements to which the facility is currently subject, until a final decision is issued in the case or the appeal is withdrawn. During this period, the application shield shall remain in effect, and the facility shall not be in violation of the Act for operating without a permit.

Under 310 CMR 1.01(6)(b), the request must state clearly and concisely the facts which are the grounds for the request, and the relief sought. Additionally, the request must state why the permit is not consistent with applicable laws and regulations.

The hearing request along with a valid check payable to The Commonwealth of Massachusetts in the amount of one hundred dollars (\$100.00) must be mailed to:

The Commonwealth of Massachusetts  
Department of Environmental Protection  
P.O. Box 4062  
Boston, MA 02211

The request will be dismissed if the filing fee is not paid unless the appellant is exempt or granted a waiver as described below.

The filing fee is not required if the appellant is a city or town (or municipal agency) county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.

The Department may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.

# **EXHIBIT B**



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

RICHARD K. SULLIVAN JR.  
Secretary

KENNETH L. KIMMELL  
Commissioner

## FINAL AIR QUALITY OPERATING PERMIT

Issued by the Massachusetts Department of Environmental Protection (MassDEP) pursuant to its authority under M.G.L. c. 111, §142B and §142D, 310 CMR 7.00 et seq., and in accordance with the provisions of 310 CMR 7.00: Appendix C.

### ISSUED TO ["the Permittee"]:

Dominion Energy Brayton Point, LLC  
5000 Dominion Blvd  
Glen Allen, Virginia 23060

### FACILITY LOCATION:

Dominion Energy Brayton Point  
1 Brayton Point Road  
Somerset, Massachusetts 02726

### NATURE OF BUSINESS:

Electric Power Generation

### RESPONSIBLE OFFICIAL:

Name: Mr. Peter M. Balkus  
Title: Station Director

### INFORMATION RELIED UPON:

Application No. 4V04019  
Transmittal No. W051616  
(includes):  
Minor Mod. No. SE-11-039, Transmittal No. X241366

### FACILITY IDENTIFYING NUMBERS:

AQ ID: 1200061  
FMF FAC NO. 402959  
FMF RO NO. 407197

### STANDARD INDUSTRIAL CODE (SIC): 4911

**NORTH AMERICAN INDUSTRY  
CLASSIFICATION SYSTEM (NAICS): 221112**

### FACILITY CONTACT PERSON:

Name: Ms. Sheila A. Medeiros  
Title: Sr. Environmental Compliance Coordinator  
Phone: (508) 646-5260  
Email: Sheila.A.Medeiros@dom.com

**This operating permit shall expire on July 25, 2016.**

For the Department of Environmental Protection, Bureau of Waste Prevention

*This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.*

\_\_\_\_\_  
Chief, Permit Section

\_\_\_\_\_  
(Operating Permit signed 7/25/11)  
Date

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## SPECIAL CONDITIONS FOR OPERATING PERMIT

A Legend to Abbreviated Terms found in the following Tables is located in Section 28 of the Operating Permit.

### I. PERMITTED ACTIVITIES

In accordance with the provisions of 310 CMR 7.00: Appendix C and applicable rules and regulations, the permittee is authorized to operate air emission units as shown in Table 1 and exempt, and insignificant activities as described in 310 CMR 7.00: Appendix C(5)(h) and (i). The units described in Table 1 are subject to the terms and conditions shown in Sections 4, 5, and 6 and to other terms and conditions as specified in this permit. Emissions from the exempt activities shall be included in the total facility emissions for the emission-based portion of the fee calculation described in 310 CMR 4.00 and this permit.

### DESCRIPTION OF FACILITY AND OPERATIONS

Brayton Point Station consists of three primarily coal-fired boilers (designated as Emission Unit Nos. EU 1, EU 2, and EU 3) and one fuel oil and natural gas-fired boiler (designated as Emission Unit No. EU 4) for a total nominal generating capacity of approximately 1,600 MW. The facility is located in Somerset, Bristol County, Massachusetts, on a peninsula in Mount Hope Bay. The principal materials handling and storage activities at Brayton Point Station consist of coal receiving via ships, coal pile storage, and covered conveying. Additionally, fly ash from EU 1, 2, and 3 is collected, temporarily stored in silos, and transferred to on-site or off-site areas via covered dump trucks or dry haulers, or is transferred to the Ash Reduction Process (EU 12) pneumatically.

Emission Unit No. 1 (EU 1) utilizes pulverized coal at 100 percent MCR, natural gas at 25 percent MCR as a secondary fuel, No. 6 fuel oil at 100 percent MCR as a backup fuel, and No. 2 fuel oil at 100 percent MCR as an alternate backup fuel.

EU 1 has been equipped with an SCR system for the control of NO<sub>x</sub> emissions, a dry flue gas desulfurization system consisting of a SDA/FF for the control of SO<sub>2</sub> and PM, and PAC injection systems for the control of Hg. The SCR system is designed for up to 90 percent control of NO<sub>x</sub> and utilizes aqueous NH<sub>3</sub> to generate NH<sub>3</sub> for injection at the SCR inlet. The SDA/FF system, located downstream of the ESPs, is designed for up to 90 percent control of SO<sub>2</sub>. Lime is mixed with water and pumped to the SDA for SO<sub>2</sub> removal. The PAC injection system for removal of Hg includes three PAC injection locations: upstream of the Koppers ESPs, upstream of the R-C ESPs, and upstream of the SDA/FF system. The PAC injection system in conjunction with the SDA/FF is designed for up to 95 percent control of Hg.

Emission Unit No. 2 (EU 2) utilizes pulverized coal at 100 percent MCR, natural gas at 25 percent MCR as a secondary fuel, No. 6 fuel oil at 100 percent MCR as a backup fuel, and No. 2 fuel oil at 100 percent MCR as an alternate backup fuel.

EU 2 has been equipped with a dry flue gas desulfurization system consisting of a SDA/FF for the control of SO<sub>2</sub> and PM, and PAC injection systems for the control of Hg. The SDA/FF

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system, located downstream of the ESPs, is designed for up to 90 percent control of SO<sub>2</sub>. Lime is mixed with water and pumped to the SDA for SO<sub>2</sub> removal. The PAC injection system for removal of Hg includes three PAC injection locations: upstream of the Koppers ESPs, upstream of the R-C ESPs, and upstream of the SDA/FF system. The PAC injection system in conjunction with the SDA/FF is designed for up to 95 percent control of Hg.

Emission Unit No. 3 (EU 3) utilizes pulverized coal at 100 percent MCR, natural gas at 10 percent MCR as a secondary fuel, No. 6 fuel oil at 100 percent MCR as a backup fuel, and No. 2 fuel oil at 100 percent MCR as an alternate backup fuel.

EU 3 has been equipped with an SCR system for the control of NO<sub>x</sub> emissions, and a PAC injection system for the control of Hg. The SCR system is designed for up to 90 percent control of NO<sub>x</sub> and utilizes aqueous NH<sub>3</sub> to generate NH<sub>3</sub> for injection at the SCR inlet. A DS/FF system designed for up to 90 percent control of SO<sub>2</sub> is under construction and is scheduled to be in operation during the first quarter of 2014. The PAC injection system for removal of Hg includes two PAC injection locations: upstream of the Koppers ESPs and upstream of the R-C ESPs. It is proposed to construct an additional PAC injection location upstream of the DS/FF. The PAC injection system in conjunction with the ESPs alone is designed for up to 80 percent control of Hg. With the addition of the third PAC injection location at the DS/FF, the entire system will be designed for up to a maximum of 95 percent control of Hg.

Emission Unit No. 4 (EU 4) utilizes residual oil and natural gas fuels. It is equipped with a R-C ESP for the control of PM emissions; and Rodenhuis & Verloop low-NO<sub>x</sub> burners, and Riley Stoker flue gas recirculation for the control of NO<sub>x</sub> emissions.

The ash reduction process (ARP), which is identified as Emission Unit No. EU 12, processes coal fly ash in a fluid bed furnace and produces a high quality ash with low carbon content for use as a replacement of Portland cement in the production of concrete. The ARP furnace recovers a substantial amount of the heat that would normally be wasted through the disposal of high-carbon fly ash. The furnace has a maximum design heat input of 97 MMBtu/hr with the exhaust routed through a fabric filter (FF) particulate control device and then conveyed to the windbox of Emission Unit Nos. EU 1 or EU 3, and when both EU 1 and EU 3 are not operating, the ARP will be shut down. The furnace heat input is provided by the high carbon ash and augmented as necessary with natural gas and powder activated carbon (PAC). Based in a determination issued by U.S. EPA-Region 4, 40 CFR 60, Subpart Dc applies to the ARP because the ARP heat recovery meets the definition of a "steam generating unit." However, because the fly ash and PAC are not considered to meet the definition of coal, no Subpart Dc emission standards apply. The facility must, however, meet the recordkeeping and reporting requirements of 40 CFR 60.48c(g) and the general provisions of 40 CFR 60.7.

The facility is subject to the requirements of 40 CFR 64 (Compliance Assurance Monitoring) for particulate matter emissions from Emission Unit Nos. EU 1 through EU 4, and Emission Unit Nos. EU 14 and EU 15.

The facility is a major source of hazardous air pollutants (HAP).

Emission Unit Nos. EU 1, 2, 3, and 4 are subject to the requirements of the Massachusetts Clean Air Interstate Rule (CAIR) under 310 CMR 7.32. The permittee has submitted a BWP AQ29 CAIR permit application (Transmittal No. W152786) pursuant to 310 CMR 7.32(3). Upon

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approval of the submitted CAIR permit application, the permittee shall submit a BWP AQ10 Minor Modification application to incorporate the requirements into this Operating Permit. On August 28, 2008, the Brayton Point facility submitted a Prevention of Significant Deterioration (PSD) permit application to U.S. EPA to construct and operate a dry scrubber and fabric filter (DS/FF) on EU 3 and two new natural draft cooling towers (No. 1 and 2, identified as Emission Unit Nos. 14 and 15). This application was significantly revised in a January 9, 2009 submittal. On April 2, 2009, EPA issued PSD Permit No. 052-120-MA14 for Cooling Towers No. 1 and No. 2. The cooling towers are part of a closed-cycle cooling system that is being installed at the facility. Operation of the cooling towers will result in a significant potential emission increase of particulate matter less than 2.5 micrometers ( $\mu\text{m}$ ) and particulate matter less than 10  $\mu\text{m}$  with an associated increase in particulate matter potential emissions of 194.5 tons per year for each cooling tower. The addition of EU 3 DS/FF and cooling tower emissions to this Operating Permit renewal constitutes a Significant Modification to the originally-issued Operating Permit.

On October 7, 2009, EPA issued a second PSD Permit (Permit No. 052-120-MA15) for the construction and operation of the DS/FF emission control system for EU 3.

**2. EMISSION UNIT IDENTIFICATION**

The following emission units (Table 1) are subject to and regulated by this operating permit:

<b>Table 1</b>			
<b>Emission Unit (EU#)</b>	<b>Description of Emission Unit</b>	<b>EU Design Capacity</b>	<b>Pollution Control Device (PCD)</b>
EU 1	<p><u>Unit 1:</u>                      Combustion Engineering                      MFR # 19407 Type CC,                      Water Tube Boiler</p> <p>(to Stack No. 1)</p>	<p>2,250 MMBtu per hour</p> <p>255 Megawatts (Net)</p>	<p>Selective Catalytic Reduction                      R-C Electrostatic Precipitators                      Low NO<sub>x</sub> Burners with Overfire Air                      Management of Lower Sulfur Fuels                      Spray Dryer Absorber                      Fabric Filter Baghouse                      Powder Activated Carbon</p> <p>PCD-1</p>
EU 2	<p><u>Unit 2:</u>                      Combustion Engineering                      MFR # 19617 Type CC,                      Water Tube Boiler</p> <p>(to Stack No. 2)</p>	<p>2,250 MMBtu per hour</p> <p>255 Megawatts (Net)</p>	<p>Flue Gas Conditioning                      R-C Electrostatic Precipitators                      Low NO<sub>x</sub> Burners with Overfire Air                      Management of Lower Sulfur Fuels                      Spray Dryer Absorber                      Fabric Filter Baghouse                      Powder Activated Carbon</p> <p>PCD-2</p>
EU 3	<p><u>Unit 3:</u>                      Babcock and Wilcox                      Model # UP-52                      Water Tube Boiler</p> <p>(to Stack No. 3)</p>	<p>5,655 MMBtu per hour</p> <p>633 Megawatts (Net)</p>	<p>Selective Catalytic Reduction                      R-C Electrostatic Precipitators                      Low NO<sub>x</sub> Burners with Overfire Air                      Management of Lower Sulfur Fuels                      Dry Scrubber                      Fabric Filter Baghouse                      Powder Activated Carbon</p> <p>PCD-3</p>
EU 4	<p><u>Unit 4:</u>                      Riley Stoker                      Model # 1SR                      Water Tube Boiler</p> <p>(to Stack No. 4)</p>	<p>4,800 MMBtu per hour</p> <p>446 Megawatts (Net)</p>	<p>Electrostatic Precipitators                      Low NO<sub>x</sub> Burners                      Management of Lower Sulfur Fuels                      Flue Gas Recirculation</p> <p>PCD-4</p>
EU 5	<p>Diesel Generator Unit No.                      1:                      General Motors                      Model # 20-645-E44</p>	<p>28 MMBtu per hour</p>	<p>Retard Timing                      Ultra-Low Sulfur Fuel                      Crankcase Ventilation</p>

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Table 1 (continued)

Emission Unit (EU#)	Description of Emission Unit	EU Design Capacity	Pollution Control Device (PCD)
EU 6	Diesel Generator Unit No. 2: General Motors Model # 20-645-E44	28 MMBtu per hour	Retard Timing Ultra-Low Sulfur Fuel Crankcase Ventilation
EU 7	Diesel Generator Unit No. 3: General Motors Model # 20-645-E44	28 MMBtu per hour	Retard Timing Ultra-Low Sulfur Fuel Crankcase Ventilation
EU 8	Diesel Generator Unit No. 4: General Motors Model # 20-645-E44	28 MMBtu per hour	Retard Timing Ultra-Low Sulfur Fuel Crankcase Ventilation
EU 10	Underground Gasoline Storage Tank	5,000 gallons	Stage II Vapor Recovery  PCD-6
EU 11	Coal Storage Pile	680,000 tons	Water Sprays, Dust Suppressant, Surface Sealant  PCD-7
EU 12	Ash Reduction Process (ARP)  Goodhart Sons	97 MMBtu per hour  6,930 lb/hr carbon	(Exhaust of ARP routed to the windbox of EU 1 or EU 3)
EU 14	Cooling Tower 1  SPX/Series 800	360,000 gpm circulating water flow	Drift Eliminators (limiting water mist to 0.0005% of circulating water flow)
EU 15	Cooling Tower 2  SPX/Series 800	360,000 gpm circulating water flow	Drift Eliminators (limiting water mist to 0.0005% of circulating water flow)
EU 16	Parts Degreasers  Super Brute (9 units)	35 and 45 gallon capacity	Closed Covers
EU 17	Gasoline Dispensing  Gasboy Model 9153ACXF	N/A	Balance Stage II System

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**3. IDENTIFICATION OF EXEMPT ACTIVITIES**

The following are considered exempt activities in accordance with the criteria contained in 310 CMR 7.00: Appendix C(5)(h):

<b>Table 2</b>	
<b>Description of Current Exempt Activities</b>	<b>Reason</b>
The list of current exempt activities is contained in the Operating Permit application and shall be updated by the permittee to reflect changes at the facility over the permit term. An up-to-date copy of exempt activities list shall be kept on-site at the facility and a copy shall be submitted to MassDEP's Regional Office. Emissions from these activities shall be reported on the annual emissions statement pursuant to 310 CMR 7.12.	310 CMR 7.00:Appendix C(5)(h)

**4. APPLICABLE REQUIREMENTS**

**A. EMISSION LIMITS AND RESTRICTIONS**

The permittee is subject to the emission limits/restrictions as contained in Table 3 below:

<b>Table 3</b>				
<b>EU #</b>	<b>Fuel</b>	<b>Pollutant</b>	<b>Emissions Limit/Standard</b>	<b>Applicable Regulation and/or (Approval No.)</b>
EU 1	All Fuels	NH <sub>3</sub>	$\leq 2 \text{ ppm @ } 3\% \text{ O}_2^{(1)}$ $\leq 0.001 \text{ lb/MMBtu}^{(1)}$ $\leq 2.26 \text{ lb/hr}^{(1)}$ $\leq 9.9 \text{ tpy}$	Approval No. 4B08052
EU 1 EU 2	Coal	NO <sub>x</sub>	$\leq 0.40 \text{ lb/MMBtu}$ (annual average basis)	Approval No. 4B97105
			$\leq 0.38 \text{ lb/MMBtu}^{(2)}$	Approval No. 4B93086 310 CMR 7.19(4)(a)
			$\leq 0.25 \text{ lb/MMBtu}^{(2)}$	
			$\leq 0.25 \text{ lb/MMBtu}^{(2)}$	
			$\leq 0.20 \text{ lb/MMBtu}^{(2)}$	
	Co-Firing Fuels	$\leq \text{PS}_{\text{NOx}}^{(2,3)}$	310 CMR 7.19(15)	
	All Fuels	CO	$\leq 100 \text{ ppm by volume, dry basis at } 3\% \text{ O}_2^{(2)}$	Approval No. 4B93086
		PM <sup>(4,5)</sup> PM <sub>10</sub> <sup>(4,7)</sup> PM <sub>2.5</sub> <sup>(4,7)</sup>	$\leq 0.08 \text{ lb/MMBtu}$ $\leq 180.0 \text{ lb/hr}$ $\leq 788.4 \text{ tpy}$	Approval No. 4B08052
		Opacity	$\leq 20\%$ , except $> 20$ to $\leq 40\%$ for $\leq 2$ minutes during any one hour, at no time to exceed 40%	310 CMR 7.06(1)(b)
		Smoke	$< \text{No. 1 of the Chart}^{(8)}$ , except $\geq \text{No. 1 to } < \text{No. 2 of the Chart}$ for $\leq 6$ minutes during any one hour, at no time to equal or exceed No. 2 of the Chart	310 CMR 7.06(1)(a)
Coal	S in Fuel	$\leq 1.23 \text{ lb/MMBtu per calendar day}$ $\leq 1.21 \text{ lb/MMBtu per 30 day rolling period}$	Approval No. 4B91064	

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**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2	No. 6 Fuel Oil	S in Fuel	≤ 1.21 lb/MMBtu	Approval No. 4B88148 310 CMR 7.05(1)(a)1.
	No. 2 Fuel Oil		≤ 0.17 lb/MMBtu	310 CMR 7.05(1)(a)2.
	Coal	SO <sub>2</sub>	≤ 2.46 lb/MMBtu per calendar day	Approval No. 4B91064
			≤ 2.42 lb/MMBtu per 30 day rolling period	
	Ash in Fuel	May exceed 9% by weight, dry basis	Approval No. 4B88148	
EU 3	Coal	NO <sub>x</sub>	≤ 0.46 lb/MMBtu (annual average basis)	Approval No. 4B97105
			≤ 0.45 lb/MMBtu <sup>(2)</sup>	Approval No. 4B93107 310 CMR 7.19(4)(a)
	No. 6 Fuel Oil		≤ 0.28 lb/MMBtu <sup>(2)</sup>	
	No. 2 Fuel Oil		≤ 0.28 lb/MMBtu <sup>(2)</sup>	
	Natural Gas		≤ 0.28 lb/MMBtu <sup>(2)</sup>	
	Co-Firing Fuels		≤ PS <sub>NOx</sub> <sup>(2,3)</sup>	
	All Fuels	CO	≤ 200 ppm by volume, dry basis at 3% O <sub>2</sub> <sup>(2)</sup>	Approval No. 4B95073
		PM <sup>(22)</sup>	≤ 0.08 lb/MMBtu	Approval No. 4B88148
		PM <sup>(5,6,9,10)</sup>	≤ 0.010 lb/MMBtu ≤ 56.6 lb/hr ≤ 247.7 tpy	Approval No. 4B08052
		PM <sub>10</sub> <sup>(6,7,9)</sup> PM <sub>2.5</sub> <sup>(6,7,9)</sup>	≤ 0.025 lb/MMBtu ≤ 141.4 lb/hr ≤ 619.2 tpy (filterable & condensable)	Approval No. 4B08052 PSD Permit No. 052-120-MA15
		PM <sub>10</sub> <sup>(6)</sup> PM <sub>2.5</sub> <sup>(6)</sup>	≤ 0.010 lb/MMBtu ≤ 56.6 lb/hr (filterable only)	PSD Permit No. 052-120-MA15

**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 3	All Fuels	NH <sub>3</sub>	$\leq 2 \text{ ppm @ } 3\% \text{ O}_2^{(1)}$ $\leq 0.001 \text{ lb/MMBtu}^{(1)}$ $\leq 5.71 \text{ lb/hr}^{(1)}$ $\leq 25.0 \text{ tpy}$	Approval No. 4B08052
		Opacity	$\leq 20\%$ , except $> 20$ to $\leq 40\%$ for $\leq 2$ minutes during any one hour, at no time to exceed 40% Shall not exceed 10% after installation of the DS/FF, exclusive of uncombined water vapor, for a period or aggregate period in excess of 2 minutes during any 1 hour, provided that at no time during the 2 minutes to exceed 20%	Approval No. 4B08052 310 CMR 7.06(1)(b)
		Smoke	$< \text{No. 1}$ of the Chart <sup>(8)</sup> , except $\geq \text{No. 1}$ to $< \text{No. 2}$ of the Chart for $\leq 6$ minutes during any one hour, at no time to equal or exceed No. 2 of the Chart	310 CMR 7.06(1)(a)
	Coal	S In Fuel	$\leq 1.23 \text{ lb/MMBtu}$ per calendar day $\leq 1.21 \text{ lb/MMBtu}$ per 30 day rolling period	Approval No. 4B91064
	No. 6 Fuel Oil		$\leq 1.21 \text{ lb/MMBtu}$	Approval No. 4B88148 310 CMR 7.05(1)(a)1.
	No. 2 Fuel Oil		$\leq 0.17 \text{ lb/MMBtu}$	310 CMR 7.05(1)(a)2.
	Coal	SO <sub>2</sub>	$\leq 2.46 \text{ lb/MMBtu}$ per calendar day $\leq 2.42 \text{ lb/MMBtu}$ per 30 day rolling period	Approval No. 4B91064
	Ash in Fuel		May exceed 9% by weight, dry basis	Approval No. 4B88148

**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2 EU 3	All Fuels	PM <sup>(22)</sup>	≤ 0.08 lb/MMBtu	Approval No. 4B88148
	Coal	Hg	≤ 146.6 lb/yr <sup>(11)</sup> per calendar year, from the combustion from solid fuels or from re-burn of ash, calculated using the results of the stack tests required at 310 CMR 7.29(5)(a)3.d.ii.  (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)3.c.
			85% removal efficiency or ≤ 0.0075 lb/GWh (see Table 6A)  (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)3.e.i. or ii.
			95% removal efficiency or ≤ 0.0025 lb/GWh (see Table 6A)  (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)3.f.i. or ii.
EU 4	No. 6 Fuel Oil	NO <sub>x</sub>	≤ 0.27 lb/MMBtu <sup>(2)</sup>	Approval No. 4B94040 310 CMR 7.19(4)(a)
	No. 6 Fuel Oil and Natural Gas		≤ 0.27 lb/MMBtu <sup>(2)</sup>	
	Natural Gas		≤ 0.20 lb/MMBtu <sup>(2)</sup>	
	All Fuels	CO	≤ 100 ppm by volume, dry basis at 3% O <sub>2</sub> <sup>(2)</sup>	Approval No. 4B94040
		PM <sup>(5)</sup> PM <sub>10</sub> <sup>(7)</sup> PM <sub>2.5</sub> <sup>(7)</sup>	≤ 0.03 lb/MMBtu  ≤ 144.0 lb/hr  ≤ 630.7 tpy	Approval No. 4B08052
		Opacity	≤ 20%, except > 20 to ≤ 40% for ≤ 2 minutes during any one hour, at no time to exceed 40 percent	310 CMR 7.06(1)(b)
		Smoke	< No. 1 of the Chart <sup>(8)</sup> , except ≥ No. 1 to < No. 2 of the Chart for ≤ 6 minutes during any one hour, at no time to equal or exceed No. 2 of the Chart	310 CMR 7.06(1)(a)
Start Up No. 6 Fuel Oil and/or Natural Gas <sup>(12)</sup>	S in Fuel	≤ 0.55 lb/MMBtu (for start up)	Approval No. 4B90187	

**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)	
EU 4	No. 6 Fuel Oil	S in Fuel	≤ 1.21 lb/MMBtu	Approval No. 4B90187 310 CMR 7.05(1)(b)1.	
		N in Fuel	≤ 0.4% by weight	Approval No. 4B90187	
EU 1 EU 2 EU 3 EU 4	Used/Waste Oil & Non-Chlorinated Solvents <sup>(13)</sup>	N/A	Achieve and substantiate a minimum combustion efficiency of 99.5%	Approval No. 4B88066	
	All Fuels	NO <sub>x</sub>	See <u>Special Terms and Conditions, Section 5.(H)</u>	40 CFR Part 76	
			≤ 1.5 lb/MWh, calculated over any consecutive 12-month period, recalculated monthly ( <b>see Table 6A</b> ) (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)1.a.	
			≤ 3.0 lb/MWh, calculated over any Individual month ( <b>see Table 6A</b> ) (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)1.b.	
			As of the allowance deadline for a control period, the owners and operators of each CAIR NO <sub>x</sub> Ozone Season source and each CAIR NO <sub>x</sub> Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO <sub>x</sub> Ozone Season allowances available for compliance deductions for the control period under 310 CMR 7.32(6)(e)1. in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO <sub>x</sub> Ozone Season units at the source, as determined in accordance with 310 CMR 7.32(8).	310 CMR 7.32	
			SO <sub>2</sub>	See <u>Special Terms and Conditions, Section 5.G.</u>	40 CFR Part 72
				See <u>Special Terms and Conditions, Section 5.H.</u>	40 CFR Part 76

**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2 EU 3 EU 4	All Fuels	SO <sub>2</sub>	≤ 6.0 lb/MWh, calculated over any consecutive 12-month period, recalculated monthly (effective 10/1/06) (see Table 6A)  (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)2.a.
			≤ 3.0 lb/MWh, calculated over any consecutive 12-month period, recalculated monthly (effective 10/1/08) (see Table 6A)  (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)2.b.i.
			≤ 6.0 lb/MWh, calculated over any individual month (effective 10/1/08) (see Table 6A)  (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)2.b.ii.
			≤ 1.21 lb/MMBtu <sup>(14)</sup>  (state-only requirement)	Approval No. 4B90147 310 CMR 7.22
			4 Unit Total – See <u>Special Terms and Conditions</u> , Section 5.(Z)	Approval No. 4B08052
		CO <sub>2</sub>	≤ the historical actual emissions of 8,585,152 tpy <sup>(15,16)</sup> per calendar year (see Table 6A)  (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)5.a.
			≤ 1,800 lb/MWh <sup>(16)</sup> in the calendar year (see Table 6A)  (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)5.b.
			Hold CO <sub>2</sub> allowances available for compliance <sup>(18,19)</sup>  (state-only requirement)	Approval No. 4B08038 310 CMR 7.70(1)(e)3.a.
			CO <sub>2</sub> allowance transfers  (state-only requirement)	Approval No. 4B08038 310 CMR 7.70(7)

**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 5 EU 6 EU 7 EU 8	No. 2 Fuel Oil	NO <sub>x</sub>	≤ 2.83 lb/MMBtu <sup>(17)</sup>	Approval No. 4B94073 310 CMR 7.19(8)(d)
		S in Fuel	≤ 15 ppm sulfur content	4B08002
		CO	23 ppmvd @ 15% O <sub>2</sub> <sup>(21)</sup> (dry basis) or 70% CO reduction	40 CFR 63, Subpart ZZZZ
		Opacity	≤ 20%, except 20 to ≤ 40% for ≤ 2 minutes during any one hour	310 CMR 7.06(1)(b)
		Smoke	< No. 1 of the Chart <sup>(8)</sup> , except No. 1 to < No. 2 of the Chart for ≤ 6 minutes during any one hour	310 CMR 7.06(1)(a)
		HAPs	N/A	40 CFR 63, Subpart ZZZZ
EU 11	Coal	PM	Standard Operating and Maintenance Procedures Coal Handling and Measurement Systems	Approval No. 4B91064
EU 12	Coal Fly Ash & Powder Activated Carbon		N/A	40 CFR 60, Subpart Dc
EU 14 EU 15	N/A	PM PM <sub>10</sub> PM <sub>2.5</sub>	≤ 44.4 lb/hr (each unit) ≤ 194.5 tpy (each unit)	Approval No. 4B08052
		PM <sub>10</sub> PM <sub>2.5</sub>	1,066 lb/24-hour block average (each unit)	PSD Permit No. 052-120-MA14
EU 16	N/A	VOC	< 100 gallons/month of solvent (for each unit)	310 CMR 7.03(8)
			The solvent used shall have a vapor pressure that does not exceed 1.0 mm Hg measured at 20°C	310 CMR 7.18(8)(a)

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<b>Table 3 (continued)</b>				
EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 17	N/A	VOC	Submerged Fill	310 CMR 7.24(3)(a)
			Stage I Vapor Recovery	310 CMR 7.24(3)(b)
			Stage II Vapor Recovery	310 CMR 7.24(6)(a)2.
Facility Wide		Green House Gas <sup>(20)</sup>	N/A	310 CMR 7.71 (state-only requirement)

**Table 3 Notes:**

- (1) One-hour average, measured at the stack.
- (2) NO<sub>x</sub> and CO emission limits are based on a one calendar day averaging time.
- (3) For Emission Unit Nos. EU 1 and EU 2:

$$PS_{NOx} = \frac{0.38 \times (HI_1) + 0.25 \times (HI_2) + 0.25 \times (HI_3) + 0.20 \times (HI_4)}{(HI_1 + HI_2 + HI_3 + HI_4)}$$

- PS<sub>NOx</sub> = prorated NO<sub>x</sub> emission limit when burning different fuels, lb/MMBtu
- HI<sub>1</sub> = heat input for Coal, MMBtu
- HI<sub>2</sub> = heat input for No. 6 Fuel Oil, MMBtu
- HI<sub>3</sub> = heat input for No. 2 Fuel Oil, MMBtu
- HI<sub>4</sub> = heat input for Natural Gas, MMBtu

For Emission Unit No. EU 3:

$$PS_{NOx} = \frac{0.45 \times (HI_1) + 0.28 \times (HI_2) + 0.28 \times (HI_3) + 0.28 \times (HI_4)}{(HI_1 + HI_2 + HI_3 + HI_4)}$$

- PS<sub>NOx</sub> = prorated NO<sub>x</sub> emission limit when burning different fuels, lb/MMBtu
- HI<sub>1</sub> = heat input for Coal, MMBtu
- HI<sub>2</sub> = heat input for No. 6 Fuel Oil, MMBtu
- HI<sub>3</sub> = heat input for No. 2 Fuel Oil, MMBtu
- HI<sub>4</sub> = heat input for Natural Gas, MMBtu

The PS<sub>NOx</sub> limit applies only when the combined annual heat input of all co-fired fuels (other than primary fuel) exceeds 5% of the total annual heat input of an EU, based on a twelve month rolling average.

- (4) Emission limits will be further restricted or remain the same upon MassDEP approval per Special Terms and Conditions, Section FF.
- (5) Per test methods contained in 40 CFR 60, Appendix A, Method 5, or other test methods acceptable to MassDEP.
- (6) Effective upon DS/FF commencing operation.
- (7) Per test methods contained in 40 CFR 51, Appendix M, Method 201 or 201A and Method 202, or other test methods acceptable to MassDEP.

**Table 3 Notes (continued):**

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- (8) Chart means the Ringelmann Scale for grading the density of smoke, as published by the United States Bureau of Mines and as referred to in the Bureau of Mines Information Circular No. 8333, or any smoke inspection guide approved by MassDEP.
- (9) Emission limits will be further restricted or remain the same upon MassDEP approval per Special Terms and Conditions, Section HH.
- (10) The PM/PM<sub>10</sub>/PM<sub>2.5</sub> emission limits may be increased per Special Terms and Conditions, Section II.
- (11) Calculated per calendar year using the results of the stack tests required in 310 CMR 7.29(5)(a)3.d.ii. **(state-only requirement)**
- (12) In accordance with Approval No. 4B90187, Emission Unit No. EU 4 shall start up on natural gas, or No. 6 Fuel Oil having a maximum sulfur content of 0.55 lb/MMBtu heat release potential, or a mixture of both fuels.
- (13) In accordance with Approval No. 4B88066, Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4 are approved to burn used/waste oil & non-chlorinated solvents provided that:
  - a. the permittee is in possession of the appropriate and active Recycling Permit(s) obtained from MassDEP; and,
  - b. the permittee abides by all conditions stated in such Recycling Permit(s), Plan Approvals, Operating Permit, and regulations concerning the handling, recycling and burning of used/waste oil & non-chlorinated solvents).
- (14) In accordance with 310 CMR 7.22(3)(b) and Approval No. 4B90147, compliance is based on averaging the emissions from the permittee's Brayton Point Station (Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4) and Salem Harbor Station (Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4) facilities and qualified Demand Side Management (DSM) credits utilizing a one (1) calendar year averaging time. **(state-only requirement)**.
- (15) If MassDEP has received a technically complete Plan Approval application under 310 CMR 7.02 for a new or re-powered electric generating unit subject to 40 CFR Part 72 at an affected facility prior to May 11, 2001, then the emissions from the new or re-powered unit may be included in the calculation of historical actual emissions. The calculation of historical actual emissions which includes emissions from a new or re-powered unit shall not include emission from any unit shut down or removed from operation at the affected facility that is included in the technically complete Plan Approval application pursuant to 310 CMR 7.02. Provisions for the quantification and certification of greenhouse gas (GHG) emission reductions, avoided emissions, or sequestered emissions for use in demonstrating compliance with the CO<sub>2</sub> emission limitation contained in 310 CMR 7.29 are contained in 310 CMR 7.00, Appendix B(7) Greenhouse Gas Credit Banking and Trading. **(state-only requirement)**.
- (16) The indicated CO<sub>2</sub> emission standards shall not apply to the emissions of CO<sub>2</sub> that occur after December 31, 2008.
- (17) Emission Unit Nos. EU 5, EU 6, EU 7, and EU 8 shall comply with all requirements contained in 310 CMR 7.19(8)(c) or 7.19(8)(d) based on hours of operation per consecutive 12-month period. Compliance with emission limits/standards shall be based on a one-hour averaging time.
- (18) Compliance with CO<sub>2</sub> allowances shall be based on the control period. The control period is a three-calendar-year time period, unless extended to four years upon occurrence of a stage two trigger event. Control period and stage two trigger event are defined in 310 CMR 7.70(1)(b). **(state-only requirement)**.
- (19) Hold CO<sub>2</sub> allowances available for compliance deductions under 310 CMR 7.70(6)(e), as of the CO<sub>2</sub> allowance transfer deadline, in the source's compliance account in an amount not less than the total CO<sub>2</sub> emissions for the control period from all CO<sub>2</sub> budget units at the source, as determined in accordance with 310 CMR 7.70(6) and (8). **(state-only requirement)**.

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**Table 3 Notes (continued):**

(20) Green House Gas means any chemical or physical substance that is emitted into the air and that the Department may reasonably anticipate will cause or contribute to climate change including, but not limited to, CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, SF<sub>6</sub>, hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).

(21) Effective May 3, 2013. Not applicable during periods of startup.

(22) The PM emission limit specified applies to EU 3 until the DS/FF is installed and operational on EU 3.

**B. COMPLIANCE DEMONSTRATION**

The permittee is subject to the monitoring/testing, record keeping, and reporting requirements as contained in Tables 4, 5, and 6 below and 310 CMR 7.00 Appendix C(9) and (10) and applicable requirements contained in Table 3:

<b>Table 4</b>	
<b>EU #</b>	<b>Monitoring/Testing Requirements</b>
	In accordance with 310 CMR 7.14(2) and 310 CMR 7.19(13)(a)1., compliance with NO <sub>x</sub> emission limits/standards shall be demonstrated with Continuous Emissions Monitoring Systems (CEMS). The NO <sub>x</sub> CEMS shall meet the requirements specified in 310 CMR 7.19(13)(b). In accordance with the Acid Rain Program 40 CFR Part 72, monitor NO <sub>x</sub> emissions pursuant to 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control in order to determine compliance with 310 CMR 7.19, except that the missing data routine and bias adjustment factors contained in 40 CFR Part 75 need not be applied. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
	In accordance with 310 CMR 7.19(13)(a)1., compliance with CO emission limits/standards shall be demonstrated with Continuous Emissions Monitoring Systems (CEMS) as specified in 310 CMR 7.19(13)(b). CO emissions shall be monitored as specified in 310 CMR 7.19(13)(b)1., through 7.19(13)(b)12. Monitor CO emissions with CEMS certified in accordance with the performance specifications contained in 40 CFR Part 60, Appendix B and use the procedures contained in 40 CFR Part 60, Appendix F to comply, provide quality assurance and quality control.
	In accordance with 310 CMR 7.14(2) and the Acid Rain Program 40 CFR Part 72, monitor SO <sub>2</sub> emissions with CEMS meeting the requirements of 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
EU 1 EU 2 EU 3 EU 4	In accordance with the Acid Rain Program 40 CFR Part 72, monitor flue gas volumetric flow with a CEMS flow monitoring system pursuant to 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control.
	In accordance with Approval No. 4B90147, compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 shall be demonstrated through monitoring of the quantity of each fuel burned, the heating value or heat input of each fuel burned and SO <sub>2</sub> emissions. SO <sub>2</sub> emissions and heat input of each fuel burned shall be monitored with CEMS that meet the requirements of 40 CFR Part 75.
	In accordance with 310 CMR 7.14(2) and the Acid Rain Program 40 CFR Part 72, measure O <sub>2</sub> or carbon dioxide (CO <sub>2</sub> ) in the flue gas with CEMS. The O <sub>2</sub> or CO <sub>2</sub> CEMS shall meet the requirements of 40 CFR Part 75 in order to convert SO <sub>2</sub> and NO <sub>x</sub> continuous emission monitoring data to units of the applicable emission standards as specified in Table 3. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
	In the event that CEMS are inoperative, comply with 40 CFR Part 75, Subpart D for CO <sub>2</sub> emissions and heat input missing data substitution.
	In accordance with the Unit 1, Unit 2 and Unit 3 Standard Operating and Maintenance Procedures (SOMP), monitor Electrostatic Precipitator (ESP) performance (optimum amperage range as determined from the most recent stack testing) continuously to ensure compliance with PM emission limits. In accordance with the Unit 4 SOMP, monitor ESP performance (optimum amperage range as determined from the most recent stack testing) once per shift to ensure compliance with PM emission limits.

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**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
	<p>In accordance with 310 CMR 7.14(2) and the Acid Rain Program 40 CFR Part 72 and 40 CFR Part 75, monitor opacity for Units 1, 2, 3, and 4 utilizing Continuous Opacity Monitoring Systems (COMS) to provide reasonable assurance of compliance with opacity standards. The opacity COMS shall meet Performance Specification 1 of 40 CFR Part 60, Appendix B. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement. In accordance with 310 CMR 7.06 and 4B93011, visible emission compliance (opacity and smoke) for Units 1, 2, 3, and 4 shall be determined in accordance with 40 CFR Part 60, Appendix A, Method 9.</p>
	<p>Opacity shall be determined in accordance with 40 CFR Part 60, Appendix A, Method 9 in the event of a COMS malfunction. This method shall also apply to any detached plumes.</p>
	<p>In accordance with 310 CMR 7.04(2)(a), operate continuously and maintain in an accurate operating condition smoke density indicators equipped with audible alarms and recorders that signal the need for combustion equipment adjustment or repair when the smoke density is equal to or greater than No. 1 of the Chart. Compliance with 40 CFR Part 75 for opacity monitoring shall constitute compliance with this requirement.</p>
<p>EU 1 EU 2 EU 3 EU 4</p>	<p>In accordance with 310 CMR 7.19(13)(d)3., measure for each unit on a daily basis: type fuel(s) burned each day, heat content of each fuel, the total heating value of the fuel consumed for each day, the actual emission rate (for emissions units demonstrating compliance with CEMS), and the allowable emission rate for CO and NO<sub>x</sub>.</p>
	<p>In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor sulfur content of each new shipment of fuel received. Compliance with Approval Nos. 4B88148, 4B90187, 4B91064, and/or 310 CMR 7.05(1) for sulfur content of the fuel can be demonstrated through monitoring of SO<sub>2</sub> emissions with CEMS which meet the requirements of 40 CFR Part 75 or fuel analysis. The analysis of sulfur content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by MassDEP and EPA. Fuel sulfur information may be provided by fuel suppliers.</p>
	<p>In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor ash content of each new shipment of solid fuel received. Compliance with Approval No. 4B88148 and/or 310 CMR 7.05(3) for ash content of the solid or solid/liquid fuel mixture can be demonstrated through fuel analysis. The fuel analysis or shipment certification of ash content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by MassDEP and EPA. Fuel ash information may be provided by fuel suppliers.</p>
	<p>In accordance with Approval No. 4B88066, monitor the quantities of used/waste oil &amp; non-chlorinated solvents burned, and achieve and substantiate a combustion efficiency of 99.5 percent or greater.</p>
	<p>In accordance with Approval No. 4B08052 and 310 CMR 7.04(4)(a), inspect and maintain fuel utilization facility in accordance with manufacturer's recommendations and test for efficient operation at least once in each calendar year. The results of said inspection, maintenance and testing and the date upon which it was performed shall be recorded and post conspicuously on or near each unit.</p>
	<p>In accordance with 310 CMR 7.04(5), operate and maintain automatic viscosity controllers of a type approved by MassDEP to control the viscosity of No. 6 Fuel Oil to the burners.</p>
	<p>In accordance with Approval No. 4B08050, monitor actual net electrical output, expressed in megawatt-hours. Actual net electrical output shall be provided for individual units as a facility total for all units included in the calculation demonstrating compliance.</p>

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
EU 1 EU 2 EU 3 EU 4	<p>In accordance with 310 CMR 7.19(13)(d)5., 310 CMR 7.19(13)(d)6., and Approval No. 4B90187, monitor nitrogen content of each new shipment of No. 6 Fuel Oil received, by one of the following methods:</p> <p>(1) monitor through obtaining a certification from the fuel oil supplier that includes the following information:</p> <ul style="list-style-type: none"> <li>a. the name of the fuel oil supplier;</li> <li>b. the nitrogen content* of each oil shipment; and,</li> <li>c. the location where the sample was drawn for analysis to determine the nitrogen content of the fuel oil, specifically including whether the fuel oil was sampled as delivered to the permittee's facility or whether the sample was drawn from fuel oil in storage at the fuel oil supplier's or fuel oil refiner's facility or another location.</li> </ul> <p>(2) sample and analyze the fuel oil for nitrogen content* immediately after the fuel oil tank is filled and before any fuel oil is combusted.</p> <p>*The shipment certification or analysis of nitrogen content of the fuel oil shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by MassDEP and EPA.</p>
	<p>In accordance with Approval No. 4B08052 and 310 CMR 7.13, MassDEP may require additional emissions testing of the facility at any time to ascertain compliance with MassDEP's Regulations and/or this Operating Permit.</p>
	<p>In accordance with Approval No. 4B08052, conduct an initial emission test to demonstrate that Units 1, 2, 3, and 4 are in compliance with PM, PM<sub>10</sub>, PM<sub>2.5</sub>, emission limits and to define PM, PM<sub>10</sub>, PM<sub>2.5</sub>, control equipment performance. The emission tests shall be conducted 180 days from the date of Approval No. 4B08052 (April 2, 2009).</p>
	<p>In accordance with Approval No. 4B08052, the permittee shall ensure that the facility is constructed to accommodate the initial emissions (compliance) testing requirements contained herein. All emissions testing shall be conducted in accordance with MassDEP's <u>Guidelines for Source Emissions Testing</u>" and in accordance with the Environmental Protection Agency (EPA) reference test methods as specified in 40 CFR Part 60, Appendix A, or a method approved by MassDEP in writing.</p>
	<p>In accordance with 310 CMR 7.32, monitor and test as required by the Massachusetts Clean Air Interstate Rule (CAIR). The permittee has submitted an application, under Transmittal No. W152786, in accordance with 310 CMR 7.32 and shall modify this Operating Permit upon approval of the application.</p>
	<p>In accordance with 310 CMR 7.70(8)(a)1.a. and Approval No. 4B08038, Install all monitoring systems necessary to monitor CO<sub>2</sub> mass emissions in accordance with 40 CFR Part 75, except equation G-1 in Appendix G shall not be used to determine CO<sub>2</sub> emissions under 310 CMR 7.70(8). (state-only requirement).</p>

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
EU 1 EU 2 EU 3 EU 4	In accordance with 310 CMR 7.70(8)(a)2.a. and Approval No. 4B08038, each CO <sub>2</sub> budget unit that commenced commercial operation before July 1, 2008, must be in compliance with the requirements of 310 CMR 7.70(8) by January 1, 2009. <b>(state-only requirement)</b> .
	In accordance with 310 CMR 7.70(8)(h)1. and Approval No. 4B08038, submit to the Department or its agent net electrical output. <b>(state-only requirement)</b> .
	In accordance with 310 CMR 7.70(8)(h)4.a. and Approval No. 4B08038, the billing meter shall record the electric output. <b>(state-only Requirement)</b> .
	In accordance with 310 CMR 7.70(8)(h)5.c. and Approval No. 4B08038, when a component of output measurement equipment fails to pass an accuracy test, all data shall be replaced by either zero or an output value that is approved as part of the monitoring plan required under 310 CMR 7.70(8)(h)3. until the component passes an accuracy test or is replaced with another piece of equipment that passes the accuracy test. <b>(state-only requirement)</b> .
EU 1 EU 2 EU 3	<p>In accordance with Approval No. 4B08052, the permittee shall conduct initial emission compliance tests no later than 180 days after the following dates:</p> <ul style="list-style-type: none"> <li>(a) The date Unit 1 SCR system has passed acceptance testing (vendor guarantee).</li> <li>(b) The date Unit 1 SDA/FF and PAC systems passed acceptance testing (vendor guarantee).</li> <li>(c) The date Unit 2 SDA/FF and PAC systems passed acceptance testing (vendor guarantee).</li> <li>(d) The date Unit 3 SCR and ARP systems passed acceptance testing (vendor guarantee).</li> <li>(e) The date Unit 3 PAC system passed acceptance testing (vendor guarantee).</li> <li>(f) The date Unit 3 DS/FF systems passed acceptance testing (vendor guarantee).</li> </ul> <p>Initial emission tests shall be completed no more than one year after the initial operation with Unit 3 DS/FF.</p> <p>The emission compliance test program shall comply with MassDEP's <u>Guidelines for Source Emission Testing</u>.</p>
	In accordance with Approval No. 4B08052, the permittee shall conduct an initial emission test to demonstrate that Emission Unit Nos. EU 1, EU 2, and EU 3 are in compliance with the emission limits (lb/hr, lb/MMBtu, ppmvd @3% O <sub>2</sub> , as applicable, and opacity) for NO <sub>x</sub> , PM, PM <sub>10</sub> , PM <sub>2.5</sub> , SO <sub>2</sub> , NH <sub>3</sub> , Hg and opacity (NH <sub>3</sub> not required for EU 2). With respect to Emission Unit No. 3, the permittee shall conduct an initial emission test to demonstrate compliance, for the same air contaminants as required for EU 1, EU 2, and EU 3, after SCR and PAC installation and again after the DS/FF installation. Testing shall be conducted between 90 and 100% of rated base load.
EU 1 EU 3	In accordance with Approval No. 4B08052, Unit 1 and Unit 3 shall be equipped with ammonia (NH <sub>3</sub> ) CEMS with the outputs directed to the data acquisition system. The NH <sub>3</sub> CEMS shall comply with the linearity check and Relative Accuracy Test Audits (RATA) frequencies as specified in 40 CFR 75 in conducting gas audits and RATAs.

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
EU 1 EU 3	In accordance with Approval No. 4B08052, NH <sub>3</sub> CEMS data will initially be used as an operational tool. Compliance with the NH <sub>3</sub> emission limit will be determined during the initial compliance test, and by quarterly compliance testing thereafter, until MassDEP in writing approves otherwise, or until the NH <sub>3</sub> CEMS becomes a direct compliance monitor as defined in Section VIII(B)2 of Approval No. 4B08052. The NH <sub>3</sub> CEMS shall operate during NH <sub>3</sub> compliance testing and the test report shall be submitted to MassDEP within 45 days after completion of testing. Until the NH <sub>3</sub> CEM system becomes a direct compliance monitor the permittee on an annual basis, by March 1st, shall submit a report on the performance and relative accuracy of the NH <sub>3</sub> CEM systems along with a recommendation on the feasibility of their use as a compliance determination method.
	In accordance with Approval No. 4B08052, the permittee shall conduct initial emission compliance tests to demonstrate that Unit 1 and Unit 3 are in compliance with the emission limits (lb/hr, lb/MMBtu, ppmvd as applicable, and opacity) for the pollutants listed below after SCR installation. Testing for the following pollutants shall be conducted at 100% of rated base load:  (a) Nitrogen oxides (NO <sub>x</sub> ) (b) Particulate matter (PM) (c) Sulfur dioxide (SO <sub>2</sub> ) (d) Ammonia (NH <sub>3</sub> ) (e) Opacity
	In accordance with Approval No. 4B08050, certify and operate each CEMS in accordance with 310 CMR 7.29(5)(a)3.g. <b>(state-only requirement)</b> .
EU 3	In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall monitor heat input on an hourly basis using one of the methods prescribed in 40 CFR Part 75.
	In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall continuously monitor the FF pressure drop.
	In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall continuously monitor the exhaust temperature at the inlet of the FF.
	In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall continuously monitor the amount of reagent used by the DS.
	In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall ensure that all stack and exhaust ducts will accommodate the emission testing requirements stipulated in 40 CFR Part 60, Appendix A.
	In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall complete the following performance testing within 90 days after accepting the DS/FF equipment pursuant to the contract with its vendor or within 12 months of initial startup of the DS/FF, whichever is earlier, and at least once in every 12 month period thereafter.  a. Testing for filterable PM <sub>10</sub> and PM <sub>2.5</sub> emission limits shall be conducted in accordance with 40 CFR 51, Appendix M, Method 201 or 201A or other test methods approved by EPA.  b. Testing for total PM <sub>10</sub> and PM <sub>2.5</sub> emission limits shall be conducted in accordance with 40 CFR 51, Appendix M, Method or 201A and Method 202 or other test methods approved by EPA.  c. Testing for volumetric flow rate and velocity shall be conducted by 40 CFR 60, Appendix A, Method 2, 2F, or 2G.

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
EU 3	In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall notify EPA of the tests in writing and provide EPA with a test protocol at least 45 days prior to such tests. The test protocol shall include a detailed description of sampling port locations, sampling equipment, sampling and analytical procedures, and operating conditions for any such emissions testing. The owner/operator shall revise the plan upon EPA request.
EU 1 EU 2 EU 3 EU 12 <sup>(1)</sup>	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.c.i. and 310 CMR 7.29(5)(a)3.d.iii., the portion of total annual mercury (Hg) emissions from combustion of solid fossil fuel in units subject to 40 CFR 72 located at or from re-burn of ash at an affected facility, determined using emissions testing at least every other calendar quarter from October 1, 2006 until Hg CEMS are used to demonstrate compliance with the standards contained in 310 CMR 7.29(5)(a)3.e. or f. and using mercury CEMS thereafter. Stack tests for Hg shall consist at a minimum of three runs at full load on each unit firing solid fossil fuel or ash according to a testing protocol acceptable to MassDEP. Stack tests for Hg, and certification and annual RATAs for mercury CEMS, shall determine total and particulate bound Hg ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.c.ii.(l), when ash produced by an affected facility is used in Massachusetts as a cement kiln fuel, as an asphalt filler, or in any other high temperature processes that volatilize mercury (Hg), the Hg content of the utilized ash shall be measured weekly using a method acceptable to MassDEP ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.e. and f., any person who owns, leases, operates or controls an affected facility which combusts solid fossil fuel or ash shall monitor a facility's average total mercury (Hg) removal efficiency or emission rate for those units combusting solid fossil fuel or ash. This will be based on a Hg CEMS using the methodology approved by MassDEP in the monitoring plan required under 310 CMR 7.29(5)(a)3.g. and shall be calculated on a rolling 12-month basis ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g.i., by January 1, 2008, any person who owns, leases, operates or controls an affected facility which combusts solid fossil fuel or ash shall install, certify, and operate CEMS to measure mercury (Hg) stack emissions from each solid fossil fuel or ash-fired unit at a facility subject to 310 CMR 7.29 ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 actual emissions shall be monitored for individual units and monitored as a facility total for all units included in the calculation demonstrating compliance. Actual emissions shall be monitored in accordance with 310 CMR 7.29(7)(b)1.b., c., and d. for Hg ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g.i., operate each continuous emission monitoring system at all times that the emission unit(s) is operating except for periods of CEMS calibrations checks, zero span adjustment, and preventive maintenance as described in the monitoring plan approved by MassDEP and as determined during certification. The CEMS shall be operated in accordance with 40 CFR 75 and 40 CFR 60.4106(b)(1) to measure mercury stack emissions from each solid fossil fuel or ash-fired unit subject to 310 CMR 7.29 ( <b>state-only requirement</b> ).
	In accordance with the Applicability Determination and Approval dated March 31, 2008, the mercury (Hg) CEMS shall be deemed to be conditionally certified as of the date that each CEM passed the RATA. Further, compliance with 310 CMR 7.29 Hg requirements for the 1 <sup>st</sup> quarter 2008 shall be determined using valid data only ( <b>state-only requirement</b> ).

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
EU 1 EU 2 EU 3 EU 4	In accordance with Approval No. 4B08050, actual emissions shall be monitored for individual units and monitored as a facility total for all units included in the calculation demonstrating compliance. Actual emissions shall be monitored in accordance with 40 CFR Part 75 for SO <sub>2</sub> , CO <sub>2</sub> , and NO <sub>x</sub> , and 310 CMR 7.29 for Hg. MassDEP shall detail the monitoring methodology for CO and PM <sub>2.5</sub> at the time regulations are promulgated by MassDEP for those parameters ( <b>state-only requirement</b> ).
EU 12 <sup>(1)</sup>	In accordance with Approval No. 4B08052, the CEMS for CO shall comply with the linearity check and RATA frequencies as specified in 40 CFR 75 in conducting cylinder gas audits and RATAs ( <b>state-only requirement</b> ).
EU 5 EU 6 EU 7 EU 8	<p>In accordance with 310 CMR 7.19(13)(d)3., measure for each unit on a daily basis: type fuel(s) burned each day, heat content of each fuel, the total heating value of the fuel consumed for each day, and the allowable NO<sub>x</sub> and CO emission rates.</p> <p>In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor sulfur content of each new shipment of fuel received. Compliance with 310 CMR 7.05(1) for sulfur content of the fuel can be demonstrated through fuel analysis or maintaining a shipping receipt from the fuel supplier. The analysis of sulfur content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by MassDEP and EPA.</p> <p>In accordance with 40 CFR 63, Subpart ZZZZ, effective May 3, 2013, the permittee shall conduct an initial performance test and must test every 8,760 hours of operation or 3 years, whichever comes first, to demonstrate compliance with emission standards.</p>
EU 10	<p>In accordance with 310 CMR 7.24(3)(f), install, maintain, and properly operate a Stage I vapor recovery system.</p> <p>In accordance with 310 CMR 7.24(6)(c), install and properly operate a certified Stage II vapor collection and control system.</p>
EU 11	In accordance with Approval No. 4B91064, monitor the operation of the Unloader-Stacker, coal pile dust control system, coal transfer to powerhouse and silos, and coal dust collection system operating parameters.
EU 12 <sup>(1)</sup>	<p>In accordance with Approval No. 4B08052, monitor the fly ash fuel feed rates to the ARP and record daily feed rates in tons per day.</p> <p>In accordance with Approval No. 4B08052, fly ash feed to and fly ash product from the ARP shall be sampled on a calendar quarter basis and analyzed for higher heating value (HHV) in units of Btu/lb.</p> <p>In accordance with Approval No. 4B08052, monitor the PAC feed rates to the ARP and record daily feed rates in tons per day.</p>
EU 14 EU 15	<p>In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, install and maintain non-resettable elapsed operating meters of the equivalent software to accurately indicate elapsed operating time for each circulating water pump servicing Cooling Tower 1 and 2.</p> <p>In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, monitor the circulating water flow (by use of ultrasonic flow meters and/or pump curves) to Cooling Tower 1 and 2, individually, and record gallons per day, per month, and per consecutive 12-month period.</p>



**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
Facility Wide	<p>In accordance with Approval No. 4B08052, the permittee must obtain written MassDEP approval of any emissions test protocol. Each protocol shall include a detailed description of sampling port locations, sampling equipment, sampling and analytical procedures, and operating conditions for any such emissions testing. Each emissions test protocol shall be submitted to MassDEP at least 45 days prior to commencement of testing of the facility. Each test protocol shall include a test matrix that will define emission control efficiencies and emission rates, as follows:</p> <p><b><u>Emission Unit No. 1</u></b>  <u>SCR</u>                      NO<sub>x</sub> (upstream and downstream of SCR)                      NH<sub>3</sub> (downstream of SCR)  <u>SDA/FF and PAC</u>                      SO<sub>2</sub> (upstream and downstream of SDA/FF)                      PM (upstream and downstream of FF)                      Hg (upstream of PAC and downstream of SDA/FF)                      Opacity</p> <p><b><u>Emission Unit No. 2</u></b>  <u>SDA/FF and PAC</u>                      SO<sub>2</sub> (upstream and downstream of SDA/FF)                      PM (upstream and downstream of FF)                      Hg (upstream of PAC and downstream of SDA/FF)                      Opacity</p> <p><b><u>Emission Unit No. 3</u></b>  <u>SCR and ARP</u>                      NO<sub>x</sub> (upstream and downstream of SCR)                      NH<sub>3</sub> (downstream of SCR)                      Opacity  <u>PAC</u>                      Hg (upstream of PAC and downstream of R-C ESP)                      PM (downstream of R-C ESP)                      Opacity  <u>DS/FF</u>                      SO<sub>2</sub> (upstream and downstream of DS/FF)                      PM (upstream and downstream of DS/FF)                      PM<sub>10</sub> (upstream and downstream of DS/FF)                      PM<sub>2.5</sub> (upstream and downstream of DS/FF)                      Hg (upstream of PAC and downstream of DS/FF)                      NH<sub>3</sub> (downstream of DS/FF)                      Opacity</p> <p><b><u>Emission Unit No. 4</u></b>                      PM (upstream and downstream of ESP)                      PM<sub>10</sub> (upstream and downstream of ESP)                      PM<sub>2.5</sub> (upstream and downstream of ESP)</p>

<b>Table 4 (continued)</b>	
EU #	Monitoring/Testing Requirements
Facility Wide	In accordance with 310 CMR 7.13(1), any person owning, leasing, operating or controlling a facility for which MassDEP has determined that stack testing is necessary to ascertain compliance with MassDEP's regulations or design approval provisos shall cause such stack testing:
	(a) to be conducted by a person knowledgeable in stack testing,
	(b) to be conducted in accordance with procedures contained in a test protocol which has been approved by MassDEP, and
	(c) to be conducted in the presence of a representative of MassDEP when such is deemed necessary.
	Conduct any other testing or testing methodology if and when requested by MassDEP or EPA.
	Monitor operations such that information may be compiled for the annual preparation of a Source Registration/Emission Statement Form as required by 310 CMR 7.12.
	In accordance with 310 CMR 7.71(1) and Appendix C(9), establish and maintain data systems or recordkeeping practices (e.g., fuel use records, SF <sub>6</sub> usage documentation, Continuous Emissions Monitoring System) for greenhouse gas emissions to ensure compliance with the reporting provisions of M.G.L. c. 21N, the Climate Protection and Green Economy Act, St. 2008, c. 298, § 6. ( <b>state-only requirement</b> ).

**Table 4 Notes:**

- (1) The exhaust of EU 12 (ARP) will be directed to the windbox of Unit 3. If Unit 3 is not available, it will be directed to Unit 1. If neither Unit 3 nor Unit 1 are available, it will be shut down. Therefore, the exhaust of EU 12 will pass through the emission controls on Unit 3 or Unit 1, and that unit's CEMS will measure all emissions from EU 12. EU 12 will be equipped with a fabric filter baghouse to remove particulates in the exhaust gas prior to entering either the Unit 3 or Unit 1 windbox.

**Table 4A**

<b>Compliance Assurance Monitoring for Particulate Matter (PM)</b>				
	<b>EU 1</b>	<b>EU 2</b>	<b>EU 3</b>	<b>EU 4</b>
<b>Indicators</b>	$\Delta$ P measured across the FF, <u>and</u> Continuous opacity	$\Delta$ P measured across the FF, <u>and</u> Continuous opacity	ESP Secondary Current	ESP Secondary Current
<b>Indicator Range<sup>(1,2)</sup></b>	1.0-11.0 inches of H <sub>2</sub> O, <u>and</u> < 10% opacity increase over baseline, except > 20 to $\leq$ 40% for $\leq$ 2 minutes during any 1 hour, at no time to exceed 40%	1.0-11.0 inches of H <sub>2</sub> O, <u>and</u> < 10% opacity increase over baseline, except > 20 to $\leq$ 40% for $\leq$ 2 minutes during any 1 hour, at no time to exceed 40%	Current $\geq$ 8,159 mA	Current $\geq$ 4,475 mA
<b>Frequency</b>	Continuous	Continuous	Continuous	Once/8-hr shift
<b>Data Collection</b>	$\Delta$ P and opacity continuously monitored and recorded in the facility's data acquisition system	$\Delta$ P and opacity continuously monitored and recorded in the facility's data acquisition system	Secondary current calculated and recorded as a 1-hour average	Secondary current calculated and recorded as an 8-hour average
<b>Corrective Action</b>	Excursions trigger an inspection, corrective action, and a record keeping and reporting requirement	Excursions trigger an inspection, corrective action, and a record keeping and reporting requirement	Corrective action threshold occurs when current < 9,791 mA, triggering an alarm	Corrective action threshold occurs when current < 5,370 mA, triggering an alarm
<b>Excursion<sup>(2)</sup></b>	$\Delta$ P outside the range 0.5-12.0 inches of H <sub>2</sub> O, and $\geq$ 10% increase over baseline opacity, <u>or</u> The 3 <sup>rd</sup> and each subsequent 1-minute average in any hour when opacity > 20% but < 40%, or any 1-minute average during the hour that > 40%	$\Delta$ P outside the range 0.5-12.0 inches of H <sub>2</sub> O, and $\geq$ 10% increase over baseline opacity, <u>or</u> The 3 <sup>rd</sup> and each subsequent 1-minute average in any hour when opacity > 20% but < 40%, or any 1-minute average during the hour that > 40%	Excursion occurs when current < 8,159 mA, triggering an alarm, inspection, corrective action, and reporting	Excursion occurs when current < 4,475 mA, triggering an alarm, inspection, corrective action, and reporting

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<b>Table 4A (continued)</b>	
<b>Compliance Assurance Monitoring for Particulate Matter (PM)</b>	
<b>EU 14 and EU 15</b>	
<b>Indicators</b>	<p><b>Requirements</b> - Monitor the circulating water flow (use of pump curves is acceptable) and record gallons per day, gallons per month, and gallons per 12-month rolling period for each cooling tower. Monitor and record circulating water or blowdown water total dissolved solids (TDS) using continuous conductivity monitors.</p> <p><b>Measurement Approach</b> – Salinity of the circulating water or blowdown water is measured using a continuous conductivity meter. A redundant conductivity monitor is also installed. Circulating water flow is measured using an ultrasonic flow meter located on each circulating water pipe prior to the cooling towers. The lb/hr emission rate for particulate matter (PM) is then calculated in the data control system using the equation provided under Section II.7. of the Cooling Tower PSD Permit (Permit No. 051-120-MA14).</p>
<b>Indicator Range</b>	To assess the status of compliance with PM emission limits, the TDS concentration of the circulating water (or blowdown water) should be within the range of 0-48,000 ppm <sub>w</sub> over any 30-minute period, with an assumed flow rate equal to 360,000 gallons per minute (gpm), which is the design maximum flow rate.
<b>Frequency</b>	1 hour averaging period.
<b>Data Collection</b>	TDS are measured using the continuous conductivity monitors, along with the water flow rate to determine PM emission rates. Data are recorded in the data acquisition system.
<b>Corrective Action</b>	Excursions trigger an inspection, corrective action, and a reporting requirement.
<b>Excursion</b>	An excursion is defined as a TDS concentration of the circulating water or blowdown water that is not within the normal range of 0 to 48,000 ppm <sub>w</sub> over any 30-minute period, with a flow rate of 360,00 gallons per minute. Excursions trigger an inspection, corrective action, and a reporting requirement.

**Key:**

ΔP = differential pressure      ESP = electrostatic precipitator  
 FF = fabric filter                SDA = spray dryer absorber  
 TDS = total dissolved solids    gpm = gallons per minute

**Table 4A Notes:**

- (1) The indicator range shown for EU 1 and EU 2 includes periods of startup/shutdown and accommodates low load operation during which the SDAs for these units may not be in service.
- (2) Baseline opacity is defined as the average opacity during the previous clock hour prior to the ΔP going outside the range for EU 1 and EU 2.

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**Table 5**

EU #	Recordkeeping Requirements
	Record on a continuous basis emissions of NO <sub>x</sub> in accordance with the requirements of 310 CMR 7.19(13)(a)1., and 40 CFR Part 75.
	In accordance with 40 CFR 60, 40 CFR 72, 40 CFR 75, and 40 CFR 76, comply with all applicable recordkeeping requirements.
	Record on a continuous basis emissions of CO in accordance with the requirements of 310 CMR 7.19(13)(b)1., through 7.19(13)(b)12., 40 CFR Part 60, Appendix B, and 40 CFR Part 60 Appendix F.
	Record on a continuous basis emissions of SO <sub>2</sub> in accordance with the requirements of 40 CFR Part 75.
	Record on a continuous basis flue gas volumetric flow in accordance with the requirements of 40 CFR Part 75.
	In accordance with Approval No. 4B90147 (Revised on March 4, 1996), compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 shall be demonstrated by recording the quantity of each fuel burned, total heating value or total heat input of the fuel (or combined fuels burned) and SO <sub>2</sub> emissions. SO <sub>2</sub> emissions and total heat input for the fuel(s) burned shall be recorded with CEMS that meet the requirements of 40 CFR Part 75.
	Record on a continuous basis O <sub>2</sub> or CO <sub>2</sub> in the flue gas in accordance with the requirements of 40 CFR Part 75.
EU 1	In accordance with the Unit 1, Unit 2 and Unit 3 SOMP, record ESP performance (amperage) continuously. In accordance with the Unit 4 SOMP, record ESP performance (amperage) once per shift.
EU 2	
EU 3	Record on a continuous basis opacity in accordance with the requirements of 40 CFR Part 75 and 40 CFR Part 60, Appendix B.
EU 4	Record opacity determined in accordance with EPA Test Method 9, as specified in 40 CFR Part 60, Appendix A in the event of a COMS malfunction. This method shall also apply to any detached plumes.
	Maintain records of Smoke Density Indicator Recording Charts required by 310 CMR 7.04(2)(a) or COMS records required by 40 CFR Part 75 and 40 CFR Part 60, Appendix B.
	In accordance with 310 CMR 7.19(13)(d)3., record for each unit on a daily basis the type(s) of fuel burned, heat content of each fuel, total heating value of the fuel consumed, actual emission rate (for emission units demonstrating compliance with CEMS), and allowable emission rate for CO and NO <sub>x</sub> .
	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain SO <sub>2</sub> CEMS records or fuel analysis results used to demonstrate compliance with fuel sulfur content requirements.
	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain fuel analysis results used to demonstrate compliance with fuel ash content requirements.
	In accordance with 310 CMR 7.19(13)(d)7., maintain copies of all fuel supplier certifications or fuel oil analyses on site for a period of five years.
	In accordance with Approval No. 4B88066, record the quantities of used/waste oil & non-chlorinated solvents burned.

**Table 5 (continued)**

EU #	Recordkeeping Requirements
	In accordance with 310 CMR 7.04(4)(a), maintain results of fuel utilization facility inspection, maintenance, and testing and the date upon which it was performed posted conspicuously on or near the facility.
	In accordance with 310 CMR 7.19(13)(d)1., maintain a record of all measurements, performance evaluations, calibration checks, and maintenance or adjustments for each CEM.
	In accordance with 310 CMR 7.19(13)(d)8., all records required by 310 CMR 7.19(13)(d), including computer retained and generated data, shall be kept in a permanently bound log book or any other form acceptable to MassDEP.
	Maintain records required by 40 CFR Part 75, Subpart F.
	Maintain on-site, at all times, a copy of the Standard Operating and Maintenance Procedure (SOMP) for the subject emission units.
EU 1 EU 2	In accordance with Approval No. 4B08050, maintain a record of actual net electrical output for each of the preceding 12 months, expressed in megawatt-hours. Records of actual net electrical output shall be maintained for Individual units and as a facility total for all units included in the calculation demonstrating compliance.
EU 3 EU 4	In accordance with 310 CMR 7.32, maintain records as required by the Massachusetts Clean Air Interstate Rule (CAIR). The permittee has submitted an application, under Transmittal No. W152786, in accordance with 310 CMR 7.32 and shall modify this Operating Permit upon approval of the application.
	In accordance with 310 CMR 7.70(8)(e)1. and Approval No. 4B08038, comply with all recordkeeping and reporting requirements in 310 CMR 7.70(8)(e) and with all applicable recordkeeping and reporting requirements under 40 CFR 75.73, and with the requirements of 310 CMR 7.70(2)(a)5. ( <b>state-only requirement</b> ).
	In accordance with 310 CMR 7.70(8)(h)6.a. and Approval No. 4B08038, comply with all output recordkeeping and reporting requirements in 310 CMR 7.70(8)(h) and with the requirements of 310 CMR 7.70(1)(e)5. and (2)(a)5. ( <b>state-only requirement</b> ).
	In accordance with 310 CMR 7.70(8)(h)6.b. and Approval No. 4B08038, retain data used to monitor, determine, or calculate net generation for ten years from the date reported. ( <b>state-only requirement</b> ).
EU 1 EU 2 EU 3	In accordance with Approval No. 4B08050, certify and operate each CEMS in accordance with 310 CMR 7.29(5)(a)3.g. ( <b>state-only requirement</b> ).
EU 3	In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall maintain a record of all information used to show compliance with the terms and conditions of the PSD Permit (and the Operating Permit) for five years in a location accessible to representatives of EPA and MassDEP.

**Table 5 (continued)**

EU #	Recordkeeping Requirements
EU 3	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall maintain, at a minimum, the following information:</p> <ul style="list-style-type: none"> <li>a. Hourly heat input information obtained from 40 CFR Part 75 requirements.</li> <li>b. Supporting documentation and results from all emission performance tests.</li> <li>c. Number of hours the boiler operated for each day.</li> <li>d. Number of hours the FF operated for each day.</li> <li>e. Daily reagent usage in lbs/day.</li> <li>f. Continuous measurement of the pressure drop across the FF.</li> <li>g. Continuous measurement of the flue gas temperature at the inlet of the FF.</li> <li>h. For each day, the hourly filterable and total PM<sub>10</sub> and PM<sub>2.5</sub> emissions on an lbs/hr basis. Hourly emissions will be calculated by multiplying the results from the most recent stack test by the hourly heat input.</li> </ul> <p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall comply with any request by EPA to supply any of the above records.</p>
EU 1 EU 2 EU 3 EU 4 EU 12 <sup>(1)</sup>	<p>In accordance with Approval No. 4B08050, maintain a record of actual emissions for each regulated pollutant for each of the preceding 12 months. Actual emissions shall be recorded for individual units and a facility total for all units included in the calculation demonstrating compliance. Actual emissions provided under this Section shall be recorded in accordance with 40 CFR Part 75 for SO<sub>2</sub>, CO<sub>2</sub>, and NO<sub>x</sub>, and 310 CMR 7.29 for Hg. MassDEP shall detail the monitoring methodology for CO and PM<sub>2.5</sub> at the time regulations are promulgated for those parameters (<b>state-only requirement</b>).</p> <p>In accordance with Approval No. 4B08050, maintain a record of the resulting output-based emission rates for each of the preceding 12 months, and each of the 12 consecutive rolling month time periods, expressed in pounds per megawatt-hour. Output-based emission rates shall be provided for individual emission units and as a facility total for all units included in the calculation demonstrating compliance.</p> <p>In accordance with Approval No. 4B08050, keep all measurements, data, reports and other information required by 310 CMR 7.29 onsite for a minimum of five (5) years, or any other period consistent with the facility's Operating Permit (<b>state-only requirement</b>).</p>
EU 1 EU 2 EU 3 EU 12 <sup>(1)</sup>	<p>In accordance with Approval No. 4B08052, the permittee shall maintain on site for five (5) years all records of output from and continuous monitors for flue gas emissions and fuel consumption, and shall make these records available to MassDEP upon request.</p> <p>In accordance with Approval No. 4B08052, the permittee shall maintain a log to record upsets or failures associated with the emission control systems.</p>

**Table 5 (continued)**

EU #	Recordkeeping Requirements
	<p>In accordance with Approval No. 4B08052, a recordkeeping system for the facility shall be established and maintained on site by the permittee. All such records shall be maintained up-to-date such that year-to-date information is readily available for MassDEP examination upon request. The record-keeping log/system, including any other "credible evidence", shall be kept on site for a minimum of five (5) years. Recordkeeping shall, at a minimum, include:</p> <p>(a) Compliance records sufficient to demonstrate that emissions from the facility have not exceeded emission limits contained herein. Such records shall include, but are not limited to, fuel usage rate, emissions test results, and monitoring equipment data and reports.</p> <p>(b) <u>Maintenance</u>: A record of routine maintenance activities performed on the control equipment and monitoring equipment including, at a minimum, the type or a description of the maintenance performed and the date and time the work was completed.</p> <p>(c) <u>Malfunctions</u>: A record of all malfunctions on the emission control and monitoring equipment including, at a minimum, the date and time the malfunction occurred, a description of the malfunction and the corrective action taken, the date and time corrective actions were initiated, and the date and time corrective actions were completed and the equipment was returned to compliance.</p>
	<p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3., keep records of required mercury (Hg) stack testing and ash testing (<b>state-only requirement</b>).</p>
<p>EU 1                  EU 2                  EU 3</p>	<p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g., maintain a record of all measurements, performance evaluations, calibration checks, and maintenance or adjustments for each mercury (Hg) CEMS (<b>state-only requirement</b>).</p>
<p>EU 12<sup>(1)</sup></p>	<p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(7)(e), for units that apply carbon or other sorbent injection for mercury (Hg) control, the carbon and other sorbent records shall be kept until such time as mercury CEMS are installed in that unit (<b>state-only requirement</b>).</p>
	<p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(7)(i), any person subject to 310 CMR 7.29(5)(a)3. shall submit the results of all mercury (Hg) emissions, monitor, and optimization test reports, along with supporting calculations, to MassDEP within 45 days after completion of such testing (<b>state-only requirement</b>).</p>
	<p>In accordance with Approval No. 4B08050, maintain a record of actual emissions of mercury (Hg) for each of the preceding 12 months. Actual emissions shall be recorded for individual units and as a facility total for all units included in the calculation demonstrating compliance. Actual emissions shall be recorded in accordance with 310 CMR 7.29(7)(b)1.b., c., and d. for Hg (<b>state-only requirement</b>).</p>
	<p>In accordance with Approval No. 4B08052, maintain ARP daily records including operating hours, fly ash feed in tons per day, PAC feed in tons per day, and cubic feet of natural gas burned per day.</p>
	<p>In accordance with Approval No. 4B08052, maintain ARP calendar month records including number of operating hours, natural gas heat input, PAC heat input, fly ash heat input, and average total heat input (MMBtu/hr) during operating hours.</p>
	<p>In accordance with the Applicability Determination and Approval dated March 31, 2008, the mercury (Hg) CEMS shall be deemed to be conditionally certified as of the date that each CEM passed the RATA. Further, compliance with 310 CMR 7.29 Hg requirements for the 1<sup>st</sup> quarter 2008 shall be determined using valid data only (<b>state-only requirement</b>).</p>

**Table 5 (continued)**

EU #	Recordkeeping Requirements
	In accordance with 310 CMR 7.19(13)(d)3., record for each unit on a daily basis: type fuel(s) burned each day, heat content of each fuel, the total heating value of the fuel consumed for each day, and the allowable NOx and CO emission rates.
EU 5	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain fuel analysis results or fuel purchase receipts used to demonstrate compliance with fuel sulfur content requirements.
EU 6	In accordance with Approval No. 4B94073 and 310 CMR 7.19(8)(d)3., record the hours of operation of each emission unit.
EU 7	In accordance with 310 CMR 7.19(13)(d)8., all records required by 310 CMR 7.19(13)(d), including computer retained and generated data, shall be kept in a permanently bound log book or any other form acceptable to MassDEP.
EU 8	In accordance with 40 CFR 63, Subpart ZZZZ, keep a record of the applicability determination on site at the facility for a period of 5 years after the determination (40 CFR 63.10(b)(3)).
	In accordance with 40 CFR 63, Subpart ZZZZ, effective May 3, 2013, maintain records of hours of operation.
	In accordance with 40 CFR 63, Subpart ZZZZ, effective May 3, 2013, maintain records of the manufacturer's recommended maintenance procedures for the closed crankcase ventilation system or open crankcase filtration system, and of maintenance performed on the system.
EU 10	<p>In accordance with 310 CMR 7.24(3)(f):</p> <ol style="list-style-type: none"> <li>1. Install, maintain and properly operate the vapor balance system;</li> <li>2. Maintain records of all maintenance performed, including the type of maintenance performed, and the date maintenance was performed; and,</li> <li>3. Maintain records of all malfunctions, including the type of malfunction, the date the malfunction was observed, and the date the malfunction was repaired; and,</li> <li>4. Maintain all gauges, meters, or other specified testing device in proper working order; and,</li> <li>5. Maintain records of the daily throughput of any organic material with a true vapor pressure of 1.5 psla or greater under actual storage conditions.</li> </ol>
EU 12 <sup>(1)</sup>	<p>In accordance with Approval No. 4B08052, the permittee shall maintain records of the daily fly ash feed to the ARP in tons per day.</p> <p>In accordance with Approval No. 4B08052, the permittee shall maintain calendar quarter records of the fly ash heat input to, and fly ash product from, the ARP in units of Btu/lb.</p> <p>In accordance with Approval No. 4B08052 and 40 CFR 60, Subpart Dc, meet the recordkeeping requirements of Section 60.48c(g) and the general provisions of 40 CFR 60.7.</p>
EU 16	In accordance with 310 CMR 7.03(8), maintain records of the amounts of solvent added to each of the degreaser units on a monthly basis.

**Table 5 (continued)**

EU #	Recordkeeping Requirements
EU 17	<p>In accordance with 310 CMR 7.24(3)(f), properly operate the vapor balance system; maintain records of all maintenance performed, including the type of maintenance performed and date the maintenance was performed; maintain records of all malfunctions, including the type of malfunction, the date the malfunction was observed, and the date the malfunction was repaired; and, maintain records of the daily throughput of any organic material with a true vapor pressure of 1.5 psia or greater during actual storage conditions.</p>
	<p>In accordance with 310 CMR 7.24(6)(b)3., maintain all Stage II system maintenance records on site, in a centralized location, for the most recent rolling twelve-month period. Such records may be either hard copy documents or electronic documents, provided that a hard copy of the electronic documents shall be printed on-site immediately upon request. Stage II system maintenance records shall include:</p> <p>(a) All of the facility's weekly inspection checklists for the prior twelve-month period, identifying:</p> <ul style="list-style-type: none"> <li>(i) the date each weekly visual inspection was performed and the signature of the person who performed the visual inspection;</li> <li>(ii) any Stage II system component determined to be incorrectly installed, non-functioning or broken;</li> <li>(iii) whether the incorrectly installed, non-functioning or broken component was immediately repaired, taken out of service and repaired within 14 days, isolated, or the facility stopped dispensing motor vehicle fuel and all fuel dispensers were taken out of service;</li> <li>(iv) the date the incorrectly installed, non-functioning or broken components identified in (iii) above were repaired.</li> </ul> <p>(b) A copy of compliance testing company test results for all Stage II compliance tests during the prior 12-month period.</p> <p>(c) A copy of the Stage II system's most recent Annual In-Use Compliance Certification.</p>
Facility Wide	<p>Maintain the test results of any stack testing performed in accordance with 310 CMR 7.13(1) or of any other testing or testing methodology required by MassDEP or EPA.</p>
	<p>Keep copies of Source Registration/Emission Statement Forms submitted annually to MassDEP as required per 310 CMR 7.12(3)(b). Copies shall be retained for five years from the date of submittal.</p>
	<p>In accordance with 310 CMR 7.00: Appendix C(10)(b), maintain records of all monitoring data and supporting information required by this operating permit on site for five (5) years from the date of the monitoring sample, measurement, report or initial operating permit application.</p>
	<p>In accordance with Approval No. 4B08052, the use of wastewater from the Somerset POTW that contains minor amounts of VOCs is subject to the recordkeeping requirements contained in 310 CMR 7.02(2)(d).</p>

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<b>Table 5 (continued)</b>	
EU #	Recordkeeping Requirements
Facility Wide	In accordance with Approval No. 4B08052, the lime, fly ash and PAC material handling and storage systems are subject to the recordkeeping requirements contained in 310 CMR 7.03(6).
	In accordance with 310 CMR 7.71(6)(b). and (c)., retain at the facility for five years and make available to the Department upon request copies of the documentation of the methodology and data used to quantify emissions. <b>(state-only requirement)</b> .

**Table 5 Notes:**

- (1) The exhaust of EU 12 (ARP) will be directed to the windbox of Unit 3. If Unit 3 is not available, it will be directed to Unit 1. If neither Unit 3 nor Unit 1 are available, it will be shut down. Therefore, the exhaust of EU 12 will pass through the emission controls on Unit 3 or Unit 1, and that unit's CEMS will measure all emissions from EU 12. EU 12 will be equipped with a fabric filter baghouse to remove particulates in the exhaust gas prior to entering either the Unit 3 or Unit 1 windbox.

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**Table 6**

EU #	Reporting Requirements
	<p>In accordance with 310 CMR 7.14(2) and 310 CMR 7.19(13)(d)2., submit CEM Excess Emission Reports for each calendar quarter by the thirtieth (30th) day of April, July, October, and January covering the previous calendar periods of January through March, April through June, July through September, and October through December, respectively. Such reports shall contain visible emissions (opacity and/or smoke exclusive of uncombined water) and emission rates of NO<sub>x</sub>, CO and SO<sub>2</sub> in excess of the emission limits/standards contained in Table 3. Start-up periods shall be reported in accordance with "The Department Response to Comments on Proposed Amendments to 310 CMR 7.00: RACT for NO<sub>x</sub>", dated June 1994. Start-up periods are not included in the calendar day NO<sub>x</sub> and CO emission rate compliance averaging time as long as the mass emission rate, in pounds of NO<sub>x</sub> and/or CO per hour, from the emission unit does not exceed the mass emission rate that would occur at the maximum firing rate. Start-up begins with when the first burner is lit and ends when all available or required burners are in service. The permittee shall notify MassDEP if start-ups last longer than twenty-four (24) hours.</p>
EU 1 EU 2	<p>In accordance with 40 CFR Part 75, submit to the USEPA Acid Rain Division all NO<sub>x</sub> emissions and operating information for each calendar quarter of each year in accordance with the standards specified in 40 CFR Part 75, Subpart G. The submission must be in an electronic format that meets the requirements of EPA's Electronic Data Reporting (EDR) convention. Quarterly reports must contain NO<sub>x</sub> emissions in pounds per hour for every hour, and cumulative quarterly and seasonal NO<sub>x</sub> emissions data in pounds, in a format consistent with the EDR convention.</p>
EU 3 EU 4	<p>In accordance with 40 CFR 60, 40 CFR 72, and 40 CFR 75, comply with all applicable reporting requirements.</p>
	<p>Notification of QA testing is required for Relative Accuracy Test Audits (RATAs) and Appendix E/LME (Low Mass Emission) unit tests. Notification must be made by mail or electronic mail (e-mail) at least 21 days prior to the scheduled test date to the EPA as required by 40 CFR 75.61, to MassDEP Headquarters, Bureau of Waste Prevention, Division of Planning and Evaluation, and to the MassDEP Regional office, Attn: BWP Permit Chief. If tests must be rescheduled, 24 hours notice must be given, as specified in 40 CFR 75.61(a)(5).</p>
	<p>A previously approved RATA protocol may be referenced at the time of test notification provided that the referenced protocol was completed in accordance with current 40 CFR Part 75 procedures, addresses all previous MassDEP protocol comments to the satisfaction of the MassDEP, and none of the information has changed. If a revised protocol must be submitted, it must be submitted at least 21 days prior to the scheduled test date.</p>
	<p>A hardcopy of the QA RATA or Appendix E/LME test results must be submitted to both the DEP Lawrence and DEP Regional offices within 45 days of completion of tests. The electronic results must be submitted in the quarterly electronic data report (EDR).</p>
	<p>Results from QA daily calibrations, quarterly linearity checks and Appendix D Fuel flowmeter tests must be reported electronically in the EDR submittal for the quarter in which the testing occurs.</p>

**Table 6 (continued)**

EU #	Reporting Requirements
	<p>Submit SO<sub>2</sub> emission reports to verify compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 for each calendar quarter by the thirtieth (30th) day of April, July, October, and January covering the previous calendar periods of January through March, April through June, July through September, and October through December, respectively. Such reports shall contain, on a quarterly basis, for each EU defined in the permittee's SO<sub>2</sub> compound emission rate averaging system encompassing the Salem Harbor Station and Brayton Point Station facilities: total heating value or heat input of fuel consumed in BTUs and mass SO<sub>2</sub> emission rate in pounds. The quarterly report shall also contain system-wide totals of the latter information for the permittee's entire SO<sub>2</sub> compound emission rate averaging system encompassing the Salem Harbor Station and Brayton Point Station facilities. The fourth quarterly report shall contain an annual summary of the reportable information.</p>
	<p>In accordance with Approval No. 4B88066, report the quantity of used/waste oil &amp; non-chlorinated solvents burned for each calendar year; to include all waste oil, used and unused from the fuel system, lubricating sources, floor drains, heater drains and drains from fill hose and possible spills, inclusive of combined water.</p>
	<p>In accordance with 310 CMR 7.19(13)(d)9., submit compliance records within ten (10) days of written request by MassDEP or EPA.</p>
	<p>Report as required by 40 CFR Part 75, Subpart G.</p>
<p>EU 1                  EU 2                  EU 3                  EU 4</p>	<p>In accordance with Approval No. 4B08050, MassDEP may verify the facility's compliance status by whatever means necessary, including but not limited to requiring the affected facility to submit information on actual electrical output of company generating units provided by the New England Independent System Operator (ISO), or any successor thereto.</p>
	<p>In accordance with Approval No. 4B08050, by January 30 of the year following the earliest applicable compliance date for the affected facility under 310 CMR 7.29(6)(c), and January 30 of each calendar year thereafter, the company representative responsible for compliance shall submit a compliance report to MassDEP demonstrating the facility's compliance status with the emission standards contained in 310 CMR 7.29(5)(a) and in an approved Emission Control Plan. The report shall demonstrate the facility's compliance status with applicable monthly emission rates for each month of the previous calendar year, and each of the twelve previous consecutive 12-month periods. The compliance report shall include all statements listed in 310 CMR 7.29(7)(b)4. <sup>(2)</sup> <b>(state-only requirement).</b></p>
	<p>In accordance with Approval No. 4B08052, at least 60 days prior to commencing construction of the CEM/COM systems, protocols and plans for the new CEM/COM systems, including NH<sub>3</sub> CEMS, and supporting documentation, shall be submitted to MassDEP for review and approval.</p>
	<p>In accordance with Approval No. 4B08050, certify and operate each CEMS in accordance with 310 CMR 7.29(5)(a)3.g. <b>(state-only requirement).</b></p>
	<p>In accordance with 310 CMR 7.32, submit reports as required by the Massachusetts Clean Air Interstate Rule (CAIR). the permittee has submitted an application, under Transmittal No. W152786, in accordance with 310 CMR 7.32 and shall modify this Operating Permit upon approval of the application.</p>
	<p>In accordance with 310 CMR 7.70(2)(a)5. and Approval No. 4B08038, each submission under the CO<sub>2</sub> Budget Trading Program shall be submitted, signed, and certified by the CO<sub>2</sub> authorized account representative. <b>(state-only requirement).</b></p>

**Table 6 (continued)**

EU #	Reporting Requirements
	In accordance with 310 CMR 7.70(4)(a) and Approval No. 4B08038, for each control period in which a CO <sub>2</sub> budget source is subject to the CO <sub>2</sub> requirements of 310 CMR 7.70(1)(e)3., submit to the Department by March 1 following the relevant control period, a compliance certification report to <b>MassDEP, Bureau of Waste Prevention, 1 Winter Street, Boston, MA 02108, Attn: CO<sub>2</sub> Budget Trading Program</b> . The compliance certification shall contain, at a minimum, the items listed in 310 CMR 7.70(4)(a)2. and 3. <b>(state-only requirement)</b> .
	In accordance with 310 CMR 7.70(6)(c) and Approval No. 4B08038, following the establishment of a CO <sub>2</sub> Allowance Tracking System account, all submissions to the Department or its agent pertaining to the account, shall be made only by the CO <sub>2</sub> authorized account representative for the account. <b>(state-only requirement)</b> .
	In accordance with 310 CMR 7.70(8)(d) and Approval No. 4B08038, the CO <sub>2</sub> authorized account representative shall submit written notifications to the Department and the Administrator in accordance with 40 CFR 75.61. <b>(state-only requirement)</b> .
EU 1 EU 2 EU 3 EU 4	In accordance with 310 CMR 7.70(8)(e)1. and Approval No. 4B08038, comply with all recordkeeping and reporting requirements in 310 CMR 7.70(8)(e), the applicable recordkeeping and reporting requirements under 40 CFR 75.73 and with the requirements of 310 CMR 7.70(2)(a)5. <b>(state-only requirement)</b> .
	In accordance with 310 CMR 7.70(8)(e)4.a.i. and Approval No. 4B08038, report the CO <sub>2</sub> mass emissions data for the CO <sub>2</sub> budget unit that commenced commercial operation before July 1, 2008, in an electronic format prescribed by the Administrator, unless otherwise prescribed by the Department, for each calendar quarter beginning with the calendar quarter covering January 1, 2009 through March 31, 2009. <b>(state-only requirement)</b> .
	In accordance with 310 CMR 7.70(8)(e)4.c. and Approval No. 4B08038, submit to the Department or its agent a compliance certification in support of each quarterly report. <b>(state-only requirement)</b> .
	In accordance with 310 CMR 7.70(8)(h)6.a. and Approval No. 4B08038, comply with all output recordkeeping and reporting requirements in 310 CMR 7.70(8)(h) and with the requirements of 310 CMR 7.70(1)(e)5. and (2)(a)5. <b>(state-only requirement)</b> .
	In accordance with 310 CMR 7.70(8)(h)6.c. and Approval No. 4B08038, submit annual output reports in a spreadsheet both electronically and in hardcopy by March 1 for the immediately preceding calendar year to <b>MassDEP, Bureau of Waste Prevention, 1 Winter Street, Boston, MA 02108, Attn: CO<sub>2</sub> Budget Trading Program</b> or the Department's agent. <b>(state-only requirement)</b> .
EU 1 EU 2 EU 3 EU 4 EU 12 <sup>(1)</sup>	In accordance with Approval No. 4B08050 and 310 CMR 7.29(7), by January 30 of the year following the earliest applicable compliance date and January 30 of each calendar year thereafter the facility shall submit a report to MassDEP demonstrating compliance with the emission standards contained in 310 CMR 7.29(5)(a) and in an approved emission control plan (ECP). For the mercury standards at 310 CMR 7.29(5)(a)3.c., the compliance reports due January 30, 2007 and 2008 shall include the quarterly emissions for each quarter beginning October 1, 2006. For the mercury standards at 310 CMR 7.29(5)(a)3.c., e., and f., the compliance report due January 30, 2009 and each report thereafter shall demonstrate compliance with any applicable annual standard for the previous calendar year and with any applicable 12-month standard for each of the 12 previous consecutive 12-month periods <b>(state-only requirement)</b> .

**Table 6 (continued)**

EU #	Reporting Requirements
EU 1 EU 3	<p>In accordance with Approval No. 4B08052, NH<sub>3</sub> CEMS data will initially be used as an operational tool. Compliance with the NH<sub>3</sub> emission limit will be determined during the initial compliance test, and by quarterly compliance testing thereafter, until MassDEP in writing approves otherwise, or until the NH<sub>3</sub> CEMS becomes a direct compliance monitor as defined in Section VIII(B)2 of Approval No. 4B08052. The NH<sub>3</sub> CEMS shall operate during NH<sub>3</sub> compliance testing and the test report shall be submitted to MassDEP within 45 days after completion of testing. Until the NH<sub>3</sub> CEM system becomes a direct compliance monitor the permittee on an annual basis, by March 1st, shall submit a report on the performance and relative accuracy of the NH<sub>3</sub> CEM systems along with a recommendation on the feasibility of their use as a compliance determination method.</p>
	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall submit all notifications and reports to the address below.</p> <p style="text-align: center;">Air Compliance Clerk                  EPA-New England, Region 1                  5 Post Office Square                  Suite 100 (OES04-2)                  Boston, MA 02109-3912</p>
EU 3	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall submit to EPA Region 1 semi-annual reports postmarked by January 30<sup>th</sup> and July 30<sup>th</sup> of each year. Each semi-annual report shall contain the following information from the prior calendar 6-month period:</p> <ul style="list-style-type: none"> <li>a. Rolling 12-month filterable and total PM emission rates using data collected in accordance with Section V.2. of the PSD Permit;</li> <li>b. Date and time of all emission limit and permit condition violations; and</li> <li>c. All equipment malfunctions and corrective actions.</li> </ul>
	<p>In accordance with PSD Permit No. 052-120-MA15, within 45 days after the completion of emissions tests, a preliminary report of the test results shall be submitted to EPA. The test report shall indicate:</p> <ul style="list-style-type: none"> <li>a. The filterable and total PM<sub>10</sub> and PM<sub>2.5</sub> emissions in lbs/MMBtu and lbs/hr.</li> <li>b. The heat input for boiler No. 3 in MMBtu/hr.</li> </ul>
	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall submit the final emissions test report(s) to EPA Region 1 within 60 days after the completion of each of the tests.</p>
EU 1 EU 2 EU 3 EU 12 <sup>(1)</sup>	<p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.d.iii., the results of each stack test for mercury (Hg) shall be reported to MassDEP within 45 days after conducting each stack test <b>(state-only requirement)</b>.</p> <p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.c.ii.(iv), when ash produced by an affected facility is used in Massachusetts as a cement kiln fuel, as an asphalt filler, or in other high temperature processes that volatilize mercury (Hg), a proposal shall be submitted for MassDEP approval at least 45 days prior to such use, or at least 45 days prior to October 1, 2006, whichever is later, detailing the proposed measurement methods to be used to comply with 310 CMR 7.29(5)(a) 3.c.ii.(i) and (ii) <b>(state-only requirement)</b>.</p>

**Table 6 (continued)**

EU #	Reporting Requirements
EU 1 EU 2 EU 3 EU 12 <sup>(1)</sup>	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g., submit a CEMS monitoring plan for MassDEP approval at least 45 days prior to equipment installation including, but not limited to, a sample calculation demonstrating compliance with the emission limits using conversion factors from 40 CFR Part 60 or Part 75 or other proposed factors ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g., submit for MassDEP approval a CEMS certification protocol at least 21 days prior to certification testing for the CEMS, and any proposed adjustment to the certification testing at least seven (7) days in advance ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g., submit a certification report within 45 days of the completion of the certification test for MassDEP approval ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g.i.(xii), submit to the appropriate MassDEP regional office by the 30 <sup>th</sup> day of April, July, October, and January, a report detailing any of the following that have occurred within the previous calendar quarter. In the event none of the following items have occurred, such information shall be stated in the report ( <b>state-only requirement</b> ):  (a) The date and time that any mercury CEMS stopped collecting valid data and when it started to collect valid data again, except for zero and span checks; and,  (b) the nature and the date of system repairs.
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(7)(a), for the mercury (Hg) standards at 310 CMR 7.29(5)(a)3.c., the compliance reports due January 30, 2007 and 2008 shall include the quarterly emissions for each quarter beginning October 1, 2006. For the mercury standards at 310 CMR 7.29(5)(a)3.c., e., and f., the compliance report due January 30, 2009 and each report thereafter shall demonstrate compliance with any applicable annual standard for the previous calendar year and with any applicable 12-month standard for each of the 12 previous consecutive 12-month periods. The compliance report shall contain items listed in 310 CMR 7.29(7)(b) ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(7)(g), any person subject to 310 CMR 7.29(5)(a)3 shall submit the results of all mercury emissions, monitor, and optimization test reports, along with supporting calculations, to MassDEP within 45 days after completion of such testing ( <b>state-only requirement</b> ).
	Submit to the appropriate MassDEP regional office a compliance report in accordance with 310 CMR 7.29(7)(b) ( <b>state-only requirement</b> ).

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**Table 6 (continued)**

EU #	Reporting Requirements
EU 1 EU 2 EU 3 EU 14 EU 15	<p>In accordance with Approval No. 4B08052, the permittee shall notify MassDEP in writing within 10 days after each activity listed below occurs:</p> <ul style="list-style-type: none"> <li>(a) The date construction commences.</li> <li>(b) The date construction is completed.</li> <li>(c) The date Unit 1 SCR system has passed acceptance testing (vendor guarantee).</li> <li>(d) The date Unit 1 SDA/FF and PAC systems passed acceptance testing (vendor guarantee).</li> <li>(e) The date Unit 2 SDA/FF and PAC systems passed acceptance testing (vendor guarantee).</li> <li>(f) The date Unit 3 SCR and ARP systems passed acceptance testing (vendor guarantee).</li> <li>(g) The date Unit 3 PAC system passed acceptance testing (vendor guarantee).</li> <li>(h) The date Unit 3 DS/FF systems passed acceptance testing (vendor guarantee).</li> <li>(i) The date Cooling Tower 1 has passed acceptance testing (vendor guarantee).</li> <li>(j) The date Cooling Tower 2 has passed acceptance testing (vendor guarantee).</li> </ul>
EU 5 EU 6 EU 7 EU 8	<p>In accordance with Approval No. 4B94073 and 310 CMR 7.19(8)(d)3., report the hours of operation of each EU on a Source Registration/Emission Statement Form as required by 310 CMR 7.12.</p> <p>In accordance with 310 CMR 7.19(13)(d)9., submit compliance records within ten (10) days of written request by MassDEP or EPA.</p> <p>In accordance with 40 CFR 63, Subpart ZZZZ, submit all of the applicable notifications as listed in the NESHAP General Provisions (40 CFR 63, Subpart A), including an Initial notification, notification of performance test, and a notification of compliance with the emission limitations.</p>
EU 12 <sup>(1)</sup>	<p>In accordance with Approval No. 4B08052 and 40 CFR 60, Subpart Dc, meet the reporting requirements of Section 60.48c(g) and the general provisions of 40 CFR 60.7.</p>
EU 14 EU 15	<p>In accordance with PSD Permit No. 052-120-MA14, submit all notifications and reports required by this permit to:</p> <p style="text-align: center;">Air Compliance Clerk              EPA-New England, Region 1              5 Post Office Square              Suite 100 (OES04-2)              Boston, MA 02109-3912</p>

**Table 6 (continued)**

EU #	Reporting Requirements
EU 14 EU 15	<p>In accordance with PSD Permit No. 052-120-MA14, after either Cooling Tower 1 or 2 commences operation, the permittee shall submit to EPA New England semi-annual reports postmarked by January 30<sup>th</sup> and July 30<sup>th</sup> of each year. Each semi-annual report shall contain the following information from the prior calendar 6-month period:</p> <p>(a) Cooling Towers 1 and 2 rolling 12-month total PM<sub>2.5</sub> and PM<sub>10</sub> emission rates.</p> <p>(b) Date and time of all emission limit and permit condition violations.</p> <p>(c) All equipment malfunctions and corrective actions.</p>
Facility Wide	Submit Emissions Compliance Testing (Stack Testing) Reports in accordance with 310 CMR 7.19(13)(c).
	Submit a Source Registration/Emission Statement Form to MassDEP on an annual basis in accordance with 310 CMR 7.12.
	Promptly report to MassDEP all instances of deviations from permit requirements which are not otherwise reported to MassDEP by telephone or fax or electronic mail (e-mail), within three days of discovery of such deviation, as provided in 310 CMR 7.00: Appendix C(10)(f). (See General Condition 25).
	All required reports must be certified by a responsible official as provided in 310 CMR 7.00: Appendix C(10)(h).
	In accordance with Approval No. 4B08050, submit by January 15, April 15, July 15, and October 15 for the previous three (3) months, respectively, a 310 CMR 7.29 construction status report which identifies the construction activities which have occurred during the past three months, and those activities anticipated for the following three months, and progress toward achieving compliance with the implementation dates identified in Table 6 of Approval No. 4B08050 <u>Amended Emission Control Plan Final Approval</u> , dated December 29, 2008. <b>(This Table is reproduced in this Operating Permit as Table 6A) (state-only requirement).</b>
	In accordance with Approval No. 4B08052, the use of wastewater from the Somerset POTW that contains minor amounts of VOCs, is subject to the reporting requirements contained in 310 CMR 7.02(2)(e).
	In accordance with Approval No. 4B08052, the lime, fly ash, and PAC material handling and storage systems are subject to the reporting requirements contained in 310 CMR 7.03(5).
	In accordance with Approval No. 4B08052, the permittee shall notify MassDEP by telephone, fax, or electronic mail (e-mail) no later than three (3) business days after the occurrence of any facility upsets or malfunctions to the facility equipment which results in an excess emission to the ambient air and/or a condition of air pollution.
	In accordance with Approval No. 4B08052, the permittee shall ensure that all final emission test reports are submitted to MassDEP within 60 days after completion of each of the tests.
In accordance with Approval No. 4B08052, post-construction sound survey final reports shall be submitted to MassDEP within 60 days after the last day of sound monitoring.	

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**Table 6 (continued)**

EU #	Reporting Requirements
Facility Wide	All notifications and reporting required by this Operating Permit shall be made to the attention of:  Department of Environmental Protection Bureau of Waste Prevention 20 Riverside Drive Lakeville, Massachusetts 02347 ATTN: Permit Section Telephone: (508) 946-2770 Fax: (508) 947-6557 or (508) 946-2865
	In accordance with Approval No. 4B08052, pursuant to 310 CMR 7.00, Appendix A, the permittee, on an annual basis for a period of 5 years from the date each unit (Unit 1, Unit 2, and Unit 3) resumes regular operation after completion of the steps identified in Approval No. 4B08052, shall submit to MassDEP information demonstrating that the physical or operational change did not result in an emission increase beyond the "representative actual annual emissions" defined in Section IV <u>Emission Offsets and Nonattainment Review</u> of Approval No. 4B08052. Should there be an increase beyond that defined in Approval No. 4B08052, MassDEP will consider information provided by the permittee that the increase is unrelated to the alterations/construction approved in Approval No. 4B08052, such as, any increased utilization due to the rate of electricity demand growth for the utility system as a whole. The installation dates of the Unit 3 SCR and DS/FF emission control systems do not coincide, as is the case of the Units 1 and 2 SCR and SDA/FF/PAC emission control systems. Therefore, Units 1, 2, and 3 will have more than one different 5-year period subject to the requirements of this Condition.
	In accordance 310 CMR 7.71(5), by April 15 <sup>th</sup> , 2010, and April 15 <sup>th</sup> of each year thereafter report emissions of greenhouse gases from stationary emissions sources including, but not limited to, emissions from factory stacks, manufacturing processes and vents, fugitive emissions, and other process emissions, and owned or leased vehicles when stationary source greenhouse gas emissions or greater than 5,000 short tons CO <sub>2</sub> e. Report greenhouse gas emissions electronically in a format that can be accommodated by the registry. <b>(state-only requirement)</b> .
	In accordance with 310 CMR 7.71(6), certify greenhouse gas emissions reports using a form provided by the Department or the registry. <b>(state-only requirement)</b> .
In accordance with 310 CMR 7.71(7), by December 31 <sup>st</sup> of the applicable year submit to the Department Documentation of triennial verification of the greenhouse gas emissions report. <b>(state-only requirement)</b> .	

**Table 6 Notes:**

- (1) The exhaust of EU 12 (ARP) will be directed to the windbox of Unit 3. If Unit 3 is not available, it will be directed to Unit 1. If neither Unit 3 nor Unit 1 is available, it will be shut down. Therefore, the exhaust of EU 12 will pass through the emission controls on Unit 3 or Unit 1, and that unit's CEMS will measure all emissions from EU 12. EU 12 will be equipped with a fabric filter baghouse to remove particulates in the exhaust gas prior to entering either the Unit 3 or Unit 1 windbox.
- (2) If the ISO final settlement of actual electrical output is not available, the facility shall submit a compliance report based on provisional values of actual electrical output. Upon receiving certified ISO values of actual electrical output for all provisional months within the calendar year, the facility shall submit a revised compliance report within 30 days thereafter.

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Table 6A		
Compliance Path		
Pollutant	Standard	Date
NO <sub>x</sub> SO <sub>2</sub>	310 CMR 7.29(5)(a)1.a. 310 CMR 7.29(5)(a)2.a.	October 1 2006
NO <sub>x</sub> SO <sub>2</sub>	310 CMR 7.29(5)(a)1.b. 310 CMR 7.29(5)(a)2.b.	October 1 2008
CO <sub>2</sub>	310 CMR 7.29(5)(a)5.a.	Calendar Year 2006
CO <sub>2</sub>	310 CMR 7.29(5)(a)5.b.	Calendar Year 2008
Hg	310 CMR 7.29(5)(a)3.c.	October 1, 2006
Hg	310 CMR 7.29(5)(a)3.e.i. or ii.	January 1, 2008
Hg	310 CMR 7.29(5)(a)3.f.i. or ii.	October 1, 2012

C. GENERAL APPLICABLE REQUIREMENTS

The permittee shall comply with all generally applicable requirements contained in 310 CMR 7.00 et seq., and 310 CMR 8.00 et seq., when subject.

D. REQUIREMENTS NOT CURRENTLY APPLICABLE

The permittee is currently not subject to the following requirements:

Table 7	
Regulation	Description
310 CMR 7.07	Open Burning
310 CMR 7.16	Reduction of Single Occupant Commuter Vehicle Use
310 CMR 7.25	Consumer and Commercial Products
310 CMR 7.27	Superseded by 310 CMR 7.28 and 7.32
310 CMR 7.28	As of January 1, 2009, this regulation is no longer applicable; it was superseded by 310 CMR 7.32
310 CMR 7.29(5)(a)5.a. and b.	Superseded by 310 CMR 7.70

**5. SPECIAL TERMS AND CONDITIONS**

The permittee is subject to the following special terms and conditions that are not contained in Table 3, 4, 5, and 6:

**Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4:**

A. The permittee shall comply with the requirements of Standard Operating Procedure, Section 3.0 Coal Handling and Measurement Systems contained in Approval No. 4B91064 dated February 28, 1992.

B. The permittee shall comply with the requirements of Standard Operating Procedure, Section 4.0 Ash Handling Systems contained in Approval No. 4B91064 dated February 28, 1992.

C. Unit No. 1 Stack Parameters (Stack No. 1):

Stack Height = 351.7 feet  
Exit Diameter = 174.0 inches

D. Unit No. 2 Stack Parameters (Stack No. 2):

Stack Height = 351.7 feet  
Exit Diameter = 174.0 inches

E. Unit No. 3 Stack Parameters (Stack No. 3):

Stack Height = 351.7 feet  
Exit Diameter = 233.8 inches

F. Unit No. 4 Stack Parameters (Stack No. 4):

Stack Height = 500.0 feet  
Exit Diameter = 222.0 inches

G. Federal Acid Rain Program, Phase I Acid Rain Permit

- (1) Brayton Point Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4 are affected sources for Phase I of the Federal Acid Rain Program, pursuant to the "compensating unit" provisions of 40 CFR 72.43. As such, these emission units are subject to the requirements of the US EPA Phase I Acid Rain Permit, issued to Brayton Point for the period of January 1, 1995 to December 31, 1999, as revised on January 22, 1996. By January 30th of each year, the permittee must hold in the SO<sub>2</sub> allowance account for each emission unit at least one allowance for each ton of SO<sub>2</sub> emitted the previous year, provided the permittee elected that its emission units participate as compensating units for that year. The permittee's designated representative may buy, sell, trade, or transfer allowances for or between EU accounts at any time, except between January 30th and the completion of the annual SO<sub>2</sub> allowance reconciliation for the preceding year(s).

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H. Federal Acid Rain Program, Phase II Acid Rain Permit

- (1) Brayton Point Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4 are subject to the requirements of Phase II of the Federal Acid Rain Program as defined by EPA in 40 CFR Part 72. Pursuant to 40 CFR 72.71, 40 CFR 72.73, and 310 CMR 7.00, Appendix C(3)(n), MassDEP is the permitting authority for Phase II Acid Rain Permits. MassDEP issued the initial Phase II Acid Rain Permit No. 4B97105 to Brayton Point Station on December 30, 1997 and renewed said permit on February 28, 2003. MassDEP is incorporating the requirements of the renewed Phase II Acid Rain Permit into this Operating Permit. The Phase II Acid Rain Permit will renew in the Operating Permit.
- (2) Within 60 days of the end of each calendar year, the facility shall hold in its SO<sub>2</sub> allowance account at least one allowance for each ton of SO<sub>2</sub> emitted during the previous year. An allowance is a limited authorization to emit SO<sub>2</sub> in accordance with the Acid Rain Program.
- (3) If the facility has excess emissions in any calendar year, it shall submit a proposed offset plan as required under 40 CFR Part 77. In addition, the permittee shall pay any penalties specified in 40 CFR Part 77 and comply with the terms of an approved offset plan.
- (4) In accordance with 40 CFR Part 73, the permittee's designated representative may buy, sell, trade, or transfer allowances between EU accounts at any time, except between 60 days of the end of the calendar year and the completion of the annual SO<sub>2</sub> allowance reconciliation for the preceding year(s).
- (5) The yearly allowance allocations as identified in 40 CFR 73, Tables 2, 3, and 4 (as amended) and Acid Rain Permit No. 4B97105 Renewal dated February 28, 2003 are identified below:

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EU #	Allowances	Tons/Year		
		2008	2009	2010 and Beyond
EU 1	SO <sub>2</sub>	8,478	8,478	8,496
	NO <sub>x</sub>	Standard annual average emission limitation of 0.40 lb/MMBtu for Phase II tangentially fired boiler		
EU 2	SO <sub>2</sub>	8,908	8,908	8,926
	NO <sub>x</sub>	Standard annual average emission limitation of 0.40 lb/MMBtu for Phase II tangentially fired boiler		
EU 3	SO <sub>2</sub>	18,618	18,618	18,658
	NO <sub>x</sub>	Standard annual average emission limitation of 0.46 lb/MMBtu for Phase II dry bottom wall-fired boiler		
EU 4	SO <sub>2</sub>	12,135	12,135	11,621

- (6) Acid Rain Approval No. 4B97105 is incorporated by reference into the Operating Permit.
  
- I. The permittee is subject to, and has stated in the original operating permit application (Application No. 4V95056, Transmittal No. 108001) that it is in compliance with the requirements of 40 CFR 82: Protection of Stratospheric Ozone. These requirements are applicable to this facility and the United States Environmental Protection Agency enforces these requirements.
  
- J. Massachusetts Clean Air Interstate Rule (Mass CAIR)
  - (1) The owner/operator of EU 1, EU 2, EU 3, and EU 4 is subject to the Massachusetts Clean Air Interstate Rule (Mass CAIR), 310 CMR 7.32, and has submitted a CAIR permit application pursuant to 310 CMR 7.32(3).
  
- K. Massachusetts CO<sub>2</sub> Budget Trading Program, 310 CMR 7.70
  - (1) The owner/operator of EU 1, EU 2, EU 3, and EU 4 is subject to the Massachusetts CO<sub>2</sub> Budget Trading Program, 310 CMR 7.70, and shall comply with all applicable requirements therein. In accordance with 310 CMR 7.70(3)(b), the CO<sub>2</sub> authorized account representative shall submit a complete CO<sub>2</sub> budget emission control plan under 310 CMR 7.70(3)(c) covering EU 1, EU 2, EU 3, and EU 4, to MassDEP on or before August 1, 2008.

**Emission Unit Nos. EU 1, EU 2, and EU 3**

- L. In accordance with Approval No. 4B08052, the permittee shall submit to MassDEP, in accordance with the provisions of Regulation 310 CMR 7.02(5)(c), the final general plans and specifications, including updated application forms as applicable, for the construction/-

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alterations of each system approved within 60 days after each system passes acceptance testing.

- M. In accordance with Approval No. 4B08052, the permittee shall submit Standard Operating and Maintenance Procedures (SOMP) for the new and altered equipment to MassDEP no later than 60 days after commencement of operation. Thereafter, the permittee shall submit updated versions of the SOMP to MassDEP no later than 30 days prior to the occurrence of a significant change. MassDEP must approve in writing any significant changes to the SOMP prior to the SOMP becoming effective.
- N. In accordance with Approval No. 4B08052, the permittee shall maintain a complaint log concerning emissions, odor, PM and sound from the facility. The permittee shall make available to the general public a telephone number that will receive and record complaints 24 hours per day, 7 days per week. The complaint log shall be maintained for the most recent five (5) year period. The complaint log shall be made available to MassDEP upon request. The permittee shall take all reasonable actions to respond to complaints.

**Emission Unit Nos. EU 1 and EU 3**

- O. In accordance with Approval No. 4B08052, the permittee shall, within 60 days after the submittal to MassDEP of the compliance test report, propose a surrogate methodology or parametric monitoring for NH<sub>3</sub> emissions based on compliance test results, NH<sub>3</sub> CEMS, and operating experience.
- P. In accordance with Approval No. 4B08050, MassDEP may verify compliance with 310 CMR 7.29(5) by whatever means necessary, including but not limited to: inspection of a unit's operating records; requiring the facility to submit information on actual electrical output of company generating units provided to that person by the New England Independent System Operator, or any successor thereto; testing emission monitoring devices; and, requiring the facility to conduct emissions testing under the supervision of MassDEP (**state-only requirement**).
- Q. In accordance with Approval No. 4B08050, MassDEP is not approving or denying any off-site or non-contemporaneous proposed CO<sub>2</sub> reduction measures at this time. 310 CMR 7.29(5)(a)5.c. and d. provide that compliance with the CO<sub>2</sub> emission limitations may be demonstrated by using offsite reductions or sequestration in addition to onsite reductions, as long as certain established conditions are met. However, while there is a provision for using early reductions of SO<sub>2</sub> to meet the SO<sub>2</sub> emissions limit in 310 CMR 7.29(5)(a)2.a., there is no similar regulatory provision for use of early reductions of CO<sub>2</sub> for compliance with 310 CMR 7.29(5)(a)5. Provisions for the quantification and certification of Greenhouse Gas (GHG) reductions, avoided emissions, or sequestered emissions for use in demonstrating compliance with the CO<sub>2</sub> emission limitations contained in 310 CMR 7.29 are contained in 310 CMR 7.00, Appendix B(7) Greenhouse Gas Credit Banking and Trading (state-only requirement).
- R. In accordance with Approval No. 4B08052, the basis for NH<sub>3</sub> emission compliance determination will automatically convert from quarterly compliance testing to the NH<sub>3</sub> CEM system upon each unit's CEM system demonstration that the relative accuracy of the NH<sub>3</sub> CEM system is within  $\pm 15\%$  for four consecutive quarters and the NH<sub>3</sub> CEM system was

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operating 90% of the time during the same period.

- S. In accordance with Approval No. 4B08052 Unit 1 and Unit 3 shall meet the NH<sub>3</sub> emission limits approved herein within four hours from initiating NH<sub>3</sub> feed to the SCR based upon compliance level ammonia CEM system data. During shutdown of the NH<sub>3</sub> system, EU 1 and EU 3 will be exempt from the hourly limits during the last hour of the NH<sub>3</sub> feed to the SCR.

**Emission Unit No. EU 3**

- T. In accordance with 310 CMR 7.00, Appendix C, within 60 days from the date that EU 3 DS/FF commences operation the permittee shall submit a Minor Modification application that addresses a CAM plan for PM emissions.
- U. In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall operate the FF at all times while Emission Unit No. EU 3 is in operation.
- V. In accordance with PSD Permit No. 052-120-MA15, the Emission Unit No. EU 3 heat input shall not exceed 5,655 MMBtu/hr (24-hour block average).
- W. In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall affix a copy of the PSD Permit in the control room.
- X. In accordance with PSD Permit No. 052-120-MA15, after the occurrence of any upset or malfunction to Emission Unit No. equipment or control devices that may result in a violation of any emission limitation or condition contained in the PSD Permit, the owner/operator must notify EPA Region 1, Office of Environmental Stewardship, attention Compliance and Enforcement Chief, by FAX at (617) 918-0905 within two business days, and subsequently in writing to the address listed below or by e-mail to;

[R1.AirReports@epa.gov](mailto:R1.AirReports@epa.gov)

Air Compliance Clerk  
EPA-New England, Region 1  
5 Post Office Square  
Suite 100 (OES04-2)  
Boston, MA 02109-3912

**Emission Unit No. EU 12 – Ash Reduction Process (ARP)**

- Y. In accordance with Approval No. 4B08052, the ARP shall not operate when Emission Unit No. EU 1 and EU 3 are both shut down.

**Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4 (4-Unit SO<sub>2</sub> Total)**

- Z. In accordance with Approval No. 4B08052, under the “existing configuration” total SO<sub>2</sub> emissions must not exceed 16,857 lb/hr. Under the “post-retrofit” configuration total SO<sub>2</sub> emissions must not exceed 18,292 lb/hr. As defined, the “existing configuration” is prior to the installation of one or more SO<sub>2</sub> control systems (SDA or DS), or when all SO<sub>2</sub> control

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systems are not in operation. "Post-retrofit configuration" is following the installation of one or more SO<sub>2</sub> control systems (SDA or DS). The lb/hr limit is based upon a three-hour average, recalculated hourly, as measured by 40 CFR 75 CEMs using valid data only.

**Emission Unit Nos. EU 5, EU 6, EU 7, and EU 8**

- AA. In accordance with Approval No. 4B08002, advise MassDEP in writing within fifteen (15) days after the date that the stock of distillate oil (0.3% sulfur by weight) existing on-site on the date of issuance of Approval No. 4B08002 (January 29, 2008) is consumed.
- BB. In accordance with 40 CFR 63, Subpart ZZZZ, the diesel generators will be subject to the Startup, Shutdown, and Malfunction (SSM) requirements, beginning May 3, 2013:
- Startup – Minimize the engine's time spent at idle and minimize the engine's startup to a period needed for appropriate and safe loading of the engine, not to exceed 30 minutes, after which time the engine must meet the otherwise applicable emission standards; however, there are no emissions limits for the startup period.
- Shutdown, Malfunction – Applicable emissions limits apply during periods of shutdown and malfunction.
- CC. Maintenance - In accordance with 40 CFR 63, Subpart ZZZZ, the diesel generators will be subject to "work practice standards" effective on May 3, 2013, and the permittee will need to follow the manufacturer's specified maintenance requirements for operating and maintaining the open or closed crankcase ventilation systems and replacing the crankcase filters.
- DD. Crankcase Ventilation - In accordance with 40 CFR 63, Subpart ZZZZ, effective May 3, 2013, the diesel generators will be subject to the crankcase ventilation standards and the permittee must install a closed crankcase ventilation system that prevents crankcase emissions from being emitted to the atmosphere, or install an open crankcase filtration emission control system that reduces emissions from the crankcase by filtering the exhaust stream to remove oil mist, particulates, and metals.

**SDA/FF and PAC Emission Control Systems**

- EE. In accordance with Approval No. 4B08052, the permittee shall submit to MassDEP final project design information by April 1, 2008 including, but not limited to, all documents not submitted with Application No. 4B08052 (refer to Application No. 4B06002, Appendix A, Form BWP AQ CPA-1, Section B), or items listed as to be determined (TBD), and forms contained in Appendix A of the application.
- FF. In accordance with Approval No. 4B08052, the permittee, within 36 months after the later date the Unit 1 SDA/FF and the Unit 2 SDA/FF have passed acceptance testing (vendor guarantee) shall propose to MassDEP new PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission limits for Units 1 and 2 and provide supporting justification for the proposed new emission limits or supporting justification for maintaining the emission limits contained herein in Table 3. A minimum of four (4) PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission tests shall be conducted on each of the stacks serving Units 1 and 2. MassDEP will establish, through issuance of an approval letter subject to the Appeal Process, final PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission limits after review

of the permittee's proposed final emission limits and supporting documentation.

**DS/FF Emission Control System**

- GG. In accordance with Approval No. 4B08052, the permittee shall submit to MassDEP, in accordance with the provisions of Regulation 310 CMR 7.02(5)(c), the final general plans and specifications, including updated application forms as applicable, for the construction/alterations of each system approved in Approval No. 4B08052 within 60 days after each system passes acceptance testing.
- HH. In accordance with Approval No. 4B08052, the permittee, within 36 months after the date the DS/FF has passed acceptance testing (vendor guarantee) shall propose to MassDEP new PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission limits for Unit 3 and provide supporting justification for the proposed new emission limits or supporting justification for maintaining the emission limits contained herein in Table 3. A minimum of four (4) PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission tests shall be conducted. MassDEP will establish, through issuance of an approval letter subject to the Appeal Process, final PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission limits after review of the permittee's proposed final emission limits and supporting documentation.
- II. In accordance with Approval No. 4B08052, the DS/FF shall be specified, designed and constructed to meet the 0.010 lb/MMBtu PM/PM<sub>10</sub>/PM<sub>2.5</sub> filterable emission limit. The permittee shall specify contractual performance guarantees that require the selected equipment supplier to meet this performance level. The permittee shall take reasonable measures to establish contract language that requires the equipment supplier to attempt to remedy particulate emission performance deficiencies, at a cost to the equipment supplier, up to the limit of liability of the agreed contract. The permittee shall take reasonable measures to negotiate a limit of liability that is equal to the contract amount for this specified guarantee. This establishes a contract make good clause that will require the selected equipment supplier to make good on the 0.010 lb/MMBtu emission limit and take actions up to the value of the contract. A contractual make good clause in general terms means that the equipment supplier must provide engineering, materials and construction to remedy contractual performance guarantee deficiencies.

Should the permittee exercise all contractual obligations and remedies and still not achieve compliance with the 0.010 lb/MMBtu PM/PM<sub>10</sub>/PM<sub>2.5</sub> filterable emission limit, the permittee may propose an emission limit up to 0.012 lb/MMBtu, 67.9 lb/hr, and 297.2 tpy. The permittee shall submit documentation supporting the proposed increased emission limit to MassDEP for review and MassDEP will render a written decision of the final emission limit under Application No. 4B08052/Transmittal No. X224106.

**Emission Unit Nos. EU 14 and EU 15, Cooling Towers**

- JJ. In accordance with Approval No. 4B08052, the permittee shall submit to MassDEP, in accordance with the provisions of Regulation 310 CMR 7.02(5)(e), the standard operations and maintenance procedures (SOMP); and the final general plans and specifications, including updated application forms as applicable, for the construction/alterations of each system approved in Approval No. 4B08052 within 60 days after each system passes acceptance testing.

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- KK. In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, Cooling Towers 1 and 2 shall be equipped with drift eliminators designed (manufacturer's design guarantee) to limit water mist drift to 0.0005% of the cooling tower circulating water flow.
- LL. In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, Cooling Tower 1 and 2 lb/hr emission limits contained in Table 3 shall be determined from drift eliminator design performance, circulating water flow determined by manufacturer's pump curve, and TDS determined by conductivity monitoring.
- MM. In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, Cooling Tower 1 and 2 shall be inspected from internal walkways not less than every three months to assure that the drift eliminators are clean and in good working order. Records shall be kept of the inspections. Not less than once per calendar year a complete inspection shall be conducted on Cooling Tower 1 and 2 using an inspector with recognized expertise in the field of natural draft cooling tower drift eliminators. Records shall be kept of these inspections, including the inspector's resume or credentials.
- NN. In accordance with 310 CMR 7.00, Appendix C, within 60 days from the date that EU 14 or EU 15 commences operation the permittee shall submit a Minor Modification application that addresses a CAM plan for PM emissions for EU 14 and EU 15.
- OO. In accordance with PSD Permit No. 052-120-MA14, the permittee shall maintain, at a minimum, the following information:
- (1) Hours of operation of each circulating water flow pump for each operating day.
  - (2) For each 24-hour time block, the average of the circulating water flow rate in gpm.
  - (3) Continuous readings of total dissolved solids in the circulating water.
  - (4) Quarterly and annual drift eliminator inspection records, including certification as to whether the drift eliminators are properly installed and in good working order.
  - (5) Monitoring equipment design data, maintenance, and repair information, including dates and times of repairs or maintenance.
  - (6) For each operating day, record total PM<sub>2.5</sub> and PM<sub>10</sub> emissions.
- PP. In accordance with PSD Permit No. 052-120-MA14, the permittee shall maintain the following records for the control and monitoring equipment on the Cooling Towers. For purposes of this permit, a malfunction is a sudden and reasonably unforeseeable failure that results in the possible exceedance of the emission limits or conditions in this permit:
- (1) Periods of malfunction including, at a minimum, the date and time the malfunction occurred;
  - (2) A description of the malfunction and the corrective action taken;
  - (3) The date and time corrective actions were initiated; and

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- (4) The date and time corrective actions were completed and the repaired equipment was returned to compliance
- QQ. In accordance with PSD Permit No. 052-120-MA14, the permittee shall comply with any request by EPA to supply any of the above records.
- RR. In accordance with PSD Permit No. 052-120-MA14, the permittee shall affix a copy of this PSD Permit in the control room.
- SS. In accordance with PSD Permit No. 052-120-MA14, after the occurrence of any upset or malfunction to Cooling Towers 1 or 2 equipment of control devices that may result in a violation of any emission limitation or condition contained herein, the permittee must notify EPA New England, Office of Environmental Stewardship, attention Compliance and Enforcement Chief, by FAX at (617) 918-0905 within two business days, and subsequently in writing to the address listed in Table 6 within seven calendar days or by e-mail to: [RIAirReports@epa.gov](mailto:RIAirReports@epa.gov).

#### Facility-Wide

- TT. In accordance with Approval No. 4B08052, a post-construction sound survey (**state-only requirement**) shall be conducted to define actual sound impacts in comparison to impacts proposed in the associated application and sound emission limits contained in Approval No. 4B08052. Post construction sound surveys shall be conducted no later than 180 days after the latest of the events listed in (1), (2), and (3) below:
- (1) Unit 1 SDA/FF and PAC systems passes acceptance testing,
  - (2) when Unit 2 SDA/FF and PAC systems passes acceptance testing,
  - (3) or Unit 3 SCR and ARP have both passed acceptance testing;
- And no later than 180 days after each of the events listed in (4) and (5) below:
- (4) the date Unit 3 DS/FF passes acceptance testing; but not to exceed 180 days from initial operation Unit 3 DS/FF;
  - (5) the date Cooling Tower 1 and Cooling Tower 2 passes acceptance testing, but not to exceed 180 days after the initial operation with both cooling towers.

## 6. ALTERNATIVE OPERATING SCENARIOS

The permittee did not request alternative operating scenarios in its operating permit application.

## 7. EMISSIONS TRADING

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(a) Intra-facility emission trading

Pursuant to 310 CMR 7.00: Appendix C(7)(b), emission trades, provided for in this permit, may be implemented provided the permittee notifies The United States Environmental Protection Agency (EPA) and MassDEP at least fifteen (15) days in advance of the proposed changes and the permittee provides the information required in 310 CMR 7.00: Appendix C(7)(b)3.

Any intra-facility change that does not qualify pursuant to 310 CMR 7.00: Appendix C(7)(b)2 is required to be submitted to MassDEP pursuant to 310 CMR 7.00: Appendix B.

(b) Inter-facility emission trading

All increases in emissions due to emission trading, must be authorized under the applicable requirements of 310 CMR 7.00: Appendix B (the "Emissions Trading Program") and the 42 U.S.C. §7401 et seq. (the "Act"), and provided for in this permit.

## **8. COMPLIANCE SCHEDULE**

The permittee has indicated that the facility is in compliance and shall remain in compliance with the applicable requirements contained in Sections 4 and 5.

In addition, the permittee shall comply with any applicable requirements that become effective during the permit term.

## GENERAL CONDITIONS FOR OPERATING PERMIT

### 9. FEES

The permittee has paid the permit application processing fee and shall pay the annual compliance fee in accordance with the fee schedule pursuant to 310 CMR 4.00.

### 10. COMPLIANCE CERTIFICATION

All documents submitted to MassDEP shall contain certification by the responsible official of truth, accuracy, and completeness. Such certification shall be in compliance with 310 CMR 7.01(2) and contain the following language:

"I certify that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment."

The "Operating Permit Reporting Kit" contains instructions and the Annual Compliance Report and Certification and the Semi-Annual Monitoring Summary Report and Certification. The "Operating Permit Reporting Kit" is available to the permittee via MassDEP's web site,

<http://www.mass.gov/dep/air/approvals/aqforms.htm#op>

#### (a) Annual Compliance Report and Certification

The Responsible Official shall certify, annually for the calendar year, that the facility is in compliance with the requirements of this permit. The report shall be postmarked or delivered by January 30 to MassDEP and to the Regional Administrator, U.S. Environmental Protection Agency - New England Region. The report shall be submitted in compliance with the submission requirements below.

The compliance certification and report shall describe:

- (i) the terms and conditions of the permit that are the basis of the certification;
- (ii) the current compliance status and whether compliance was continuous or intermittent during the reporting period;
- (iii) the methods used for determining compliance, including a description of the monitoring, record keeping, and reporting requirements and test methods; and
- (iv) any additional information required by MassDEP to determine the compliance status of the source.

(b) Semi-Annual Monitoring Summary Report and Certification

The Responsible Official shall certify, semi-annually on the calendar year, that the facility is in compliance with the requirements of this permit. The report shall be postmarked or delivered by January 30 and July 30 to MassDEP. The report shall be submitted in compliance with the submission requirements below.

The compliance certification and report shall describe:

- (i) the terms and conditions of the permit that are the basis of the certification;
- (ii) the current compliance status during the reporting period;
- (iii) the methods used for determining compliance, including a description of the monitoring, record keeping, and reporting requirements and test methods;
- (iv) whether there were any deviations during the reporting period;
- (v) if there are any outstanding deviations at the time of reporting, and the Corrective Action Plan to remedy said deviation;
- (vi) whether deviations in the reporting period were previously reported;
- (vii) if there are any outstanding deviations at the time of reporting, the proposed date of return to compliance;
- (viii) if the deviations in the reporting period have returned to compliance and date of such return to compliance; and
- (ix) any additional information required by MassDEP to determine the compliance status of the source.

**11. NONCOMPLIANCE**

Any noncompliance with a permit condition constitutes a violation of 310 CMR 7.00: Appendix C and the Clean Air Act, and is grounds for enforcement action, for permit termination or revocation, or for denial of an operating permit renewal application by MassDEP and/or EPA. Noncompliance may also be grounds for assessment of administrative or civil penalties under M.G.L. c.21A, §16 and 310 CMR 5.00; and civil penalties under M.G.L. c.111, §142A and 142B. This permit does not relieve the permittee from the obligation to comply with any other provisions of 310 CMR 7.00 or the Act, or to obtain any other necessary authorizations from other governmental agencies, or to comply with all other applicable Federal, State, or Local rules and regulations, not addressed in this permit.

**12. PERMIT SHIELD**

- (a) This facility has a permit shield provided that it operates in compliance with the terms and conditions of this permit. Compliance with the terms and conditions of this permit shall be deemed compliance with all applicable requirements specifically identified in Sections 4, 5, 6, and 7, for the emission units as described in the permittee's application and as identified in this permit.

Where there is a conflict between the terms and conditions of this permit and any earlier approval or permit, the terms and conditions of this permit control.

- (b) MassDEP has determined that the permittee is not currently subject to the requirements listed in Section 4, Table 7.
- (c) Nothing in this permit shall alter or affect the following:
  - (i) the liability of the source for any violation of applicable requirements prior to or at the time of permit issuance.
  - (ii) the applicable requirements of the Acid Rain Program, consistent with 42 U.S.C. §7401, §408(a); or
  - (iii) the ability of EPA to obtain information under 42 U.S.C. §7401, §114 or §303 of the Act.

### **13. ENFORCEMENT**

The following regulations found at 310 CMR 7.02(8)(h) Table 6 for wood fuel, 7.04(9), 7.05(8), 7.09 (odor), 7.10 (noise), 7.18(1)(b), 7.21, 7.22, 7.70, and any condition(s) designated as "state only" are not federally enforceable because they are not required under the Act or under any of its applicable requirements. These regulations and conditions are not enforceable by the EPA. Citizens may seek equitable or declaratory relief to enforce these regulations and conditions pursuant to Massachusetts General Law Chapter 214, Section 7A.

All other terms and conditions contained in this permit, including any provisions designed to limit a facility's potential to emit, are enforceable by MassDEP, EPA and citizens as defined under the Act.

A permittee shall not claim as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### **14. PERMIT TERM**

This permit shall expire on the date specified on the cover page of this permit, which shall not be later than the date 5 years after issuance of this permit.

Permit expiration terminates the permittee's right to operate the facility's emission units, control equipment or associated equipment covered by this permit, unless a timely and complete renewal application is submitted at least 6 months before the expiration date.

### **15. PERMIT RENEWAL**

Upon MassDEP's receipt of a complete and timely application for renewal, this facility may continue to operate subject to final action by MassDEP on the renewal application.

In the event MassDEP has not taken final action on the operating permit renewal application prior to this permit's expiration date, this permit shall remain in effect until MassDEP takes final action

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on the renewal application, provided that a timely and complete renewal application has been submitted in accordance with 310 CMR 7.00: Appendix C(13).

**16. REOPENING FOR CAUSE**

This permit may be modified, revoked, reopened, and reissued, or terminated for cause by MassDEP and/or EPA. The responsible official of the facility may request that MassDEP terminate the facility's operating permit for cause. MassDEP will reopen and amend this permit in accordance with the conditions and procedures under 310 CMR 7.00: Appendix C(14).

The filing of a request by the permittee for an operating permit revision, revocation and reissuance, or termination, or a notification of a planned change or anticipated noncompliance does not stay any operating permit condition.

**17. DUTY TO PROVIDE INFORMATION**

Upon MassDEP's written request, the permittee shall furnish, within a reasonable time, any information necessary for determining whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall furnish to MassDEP copies of records that the permittee is required to retain by this permit.

**18. DUTY TO SUPPLEMENT**

The permittee, upon becoming aware that any relevant facts were omitted or incorrect information was submitted in the permit application, shall promptly submit such supplementary facts or corrected information. The permittee shall also provide additional information as necessary to address any requirements that become applicable to the facility after the date a complete renewal application was submitted but prior to release of a draft permit.

The permittee shall promptly, on discovery, report to MassDEP a material error or omission in any records, reports, plans, or other documents previously provided to MassDEP.

**19. TRANSFER OF OWNERSHIP OR OPERATION**

This permit is not transferable by the permittee unless done in accordance with 310 CMR 7.00: Appendix C(8)(a). A change in ownership or operation control is considered an administrative permit amendment if no other change in the permit is necessary and provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between current and new permittee, has been submitted to MassDEP.

**20. PROPERTY RIGHTS**

This permit does not convey any property rights of any sort, or any exclusive privilege.

**21. INSPECTION AND ENTRY**

Upon presentation of credentials and other documents as may be required by law, the Permittee shall allow authorized representatives of MassDEP, and EPA to perform the following:

- (a) enter upon the permittee's premises where an operating permit source activity is located or emissions-related activity is conducted, or where records must be kept under the conditions of this permit;
- (b) have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) sample or monitor at reasonable times any substances or parameters for the purpose of assuring compliance with the operating permit or applicable requirements as per 310 CMR 7.00 Appendix C(3)(g)(12).

**22. PERMIT AVAILABILITY**

The permittee shall have available at the facility, at all times, a copy of the materials listed under 310 CMR 7.00: Appendix C(10)(e) and shall provide a copy of the permit, including any amendments or attachments thereto, upon request by MassDEP or EPA.

**23. SEVERABILITY CLAUSE**

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

**24. EMERGENCY CONDITIONS**

The permittee shall be shielded from enforcement action brought for noncompliance with technology based<sup>1</sup> emission limitations specified in this permit as a result of an emergency<sup>2</sup>. In order to

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<sup>1</sup> Technology based emission limits are those established on the basis of emission reductions achievable with various control measures or process changes (e.g., a new source performance standard) rather than those established to attain health based air quality standards.

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use emergency as an affirmative defense to an action brought for noncompliance, the Permittee shall demonstrate the affirmative defense through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (a) an emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (b) the permitted facility was at the time being properly operated;
- (c) during the period of the emergency, the permittee took all reasonable steps as expeditiously as possible, to minimize levels of emissions that exceeded the emissions standards, or other requirements in this permit; and
- (d) the permittee submitted notice of the emergency to MassDEP within two (2) business days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emission, and corrective actions taken.

If an emergency episode requires immediate notification to the Bureau of Waste Site Cleanup/-Emergency Response immediate notification to the appropriate parties should be made as required by law.

## 25. PERMIT DEVIATION

Deviations are instances where any permit condition is violated and not reported as an emergency pursuant to Section 24 of this permit. Reporting a permit deviation is not an affirmative defense for action brought for noncompliance. Any reporting requirements listed in Table 6, of this Operating Permit shall supersede the following deviation reporting requirements, if applicable.

The permittee shall report to MassDEP's Regional Bureau of Waste Prevention the following deviations from permit requirements, by telephone, fax or electronic mail (e-mail), within three (3) days of discovery of such deviation:

- Unpermitted pollutant releases, excess emissions or opacity exceedances measured directly by CEMS/COMS, by EPA reference methods or by other credible evidence, which are ten percent (10%) or more above the emission limit.
- Exceedances of parameter limits established by your Operating Permit or other approvals, where the parameter limit is identified by the permit or approval as surrogate for an emission limit.
- Exceedances of permit operational limitations directly correlated to excess emissions.
- Failure to capture valid emissions or opacity monitoring data or to maintain monitoring equipment as required by statutes, regulations, your Operating Permit, or other approvals.

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<sup>2</sup> An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation would require immediate corrective action to restore normal operation, and that causes the source to exceed a technology based limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operations, operator error or decision to keep operating despite knowledge of any of these things.

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- Failure to perform QA/QC measures as required by your Operating Permit or other approvals for instruments that directly monitor compliance.

For all other deviations, three (3) day notification is waived and is satisfied by the documentation required in the subsequent Semi-Annual Monitoring Summary and Certification. Instructions and forms for reporting deviations are found in the MassDEP Bureau of Waste Prevention Air Operating Permit Reporting Kit, which is available to the permittee via MassDEP's web site,

<http://www.mass.gov/dep/air/approvals/aqforms.htm#op>

This report shall include the deviation, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and the corrective actions or preventative measures taken.

Deviations that were reported by telephone, fax or electronic mail (e-mail) within 3 days of discovery, said deviations shall also be submitted in writing via the Operating Permit Deviation Report to the regional Bureau of Waste Prevention within ten (10) days of discovery. For deviations, which do not require 3-day verbal notification, follow-up reporting requirements are satisfied by the documentation required in the aforementioned Semi-Annual Monitoring Summary and Certification.

## 26. OPERATIONAL FLEXIBILITY

The permittee is allowed to make changes at the facility consistent with 42 U.S.C. §7401, §502(b)(10) not specifically prohibited by the permit and in compliance with all applicable requirements provided the permittee gives the EPA and MassDEP written notice fifteen days prior to said change; notification is not required for exempt activities listed at 310 CMR 7.00: Appendix C(5)(h) and (i). The notice shall comply with the requirements stated at 310 CMR 7.00: Appendix C(7)(a) and will be appended to the facility's permit. The permit shall allow for at 310 CMR 7.00: Appendix C(12) shall not apply to these changes.

## 27. MODIFICATIONS

- Administrative Amendments - The permittee may make changes at the facility which are considered administrative amendments pursuant to 310 CMR 7.00: Appendix C(8)(a)1., provided they comply with the requirements established at 310 CMR 7.00: Appendix C(8)(b).
- Minor Modifications - The permittee may make changes at the facility which are considered minor modifications pursuant to 310 CMR 7.00: Appendix C(8)(a)2., provided they comply with the requirements established at 310 CMR 7.00: Appendix C(8)(d).
- Significant Modifications - The permittee may make changes at the facility which are considered significant modifications pursuant to 310 CMR 7.00: Appendix C(8)(a)3., provided they comply with the requirements established at 310 CMR 7.00: Appendix C(8)(c).

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- (d) No permit revision shall be required, under any approved economic incentives program, marketable permits program, emission trading program and other similar programs or processes, for changes that are provided in this operating permit. A revision to the permit is not required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program under Title IV of the Act, provided that such increases do not require an operating permit revision under any other applicable requirement.

## 28. OZONE DEPLETING SUBSTANCES

This section contains air pollution control requirements that are applicable to this facility, and the United States Environmental Protection Agency enforces these requirements.

- (a) The Permittee shall comply with the standards for labeling of products using ozone-depleting substances pursuant to 40 CFR Part 82, Subpart E:
- (1) All containers containing a class I or class II substance that is stored or transported, all products containing a class I substance, and all products directly manufactured with a class I substance must bear the required warning statement if it is being introduced into interstate commerce pursuant to 40 CFR 82.106.
  - (2) The placement of the required warning statement must comply with the requirements of 40 CFR 82.108.
  - (3) The form of the label bearing the required warning statement must comply with the requirements of 40 CFR 82.110.
  - (4) No person may modify, remove or interfere with the required warning statement except as described in 40 CFR 82.112.
- (b) The Permittee shall comply with the standards for recycling and emissions reduction pursuant to 40 CFR 82, Subpart F, excepts as provided for motor vehicle air conditioners (MVAC) in Subpart B:
- (1) Persons opening appliances for maintenance, service, repair or disposal must comply with the required practices of 40 CFR 82.156.
  - (2) Equipment used during the maintenance, service, repair or disposal of appliances must comply with the standards for recycling and recovery equipment of 40 CFR 82.158.
  - (3) Persons performing maintenance, service, repair or disposal of appliances must be certified by an approved technician certification program pursuant to 40 CFR 82.161.
  - (4) Persons disposing of small appliances, MVACs and MVAC-like appliances (as defined in 40 CFR 82.152) must comply with recordkeeping requirements of 40

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CFR 82.166.

- (5) Persons owning commercial or industrial process refrigeration equipment must comply with the leak repair equipment requirements of 40 CFR 82.156.
- (6) Owners/operators of appliances normally containing 50 or more pounds of refrigerant must keep records of refrigerant purchased and added to such appliances pursuant to 40 CFR 82.166.
- (c) If the Permittee manufactures, transforms, imports or exports a class I or class II substance, the Permittee is subject to all the requirements as specified in 40 CFR Part 82, Subpart A, "Production and Consumption Controls".
- (d) If the Permittee performs a service on motor (fleet) vehicles when this service involves ozone-depleting substance refrigerant (or regulated substitute substance) in the motor vehicle air conditioner (MVAC), the Permittee is subject to all the applicable requirements as specified in 40 CFR Part 82, Subpart B, "Servicing of Motor Vehicle Air Conditioners". The term "motor vehicle" as used in Subpart B does not include a vehicle in which final assembly of the vehicle has not been completed. The term "MVAC" as used in Subpart B does not include the air-tight sealed refrigeration system used on as refrigerated cargo or system used on passenger buses using HCFC-22 refrigerant.
- (e) The Permittee shall be allowed to switch from any ozone-depleting substance to any alternative that is listed in the Significant New Alternatives Program (SNAP) promulgated pursuant to 40 CFR Part 82, Subpart G, "Significant New Alternatives Policy Program".

## **29. PREVENTION OF ACCIDENTAL RELEASES**

This section contains air pollution control requirements that are applicable to this facility, and the United States Environmental Protection Agency enforces these requirements.

Your facility is subject to the requirements of the General Duty Clause, under 112(r)(1) of the CAA Amendments of 1990. This clause specifies that the owners or operators of stationary sources producing, processing, handling or storing a chemical in any quantity listed in 40 CFR Part 68 or any other extremely hazardous substance have a general duty to identify hazards associated with these substances and to design, operate and maintain a safe facility, in order to prevent releases and to minimize the consequences of accidental releases which may occur.

**30. LEGEND OF ABBREVIATED TERMS IN OPERATING PERMIT**

AQ ID	Stationary Source Emission Inventory Identification Number
FMF FAC NO.	Facility Master File Facility Number
FMF RO NO.	Facility Master File Regulated Object Number
EU#	Emission Unit number
AAR	Authorized Account Representative
ARP	ash reduction process
Btu/kWh	British thermal units per kilowatt hour
Btu/lb	British thermal units per pound
CAM	Compliance Assurance Monitoring
CEM	continuous emission monitor
COM	continuous opacity monitor
CO	carbon monoxide
CO <sub>2</sub>	carbon dioxide
CT	cooling tower
DS	dry scrubber
ECP	emission control plan
EPA	Environmental Protection Agency
ESP	electrostatic precipitator
FF	fabric filter
gpm	gallons per minute
Hg	mercury
HAP	hazardous air pollutant
HHV	higher heating value
lb/hr	pound per hour
lb/MMBtu	pound per million British thermal units
lb/MWh	pound per megawatt-hour (net)
lb/GWh	pound per gigawatt-hour (net)
LOI	loss-on-ignition
mA	milliampere (1/1,000 of an ampere)
MassDEP	Massachusetts Department of Environmental Protection ("the Department")
MCR	maximum continuous rating
MMBtu/hr	million British thermal units per hour
MW	megawatt
NAICS	North American Industrial Classification System
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NSPS	New Source Performance Standards
NH <sub>3</sub>	ammonia
NO <sub>2</sub>	nitrogen dioxide
NO <sub>x</sub>	nitrogen oxides
ppm <sub>w</sub>	parts per million by weight
ppm <sub>vd</sub> @ 3% O <sub>2</sub>	parts per million by volume, dry basis, corrected to three percent oxygen
PAC	powder activated carbon
Pb	lead
PM	particulate matter
PM <sub>10</sub>	particulate matter up to 10 microns in size (condensables included)

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**Section 30 (continued)**

PM <sub>2.5</sub>	particulate matter up to 2.5 microns in size (condensables included)
POTW	publicly-owned treatment works
PSD	Prevention of Significant Deterioration
R-C	Research-Cottrell
SCR	selective catalytic reduction
SDA	spray dryer absorber
SIC	Standard Industrial Code
SSM	start-up, shutdown, and malfunction
SO <sub>2</sub>	sulfur dioxide
SO <sub>x</sub>	sulfur oxides
SO <sub>3</sub>	sulfur trioxide
tpy	tons per consecutive twelve-month period
VOC	volatile organic compounds
<	less than
>	greater than
≤	less than or equal to
≥	greater than or equal to
%	percent
ΔP	delta-P; differential pressure

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## APPEAL CONDITIONS FOR OPERATING PERMIT

This permit is an action of the MassDEP. If you are aggrieved by this action, you may request an adjudicatory hearing within 21 days of issuance of this permit. In addition, any person who participates in any public participation process required by the Federal Clean Air Act, 42 U.S.C. §7401, §502(b)(6) or under 310 CMR 7.00: Appendix C(6), with respect to MassDEP's final action on operating permits governing air emissions, and who has standing to sue with respect to the matter pursuant to federal constitutional law, may initiate an adjudicatory hearing pursuant to Chapter 30A, and may obtain judicial review, pursuant to Chapter 30A, of a final decision therein.

If an adjudicatory hearing is requested, the facility must continue to comply with all existing federal and state applicable requirements to which the facility is currently subject, until a final decision is issued in the case or the appeal is withdrawn. During this period, the application shield shall remain in effect, and the facility shall not be in violation of the Act for operating without a permit.

Under 310 CMR 1.01(6)(b), the request must state clearly and concisely the facts which are the grounds for the request, and the relief sought. Additionally, the request must state why the permit is not consistent with applicable laws and regulations.

The hearing request along with a valid check payable to The Commonwealth of Massachusetts in the amount of one hundred dollars (\$100.00) must be mailed to:

The Commonwealth of Massachusetts  
Department of Environmental Protection  
P.O. Box 4062  
Boston, MA 02211

The request will be dismissed if the filing fee is not paid unless the appellant is exempt or granted a waiver as described below.

The filing fee is not required if the appellant is a city or town (or municipal agency) county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.

MassDEP may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on January 14 2013, the foregoing document **[PROPOSED] COMPLAINT IN INTERVENTION** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 14 2013, the foregoing document **[PROPOSED] COMPLAINT IN INTERVENTION** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
Deanna R. Swits

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
and	)
	)
THE CITY OF FALL RIVER,	)
	)
Plaintiff-Intervenor,	)
	)
v.	)
	)
DOMINION ENERGY, INC., DOMINION	)
ENERGY BRAYTON POINT, LLC, AND	)
KINCAID GENERATION, LLC.	)
	)
Defendants.	)
	)
	)

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF ITS MOTION TO INTERVENE AS OF RIGHT,  
OR ALTERNATIVELY, BY PERMISSION**

Plaintiff-Intervenor City of Fall River (hereinafter "Fall River") respectfully submits this Memorandum of Points and Authorities in Support of its motion to intervene as a matter of right pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 24(a), or, in the alternative, permission to intervene pursuant to Fed. R. Civ. P. 24(b).

## STATEMENT OF FACTS

### A. Complaints Filed Against Dominion

On or about April 1, 2013, the United States commenced this action at the request of the EPA, alleging Dominion unlawfully operated its power stations in violation of the CAA by releasing unlawful levels of sulfur dioxide (“SO<sub>2</sub>”), nitrogen oxide (“NO<sub>x</sub>”), and/or Particulate Matter (“PM”) in violation of several State Implementation Plans (“SIP”) and its Title V Permits. (See Dkt. No. 1 at ¶ 44.) Upon information and belief, the United States included Brayton Point as a party to this litigation, as a pre-existing citizen suit was filed two months prior alleging identical violations of the CAA. See *Conservation Law Foundation, Inc. et al. v. Dominion Energy Brayton Point, LLC*, Case No. 13-cv-10346 (D. Mass. 2013) Compl. at Dkt. No. 1.<sup>1</sup> The allegations asserted in the *Conservation Law Foundation (CLF)* citizen suit and Fall River’s proposed Complaint in Intervention mirror the claims asserted here. Specifically, the complaints allege that Brayton Point violated the CAA’s various opacity emission standards and limitations by releasing unlawful levels of sulfur dioxide (“SO<sub>2</sub>”), nitrogen oxides (“NO<sub>x</sub>”), Carbon Dioxide (CO<sub>2</sub>) and/or Particulate Matter (“PM”) in violation of the Massachusetts SIP and Dominion’s Title V Permits. *Id.* at ¶ 1. Fall River lies within 2.5 kilometers of Brayton Point and its environment and inhabitants are directly harmed by Dominion’s release of the above-described pollutants into the atmosphere. (Mot. Ex. 1 at ¶2.)

The relief sought by Fall River, the Conservation Law Foundation’s citizen suit, and the United States is likewise indistinguishable, as the existing and proposed plaintiffs all seek: (1) a declaration that Dominion violated the CAA; (2) an order enjoining Dominion from operating, except in accordance with a compliance schedule to prevent further violations; (3) an order

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<sup>1</sup> In or about October, 2013, this action was voluntarily dismissed with prejudice. See Case No. 13-cv-10346 at Dkt. No. 16 (D. Mass. 2013).

requiring Dominion remedy, mitigate and offset the harm caused to the public health and environment; and (4) an imposition of civil penalties. (See Dkt. No. 1 at pages 12-13; *see also* Mot. Ex. 1 at pages 17-18; and CLF Compl. at pages 15-16.)

**A. The Consent Decree**

To avoid the costs of protracted litigation, the United States and Dominion entered into a Consent Decree to resolve all claims on or about July 2, 2013. See Consent Decree generally. Under the Consent Decree, Dominion agreed to spend \$9,750,000 on Environmental Mitigation Projects in the areas most affected by its emissions. See Consent Decree, Appx. A, page 1. With respect to Brayton Point, the Consent Decree requires Dominion spend \$1,600,000, of the \$9,750,000, in the Northeast and further specifies that “approximately half of the total Project Dollars [in the Northeast] will be spent in Somerset [and, therefore, the other half in Fall River], but the final distribution will depend on the Projects (and their costs) that can be proposed and implemented within the time frames and other requirements set out in th[e] Appendix.” (See Consent Decree, Appx. A., Section XI, ¶ B.) Dominion is further obligated to develop each plan in good faith *in consultation* with Somerset and Fall River, and to submit each proposal to the EPA for review and approval. (See Consent Decree, Appx. A, Section XI ¶A (emphasis added)).

The Consent Decree limited the type of Environmental Mitigation Projects Dominion could implement to: (a) Energy Efficiency, Geothermal, and/or Solar Photovoltaic (“PV”) Projects at one or more public school buildings, and/or (b) Clean Diesel Projects to retrofit or repower higher-polluting diesel engines. (See Consent Decree, Appx. A, Section XI ¶A.) The Consent Decree imposed a 120-day deadline from the Date of Entry of the Consent Decree, for Dominion to submit the proposed plans to the EPA for review and approval. *Id.*

**B. Dominion’s Failure to Consult with Fall River**

In July, 2013, James Smith of Smith, Ruddock & Hayes, a public policy consulting group hired by Dominion, contacted Fall River to discuss the terms of the Consent Decree as it related to Fall River. (See Exhibit 2, Affidavit of Kenneth Pacheco dated December 27, 2013, hereinafter “Pacheco Aff.”, at ¶ 3.) A meeting was arranged at the Fall River Government Center on July 11, 2013, with Mr. Smith, Kevin Hennessey, Director of Federal State & Local Affairs for Dominion, Mayor William A. Flanagan, former City Administrator Shawn Cadime, Kenneth Pacheco, Director of Community Maintenance, and Elizabeth Sousa, Corporation Counsel in attendance. (See Ex. 2 at ¶ 3.) At no time during the July, 2013 meeting, or at any point thereafter, did Dominion indicate to Fall River what the projected period of time was in which the Court would approve the Consent Decree to trigger the 120-day deadline. (See Ex. 2 at ¶ 4.)

Instead, Dominion prepared their own written guidelines (“Proposal Guidelines”), including a footnote that the “United States soon will move to enter the Consent Decree which will then take effect when the Court enters it.” (See Proposal Guidelines at Ex. 4) Unbeknownst to Fall River, and contrary to Dominion’s representations in the Proposal Guidelines, at the time of the July 11, 2013 meeting, the United States had already moved for the Court to enter the Consent Decree. (See Dkt. No. 6.) Dominion further failed to notify Fall River when the Court entered the Consent Decree after the United States’ motion, or to provide Fall River with any notice of the Court’s deadline. (See Ex. 2 at ¶ 13; see also Ex. 1 at ¶¶ 4, 5, 9.)

While considering what type of project proposal would be most beneficial to the City, Fall River considered that it had already undertaken and completed a number of solar photovoltaic projects at its newly built schools. (See Ex. 2 at ¶6.) Additionally, given the presence of “ledge” near many of Fall River’s older schools, coupled with New England’s rocky

terrain, geothermal projects were not deemed to be feasible. (See Ex. 1.) Accordingly, Fall River determined that it required additional time to develop a proposal that would work within Fall River's geological conditions, while not duplicating existing improvements and still complying with the Consent Decree's terms. (See Ex. 2 at ¶ 8.) In an effort to comply with Dominion's Proposal Guidelines—which required Fall River submit a proposal by August 1, 2013—Fall River obtained an extension of time from Dominion to submit a written proposal. (See Ex. 1 at ¶ 9.) Dominion's representative and main point of contact on the project, James Smith, consented to the extension. (See Ex. 1 at ¶ 9.)

In or about September 2013, based upon Dominion's representations through its consultant James Smith that Fall River had an extension of time to submit a proposal, Fall River retained its own consultant, Ameresco, Inc., ("Ameresco") to generate a viable project plan for Fall River in conformance with the Consent Decree. (See Ex. 2 at ¶ 10.) Ameresco and Fall River continued to work to develop a project plan relying in good faith upon Dominion's promise that it would accept Fall River's proposed project plan upon its completion. (See Affidavit of Harold Meyer dated December 26, 2013 ("Meyer Aff.") attached hereto as Ex. 3 at ¶ 5.) Neither Mr. Smith, nor any other representative from Dominion, contacted Fall River to follow up on the development of its project plan. (See Ex. 1 at ¶ 11.)

**C. Dominion's Misrepresentations and Refusal to Accept Fall River's Proposal**

On or about December 17, 2013, Fall River officials read a newspaper article in the *Herald News* alleging that the neighboring Town of Somerset was likely to receive the full \$1,600,000, stating that Fall River allegedly failed to timely submit its proposal in accordance with the 120-day deadline imposed by the Consent Decree. (See Ex. 2 at ¶11; see also the December 17, 2013 *Herald News* Article annexed to the DiOrio Aff. as Exhibit 1-C.) While Fall

River sought to determine the veracity of the article, it further asked Ameresco to finalize its project plan (hereinafter the "Project Plan") for submission that same day. (See id.; see also Ex. 3 at ¶10.)

On December 17, 2013 after reading the *Herald News* article, Fall River communicated with Dominion's representative James Smith, who advised that he disagreed with the newspaper article's claim that Fall River "did not apply for its share" of the \$1,600,000 settlement, and promised to contact Dominion's legal counsel to investigate. (See Ex. 1 at ¶ 14.) Meanwhile, a conference call arranged by the Mayor of Fall River between City Officials and the EPA revealed that one month earlier, on November 5, 2013, Dominion informed the EPA that Fall River had not maintained communication and had indicated to Dominion that it had no viable projects to implement, leading Dominion to move forward with only Somerset's project plan. (See Correspondence from Fall River to Dominion's counsel dated December 18, 2013 referencing reports relayed by the EPA as respects the November 5, 2013 letter, attached to the DiOrio Aff. as Ex. 1-D at page 2.) Immediately, Fall River advised the EPA that it obtained an extension from Dominion to submit their Project Plan, had a completed Project Plan from Ameresco ready, and that Dominion's representations that Fall River did not intend to submit a plan were incorrect. (See id. at page 3.) The EPA responded that it would wait for Dominion's response to Fall River's offered Project Plan, and upon information and belief, the EPA has not taken further action to consider any of Dominion's project proposals. (See Ex. 1 at ¶ 15.)

To date, Dominion refuses to accept Fall River's Project Plan, and advised that although it extended the time for Fall River to submit a plan beyond its self-imposed August 1, 2013 deadline, that it lacked the authority to extend the Court-imposed deadline of November 14, 2013. (See Correspondence from Dominion's counsel dated December 19, 2013 annexed to the

DiOrio Aff. as Ex. 1-E.) The November 14, 2013 deadline is 120 days after the Court entered the Consent Decree, on July 18, 2013. (See Dkt. No. 8.) Fall River, however, had no knowledge of the November 14, 2013 deadline, and further had no knowledge of the date that the Court entered the Consent Decree. (See Ex. 2 at ¶ 13.) James Smith further advised Fall River that he, as Dominion's representative, was likewise unaware of the November, 2013 Court deadline. (See Ex. 1 at ¶ 22.) The only deadline that Dominion communicated to Fall River was the August 1, 2013 deadline that Dominion imposed—independent of the Consent Decree—and to which Fall River obtained an extension. (See Ex. 2 at ¶ 9; see also Ex. 1 at ¶ 9.) The Consent Decree does not impose any deadlines or obligations on Fall River as a recipient of the remediation award, as the 120-day deadline is the time within which *Dominion* must submit its Remediation Plans, not Fall River. (See Consent Decree generally and at Appx. A, Section II (emphasis added).)

Dominion alleges that communications with Fall River tapered off in October after Fall River allegedly communicated that it would not be submitting a proposal due to the narrow scope of the Consent Decree Requirements. Conversely, Fall River contends that Ameresco was working diligently to identify viable projects per the Consent Decree, but that Dominion made no attempt in October or November to determine how Fall River's plans were progressing. (See Ex. 2 at ¶ 10; see also Ex. 3 at ¶ 5.)

Most shockingly, after reading the *Herald News* article in December, 2013, Fall River learned for the first time that James Smith, who had been Fall River's main point of contact at Dominion throughout the project, had been terminated by Dominion on September 1, 2013, after Dominion was sold to EquiPower Resources Corp. (See Ex. 1 at ¶14.) Fall River had no knowledge of Dominion's sale to EquiPower Resources Corp., and neither James Smith nor

anyone at Dominion ever notified Fall River that Dominion terminated James Smith.<sup>2</sup> (See Ex. 1 at ¶ 19.) Nor did Dominion appoint a new point of contact to coordinate and consult with Fall River on the Project Plan after it terminated James Smith. (See Ex. 1 at ¶ 20.) As a result, Fall River continued to communicate with James Smith through December 2013, under the mistaken belief that he was still a representative of Dominion.

On December 17, 2013, Fall River attempted to provide its “shovel ready” Project Plan to Dominion for submission to the EPA for review and consideration as if the 120-day deadline had not passed. (See Ex. 1 at ¶ 23.) Dominion rejected Fall River’s efforts, claiming that it would be inappropriate to alter the process it had undertaken in reviewing and submitting mitigation Project Plans to the EPA for approval and unfair to the other participants who submitted their project plans. As such, Fall River has no choice but to make the instant application to intervene to protect its interests.

## ARGUMENT

### A. Intervention of Right

A court must permit anyone to intervene, who files a timely motion and possesses an unconditional right to intervene by federal statute. *See* FED. R. CIV. P. 24(a). “The language of the Clean Air Act grants an unconditional right to intervene if done in a timely fashion.” *See United States v. Republic Steel*, 1980 U.S. Dist. LEXIS 17371 at \*1 (N.D. Ill. 1980) (finding a motion to intervene timely when brought roughly one month after being placed on notice of the need to intervene); *see also* 42 U.S.C.S. §7604(b)(1)(B).

### B. Timeliness

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<sup>2</sup> Of note, James Smith informed Fall River that he was likewise unaware of the November 2013 deadline for Dominion to submit its proposals to the EPA.

To decide whether a motion to intervene is timely, courts consider several factors including: “(1) the length of time the intervenor knew or should have known of her interest in the case, (2) the prejudice caused to the original parties by the delay, (3) the prejudice to the intervenor if the motion is denied, and (4) any other unusual circumstances.” *See Reid L. v. Ill. State Bd. of Educ.*, 289 F.3d 1009, 1017-1018 (7th Cir. Ill. 2002) (citing *Ragsdale v. Turnock*, 941 F.2d 501, 504 (7th Cir. 1991)). Courts must consider the significance of the impact on the rights of the proposed intervenors should the motion be denied for untimeliness. The Seventh Circuit has held that

For the interests of an intervenor who qualified under Rule 24(a) for intervention of right would be far more seriously impaired by denial of intervention on the ground of untimeliness than those of an intervenor only qualifying to intervene by permission under Rule 24(b). The weight to be accorded the untimeliness of the filing for intervention in deciding whether to deny the intervention thus depends in part on what type of intervention is involved.

*EEOC v. United Air Lines*, 515 F.2d 946, 949 (7th Cir. 1975) (citations omitted); *see also McDonald v. E. J. Lavino Co.*, 430 F.2d 1065, 1073 (5th Cir. Ala. 1970) (citing Wright, Federal Courts § 75, at 328 (2d ed. 1970) (“... courts should be extremely reluctant to dismiss such applications as untimely”).

Fall River is entitled to intervene under the CAA as a matter of right because its application is timely and the Original Parties will not be prejudiced by any delay. Moreover, Fall River will be significantly prejudiced if the instant application to intervene is denied. In light of the unusual circumstances surrounding Fall River’s reliance on, among other things, Dominion’s representation of an extension, Dominion’s failure to notify Fall River of any Court imposed deadlines, Dominion’s failure to consult with Fall River throughout, and Dominion’s failure to

notify Fall River that it terminated the main point of contact on the project, an order granting the instant motion to intervene is warranted.

1. Fall River Timely Applied For Intervention After Learning Its Interests Were Adversely Affected

A prospective intervenor must promptly move to intervene as soon as it knows that its interests might be adversely affected. *See Heartwood Inc., v. United States Forest Service, et al.*, 316 F.3d 694, 701 (7th Cir. 2003). When a motion to intervene is brought in a litigation that has been otherwise resolved, the relevant inquiry in determining timeliness is not the time between the settlement and the motion, but rather is the time between the intervenor's knowledge that its interests could be impacted and the submission of the intervenor's motion to intervene. *See id.*

Fall River did not know of its need to intervene until Dominion rejected its Proposal on December 19, 2013. (See Ex. 1-E of the DiOrio Aff.) Prior to Dominion's rejection, Fall River had no knowledge that its interests could be adversely affected. Furthermore, Fall River had no reason to intervene after the Original Parties agreed to the Consent Decree, because the Consent Decree expressly protected Fall River's interests and provided for Fall River to receive part of the \$1,600,000 remediation award. (See Consent Decree, Appx A., Section XI, ¶ B.) Fall River submits the instant application within a matter of weeks after Dominion rejected Fall River's proposal.<sup>3</sup>

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<sup>3</sup> Fall River became aware of the potential need to intervene on December 19, 2013 – just days before several state, federal and municipal holidays. Despite Fall River Officials' best efforts a number of municipal persons had to be consulted in the preparation of the instant application. In light of the difficulty involved in assembling the required internal approvals during the holidays, and the time required to prepare this motion, Fall River respectfully submits that it has acted with timeliness preserve its rights.

Additionally, when an intervenor seeks to intervene in a settled dispute for a collateral purpose, timeliness is not a concern. *See, supra, Heartwood Inc.*, 316 F.3d at 700. Fall River seeks to intervene to modify the Consent Decree to provide an extension and permit the EPA's consideration of its Project Plan. Fall River does not seek to interfere with, or undermine the terms of the Consent Decree.

2. The Original Parties Will Not Be Prejudiced By Any Delay

“The most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case.” *See Maxum Indem. Co. v. Eclipse Mfg. Co.*, 2008 U.S. Dist. LEXIS 89757 at \*8-9 (N.D. Ill. Nov. 5, 2008) (citing *Nissei Sangyo Am. v. United States*, 31 F.3d 435, 439 (7th Cir. 1994); *see also Aurora Loan Servs. v. Craddieth*, 442 F.3d 1018, 1027 (7th Cir. 2006) (“[I]n the absence of any indication of prejudice to the [existing parties] . . . the motion cannot be adjudged untimely as a matter of law.”). Here as discussed above, there is no such delay.

Actions to intervene on collateral issues to modify settlements that do not address the substantive merits need not be timely. As such, it is not necessary that Fall River's motion to intervene be timely for the limited purpose under which it is brought. *See, e.g., Lalic v. Chicago, Burlington & Quincy Railroad Co.*, 263 F. Supp. 987, 988 (N.D. Ill. 1967) (holding intervention proper to assert subrogation interests after the original parties to the suit had settled). To date, the EPA has not made a determination as to any of Dominion's proposed project plans; therefore, there is no doubt that Fall River's motion to intervene as a matter of right is timely. Granting Fall River's motion to intervene would impact neither Dominion nor the EPA. Fall River seeks to intervene solely to modify the Consent Decree to extend the time by which the EPA may

receive Dominion's project proposals, specifically Fall River's "shovel ready" Project Plan.<sup>4</sup> Fall River's limited purpose of securing its right to submit a proposal to Dominion is not an attempt to litigate any pre-consent decree issue, and as such, cannot in any way prejudice the Original Parties.

3. Fall River Will Be Significantly Prejudiced If This Application Is Denied

As addressed more fully above, an intervenors' rights are more significantly impacted when the right to intervene is one expressly provided for by federal statute as a matter of right. *See supra EEOC v. United Air Lines*, 515 F.2d at 949. If Fall River's application is denied, Fall River will be significantly prejudiced because it will no longer be eligible for consideration to receive any of the roughly \$800,000 contemplated under the Consent Decree as remediation for Dominion's harmful release of pollutants into Fall River's environment.

In addition, Fall River will have no other legal remedies under the CAA because enforcement authority is granted solely to EPA, and citizen suits are preempted if the "Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to compel compliance with the standard, limitation or order..." *See* 42 USC 7604(b)(1)(B)<sup>5</sup>; *see e.g. St. Bernard Citizens for Envtl. Quality, Inc. v Chalmette Ref., L.L.C.* 500 F. Supp. 2d 592 (E.D. La, 2007), (holding that a non-profit corporations' claims against a refinery in a citizen suit brought under the CAA were barred under doctrine of res judicata when the EPA and Louisiana Department of Environmental Quality initiated enforcement mechanisms against the refinery resulting in a consent decree ).

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<sup>4</sup> Nonmaterial modifications already have been made to the Consent Decree by the United States on December 5, 2013, when a notice was filed that nonmaterial modifications could be made to the Consent Decree without need for Court approval. (See Ex. 1 at ¶ 21; see also Dkt. No. 11.)

<sup>5</sup> It is as a result of this limitation that the Clean Air Act provides for unconditional intervention as a matter of right.

The Consent Decree was designed to redress damage to the areas most impacted by Dominion's allegedly unlawful emissions. (See Consent Decree at ¶ 109; see also Ex. 1-D of the DiOrio Aff. at page 3.) Under the Consent Decree, Dominion was required to use "good faith efforts to secure as much environmental benefit as possible for the Project Dollars expended, consistent with the applicable requirements and limits of this Consent Decree." See Consent Decree at ¶ 113. Dominion failed to consult with Fall River in good faith as required by the Consent Decree. See Ex. 1 at ¶ 20; see also Ex. 2 at ¶ 13. Dominion's refusal to accept Fall River's Project Plan for consideration is further questionable, especially in light of the EPA's direction that it would wait for Dominion's response to determine whether Fall River's Project Plan could be considered. See Ex. 1 at ¶ 15.

Fall River expended significant time, effort and funds to develop a plan that complied with the requirements of the Consent Decree between September and December 2013. Based upon its good faith reliance on the agreed-upon extension provided by Dominion in September 2013, and Dominion's failure to notify Fall River of the Court's November 14, 2013 deadline, Fall River retained Ameresco to assist it with developing a plan in accordance with the Consent Decree's terms. Fall River continued to work on its Project Plan, even though it had been unknowingly taken "out of the running" by Dominion on November 5, 2013 based upon Dominion's misrepresentation that Fall River advised Dominion that it did not intend to submit a proposal. As such, Fall River will be severely prejudiced if not permitted to intervene, and protect its interests as provided for under the CAA and Consent Decree.

4. The Unusual Circumstances Warrant An Order Granting Intervention

Fall River did not know its interests were adversely affected until December 19, 2013. Any alleged delay by Fall River in failing to intervene prior to December 19, 2013 is a direct

result of the fact that prior to that date there was no need, as its interests were expressly protected and provided for in the Consent Decree. See Consent Decree, Appx. A., Section XI, ¶ B. When an otherwise delayed motion to intervene is brought, the Court in its discretion may still determine it is timely if there exist unusual circumstances to explain the reason for any delay. *See Bloomington v. Westinghouse Electric Corp.*, 824 F.2d 531, 537 (7th Cir. 1987).

Dominion's failure to adequately consult with Fall River is evidenced by the circumstances surrounding James Smith's appointment and termination as Dominion's consultant to Fall River. Thus, Fall River's ability to meet Dominion's self-identified internal deadline for the receipt of Fall River's proposal was compromised when neither Dominion nor James Smith notified Fall River that James Smith was no longer acting as Dominion's appointed consultant and intermediary. Moreover, James Smith continued to communicate with Fall River on Dominion's behalf regarding the project proposals through December 17, 2013 despite his September 1, 2013 termination. (See Ex. 1 at ¶ 14.) Thus, Dominion's allegations that Fall River failed to communicate with Dominion after September 1, 2013 are in fact evidence of Dominion's own failure to identify the correct person with whom Fall River should have been communicating.

Dominion further failed to notify Fall River of the Court imposed November 14, 2013 deadline. The only deadline Fall River was made aware of was the Dominion deadline of August 1, 2013, from which Fall River obtained an extension—a fact to which no one disagrees. As a result of all of the above-described unusual circumstances, Fall River should be permitted to intervene as a matter of right to file its motion to modify the consent decree to extend the period of time in which it may submit its Project Plan for the EPA's consideration.

**C. In the Alternative, Fall River Seeks Permission to Intervene**

Fed. R. Civ. P. 24(b) provides in pertinent part that “[o]n timely motion, the court may permit anyone to intervene who: (a) is given a conditional right to intervene by a federal statute; or (b) has a claim or defense that shares with the main action a common question of law or fact. See Fed. R. Civ. P. 24(b)(1). As addressed more fully above, the instant application is timely as it was brought within a matter of weeks after Fall River learned its interests were adversely affected, no prejudice will be caused to the Original Parties by any delay, Fall River will be significantly prejudiced if unable to intervene, and the unusual circumstances are such that intervention is appropriate. *See Reid L. v. Ill. State Bd. of Educ.*, 289 F.3d 1009, 1017-1018 (7th Cir. Ill. 2002).

Although Fall River respectfully submits that it has the unconditional ability to intervene as a matter of right under the CAA pursuant to 42 U.S.C.S. §7604(b)(1)(B), in the alternative, it should further be granted permission to intervene pursuant to Fed. R. Civ. P. 24(b). “Rule 24(b) provides courts with discretion to allow permissive intervention when an intervenor shows: (1) independent grounds for jurisdiction; (2) the intervention will not unduly delay or prejudice the adjudication of the original parties’ rights; and (3) the applicant’s claim or defense, and the main action, have a question of law or a question of fact in common.” *See Maxum Indem. Co. v. Eclipse Mfg. Co.*, 2008 U.S. Dist. LEXIS 89757 at \*6-8 (N.D. Ill. 2008). A showing of independent jurisdiction only requires that such claims could have been asserted in federal court in the absence of the main action. *See Reedsburg Bank v. Apollo*, 508 F.2d 995, 1000 (7th Cir. 1975).

In the absence of EPA’s Complaint in the present action, and assuming the United States failed to otherwise diligently prosecute Dominion for its alleged violations, Fall River would have independent jurisdiction to file suit in this Court as “the district courts have jurisdiction

without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation.” See 42 U.S.C.S. §7604(a). Additionally, venue is proper in this District pursuant to the CAA Sections 113(b), 42 U.S.C. §7413(b) and 28 U.S.C. §§ 1391(b), (c), and 1395(a), because violations that are the subject of the Complaint occurred in this District. See Dkt. No. 1 at ¶ 5. As Dominions’ harmful release of pollutants exposed and continues to expose the people of Fall River and threatens their lives, health and welfare and denies them protect provided under the CAA, Fall River has standing and its requested relief will address these injuries.

#### CONCLUSION

WHEREFORE, for the foregoing reasons Fall River respectfully requests that the Court grant its motion to intervene as a matter of right, and/or in the alternative grant it permission to intervene, so it may submit a motion to modify the nonmaterial terms of the Consent Decree to extend the time in which it may submit its Project Plan for the EPA’s consideration, along with such other and further relief as the Court may deem just and proper from the circumstances.

Dated: January 14, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO INTERVENE AS OF RIGHT, OR ALTERNATIVELY, BY PERMISSION** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO INTERVENE AS OF RIGHT, OR ALTERNATIVELY, BY PERMISSION** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
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Protection Agency, Region 1  
Mail Code OES04-3  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

J. David Rives  
Senior Vice President–Distribution  
Dominion Virginia Power  
120 Tredegar Street  
Richmond, Virginia 23219

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
Email: [mary.jo.sheeley@dom.com](mailto:mary.jo.sheeley@dom.com)

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,  
Plaintiff

v.

C.A. No.:3:13-cv-08086-SEM-BGC

DOMINION ENERGY, INC.,  
BRAYTON POINT ENERGY, LLC  
KINCAID GENERATION, LLC, and  
EQUIPOWER RESOURCES CORP.,  
Defendants

AFFIDAVIT

I, Christy M. DiOrio, being duly sworn, hereby depose and state:

1. That I am assistant corporation counsel for the City of Fall River (hereinafter "Fall River" or "City") in the Commonwealth of Massachusetts.
2. That upon information and belief, representatives from Dominion Energy, Inc. (hereinafter "Dominion"), namely James Smith of Smith, Ruddock & Hayes and Kevin Hennessey, Director of Federal State & Local Affairs from Dominion Resources Services, Inc. met with the following Fall River officials: Shawn Cadime, former City Administrator; Kenneth Pacheco, Director, Department of Community Maintenance and present Interim City Administrator; Mayor William A. Flanagan, and Elizabeth Sousa, Corporation Counsel on July 11, 2013, to discuss the applicable settlement terms of the above-captioned matter as it related to Fall River as a beneficiary of the settlement.
3. That Fall River officials were provided with a copy of the Consent Decree filed in the above-captioned civil action at said July 11, 2013, meeting.
4. That upon information and belief, at said July 11, 2013, meeting, Fall River was not informed or advised as to the projected time frame in which the Consent Decree would be approved by the Court thereby triggering the 120 day court-appointed deadline for Dominion's submission of Project Plan(s) to the Environmental Protection Agency ("EPA").
5. That although the Consent Decree had been granted and approved by this Honorable Court on July 17, 2013, Fall River was never advised of nor received a copy of the entered order.
6. That Fall River missed the August 1, 2013, deadline Dominion established for Fall River to prepare and submit a proposed Project Plan. Upon information and belief, neither the

Director of Community Maintenance nor the Corporation Counsel received any correspondence from Dominion's representatives regarding the missed August 1, 2013, Dominion-imposed deadline. As the then-appointed City Administrator is no longer employed by the City, the undersigned requested that a search of Mr. Cadime's computer be conducted to determine if any email correspondence was received from or delivered to Dominion's representatives. A search yielded no such correspondence. (See affidavit of John L. Niewola attached hereto as **Exhibit A**).

7. That upon information and belief, on or about September 3, 2013, Mayor William A. Flanagan instructed Corporation Counsel to prepare a proposed Project Plan in accordance with the terms of the Consent Decree. Corporation Counsel assigned this matter to the undersigned on or about the same date.
8. That after a review of the terms of the Consent Decree, the undersigned met with Mr. Cadime and Mr. Pacheco to discuss the narrow scope of allowable proposed projects, given the City's completion of a number of comprehensive solar energy projects at its public schools and the replacement of diesel powered public works' vehicles from other funding sources. Thereafter, the City recognized that it needed additional time to formulate a Project Plan that would conform to the narrow scope of the consent decree.
9. That the undersigned requested of Dominion, by and through its representative, James Smith of Smith, Ruddock & Hayes, additional time in which to complete a proposed Project Plan. (See email dated September 5, 2013 attached hereto at **Exhibit B**). Mr. Smith verbally confirmed that the City had additional time to complete the Project Plan and no new deadline was provided or established. At no time did Mr. Smith inform the undersigned that the Consent Decree had been approved and entered by this Honorable Court, thereby triggering the 120 day deadline appearing in Appendix A, ¶ A of the Consent Decree.
10. That Fall River hired Ameresco, an independent third-party contractor, to develop a proposed Project Plan that would conform to the narrow scope of the Consent Decree.
11. That after the verbal confirmation of an extension from Dominion's representative, the City received no further communication from Dominion, either written or verbal.
12. That on or about December 17, 2013, Fall River discovered that the Town of Somerset was "in line to receive all of 1.6 million from Brayton Point Settlement," as reported in the *Fall River Herald News*. (Article attached hereto at **Exhibit C**).
13. That on December 17, 2013, Fall River received a proposed Project Plan from Ameresco.
14. That the undersigned immediately contacted Mr. Smith, Dominion's representative, on December 17, 2013, to determine the veracity of the newspaper article. Mr. Smith agreed that it was "untrue" that Fall River "did not apply for its share" of the settlement money as reported by the *Herald News*, and that he would contact Dominion's legal counsel to

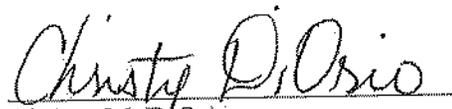
determine what was going on since Fall River had "worked hard" on this Project Proposal. On the same day, Mr. Smith, advised the undersigned that he no longer worked for Dominion.

15. That Mayor Flanagan, Mr. Pacheco and the undersigned had a conference call with H. Curtis Spalding, Region 1 Administrator for the Environmental Protection Agency ("EPA") and Steven Viggiani, Esq., counsel for the EPA on December 17, 2013, to again determine the veracity of the *Herald News* article. EPA informed the City that it would wait for Dominion's response to our request to submit our Project Plan to EPA.
16. After the EPA conference call, Mr. Smith advised the undersigned that a phone call from Kevin Hennessey, Director of Federal State & Local Affairs from Dominion Resources Services, Inc. would be forthcoming, advising Fall River that it was "out of the running."
17. That on the same date, Mr. Hennessey did, indeed, inform the City that it had missed the 120 day deadline required by the Consent Decree, and as such, was not eligible to have its proposed Project Plan submitted to the EPA. Mr. Hennessey also requested that Fall River submit its request for late consideration of its Project Plan in writing so that it could be forwarded to Dominion's general counsel for review and consideration. (See email and correspondence dated December 18, 2013, attached hereto at **Exhibit D**).
18. That Dominion, by and through its general counsel, declined to accept Fall River's late proposal. (See email and correspondence dated December 19, 2013, attached hereto at **Exhibit E**).
19. That on December 23, 2013, the undersigned again spoke with Mr. Smith of Smith, Ruddock & Hayes, who stated that his relationship with Dominion terminated on September 1, 2013, after Dominion was sold to EquiPower Resources Corp. (hereinafter "EquiPower"), facts which were never relayed or disclosed to Fall River in our September discussions. Mr. Smith did not instruct the City to contact Kevin Hennessey of Dominion Resources Services, Inc. in the future or any other person employed by Dominion or EquiPower.
20. That no other Dominion representative or EquiPower representative ever contacted City officials after Mr. Smith's termination to discuss a deadline or advise the City that it would be submitting its proposals to EPA on a certain date. Nor did any other Dominion representative or EquiPower representative inquire with Fall River as to the progress it was making with its proposed Project Plan after its discussions with Mr. Smith in September 2013.
21. That the United States of America filed a Notice Related to Consent Decree with this Honorable Court on December 5, 2013, noting that a "nonmaterial modification" to the Consent Decree may be made by written agreement without need for Court approval, pursuant to Section XXIII, ¶ 188, and that amongst these "nonmaterial modifications" was the fact that on August 29, 2013, Dominion Energy, Inc. "sold and transferred its ownership and operation interest . . ." to affiliates of EquiPower Resources Corp."

("EquiPower") and that "EquiPower succeeds to Dominion Energy Inc.'s liabilities and obligations under the Consent Decree . . . (*except for liabilities and obligations related to the Civil Penalty and Environmental Mitigation Projects required by the Consent Decree*)." (emphasis added).

22. That Mr. Smith advised the undersigned on December 23, 2013, that he was also unaware of the 'November 2013 deadline' (i.e., the 120 days referenced in Appendix A, ¶ A of the Consent Decree).
23. That Fall River attempted to provide the Project Plan in good faith, and that efforts to amicably resolve this matter have been met with opposition by Dominion. (See email dated December 23, 2013, attached hereto as **Exhibit F**).

Signed and sworn under the pains and penalties of perjury this 23<sup>rd</sup> day of December 2013.

  
Christy M. DiOrio

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,  
Plaintiff

v.

C.A. No.:3:13-cv-08086-SEM-BGC

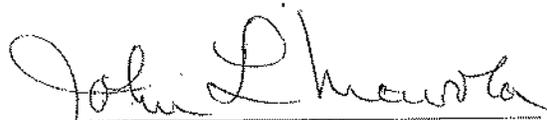
DOMINION ENERGY, INC.,  
BRAYTON POINT ENERGY, LLC  
KINCAID GENERATION, LLC, and  
EQUIPOWER RESOURCES CORP.,  
Defendants

AFFIDAVIT

I, John N. Niewola, being duly sworn, hereby depose and state:

1. That I am manager of Information Systems for the City of Fall River (hereinafter "Fall River" or "City") in the Commonwealth of Massachusetts.
2. That on December 20, 2013, Christy M. DiOrio, assistant corporation counsel, requested that I search through former City Administrator, Shawn Cadime's electronic files to determine if there was correspondence regarding the above-captioned matter.
3. That on said date, I ran a query of the terms: "Jim Smith" and "Dominion Energy" to locate any electronic correspondence.
4. That as a result of said search, only three (3) responses matched said query search and included: 1) a meeting request accepted on July 3, 2013, regarding Dominion Energy settlement with Jim Smith; 2) a meeting request sent to Yassara V. M. Todorov, legal assistant for the City's Office of the Corporation Counsel on September 6, 2013, regarding Dominion Energy Settlement; and 3) an email from Terrence Sullivan, Director of Community Utilities for Fall River indicating that Dominion Energy donated \$2,500 in gravel for parking lot construction bids. A copy of said records are attached hereto at **Exhibit 1**.

Signed and sworn under the pains and penalties of perjury this 26<sup>th</sup> day of December 2013.

  
John L. Niewola

# EXHIBIT 1

**Shawn Cadime**

---

**From:** Shawn Cadime  
**Sent:** Wednesday, July 03, 2013 12:21 PM  
**To:** Mayor  
**Subject:** Accepted: Jim Smith and Dominion Energy re: Settlement (617-523-0600)

Shawn Cadime

---

From: Shawn Cadime  
Sent: Friday, September 06, 2013 10:23 AM  
To: Yassara V. M. Todorov  
Subject: Accepted: Dominion Energy Settlement

**Shawn Cadime**

---

**From:** Terry Sullivan <tsullivan@fallriverma.org>  
**Sent:** Wednesday, April 11, 2012 2:07 PM  
**To:** Shawn Cadime  
**Subject:** FW: Parking Lot Construction Bid Results

Shawn,  
Per the e mails below we are going to award this small contract to D.S Enterprises for \$3,800.  
This is for a small parking lot for Bioreserve visitors on Blossom Road 800 feet south of our Reservation Headquarters (2929 Blossom Road).  
The donations for the gravel are from Dominion Energy (\$2,500) and the Greater Fall River Land Conservancy (\$2,500).  
The \$3,800 for construction by D.S. Enterprises is covered by a DCR grant.  
I bring this to your attention in the event your office gets calls from Biszko.  
Please call me if you have any questions.  
Thanx  
terry

---

**From:** Mike Labossiere [mailto:mlabossiere@fallriverma.org]  
**Sent:** Monday, April 09, 2012 10:15 AM  
**To:** Terry Sullivan  
**Cc:** Ted Home; Ted Kaegael  
**Subject:** FW: Parking Lot Construction Bid Results

Terry,

I'm resending this email which summarized the parking lot construction bids.

This morning I have confirmed that we will receive two cash donations for gravel in the amount of \$5000. I will apply this donation directly to payment for gravel. I have an invoice from Potter Construction Materials in Westport stating the sum for our material will not exceed \$5000. I am ready to advise the Purchasing Dept. to award the bid to D.S. Enterprises based on this information because they were the low bidder (by \$2690) based on their bid for "Operations Only" and their quality of work is good.

If this is satisfactory to you please let me know at your earliest convenience. Thanks.

Mike

---

**From:** Mike Labossiere [mailto:mlabossiere@fallriverma.org]  
**Sent:** Thursday, March 22, 2012 8:29 AM  
**To:** Terry Sullivan (tsullivan@fallriverma.org)  
**Cc:** (jfrjar@fallriverma.org); Ted Kaegael  
**Subject:** Parking Lot Construction Bid Results

Three bids were received by 10:30am on 3/12/12 close of bid.

<u>Company Name</u>	<u>Bid for Total</u>	<u>Bid for Operations Only</u>
Century Paving	\$17,500	\$7,600
Biszko Construction	\$9,712	\$6,490
D.S. Enterprises	\$11,170.75	\$3,800

Award of contract pending outcome of grant request by Water Dept. to conservation group for donation of materials for project. I hope to know about this grant in the next few weeks.

If grant for project is received, bid will be awarded to D.S. Enterprises. If no grant is received bid will be awarded to Biszki Construction.

Thank you.

Mike Labossiere  
*Reservation Superintendent*

Water Division, Treatment and Resources  
Department of Public Utilities  
CITY OF FALL RIVER

WATUPPA RESERVATION  
2929 Blossom Road  
Westport, MA 02790

Office Tel: 508-324-2749  
Email: [mlabossiere@fallriverma.org](mailto:mlabossiere@fallriverma.org)

# EXHIBIT B

Christy Diorio

---

**From:** Christy Diorio  
**Sent:** Thursday, September 05, 2013 11:03 AM  
**To:** 'jsmith@srhpublicpolicy.com'  
**Subject:** Dominion Energy Env'tl Mitigation Plan Project

**TimeMattersID:** MB558A24B1DA3807  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Hi Jim,

Can you confirm whether the \$800,000 will be provided as a reimbursement to the City following our expenditure? I need to determine whether the City will need to initially bond for the project we decide to undertake.

I look forward to hearing from you regarding an appropriate extension in which we can put a reasonable plan together which meets the June 24, 2013 Guidelines.

Best,

Christy Diorio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
508-324-2655 (Fax)

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# EXHIBIT C

# The Herald News

REALITY. DELIVERED DAILY. NOW!

## Officials say Somerset schools in line to receive all of \$1.6 million from Brayton Point settlement

Selectmen seek explanation on why funds are not going toward municipal use

By Michael Holtzman  
Herald News Staff Reporter  
Posted Dec 16, 2013 @ 10:33 PM  
Last update Dec 16, 2013 @ 11:49 PM

**Related Stories**

Fall River, Somerset split \$1.6M from Dominion for clean energy

Somerset schools outlining clean energy proposals

SOMERSET — Officials are optimistic about the Somerset School Department receiving the lion's share of \$1.6 million in energy-efficient project funding as part of an April 1 settlement between the former owner of Brayton Point and the federal government.

"My understanding is the school department had done everything they were supposed to do and, therefore, they would be rewarded with the whole \$1.6 million," state Rep. Patricia Haddad, D-Somerset, said Monday night.

She said Fall River did not apply for its share.

"We'll have an announcement right after the first of the year. I feel very optimistic," said Somerset School Committee Vice Chairman Jamison Souza, who said he's been working closely with Haddad for months.

"We're going to receive more than we originally planned strictly through the school department," he said.

Among project criteria are energy efficiency and renewable energy, Haddad said.

The Board of Selectmen are scheduled to talk about the issue at Wednesday's 6 p.m. meeting at Town Hall after Chairman Donald Setters asked Town Administrator Dennis Luttrell last week for an update on the settlement funds.

The April 1 settlement between Dominion — owner of Brayton Point until this year — and the U.S. Environmental Protection Agency has been widely known.

As part of a 2010 court agreement over three Dominion power plants found to be in violation of 2010 federal clean air standards, the Virginia-based Dominion agreed to about \$1.3 million in payments, including \$9.8 million in federal mitigation projects and a \$3.4 million civil penalties, including the \$1.6 million for Somerset and Fall River to share.

In late August, school officials announced they submitted several energy recovery and energy control system projects to a Dominion manager, Allee Prior.

With specific details provided, their plan is to use the cost-saving measures at Somerset Middle School and North, South and Chase elementary schools, Superintendent Richard Medeiros had said.

The projects included:

- \$779,011 to install CO<sub>2</sub> energy-recovery exchangers at four schools, with an investment return in four years and a \$1.6 million savings over 20 years.
- \$612,059 to install heating and cooling system energy controls, with a 12-year investment return.
- Among several other proposals, one was to install solar panels at the middle school and North Elementary School to supply at least 20 percent — and potentially three times that amount — of each building's electrical needs.

Questions remain unanswered about how the funds may be submitted to school or town departments, which is part of the reason selectmen want the issue explained.

Selectman Scott Lebeau said he understood "originally the money was for municipal use." Lebeau said he was "informed that some wording was changed to include the school department."

He said they were awaiting an explanation from Luttrell about what happened.

Haddad, who, along with Souza, said they have worked hard and many months on this funding, had a different explanation.

"I called first to the municipal side, and when they didn't get back to me, I was asked by the secretary (Richard Sullivan, from the state's energy/environmental affairs agency) for the projects, and I went to the school department," Haddad said in a phone interview.

With Somerset and Fall River in line to divide the \$1.6 million evenly, Haddad said she asked municipal officials to put together \$1 million in projects.

Asked whom she contacted, Haddad said, "I hate to throw people under the bus, but I called the town administrator."

Four phone calls were left for Luttrell at his office Monday afternoon and at his home number Monday night. He left a message at The Herald News at 4 p.m. saying he was leaving at the end of the workday and would call again today, and he did not answer messages left at his home at night.

On the \$1.6 million award, Haddad said, "My understanding is that it is going to come directly from the state to the school department and it will not go to the municipality."

When asked why that was an issue, Haddad said she understood from school officials the municipal side wanted "a carrying fee of 10 percent."

"I can't let them take 10 percent (\$160,000) off the top," Haddad said. "It's not free money. There was a lot of work that went into these requests."

Neither Luttrell nor Setters could be reached to comment about the 10 percent fee Haddad alleged town officials were seeking.

Setters said at last week's meeting that while he understood the funding was for the municipal side, the school department benefiting would help the town as a whole.

Email Michael Holtzman at [m Holtzman at mholztman@heraldnews.com](mailto:mholtzman@heraldnews.com).

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# EXHIBIT D

**Christy Diorio**

---

**From:** Christy Diorio  
**Sent:** Wednesday, December 18, 2013 5:07 PM  
**To:** 'kevin.r.hennessey@dom.com'  
**Cc:** 'viggiani.steven@epa.gov'  
**Subject:** USA v. Dominion Energy Inc., et al  
**Attachments:** Kevin Hennessey.pdf; Fall River Potential Energy Conservation Measures.pdf; Herald News Article 12.17.13.pdf; FW: Dominion Energy Env'tl Mitigation Plan Project

**Importance:** High

**TimeMattersID:** M7724A2B3D381643  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Hi Kevin,

Attached please find correspondence requested by you during our telephone conversation yesterday. Kindly forward this letter to your general counsel. Could you provide me with her direct contact information? I would like to follow up with her in the very near future.

I look forward to favorably resolving this issue.

Best,

Christy Diorio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
508-324-2655 (Fax)

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**City of Fall River**  
*Office of the Corporation Counsel*

**WILLIAM A. FLANAGAN**  
Mayor

**ELIZABETH SOUSA**  
Corporation Counsel



**GARY P. HOWAYECK**  
Assistant Corporation Counsel

**CHRISTY M. DIORIO**  
Assistant Corporation Counsel

December 18, 2013

*Via email to Kevin.R.Hennessy@dom.com  
and regular mail*

Kevin R. Hennessey  
Director  
Federal, State & Local Affairs  
Dominion Resources Services, Inc.  
Rope Ferry Road, Route 156  
Waterford, CT 06385

Re: Dominion Energy, Inc. Environmental Mitigation Projects  
USA v. Dominion Energy, Inc., et al  
C.A. No.: 13-03086

Dear Mr. Hennessey:

This correspondence is written in follow up to our telephone conversation yesterday, December 17, 2013, wherein you requested that the City of Fall River (hereinafter "City" or "Fall River") submit its concerns surrounding the environmental mitigation projects required by Dominion Energy, Inc. (hereinafter "Dominion") pursuant to a Consent Decree filed in the United States District Court for the Central District of Illinois. Dominion is required to submit proposed Project Plans to the U.S. Environmental Protection Agency ("EPA") for review and approval in accordance with the Consent Decree, after consultation with the Town of Somerset and the City of Fall River.

The Project Plans require description of anticipated environmental benefits expected to be realized upon completion and implementation of (a) energy efficiency, geothermal, and/or solar photovoltaic projects at one or more public school buildings, and/or (b) clean diesel projects to retrofit or repower higher-polluting diesel powered engines for municipal construction or public works vehicles or equipment.

The City initially met with Dominion representatives on July 11, 2013. Thereafter, the City determined that the City's progress and advancements made with its public schools' energy efficiency as well as the municipal fleet limited Fall River's options as to use of mitigation funds. Over the last several years, the City has completed a number of comprehensive solar energy projects at the public schools, and has, through other funding sources, replaced and

Kevin Hennessey  
December 18, 2013  
Page 2 of 3

upgraded the City's public works diesel powered vehicles, including its garbage and recycle vehicles. Thereafter the City recognized that it needed additional time to formulate a Project Plan that would conform to the narrow scope of the Consent Decree.

In working with Dominion's representative, namely James Smith of Smith, Ruddock & Hayes, the City requested and received additional time to prepare its Project Plan in September. The undersigned explained the difficulty we were having formulating a plan that conformed to the Consent Decree and asked Mr. Smith if he could look into whether there was any leeway on solely providing improvements to school buildings (i.e., prepare plans for other municipal buildings) in an effort to expand the City's ability to use the settlement money. As evidence of this request, an email from the undersigned to Mr. Smith dated September 5, 2013, affirming our request for an extension is enclosed. Mr. Smith responded via telephone that the use of the funds was inflexible. As such, the City immediately sought a preliminary investment grade audit from an independent third-party contractor, Ameresco. The undersigned received assurances from Mr. Smith that the City had additional time to formulate a Project Plan and no final deadline was articulated or expressed.

Ameresco prepared a report entitled, "Potential Energy Conservation Measures for the Dominion Electric Consent Decree" identifying possible enhancements to Fall River schools (copy attached hereto). Primarily, Ameresco identified the possibility of a solar photovoltaic system at Fonseca Elementary and energy management systems at five other schools. After the City was granted additional time in September to have Ameresco prepare the Project Plan, the undersigned was never contacted by Dominion's representative again. Ameresco's proposed Project Plan was submitted to the City on December 17, 2013, the same day in which the *Herald News* reported that the Town of Somerset would likely be receiving the full 1.6 million dollar settlement earmarked in the Court Decree for certain environmental benefits to be realized in Somerset and Fall River. (See attached).

Since the City did not receive any notification from Dominion, by and through its representative, that our previously approved extension was over, and had received adequate assurances of an extension leading it to contract with Ameresco, the City was surprised, to say the least, by the publication's claim, particularly when the City was never informed that Dominion would submit all proposed projects to the EPA by November 17, 2013, and that Dominion had, in fact, submitted Somerset's project proposal without intending to ever honor the extension granted by Dominion's representative.

Thereafter, the City immediately inquired with Dominion, by and through its representative, James Smith, of the veracity of the *Herald News* article, and whether the EPA approved the Somerset proposed Project Plan without consideration of the Fall River project proposal that was undertaken by Ameresco pursuant to the extension granted in September. Additionally, the City called the EPA, who apprised the City of its understanding that Fall River had not been responsive to Dominion's inquiries, and that Dominion informed the EPA in a letter dated on or about November 5, 2013, that it had "no choice" but to submit solely the Somerset Project Plan.

Kevin Hennessey  
December 18, 2013  
Page 3 of 3

Unfortunately, this is not our understanding of events, as the City of Fall River has acted in good faith, believing that its project proposal would be included and submitted when received. Following the unfolding of events yesterday, the City hereby requests that EPA and Dominion review the proposed Project Plan submitted by Ameresco on December 17, 2013, particularly since Fall River is "shovel ready" on its project proposal. Moreover, one of the purposes of the Consent Decree is to mitigate violations of the Clean Air Act, of which Fall River would be unjustly harmed and prejudiced by a refusal to consider our Project Plan, albeit after the time frame required by the Consent Decree. Fall River is specifically intended to be a beneficiary of the Consent Decree, so it appears likely that (provided all parties to the litigation agree, as well as the EPA) the court would not withhold its approval of a joint motion to modify the Consent Decree to consider Fall River's Project Plan after the original deadline. We would expect, of course, given the facts surrounding this request that such an action would come without penalty to Dominion.

In the event that one or both parties to the action decline to petition the court for consideration of Fall River's Project Plan, the City will have no choice but to petition the court directly. The City hopes that Dominion recognizes that it is seeking an opportunity to be fairly considered for an award under the Consent Decree. Furthermore, it is the City's understanding after speaking with H. Curtis Spaulding, Region 1 Administrator and Steven Viggiani, Esq., both of the EPA, that the EPA is awaiting Dominion in response to the City's request. As such, the undersigned respectfully requests that Dominion's corporate counsel respond to this correspondence by January 2, 2014. The City will hold its filing for injunctive relief in abeyance until after said date, provided that no monetary award or decisions regarding award are made prior to said date.

Thank you for your anticipated attention to this matter.

Very truly yours,



Christy M. DiOrto

Enclosures (3)

cc: Steven Viggiani, Esq. (w/ encls.) (via email only)



# Potential Energy Conservation Measures for Dominion Electric Consent Decree

---



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Renovate Windows	11



## Executive Summary

The City of Fall River has a Comprehensive Energy Management Services contract with Ameresco, Inc. of Framingham Massachusetts. The program is a multi-year, multi-phase energy-efficiency implementation program. Ameresco has developed four (4) comprehensive project phases for City and school buildings and is currently completing construction of Phase 2 and Phase 3 will be complete early next year. The City has instructed Ameresco to develop this project as Phase 5 of the Energy Management Services program and to include only school buildings in the scope of work.

### Summary of Proposed Measures

Energy Efficiency Measure	School	Cost
Solar Photovoltaic System	Mary L. Fonseca Elementary School	\$559,500
New Energy Management System	Westall Elementary School	\$56,938
New Energy Management System	James Tansey Elementary School	\$68,888
New Energy Management System	Samuel Watson Elementary School	\$63,557
New Energy Management System	Old Kuss Middle School	\$87,401
New Energy Management System	Stone Elementary School	\$56,938
Renovate Windows	Henry Lord Middle School	\$117,207
Renovate Windows	Samuel Watson Elementary School	\$153,524
Renovate Windows	Old Kuss Middle School	\$445,876
<b>TOTAL</b>		<b>\$1,807,829.00</b>

This preliminary audit will be followed by a detailed Investment Grade Audit (IGA), once the measures (concept) are approved. The IGA will further analyze and quantify the feasibility of installing the improvements throughout the schools of Fall River. The City is in a unique position in that under the program with Ameresco, can immediately enter into construction, without further municipal bidding and procurement since Ameresco's contract procurement covers all design, acquisition, installation, modification, commissioning and training for the ECMs as presented herein. Unlike typical municipal projects and procurement, the City can implement all these projects in months -- not years.



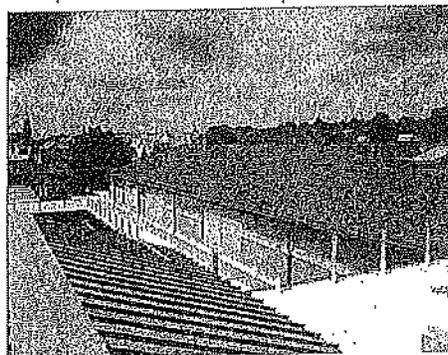
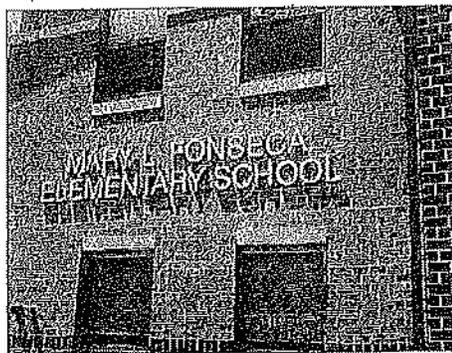
# Solar Photovoltaic System

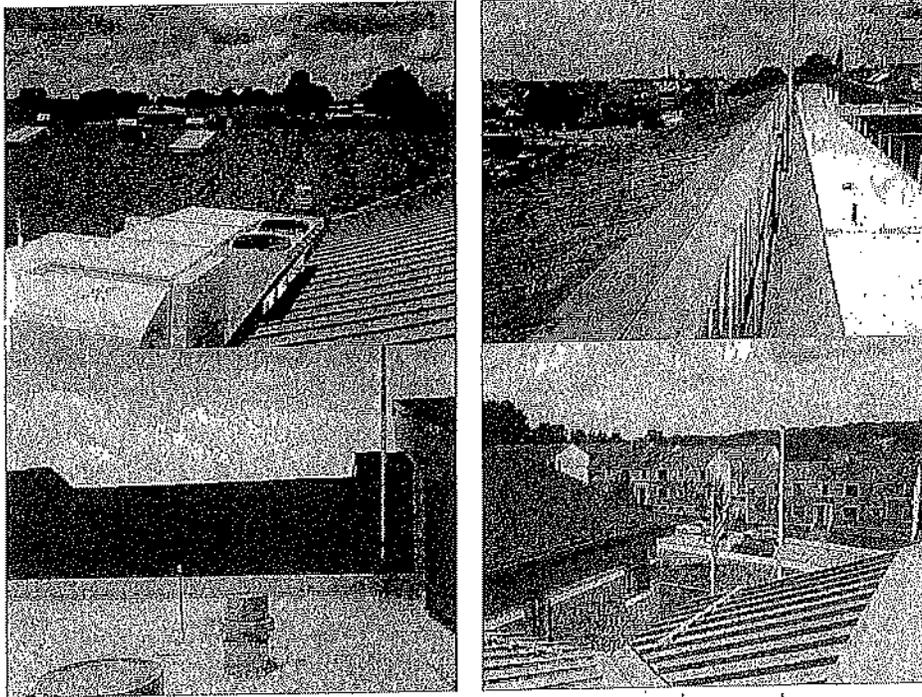
## Mary L. Fonseca Elementary School

### Current Site Conditions

The Mary L. Fonseca Elementary School was built in 2008. Considerations are:

- **Roof:** The roof requires reinforcement in one segment of a ridge beam in order to support PV panels. The roof exterior condition appears excellent. As shown in the following pictures, there are open areas for solar PV panels. The panels will be visible to the school students and neighbors. The roof is made of architectural shingles. The panels will be mounted flush to the roof with approximately 500 mechanical attachments into the roof support structure.
- **Building Direction:** The roof line faces towards the south, which is favorable for a solar PV array.
- **Security:** The roof and building appear secure from vandalism.
- **Electrical:** The building's switchgear is at 480 Volts, which is favorable for a solar connection.





## Solar PV System Description

Table 2.2

	Tilt Angle (Deg)	Azimuth (Deg)	kW	kWh	Unshaded Open Area (Sq. Ft.)
Mary L. Fonseca Elementary School 160 Wall Street	18.5	194	161	208,840	11,767
	Inverter		PV Panel	Mounting System	
	Sollectria PVI-20TL x 7 Units		CS6P-250P	Unirac	

**Solar PV Modules and Roof Layout:** Ameresco proposes a solar PV grid tied system of 161 kWp rated capacity, to be installed on the sloped roof of the Mary L. Fonseca elementary School, located at 160 Wall Street, Fall River MA. The system will consist of 644, Canadian Solar CS6P-250P solar modules, or equivalent installed on the roof. The module layout is shown in the conceptual system layout drawing below.

**Rack Mounting System:** The solar modules will be installed onto Unirac or similar aluminum rail system on the 18.5 degree pitched roof. The location of the solar modules has been chosen to avoid roof obstructions or any objects casting a shadow onto the solar array. Modules will not be placed closer than 3ft from any roof edge or parapet. The racking system will be secured to the roof with approximately 500 connections into the roofing supports.



Electrical: Each Solar PV module has a rated capacity of 250W. A set of 14 modules will be connected in a source circuit. These source circuits will be connected in parallel using a fused sub-array combiner enclosure. A set of 14 modules will be connected in a source circuit. These source circuits will in turn be connected in parallel using a fused sub-array combiner enclosure. A total of seven sub-array combiners and six fused DC disconnects will be installed. Three disconnects will be installed on the roof and the other three will be installed on ground level closer to the inverter. The DC protection and switching configuration allows for system isolation down to a single source circuit, thereby minimizing system down time during maintenance and/or faultfinding.

The array will be connected to seven (7) Solectria PVI-20TL, 20kW inverters. The seven inverters will produce 480V, 3-phase power and each one will be connected to an AC combiner panel through a 35 A breaker. The AC combiner output will be fed to the main distribution panel located in the main electrical room. The method of interconnection will be by installing a new 250A back feed rated circuit breaker into the existing switchgear.

Data acquisition system (DAS): Ameresco proposes the Draker DAS system



## New Energy Management Systems

---

During the preliminary IGA, Ameresco installed data loggers in a number of facilities to capture a snapshot of the heating operation of the existing systems. Most of the facilities have significant opportunity to reduce operating costs during unoccupied periods by lowering the temperatures in the spaces and better monitoring the operating schedules. Ameresco proposes to improve control of zone temperature and equipment operation by installing new energy management systems (EMS) or programmable thermostats at various Fall River Public Schools facilities.

### Energy Management Systems

---

Ameresco proposes to install new direct digital control (DDC) energy management systems or upgrade existing ones as described by location below. As explained in further detail below, the new EMS will enable energy conservation through:

- Deeper unoccupied temperature setback combined with optimum start strategy for morning warm-up,
- Scheduling of holidays and other unoccupied weekdays where 7-day clocks are now used,
- Alerts to staff of out-of-tolerance conditions, and
- Additional strategies as described elsewhere in this section.

The upgrades will make the affected locations internet-accessible, including graphics having the same look and feel as those for Fall River's other web-connected locations. This will enable centralization of the energy management function and more consistent control of scheduling and setpoint parameters.

Ameresco's work at all locations will include commissioning of the installed or upgraded system and training of authorized personnel in scheduling changes, maintaining energy conservation features, and receiving and responding to alerts.

Ameresco proposes to install Schneider Electric energy management systems at the Fall River Public School buildings listed below, for compatibility with the existing network of five web-accessible systems installed in the Kuss, Fonseca, Morton, Letourneau, and Talbot schools. Data logging of temperatures indicate that little or no setback is occurring in most of the schools.



### *Westall Elementary School*

The existing system at Westall is a single steam boiler controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. The terminal units are a mixture of cast iron radiators, bare pipe loops, and exposed fin tube, all of which operate as a single zone. All steam traps are located at the basement level.

Ameresco proposes to install a web-accessible energy management system for boiler control at Westall, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

### *Tansey Elementary School*

The existing system at the original portion of Tansey is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. Heat is delivered by unit ventilators that start whenever their internal aquastats sense steam to their coils. Until the pneumatic system was abandoned, nearly two years ago, classroom thermostats used to respond to day/night air pressures to provide individual zone temperature control and setback. Now the original portion of the school operates as a single zone.

Tansey also has nine modular classrooms that are heated and cooled by rooftop units. Seven have gas heat and electric cooling, while the other two are all-electric.

Ameresco proposes to install a web-enabled, energy management system for boiler control at Tansey, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to wings having different solar and wind exposures, as well as through the other strategies described in this section.

The new EMS for Tansey will also provide setback and optimum start of the nine rooftop units serving the modular classrooms.

### *Watson Elementary School*

The existing system at Watson is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. The terminal units are mostly cast iron radiators with hand valves and thermostatic traps. Unit ventilators were added to the top floor classrooms, apparently to remedy underheating there. The UVs are controlled by internal aquastats and manual switches. It appears there may once have been a pneumatic control system at Watson, but none is present now.

Ameresco proposes to install a web-accessible, energy management system for boiler control at Watson, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.



### *Old Kuss Middle School*

The old Kuss Middle School is currently serving as the Resiliency Preparatory School (RPS). The existing system there is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. A former pneumatic control system was abandoned years ago. The original terminal units are cast iron radiators with hand valves and thermostatic traps. Each classroom also has a unit ventilator.

Ameresco proposes to install a web-accessible energy management system for boiler control at RPS, and to add control valves to the steam distribution system to subdivide it into six heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

### *Stone Elementary School*

The existing system at Stone is a single steam boilers controlled by a single thermostat. The terminal units are cast iron radiators with calibrated hand valves and thermostatic traps.

Ameresco proposes to install a web-accessible, energy management system for boiler control at Stone, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

The following Control Sequences are to be programmed for each building:

#### *Unoccupied Zone Temperature Reset*

Ameresco proposes to fully implement unoccupied zone temperature reset.

#### *Proposed HVAC Scheduling*

Ameresco proposes to implement tighter scheduling of HVAC equipment. Based on review of the existing schedules, HVAC equipment are operating longer than the areas served are occupied. The addition of "Optimum Start/Stop" will allow tighter occupancy schedules.

#### *Optimum Start/Stop of HVAC Equipment*

Ameresco proposes to implement optimum stop/start of HVAC Equipment. System energy will be saved if occupied zone temperature is conditioned to its setpoint as close to the beginning of the occupancy period as is possible. For example, if the occupied zone setpoint is 70°F and one hour is required to "pull the temperature up" to setpoint from the unoccupied temperature, the start time of HVAC equipment will be delayed until one hour before the occupied period. This optimum start time of HVAC equipment is a function of the building characteristics, setpoints, and ambient conditions. The EMS will create a database of measurements for the facility from which an optimum start time will be automatically determined for each day. Similarly, the stop time of HVAC equipment will be determined from this database so burners and compressors will not be started just as occupants are about to leave an area.



### *Boiler and Pump Control Sequences*

Hot water boilers and pumps will be enabled based on both an operating schedule and an outdoor temperature setpoint. During normal operation the boilers and pumps will only be enabled whenever any of the heating related zones are occupied, i.e., classrooms, gymnasiums, etc., and the outside air temperature is less than or equal to 60° (adjustable). During unoccupied periods the boilers and pumps will be off unless the outside air temperature is less than or equal to 37.5°, at which time the boilers will maintain a lower hot water loop temperature and the pumps will be operated continuously to prevent frozen coils. If the pumps are driven by VFDs then they will be operated at the minimum design flow rate and all hot water coils will be commanded open.

For steam boilers, the occupied period operation will be similar to the hot water sequence above. When the unoccupied outside air temperature is less than or equal to 37.5° the boilers will maintain the steam header setpoint.

### *General Zone and Special Area Event Scheduling*

Ameresco proposes to provide operating schedule software for all controlled spaces. For example, during normally unoccupied periods, areas can be maintained in occupied status for special events. This software will permit complicated event scheduling for specific zones in any building. For example, an "auditorium event" will schedule auditorium air handling units on for the occupied periods only while the remainder of the building is in unoccupied mode.

### *Equipment Control and Status*

Ameresco proposes to control HVAC equipment and provide feedback on operating status. All boilers will be enabled by the EMS and operate on their packaged controls. Multiple boilers will be lead/lagged. Supply and exhaust fans will be controlled. Equipment status will be provided to prove operation for all major equipment.



## Renovate Windows

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Ameresco proposes to renovate the existing windows in three schools in Fall River. The existing frames and sash will remain and will be reconditioned as noted for each building below.

### *Lord Middle School*

Lord Middle School has a combination of fixed and horizontal slider windows, as well as some storefront-type glazing in lobby entry areas. The fixed and sliding windows have EFCo aluminum frames with thermal breaks with tempered glass interior storm panels, 1/4" polycarbonate exterior glazing, and 5/8" air space. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect. There are approximately 102 fixed units and 118 sliders.

Ameresco proposes to replace the polycarbonate glazing in the fixed and sliding windows as detailed below. No change is proposed for the storefront-type glazing.

- Remove and store protect storm panel.
- Remove sash from window frame.
- Remove failed polycarbonate lite from sash. Clean and prep frame and new glass.
- Install new, 1/4", tempered glass lite with low-e hard coat in sash, reinstall sash in window frame, and reinstall storm panel.
- Remove and dispose of all debris and return work area to its original condition.

### *Watson Elementary School*

The existing windows at the Watson school are double-glazed, single-hung aluminum frames with thermal breaks, 3/16" clear glass interior lites, 1/2" polycarbonate exterior lites, and 9/16" spacers. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect.

Ameresco proposes to replace the existing glazing units in approximately 112 windows as follows:

- Remove sash from window frame.
- Remove existing glass/polycarbonate units (top and bottom sash).
- Clean and prep frame and new glass.
- Install new tempered glass, low-e, argon-filled units, 7/8" thick, in top and bottom sash.
- Reinstall sash in window frame.
- Remove and dispose of all debris and return work area to its original condition.



### *Old Kuss Middle School*

The Old Kuss Middle School, currently serving as the Resiliency Preparatory School, has approximately 656 single-hung windows. These have high-quality Traco aluminum frames with thermal breaks, but are single-glazed with 1/4" polycarbonate. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect.

Ameresco proposes to replace the polycarbonate glazing as follows:

- Remove sash from window frame.
- Remove existing polycarbonate glazing, top and bottom sash.
- Clean and prep frame and new glass.
- Install new 5/8" total thickness insulated glazing units with 1/8" clear tempered inside glass, 3/8" spacers, argon fill, and 1/8" low-e tempered outside glass.
- Reinstall sash in window frame.
- Remove and dispose of all debris and return work area to its original condition.

**Ameresco**

Fall River Phase II  
Emissions Calculations  
Version 1.0

Electricity Saved 225,476 kWh  
Natural Gas Saved 69,881 Therms  
Location of Project (State) Massachusetts 12

	CO2	SO2	NOx	Mercury (mg)	PM10
Electric Emission Factors	6316	0.00316	0.00413	2.23145E-06	
Natural Gas Emission Factors	12	0.00088	0.0130	0	0.00010

State-Level Average All (Total) Generation Electricity Emission Factors & Transmission & Distribution Line Loss Factor = 7.25%  
U.S. DOE / EIA (1999) Voluntary Reporting of Greenhouse Gases Appendix G, Adjusted Electricity Emission Factors by State, February, 2003  
U.S. DOE / EIA (1999) Voluntary Reporting of Greenhouse Gases Appendix F, Fuel and Energy Source, Codes and Emission Coefficients, February, 2003

	Electricity	Nat. Gas	No. 2 Oil	No. 6 Oil	Diesel	Coal	Biomass	Total
Total CO2 Reduced:	295,278	698,751	-	-	-	-	-	995,028 Pounds
Total SO2 Reduced:	847	4	-	-	-	-	-	851 Pounds
Total NOx Reduced:	319	895	-	-	-	-	-	1,213 Pounds
Total Energy Saved	69,063,972	5,908	-	-	-	-	-	69,069,841 MMBTU
Total Mercury Reduced	0.60	-	-	-	-	-	-	0.60 mg

Cars Removed From the Road 83 Cars  
OR  
Houses Powered Each Year 63 Houses  
OR  
Acres of pine or fir forests storing carbon for one year 103 Acres  
Total energy saved 69,069,841 Million BTUs

Calculations based on EPA values from <http://www.epa.gov/air/energy/energy-releases.html>

# EXHIBIT E

**Christy Diorio**

---

**From:** Mary Jo Sheeley (Services - 6) [mary.jo.sheeley@dom.com]  
**Sent:** Thursday, December 19, 2013 3:37 PM  
**To:** Christy Diorio  
**Cc:** Elizabeth Sousa; Viggiani, Steven; Cathy C Taylor (Services - 6); Kevin R Hennessy (Services - 6)  
**Subject:** Dominion Energy, Inc: Federal Consent Decree and Mitigation Project Plans  
**Attachments:** 20131219150753697.pdf

**TimeMattersID:** M6622A2B4AE97734  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Dear Ms. Diorio:

I attach a letter which responses to your submittal of last night. Thank you.

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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Dominion Resources Services, Inc.  
Law Department  
P.O. Box 26532, Richmond, VA 23261



December 19, 2013

By E-Mail and U.S. Postal Service

Christy DiOrio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722

Re: Consent Decree: Mitigation Project Plans

Dear Ms. DiOrio:

On December 17, 2013, we were made aware that the City of Fall River was still interested in putting forth a proposed mitigation project plan for Dominion's consideration and submission to the U.S. Environmental Protection Agency ("EPA") pursuant to the federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (Civil Action No. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree"). After close of business last night, Dominion received a proposal from the City. While we appreciate the City's interest, in order to meet the court-imposed deadline, Dominion submitted all of its proposed mitigation plans to EPA by the Consent Decree deadline of November 14, 2013, and will not be making any new submittals.

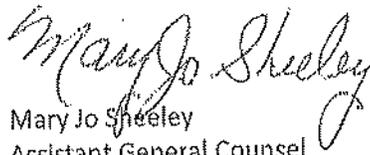
This process has been extensive. Prior to the Court entering the Consent Decree on July 17, 2013, Dominion provided all interested parties, including the City, with extensive written guidelines for each project category to assist in developing and submitting proposed plans to Dominion. We also provided copies of the Consent Decree (which sets forth the November 14 deadline) with the guidelines. The original deadline for making submittals to Dominion was August 1 to allow time for review and revision of the proposal before final submittal by the November deadline imposed in the Consent Decree. We agreed to provide additional time past the August 1 deadline set by Dominion for the Town to submit its proposal. Dominion did not, nor could it, extend the Court-imposed deadline of November 14. Through July and August Dominion made frequent attempts at contacting the City. By September, communications were re-established; however, they tapered off by October with an indication from the City that it would not be submitting a proposal due to the narrow scope of the Consent Decree requirements.

The Consent Decree requires Dominion to fund a variety of different mitigation projects in several states. During the summer Dominion received and processed many proposed plans.

Christy DiOrto  
December 19, 2013  
Page Number 2

Dominion successfully submitted about a dozen plans by the November deadline for all categories of projects, and those plans are in various stages of approval or review by EPA. We regret that the City was unable to submit a proposal within the allotted timeframe. Given the lateness of time and in fairness to those entities that submitted timely plans and have proposals before EPA for approval, Dominion will not be accepting additional project proposals for consideration under the Consent Decree.

Sincerely,

A handwritten signature in cursive script that reads "Mary Jo Sheeley". The signature is written in dark ink and is positioned above the printed name and title.

Mary Jo Sheeley  
Assistant General Counsel

cc: Elizabeth Sousa, Esquire (City)  
Steven J. Viggiani, Esquire (EPA)  
Cathy C. Taylor  
Kevin R. Hennessy

# EXHIBIT F

**Christy Diorio**

---

**From:** Mary Jo Sheeley (Services - 6) [mary.jo.sheeley@dom.com]  
**Sent:** Monday, December 23, 2013 1:10 PM  
**To:** Christy Diorio  
**Cc:** Viggiani, Steven; Dunn, Jason (ENRD); Jaber, Makram; Johnson, Harry M. ("Pete"); Cathy C Taylor (Services - 6); Kevin R Hennessy (Services - 6)  
**Subject:** Dominion NSR: Mitigation Projects

**TimeMattersID:** M5A1DA2B883B8612  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Christy,

Last week I told you I would confer with my client as to whether Dominion would be interested, at the City's request, in discussing a potential resolution of the City of Fall River's concerns about Dominion not entertaining the City's project plan that was submitted last week well past the time for Dominion to consider it and past the court-imposed deadline (November 14, 2013) for Dominion to submit it to EPA for consideration under the *United States v. Dominion Energy, Inc.*, et al., (civil action no. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree"). Last week you also indicated that the City was planning to submit a petition for permanent injunction to have the federal court reopen the Consent Decree to require Dominion to consider the City's project plan and submit it to EPA. You asked if Dominion would oppose the petition.

I have fully briefed my client on this matter. Dominion does not believe it would be appropriate to alter the process we have undertaken, consistent with the Consent Decree, in reviewing and submitting mitigation project plans to EPA for approval. We also believe it would be unfair to all of the other participants who worked diligently for months to submit plans that allowed Dominion to meet the court-imposed deadline. Dominion, therefore, will not be participating in a conference call with the City about its proposal or its concerns about this process. Dominion also cannot support, and will oppose, any effort to reopen the Consent Decree as the City suggests.

Sincerely,

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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# **EXHIBIT 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,  
Plaintiff

v.

C.A. No.:3:13-cv-08086-SEM-BGC

DOMINION ENERGY, INC.,  
BRAYTON POINT ENERGY, LLC  
KINCAID GENERATION, LLC, and  
EQUIPOWER RESOURCES CORP.,  
Defendants

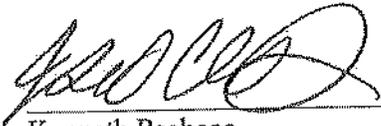
AFFIDAVIT

I, Kenneth Pacheco, being duly sworn, hereby depose and state:

1. That I am the Director of Community Maintenance for the City of Fall River (hereinafter "Fall River" or "City") with an office at One Government Center, Fall River, Massachusetts. My duties include but are not limited to directing, managing, supervising and coordinating the activities and operations of the Maintenance Division by managing multiple sections, work groups and/or service areas including building maintenance, fleet services and public works (streets and parks), maintenance functions and program areas.
2. That on or about December 9, 2013, in addition to my role as Director of Community Maintenance for the City of Fall River, I also assumed the position of Interim City Administrator.
3. That on July 11, 2013, representatives from Dominion Energy, Inc. (hereinafter "Dominion"), namely James Smith of Smith, Ruddock & Hayes and Kevin Hennessey, Director of Federal State & Local Affairs from Dominion Resources Services, Inc. met with myself, former City Administrator Shawn Cadime, Mayor William A. Flanagan, and Elizabeth Sousa, Corporation Counsel to discuss the \$1,600,000 available to Fall River by means of environmental mitigation projects required by the above-captioned civil action.
4. That at the July 11, 2013, meeting I was not informed by the Dominion representatives as to the time frame in which the Consent Decree would be approved by the Court, thereby triggering the 120 day court-appointed deadline for Dominion's submission of the project plan ("Project Plan") to the Environmental Protection Agency ("EPA").

5. That on or about September 4, 2013, I met with Assistant Corporation Counsel Christy DiOrio and was informed that the City missed Dominion's self-imposed August 1, 2013, deadline to submit a proposed Project Plan to Dominion for review.
6. That drafting a proposed Project Plan proved to be challenging due to the narrow scope of the mitigation projects outlined in the Consent Decree and the uniqueness of Fall River's energy efficiency advancements already completed. Many of the City's public schools are newly constructed and a number of solar projects were recently finished at the Fall River public schools.
7. The replacement of diesel powered public works' vehicles occurred through other funding sources. Given the City's replacement of its municipal fleet, the City was not able to develop a proposal that would include the replacement of diesel powered vehicles.
8. That given the limitations identified in numbers 6 and 7 herein, I informed Attorney DiOrio that the City needed more time to complete a proposed Project Plan that would conform to the narrow scope of the Consent Decree.
9. That on or about September 5, 2013, I was verbally informed by Attorney DiOrio that Dominion would allow us additional time to submit a Project Plan. No deadline had been provided to me at that time or any subsequent time.
10. That on or about September 13, 2013, I requested that Ameresco, Inc. ("Ameresco"), a contractor with whom the City entered into a comprehensive energy management services contract in 2008 and who possessed keen familiarity with the City's public schools, review the Consent Decree and produce a Project Plan in accordance with the guidelines provided by Dominion. The full Consent Decree was provided to Ameresco at a subsequent meeting.
11. That on December 17, 2013, an article in the Fall River *Herald News* reported that the Town of Somerset was in line to receive all of the \$1,600,000 from the Brayton Point Settlement. I then contacted Harold Meyer, Business Development Manager for Ameresco, and informed him to immediately submit the proposed Project Plan to the City. Mr. Meyer provided the Project Plan to the City on the same date in an effort for Attorney DiOrio to submit it to Dominion forthwith.
12. That I was only informed by Attorney DiOrio after December 17, 2013, that Dominion alleged that the City missed the court deadline in which Dominion was required to submit all project proposals to the EPA.
13. That I was never provided with any oral or written correspondence from any of Dominion's representatives of an impending court-imposed deadline.
14. That at my request on December 23, 2013, Ameresco modified the proposed Project Plan and submitted a revised copy to me on December 23, 2013.

Signed and sworn under the pains and penalties of perjury this 27<sup>th</sup> day of December 2013.



---

Kenneth Pacheco

# **EXHIBIT 3**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,  
Plaintiff

v.

C.A. No.:3:13-cv-08086-SEM-BGC

DOMINION ENERGY, INC.,  
BRAYTON POINT ENERGY, LLC  
KINCAID GENERATION, LLC, and  
EQUIPOWER RESOURCES CORP.,  
Defendants

AFFIDAVIT

I, Harold Meycr, being duly sworn, hereby depose and state:

1. That I am Business Development Manager for Ameresco, Inc. ("Ameresco"), a duly incorporated Delaware corporation registered to conduct business in the Commonwealth of Massachusetts and whose principal place of business is located at 111 Speen Street, Suite 410, Framingham, Massachusetts 01701.
2. That Ameresco has a comprehensive energy management services contract with the City of Fall River (hereinafter "Fall River" or "City") in the Commonwealth of Massachusetts.
3. That on or about September 13, 2013, Fall River, by and through Kenneth Pacheco, Director of Community Maintenance requested that Ameresco produce a proposed Project Plan in conformance with an 8-page Consent Decree guideline document, which document asked for a response by August 1, 2013.
4. That on or about October 10, 2013, Ameresco received from Fall River a copy of the Consent Decree document.
5. That during Fall 2013, Ameresco continued to review potential projects that fit the scope in the Consent Decree, specifically centrally-monitored digital controls, geothermal, photovoltaic projects.
6. That, despite the City's progress and advancements previously made with its public schools' centrally-monitored digital controls and photovoltaic installations, Ameresco developed a proposal for digital controls projects at five schools and a photovoltaic project at the Fonseca School that would now be economically feasible with additional capital funding.

7. That while conducting its review of potential projects, Ameresco sought clarification and/or expansion to the scope from the City.
8. That Ameresco was not informed or advised as to the projected time frame in which the Consent Decree would be approved by the Court thereby triggering the 120 day court-appointed deadline for Dominion's submission of Project Plan(s) to the Environmental Protection Agency ("EPA").
9. That Ameresco worked diligently and exchanged information in good faith in order to submit a viable Project Plan that conformed with the Consent Decree to Fall River until its written submission to the City on December 17, 2013.
10. That the undersigned received a phone call from Mr. Pacheco on December 17, 2013, requesting that Ameresco submit the proposed Project Plan to the City immediately since it had been advised that the full \$1,600,000 was likely going to the Town of Somerset for failure to timely submit the Project Plan.
11. That on December 23, 2013, upon further request by Mr. Pacheco, Ameresco modified the proposed Project Plan and submitted a revised copy to Mr. Pacheco (Copy attached hereto as **Exhibit 1**).

Signed and sworn under the pains and penalties of perjury this 26<sup>th</sup> day of December 2013.



---

Harold Meyer

# **EXHIBIT 4**

13-1572

Dominion Energy, Inc.  
Environmental Mitigation Projects: Plan Proposal Guidelines  
(June 24, 2013)

**Environmental Mitigation Project:** Northeast Clean Energy and Clean Diesel Projects

**I. Overview**

Pursuant to a federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (civil action no. 13-cv-3806) (C.D. Ill. Lodged, Apr. 2, 2013) ("Consent Decree") (attached),<sup>1</sup> Dominion Energy, Inc. ("DEI") has agreed to fund various Environmental Mitigation Projects as provided in Appendix A to the Consent Decree. Within 120 days of the entry of the Consent Decree, DEI is required to submit Project Plans to the U.S. Environmental Protection Agency ("USEPA") for its approval prior to the projects being implemented. DEI is permitted under the Consent Decree to contribute Project Dollar funds to another entity to carry out a project in lieu of DEI. The requirements for doing so are spelled out in the Consent Decree and Appendix A.

Appendix A, section XI, is entitled the Northeast Clean Energy and Clean Diesel Projects and is directed towards the implementation of projects in the Town of Somerset and the City of Fall River, Massachusetts. Section XI provides for the funding of various types of projects grouped in two categories: clean energy projects and clean diesel projects. DEI will fund \$1,600,000 in Project Dollars for "Energy Efficiency, Geothermal, PV, and/or Clean Diesel Retrofit and Repower Projects" as those projects are described in Appendix A, section XI. DEI may fund one or more projects, so it is encouraged to submit plans for projects that can be approved in whole or part based on the availability of Project Dollars. It is expected that approximately half of the total Project Dollars will be spent in Somerset. App. A, section XI.B.

Project Plans for the Northeast Clean Energy and Clean Diesel Projects must provide for expending the Project Dollars within three years of the entry of the Consent Decree.

DEI is asking for the submission of proposed project plans **by August 1, 2013**, for DEI's consideration in determining which Project Plans to provide to USEPA for approval and eventual implementation, if approved, by the Town of Somerset and/or the City of Fall River. This document outlines what must be included in a proposed Project Plan. In addition to relying on this document, the Town and City should also review the relevant portions of the Consent Decree.

<sup>1</sup> The United States soon will move to enter the Consent Decree, which will then take effect when the Court enters it.

## II. General Project Plan Elements

According to the Consent Decree all Project Plans must include the following:

1. A plan for implementing the Project. (App. A, II.D)
2. A summary-level budget for the Project. (App. A, II.D)
3. A timeline for implementation of the Project. (App. A, II.D) The timeline shall include a schedule for completing and funding each portion of the project. As noted above, the projects are to be completed within three years. The schedule shall provide for periodic reporting as set forth in section III below.
4. A description of the anticipated environmental benefits of the Project, including an estimate of emission reductions (e.g., SO<sub>2</sub>, NO<sub>x</sub>, PM, mercury, CO<sub>2</sub>) expected to be realized. (App. A, II.D)
5. The entity seeking funding and submitting a plan for consideration must also provide a written statement (a) identifying its legal authority for accepting such funding and (b) identifying its legal authority to conduct the Project. (CD, para. 114)

## III. Periodic and Final Reporting Requirements

The Consent Decree requires that DEI submit periodic reports to USEPA within 60 days after the end of each half of the calendar year (January through June and July through December) (CD, para. 122) and a final report within 60 days of completing a project (App. A, II.G). Regarding the mitigation projects, periodic reports must include "a summary of actions implemented and expenditures made pursuant to implementation of the Environmental Mitigation Projects" required in the Consent Decree and Appendix A. (CD, para. 122.h; see also App. A, II.F)

Accordingly, in order for DEI to meet these Consent Decree requirements, Project Plans must provide in the schedule for the submission of periodic reports to DEI within 30 days after the end of each half of the calendar year until completion of the project. The schedule must also provide for the submission of a final report within 30 days of completion of the Project. The Final Report shall document:

1. The date the Project was completed.
2. The results of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved.
3. The Project Dollars incurred in implementing the Project.

2x per yr

w/in 30 days after each 1/2 calendar yr

Final report 30 days following completion

#### **IV. Plan Specific Elements for Clean Energy Projects**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a Clean Energy Project to implement "Energy Efficiency, Geothermal, and/or Solar Photovoltaic ('PV') Projects at one or more public school buildings in either or both municipalities." App. A, XI.A. The proposed Clean Energy Projects "may include the installation of centrally-monitored digital controls and timers for heating/cooling systems in school buildings in either or both municipalities ('Energy Efficiency Project'). The proposed Projects may also include the installation of a geothermal heating and/or cooling system ('Geothermal Project'), and/or a solar photovoltaic project consisting of electricity-generating solar panels ('PV Project') for public school buildings in either or both municipalities." App. A, XI.A.

Appendix A sets forth general Project Plan requirements for Clean Energy Projects, and identifies additional Clean Energy Plan requirements for Geothermal and PV Projects. The additional requirements are set forth in subsections below. The following are the general plan requirements that must be included in any type of proposed Clean Energy Project Plan that seeks funding as an Energy Efficiency, Geothermal, or PV Project:

1. Identification of the specific proposed Project(s) to be implemented;
2. Implementation timelines and expected completion dates for each Project;
3. Description of each proposed Project's system design;
4. Identification of any project designers, contractors, or other third parties with whom the municipality's school system will contract or partner with to implement the Project(s), and a list of any relevant accreditations or certifications held by such contractors, designers or parties; and
5. Description of the schedule and the budgetary increments needed to provide the necessary funding by DEI to the municipality's school system or its project designers/contractors to implement the Project.

Appendix A, Section X.I.

##### **A. Geothermal Project: Additional Specific Plan Elements**

The Plan for a Geothermal Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Describe the proposed geothermal system design (e.g., a closed loop design with either horizontal or vertical loop well fields, a standing column well, or station surface sources). The Project shall be limited to serving space heating and cooling building loads, with the option to add a desuperheater to the project to serve hot water loads when practical,
2. Provide for the purchase and installation of a geothermal heat pump system that utilizes the earth as a heat source in the winter and a heat sink in the summer to reduce energy consumption. The system shall include the equipment necessary to support the installation and operation of a geothermal heat pump, including the exterior building components (e.g., well field holes, subsurface piping, and circulation pumps), the heat pump unit (evaporator and condenser, compressor, expansion valve and refrigerant) and any internal building components (e.g., HVAC distribution system and ductwork) necessary for the proper operation of the new system. Heat pumps should be Air-Conditioning, Heating and Refrigeration Institute (AHRI) and Energy Star rated. Heat pumps should meet the minimum EER and COP ratings required by Energy Star at the time the heat pumps are installed.
3. System Application and Design: The Plan shall provide that, prior to the design modeling of the system and production loop installation, the contractor/project designer conduct an in-situ formation thermal conductivity test for ambient deep earth temperature, thermal conductivity, and thermal diffusivity, for a minimum of 40 hours to assess the subsurface soil conditions. The Plan shall provide that the contract with the contractor/project designer shall require that the designer provide the building owner with copies of the related site drilling logs, soil sample documentation and in-situ thermal conductivity analyses. The Plan shall also provide that the contract with the contractor/project designer shall require that the designer employ quality assurance measures to prevent "short looping" of well field bore holes during the drilling process.
4. Provide for the installation of monitoring equipment to allow facility managers and staff to monitor the operation and performance of the system.
5. Provide for system commissioning and performance optimization within the first year of system operation.
6. Provide for the restoration of the project site, particularly the well field to its original or near-original condition.
7. Provide for the installation of onsite monitoring equipment supported byiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor the operation and performance of the

geothermal system.

8. Identify the contractor/project designer(s) and/or other third parties with whom the Town or City will contract or partner with to implement the Project, and list any relevant accreditations or certifications held by such contractor/designer(s) or parties. The Plan shall provide that the Project's design, installation and system commissioning will be performed by International Ground Source Heat Pump Association (IGSHPA) professionals or by other professionals certified by geothermal manufacturers to design and/or install the manufacturers' systems. The Plan shall also provide that best efforts will be made to select project designers and installers (including engineers, architects, and bore hole drillers) with experience on at least three successful geothermal projects.
9. End-user Documentation and Training Requirements: The Plan shall provide that the developer/contractor will provide the Town/City with:
  - System design drawings including a map detailing the subsurface location of well field bore holes;
  - Copies of permits and inspections demonstrating compliance with local codes;
  - Copies of the drilling logs, soil sample documentation and in-situ thermal conductivity analysis;
  - Copies of simulated design and financial performance (energy and cost saving) analyses of the system;
  - System documentation including, system maintenance and operational requirements, component manuals, operation manuals and warranty information; and
  - In-person, on-site, system operation user training.
10. Maintenance: The Project Plan may request Project Dollars for funding the establishment of an escrow account to maintain and/or replace the heat pump unit or other elements of the system, or for the funding or pre-payment for an extended warranty or service contract for such maintenance/replacement.

**B. PV Project: Additional Plan Elements**

The Plan for a PV Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Provide for the installation of solar panels with unobstructed solar access, producing electricity not to exceed the total annual electricity base load of the building the project serves.
2. Provide for a grid-tied inverter, appropriately sized for the capacity of the solar panels installed at the location.
3. Provide for the appropriate solar panel mounting equipment for the particular school.
4. Provide for wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid.
5. Provide for appropriate monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor various aspects of the system, e.g., the total and hourly energy output of the system (kilowatt hours), environmental benefits delivered (pounds CO<sub>2</sub> avoided), hourly ambient temperature and cell temperature (C<sup>o</sup>), irradiance (W/M<sup>2</sup>), as well as time sensitive voltage, power and current metrics.
6. Provide for the installation of the system on the customer side of the meter with ownership of the system being by the Somerset Public School system or Fall River Public School System, as appropriate. The Plan shall also provide that all related environmental benefits will be retained by the system owner, including associated renewable energy certificates.
7. Provide, to the extent practicable, that North American Board of Certified Energy Practitioners (NACEP) certified energy professionals perform the installation of the PV Projects to ensure the highest quality installation and performance of the system.
8. Provide for the inclusion of manufacturer parts warranties for major system components, specifically, a minimum 25 year warranty for the solar panels (modules) and a minimum 10 year warranty for the inverter(s).
9. Provide for the establishment of an escrow account with funding from Project Dollars sufficient to support one or more service contracts (or their equivalent) to ensure the ongoing maintenance and performance of the PV

system consistent with established industry practice for no less than 25 years, including annual system checkups, annual solar panel (module) cleaning, expected inverter replacements, and remote system monitoring.

#### **V. Clean Diesel Retrofit and Repower Projects: Plan Specific Elements**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a "Clean Diesel Retrofit and Repower Project" to retrofit or repower higher-polluting diesel engines in either or both the municipalities (the Town of Somerset and the City of Fall River). These Projects would include the "retrofit or repower of eligible diesel engines on diesel-powered municipal construction or public works vehicles or equipment owned or operated on a long-term basis by either or both municipalities in order to reduce diesel pollutant emissions." App. A, XI.A.

In addition to the general Project Plan requirements identified above in sections II and III, proposed Clean Diesel Retrofit and Repower Project Plans shall include the following:

1. For diesel engine retrofits, a plan element to use exhaust control technologies verified either by EPA or by the California Air Resources Board (CARB);
2. For diesel engine retrofits, a plan element to purchase and install EPA or CARB-verified diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs) on diesel-powered municipal construction or public works vehicles or equipment. A list of EPA-verified retrofit technologies can be found at <http://epa.gov/cleandiesel/verification/verif-list.htm>; a list of CARB-verified technologies can be found at [www.arb.ca.gov/diesel/verdev/vt/cvt.htm](http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm).
3. If the Project includes DPF retrofits, the plan must provide for the purchase of DPF service equipment required for proper DPF maintenance.
4. For diesel engine repowering, the plan must provide for the use of technologies certified by EPA or by CARB if available.
5. For diesel engine repowering, the plan must provide for the use of new engine configurations certified to emission standards. Information on engine certification can be found at [www.epa.gov/otaq/certdata.htm](http://www.epa.gov/otaq/certdata.htm).
6. In determining which vehicles or equipment to retrofit or repower under the Clean Diesel Retrofit and Repower Project, priority should be given to older, higher-polluting vehicles and equipment that have high annual usage rates and/or vehicle miles travelled, so that the pollution reductions obtained from the Project will be maximized.

**VI. Submission of Proposed Project Plans; Inquiries**

Proposed Project Plans are to be submitted by August 1, 2013, to Alice Pryor, Environmental Projects Manager, Dominion Resources Services, Inc. at [alice.g.pryor@dom.com](mailto:alice.g.pryor@dom.com).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Plaintiff-Intervenor,	)	
	)	
v.	)	
	)	
DOMINION ENERGY, INC., DOMINION	)	
ENERGY BRAYTON POINT, LLC, AND	)	
KINCAID GENERATION, LLC.	)	
	)	
	)	
Defendants.	)	
	)	
	)	

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**PLAINTIFF-INTERVENOR CITY OF FALL RIVER’S MOTION FOR A  
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Plaintiff-Intervenor City of Fall River (“Fall River”) hereby moves this Court pursuant to F.R.C.P. 65(a) to enter a temporary restraining order, and upon the expiration thereof, order a preliminary injunction against Defendants, Dominion Energy, Inc. Dominion Energy Brayton Point, LLC, and Kincaid Generation, LLC (collectively “Dominion) and the Environmental Protection Agency (EPA). Pursuant to CDIL-LR 7, a memorandum in support of the motion for preliminary injunction is being filed herewith.<sup>1</sup>

As explained in detail in the Memorandum In Support of the Motion, a Consent Decree in Civ. Action No. 3:13-cv-03086 was entered by this Court on July 17, 2013 in conjunction with

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<sup>1</sup> Fall River will post security in an amount the Court considers proper pursuant to FED. R. CIV. P. 65(c).

violations of the Clean Air Act by Dominion. As part of the Consent Decree, Dominion agreed to fund certain environmental mitigation project plans for alternative energy, efficiency or diesel fuel abatement. One such project plan was to be prepared by Fall River and sent to Dominion for submission to the EPA. Due to Dominion's failure to inform Fall River of the entry of the Consent Decree and subsequent deadlines for submitting the project plan, Fall River's project plan was not submitted and, not considered. Intervenor-Plaintiff, the City of Fall River ("Fall River") moves this Court to delay payment for certain environmental mitigation projects under a Consent Decree previously entered in this case until it can be determined whether Fall River is entitled to funds for its proposed project plan. Defendants Dominion Energy, Inc., Dominion Energy Brayton Point, LLC and Kincaid Generation, LLC (collectively referred to as "Dominion") entered into the Consent Decree to resolve its violations of the Clean Air Act. Part of the Consent Decree required Dominion to work in conjunction with Fall River to submit a Project Plan for alternative energy, efficiency measures or diesel abatement to the EPA and for Dominion to fund the Project Plan. Dominion failed to adequately inform Fall River of the entry of the Consent Decree by this Court; therefore, Fall River was unaware of the deadline to submit its Project Plan.

As will be explained in the Memorandum in Support of this Motion, the contact person appointed by Dominion not only failed to disclose to Fall River that he was no longer working with Dominion, but he continued to communicate with Fall River on the Project Plan. The EPA agreed to withhold its approval of any projects previously proposed by Dominion through January 17, 2014, thereby necessitating Fall River's request for emergency relief from this Honorable Court to prevent the rendering of a decision that is contrary to the spirit of the Consent Decree.

WHEREFORE, Fall River respectfully requests that this Court to issue an Order to:

- 1) order Dominion to accept its Project Plan,
- 2) submit Fall River's Project Plan to the EPA for review,
- 3) stay EPA's approval of Dominion's previously submitted Project Plan as it relates to the Northeast Clean Energy and Clean Diesel,
- 4) stay an award of monies for the Northeast Clean Energy and Clean Diesel Projects,
- 5) order Dominion to fund the Fall River Project Plan upon review and approval by the EPA, and
- 6) grant any further relief this Court deems just and proper.

Pursuant to Local Rule 7.1(A)(2), Fall River requests oral argument so as to address the complex nature of the facts and law asserted herein.

Dated: January 14, 2014

Respectfully submitted,

s/ Deanna R. Swits  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
Deanna R. Swits

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Plaintiff-Intervenor,	)	
	)	Civil Action No. 3:13-cv-03086
v.	)	(SEM)(BGC)
	)	
DOMINION ENERGY, INC., DOMINION	)	
ENERGY BRAYTON POINT, LLC, AND	)	
KINCAID GENERATION, LLC.	)	
	)	
	)	
Defendants.	)	Oral Argument Requested
	)	
	)	

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**PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S  
MOTION TO ENFORCE AND/OR MODIFY CONSENT DECREE**

Plaintiff-Intervenor City of Fall River (“Fall River”) hereby moves this Court to enforce or modify the Consent Decree entered in this action. As described more fully in the Memorandum in Support of this Motion filed herewith, one of the major, articulated goals of the Consent Decree included mitigating the environmental harm to Fall River from alleged violations of the Clean Air Act by Dominion at the Brayton Point facility, located just across the Taunton River in Somerset. See Consent Decree, ¶ 113; Appx. A, Section XI, ¶ A (“Dominion shall use good faith efforts to secure as much environmental benefit as possible . . .” “Consistent with the requirements of Section II of this Appendix, Dominion, in consultation with the Town of Somerset and the City of Fall River (“the municipalities”), shall submit one or more Project

Plans to EPA for review and approval . . .”). Failure to modify the Consent Decree would frustrate the purpose and intent of the Consent Decree, cause an egregious injustice to Fall River and its inhabitants, be contrary to the public interest, and cause irreparable harm.

WHEREFORE, Fall River requests that this Court now enforce Dominion’s compliance with the Consent Decree, in particular its duty to consult with Fall River, and, if necessary, modify the Consent Decree to allow the EPA to accept Fall River’s proposal directly without the involvement of Dominion, thereby enabling the award of half of the \$1.6 million allocated to be split between Fall River and the Town of Somerset, as specifically written in the Consent Decree.

Pursuant to Local Rule 7.1(A)(2), Fall River requests oral argument so as to address the complex nature of the facts and law asserted herein.

Dated: January 14, 2014

Respectfully submitted,

s/ Deanna R. Swits  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MOTION TO ENFORCE AND/OR MODIFY CONSENT DECREE** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MOTION TO ENFORCE AND/OR MODIFY CONSENT DECREE** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
Deanna R. Swits

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and )  
 )  
 THE CITY OF FALL RIVER, )  
 )  
 Plaintiff-Intervenor, )  
 )  
 v. )  
 )  
 DOMINION ENERGY, INC., DOMINION )  
 ENERGY BRAYTON POINT, LLC, AND )  
 KINCAID GENERATION, LLC. )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM  
IN SUPPORT OF ITS MOTION TO MODIFY CONSENT DECREE**

On April 2, 2013, the United States of America ("United States") and the Defendants, Dominion Energy, Inc. (hereinafter "Dominion"), Dominion Energy Brayton Point, LLC and Kincaid Generation, LLC (collectively referred to as the "Parties"<sup>1</sup>) filed a proposed Consent Decree agreeing upon certain settlement terms in connection with and resolution of a Complaint alleging the Defendants' violation of the Clean Air Act at the Brayton Point power station

<sup>1</sup> The "Parties" includes the substitutions and additions as discussed *supra* note 1.

located in Somerset, Massachusetts, amongst other places.<sup>2</sup> A Motion to Enter the Consent Decree was filed with the Court on July 2, 2013, after the United States so moved, and the Court granted the United States' motion, ordering the Consent Decree entered on July 17, 2013.

As part of the Consent Decree, Dominion was required to consult with the City of Fall River and the Town of Somerset to identify and propose certain environmental mitigation projects totaling \$1,600,000 that would, in turn, be submitted to the Environmental Protection Agency ("EPA") for review and approval pursuant to Section XIII of the Consent Decree. Consent Decree, App. A, Section II, ¶ A; Section XI, ¶¶ A and B ("Dominion in consultation with the Town of Somerset and the City of Fall River ('the municipalities'), shall submit one or more Project Plans to EPA for review and approval . . . .")

The Consent Decree specifically identified the City of Fall River as a beneficiary based on the harms suffered by Fall River and its citizens, stating:

[t]he Parties expectation is that approximately half of the total Project Dollars will be spent in Somerset [and, therefore, the other half in Fall River], but the final distribution will depend on the Projects (and their costs) that can be proposed and implemented within the time frames and other requirements set out in th[e] Appendix.

Consent Decree, App. A., Section XI, ¶ B. Dominion was instructed to submit proposed plans ("Project Plans") to the EPA within 120 days from the entry of the Consent Decree. Consent Decree, App. A., Section II, ¶ A. Yet, as described more fully in the Intervenor Complaint and Motion to Intervene filed concomitantly herewith, Dominion's representatives, particularly the consultant assigned to liaise with Fall River on behalf of Dominion, failed inform Fall River the

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<sup>2</sup> The Complaint alleges that the Defendants also violated the Clean Air Act at the State Line power station in Hammond, Indiana and the Kincaid power station located in Kincaid, Illinois. For the purposes of Fall River's discussion, the midwestern power stations are omitted in the body of the motion.

Consent Decree had been entered, failed to provide a final deadline for Fall River's submission, and, most egregiously, failed to inform Fall River that the assigned consultant's relationship with Dominion actually was terminated on September 1, 2013 due to the sale of the Brayton Point facility from Dominion. The only deadline ever communicated to Fall River was given at the initial July 11, 2013 meeting between Fall River and Dominion, in which Dominion gave Fall River an August 1, 2013 deadline, approximating three weeks, in which to provide a comprehensive Project Plan to Dominion for review.

Unsurprisingly, Fall River was unable to provide its project plan within three weeks given the narrow scope of the environmental mitigation projects, and an extension was approved by the Dominion consultant for an indefinite amount of time. **Exh. 1, ¶ 6.** Fall River maintained communications with the consultant after his termination, working on the proposal and inquiring about the final deadline for submission. Neither the consultant nor any other Dominion representative informed Fall River of the change in personnel or provided a final court deadline. Not until December 17, 2013, when Fall River officials read a newspaper article in the *Herald News* reporting that the neighboring Town of Somerset was likely to receive the full \$1,600,000 award by the EPA did Fall River have a glimmer of notice that a problem existed. **Exh. 1, ¶ 12.**

Upon learning this information, the Mayor of Fall River arranged a conference with H. Curtis Spalding, Administrator for Region 1 at the EPA, Steven Viggiani, Esq., senior enforcement counsel for the EPA, and other City officials. This conference revealed that Dominion informed the EPA in a November 5, 2013, letter that Fall River had not maintained communication, had eventually indicated that it had no viable projects, and that Dominion had no choice but to move forward with only the Town of Somerset's Project Plan. **Exh. 1.** Fall River advised the EPA that the circumstances, as expressed by Dominion, simply were untrue.

and that it had received a Project Plan prepared by Ameresco the same day. EPA officials advised the City that it would wait for Dominion's response to Fall River's offered Project Plan.

**Exh. 1, ¶ 15.**

Over the next two weeks (including the Christmas and New Year's holidays) Fall River corresponded with representatives from the EPA, the Department of Justice, and Dominion. The EPA and Department of Justice representatives made themselves available for a conference on January 7, 2014. Dominion refused to participate and refused to accept Fall River's proposal, indicating that although Dominion agreed to give Fall River additional time to prepare a Project Plan after its self-imposed August 1, 2013, deadline, "Dominion did not, nor could it, extend the Court-imposed deadline of November 14." **Exh. 1, ¶ 18.** Even after the conference with Department of Justice and EPA confirmed that EPA would accept an amended submission from Dominion including the Fall River proposal, and that no modification to the consent decree need occur, Dominion still refused to accept Fall River's proposal or submit the same to the EPA for consideration. **Exh. 2.**

The City was never informed when the time began for the 120 day deadline by or through Dominion's agents, nor was Fall River provided with a copy of the order accepting the Consent Decree. **Exh. 1, ¶ 22.** The failure to communicate the final November 14 deadline (i.e., 120 days after the acceptance of the Consent Decree by the Court), severely prejudiced the City's ability to submit a timely Project Plan to Dominion. Thus, Fall River now must turn to this Court to enforce Dominion's compliance with the Consent Decree, in particular its duty to consult with Fall River, and, if necessary, modify the Consent Decree to allow the EPA to accept Fall River's proposal directly without the involvement of Dominion, thereby enabling the award

of half of the \$1.6 million allocated to be split between Fall River and the Town of Somerset, as specifically written in the Consent Decree.

### ARGUMENT

A court has the inherent authority to enforce and/or modify its orders. And, while a consent judgment has many characteristics of a private contract between litigants, it is nonetheless a judgment bearing the imprimatur (or more appropriately, the *nihil obstat*) of the court and backed by its full authority. *Kasper v. Hayes*, 651 F. Supp. 1311, 1314 (N.D. Ill. 1987); see also *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 616 F.2d 1006, 1013-15 (7th Cir.1980). The Consent Decree entered in this action specifically indicates that this Court retains jurisdiction to enforce the Consent Decree. (Consent Decree, ¶ 87.)

A specifically intended beneficiary to a consent decree has standing to enforce and/or to modify that consent decree. *South v. Rowe*, 759 F.2d 610, 612 (7th Cir. 1985.) And, while some courts have recognized a narrow exception where the government is a party to the consent decree, here, the Clean Air Act itself specifically authorizes the intervention of the City of Fall River. 42 U.S.C. § 7604(b)(1)(B). Moreover, the Seventh Circuit has stated that

This Court has previously stated that “‘Consent’ that is no more than knuckling under to the inevitable is more like an adjudication than a contract.”...[Th]e defendant may enter into a consent decree, not because the plaintiffs' ability to recover is uncertain, but because the parties recognize that the compliance with the law, sooner rather than later, will minimize costs and save both parties time and money. As such, modification is appropriate where an unforeseen obstacle warrants revision of the consent decree, and a proposed modification is necessary in order for the decree to remedy adequately the constitutional or legal violation which it was designed to remedy. Modification is particularly appropriate where the alternative is to vacate the decree, collect the disbursed payments and conduct a damages trial that will likely result in a compensatory award similar to the proposed modification.

*U.S. v. City of Chicago*, 978 F.2d 325, 333 (7th Cir. 1992) (internal citations omitted) (noting also that the court could not put “our desire for finality in the way of rendering substantial justice”).

Additionally, Fed R. Civ. P. 60(b)(5) provides a vehicle whereby a party may ask a court to modify or vacate a judgment or order if ‘a significant change either in factual conditions or in law’ renders continued enforcement ‘detrimental to the public interest.’” *See also Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992). Here, the change in ownership of Dominion that led to the termination of its consultant to Fall River, without informing Fall River of the change or the deadline has created a circumstances that will severely prejudice Fall River and that Fall River is unable to address with Dominion, the U.S. Department of Justice, and the EPA without the intervention of this Court.

For instance, in *U.S. v. City of Northlake*, 942 F.2d 1164, 1167-68 (7th Cir. 1991), the Seventh Circuit held that even after more than two years from the entry of the consent decree, the consent decree could be modified to include additional claims of discrimination. The Seventh Circuit stated there:

Requiring the United States to file a new lawsuit to remedy discrimination already comprehended by the plain language of the consent decree undermines the judiciary's role in overseeing the proper implementation of the decree and unnecessarily delays, frustrates and prejudices the plaintiff in its efforts to obtain enforcement.

*Id.* at 1169.

The *Northlake* opinion highlights the judicial inefficiency with requiring a beneficiary to file a separate suit to enforce rights and interests already contemplated in a consent decree—if

only the consent decree is enforced—and specifically allows for enforcement of a process-related aspect of a consent decree.

Where, as here, the proposed relief—which is simply allowing the EPA to directly consider the proposal of Fall River or requiring Dominion to submit the proposal of Fall River to the EPA at this time—is narrowly tailored to the change in circumstances, a court abuses its discretion ‘when it refuses to **modify** an injunction or **consent decree** in light of such changes.’” *Horne*, 557 U.S. at 447 (quoting *Agostini v. Felton*, 521 U.S. 203, 215, 117 S. Ct. 1997, 138 L. Ed. 2d 391 (1997)); see *System Federation No. 91 Railway Employees' Dep't v. Wright*, 364 U.S. 642, 647, 81 S. Ct. 368, 5 L. Ed. 2d 349 (1961) (“[A] sound judicial discretion may call for the modification of the terms of an injunction decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen.”). The Court should exercise flexibility in its decision and should consider the goals of the original judgment, the factors that are important to the particular litigation — including the public interest where the litigation involves the public's rights — and the nature of the change in circumstances. See *Rufo* at 381, 383; *Horne*, 557 U.S. at 450; see also *Hendrix v. Page*, 986 F.2d 195, 198 (7th Cir. 1993) (*Rufo*'s flexible standard generally applies in all equitable cases).

One of the major, articulated goals of the Consent Decree included mitigating the environmental harm to Fall River from alleged violations of the Clean Air Act by Dominion at the Brayton Point facility, located just across the Taunton River in Somerset. See Consent Decree, ¶ 113; Appx. A, Section XI, ¶ A (“Dominion shall use good faith efforts to secure as much environmental benefit as possible . . .” “Consistent with the requirements of Section II of this Appendix, Dominion, in consultation with the Town of Somerset and the City of Fall River

("the municipalities"), shall submit one or more Project Plans to EPA for review and approval . . ."). Failure to modify the Consent Decree would frustrate the purpose and intent of the Consent Decree, cause an egregious injustice to Fall River and its inhabitants, be contrary to the public interest, and cause irreparable harm.

**CONCLUSION**

Dominion's failure to communicate in good faith with the City of Fall River, as required by the Consent Decree, severely prejudiced the City's ability to submit a "timely" Project Plan to Dominion. Thus, Fall River now must turn to this Court to enforce Dominion's compliance with the Consent Decree, in particular its duty to consult with Fall River, and, if necessary, modify the Consent Decree to allow the EPA to accept Fall River's proposal directly without the involvement of Dominion, thereby enabling the award of half of the \$1.6 million allocated to be split between Fall River and the Town of Somerset, as specifically written in the Consent Decree.

Dated: January 14, 2014

Respectfully submitted,

s/ Deanna R. Swits  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN SUPPORT OF ITS MOTION TO MODIFY CONSENT DECREE** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN SUPPORT OF ITS MOTION TO MODIFY CONSENT DECREE** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
Deanna R. Swits

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# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,  
Plaintiff

v.

C.A. No.:3:13-cv-08086-SEM-BGC

DOMINION ENERGY, INC.,  
BRAYTON POINT ENERGY, LLC  
KINCAID GENERATION, LLC, and  
EQUIPOWER RESOURCES CORP.,  
Defendants

AFFIDAVIT

I, Christy M. DiOrio, being duly sworn, hereby depose and state:

1. That I am assistant corporation counsel for the City of Fall River (hereinafter "Fall River" or "City") in the Commonwealth of Massachusetts.
2. That upon information and belief, representatives from Dominion Energy, Inc. (hereinafter "Dominion"), namely James Smith of Smith, Ruddock & Hayes and Kevin Hennessey, Director of Federal State & Local Affairs from Dominion Resources Services, Inc. met with the following Fall River officials: Shawn Cadime, former City Administrator; Kenneth Pacheco, Director, Department of Community Maintenance and present Interim City Administrator; Mayor William A. Flanagan, and Elizabeth Sousa, Corporation Counsel on July 11, 2013, to discuss the applicable settlement terms of the above-captioned matter as it related to Fall River as a beneficiary of the settlement.
3. That Fall River officials were provided with a copy of the Consent Decree filed in the above-captioned civil action at said July 11, 2013, meeting.
4. That upon information and belief, at said July 11, 2013, meeting, Fall River was not informed or advised as to the projected time frame in which the Consent Decree would be approved by the Court thereby triggering the 120 day court-appointed deadline for Dominion's submission of Project Plan(s) to the Environmental Protection Agency ("EPA").
5. That although the Consent Decree had been granted and approved by this Honorable Court on July 17, 2013, Fall River was never advised of nor received a copy of the entered order.
6. That Fall River missed the August 1, 2013, deadline Dominion established for Fall River to prepare and submit a proposed Project Plan. Upon information and belief, neither the

Director of Community Maintenance nor the Corporation Counsel received any correspondence from Dominion's representatives regarding the missed August 1, 2013, Dominion-imposed deadline. As the then-appointed City Administrator is no longer employed by the City, the undersigned requested that a search of Mr. Cadime's computer be conducted to determine if any email correspondence was received from or delivered to Dominion's representatives. A search yielded no such correspondence. (See affidavit of John L. Niewola attached hereto as **Exhibit A**).

7. That upon information and belief, on or about September 3, 2013, Mayor William A. Flanagan instructed Corporation Counsel to prepare a proposed Project Plan in accordance with the terms of the Consent Decree. Corporation Counsel assigned this matter to the undersigned on or about the same date.
8. That after a review of the terms of the Consent Decree, the undersigned met with Mr. Cadime and Mr. Pacheco to discuss the narrow scope of allowable proposed projects, given the City's completion of a number of comprehensive solar energy projects at its public schools and the replacement of diesel powered public works' vehicles from other funding sources. Thereafter, the City recognized that it needed additional time to formulate a Project Plan that would conform to the narrow scope of the consent decree.
9. That the undersigned requested of Dominion, by and through its representative, James Smith of Smith, Ruddock & Hayes, additional time in which to complete a proposed Project Plan. (See email dated September 5, 2013 attached hereto at **Exhibit B**). Mr. Smith verbally confirmed that the City had additional time to complete the Project Plan and no new deadline was provided or established. At no time did Mr. Smith inform the undersigned that the Consent Decree had been approved and entered by this Honorable Court, thereby triggering the 120 day deadline appearing in Appendix A, ¶ A of the Consent Decree.
10. That Fall River hired Ameresco, an independent third-party contractor, to develop a proposed Project Plan that would conform to the narrow scope of the Consent Decree.
11. That after the verbal confirmation of an extension from Dominion's representative, the City received no further communication from Dominion, either written or verbal.
12. That on or about December 17, 2013, Fall River discovered that the Town of Somerset was "in line to receive all of 1.6 million from Brayton Point Settlement," as reported in the Fall River *Herald News*. (Article attached hereto at **Exhibit C**).
13. That on December 17, 2013, Fall River received a proposed Project Plan from Ameresco.
14. That the undersigned immediately contacted Mr. Smith, Dominion's representative, on December 17, 2013, to determine the veracity of the newspaper article. Mr. Smith agreed that it was "untrue" that Fall River "did not apply for its share" of the settlement money as reported by the *Herald News*, and that he would contact Dominion's legal counsel to

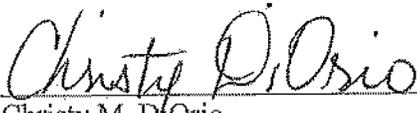
determine what was going on since Fall River had "worked hard" on this Project Proposal. On the same day, Mr. Smith, advised the undersigned that he no longer worked for Dominion.

15. That Mayor Flanagan, Mr. Pacheco and the undersigned had a conference call with H. Curtis Spalding, Region 1 Administrator for the Environmental Protection Agency ("EPA") and Steven Viggiani, Esq., counsel for the EPA on December 17, 2013, to again determine the veracity of the *Herald News* article. EPA informed the City that it would wait for Dominion's response to our request to submit our Project Plan to EPA.
16. After the EPA conference call, Mr. Smith advised the undersigned that a phone call from Kevin Hennessey, Director of Federal State & Local Affairs from Dominion Resources Services, Inc. would be forthcoming, advising Fall River that it was "out of the running."
17. That on the same date, Mr. Hennessey did, indeed, inform the City that it had missed the 120 day deadline required by the Consent Decree, and as such, was not eligible to have its proposed Project Plan submitted to the EPA. Mr. Hennessey also requested that Fall River submit its request for late consideration of its Project Plan in writing so that it could be forwarded to Dominion's general counsel for review and consideration. (See email and correspondence dated December 18, 2013, attached hereto at **Exhibit D**).
18. That Dominion, by and through its general counsel, declined to accept Fall River's late proposal. (See email and correspondence dated December 19, 2013, attached hereto at **Exhibit E**).
19. That on December 23, 2013, the undersigned again spoke with Mr. Smith of Smith, Ruddock & Hayes, who stated that his relationship with Dominion terminated on September 1, 2013, after Dominion was sold to EquiPower Resources Corp. (hereinafter "EquiPower"), facts which were never relayed or disclosed to Fall River in our September discussions. Mr. Smith did not instruct the City to contact Kevin Hennessey of Dominion Resources Services, Inc. in the future or any other person employed by Dominion or EquiPower.
20. That no other Dominion representative or EquiPower representative ever contacted City officials after Mr. Smith's termination to discuss a deadline or advise the City that it would be submitting its proposals to EPA on a certain date. Nor did any other Dominion representative or EquiPower representative inquire with Fall River as to the progress it was making with its proposed Project Plan after its discussions with Mr. Smith in September 2013.
21. That the United States of America filed a Notice Related to Consent Decree with this Honorable Court on December 5, 2013, noting that a "nonmaterial modification" to the Consent Decree may be made by written agreement without need for Court approval, pursuant to Section XXIII, ¶ 188, and that amongst these "nonmaterial modifications" was the fact that on August 29, 2013, Dominion Energy, Inc. "sold and transferred its ownership and operation interest . . ." to affiliates of EquiPower Resources Corp."

("EquiPower") and that "EquiPower succeeds to Dominion Energy Inc.'s liabilities and obligations under the Consent Decree . . . *(except for liabilities and obligations related to the Civil Penalty and Environmental Mitigation Projects required by the Consent Decree)*." (emphasis added).

22. That Mr. Smith advised the undersigned on December 23, 2013, that he was also unaware of the 'November 2013 deadline' (i.e., the 120 days referenced in Appendix A, ¶ A of the Consent Decree).
23. That Fall River attempted to provide the Project Plan in good faith, and that efforts to amicably resolve this matter have been met with opposition by Dominion. (See email dated December 23, 2013, attached hereto as **Exhibit F**).

Signed and sworn under the pains and penalties of perjury this 23<sup>rd</sup> day of December 2013.

  
Christy M. DiOrio

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,  
Plaintiff

v.

C.A. No.:3:13-cv-08086-SEM-BGC

DOMINION ENERGY, INC.,  
BRAYTON POINT ENERGY, LLC  
KINCAID GENERATION, LLC, and  
EQUIPOWER RESOURCES CORP.,  
Defendants

AFFIDAVIT

I, John N. Niewola, being duly sworn, hereby depose and state:

1. That I am manager of Information Systems for the City of Fall River (hereinafter "Fall River" or "City") in the Commonwealth of Massachusetts.
2. That on December 20, 2013, Christy M. DiOrio, assistant corporation counsel, requested that I search through former City Administrator, Shawn Cadime's electronic files to determine if there was correspondence regarding the above-captioned matter.
3. That on said date, I ran a query of the terms: "Jim Smith" and "Dominion Energy" to locate any electronic correspondence.
4. That as a result of said search, only three (3) responses matched said query search and included: 1) a meeting request accepted on July 3, 2013, regarding Dominion Energy settlement with Jim Smith; 2) a meeting request sent to Yassara V. M. Todorov, legal assistant for the City's Office of the Corporation Counsel on September 6, 2013, regarding Dominion Energy Settlement; and 3) an email from Terrence Sullivan, Director of Community Utilities for Fall River indicating that Dominion Energy donated \$2,500 in gravel for parking lot construction bids. A copy of said records are attached hereto at **Exhibit 1**.

Signed and sworn under the pains and penalties of perjury this 26<sup>th</sup> day of December 2013.

  
John L. Niewola

# EXHIBIT 1

Shawn Cadime

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From: Shawn Cadime  
Sent: Wednesday, July 03, 2013 12:21 PM  
To: Mayor  
Subject: Accepted: Jim Smith and Dominion Energy re: Settlement (617-523-0600)

Shawn Cadime

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From: Shawn Cadime  
Sent: Friday, September 06, 2013 10:23 AM  
To: Yassara V. M. Todorov  
Subject: Accepted: Dominion Energy Settlement

**Shawn Cadime**

---

**From:** Terry Sullivan <tsullivan@fallriverma.org>  
**Sent:** Wednesday, April 11, 2012 2:07 PM  
**To:** Shawn Cadime  
**Subject:** FW: Parking Lot Construction Bid Results

Shawn,  
Per the e mails below we are going to award this small contract to D.S Enterprises for \$3,800.  
This is for a small parking lot for Bioreserve visitors on Blossom Road 800 feet south of our Reservation Headquarters (2929 Blossom Road).  
The donations for the gravel are from Dominion Energy (\$2,500) and the Greater Fall River Land Conservancy (\$2,500).  
The \$3,800 for construction by D.S. Enterprises is covered by a DCR grant.  
I bring this to your attention in the event your office gets calls from Biszko.  
Please call me if you have any questions.  
Thanx  
terry

---

**From:** Mike Labossiere [mailto:mlabossiere@fallriverma.org]  
**Sent:** Monday, April 09, 2012 10:15 AM  
**To:** Terry Sullivan  
**Cc:** Ted Home; Ted Kaegael  
**Subject:** FW: Parking Lot Construction Bid Results

Terry,

I'm resending this email which summarized the parking lot construction bids.

This morning I have confirmed that we will received two cash donations for gravel in the amount of \$5000. I will apply this donation directly to payment for gravel. I have an invoice from Potter Construction Materials in Westport stating the sum for our material will not exceed \$5000. I am ready to advise the Purchasing Dept. to award the bid to D.S. Enterprises based on this information because they were the low bidder (by \$2690) based on their bid for "Operations Only" and their quality of work is good.

If this is satisfactory to you please let me know at your earliest convenience. Thanks.

Mike

---

**From:** Mike Labossiere [mailto:mlabossiere@fallriverma.org]  
**Sent:** Thursday, March 22, 2012 8:29 AM  
**To:** Terry Sullivan (tsullivan@fallriverma.org)  
**Cc:** (jfrlar@fallriverma.org); Ted Kaegael  
**Subject:** Parking Lot Construction Bid Results

Three bids were received by 10:30am on 3/12/12 close of bid.

<u>Company Name</u>	<u>Bid for Total</u>	<u>Bid for Operations Only</u>
Century Paving	\$17,500	\$7,600
Biszko Construction	\$9,712	\$6,490
D.S. Enterprises	\$11,170.75	\$3,800

Award of contract pending outcome of grant request by Water Dept. to conservation group for donation of materials for project. I hope to know about this grant in the next few weeks.

If grant for project is received, bid will be awarded to D.S. Enterprises. If no grant is received bid will be awarded to Biszki Construction.

Thank you.

Mike Labossiere  
*Reservation Superintendent*

Water Division, Treatment and Resources  
Department of Public Utilities  
CITY OF FALL RIVER

WATUPPA RESERVATION  
2929 Blossom Road  
Westport, MA 02790

Office Tel: 508-324-2749  
Email: [mlabossiere@fallriverma.org](mailto:mlabossiere@fallriverma.org)

# **EXHIBIT B**

**Christy Diorio**

---

**From:** Christy Diorio  
**Sent:** Thursday, September 05, 2013 11:03 AM  
**To:** 'jsmlth@srhpublicpolicy.com'  
**Subject:** Dominion Energy Env'l Mitigation Plan Project

**TimeMattersID:** MB558A24B1DA3807  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Hi Jim,

Can you confirm whether the \$800,000 will be provided as a reimbursement to the City following our expenditure? I need to determine whether the City will need to initially bond for the project we decide to undertake.

I look forward to hearing from you regarding an appropriate extension in which we can put a reasonable plan together which meets the June 24, 2013 Guidelines.

Best,

Christy Diorio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
508-324-2655 (Fax)

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# EXHIBIT C

# The Herald News

REALITY. DELIVERED DAILY NOW!

## Officials say Somerset schools in line to receive all of \$1.6 million from Brayton Point settlement

Selectmen seek explanation on why funds are not going toward municipal use

By Michael Holtzman  
Herald News Staff Reporter  
Posted Dec 16, 2013 @ 10:33 PM  
Last update Dec 16, 2013 @ 11:39 PM

### Related Stories

Fall River, Somerset split \$1.6M from Dominion for clean energy

Somerset schools outlining clean energy proposals

SOMERSET -- Officials are optimistic about the Somerset School Department receiving the lion's share of \$1.6 million in energy-efficient project funding as part of an April 1 settlement between the former owner of Brayton Point and the federal government.

"My understanding is the school department had done everything they were supposed to do and, therefore, they would be rewarded with the whole \$1.6 million," state Rep. Patricia Haddad, D-Somerset, said Monday night.

She said Fall River did not apply for its share.

"We'll have an announcement right after the first of the year. I feel very optimistic," said Somerset School Committee Vice Chairman Jamison Souza, who said he's been working closely with Haddad for months.

"We're going to receive more than we originally planned strictly through the school department," he said.

Among project criteria are energy efficiency and renewable energy, Haddad said.

The Board of Selectmen are scheduled to talk about the issue at Wednesday's 6 p.m. meeting at Town Hall after Chairman Donald Setters asked Town Administrator Dennis Luttrell last week for an update on the settlement funds.

The April 1 settlement between Dominion -- owner of Brayton Point until this year -- and the U.S. Environmental Protection Agency has been widely known.

As part of a 2010 court agreement over three Dominion power plants found to be in violation of 2010 federal clean air standards, the Virginia-based Dominion agreed to about \$13 million in payments, including \$9.8 million in federal mitigation projects and a \$3.4 million civil penalties, including the \$1.6 million for Somerset and Fall River to share.

In late August, school officials announced they submitted several energy recovery and energy control system projects to a Dominion manager, Alice Prior.

With specific details provided, their plan is to use the cost-saving measures at Somerset Middle School and North, South and Chase elementary schools, Superintendent Richard Medeiros had said.

The projects included:

- \$779,011 to install CO2 energy-recovery exchangers at four schools, with an investment return in four years and a \$1.6 million savings over 20 years.
- \$622,059 to install heating and cooling system energy controls, with a 12-year investment return.
- Among several other proposals, one was to install solar panels at the middle school and North Elementary School to supply at least 20 percent -- and potentially three times that amount -- of each building's electrical needs.

Questions remain unanswered about how the funds may be submitted to school or town departments, which is part of the reason selectmen want the issue explained.

Selectman Scott Lebeau said he understood "originally the money was for municipal use." Lebeau said he was "informed that some wording was changed to include the school department."

He said they were awaiting an explanation from Luttrell about what happened.

Haddad, who, along with Souza, said they have worked hard and in many months on this funding, had a different explanation.

"I called first to the municipal side, and when they didn't get back to me, I was asked by the secretary (Richard Sullivan, from the state's energy/environmental affairs agency) for the projects, and I went to the school department," Haddad said in a phone interview.

With Somerset and Fall River in line to divide the \$1.6 million evenly, Haddad said she asked municipal officials to put together \$1 million in projects.

Asked whom she contacted, Haddad said, "I hate to throw people under the bus, but I called the town administrator."

Four phone calls were left for Luttrell at his office Monday afternoon and at his home number Monday night. He left a message at The Herald News at 4 p.m. saying he was leaving at the end of the workday and would call again today, and he did not answer messages left at his home at night.

On the \$1.6 million award, Haddad said, "My understanding is that it is going to come directly from the state to the school department and it will not go to the municipality."

When asked why that was an issue, Haddad said she understood from school officials the municipal side wanted "a carrying fee of 10 percent."

"I can't let them take 10 percent (\$160,000) off the top," Haddad said. "It's not free money. There was a lot of work that went into these requests."

Neither Luttrell nor Setters could be reached to comment about the 10 percent fee Haddad alleged town officials were seeking.

Setters said at last week's meeting that while he understood the funding was for the municipal side, the school department benefiting would help the town as a whole.

Email Michael Holtzman at [m Holtzman at mholztman@heraldnews.com](mailto:mholtzman@heraldnews.com).

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# EXHIBIT D

**Christy Diorio**

---

**From:** Christy Diorio  
**Sent:** Wednesday, December 18, 2013 5:07 PM  
**To:** 'kevin.r.hennessey@dom.com'  
**Cc:** 'viggiani.steven@epa.gov'  
**Subject:** USA v. Dominion Energy Inc., et al  
**Attachments:** Kevin Hennessey.pdf; Fall River Potential Energy Conservation Measures.pdf; Herald News Article 12.17.13.pdf; FW: Dominion Energy Env'tl Mitigation Plan Project

**Importance:** High

**TimeMattersID:** M7724A2B3D381643  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Hi Kevin,

Attached please find correspondence requested by you during our telephone conversation yesterday. Kindly forward this letter to your general counsel. Could you provide me with her direct contact information? I would like to follow up with her in the very near future.

I look forward to favorably resolving this issue.

Best,

Christy DiOrio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
508-324-2655 (Fax)

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**City of Fall River**  
*Office of the Corporation Counsel*

**WILLIAM A. FLANAGAN**  
Mayor

**ELIZABETH SOUSA**  
Corporation Counsel



**GARY P. HOWAYECK**  
Assistant Corporation Counsel

**CHRISTY M. DIORIO**  
Assistant Corporation Counsel

December 18, 2013

*Via email to Kevin.R.Hennessey@dom.com  
and regular mail*

Kevin R. Hennessey  
Director  
Federal, State & Local Affairs  
Dominion Resources Services, Inc.  
Rope Ferry Road, Route 156  
Waterford, CT 06385

Re: Dominion Energy, Inc. Environmental Mitigation Projects  
USA v. Dominion Energy, Inc., et al  
C.A. No.: 13-03086

Dear Mr. Hennessey:

This correspondence is written in follow up to our telephone conversation yesterday, December 17, 2013, wherein you requested that the City of Fall River (hereinafter "City" or "Fall River") submit its concerns surrounding the environmental mitigation projects required by Dominion Energy, Inc. (hereinafter "Dominion") pursuant to a Consent Decree filed in the United States District Court for the Central District of Illinois. Dominion is required to submit proposed Project Plans to the U.S. Environmental Protection Agency ("EPA") for review and approval in accordance with the Consent Decree, after consultation with the Town of Somerset and the City of Fall River.

The Project Plans require description of anticipated environmental benefits expected to be realized upon completion and implementation of (a) energy efficiency, geothermal, and/or solar photovoltaic projects at one or more public school buildings, and/or (b) clean diesel projects to retrofit or repower higher-polluting diesel powered engines for municipal construction or public works vehicles or equipment.

The City initially met with Dominion representatives on July 11, 2013. Thereafter, the City determined that the City's progress and advancements made with its public schools' energy efficiency as well as the municipal fleet limited Fall River's options as to use of mitigation funds. Over the last several years, the City has completed a number of comprehensive solar energy projects at the public schools, and has, through other funding sources, replaced and

Kevin Hennessey  
December 18, 2013  
Page 2 of 3

upgraded the City's public works diesel powered vehicles, including its garbage and recycle vehicles. Thereafter the City recognized that it needed additional time to formulate a Project Plan that would conform to the narrow scope of the Consent Decree.

In working with Dominion's representative, namely James Smith of Smith, Ruddock & Hayes, the City requested and received additional time to prepare its Project Plan in September. The undersigned explained the difficulty we were having formulating a plan that conformed to the Consent Decree and asked Mr. Smith if he could look into whether there was any leeway on solely providing improvements to school buildings (i.e., prepare plans for other municipal buildings) in an effort to expand the City's ability to use the settlement money. As evidence of this request, an email from the undersigned to Mr. Smith dated September 5, 2013, affirming our request for an extension is enclosed. Mr. Smith responded via telephone that the use of the funds was inflexible. As such, the City immediately sought a preliminary investment grade audit from an independent third-party contractor, Ameresco. The undersigned received assurances from Mr. Smith that the City had additional time to formulate a Project Plan and no final deadline was articulated or expressed.

Ameresco prepared a report entitled, "Potential Energy Conservation Measures for the Dominion Electric Consent Decree" identifying possible enhancements to Fall River schools (copy attached hereto). Primarily, Ameresco identified the possibility of a solar photovoltaic system at Fonseca Elementary and energy management systems at five other schools. After the City was granted additional time in September to have Ameresco prepare the Project Plan, the undersigned was never contacted by Dominion's representative again. Ameresco's proposed Project Plan was submitted to the City on December 17, 2013, the same day in which the *Herald News* reported that the Town of Somerset would likely be receiving the full 1.6 million dollar settlement earmarked in the Court Decree for certain environmental benefits to be realized in Somerset and Fall River. (See attached).

Since the City did not receive any notification from Dominion, by and through its representative, that our previously approved extension was over, and had received adequate assurances of an extension leading it to contract with Ameresco, the City was surprised, to say the least, by the publication's claim, particularly when the City was never informed that Dominion would submit all proposed projects to the EPA by November 17, 2013, and that Dominion had, in fact, submitted Somerset's project proposal without intending to ever honor the extension granted by Dominion's representative.

Thereafter, the City immediately inquired with Dominion, by and through its representative, James Smith, of the veracity of the *Herald News* article, and whether the EPA approved the Somerset proposed Project Plan without consideration of the Fall River project proposal that was undertaken by Ameresco pursuant to the extension granted in September. Additionally, the City called the EPA, who apprised the City of its understanding that Fall River had not been responsive to Dominion's inquiries, and that Dominion informed the EPA in a letter dated on or about November 5, 2013, that it had "no choice" but to submit solely the Somerset Project Plan.

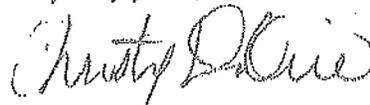
Kevin Hennessey  
December 18, 2013  
Page 3 of 3

Unfortunately, this is not our understanding of events, as the City of Fall River has acted in good faith, believing that its project proposal would be included and submitted when received. Following the unfolding of events yesterday, the City hereby requests that EPA and Dominion review the proposed Project Plan submitted by Ameresco on December 17, 2013, particularly since Fall River is "shovel ready" on its project proposal. Moreover, one of the purposes of the Consent Decree is to mitigate violations of the Clean Air Act, of which Fall River would be unjustly harmed and prejudiced by a refusal to consider our Project Plan, albeit after the time frame required by the Consent Decree. Fall River is specifically intended to be a beneficiary of the Consent Decree, so it appears likely that (provided all parties to the litigation agree, as well as the EPA) the court would not withhold its approval of a joint motion to modify the Consent Decree to consider Fall River's Project Plan after the original deadline. We would expect, of course, given the facts surrounding this request that such an action would come without penalty to Dominion.

In the event that one or both parties to the action decline to petition the court for consideration of Fall River's Project Plan, the City will have no choice but to petition the court directly. The City hopes that Dominion recognizes that it is seeking an opportunity to be fairly considered for an award under the Consent Decree. Furthermore, it is the City's understanding after speaking with H. Curtis Spaulding, Region I Administrator and Steven Viggiani, Esq., both of the EPA, that the EPA is awaiting Dominion in response to the City's request. As such, the undersigned respectfully requests that Dominion's corporate counsel respond to this correspondence by January 2, 2014. The City will hold its filing for injunctive relief in abeyance until after said date, provided that no monetary award or decisions regarding award are made prior to said date.

Thank you for your anticipated attention to this matter.

Very truly yours,



Christy M. DiOrio

Enclosures (3)

cc: Steven Viggiani, Esq. (w/ encls.) (via email only)



# Potential Energy Conservation Measures for Dominion Electric Consent Decree

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New Energy Management Systems	7
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## Executive Summary

The City of Fall River has a Comprehensive Energy Management Services contract with Ameresco, Inc. of Framingham Massachusetts. The program is a multi-year, multi-phase energy-efficiency implementation program. Ameresco has developed four (4) comprehensive project phases for City and school buildings and is currently completing construction of Phase 2 and Phase 3 will be complete early next year. The City has instructed Ameresco to develop this project as Phase 5 of the Energy Management Services program and to include only school buildings in the scope of work.

### Summary of Proposed Measures

Energy Efficiency Measure	School	Cost
Solar Photovoltaic System	Mary L. Fonseca Elementary School	\$559,500
New Energy Management System	Westall Elementary School	\$56,938
New Energy Management System	James Tansey Elementary School	\$60,888
New Energy Management System	Samuel Watson Elementary School	\$63,557
New Energy Management System	Old Kuss Middle School	\$87,401
New Energy Management System	Stone Elementary School	\$56,938
Renovate Windows	Henry Lord Middle School	\$117,207
Renovate Windows	Samuel Watson Elementary School	\$153,524
Renovate Windows	Old Kuss Middle School	\$445,676
<b>TOTAL</b>		<b>\$1,807,629.00</b>

This preliminary audit will be followed by a detailed Investment Grade Audit (IGA), once the measures (concept) are approved. The IGA will further analyze and quantify the feasibility of installing the improvements throughout the schools of Fall River. The City is in a unique position in that under the program with Ameresco, can immediately enter into construction, without further municipal bidding and procurement since Ameresco's contract procurement covers all design, acquisition, installation, modification, commissioning and training for the ECMs as presented herein. Unlike typical municipal projects and procurement, the City can implement all these projects in months – not years.



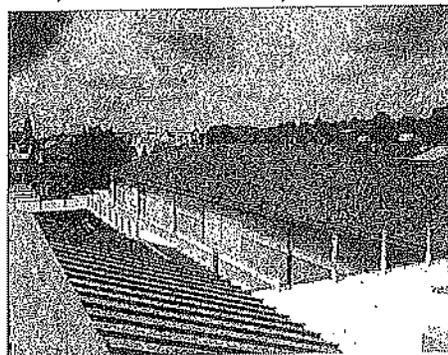
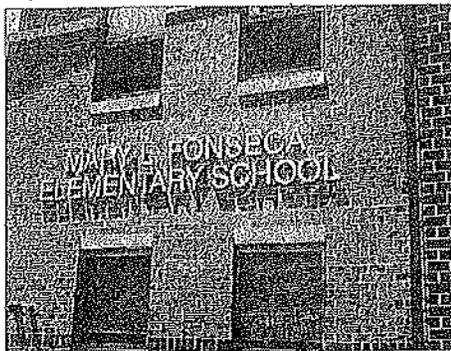
# Solar Photovoltaic System

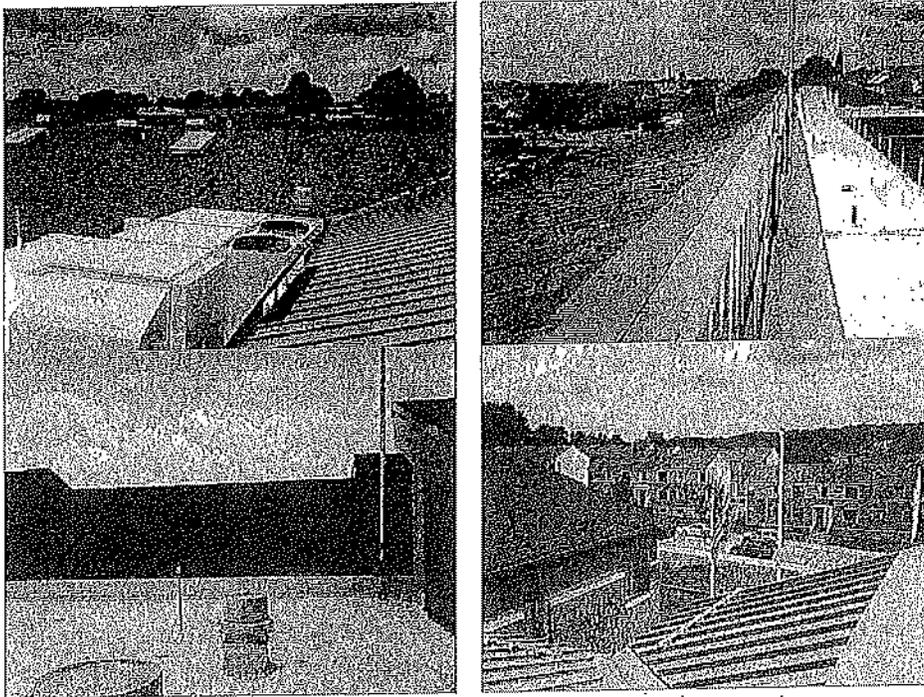
## Mary L. Fonseca Elementary School

### Current Site Conditions

The Mary L. Fonseca Elementary School was built in 2008. Considerations are:

- **Roof:** The roof requires reinforcement in one segment of a ridge beam in order to support PV panels. The roof exterior condition appears excellent. As shown in the following pictures, there are open areas for solar PV panels. The panels will be visible to the school students and neighbors. The roof is made of architectural shingles. The panels will be mounted flush to the roof with approximately 500 mechanical attachments into the roof support structure.
- **Building Direction:** The roof line faces towards the south, which is favorable for a solar PV array.
- **Security:** The roof and building appear secure from vandalism.
- **Electrical:** The building's switchgear is at 480 Volts, which is favorable for a solar connection.





## Solar PV System Description

Table 2.2

	Tilt Angle (Deg)	Azimuth (Deg)	kW	kWh	Unshaded Open Area (Sq. Ft.)
Mary L. Fonseca Elementary School 160 Wall Street	18.5	194	161	206,840	11,787
	Inverter		PV Panel		Mounting System
	Sollectria PVI-20TL x 7 Units		CS6P-250P	Unirac	

**Solar PV Modules and Roof Layout:** Ameresco proposes a solar PV grid tied system of 161 kWp rated capacity, to be installed on the sloped roof of the Mary L. Fonseca elementary School, located at 160 Wall Street, Fall River MA. The system will consist of 644, Canadian Solar CS6P-250P solar modules, or equivalent installed on the roof. The module layout is shown in the conceptual system layout drawing below.

**Rack Mounting System:** The solar modules will be installed onto Unirac or similar aluminum rail system on the 18.5 degree pitched roof. The location of the solar modules has been chosen to avoid roof obstructions or any objects casting a shadow onto the solar array. Modules will not be placed closer than 3ft from any roof edge or parapet. The racking system will be secured to the roof with approximately 500 connections into the roofing supports.



**Electrical:** Each Solar PV module has a rated capacity of 250W. A set of 14 modules will be connected in a source circuit. These source circuits will be connected in parallel using a fused sub-array combiner enclosure. A set of 14 modules will be connected in a source circuit. These source circuits will in turn be connected in parallel using a fused sub-array combiner enclosure. A total of seven sub-array combiners and six fused DC disconnects will be installed. Three disconnects will be installed on the roof and the other three will be installed on ground level closer to the inverter. The DC protection and switching configuration allows for system isolation down to a single source circuit, thereby minimizing system down time during maintenance and/or faultfinding.

The array will be connected to seven (7) Solectria PVI-20TL, 20kW inverters. The seven inverters will produce 480V, 3-phase power and each one will be connected to an AC combiner panel through a 35 A breaker. The AC combiner output will be fed to the main distribution panel located in the main electrical room. The method of interconnection will be by installing a new 250A back feed rated circuit breaker into the existing switchgear.

**Data acquisition system (DAS):** Ameresco proposes the Draker DAS system



## New Energy Management Systems

---

During the preliminary IGA, Ameresco installed data loggers in a number of facilities to capture a snapshot of the heating operation of the existing systems. Most of the facilities have significant opportunity to reduce operating costs during unoccupied periods by lowering the temperatures in the spaces and better monitoring the operating schedules. Ameresco proposes to improve control of zone temperature and equipment operation by installing new energy management systems (EMS) or programmable thermostats at various Fall River Public Schools facilities.

### Energy Management Systems

---

Ameresco proposes to install new direct digital control (DDC) energy management systems or upgrade existing ones as described by location below. As explained in further detail below, the new EMS will enable energy conservation through:

- Deeper unoccupied temperature setback combined with optimum start strategy for morning warm-up,
- Scheduling of holidays and other unoccupied weekdays where 7-day clocks are now used,
- Alerts to staff of out-of-tolerance conditions, and
- Additional strategies as described elsewhere in this section.

The upgrades will make the affected locations internet-accessible, including graphics having the same look and feel as those for Fall River's other web-connected locations. This will enable centralization of the energy management function and more consistent control of scheduling and setpoint parameters.

Ameresco's work at all locations will include commissioning of the installed or upgraded system and training of authorized personnel in scheduling changes, maintaining energy conservation features, and receiving and responding to alerts.

Ameresco proposes to install Schneider Electric energy management systems at the Fall River Public School buildings listed below, for compatibility with the existing network of five web-accessible systems installed in the Kuss, Fonseca, Morton, Letourneau, and Talbot schools. Data logging of temperatures indicate that little or no setback is occurring in most of the schools.



### *Westall Elementary School*

The existing system at Westall is a single steam boiler controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. The terminal units are a mixture of cast iron radiators, bare pipe loops, and exposed fin tube, all of which operate as a single zone. All steam traps are located at the basement level.

Ameresco proposes to install a web-accessible energy management system for boiler control at Westall, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

### *Tansey Elementary School*

The existing system at the original portion of Tansey is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. Heat is delivered by unit ventilators that start whenever their internal aquastats sense steam to their coils. Until the pneumatic system was abandoned, nearly two years ago, classroom thermostats used to respond to day/night air pressures to provide individual zone temperature control and setback. Now the original portion of the school operates as a single zone.

Tansey also has nine modular classrooms that are heated and cooled by rooftop units. Seven have gas heat and electric cooling, while the other two are all-electric.

Ameresco proposes to install a web-enabled, energy management system for boiler control at Tansey, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to wings having different solar and wind exposures, as well as through the other strategies described in this section.

The new EMS for Tansey will also provide setback and optimum start of the nine rooftop units serving the modular classrooms.

### *Watson Elementary School*

The existing system at Watson is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. The terminal units are mostly cast iron radiators with hand valves and thermostatic traps. Unit ventilators were added to the top floor classrooms, apparently to remedy underheating there. The UVs are controlled by internal aquastats and manual switches. It appears there may once have been a pneumatic control system at Watson, but none is present now.

Ameresco proposes to install a web-accessible, energy management system for boiler control at Watson, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.



### *Old Kuss Middle School*

The old Kuss Middle School is currently serving as the Resiliency Preparatory School (RPS). The existing system there is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. A former pneumatic control system was abandoned years ago. The original terminal units are cast iron radiators with hand valves and thermostatic traps. Each classroom also has a unit ventilator.

Ameresco proposes to install a web-accessible energy management system for boiler control at RPS, and to add control valves to the steam distribution system to subdivide it into six heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

### *Stone Elementary School*

The existing system at Stone is a single steam boilers controlled by a single thermostat. The terminal units are cast iron radiators with calibrated hand valves and thermostatic traps.

Ameresco proposes to install a web-accessible, energy management system for boiler control at Stone, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

The following Control Sequences are to be programmed for each building:

#### *Unoccupied Zone Temperature Reset*

Ameresco proposes to fully implement unoccupied zone temperature reset.

#### *Proposed HVAC Scheduling*

Ameresco proposes to implement tighter scheduling of HVAC equipment. Based on review of the existing schedules, HVAC equipment are operating longer than the areas served are occupied. The addition of "Optimum Start/Stop" will allow tighter occupancy schedules.

#### *Optimum Start/Stop of HVAC Equipment*

Ameresco proposes to implement optimum stop/start of HVAC Equipment. System energy will be saved if occupied zone temperature is conditioned to its setpoint as close to the beginning of the occupancy period as is possible. For example, if the occupied zone setpoint is 70°F and one hour is required to "pull the temperature up" to setpoint from the unoccupied temperature, the start time of HVAC equipment will be delayed until one hour before the occupied period. This optimum start time of HVAC equipment is a function of the building characteristics, setpoints, and ambient conditions. The BMS will create a database of measurements for the facility from which an optimum start time will be automatically determined for each day. Similarly, the stop time of HVAC equipment will be determined from this database so burners and compressors will not be started just as occupants are about to leave an area.



### *Boiler and Pump Control Sequences*

Hot water boilers and pumps will be enabled based on both an operating schedule and an outdoor temperature setpoint. During normal operation the boilers and pumps will only be enabled whenever any of the heating related zones are occupied, i.e., classrooms, gymnasiums, etc., and the outside air temperature is less than or equal to 60° (adjustable). During unoccupied periods the boilers and pumps will be off unless the outside air temperature is less than or equal to 37.5°, at which time the boilers will maintain a lower hot water loop temperature and the pumps will be operated continuously to prevent frozen coils. If the pumps are driven by VFDs then they will be operated at the minimum design flow rate and all hot water coils will be commanded open.

For steam boilers, the occupied period operation will be similar to the hot water sequence above. When the unoccupied outside air temperature is less than or equal to 37.5° the boilers will maintain the steam header setpoint.

### *General Zone and Special Area Event Scheduling*

Ameresco proposes to provide operating schedule software for all controlled spaces. For example, during normally unoccupied periods, areas can be maintained in occupied status for special events. This software will permit complicated event scheduling for specific zones in any building. For example, an "auditorium event" will schedule auditorium air handling units on for the occupied periods only while the remainder of the building is in unoccupied mode.

### *Equipment Control and Status*

Ameresco proposes to control HVAC equipment and provide feedback on operating status. All boilers will be enabled by the EMS and operate on their packaged controls. Multiple boilers will be lead/lagged. Supply and exhaust fans will be controlled. Equipment status will be provided to prove operation for all major equipment.



## Renovate Windows

---

Ameresco proposes to renovate the existing windows in three schools in Fall River. The existing frames and sash will remain and will be reconditioned as noted for each building below.

### *Lord Middle School*

Lord Middle School has a combination of fixed and horizontal slider windows, as well as some storefront-type glazing in lobby entry areas. The fixed and sliding windows have EFCo-aluminum frames with thermal breaks with tempered glass interior storm panels, 1/4" polycarbonate exterior glazing, and 5/8" air space. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect. There are approximately 102 fixed units and 118 sliders.

Ameresco proposes to replace the polycarbonate glazing in the fixed and sliding windows as detailed below. No change is proposed for the storefront-type glazing.

- Remove and store protect storm panel.
- Remove sash from window frame.
- Remove failed polycarbonate lite from sash. Clean and prep frame and new glass.
- Install new, 1/4", tempered glass lite with low-e hard coat in sash, reinstall sash in window frame, and reinstall storm panel.
- Remove and dispose of all debris and return work area to its original condition.

### *Watson Elementary School*

The existing windows at the Watson school are double-glazed, single-hung aluminum frames with thermal breaks, 3/16" clear glass interior lites, 1/4" polycarbonate exterior lites, and 9/16" spacers. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect.

Ameresco proposes to replace the existing glazing units in approximately 112 windows as follows:

- Remove sash from window frame.
- Remove existing glass/polycarbonate units (top and bottom sash).
- Clean and prep frame and new glass.
- Install new tempered glass, low-e, argon-filled units, 7/8" thick, in top and bottom sash.
- Reinstall sash in window frame.
- Remove and dispose of all debris and return work area to its original condition.



### *Old Kuss Middle School*

The Old Kuss Middle School, currently serving as the Resiliency Preparatory School, has approximately 656 single-hung windows. These have high-quality Traco aluminum frames with thermal breaks, but are single-glazed with 1/4" polycarbonate. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect.

Ameresco proposes to replace the polycarbonate glazing as follows:

- Remove sash from window frame.
- Remove existing polycarbonate glazing, top and bottom sash.
- Clean and prep frame and new glass.
- Install new 5/8" total thickness insulated glazing units with 1/8" clear tempered inside glass, 3/8" spacers, argon fill, and 1/8" low-e tempered outside glass.
- Reinstall sash in window frame.
- Remove and dispose of all debris and return work area to its original condition.

**Amoresco**

**Fall River Phase 6  
Emissions Calculations**

Version 2.0

Electricity Saved 225,476 kWh  
 Natural Gas Saved 59,691 Therms  
 Location of Project (State) Massachusetts Average 3.1

	CO2	SO2	NOx	Mercury (mg)	PM10
Electric Emission Factors	1.214	0.00048	0.00111	2.22E-05	
Natural Gas Emission Factors	12	0.00066	0.0156	0	0.00019

State-Level Average All Generation Electricity Emission Factors w/ Transmission & Distribution Line Loss Factor = 7.25%  
 U.S. DOE / EIA 1999(a) Voluntary Reporting of Greenhouse Gases Appendix G, Adjusted Electricity Emission Factors by State, February, 2003  
 U.S. DOE / EIA 1999(b) Voluntary Reporting of Greenhouse Gases Appendix F, Fuel and Energy Source, Codes and Heating Coefficients, February, 2003

	Electricity	Nat. Gas	No. 2 Oil	No. 6 Oil	Diesel	Coal	Biomass	Total	
Total CO2 Reduced:	208,278	690,751	-	-	-	-	-	899,029	Pounds
Total SO2 Reduced:	847	4	-	-	-	-	-	851	Pounds
Total NOx Reduced:	318	896	-	-	-	-	-	1,213	Pounds
Total Energy Saved	60,033,972	4,058	-	-	-	-	-	60,038,030	MMBTU
Total Mercury Reduced	0.50	-	-	-	-	-	-	0.50	mg

Cars Removed From the Road 83 Cars  
 OR  
 Houses Powered Each Year 63 Houses  
 OR  
 Acres of pine or fir forests storing carbon for one year 103 Acres  
 Total energy saved 60,038,031 Million BTUs

Calculations based on EPA values from <http://www.epa.gov/eis/energy/energyresources.html>

# EXHIBIT E

**Christy Diorio**

---

**From:** Mary Jo Sheeley (Services - 6) [mary.jo.sheeley@dom.com]  
**Sent:** Thursday, December 19, 2013 3:37 PM  
**To:** Christy Diorio  
**Cc:** Elizabeth Sousa; Viggiani, Steven; Cathy C Taylor (Services - 6); Kevin R Hennessy (Services - 6)  
**Subject:** Dominion Energy, Inc: Federal Consent Decree and Mitigation Project Plans  
**Attachments:** 20131219150753697.pdf

**TimeMattersID:** M6622A2B4AE97734  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Dear Ms. Diorio:

I attach a letter which responses to your submittal of last night. Thank you.

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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Dominion Resources Services, Inc.  
Law Department  
P.O. Box 26532, Richmond, VA 23261



December 19, 2013

By E-Mail and U.S. Postal Service

Christy DiOrlo  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722

Re: Consent Decree: Mitigation Project Plans

Dear Ms. DiOrlo:

On December 17, 2013, we were made aware that the City of Fall River was still interested in putting forth a proposed mitigation project plan for Dominion's consideration and submission to the U.S. Environmental Protection Agency ("EPA") pursuant to the federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (Civil Action No. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree"). After close of business last night, Dominion received a proposal from the City. While we appreciate the City's interest, in order to meet the court-imposed deadline, Dominion submitted all of its proposed mitigation plans to EPA by the Consent Decree deadline of November 14, 2013, and will not be making any new submittals.

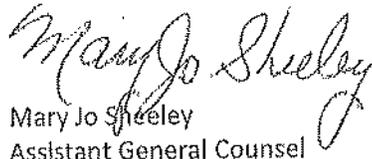
This process has been extensive. Prior to the Court entering the Consent Decree on July 17, 2013, Dominion provided all interested parties, including the City, with extensive written guidelines for each project category to assist in developing and submitting proposed plans to Dominion. We also provided copies of the Consent Decree (which sets forth the November 14 deadline) with the guidelines. The original deadline for making submittals to Dominion was August 1 to allow time for review and revision of the proposal before final submittal by the November deadline imposed in the Consent Decree. We agreed to provide additional time past the August 1 deadline set by Dominion for the Town to submit its proposal. Dominion did not, nor could it, extend the Court-imposed deadline of November 14. Through July and August Dominion made frequent attempts at contacting the City. By September, communications were re-established; however, they tapered off by October with an indication from the City that it would not be submitting a proposal due to the narrow scope of the Consent Decree requirements.

The Consent Decree requires Dominion to fund a variety of different mitigation projects in several states. During the summer Dominion received and processed many proposed plans.

Christy DiOrio  
December 19, 2013  
Page Number 2

Dominion successfully submitted about a dozen plans by the November deadline for all categories of projects, and those plans are in various stages of approval or review by EPA. We regret that the City was unable to submit a proposal within the allotted timeframe. Given the lateness of time and in fairness to those entities that submitted timely plans and have proposals before EPA for approval, Dominion will not be accepting additional project proposals for consideration under the Consent Decree.

Sincerely,



Mary Jo Sheeley  
Assistant General Counsel

cc: Elizabeth Sousa, Esquire (City)  
Steven J. Viggiani, Esquire (EPA)  
Cathy C. Taylor  
Kevin R. Hennessy

# EXHIBIT F

**Christy Diorio**

---

**From:** Mary Jo Sheeley (Services - 6) [mary.jo.sheeley@dom.com]  
**Sent:** Monday, December 23, 2013 1:10 PM  
**To:** Christy Diorio  
**Cc:** Viggiani, Steven; Dunn, Jason (ENRD); Jaber, Makram; Johnson, Harry M. ("Pete"); Cathy C Taylor (Services - 6); Kevin R Hennessy (Services - 6)  
**Subject:** Dominion NSR: Mitigation Projects

**TimeMattersID:** M5A1DA2B883B8612  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Christy,

Last week I told you I would confer with my client as to whether Dominion would be interested, at the City's request, in discussing a potential resolution of the City of Fall River's concerns about Dominion not entertaining the City's project plan that was submitted last week well past the time for Dominion to consider it and past the court-imposed deadline (November 14, 2013) for Dominion to submit it to EPA for consideration under the *United States v. Dominion Energy, Inc.*, et al., (civil action no. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree"). Last week you also indicated that the City was planning to submit a petition for permanent injunction to have the federal court reopen the Consent Decree to require Dominion to consider the City's project plan and submit it to EPA. You asked if Dominion would oppose the petition.

I have fully briefed my client on this matter. Dominion does not believe it would be appropriate to alter the process we have undertaken, consistent with the Consent Decree, in reviewing and submitting mitigation project plans to EPA for approval. We also believe it would be unfair to all of the other participants who worked diligently for months to submit plans that allowed Dominion to meet the court-imposed deadline. Dominion, therefore, will not be participating in a conference call with the City about its proposal or its concerns about this process. Dominion also cannot support, and will oppose, any effort to reopen the Consent Decree as the City suggests.

Sincerely,

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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# EXHIBIT 2

**From:** Mary Jo Sheeley (Services - 6) [<mailto:mary.jo.sheeley@dom.com>]

**Sent:** Monday, December 23, 2013 1:10 PM

**To:** Christy Diorio

**Cc:** Viggiani, Steven; Dunn, Jason (ENRD); Jaber, Makram; Johnson, Harry M. ("Pete"); Cathy C Taylor (Services - 6); Kevin R Hennessy (Services - 6)

**Subject:** Dominion NSR: Mitigation Projects

Christy,

Last week I told you I would confer with my client as to whether Dominion would be interested, at the City's request, in discussing a potential resolution of the City of Fall River's concerns about Dominion not entertaining the City's project plan that was submitted last week well past the time for Dominion to consider it and past the court-imposed deadline (November 14, 2013) for Dominion to submit it to EPA for consideration under the *United States v. Dominion Energy, Inc., et al.*, (civil action no. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree"). Last week you also indicated that the City was planning to submit a petition for permanent injunction to have the federal court reopen the Consent Decree to require Dominion to consider the City's project plan and submit it to EPA. You asked if Dominion would oppose the petition.

I have fully briefed my client on this matter. Dominion does not believe it would be appropriate to alter the process we have undertaken, consistent with the Consent Decree, in reviewing and submitting mitigation project plans to EPA for approval. We also believe it would be unfair to all of the other participants who worked diligently for months to submit plans that allowed Dominion to meet the court-imposed deadline. Dominion, therefore, will not be participating in a conference call with the City about its proposal or its concerns about this process. Dominion also cannot support, and will oppose, any effort to reopen the Consent Decree as the City suggests.

Sincerely,

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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**Swits, Deanna**

---

**From:** Mary Jo Sheeley (Services - 6) <mary.jo.sheeley@dom.com>  
**Sent:** Friday, January 10, 2014 3:54 PM  
**To:** Swits, Deanna  
**Cc:** Christy Diorio; Elizabeth Sousa; Simon Lento, Jennifer; Cooper, Donald; Jaber, Makram; Viggiani, Steven; Dunn, Jason (ENRD)  
**Subject:** RE: City of Fall River and Consent Decree in US v. Dominion

Ms. Swits,

Pursuant to your January 8, 2014 email (below), I have shared Fall River's request for reconsideration with Dominion management. Upon further careful review, Dominion continues to believe it would be improper to entertain Fall River's untimely submitted project proposal. As I stated in my December 23, 2013 email to Ms. D'Orio: "Dominion does not believe it would be appropriate to alter the process we have undertaken, consistent with the Consent Decree, in reviewing and submitting mitigation project plans to EPA for approval. We also believe it would be unfair to all of the other participants who worked diligently for months to submit plans that allowed Dominion to meet the court-imposed deadline."

In response to your comment on Fall River pursuing litigation regarding this matter, as I also represented in my December 23 email, Dominion will oppose any such effort to reopen the Consent Decree.

Sincerely,

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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---

**From:** Swits, Deanna [mailto:dswits@nixonpeabody.com]  
**Sent:** Wednesday, January 08, 2014 12:55 PM  
**To:** Mary Jo Sheeley (Services - 6)  
**Cc:** Christy Diorio; Elizabeth Sousa; Simon Lento, Jennifer; Cooper, Donald  
**Subject:** City of Fall River and Consent Decree In US v. Dominion, CDIL

Ms. Sheeley,

My name is Deanna Swits, and I am an attorney with Nixon Peabody LLP and represent the City of Fall River, Massachusetts, with whom I understand you previously have communicated. We were disappointed that Dominion chose not to participate in the conference call that we held with the Department of Justice and the EPA yesterday. Based on the call and the facts we have discovered since my client last contacted you, we do, however, believe that there is an opportunity to resolve the issues without court intervention. The investigation into this issue has revealed that the consultant that was assigned by Dominion to work with Fall River, James Smith of Smith, Ruddock & Hayes, no longer had a relationship with Dominion as of September 1, 2013. Unfortunately, neither Dominion nor Mr. Smith conveyed this information to Fall River, nor did Dominion or Mr. Smith convey Dominion's November deadline to Fall River at any time. In fact, after Mr. Smith's relationship with Dominion terminated on September 1, Mr. Smith continued to maintain communication with Fall River viz a viz Christy DiOrio, even solidifying an extension for submission of its proposed project plan beyond Dominion's self-imposed August 1 deadline. Thereafter, no one else from Dominion or EquiPower contacted Ms. DiOrio to confirm submission or lack of submission of a project plan. The City continued to diligently seek assistance in the preparation of a plan from an independent third party contractor until a local newspaper reported that the Court had imposed a November 14 deadline. It wasn't until December when Dominion alleged that Fall River missed the court imposed that deadline that Mr. Smith informed Ms. DiOrio that he hadn't been in Dominion's employ since September 1. You can imagine the confusion and surprise, given that Mr. Smith continued to represent himself as a consultant for Dominion after the September 1 termination date, and had, in fact, communicated with Fall River after said date. While Fall River recognizes that the sale to EquiPower may have resulted in changed relationships and responsibilities within Dominion and EquiPower, Fall River respectfully believes that Dominion had a duty to inform Fall River of any changes in contacts and, at the minimum, of any deadlines.

Fortunately, based on our conference with the Department of Justice and EPA yesterday, because there has not yet been any approval of the mitigation project plans submitted by Dominion, Dominion may still submit an amended mitigation project plan to EPA for its consideration that includes the Fall River proposal, which is attached here, fully complete, and "shovel-ready."

We hope that in light of this information that Dominion will re-consider its position and prevent the necessity that Fall River seek court intervention to protect and enforce the rights and interests of its citizens. We would appreciate your response by Friday, January 10, 2014. If you have any questions or wish to discuss the matter more, please let me know.

Best Regards,

Deanna Swits



**Deanna R. Swits**

Attorney

dswits@nixonpeabody.com

T 312-425-3971 | F 866-947-1702

Nixon Peabody LLP | 300 S. Riverside Plaza, 16th Floor | Chicago, IL 60606-6613

nixonpeabody.com | @NixonPeabodyLLP

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16, 2014 at FR 000002 and respectfully requests that this Court consider any documents received in response thereto.

Dated: January 29, 2014

Respectfully submitted,

s/ Deanna R. Swits  
Deanna R. Swits, IL No. 6287513  
NIXON PEABODY LLP  
300 South Riverside Plaza, 16<sup>th</sup> Floor  
Chicago, IL 60606  
Phone: (312) 425-3900  
Fax: (312) 425-3909  
Email: [dswits@nixonpeabody.com](mailto:dswits@nixonpeabody.com)

**CERTIFICATE OF SERVICE**

The undersigned certifies that on January 29, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S SUPPLEMENT TO ITS MEMORANDUM IN SUPPORT OF ITS MOTION TO MODIFY CONSENT DECREE** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 29, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S SUPPLEMENT TO ITS MEMORANDUM IN SUPPORT OF ITS MOTION TO MODIFY CONSENT DECREE** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
Deanna R. Swits

Ignacio S. Moreno  
Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Phone: (202) 514-1111  
Facsimile: (202) 616-6583

Jason A. Dunn  
Senior Attorney  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Phone: (202) 514-1111  
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Email: [Jason.Dunn@usdoj.gov](mailto:Jason.Dunn@usdoj.gov)

Gerard A. Brost, IL Bar 3125997  
Assistant United States Attorney  
One Technology Plaza  
211 Filton St., Ste. 400  
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Telephone: 309-671-7050  
Email: [Gerard.brost@usdoj.gov](mailto:Gerard.brost@usdoj.gov)

Cynthia Giles  
Assistant Administrator  
United States Environmental Protection Agency  
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Washington, DC 20460

Phillip A. Brooks  
Director, Air Enforcement Division  
United States Environmental Protection Agency  
1200 Pennsylvania Ave, N.W. (2242A)  
Washington, DC 20460

Seema Kakade  
Attorney-Advisor  
United States Environmental Protection Agency  
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Chicago, IL 60604

Nicole Wood-Chi  
Associate Regional Counsel  
United States Environmental Protection Agency,  
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Chicago, IL 60604

Curt Spalding  
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Susan Studien  
Director, Office of Environmental Stewardship  
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Steven Viggiani  
Senior Enforcement Counsel  
United States Environmental  
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J. David Rives  
Senior Vice President--Distribution  
Dominion Virginia Power  
120 Tredegar Street  
Richmond, Virginia 23219

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
Email: [mary.jo.sheeley@dom.com](mailto:mary.jo.sheeley@dom.com)

# **EXHIBIT 3**

**City of Fall River**  
*Office of the Corporation Counsel*

**WILLIAM A. FLANAGAN**  
Mayor

**ELIZABETH SOUSA**  
Corporation Counsel



**GARY P. HOWAYECK**  
Assistant Corporation Counsel

**CHRISTY M. DIORIO**  
Assistant Corporation Counsel

December 26, 2013

*Via email medeirosr@somerset.k12.ma.us and First Class Mail*

Richard Medeiros  
Superintendent  
Somerset Public Schools  
580 Wetstone Hill Road  
Somerset, MA 02726

Re: Public Records Request – Dominion Energy Inc. Environmental Mitigation Project

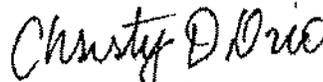
Dear Mr. Medeiros:

This correspondence constitutes a public records request pursuant to M.G.L. c. 4, § 7(26). With regard to the Dominion Energy, Inc. ("Dominion") environmental mitigation project referenced in United States of America v. Dominion Energy, Inc., et al, C.A. No. 3:13-cv-08086-SEM-BGC, kindly provide the following documents: 1) Somerset's Project Plan; and 2) any and all correspondence, including emails, with Dominion's representative or representatives regarding the deadline and submission of the Project Plan and any written discussion of extensions or the need for more time to prepare the proposed Project Plan.

Please provide the undersigned with a written response of the cost for said copies within the time provided by the public records law.

Thank you for your anticipated attention to this matter.

Very truly yours,

  
Christy M. Diorio



GateHouse Media

Holtzman, Michael &lt;mholtzman@heraldnews.com&gt;

**(no subject)**

1 message

Marc Furtado <furtadom@sregional.org>  
 To: mholtzman@heraldnews.com

Thu, Jan 16, 2014 at 3:50 PM

Marc,

I wanted to bring you up to date on recent activities regarding the process for submitting the Somerset plan to EPA and securing EPA's approval. In case you have not heard, late Tuesday January 14, 2014 the City of Fall River filed a lawsuit in the federal district court for the Central District of Illinois where the Dominion Consent Decree was entered. Fall River seeks to intervene in that matter and have the court issue an injunction ordering Dominion to submit Fall River's proposed mitigation plan to EPA for its review, and ordering Dominion to fund that project upon receiving EPA's approval of that plan. Their court pleadings also ask the court to stay any award of money under the Northeast Clean Energy and Clean Diesel Project, which is the Consent Decree project under which Somerset's project would be funded. On January 15, 2014, the court held an emergency hearing on Fall River's request for a temporary restraining order (TRO). Rather than the court ruling on the TRO, Dominion and EPA agreed not to take any actions on any plan that would be funded under the Northeast Clean Energy and Clean Diesel Project until the issues raised by Fall River are resolved. Thus, we are prohibited from submitting Somerset's revised project plan to EPA and EPA is unable to take any actions related to Somerset's plan. Given the briefing schedule set forth by the court and the proposed dates for a hearing, we would not expect resolution until sometime toward the middle or end of April 2014. Dominion regrets this delay in the process, and how it impacts our ability to secure EPA approval and Somerset's ability to move forward with construction of the solar projects at its schools.

Please let me know if you would like to discuss this further. I will be out of the office until next Tuesday, but can be reached by email.

*Injunction ordering D. to submit*

Marc Furtado  
 Director of Finance and Facilities  
 Somerset Berkley Regional School District  
 Somerset Public Schools  
 508 324-3100, x-212

FR 000002

**Somerset Public Schools**  
**Somerset-Berkley Regional School District**

16 JAN 13 11:11 AM

Marc Furtado, Director of Business and Finance

580 Whetstone Hill Road  
Somerset MA 02726-3700  
Telephone: (508) 324-3100, x-212  
Fax: (508) 324-3104

To: Christy M. DiOrto, Assistant Corporation Counsel  
Richard Medeiros, Superintendent  
Robert Camara, Chair, Somerset School Committee  
From: Marc Furtado, Business Manager Somerset Public Schools  
Date: December 27, 2013  
Re: Public Records Request-Dominion Energy Inc Environmental Mitigation Project

I am writing in response to your December 26, 2013 public records request addressed to Superintendent Richard Medeiros requesting certain records in connection with the school district's Dominion Energy Inc. environmental mitigation project. As I was the individual who was responsible for putting together the school district's proposal to Dominion, I am responding to your request. The following documents are what we have in response to your request: 1) a copy of the Somerset Public Schools' project plan; and, 2) two separate e mail correspondence from me to Dominion representatives regarding our submission up to the day that our proposal was formally submitted on August 20, 2013, and 3) a package of information sent from the Superintendent of Schools to Dominion on August 1, 2013.

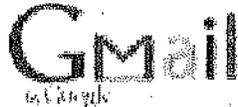
At no time in the process did we ever request or discuss an extension of the due date for our proposal. We met with Dominion representatives on July 11, 2013 at 11:00 a.m. at our offices where they debriefed us on the Consent Decree regarding Dominion and the Somerset Public Schools and the City of Fall River. The Dominion representatives explained that they had just come from a meeting with Fall River city officials and had given the Fall River officials the same presentation and information that they gave to us.

At the meeting, Dominion representatives explained to us that the Consent Decree called for the submission of proposals by August 1, 2013. The Dominion representatives also explained that the court process was delayed and the decree had not yet been formally signed by the parties as of July 11, 2013. As such, there was an expectation of a thirty (30) day window from the date that the Decree was formally signed to the date that our proposals would be due. Our proposal submission met these guidelines. At no time did we ever request a time extension, either verbally or in writing.

To respond to your request, we would need to copy one hundred and sixty four (164) pages (@ \$0.10 per) and print five (5) pages (@ \$0.50 per). In addition a clerk would be required to spend 20 minutes of her time copying, printing and putting the request together. Her hourly rate is \$27.70 per labor contract. The total cost for your request would be \$28.04. We would proceed with the work once payment is received.

Certification # 7005 0390 0002 4434 3295

FR 000003



Marc Furtado <furtadom@sbregional.org>

**Settlement Proposal From Somerset, MA**

6 messages

Marc Furtado <furtadom@sbregional.org>  
To: alice.g.pryor@dom.com

Wed, Aug 21, 2013 at 11:43 AM

Alice

My name is Marc Furtado and I am the Director of Finance for the school district. We have a pretty extensive document to send in regard to the recent consent decree with the EPA, but unfortunately all I have is a hard copy due to the extensive data sheets with the proposals and all I have for you is this e mail address. Would it be possible to get a mailing address in order for us to overnight a copy of our complete document? A hard copy has been overmighted to Kevin Hennessy today.

Thank you for your help

---  
Marc Furtado  
Director of Finance and Facilities  
Somerset Berkley Regional School District

Mail Delivery Subsystem <mailer-daemon@googlemail.com>  
To: furtadom@sbregional.org

Wed, Aug 21, 2013 at 11:43 AM

Delivery to the following recipient failed permanently:

alice.g.pryor@dom.com

Technical details of permanent failure:

Google tried to deliver your message, but it was rejected by the server for the recipient domain dom.com by Inm02.dom.com. [158.106.48.67].

The error that the other server returned was:

550 Mailbox unavailable or access denied - <alice.g.pryor@dom.com>

----- Original message -----

X-Google-DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;  
d=google.com; s=20120113;  
h=x-gm-message-state:mime-version:date:message-id:subject:from:to  
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MIME-Version: 1.0  
X-Received: by 10.221.28.131 with SMTP Id ru3mr829984vcb.33.1377099819987;  
Wed, 21 Aug 2013 08:43:39 -0700 (PDT)  
Received: by 10.58.169.162 with HTTP; Wed, 21 Aug 2013 08:43:39 -0700 (PDT)

Date: Wed, 21 Aug 2013 11:43:39 -0400  
Message-ID: <CAF507ra78jtuD6enqj\_ZjmtQ5g8+imt9aZc5uvNwVZ\_0ufPhAw@mail.gmail.com>  
Subject: Settlement Proposal From Somerset, MA  
From: Marc Furtado <furtadom@sbregional.org>  
To: alice.g.prior@dom.com  
Content-Type: multipart/alternative; boundary=001a1133457692b76604e47709e9

Alice

My name is Marc Furtado and I am the Director of Finance for the school district. We have a pretty extensive document to send in regard to the recent consent decree with the EPA, but unfortunately all I have is a hard copy due to the extensive data sheets with the proposals and all I have for you is this e mail address. Would it be possible to get a mailing address in order for us to overnight a copy of our complete document? A hard copy has been overnighted to Kevin Hennessy today.

Thank you for your help

---  
\*Marc Furtado\*  
[Quoted text hidden]

---

Marc Furtado <furtadom@sbregional.org>  
To: Kevin R Hennessy <kevin.r.hennessy@dom.com>

Wed, Aug 21, 2013 at 11:47 AM

Kevin

Hope all is well. My e mail to Alice was bounced back?

[Quoted text hidden]

---  
Marc Furtado  
Director of Finance and Facilities  
Somerset Berkley Regional School District

---

Kevin R Hennessy (Services - 6) <Kevin.R.Hennessy@dom.com>  
To: Marc Furtado <furtadom@sbregional.org>  
Cc: "Alice G Prior (Services - 6)" <alice.g.prior@dom.com>

Wed, Aug 21, 2013 at 11:51 AM

Alice's correct email is Alice.g.prior@dom.com. I've also copied her on this email.

Kevin

Sent from my iPhone  
[Quoted text hidden]

**CONFIDENTIALITY NOTICE:** This electronic message contains information which may be legally confidential and/or privileged and does not in any case represent a firm ENERGY COMMODITY bid or offer relating thereto which binds the sender without an additional express written confirmation to that effect. The information is intended solely for the individual or entity named above and access by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this information is prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender that you have received the message in error, and delete it. Thank you.

---

Marc Furtado <furtadom@sbregional.org>  
To: "Kevin R Hennessy (Services - 6)" <Kevin.R.Hennessy@dom.com>  
Cc: "Alice G Prior (Services - 6)" <alice.g.prior@dom.com>

Wed, Aug 21, 2013 at 11:55 AM

Thanks Kevin

Alice I need an overnight mailing address as well as a phone number...thanks  
[Quoted text hidden]

---

Alice G Prior (Services - 6) <alice.g.prior@dom.com>

Wed, Aug 21, 2013 at 12:03 PM

To: Marc Furtado <furladom@sbregional.org>, "Kevin R Hennessy (Services - 6)" <Kevin.R.Hennessy@dom.com>

Cc: "Mary Jo Sheeley (Services - 6)" <mary.jo.sheeley@dom.com>, "Cathy C Taylor (Services - 6)" <cathy.c.taylor@dom.com>

Address is:

Alice Prior

Dominion Resources Inc.

5000 Dominion Blvd, 2NW

Glen Allen, VA 23060

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

**From:** Marc Furtado [mailto:furladom@sbregional.org]

**Sent:** Wednesday, August 21, 2013 11:55 AM

**To:** Kevin R Hennessy (Services - 6)

**Cc:** Alice G Prior (Services - 6)

**Subject:** Re: Delivery Status Notification (Failure)

[Quoted text hidden]



Marc Furtado <furtadom@sbregional.org>

---

**Checking in**

2 messages

---

Kevin R Hennessy <Kevin.R.Hennessy@dom.com>  
To: Marc Furtado <furtadom@sbregional.org>  
Cc: Jim Smith <JSmith@publicpolicylaw.com>

Fri, Jul 19, 2013 at 11:26 AM

Hi Marc,

Thanks for meeting with us last week and introducing us to Superintendent Medeiros. Just wanted to check in and make sure you didn't have any questions regarding the implementation plan for the project.

Best,

Kevin

Kevin R. Hennessy

Director - Federal, State & Local Affairs - New England

Dominion Resources, Inc.

Rope Ferry Road

PO Box 128

Waterford, CT 06385

860-444-5656 (office)

860-912-5124 (mobile)

Kevin.R.Hennessy@dom.com

**CONFIDENTIALITY NOTICE:** This electronic message contains information which may be legally confidential and/or privileged and does not in any case represent a firm ENERGY COMMODITY bid or offer relating thereto which binds the sender without an additional express written confirmation to that effect. The information is intended solely for the individual or entity named above and access by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this information is prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender that you have received the message in error, and delete it. Thank you.

---

Marc Furtado <furtadom@sbregional.org>

Fri, Jul 19, 2013 at 11:39 AM

To: Kevin R Hennessy <Kevin.R.Hennessy@dom.com>, Richard Medeiros <medeirosr@somerset.k12.ma.us>, jsmith <jsmith@publicpollcylaw.com>

Kevin

We are progressing with the development of multiple proposals. I learned that the South School heating system is steam, not hot water, based and therefore not eligible for a Geothermal application. We have moved forward requesting proposals on our two big schools for both geothermal and PV projects from multiple vendors, so we feel very confident that while we will only have budget development type numbers, they will be relatively reliable. Coupled with these two we will have a solid digital control proposal and we will have one other involving heat exchangers for air intake that is part of the geothermal work. All in all we will be showing significant energy savings as well as significant emissions reductions associated with the work and will have a full menu from which the EPA can make choices.

We expect to have formal documents ready for you in the first week of August.

We greatly appreciate the help and work both you and Jim did on our behalf and look forward to what appears to be a very exciting outcome for the schools here.

Marc

[Quoted text hidden]



## Somerset Public Schools

• 580 Whetstone Hill Road  
Somerset, Massachusetts 02726-3100  
Telephone (508) 324-3100

August 20, 2013

Ms. Alice Prior  
Environmental Projects Manager  
Dominion Resources Services, Inc

Mr. Kevin Hennessy  
Director Federal, State and Local Affairs  
Dominion Resources Services, Inc

Dear Ms. Prior and Mr. Hennessy:

The Somerset Public School District is happy to propose the following projects for consideration for funding via the Environmental Mitigation Project component of the *United States v. Dominion Energy, Inc et al* Consent Decree.

The proposed projects are the result of multiple vendor meetings across four main project areas:

1. Heat Exchangers/Energy Recovery Systems; allowable under the "Energy Efficiency" component of Appendix A of the Plan Proposal Guidelines, Section IV.
2. Digital Control of Environmental Systems; allowable under the "Energy Efficiency" component of Appendix A of the Plan Proposal Guidelines, Section IV.
3. Photovoltaics ; allowable under the "Energy Efficiency" component of Appendix A of the Plan Proposal Guidelines, Section IV with additional specific plan elements under Section XI.D,E, I (1-4)
4. Geothermal; ; allowable under the "Energy Efficiency" component of Appendix A of the Plan Proposal Guidelines, Section IV with additional specific plan elements under Section XI. C & I (1-4)

Of the eight (8) proposals investigated, the biggest environmental impact and biggest return to the school district in terms of energy efficiencies and savings would be with the installation of Energy Recovery Systems controlled by CO2 sensors in four (4) of the five (5) schools in the district. We have excluded the Wilbur School from this proposal due to questions about the long term viability of the building. The specifics to this program were developed for the Somerset Middle School and are contained in **Appendix A** of this document.

This project for the Middle School has a ROI of four (4) years and will save approximately 3,000,000 MBTU annually. Reductions of approximately 1.3 million lbs of CO2, 3,000 lbs of SO2 and 3,000 lbs of NOx annually would accompany these efficiency improvements.

While the installations and investments at the other schools in the district would be smaller, the returns would be relatively equal for each dollar invested.

The overall investment by school would break out as follows:

Somerset Middle School	\$269,595
North Elementary School	\$239,640
Chace Street School	\$149,775
South Elementary School	\$119,821
Wilbur Elementary School	excluded

**TOTAL ENERGY RECOVERY PROGRAM \$779,011**

Installation would be on a turnkey basis with the Contractor, SouthCoast Greenllght, being responsible for all aspects of system installation including all engineering, duct work, controls, wiring and permits. BPE-MIR XE-2000 Heat Exchangers are specified and are guaranteed for 20 years not to become unusable for providing breathable air and are expected to result in a net savings of over \$1.6 million in energy cost during that period at the Somerset Middle School alone.

Budgetary Increments: A 25% deposit is required to initiate project. A second 25% payment would be made in with delivery of equipment to sites, a third 25% payment at the project's midpoint and the final 25% at project completion.

It is expected that the project time line would be: It will require five to six (5-6) months for all schools to be completed, including permitting.

The second proposal is for digital controls on all of the environmental systems in four (4) of the district's five (5) schools. This proposal addresses a critical need for central control over the district's heating and cooling systems which does not exist currently. We have excluded the Wilbur School from this proposal due to questions about the long term viability of the building. While the ROI is longer than optimally desired (12 years), the operational benefits to the district would be substantial from a safety and student quality of life perspective. The details of this proposal are contained in **Appendix B** of this document.

This project has a ROI of approximately twelve (12) years after incentives and rebates and will save approximately 3,000,000 MBTU annually. Reductions of approximately 500,000 lbs of CO2, 600 lbs of SO2 and 600 lbs of NOx annually would accompany these efficiency improvements.

The overall investment by school would break out as follows (net of incentives and rebates):

Somerset Middle School	\$220,482
North Elementary School	\$201,256
Chace Street School	\$123,089
South Elementary School	\$ 67,232
Wilbur Elementary School	excluded
<b>TOTAL ENERGY RECOVERY PROGRAM</b>	<b>\$612,059</b>

Installation would be on a turnkey basis with the Contractor, Energy Source, being responsible for all aspects of system installation including all engineering, duct work, controls, wiring and permits. KMC Controls are specified. Energy Source will cover the guarantee for the systems in

the first year and the manufacturer's guarantee will be in effect thereafter. The installation of the controls is expected to result in a net savings of over \$55,000 in energy cost per year.

Budgetary Increments: A 33% deposit is required to initiate project upon delivery of materials. A second 33% payment would be made with the completion of the rough wiring, and third 34% final payment would be made at project completion.

It is expected that the project time line would be: Work would be performed between 2:30 pm and 10:30 pm in order to not impact the school day and normal function of the environmental systems. It is expected that the entire project will take six (6) months to complete.

A third proposal is for photovoltaic arrays at the North Elementary School and/or the Somerset Middle School. These proposals are structured to address the requirements set forth in Appendix A of the Plan Proposal Guidelines, Section IV with additional specific plan elements under Section XI.D,E, I (1-4). The ROI calculation is dependent on where the system is installed, ground based vs rooftop based and on the size of the system (100 kW, 200 kW or 300kW). 100kW and 200kW systems are assumed to be roof mounted, while the 300kW system is ground mounted. Average ROI is estimated to be 5 years. The details of the various proposals are contained in **Appendix C** of this document.

This project has a ROI of approximately five (5) years after incentives and rebates and will save approximately 125,000 kWh annually per building for a 100 kW system, and 220,000 kWh annually per building for a 200 kW system. Reductions of approximately 2,200 tons of CO2 over the twenty five year life of the system as well as saving approximately \$800,000 in energy cost to the district per school for the 100kW system. It is estimated that these figures double for a 200 kW system. The 100kW system would supply approximately 20-22% of the annual electrical requirement of the building it serves; a 200kW system would supply approximately 34% and the 300kW system would supply approximately 67% of the building annual electrical requirement. A 300kW system would be ground mounted.

The overall investment by school would break out as follows (does NOT include S-REC Program, MACRS Depreciation or any Federal Tax Credits):

	100kW	200kW	300kW
Somerset Middle School	\$350,000	\$700,000	
North Elementary School	\$350,000	\$700,000	\$1,150,000
<b>TOTAL PHOTOVOLTAIC PROGRAM</b>	<b>\$700,000</b>	<b>\$1,400,000</b>	<b>\$1,150,000</b>

Installation would be on a turnkey basis with the Contractor being responsible for all aspects of system installation including all engineering, construction, controls, wiring and permits. The two proposals received are essentially the same from a cost perspective. One vendor specified LG Electronics panels and a Solectria Inverter, the other specified Westinghouse panels and a Solectria Inverter. The panels are guaranteed to be generating electricity at 80% of their new rate after twenty five (25) years. The Solectria Inverter with the Westinghouse panels is guaranteed for twenty five (25) years, the Solectria with the LG panels is guaranteed for fifteen (15) years.

Budgetary Increments: A 33% deposit is required to initiate project upon delivery of materials. A second 33% payment would be made with the completion of the rough wiring, and thlrd 34% final payment would be made at project completion.

It is expected that the project time line would be: Work would be performed between 2:30 pm and 10:30 pm in order to not impact the school day and normal function of the environmental systems. It is expected that the entire project will take six (6) months to complete.

**CAVEATS TO THIS PROPOSAL: No structural engineering work has been done to determine if the buildings can structurally support at 100kW or 200kW system on the roof. For the 300kW system, no discussion has yet taken place with the Town on this use of the school grounds.**

A Geothermal project was reviewed for this proposal. The formal document is **Appendix D** of this proposal. It was found that a Geothermal System was not economically feasible at this time for two reasons:

1. The highly inefficient air handling systems would greatly depress the economic impact of any Geothermal System. The forty (40) ton system proposed for the Middle School would result in annual gas savings of only \$5,000/yr on a \$350,000 investment.
2. Our hope was to have the system serve two schools as the South School abuts the Somerset Middle School, however the South School's heating system is steam based and therefore not conducive to a partial Geothermal conversion.

We do not wish to include the Geothermal proposal in our request at this time, however have included the particulars in the form of the vendor proposal for your review. That is Appendix D of this document.

Overall our preferences are to do the Energy Recovery project due to its significant energy usage/savings impact. We would also like to do a photovoltaic project, although that is contingent on the buildings supporting the PV structure. From our perspective the controls project would come third due to the extended ROI. A geothermal project is not viable at this time, although the Energy Recovery work would make it much more viable for the future.

I want to again thank you for the opportunity to make these proposals to improve the environmental footprint of our school district and to better serve our students and community. Should you have any questions or require any additional follow up, I would ask that you direct your questions to Marc Furtado, Director of Finance and Facilities. He can be reached at 508 822-5220, x-304 or at [furtadom@sbregional.org](mailto:furtadom@sbregional.org).

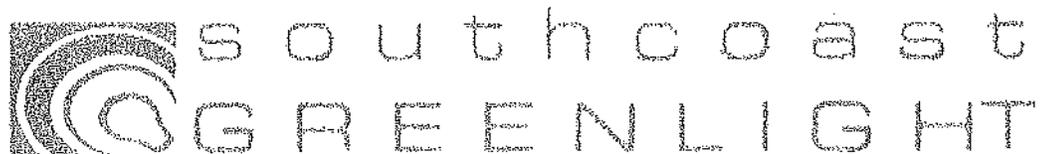
Sincerely,



Dr. Pauline Camara  
Acting Superintendent, Somerset Public Schools

c: Robert Camara, Chair Somerset School Committee  
Jamison Sousa, Somerset School Committee  
Patricia A. Haddad, House District-5<sup>th</sup> Bristol

# APPENDIX A

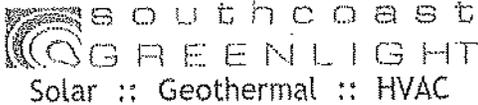


CLEAN ENERGY. BRIGHT FUTURE.

527 WILBUR AVE.  
SWANSEA, MA. 02777

ENERGY RECOVERY SYSTEM PROPOSAL

MARC FURTADO  
SOMERSET SCHOOL DISTRICT  
580 WHETSTONE HILL RD.  
SOMERSET, MA 02726  
508.324.3100



527 Wilbur Avenue  
Swansea, MA 02777  
Tel. 508.673.1100  
Fax. 508.678.2542

Somerset School District  
580 Whetstone Hill Rd.  
Somerset, Ma 02726  
Attention: Marc Furtado 508 324 3100 ext.212

August 8, 2013

We are pleased to present a proposal to design and install an Energy Recovery System (ERS). The design is based on the load calculation derived from current ventilation standards for public schools. The BPE heat exchangers will replace all direct ventilation in each school building. This ERS system will reduce energy costs for heating by 50-60%

**Project Summary:**

A mechanical engineer certified design of the ERS system will be performed for each building. The ERS system will replace direct ventilation using a heat exchanger to temper the incoming fresh air by absorbing the heat from the exhaust air before it is discharged outside each building. These systems will operate with co2 sensors located in the exhaust air ducts, the co2 levels will be maintained @ 800 ppm.

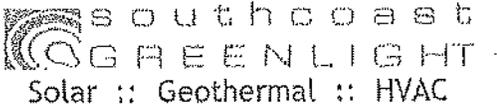
**The ERS systems will be designated as follows:**

Middle School @ Brayton Ave.	A 14,000 CFM ERS using 9 BPE MIR EX 2000 units.
North School @ Whetstone Hill Rd.	A 12,000 CFM ERS using 8 BPE MIR EX 2000 units.
Chase St.School @ Chase St.	A 8,000 CFM ERS using 5 BPE MIR EX 2000 units.
South Elementary School @ Read St.	A 6,000 CFM ERS using 4 BPE MIR EX 2000 units.
Wilbur School @ Brayton Pt. Rd.	A 4,000 CFM ERS using 3 BPE MIR EX 2000 units.

**Scope of Services:**

**Complete design and installation for a BPE ERS system.**

1. File for all mechanical permits and inspections required by the town.
2. Installation of all major equipment and controls necessary to integrate the ERS system with the existing air duct systems.
3. Installation of ERS system and connecting ductwork and mechanical insulation.
4. Connect and terminate all condensate drains from each ERS unit to outside.
5. Electrical wiring is included.



527 Wilbur Avenue  
Swansea, MA 02777  
Tel. 508.673.1100  
Fax. 508.678.2542

**Equipment Detail:**

**All units are BPE -- MIR- XE- 2000 heat exchangers**

**Cost Detail:**

Total BPE ERS Equipment & Install Cost

Includes all engineering, duct work, fan controls, piping & wiring:

Middle School @ Brayton Ave.	\$269,595.00
North School @ Whetstone Hill Rd.	\$239,640.00
Chase St.School @ Chase St.	\$149,775.00
South Elementary School @ Read St.	\$119,821.00
Wilbur School @ Brayton Pt. Rd.	\$89,865.00
<b>Total cost for all Schools</b>	<b>\$ 868,696.00</b>

Deposit 25% upon acceptance \$

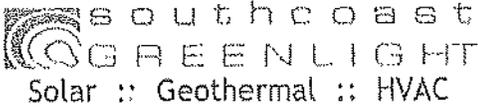
Prepared By: \_\_\_\_\_

Accepted By: \_\_\_\_\_

Upon acceptance of this proposal a contract will be drawn to the above mentioned specifications. Should any changes in the building construction change before work begins, owner/ contractor is required to notify SCGL so that the heat loss/ gain can be adjusted and resulting changes can be addressed. This proposal is for budgetary purpose and is accurate with a margin of + Or - 10%. After a design is complete for each building an exact cost will be used as the contract price. SCGL will produce the designed ERS system after the client executes a contract and SCGL receives the 25% deposit required.

Prices are valid for 30 days from delivery of proposal.

We look forward to doing business with you.



527 Wilbur Avenue  
Swansea, MA 02777  
Tel. 508.673.1100  
Fax. 508.678.2542

Somerset School District  
580 Whetstone Hill Rd.  
Somerset, Ma 02726  
Attention: Marc Furtado 508 324 3100 ext.212

August 8, 2013

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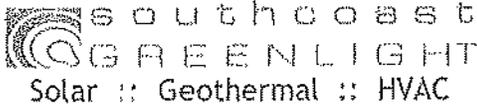
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South Elementary School @ Read St.	A 6,000 CFM ERS using 4 BPE MIR EX 2000 units.
Wilbur School @ Brayton Pt. Rd.	A 4,000 CFM ERS using 3 BPE MIR EX 2000 units.

**Scope of Services:**

**Complete design and installation for a BPE ERS system.**

1. File for all mechanical permits and inspections required by the town.
2. Installation of all major equipment and controls necessary to integrate the ERS system with the existing air duct systems.
3. Installation of ERS system and connecting ductwork and mechanical insulation.
4. Connect and terminate all condensate drains from each ERS unit to outside.
5. Electrical wiring is included.



527 Wilbur Avenue  
Swansea, MA 02777  
Tel. 508.673.1100  
Fax. 508.678.2542

**Equipment Detail:**

All units are BPE – MIR- XE- 2000 heat exchangers

**Cost Detail:**

Total BPE ERS Equipment & Install Cost

Includes all engineering, duct work, fan controls, piping & wiring:

Middle School @ Brayton Ave.	\$269,595.00
North School @ Whetstone Hill Rd.	\$239,640.00
Chase St.School @ Chase St.	\$149,775.00
South Elementary School @ Read St.	\$119,821.00
Wilbur School @ Brayton Pt. Rd.	\$89,865.00
<b>Total cost for all Schools</b>	<b>\$ 868,696.00</b>

Deposit 25% upon acceptance \$

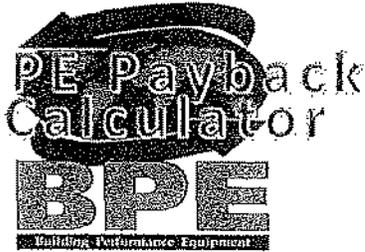
Prepared By: \_\_\_\_\_

Accepted By: \_\_\_\_\_

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Prices are valid for 30 days from delivery of proposal.

We look forward to doing business with you.



Enter in the requested information below. If you are not sure of a value, See our recommendations in the comment boxes (red arrows).

Thank you for using BPE, Inc.®  
 For more specific engineering analysis, please see the BPE Performance Calculator at: [www.LowKWH.com](http://www.LowKWH.com)

SYSTEM GENERAL INFO	
Heating System Type	Gas Fired
Cooling System Type	None
Outdoor Air Flow (OA)	14,000 scfm
Percent Outdoor Air (OA/SA, %)	40 %
Building Type	Commercial (< 5,000 SF)
Nearest Location	Newark, NJ

Number of Units			
2000	1000	500	200
9	0	0	0

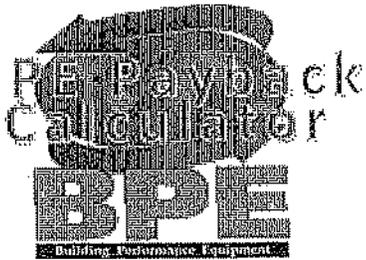
UTILITY INFORMATION	
Electric Rate (\$/kWh)	0.15
Peak Demand Charge (\$/kW)	8.00
Months of Peak Demand Charge	4
Gas Rates (\$/Therm)	1.05

COST ASSUMPTIONS	
Installed Cost per Ton (\$/Ton)	2,500
ERV Installed Cost	\$ 269,595
Maintenance Savings	\$ -
Total Incentives	\$ -

\*Use for New Construction or Major Retrofits

SYSTEM EFFICIENCIES	
Heating Efficiency	80 %
Cooling Efficiency	9.5 kW/Ton
BPE Effectiveness	80 %

CONTROLS AND SET POINTS	
CO <sub>2</sub> Controller	Yes
Percent Run-time	30 %
Summer (Cooling)	74 °F (db)
Winter (Heating)	70 °F (db)



## 20 Years of Savings!

BPE Energy Recovery Ventilators are guaranteed for 20 years not to become unusable for providing breathable air as a result from rust, rot, or corrosion. This does not apply to other gases other than breathable air. See Limited Lifetime Warranty for more details.

ENERGY ANALYSIS	
BPE Cooling Capacity	23.69 TONS
BPE Heating Capacity	816.48 MBH
Peak Demand Reduction	29.92 KW
Annual Electric Energy Saved	395,262 MBTU
Annual Thermal Energy Saved	2,575,547 MBTU
<b>TOTAL Savings</b>	<b>2,970,809 MBTU</b>

OPERATING COST ANALYSIS	
Maintenance Savings	\$ -
Cooling Cost Savings	\$ (604)
Peak Demand Cost Savings	\$ (957)
Heating Cost Savings (Gas or HP)	\$ (27,043)
Electrical Cost Savings (ER+Fans)	\$ (26,426)
Electric Resistive Savings	(9,658)
Reduced Supply + Exhaust Fan Savings	(19,515)
BPE Parasitic Fan Cost	2,747
<b>TOTAL Savings</b>	<b>\$ (55,031)</b>

CAPITAL EXPENSE ANALYSIS	
HVAC Initial Cost Avoidance	\$ (59,220)
Added Cost of ERV	\$ 269,595
Total Incentives/Funding	\$ -
Net Capital Expenditure	\$ 210,375
<b>Simple Payback (Years)</b>	<b>3.82</b>
<b>Internal Rate of Return (IRR)</b>	<b>20%</b>
<b>Net Present Value (20 Yr Life Cycle)</b>	<b>\$1,235,111.42</b>
<b>Emission Reduction (Cars/yr)</b>	<b>113.41</b>



## BPE Performance Calculator for Reduced Pollution

Total ERV CFM =  CFM

Operating Efficiency =  Thermal Eff.

A/C Efficiency =  kWh/Ton

Heating Efficiency =  Thermal Eff.

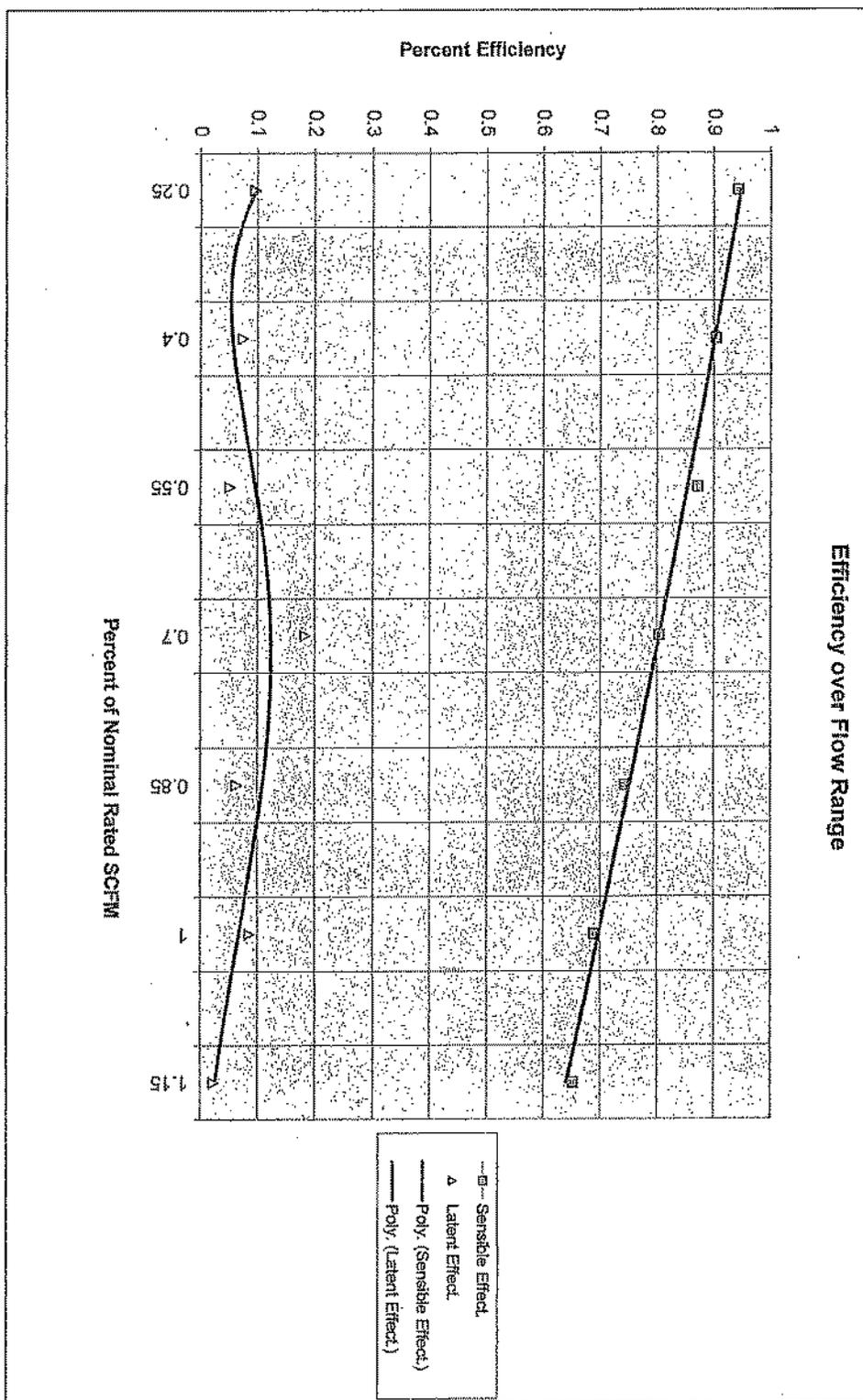
BPE Pollution Reductions Per Year of Operation						
Energy	Savings per Year	Cost in \$ 2010	CO <sub>2</sub> Reduced	SO <sub>2</sub> Reduced	NOx Reduced	Cars* Removed
Electric (kWh)	115,810.81	18240.20	64043.38	191.74	158.45	5.59
Gas Savings (Therms)	25755.47	28395.41	1234503.43	2525.68	3054.32	107.82
<b>Total Savings (BTU)</b>	<b>2,970,709.873</b>	<b>\$ 46,635.61</b>	<b>#####</b>	<b>2,717.42</b>	<b>3,212.77</b>	

Total Pollution Reduction in Cars Removed from the Road =

\* Equivalent number of passenger cars taken off the road in 1 year, based on estimated average 12,500 miles traveled per year, releasing an estimated 11,450 pounds of CO2 per year.

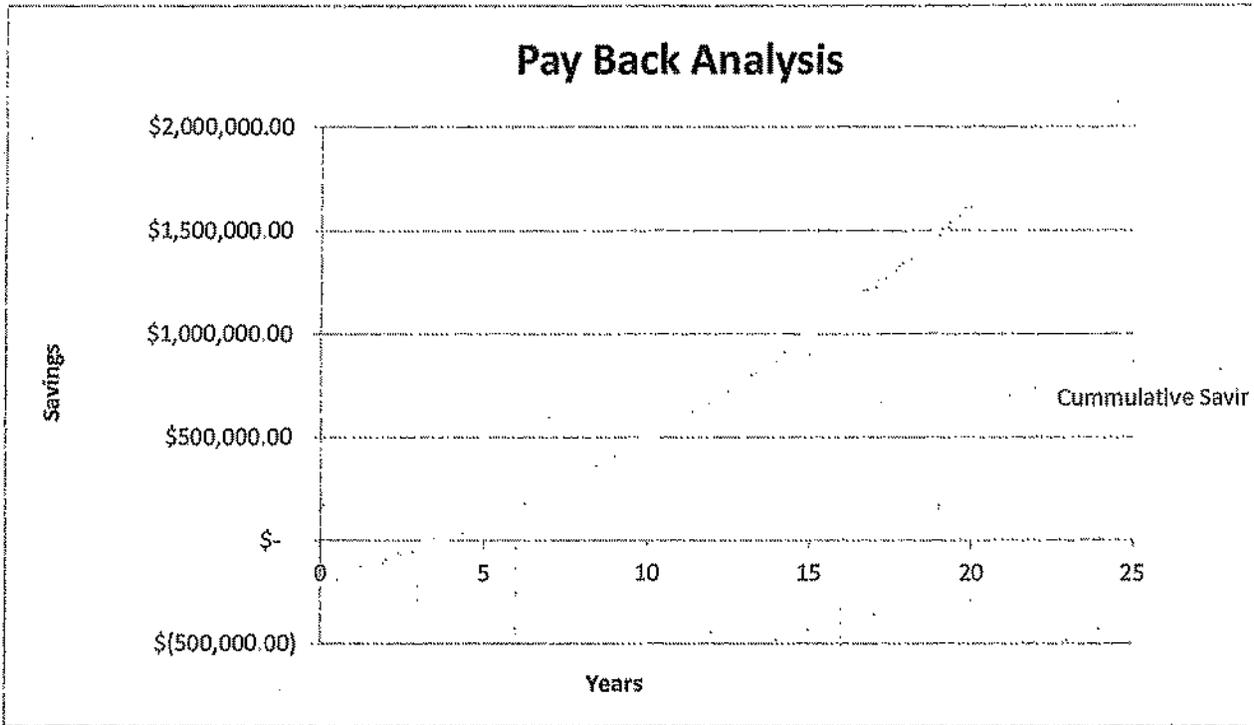
Referencing EPA Office for Transportation and Air Quality at [www.epa.gov/otaq/consumer/f00013.htm](http://www.epa.gov/otaq/consumer/f00013.htm)

Note: All default values can be changed to represent accurately actual equipment efficiencies.



Year	Annual PV	Cumulative Savings
0	\$ (210,375.00)	\$ (210,375.00)
1	\$ 56,143.12	\$ (154,231.88)
2	\$ 58,950.28	\$ (95,281.60)
3	\$ 61,897.79	\$ (33,383.81)
4	\$ 64,992.68	\$ 31,608.87
5	\$ 68,242.31	\$ 99,851.18
6	\$ 71,654.43	\$ 171,505.61
7	\$ 75,237.15	\$ 246,742.77
8	\$ 78,999.01	\$ 325,741.77
9	\$ 82,948.96	\$ 408,690.73
10	\$ 87,096.41	\$ 495,787.14
11	\$ 91,451.23	\$ 587,238.37
12	\$ 96,023.79	\$ 683,262.16
13	\$ 100,824.98	\$ 784,087.14
14	\$ 105,866.23	\$ 889,953.37
15	\$ 111,159.54	\$ 1,001,112.91
16	\$ 116,717.52	\$ 1,117,830.42
17	\$ 122,553.39	\$ 1,240,383.81
18	\$ 128,681.06	\$ 1,369,064.88
19	\$ 135,115.11	\$ 1,504,179.99
20	\$ 141,870.87	\$ 1,646,050.86

\$1,235,111.42 NPV  
31% IRR



# APPENDIX B



PROPOSAL CREATED FOR:

Somerset Public Schools



580 Whetstone Hill Road  
Somerset, MA 02726



July 25, 2013

Dear Mr. Campos,

Energy Source is pleased to present you with this energy conservation proposal. We trust you will find this proposal a cost effective means to, not only reducing your energy costs, but also improving the quality of the environment throughout your facility.

Other factors to consider as you evaluate this proposal are existing equipment related disruptions and maintenance costs are eliminated or minimized until the new equipment enters its end of life – typically several years.

In the attached proposal you will find detailed reports recommending the installation of digital controls, electronic actuators, new control valves, sensors and an Energy Management System.

Energy Source will secure incentives from National Grid which substantially reduced the net cost of this project. The utility incentives reflected in this proposal are estimated and are subject to change until projects are reviewed by National Grid.

I hope you find this proposal informative. If you have any questions please do not hesitate to contact me.

Sincerely,

Jim Howard  
Energy Source



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**Disclaimer**

This report is not for general use and is the property of Energy Source.

All savings estimates and rebates must be considered estimated until reviewed and approved by the utility companies designated within this report.

For any questions regarding this report, please contact Jim Howard, Energy Efficiency Consultant for Energy Source, Inc. at 401-490-7555 x222. Any additional use of this report is prohibited unless permission is given in writing from Energy Source, Inc.



## Executive Summary

Energy Source recently conducted an energy survey of the High School for the Attleboro School Department.

Our recommendations are separated into two Energy Conservation Measures which are outlined in two separate reports.

The expected energy savings were determined based on current operating hours of equipment surveyed. Poorly performing equipment will reduce the effectiveness of employing these ECMs, and the cost to repair or replace that equipment is not covered in this estimate.

<b>Summary of All Energy Conservation Measures</b>							
<b>ECM's</b>	<b>Project Costs</b>	<b>NGrid/ Incentives</b>	<b>KwH Saved</b>	<b>Therms Saved</b>	<b>Customer Costs</b>	<b>Electric/Gas Savings</b>	<b>Year Payback</b>
<i>North Elementary</i>	\$237,256	\$36,000	44,212	9,600	\$201,256	\$17,968	11.2
<i>Middle School</i>	\$256,482	\$36,000	47,212	10,600	\$220,482	\$19,623	11.2
<i>Chace Elementary</i>	\$136,589	\$13,500	22,212	3,960	\$123,089	\$7,948	15.5
<i>South Elementary</i>	\$71,732	\$4,500	20,212	1,922	\$67,232	\$5,130	13.1
<i>Wilbur Elementary</i>	\$76,747	\$4,500	18,212	2,610	\$72,247	\$5,720	12.6
<b>Total</b>	\$778,809	\$94,500	152,060	28,692	\$684,306	\$56,389	12.1

\*energy savings calculated at \$0.135 per kilowatt hour and \$1.25 per therm



**ECM#1 Install EMS (Energy Management System) at the Somerset North School**

Install controls for the main air handling units, re-heat coils and new boilers and pumps

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

- 25 Air Handling units
- 20 CUH's and fin tube radiation valves
- 20 Re-heat coils
- 3 Boilers and two pumps and VFD's
- 44 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperature
5. Maintenance alarms based upon actual runtime of fan motors

The new controls will also integrate into the existing boiler controls allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



## ECM#2 Install EMS (Energy Management System) at the Somerset Middle School

Install controls for the main air handling units, re-heat coils, new boiler existing boilers and pumps

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

51 Air Handling units & Unit ventilators  
20 CUH's and fin tube radiation valves  
15 Re-heat coils  
Office RTU and associated re-heats  
3 Boilers and two pumps and VFD's  
23 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



**ECM#3 Install EMS (Energy Management System) at the Chase Street Elementary School**

Install controls for the air handling units, classroom unit ventilators, cabinet unit heaters baseboard, new boiler and existing boilers and pumps

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

36 Unit ventilators  
16 CUH's and fin tube radiation valves  
3 Boilers and two pumps and VFD's  
16 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



#### **ECM#4 Install EMS (Energy Management System) at the South Elementary School**

Install controls for the air handling units, classroom unit ventilators, cabinet unit heaters convectors, baseboard and existing boilers.

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

- 15 Unit ventilators
- 19 CUH's and fin tube radiation valves
- 1 Boilers
- 6 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers. The unit ventilator, cabinet unit heaters and air handling unit steam traps will be replaced as part of this work.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



**ECM#5 Install EMS (Energy Management System) at the Wilbur Elementary School**

Install controls for the air handling units, classroom unit ventilators, cabinet unit heaters convectors, baseboard and existing boilers.

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

16 Unit ventilators  
1 AHU  
19 CUH's and fin tube radiation valves  
1 Boilers  
6 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers. The unit ventilator, cabinet unit heaters and air handling unit steam traps will be replaced as part of this work.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



## **Installation and Warranty Information**

If you decide to proceed with this proposal, Energy Source will be responsible for the following tasks:

- Develop final equipment specifications and equipment layout
- Processing and filing application for utility incentives
- Material ordering and receiving
- Dismantling and removing existing systems from premises
- Construction
- Final walk-through with you
- Development and delivery of comprehensive project completion manual.

## **Installation**

Energy Source assumes after school installation for most of the measures associated with this project. All installation staff will agree to submit to a CORI check before proceeding with project.

The removal and disposal of asbestos and toxic materials if present are the owner's responsibility and should be determined before proceeding with the project.

## **Warranty**

Included with your project is a one-year warranty on all labor and materials provided by Energy Source. At the end of the first year materials remain covered by standard warranties provided by their manufacturers. Warranty periods begin when the installation is completed. The owner has a one-month period following the completion of the installation to accept or reject work performed by Energy Source, after which time we will assume that the work has been accepted.

Due to the fluctuation in commodities this proposal is valid for a period of 30 days from the date shown at the top of this proposal, after which time we will be happy to provide an adjusted quote if necessary.

**Environmental Impact of This Project**

Of the total energy consumed in America, about 39% is used to generate electricity. Therefore, electricity consumption is an important portion of a consumer's environmental footprint. All forms of electricity generation have some level of environmental impact.

Some greenhouse gases occur naturally in the atmosphere, while others result from human activities. Naturally occurring greenhouse gases include water vapor, carbon dioxide, methane, nitrous oxide, and ozone. Certain human activities, however, add to the levels of most of these naturally occurring gases:

Carbon dioxide is released to the atmosphere when solid waste, fossil fuels (oil, natural gas, and coal), and wood and wood products are burned.

Sulfur dioxide Over 65% of SO<sub>2</sub> released to the air, or more than 13 million tons per year, comes from electric utilities, especially those that burn coal.

Nitrous oxide is emitted during agricultural and industrial activities, as well as during combustion of solid waste and fossil fuels.

Using energy more efficiently through more efficient end-uses, reduces the amount of fuel required to produce a unit of energy output and reduces the corresponding emissions of pollutants and greenhouse gases.

<http://www.cleaneandgreener.org/resources/pollutioncalculator.html>

As a result of the energy reductions outlined in this proposal, the estimated pounds of air pollutants will be reduced as follows:

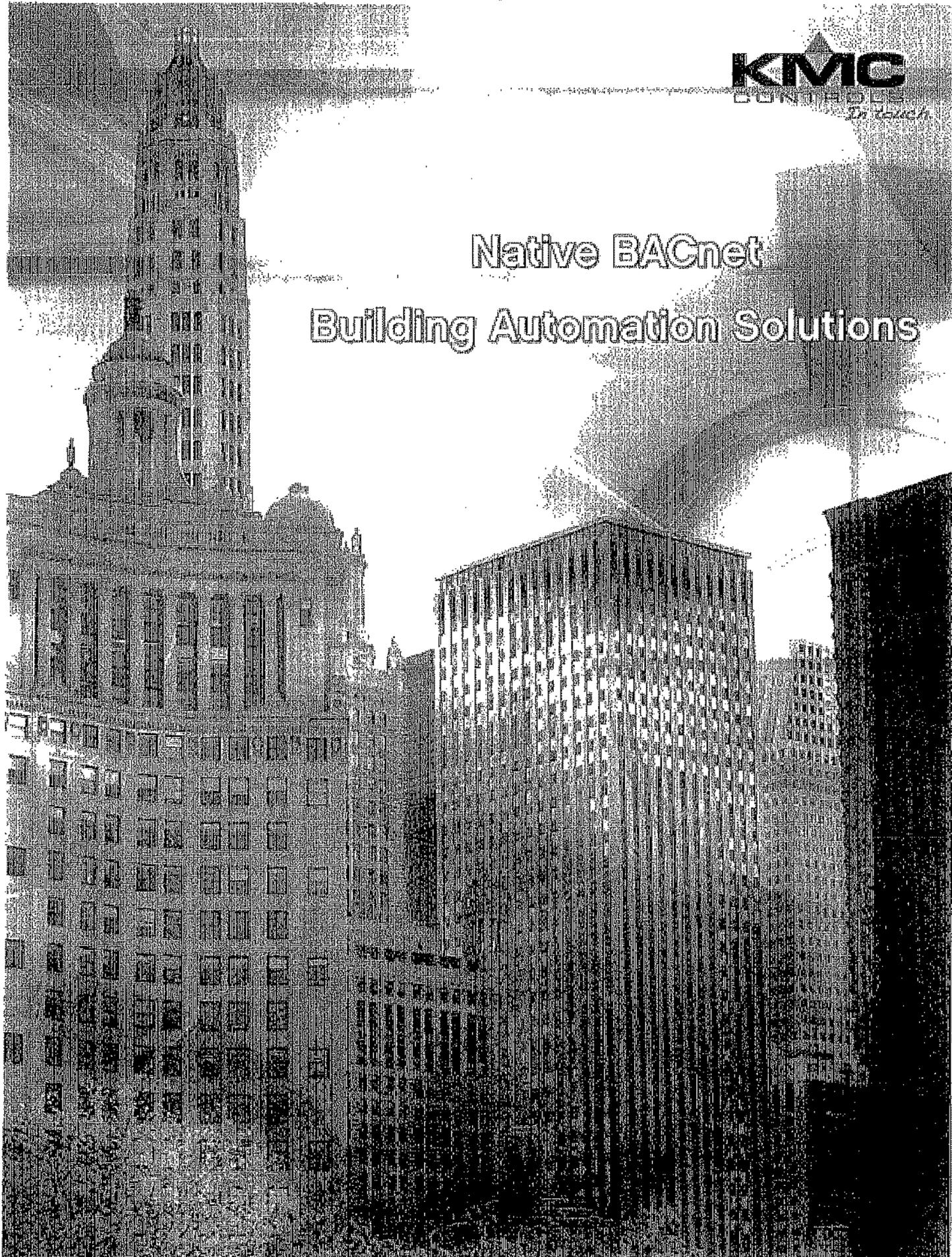
530,137.00	Pounds of Carbon Dioxide (CO <sub>2</sub> )
605.00	Pounds of Sulfur Dioxide (SO <sub>2</sub> )
593.00	Pounds of Nitrogen Oxide (NO <sub>x</sub> )

By eliminating the air pollutants referenced above, the environmental impact would be the equivalent of:

Planting	72	Acres of Trees or
Removing	46	Cars from the roads annually or
Saving	34,725	Gallons of gas annually



# Native BACnet Building Automation Solutions



## Thinking About KMC and BACnet

### Sustainability, Interoperability, Reliability

These words will drive the future of building automation controls in the 21st Century. These words describe what is provided by KMC BACnet solutions...today!

Sustainable, "green" buildings will become the expected norm in the future. The U.S. Green Building Council has been paving the way with its Leadership in Energy and Environmental Design (LEED®) Green Building Rating System. Earning LEED certification points in the crucial categories of Indoor Environmental Quality and Energy and Atmosphere requires an efficient building automation system, which is what BACnet® and KMC Controls® are all about.

### Why BACnet?

BACnet (for Building Automation and Control NETWORKs) is the only communications protocol



that was designed for open system interoperability and specifically intended for building systems. Interoperability means that products from different manufacturers can communicate with each other and work together. The concept of interoperability blends well with the integrated project design of LEED and other green approaches.

An open system also helps reduce future risk for building owners. If a BAS vendor for an installed proprietary system goes out of business, future maintenance and upgrades might require the old BAS to be torn out and entirely replaced by something new. Interoperability, however, means that new can build on the old, and it helps future-proof life-cycle costs.

An uncertain future means we can't be content with the best practices of the past. Working groups within BACnet International are constantly striving to evolve the standards to help meet the new environmental and energy challenges of tomorrow.

### Why BACnet from KMC Controls?

When opting for a BACnet system, why choose BACnet products by KMC (a long-time member of BACnet International)? Carefully consider these KMC BACnet pointers before starting your building project.

### Flexible Configuration and Deployment

For AHU, FCU, HPU, RTU, and VAV applications, we offer models of controllers with built-in standard application sequences and optimized outputs, which allow rapid deployment of controllers on a job. However, many sites require customization to their unique needs. For maximum flexibility, all KMC BACnet controllers are Fully Field Programmable so you can customize your applications as much as you need.



### Pondering Proprietary Objects and Properties

While the BACnet standard defines required objects and properties, it also provides manufacturers the freedom to create proprietary objects or properties of objects. Such moves, however, can block true interoperability. KMC Controls is committed to BACnet the way it was meant to be, and we refrain from using proprietary objects or proprietary properties in the standard objects of our "native" BACnet controllers.

### Talking the Talk

Participation in annual BACnet interoperability workshops enables manufacturers to test the communication capability of their products with other BACnet equipment and to resolve problems that might arise in the field. KMC Controls has been an active participant in such workshops since their inception. Our products have communicated effectively with comparable products from all major BACnet manufacturers.

In the past, getting new controllers to communicate with other controllers on a network has often been one of the most time-consuming aspects of a network installation. KMC's built-in auto addressing automatically assigns MAC addresses and device instance numbers to our advanced application controllers, simplifying installation of a BACnet network.



### BTL Listed (the BACnet Seal of Approval)

A "listing" from the BACnet Testing Laboratory (BTL) is the assurance that BACnet devices not only meet the standard, but also the more rigorous test requirements of the BTL. BTL testing demands a greater level of engineering commitment from manufacturers. KMC is committed to BTL listing for our native BACnet devices.

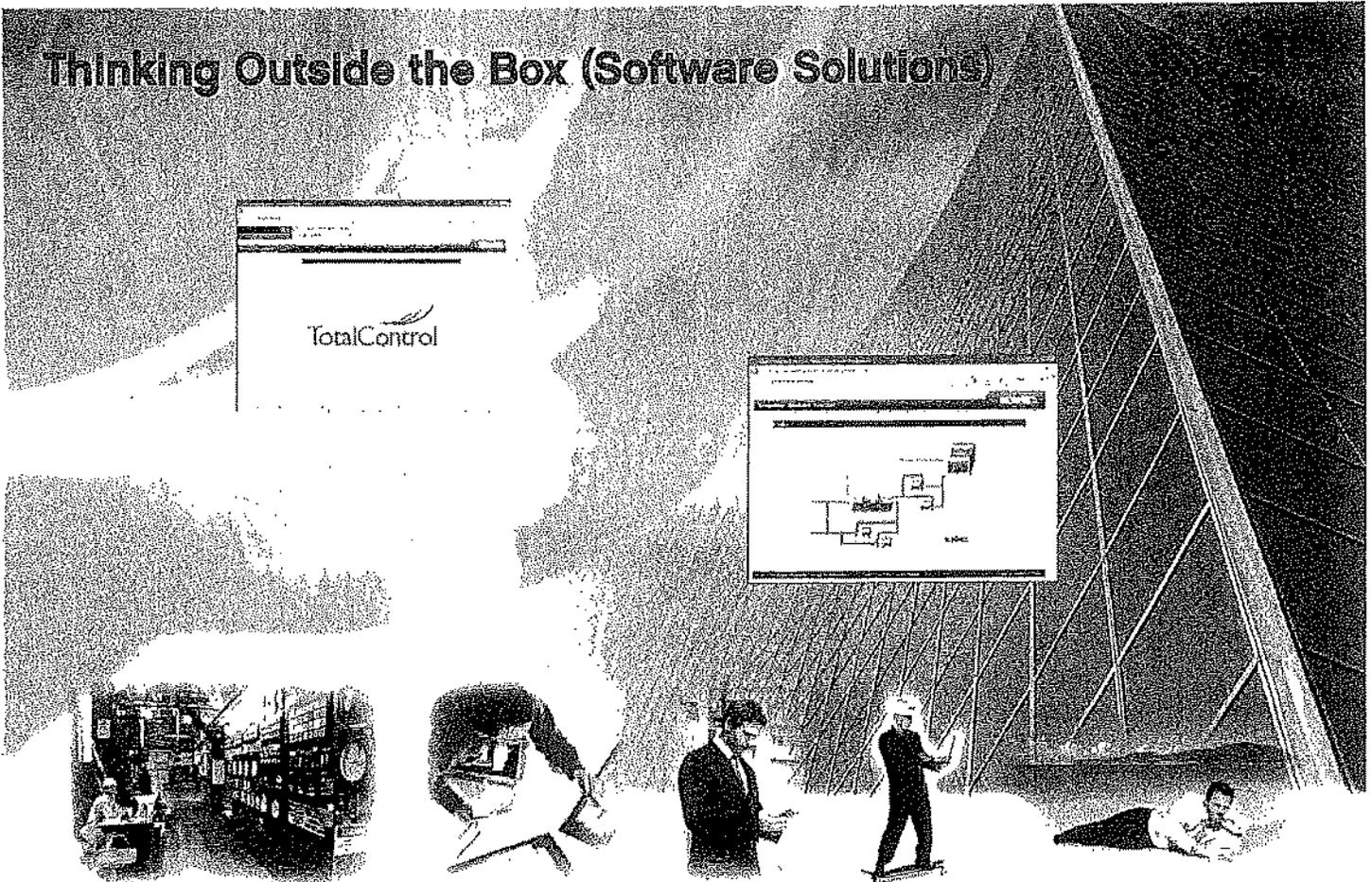


### Robust Reliability...Sometimes Repackaged

After installation, the superior quality design and construction of KMC controllers will provide years of trouble-free operation even in demanding conditions. Our industry-leading five-year warranty shows our confidence in our products. Our products have been recognized even by other manufacturers as being among the best in the business. We privately label our controllers for a variety of corporations...but it is what's inside that counts whatever the outward label says.

So whether building new or augmenting an existing BACnet installation, KMC Controls is the intelligent choice. The following pages describe KMC software tools, show sample installations of varying sizes, and further describe our hardware products. For more information about KMC, download our Corporate Brochure (SB-052) from our award-winning web site.

## Thinking Outside the Box (Software Solutions)



Rising energy costs, increased environmental and security concerns, and the promise of enhanced productivity inside optimized work environments have made the need to **control** building automation systems more important than ever before. The capability to link multiple building systems, manage building environments remotely, and manage multi-manufacturer interoperability issues can now be brought under control over the Internet.

### TotalControl

**TotalControl™** from KMC Controls, Inc. makes web-based monitoring and managing of everything from single rooms to multiple buildings simple. TotalControl and the Internet are all you need to access and manage the critical functions of complex building automation systems.

TotalControl's Design Studio module is used to custom-build the Building Services web interface. Design of the interface is usually done by the controls contractor in consultation with the facility's owner/operator. Once designed, only the Building Services module is needed to monitor and control the building automation system... from anywhere.

Behind the scenes, the Building Services module collects data from multiple BAS protocols, stores (trends, schedules, and alarm) data in a central database, and serves web pages.

Then, only a web browser is required for the operator to interact with the trends, schedules, alarms, and pages managed from the Building Services computer. The web interface allows operators to control building automation systems via a company network or the Internet. Operators can immediately see and change environmental controls or related building automation systems using just a web browser from an office desktop...or from a laptop at the beach.

### Other Control Tools

The KMC Controls **BACnet Module for Niagara<sup>AX</sup>** adds the required functionality to the Niagara<sup>AX</sup> framework to fully integrate KMC BACnet controllers into a Niagara-managed controls system. Once installed, all objects and properties in KMC BACnet controllers can be configured from either Niagara Workbench or through a JACE panel.

For less complex jobs, the **BACstage™** service tool helps configure controllers and build graphical interfaces for its own operator workstation. In addition to permanent network connections, BACstage can also be used on a laptop to make quick, easy, temporary network connections through the data ports in most KMC controllers, NetSensors, FlexStats, and some models of STE-6000 series sensors. KMC also supplies other software utilities to help facilitate the system configuration and programming process.

FR 000040



## Sensors, Interfaces, and Thermostats

Controllers are blind without sensors, and KMC offers a variety of sensors to meet almost any need.

### NetSensors

**KMD-116x/118x/12x1 series NetSensors®** are wall-mounted, temperature sensing, programmable operator interfaces for use in KMC BACnet as well as our proprietary KMDigital® systems.

Optional built-in humidity and motion sensors are also available so that you can now have room temperature and humidity control linked to occupancy. After all, there's no reason to heat or cool a room when nobody's home. Programmed schedules are fine for most days...except for vacations, sick days, business trips, long meetings, and other disruptions to the routine. Room occupancy is optionally detected via a built-in passive infrared motion sensor with a range of up to 33 feet (10 meters).

NetSensors, available in white or light almond, offer a large, easy to read, backlit LCD display for easy temperature viewing, plus smaller characters for time and relative humidity. Convenient setpoint buttons are instantly accessible, and additional buttons behind the hinged cover may be programmed to control or display the value of an object (such as outside air temperature) in the attached controller.

### FlexStats (Thermostats, Controllers with Sensors)

Sharing many similarities with NetSensors, **FlexStats™** combine the power of a controller (having up to nine relay and/or analog outputs) with an LCD display, a built-in temperature sensor, optional humidity, motion, and CO<sub>2</sub> sensors, as well as up to six input terminals for additional sensors. Plus, they have an easily configurable built-in library of AHU, FCU, HPU, and RTU applications that cover a great range of situations...or you can field-program them for the ultimate in flexibility.

### Analog Sensors

KMC also offers many analog sensors that can be connected to a controller's inputs for monitoring and controlling humidity, CO, CO<sub>2</sub>, room/duct/outside temperature, duct pressure, fan status, smoke, setpoint, and override.

### Router

The multi-port **BAC-5050 FullBAC™ Router** provides communication between BACnet IP LANs, BACnet MS/TP controller networks, foreign



devices, and an Ethernet 802.3 network. It also provides a debug and modem connection among other features. The product's name derives from the robust connectivity it offers to the most demanding BACnet jobs.

### Building Controllers

For the most demanding applications, the **BAC-A1616BC BACnet Building Controller (B-BC)** is a high-performance, native BACnet direct digital controller. This 16 x 16 B-BC provides precise monitoring and control of connected points. Integrated into the controller is a BACnet router, a web server, and expandable I/O.

A web server allows a remote web browser to configure I/Os, set up objects, and monitor values (configuration/monitoring are also available through TotalControl). Firmware is easily upgradable (without requiring physical access) through the Ethernet connection.

Additionally, up to seven **CAN-A168EIO Expansion Modules** can be connected (via standard shielded twisted-pair wire up to 200 feet from the B-BC). Each provides another 16 universal inputs and 8 universal outputs (for a maximum total of 128 inputs and 72 outputs)...if you have to think outside this box.

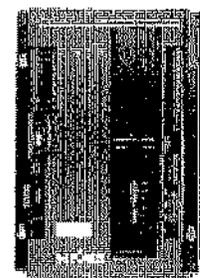
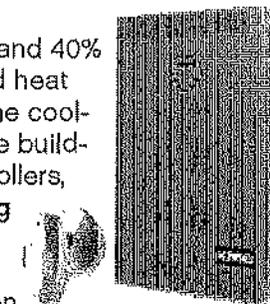
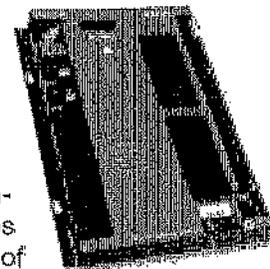
### Lighting Controls

Lighting consumes between 15 and 40% of a building's energy costs, and heat generated by lighting adds to the cooling load and energy used by the building's HVAC system. KMC's controllers, such as the **L900 series Lighting Controls**, can optimize illumination while minimizing energy usage through schedules, motion sensors, and other controls.

### Gateways

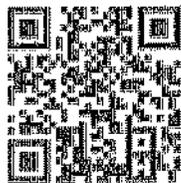
Ideally, interoperability means being able to talk to anything... even other protocols. If you need to link a BACnet system to a legacy KMDigital system, **KMD-5210 series KMDigital LAN Controllers with BACnet Interfaces** or the **KMD-5270-001 KMDigital WebLite Controller with BACnet Interface** can serve as interfaces. BACnet Ethernet 802.3 and MS/TP versions are available.

For more information about individual products, see their respective data sheets and other documents on our award-winning web site ([www.kmcccontrols.com](http://www.kmcccontrols.com)).



# KMIC CONTROLS

*In Touch*



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# APPENDIX C

LG PHOTOVOLTAIC

## Summary

**Customer**

580 Whetstone Hill Road Somerset MA  
580 Whetstone Hill Road Somerset MA

**Site Address**

Somerset, MA 02726

**Company Contact**

Roland Moulin  
Senior Sales Executive - Solar  
Munro Solar  
33 Commercial St.,  
Raynham, MA 02767

### 25 Year Financial Analysis

Utility Savings Over Initial Term	\$790,525
	\$2,635 / mo (avg)
Payback Period	6-7 years
Total Life-Cycle Payback (Cash Flow compared to Net Cost)	324%
Rate of Return on Cash Invested	13.9%
Levelized Cost of Solar Energy	\$0.130 / kWh

### Cost Breakdown

Installer Contract Cost	\$345,756	(\$3.46/watt DC, \$3.99/watt AC)
Net Cost (year of installation)	\$345,756	(\$3.46/watt DC, \$3.99/watt AC)
\$300 per SREC	(\$339,406)	
Net Cost (all years)	\$6,350	(\$0.06/watt DC, \$0.07/watt AC)

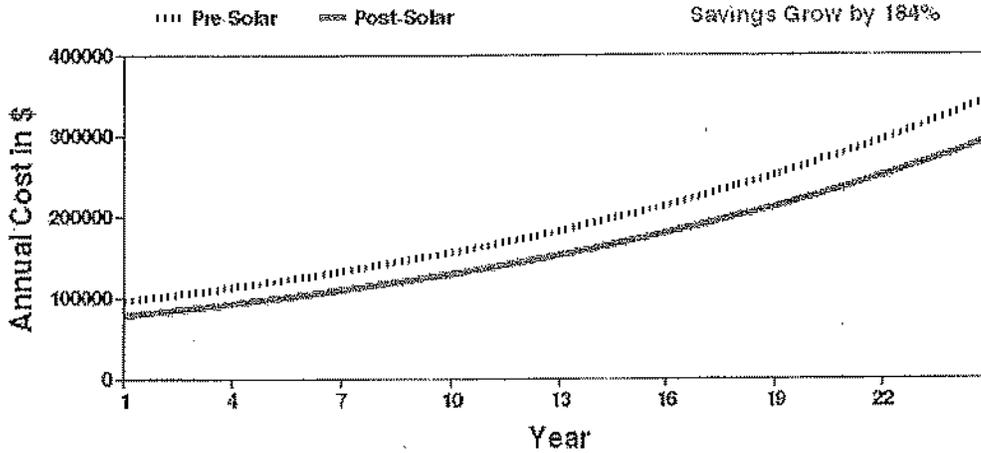
### System Description

Total System Size	99,905 kW DC Power (STC) / 86,716 kW AC Power (CEC)
Estimated Annual Production	119,515 kWh
PV Panel Description	Qty. 377 - LG Electronics Solar Cell Division Model: LG265S1C-G3
Inverters	Qty. 1 - Soflectria Renewables Model: PVI85kW-240

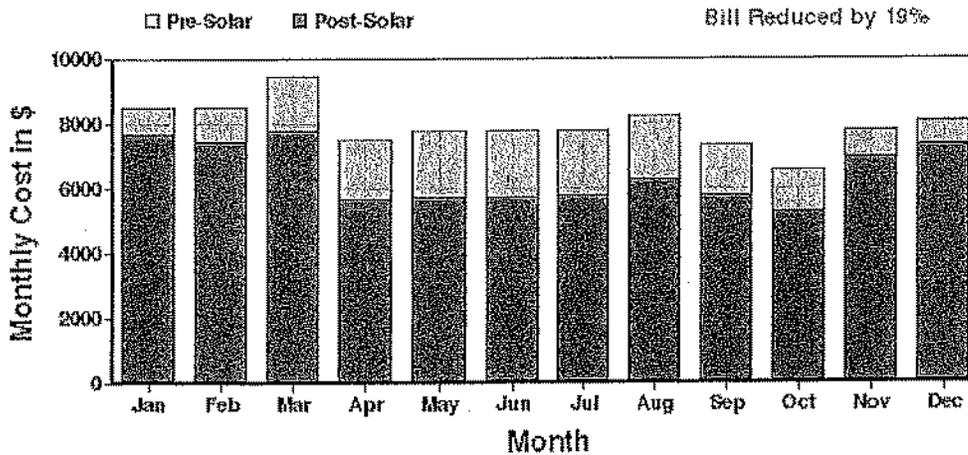
## Energy Analysis

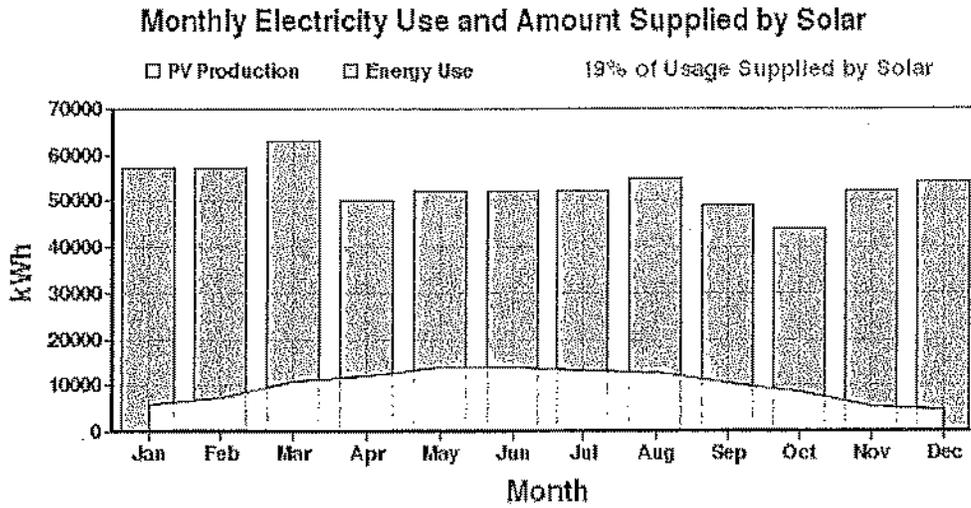
Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

### Annual Electricity Bill Savings Over Time



### Monthly Electricity Bill Savings





Assumptions: Post-Solar Electric Rate Schedule for National Grid is G 1 @ 0.135 Annual utility inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.

## Energy Bill Estimate

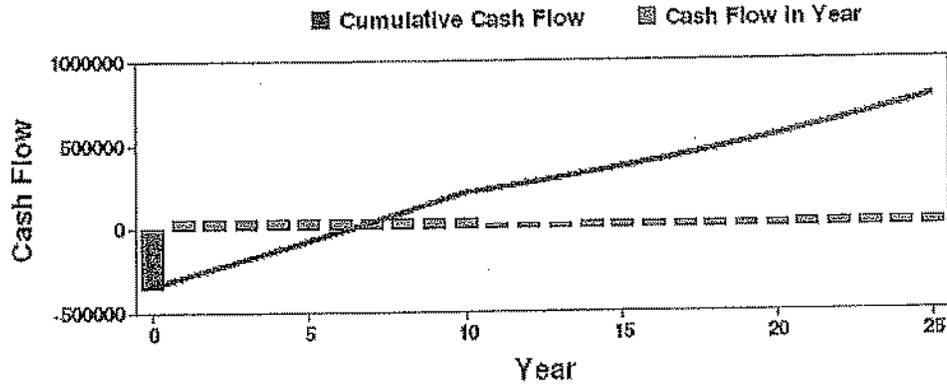
The following energy bill estimate is without any tax effects applied.

(kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Usage without Solar	57.0k	57.0k	63.0k	50.0k	52.0k	52.0k	52.0k	55.0k	49.0k	44.0k	52.0k	54.0k	637k
Solar Production	5,789	7,308	11.1k	12.0k	13.8k	13.9k	13.4k	12.9k	10.4k	8,664	5,481	4,817	120k
Utility Usage with Solar	51.2k	49.7k	51.9k	38.0k	38.2k	38.1k	38.6k	42.1k	38.6k	35.3k	46.5k	49.2k	517k
(Cost)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Bill without Solar*	\$8,524	\$8,524	\$9,421	\$7,477	\$7,776	\$7,776	\$7,776	\$8,225	\$7,328	\$6,580	\$7,776	\$8,075	\$95.3k
Utility Bill with Solar*	\$7,658	\$7,431	\$7,764	\$5,689	\$5,711	\$5,704	\$5,772	\$6,298	\$5,766	\$5,281	\$6,957	\$7,355	\$77.4k
Utility Bill Savings	\$866	\$1,093	\$1,657	\$1,788	\$2,065	\$2,072	\$2,004	\$1,927	\$1,562	\$1,299	\$819	\$720	\$17.9k

\*Includes utility rate increase of 5.50%

## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



Financial Summary	
Utility Savings Over Initial Term	\$790,525
Average Monthly Utility Savings	\$2,635 (over system life)
Net Cost (In year of installation)	\$345,758
Payback Period	6-7 years
Rate of Return on Cash Invested	13.9%
Total Life-Cycle Payback (Cash flow compared to Net Cost)	324%
Levelized Cost of Solar Energy (Net Cost / lifetime energy production)	\$0.130 / kWh

## Environmental Impact Analysis

Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by **2,647 tons of CO2**  
(Over 25 years)

#### Equivalent CO2 Reductions

Small Car:	6,937,966 miles
Medium Car:	3,721,273 miles
SUV:	2,607,261 miles
Air Miles:	4,220,000 miles
Trees Planted:	81,868 trees planted
CO2 from Trash & Waste:	3,721 persons

## Cash Flow by Year

The following table of estimated cash flows includes any tax effects, rate and cost inflation and other time-related cash flow factors. Refer to the Disclaimers & Assumptions section (below) for further clarification.

Year:	0	1	2	3	4
\$300 per SREC	\$0	\$35,496	\$35,141	\$34,790	\$34,442
Energy Bill Savings	\$0	\$17,872	\$18,666	\$19,497	\$20,363
Installation, Operation & Maintenance Costs	(\$345,756)	(\$349)	(\$352)	(\$356)	(\$359)
<b>Total Annual Cash Flow</b>	<b>(\$345,756)</b>	<b>\$53,019</b>	<b>\$53,455</b>	<b>\$53,931</b>	<b>\$54,446</b>
Cumulative Cash Flow	(\$345,756)	(\$292,737)	(\$239,282)	(\$185,351)	(\$130,905)

Year:	5	6	7	8	9
\$300 per SREC	\$34,097	\$33,756	\$33,419	\$33,085	\$32,754
Energy Bill Savings	\$21,268	\$22,213	\$23,201	\$24,232	\$25,309
Installation, Operation & Maintenance Costs	(\$363)	(\$367)	(\$370)	(\$374)	(\$378)
<b>Total Annual Cash Flow</b>	<b>\$55,002</b>	<b>\$55,602</b>	<b>\$56,250</b>	<b>\$56,943</b>	<b>\$57,685</b>
Cumulative Cash Flow	(\$75,903)	(\$20,301)	\$35,949	\$92,892	\$150,577

Year:	10	11	12	13	14
\$300 per SREC	\$32,426	\$0	\$0	\$0	\$0
Energy Bill Savings	\$26,434	\$27,609	\$28,836	\$30,118	\$31,457
Installation, Operation & Maintenance Costs	(\$381)	(\$385)	(\$359)	(\$393)	(\$397)
<b>Total Annual Cash Flow</b>	<b>\$58,479</b>	<b>\$27,224</b>	<b>\$28,447</b>	<b>\$29,725</b>	<b>\$31,060</b>
Cumulative Cash Flow	\$209,056	\$236,280	\$264,727	\$294,452	\$325,512

Year:	15	16	17	18	19
\$300 per SREC	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$32,855	\$34,315	\$35,841	\$37,433	\$39,098
Installation, Operation & Maintenance Costs	(\$401)	(\$405)	(\$409)	(\$413)	(\$417)
<b>Total Annual Cash Flow</b>	<b>\$32,454</b>	<b>\$33,910</b>	<b>\$35,432</b>	<b>\$37,020</b>	<b>\$38,681</b>
Cumulative Cash Flow	\$357,966	\$391,876	\$427,308	\$464,328	\$503,009

Year:	20	21	22	23	24	25
\$300 per SREC	\$0	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$40,836	\$42,651	\$44,546	\$46,527	\$48,594	\$50,755
Installation, Operation & Maintenance Costs	(\$421)	(\$426)	(\$430)	(\$434)	(\$439)	(\$443)
<b>Total Annual Cash Flow</b>	<b>\$40,415</b>	<b>\$42,225</b>	<b>\$44,116</b>	<b>\$46,093</b>	<b>\$48,155</b>	<b>\$50,312</b>
Cumulative Cash Flow	\$543,424	\$585,649	\$629,765	\$675,858	\$724,013	\$774,325

## Disclaimers & Assumptions

### Operation, Maintenance, and Inflation Rates

This estimate assumes the following system operation, maintenance and inflation rates:

System Life:	25 years
Operation & Maintenance:	0.10% of system cost per annum
PV Degradation:	1.00% per annum
Estimated Inverter Life:	15 years
O&M Inflation Rate:	1.0% per annum
Inverter Replacement Inflation Rate:	1.0% per annum

### System Size Ratings & Performance

There are three methods commonly used to rate PV system size: STC, PTC and CEC. The Standard Test Condition rating ("STC" also called "DC" or "nameplate") assumes a standard set of optimal operating conditions. The STC rating is most often used by manufacturers to classify the power output of PV modules. The PV-USA Test Condition ("PTC") and California Energy Commission ("CEC") ratings were designed to approximate system performance in more realistic operating conditions.

The Energy production for the first year is based on PVWatts Version 2. To calculate the system's energy production for any future year, the expected degradation in system performance is included (See "PV Degradation", in table above).

## Tax Credits & Deductions

Income tax rate assumed: 42.00% (Federal 33.00% - State: 9.00%)

To calculate the estimated cash flow in this proposal, our analysis used these tax rates. We should stress that we cannot provide tax or investment guidance. You should consult your tax preparer or investment adviser for these services. This analysis calculates the cash flows based only on the assumptions entered into the proposal.

This analysis assumes Federal Income Tax is not applied to any rebates. Therefore, the basis for the Federal ITC is the installation cost less 100% of any and all rebates.

### Commercial:

In calculating the cash flow, our analysis assumes that your business' utility expense is tax deductible. Since your utility bill will be reduced by installing the solar energy system, the resulting tax deduction is similarly reduced. Our analysis takes this into account.

It also assumes that when you install your solar energy system, you will be able to receive tax benefits from the investment tax credit, depreciation of the equipment, annual maintenance expense, and interest used in financing. Unlike a residential system, the financing does not have to be secured by real estate in order for the interest to qualify as a tax deduction.

MACRS Depreciation: Any commercial entity that invests in or purchases qualified solar energy property may use the Modified Accelerated Cost Recovery System (MACRS) accelerated depreciation schedule: Year 1=20.00%, Year 2=32.00%, Year 3=19.20%, Year 4=11.52%, Year 5=11.52%, Year 6=5.76%.

This analysis assumes Federal Income Tax is not applied to any state or local incentives. Therefore, the basis for depreciation is the installation cost less 50% of any Federal energy tax credits less 100% of any and all state or local incentives received in year 0.

See IRS Publications 946 and 587.

In this analysis, year 0 is the year in which the solar energy system is installed. Our analysis assumes that you will benefit from the Investment Tax Credit in year 0 (by knowing you won't have to pay as much tax), though you apply for it in year 1.

For all following years, tax deductions are applied to the year in which they occurred. The tax effect of deductions in year 1 are applied to year 1, and so forth.

## (Net) Energy Bill Savings

For an individual, electric bills are not usually deductible against income taxes.

For a business, electric bills are usually deductible against income taxes. If an income tax rate is defined, the cash flow displays a "Net" Energy Bill Savings line item which is the Energy Bill Savings less the loss in tax deduction due to the PV system's lowering of the electric bill. Cost inflation for the utility rate and degradation of system performance are also taken into account.

## Average Monthly Utility Savings

"Average Monthly Utility Savings" is the average monthly (Net) Energy Bill Savings expected over the system life. This takes into account utility rate inflation and any expected degradation in system performance. This estimate has not assumed any changes in the amount or timing in your building's energy use.

## Rate of Return (IRR) on Cash Invested

"Rate of Return on Cash Invested" (also called "Internal Rate of Return" or "IRR") is the annual compounded rate of return that the cash flows (savings, incentives, tax benefits, etc.) bring based upon the net cash invested in the year of installation ("Year 0"). In financial math terms, IRR is the discount rate required to make the sum of the present values of each annual cash flow equal zero. If you financed your system 100%, IRR does not apply since you did not actually invest cash.

## Total Life-Cycle Payback

"Total Life-Cycle Payback" is the total cash flows (savings, incentives, tax benefits, etc.) for all years after installation as a percentage of the net cash invested in the year of installation ("Year 0"). This ROI calculation is not adjusted for inflation or the time-value of money.

## Levelized Cost of Energy

"Levelized Cost of Energy" (or LCOE) is an approximation of the average cost of energy from your solar system (\$/kWh). To determine LCOE, the system Net Cost (\$ in the installation year) is divided by the amount of energy produced (kWh) over the system life (years). For this calculation, energy produced over system life is limited to the annual energy consumption of the building times the system life in years. The Net Cost does not include incentives which may materialize in later years, such as tax credits or deductions or production rebates. This calculation is not adjusted for the time-value of money.

## Environmental Analysis

CO<sub>2</sub> gas emissions avoided per passenger via various travel methods:

Travel Method	Emissions / mile
Small Car	.59 pounds
Medium Car	1.10 pounds
SUV/4 Wheel Drive	1.57 pounds
Airplane (Boeing 747)	0.97 pounds

Air travel average USA capacity.

Tree offset calculation is based on a tree planted in the humid tropics absorbing on average 50 pounds (22 kg) of carbon dioxide annually over 40 years - each tree will absorb 1 ton of CO<sub>2</sub> over its lifetime; but as trees grow, they compete for resources and some may die or be destroyed - not all will achieve their full carbon sequestration potential. This calculator assumes that 5 trees should be planted to ensure that at least one lives to 40 years or that their combined sequestration equals 1 ton.

General waste is based on the USA average carbon dioxide emission equivalent of 1,010 pounds per person per year.

Sources: [Sightline Institute](#), [Trees for the Future](#) and [USA Environmental Protection Agency](#)

## Electric Utility Rates & Assumptions

Utility:	National Grid
Rate Name (Post Installation):	G 1 @ 0.135
Annual Inflation:	5.5% (assumed)

## Utility Electric Rate Inflation: Historical References

National Averages: In 2009, the average retail electricity price for all customers across the United States rose to 9.83 cents per kWh, a small increase over 2008. Over the two year period though, from 2007 to 2009, the average retail price rose 7.7 percent.

See the following Dept of Energy source for more detail on regional and state inflation patterns.

Source: [http://www.eia.doe.gov/cneaff/electricity/esr/esr\\_sum.html](http://www.eia.doe.gov/cneaff/electricity/esr/esr_sum.html)

## Summary

**Customer**

1141 Brayton Ave. Somerset MA  
 1141 Brayton Ave. Somerset MA

**Site Address**

Somerset, MA 02726

**Company Contact**

Roland Moulin  
 Senior Sales Executive - Solar  
 Munro Solar  
 33 Commercial St.,  
 Raynham, MA 02767

### 25 Year Financial Analysis

Utility Savings Over Initial Term	\$836,574
	\$2,789 / mo (avg)
Payback Period	6-7 years
Total Life-Cycle Payback (Cash Flow compared to Net Cost)	343%
Rate of Return on Cash Invested	14.9%
Levelized Cost of Solar Energy	\$0.123 / kWh

### Cost Breakdown

Installer Contract Cost	\$345,756	(\$3.46/watt DC, \$4.05/watt AC)
Net Cost (year of installation)	\$345,756	(\$3.46/watt DC, \$4.05/watt AC)
\$300 per SREC	(\$359,113)	
Net Cost (all years)	(\$13,357)	(-\$0.13/watt DC, -\$0.16/watt AC)

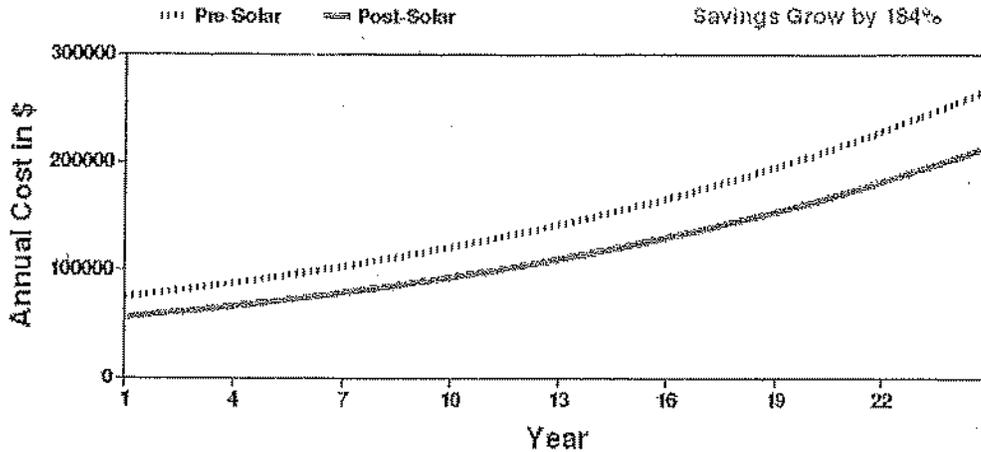
### System Description

Total System Size	99.905 kW DC Power (STC) / 85.361 kW AC Power (CEC)	
Estimated Annual Production	126,455 kWh	
PV Panel Description	Qty. 377 - LG Electronics Solar Cell Division Model: LG265S1C-G3	
Inverters	Qty. 1 - Solectria Renewables Model: PVI82kW-208	

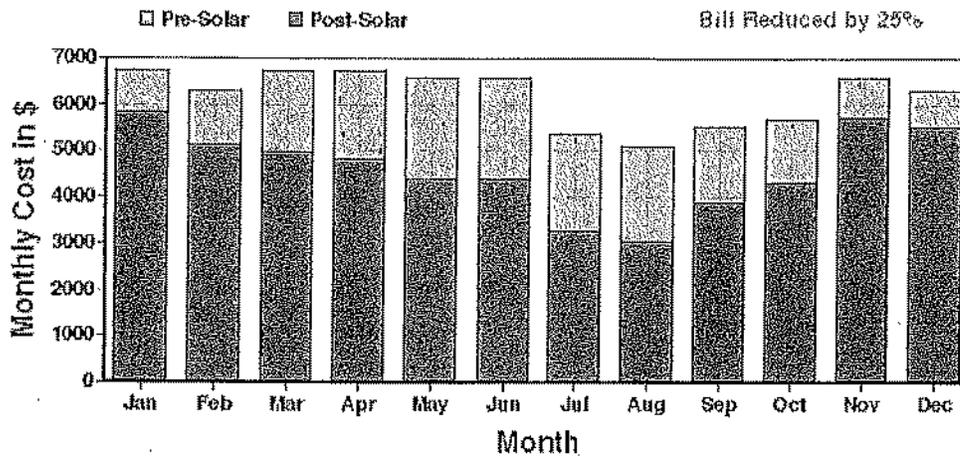
## Energy Analysis

Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

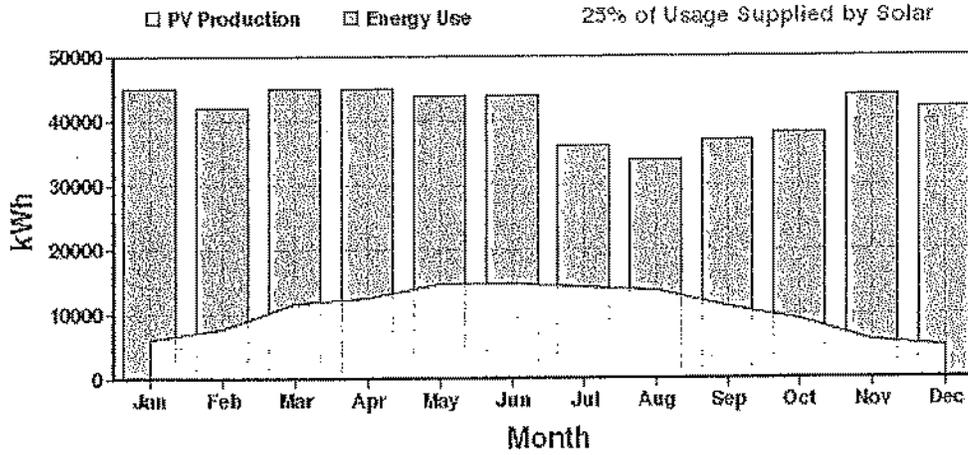
### Annual Electricity Bill Savings Over Time



### Monthly Electricity Bill Savings



### Monthly Electricity Use and Amount Supplied by Solar



Assumptions: Post-Solar Electric Rate Schedule for National Grid is G 1 @ 0.135 Annual utility inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.

## Energy Bill Estimate

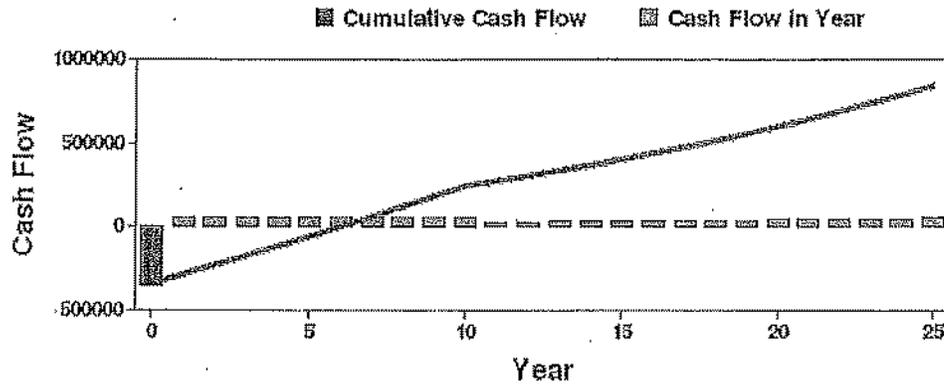
The following energy bill estimate is without any tax effects applied.

(kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Usage without Solar	45.0k	42.0k	45.0k	45.0k	44.0k	44.0k	36.0k	34.0k	37.0k	38.0k	44.0k	42.0k	496k
Solar Production	6,119	7,743	11.7k	12.6k	14.6k	14.6k	14.2k	13.6k	11.1k	9,191	5,819	5,120	126k
Utility Usage with Solar	38.9k	34.3k	33.3k	32.4k	29.4k	29.4k	21.8k	20.4k	25.9k	28.8k	38.2k	36.9k	370k
(Cost)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Bill without Solar*	\$6,730	\$6,281	\$6,730	\$6,730	\$6,580	\$6,580	\$5,384	\$5,085	\$5,533	\$5,683	\$6,580	\$6,281	\$74.2k
Utility Bill with Solar*	\$5,814	\$5,123	\$4,978	\$4,840	\$4,399	\$4,391	\$3,262	\$3,045	\$3,879	\$4,308	\$5,710	\$5,515	\$55.3k
Utility Bill Savings	\$916	\$1,158	\$1,752	\$1,890	\$2,181	\$2,189	\$2,122	\$2,040	\$1,654	\$1,375	\$870	\$766	\$18.9k

\*includes utility rate increase of 5.50%

## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



### Financial Summary

Utility Savings Over Initial Term	\$836,574
Average Monthly Utility Savings	\$2,789 (over system life)
Net Cost (In year of installation)	\$345,756
Payback Period	6-7 years
Rate of Return on Cash Invested	14.9%
Total Life-Cycle Payback (Cash flow compared to Net Cost)	343%
Levelized Cost of Solar Energy (Net Cost / lifetime energy production)	\$0.123 / kWh

## Environmental Impact Analysis

Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by **2,166 tons of CO2**  
(Over 25 years)

#### Equivalent CO2 Reductions

Small Car:	7,340,678 miles
Medium Car:	3,937,273 miles
SUV:	2,758,589 miles
Air Miles:	4,464,948 miles
Trees Planted:	86,620 trees planted
CO2 from Trash & Waste:	3,937 persons

## Cash Flow by Year

The following table of estimated cash flows includes any tax effects, rate and cost inflation and other time-related cash flow factors. Refer to the Disclaimers & Assumptions section (below) for further clarification.

Year:	0	1	2	3	4
\$300 per SREC	\$0	\$37,557	\$37,181	\$36,810	\$36,442
Energy Bill Savings	\$0	\$18,913	\$19,754	\$20,632	\$21,549
Installation, Operation & Maintenance Costs	(\$345,756)	(\$349)	(\$352)	(\$356)	(\$359)
<b>Total Annual Cash Flow</b>	<b>(\$345,756)</b>	<b>\$56,121</b>	<b>\$56,583</b>	<b>\$57,086</b>	<b>\$57,632</b>
Cumulative Cash Flow	(\$345,756)	(\$289,635)	(\$233,052)	(\$175,966)	(\$118,334)

Year:	5	6	7	8	9
\$300 per SREC	\$36,077	\$35,716	\$35,359	\$35,006	\$34,656
Energy Bill Savings	\$22,506	\$23,507	\$24,552	\$25,644	\$26,783
Installation, Operation & Maintenance Costs	(\$363)	(\$367)	(\$370)	(\$374)	(\$378)
<b>Total Annual Cash Flow</b>	<b>\$58,220</b>	<b>\$58,856</b>	<b>\$59,541</b>	<b>\$60,276</b>	<b>\$61,061</b>
Cumulative Cash Flow	(\$80,114)	(\$1,258)	\$58,283	\$118,559	\$179,620

Year:	10	11	12	13	14
\$300 per SREC	\$34,309	\$0	\$0	\$0	\$0
Energy Bill Savings	\$27,974	\$29,217	\$30,516	\$31,872	\$33,289
Installation, Operation & Maintenance Costs	(\$381)	(\$385)	(\$389)	(\$393)	(\$397)
<b>Total Annual Cash Flow</b>	<b>\$61,902</b>	<b>\$28,832</b>	<b>\$30,127</b>	<b>\$31,479</b>	<b>\$32,892</b>
Cumulative Cash Flow	\$241,522	\$270,354	\$300,481	\$331,960	\$364,852

Year:	15	16	17	18	19
\$300 per SREC	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$34,768	\$36,314	\$37,928	\$39,614	\$41,376
Installation, Operation & Maintenance Costs	(\$401)	(\$405)	(\$409)	(\$413)	(\$417)
<b>Total Annual Cash Flow</b>	<b>\$34,367</b>	<b>\$35,909</b>	<b>\$37,519</b>	<b>\$39,201</b>	<b>\$40,959</b>
Cumulative Cash Flow	\$399,219	\$435,128	\$472,647	\$511,848	\$552,807

Year:	20	21	22	23	24	25
\$300 per SREC	\$0	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$43,214	\$45,135	\$47,141	\$49,237	\$51,426	\$53,711
Installation, Operation & Maintenance Costs	(\$421)	(\$426)	(\$430)	(\$434)	(\$439)	(\$443)
<b>Total Annual Cash Flow</b>	<b>\$42,793</b>	<b>\$44,709</b>	<b>\$46,711</b>	<b>\$48,803</b>	<b>\$50,987</b>	<b>\$53,268</b>
Cumulative Cash Flow	\$595,600	\$640,309	\$687,020	\$735,823	\$786,810	\$840,078

## Disclaimers & Assumptions

### Operation, Maintenance, and Inflation Rates

This estimate assumes the following system operation, maintenance and inflation rates:

System Life:	25 years
Operation & Maintenance:	0.10% of system cost per annum
PV Degradation:	1.00% per annum
Estimated Inverter Life:	15 years
O&M Inflation Rate:	1.0% per annum
Inverter Replacement Inflation Rate:	1.0% per annum

### System Size Ratings & Performance

There are three methods commonly used to rate PV system size: STC, PTC and CEC. The Standard Test Condition rating ("STC" also called "DC" or "nameplate") assumes a standard set of optimal operating conditions. The STC rating is most often used by manufacturers to classify the power output of PV modules. The PV-USA Test Condition ("PTC") and California Energy Commission ("CEC") ratings were designed to approximate system performance in more realistic operating conditions.

The Energy production for the first year is based on PVWatts Version 2. To calculate the system's energy production for any future year, the expected degradation in system performance is included (See "PV Degradation", in table above).

## Tax Credits & Deductions

Income tax rate assumed: 42.00% (Federal 33.00% - State: 9.00%)

To calculate the estimated cash flow in this proposal, our analysis used these tax rates. We should stress that we cannot provide tax or investment guidance. You should consult your tax preparer or investment adviser for these services. This analysis calculates the cash flows based only on the assumptions entered into the proposal.

This analysis assumes Federal income Tax is not applied to any rebates. Therefore, the basis for the Federal ITC is the installation cost less 100% of any and all rebates.

### Commercial:

In calculating the cash flow, our analysis assumes that your business' utility expense is tax deductible. Since your utility bill will be reduced by installing the solar energy system, the resulting tax deduction is similarly reduced. our analysis takes this into account.

It also assumes that when you install your solar energy system, you will be able to receive tax benefits from the investment tax credit, depreciation of the equipment, annual maintenance expense, and interest used in financing. Unlike a residential system, the financing does not have to be secured by real estate in order for the interest to qualify as a tax deduction.

MACRS Depreciation: Any commercial entity that invests in or purchases qualified solar energy property may use the Modified Accelerated Cost Recovery System (MACRS) accelerated depreciation schedule: Year 1=20.00%, Year 2=32.00%, Year 3=19.20%, Year 4=11.52%, Year 5=11.52%, Year 6=5.76%.

This analysis assumes Federal income Tax is not applied to any state or local incentives. Therefore, the basis for depreciation is the installation cost less 50% of any Federal energy tax credits less 100% of any and all state or local incentives received in year 0.

See IRS Publications 946 and 587.

In this analysis, year 0 is the year in which the solar energy system is installed. Our analysis assumes that you will benefit from the investment Tax Credit in year 0 (by knowing you won't have to pay as much tax), though you apply for it in year 1.

For all following years, tax deductions are applied to the year in which they occurred. The tax effect of deductions in year 1 are applied to year 1, and so forth.

## (Net) Energy Bill Savings

For an individual, electric bills are not usually deductible against income taxes.

For a business, electric bills are usually deductible against income taxes. If an income tax rate is defined, the cash flow displays a "Net" Energy Bill Savings line item which is the Energy Bill Savings less the loss in tax deduction due to the PV system's lowering of the electric bill. Cost inflation for the utility rate and degradation of system performance are also taken into account.

## Average Monthly Utility Savings

"Average Monthly Utility Savings" is the average monthly (Net) Energy Bill Savings expected over the system life. This takes into account utility rate inflation and any expected degradation in system performance. This estimate has not assumed any changes in the amount or timing in your building's energy use.

## Rate of Return (IRR) on Cash Invested

"Rate of Return on Cash Invested" (also called "Internal Rate of Return" or "IRR") is the annual compounded rate of return that the cash flows (savings, incentives, tax benefits, etc.) bring based upon the net cash invested in the year of installation ("Year 0"). In financial math terms, IRR is the discount rate required to make the sum of the present values of each annual cash flow equal zero. If you financed your system 100%, IRR does not apply since you did not actually invest cash.

## Total Life-Cycle Payback

"Total Life-Cycle Payback" is the total cash flows (savings, incentives, tax benefits, etc.) for all years after installation as a percentage of the net cash invested in the year of installation ("Year 0"). This ROI calculation is not adjusted for inflation or the time-value of money.

## Levelized Cost of Energy

"Levelized Cost of Energy" (or LCOE) is an approximation of the average cost of energy from your solar system (\$/kWh). To determine LCOE, the system Net Cost (\$ in the installation year) is divided by the amount of energy produced (kWh) over the system life (years). For this calculation, energy produced over system life is limited to the annual energy consumption of the building times the system life in years. The Net Cost does not include incentives which may materialize in later years, such as tax credits or deductions or production rebates. This calculation is not adjusted for the time-value of money.

## Environmental Analysis

CO<sub>2</sub> gas emissions avoided per passenger via various travel methods:

Travel Method	Emissions / mile
Small Car	.59 pounds
Medium Car	1.10 pounds
SUV/4 Wheel Drive	1.57 pounds
Airplane (Boeing 747)	0.97 pounds

Air travel average USA capacity.

Tree offset calculation is based on a tree planted in the humid tropics absorbing on average 50 pounds (22 kg) of carbon dioxide annually over 40 years - each tree will absorb 1 ton of CO<sub>2</sub> over its lifetime; but as trees grow, they compete for resources and some may die or be destroyed - not all will achieve their full carbon sequestration potential. This calculator assumes that 5 trees should be planted to ensure that at least one lives to 40 years or that their combined sequestration equals 1 ton.

General waste is based on the USA average carbon dioxide emission equivalent of 1,010 pounds per person per year.

Sources: [Sightline Institute](#), [Trees for the Future](#) and [USA Environmental Protection Agency](#)

## Electric Utility Rates & Assumptions

Utility:	National Grid
Rate Name (Post Installation):	G 1 @ 0.135
Annual Inflation:	5.5% (assumed)

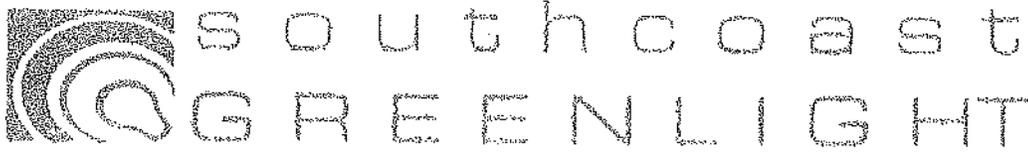
## Utility Electric Rate Inflation: Historical References

National Averages: In 2009, the average retail electricity price for all customers across the United States rose to 9.83 cents per kWh, a small increase over 2008. Over the two year period though, from 2007 to 2009, the average retail price rose 7.7 percent.

See the following Dept of Energy source for more detail on regional and state inflation patterns.

Source: [http://www.eia.doe.gov/cneaf/electricity/esr/esr\\_sum.html](http://www.eia.doe.gov/cneaf/electricity/esr/esr_sum.html)

# WESTINGHOUSE PHOTOVOLTAIC



CLEAN ENERGY. BRIGHT FUTURE.

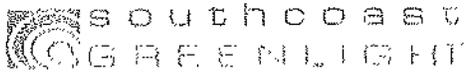
527 WILBUR AVE.  
SWANSEA, MA. 02777

100 kW PV SYSTEM PROPOSAL - ROOF MOUNT

MARC FURTADO  
SOMERSET SCHOOL DISTRICT  
MIDDLE SCHOOL  
1141 BRAYTON AVE.  
SOMERSET, MA 02726  
508.324.3100

MIDDLE SCHOOL





Proposal prepared for Marc Furtado

Marc Furtado  
Somerset School District  
Middle School, 1141 Brayton Ave.  
Somerset, MA 02726

*Mailing Address:*

Marc Furtado  
Somerset School District  
580 Whetstone Hill Rd.  
Somerset, MA 02726

Dear Marc Furtado

We are pleased to submit a proposal for your solar electric energy system. Solar electric systems are environmentally friendly and reduce your reliance on energy from the utility. Instead of renting your electricity from your utility, you can now own your own clean energy production.

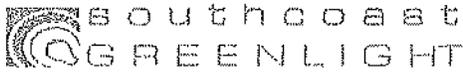
We have designed a system that achieves the best energy cost savings for you. This includes an analysis of your energy requirements, a study of the best energy production design and the application of any available state and federal rebates.

We are committed to a quality installation and to ensuring your total satisfaction with our products and service. The next step is signing the necessary agreements so we can reserve your rebate and begin the engineering and permitting processes. This proposal is valid for 30 days.

We look forward to helping you achieve energy independence, make a positive environmental impact, and ensure a great investment. Please contact us with any questions.

Gary Cyr  
Tel: 508-673-1100

FR 000071



Proposal prepared for Marc Furtado

## Summary

<b>Customer</b>	<b>Site Address</b>	<b>Mailing Address</b>	<b>Company Contact</b>
Marc Furtado	Middle School, 1141 Brayton Ave.	580 Whetstone Hill Rd. Somerset, MA 02726	Gary Cyr
Somerset School District	Somerset, MA 02726		Southcoast Greenlight
508-324-3100			527 Wilbur Ave.
furtadom@SBRegional.org			Swansea, MA 02777

### 25 Year Financial Analysis

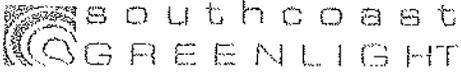
Utility Savings Over Initial Term	\$742,315
	\$2,474 / mo (avg)
Payback Period	3-4 years
Total Life-Cycle Payback (Cash Flow compared to Net Cost)	397%
Rate of Return on Cash Invested	23.8%
Levelized Cost of Solar Energy	\$0.101 / kWh

### Cost Breakdown

<b>Installer Contract Cost</b>	<b>\$349,547</b>	<b>(\$3.50/watt DC, \$4.05/watt AC)</b>
Federal Tax Credit/Tax Impact	(\$104,864)	
<b>Net Cost (year of installation)</b>	<b>\$244,683</b>	<b>(\$2.45/watt DC, \$2.83/watt AC)</b>
MACRS Depreciation	(\$124,788)	
Minimum Standard S-REC program	(\$206,129)	
<b>Net Cost (all years)</b>	<b>(\$86,234)</b>	<b>(-\$0.86/watt DC, -\$1.00/watt AC)</b>

### System Description

Total System Size	100.000 kW DC Power (STC) / 86.400 kW AC Power (CEC)
Estimated Annual Production	108,878 kWh
PV Panel Description	Qty. 400 - Westinghouse Solar Model: WTW-250-1-AC2-D-B
Inverters	Qty. 1 - Solectria Renewables Model: PVI100kW-208

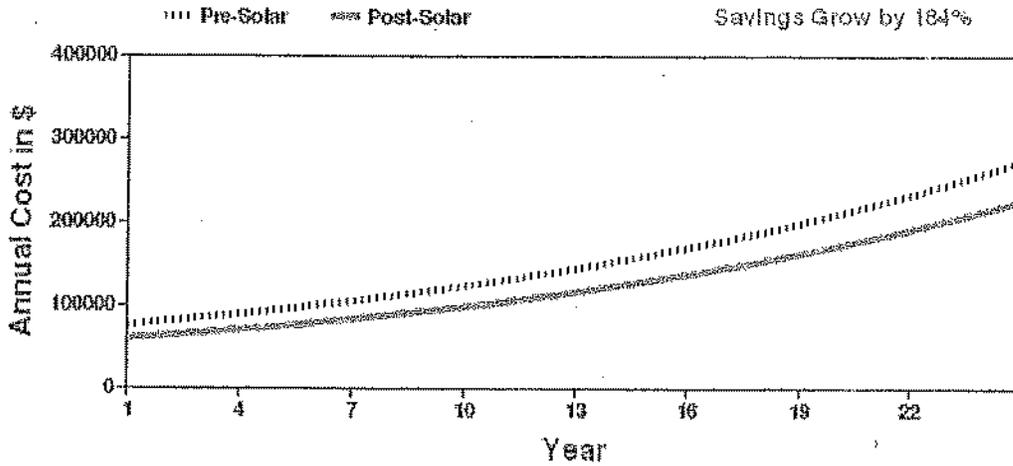


Proposal prepared for Marc Furtado

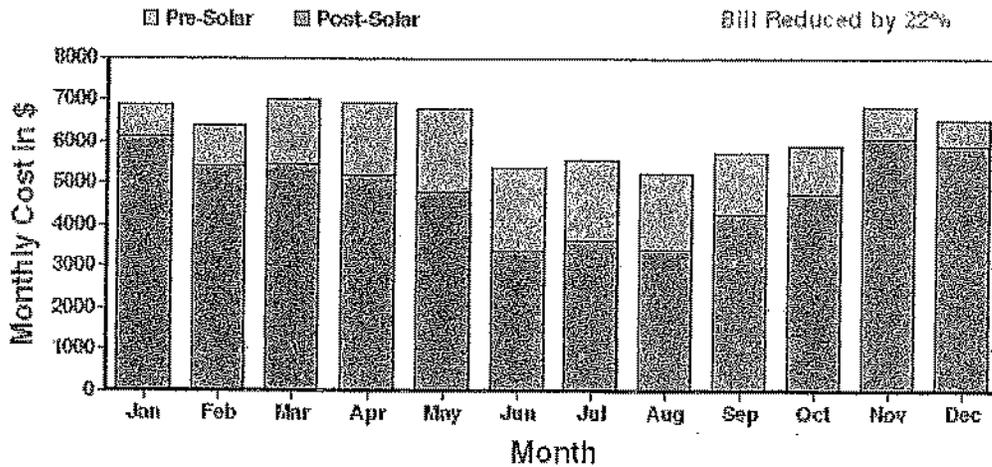
## Energy Analysis

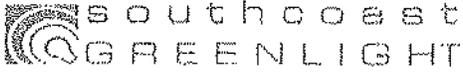
Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

### Annual Electricity Bill Savings Over Time



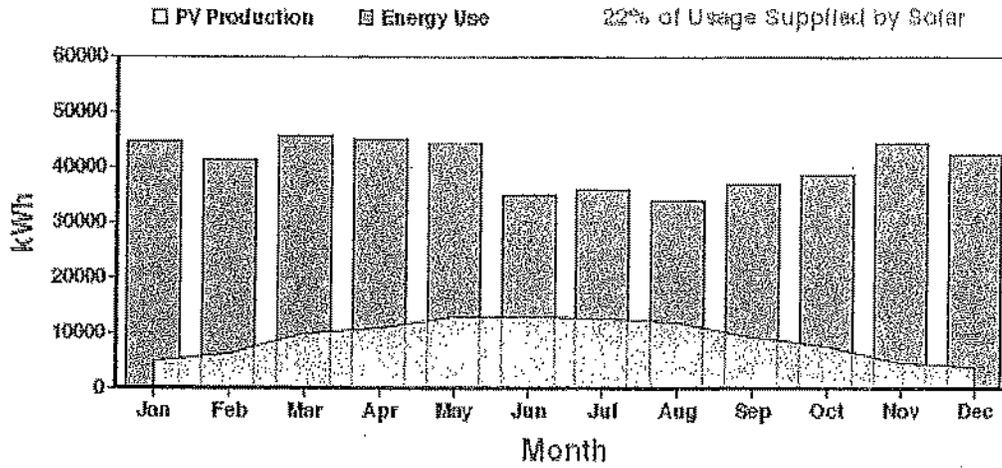
### Monthly Electricity Bill Savings





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### Monthly Electricity Use and Amount Supplied by Solar



Assumptions: Post-Solar Electric Rate Schedule for National Grid is Regular Residential (Fixed) (Rate Code: R-1) Annual utility inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.



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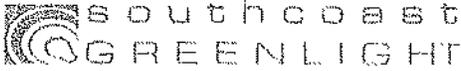
## Energy Bill Estimate

The following energy bill estimate is without any tax effects applied.

(kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Usage without Solar	44.7k	41.5k	45.5k	44.9k	44.2k	35.0k	36.1k	34.0k	37.1k	38.5k	44.3k	42.3k	488k
Solar Production	4,950	6,435	10.1k	11.1k	13.0k	13.0k	12.5k	11.9k	9,495	7,650	4,703	4,050	109k
Utility Usage with Solar	39.8k	35.1k	35.4k	33.8k	31.2k	22.0k	23.6k	22.1k	27.6k	30.9k	39.6k	38.3k	379k
(Cost)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Bill without Solar*	\$6,889	\$6,396	\$7,012	\$6,920	\$6,812	\$5,394	\$5,563	\$5,240	\$5,718	\$5,933	\$6,827	\$6,519	\$75.2k
Utility Bill with Solar*	\$6,126	\$5,404	\$5,459	\$5,210	\$4,814	\$3,386	\$3,632	\$3,405	\$4,254	\$4,754	\$6,102	\$5,895	\$58.4k
Utility Bill Savings	\$763	\$992	\$1,553	\$1,710	\$1,998	\$2,008	\$1,931	\$1,835	\$1,464	\$1,179	\$725	\$624	\$16.8k

\*Includes utility rate increase of 5.50%

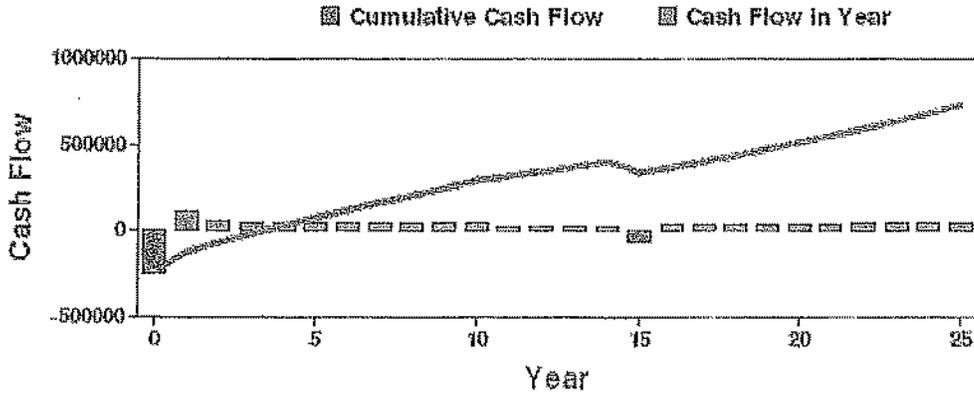
FR 000075



Proposal prepared for Marc Furtado

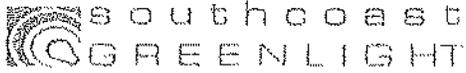
## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



### Financial Summary

Utility Savings Over Initial Term	\$742,315
Average Monthly Utility Savings	\$2,474 (over system life)
Net Cost (In year of installation)	\$244,683
Payback Period	3-4 years
Rate of Return on Cash Invested	23.8%
Total Life-Cycle Payback (Cash flow compared to Net Cost)	397%
Levelized Cost of Solar Energy (Net Cost / lifetime energy production)	\$0.101 / kWh



Proposal prepared for Marc Furtado

## Environmental Impact Analysis

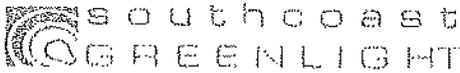
Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by 1,865 tons of CO2  
(Over 25 years)

### Equivalent CO2 Reductions

Small Car: 6,320,339 miles  
Medium Car: 3,390,000 miles  
SUV: 2,375,159 miles  
Air Miles: 3,844,330 miles  
Trees Planted: 74,580 trees planted  
CO2 from Trash & Waste: 3,390 persons



Proposal prepared for Marc Furtado

## Cost Detail & System Description

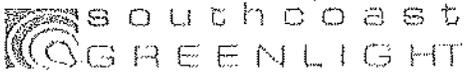
This is a summary of the cost and a description of the solar system we are quoting.

### Net Cost Detail

	<b>Gross Cost</b>	<b>\$349,547</b>
<b>Incentives Received in Year of Installation</b>		
	Federal Individual Tax Credit (30%)	(\$104,864)
	<b>Total Incentives:</b> (In year of installation)	<b>(\$104,864)</b>
	<b>Net Cost:</b> (In year of installation)	<b>\$244,683</b>
	<b>Contract Cost:</b>	<b>\$349,547</b>
	Other Cash Incentives: (In later years)	\$206,131

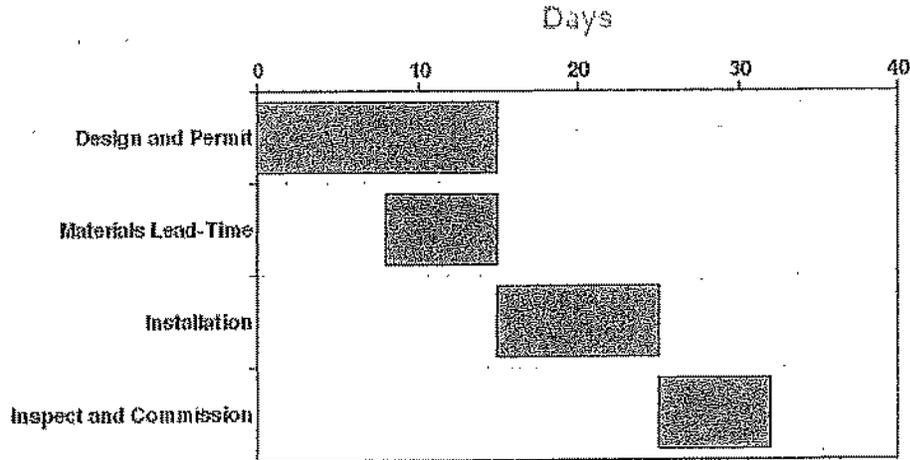
### System Description

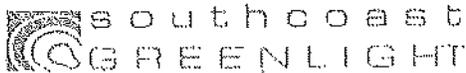
Total System Size:	100.000 kW DC Power (STC) 90.000 kW (PTC) 86.400 kW AC Power (CEC Size)	
Net Cost per Watt:	\$2.45 / Watt DC Power (STC) \$2.72 / watt (PTC) \$2.83 / watt AC Power (CEC Size)	
Estimated Annual Production:	108,878 kWh	
	<b>Array 1</b>	<b>Array 2</b>
Proposed Array Sizes (STC):	82.500 kW	17.500 kW
Number of PV Panels:	330	70
PV Panel Description:	Westinghouse Solar Model: WTW-250-1-AC2-D-B 250W DC, Polycrystalline ACPV Module	Westinghouse Solar Model: WTW-250-1-AC2-D-B 250W DC, Polycrystalline ACPV Module
Inverters:	Qty. 1 Solectria Renewables Model: PVI100kW-208 100 kW 208Vac Commercial Grid-Tied Solar PV Inverter	Qty. 0 Solectria Renewables Model: PVI100kW-208 100 kW 208Vac Commercial Grid-Tied Solar PV Inverter
Output due to Shade Factors:	90%	90%
Array Area & Orientation:	Roof Mount: 6,250 sq-ft Tilt: 5°, Azimuth: 180° (S)	Roof Mount: 6,250 sq-ft Tilt: 5°, Azimuth: 180° (S)



## Job Schedule

The job schedule provided below summarizes our schedule for meeting four key milestones.





Proposal prepared for Marc Furtado

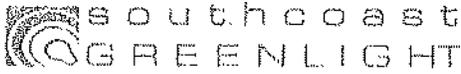
## Cash Flow by Year

The following table of estimated cash flows includes any tax effects, rate and cost inflation and other time-related cash flow factors. Refer to the Disclaimers & Assumptions section (below) for further clarification.

Year:	0	1	2	3	4
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$74,873	\$19,966	\$11,980	\$7,188
Minimum Standard S-REC program	\$0	\$21,558	\$21,342	\$21,129	\$20,917
Federal Individual Tax Credit (30%)	\$104,864	\$0	\$0	\$0	\$0
Energy Bill Savings	\$0	\$16,782	\$17,528	\$18,307	\$19,121
Installation, Operation & Maintenance Costs	(\$349,847)	(\$353)	(\$356)	(\$360)	(\$363)
<b>Total Annual Cash Flow</b>	<b>(\$244,683)</b>	<b>\$112,880</b>	<b>\$58,480</b>	<b>\$51,068</b>	<b>\$46,863</b>
Cumulative Cash Flow	(\$244,683)	(\$131,823)	(\$73,343)	(\$22,287)	\$24,576

Year:	5	6	7	8	9
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$7,188	\$3,594	\$0	\$0	\$0
Minimum Standard S-REC program	\$20,708	\$20,501	\$20,296	\$20,093	\$19,892
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$19,971	\$20,858	\$21,786	\$22,754	\$23,768
Installation, Operation & Maintenance Costs	(\$367)	(\$371)	(\$374)	(\$378)	(\$382)
<b>Total Annual Cash Flow</b>	<b>\$47,500</b>	<b>\$44,582</b>	<b>\$41,708</b>	<b>\$42,469</b>	<b>\$43,276</b>
Cumulative Cash Flow	\$72,076	\$116,658	\$158,366	\$200,835	\$244,111

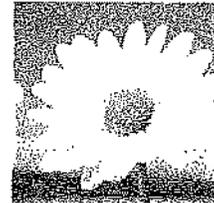
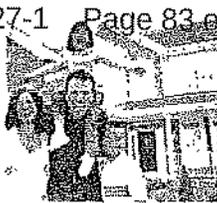
Year:	10	11	12	13	14
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$19,693	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$24,822	\$25,925	\$27,078	\$28,282	\$29,538
Installation, Operation & Maintenance Costs	(\$386)	(\$389)	(\$393)	(\$397)	(\$401)
<b>Total Annual Cash Flow</b>	<b>\$44,129</b>	<b>\$25,536</b>	<b>\$26,685</b>	<b>\$27,885</b>	<b>\$29,137</b>
Cumulative Cash Flow	\$288,240	\$313,776	\$340,461	\$368,346	\$397,483



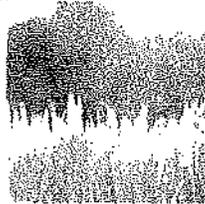
Proposal prepared for Marc Furtado

Year:	15	16	17	18	19
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$0	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$30,851	\$32,223	\$33,655	\$35,150	\$36,714
Installation, Operation & Maintenance Costs	(\$93,271)	(\$409)	(\$413)	(\$416)	(\$422)
<b>Total Annual Cash Flow</b>	<b>(\$62,420)</b>	<b>\$31,814</b>	<b>\$33,242</b>	<b>\$34,732</b>	<b>\$36,292</b>
Cumulative Cash Flow	\$335,063	\$366,877	\$400,119	\$434,851	\$471,143

Year:	20	21	22	23	24	25
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$0	\$0	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$38,345	\$40,049	\$41,830	\$43,689	\$45,631	\$47,659
Installation, Operation & Maintenance Costs	(\$426)	(\$430)	(\$435)	(\$439)	(\$443)	(\$448)
<b>Total Annual Cash Flow</b>	<b>\$37,919</b>	<b>\$39,619</b>	<b>\$41,395</b>	<b>\$43,250</b>	<b>\$45,188</b>	<b>\$47,211</b>
Cumulative Cash Flow	\$509,062	\$548,681	\$590,076	\$633,326	\$678,514	\$725,725



SUN FOR EVERYONE

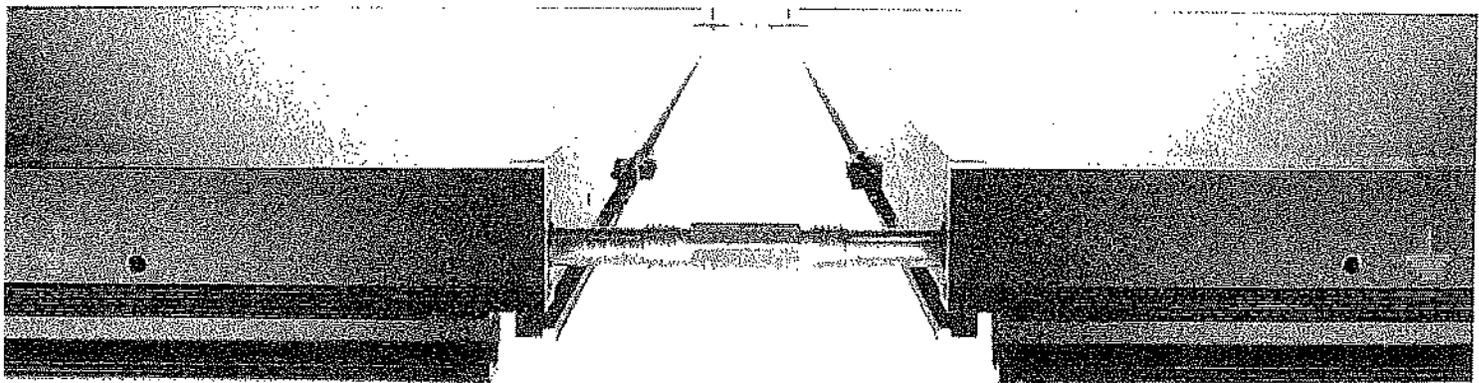


# INSTANT CONNECT® AC 245/250



For more than a century, Westinghouse has stood for reliability and innovation—developing products that deliver safe and efficient electricity, and bringing comfort and convenience to the lives of millions. Today, that tradition continues with Westinghouse Solar’s Instant Connect systems, which are safer, more powerful, and more reliable than ordinary solar power systems, while backed by the proven quality of the Westinghouse name.

Instant Connect Technology – The World’s First Fully Integrated *Plug-and-Play* Solar Power System



**Incredibly Simple.** Patented design eliminates need for separate rack systems and automates panel-to-panel grounding and electrical connections. With 80% fewer parts and 50% less labor, the system is easy to design and fast to install.

**5-25% more energy collection than ordinary solar panels.** Advanced panel technology efficiently captures and converts more of the sun’s energy into usable power.

**Reliable performance.** Integrated micro-inverter, wiring and grounding systems eliminate the hazards of exposed wiring and corrosive environmental effects, providing decades of optimal performance.

**Ruggedized construction.** Instant Connect systems are engineered to exceed wind and snow load requirements established by local building codes, enabling installations in more regions than any other rooftop solar power system.

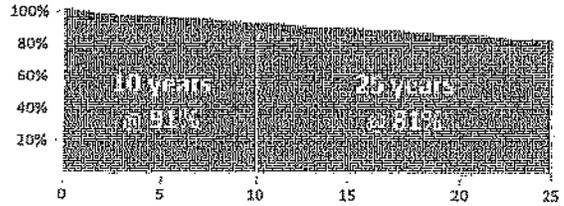
**Monitor your system anywhere in the world.** Web-based monitoring system delivers real-time energy production and savings analysis directly to your browser or smart-phone.

**Integrated Mounting Systems.** Westinghouse Solar Instant Connect panels seamlessly integrate with our sloped and flat roof mounting systems, minimizing part count and maximizing reliability.



The Westinghouse Solar Power Warranty  
 Models WTW-245-1-AC2-D-B / WTW-260-1-AC2-D-B

You have our word. Every Solar Power System is backed by the proven reliability of the Westinghouse name—for more than a century a guarantee of quality. Panel warranty provides 25 year power output warranty—10 yrs @ 91% & 25 yrs @ 81%.



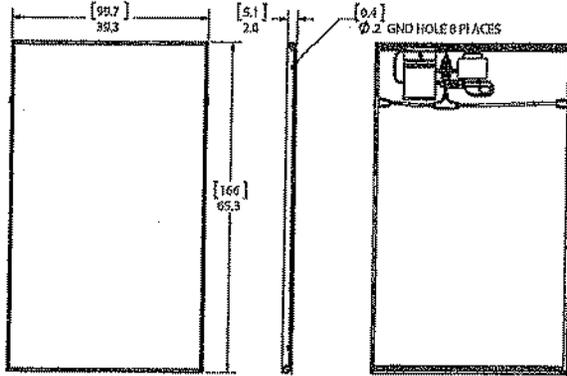
**AC Module Technical Specifications**

WTW-245-1-AC2-D-B / WTW-260-1-AC2-D-B

	AC Output @ 208 Vac	AC Output @ 240 Vac
Maximum AC Power Output	215W	215W
Nominal output current	1.0A	0.9A
Nominal voltage/range	208V/193V-229V	240V/211V-264V
Nominal frequency/range	60.0/59.3-60.6 Hz	60.0/59.3-60.6 Hz
Extended frequency/range	60.0/59.2-60.6 Hz	60.0/59.2-60.6 Hz
Power factor	>0.95	>0.95
Maximum units per 20A branch	15 (three phase)	17 (single phase)
Maximum output fault current	1.05 Arms, over 3 cycles; 25.2 Apeak, 1.74ms duration	
CEC weighted efficiency	96.0%	96.0%
Peak inverter efficiency	96.3%	96.3%
Night time power consumption	46mW	46mW
Operating temperature range	-40°C to +85°C	-40°C to +85°C
Cooling	Natural Convection - No Fans	
Enclosure environment rating	Outdoor - NEMA 6 (inverter only)	
Communication	Powerline	
Compliance	UL1741/IEEE1547, FCC Part 15 Class B CAN/CSA-C22.2 NO. 0-M91, 0.4-04, and 107.1-01	

**Mechanical Specifications - Module**

Length x Width: 65.3 x 39.3 inches / 166 x 99.7 cm  
 Thickness: 2.0 inches / 5.1 cm  
 Weight: 51.6 lbs / 23.4 kg



**Electrical Characteristics at Standard Test Conditions**

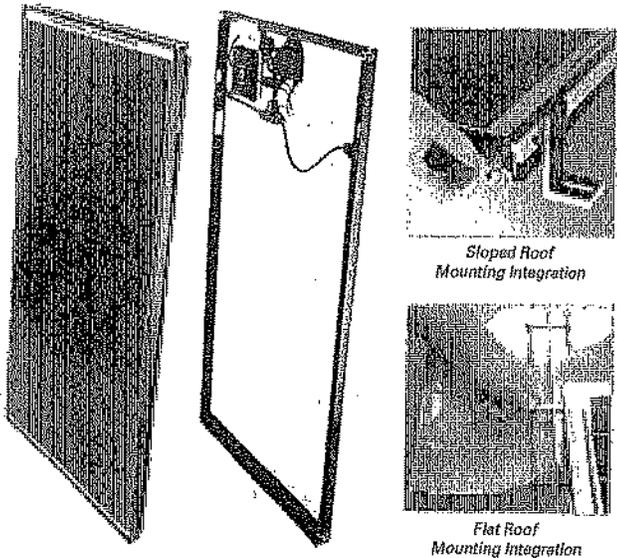
		245W	260W
Peak DC Power <sup>1</sup>	P <sub>max</sub>	245W	260W
Output Tolerance		+5%	+5%
Cell Technology		60 Cell Poly-Si, 156 x 156mm (6.14 inch)	

White back sheet for high efficiency

<sup>1</sup>Peak Power at Output Tolerances

**Mechanical Specifications - System**

	Westinghouse Solar	Ordinary Solar
Racking Hardware	Integrated	External
Module-to-Module Grounding	Integrated	External
Module-to-Module Wiring	Integrated	Separate Trunk Cable
Module-to-Module Connection	Integrated (Threaded)	External (Friction Clip)
Space Between Modules	1/8"	Up to 3"
Roof Penetrations	25% Fewer	Standard



Certified wind and snow load tested to 5400Pa

Protected by U.S. patents (7,406,800; 7,832,157 and 7,866,098)  
 Other patents pending.



1475 South Bascom Ave, Suite 101 Campbell, CA 95008  
 www.westinghousesolar.com | t: 888.395.2248



COMMERCIAL INVERTERS

- PVI 50KW
- PVI 60KW
- PVI 75KW
- PVI 85KW
- PVI 100KW

FEATURES

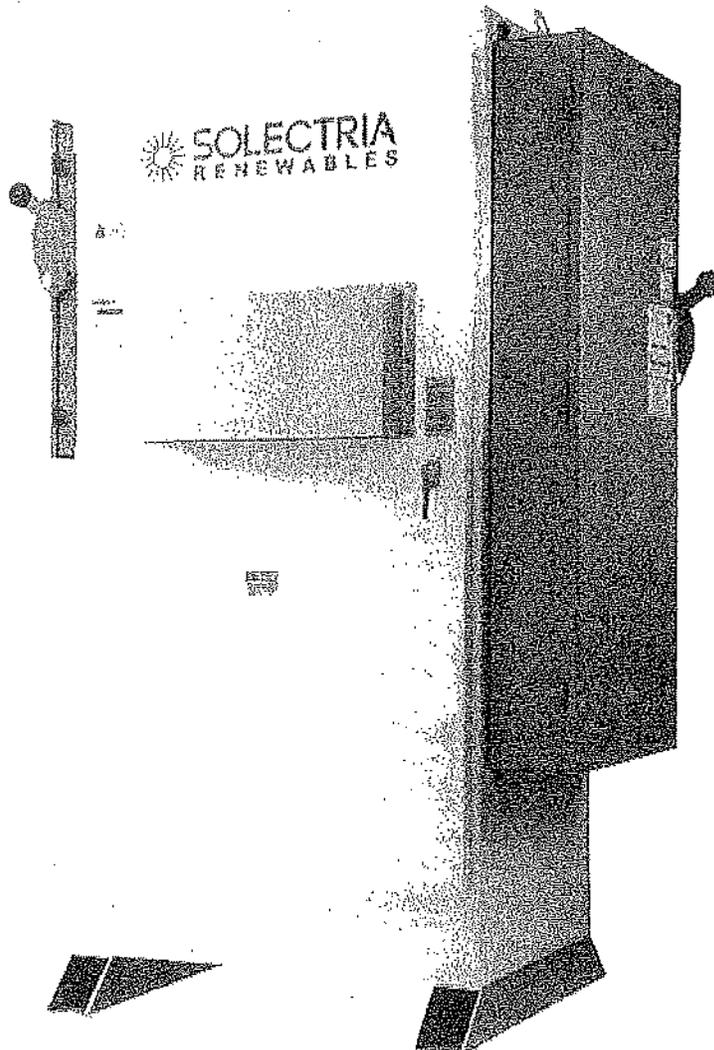
- High-efficiency and GFI protection
- 50, 60, 75, 85 and 100 kW
- Integrated AC and DC disconnects
- Transformer isolated
- 208 VAC, 240 VAC, 480 VAC or 600 VAC
- Modbus communications
- 10-character active LCD

OPTIONS

- Premium efficient models
- Fused or breaker subcombiners
- Forward facing disconnect
- Stainless steel enclosure
- Web-based monitoring
- Sub-array monitoring
- Built-in cellular connectivity
- Dust filter

OPTIONS FOR UTILITIES

- Real power curtailment
- Reactive power control
- Voltage ride through
- Frequency ride through



COMMERCIAL INVERTERS

The most customizable full-line of commercial grid-tied PV inverters available today, the PVI 50-100KW series has been utilized in projects ranging from 30kW to multi-megawatt solar farms. This series of inverters is capable of operating at 208 VAC, 240 VAC, 480 VAC, and 600 VAC and comes standard with AC and DC disconnects, transformer isolation, LCD display, and monitoring gateway. Options include premium efficient models, integrated fused or breaker subcombiners, forward facing disconnects, stainless steel enclosure, web-based and sub-array monitoring, built-in cellular connectivity, and a dust filter. AC voltage and frequency settings may be customized according to utility specifications.



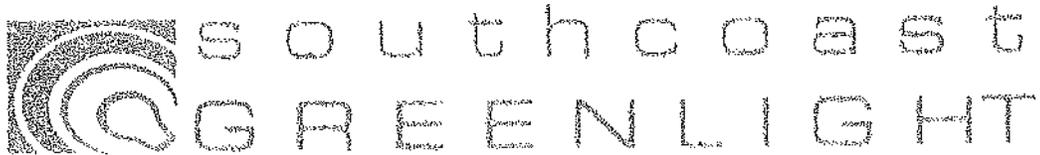
 Built for the real world

Parameter	208 VAC	240 VAC	480 VAC	600 VAC
Absolute Maximum Input Voltage	600 VDC			
MPPPT Input Voltage Range	300-500 VDC			
Maximum Operating Input Current	176 A	213 A	264 A	351 A
Nominal Output Voltage	208, 240, 480 or 600 VAC, 3-Ph (3 wire standard, 4 wire option)			
AC Voltage Range (Standard)	-12%/+10%			
Continuous Output Power	50 kW	60 kW	75 kW	85 kW
Continuous Output Current	208 VAC: 139 A 240 VAC: 120 A 480 VAC: 60 A 600 VAC: 48 A	208 VAC: 167 A 240 VAC: 144 A 480 VAC: 72 A 600 VAC: 58 A	208 VAC: 208 A 240 VAC: 180 A 480 VAC: 90 A 600 VAC: 72 A	208 VAC: 236 A 240 VAC: 205 A 480 VAC: 102 A 600 VAC: 82 A
Maximum Backfeed Current	0 A			
Nominal Output Frequency	60 Hz			
Output Frequency Range	59.3-60.5 Hz			
Power Factor	1.0			
Total Harmonic Distortion (THD)	<3%			
Peak Efficiency	208 or 240 VAC: 96.7%	208 VAC Premium (PE): --	480 or 600 VAC: 96.5%	480 VAC Premium (PE): --
CEC Efficiency	208 or 240 VAC: 96.0%	208 VAC Premium (PE): --	480 VAC: 96.0%	480 VAC Premium (PE): --
Tare Loss	3 W			
Fuses or Breakers	2-8 positions, 40-300 A			
Ambient Temperature Range (full power)	-40°F to +131°F (-40°C to +55°C)			
Storage Temperature Range	-40°F to +131°F (-40°C to +55°C)			
Relative Humidity (non-condensing)	0-95%			
Web-based Monitoring (Inverter Direct)	SolrenView			
Revenue Grade Monitoring	External			
Sub-Array Monitoring (SolZone)	2-8 zones			
Cellular Communication	SolrenView AIR			
Third Party Compatibility	Standard via Modbus			
Safety Listings & Certifications	UL 1741/IEEE 1547, IEEE 1547.1, CSA C22.2#107.1, FCC part 15 B			
Certification Agency	ETL			
Standard	5 year			
Optional	10, 15, 20 year; extended service agreement; uptime guarantee			
Transformer	Standard, fully-integrated (Internal)			
AC/DC Disconnects	Standard, fully-integrated			
Dimensions - Side Facing Disconnects (H x W x D)	78.2 in. x 50-53 in. x 33 in. (1986 mm x 1270-1346 mm x 838 mm)*			
Dimensions - Forward Facing Disconnects (H x W x D)	78.2 in. x 79-88 in. x 33 in. (1986 mm x 2007-2235 mm x 838 mm)*			
Weight	1450 lbs (659 kg)	1875 lbs (852 kg)	2070 lbs (941 kg)	
Enclosure Rating	NEMA 3R			
Enclosure Finish	Polyester powder coated steel; Optional 316 stainless steel			

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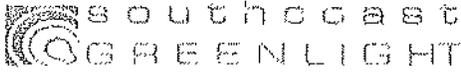


CLEAN ENERGY. BRIGHT FUTURE.

527 WILBUR AVE.  
SWANSEA, MA. 02777

200 KW PV SYSTEM PROPOSAL - ROOF MOUNT

MARC FURTADO  
SOMERSET SCHOOL DISTRICT  
NORTH ELEMENTARY SCHOOL  
580 WHETSTONE HILL RD.  
SOMERSET, MA 02726  
508.324.3100



Proposal prepared for Marc Furtado

---

Marc Furtado  
Somerset School District  
North Elementary, 580 Whetstone Hill Road  
Somerset, MA 02726

*Mailing Address:*

Marc Furtado  
Somerset School District  
580 Whetstone Hill Road  
Somerset, MA 02726

Dear Marc Furtado

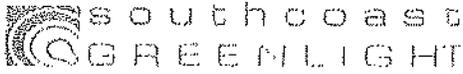
We are pleased to submit a proposal for your solar electric energy system. Solar electric systems are environmentally friendly and reduce your reliance on energy from the utility. Instead of renting your electricity from your utility, you can now own your own clean energy production.

We have designed a system that achieves the best energy cost savings for you. This includes an analysis of your energy requirements, a study of the best energy production design and the application of any available state and federal rebates.

We are committed to a quality installation and to ensuring your total satisfaction with our products and service. The next step is signing the necessary agreements so we can reserve your rebate and begin the engineering and permitting processes. This proposal is valid for 30 days.

We look forward to helping you achieve energy independence, make a positive environmental impact, and ensure a great investment. Please contact us with any questions.

Gary Cyr  
Tel: 508-673-1100



Proposal prepared for Marc Furtado

## Summary

<b>Customer</b> Marc Furtado Somerset School District 508-324-3100 furtadom@SBRegional.org	<b>Site Address</b> North Elementary, 580 Whetstone Hill Road Somerset, MA 02726	<b>Mailing Address</b> 580 Whetstone Hill Road Somerset, MA 02726	<b>Company Contact</b> Gary Cyr Southcoast Greenlight 527 Wilbur Ave. Swansea, MA 02777
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### 25 Year Financial Analysis

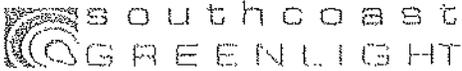
Utility Savings Over Initial Term	\$1,469,317
	\$4,898 / mo (avg)
Payback Period	3-4 years
Total Life-Cycle Payback (Cash Flow compared to Net Cost)	393%
Rate of Return on Cash Invested	23.6%
Levelized Cost of Solar Energy	\$0.101 / kWh

### Cost Breakdown

<b>Installer Contract Cost</b>	\$700,000	(\$3.50/watt DC, \$4.05/watt AC)
Federal Tax Credit/Tax Impact	(\$210,000)	
<b>Net Cost (year of installation)</b>	\$490,000	(\$2.45/watt DC, \$2.84/watt AC)
MACRS Depreciation	(\$249,900)	
Minimum Standard S-REC program	(\$412,260)	
<b>Net Cost (all years)</b>	(\$172,160)	(-\$0.86/watt DC, -\$1.00/watt AC)

### System Description

Total System Size	200.000 kW DC Power (STC) / 172.800 kW AC Power (CEC)
Estimated Annual Production	217,755 kWh
PV Panel Description	Qty. 800 - Westinghouse Solar Model: WTW-250-1-AC2-D-B
Inverters	Qty. 2 - Solectria Renewables Model: PVI100kW-208

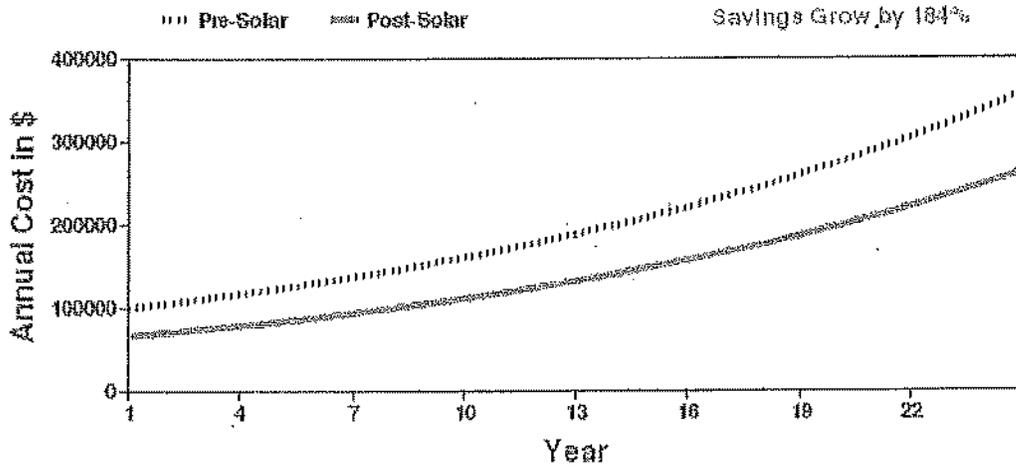


Proposal prepared for Marc Furtado

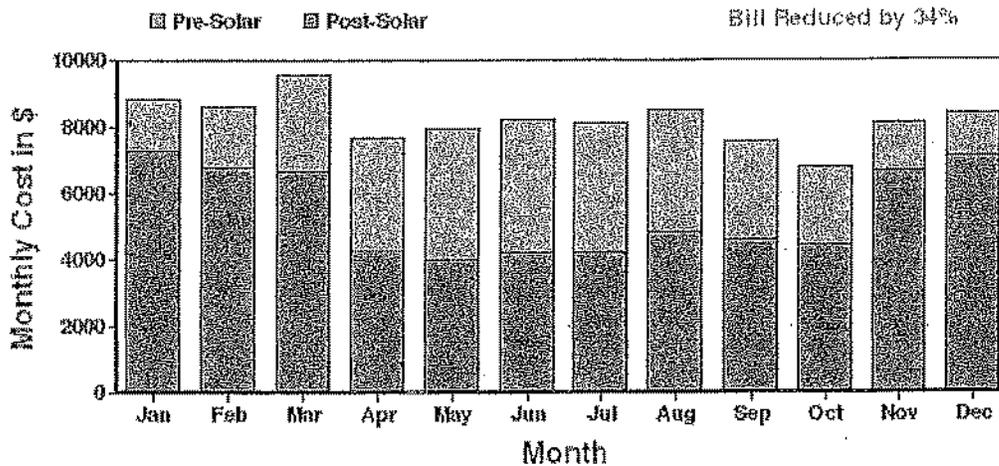
## Energy Analysis

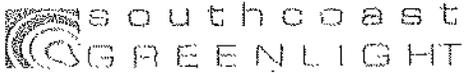
Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

### Annual Electricity Bill Savings Over Time



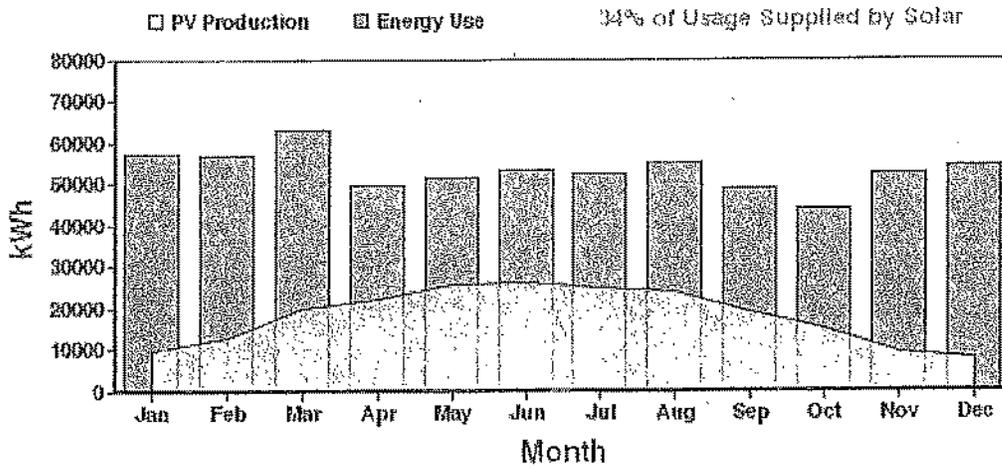
### Monthly Electricity Bill Savings



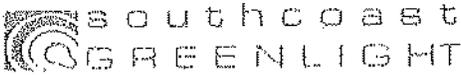


Proposal prepared for Marc Furtado

### Monthly Electricity Use and Amount Supplied by Solar



Assumptions: Post-Solar Electric Rate Schedule for National Grid Is Regular Residential (Fixed) (Rate Code: R-1) Annual utility Inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.



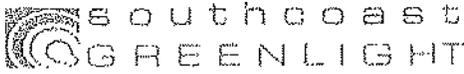
Proposal prepared for Marc Furtado

## Energy Bill Estimate

The following energy bill estimate is without any tax effects applied.

(kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Usage without Solar	57.3k	56.9k	63.3k	49.8k	51.7k	53.5k	52.5k	55.0k	49.0k	44.1k	52.5k	54.3k	640k
Solar Production	9,900	12.9k	20.2k	22.2k	25.9k	26.1k	25.1k	23.8k	19.0k	15.3k	9,405	8,100	218k
Utility Usage with Solar	47.4k	44.0k	43.1k	27.6k	25.8k	27.4k	27.4k	31.2k	30.0k	28.8k	43.1k	46.2k	422k
(Cost)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Bill without Solar*	\$8,831	\$8,629	\$9,554	\$7,675	\$7,968	\$8,245	\$8,091	\$8,476	\$7,551	\$6,798	\$8,091	\$8,368	\$98.3k
Utility Bill with Solar*	\$7,305	\$6,786	\$6,648	\$4,256	\$3,973	\$4,230	\$4,228	\$4,807	\$4,625	\$4,438	\$6,641	\$7,120	\$65.1k
Utility Bill Savings	\$1,526	\$1,843	\$2,906	\$3,419	\$3,995	\$4,015	\$3,863	\$3,669	\$2,926	\$2,358	\$1,450	\$1,248	\$33.2k

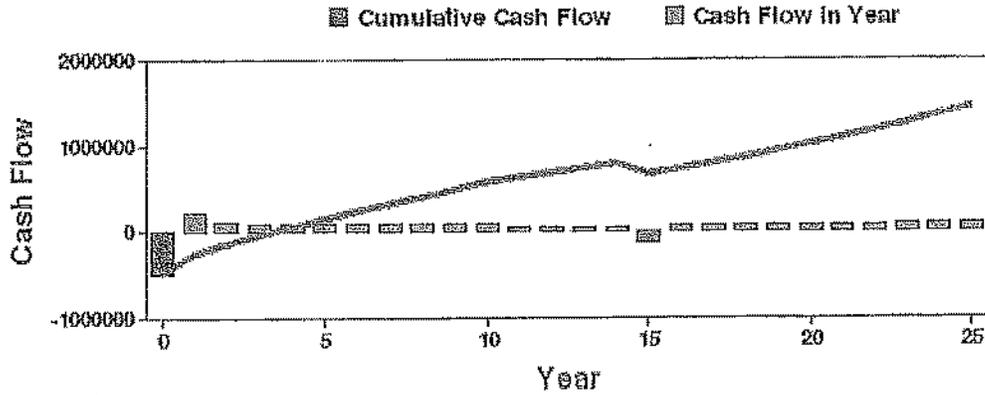
\*Includes utility rate increase of 5.50%



Proposal prepared for Marc Furtado

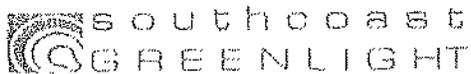
## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



### Financial Summary

Utility Savings Over Initial Term	\$1,469,317
Average Monthly Utility Savings	\$4,898 (over system life)
Net Cost (in year of installation)	\$490,000
Payback Period	3-4 years
Rate of Return on Cash Invested	23.6%
Total Life-Cycle Payback (Cash flow compared to Net Cost)	393%
Levelized Cost of Solar Energy (Net Cost / lifetime energy production)	\$0.101 / kWh



Proposal prepared for Marc Furtado

## Environmental Impact Analysis

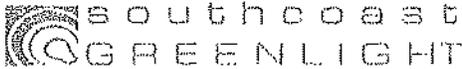
Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by 3,729 tons of CO<sub>2</sub>  
(Over 25 years)

#### Equivalent CO<sub>2</sub> Reductions

Small Car: 12,641,017 miles  
Medium Car: 6,780,182 miles  
SUV: 4,750,446 miles  
Air Miles: 7,688,866 miles  
Trees Planted: 149,164 trees planted  
CO<sub>2</sub> from Trash & Waste: 6,780 persons



Proposal prepared for Marc Furtado

## Cost Detail & System Description

This is a summary of the cost and a description of the solar system we are quoting.

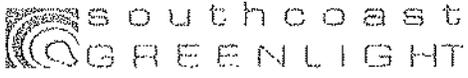
### Net Cost Detail

Gross Cost	\$700,000
<b>Incentives Received in Year of Installation</b>	
Federal Individual Tax Credit (30%)	(\$210,000)
<b>Total Incentives:</b> (In year of Installation)	<b>(\$210,000)</b>
<b>Net Cost:</b> (In year of installation)	<b>\$490,000</b>
<b>Contract Cost:</b>	<b>\$700,000</b>
Other Cash Incentives: (In later years)	\$412,261

### System Description

Total System Size:	200,000 kW DC Power (STC) 180,000 kW (PTC) 172,800 kW AC Power (CEC Size)
Net Cost per Watt:	\$2.45 / Watt DC Power (STC) \$2.72 / watt (PTC) \$2.84 / watt AC Power (CEC Size)
Estimated Annual Production:	217,755 kWh
Proposed Array Sizes (STC):	Array 1 200,000 kW
Number of PV Panels:	800
PV Panel Description:	Westinghouse Solar Model: WTW-250-1-AC2-D-B 250W DC, Polycrystalline ACPV Module
Inverters:	Qty. 2 Solectria Renewables Model: PVI100kW-208 100 kW 208Vac Commercial Grid-Tied Solar PV Inverter
Output due to Shade Factors:	90%
Array Area & Orientation:	Roof Mount: 17,500 sq-ft Tilt: 5°, Azimuth: 180° (S)

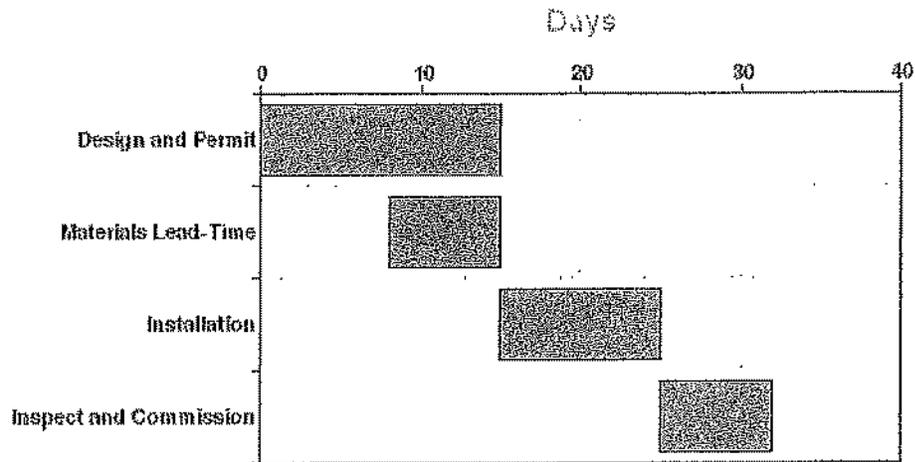
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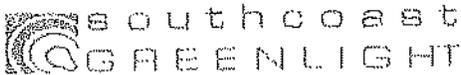


Proposal prepared for Marc Furtado

## Job Schedule

The job schedule provided below summarizes our schedule for meeting four key milestones.





Proposal prepared for Marc Furtado

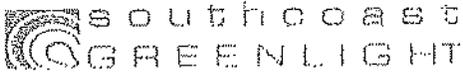
## Cash Flow by Year

The following table of estimated cash flows includes any tax effects, rate and cost inflation and other time-related cash flow factors. Refer to the Disclaimers & Assumptions section (below) for further clarification.

Year:	0	1	2	3	4
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$149,940	\$39,984	\$23,990	\$14,394
Minimum Standard S-REC program	\$0	\$43,115	\$42,684	\$42,257	\$41,835
Federal Individual Tax Credit (30%)	\$210,000	\$0	\$0	\$0	\$0
Energy Bill Savings	\$0	\$33,218	\$34,694	\$36,237	\$37,848
Installation, Operation & Maintenance Costs	(\$700,000)	(\$707)	(\$714)	(\$721)	(\$728)
<b>Total Annual Cash Flow</b>	<b>(\$490,000)</b>	<b>\$225,566</b>	<b>\$116,648</b>	<b>\$101,763</b>	<b>\$93,349</b>
<b>Cumulative Cash Flow</b>	<b>(\$490,000)</b>	<b>(\$264,434)</b>	<b>(\$147,786)</b>	<b>(\$46,023)</b>	<b>\$47,326</b>

Year:	5	6	7	8	9
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$14,394	\$7,197	\$0	\$0	\$0
Minimum Standard S-REC program	\$41,417	\$41,002	\$40,592	\$40,186	\$39,785
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$39,529	\$41,286	\$43,122	\$45,039	\$47,040
Installation, Operation & Maintenance Costs	(\$735)	(\$743)	(\$750)	(\$757)	(\$765)
<b>Total Annual Cash Flow</b>	<b>\$94,605</b>	<b>\$88,742</b>	<b>\$82,964</b>	<b>\$84,468</b>	<b>\$86,060</b>
<b>Cumulative Cash Flow</b>	<b>\$141,931</b>	<b>\$230,673</b>	<b>\$313,637</b>	<b>\$398,105</b>	<b>\$484,165</b>

Year:	10	11	12	13	14
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$39,387	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$49,131	\$51,316	\$53,597	\$55,979	\$58,467
Installation, Operation & Maintenance Costs	(\$773)	(\$780)	(\$788)	(\$796)	(\$804)
<b>Total Annual Cash Flow</b>	<b>\$87,745</b>	<b>\$50,536</b>	<b>\$52,809</b>	<b>\$55,183</b>	<b>\$57,663</b>
<b>Cumulative Cash Flow</b>	<b>\$571,910</b>	<b>\$622,446</b>	<b>\$675,255</b>	<b>\$730,438</b>	<b>\$788,101</b>

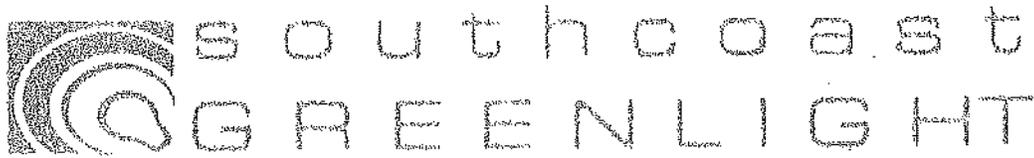


Proposal prepared for Marc Furtado

Year:	15	16	17	18	19
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$0	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$61,066	\$63,781	\$66,615	\$69,577	\$72,670
Installation, Operation & Maintenance Costs	(\$186,918)	(\$820)	(\$829)	(\$837)	(\$845)
<b>Total Annual Cash Flow</b>	<b>(\$125,852)</b>	<b>\$62,961</b>	<b>\$65,786</b>	<b>\$68,740</b>	<b>\$71,825</b>
Cumulative Cash Flow	\$662,249	\$726,210	\$790,996	\$859,736	\$931,561

Year:	20	21	22	23	24	25
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$0	\$0	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$75,900	\$79,274	\$82,796	\$86,478	\$90,321	\$94,336
Installation, Operation & Maintenance Costs	(\$854)	(\$862)	(\$871)	(\$880)	(\$888)	(\$897)
<b>Total Annual Cash Flow</b>	<b>\$75,046</b>	<b>\$78,412</b>	<b>\$81,925</b>	<b>\$85,598</b>	<b>\$89,433</b>	<b>\$93,439</b>
Cumulative Cash Flow	\$1,006,607	\$1,085,019	\$1,166,944	\$1,252,542	\$1,341,975	\$1,435,414





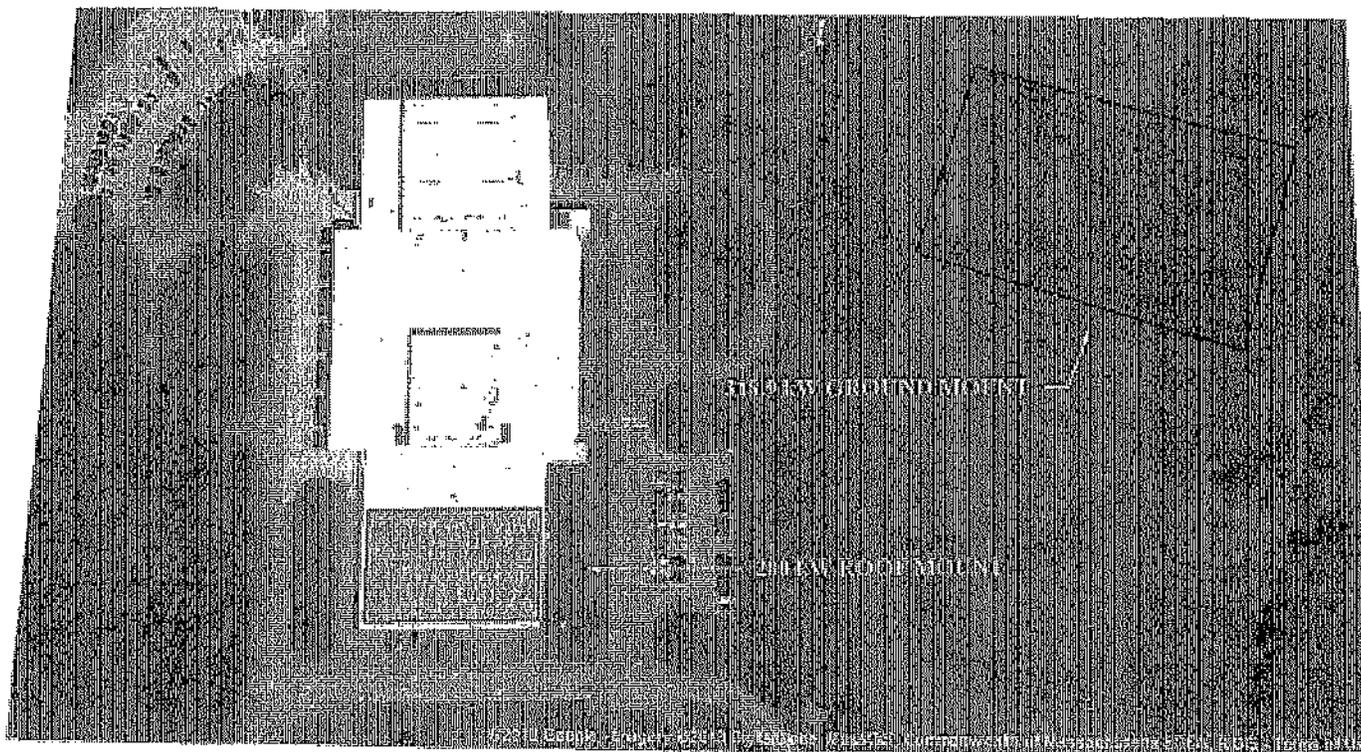
CLEAN ENERGY. BRIGHT FUTURE.

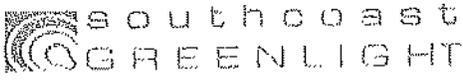
527 WILBUR AVE.  
SWANSEA, MA. 02777

318.9 KW PV SYSTEM PROPOSAL - GROUND MOUNT

MARC FURTADO  
SOMERSET SCHOOL DISTRICT  
NORTH ELEMENTARY  
580 WHETSTONE HILL RD.  
SOMERSET, MA 02726  
508.324.3100

NORTH ELEMENTARY SCHOOL





Proposal prepared for Marc Furtado

Marc Furtado  
Somerset School District  
North Elementary, 580 Whetstone Hill Road (Field)  
Somerset, MA 02726

*Mailing Address:*

Marc Furtado  
Somerset School District  
580 Whetstone Hill Road  
Somerset, MA 02726

Dear Marc Furtado

We are pleased to submit a proposal for your solar electric energy system. Solar electric systems are environmentally friendly and reduce your reliance on energy from the utility. Instead of renting your electricity from your utility, you can now own your own clean energy production.

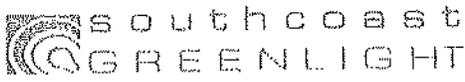
We have designed a system that achieves the best energy cost savings for you. This includes an analysis of your energy requirements, a study of the best energy production design and the application of any available state and federal rebates.

We are committed to a quality installation and to ensuring your total satisfaction with our products and service. The next step is signing the necessary agreements so we can reserve your rebate and begin the engineering and permitting processes. This proposal is valid for 30 days.

We look forward to helping you achieve energy independence, make a positive environmental impact, and ensure a great investment. Please contact us with any questions.

Gary Cyr  
Tel: 508-673-1100

FR 000102



Proposal prepared for Marc Furtado

## Summary

<b>Customer</b>	<b>Site Address</b>	<b>Mailing Address</b>	<b>Company Contact</b>
Marc Furtado	North Elementary, 580	580 Whetstone Hill Road	Gary Cyr
Somerset School District	Whetstone Hill Road (Field)	Somerset, MA 02726	Southcoast Greenlight
508-324-3100	Somerset, MA 02726		527 Wilbur Ave.
furtadom@SBRregional.org			Swansea, MA 02777

### 25 Year Financial Analysis

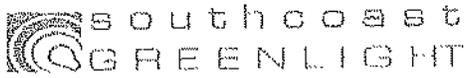
Utility Savings Over Initial Term	\$2,891,352
	\$9,638 / mo (avg)
Payback Period	3-4 years
Total Life-Cycle Payback (Cash Flow compared to Net Cost)	481%
Rate of Return on Cash Invested	28.1%
Levelized Cost of Solar Energy	\$0.085 / kWh

### Cost Breakdown

Installer Contract Cost	\$1,148,040	(\$3.60/watt DC, \$4.17/watt AC)
Federal Tax Credit/Tax Impact	(\$344,412)	
<b>Net Cost (year of installation)</b>	<b>\$803,628</b>	<b>(\$2.52/watt DC, \$2.92/watt AC)</b>
MACRS Depreciation	(\$409,850)	
Minimum Standard S-REC program	(\$807,218)	
<b>Net Cost (all years)</b>	<b>(\$413,440)</b>	<b>(-\$1.30/watt DC, -\$1.50/watt AC)</b>

### System Description

Total System Size	318.900 kW DC Power (STC) / 275.211 kW AC Power (CEC)
Estimated Annual Production	426,369 kWh
PV Panel Description	Qty. 1063 - Chint Solar (Zhejiang) Model: CHSM6612P-300
Inverters	Qty. 3 - Solectria Renewables Model: PVI95kW-480

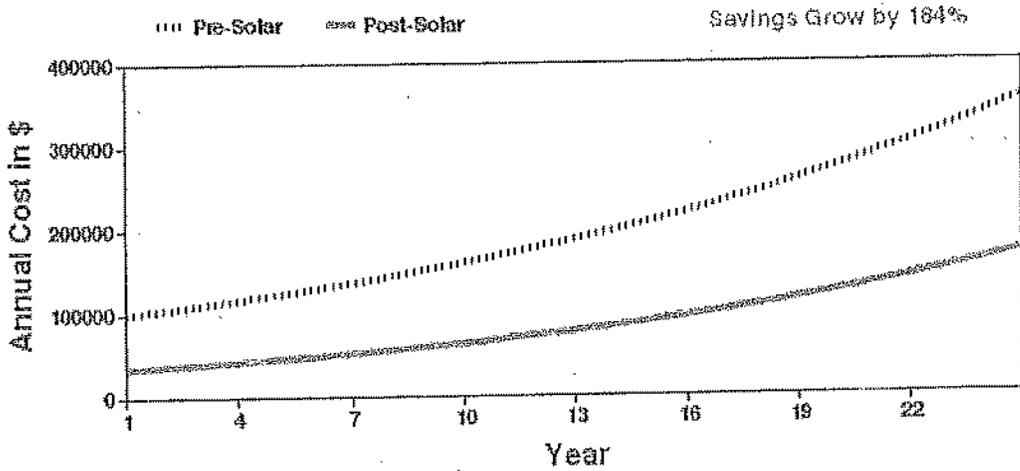


Proposal prepared for Marc Furtado

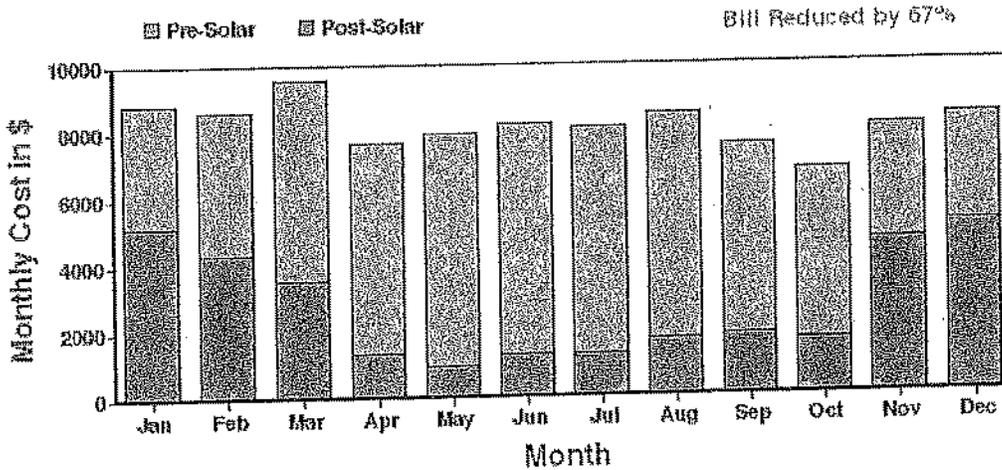
## Energy Analysis

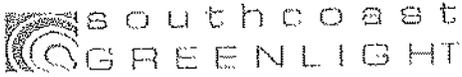
Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

### Annual Electricity Bill Savings Over Time



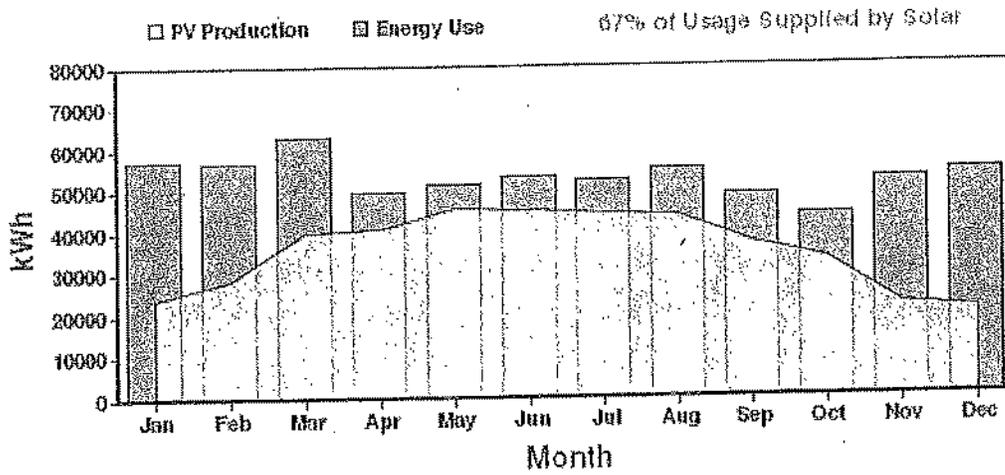
### Monthly Electricity Bill Savings



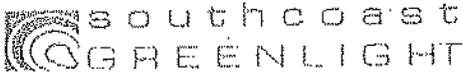


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**Monthly Electricity Use and Amount Supplied by Solar**



Assumptions: Post-Solar Electric Rate Schedule for National Grid is Regular Residential (Fixed) (Rate Code: R-1) Annual utility inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.



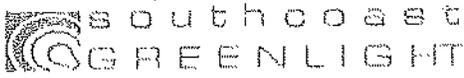
Proposal prepared for Marc Furtado

## Energy Bill Estimate

The following energy bill estimate is without any tax effects applied.

(kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Usage without Solar	57.3k	56.9k	63.3k	49.8k	51.7k	53.5k	52.5k	55.0k	49.0k	44.1k	52.5k	54.3k	640k
Solar Production	23.8k	28.6k	40.2k	41.0k	45.7k	45.3k	44.3k	43.9k	37.2k	33.2k	22.3k	20.7k	426k
Utility Usage with Solar	33.5k	28.3k	23.1k	8,821	6,018	8,216	8,173	11.1k	11.8k	10.9k	30.2k	33.6k	214k
(Cost)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Bill without Solar*	\$8,831	\$8,629	\$9,554	\$7,675	\$7,968	\$8,245	\$8,091	\$8,478	\$7,551	\$6,796	\$8,091	\$8,368	\$98.3k
Utility Bill with Solar*	\$5,157	\$4,358	\$3,583	\$1,359	\$927	\$1,266	\$1,260	\$1,706	\$1,814	\$1,673	\$4,651	\$5,174	\$32.9k
Utility Bill Savings	\$3,674	\$4,271	\$5,991	\$6,316	\$7,041	\$6,979	\$6,831	\$6,770	\$5,737	\$5,123	\$3,440	\$3,194	\$65.4k

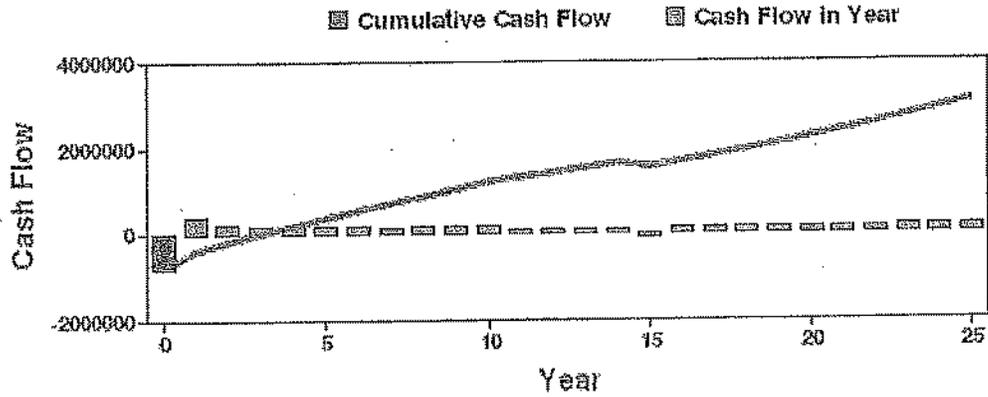
\*Includes utility rate increase of 5.50%



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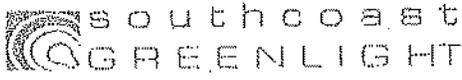
## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



### Financial Summary

Utility Savings Over Initial Term	\$2,891,352
Average Monthly Utility Savings	\$9,638 (over system life)
Net Cost (In year of Installation)	\$803,628
Payback Period	3-4 years
Rate of Return on Cash Invested	28.1%
Total Life-Cycle Payback (Cash flow compared to Net Cost)	481%
Levelized Cost of Solar Energy (Net Cost / lifetime energy production)	\$0.085 / kWh



Proposal prepared for Marc Furtado

## Environmental Impact Analysis

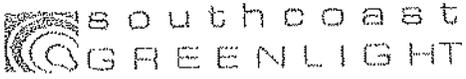
Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by 7,302 tons of CO<sub>2</sub>  
(Over 25 years)

#### Equivalent CO<sub>2</sub> Reductions

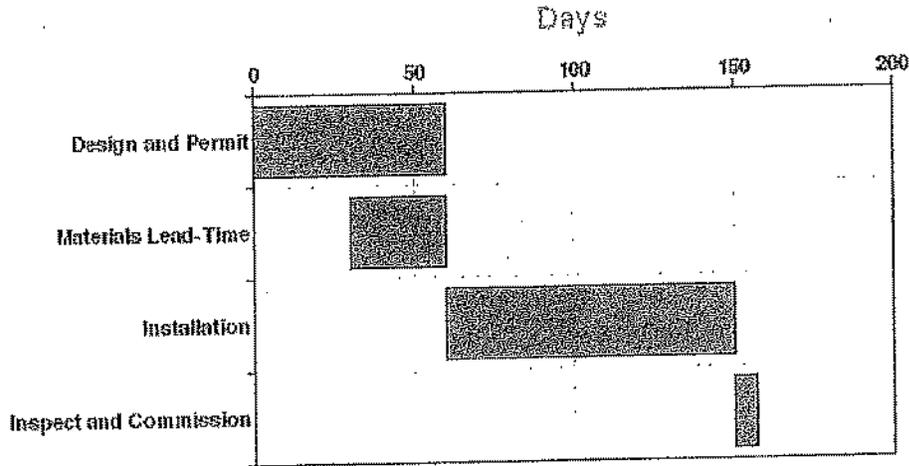
Small Car:	24,751,186 miles
Medium Car:	13,275,636 miles
SUV:	9,301,401 miles
Air Miles:	15,054,845 miles
Trees Planted:	292,064 trees planted
CO <sub>2</sub> from Trash & Waste:	13,276 persons

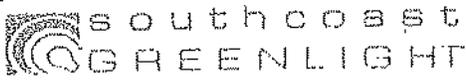


Proposal prepared for Marc Furtado

## Job Schedule

The job schedule provided below summarizes our schedule for meeting four key milestones.





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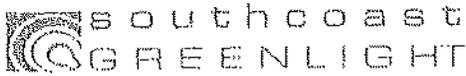
## Cash Flow by Year

The following table of estimated cash flows includes any tax effects, rate and cost inflation and other time-related cash flow factors. Refer to the Disclaimers & Assumptions section (below) for further clarification.

Year:	0	1	2	3	4
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$245,910	\$65,576	\$39,346	\$23,607
Minimum Standard S-REC program	\$0	\$84,421	\$83,577	\$82,741	\$81,914
Federal Individual Tax Credit (30%)	\$344,412	\$0	\$0	\$0	\$0
Energy Bill Savings	\$0	\$65,367	\$68,272	\$71,308	\$74,477
Installation, Operation & Maintenance Costs	(\$1,148,040)	(\$1,159)	(\$1,171)	(\$1,182)	(\$1,194)
<b>Total Annual Cash Flow</b>	<b>(\$803,628)</b>	<b>\$394,539</b>	<b>\$216,254</b>	<b>\$192,213</b>	<b>\$178,804</b>
<b>Cumulative Cash Flow</b>	<b>(\$803,628)</b>	<b>(\$409,089)</b>	<b>(\$192,835)</b>	<b>(\$622)</b>	<b>\$178,182</b>

Year:	5	6	7	8	9
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$23,607	\$11,804	\$0	\$0	\$0
Minimum Standard S-REC program	\$81,095	\$80,284	\$79,481	\$78,686	\$77,899
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$77,787	\$81,245	\$84,857	\$88,629	\$92,567
Installation, Operation & Maintenance Costs	(\$1,206)	(\$1,218)	(\$1,230)	(\$1,243)	(\$1,255)
<b>Total Annual Cash Flow</b>	<b>\$181,283</b>	<b>\$172,115</b>	<b>\$163,108</b>	<b>\$166,072</b>	<b>\$169,211</b>
<b>Cumulative Cash Flow</b>	<b>\$359,465</b>	<b>\$531,580</b>	<b>\$694,688</b>	<b>\$860,760</b>	<b>\$1,029,971</b>

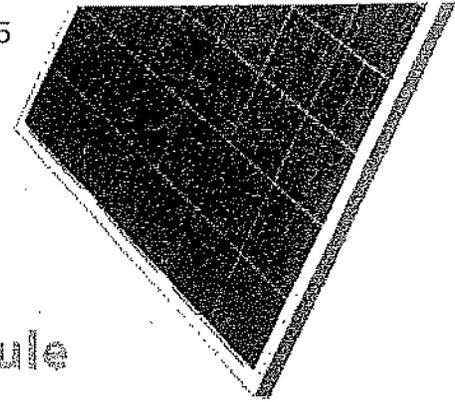
Year:	10	11	12	13	14
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$77,120	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$96,682	\$100,980	\$105,469	\$110,156	\$115,053
Installation, Operation & Maintenance Costs	(\$1,268)	(\$1,280)	(\$1,293)	(\$1,306)	(\$1,319)
<b>Total Annual Cash Flow</b>	<b>\$172,534</b>	<b>\$99,700</b>	<b>\$104,176</b>	<b>\$108,850</b>	<b>\$113,734</b>
<b>Cumulative Cash Flow</b>	<b>\$1,202,505</b>	<b>\$1,302,205</b>	<b>\$1,406,381</b>	<b>\$1,515,231</b>	<b>\$1,628,965</b>



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Year:	15	16	17	18	19
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$0	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$120,167	\$125,509	\$131,087	\$136,914	\$143,000
Installation, Operation & Maintenance Costs	(\$210,628)	(\$1,346)	(\$1,359)	(\$1,373)	(\$1,386)
<b>Total Annual Cash Flow</b>	<b>(\$90,461)</b>	<b>\$124,163</b>	<b>\$129,728</b>	<b>\$135,541</b>	<b>\$141,614</b>
Cumulative Cash Flow	\$1,538,504	\$1,662,667	\$1,792,395	\$1,927,936	\$2,069,550

Year:	20	21	22	23	24	25
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$0	\$0	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$149,357	\$155,996	\$162,929	\$170,172	\$177,736	\$185,636
Installation, Operation & Maintenance Costs	(\$1,400)	(\$1,414)	(\$1,428)	(\$1,443)	(\$1,457)	(\$1,472)
<b>Total Annual Cash Flow</b>	<b>\$147,957</b>	<b>\$154,582</b>	<b>\$161,501</b>	<b>\$168,729</b>	<b>\$176,279</b>	<b>\$184,164</b>
Cumulative Cash Flow	\$2,217,507	\$2,372,089	\$2,533,590	\$2,702,319	\$2,878,598	\$3,062,762



# Datasheet

## Crystalline PV Module

### CHSM6612P Series

275	280	285	290	295	300	305	310
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EN

ELECTRICAL SPECIFICATIONS								
	275 Wp	280 Wp	285 Wp	290 Wp	295 Wp	300 Wp	305 Wp	310 Wp
STC rated output (P <sub>mpp</sub> )*	275 Wp	280 Wp	285 Wp	290 Wp	295 Wp	300 Wp	305 Wp	310 Wp
PTC rated output (P <sub>mpp</sub> )**	247.2 Wp	251.8 Wp	256.5 Wp	261.1 Wp	265.7 Wp	270.3 Wp	275.0 Wp	279.6 Wp
Standard sorted output:	-0/+5 Wp							
Warranted power output STC (P <sub>mpp min</sub> )	275Wp	280 Wp	285 Wp	290 Wp	295 Wp	300 Wp	305 Wp	310 Wp
Rated voltage (V <sub>mpp</sub> ) at STC	35.60 V	35.63 V	35.66 V	35.68 V	35.72 V	35.74 V	35.77 V	35.80 V
Rated current (I <sub>mpp</sub> ) at STC	7.76 A	7.90 A	8.04 A	8.15 A	8.30 A	8.40 A	8.53 A	8.68 A
Open circuit voltage (V <sub>oc</sub> ) at STC	44.51 V	44.64 V	44.77 V	44.90 V	45.03 V	45.16 V	45.29 V	45.42 V
Short circuit current (I <sub>sc</sub> ) at STC	8.56 A	8.71 A	8.86 A	8.94 A	9.16 A	9.27 A	9.42 A	9.56 A
Module efficiency	14.1%	14.4%	14.7%	14.9%	15.2%	15.4%	15.7%	15.9%
Rated output (P <sub>mpp</sub> ) at NOCT	192.0 Wp	195.5 Wp	199.0 Wp	202.5 Wp	206.0 Wp	209.5 Wp	213.0 Wp	216.5 Wp
Rated voltage (V <sub>mpp</sub> ) at NOCT	32.38 V	32.38 V	32.39 V	32.51 V	32.47 V	32.63 V	32.67 V	32.70 V
Rated current (I <sub>mpp</sub> ) at NOCT	5.93 A	6.04 A	6.14 A	6.23 A	6.34 A	6.42 A	6.52 A	6.62 A
Open circuit voltage (V <sub>oc</sub> ) at NOCT	40.84 V	40.96 V	41.08 V	41.20 V	41.32 V	41.44 V	41.56 V	41.68 V
Short circuit current (I <sub>sc</sub> ) at NOCT	6.62 A	6.74 A	6.85 A	6.91 A	7.09 A	7.17 A	7.28 A	7.39 A
Temperature coefficient (P <sub>mpp</sub> )	-0.451%/K		Maximum system voltage SCL			1000 V <sub>DC</sub>		
Temperature coefficient (I <sub>sc</sub> )	+0.087%/K		Maximum system voltage NEC			600 V <sub>DC</sub> / 1000 V <sub>DC</sub>		
Temperature coefficient (I <sub>mpp</sub> )	+0.007%/K		Number of diodes			6		
Temperature coefficient (V <sub>mpp</sub> )	-0.445%/K		Maximum series fuse rating			15 A		
Temperature coefficient (V <sub>oc</sub> )	-0.332%/K							
Normal operating cell temperature (NOCT)	46±2°C							

\* Measurement tolerance ±0.3%

\*\* Estimated



**QUALIFICATION AND WARRANTIES**

Product standard	IEC 61215, 61730 / UL 1703
Extended product warranty	10 years
Output warranty of 90% performance $P_{mpp}$ (STC)	10 years
Output warranty of 80% performance $P_{mpp}$ (STC)	25 years
MunichRe Warranty	25 years

**TECHNICAL**

Cell type	polycrystalline
Number of cells / cell arrangement	72 / 6 x 12
Cells dimension	6"

**MECHANICAL SPECIFICATIONS**

Outer dimensions (L x W x H)	1956 x 994 x 50 mm 77.01 x 39.13 x 1.97 in
Frame technology	Aluminum, silver anodized
Module composition	Glass / EVA / Backsheet (white)
Weight (module only)	23.5 kg / 51.7 lbs
Front glass thickness	3.2 mm / 0.13 in
Junction box IP rating	IP 65
Cable length / diameter (UL)	1200 mm / 47.24 in / 12 AWG
Cable length / diameter (IEC)	1150 mm / 45.28 in / 4 mm <sup>2</sup>
Maximum load capacity	5400 Pa
Fire class	C
Connector type (UL)	Multi Contact type 4 / MC type 4 compatible
Connector type (TUV)	MC type 4 compatible

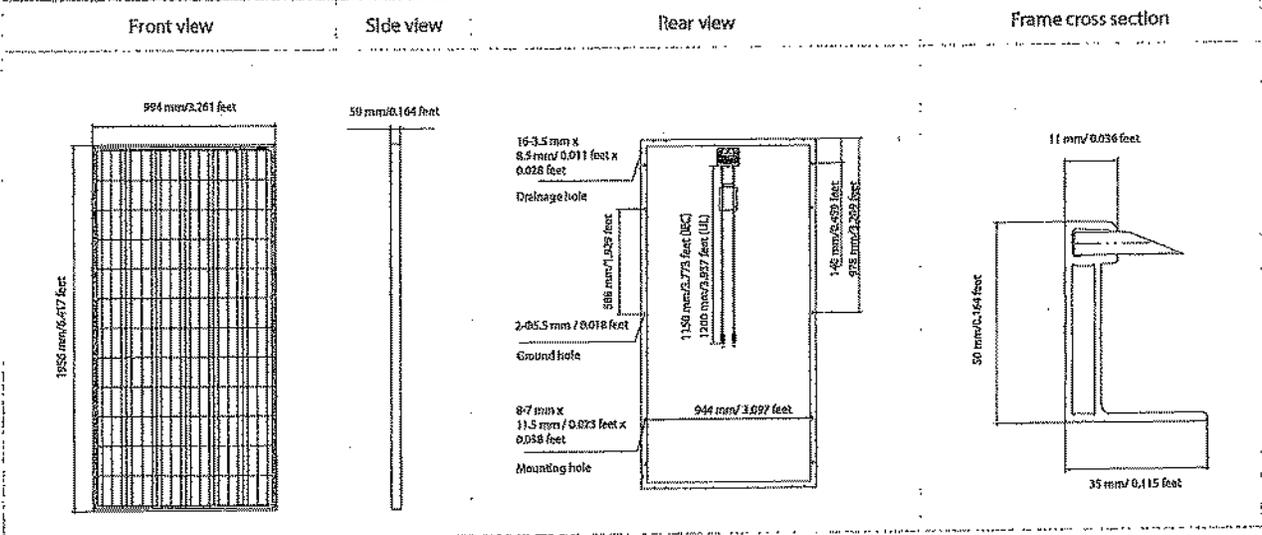
**MECHANICAL**

Packing unit	20 modules
Weight of packing unit	528 kg / 1162 lbs

**ARTICLE NUMBER (per panel) CHSM6612P-50123**

Model	Article No. (IEC)	Article No. (UL)
CHSM6612P-275	200032	200039
CHSM6612P-280	200033	200040
CHSM6612P-285	200034	200041
CHSM6612P-290	200035	200042
CHSM6612P-295	200036	200043
CHSM6612P-300	200209	200211
CHSM6612P-305	200210	200212
CHSM6612P-310	200277	200278

**DETAILS OF DIMENSIONS OF MODULE**



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 Specifications and designs included in this datasheet are subject to change without notice.



COMMERCIAL INVERTERS

PVI 60KW  
PVI 82KW  
PVI 95KW

FEATURES

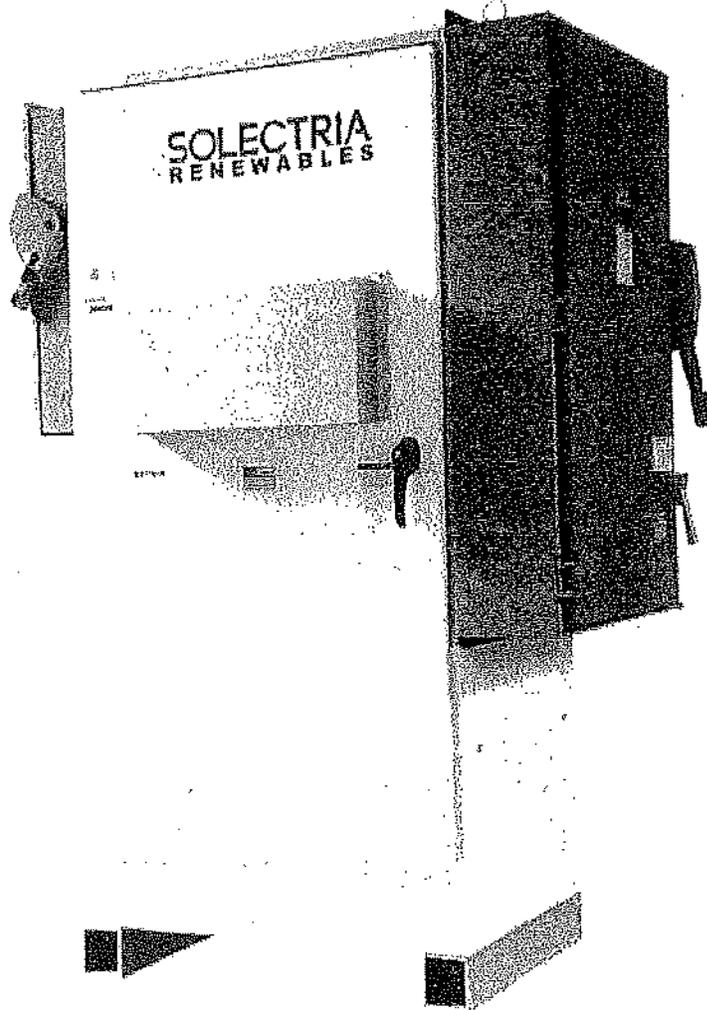
- Fully integrated design
- Transformer isolated
- 208 VAC, 240 VAC, 480 VAC or 600 VAC
- MODBUS communications
- User interactive LCD display

OPTIONS

- Fused subcombiners
- Forward facing disconnects
- Stainless steel enclosure
- Web based monitoring
- Sub-array monitoring
- Built in cellular connectivity

OPTIONS FOR UTILITIES

- Real power curtailment
- Reactive power control
- Voltage ride through
- Frequency ride through



COMMERCIAL INVERTERS

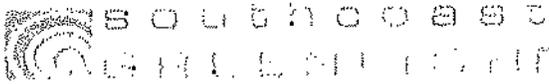
The most fully customizable line of commercial grid-tied PV Inverters available today, the PVI 60KW, PVI 82KW, and PVI 95KW series of Solectria Renewables inverters has been utilized in projects ranging from 50kW to multi-megawatt solar farms. This series of inverters is capable of operating at 208 VAC, 240 VAC, 480 VAC, and 600 VAC and comes standard with AC and DC disconnects, isolation transformer, LCD display and monitoring gateway. Options include an integrated fused subcombiner, forward facing disconnects, stainless steel enclosure and web-based monitoring. AC voltage and frequency settings may be customized according to utility specifications.



Built for the real world

SPECIFICATIONS	PVI 60KW	PVI 82KW	PVI 95KW	
<b>DC Input</b>				
Absolute Maximum Input Voltage		600 VDC		
MPPT Input Voltage Range		312-500 VDC		
MPPT Input Voltage Range - Low Voltage Option		296-500 VDC		
Maximum Operating Input Current	201 A	278 A	320 A	
Maximum Operating Input Current - Low Voltage Option	212 A	293 A	337 A	
<b>AC Input</b>				
Nominal Output Voltage	208, 240, 480 or 600 VAC, 3-Ph (4 wire option)			
AC Voltage Range (Standard)	-12%/+10%			
Continuous Output Power	60 kW	82 kW	95 kW	
	208 VAC	167 A	228 A	
	240 VAC	145 A	198 A	
Continuous Output Current	480 VAC	73 A	100 A	
	600 VAC	58 A	80 A	
Maximum Backfeed Current	0 A			
Nominal Output Frequency	60 Hz			
Output Frequency Range	59.3-60.5 Hz			
Power Factor	Unity, >0.99			
Total Harmonic Distortion (THD)	<3%			
<b>Efficiency</b>				
Peak Efficiency	208/240 VAC	95.7%	95.6%	95.3%
	480/600 VAC	96.5%	96.5%	96.5%
CEC Efficiency	208 VAC	94.0%	94.5%	94.5%
	480 VAC	95.5%	95.5%	95.5%
	208 VAC		4 W	
	240 VAC		4 W	
Tare Loss	480 VAC		5 W	
	600 VAC		7 W	
<b>Installation Options</b>				
	2-8 positions, 40-275 A			
<b>Operating Conditions</b>				
Ambient Temperature Range (full power)	-13°F to +122°F (-25°C to +50°C)			
Storage Temperature Range	-13°F to +122°F (-25°C to +50°C)			
Relative Humidity (non-condensing)	5-95%			
<b>Monitoring Options</b>				
Web-based Monitoring (Inverter Direct)	SolrenView			
Revenue Grade Monitoring	External			
Sub-Array Monitoring (SolZone)	2-8 zones			
Cellular Communication	SolrenView AIR			
Third Party Compatibility	Standard via MODBUS			
<b>Standards &amp; Certifications</b>				
Safety Listings & Certifications	UL 1741/IEEE 1547, IEEE 1547.1, IEEE 62.41.2, IEEE 62.45, IEEE C37.90.2, CSA C22.2#107.1, FCC part 15 B			
Testing Agency	ETL			
<b>Warranty</b>				
Standard	5 year			
Optional	10, 15, 20 year; extended service agreement; uptime guarantee			
<b>Dimensions</b>				
Transformer	Standard, fully integrated (Internal)			
AC/DC Disconnects	Standard, fully integrated			
Dimensions 208/240 VAC (H x W x D)	76 in. x 56 in. x 29.3 in. (1930 mm x 1422 mm x 744 mm)			
Dimensions 480/600 VAC (H x W x D)	76 in. x 54 in. x 25.3 in. (1930 mm x 1372 mm x 643 mm)			
Weight	1526 lbs (694 kg)	1615 lbs (734 kg)	1748 lbs (794 kg)	
Enclosure Rating	NEMA 3R			
Enclosure Finish	Polyester powder coated steel; Optional stainless steel			

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CLEAN ENERGY. BRIGHT FUTURE.

527 WILBUR AVE  
 SWANSEA, MA. 02777  
 508 673 1100

REFERENCES FOR PHOTOVOLTAIC SYSTEMS

Robert Horowitz 994 Kempton St. New Bedford, Ma	3.8 KW	508 971 1250	1
Thomas Aldous 161 Danforth St. Rehoboth, Ma	5.4 KW	508 272 8667	
Vui Le" Vintage Barn"580 GAR Hwy. Swansea, Ma	28.4 KW	617 335 9120	
Munro Electric 115 North Seventh St. Fall River, Ma	24.6 KW	508 889 3854 Kevin Munro	1
Swansea Oil Co. 531 Wilbur Ave. Swansea, Ma	2.4 KW	508 673 0352	
Susan Collins 335 Pearse Rd. Swansea, Ma	4.56 KW	508 676 7891	1
Susan Beetler 122 Reynolds Ave. Rehoboth, Ma	4.56 KW	508 252 3583	
Mark Laubenstein 5 Smelt Pond Rd. Kingston, Ma	4.4 KW	508 345 5034	1
Randy Corwin 16 Longmeadow Rd. Norfolk, Ma	4.4 KW	508 654 2194	
Stan Treloar 17 Weaver St. Swansea, Ma	2.6 KW	508 642 9275	
Will Gardner 17 Cottage St. Fairhaven, Ma	1.8 KW	508 542 7153	
Fernandes Masonry 1031 Phillips Rd. New Bedford, Ma	33 KW	508 998 2121 Victor & Vera	
Ossama Labib 833 Old Warren Rd. Swansea, Ma	22.5 KW	401 578 4375	1
Dominican Sisters 3012 Elm St. Dighton, Ma	50.6 KW	508 669 5460 Sister Marie	
BayCoast Bank 330 Swansea Mall Dr. Swansea, Ma	185.5 KW	508 675 6617 Jim Wallace	1
945 GAR Hwy. Somerset, Ma	4.2 KW		
1485 Pleasant St. Fall River, ma	12.7 KW		

REFERENCES FOR SOLAR THERMAL SYSTEMS

Hilco Paul Janell CFO	Heat & DhW	Sunmaxx30's	508-699-4406 ext.3018 *	1
Susan Collins 335 Pearse Rd. Swansea, Ma	SDHW	AET solar	508 676 7891	2
Mike Carter 122 Barton Ave. Swansea, Ma	SDHW	AET solar	508 971 0243	
Paul Sarro 38 Chase Rd. Freetown, Ma	SDHW	AET solar	580 763 8636	
Gary Arruda 55 Elwick St. Dartmouth, Ma	SDHW	AET solar	508 263 8423	

Ken Brillhante 14 Barnum St. Taunton, Ma	SDHW	Stiebel Eltron	508 822 6006
Rob Horowitz 14 Bay Point Rd. Swansea, Ma	SDHW	Stiebel Eltron	508 971 1250 <u>2</u>
Lisa Heagney 52 Broad St. Plainville, Ma	SDHW	AET solar	508 397 7206
Mark Laubenstein 5 Smelt Pond Rd. Kingston, Ma	SDHW	AET solar	508 345 5034 <u>2</u>

**Commercial Systems in Bold type**

**\*Largest solar thermal system with Evacuated Tube collectors in New England to date.**

## REFERENCES FOR GEOTHERMAL SYSTEMS

Susan Collins 335 Pearse Rd. Swansea, Ma	Air 4 ton	retrofit	508 676 7891 <u>3</u>
Rich Tula 38 John Scott Blvd. Norton, Ma	Water/ Water / Air	8 ton new const.	508 884 5010
Bill Leblanc 190 Pleasant St. Rehoboth, Ma	Water / Water	4 ton retrofit	508 252 4633
Ben Brayton 86 Summerfield Lane Middletown, RI	Water / Air	5 ton new const.	401 864 2322
Eric Nathan 5 Rivers Edge Way Assonet, Ma	Air 4 ton	retrofit	774 315 6858
Steve Carey 48 Long Pasture Rd. Little Compton, RI	Air 5 Ton	new const.	860 575 0470
Robert Truesdale 40 Powisset Rd. Dover, Ma	several units	retrofit	508-785-9996
Dave & Kim Resare 7 Wayland Ave. Bristol, RI	Air 4 ton	retrofit	401-654-3939
Frank Dias 15 Evelyn Way Seekonk, Ma	Air 5 ton	new const.	401-265-2797
Kevin & Aimee Munro 250 Bay Point Rd. Swansea	5 ton Hybrid	new const.	508 536 9913 <u>2</u>
Gordon Hutton 101 Boyce Ave. Barrington, RI	Water/ Air/ Radiant	new const.	401 486 0471
Joel Morgenstern 19 Juniper Rd. Medway, Ma	Water/ Air	7 ton retrofit	508 533 1961
Tom Liang 7 Capen Hill Rd. Sharon, Ma	Water/ Air	3 ton retrofit	617 320 0832
Kevin Bartlett 69 Spring Grove Rd. Chepachet, RI	Water/ Water	5 ton new const.	401 484 4919
Ossama Labib 833 Old Warren Rd, Swansea, Ma.	Water/ Water	15 ton retrofit	401 578 4375 <u>2</u>

## REFERENCES FOR ENERGY RECOVERY SYSTEMS

Hilco Paul Janell CFO 508-699-4406 ext.3018 *	Data Center 5 ton cooling with BPE MIR 2000 heat exchanger	<u>2</u>
	ANNEX 86,000 Btu heating with BPE MIR 2000 heat exchanger	<u>3</u>

CERTIFICATIONS FOR RENEWABLE ENERGY SYSTEMS

NABCEP CERTIFICATION FOR PHOTOVOLTAIC'S

IGSHPA CERTIFIED GROUND LOOP INSTALLER

MASS. MASTER SHEET METAL LICENSE

RI CONTRACTORS LIC #6907

MASS. CONSTRUCTION SUPERVISORS LICENSE

RI PIPEFITTERS LICENSE

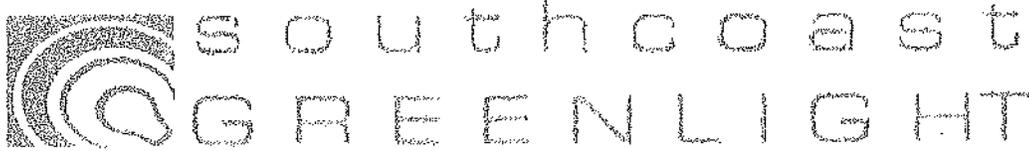
MASS MASTER PIPEFITTER LICENSE

MASS CONTRACTORS REGISTRATION 133057

MASS HOISTING OPERATOR'S LICENSE

1 2 3 INDICATES CLIENT'S THAT CHOSE SOUTHCOAST GREENLIGHT FOR MULTIPLE PROJECTS

# APPENDIX D

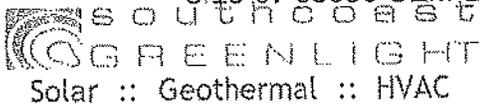


CLEAN ENERGY. BRIGHT FUTURE.

527 WILBUR AVE.  
SWANSEA, MA. 02777

GEOHERMAL SYSTEM PROPOSAL

MARC FURTADO  
SOMERSET SCHOOL DISTRICT  
580 WHETSTONE HILL RD.  
SOMERSET, MA 02726  
508.324.3100



527 Wilbur Avenue  
Swansea, MA 02777  
Tel. 508.673.1100  
Fax. 508.678.2542

Somerset School District  
580 Whetstone Hill Rd.  
Somerset, Ma 02726  
Attention: Marc Furtado 508 324 3100 ext. 212

August 8, 2013

We are pleased to present a proposal to design and install a geothermal heating and cooling system for your Middle School. The design is based on the load calculation derived from your current natural gas use. The total heat loss on your building will require a 300 Ton heating system to satisfy the load based on an outdoor low temperature of 0 degrees F and an indoor set point of 70 F. The 40 ton geothermal HVAC system will provide 12-15% of the current heating load of this building. The Comfort-Aire Heat pumps specified for this project carries a standard 10 year warranty and SCGL provides a 2 year workmanship guaranty.

#### **Project Summary:**

We are proposing a Geothermal retrofit to the existing heating and cooling system to condition the space within building. The geothermal exchange system will be a vertical closed loop well system. We believe that this is the best option for this building. The system will include three (4) water to water two stage reversible heat pumps. The geothermal exchange field will consist of sixteen (16) vertical closed loop wells 430' deep. Actual location and setbacks to be determined upon final design. Domestic hot water will be pre heated by a desuperheater and fed into the existing 120 gallon hot water heater.

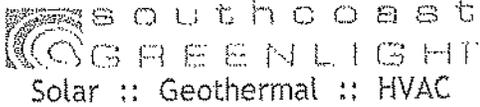
#### **The zones will be designated as follows:**

Zone A. Heat pump #1 & Heat pump #2 will be connected to a 120 gallon buffer tank to provide heating and  
Zone B. Heat pump #3 & Heat pump #4 will be connected to a 120 gallon buffer tank to provide heating and cooling to all of the main building conditioned space.

#### **Scope of Services:**

##### **Complete design and installation for a 40 Ton geothermal HVAC system.**

1. Design geothermal system and provide a plan of the system integrated with existing heating system.
2. File for all mechanical permits and inspections required by the town.
3. Installation of all major equipment and controls necessary to integrate the zoned distribution system with the water source heat pump system.
4. Installation of 16 vertical closed loop well field.
5. Install all piping runs inside the building and connect from heat pumps to buffer tanks. Connect Ground source heat exchanger to heat pumps with associated piping and complete flushing & pressure testing of system before startup.
6. Start up and testing of equipment and balance system.



527 Wilbur Avenue  
Swansea, MA 02777  
Tel. 508.673.1100  
Fax. 508.678.2542

**Equipment Detail:**

**All heat pumps by Comfort-Aire and buffer tanks by Vaughn.**

1. 4 Comfort-Aire 10 ton water to water GSHP
2. 2 Vaughn 120 gallon stone lined water storage tanks
3. 4 Comfort-Aire 60 gpm flow centers
4. All manifolds and piping required for well field.
5. Manifolds, pumps, line sets and H&C controls to connect to existing heating system.

**Cost Detail:**

Total Geothermal Equipment Design & Install Cost  
Includes all duct work, zone controls, piping & wiring: \$ 225,804.00

Estimate for Vertical Closed Loop Wells: \$172,000.00

<b>Total Geothermal Cost:</b>	<b>\$ 397,804.00</b>
<b>Federal Tax Credit 10%:</b>	<b>\$ (39,780.00)</b>
<b>Net Cost:</b>	<b>\$ 358,024.00</b>

Deposit 25% upon acceptance

Prepared By: \_\_\_\_\_

Accepted By: \_\_\_\_\_

Upon acceptance of this proposal a contract will be drawn to the above mentioned specifications. Should any changes in the building construction change before work begins, owner/ contractor is required to notify SCGL so that the heat loss/ gain can be adjusted and resulting changes can be addressed. This proposal is for budgetary purpose and is accurate with a margin of + Or - 10%. After a design is complete for each building an exact cost will be used as the contract price. SCGL will produce the designed Geothermal system after the client executes a contract and SCGL receives the 25% deposit required.

Prices are valid for 30 days from delivery of proposal.  
We look forward to doing business with you.

**OPERATING COST COMPARISON**

JobName:Middle School	Location:Somer Boston/Eastern MA		
Loop Type:Vertical	6800	Fossil Fuel Heat Type	1-Oil 2-NG 3-LP 2
Degree Days	4000		
<b>Gas cost /Therm</b>	1.2	\$/ therm	9939 11926.8 \$/ yr
Annual gas use	9939	therms	100000 Btu/ therm
Btu's/ therm	100000	Btu's	0.75 Eff. Rate
DHW Load	1987.8	therms	596340000 Btu's/yr
Heat Load	434831	Btu/ hr. @ 0 Deg. F	

<b>Equivalent</b>	<b>Geothermal cost / Kwh</b>	3412	3.1 COP
		0.12 \$/kWh	10577.2 Btu/kwh
			56379.76 kwh/yr
			6765.5712 \$/ yr.

Climatemaster Annual Savings	\$5,161
Climatemaster Monthly Savings	\$430
Natural Gas cost 20 years	\$ 298170
Geothermal cost 20 years	\$ 139370.7673
Geothermal savings	\$ 158799.2327

Gas use is 15% of total to use as a comparison to geothermal output.

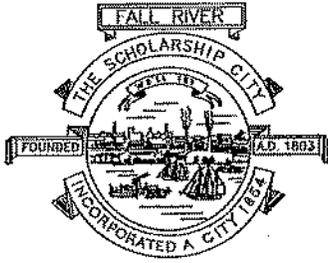
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# City of Fall River Massachusetts

## Commission on Disability

**WILLIAM A. FLANAGAN**  
*Mayor*

**WILLIAM FONTAINE**  
Chairman

**DENNIS POLSELLI**  
Vice Chairman

Fall River Commission on Disability  
Date: February 13, 2014 Time: 2:00 PM

Called to order:

1: Roll Call:

2: Public Input:

3: Acceptance of minutes: from January 09, 2014

4: Bills and Communications:

- a) Material received from Mass. Office on Disability
- b) Response from letters sent-Mayor Flanagan/Mr. Biszko/Law Dept.
- c) Open Meeting Law –complaint from Attorney DiOrio

5: Awareness:

- a) Commission Brochure update
- b) Emergency Evacuation Board – Chief Aguir

6: Old Business:

- a) CD Rec. wheelchair ramp and door bell?

7: New Business:

- a) Executive Session: Police Dept. contract – HP abuse program

8: Agenda for March 13, 2014

- a) Ms. Laurel Clark –Fall River Public Library
- b) Review MOD survey- old/unfinished business from –Jan 2014

9: Motion to Adjourn:

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and )  
 )  
 THE CITY OF FALL RIVER, )  
 )  
 Plaintiff-Intervenor, )  
 )  
 v. )  
 )  
 DOMINION ENERGY, INC., DOMINION )  
 ENERGY BRAYTON POINT, LLC, AND )  
 KINCAID GENERATION, LLC. )  
 )  
 )  
 Defendants. )  
 )  
 )

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S REVISED MEMORANDUM  
OF POINTS AND AUTHORITIES IN SUPPORT OF ITS REVISED MOTION TO  
INTERVENE AS OF RIGHT, OR ALTERNATIVELY, BY PERMISSION**

Plaintiff-Intervenor City of Fall River (hereinafter "Fall River") respectfully submits this *Revised* Memorandum of Points and Authorities in Support<sup>1</sup> of its *Revised* Motion to Intervene as a matter of right pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 24(a), or, in the alternative, permission to intervene pursuant to Fed. R. Civ. P. 24(b).

<sup>1</sup> Fall River relies on the exhibits filed with the original Memorandum of Points and Authorities filed at Dkt. 14 in this case and, therefore, has not re-filed the exhibits in order to minimize the filings. Should the Court request the exhibits be re-filed, Fall River is happy to do so.

**STATEMENT OF FACTS**

**A. Complaints Filed Against Dominion**

On or about April 1, 2013, the United States commenced this action at the request of the EPA, alleging Dominion unlawfully operated its power stations in violation of the CAA by releasing unlawful levels of sulfur dioxide (“SO<sub>2</sub>”), nitrogen oxide (“NO<sub>x</sub>”), and/or Particulate Matter (“PM”) in violation of several State Implementation Plans (“SIP”) and its Title V Permits. (See Dkt. No. 1 at ¶ 44.) Upon information and belief, the United States treated Brayton Point as a party to this litigation, as a pre-existing citizen suit was filed two months prior alleging identical violations of the CAA. See *Conservation Law Foundation, Inc. et al. v. Dominion Energy Brayton Point, LLC*, Case No. 13-cv-10346 (D. Mass. 2013) Compl. at Dkt. No. 1.<sup>2</sup> The allegations asserted in the *Conservation Law Foundation (CLF)* citizen suit and Fall River’s proposed Complaint in Intervention mirror the claims asserted here. Specifically, the complaints allege that Brayton Point violated the CAA’s various opacity emission standards and limitations by releasing unlawful levels of sulfur dioxide (“SO<sub>2</sub>”), nitrogen oxides (“NO<sub>x</sub>”), Carbon Dioxide

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<sup>2</sup> The United States filed its Complaint against Dominion in the instant matter (the “Illinois Action”) as well as the proposed Consent Decree on April 2, 2013. Two months earlier, on February 22, 2013, the Conservation Law Foundation (“CLF”) and two additional environmental organizations filed a complaint against Dominion Energy Brayton Point, LLC at the District Court for the District of Massachusetts in a case captioned *Conservation Law Foundation, Inc., Clean Water Action, and Toxics Action Center v. Dominion Energy Brayton Point, LLC*, Case No. 1:13-cv-10346-JLT (the “Massachusetts Lawsuit”). Plaintiffs in the Massachusetts Lawsuit filed their claims pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. §7604, seeking, among other things, to enjoin certain alleged violations of Dominion Energy Brayton Point’s compliance obligations under the Clean Air Act. Upon information and belief, the citizen plaintiffs in the Massachusetts Lawsuit agreed to voluntarily dismiss their suit against Dominion on the condition that the violations at the Brayton Point facility alleged in the Massachusetts Lawsuit would be resolved by and through provisions in the Consent Decree that was being drafted to resolve the United States’ allegations in the Illinois Action. Accordingly, while the United States’ Complaint in the Illinois Action does not address the Brayton Point Power Station, the United States and the Defendant in the Illinois Action agreed to resolve the alleged violations at Brayton Point by and through the Consent Decree issued in the Illinois Action. Following the Illinois District Court’s July 17, 2013 approval of the Consent Decree, the Massachusetts Lawsuit was voluntarily dismissed with prejudice. See Case No. 13-cv-10346 at Dkt. No. 16 (D. Mass. 2013).

(CO<sub>2</sub>) and/or Particulate Matter (“PM”) in violation of the Massachusetts SIP and Dominion’s Title V Permits. *Id.* at ¶ 1. Fall River lies within 2.5 kilometers of Brayton Point and its environment and inhabitants are directly harmed by Dominion’s release of the above-described pollutants into the atmosphere. (Mot. Ex. 1 at ¶2.)

The relief sought by Fall River, the citizen plaintiffs in the Massachusetts Lawsuit, and by the United States in the instant matter is likewise indistinguishable, as the existing and proposed plaintiffs all seek: (1) a declaration that Dominion violated the CAA; (2) an order enjoining Dominion from operating, except in accordance with a compliance schedule to prevent further violations; (3) an order requiring Dominion remedy, mitigate and offset the harm caused to the public health and environment; and (4) an imposition of civil penalties. (See Dkt. No. 1 at pages 12-13; *see also* Mot. Ex. 1 at pages 17-18; and CLF Compl. at pages 15-16.)

**A. The Consent Decree**

To avoid the costs of protracted litigation in both the Massachusetts Lawsuit and the Illinois Action, the United States and Dominion entered into a Consent Decree to resolve all claims on or about July 2, 2013. See Consent Decree generally. Under the Consent Decree, Dominion agreed to spend \$9,750,000 on Environmental Mitigation Projects in the areas most affected by its emissions. See Consent Decree, Appx. A, page 1. With respect to Brayton Point, the Consent Decree requires Dominion spend \$1,600,000, of the \$9,750,000, in the Northeast and further specifies that “approximately half of the total Project Dollars [in the Northeast] will be spent in Somerset [and, therefore, the other half in Fall River], but the final distribution will depend on the Projects (and their costs) that can be proposed and implemented within the time frames and other requirements set out in th[e] Appendix.” (See Consent Decree, Appx. A., Section XI, ¶ B.) Dominion is further obligated to develop each plan in good faith *in*

*consultation* with Somerset and Fall River, and to submit each proposal to the EPA for review and approval. (Sec Consent Decree, Appx. A, Section XI ¶A (emphasis added)).

The Consent Decree limited the type of Environmental Mitigation Projects Dominion could implement to: (a) Energy Efficiency, Geothermal, and/or Solar Photovoltaic (“PV”) Projects at one or more public school buildings, and/or (b) Clean Diesel Projects to retrofit or repower higher-polluting diesel engines. (See Consent Decree, Appx. A, Section XI ¶A.) The Consent Decree imposed a 120-day deadline from the Date of Entry of the Consent Decree, for Dominion to submit the proposed plans to the EPA for review and approval. *Id.*

**B. Dominion’s Failure to Consult with Fall River**

In July 2013, James Smith of Smith, Ruddock & Hayes, a public policy consulting group hired by Dominion, contacted Fall River to discuss the terms of the Consent Decree as it related to Fall River. (See Exhibit 2, Affidavit of Kenneth Pacheco dated December 27, 2013, hereinafter “Pacheco Aff.”, at ¶ 3.) A meeting was arranged at the Fall River Government Center on July 11, 2013, with Mr. Smith, Kevin Hennessey, Director of Federal State & Local Affairs for Dominion, Mayor William A. Flanagan, former City Administrator Shawn Cadime, Kenneth Pacheco, Director of Community Maintenance, and Elizabeth Sousa, Corporation Counsel in attendance. (See Ex. 2 at ¶ 3.) At no time during the July 2013 meeting, or at any point thereafter, did Dominion indicate to Fall River what the projected period of time was in which the Court would approve the Consent Decree to trigger the 120-day deadline. (See Ex. 2 at ¶ 4.)

Instead, Dominion prepared their own written guidelines (“Proposal Guidelines”), including a footnote that the “United States soon will move to enter the Consent Decree which will then take effect when the Court enters it.” (See Proposal Guidelines at Ex. 4) Unbeknownst

to Fall River, and contrary to Dominion's representations in the Proposal Guidelines, at the time of the July 11, 2013 meeting, the United States had already moved for the Court to enter the Consent Decree. (See Dkt. No. 6.) Dominion further failed to notify Fall River when the Court entered the Consent Decree after the United States' motion, or to provide Fall River with any notice of the Court's deadline. (See Ex. 2 at ¶ 13; see also Ex. 1 at ¶¶ 4, 5, 9.)

While considering what type of project proposal would be most beneficial to the City, Fall River considered that it had already undertaken and completed a number of solar photovoltaic projects at its newly built schools. (See Ex. 2 at ¶ 6.) Additionally, given the presence of "ledge" near many of Fall River's older schools, coupled with New England's rocky terrain, geothermal projects were not deemed to be feasible. (See Ex. 1.) Accordingly, Fall River determined that it required additional time to develop a proposal that would work within Fall River's geological conditions, while not duplicating existing improvements and still complying with the Consent Decree's terms. (See Ex. 2 at ¶ 8.) In an effort to comply with Dominion's Proposal Guidelines—which required Fall River submit a proposal by August 1, 2013—Fall River obtained an extension of time from Dominion to submit a written proposal. (See Ex. 1 at ¶ 9.) Dominion's representative and main point of contact on the project, James Smith, consented to the extension. (See Ex. 1 at ¶ 9.)

In or about September 2013, based upon Dominion's representations through its consultant James Smith that Fall River had an extension of time to submit a proposal, Fall River retained its own consultant, Ameresco, Inc., ("Ameresco") to generate a viable project plan for Fall River in conformance with the Consent Decree. (See Ex. 2 at ¶ 10.) Ameresco and Fall River continued to work to develop a project plan relying in good faith upon Dominion's promise that it would accept Fall River's proposed project plan upon its completion. (See

Affidavit of Harold Meyer dated December 26, 2013 (“Meyer Aff.”) attached hereto as Ex. 3 at ¶ 5.) Neither Mr. Smith, nor any other representative from Dominion, contacted Fall River to follow up on the development of its project plan. (See Ex. 1 at ¶ 11.)

**C. Dominion’s Misrepresentations and Refusal to Accept Fall River’s Proposal**

On or about December 17, 2013, Fall River officials read a newspaper article in the *Herald News* alleging that the neighboring Town of Somerset was likely to receive the full \$1,600,000, stating that Fall River allegedly failed to timely submit its proposal in accordance with the 120-day deadline imposed by the Consent Decree. (See Ex. 2 at ¶11; see also the December 17, 2013 *Herald News* Article annexed to the DiOrio Aff. as Exhibit 1-C.) While Fall River sought to determine the veracity of the article, it further asked Ameresco to finalize its project plan (hereinafter the “Project Plan”) for submission that same day. (See *id.*; see also Ex. 3 at ¶10.)

On December 17, 2013 after reading the *Herald News* article, Fall River communicated with Dominion’s representative James Smith, who advised that he disagreed with the newspaper article’s claim that Fall River “did not apply for its share” of the \$1,600,000 settlement, and promised to contact Dominion’s legal counsel to investigate. (See Ex. 1 at ¶ 14.) Meanwhile, a conference call arranged by the Mayor of Fall River between City Officials and the EPA revealed that one month earlier, on November 5, 2013, Dominion informed the EPA that Fall River had not maintained communication and had indicated to Dominion that it had no viable projects to implement, leading Dominion to move forward with only Somerset’s project plan. (See Correspondence from Fall River to Dominion’s counsel dated December 18, 2013 referencing reports relayed by the EPA as respects the November 5, 2013 letter, attached to the DiOrio Aff. as Ex. 1-D at page 2.) Immediately, Fall River advised the EPA that it obtained an

extension from Dominion to submit their Project Plan, had a completed Project Plan from Ameresco ready, and that Dominion's representations that Fall River did not intend to submit a plan were incorrect. (See *id.* at page 3.) The EPA responded that it would wait for Dominion's response to Fall River's offered Project Plan, and upon information and belief, the EPA has not taken further action to consider any of Dominion's project proposals. (See Ex. 1 at ¶ 15.)

To date, Dominion refuses to accept Fall River's Project Plan, and advised that although it extended the time for Fall River to submit a plan beyond its self-imposed August 1, 2013 deadline, that it lacked the authority to extend the Court-imposed deadline of November 14, 2013. (See Correspondence from Dominion's counsel dated December 19, 2013 annexed to the DiOrio Aff. as Ex. 1-E.) The November 14, 2013 deadline is 120 days after the Court entered the Consent Decree, on July 18, 2013. (See Dkt. No. 8.) Fall River, however, had no knowledge of the November 14, 2013 deadline, and further had no knowledge of the date that the Court entered the Consent Decree. (See Ex. 2 at ¶ 13.) James Smith further advised Fall River that he, as Dominion's representative, was likewise unaware of the November, 2013 Court deadline. (See Ex. 1 at ¶ 22.) The only deadline that Dominion communicated to Fall River was the August 1, 2013 deadline that Dominion imposed—independent of the Consent Decree—and to which Fall River obtained an extension. (See Ex. 2 at ¶ 9; see also Ex. 1 at ¶ 9.) The Consent Decree does not impose any deadlines or obligations on Fall River as a recipient of the remediation award, as the 120-day deadline is the time within which *Dominion* must submit its Remediation Plans, not Fall River. (See Consent Decree generally and at Appx. A, Section II (emphasis added).)

Dominion alleges that communications with Fall River tapered off in October after Fall River allegedly communicated that it would not be submitting a proposal due to the narrow

scope of the Consent Decree Requirements. Conversely, Fall River contends that Ameresco was working diligently to identify viable projects per the Consent Decree, but that Dominion made no attempt in October or November to determine how Fall River's plans were progressing. (See Ex. 2 at ¶ 10; see also Ex. 3 at ¶ 5.)

Most shockingly, after reading the *Herald News* article in December, 2013, Fall River learned for the first time that James Smith, who had been Fall River's main point of contact at Dominion throughout the project, had been terminated by Dominion on September 1, 2013, after Dominion was sold to EquiPower Resources Corp. (See Ex. 1 at ¶14.) Fall River had no knowledge of Dominion's sale to EquiPower Resources Corp., and neither James Smith nor anyone at Dominion ever notified Fall River that Dominion terminated James Smith.<sup>3</sup> (See Ex. 1 at ¶ 19.) Nor did Dominion appoint a new point of contact to coordinate and consult with Fall River on the Project Plan after it terminated James Smith. (See Ex. 1 at ¶ 20.) As a result, Fall River continued to communicate with James Smith through December 2013, under the mistaken belief that he was still a representative of Dominion.

On December 17, 2013, Fall River attempted to provide its "shovel ready" Project Plan to Dominion for submission to the EPA for review and consideration as if the 120-day deadline had not passed. (See Ex. 1 at ¶ 23.) Dominion rejected Fall River's efforts, claiming that it would be inappropriate to alter the process it had undertaken in reviewing and submitting mitigation Project Plans to the EPA for approval and unfair to the other participants who submitted their project plans. As such, Fall River has no choice but to make the instant application to intervene to protect its interests.

#### ARGUMENT

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<sup>3</sup> Of note, James Smith informed Fall River that he was likewise unaware of the November 2013 deadline for Dominion to submit its proposals to the EPA.

**A. Intervention of Right**

A court must permit anyone to intervene, who files a timely motion and possesses an unconditional right to intervene by federal statute. *See* FED. R. CIV. P. 24(a). “The language of the Clean Air Act grants an unconditional right to intervene if done in a timely fashion.” *See United States v. Republic Steel*, 1980 U.S. Dist. LEXIS 17371 at \*1 (N.D. Ill. 1980) (finding a motion to intervene timely when brought roughly one month after being placed on notice of the need to intervene); *see also* 42 U.S.C.S. §7604(b)(1)(B).

**B. Timeliness**

To decide whether a motion to intervene is timely, courts consider several factors including: “(1) the length of time the intervenor knew or should have known of her interest in the case, (2) the prejudice caused to the original parties by the delay, (3) the prejudice to the intervenor if the motion is denied, and (4) any other unusual circumstances.” *See Reid L. v. Ill. State Bd. of Educ.*, 289 F.3d 1009, 1017-1018 (7th Cir. Ill. 2002) (citing *Ragsdale v. Turnock*, 941 F.2d 501, 504 (7th Cir. 1991)). Courts must consider the significance of the impact on the rights of the proposed intervenors should the motion be denied for untimeliness. The Seventh Circuit has held that

For the interests of an intervenor who qualified under Rule 24(a) for intervention of right would be far more seriously impaired by denial of intervention on the ground of untimeliness than those of an intervenor only qualifying to intervene by permission under Rule 24(b). The weight to be accorded the untimeliness of the filing for intervention in deciding whether to deny the intervention thus depends in part on what type of intervention is involved.

*EEOC v. United Air Lines*, 515 F.2d 946, 949 (7th Cir. 1975) (citations omitted); *see also McDonald v. E. J. Lavino Co.*, 430 F.2d 1065, 1073 (5th Cir. Ala. 1970) (citing *Wright*, Federal

Courts § 75, at 328 (2d ed. 1970) (“... courts should be extremely reluctant to dismiss such applications as untimely”).

Fall River is entitled to intervene under the CAA as a matter of right because its application is timely and the Original Parties will not be prejudiced by any delay. Moreover, Fall River will be significantly prejudiced if the instant application to intervene is denied. In light of the unusual circumstances surrounding Fall River’s reliance on, among other things, Dominion’s representation of an extension, Dominion’s failure to notify Fall River of any Court imposed deadlines, Dominion’s failure to consult with Fall River throughout, and Dominion’s failure to notify Fall River that it terminated the main point of contact on the project, an order granting the instant motion to intervene is warranted.

1. Fall River Timely Applied For Intervention After Learning Its Interests Were Adversely Affected

A prospective intervenor must promptly move to intervene as soon as it knows that its interests might be adversely affected. *See Heartwood Inc., v. United States Forest Service, et al.*, 316 F.3d 694, 701 (7th Cir. 2003). When a motion to intervene is brought in a litigation that has been otherwise resolved, the relevant inquiry in determining timeliness is not the time between the settlement and the motion, but rather is the time between the intervenor’s knowledge that its interests could be impacted and the submission of the intervenor’s motion to intervene. *See id.*

Fall River did not know of its need to intervene until Dominion rejected its Proposal on December 19, 2013. (See Ex. 1-E of the DiOrio Aff.) Prior to Dominion’s rejection, Fall River had no knowledge that its interests could be adversely affected. Furthermore, Fall River had no reason to intervene after the Original Parties agreed to the Consent Decree, because the Consent Decree expressly protected Fall River’s interests and provided for Fall River to receive part of

the \$1,600,000 remediation award. (See Consent Decree, Appx A., Section XI, ¶ B.) Fall River submits the instant application within a matter of weeks after Dominion rejected Fall River's proposal.<sup>4</sup>

Additionally, when an intervenor seeks to intervene in a settled dispute for a collateral purpose, timeliness is not a concern. *See, supra, Heartwood Inc.*, 316 F.3d at 700. Fall River seeks to intervene to modify the Consent Decree to provide an extension and permit the EPA's consideration of its Project Plan. Fall River does not seek to interfere with, or undermine the terms of the Consent Decree.

## 2. The Original Parties Will Not Be Prejudiced By Any Delay

"The most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case." *See Maxum Indem. Co. v. Eclipse Mfg. Co.*, 2008 U.S. Dist. LEXIS 89757 at \*8-9 (N.D. Ill. Nov. 5, 2008) (citing *Nissei Sangyo Am. v. United States*, 31 F.3d 435, 439 (7th Cir. 1994); *see also Aurora Loan Servs. v. Craddieth*, 442 F.3d 1018, 1027 (7th Cir. 2006) ("[I]n the absence of any indication of prejudice to the [existing parties] . . . the motion cannot be adjudged untimely as a matter of law."). Here as discussed above, there is no such delay.

Actions to intervene on collateral issues to modify settlements that do not address the substantive merits need not be timely. As such, it is not necessary that Fall River's motion to intervene be timely for the limited purpose under which it is brought. *See, e.g., Lalic v. Chicago, Burlington & Quincy Railroad Co.*, 263 F. Supp. 987, 988 (N.D. Ill. 1967) (holding intervention

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<sup>4</sup> Fall River became aware of the potential need to intervene on December 19, 2013 – just days before several state, federal and municipal holidays. Despite Fall River Officials' best efforts a number of municipal persons had to be consulted in the preparation of the instant application. In light of the difficulty involved in assembling the required internal approvals during the holidays, and the time required to prepare this motion, Fall River respectfully submits that it has acted with timeliness preserve its rights.

proper to assert subrogation interests after the original parties to the suit had settled). To date, the EPA has not made a determination as to any of Dominion's proposed project plans; therefore, there is no doubt that Fall River's motion to intervene as a matter of right is timely. Granting Fall River's motion to intervene would impact neither Dominion nor the EPA. Fall River seeks to intervene solely to modify the Consent Decree to extend the time by which the EPA may receive Dominion's project proposals, specifically Fall River's "shovel ready" Project Plan.<sup>5</sup> Fall River's limited purpose of securing its right to submit a proposal to Dominion is not an attempt to litigate any pre-consent decree issue, and as such, cannot in any way prejudice the Original Parties.

3. Fall River Will Be Significantly Prejudiced If This Application Is Denied

As addressed more fully above, an intervenors' rights are more significantly impacted when the right to intervene is one expressly provided for by federal statute as a matter of right. *See supra EEOC v. United Air Lines*, 515 F.2d at 949. If Fall River's application is denied, Fall River will be significantly prejudiced because it will no longer be eligible for consideration to receive any of the roughly \$800,000 contemplated under the Consent Decree as remediation for Dominion's harmful release of pollutants into Fall River's environment.

In addition, Fall River will have no other legal remedies under the CAA because enforcement authority is granted solely to EPA, and citizen suits are preempted if the "Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to compel compliance with the standard, limitation or order..." *See*

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<sup>5</sup> Nonmaterial modifications already have been made to the Consent Decree by the United States on December 5, 2013, when a notice was filed that nonmaterial modifications could be made to the Consent Decree without need for Court approval. (See Ex. 1 at ¶ 21; see also Dkt. No. 11.)

42 USC 7604(b)(1)(B)<sup>6</sup>; *see e.g. St. Bernard Citizens for Env'tl. Quality, Inc. v Chalmette Ref., L.L.C.* 500 F. Supp. 2d 592 (E.D. La, 2007), (holding that a non-profit corporations' claims against a refinery in a citizen suit brought under the CAA were barred under doctrine of res judicata when the EPA and Louisiana Department of Environmental Quality initiated enforcement mechanisms against the refinery resulting in a consent decree ).

The Consent Decree was designed to redress damage to the areas most impacted by Dominion's allegedly unlawful emissions. (See Consent Decree at ¶ 109; see also Ex. 1-D of the DiOrio Aff. at page 3.) Under the Consent Decree, Dominion was required to use "good faith efforts to secure as much environmental benefit as possible for the Project Dollars expended, consistent with the applicable requirements and limits of this Consent Decree." See Consent Decree at ¶ 113. Dominion failed to consult with Fall River in good faith as required by the Consent Decree. See Ex. 1 at ¶ 20; see also Ex. 2 at ¶ 13. Dominion's refusal to accept Fall River's Project Plan for consideration is further questionable, especially in light of the EPA's direction that it would wait for Dominion's response to determine whether Fall River's Project Plan could be considered. See Ex. 1 at ¶ 15.

Fall River expended significant time, effort and funds to develop a plan that complied with the requirements of the Consent Decree between September and December 2013. Based upon its good faith reliance on the agreed-upon extension provided by Dominion in September 2013, and Dominion's failure to notify Fall River of the Court's November 14, 2013 deadline, Fall River retained Ameresco to assist it with developing a plan in accordance with the Consent Decree's terms. Fall River continued to work on its Project Plan, even though it had been unknowingly taken "out of the running" by Dominion on November 5, 2013 based upon

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<sup>6</sup> It is as a result of this limitation that the Clean Air Act provides for unconditional intervention as a matter of right.

Dominion's misrepresentation that Fall River advised Dominion that it did not intend to submit a proposal. As such, Fall River will be severely prejudiced if not permitted to intervene, and protect its interests as provided for under the CAA and Consent Decree.

4. The Unusual Circumstances Warrant An Order Granting Intervention

Fall River did not know its interests were adversely affected until December 19, 2013. Any alleged delay by Fall River in failing to intervene prior to December 19, 2013 is a direct result of the fact that prior to that date there was no need, as its interests were expressly protected and provided for in the Consent Decree. See Consent Decree, Appx. A., Section XI, ¶ B. When an otherwise delayed motion to intervene is brought, the Court in its discretion may still determine it is timely if there exist unusual circumstances to explain the reason for any delay. *See Bloomington v. Westinghouse Electric Corp.*, 824 F.2d 531, 537 (7th Cir. 1987).

Dominion's failure to adequately consult with Fall River is evidenced by the circumstances surrounding James Smith's appointment and termination as Dominion's consultant to Fall River. Thus, Fall River's ability to meet Dominion's self-identified internal deadline for the receipt of Fall River's proposal was compromised when neither Dominion nor James Smith notified Fall River that James Smith was no longer acting as Dominion's appointed consultant and intermediary. Moreover, James Smith continued to communicate with Fall River on Dominion's behalf regarding the project proposals through December 17, 2013 despite his September 1, 2013 termination. (See Ex. 1 at ¶ 14.) Thus, Dominion's allegations that Fall River failed to communicate with Dominion after September 1, 2013 are in fact evidence of Dominion's own failure to identify the correct person with whom Fall River should have been communicating.

Dominion further failed to notify Fall River of the Court imposed November 14, 2013 deadline. The only deadline Fall River was made aware of was the Dominion deadline of August 1, 2013, from which Fall River obtained an extension—a fact to which no one disagrees. As a result of all of the above-described unusual circumstances, Fall River should be permitted to intervene as a matter of right to file its motion to modify the consent decree to extend the period of time in which it may submit its Project Plan for the EPA's consideration.

**C. In the Alternative, Fall River Seeks Permission to Intervene**

Fed. R. Civ. P. 24(b) provides in pertinent part that “[o]n timely motion, the court may permit anyone to intervene who: (a) is given a conditional right to intervene by a federal statute; or (b) has a claim or defense that shares with the main action a common question of law or fact. See Fed. R. Civ. P. 24(b)(1). As addressed more fully above, the instant application is timely as it was brought within a matter of weeks after Fall River learned its interests were adversely affected, no prejudice will be caused to the Original Parties by any delay, Fall River will be significantly prejudiced if unable to intervene, and the unusual circumstances are such that intervention is appropriate. *See Reid L. v. Ill. State Bd. of Educ.*, 289 F.3d 1009, 1017-1018 (7th Cir. Ill. 2002).

Although Fall River respectfully submits that it has the unconditional ability to intervene as a matter of right under the CAA pursuant to 42 U.S.C.S. §7604(b)(1)(B), in the alternative, it should further be granted permission to intervene pursuant to Fed. R. Civ. P. 24(b). “Rule 24(b) provides courts with discretion to allow permissive intervention when an intervenor shows: (1) independent grounds for jurisdiction; (2) the intervention will not unduly delay or prejudice the adjudication of the original parties’ rights; and (3) the applicant’s claim or defense, and the main action, have a question of law or a question of fact in common.” *See Maxum Indem. Co. v.*

*Eclipse Mfg. Co.*, 2008 U.S. Dist. LEXIS 89757 at \*6-8 (N.D. Ill. 2008). A showing of independent jurisdiction only requires that such claims could have been asserted in federal court in the absence of the main action. *See Reedsburg Bank v. Apollo*, 508 F.2d 995, 1000 (7th Cir. 1975).

In the absence of EPA's Complaint in the present action, and assuming the United States failed to otherwise diligently prosecute Dominion for its alleged violations, Fall River would have independent jurisdiction to file suit in this Court as "the district courts have jurisdiction without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation." *See* 42 U.S.C.S. §7604(a). Additionally, venue is proper in this District pursuant to the CAA Sections 113(b), 42 U.S.C. §7413(b) and 28 U.S.C. §§ 1391(b), (c), and 1395(a), because violations that are the subject of the Complaint occurred in this District. *See* Dkt. No. 1 at ¶ 5. As Dominions' harmful release of pollutants exposed and continues to expose the people of Fall River and threatens their lives, health and welfare and denies them protect provided under the CAA, Fall River has standing and its requested relief will address these injuries.

### CONCLUSION

WHEREFORE, for the foregoing reasons Fall River respectfully requests that the Court grant its motion to intervene as a matter of right, and/or in the alternative grant it permission to intervene, so it may submit a motion to modify the nonmaterial terms of the Consent Decree to extend the time in which it may submit its Project Plan for the EPA's consideration, along with such other and further relief as the Court may deem just and proper from the circumstances.

Dated: January 29, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on January 29, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S REVISED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS REVISED MOTION TO INTERVENE AS OF RIGHT, OR ALTERNATIVELY, BY PERMISSION** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 29, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S REVISED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS REVISED MOTION TO INTERVENE AS OF RIGHT, OR ALTERNATIVELY, BY PERMISSION** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

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The United States of America (“United States”) commenced this action at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) against Defendants Dominion Energy, Dominion Energy Brayton Point, LLC and Kincaid Generation LLC (hereinafter collectively referred to as “Dominion”) for violations of the Clean Air Act (“CAA”). To avoid the costs of litigation, the United States and Dominion (collectively the “Original Parties”) executed a Consent Decree by which Dominion agreed to fund environmental remediation projects in the areas most affected by the alleged CAA violations.<sup>1</sup> With respect to Dominion Energy Brayton Point, LLC (“Brayton Point”), located in Massachusetts, the Consent Decree requires Dominion spend \$1,600,000 for environmental mitigation projects, divided between the Town of Somerset (“Somerset”) and Fall River. (See Consent Decree App. A, Section XII, ¶ B.) The Consent Decree further requires that prior to spending the allocated funds on remediation projects, Dominion must first consult in good faith with both Somerset and Fall River to develop the remediation proposals. (See Consent Decree App. A, Section XII, ¶ A.) Finally, the Consent Decree requires Dominion to submit proposals for each project to the EPA for prior approval. Dominion is in violation of the Consent Decree because it failed to consult in good faith with Fall River to develop a remediation proposal. Dominion refuses to accept or

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<sup>1</sup> The United States filed its Complaint against Dominion (the “Illinois Action”) as well as the proposed Consent Decree on April 2, 2013. Two months earlier, on February 22, 2013, the Conservation Law Foundation (“CLF”) and two additional environmental organizations filed a complaint against Dominion Energy Brayton Point, LLC at the District Court for the District of Massachusetts in a case captioned *Conservation Law Foundation, Inc., Clean Water Action, and Toxics Action Center v. Dominion Energy Brayton Point, LLC*, Case No. 1:13-cv-10346-JLT (the “Massachusetts Lawsuit”). Plaintiffs in the Massachusetts Lawsuit filed their claims pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. §7604, seeking, among other things, to enjoin certain alleged violations of Dominion Energy Brayton Point’s compliance obligations under the Clean Air Act. Upon information and belief, the Plaintiffs to the Massachusetts Lawsuit agreed to voluntarily dismiss their suit against Dominion on the condition that the violations at the Brayton Point facility alleged in the Massachusetts Lawsuit would be resolved by and through provisions in the Consent Decree that was being drafted to resolve the United States’ allegations in the Illinois Action. Accordingly, while the United States’ Complaint in the Illinois Action does not address the Brayton Point Power Station, the United States and the Defendant in the Illinois Action agreed to resolve the alleged violations at Brayton Point by and through the Consent Decree issued in the Illinois Action. Following the Illinois District Court’s July 17, 2013 approval of the Consent Decree, the Massachusetts Lawsuit was voluntarily dismissed with prejudice. See Case No. 13-cv-10346 at Dkt. No. 16 (D. Mass. 2013).

submit Fall River's shovel-ready remediation proposal to the EPA for consideration. Accordingly, Fall River seeks to intervene so that it may file a motion to modify the nonmaterial terms of the existing Consent Decree to provide for an extension of time under which Dominion may submit remediation proposals to the EPA for consideration.

As addressed more fully in the Memorandum in Support of this Motion and in Fall River's proposed Complaint in Intervention, Fall River has the right to intervene pursuant to 42 U.S.C. §7604(b)(1)(B) under the CAA and its application is timely brought. Furthermore, Fall River's interests will be severely prejudiced if not afforded the opportunity to intervene, and any such intervention will not unduly delay or prejudice the Original Parties' rights in this action. Alternatively, Fall River's claims against Dominion share a common question of law and fact with those asserted in the main action, and Fall River should be granted permission to intervene. As such, Fall River respectfully requests the Court grant the instant application for intervention as a matter of right, or in the alternative, grant it permission to intervene, along with such other and further relief as the Court may deem just and proper. A proposed Complaint in Intervention setting forth the grounds under which intervention is sought is attached to the instant Motion as Exhibit 1.

Fall River requested Defendants Dominion Energy, Inc., Dominion Energy Brayton Point, LLC and Kincaid Generation, LLC's (collectively referred to hereinafter as "Defendants") consent to so move, but did not obtain same.

Pursuant to Local Rule 7.1(A)(2), Fall River requests oral argument so as to address the complex nature of the facts and law asserted herein.

Dated: January 29, 2014

Respectfully submitted,

s/ Deanna R. Swits

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on January 29, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S REVISED MOTION TO INTERVENE** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 29, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S REVISED MOTION TO INTERVENE** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

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# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and )  
 )  
 THE CITY OF FALL RIVER, )  
 )  
 Plaintiff-Intervenor, )  
 ) Civil Action No. 3:13-cv-03086  
 v. ) (SEM)(BGC)  
 )  
 DOMINION ENERGY, INC., DOMINION )  
 ENERGY BRAYTON POINT, LLC, AND )  
 KINCAID GENERATION, LLC. )  
 )  
 Defendants. )  
 )  
 )  
 )  
 )

**[REVISED PROPOSED] COMPLAINT IN INTERVENTION**

Plaintiff-Intervenor City of Fall River alleges, upon information and belief:

1. Dominion Energy, Inc., Dominion Energy Brayton Point, LLC, and Kincaid Generation, LLC, (together, "Defendants" or "Dominion") have, among other things, violated various emission standards and limitations designed to control emissions of sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxides (NO<sub>x</sub>"), and Particulate Matter ("PM") as required by the Prevention of Significant Deterioration ("PSD") provisions of the Clean Air Act ("the Act" or "CAA"), 42 U.S.C. §§ 7470-92, Title V of the Act, 42 U.S.C. §§ 7661-7661(f), and the federally approved and enforceable State Implementation Plan ("SIP") adopted by the State of Massachusetts approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410.

2. Defendant Dominion Energy Brayton Point, LLC (“Dominion Brayton”) has violated opacity emissions limitations and monitoring requirements, acid rain monitoring requirements, and monitoring requirements for SO<sub>2</sub> and NO<sub>x</sub> and carbon dioxide at Brayton Point Power Station (“Brayton”) located at 1 Brayton Point Road, Somerset, Massachusetts approximately 2.5 kilometers across Mt. Hope Bay from the City of Fall River.

3. As a result of Defendants’ failure to comply with the terms of its Title V permit for its electricity generating unit at Brayton Point, large amounts of SO<sub>2</sub>, NO<sub>x</sub>, and carbon dioxide pollution each year have been, and are still being, released into the atmosphere and are causing direct harm to the environment and to the health and welfare of the inhabitants of the City of Fall River.

#### **A. JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to CAA Sections 113(b) and 167, 42 U.S.C. § 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 2201 and 2202. The relief requested by the Plaintiff and the Plaintiff-Intervenor is authorized by 42 U.S.C. §§ 7413 and 7604 and 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in this District pursuant to CAA Sections 304(c)(1), 42 U.S.C. §7413(b), and 28 U.S.C. §§ 1391(b)(2) because violations that are the subject of the Complaint occurred and are occurring within this District, and Defendants reside and conduct business within this District.<sup>1</sup>

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<sup>1</sup> The United States filed its Complaint against Dominion in the instant matter (the “Illinois Action”) as well as the proposed Consent Decree on April 2, 2013. Two months earlier, on February 22, 2013, the Conservation Law Foundation (“CLF”) and two additional environmental organizations filed a complaint against Dominion Energy Brayton Point, LLC at the District Court for the District of Massachusetts in a *(Footnote continued on next page)*

**B. NOTICES**

6. U.S. EPA issued a Notice and Finding of Violation (“NOV”) on April 16, 2009, with respect to alleged violations of the CAA, as required by Section 113(a)(1) of the Act, 42 U.S.C. §7413(a)(1).

7. The 30-day period between issuance of the NOV and commencement of a civil action, required under CAA Section 113, 42 U.S.C. § 7413, has elapsed.

8. Upon information and belief, Plaintiff United States provided notice of the commencement of this action to the appropriate State air pollution control agencies in Illinois, Indiana, and Massachusetts, as required by CAA Section 113(b), 42 U.S.C. § 7413(b).

**C. PARTIES**

9. Plaintiff is the United States of America.

10. Plaintiff-Intervenor is a municipality located within the Commonwealth of Massachusetts.

case captioned *Conservation Law Foundation, Inc., Clean Water Action, and Toxics Action Center v. Dominion Energy Brayton Point, LLC*, Case No. 1:13-cv-10346-JLT (the “Massachusetts Lawsuit”). Plaintiffs in the Massachusetts Lawsuit filed their claims pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. §7604, seeking, among other things, to enjoin certain alleged violations of Dominion Energy Brayton Point’s compliance obligations under the Clean Air Act. Upon information and belief, the citizen plaintiffs in the Massachusetts Lawsuit agreed to voluntarily dismiss their suit against Dominion on the condition that the violations at the Brayton Point facility alleged in the Massachusetts Lawsuit would be resolved by and through provisions in the Consent Decree that was being drafted to resolve the United States’ allegations in the Illinois Action. Accordingly, while the United States’ Complaint in the Illinois Action does not address the Brayton Point Power Station, the United States and the Defendant in the Illinois Action agreed to resolve the alleged violations at Brayton Point by and through the Consent Decree issued in the Illinois Action. Following the Illinois District Court’s July 17, 2013 approval of the Consent Decree, the Massachusetts Lawsuit was voluntarily dismissed with prejudice. *See* Case No. 13-cv-10346 at Dkt. No. 16 (D. Mass. 2013). Because this Court entered the Consent Decree that purports to resolve the Clean Air Act violations at Brayton Point Power Station, this Court has jurisdiction (and both the United States and Dominion have implicitly accepted that jurisdiction) over the allegations originally set forth in the Massachusetts Lawsuit.

11. Defendant Dominion Energy, Inc., is a Virginia Corporation registered to do business in Massachusetts and Illinois, and is the parent corporation of, *inter alia*, Dominion Energy Brayton Point, LLC and Kincaid Generation, LLC. Dominion Energy Inc. and its subsidiary Kincaid Generation, LLC own and/or operate the Kincaid Power Station located in Kincaid, Illinois. Dominion Energy and its subsidiary Dominion Energy Brayton Point, LLC own and/or operate the Brayton Point Power Station located in Somerset, Massachusetts. Dominion Energy, Inc. also owns the State Line Power Station, located in Hammond, Indiana.

12. At all times pertinent to this civil action, Defendant Dominion Energy Inc. has been the owner and/or operator of the Brayton Point Power Station located in Somerset, Massachusetts across Mount Hope Bay from the City of Fall River. The Brayton Point Power Station consists of four steam electric generating units ("Boiler Units"). Boiler Units 1 and 2 are Combustion Engineering water-tube boilers fueled primarily by coal, but may fire natural gas at 25 percent as a secondary fuel and No. 6 or No. 2 fuel oil at 100 percent as a backup fuel. Boiler Units 1 and 2 were installed in 1963 and 1964, respectively. Boiler Unit 3 is a Babcock and Wilcox water-tube boiler, installed in 1968, that is fueled primarily with coal but may also fire natural gas at 10 percent as a secondary fuel and No. 6 or No. 2 fuel oil as a backup fuel. Unit 4 is a Riley Stoker water tube boiler, installed in 1974, that is fueled primarily by residual oil and natural gas. These Boiler Units have net design capacities of 255, 255, 633, and 446 Megawatts (MW), respectively.

13. Plaintiff-Intervenor and Defendants as identified above, are "persons" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7401(b)(1).

14. Plaintiff-Intervenor has standing because the acts and omissions alleged herein exposed and continue to expose the people of the City of Fall River who live, work, and recreate in the vicinity of the plant to harmful pollution that threatens their health and welfare, interferes with their use and enjoyment of property and the surrounding areas, injures their economic interests, denies them protection of their health and well-being protected by the Act and the Title V permits issued under the Act and the Massachusetts SIP, and negatively impacts their aesthetic and recreational interests. The relief requested herein will redress these injuries.

#### **D. STATUTORY BACKGROUND**

##### **1. The Clean Air Act**

15. The purpose of the Act is the protection and enhancement of the Nation's air resources to promote the public health and welfare and the productive capacity of its population. CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1).

16. The Act requires EPA to establish national ambient air quality standards ("NAAQS") that "allow[] an adequate margin of safety, requisite to protect the public health," and that are "requisite to protect the public welfare." CAA § 109(b), 42 U.S.C. § 7409(b). The Act mandates the use of certain emission control technologies to limit emissions of pollutants that EPA has determined "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." CAA § 108(a)(1)(A), 42 U.S.C. § 7408(a)(1)(A).

17. Fine particulate matter—particles with a size less than or equal to 2.5 micrometers in diameter, "PM<sub>2.5</sub>"—is one of the air pollutants for which the EPA has established a NAAQS. 40 C.F.R. § 50.7; 78 Fed. Reg. 3,086 (2013).

18. PM<sub>2.5</sub> is a mixture of small particles, including organic chemicals, metals, and ash, which can cause severe health and environmental problems. Once inhaled, PM<sub>2.5</sub> can affect the heart and lungs and cause serious health effects. See 78 Fed. Reg. 3,103–3,104 (2013); 52 Fed. Reg. 24,663 (1987).

19. Opacity, also known as visible emissions, is not a criteria pollutant; however, visible emissions standards were initially established as a surrogate for assuring compliance with particulate matter standards at a time when continuous emissions monitors for PM were not considered technologically feasible. 76 Fed. Reg. 18,870, 18,872 (2011) (“Although opacity is not a criteria pollutant, opacity standards continue to be used as an indicator of the effectiveness of emission controls for PM emissions, or to assist with implementation and enforcement of PM emission standards for purposes of attaining PM NAAQS”).

20. Under the CAA, each state bears primary responsibility for assuring air quality within its geographic area by submitting an implementation plan for the State which specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in the State. CAA §§ 107, 110(a); 42 U.S.C. §§ 7407, 7410(a). The state implementation plan (“SIP”) must be submitted to the EPA Administrator for approval. CAA § 110(a), 42 U.S.C. § 7410(a).

21. The CAA, in relevant part, mandates that the SIP shall include enforceable emissions limitations and other control measures, as well as periodic reports on emissions, as necessary to meet the requirements of the Act. CAA § 110(a), 42 U.S.C. § 7410(a)(2).

22. A SIP must satisfy the mandates of the CAA before it can receive EPA approval. 42 U.S.C. §§ 7410(a) and (k). See also 40 C.F.R. § 51.110, Appendix V.

## 2. Massachusetts Implementation of the Clean Air Act

### *i. The Massachusetts SIP*

23. Massachusetts submitted its SIP to EPA in January 1972. 40 C.F.R. § 52.1120(b). The MA SIP is codified at 40 C.F.R. Part 52, Subpart W. 40 C.F.R. § 52.1119 et seq.

24. Since then, Massachusetts, from time to time, has submitted state regulations to the EPA for approval as revisions to the MA SIP.

### *ii. MA SIP Visible Emissions Provisions*

25. The Massachusetts SIP provision that establishes visible emissions limitations for stationary sources such as BRAYTON is set forth at 310 Mass. Code Regs. 7.06. The EPA has approved and incorporated 310 Mass. Code Regs. 7.06(1)(a)-(b) of Massachusetts' visible emissions regulations into the Massachusetts SIP. See 40 C.F.R. § 52.1120(c)(4); 37 Fed. Reg. 23,085 (1972).

26. Under 310 Mass. Code Regs. 7.06, opacity shall not "exceed twenty per cent (20%) opacity for a period or aggregate period of time in excess of two minutes during any one hour provided that, at no time during the said two minutes shall opacity exceed 40%." 310 Mass. Code Regs. 7.06(1)(b).

27. The Massachusetts SIP also prohibits the emission of smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time shall the shade, density or appearance be equal to or greater than No. 2 of the Ringelmann chart. 310 Mass. Code Regs. 7.06(1)(a).

28. As standards or limitations under the Massachusetts SIP, the visible emission standards cited in Paragraphs 25-27 above constitute "emission standards or limitations" under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a).

29. "Emissions standards" is defined in section 302(k) of the CAA as "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter." CAA § 302(k), 42 U.S.C. § 7602(k).

30. Continuous compliance is necessary because of the severe health impacts that may occur as a result of even short-term exposure to air pollution.

### *iii. MA SIP Monitoring Requirements*

31. The Massachusetts SIP provides that any person who owns or operates an emission source as described in 40 C.F.R. Part 51, Appendix P, shall continuously monitor emissions of opacity, nitrogen oxides ("NO<sub>x</sub>"), sulfur dioxide ("SO<sub>2</sub>"), and carbon dioxide ("CO<sub>2</sub>"). 310 Mass. Code Regs. 7.14(2). Appendix P applies to fossil fuel-fired steam generators, including Brayton. 40 C.F.R. Part 51, Appendix P.

32. The Massachusetts SIP also requires facilities with the potential to emit 50 tons per year or more of NO<sub>x</sub> to continuously monitor emissions of NO<sub>x</sub> and carbon monoxide ("CO"). 310 Mass. Code Regs. 7.19(13). Brayton is a facility with the potential to emit 50 tons per year or more of NO<sub>x</sub>.

33. As standards or limitations under the Massachusetts SIP, the monitoring requirements cited in Paragraphs 31–32 above constitute “emission standards or limitations” under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a).

### **3. The Massachusetts Title V Permit Program**

34. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources.” The purpose of Title V is to ensure that all “applicable requirements” for compliance with the Act, including opacity and SIP requirements, are collected in one place.

35. A “major source” for purposes of Title V is defined, among other things, as a source with a potential to emit greater than 100 tons per year of any criteria pollutant. 42 U.S.C. § 7661(2).

36. Massachusetts’ Title V operating permit program was granted interim approval by EPA on May 15, 1996 (61 Fed. Reg. 24,460) and final approval on November 27, 2001. 66 Fed. Reg. 49,541 (2001). Massachusetts’ Title V permit program is codified at 310 CMR 7.00: Appendix C.

37. Section 502(a) of the Act, 42 U.S.C. 7661a(a), and the Massachusetts Title V operating permit program have at all relevant times made it unlawful for any person to operate a major source except in compliance with a permit issued under Title V.

38. Section 503(c) of the Act, 42 U.S.C. § 7661b(c), the Title V regulations at 40 C.F.R. §§ 70.5(a), (c), and (d), and the Massachusetts Title V program, have at all relevant times required the owner or operator of a source to submit an application for a Title V permit that is

timely and complete and which, among other things, identifies all applicable requirements (including any opacity monitoring requirements), certifies compliance with all applicable requirements, and contains a compliance plan for all applicable requirements for which the source is not in compliance.

39. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), implementing the regulations of the Act, 40 C.F.R. § 70.2, and the Massachusetts Title V operating permit program regulations have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Clean Air Act and the requirements of the applicable SIP, including any applicable opacity requirements.

40. At all times relevant to this Complaint, Brayton operated under a federal enforceable Title V permit. From February 22, 2008 to July 25, 2011, Brayton operated under Title V Operating Permit No. 4V95056 (attached hereto as Exhibit A); from July 26, 2011, to the present, Brayton operated under Title V Operating Permit No. 4V04019 (attached hereto as Exhibit B) (collectively, "Title V Permits"). The Title V Permits incorporated applicable portions of the SIP as well as permit conditions from the earlier state approvals.

41. The Title V Permits limit all four Brayton Units to opacity emissions no greater than 20%, except that the units may emit at an opacity between 20% and 40% for equal to or less than 2 minutes during any one hour; the units are not to exceed 40% at any time. *See* Exhibit A and 5-7; Exhibit B at 9, 11, 12.

42. The Title V permit in effect from July 26, 2011 to the present also requires that opacity at Unit 3 shall not exceed 10% after installation of the dry scrubber and fabric filter, for a

period or aggregate period in excess of 2 minutes during any one hour provided that at no time during the 2 minutes shall opacity exceed 20%. *See* Exhibit B at 11.

43. The Title V permits prohibit emissions of smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time shall the shade, density or appearance be equal to or greater than No. 2 of the Ringelmann chart at all four BPS Units. *See* Exhibit A at 5–7; Exhibit B at 9, 11, 12.

44. The Title V Permits incorporate the continuous monitoring, reporting and recordkeeping requirements established in 310 Mass. Code Regs. 7.14. *See* Exhibit A at 11–13; Exhibit B at 19–20.

45. The Title V Permits also require BPS to monitor flue gas volumetric flow with a Continuous Emission Monitoring System (“CEMS”) pursuant to the federal Acid Rain Program, 40 C.F.R. Part 72, and the Massachusetts Acid Rain Law, 310 Mass. Code Regs. 7.22. *See* Exhibit A at 11; Exhibit B at 19.

46. As standards or limitations established under a permit in effect pursuant to CAA Title V and/or the Massachusetts SIP, the visible emissions limitations and monitoring requirements contained in the Title V Permits (referenced at Paragraphs 41-45 above) constitute “emission standards or limitations” under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a)(1).

**E. ENFORCEMENT PROVISIONS**

47. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. §§ 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with CAA Section 113(b) whenever on the basis of any information available, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of, among other things: (1) Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or (3) the Massachusetts SIP or any permit issued thereunder.

48. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes EPA to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring before January 31, 1997; \$27,500 per day for each violation occurring after January 31, 1997; \$32,500 per day for each violation occurring after March 15, 2004; and \$37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated or is in violation of, among other things, the requirements or prohibitions described in the preceding paragraph.

49. 40 C.F.R. § 52.23 provides, among other things, that any failure by a person to comply with any provisions of 40 C.F.R., Part 52, or with any approved regulatory provision of a SIP, shall render such person in violation of the applicable SIP, and subject to enforcement action pursuant to CAA Section 113, 42 U.S.C. § 7413.

50. Fed. R. Civ. P. 24 provides that, on timely motion, the Court must permit anyone to intervene in an action if such intervention is authorized by a federal statute; or “has an interest

relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24.

51. Section 304(b)(1)(B) of the Act, 42 U.S.C. § 7604(b) provides that: "No action may be commenced – (1) under subsection A of this section—[ ....] (B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation or order, *but in any such action in a court of the United States any person may intervene as a matter of right.*" 42 U.S.C. § 7604(b)(1)(B) (emphasis added). "Thus, Section 304(b)(1)(B) curtails the right to initiate a citizen suit under Section 304(a)(1), but permits intervention as a matter of right. *United States v. Duke Energy Corp.*, 171 F. Supp. 2d 560, 563 (MD NC 2001) (granting environmental group's petition to intervene in federal enforcement action against utility who allegedly violated CAA permits); see also, *United States v. PG&E*, 776 F. Supp. 2d 1007, 1017 (ND Cal. 2011) (holding that Section 304 authorizes a party to intervene in a federal or state enforcement action for violations of the CAA). Accordingly, the Plaintiff-Intervenor City of Fall River is authorized under Fed. R. Civ. P. 24 and Section 304(b) of the Act to intervene in the instant action brought by U.S. EPA.

#### **FIRST CLAIM FOR RELIEF**

(Opacity Violations of Massachusetts SIP and Title V Permit)

52. Paragraphs 1 – 51 are realleged and incorporated here by reference.

53. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions limitations contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 25-27 and 41-45 above.

54. Since at least June 9, 2008, Defendant has repeatedly emitted air pollution with opacity of greater than 20% for an aggregate of 2 minutes and emitted air pollution with opacity of greater than 40%.

55. The emissions described in the preceding paragraph exceed the visible emissions standards in the Massachusetts SIP and the Title V Permits.

56. These violations are well documented in Brayton's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MassDEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

57. These violations of visible emissions standards in the Massachusetts SIP and the Title V permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by enforcement action.

#### **SECOND CLAIM FOR RELIEF**

(Smoke Emission Violations of Massachusetts SIP and Title V Permit)

58. Paragraphs 1 – 57 are realleged and incorporated here by reference.

59. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions limitations contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 27 and 45.

60. Since at least October 23, 2008, Defendant has repeatedly emitted smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for periods in excess of six minutes during an hour and smoke with a shade, density or appearance equal to or greater than No. 2 of the Ringelmann chart.

61. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 Mass. Code Regs. 7.14, and 40 C.F.R. Part 51, Appendix P.

62. These violations of visible emissions standards in the Massachusetts SIP and the Title V Permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

### **THIRD CLAIM FOR RELIEF**

#### **(Violations of Visible Emissions Monitoring Requirements)**

63. Paragraphs 1 – 62 are realleged and incorporated here by reference.

64. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions monitoring requirements contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 31 and 46.

65. Since at least April 10, 2008, Defendant has repeatedly failed to monitor visible emissions for each unit.

66. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

67. These violations of the visible emissions monitoring requirements of the Massachusetts SIP and the Title V permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by enforcement action.

#### **FOURTH CLAIM FOR RELIEF**

(Violations of Monitoring Requirements for NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub>)

68. The allegations of paragraphs 1-67 are realleged incorporated here by reference.

69. Upon information and belief, Defendant repeatedly has violated and is in violation of the monitoring requirements for NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 31-32 and 47.

70. Since at least January 3, 2011, Defendant has repeatedly failed to monitor NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> emissions.

71. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation

reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

72. These violations of the NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> Monitoring Requirements of the Massachusetts SIP and the Title V permits constitute violations of “emissions standards and limitations” under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

#### **FIFTH CLAIM FOR RELIEF**

##### **(Violations of Acid Rain Monitoring Requirements)**

73. The allegations of paragraph 1-72 are realleged and incorporated here by reference.

74. Upon information and belief, Defendant repeatedly has violated and is in violation of the Acid Rain Monitoring Requirements of the Title V Permits referenced in Paragraph 47.

75. Since at least January 3, 2011, Defendant has repeatedly failed to monitor the flue gas volumetric flow for each unit, as required by the Acid Rain Monitoring Requirements of the Title V permits.

76. These violations are well documented in BPS’s quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

77. These violations of the Acid Rain Monitoring Requirements of the Title V permits constitute violations of “emissions standards and limitations” under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

#### **PRAYER FOR RELIEF**

WHEREFORE, based upon all the allegations set forth above, Plaintiff-Intervenor City of Fall River requests that this Court:

1. Declare that Defendant has violated and is continuing to violate the Clean Air Act by exceeding the visible emissions limitations contained in the Massachusetts SIP and the Title V Permits for Units 1-4;
2. Declare that Defendant has violated and continues to be in violation of monitoring requirements set forth in the Massachusetts SIP and the Title V Permits;
3. Enjoin Defendant from operating BPS, except in accordance with a compliance schedule that will prevent BPS from causing further violations of these standards and requirements;
4. Order Defendant to take all necessary steps to comply with emission standards, including, but not limited to, installing adequate pollution controls, conducting opacity audits, and developing protocols and processes to eliminate opacity violations;
5. Order Defendant to install continuous emissions monitors to measure filterable PM<sub>2.5</sub>;
6. Order Defendant to take all necessary steps to comply with monitoring requirements;

7. Order Defendant to pay civil penalties of up to \$32,500 per violation per day for emissions violations occurring on or after March 15, 2004 and up to \$37,500 per violation per day for violations occurring on or after January 12, 2009, consistent with the CAA (42 U.S.C. §§ 7413(b), 7413(e), and 7604(a); 40 C.F.R. §§ 19.2 and 19.4 (2008));

8. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to the public health and the environment caused by the violations of the CAA alleged above;

9. Award Plaintiff-Intervenor its costs of this action; and

10. Grant such other relief as the Court deems just and proper.

Dated: January \_\_, 2014

Respectfully submitted,

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# **EXHIBIT A**



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SOUTHEAST REGIONAL OFFICE  
20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

MITT ROMNEY  
Governor

ELLEN ROY HERZFELDER  
Secretary

KERRY HEALEY  
Lieutenant Governor

ROBERT W. GOLLEDGE, Jr.  
Commissioner

## FINAL AIR QUALITY OPERATING PERMIT MINOR MODIFICATION

Issued by the Massachusetts Department of Environmental Protection ("The Department") pursuant to its authority under M.G.L. c. 111, §142B and §142D, 310 CMR 7.00 et seq., and in accordance with the provisions of 310 CMR 7.00: Appendix C.

**ISSUED TO ["the Permittee"]:**

USGen New England, Inc.  
Brayton Point Station  
Brayton Point Road  
Somerset, Massachusetts 02726

**INFORMATION RELIED UPON:**

Application No. 4V95056  
Transmittal No. 108001

**FACILITY LOCATION:**

Brayton Point Station  
Brayton Point Road  
Somerset, Massachusetts 02726

**FACILITY IDENTIFYING NUMBERS:**

SSEIS ID: 1200061  
FMF FAC NO. 311183  
FMF RO NO. 311263

**NATURE OF BUSINESS:**

Electric Power Generation

**STANDARD INDUSTRIAL CODE (SIC):**

4911

**RESPONSIBLE OFFICIAL:**

Name: Mark V. Carney  
Title: Vice President  
of Environmental Affairs

**FACILITY CONTACT PERSON:**

Name: Barry A. Ketschke  
Title: General Manager  
Phone: (508) 646-5236

This operating permit shall expire on 01/06/05.

For the Department of Environmental Protection, Bureau of Waste Prevention

**Minor Modification No. 4M04006**  
Regional Director

**09/09/04**  
Date

USGEN New England, Inc.  
 Brayton Point Station  
 Transmittal No. 108001  
 FINAL Operating Permit No. 4V95056  
 Minor Modification No. 4M040006  
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USGEN New England, Inc.  
 Brayton Point Station  
 Transmittal No. 108001  
 FINAL Operating Permit No. 4V95056  
 Minor Modification No. 4M040006  
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## SPECIAL CONDITIONS FOR OPERATING PERMIT

### 1. PERMITTED ACTIVITIES

In accordance with the provisions of 310 CMR 7.00:Appendix C and applicable rules and regulations, the Permittee is authorized to operate air emission units as shown in Table 1 and exempt, and insignificant activities as described in 310 CMR 7.00:Appendix C(5)(h) and (i). The units described in Table 1 are subject to the terms and conditions shown in Sections 4, 5, and 6 and to other terms and conditions as specified in this permit. Emissions from the exempt activities shall be included in the total facility emissions for the emission-based portion of the fee calculation described in 310 CMR 4.00 and this permit.

### 2. EMISSION UNIT IDENTIFICATION

The following emission units (Table 1) are subject to and regulated by this operating permit:

Table 1			
Emission Unit (EU#)	Description of Emission Unit	EU Design Capacity	Pollution Control Device (PCD)
EU 1	Unit 1: Combustion Engineering MFR # 19407 Type CC, Water Tube Boiler	2,250 MMBtu per hour	Electrostatic Precipitator With flue gas conditioning PCD-1
EU 2	Unit 2: Combustion Engineering MFR # 19617 Type CC, Water Tube Boiler	2,250 MMBtu per hour	Electrostatic Precipitator With flue gas conditioning PCD-2
EU 3	Unit 3: Babcock and Wilcox Model # UP-52 Water Tube Boiler	5,655 MMBtu per hour	Electrostatic Precipitator With flue gas conditioning PCD-3
EU 4	Unit 4: Riley Stoker Model # 1SR Water Tube Boiler	4,800 MMBtu per hour	Electrostatic Precipitator PCD-4

USGEN New England, Inc.  
 Brayton Point Station  
 Transmittal No. 108001  
 FINAL Operating Permit No. 4V95056  
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<b>Table 1</b>			
<b>Emission Unit (EU#)</b>	<b>Description of Emission Unit</b>	<b>EU Design Capacity</b>	<b>Pollution Control Device (PCD)</b>
EU 5	Diesel Generator Unit No. 1: General Motors Model # 20-645-E44	28 MMBtu per hour	None
EU 6	Diesel Generator Unit No. 2: General Motors Model # 20-645-E44	28 MMBtu per hour	None
EU 7	Diesel Generator Unit No. 3: General Motors Model # 20-645-E44	28 MMBtu per hour	None
EU 8	Diesel Generator Unit No. 4: General Motors Model # 20-645-E44	28 MMBtu per hour	None
EU 9	CS 1: Coal Flyash Carbon Separation System	30 tons per hour	Fabric Filter PCD-5
EU 10	UT 1: Underground Gasoline Storage Tank	5000 gallons	Stage II Vapor Recovery PDC-6
EU 11	CP: 1 Coal Storage Pile	680,000 tons	Water Sprays, Dust Suppressant, Surface Sealant PCD-7

**Table 1 Key:**

- EU# = Emission Unit Number
- MMBtu = Million British Thermal Units
- PCD# = Pollution Control Device Number

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**3. IDENTIFICATION OF EXEMPT ACTIVITIES**

The following are considered exempt activities in accordance with the criteria contained in 310 CMR 7.00: Appendix C(5)(h):

Table 2	
Description of Current Exempt Activities	Reason
The list of current exempt activities is contained in the Operating Permit application and shall be updated by the Permittee to reflect changes at the facility over the permit term. An up-to-date copy of exempt activities list shall be kept on-site at the facility and a copy shall be submitted to the Department's Regional Office.	310 CMR 7.00:Appendix C(5)(h)

**4. APPLICABLE REQUIREMENTS**

**A. EMISSION LIMITS AND RESTRICTIONS**

The permittee is subject to the emission limits/restrictions as contained in Table 3 below:

Table 3				
EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2	Coal	NO <sub>x</sub>	≤ 0.38 lb/MMBtu (2)	4B93086 310 CMR 7.19(4)(a)
	No. 6 Fuel Oil		≤ 0.25 lb/MMBtu (2)	
	No. 2 Fuel Oil		≤ 0.25 lb/MMBtu (2)	
	Natural Gas		≤ 0.20 lb/MMBtu (2)	
	Co Firing Fuels		≤ PS <sub>NOx</sub> (1)(2)	310 CMR 7.19(15)
	All Fuels	CO	≤ 100 ppm by volume, dry basis at 3% O <sub>2</sub> (2)	4B93086
		PM	≤ 0.08 lb/MMBtu	4B88148
		Opacity	≤ 20%, except 20 to < 40% for ≤ 2 minutes during any one hour	310 CMR 7.06(1)(b)

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**Table 3**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2	All Fuels	Smoke	≤ No. 1 of the Chart (7), except No. 1 to No. 2 of the Chart for ≤ 6 minutes during any one hour	310 CMR 7.06(1)(a)
	Coal	S in Fuel	≤ 1.23 lb/MMBtu per calendar day ≤ 1.21 lb/MMBtu per 30 day rolling period	4B91064
	No. 6 Fuel Oil		≤ 1.21 lb/MMBtu	4B88148 and 310 CMR 7.05(1)(a)1.
	No. 2 Fuel Oil		≤ 0.17 lb/MMBtu	310 CMR 7.05(1)(a)2.
	Coal	SO <sub>2</sub>	≤ 2.46 lb/MMBtu per calendar day ≤ 2.42 lb/MMBtu per 30 day rolling period	4B91064
Ash in Fuel			May exceed 9% by weight, dry basis	4B88148
EU 3	Coal	NO <sub>x</sub>	≤ 0.45 lb/MMBtu (2)	4B93086 310 CMR 7.19(4)(a)
	No. 6 Fuel Oil		≤ 0.28 lb/MMBtu (2)	
	No. 2 Fuel Oil		≤ 0.28 lb/MMBtu (2)	
	Natural Gas		≤ 0.28 lb/MMBtu (2)	
	Co Firing Fuels		≤ PS <sub>NOx</sub> (1)(2)	310 CMR 7.19(15)
	All Fuels	CO	≤ 200 ppm by volume, dry basis at 3% O <sub>2</sub> (2)	4B95073
		PM	≤ 0.08 lb/MMBtu	4B88148
		Opacity	≤ 20%, except 20 to < 40% for ≤ 2 minutes during any one hour	310 CMR 7.06(1)(b)
		Smoke	≤ No. 1 of the Chart (7), except No. 1 to No. 2 of the Chart for ≤ 6 minutes during any one hour	310 CMR 7.06(1)(a)
	Coal	S in Fuel	≤ 1.23 lb/MMBtu per calendar day ≤ 1.21 lb/MMBtu per 30 day rolling period	4B91064
			No. 6 Fuel Oil	≤ 1.21 lb/MMBtu

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**Table 3**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 3	No. 2 Fuel Oil	S in Fuel	≤ 0.17 lb/MMBtu	310 CMR 7.05(1)(a)2.
	Coal	SO <sub>2</sub>	≤ 2.46 lb/MMBtu per calendar day ≤ 2.42 lb/MMBtu per 30 day rolling period	4B91064
		Ash in Fuel	May exceed 9% by weight, dry basis	4B88148
EU 4	No. 6 Fuel Oil	NO <sub>x</sub>	≤ 0.27 lb/MMBtu (2)	4B94040 and 310 CMR 7.19(4)(a)
	No. 6 Fuel Oil and Natural Gas		≤ 0.27 lb/MMBtu (2)	
	Natural Gas		≤ 0.27 lb/MMBtu (2)	
	All Fuels	CO	≤ 100 ppm by volume, dry basis at 3% O <sub>2</sub> (2)	4B94040
		PM	≤ 0.03 lb/MMBtu	4B90187
		Opacity	≤ 20%, except 20 to < 40% for ≤ 2 minutes during any one hour	310 CMR 7.06(1)(b)
		Smoke	≤ No. 1 of the Chart (7), except No. 1 to No. 2 of the Chart for ≤ 6 minutes during any one hour	310 CMR 7.06(1)(a)
	Start Up No. 6 Fuel Oil (3)	S in Fuel	≤ 0.55 lb/MMBtu	4B90187
	No. 6 Fuel Oil		≤ 1.21 lb/MMBtu	4B90187 and 310 CMR 7.05(1)(a)
		No. 6 Fuel Oil	N <sub>2</sub> in Fuel	≤ 0.4% by weight
EU 1 EU 2 EU 3 EU 4	All Fuels	NO <sub>x</sub>	See Special Terms and Conditions Section 5.7	310 CMR 7.27 and 310 CMR 7.28
			See Special Terms and Conditions Section 5.9	40 CFR Part 76
		SO <sub>2</sub>	See Special Terms and Conditions Section 5.8	40 CFR Part 72

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Table 3				
EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2 EU 3 EU 4	All Fuels	SO <sub>2</sub>	See Special Terms and Conditions Section 5.9	40 CFR Part 76
System Wide	All Fuels	SO <sub>2</sub>	≤ 1.21 lb/MMBtu (4)	4B90147 and 310 CMR 7.22
EU 5 EU 6 EU 7 EU 8	No. 2 Fuel Oil	NO <sub>x</sub>	≤ 2.831 lb/MMBtu (5)	4B94073 and 310 CMR 7.19(8)(d)
		S in Fuel	≤ 0.17 lb/MMBtu	310 CMR 7.05(1)(a)2.
	All Fuels	PM	≤ 0.12 lb/MMBtu	310 CMR 7.02(8)(d) Table 3
		Opacity	≤ 20%, except 20 to < 40% for ≤ 2 minutes during any one hour	310 CMR 7.06(1)(b)
		Smoke	≤ No. 1 of the Chart (7), except No. 1 to No. 2 of the Chart for ≤ 6 minutes during any one hour	310 CMR 7.06(1)(a)
EU 9	Coal Fly ash	PM	0.01 gr/dscf and 0.48 lb/hr Minimum PM Control Efficiency = 99.95%	4P97017
EU 10	Gasoline	VOC	Submerged Fill	310 CMR 7.24(3)(a)
			Stage I Vapor Recovery	310 CMR 7.24(3)(b)
			Stage II Vapor Recovery	310 CMR 7.24(6)(a)2.
EU 11	Coal	PM	Standard Operating and Maintenance Procedures Coal Handling and Measurement Systems	4B91064

**Table 3 Notes:**

1. For EU1, EU2:

$$PS_{NOx} = \frac{0.38 \times (HI_1) + 0.25 \times (HI_2) + 0.25 \times (HI_3) + 0.20 \times (HI_4)}{(HI_1 + HI_2 + HI_3 + HI_4)}$$

- $PS_{NOx}$  = prorated  $NO_x$  emission limit when burning different fuels, lb/MMBtu
- $HI_1$  = heat input for Coal, MMBtu
- $HI_2$  = heat input for No. 6 Fuel Oil, MMBtu
- $HI_3$  = heat input for No. 2 Fuel Oil, MMBtu
- $HI_4$  = heat input for Natural Gas, MMBtu

For EU3:

$$PS_{NOx} = \frac{0.45 \times (HI_1) + 0.28 \times (HI_2) + 0.28 \times (HI_3) + 0.28 \times (HI_4)}{(HI_1 + HI_2 + HI_3 + HI_4)}$$

- $PS_{NOx}$  = prorated  $NO_x$  emission limit when burning different fuels, lb/MMBtu
- $HI_1$  = heat input for Coal, MMBtu
- $HI_2$  = heat input for No. 6 Fuel Oil, MMBtu
- $HI_3$  = heat input for No. 2 Fuel Oil, MMBtu
- $HI_4$  = heat input for Natural Gas, MMBtu

The  $PS_{NOx}$  limit applies only when the combined annual heat input of all cofired fuels (other than primary fuel) exceeds 5% of the total annual heat input of an EU, based on a twelve month rolling average.

2.  $NO_x$  and CO emission limits are based on a one calendar day averaging time.
3. In accordance with Approval No. 4B90187, EU4 shall start-up utilizing No. 6 Fuel Oil having a maximum sulfur content of 0.55 lb/MMBtu heat release potential.
4. In accordance with 310 CMR 7.22(3)(b) and Approval No. 4B90147, compliance is based on averaging the emissions from the Permittee's Brayton Point Station (EU1, EU2, EU3, and EU4) and Salem Harbor Station (EU1, EU2, EU3, and EU4) facilities and qualified Demand Side Management (DSM) credits utilizing a one (1) calendar year averaging time.
5.  $NO_x$  emissions with 4 degree ignition timing retard technology will be a maximum of 10 gm  $NO_x$ /Brake Hp-hr. EU5, EU6, EU7, and EU8 shall comply with all requirements contained in 310 CMR 7.19(8)(c) or 7.19(8)(d) based on hours of operation per twelve (12) month rolling average. Compliance with Emission Limits/Standards shall be based on a one hour averaging time.



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**B. COMPLIANCE DEMONSTRATION**

The permittee is subject to the monitoring/testing, record keeping, and reporting requirements as contained in Tables 4, 5, and 6 below and 310 CMR 7.00 Appendix C (9) and (10) and applicable requirements contained in Table 3:

<b>Table 4</b>	
<b>EU #</b>	<b>MONITORING/TESTING REQUIREMENTS</b>
	In accordance with 310 CMR 7.14(2) and 310 CMR 7.19(13)(a)1., compliance with NO <sub>x</sub> emission limits/standards shall be demonstrated with Continuous Emissions Monitoring Systems (CEMS). The NO <sub>x</sub> CEMS shall meet the requirements specified in 310 CMR 7.19(13)(b). In accordance with the Acid Rain Program 40 CFR Part 72, monitor NO <sub>x</sub> emissions pursuant to 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control in order to determine compliance with 310 CMR 7.19, except that the missing data routine and bias adjustment factors contained in 40 CFR Part 75 need not be applied. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
EU 1	In accordance with 310 CMR 7.27(11), monitor NO <sub>x</sub> emissions with CEMS. The NO <sub>x</sub> CEMS shall meet the requirements of 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control.
EU 2	In accordance with 310 CMR 7.19(13)(a)1., compliance with CO emission limits/standards shall be demonstrated with Continuous Emissions Monitoring Systems (CEMS) as specified in 310 CMR 7.19(13)(b). CO emissions shall be monitored as specified in 310 CMR 7.19(13)(b)1., through 7.19(13)(b)12. Monitor CO emissions with CEMS certified in accordance with the performance specifications contained in 40 CFR Part 60, Appendix B and use the procedures contained in 40 CFR Part 60, Appendix F to comply, provide quality assurance and quality control.
EU 3	
EU 4	
	In accordance with 310 CMR 7.14(2) and the Acid Rain Program 40 CFR Part 72, monitor SO <sub>2</sub> emissions with CEMS meeting the requirements of 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
	In accordance with the Acid Rain Program 40 CFR Part 72 and 310 CMR 7.27(11)(b), monitor flue gas volumetric flow with a CEMS flow monitoring system pursuant to 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control.

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**Table 4**

EU #	MONITORING/TESTING REQUIREMENTS
	In accordance with 4B01049 and 310 CMR 7.28(11)(a)(1), any person who owns, leases, operates or controls a budget unit that commences operation before January 1, 2002 shall install, operate and successfully complete all applicable certification testing requirements for monitoring heat input, NO <sub>x</sub> emission rate and NO <sub>x</sub> mass emissions pursuant to the requirements of 40 CFR Part 75 Subpart H by May 1, 2002.
	In accordance with 4B01049 and 310 CMR 7.28(11)(a)(4), all monitoring systems are subject to initial performance testing and periodic calibration, accuracy testing and quality assurance/quality control testing as specified in 40 CFR Part 75 Subpart H.
	As required by 4B01049 and 310 CMR 7.28(11)(a)(5), during a period when valid data is not being recorded by a monitoring system approved under 310 CMR 7.28, the missing or invalid data must be replaced with default data in accordance with the provisions of 40 CFR 75.70(f). The applicable missing data procedures are specified in 40 CFR Part 75 for NO <sub>x</sub> emission rate (in lb/MMBtu), heat input, stack gas volumetric flow rate, oil density, GCV or fuel flow rate.
EU 1	In accordance with 4B01049 and 310 CMR 7.28(11)(a)(6), NO <sub>x</sub> emissions data must be reported to the NO <sub>x</sub> Emissions Tracking System (NETS) in accordance with 310 CMR 7.28(13).
EU 2	
EU 3	In accordance with 4B01049 and 310 CMR 7.28(11)(a)(7), budget units must report data pursuant to the requirements of 310 CMR 7.28(11) for every hour.
EU 4	In accordance with 4B01049 and 310 CMR 7.28(11)(b), any person who owns, leases, operates or controls a budget unit subject to 310 CMR 7.28 must comply with the notification requirements in 40 CFR 75.61, where applicable.
	In accordance with Approval No. 4B90147, compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 shall be demonstrated through monitoring of the quantity of each fuel burned, the heating value or heat input of each fuel burned and SO <sub>2</sub> emissions. SO <sub>2</sub> emissions and heat input of each fuel burned shall be monitored with CEMS that meet the requirements of 40 CFR Part 75.
	In accordance with 310 CMR 7.14(2) and the Acid Rain Program 40 CFR Part 72, measure O <sub>2</sub> or carbon dioxide (CO <sub>2</sub> ) in the flue gas with CEMS. The O <sub>2</sub> or CO <sub>2</sub> CEMS shall meet the requirements of 40 CFR Part 75 in order to convert SO <sub>2</sub> and NO <sub>x</sub> continuous emission monitoring data to units of the applicable emission standards as specified in Table 3. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
	In the event that CEMS are inoperative, comply with 40 CFR Part 75, Subpart D for CO <sub>2</sub> emissions and heat input missing data substitution.

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**Table 4**

EU #	MONITORING/TESTING REQUIREMENTS
	<p>In accordance with the Unit 1, Unit 2 and Unit 3 Standard Operating and Maintenance Procedures (SOMP), monitor Electrostatic Precipitator (ESP) performance (optimum voltage and amperage range as determined from the most recent stack testing) continuously to ensure compliance with PM emission limits. In accordance with the Unit 4 SOMP, monitor ESP performance (optimum voltage and amperage range as determined from the most recent stack testing) once per shift to ensure compliance with PM emission limits.</p>
	<p>In accordance with 310 CMR 7.14(2) and the Acid Rain Program 40 CFR Part 72 and 40 CFR Part 75, monitor opacity for Units 1, 2, 3, and 4 utilizing Continuous Opacity Monitoring Systems (COMS) to provide reasonable assurance of compliance with opacity standards. The opacity COMS shall meet Performance Specification 1 of 40 CFR Part 60, Appendix B. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement. In accordance with 310 CMR 7.06 and 4B93011, visible emission compliance (opacity and smoke) for Units 1, 2, 3, and 4 shall be determined in accordance with 40 CFR Part 60, Appendix A, Method 9.</p>
EU 1	<p>Opacity shall be determined in accordance with 40 CFR Part 60, Appendix A,</p>
EU 2	<p>Method 9 in the event of a COMS malfunction. This method shall also apply to any</p>
EU 3	<p>detached plumes.</p>
EU 4	<p>In accordance with 310 CMR 7.04(2)(a), operate continuously and maintain in an accurate operating condition smoke density indicators equipped with audible alarms and recorders that signal the need for combustion equipment adjustment or repair when the smoke density is equal to or greater than No. 1 of the Chart. Compliance with 40 CFR Part 75 for opacity monitoring shall constitute compliance with this requirement.</p>
	<p>Measure the operating time of each EU and the date and amount of time that any CEMS or COMS are inoperative.</p>
	<p>Monitor any occurrences when visible emissions (opacity and/or smoke exclusive of uncombined water) and emission rates of NO<sub>x</sub>, CO and SO<sub>2</sub> are in excess of the emission limits/standards contained in Table 3.</p>
	<p>In accordance with 310 CMR 7.19(13)(d)3., measure for each unit on a daily basis: type fuel(s) burned each day, heat content of each fuel, the total heating value of the fuel consumed for each day, the actual emission rate (for emissions units demonstrating compliance with CEMS), and the allowable emission rate for CO and NO<sub>x</sub>.</p>

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**Table 4**

EU #	MONITORING/TESTING REQUIREMENTS
	<p>In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor sulfur content of each new shipment of fuel received. Compliance with Approval Nos. 4B88148, 4B90187, 4B91064, and/or 310 CMR 7.05(1)(f) for sulfur content of the fuel can be demonstrated through monitoring of SO<sub>2</sub> emissions with CEMS which meet the requirements of 40 CFR Part 75 or fuel analysis. The analysis of sulfur content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by the Department and EPA. Fuel sulfur information may be provided by fuel suppliers.</p>
	<p>In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor ash content of each new shipment of fuel received. Compliance with Approval No. 4B88148 and/or 310 CMR 7.05(4)(a) for ash content of the fuel can be demonstrated through fuel analysis. The fuel analysis or shipment certification of ash content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by the Department and EPA. Fuel ash information may be provided by fuel suppliers.</p>
<p>EU 1                      EU 2                      EU 3                      EU 4</p>	<p>In accordance with 310 CMR 7.19(13)(d)5., 310 CMR 7.19(13)(d)6., and Approval No. 4B90187, monitor nitrogen content of each new shipment of No. 6 Fuel Oil received, by one of the following methods:</p> <p>(1) monitor through obtaining a certification from the fuel oil supplier that includes the following information:</p> <ul style="list-style-type: none"> <li>a. the name of the fuel oil supplier;</li> <li>b. the nitrogen content * of each oil shipment; and</li> <li>c. the location where the sample was drawn for analysis to determine the nitrogen content of the fuel oil, specifically including whether the fuel oil was sampled as delivered to the Permittee's facility or whether the sample was drawn from fuel oil in storage at the fuel oil supplier's or fuel oil refiner's facility or another location.</li> </ul> <p>(2) sample and analyze the fuel oil for nitrogen content * immediately after the fuel oil tank is filled and before any fuel oil is combusted.</p> <p>* The shipment certification or analysis of nitrogen content of the fuel oil shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by the Department and EPA.</p> <p>In accordance with Approval No. 4B88066, monitor the quantities of Used Oil Fuel burned.</p>

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<b>Table 4</b>	
<b>EU #</b>	<b>MONITORING/TESTING REQUIREMENTS</b>
EU 1	In accordance with 310 CMR 7.04(4)(a), inspect and maintain fuel utilization facility in accordance with manufacturer's recommendations and test for efficient operation at least annually.
EU 2	
EU 3	In accordance with 310 CMR 7.04(5), operate and maintain automatic viscosity controllers of a type approved by the Department to control the viscosity of No. 6 Fuel Oil to the burners.
EU 4	
EU 5	In accordance with 310 CMR 7.19(13)(d)3., measure for each unit on a daily basis: type fuel(s) burned each day, heat content of each fuel, the total heating value of the fuel consumed for each day, and the allowable NOx and CO emission rates.
EU 6	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor sulfur content of each new shipment of fuel received. Compliance with 310 CMR 7.05(1)(f)4., for sulfur content of the fuel can be demonstrated through fuel analysis or maintaining a shipping receipt from the fuel supplier. The analysis of sulfur content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by the Department and EPA.
EU 7	
EU 8	
EU 9	In accordance with 310 CMR 7.04(4)(a), inspect and maintain fuel utilization facility in accordance with manufacturer's recommendations and test for efficient operation at least annually.
EU 10	In accordance with Approval No. 4B94073 and 310 CMR 7.19(8)(d)3., monitor the hours of operation of each EU.
EU 11	In accordance with Approval No. 4B97017 monitor operations of the Unit 1, 2, and 3 fly ash handling system for system upsets, malfunction, proper operation.
EU 12	In accordance with 310 CMR 7.24(3)(f), install, maintain, and properly operate a Stage I vapor recovery system.
EU 13	In accordance with 310 CMR 7.24(6)(c), install and properly operate a certified Stage II vapor collection and control system.
EU 14	In accordance with Approval No. 4B91064, monitor the operation of the Unloader-Stacker, coal pile dust control system, coal transfer to powerhouse and silos, and coal dust collection system operating parameters.

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<b>Table 4</b>	
<b>EU #</b>	<b>MONITORING/TESTING REQUIREMENTS</b>
Facility  Wide	<p>In accordance with 310 CMR 7.13(1), any person owning, leasing, operating or controlling a facility for which the Department has determined that stack testing is necessary to ascertain compliance with the Department's regulations or design approval provisos shall cause such stack testing:</p> <p>(a) to be conducted by a person knowledgeable in stack testing,</p> <p>(b) to be conducted in accordance with procedures contained in a test protocol which has been approved by the Department, and</p> <p>(c) be conducted in the presence of a representative of the Department when such is deemed necessary.</p> <p>Conduct any other testing or testing methodology if and when requested by the Department or EPA.</p> <p>Monitor operations such that information may be compiled for the annual preparation of a Source Registration/Emission Statement Form as required by 310 CMR 7.12.</p>

<b>Table 5</b>	
<b>EU #</b>	<b>RECORD KEEPING REQUIREMENTS</b>
	Record on a continuous basis emissions of NOx in accordance with the requirements of 310 CMR 7.19(13)(a)1., and 40 CFR Part 75.
	In accordance with 310 CMR 7.27(12), record all measurements, data, reports and other information required by 310 CMR 7.27.
EU 1	In accordance with 40 CFR 60, 40 CFR 72, 40 CFR 75 and 310 CMR 7.28 comply with all applicable recordkeeping requirements.
EU 2	In accordance with 4B01049 and 310 CMR 7.28(8)(e), information on the
EU 3	Authorized Account Representative (AAR) Form must be kept current.
EU 4	In accordance with 4B01049 and 310 CMR 7.28(12), any person who owns, leases, operates or controls a budget unit must keep all measurements, data, reports and other information required by 310 CMR 7.28 for five years; or any other period consistent with the budget unit's operating permit
	Record on a continuous basis emissions of CO in accordance with the requirements of 310 CMR 7.19(13)(b)1., through 7.19(13)(b)12., 40 CFR Part 60, Appendix B, and 40 CFR Part 60 Appendix F.

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**Table 5**

EU #	RECORD KEEPING REQUIREMENTS
	Record on a continuous basis emissions of SO <sub>2</sub> in accordance with the requirements of 40 CFR Part 75.
	Record on a continuous basis flue gas volumetric flow in accordance with the requirements of 40 CFR Part 75.
	In accordance with Approval No. 4B90147 (Revised on March 4, 1996), compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 shall be demonstrated by recording the quantity of each fuel burned, heating value or heat input of each fuel burned and SO <sub>2</sub> emissions. SO <sub>2</sub> emissions and heat input of each fuel burned shall be recorded with CEMS that meet the requirements of 40 CFR Part 75.
	Record on a continuous basis O <sub>2</sub> or CO <sub>2</sub> in the flue gas in accordance with the requirements of 40 CFR Part 75.
	In accordance with the Unit 1, Unit 2 and Unit 3 SOMP, record ESP performance (voltage and amperage) continuously. In accordance with the Unit 4 SOMP, record ESP performance (voltage and amperage) once per shift.
EU 1	Record on a continuous basis opacity in accordance with the requirements of 40 CFR Part 75 and 40 CFR Part 60, Appendix B.
EU 2	Record opacity determined in accordance with EPA Test Method 9, as specified in
EU 3	40 CFR Part 60, Appendix A in the event of a COMS malfunction. This method shall
EU 4	also apply to any detached plumes.
	Maintain records of Smoke Density Indicator Recording Charts required by 310 CMR 7.04(2)(a) or COMS records required by 40 CFR Part 75 and 40 CFR Part 60, Appendix B.
	Record operating time of each EU and the date and amount of time that any CEMS or COMS are inoperative.
	Record any occurrences when visible emissions (opacity and/or smoke exclusive of uncombined water) and emission rates of NO <sub>x</sub> , CO and SO <sub>2</sub> are in excess of the emission limits/standards contained in Table 3.
	In accordance with 310 CMR 7.19(13)(d)3., record for each unit on a daily basis the type(s) of fuel burned, heat content of each fuel, total heating value of the fuel consumed, actual emission rate (for emission units demonstrating compliance with CEMS), and allowable emission rate for CO and NO <sub>x</sub> .
	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain SO <sub>2</sub> CEMS records or fuel analysis results used to demonstrate compliance with fuel sulfur content requirements.

**Table 5**

EU #	RECORD KEEPING REQUIREMENTS
	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain fuel analysis results used to demonstrate compliance with fuel ash content requirements.
	In accordance with 310 CMR 7.19(13)(d)7., maintain records of the nitrogen content of each new shipment of No. 6 Fuel Oil received. Such records shall include fuel analysis results and/or fuel oil supplier certifications that includes the name of the fuel oil supplier and the location where the sample was drawn for analysis to determine the nitrogen content
	In accordance with Approval No. 4B88066, record the quantities of Used Oil Fuel burned.
EU 1	In accordance with 310 CMR 7.04(4)(a), maintain results of fuel utilization facility inspection, maintenance, and testing and the date upon which it was performed
EU 2	posted conspicuously on or near the facility.
EU 3	In accordance with 310 CMR 7.19(13)(d)1., maintain a record of all measurements,
EU 4	performance evaluations, calibration checks, and maintenance or adjustments for each CEM.
	In accordance with 310 CMR 7.19(13)(d)8., all records required by 310 CMR 7.19(13)(d), including computer retained and generated data, shall be kept in a permanently bound log book or any other form acceptable to the Department.
	Maintain records required by 40 CFR Part 75, Subpart F.
	Keep copies of Source Registration/Emission Statement Forms submitted annually to the Department as required per 310 CMR 7.12(1)(d).
	Maintain on-site, at all times, a copy of the Standard Operating and Maintenance Procedure (SOMP) for the subject emission units.
EU 5	In accordance with 310 CMR 7.19(13)(d)3., record for each unit on a daily basis: type fuel(s) burned each day, heat content of each fuel, the total heating value of the fuel consumed for each day, and the allowable NOx and CO emission rates.
EU 6	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain fuel analysis results or fuel purchase receipts used to demonstrate compliance with fuel sulfur content requirements.
EU 7	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain fuel analysis results or fuel purchase receipts used to demonstrate compliance with fuel ash content requirements.
EU 8	In accordance with 310 CMR 7.04(4)(a), maintain results of fuel utilization facility inspection, maintenance, and testing and the date upon which it was performed posted conspicuously on or near the facility.

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**Table 5**

EU #	RECORD KEEPING REQUIREMENTS
EU 5 EU 6	In accordance with Approval No. 4B94073 and 310 CMR 7.19(8)(d)3., record the hours of operation of each EU.
EU 7 EU 8	In accordance with 310 CMR 7.19(13)(d)8., all records required by 310 CMR 7.19(13)(d), including computer retained and generated data, shall be kept in a permanently bound log book or any other form acceptable to the Department.
EU 9	<p>In accordance with Approval No. 4P97017, all records required, including the following:</p> <ol style="list-style-type: none"> <li>1. A record of all malfunctions including the date and time the malfunction occurred, a description of the malfunction, corrective action taken, the date and time corrective actions were initiated, the date and time corrective actions were completed and the facility returned to compliance.</li> <li>2. Records shall be maintained documenting air contaminant emissions.</li> <li>3. Records shall be kept on site for five (5) years from date of record and shall be made available to the Department upon request.</li> </ol>
EU 10	<p>In accordance with 310 CMR 7.24(3)(f), maintain records of the following:</p> <ol style="list-style-type: none"> <li>1. All maintenance performed, including the type of maintenance performed, and the date maintenance was performed;</li> <li>2. All malfunctions, including the type of malfunction, the date the malfunction was observed, and the date the malfunction was repaired;</li> <li>3. Maintain records of the daily throughput of any organic material with a true vapor pressure of 1.5 psia or greater under actual storage conditions.</li> </ol>
Facility Wide	<p>Maintain the test results of any stack testing performed in accordance with 310 CMR 7.13(1) or of any other testing or testing methodology required by the Department or EPA.</p> <p>Maintain records for the annual preparation of a Source Registration/Emission Statement Form as required by 310 CMR 7.12.</p> <p>In accordance with 310 CMR 7.00: Appendix C(10)(b), maintain records of all monitoring data and supporting information required by this operating permit on site for five (5) years from the date of the monitoring sample, measurement, report or initial operating permit application.</p>

**Table 6**

EU #	REPORTING REQUIREMENTS
	<p>In accordance with 310 CMR 7.14(2) and 310 CMR 7.19(13)(d)2., submit CEM Excess Emission Reports for each calendar quarter by the thirtieth (30th) day of April, July, October, and January covering the previous calendar periods of January through March, April through June, July through September, and October through December, respectively. Such reports shall contain visible emissions (opacity and/or smoke exclusive of uncombined water) and emission rates of NO<sub>x</sub>, CO and SO<sub>2</sub> in excess of the emission limits/standards contained in Table 3. Start up periods shall be reported in accordance with "The Department Response to Comments on Proposed Amendments to 310 CMR 7.00: RACT for NO<sub>x</sub>", dated June 1994. Start-up periods are not included in the calendar day NO<sub>x</sub> and CO emission rate compliance averaging time as long as the mass emission rate, in pounds of NO<sub>x</sub> and/or CO per hour, from the emission unit does not exceed the mass emission rate that would occur at the maximum firing rate. Start-up begins with when the first burner is lit and ends when all available or required burners are in service. The Permittee shall notify the Department if start-ups last longer than twenty four (24) hours.</p>
<p>EU 1                      EU 2                      EU 3                      EU 4</p>	<p>In accordance with 310 CMR 7.27(13)(a)1., 310 CMR 7.27(13)(b), and 310 CMR 7.27(13)(c) submit to the USEPA Acid Rain Division all NO<sub>x</sub> emissions and operating information for each calendar quarter of each year in accordance with the standards specified in 40 CFR Part 75, Subpart G. The submission must be in an electronic format which meets the requirements of EPA's Electronic Data Reporting (EDR) convention. Quarterly reports must contain NO<sub>x</sub> emissions in pounds per hour for every hour, and cumulative quarterly and seasonal NO<sub>x</sub> emissions data in pounds, in a format consistent with the EDR convention. Submit quarterly reports as part of the quarterly reports submitted to EPA to comply with 40 CFR Part 75.</p>
	<p>In accordance with 40 CFR 60, 40 CFR 72, 40 CFR 75 and 310 CMR 7.28, comply with all applicable reporting requirements.</p>
	<p>As required by 4B01049 and 310 CMR 7.28(13)(a)(1), for units commencing operation prior to May 1, 2002, the AAR must submit quarterly reports for each calendar quarter beginning with: the earlier of the calendar quarter that includes the date of initial certification or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of certification or the first hour on May 1, 2002.</p>
	<p>In accordance with 4B01049 and 310 CMR 7.28(13)(b), the AAR for each budget unit using CEMS must submit to the Administrator all emissions and operating information for each calendar quarter of each year in accordance with the standards specified in 40 CFR Part 75 Subpart H and 40 CFR 75.64.</p>

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**Table 6**

EU #	REPORTING REQUIREMENTS
	In accordance with 4B01049 and 310 CMR 7.28(13)(c)(1), for units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in 40 CFR Part 75 Subpart H for each NOx Budget unit (or group of units using a common stack) as well as information required in 40 CFR Part 75 Subpart G.
	In accordance with the requirements of 4B01049 and 310 CMR 7.28(13), NOx emissions data must be reported pursuant to the requirements of 310 CMR 7.28(11)(a)(6), (a)(7) and (b).
	NO <sub>x</sub> emissions data should be reported directly to EPA's National Computer Center mainframe computer in a method acceptable to EPA. The deadline to submit data to EPA is 30 days after the end of each calendar quarter.
EU 1 EU 2	In accordance with 4B01049 and 310 CMR 7.28(13)(d), should a budget unit be permanently shut down, the Department will grant an exemption from the requirements of 310 CMR 7.28 upon request from the budget unit's AAR, and provided the shutdown is part of an approved emission control plan or approved under 310 CMR 7.00, Appendix B. The request must include an identification of the budget unit being shut down, and the date of shutdown. Department approval of the request for shutdown exemption will be sent to the AAR, and the Administrator, and may contain conditions as deemed necessary by the Department.
EU 3 EU 4	In accordance with 4B01049 and 310 CMR 7.28(13)(e), by October 15 of each year, any person who owns, leases, operates or controls a new or existing budget unit must report to the Department each facility's metered net electric and useful steam output for that year's control period. Net electric output must be reported in megawatt-hours, and steam output in MMBtu. If data for steam output is not available, the person may report heat input providing useful steam output as a surrogate for steam output. (See special condition #4).
	In accordance with 4B01049 and 310 CMR 7.28(15)(a), for each control period, the AAR for the budget unit shall submit by November 30 of each year, an annual compliance certification report to the Department and the NATS Administrator. In accordance with 310 CMR 7.28(15)(b), the compliance certification report shall be submitted no later than November 30 <sup>th</sup> of each year. The compliance certification shall contain, at a minimum, the items listed in 310 CMR 7.28(15)(c)1 through 8.
	Notification of QA testing is required for Relative Accuracy Test Audits (RATAs) and Appendix E/LME (Low Mass Emission) unit tests. Notification must be made at least 21 days prior to the scheduled test date to the EPA as required by 40 CFR 75.61, to the DEP Lawrence office at DEP, Wall Experiment Station, 37 Shattuck Street, Lawrence, MA 01843-1398 Attn: Source Monitoring Section, and to the DEP Regional office, Attn: BWP Permit Chief. If tests must be rescheduled, 24 hours notice must be given, as specified in 40 CFR 75.61(a)(5).

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**Table 6**

EU #	REPORTING REQUIREMENTS
	<p>A previously approved RATA protocol may be referenced at the time of test notification provided that the referenced protocol was completed in accordance with current 40 CFR Part 75 procedures, addresses all previous DEP protocol comments to the satisfaction of the DEP, and none of the information has changed. If a revised protocol must be submitted, it must be submitted at least 21 days prior to the scheduled test date.</p>
	<p>A hardcopy of the QA RATA or Appendix E/LME test results must be submitted to both the DEP Lawrence and DEP Regional offices within 45 days of completion of tests. The electronic results must be submitted in the quarterly electronic data report (EDR).</p>
	<p>Results from QA daily Calibrations, quarterly Linearity checks and Appendix D Fuel Flowmeter tests must be reported electronically in the EDR submittal for the quarter in which the testing occurs.</p>
<p>EU 1                      EU 2                      EU 3                      EU 4</p>	<p>Submit SO<sub>2</sub> emission reports to verify compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 for each calendar quarter by the thirtieth (30th) day of April, July, October, and January covering the previous calendar periods of January through March, April through June, July through September, and October through December, respectively. Such reports shall contain, on a quarterly basis, for each EU defined in the Permittee's SO<sub>2</sub> compound emission rate averaging system encompassing the Salem Harbor Station and Brayton Point Station facilities: total heating value or heat input of fuel consumed in BTUs and mass SO<sub>2</sub> emission rate in pounds. The quarterly report shall also contain system-wide totals of the latter information for the Permittee's entire SO<sub>2</sub> compound emission rate averaging system encompassing the Salem Harbor Station and Brayton Point Station facilities. The fourth quarterly report shall contain an annual summary of the reportable information.</p>
	<p>In accordance with Approval No. 4B88066, report the quantity of Used Oil Fuel burned for each calendar year.</p>
	<p>In accordance with 310 CMR 7.19(13)(d)9., submit compliance records within ten (10) days of written request by the Department or EPA.</p>
	<p>Report as required by 40 CFR Part 75, Subpart G.</p>
	<p>In accordance with 310 CMR 7.02(2) updated versions of the Standard Operating and Maintenance Procedures (SOMP) shall be submitted to the Department. The Department must approve of significant changes to the SOMP prior to the change becoming effective. The updated SOMP shall supersede prior versions of the SOMP.</p>

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Table 6	
EU #	REPORTING REQUIREMENTS
EU 5	In accordance with Approval No. 4B94073 and 310 CMR 7.19(8)(d)3., report the hours of operation of each EU on a Source Registration/Emission Statement Form as required by 310 CMR 7.12.
EU 6	
EU 7	In accordance with 310 CMR 7.19(13)(d)9., submit compliance records within ten (10) days of written request by the Department or EPA.
EU 8	
EU 9	In accordance with Approval No. 4P97017, report emissions as required by 310 CMR 7.12.
Facility Wide	Submit Emissions Compliance Testing (Stack Testing) Reports in accordance with 310 CMR 7.19(13)(c).
	Submit a Source Registration/Emission Statement Form to the Department on an annual basis in accordance with 310 CMR 7.12.
	Submit by February 15 and August 15 for the previous six months respectively, a summary of all monitoring data and related supporting information to the Department as required by 310 CMR 7.00: Appendix C(10)(c).
	Promptly report to the Department all instances of deviations from permit requirements which are not otherwise reported to the Department by telephone or fax, within three days of discovery of such deviation, as provided in 310 CMR 7.00: Appendix C(10)(f). (See General Condition 25).
	All required reports must be certified by a responsible official as provided in 310 CMR 7.00: Appendix C(10)(h).

C. GENERAL APPLICABLE REQUIREMENTS

The Permittee shall comply with all generally applicable requirements contained in 310 CMR 7.00 et seq. and 310 CMR 8.00 et seq., when subject.

D. REQUIREMENTS NOT CURRENTLY APPLICABLE

The Permittee is currently not subject to the following requirements:

Table 7	
REGULATION	REASON
310 CMR 7.16	Reduction of Single Occupant Commuter Vehicle Use
42 USC 7401 Section 112(r)	Prevention of Accidental Releases

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## 5. SPECIAL TERMS AND CONDITIONS

The Permittee is subject to the following special terms and conditions that are not contained in Table 3, 4, 5, and 6:

### Emission Units No. 1, 2, 3, and 4:

1. The Permittee shall comply with the requirements of Standard Operating Procedure, Section 3.0 Coal Handling and Measurement Systems contained in Approval No. 4B91064 dated February 28, 1992.
2. The Permittee shall comply with the requirements of Standard Operating Procedure, Section 4.0 Ash Handling Systems contained in Approval No. 4B91064 dated February 28, 1992.
3. Unit No. 1 Stack Parameters:

Stack Height	=	351.7 feet
Exit Diameter	=	174.0 inches
4. Unit No. 2 Stack Parameters:

Stack Height	=	351.7 feet
Exit Diameter	=	174.0 inches
5. Unit No. 3 Stack Parameters:

Stack Height	=	351.7 feet
Exit Diameter	=	233.8 inches
6. Unit No. 4 Stack Parameters:

Stack Height	=	500.0 feet
Exit Diameter	=	222.0 inches

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7. State NO<sub>x</sub> Allowance Program

- A. Brayton Point EU1, EU2, EU3, and EU4 are subject to the requirements of the NO<sub>x</sub> Allowance Program 310 CMR 7.27. The Department issued the Phase I Emission Control Plan (ECP) Final Approval for this facility on November 14, 1997, the Phase II ECP Final Approval on March 6, 2002 and the Phase III ECP Final Approval on March 26, 2002.
- B. As per 310 CMR 7.27(6), The Authorized Account Representative (AAR) may buy, sell, trade, or transfer allowances for or between NO<sub>x</sub> Allowance Tracking System (NATS) compliance accounts at any time, up until December 31 of the corresponding ozone season. By December 31st of each year, the AAR must hold in the NO<sub>x</sub> NATS compliance account for each EU at least one allowance for each ton of NO<sub>x</sub> emitted during the corresponding ozone season (May 1 through September 30). The number of allowances actually held in a NATS compliance account for an affected EU may differ from the number allocated by the Department.
- C. EU1, EU2, EU3, and EU4 are classified as "utility units" as per 310 CMR 7.27(6). Utility unit allocations are determined on the percentage basis listed in 310 CMR 7.27(6) Table 3 and by the procedures listed in 310 CMR 7.27(6). The percentage share for utility unit allowance allocation for Brayton Point Station are identified below:

ORISPL Number	YEAR			
	1999	2000	2001	2002
01619	32.83	32.83	32.83	32.83

- D. By May 1, 2003, the NO<sub>x</sub> allowance allocation for each NATS compliance account will be amended according to the new State allowance cap.

- E. As per 310 CMR 7.27(8)(c), NO<sub>x</sub> Allowance transfers must occur as follows:
1. The transfer request must be on a form, or electronic media in a format determined by the NO<sub>x</sub> Allowance Tracking System. Requests must be submitted to the EPA and include at a minimum; the account numbers identifying both the originating account and the acquiring account; and, the names and addresses associated with the owners of the originating account and the acquiring account; and the serial number for each allowance being transferred. The transfer request must be authorized and certified by the Authorized Account Representative for the originating account. To be considered correctly submitted, the request must include the statement of certification contained in 310 CMR 7.27(8)(c)2., verbatim.
  2. As per 310 CMR 7.27(8)(i), any budget unit must make available to the Department, upon request, information regarding transaction cost and allowance price.
  3. As per 310 CMR 7.27(14)(b), each year during the period from November 1 through December 31, inclusive, the Authorized Account Representative for each budget unit must request the NATS administrator to deduct current year allowances from the compliance account equivalent to the NO<sub>x</sub> emissions from the budget unit in the current control period. The request must be submitted by the AAR to the NATS Administrator no later than December 31. The request must identify the compliance account from which the deductions should be made, and if desired, the serial numbers of the allowances to be deducted.
  4. As per 310 CMR 7.27(15), for each control period the Authorized Account Representative for the budget unit must submit by December 31st of each year an annual compliance certification. The Compliance Certification shall contain, at a minimum, the items listed in 310 CMR 7.27(15)(c)1. through 6.
- F. Brayton Point EU1, EU2, EU3, and EU4 are subject to the requirements of the NO<sub>x</sub> Allowance Program 310 CMR 7.28. The Department issued the Phase I and Phase II Emission Control Plan (ECP) Final Approval for this facility on July 23, 2002.
- G. NO<sub>x</sub> Allowance use and transfer must comply with 310 CMR 7.28(10).
- H. In accordance with 310 CMR 7.28(14), each year by November 30, for each budget unit, the total number of banked or current year allowances in its compliance or overdraft account must equal or exceed the NO<sub>x</sub> emissions from the budget unit in the current control period.

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1. Each budget unit shall meter electric and/or steam output in accordance with the approved monitoring methodology contained in Table II and Table III of the ECP Approval No. 4B01049.

#### Electric Output Meters

1. In the case where billing meters are used to determine output, no QA/QC activities beyond those already performed are required. To qualify as a billing meter, the measurement device must be used to measure electric or thermal output for commercial billing under a contract. The facility selling the electric or thermal output must have different owners from the owners of the party purchasing the electric or thermal output. Any electric or thermal output values that the facility reports must be the same as the values used in billing for the output.
2. In the case where non-billing meters are used to determine output, if the facility decides to adopt a system approach to accuracy then a system accuracy of 10.0% must be achieved. If testing an output measurement system shows that the output readings are not accurate to 10.0% or less, then the measurement equipment must be retested or replaced, and meet that requirement. If the facility decides to adopt a component approach to accuracy, then a component accuracy of 3.0% must be achieved. If testing a piece of output measurement equipment shows that the output readings are not accurate to 3.0% or less of the full scale, then the measurement equipment must be retested or replaced, and meet that requirement. When a non-billing system fails to meet the 10% or 3% requirement, data should be considered invalid, prospectively, for purposes of determining allocations. Data remain invalid until the output measurement equipment passes an accuracy test or is replaced with another piece of equipment that passes the accuracy test. The invalid data must be omitted and either zero or an output value that is likely to be lower than a measured value must be reported.
3. Output measurement equipment must be tested for accuracy or recalibrated at least once every two years, in accordance with applicable consensus or NIST traceable standards, unless a standard allows for less frequent calibrations or accuracy tests.

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8. Federal Acid Rain Program, Phase I Acid Rain Permit

- A. Brayton Point EU1, EU2, EU3, and EU4 are affected sources for Phase I of the Federal Acid Rain Program, pursuant to the "compensating unit" provisions of 40 CFR 72.43. As such, these EUs are subject to the requirements of the US EPA Phase I Acid Rain Permit, issued to Brayton Point for the period of January 1, 1995 to December 31, 1999, as revised on January 22, 1996. By January 30th of each year, the permittee must hold in the SO<sub>2</sub> allowance account for each EU at least one allowance for each ton of SO<sub>2</sub> emitted the previous year, provided the Permittee elected that its EUs participate as compensating units for that year. The Permittee's designated representative may buy, sell, trade, or transfer allowances for or between EU accounts at any time, except between January 30th and the completion of the annual SO<sub>2</sub> allowance reconciliation for the preceding year(s).
- B. The yearly SO<sub>2</sub> allowance allocations found in the Statement of Basis, Part B, of the Phase I Acid Rain Permit for each of the Brayton Point Station EUs are identified below:

EU#/Type	YEAR				
	1995	1996	1997	1998	1999
EU1, EU2, EU3, EU4/ Table I, 40 CFR 73.10; Phase I Extension 40 CFR 72.42; Substitution 40 CFR 72.41	NA	NA	NA	NA	NA
EU1/Reduced Utilization 40 CFR 72.43	15,085	15,085	15,085	15,085	15,085
EU2/Reduced Utilization 40 CFR 72.43	15,838	15,838	15,838	15,838	15,838
EU3/Reduced Utilization 40 CFR 72.43	32,977	32,977	32,977	32,977	32,977
EU4/Reduced Utilization 40 CFR 72.43	21,238	21,238	21,238	21,238	21,238

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9. Federal Acid Rain Program, Phase II Acid Rain Permit

- A. Brayton Point EU1, EU2, EU3, and EU4 are subject to the requirements of Phase II of the Federal Acid Rain Program as defined by EPA in 40 CFR Part 72. Pursuant to 40 CFR 72.71, 40 CFR 72.73, and 310 CMR 7.00, Appendix C(3)(n), the Department is the permitting authority for Phase II Acid Rain Permits. The Department issued the initial Phase II Acid Rain Permit No. 4B97105 to Brayton Point Station on December 30, 1997 and renewed said permit on February 28, 2003.
- B. Within 60 days of the end of each calendar year, the facility shall hold in its SO<sub>2</sub> allowance account at least one allowance for each ton of SO<sub>2</sub> emitted during the previous year. An allowance is a limited authorization to emit SO<sub>2</sub> in accordance with the Acid Rain Program.
- C. If the facility has excess emissions in any calendar year, it shall submit a proposed offset plan as required under 40 CFR Part 77. In addition, the Permittee shall pay any penalties specified in 40 CFR Part 77 and comply with the terms of an approved offset plan.
- D. In accordance with 40 CFR Part 73, the Permittee's designated representative may buy, sell, trade, or transfer allowances between EU accounts at any time, except between 60 days of the end of the calendar year and the completion of the annual SO<sub>2</sub> allowance reconciliation for the preceding year(s).
- E. The yearly allowance allocations as identified in 40 CFR 73, Tables 2, 3, and 4, and Phase II Acid Rain Permit No. 4B97105 are identified below:

EU#	YEAR				
	1998	1999	2000	2001	2002
EU1	NA	NA	8,478	8,478	8,478
EU2	NA	NA	8,908	8,908	8,908
EU3	NA	NA	18,618	18,618	18,618
EU4	NA	NA	12,135	12,135	12,135

By January 1, 1999, the Phase II Acid Rain Permit will be reopened to add NO<sub>x</sub> requirements in accordance with 40 CFR 76 and Section 407 of the Clean Air Act.





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(b) Inter-facility emission trading

The Permittee is currently authorized to engage in emissions trading under the following federal and state regulatory programs:

- 40 CFR 72, 73, and 74 - SO<sub>2</sub> Allowance System;
- 310 CMR 7.22 - SO<sub>2</sub> Emissions Reductions for the Purpose of Reducing Acid Rain
- 310 CMR 7.27 - NO<sub>x</sub> Allowance Program;
- 310 CMR 7.28 - NO<sub>x</sub> Allowance Trading Program;
- 310 CMR 7.00, Appendix A - Emission Offsets; and
- 310 CMR 7.00, Appendix B - Emission Reduction Credits

All increases in emissions due to emission trading, must be authorized under the applicable requirements of 310 CMR 7.00: Appendix B (the "Emissions Trading Program") and the 42 U.S.C. §7401 et seq. (the "Act"), and provided for in this permit.

**8. COMPLIANCE SCHEDULE**

The Permittee has indicated that the facility is in compliance and shall remain in compliance with the applicable requirements contained in Sections 4 and 5. In addition, the Permittee shall comply with any applicable requirements that become effective during the permit term.

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## GENERAL CONDITIONS FOR OPERATING PERMIT

### 9. FEES

The permittee has paid the permit application processing fee and shall pay the annual compliance fee in accordance with the fee schedule pursuant to 310 CMR 4.00.

### 10. COMPLIANCE CERTIFICATION

All documents submitted to the Department shall contain certification by the responsible official of truth, accuracy, and completeness. Such certification shall be in compliance with 310 CMR 7.01(2) and contain the following language:

"I certify that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment."

The "Operating Permit Reporting Kit" contains instructions and the Annual Compliance Report and Certification and the Semi-Annual Monitoring Summary Report and Certification. The "Operating Permit Reporting Kit" is available to the Permittee via the Department's web site, <http://www.state.ma.us/dep/bwp/daqc/aqforms.htm>.

#### (a) Annual Compliance Report and Certification

The Responsible Official shall certify, annually for the calendar year, that the facility is in compliance with the requirements of this permit. The report shall be postmarked or delivered by January 30 to the Department and to the Regional Administrator, U.S. Environmental Protection Agency - New England Region. The report shall be submitted in compliance with the submission requirements below.

The compliance certification and report shall describe:

- i. the terms and conditions of the permit that are the basis of the certification;
- ii. the current compliance status and whether compliance was continuous or intermittent during the reporting period;
- iii. the methods used for determining compliance, including a description of the monitoring, record keeping, and reporting requirements and test methods; and
- iv. any additional information required by the Department to determine the compliance status of the source.

#### (b) Semi-Annual Monitoring Summary Report and Certification

The Responsible Official shall certify, semi-annually on the calendar year, that the facility is in compliance with the requirements of this permit. The report shall be postmarked or delivered by January 30 and July 30 to the Department. The report shall be submitted in compliance with the submission requirements below.

The compliance certification and report shall describe:

- i. the terms and conditions of the permit that are the basis of the certification;
- ii. the current compliance status during the reporting period;
- iii. the methods used for determining compliance, including a description of the monitoring, record keeping, and reporting requirements and test methods;
- iv. whether there were any deviations during the reporting period;
- v. if there are any outstanding deviations at the time of reporting, and the Corrective Action Plan to remedy said deviation;
- vi. whether deviations in the reporting period were previously reported;
- vii. if there are any outstanding deviations at the time of reporting, the proposed date of return to compliance;
- viii. if the deviations in the reporting period have returned to compliance and date of such return to compliance; and
- ix. any additional information required by the Department to determine the compliance status of the source.

## **11. NONCOMPLIANCE**

Any noncompliance with a permit condition constitutes a violation of 310 CMR 7.00; Appendix C and the Clean Air Act, and is grounds for enforcement action, for permit termination or revocation, or for denial of an operating permit renewal application by the Department and/or EPA. Noncompliance may also be grounds for assessment of administrative or civil penalties under M.G.L. c.21A, §16 and 310 CMR 5.00; and civil penalties under M.G.L. c.111, §142A and 142B. This permit does not relieve the permittee from the obligation to comply with any other provisions of 310 CMR 7.00 or the Act, or to obtain any other necessary authorizations from other governmental agencies, or to comply with all other applicable Federal, State, or Local rules and regulations, not addressed in this permit.

## **12. PERMIT SHIELD**

(a) This facility has a permit shield provided that it operates in compliance with the terms and conditions of this permit. Compliance with the terms and conditions of this permit shall be deemed compliance with all applicable requirements specifically identified in Sections 4, 5, 6, and 7, for the emission units as described in the permittee's application and as identified in this permit.

Where there is a conflict between the terms and conditions of this permit and any earlier approval or permit, the terms and conditions of this permit control.

(b) The Department has determined that the permittee is not currently subject to the requirements listed in Section 4, Table 7.

(c) Nothing in this permit shall alter or affect the following:

- (i) the liability of the source for any violation of applicable requirements prior to or at the time of permit issuance.

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- (ii) the applicable requirements of the Acid Rain Program, consistent with 42 U.S.C. §7401, §408(a); or
- (iii) the ability of EPA to obtain information under 42 U.S.C. §7401, §114 or §303 of the Act.

### **13. ENFORCEMENT**

The following regulations found at 310 CMR 7.02(8)(h) Table 6 for wood fuel, 7.02(8)(i), 7.04(9), 7.05(8), 7.09 (odor), 7.10 (noise), 7.18(1)(b), 7.21, 7.22 and any condition(s) designated as "state only" are not federally enforceable because they are not required under the Act or under any of its applicable requirements. These regulations and conditions are not enforceable by the EPA. Citizens may seek equitable or declaratory relief to enforce these regulations and conditions pursuant to Massachusetts General Law Chapter 214, Section 7A

All other terms and conditions contained in this permit, including any provisions designed to limit a facility's potential to emit, are enforceable by the Department, EPA and citizens as defined under the Act.

A Permittee shall not claim as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### **14. PERMIT TERM**

This permit shall expire on the date specified on the cover page of this permit, which shall not be later than the date 5 years after issuance of this permit.

Permit expiration terminates the permittee's right to operate the facility's emission units, control equipment or associated equipment covered by this permit, unless a timely and complete renewal application is submitted at least 6 months before the expiration date.

### **15. PERMIT RENEWAL**

Upon the Department's receipt of a complete and timely application for renewal, this facility may continue to operate subject to final action by the Department on the renewal application.

In the event the Department has not taken final action on the operating permit renewal application prior to this permit's expiration date, this permit shall remain in effect until the Department takes final action on the renewal application, provided that a timely and complete renewal application has been submitted in accordance with 310 CMR 7.00: Appendix C(13).

## **16. REOPENING FOR CAUSE**

This permit may be modified, revoked, reopened, and reissued, or terminated for cause by the Department and/or EPA. The responsible official of the facility may request that the Department terminate the facility's operating permit for cause. The Department will reopen and amend this permit in accordance with the conditions and procedures under 310 CMR 7.00: Appendix C(14).

The filing of a request by the permittee for an operating permit revision, revocation and reissuance, or termination, or a notification of a planned change or anticipated noncompliance does not stay any operating permit condition.

## **17. DUTY TO PROVIDE INFORMATION**

Upon the Department's written request, the permittee shall furnish, within a reasonable time, any information necessary for determining whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall furnish to the Department copies of records that the permittee is required to retain by this permit.

## **18. DUTY TO SUPPLEMENT**

The permittee, upon becoming aware that any relevant facts were omitted or incorrect information was submitted in the permit application, shall promptly submit such supplementary facts or corrected information. The permittee shall also provide additional information as necessary to address any requirements that become applicable to the facility after the date a complete renewal application was submitted but prior to release of a draft permit.

The permittee shall promptly, on discovery, report to the Department a material error or omission in any records, reports, plans, or other documents previously provided to the Department.

## **19. TRANSFER OF OWNERSHIP OR OPERATION**

This permit is not transferable by the permittee unless done in accordance with 310 CMR 7.00: Appendix C(8)(a). A change in ownership or operation control is considered an administrative permit amendment if no other change in the permit is necessary and provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between current and new permittee, has been submitted to the Department.

## **20. PROPERTY RIGHTS**

This permit does not convey any property rights of any sort, or any exclusive privilege.







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## APPEAL CONDITIONS FOR OPERATING PERMIT

This permit is an action of the Department. If you are aggrieved by this action, you may request an adjudicatory hearing within 21 days of issuance of this permit. In addition, any person who participates in any public participation process required by the Federal Clean Air Act, 42 U.S.C. §7401, §502(b)(6) or under 310 CMR 7.00: Appendix C(6), with respect to the Department's final action on operating permits governing air emissions, and who has standing to sue with respect to the matter pursuant to federal constitutional law, may initiate an adjudicatory hearing pursuant to Chapter 30A, and may obtain judicial review, pursuant to Chapter 30A, of a final decision therein.

If an adjudicatory hearing is requested, the facility must continue to comply with all existing federal and state applicable requirements to which the facility is currently subject, until a final decision is issued in the case or the appeal is withdrawn. During this period, the application shield shall remain in effect, and the facility shall not be in violation of the Act for operating without a permit.

Under 310 CMR 1.01(6)(b), the request must state clearly and concisely the facts which are the grounds for the request, and the relief sought. Additionally, the request must state why the permit is not consistent with applicable laws and regulations.

The hearing request along with a valid check payable to The Commonwealth of Massachusetts in the amount of one hundred dollars (\$100.00) must be mailed to:

The Commonwealth of Massachusetts  
Department of Environmental Protection  
P.O. Box 4062  
Boston, MA 02211

The request will be dismissed if the filing fee is not paid unless the appellant is exempt or granted a waiver as described below.

The filing fee is not required if the appellant is a city or town (or municipal agency) county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.

The Department may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.

# **EXHIBIT B**



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-948-2700

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

RICHARD K. SULLIVAN JR.  
Secretary

KENNETH L. KIMMELL  
Commissioner

## FINAL AIR QUALITY OPERATING PERMIT

Issued by the Massachusetts Department of Environmental Protection (MassDEP) pursuant to its authority under M.G.L. c. 111, §142B and §142D, 310 CMR 7.00 et seq., and in accordance with the provisions of 310 CMR 7.00: Appendix C.

### ISSUED TO ["the Permittee"]:

Dominion Energy Brayton Point, LLC  
5000 Dominion Blvd  
Glen Allen, Virginia 23060

### FACILITY LOCATION:

Dominion Energy Brayton Point  
1 Brayton Point Road  
Somerset, Massachusetts 02726

### NATURE OF BUSINESS:

Electric Power Generation

### RESPONSIBLE OFFICIAL:

Name: Mr. Peter M. Balkus  
Title: Station Director

### INFORMATION RELIED UPON:

Application No. 4V04019  
Transmittal No. W051616  
(includes):  
Minor Mod. No. SE-11-039, Transmittal No. X241366

### FACILITY IDENTIFYING NUMBERS:

AQ ID: 1200061  
FMF FAC NO. 402959  
FMF RO NO. 407197

### STANDARD INDUSTRIAL CODE (SIC): 4911

### NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS): 221112

### FACILITY CONTACT PERSON:

Name: Ms. Sheila A. Medeiros  
Title: Sr. Environmental Compliance Coordinator  
Phone: (508) 646-5260  
Email: Sheila.A.Medeiros@dom.com

This operating permit shall expire on July 25, 2016.

For the Department of Environmental Protection, Bureau of Waste Prevention

*This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.*

\_\_\_\_\_  
Chief, Permit Section

(Operating Permit signed 7/25/11)

\_\_\_\_\_  
Date

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## SPECIAL CONDITIONS FOR OPERATING PERMIT

A Legend to Abbreviated Terms found in the following Tables is located in Section 28 of the Operating Permit.

### 1. PERMITTED ACTIVITIES

In accordance with the provisions of 310 CMR 7.00: Appendix C and applicable rules and regulations, the permittee is authorized to operate air emission units as shown in Table 1 and exempt, and insignificant activities as described in 310 CMR 7.00: Appendix C(5)(h) and (i). The units described in Table 1 are subject to the terms and conditions shown in Sections 4, 5, and 6 and to other terms and conditions as specified in this permit. Emissions from the exempt activities shall be included in the total facility emissions for the emission-based portion of the fee calculation described in 310 CMR 4.00 and this permit.

### DESCRIPTION OF FACILITY AND OPERATIONS

Brayton Point Station consists of three primarily coal-fired boilers (designated as Emission Unit Nos. EU 1, EU 2, and EU 3) and one fuel oil and natural gas-fired boiler (designated as Emission Unit No. EU 4) for a total nominal generating capacity of approximately 1,600 MW. The facility is located in Somerset, Bristol County, Massachusetts, on a peninsula in Mount Hope Bay. The principal materials handling and storage activities at Brayton Point Station consist of coal receiving via ships, coal pile storage, and covered conveying. Additionally, fly ash from EU 1, 2, and 3 is collected, temporarily stored in silos, and transferred to on-site or off-site areas via covered dump trucks or dry haulers, or is transferred to the Ash Reduction Process (EU 12) pneumatically.

Emission Unit No. 1 (EU 1) utilizes pulverized coal at 100 percent MCR, natural gas at 25 percent MCR as a secondary fuel, No. 6 fuel oil at 100 percent MCR as a backup fuel, and No. 2 fuel oil at 100 percent MCR as an alternate backup fuel.

EU 1 has been equipped with an SCR system for the control of NO<sub>x</sub> emissions, a dry flue gas desulfurization system consisting of a SDA/FF for the control of SO<sub>2</sub> and PM, and PAC injection systems for the control of Hg. The SCR system is designed for up to 90 percent control of NO<sub>x</sub> and utilizes aqueous NH<sub>3</sub> to generate NH<sub>3</sub> for injection at the SCR inlet. The SDA/FF system, located downstream of the ESPs, is designed for up to 90 percent control of SO<sub>2</sub>. Lime is mixed with water and pumped to the SDA for SO<sub>2</sub> removal. The PAC injection system for removal of Hg includes three PAC injection locations: upstream of the Koppers ESPs, upstream of the R-C ESPs, and upstream of the SDA/FF system. The PAC injection system in conjunction with the SDA/FF is designed for up to 95 percent control of Hg.

Emission Unit No. 2 (EU 2) utilizes pulverized coal at 100 percent MCR, natural gas at 25 percent MCR as a secondary fuel, No. 6 fuel oil at 100 percent MCR as a backup fuel, and No. 2 fuel oil at 100 percent MCR as an alternate backup fuel.

EU 2 has been equipped with a dry flue gas desulfurization system consisting of a SDA/FF for the control of SO<sub>2</sub> and PM, and PAC injection systems for the control of Hg. The SDA/FF

system, located downstream of the ESPs, is designed for up to 90 percent control of SO<sub>2</sub>. Lime is mixed with water and pumped to the SDA for SO<sub>2</sub> removal. The PAC injection system for removal of Hg includes three PAC injection locations: upstream of the Koppers ESPs, upstream of the R-C ESPs, and upstream of the SDA/FF system. The PAC injection system in conjunction with the SDA/FF is designed for up to 95 percent control of Hg.

Emission Unit No. 3 (EU 3) utilizes pulverized coal at 100 percent MCR, natural gas at 10 percent MCR as a secondary fuel, No. 6 fuel oil at 100 percent MCR as a backup fuel, and No. 2 fuel oil at 100 percent MCR as an alternate backup fuel.

EU 3 has been equipped with an SCR system for the control of NO<sub>x</sub> emissions, and a PAC injection system for the control of Hg. The SCR system is designed for up to 90 percent control of NO<sub>x</sub> and utilizes aqueous NH<sub>3</sub> to generate NH<sub>3</sub> for injection at the SCR inlet. A DS/FF system designed for up to 90 percent control of SO<sub>2</sub> is under construction and is scheduled to be in operation during the first quarter of 2014. The PAC injection system for removal of Hg includes two PAC injection locations: upstream of the Koppers ESPs and upstream of the R-C ESPs. It is proposed to construct an additional PAC injection location upstream of the DS/FF. The PAC injection system in conjunction with the ESPs alone is designed for up to 80 percent control of Hg. With the addition of the third PAC injection location at the DS/FF, the entire system will be designed for up to a maximum of 95 percent control of Hg.

Emission Unit No. 4 (EU 4) utilizes residual oil and natural gas fuels. It is equipped with a R-C ESP for the control of PM emissions; and Rodenhuis & Verloop low-NO<sub>x</sub> burners, and Riley Stoker flue gas recirculation for the control of NO<sub>x</sub> emissions.

The ash reduction process (ARP), which is identified as Emission Unit No. EU 12, processes coal fly ash in a fluid bed furnace and produces a high quality ash with low carbon content for use as a replacement of Portland cement in the production of concrete. The ARP furnace recovers a substantial amount of the heat that would normally be wasted through the disposal of high-carbon fly ash. The furnace has a maximum design heat input of 97 MMBtu/hr with the exhaust routed through a fabric filter (FF) particulate control device and then conveyed to the windbox of Emission Unit Nos. EU 1 or EU 3, and when both EU 1 and EU 3 are not operating, the ARP will be shut down. The furnace heat input is provided by the high carbon ash and augmented as necessary with natural gas and powder activated carbon (PAC). Based in a determination issued by U.S. EPA-Region 4, 40 CFR 60, Subpart Dc applies to the ARP because the ARP heat recovery meets the definition of a "steam generating unit." However, because the fly ash and PAC are not considered to meet the definition of coal, no Subpart Dc emission standards apply. The facility must, however, meet the recordkeeping and reporting requirements of 40 CFR 60.48c(g) and the general provisions of 40 CFR 60.7.

The facility is subject to the requirements of 40 CFR 64 (Compliance Assurance Monitoring) for particulate matter emissions from Emission Unit Nos. EU 1 through EU 4, and Emission Unit Nos. EU 14 and EU 15.

The facility is a major source of hazardous air pollutants (HAP).

Emission Unit Nos. EU 1, 2, 3, and 4 are subject to the requirements of the Massachusetts Clean Air Interstate Rule (CAIR) under 310 CMR 7.32. The permittee has submitted a BWP AQ29 CAIR permit application (Transmittal No. W152786) pursuant to 310 CMR 7.32(3). Upon

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approval of the submitted CAIR permit application, the permittee shall submit a BWP AQ10 Minor Modification application to incorporate the requirements into this Operating Permit. On August 28, 2008, the Brayton Point facility submitted a Prevention of Significant Deterioration (PSD) permit application to U.S. EPA to construct and operate a dry scrubber and fabric filter (DS/FF) on EU 3 and two new natural draft cooling towers (No. 1 and 2, identified as Emission Unit Nos. 14 and 15). This application was significantly revised in a January 9, 2009 submittal. On April 2, 2009, EPA issued PSD Permit No. 052-120-MA14 for Cooling Towers No. 1 and No. 2. The cooling towers are part of a closed-cycle cooling system that is being installed at the facility. Operation of the cooling towers will result in a significant potential emission increase of particulate matter less than 2.5 micrometers ( $\mu\text{m}$ ) and particulate matter less than 10  $\mu\text{m}$  with an associated increase in particulate matter potential emissions of 194.5 tons per year for each cooling tower. The addition of EU 3 DS/FF and cooling tower emissions to this Operating Permit renewal constitutes a Significant Modification to the originally-issued Operating Permit.

On October 7, 2009, EPA issued a second PSD Permit (Permit No. 052-120-MA15) for the construction and operation of the DS/FF emission control system for EU 3.

**2. EMISSION UNIT IDENTIFICATION**

The following emission units (Table 1) are subject to and regulated by this operating permit:

<b>Table 1</b>			
<b>Emission Unit (EU#)</b>	<b>Description of Emission Unit</b>	<b>EU Design Capacity</b>	<b>Pollution Control Device (PCD)</b>
EU 1	<p style="text-align: center;"><u>Unit 1:</u>                      Combustion Engineering                      MFR # 19407 Type CC,                      Water Tube Boiler                       (to Stack No. 1)</p>	<p style="text-align: center;">2,250 MMBtu per hour                       255 Megawatts (Net)</p>	<p style="text-align: center;">Selective Catalytic Reduction                      R-C Electrostatic Precipitators                      Low NO<sub>x</sub> Burners with Overfire Air                      Management of Lower Sulfur Fuels                      Spray Dryer Absorber                      Fabric Filter Baghouse                      Powder Activated Carbon                       PCD-1</p>
EU 2	<p style="text-align: center;"><u>Unit 2:</u>                      Combustion Engineering                      MFR # 19617 Type CC,                      Water Tube Boiler                       (to Stack No. 2)</p>	<p style="text-align: center;">2,250 MMBtu per hour                       255 Megawatts (Net)</p>	<p style="text-align: center;">Flue Gas Conditioning                      R-C Electrostatic Precipitators                      Low NO<sub>x</sub> Burners with Overfire Air                      Management of Lower Sulfur Fuels                      Spray Dryer Absorber                      Fabric Filter Baghouse                      Powder Activated Carbon                       PCD-2</p>
EU 3	<p style="text-align: center;"><u>Unit 3:</u>                      Babcock and Wilcox                      Model # UP-52                      Water Tube Boiler                       (to Stack No. 3)</p>	<p style="text-align: center;">5,655 MMBtu per hour                       633 Megawatts (Net)</p>	<p style="text-align: center;">Selective Catalytic Reduction                      R-C Electrostatic Precipitators                      Low NO<sub>x</sub> Burners with Overfire Air                      Management of Lower Sulfur Fuels                      Dry Scrubber                      Fabric Filter Baghouse                      Powder Activated Carbon                       PCD-3</p>
EU 4	<p style="text-align: center;"><u>Unit 4:</u>                      Riley Stoker                      Model # 1SR                      Water Tube Boiler                       (to Stack No. 4)</p>	<p style="text-align: center;">4,800 MMBtu per hour                       446 Megawatts (Net)</p>	<p style="text-align: center;">Electrostatic Precipitators                      Low NO<sub>x</sub> Burners                      Management of Lower Sulfur Fuels                      Flue Gas Recirculation                       PCD-4</p>
EU 5	<p style="text-align: center;">Diesel Generator Unit No.                      1:                      General Motors                      Model # 20-645-E44</p>	<p style="text-align: center;">28 MMBtu per hour</p>	<p style="text-align: center;">Retard Timing                      Ultra-Low Sulfur Fuel                      Crankcase Ventilation</p>

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**Table 1 (continued)**

Emission Unit (EU#)	Description of Emission Unit	EU Design Capacity	Pollution Control Device (PCD)
EU 6	Diesel Generator Unit No. 2: General Motors Model # 20-645-E44	28 MMBtu per hour	Retard Timing Ultra-Low Sulfur Fuel Crankcase Ventilation
EU 7	Diesel Generator Unit No. 3: General Motors Model # 20-645-E44	28 MMBtu per hour	Retard Timing Ultra-Low Sulfur Fuel Crankcase Ventilation
EU 8	Diesel Generator Unit No. 4: General Motors Model # 20-645-E44	28 MMBtu per hour	Retard Timing Ultra-Low Sulfur Fuel Crankcase Ventilation
EU 10	Underground Gasoline Storage Tank	5,000 gallons	Stage II Vapor Recovery  PCD-6
EU 11	Coal Storage Pile	680,000 tons	Water Sprays, Dust Suppressant, Surface Sealant  PCD-7
EU 12	Ash Reduction Process (ARP)  Goodhart Sons	97 MMBtu per hour  6,930 lb/hr carbon	(Exhaust of ARP routed to the windbox of EU 1 or EU 3)
EU 14	Cooling Tower 1  SPX/Series 800	360,000 gpm circulating water flow	Drift Eliminators (limiting water mist to 0.0005% of circulating water flow)
EU 15	Cooling Tower 2  SPX/Series 800	360,000 gpm circulating water flow	Drift Eliminators (limiting water mist to 0.0005% of circulating water flow)
EU 16	Parts Degreasers  Super Brute (9 units)	35 and 45 gallon capacity	Closed Covers
EU 17	Gasoline Dispensing  Gasboy Model 9153ACXF	N/A	Balance Stage II System

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**3. IDENTIFICATION OF EXEMPT ACTIVITIES**

The following are considered exempt activities in accordance with the criteria contained in 310 CMR 7.00: Appendix C(5)(h):

<b>Table 2</b>	
<b>Description of Current Exempt Activities</b>	<b>Reason</b>
The list of current exempt activities is contained in the Operating Permit application and shall be updated by the permittee to reflect changes at the facility over the permit term. An up-to-date copy of exempt activities list shall be kept on-site at the facility and a copy shall be submitted to MassDEP's Regional Office. Emissions from these activities shall be reported on the annual emissions statement pursuant to 310 CMR 7.12.	310 CMR 7.00:Appendix C(5)(h)

**4. APPLICABLE REQUIREMENTS**

**A. EMISSION LIMITS AND RESTRICTIONS**

The permittee is subject to the emission limits/restrictions as contained in Table 3 below:

<b>Table 3</b>					
<b>EU #</b>	<b>Fuel</b>	<b>Pollutant</b>	<b>Emissions Limit/Standard</b>	<b>Applicable Regulation and/or (Approval No.)</b>	
EU 1	All Fuels	NH <sub>3</sub>	$\leq 2 \text{ ppm @ } 3\% \text{ O}_2^{(1)}$ $\leq 0.001 \text{ lb/MMBtu}^{(1)}$ $\leq 2.26 \text{ lb/hr}^{(1)}$ $\leq 9.9 \text{ tpy}$	Approval No. 4B08052	
EU 1 EU 2	Coal	NO <sub>x</sub>	$\leq 0.40 \text{ lb/MMBtu}$ (annual average basis)	Approval No. 4B97105	
	No. 6 Fuel Oil		$\leq 0.38 \text{ lb/MMBtu}^{(2)}$	Approval No. 4B93086 310 CMR 7.19(4)(a)	
	No. 2 Fuel Oil		$\leq 0.25 \text{ lb/MMBtu}^{(2)}$		
	Natural Gas		$\leq 0.25 \text{ lb/MMBtu}^{(2)}$		
	Co-Firing Fuels		$\leq 0.20 \text{ lb/MMBtu}^{(2)}$		
			$\leq \text{PS}_{\text{NOx}}^{(2,3)}$	310 CMR 7.19(15)	
			CO	$\leq 100 \text{ ppm by volume,}$ dry basis at 3% O <sub>2</sub> <sup>(2)</sup>	Approval No. 4B93086
		All Fuels	PM <sup>(4,5)</sup> PM <sub>10</sub> <sup>(4,7)</sup> PM <sub>2.5</sub> <sup>(4,7)</sup>	$\leq 0.08 \text{ lb/MMBtu}$ $\leq 180.0 \text{ lb/hr}$ $\leq 788.4 \text{ tpy}$	Approval No. 4B08052
			Opacity	$\leq 20\%$ , except $> 20$ to $\leq 40\%$ for $\leq 2$ minutes during any one hour, at no time to exceed 40%	310 CMR 7.06(1)(b)
			Smoke	$< \text{No. 1}$ of the Chart <sup>(8)</sup> , except $\geq \text{No. 1}$ to $< \text{No. 2}$ of the Chart for $\leq 6$ minutes during any one hour, at no time to equal or exceed No. 2 of the Chart	310 CMR 7.06(1)(a)
	Coal	S in Fuel	$\leq 1.23 \text{ lb/MMBtu per calendar day}$ $\leq 1.21 \text{ lb/MMBtu per 30 day rolling period}$	Approval No. 4B91064	

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**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2	No. 6 Fuel Oil	S in Fuel	≤ 1.21 lb/MMBtu	Approval No. 4B88148 310 CMR 7.05(1)(a)1.
	No. 2 Fuel Oil		≤ 0.17 lb/MMBtu	310 CMR 7.05(1)(a)2.
	Coal	SO <sub>2</sub>	≤ 2.46 lb/MMBtu per calendar day ≤ 2.42 lb/MMBtu per 30 day rolling period	Approval No. 4B91064
		Ash in Fuel	May exceed 9% by weight, dry basis	Approval No. 4B88148
EU 3	Coal	NO <sub>x</sub>	≤ 0.46 lb/MMBtu (annual average basis)	Approval No. 4B97105
			≤ 0.45 lb/MMBtu <sup>(2)</sup>	Approval No. 4B93107 310 CMR 7.19(4)(a)
	No. 6 Fuel Oil		≤ 0.28 lb/MMBtu <sup>(2)</sup>	
	No. 2 Fuel Oil		≤ 0.28 lb/MMBtu <sup>(2)</sup>	
	Natural Gas		≤ 0.28 lb/MMBtu <sup>(2)</sup>	
	Co-Firing Fuels		≤ PS <sub>NOx</sub> <sup>(2,3)</sup>	310 CMR 7.19(15)
	All Fuels	CO	≤ 200 ppm by volume, dry basis at 3% O <sub>2</sub> <sup>(2)</sup>	Approval No. 4B95073
		PM <sup>(22)</sup>	≤ 0.08 lb/MMBtu	Approval No. 4B88148
		PM <sup>(5,6,9,10)</sup>	≤ 0.010 lb/MMBtu ≤ 56.6 lb/hr ≤ 247.7 tpy	Approval No. 4B08052
		PM <sub>10</sub> <sup>(6,7,9)</sup> PM <sub>2.5</sub> <sup>(6,7,9)</sup>	≤ 0.025 lb/MMBtu ≤ 141.4 lb/hr ≤ 619.2 tpy (filterable & condensable)	Approval No. 4B08052 PSD Permit No. 052-120-MA15
		PM <sub>10</sub> <sup>(6)</sup> PM <sub>2.5</sub> <sup>(6)</sup>	≤ 0.010 lb/MMBtu ≤ 56.6 lb/hr (filterable only)	PSD Permit No. 052-120-MA15

**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 3	All Fuels	NH <sub>3</sub>	$\leq 2 \text{ ppm @ } 3\% \text{ O}_2^{(1)}$ $\leq 0.001 \text{ lb/MMBtu}^{(1)}$ $\leq 5.71 \text{ lb/hr}^{(1)}$ $\leq 25.0 \text{ tpy}$	Approval No. 4B08052
		Opacity	$\leq 20\%$ , except $> 20$ to $\leq 40\%$ for $\leq 2$ minutes during any one hour, at no time to exceed 40% Shall not exceed 10% after installation of the DS/FF, exclusive of uncombined water vapor, for a period or aggregate period in excess of 2 minutes during any 1 hour, provided that at no time during the 2 minutes to exceed 20%	Approval No. 4B08052 310 CMR 7.06(1)(b)
		Smoke	$< \text{No. 1}$ of the Chart <sup>(8)</sup> , except $\geq \text{No. 1}$ to $< \text{No. 2}$ of the Chart for $\leq 6$ minutes during any one hour, at no time to equal or exceed No. 2 of the Chart	310 CMR 7.06(1)(a)
	Coal	S in Fuel	$\leq 1.23 \text{ lb/MMBtu}$ per calendar day $\leq 1.21 \text{ lb/MMBtu}$ per 30 day rolling period	Approval No. 4B91064
	No. 6 Fuel Oil		$\leq 1.21 \text{ lb/MMBtu}$	Approval No. 4B88148 310 CMR 7.05(1)(a)1.
	No. 2 Fuel Oil		$\leq 0.17 \text{ lb/MMBtu}$	310 CMR 7.05(1)(a)2.
	Coal	SO <sub>2</sub>	$\leq 2.46 \text{ lb/MMBtu}$ per calendar day $\leq 2.42 \text{ lb/MMBtu}$ per 30 day rolling period	Approval No. 4B91064
		Ash in Fuel	May exceed 9% by weight, dry basis	Approval No. 4B88148

**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2 EU 3	All Fuels	PM <sup>(22)</sup>	≤ 0.08 lb/MMBtu	Approval No. 4B88148
	Coal	Hg	≤ 146.6 lb/yr <sup>(11)</sup> per calendar year, from the combustion from solid fuels or from re-burn of ash, calculated using the results of the stack tests required at 310 CMR 7.29(5)(a)3.d.ii.  (state-only requirement)	Approval No. 4B08050  310 CMR 7.29(5)(a)3.c.
			85% removal efficiency or ≤ 0.0075 lb/GWh (see Table 6A)  (state-only requirement)	Approval No. 4B08050  310 CMR 7.29(5)(a)3.e.i. or ii.
			95% removal efficiency or ≤ 0.0025 lb/GWh (see Table 6A)  (state-only requirement)	Approval No. 4B08050  310 CMR 7.29(5)(a)3.f.i. or ii.
EU 4	No. 6 Fuel Oil	NO <sub>x</sub>	≤ 0.27 lb/MMBtu <sup>(2)</sup>	Approval No. 4B94040  310 CMR 7.19(4)(a)
	No. 6 Fuel Oil and Natural Gas		≤ 0.27 lb/MMBtu <sup>(2)</sup>	
	Natural Gas		≤ 0.20 lb/MMBtu <sup>(2)</sup>	
	All Fuels	CO	≤ 100 ppm by volume, dry basis at 3% O <sub>2</sub> <sup>(2)</sup>	Approval No. 4B94040
		PM <sup>(5)</sup> PM <sub>10</sub> <sup>(7)</sup> PM <sub>2.5</sub> <sup>(7)</sup>	≤ 0.03 lb/MMBtu  ≤ 144.0 lb/hr  ≤ 630.7 tpy	Approval No. 4B08052
		Opacity	≤ 20%, except > 20 to ≤ 40% for ≤ 2 minutes during any one hour, at no time to exceed 40 percent	310 CMR 7.06(1)(b)
		Smoke	< No. 1 of the Chart <sup>(8)</sup> , except ≥ No. 1 to < No. 2 of the Chart for ≤ 6 minutes during any one hour, at no time to equal or exceed No. 2 of the Chart	310 CMR 7.06(1)(a)
	Start Up No. 6 Fuel Oil and/or Natural Gas <sup>(12)</sup>	S in Fuel	≤ 0.55 lb/MMBtu (for start up)	Approval No. 4B90187

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**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 4	No. 6 Fuel Oil	S in Fuel	≤ 1.21 lb/MMBtu	Approval No. 4B90187 310 CMR 7.05(1)(b)1.
		N in Fuel	≤ 0.4% by weight	Approval No. 4B90187
EU 1 EU 2 EU 3 EU 4	Used/Waste Oil & Non-Chlorinated Solvents <sup>(13)</sup>	N/A	Achieve and substantiate a minimum combustion efficiency of 99.5%	Approval No. 4B88066
	All Fuels	NO <sub>x</sub>	<u>See Special Terms and Conditions, Section 5.(H)</u>	40 CFR Part 76
			≤ 1.5 lb/MWh, calculated over any consecutive 12-month period, recalculated monthly (see Table 6A) (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)1.a.
			≤ 3.0 lb/MWh, calculated over any individual month (see Table 6A) (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)1.b.
			As of the allowance deadline for a control period, the owners and operators of each CAIR NO <sub>x</sub> Ozone Season source and each CAIR NO <sub>x</sub> Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO <sub>x</sub> Ozone Season allowances available for compliance deductions for the control period under 310 CMR 7.32(6)(e)1. in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO <sub>x</sub> Ozone Season units at the source, as determined in accordance with 310 CMR 7.32(8).	310 CMR 7.32
			See <u>Special Terms and Conditions, Section 5.G.</u>	40 CFR Part 72
	See <u>Special Terms and Conditions, Section 5.H.</u>	40 CFR Part 76		
	SO <sub>2</sub>			

**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 1 EU 2 EU 3 EU 4	All Fuels	SO <sub>2</sub>	≤ 6.0 lb/MWh, calculated over any consecutive 12-month period, recalculated monthly (effective 10/1/06) (see Table 6A) (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)2.a.
			≤ 3.0 lb/MWh, calculated over any consecutive 12-month period, recalculated monthly (effective 10/1/08) (see Table 6A) (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)2.b.i.
			≤ 6.0 lb/MWh, calculated over any individual month (effective 10/1/08) (see Table 6A) (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)2.b.ii.
			≤ 1.21 lb/MMBtu <sup>(14)</sup> (state-only requirement)	Approval No. 4B90147 310 CMR 7.22
			4 Unit Total – See <u>Special Terms and Conditions</u> , Section 5.(Z)	Approval No. 4B08052
		CO <sub>2</sub>	≤ the historical actual emissions of 8,585,152 tpy <sup>(15,16)</sup> per calendar year (see Table 6A) (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)5.a.
			≤ 1,800 lb/MWh <sup>(16)</sup> in the calendar year (see Table 6A) (state-only requirement)	Approval No. 4B08050 310 CMR 7.29(5)(a)5.b.
			Hold CO <sub>2</sub> allowances available for compliance <sup>(18,19)</sup> (state-only requirement)	Approval No. 4B08038 310 CMR 7.70(1)(e)3.a.
			CO <sub>2</sub> allowance transfers (state-only requirement)	Approval No. 4B08038 310 CMR 7.70(7)

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**Table 3 (continued)**

EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 5 EU 6 EU 7 EU 8	No. 2 Fuel Oil	NO <sub>x</sub>	≤ 2.83 lb/MMBtu <sup>(17)</sup>	Approval No. 4B94073 310 CMR 7.19(8)(d)
		S in Fuel	≤ 15 ppm sulfur content	4B08002
		CO	23 ppmvd @ 15% O <sub>2</sub> <sup>(21)</sup> (dry basis) or 70% CO reduction	40 CFR 63, Subpart ZZZZ
		Opacity	≤ 20%, except 20 to ≤ 40% for ≤ 2 minutes during any one hour	310 CMR 7.06(1)(b)
		Smoke	< No. 1 of the Chart <sup>(8)</sup> , except No. 1 to < No. 2 of the Chart for ≤ 6 minutes during any one hour	310 CMR 7.06(1)(a)
		HAPs	N/A	40 CFR 63, Subpart ZZZZ
EU 11	Coal	PM	Standard Operating and Maintenance Procedures Coal Handling and Measurement Systems	Approval No. 4B91064
EU 12	Coal Fly Ash & Powder Activated Carbon		N/A	40 CFR 60, Subpart Dc
EU 14 EU 15	N/A	PM PM <sub>10</sub> PM <sub>2.5</sub>	≤ 44.4 lb/hr (each unit) ≤ 194.5 tpy (each unit)	Approval No. 4B08052
		PM <sub>10</sub> PM <sub>2.5</sub>	1,066 lb/24-hour block average (each unit)	PSD Permit No. 052-120-MA14
EU 16	N/A	VOC	< 100 gallons/month of solvent (for each unit)	310 CMR 7.03(8)
			The solvent used shall have a vapor pressure that does not exceed 1.0 mm Hg measured at 20°C	310 CMR 7.18(8)(a)

Table 3 (continued)				
EU #	Fuel	Pollutant	Emissions Limit/Standard	Applicable Regulation and/or (Approval No.)
EU 17	N/A	VOC	Submerged Fill	310 CMR 7.24(3)(a)
			Stage I Vapor Recovery	310 CMR 7.24(3)(b)
			Stage II Vapor Recovery	310 CMR 7.24(6)(a)2.
Facility Wide		Green House Gas <sup>(20)</sup>	N/A	310 CMR 7.71 (state-only requirement)

**Table 3 Notes:**

- (1) One-hour average, measured at the stack.
- (2) NO<sub>x</sub> and CO emission limits are based on a one calendar day averaging time.
- (3) For Emission Unit Nos. EU 1 and EU 2:

$$PS_{NOx} = \frac{0.38 \times (HI_1) + 0.25 \times (HI_2) + 0.25 \times (HI_3) + 0.20 \times (HI_4)}{(HI_1 + HI_2 + HI_3 + HI_4)}$$

- PS<sub>NOx</sub> = prorated NO<sub>x</sub> emission limit when burning different fuels, lb/MMBtu
- HI<sub>1</sub> = heat input for Coal, MMBtu
- HI<sub>2</sub> = heat input for No. 6 Fuel Oil, MMBtu
- HI<sub>3</sub> = heat input for No. 2 Fuel Oil, MMBtu
- HI<sub>4</sub> = heat input for Natural Gas, MMBtu

For Emission Unit No. EU 3:

$$PS_{NOx} = \frac{0.45 \times (HI_1) + 0.28 \times (HI_2) + 0.28 \times (HI_3) + 0.28 \times (HI_4)}{(HI_1 + HI_2 + HI_3 + HI_4)}$$

- PS<sub>NOx</sub> = prorated NO<sub>x</sub> emission limit when burning different fuels, lb/MMBtu
- HI<sub>1</sub> = heat input for Coal, MMBtu
- HI<sub>2</sub> = heat input for No. 6 Fuel Oil, MMBtu
- HI<sub>3</sub> = heat input for No. 2 Fuel Oil, MMBtu
- HI<sub>4</sub> = heat input for Natural Gas, MMBtu

The PS<sub>NOx</sub> limit applies only when the combined annual heat input of all co-fired fuels (other than primary fuel) exceeds 5% of the total annual heat input of an EU, based on a twelve month rolling average.

- (4) Emission limits will be further restricted or remain the same upon MassDEP approval per Special Terms and Conditions, Section FF.
- (5) Per test methods contained in 40 CFR 60, Appendix A, Method 5, or other test methods acceptable to MassDEP.
- (6) Effective upon DS/FF commencing operation.
- (7) Per test methods contained in 40 CFR 51, Appendix M, Method 201 or 201A and Method 202, or other test methods acceptable to MassDEP.

**Table 3 Notes (continued):**

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- (8) Chart means the Ringelmann Scale for grading the density of smoke, as published by the United States Bureau of Mines and as referred to in the Bureau of Mines Information Circular No. 8333, or any smoke inspection guide approved by MassDEP.
- (9) Emission limits will be further restricted or remain the same upon MassDEP approval per Special Terms and Conditions, Section HH.
- (10) The  $PM_{10}/PM_{2.5}$  emission limits may be increased per Special Terms and Conditions, Section II.
- (11) Calculated per calendar year using the results of the stack tests required in 310 CMR 7.29(5)(a)3.d.ii. **(state-only requirement)**
- (12) In accordance with Approval No. 4B90187, Emission Unit No. EU 4 shall start up on natural gas, or No. 6 Fuel Oil having a maximum sulfur content of 0.55 lb/MMBtu heat release potential, or a mixture of both fuels.
- (13) In accordance with Approval No. 4B88066, Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4 are approved to burn used/waste oil & non-chlorinated solvents provided that:
  - a. the permittee is in possession of the appropriate and active Recycling Permit(s) obtained from MassDEP; and,
  - b. the permittee abides by all conditions stated in such Recycling Permit(s), Plan Approvals, Operating Permit, and regulations concerning the handling, recycling and burning of used/waste oil & non-chlorinated solvents).
- (14) In accordance with 310 CMR 7.22(3)(b) and Approval No. 4B90147, compliance is based on averaging the emissions from the permittee's Brayton Point Station (Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4) and Salem Harbor Station (Emission Unit Nos. EU 1, EU 2, EU 3, and EU4) facilities and qualified Demand Side Management (DSM) credits utilizing a one (1) calendar year averaging time. **(state-only requirement)**.
- (15) If MassDEP has received a technically complete Plan Approval application under 310 CMR 7.02 for a new or re-powered electric generating unit subject to 40 CFR Part 72 at an affected facility prior to May 11, 2001, then the emissions from the new or re-powered unit may be included in the calculation of historical actual emissions. The calculation of historical actual emissions which includes emissions from a new or re-powered unit shall not include emission from any unit shut down or removed from operation at the affected facility that is included in the technically complete Plan Approval application pursuant to 310 CMR 7.02. Provisions for the quantification and certification of greenhouse gas (GHG) emission reductions, avoided emissions, or sequestered emissions for use in demonstrating compliance with the CO<sub>2</sub> emission limitation contained in 310 CMR 7.29 are contained in 310 CMR 7.00, Appendix B(7) Greenhouse Gas Credit Banking and Trading. **(state-only requirement)**.
- (16) The indicated CO<sub>2</sub> emission standards shall not apply to the emissions of CO<sub>2</sub> that occur after December 31, 2008.
- (17) Emission Unit Nos. EU 5, EU 6, EU 7, and EU 8 shall comply with all requirements contained in 310 CMR 7.19(8)(c) or 7.19(8)(d) based on hours of operation per consecutive 12-month period. Compliance with emission limits/standards shall be based on a one-hour averaging time.
- (18) Compliance with CO<sub>2</sub> allowances shall be based on the control period. The control period is a three-calendar-year time period, unless extended to four years upon occurrence of a stage two trigger event. Control period and stage two trigger event are defined in 310 CMR 7.70(1)(b). **(state-only requirement)**.
- (19) Hold CO<sub>2</sub> allowances available for compliance deductions under 310 CMR 7.70(6)(e), as of the CO<sub>2</sub> allowance transfer deadline, in the source's compliance account in an amount not less than the total CO<sub>2</sub> emissions for the control period from all CO<sub>2</sub> budget units at the source, as determined in accordance with 310 CMR 7.70(6) and (8). **(state-only requirement)**.

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**Table 3 Notes (continued):**

- (20) Green House Gas means any chemical or physical substance that is emitted into the air and that the Department may reasonably anticipate will cause or contribute to climate change including, but not limited to, CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, SF<sub>6</sub>, hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).
- (21) Effective May 3, 2013. Not applicable during periods of startup.
- (22) The PM emission limit specified applies to EU 3 until the DS/FF is installed and operational on EU 3.

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**B. COMPLIANCE DEMONSTRATION**

The permittee is subject to the monitoring/testing, record keeping, and reporting requirements as contained in Tables 4, 5, and 6 below and 310 CMR 7.00 Appendix C(9) and (10) and applicable requirements contained in Table 3:

<b>Table 4</b>	
<b>EU #</b>	<b>Monitoring/Testing Requirements</b>
EU 1 EU 2 EU 3 EU 4	In accordance with 310 CMR 7.14(2) and 310 CMR 7.19(13)(a)1., compliance with NO <sub>x</sub> emission limits/standards shall be demonstrated with Continuous Emissions Monitoring Systems (CEMS). The NO <sub>x</sub> CEMS shall meet the requirements specified in 310 CMR 7.19(13)(b). In accordance with the Acid Rain Program 40 CFR Part 72, monitor NO <sub>x</sub> emissions pursuant to 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control in order to determine compliance with 310 CMR 7.19, except that the missing data routine and bias adjustment factors contained in 40 CFR Part 75 need not be applied. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
	In accordance with 310 CMR 7.19(13)(a)1., compliance with CO emission limits/standards shall be demonstrated with Continuous Emissions Monitoring Systems (CEMS) as specified in 310 CMR 7.19(13)(b). CO emissions shall be monitored as specified in 310 CMR 7.19(13)(b)1., through 7.19(13)(b)12. Monitor CO emissions with CEMS certified in accordance with the performance specifications contained in 40 CFR Part 60, Appendix B and use the procedures contained in 40 CFR Part 60, Appendix F to comply, provide quality assurance and quality control.
	In accordance with 310 CMR 7.14(2) and the Acid Rain Program 40 CFR Part 72, monitor SO <sub>2</sub> emissions with CEMS meeting the requirements of 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
	In accordance with the Acid Rain Program 40 CFR Part 72, monitor flue gas volumetric flow with a CEMS flow monitoring system pursuant to 40 CFR Part 75 and use the procedures contained therein to gather and analyze data, provide quality assurance and quality control.
	In accordance with Approval No. 4B90147, compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 shall be demonstrated through monitoring of the quantity of each fuel burned, the heating value or heat input of each fuel burned and SO <sub>2</sub> emissions. SO <sub>2</sub> emissions and heat input of each fuel burned shall be monitored with CEMS that meet the requirements of 40 CFR Part 75.
	In accordance with 310 CMR 7.14(2) and the Acid Rain Program 40 CFR Part 72, measure O <sub>2</sub> or carbon dioxide (CO <sub>2</sub> ) in the flue gas with CEMS. The O <sub>2</sub> or CO <sub>2</sub> CEMS shall meet the requirements of 40 CFR Part 75 in order to convert SO <sub>2</sub> and NO <sub>x</sub> continuous emission monitoring data to units of the applicable emission standards as specified in Table 3. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement.
	In the event that CEMS are inoperative, comply with 40 CFR Part 75, Subpart D for CO <sub>2</sub> emissions and heat input missing data substitution.
	In accordance with the Unit 1, Unit 2 and Unit 3 Standard Operating and Maintenance Procedures (SOMP), monitor Electrostatic Precipitator (ESP) performance (optimum amperage range as determined from the most recent stack testing) continuously to ensure compliance with PM emission limits. In accordance with the Unit 4 SOMP, monitor ESP performance (optimum amperage range as determined from the most recent stack testing) once per shift to ensure compliance with PM emission limits.

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**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
	<p>In accordance with 310 CMR 7.14(2) and the Acid Rain Program 40 CFR Part 72 and 40 CFR Part 75, monitor opacity for Units 1, 2, 3, and 4 utilizing Continuous Opacity Monitoring Systems (COMS) to provide reasonable assurance of compliance with opacity standards. The opacity COMS shall meet Performance Specification 1 of 40 CFR Part 60, Appendix B. Compliance with 40 CFR Part 75 shall constitute compliance with this requirement. In accordance with 310 CMR 7.06 and 4B93011, visible emission compliance (opacity and smoke) for Units 1, 2, 3, and 4 shall be determined in accordance with 40 CFR Part 60, Appendix A, Method 9.</p>
	<p>Opacity shall be determined in accordance with 40 CFR Part 60, Appendix A, Method 9 in the event of a COMS malfunction. This method shall also apply to any detached plumes.</p>
	<p>In accordance with 310 CMR 7.04(2)(a), operate continuously and maintain in an accurate operating condition smoke density indicators equipped with audible alarms and recorders that signal the need for combustion equipment adjustment or repair when the smoke density is equal to or greater than No. 1 of the Chart. Compliance with 40 CFR Part 75 for opacity monitoring shall constitute compliance with this requirement.</p>
<p>EU 1 EU 2 EU 3 EU 4</p>	<p>In accordance with 310 CMR 7.19(13)(d)3., measure for each unit on a daily basis: type fuel(s) burned each day, heat content of each fuel, the total heating value of the fuel consumed for each day, the actual emission rate (for emissions units demonstrating compliance with CEMS), and the allowable emission rate for CO and NO<sub>x</sub>.</p>
	<p>In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor sulfur content of each new shipment of fuel received. Compliance with Approval Nos. 4B88148, 4B90187, 4B91064, and/or 310 CMR 7.05(1) for sulfur content of the fuel can be demonstrated through monitoring of SO<sub>2</sub> emissions with CEMS which meet the requirements of 40 CFR Part 75 or fuel analysis. The analysis of sulfur content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by MassDEP and EPA. Fuel sulfur information may be provided by fuel suppliers.</p>
	<p>In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor ash content of each new shipment of solid fuel received. Compliance with Approval No. 4B88148 and/or 310 CMR 7.05(3) for ash content of the solid or solid/liquid fuel mixture can be demonstrated through fuel analysis. The fuel analysis or shipment certification of ash content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by MassDEP and EPA. Fuel ash information may be provided by fuel suppliers.</p>
	<p>In accordance with Approval No. 4B88066, monitor the quantities of used/waste oil &amp; non-chlorinated solvents burned, and achieve and substantiate a combustion efficiency of 99.5 percent or greater.</p>
	<p>In accordance with Approval No. 4B08052 and 310 CMR 7.04(4)(a), inspect and maintain fuel utilization facility in accordance with manufacturer's recommendations and test for efficient operation at least once in each calendar year. The results of said inspection, maintenance and testing and the date upon which it was performed shall be recorded and posted conspicuously on or near each unit.</p>
	<p>In accordance with 310 CMR 7.04(5), operate and maintain automatic viscosity controllers of a type approved by MassDEP to control the viscosity of No. 6 Fuel Oil to the burners.</p>
	<p>In accordance with Approval No. 4B08050, monitor actual net electrical output, expressed in megawatt-hours. Actual net electrical output shall be provided for individual units as a facility total for all units included in the calculation demonstrating compliance.</p>

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
EU 1 EU 2 EU 3 EU 4	<p>In accordance with 310 CMR 7.19(13)(d)5., 310 CMR 7.19(13)(d)6., and Approval No. 4B90187, monitor nitrogen content of each new shipment of No. 6 Fuel Oil received, by one of the following methods:</p> <p>(1) monitor through obtaining a certification from the fuel oil supplier that includes the following information:</p> <ul style="list-style-type: none"> <li>a. the name of the fuel oil supplier;</li> <li>b. the nitrogen content* of each oil shipment; and,</li> <li>c. the location where the sample was drawn for analysis to determine the nitrogen content of the fuel oil, specifically including whether the fuel oil was sampled as delivered to the permittee's facility or whether the sample was drawn from fuel oil in storage at the fuel oil supplier's or fuel oil refiner's facility or another location.</li> </ul> <p>(2) sample and analyze the fuel oil for nitrogen content* immediately after the fuel oil tank is filled and before any fuel oil is combusted.</p> <p>*The shipment certification or analysis of nitrogen content of the fuel oil shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by MassDEP and EPA.</p>
	<p>In accordance with Approval No. 4B08052 and 310 CMR 7.13, MassDEP may require additional emissions testing of the facility at any time to ascertain compliance with MassDEP's Regulations and/or this Operating Permit.</p>
	<p>In accordance with Approval No. 4B08052, conduct an initial emission test to demonstrate that Units 1, 2, 3, and 4 are in compliance with PM, PM<sub>10</sub>, PM<sub>2.5</sub>, emission limits and to define PM, PM<sub>10</sub>, PM<sub>2.5</sub>, control equipment performance. The emission tests shall be conducted 180 days from the date of Approval No. 4B08052 (April 2, 2009).</p>
	<p>In accordance with Approval No. 4B08052, the permittee shall ensure that the facility is constructed to accommodate the initial emissions (compliance) testing requirements contained herein. All emissions testing shall be conducted in accordance with MassDEP's <u>Guidelines for Source Emissions Testing</u> and in accordance with the Environmental Protection Agency (EPA) reference test methods as specified in 40 CFR Part 60, Appendix A, or a method approved by MassDEP in writing.</p>
	<p>In accordance with 310 CMR 7.32, monitor and test as required by the Massachusetts Clean Air Interstate Rule (CAIR). The permittee has submitted an application, under Transmittal No. W152786, in accordance with 310 CMR 7.32 and shall modify this Operating Permit upon approval of the application.</p>
	<p>In accordance with 310 CMR 7.70(8)(a)1.a. and Approval No. 4B08038, install all monitoring systems necessary to monitor CO<sub>2</sub> mass emissions in accordance with 40 CFR Part 75, except equation G-1 in Appendix G shall not be used to determine CO<sub>2</sub> emissions under 310 CMR 7.70(8). (<b>state-only requirement</b>).</p>

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
EU 1 EU 2 EU 3 EU 4	In accordance with 310 CMR 7.70(8)(a)2.a. and Approval No. 4B08038, each CO <sub>2</sub> budget unit that commenced commercial operation before July 1, 2008, must be in compliance with the requirements of 310 CMR 7.70(8) by January 1, 2009. <b>(state-only requirement).</b>
	In accordance with 310 CMR 7.70(8)(h)1. and Approval No. 4B08038, submit to the Department or its agent net electrical output. <b>(state-only requirement).</b>
	In accordance with 310 CMR 7.70(8)(h)4.a. and Approval No. 4B08038, the billing meter shall record the electric output. <b>(state-only Requirement).</b>
	In accordance with 310 CMR 7.70(8)(h)5.c. and Approval No. 4B08038, when a component of output measurement equipment fails to pass an accuracy test, all data shall be replaced by either zero or an output value that is approved as part of the monitoring plan required under 310 CMR 7.70(8)(h)3. until the component passes an accuracy test or is replaced with another piece of equipment that passes the accuracy test. <b>(state-only requirement).</b>
EU 1 EU 2 EU 3	In accordance with Approval No. 4B08052, the permittee shall conduct initial emission compliance tests no later than 180 days after the following dates: (a) The date Unit 1 SCR system has passed acceptance testing (vendor guarantee). (b) The date Unit 1 SDA/FF and PAC systems passed acceptance testing (vendor guarantee). (c) The date Unit 2 SDA/FF and PAC systems passed acceptance testing (vendor guarantee). (d) The date Unit 3 SCR and ARP systems passed acceptance testing (vendor guarantee). (e) The date Unit 3 PAC system passed acceptance testing (vendor guarantee). (f) The date Unit 3 DS/FF systems passed acceptance testing (vendor guarantee). Initial emission tests shall be completed no more than one year after the initial operation with Unit 3 DS/FF. The emission compliance test program shall comply with MassDEP's <u>Guidelines for Source Emission Testing</u> .
	In accordance with Approval No. 4B08052, the permittee shall conduct an initial emission test to demonstrate that Emission Unit Nos. EU 1, EU 2, and EU 3 are in compliance with the emission limits (lb/hr, lb/MMBtu, ppmvd @3% O <sub>2</sub> , as applicable, and opacity) for NO <sub>x</sub> , PM, PM <sub>10</sub> , PM <sub>2.5</sub> , SO <sub>2</sub> , NH <sub>3</sub> , Hg and opacity (NH <sub>3</sub> not required for EU 2). With respect to Emission Unit No. 3, the permittee shall conduct an initial emission test to demonstrate compliance, for the same air contaminants as required for EU 1, EU 2, and EU 3, after SCR and PAC installation and again after the DS/FF installation. Testing shall be conducted between 90 and 100% of rated base load.
EU 1 EU 3	In accordance with Approval No. 4B08052, Unit 1 and Unit 3 shall be equipped with ammonia (NH <sub>3</sub> ) CEMS with the outputs directed to the data acquisition system. The NH <sub>3</sub> CEMS shall comply with the linearity check and Relative Accuracy Test Audits (RATA) frequencies as specified in 40 CFR 75 in conducting gas audits and RATAs.

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
EU 1 EU 3	<p>In accordance with Approval No. 4B08052, NH<sub>3</sub> CEMS data will initially be used as an operational tool. Compliance with the NH<sub>3</sub> emission limit will be determined during the initial compliance test, and by quarterly compliance testing thereafter, until MassDEP in writing approves otherwise, or until the NH<sub>3</sub> CEMS becomes a direct compliance monitor as defined in Section VIII(B)2 of Approval No. 4B08052. The NH<sub>3</sub> CEMS shall operate during NH<sub>3</sub> compliance testing and the test report shall be submitted to MassDEP within 45 days after completion of testing. Until the NH<sub>3</sub> CEM system becomes a direct compliance monitor the permittee on an annual basis, by March 1st, shall submit a report on the performance and relative accuracy of the NH<sub>3</sub> CEM systems along with a recommendation on the feasibility of their use as a compliance determination method.</p>
	<p>In accordance with Approval No. 4B08052, the permittee shall conduct initial emission compliance tests to demonstrate that Unit 1 and Unit 3 are in compliance with the emission limits (lb/hr, lb/MMBtu, ppmvd as applicable, and opacity) for the pollutants listed below after SCR installation. Testing for the following pollutants shall be conducted at 100% of rated base load:</p> <ul style="list-style-type: none"> <li>(a) Nitrogen oxides (NO<sub>x</sub>)</li> <li>(b) Particulate matter (PM)</li> <li>(c) Sulfur dioxide (SO<sub>2</sub>)</li> <li>(d) Ammonia (NH<sub>3</sub>)</li> <li>(e) Opacity</li> </ul>
	<p>In accordance with Approval No. 4B08050, certify and operate each CEMS in accordance with 310 CMR 7.29(5)(a)3.g. <b>(state-only requirement)</b>.</p>
EU 3	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall monitor heat input on an hourly basis using one of the methods prescribed in 40 CFR Part 75.</p>
	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall continuously monitor the FF pressure drop.</p>
	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall continuously monitor the exhaust temperature at the inlet of the FF.</p>
	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall continuously monitor the amount of reagent used by the DS.</p>
	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall ensure that all stack and exhaust ducts will accommodate the emission testing requirements stipulated in 40 CFR Part 60, Appendix A.</p>
	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall complete the following performance testing within 90 days after accepting the DS/FF equipment pursuant to the contract with its vendor or within 12 months of initial startup of the DS/FF, whichever is earlier, and at least once in every 12 month period thereafter.</p> <ul style="list-style-type: none"> <li>a. Testing for filterable PM<sub>10</sub> and PM<sub>2.5</sub> emission limits shall be conducted in accordance with 40 CFR 51, Appendix M, Method 201 or 201A or other test methods approved by EPA.</li> <li>b. Testing for total PM<sub>10</sub> and PM<sub>2.5</sub> emission limits shall be conducted in accordance with 40 CFR 51, Appendix M, Method or 201A and Method 202 or other test methods approved by EPA.</li> <li>c. Testing for volumetric flow rate and velocity shall be conducted by 40 CFR 60, Appendix A, Method 2, 2F, or 2G.</li> </ul>

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
EU 3	In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall notify EPA of the tests in writing and provide EPA with a test protocol at least 45 days prior to such tests. The test protocol shall include a detailed description of sampling port locations, sampling equipment, sampling and analytical procedures, and operating conditions for any such emissions testing. The owner/operator shall revise the plan upon EPA request.
EU 1 EU 2 EU 3 EU 12 <sup>(1)</sup>	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.c.i. and 310 CMR 7.29(5)(a)3.d.iii., the portion of total annual mercury (Hg) emissions from combustion of solid fossil fuel in units subject to 40 CFR 72 located at or from re-burn of ash at an affected facility, determined using emissions testing at least every other calendar quarter from October 1, 2006 until Hg CEMS are used to demonstrate compliance with the standards contained in 310 CMR 7.29(5)(a)3.e. or f. and using mercury CEMS thereafter. Stack tests for Hg shall consist at a minimum of three runs at full load on each unit firing solid fossil fuel or ash according to a testing protocol acceptable to MassDEP. Stack tests for Hg, and certification and annual RATAs for mercury CEMS, shall determine total and particulate bound Hg ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.c.ii.(i), when ash produced by an affected facility is used in Massachusetts as a cement kiln fuel, as an asphalt filler, or in any other high temperature processes that volatilize mercury (Hg), the Hg content of the utilized ash shall be measured weekly using a method acceptable to MassDEP ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.e. and f., any person who owns, leases, operates or controls an affected facility which combusts solid fossil fuel or ash shall monitor a facility's average total mercury (Hg) removal efficiency or emission rate for those units combusting solid fossil fuel or ash. This will be based on a Hg CEMS using the methodology approved by MassDEP in the monitoring plan required under 310 CMR 7.29(5)(a)3.g. and shall be calculated on a rolling 12-month basis ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g.i., by January 1, 2008, any person who owns, leases, operates or controls an affected facility which combusts solid fossil fuel or ash shall install, certify, and operate CEMS to measure mercury (Hg) stack emissions from each solid fossil fuel or ash-fired unit at a facility subject to 310 CMR 7.29 ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 actual emissions shall be monitored for individual units and monitored as a facility total for all units included in the calculation demonstrating compliance. Actual emissions shall be monitored in accordance with 310 CMR 7.29(7)(b)1.b., c., and d. for Hg ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g.i., operate each continuous emission monitoring system at all times that the emission unit(s) is operating except for periods of CEMS calibrations checks, zero span adjustment, and preventive maintenance as described in the monitoring plan approved by MassDEP and as determined during certification. The CEMS shall be operated in accordance with 40 CFR 75 and 40 CFR 60.4106(b)(1) to measure mercury stack emissions from each solid fossil fuel or ash-fired unit subject to 310 CMR 7.29 ( <b>state-only requirement</b> ).
	In accordance with the Applicability Determination and Approval dated March 31, 2008, the mercury (Hg) CEMS shall be deemed to be conditionally certified as of the date that each CEM passed the RATA. Further, compliance with 310 CMR 7.29 Hg requirements for the 1 <sup>st</sup> quarter 2008 shall be determined using valid data only ( <b>state-only requirement</b> ).

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
EU 1 EU 2 EU 3 EU 4	In accordance with Approval No. 4B08050, actual emissions shall be monitored for individual units and monitored as a facility total for all units included in the calculation demonstrating compliance. Actual emissions shall be monitored in accordance with 40 CFR Part 75 for SO <sub>2</sub> , CO <sub>2</sub> , and NO <sub>x</sub> , and 310 CMR 7.29 for Hg. MassDEP shall detail the monitoring methodology for CO and PM <sub>2.5</sub> at the time regulations are promulgated by MassDEP for those parameters ( <b>state-only requirement</b> ).
EU 12 <sup>(1)</sup>	In accordance with Approval No. 4B08052, the CEMS for CO shall comply with the linearity check and RATA frequencies as specified in 40 CFR 75 in conducting cylinder gas audits and RATAs ( <b>state-only requirement</b> ).
EU 5 EU 6 EU 7 EU 8	<p>In accordance with 310 CMR 7.19(13)(d)3., measure for each unit on a daily basis: type fuel(s) burned each day, heat content of each fuel, the total heating value of the fuel consumed for each day, and the allowable NO<sub>x</sub> and CO emission rates.</p> <p>In accordance with 310 CMR 7.00: Appendix C(9)(b)2., monitor sulfur content of each new shipment of fuel received. Compliance with 310 CMR 7.05(1) for sulfur content of the fuel can be demonstrated through fuel analysis or maintaining a shipping receipt from the fuel supplier. The analysis of sulfur content of the fuel shall be in accordance with the applicable American Society for Testing Materials (ASTM) test methods or any other method approved by MassDEP and EPA.</p> <p>In accordance with 40 CFR 63, Subpart ZZZZ, effective May 3, 2013, the permittee shall conduct an initial performance test and must test every 8,760 hours of operation or 3 years, whichever comes first, to demonstrate compliance with emission standards.</p>
EU 10	<p>In accordance with 310 CMR 7.24(3)(f), install, maintain, and properly operate a Stage I vapor recovery system.</p> <p>In accordance with 310 CMR 7.24(6)(c), install and properly operate a certified Stage II vapor collection and control system.</p>
EU 11	In accordance with Approval No. 4B91064, monitor the operation of the Unloader-Stacker, coal pile dust control system, coal transfer to powerhouse and silos, and coal dust collection system operating parameters.
EU 12 <sup>(1)</sup>	<p>In accordance with Approval No. 4B08052, monitor the fly ash fuel feed rates to the ARP and record daily feed rates in tons per day.</p> <p>In accordance with Approval No. 4B08052, fly ash feed to and fly ash product from the ARP shall be sampled on a calendar quarter basis and analyzed for higher heating value (HHV) in units of Btu/lb.</p> <p>In accordance with Approval No. 4B08052, monitor the PAC feed rates to the ARP and record daily feed rates in tons per day.</p>
EU 14 EU 15	<p>In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, install and maintain non-resettable elapsed operating meters of the equivalent software to accurately indicate elapsed operating time for each circulating water pump servicing Cooling Tower 1 and 2.</p> <p>In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, monitor the circulating water flow (by use of ultrasonic flow meters and/or pump curves) to Cooling Tower 1 and 2, individually, and record gallons per day, per month, and per consecutive 12-month period.</p>

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
EU 14 EU 15	In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, monitor and record Cooling Tower 1 and 2 circulating water or blowdown water total dissolved solids (ppm <sub>w</sub> ) using a continuous conductivity monitor.
	In accordance with Approval No. 4B08052, if Cooling Tower 1 and 2 circulating water or blowdown water total dissolved solids (ppm <sub>w</sub> ) is outside of the normal operating range, and determined by the permittee, a grab sample of the cooling tower circulating water shall be taken and analyzed within eight (8) hours to verify the accuracy of the conductivity monitors. If the conductivity monitors are simultaneously out of service, a daily grab sample of the cooling tower water shall be taken and analyzed within eight (8) hours to determine the total dissolved solids content of the circulating water.
	In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, Cooling Tower 1 and 2 circulating water or blowdown water redundant conductivity monitors shall be installed, operated and maintained in accordance with the manufacturer's recommended installation and operating and maintenance practices.
	In accordance with Approval No. 4B08052, take a grab sample of Cooling Tower 1 and 2 circulating water on a calendar quarter basis and analyze within 24 hours to determine the circulating water total dissolved solids. Compare the conductivity monitors' accuracy to the grab sample results and recalibrate the conductivity monitor as necessary.
	<p>In accordance with PSD Permit No. 052-120-MA14, the permittee shall determine PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions using the following equation:</p> $\text{Cooling tower emissions in pounds/hour (lb/hr)} = \text{Total Circulating Water Flow Rate (gallons/minute)} \times 60 \text{ (minutes/hour)} \times \text{Drift Rate (0.0005\%)} \times \text{Density of Water (8.57 pounds/gallon)} \times \text{Total Dissolved Solids (ppm}_w\text{)}/1,000,000$
EU 16	In accordance with 310 CMR 7.03(8), monitor the amount of solvent added to each of the degreaser units on a monthly basis.
EU 17	In accordance with 310 CMR 7.24(3)(f)1., install, maintain and properly operate the vapor balance system.
	<p>In accordance with 310 CMR 7.24(3)(f)4., maintain all gauges, meters, or other specified testing devices in proper working order.</p> <p>In accordance with 310 CMR 7.24(6)(b)1.c., once every seven days perform a weekly visual inspection of the Stage II system components to determine if such components are installed, functioning and unbroken as required by the terms and conditions of the system's currently applicable Executive Order. Each visual inspection shall include, but not be limited to, inspection of: nozzle boots and splash/vapor guards; hoses; hose retractors; coaxial adaptors, dry breaks, fill caps and gaskets, vapor recovery caps and gaskets, spill containment boxes and drain valves.</p>

**Table 4 (continued)**

EU #	Monitoring/Testing Requirements
Facility Wide	<p>In accordance with Approval No. 4B08052, the permittee must obtain written MassDEP approval of any emissions test protocol. Each protocol shall include a detailed description of sampling port locations, sampling equipment, sampling and analytical procedures, and operating conditions for any such emissions testing. Each emissions test protocol shall be submitted to MassDEP at least 45 days prior to commencement of testing of the facility. Each test protocol shall include a test matrix that will define emission control efficiencies and emission rates, as follows:</p> <p><b><u>Emission Unit No. 1</u></b>  <u>SCR</u>                      NO<sub>x</sub> (upstream and downstream of SCR)                      NH<sub>3</sub> (downstream of SCR)  <u>SDA/FF and PAC</u>                      SO<sub>2</sub> (upstream and downstream of SDA/FF)                      PM (upstream and downstream of FF)                      Hg (upstream of PAC and downstream of SDA/FF)                      Opacity</p> <p><b><u>Emission Unit No. 2</u></b>  <u>SDA/FF and PAC</u>                      SO<sub>2</sub> (upstream and downstream of SDA/FF)                      PM (upstream and downstream of FF)                      Hg (upstream of PAC and downstream of SDA/FF)                      Opacity</p> <p><b><u>Emission Unit No. 3</u></b>  <u>SCR and ARP</u>                      NO<sub>x</sub> (upstream and downstream of SCR)                      NH<sub>3</sub> (downstream of SCR)                      Opacity  <u>PAC</u>                      Hg (upstream of PAC and downstream of R-C ESP)                      PM (downstream of R-C ESP)                      Opacity  <u>DS/FF</u>                      SO<sub>2</sub> (upstream and downstream of DS/FF)                      PM (upstream and downstream of DS/FF)                      PM<sub>10</sub> (upstream and downstream of DS/FF)                      PM<sub>2.5</sub> (upstream and downstream of DS/FF)                      Hg (upstream of PAC and downstream of DS/FF)                      NH<sub>3</sub> (downstream of DS/FF)                      Opacity</p> <p><b><u>Emission Unit No. 4</u></b>                      PM (upstream and downstream of ESP)                      PM<sub>10</sub> (upstream and downstream of ESP)                      PM<sub>2.5</sub> (upstream and downstream of ESP)</p>

<b>Table 4 (continued)</b>	
<b>EU #</b>	<b>Monitoring/Testing Requirements</b>
Facility Wide	<p>In accordance with 310 CMR 7.13(1), any person owning, leasing, operating or controlling a facility for which MassDEP has determined that stack testing is necessary to ascertain compliance with MassDEP's regulations or design approval provisos shall cause such stack testing:</p> <p>(a) to be conducted by a person knowledgeable in stack testing,</p> <p>(b) to be conducted in accordance with procedures contained in a test protocol which has been approved by MassDEP, and</p> <p>(c) be conducted in the presence of a representative of MassDEP when such is deemed necessary.</p> <p>Conduct any other testing or testing methodology if and when requested by MassDEP or EPA.</p> <p>Monitor operations such that information may be compiled for the annual preparation of a Source Registration/Emission Statement Form as required by 310 CMR 7.12.</p> <p>In accordance with 310 CMR 7.71(1) and Appendix C(9), establish and maintain data systems or recordkeeping practices (e.g., fuel use records, SF<sub>6</sub> usage documentation, Continuous Emissions Monitoring System) for greenhouse gas emissions to ensure compliance with the reporting provisions of M.G.L. c. 21N, the Climate Protection and Green Economy Act, St. 2008, c. 298, § 6. <b>(state-only requirement)</b>.</p>

**Table 4 Notes:**

- (1) The exhaust of EU 12 (ARP) will be directed to the windbox of Unit 3. If Unit 3 is not available, it will be directed to Unit 1. If neither Unit 3 nor Unit 1 are available, it will be shut down. Therefore, the exhaust of EU 12 will pass through the emission controls on Unit 3 or Unit 1, and that unit's CEMS will measure all emissions from EU 12. EU 12 will be equipped with a fabric filter baghouse to remove particulates in the exhaust gas prior to entering either the Unit 3 or Unit 1 windbox.

**Table 4A**

**Compliance Assurance Monitoring for Particulate Matter (PM)**

	EU 1	EU 2	EU 3	EU 4
<b>Indicators</b>	$\Delta$ P measured across the FF, <u>and</u> Continuous opacity	$\Delta$ P measured across the FF, <u>and</u> Continuous opacity	ESP Secondary Current	ESP Secondary Current
<b>Indicator Range<sup>(1,2)</sup></b>	1.0-11.0 inches of H <sub>2</sub> O, <u>and</u> < 10% opacity increase over baseline, except > 20 to $\leq$ 40% for $\leq$ 2 minutes during any 1 hour, at no time to exceed 40%	1.0-11.0 inches of H <sub>2</sub> O, <u>and</u> < 10% opacity increase over baseline, except > 20 to $\leq$ 40% for $\leq$ 2 minutes during any 1 hour, at no time to exceed 40%	Current $\geq$ 8,159 mA	Current $\geq$ 4,475 mA
<b>Frequency</b>	Continuous	Continuous	Continuous	Once/8-hr shift
<b>Data Collection</b>	$\Delta$ P and opacity continuously monitored and recorded in the facility's data acquisition system	$\Delta$ P and opacity continuously monitored and recorded in the facility's data acquisition system	Secondary current calculated and recorded as a 1-hour average	Secondary current calculated and recorded as an 8-hour average
<b>Corrective Action</b>	Excursions trigger an inspection, corrective action, and a record keeping and reporting requirement	Excursions trigger an inspection, corrective action, and a record keeping and reporting requirement	Corrective action threshold occurs when current < 9,791 mA, triggering an alarm	Corrective action threshold occurs when current < 5,370 mA, triggering an alarm
<b>Excursion<sup>(2)</sup></b>	$\Delta$ P outside the range 0.5-12.0 inches of H <sub>2</sub> O, and $\geq$ 10% increase over baseline opacity, <u>or</u> The 3 <sup>rd</sup> and each subsequent 1-minute average in any hour when opacity > 20% but < 40%, or any 1-minute average during the hour that > 40%	$\Delta$ P outside the range 0.5-12.0 inches of H <sub>2</sub> O, and $\geq$ 10% increase over baseline opacity, <u>or</u> The 3 <sup>rd</sup> and each subsequent 1-minute average in any hour when opacity > 20% but < 40%, or any 1-minute average during the hour that > 40%	Excursion occurs when current < 8,159 mA, triggering an alarm, inspection, corrective action, and reporting	Excursion occurs when current < 4,475 mA, triggering an alarm, inspection, corrective action, and reporting

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<b>Table 4A (continued)</b>	
<b>Compliance Assurance Monitoring for Particulate Matter (PM)</b>	
<b>EU 14 and EU 15</b>	
<b>Indicators</b>	<p><u>Requirements</u> - Monitor the circulating water flow (use of pump curves is acceptable) and record gallons per day, gallons per month, and gallons per 12-month rolling period for each cooling tower. Monitor and record circulating water or blowdown water total dissolved solids (TDS) using continuous conductivity monitors.</p> <p><u>Measurement Approach</u> - Salinity of the circulating water or blowdown water is measured using a continuous conductivity meter. A redundant conductivity monitor is also installed. Circulating water flow is measured using an ultrasonic flow meter located on each circulating water pipe prior to the cooling towers. The lb/hr emission rate for particulate matter (PM) is then calculated in the data control system using the equation provided under Section II.7. of the Cooling Tower PSD Permit (Permit No. 051-120-MA14).</p>
<b>Indicator Range</b>	To assess the status of compliance with PM emission limits, the TDS concentration of the circulating water (or blowdown water) should be within the range of 0-48,000 ppm <sub>w</sub> over any 30-minute period, with an assumed flow rate equal to 360,000 gallons per minute (gpm), which is the design maximum flow rate.
<b>Frequency</b>	1 hour averaging period.
<b>Data Collection</b>	TDS are measured using the continuous conductivity monitors, along with the water flow rate to determine PM emission rates. Data are recorded in the data acquisition system.
<b>Corrective Action</b>	Excursions trigger an inspection, corrective action, and a reporting requirement.
<b>Excursion</b>	An excursion is defined as a TDS concentration of the circulating water or blowdown water that is not within the normal range of 0 to 48,000 ppm <sub>w</sub> over any 30-minute period, with a flow rate of 360,00 gallons per minute. Excursions trigger an inspection, corrective action, and a reporting requirement.

**Key:**

ΔP = differential pressure      ESP = electrostatic precipitator  
 FF = fabric filter                SDA = spray dryer absorber  
 TDS = total dissolved solids    gpm = gallons per minute

**Table 4A Notes:**

- (1) The Indicator range shown for EU 1 and EU 2 includes periods of startup/shutdown and accommodates low load operation during which the SDAs for these units may not be in service.
- (2) Baseline opacity is defined as the average opacity during the previous clock hour prior to the ΔP going outside the range for EU 1 and EU 2.

**Table 5**

EU #	Recordkeeping Requirements
	Record on a continuous basis emissions of NO <sub>x</sub> in accordance with the requirements of 310 CMR 7.19(13)(a)1., and 40 CFR Part 75.
	In accordance with 40 CFR 60, 40 CFR 72, 40 CFR 75, and 40 CFR 76, comply with all applicable recordkeeping requirements.
	Record on a continuous basis emissions of CO in accordance with the requirements of 310 CMR 7.19(13)(b)1., through 7.19(13)(b)12., 40 CFR Part 60, Appendix B, and 40 CFR Part 60 Appendix F.
	Record on a continuous basis emissions of SO <sub>2</sub> in accordance with the requirements of 40 CFR Part 75.
	Record on a continuous basis flue gas volumetric flow in accordance with the requirements of 40 CFR Part 75.
	In accordance with Approval No. 4B90147 (Revised on March 4, 1996), compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 shall be demonstrated by recording the quantity of each fuel burned, total heating value or total heat input of the fuel (or combined fuels burned) and SO <sub>2</sub> emissions. SO <sub>2</sub> emissions and total heat input for the fuel(s) burned shall be recorded with CEMS that meet the requirements of 40 CFR Part 75.
	Record on a continuous basis O <sub>2</sub> or CO <sub>2</sub> in the flue gas in accordance with the requirements of 40 CFR Part 75.
EU 1	In accordance with the Unit 1, Unit 2 and Unit 3 SOMP, record ESP performance (amperage) continuously. In accordance with the Unit 4 SOMP, record ESP performance (amperage) once per shift.
EU 2	
EU 3	Record on a continuous basis opacity in accordance with the requirements of 40 CFR Part 75 and 40 CFR Part 60, Appendix B.
EU 4	Record opacity determined in accordance with EPA Test Method 9, as specified in 40 CFR Part 60, Appendix A in the event of a COMS malfunction. This method shall also apply to any detached plumes.
	Maintain records of Smoke Density Indicator Recording Charts required by 310 CMR 7.04(2)(a) or COMS records required by 40 CFR Part 75 and 40 CFR Part 60, Appendix B.
	In accordance with 310 CMR 7.19(13)(d)3., record for each unit on a daily basis the type(s) of fuel burned, heat content of each fuel, total heating value of the fuel consumed, actual emission rate (for emission units demonstrating compliance with CEMS), and allowable emission rate for CO and NO <sub>x</sub> .
	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain SO <sub>2</sub> CEMS records or fuel analysis results used to demonstrate compliance with fuel sulfur content requirements.
	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain fuel analysis results used to demonstrate compliance with fuel ash content requirements.
	In accordance with 310 CMR 7.19(13)(d)7., maintain copies of all fuel supplier certifications or fuel oil analyses on site for a period of five years,
	In accordance with Approval No. 4B88066, record the quantities of used/waste oil & non-chlorinated solvents burned.

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**Table 5 (continued)**

EU #	Recordkeeping Requirements
	In accordance with 310 CMR 7.04(4)(a), maintain results of fuel utilization facility inspection, maintenance, and testing and the date upon which it was performed posted conspicuously on or near the facility.
	In accordance with 310 CMR 7.19(13)(d)1., maintain a record of all measurements, performance evaluations, calibration checks, and maintenance or adjustments for each CEM.
	In accordance with 310 CMR 7.19(13)(d)8., all records required by 310 CMR 7.19(13)(d), including computer retained and generated data, shall be kept in a permanently bound log book or any other form acceptable to MassDEP.
	Maintain records required by 40 CFR Part 75, Subpart F.
	Maintain on-site, at all times, a copy of the Standard Operating and Maintenance Procedure (SOMP) for the subject emission units.
	In accordance with Approval No. 4B08050, maintain a record of actual net electrical output for each of the preceding 12 months, expressed in megawatt-hours. Records of actual net electrical output shall be maintained for individual units and as a facility total for all units included in the calculation demonstrating compliance.
EU 1 EU 2 EU 3 EU 4	In accordance with 310 CMR 7.32, maintain records as required by the Massachusetts Clean Air Interstate Rule (CAIR). The permittee has submitted an application, under Transmittal No. W152786, in accordance with 310 CMR 7.32 and shall modify this Operating Permit upon approval of the application.
	In accordance with 310 CMR 7.70(8)(e)1. and Approval No. 4B08038, comply with all recordkeeping and reporting requirements in 310 CMR 7.70(8)(e) and with all applicable recordkeeping and reporting requirements under 40 CFR 75.73, and with the requirements of 310 CMR 7.70(2)(a)5. ( <b>state-only requirement</b> ).
	In accordance with 310 CMR 7.70(8)(h)6.a. and Approval No. 4B08038, comply with all output recordkeeping and reporting requirements in 310 CMR 7.70(8)(h) and with the requirements of 310 CMR 7.70(1)(e)5. and (2)(a)5. ( <b>state-only requirement</b> ).
	In accordance with 310 CMR 7.70(8)(h)6.b. and Approval No. 4B08038, retain data used to monitor, determine, or calculate net generation for ten years from the date reported. ( <b>state-only requirement</b> ).
EU 1 EU 2 EU 3	In accordance with Approval No. 4B08050, certify and operate each CEMS in accordance with 310 CMR 7.29(5)(a)3.g. ( <b>state-only requirement</b> ).
EU 3	In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall maintain a record of all information used to show compliance with the terms and conditions of the PSD Permit (and the Operating Permit) for five years in a location accessible to representatives of EPA and MassDEP.

**Table 5 (continued)**

EU #	Recordkeeping Requirements
EU 3	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall maintain, at a minimum, the following information:</p> <ul style="list-style-type: none"> <li>a. Hourly heat input information obtained from 40 CFR Part 75 requirements.</li> <li>b. Supporting documentation and results from all emission performance tests.</li> <li>c. Number of hours the boiler operated for each day.</li> <li>d. Number of hours the FF operated for each day.</li> <li>e. Daily reagent usage in lbs/day.</li> <li>f. Continuous measurement of the pressure drop across the FF.</li> <li>g. Continuous measurement of the flue gas temperature at the inlet of the FF.</li> <li>h. For each day, the hourly filterable and total PM<sub>10</sub> and PM<sub>2.5</sub> emissions on an lbs/hr basis. Hourly emissions will be calculated by multiplying the results from the most recent stack test by the hourly heat input.</li> </ul> <p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall comply with any request by EPA to supply any of the above records.</p>
EU 1 EU 2 EU 3 EU 4 EU 12 <sup>(1)</sup>	<p>In accordance with Approval No. 4B08050, maintain a record of actual emissions for each regulated pollutant for each of the preceding 12 months. Actual emissions shall be recorded for individual units and a facility total for all units included in the calculation demonstrating compliance. Actual emissions provided under this Section shall be recorded in accordance with 40 CFR Part 75 for SO<sub>2</sub>, CO<sub>2</sub>, and NO<sub>x</sub>, and 310 CMR 7.29 for Hg. MassDEP shall detail the monitoring methodology for CO and PM<sub>2.5</sub> at the time regulations are promulgated for those parameters (<b>state-only requirement</b>).</p> <p>In accordance with Approval No. 4B08050, maintain a record of the resulting output-based emission rates for each of the preceding 12 months, and each of the 12 consecutive rolling month time periods, expressed in pounds per megawatt-hour. Output-based emission rates shall be provided for individual emission units and as a facility total for all units included in the calculation demonstrating compliance.</p> <p>In accordance with Approval No. 4B08050, keep all measurements, data, reports and other information required by 310 CMR 7.29 onsite for a minimum of five (5) years, or any other period consistent with the facility's Operating Permit (<b>state-only requirement</b>).</p>
EU 1 EU 2 EU 3 EU 12 <sup>(1)</sup>	<p>In accordance with Approval No. 4B08052, the permittee shall maintain on site for five (5) years all records of output from and continuous monitors for flue gas emissions and fuel consumption, and shall make these records available to MassDEP upon request.</p> <p>In accordance with Approval No. 4B08052, the permittee shall maintain a log to record upsets or failures associated with the emission control systems.</p>

**Table 5 (continued)**

EU #	Recordkeeping Requirements
	<p>In accordance with Approval No. 4B08052, a recordkeeping system for the facility shall be established and maintained on site by the permittee. All such records shall be maintained up-to-date such that year-to-date information is readily available for MassDEP examination upon request. The recordkeeping log/system, including any other "credible evidence", shall be kept on site for a minimum of five (5) years. Recordkeeping shall, at a minimum, include:</p> <p>(a) Compliance records sufficient to demonstrate that emissions from the facility have not exceeded emission limits contained herein. Such records shall include, but are not limited to, fuel usage rate, emissions test results, and monitoring equipment data and reports.</p> <p>(b) <u>Maintenance</u>: A record of routine maintenance activities performed on the control equipment and monitoring equipment including, at a minimum, the type or a description of the maintenance performed and the date and time the work was completed.</p> <p>(c) <u>Malfunctions</u>: A record of all malfunctions on the emission control and monitoring equipment including, at a minimum, the date and time the malfunction occurred, a description of the malfunction and the corrective action taken, the date and time corrective actions were initiated, and the date and time corrective actions were completed and the equipment was returned to compliance.</p>
	<p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3., keep records of required mercury (Hg) stack testing and ash testing (<b>state-only requirement</b>).</p>
<p>EU 1                  EU 2                  EU 3</p>	<p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g., maintain a record of all measurements, performance evaluations, calibration checks, and maintenance or adjustments for each mercury (Hg) CEMS (<b>state-only requirement</b>).</p>
<p>EU 12<sup>(1)</sup></p>	<p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(7)(e), for units that apply carbon or other sorbent injection for mercury (Hg) control, the carbon and other sorbent records shall be kept until such time as mercury CEMS are installed in that unit (<b>state-only requirement</b>).</p>
	<p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(7)(i), any person subject to 310 CMR 7.29(5)(a)3. shall submit the results of all mercury (Hg) emissions, monitor, and optimization test reports, along with supporting calculations, to MassDEP within 45 days after completion of such testing (<b>state-only requirement</b>).</p>
	<p>In accordance with Approval No. 4B08050, maintain a record of actual emissions of mercury (Hg) for each of the preceding 12 months. Actual emissions shall be recorded for individual units and as a facility total for all units included in the calculation demonstrating compliance. Actual emissions shall be recorded in accordance with 310 CMR 7.29(7)(b)1.b., c., and d. for Hg (<b>state-only requirement</b>).</p>
	<p>In accordance with Approval No. 4B08052, maintain ARP daily records including operating hours, fly ash feed in tons per day, PAC feed in tons per day, and cubic feet of natural gas burned per day.</p>
	<p>In accordance with Approval No. 4B08052, maintain ARP calendar month records including number of operating hours, natural gas heat input, PAC heat input, fly ash heat input, and average total heat input (MMBtu/hr) during operating hours.</p>
	<p>In accordance with the Applicability Determination and Approval dated March 31, 2008, the mercury (Hg) CEMS shall be deemed to be conditionally certified as of the date that each CEM passed the RATA. Further, compliance with 310 CMR 7.29 Hg requirements for the 1<sup>st</sup> quarter 2008 shall be determined using valid data only (<b>state-only requirement</b>).</p>

**Table 5 (continued)**

EU #	Recordkeeping Requirements
EU 5 EU 6 EU 7 EU 8	In accordance with 310 CMR 7.19(13)(d)3., record for each unit on a daily basis: type fuel(s) burned each day, heat content of each fuel, the total heating value of the fuel consumed for each day, and the allowable NOx and CO emission rates.
	In accordance with 310 CMR 7.00: Appendix C(9)(b)2., maintain fuel analysis results or fuel purchase receipts used to demonstrate compliance with fuel sulfur content requirements.
	In accordance with Approval No. 4B94073 and 310 CMR 7.19(8)(d)3., record the hours of operation of each emission unit.
	In accordance with 310 CMR 7.19(13)(d)8., all records required by 310 CMR 7.19(13)(d), including computer retained and generated data, shall be kept in a permanently bound log book or any other form acceptable to MassDEP.
	In accordance with 40 CFR 63, Subpart ZZZZ, keep a record of the applicability determination on site at the facility for a period of 5 years after the determination (40 CFR 63.10(b)(3)).
	In accordance with 40 CFR 63, Subpart ZZZZ, effective May 3, 2013, maintain records of hours of operation.
	In accordance with 40 CFR 63, Subpart ZZZZ, effective May 3, 2013, maintain records of the manufacturer's recommended maintenance procedures for the closed crankcase ventilation system or open crankcase filtration system, and of maintenance performed on the system.
EU 10	In accordance with 310 CMR 7.24(3)(f):
	1. Install, maintain and properly operate the vapor balance system;
	2. Maintain records of all maintenance performed, including the type of maintenance performed, and the date maintenance was performed; and,
	3. Maintain records of all malfunctions, including the type of malfunction, the date the malfunction was observed, and the date the malfunction was repaired; and,
	4. Maintain all gauges, meters, or other specified testing device in proper working order; and,
5. Maintain records of the daily throughput of any organic material with a true vapor pressure of 1.5 psia or greater under actual storage conditions.	
EU 12 <sup>(1)</sup>	In accordance with Approval No. 4B08052, the permittee shall maintain records of the daily fly ash feed to the ARP in tons per day.
	In accordance with Approval No. 4B08052, the permittee shall maintain calendar quarter records of the fly ash heat input to, and fly ash product from, the ARP in units of Btu/lb.
	In accordance with Approval No. 4B08052 and 40 CFR 60, Subpart Dc, meet the recordkeeping requirements of Section 60.48c(g) and the general provisions of 40 CFR 60.7.
EU 16	In accordance with 310 CMR 7.03(8), maintain records of the amounts of solvent added to each of the degreaser units on a monthly basis.

**Table 5 (continued)**

EU #	Recordkeeping Requirements
EU 17	<p>In accordance with 310 CMR 7.24(3)(f), properly operate the vapor balance system; maintain records of all maintenance performed, including the type of maintenance performed and date the maintenance was performed; maintain records of all malfunctions, including the type of malfunction, the date the malfunction was observed, and the date the malfunction was repaired; and, maintain records of the daily throughput of any organic material with a true vapor pressure of 1.5 psia or greater during actual storage conditions.</p>
	<p>In accordance with 310 CMR 7.24(6)(b)3., maintain all Stage II system maintenance records on site, in a centralized location, for the most recent rolling twelve-month period. Such records may be either hard copy documents or electronic documents, provided that a hard copy of the electronic documents shall be printed on-site immediately upon request. Stage II system maintenance records shall include:</p> <p>(a) All of the facility's weekly inspection checklists for the prior twelve-month period, identifying:</p> <ul style="list-style-type: none"> <li>(i) the date each weekly visual inspection was performed and the signature of the person who performed the visual inspection;</li> <li>(ii) any Stage II system component determined to be incorrectly installed, non-functioning or broken;</li> <li>(iii) whether the incorrectly installed, non-functioning or broken component was immediately repaired, taken out of service and repaired within 14 days, isolated, or the facility stopped dispensing motor vehicle fuel and all fuel dispensers were taken out of service;</li> <li>(iv) the date the incorrectly installed, non-functioning or broken components identified in (iii) above were repaired.</li> </ul> <p>(b) A copy of compliance testing company test results for all Stage II compliance tests during the prior 12-month period.</p> <p>(c) A copy of the Stage II system's most recent Annual In-Use Compliance Certification.</p>
Facility Wide	<p>Maintain the test results of any stack testing performed in accordance with 310 CMR 7.13(1) or of any other testing or testing methodology required by MassDEP or EPA.</p>
	<p>Keep copies of Source Registration/Emission Statement Forms submitted annually to MassDEP as required per 310 CMR 7.12(3)(b). Copies shall be retained for five years from the date of submittal.</p>
	<p>In accordance with 310 CMR 7.00: Appendix C(10)(b), maintain records of all monitoring data and supporting information required by this operating permit on site for five (5) years from the date of the monitoring sample, measurement, report or initial operating permit application.</p>
<p>In accordance with Approval No. 4B08052, the use of wastewater from the Somerset POTW that contains minor amounts of VOCs is subject to the recordkeeping requirements contained in 310 CMR 7.02(2)(d).</p>	

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<b>Table 5 (continued)</b>	
<b>EU #</b>	<b>Recordkeeping Requirements</b>
Facility Wide	In accordance with Approval No. 4B08052, the lime, fly ash and PAC material handling and storage systems are subject to the recordkeeping requirements contained in 310 CMR 7.03(6).
	In accordance with 310 CMR 7.71(6)(b). and (c)., retain at the facility for five years and make available to the Department upon request copies of the documentation of the methodology and data used to quantify emissions. <b>(state-only requirement)</b> .

**Table 5 Notes:**

- (1) The exhaust of EU 12 (ARP) will be directed to the windbox of Unit 3. If Unit 3 is not available, it will be directed to Unit 1. If neither Unit 3 nor Unit 1 are available, it will be shut down. Therefore, the exhaust of EU 12 will pass through the emission controls on Unit 3 or Unit 1, and that unit's CEMS will measure all emissions from EU 12. EU 12 will be equipped with a fabric filter baghouse to remove particulates in the exhaust gas prior to entering either the Unit 3 or Unit 1 windbox.

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**Table 6**

EU #	Reporting Requirements
	<p>In accordance with 310 CMR 7.14(2) and 310 CMR 7.19(13)(d)2., submit CEM Excess Emission Reports for each calendar quarter by the thirtieth (30th) day of April, July, October, and January covering the previous calendar periods of January through March, April through June, July through September, and October through December, respectively. Such reports shall contain visible emissions (opacity and/or smoke exclusive of uncombined water) and emission rates of NO<sub>x</sub>, CO and SO<sub>2</sub> in excess of the emission limits/standards contained in Table 3. Start-up periods shall be reported in accordance with "The Department Response to Comments on Proposed Amendments to 310 CMR 7.00: RACT for NO<sub>x</sub>", dated June 1994. Start-up periods are not included in the calendar day NO<sub>x</sub> and CO emission rate compliance averaging time as long as the mass emission rate, in pounds of NO<sub>x</sub> and/or CO per hour, from the emission unit does not exceed the mass emission rate that would occur at the maximum firing rate. Start-up begins with when the first burner is lit and ends when all available or required burners are in service. The permittee shall notify MassDEP if start-ups last longer than twenty-four (24) hours.</p>
EU 1 EU 2	<p>In accordance with 40 CFR Part 75, submit to the USEPA Acid Rain Division all NO<sub>x</sub> emissions and operating information for each calendar quarter of each year in accordance with the standards specified in 40 CFR Part 75, Subpart G. The submission must be in an electronic format that meets the requirements of EPA's Electronic Data Reporting (EDR) convention. Quarterly reports must contain NO<sub>x</sub> emissions in pounds per hour for every hour, and cumulative quarterly and seasonal NO<sub>x</sub> emissions data in pounds, in a format consistent with the EDR convention.</p>
EU 3 EU 4	<p>In accordance with 40 CFR 60, 40 CFR 72, and 40 CFR 75, comply with all applicable reporting requirements.</p>
	<p>Notification of QA testing is required for Relative Accuracy Test Audits (RATAs) and Appendix E/LME (Low Mass Emission) unit tests. Notification must be made by mail or electronic mail (e-mail) at least 21 days prior to the scheduled test date to the EPA as required by 40 CFR 75.61, to MassDEP Headquarters, Bureau of Waste Prevention, Division of Planning and Evaluation, and to the MassDEP Regional office, Attn: BWP Permit Chief. If tests must be rescheduled, 24 hours notice must be given, as specified in 40 CFR 75.61(a)(5).</p>
	<p>A previously approved RATA protocol may be referenced at the time of test notification provided that the referenced protocol was completed in accordance with current 40 CFR Part 75 procedures, addresses all previous MassDEP protocol comments to the satisfaction of the MassDEP, and none of the information has changed. If a revised protocol must be submitted, it must be submitted at least 21 days prior to the scheduled test date.</p>
	<p>A hardcopy of the QA RATA or Appendix E/LME test results must be submitted to both the DEP Lawrence and DEP Regional offices within 45 days of completion of tests. The electronic results must be submitted in the quarterly electronic data report (EDR).</p>
	<p>Results from QA daily calibrations, quarterly linearity checks and Appendix D Fuel flowmeter tests must be reported electronically in the EDR submittal for the quarter in which the testing occurs.</p>

**Table 6 (continued)**

EU #	Reporting Requirements
EU 1 EU 2 EU 3 EU 4	Submit SO <sub>2</sub> emission reports to verify compliance with the Massachusetts Acid Rain Law 310 CMR 7.22 for each calendar quarter by the thirtieth (30th) day of April, July, October, and January covering the previous calendar periods of January through March, April through June, July through September, and October through December, respectively. Such reports shall contain, on a quarterly basis, for each EU defined in the permittee's SO <sub>2</sub> compound emission rate averaging system encompassing the Salem Harbor Station and Brayton Point Station facilities: total heating value or heat input of fuel consumed in BTUs and mass SO <sub>2</sub> emission rate in pounds. The quarterly report shall also contain system-wide totals of the latter information for the permittee's entire SO <sub>2</sub> compound emission rate averaging system encompassing the Salem Harbor Station and Brayton Point Station facilities. The fourth quarterly report shall contain an annual summary of the reportable information.
	In accordance with Approval No. 4B88066, report the quantity of used/waste oil & non-chlorinated solvents burned for each calendar year; to include all waste oil, used and unused from the fuel system, lubricating sources, floor drains, heater drains and drains from fill hose and possible spills, inclusive of combined water.
	In accordance with 310 CMR 7.19(13)(d)9., submit compliance records within ten (10) days of written request by MassDEP or EPA.
	Report as required by 40 CFR Part 75, Subpart G.
	In accordance with Approval No. 4B08050, MassDEP may verify the facility's compliance status by whatever means necessary, including but not limited to requiring the affected facility to submit information on actual electrical output of company generating units provided by the New England Independent System Operator (ISO), or any successor thereto.
	In accordance with Approval No. 4B08050, by January 30 of the year following the earliest applicable compliance date for the affected facility under 310 CMR 7.29(6)(c), and January 30 of each calendar year thereafter, the company representative responsible for compliance shall submit a compliance report to MassDEP demonstrating the facility's compliance status with the emission standards contained in 310 CMR 7.29(5)(a) and in an approved Emission Control Plan. The report shall demonstrate the facility's compliance status with applicable monthly emission rates for each month of the previous calendar year, and each of the twelve previous consecutive 12-month periods. The compliance report shall include all statements listed in 310 CMR 7.29(7)(b)4. <sup>(2)</sup> <b>(state-only requirement)</b> .
	In accordance with Approval No. 4B08052, at least 60 days prior to commencing construction of the CEM/COM systems, protocols and plans for the new CEM/COM systems, including NH <sub>3</sub> CEMS, and supporting documentation, shall be submitted to MassDEP for review and approval.
	In accordance with Approval No. 4B08050, certify and operate each CEMS in accordance with 310 CMR 7.29(5)(a)3.g. <b>(state-only requirement)</b> .
	In accordance with 310 CMR 7.32, submit reports as required by the Massachusetts Clean Air Interstate Rule (CAIR). the permittee has submitted an application, under Transmittal No. W152786, in accordance with 310 CMR 7.32 and shall modify this Operating Permit upon approval of the application.
	In accordance with 310 CMR 7.70(2)(a)5. and Approval No. 4B08038, each submission under the CO <sub>2</sub> Budget Trading Program shall be submitted, signed, and certified by the CO <sub>2</sub> authorized account representative. <b>(state-only requirement)</b> .

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**Table 6 (continued)**

EU #	Reporting Requirements
	<p>In accordance with 310 CMR 7.70(4)(a) and Approval No. 4B08038, for each control period in which a CO<sub>2</sub> budget source is subject to the CO<sub>2</sub> requirements of 310 CMR 7.70(1)(e)3., submit to the Department by March 1 following the relevant control period, a compliance certification report to <b>MassDEP, Bureau of Waste Prevention, 1 Winter Street, Boston, MA 02108, Attn: CO<sub>2</sub> Budget Trading Program</b>. The compliance certification shall contain, at a minimum, the items listed in 310 CMR 7.70(4)(a)2. and 3. <b>(state-only requirement)</b>.</p>
	<p>In accordance with 310 CMR 7.70(6)(c) and Approval No. 4B08038, following the establishment of a CO<sub>2</sub> Allowance Tracking System account, all submissions to the Department or its agent pertaining to the account, shall be made only by the CO<sub>2</sub> authorized account representative for the account. <b>(state-only requirement)</b>.</p>
	<p>In accordance with 310 CMR 7.70(8)(d) and Approval No. 4B08038, the CO<sub>2</sub> authorized account representative shall submit written notifications to the Department and the Administrator in accordance with 40 CFR 75.61. <b>(state-only requirement)</b>.</p>
<p>EU 1                      EU 2                      EU 3                      EU 4</p>	<p>In accordance with 310 CMR 7.70(8)(e)1. and Approval No. 4B08038, comply with all recordkeeping and reporting requirements in 310 CMR 7.70(8)(e), the applicable recordkeeping and reporting requirements under 40 CFR 75.73 and with the requirements of 310 CMR 7.70(2)(a)5. <b>(state-only requirement)</b>.</p>
	<p>In accordance with 310 CMR 7.70(8)(e)4.a.i. and Approval No. 4B08038, report the CO<sub>2</sub> mass emissions data for the CO<sub>2</sub> budget unit that commenced commercial operation before July 1, 2008, in an electronic format prescribed by the Administrator, unless otherwise prescribed by the Department, for each calendar quarter beginning with the calendar quarter covering January 1, 2009 through March 31, 2009. <b>(state-only requirement)</b>.</p>
	<p>In accordance with 310 CMR 7.70(8)(e)4.c. and Approval No. 4B08038, submit to the Department or its agent a compliance certification in support of each quarterly report. <b>(state-only requirement)</b>.</p>
	<p>In accordance with 310 CMR 7.70(8)(h)6.a. and Approval No. 4B08038, comply with all output recordkeeping and reporting requirements in 310 CMR 7.70(8)(h) and with the requirements of 310 CMR 7.70(1)(e)5. and (2)(a)5. <b>(state-only requirement)</b>.</p>
	<p>In accordance with 310 CMR 7.70(8)(h)6.c. and Approval No. 4B08038, submit annual output reports in a spreadsheet both electronically and in hardcopy by March 1 for the immediately preceding calendar year to <b>MassDEP, Bureau of Waste Prevention, 1 Winter Street, Boston, MA 02108, Attn: CO<sub>2</sub> Budget Trading Program</b> or the Department's agent. <b>(state-only requirement)</b>.</p>
<p>EU 1                      EU 2                      EU 3                      EU 4                      EU 12<sup>(1)</sup></p>	<p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(7), by January 30 of the year following the earliest applicable compliance date and January 30 of each calendar year thereafter the facility shall submit a report to MassDEP demonstrating compliance with the emission standards contained in 310 CMR 7.29(5)(a) and in an approved emission control plan (ECP). For the mercury standards at 310 CMR 7.29(5)(a)3.c., the compliance reports due January 30, 2007 and 2008 shall include the quarterly emissions for each quarter beginning October 1, 2006. For the mercury standards at 310 CMR 7.29(5)(a)3.c., e., and f., the compliance report due January 30, 2009 and each report thereafter shall demonstrate compliance with any applicable annual standard for the previous calendar year and with any applicable 12-month standard for each of the 12 previous consecutive 12-month periods <b>(state-only requirement)</b>.</p>

**Table 6 (continued)**

EU #	Reporting Requirements
EU 1 EU 3	<p>In accordance with Approval No. 4B08052, NH<sub>3</sub> CEMS data will initially be used as an operational tool. Compliance with the NH<sub>3</sub> emission limit will be determined during the initial compliance test, and by quarterly compliance testing thereafter, until MassDEP in writing approves otherwise, or until the NH<sub>3</sub> CEMS becomes a direct compliance monitor as defined in Section VIII(B)2 of Approval No. 4B08052. The NH<sub>3</sub> CEMS shall operate during NH<sub>3</sub> compliance testing and the test report shall be submitted to MassDEP within 45 days after completion of testing. Until the NH<sub>3</sub> CEM system becomes a direct compliance monitor the permittee on an annual basis, by March 1st, shall submit a report on the performance and relative accuracy of the NH<sub>3</sub> CEM systems along with a recommendation on the feasibility of their use as a compliance determination method.</p>
EU 3	<p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall submit all notifications and reports to the address below.</p> <p style="text-align: center;">Air Compliance Clerk              EPA-New England, Region 1              5 Post Office Square              Suite 100 (OES04-2)              Boston, MA 02109-3912</p> <p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall submit to EPA Region 1 semi-annual reports postmarked by January 30<sup>th</sup> and July 30<sup>th</sup> of each year. Each semi-annual report shall contain the following information from the prior calendar 6-month period:</p> <ul style="list-style-type: none"> <li>a. Rolling 12-month filterable and total PM emission rates using data collected in accordance with Section V.2. of the PSD Permit;</li> <li>b. Date and time of all emission limit and permit condition violations; and</li> <li>c. All equipment malfunctions and corrective actions.</li> </ul> <p>In accordance with PSD Permit No. 052-120-MA15, within 45 days after the completion of emissions tests, a preliminary report of the test results shall be submitted to EPA. The test report shall indicate:</p> <ul style="list-style-type: none"> <li>a. The filterable and total PM<sub>10</sub> and PM<sub>2.5</sub> emissions in lbs/MMBtu and lbs/hr.</li> <li>b. The heat input for boiler No. 3 in MMBtu/hr.</li> </ul> <p>In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall submit the final emissions test report(s) to EPA Region 1 within 60 days after the completion of each of the tests.</p>
EU 1 EU 2 EU 3 EU 12 <sup>(1)</sup>	<p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.d.iii., the results of each stack test for mercury (Hg) shall be reported to MassDEP within 45 days after conducting each stack test (<b>state-only requirement</b>).</p> <p>In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.c.ii.(iv), when ash produced by an affected facility is used in Massachusetts as a cement kiln fuel, as an asphalt filler, or in other high temperature processes that volatilize mercury (Hg), a proposal shall be submitted for MassDEP approval at least 45 days prior to such use, or at least 45 days prior to October 1, 2006, whichever is later, detailing the proposed measurement methods to be used to comply with 310 CMR 7.29(5)(a) 3.c.ii.(i) and (ii) (<b>state-only requirement</b>).</p>

**Table 6 (continued)**

EU #	Reporting Requirements
EU 1 EU 2 EU 3 EU 12 <sup>(1)</sup>	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g., submit a CEMS monitoring plan for MassDEP approval at least 45 days prior to equipment installation including, but not limited to, a sample calculation demonstrating compliance with the emission limits using conversion factors from 40 CFR Part 60 or Part 75 or other proposed factors ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g., submit for MassDEP approval a CEMS certification protocol at least 21 days prior to certification testing for the CEMS, and any proposed adjustment to the certification testing at least seven (7) days in advance ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g., submit a certification report within 45 days of the completion of the certification test for MassDEP approval ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(5)(a)3.g.l.(xii), submit to the appropriate MassDEP regional office by the 30 <sup>th</sup> day of April, July, October, and January, a report detailing any of the following that have occurred within the previous calendar quarter. In the event none of the following items have occurred, such information shall be stated in the report ( <b>state-only requirement</b> ):  (a) The date and time that any mercury CEMS stopped collecting valid data and when it started to collect valid data again, except for zero and span checks; and,  (b) the nature and the date of system repairs.
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(7)(a), for the mercury (Hg) standards at 310 CMR 7.29(5)(a)3.c., the compliance reports due January 30, 2007 and 2008 shall include the quarterly emissions for each quarter beginning October 1, 2006. For the mercury standards at 310 CMR 7.29(5)(a)3.c., e., and f., the compliance report due January 30, 2009 and each report thereafter shall demonstrate compliance with any applicable annual standard for the previous calendar year and with any applicable 12-month standard for each of the 12 previous consecutive 12-month periods. The compliance report shall contain items listed in 310 CMR 7.29(7)(b) ( <b>state-only requirement</b> ).
	In accordance with Approval No. 4B08050 and 310 CMR 7.29(7)(g), any person subject to 310 CMR 7.29(5)(a)3 shall submit the results of all mercury emissions, monitor, and optimization test reports, along with supporting calculations, to MassDEP within 45 days after completion of such testing ( <b>state-only requirement</b> ).
	Submit to the appropriate MassDEP regional office a compliance report in accordance with 310 CMR 7.29(7)(b) ( <b>state-only requirement</b> ).

**Table 6 (continued)**

EU #	Reporting Requirements
EU 1 EU 2 EU 3 EU 14 EU 15	In accordance with Approval No. 4B08052, the permittee shall notify MassDEP in writing within 10 days after each activity listed below occurs: (a) The date construction commences. (b) The date construction is completed. (c) The date Unit 1 SCR system has passed acceptance testing (vendor guarantee). (d) The date Unit 1 SDA/FF and PAC systems passed acceptance testing (vendor guarantee). (e) The date Unit 2 SDA/FF and PAC systems passed acceptance testing (vendor guarantee). (f) The date Unit 3 SCR and ARP systems passed acceptance testing (vendor guarantee). (g) The date Unit 3 PAC system passed acceptance testing (vendor guarantee). (h) The date Unit 3 DS/FF systems passed acceptance testing (vendor guarantee). (i) The date Cooling Tower 1 has passed acceptance testing (vendor guarantee). (j) The date Cooling Tower 2 has passed acceptance testing (vendor guarantee).
EU 5 EU 6 EU 7 EU 8	In accordance with Approval No. 4B94073 and 310 CMR 7.19(8)(d)3., report the hours of operation of each EU on a Source Registration/Emission Statement Form as required by 310 CMR 7.12. In accordance with 310 CMR 7.19(13)(d)9., submit compliance records within ten (10) days of written request by MassDEP or EPA. In accordance with 40 CFR 63, Subpart ZZZZ, submit all of the applicable notifications as listed in the NESHAP General Provisions (40 CFR 63, Subpart A), including an initial notification, notification of performance test, and a notification of compliance with the emission limitations.
EU 12 <sup>(1)</sup>	In accordance with Approval No. 4B08052 and 40 CFR 60, Subpart Dc, meet the reporting requirements of Section 60.48c(g) and the general provisions of 40 CFR 60.7.
EU 14 EU 15	In accordance with PSD Permit No. 052-120-MA14, submit all notifications and reports required by this permit to: <p style="text-align: center;">                         Air Compliance Clerk                          EPA-New England, Region 1                          5 Post Office Square                          Suite 100 (OES04-2)                          Boston, MA 02109-3912                     </p>

**Table 6 (continued)**

EU #	Reporting Requirements
EU 14 EU 15	<p>In accordance with PSD Permit No. 052-120-MA14, after either Cooling Tower 1 or 2 commences operation, the permittee shall submit to EPA New England semi-annual reports postmarked by January 30<sup>th</sup> and July 30<sup>th</sup> of each year. Each semi-annual report shall contain the following information from the prior calendar 6-month period:</p> <p>(a) Cooling Towers 1 and 2 rolling 12-month total PM<sub>2.5</sub> and PM<sub>10</sub> emission rates.</p> <p>(b) Date and time of all emission limit and permit condition violations.</p> <p>(c) All equipment malfunctions and corrective actions.</p>
Facility Wide	<p>Submit Emissions Compliance Testing (Stack Testing) Reports in accordance with 310 CMR 7.19(13)(c).</p> <p>Submit a Source Registration/Emission Statement Form to MassDEP on an annual basis in accordance with 310 CMR 7.12.</p> <p>Promptly report to MassDEP all instances of deviations from permit requirements which are not otherwise reported to MassDEP by telephone or fax or electronic mail (e-mail), within three days of discovery of such deviation, as provided in 310 CMR 7.00: Appendix C(10)(f). (See General Condition 25).</p> <p>All required reports must be certified by a responsible official as provided in 310 CMR 7.00: Appendix C(10)(h).</p> <p>In accordance with Approval No. 4B08050, submit by January 15, April 15, July 15, and October 15 for the previous three (3) months, respectively, a 310 CMR 7.29 construction status report which identifies the construction activities which have occurred during the past three months, and those activities anticipated for the following three months, and progress toward achieving compliance with the implementation dates identified in Table 6 of Approval No. 4B08050 <u>Amended Emission Control Plan Final Approval</u>, dated December 29, 2008. <b>(This Table is reproduced in this Operating Permit as Table 6A) (state-only requirement).</b></p> <p>In accordance with Approval No. 4B08052, the use of wastewater from the Somerset POTW that contains minor amounts of VOCs, is subject to the reporting requirements contained in 310 CMR 7.02(2)(e).</p> <p>In accordance with Approval No. 4B08052, the lime, fly ash, and PAC material handling and storage systems are subject to the reporting requirements contained in 310 CMR 7.03(5).</p> <p>In accordance with Approval No. 4B08052, the permittee shall notify MassDEP by telephone, fax, or electronic mail (e-mail) no later than three (3) business days after the occurrence of any facility upsets or malfunctions to the facility equipment which results in an excess emission to the ambient air and/or a condition of air pollution.</p> <p>In accordance with Approval No. 4B08052, the permittee shall ensure that all final emission test reports are submitted to MassDEP within 60 days after completion of each of the tests.</p> <p>In accordance with Approval No. 4B08052, post-construction sound survey final reports shall be submitted to MassDEP within 60 days after the last day of sound monitoring.</p>

**Table 6 (continued)**

EU #	Reporting Requirements
Facility Wide	All notifications and reporting required by this Operating Permit shall be made to the attention of:  Department of Environmental Protection Bureau of Waste Prevention 20 Riverside Drive Lakeville, Massachusetts 02347 ATTN: Permit Section Telephone: (508) 946-2770 Fax: (508) 947-6557 or (508) 946-2865
	In accordance with Approval No. 4B08052, pursuant to 310 CMR 7.00, Appendix A, the permittee, on an annual basis for a period of 5 years from the date each unit (Unit 1, Unit 2, and Unit 3) resumes regular operation after completion of the steps identified in Approval No. 4B08052, shall submit to MassDEP information demonstrating that the physical or operational change did not result in an emission increase beyond the "representative actual annual emissions" defined in Section IV <u>Emission Offsets and Nonattainment Review</u> of Approval No. 4B08052. Should there be an increase beyond that defined in Approval No. 4B08052, MassDEP will consider information provided by the permittee that the increase is unrelated to the alterations/construction approved in Approval No. 4B08052, such as, any increased utilization due to the rate of electricity demand growth for the utility system as a whole. The installation dates of the Unit 3 SCR and DS/FF emission control systems do not coincide, as is the case of the Units 1 and 2 SCR and SDA/FF/PAC emission control systems. Therefore, Units 1, 2, and 3 will have more than one different 5-year period subject to the requirements of this Condition.
	In accordance 310 CMR 7.71(5), by April 15 <sup>th</sup> , 2010, and April 15 <sup>th</sup> of each year thereafter report emissions of greenhouse gases from stationary emissions sources including, but not limited to, emissions from factory stacks, manufacturing processes and vents, fugitive emissions, and other process emissions, and owned or leased vehicles when stationary source greenhouse gas emissions or greater than 5,000 short tons CO <sub>2</sub> e. Report greenhouse gas emissions electronically in a format that can be accommodated by the registry. <b>(state-only requirement).</b>
	In accordance with 310 CMR 7.71(6), certify greenhouse gas emissions reports using a form provided by the Department or the registry. <b>(state-only requirement).</b>
In accordance with 310 CMR 7.71(7), by December 31 <sup>st</sup> of the applicable year submit to the Department Documentation of triennial verification of the greenhouse gas emissions report. <b>(state-only requirement).</b>	

**Table 6 Notes:**

- (1) The exhaust of EU 12 (ARP) will be directed to the windbox of Unit 3. If Unit 3 is not available, it will be directed to Unit 1. If neither Unit 3 nor Unit 1 is available, it will be shut down. Therefore, the exhaust of EU 12 will pass through the emission controls on Unit 3 or Unit 1, and that unit's CEMS will measure all emissions from EU 12. EU 12 will be equipped with a fabric filter baghouse to remove particulates in the exhaust gas prior to entering either the Unit 3 or Unit 1 windbox.
- (2) If the ISO final settlement of actual electrical output is not available, the facility shall submit a compliance report based on provisional values of actual electrical output. Upon receiving certified ISO values of actual electrical output for all provisional months within the calendar year, the facility shall submit a revised compliance report within 30 days thereafter.

Table 6A		
Compliance Path		
Pollutant	Standard	Date
NO <sub>x</sub> SO <sub>2</sub>	310 CMR 7.29(5)(a)1.a. 310 CMR 7.29(5)(a)2.a.	October 1 2006
NO <sub>x</sub> SO <sub>2</sub>	310 CMR 7.29(5)(a)1.b. 310 CMR 7.29(5)(a)2.b.	October 1 2008
CO <sub>2</sub>	310 CMR 7.29(5)(a)5.a.	Calendar Year 2006
CO <sub>2</sub>	310 CMR 7.29(5)(a)5.b.	Calendar Year 2008
Hg	310 CMR 7.29(5)(a)3.c.	October 1, 2006
Hg	310 CMR 7.29(5)(a)3.e.i. or ii.	January 1, 2008
Hg	310 CMR 7.29(5)(a)3.f.i. or ii.	October 1, 2012

C. GENERAL APPLICABLE REQUIREMENTS

The permittee shall comply with all generally applicable requirements contained in 310 CMR 7.00 et seq., and 310 CMR 8.00 et seq., when subject.

D. REQUIREMENTS NOT CURRENTLY APPLICABLE

The permittee is currently not subject to the following requirements:

Table 7	
Regulation	Description
310 CMR 7.07	Open Burning
310 CMR 7.16	Reduction of Single Occupant Commuter Vehicle Use
310 CMR 7.25	Consumer and Commercial Products
310 CMR 7.27	Superseded by 310 CMR 7.28 and 7.32
310 CMR 7.28	As of January 1, 2009, this regulation is no longer applicable; it was superseded by 310 CMR 7.32
310 CMR 7.29(5)(a)5.a. and b.	Superseded by 310 CMR 7.70

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## 5. SPECIAL TERMS AND CONDITIONS

The permittee is subject to the following special terms and conditions that are not contained in Table 3, 4, 5, and 6:

### Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4:

- A. The permittee shall comply with the requirements of Standard Operating Procedure, Section 3.0 Coal Handling and Measurement Systems contained in Approval No. 4B91064 dated February 28, 1992.
- B. The permittee shall comply with the requirements of Standard Operating Procedure, Section 4.0 Ash Handling Systems contained in Approval No. 4B91064 dated February 28, 1992.
- C. Unit No. 1 Stack Parameters (Stack No. 1):
- |               |   |              |
|---------------|---|--------------|
| Stack Height  | = | 351.7 feet   |
| Exit Diameter | = | 174.0 inches |
- D. Unit No. 2 Stack Parameters (Stack No. 2):
- |               |   |              |
|---------------|---|--------------|
| Stack Height  | = | 351.7 feet   |
| Exit Diameter | = | 174.0 inches |
- E. Unit No. 3 Stack Parameters (Stack No. 3):
- |               |   |              |
|---------------|---|--------------|
| Stack Height  | = | 351.7 feet   |
| Exit Diameter | = | 233.8 inches |
- F. Unit No. 4 Stack Parameters (Stack No. 4):
- |               |   |              |
|---------------|---|--------------|
| Stack Height  | = | 500.0 feet   |
| Exit Diameter | = | 222.0 inches |
- G. Federal Acid Rain Program, Phase I Acid Rain Permit
- (1) Brayton Point Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4 are affected sources for Phase I of the Federal Acid Rain Program, pursuant to the "compensating unit" provisions of 40 CFR 72.43. As such, these emission units are subject to the requirements of the US EPA Phase I Acid Rain Permit, issued to Brayton Point for the period of January 1, 1995 to December 31, 1999, as revised on January 22, 1996. By January 30th of each year, the permittee must hold in the SO<sub>2</sub> allowance account for each emission unit at least one allowance for each ton of SO<sub>2</sub> emitted the previous year, provided the permittee elected that its emission units participate as compensating units for that year. The permittee's designated representative may buy, sell, trade, or transfer allowances for or between EU accounts at any time, except between January 30th and the completion of the annual SO<sub>2</sub> allowance reconciliation for the preceding year(s).

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H. Federal Acid Rain Program, Phase II Acid Rain Permit

- (1) Brayton Point Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4 are subject to the requirements of Phase II of the Federal Acid Rain Program as defined by EPA in 40 CFR Part 72. Pursuant to 40 CFR 72.71, 40 CFR 72.73, and 310 CMR 7.00, Appendix C(3)(n), MassDEP is the permitting authority for Phase II Acid Rain Permits. MassDEP issued the initial Phase II Acid Rain Permit No. 4B97105 to Brayton Point Station on December 30, 1997 and renewed said permit on February 28, 2003. MassDEP is incorporating the requirements of the renewed Phase II Acid Rain Permit into this Operating Permit. The Phase II Acid Rain Permit will renew in the Operating Permit.
- (2) Within 60 days of the end of each calendar year, the facility shall hold in its SO<sub>2</sub> allowance account at least one allowance for each ton of SO<sub>2</sub> emitted during the previous year. An allowance is a limited authorization to emit SO<sub>2</sub> in accordance with the Acid Rain Program.
- (3) If the facility has excess emissions in any calendar year, it shall submit a proposed offset plan as required under 40 CFR Part 77. In addition, the permittee shall pay any penalties specified in 40 CFR Part 77 and comply with the terms of an approved offset plan.
- (4) In accordance with 40 CFR Part 73, the permittee's designated representative may buy, sell, trade, or transfer allowances between EU accounts at any time, except between 60 days of the end of the calendar year and the completion of the annual SO<sub>2</sub> allowance reconciliation for the preceding year(s).
- (5) The yearly allowance allocations as identified in 40 CFR 73, Tables 2, 3, and 4 (as amended) and Acid Rain Permit No. 4B97105 Renewal dated February 28, 2003 are identified below:

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EU #	Allowances	Tons/Year		
		2008	2009	2010 and Beyond
EU 1	SO <sub>2</sub>	8,478	8,478	8,496
	NO <sub>x</sub>	Standard annual average emission limitation of 0.40 lb/MMBtu for Phase II tangentially fired boiler		
EU 2	SO <sub>2</sub>	8,908	8,908	8,926
	NO <sub>x</sub>	Standard annual average emission limitation of 0.40 lb/MMBtu for Phase II tangentially fired boiler		
EU 3	SO <sub>2</sub>	18,618	18,618	18,658
	NO <sub>x</sub>	Standard annual average emission limitation of 0.46 lb/MMBtu for Phase II dry bottom wall-fired boiler		
EU 4	SO <sub>2</sub>	12,135	12,135	11,621

- (6) Acid Rain Approval No. 4B97105 is incorporated by reference into the Operating Permit.
- I. The permittee is subject to, and has stated in the original operating permit application (Application No. 4V95056, Transmittal No. 108001) that it is in compliance with the requirements of 40 CFR 82: Protection of Stratospheric Ozone. These requirements are applicable to this facility and the United States Environmental Protection Agency enforces these requirements.
- J. Massachusetts Clean Air Interstate Rule (Mass CAIR)
  - (1) The owner/operator of EU 1, EU 2, EU 3, and EU 4 is subject to the Massachusetts Clean Air Interstate Rule (Mass CAIR), 310 CMR 7.32, and has submitted a CAIR permit application pursuant to 310 CMR 7.32(3).
- K. Massachusetts CO<sub>2</sub> Budget Trading Program, 310 CMR 7.70
  - (1) The owner/operator of EU 1, EU 2, EU 3, and EU 4 is subject to the Massachusetts CO<sub>2</sub> Budget Trading Program, 310 CMR 7.70, and shall comply with all applicable requirements therein. In accordance with 310 CMR 7.70(3)(b), the CO<sub>2</sub> authorized account representative shall submit a complete CO<sub>2</sub> budget emission control plan under 310 CMR 7.70(3)(c) covering EU 1, EU 2, EU 3, and EU 4, to MassDEP on or before August 1, 2008.

**Emission Unit Nos. EU 1, EU 2, and EU 3**

- L. In accordance with Approval No. 4B08052, the permittee shall submit to MassDEP, in accordance with the provisions of Regulation 310 CMR 7.02(5)(c), the final general plans and specifications, including updated application forms as applicable, for the construction/-

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alterations of each system approved within 60 days after each system passes acceptance testing.

- M. In accordance with Approval No. 4B08052, the permittee shall submit Standard Operating and Maintenance Procedures (SOMP) for the new and altered equipment to MassDEP no later than 60 days after commencement of operation. Thereafter, the permittee shall submit updated versions of the SOMP to MassDEP no later than 30 days prior to the occurrence of a significant change. MassDEP must approve in writing any significant changes to the SOMP prior to the SOMP becoming effective.
- N. In accordance with Approval No. 4B08052, the permittee shall maintain a complaint log concerning emissions, odor, PM and sound from the facility. The permittee shall make available to the general public a telephone number that will receive and record complaints 24 hours per day, 7 days per week. The complaint log shall be maintained for the most recent five (5) year period. The complaint log shall be made available to MassDEP upon request. The permittee shall take all reasonable actions to respond to complaints.

**Emission Unit Nos. EU 1 and EU 3**

- O. In accordance with Approval No. 4B08052, the permittee shall, within 60 days after the submittal to MassDEP of the compliance test report, propose a surrogate methodology or parametric monitoring for NH<sub>3</sub> emissions based on compliance test results, NH<sub>3</sub> CEMS, and operating experience.
- P. In accordance with Approval No. 4B08050, MassDEP may verify compliance with 310 CMR 7.29(5) by whatever means necessary, including but not limited to: inspection of a unit's operating records; requiring the facility to submit information on actual electrical output of company generating units provided to that person by the New England Independent System Operator, or any successor thereto; testing emission monitoring devices; and, requiring the facility to conduct emissions testing under the supervision of MassDEP (**state-only requirement**).
- Q. In accordance with Approval No. 4B08050, MassDEP is not approving or denying any off-site or non-contemporaneous proposed CO<sub>2</sub> reduction measures at this time. 310 CMR 7.29(5)(a)5.c. and d. provide that compliance with the CO<sub>2</sub> emission limitations may be demonstrated by using offsite reductions or sequestration in addition to onsite reductions, as long as certain established conditions are met. However, while there is a provision for using early reductions of SO<sub>2</sub> to meet the SO<sub>2</sub> emissions limit in 310 CMR 7.29(5)(a)2.a., there is no similar regulatory provision for use of early reductions of CO<sub>2</sub> for compliance with 310 CMR 7.29(5)(a)5. Provisions for the quantification and certification of Greenhouse Gas (GHG) reductions, avoided emissions, or sequestered emissions for use in demonstrating compliance with the CO<sub>2</sub> emission limitations contained in 310 CMR 7.29 are contained in 310 CMR 7.00, Appendix B(7) Greenhouse Gas Credit Banking and Trading (**state-only requirement**).
- R. In accordance with Approval No. 4B08052, the basis for NH<sub>3</sub> emission compliance determination will automatically convert from quarterly compliance testing to the NH<sub>3</sub> CEM system upon each unit's CEM system demonstration that the relative accuracy of the NH<sub>3</sub> CEM system is within  $\pm 15\%$  for four consecutive quarters and the NH<sub>3</sub> CEM system was

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operating 90% of the time during the same period.

- S. In accordance with Approval No. 4B08052 Unit 1 and Unit 3 shall meet the NH<sub>3</sub> emission limits approved herein within four hours from initiating NH<sub>3</sub> feed to the SCR based upon compliance level ammonia CEM system data. During shutdown of the NH<sub>3</sub> system, EU 1 and EU 3 will be exempt from the hourly limits during the last hour of the NH<sub>3</sub> feed to the SCR.

**Emission Unit No. EU 3**

- T. In accordance with 310 CMR 7.00, Appendix C, within 60 days from the date that EU 3 DS/FF commences operation the permittee shall submit a Minor Modification application that addresses a CAM plan for PM emissions.
- U. In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall operate the FF at all times while Emission Unit No. EU 3 is in operation.
- V. In accordance with PSD Permit No. 052-120-MA15, the Emission Unit No. EU 3 heat input shall not exceed 5,655 MMBtu/hr (24-hour block average).
- W. In accordance with PSD Permit No. 052-120-MA15, the owner/operator shall affix a copy of the PSD Permit in the control room.
- X. In accordance with PSD Permit No. 052-120-MA15, after the occurrence of any upset or malfunction to Emission Unit No. equipment or control devices that may result in a violation of any emission limitation or condition contained in the PSD Permit, the owner/operator must notify EPA Region 1, Office of Environmental Stewardship, attention Compliance and Enforcement Chief, by FAX at (617) 918-0905 within two business days, and subsequently in writing to the address listed below or by e-mail to;

[R1.AirReports@epa.gov](mailto:R1.AirReports@epa.gov)

Air Compliance Clerk  
EPA-New England, Region 1  
5 Post Office Square  
Suite 100 (OES04-2)  
Boston, MA 02109-3912

**Emission Unit No. EU 12 – Ash Reduction Process (ARP)**

- Y. In accordance with Approval No. 4B08052, the ARP shall not operate when Emission Unit No. EU 1 and EU 3 are both shut down.

**Emission Unit Nos. EU 1, EU 2, EU 3, and EU 4 (4-Unit SO<sub>2</sub> Total)**

- Z. In accordance with Approval No. 4B08052, under the “existing configuration” total SO<sub>2</sub> emissions must not exceed 16,857 lb/hr. Under the “post-retrofit” configuration” total SO<sub>2</sub> emissions must not exceed 18,292 lb/hr. As defined, the “existing configuration” is prior to the installation of one or more SO<sub>2</sub> control systems (SDA or DS), or when all SO<sub>2</sub> control

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systems are not in operation. "Post-retrofit configuration" is following the installation of one or more SO<sub>2</sub> control systems (SDA or DS). The lb/hr limit is based upon a three-hour average, recalculated hourly, as measured by 40 CFR 75 CEMs using valid data only.

**Emission Unit Nos. EU 5, EU 6, EU 7, and EU 8**

- AA. In accordance with Approval No. 4B08002, advise MassDEP in writing within fifteen (15) days after the date that the stock of distillate oil (0.3% sulfur by weight) existing on-site on the date of issuance of Approval No. 4B08002 (January 29, 2008) is consumed.
- BB. In accordance with 40 CFR 63, Subpart ZZZZ, the diesel generators will be subject to the Startup, Shutdown, and Malfunction (SSM) requirements, beginning May 3, 2013:
- Startup – Minimize the engine's time spent at idle and minimize the engine's startup to a period needed for appropriate and safe loading of the engine, not to exceed 30 minutes, after which time the engine must meet the otherwise applicable emission standards; however, there are no emissions limits for the startup period.
- Shutdown, Malfunction -- Applicable emissions limits apply during periods of shutdown and malfunction.
- CC. Maintenance - In accordance with 40 CFR 63, Subpart ZZZZ, the diesel generators will be subject to "work practice standards" effective on May 3, 2013, and the permittee will need to follow the manufacturer's specified maintenance requirements for operating and maintaining the open or closed crankcase ventilation systems and replacing the crankcase filters.
- DD. Crankcase Ventilation - In accordance with 40 CFR 63, Subpart ZZZZ, effective May 3, 2013, the diesel generators will be subject to the crankcase ventilation standards and the permittee must install a closed crankcase ventilation system that prevents crankcase emissions from being emitted to the atmosphere, or install an open crankcase filtration emission control system that reduces emissions from the crankcase by filtering the exhaust stream to remove oil mist, particulates, and metals.

**SDA/FF and PAC Emission Control Systems**

- EE. In accordance with Approval No. 4B08052, the permittee shall submit to MassDEP final project design information by April 1, 2008 including, but not limited to, all documents not submitted with Application No. 4B08052 (refer to Application No. 4B06002, Appendix A, Form BWP AQ CPA-1, Section B), or items listed as to be determined (TBD), and forms contained in Appendix A of the application.
- FF. In accordance with Approval No. 4B08052, the permittee, within 36 months after the later date the Unit 1 SDA/FF and the Unit 2 SDA/FF have passed acceptance testing (vendor guarantee) shall propose to MassDEP new PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission limits for Units 1 and 2 and provide supporting justification for the proposed new emission limits or supporting justification for maintaining the emission limits contained herein in Table 3. A minimum of four (4) PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission tests shall be conducted on each of the stacks serving Units 1 and 2. MassDEP will establish, through issuance of an approval letter subject to the Appeal Process, final PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission limits after review

of the permittee's proposed final emission limits and supporting documentation.

**DS/FF Emission Control System**

- GG. In accordance with Approval No. 4B08052, the permittee shall submit to MassDEP, in accordance with the provisions of Regulation 310 CMR 7.02(5)(c), the final general plans and specifications, including updated application forms as applicable, for the construction/alterations of each system approved in Approval No. 4B08052, within 60 days after each system passes acceptance testing.
- HH. In accordance with Approval No. 4B08052, the permittee, within 36 months after the date the DS/FF has passed acceptance testing (vendor guarantee) shall propose to MassDEP new PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission limits for Unit 3 and provide supporting justification for the proposed new emission limits or supporting justification for maintaining the emission limits contained herein in Table 3. A minimum of four (4) PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission tests shall be conducted. MassDEP will establish, through issuance of an approval letter subject to the Appeal Process, final PM, PM<sub>10</sub>, and PM<sub>2.5</sub> emission limits after review of the permittee's proposed final emission limits and supporting documentation.
- II. In accordance with Approval No. 4B08052, the DS/FF shall be specified, designed and constructed to meet the 0.010 lb/MMBtu PM/PM<sub>10</sub>/PM<sub>2.5</sub> filterable emission limit. The permittee shall specify contractual performance guarantees that require the selected equipment supplier to meet this performance level. The permittee shall take reasonable measures to establish contract language that requires the equipment supplier to attempt to remedy particulate emission performance deficiencies, at a cost to the equipment supplier, up to the limit of liability of the agreed contract. The permittee shall take reasonable measures to negotiate a limit of liability that is equal to the contract amount for this specified guarantee. This establishes a contract make good clause that will require the selected equipment supplier to make good on the 0.010 lb/MMBtu emission limit and take actions up to the value of the contract. A contractual make good clause in general terms means that the equipment supplier must provide engineering, materials and construction to remedy contractual performance guarantee deficiencies.

Should the permittee exercise all contractual obligations and remedies and still not achieve compliance with the 0.010 lb/MMBtu PM/PM<sub>10</sub>/PM<sub>2.5</sub> filterable emission limit, the permittee may propose an emission limit up to 0.012 lb/MMBtu, 67.9 lb/hr, and 297.2 tpy. The permittee shall submit documentation supporting the proposed increased emission limit to MassDEP for review and MassDEP will render a written decision of the final emission limit under Application No. 4B08052/Transmittal No. X224106.

**Emission Unit Nos. EU 14 and EU 15, Cooling Towers**

- JJ. In accordance with Approval No. 4B08052, the permittee shall submit to MassDEP, in accordance with the provisions of Regulation 310 CMR 7.02(5)(c), the standard operations and maintenance procedures (SOMP); and the final general plans and specifications, including updated application forms as applicable, for the construction/alterations of each system approved in Approval No. 4B08052 within 60 days after each system passes acceptance testing.

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- KK. In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, Cooling Towers 1 and 2 shall be equipped with drift eliminators designed (manufacturer's design guarantee) to limit water mist drift to 0.0005% of the cooling tower circulating water flow.
- LL. In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, Cooling Tower 1 and 2 lb/hr emission limits contained in Table 3 shall be determined from drift eliminator design performance, circulating water flow determined by manufacturer's pump curve, and TDS determined by conductivity monitoring.
- MM. In accordance with Approval No. 4B08052 and PSD Permit No. 052-120-MA14, Cooling Tower 1 and 2 shall be inspected from internal walkways not less than every three months to assure that the drift eliminators are clean and in good working order. Records shall be kept of the inspections. Not less than once per calendar year a complete inspection shall be conducted on Cooling Tower 1 and 2 using an inspector with recognized expertise in the field of natural draft cooling tower drift eliminators. Records shall be kept of these inspections, including the inspector's resume or credentials.
- NN. In accordance with 310 CMR 7.00, Appendix C, within 60 days from the date that EU 14 or EU 15 commences operation the permittee shall submit a Minor Modification application that addresses a CAM plan for PM emissions for EU 14 and EU 15.
- OO. In accordance with PSD Permit No. 052-120-MA14, the permittee shall maintain, at a minimum, the following information:
- (1) Hours of operation of each circulating water flow pump for each operating day.
  - (2) For each 24-hour time block, the average of the circulating water flow rate in gpm.
  - (3) Continuous readings of total dissolved solids in the circulating water.
  - (4) Quarterly and annual drift eliminator inspection records, including certification as to whether the drift eliminators are properly installed and in good working order.
  - (5) Monitoring equipment design data, maintenance, and repair information, including dates and times of repairs or maintenance.
  - (6) For each operating day, record total PM<sub>2.5</sub> and PM<sub>10</sub> emissions.
- PP. In accordance with PSD Permit No. 052-120-MA14, the permittee shall maintain the following records for the control and monitoring equipment on the Cooling Towers. For purposes of this permit, a malfunction is a sudden and reasonably unforeseeable failure that results in the possible exceedance of the emission limits or conditions in this permit:
- (1) Periods of malfunction including, at a minimum, the date and time the malfunction occurred;
  - (2) A description of the malfunction and the corrective action taken;
  - (3) The date and time corrective actions were initiated; and

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- (4) The date and time corrective actions were completed and the repaired equipment was returned to compliance
- QQ. In accordance with PSD Permit No. 052-120-MA14, the permittee shall comply with any request by EPA to supply any of the above records.
- RR. In accordance with PSD Permit No. 052-120-MA14, the permittee shall affix a copy of this PSD Permit in the control room.
- SS. In accordance with PSD Permit No. 052-120-MA14, after the occurrence of any upset or malfunction to Cooling Towers 1 or 2 equipment of control devices that may result in a violation of any emission limitation or condition contained herein, the permittee must notify EPA New England, Office of Environmental Stewardship, attention Compliance and Enforcement Chief, by FAX at (617) 918-0905 within two business days, and subsequently in writing to the address listed in Table 6 within seven calendar days or by e-mail to: [RI.AirReports@epa.gov](mailto:RI.AirReports@epa.gov).

#### Facility-Wide

- TT. In accordance with Approval No. 4B08052, a post-construction sound survey (**state-only requirement**) shall be conducted to define actual sound impacts in comparison to impacts proposed in the associated application and sound emission limits contained in Approval No. 4B08052. Post construction sound surveys shall be conducted no later than 180 days after the latest of the events listed in (1), (2), and (3) below:
- (1) Unit 1 SDA/FF and PAC systems passes acceptance testing,
  - (2) when Unit 2 SDA/FF and PAC systems passes acceptance testing,
  - (3) or Unit 3 SCR and ARP have both passed acceptance testing;
- And no later than 180 days after each of the events listed in (4) and (5) below:
- (4) the date Unit 3 DS/FF passes acceptance testing; but not to exceed 180 days from initial operation Unit 3 DS/FF;
  - (5) the date Cooling Tower 1 and Cooling Tower 2 passes acceptance testing, but not to exceed 180 days after the initial operation with both cooling towers.

## 6. ALTERNATIVE OPERATING SCENARIOS

The permittee did not request alternative operating scenarios in its operating permit application.

## 7. EMISSIONS TRADING

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(a) Intra-facility emission trading

Pursuant to 310 CMR 7.00: Appendix C(7)(b), emission trades, provided for in this permit, may be implemented provided the permittee notifies The United States Environmental Protection Agency (EPA) and MassDEP at least fifteen (15) days in advance of the proposed changes and the permittee provides the information required in 310 CMR 7.00: Appendix C(7)(b)3.

Any intra-facility change that does not qualify pursuant to 310 CMR 7.00: Appendix C(7)(b)2 is required to be submitted to MassDEP pursuant to 310 CMR 7.00: Appendix B.

(b) Inter-facility emission trading

All increases in emissions due to emission trading, must be authorized under the applicable requirements of 310 CMR 7.00: Appendix B (the "Emissions Trading Program") and the 42 U.S.C. §7401 et seq. (the "Act"), and provided for in this permit.

**8. COMPLIANCE SCHEDULE**

The permittee has indicated that the facility is in compliance and shall remain in compliance with the applicable requirements contained in Sections 4 and 5.

In addition, the permittee shall comply with any applicable requirements that become effective during the permit term.

## GENERAL CONDITIONS FOR OPERATING PERMIT

### 9. FEES

The permittee has paid the permit application processing fee and shall pay the annual compliance fee in accordance with the fee schedule pursuant to 310 CMR 4.00.

### 10. COMPLIANCE CERTIFICATION

All documents submitted to MassDEP shall contain certification by the responsible official of truth, accuracy, and completeness. Such certification shall be in compliance with 310 CMR 7.01(2) and contain the following language:

"I certify that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment."

The "Operating Permit Reporting Kit" contains instructions and the Annual Compliance Report and Certification and the Semi-Annual Monitoring Summary Report and Certification. The "Operating Permit Reporting Kit" is available to the permittee via MassDEP's web site,

<http://www.mass.gov/dep/air/approvals/aqforms.htm#op>

#### (a) Annual Compliance Report and Certification

The Responsible Official shall certify, annually for the calendar year, that the facility is in compliance with the requirements of this permit. The report shall be postmarked or delivered by January 30 to MassDEP and to the Regional Administrator, U.S. Environmental Protection Agency - New England Region. The report shall be submitted in compliance with the submission requirements below.

The compliance certification and report shall describe:

- (i) the terms and conditions of the permit that are the basis of the certification;
- (ii) the current compliance status and whether compliance was continuous or intermittent during the reporting period;
- (iii) the methods used for determining compliance, including a description of the monitoring, record keeping, and reporting requirements and test methods; and
- (iv) any additional information required by MassDEP to determine the compliance status of the source.

(b) Semi-Annual Monitoring Summary Report and Certification

The Responsible Official shall certify, semi-annually on the calendar year, that the facility is in compliance with the requirements of this permit. The report shall be postmarked or delivered by January 30 and July 30 to MassDEP. The report shall be submitted in compliance with the submission requirements below.

The compliance certification and report shall describe:

- (i) the terms and conditions of the permit that are the basis of the certification;
- (ii) the current compliance status during the reporting period;
- (iii) the methods used for determining compliance, including a description of the monitoring, record keeping, and reporting requirements and test methods;
- (iv) whether there were any deviations during the reporting period;
- (v) if there are any outstanding deviations at the time of reporting, and the Corrective Action Plan to remedy said deviation;
- (vi) whether deviations in the reporting period were previously reported;
- (vii) if there are any outstanding deviations at the time of reporting, the proposed date of return to compliance;
- (viii) if the deviations in the reporting period have returned to compliance and date of such return to compliance; and
- (ix) any additional information required by MassDEP to determine the compliance status of the source.

## 11. NONCOMPLIANCE

Any noncompliance with a permit condition constitutes a violation of 310 CMR 7.00: Appendix C and the Clean Air Act, and is grounds for enforcement action, for permit termination or revocation, or for denial of an operating permit renewal application by MassDEP and/or EPA. Noncompliance may also be grounds for assessment of administrative or civil penalties under M.G.L. c.21A, §16 and 310 CMR 5.00; and civil penalties under M.G.L. c.111, §142A and 142B. This permit does not relieve the permittee from the obligation to comply with any other provisions of 310 CMR 7.00 or the Act, or to obtain any other necessary authorizations from other governmental agencies, or to comply with all other applicable Federal, State, or Local rules and regulations, not addressed in this permit.

## 12. PERMIT SHIELD

- (a) This facility has a permit shield provided that it operates in compliance with the terms and conditions of this permit. Compliance with the terms and conditions of this permit shall be deemed compliance with all applicable requirements specifically identified in Sections 4, 5, 6, and 7, for the emission units as described in the permittee's application and as identified in this permit.

Where there is a conflict between the terms and conditions of this permit and any earlier approval or permit, the terms and conditions of this permit control.

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- (b) MassDEP has determined that the permittee is not currently subject to the requirements listed in Section 4, Table 7.
- (c) Nothing in this permit shall alter or affect the following:
  - (i) the liability of the source for any violation of applicable requirements prior to or at the time of permit issuance.
  - (ii) the applicable requirements of the Acid Rain Program, consistent with 42 U.S.C. §7401, §408(a); or
  - (iii) the ability of EPA to obtain information under 42 U.S.C. §7401, §114 or §303 of the Act.

### **13. ENFORCEMENT**

The following regulations found at 310 CMR 7.02(8)(h) Table 6 for wood fuel, 7.04(9), 7.05(8), 7.09 (odor), 7.10 (noise), 7.18(1)(b), 7.21, 7.22, 7.70, and any condition(s) designated as "state only" are not federally enforceable because they are not required under the Act or under any of its applicable requirements. These regulations and conditions are not enforceable by the EPA. Citizens may seek equitable or declaratory relief to enforce these regulations and conditions pursuant to Massachusetts General Law Chapter 214, Section 7A

All other terms and conditions contained in this permit, including any provisions designed to limit a facility's potential to emit, are enforceable by MassDEP, EPA and citizens as defined under the Act.

A permittee shall not claim as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### **14. PERMIT TERM**

This permit shall expire on the date specified on the cover page of this permit, which shall not be later than the date 5 years after issuance of this permit.

Permit expiration terminates the permittee's right to operate the facility's emission units, control equipment or associated equipment covered by this permit, unless a timely and complete renewal application is submitted at least 6 months before the expiration date.

### **15. PERMIT RENEWAL**

Upon MassDEP's receipt of a complete and timely application for renewal, this facility may continue to operate subject to final action by MassDEP on the renewal application.

In the event MassDEP has not taken final action on the operating permit renewal application prior to this permit's expiration date, this permit shall remain in effect until MassDEP takes final action

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on the renewal application, provided that a timely and complete renewal application has been submitted in accordance with 310 CMR 7.00: Appendix C(13).

#### **16. REOPENING FOR CAUSE**

This permit may be modified, revoked, reopened, and reissued, or terminated for cause by MassDEP and/or EPA. The responsible official of the facility may request that MassDEP terminate the facility's operating permit for cause. MassDEP will reopen and amend this permit in accordance with the conditions and procedures under 310 CMR 7.00: Appendix C(14).

The filing of a request by the permittee for an operating permit revision, revocation and reissuance, or termination, or a notification of a planned change or anticipated noncompliance does not stay any operating permit condition.

#### **17. DUTY TO PROVIDE INFORMATION**

Upon MassDEP's written request, the permittee shall furnish, within a reasonable time, any information necessary for determining whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall furnish to MassDEP copies of records that the permittee is required to retain by this permit.

#### **18. DUTY TO SUPPLEMENT**

The permittee, upon becoming aware that any relevant facts were omitted or incorrect information was submitted in the permit application, shall promptly submit such supplementary facts or corrected information. The permittee shall also provide additional information as necessary to address any requirements that become applicable to the facility after the date a complete renewal application was submitted but prior to release of a draft permit.

The permittee shall promptly, on discovery, report to MassDEP a material error or omission in any records, reports, plans, or other documents previously provided to MassDEP.

#### **19. TRANSFER OF OWNERSHIP OR OPERATION**

This permit is not transferable by the permittee unless done in accordance with 310 CMR 7.00: Appendix C(8)(a). A change in ownership or operation control is considered an administrative permit amendment if no other change in the permit is necessary and provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between current and new permittee, has been submitted to MassDEP.

## 20. PROPERTY RIGHTS

This permit does not convey any property rights of any sort, or any exclusive privilege.

## 21. INSPECTION AND ENTRY

Upon presentation of credentials and other documents as may be required by law, the Permittee shall allow authorized representatives of MassDEP, and EPA to perform the following:

- (a) enter upon the permittee's premises where an operating permit source activity is located or emissions-related activity is conducted, or where records must be kept under the conditions of this permit;
- (b) have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) sample or monitor at reasonable times any substances or parameters for the purpose of assuring compliance with the operating permit or applicable requirements as per 310 CMR 7.00 Appendix C(3)(g)(12).

## 22. PERMIT AVAILABILITY

The permittee shall have available at the facility, at all times, a copy of the materials listed under 310 CMR 7.00: Appendix C(10)(e) and shall provide a copy of the permit, including any amendments or attachments thereto, upon request by MassDEP or EPA.

## 23. SEVERABILITY CLAUSE

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

## 24. EMERGENCY CONDITIONS

The permittee shall be shielded from enforcement action brought for noncompliance with technology based<sup>1</sup> emission limitations specified in this permit as a result of an emergency<sup>2</sup>. In order to

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<sup>1</sup> Technology based emission limits are those established on the basis of emission reductions achievable with various control measures or process changes (e.g., a new source performance standard) rather than those established to attain health based air quality standards.

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use emergency as an affirmative defense to an action brought for noncompliance, the Permittee shall demonstrate the affirmative defense through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (a) an emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (b) the permitted facility was at the time being properly operated;
- (c) during the period of the emergency, the permittee took all reasonable steps as expeditiously as possible, to minimize levels of emissions that exceeded the emissions standards, or other requirements in this permit; and
- (d) the permittee submitted notice of the emergency to MassDEP within two (2) business days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emission, and corrective actions taken.

If an emergency episode requires immediate notification to the Bureau of Waste Site Cleanup/-Emergency Response immediate notification to the appropriate parties should be made as required by law.

## 25. PERMIT DEVIATION

Deviations are instances where any permit condition is violated and not reported as an emergency pursuant to Section 24 of this permit. Reporting a permit deviation is not an affirmative defense for action brought for noncompliance. Any reporting requirements listed in Table 6. of this Operating Permit shall supersede the following deviation reporting requirements, if applicable.

The permittee shall report to MassDEP's Regional Bureau of Waste Prevention the following deviations from permit requirements, by telephone, fax or electronic mail (e-mail), within three (3) days of discovery of such deviation:

- Unpermitted pollutant releases, excess emissions or opacity exceedances measured directly by CEMS/COMS, by EPA reference methods or by other credible evidence, which are ten percent (10%) or more above the emission limit.
- Exceedances of parameter limits established by your Operating Permit or other approvals, where the parameter limit is identified by the permit or approval as surrogate for an emission limit.
- Exceedances of permit operational limitations directly correlated to excess emissions.
- Failure to capture valid emissions or opacity monitoring data or to maintain monitoring equipment as required by statutes, regulations, your Operating Permit, or other approvals.

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<sup>2</sup> An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation would require immediate corrective action to restore normal operation, and that causes the source to exceed a technology based limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operations, operator error or decision to keep operating despite knowledge of any of these things.

- Failure to perform QA/QC measures as required by your Operating Permit or other approvals for instruments that directly monitor compliance.

For all other deviations, three (3) day notification is waived and is satisfied by the documentation required in the subsequent Semi-Annual Monitoring Summary and Certification. Instructions and forms for reporting deviations are found in the MassDEP Bureau of Waste Prevention Air Operating Permit Reporting Kit, which is available to the permittee via MassDEP's web site,

<http://www.mass.gov/dep/air/approvals/aqforms.htm#op>

This report shall include the deviation, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and the corrective actions or preventative measures taken.

Deviations that were reported by telephone, fax or electronic mail (e-mail) within 3 days of discovery, said deviations shall also be submitted in writing via the Operating Permit Deviation Report to the regional Bureau of Waste Prevention within ten (10) days of discovery. For deviations, which do not require 3-day verbal notification, follow-up reporting requirements are satisfied by the documentation required in the aforementioned Semi-Annual Monitoring Summary and Certification.

## 26. OPERATIONAL FLEXIBILITY

The permittee is allowed to make changes at the facility consistent with 42 U.S.C. §7401, §502(b)(10) not specifically prohibited by the permit and in compliance with all applicable requirements provided the permittee gives the EPA and MassDEP written notice fifteen days prior to said change; notification is not required for exempt activities listed at 310 CMR 7.00: Appendix C(5)(h) and (i). The notice shall comply with the requirements stated at 310 CMR 7.00: Appendix C(7)(a) and will be appended to the facility's permit. The permit shield allowed for at 310 CMR 7.00: Appendix C(12) shall not apply to these changes.

## 27. MODIFICATIONS

- Administrative Amendments - The permittee may make changes at the facility which are considered administrative amendments pursuant to 310 CMR 7.00: Appendix C(8)(a)1., provided they comply with the requirements established at 310 CMR 7.00: Appendix C(8)(b).
- Minor Modifications - The permittee may make changes at the facility which are considered minor modifications pursuant to 310 CMR 7.00: Appendix C(8)(a)2., provided they comply with the requirements established at 310 CMR 7.00: Appendix C(8)(d).
- Significant Modifications - The permittee may make changes at the facility which are considered significant modifications pursuant to 310 CMR 7.00: Appendix C(8)(a)3., provided they comply with the requirements established at 310 CMR 7.00: Appendix C(8)(c).

- (d) No permit revision shall be required, under any approved economic incentives program, marketable permits program, emission trading program and other similar programs or processes, for changes that are provided in this operating permit. A revision to the permit is not required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program under Title IV of the Act, provided that such increases do not require an operating permit revision under any other applicable requirement.

## 28. OZONE DEPLETING SUBSTANCES

This section contains air pollution control requirements that are applicable to this facility, and the United States Environmental Protection Agency enforces these requirements.

- (a) The Permittee shall comply with the standards for labeling of products using ozone-depleting substances pursuant to 40 CFR Part 82, Subpart E:
- (1) All containers containing a class I or class II substance that is stored or transported, all products containing a class I substance, and all products directly manufactured with a class I substance must bear the required warning statement if it is being introduced into interstate commerce pursuant to 40 CFR 82.106.
  - (2) The placement of the required warning statement must comply with the requirements of 40 CFR 82.108.
  - (3) The form of the label bearing the required warning statement must comply with the requirements of 40 CFR 82.110.
  - (4) No person may modify, remove or interfere with the required warning statement except as described in 40 CFR 82.112.
- (b) The Permittee shall comply with the standards for recycling and emissions reduction pursuant to 40 CFR 82, Subpart F, excepts as provided for motor vehicle air conditioners (MVAC) in Subpart B:
- (1) Persons opening appliances for maintenance, service, repair or disposal must comply with the required practices of 40 CFR 82.156.
  - (2) Equipment used during the maintenance, service, repair or disposal of appliances must comply with the standards for recycling and recovery equipment of 40 CFR 82.158.
  - (3) Persons performing maintenance, service, repair or disposal of appliances must be certified by an approved technician certification program pursuant to 40 CFR 82.161.
  - (4) Persons disposing of small appliances, MVACs and MVAC-like appliances (as defined in 40 CFR 82.152) must comply with recordkeeping requirements of 40

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- (5) Persons owning commercial or industrial process refrigeration equipment must comply with the leak repair equipment requirements of 40 CFR 82.156.
- (6) Owners/operators of appliances normally containing 50 or more pounds of refrigerant must keep records of refrigerant purchased and added to such appliances pursuant to 40 CFR 82.166.
- (c) If the Permittee manufactures, transforms, imports or exports a class I or class II substance, the Permittee is subject to all the requirements as specified in 40 CFR Part 82, Subpart A, "Production and Consumption Controls".
- (d) If the Permittee performs a service on motor (fleet) vehicles when this service involves ozone-depleting substance refrigerant (or regulated substitute substance) in the motor vehicle air conditioner (MVAC), the Permittee is subject to all the applicable requirements as specified in 40 CFR Part 82, Subpart B, "Servicing of Motor Vehicle Air Conditioners". The term "motor vehicle" as used in Subpart B does not include a vehicle in which final assembly of the vehicle has not been completed. The term "MVAC" as used in Subpart B does not include the air-tight sealed refrigeration system used on as refrigerated cargo or system used on passenger buses using HCFC-22 refrigerant.
- (e) The Permittee shall be allowed to switch from any ozone-depleting substance to any alternative that is listed in the Significant New Alternatives Program (SNAP) promulgated pursuant to 40 CFR Part 82, Subpart G, "Significant New Alternatives Policy Program".

## 29. PREVENTION OF ACCIDENTAL RELEASES

This section contains air pollution control requirements that are applicable to this facility, and the United States Environmental Protection Agency enforces these requirements.

Your facility is subject to the requirements of the General Duty Clause, under 112(r)(1) of the CAA Amendments of 1990. This clause specifies that the owners or operators of stationary sources producing, processing, handling or storing a chemical in any quantity listed in 40 CFR Part 68 or any other extremely hazardous substance have a general duty to identify hazards associated with these substances and to design, operate and maintain a safe facility, in order to prevent releases and to minimize the consequences of accidental releases which may occur.

**30. LEGEND OF ABBREVIATED TERMS IN OPERATING PERMIT**

AQ ID	Stationary Source Emission Inventory Identification Number
FMF FAC NO.	Facility Master File Facility Number
FMF RO NO.	Facility Master File Regulated Object Number
EU#	Emission Unit number
AAR	Authorized Account Representative
ARP	ash reduction process
Btu/kWh	British thermal units per kilowatt hour
Btu/lb	British thermal units per pound
CAM	Compliance Assurance Monitoring
CEM	continuous emission monitor
COM	continuous opacity monitor
CO	carbon monoxide
CO <sub>2</sub>	carbon dioxide
CT	cooling tower
DS	dry scrubber
ECP	emission control plan
EPA	Environmental Protection Agency
ESP	electrostatic precipitator
FF	fabric filter
gpm	gallons per minute
Hg	mercury
HAP	hazardous air pollutant
HHV	higher heating value
lb/hr	pound per hour
lb/MMBtu	pound per million British thermal units
lb/MWh	pound per megawatt-hour (net)
lb/GWh	pound per gigawatt-hour (net)
LOI	loss-on-ignition
mA	milliampere (1/1,000 of an ampere)
MassDEP	Massachusetts Department of Environmental Protection ("the Department")
MCR	maximum continuous rating
MMBtu/hr	million British thermal units per hour
MW	megawatt
NAICS	North American Industrial Classification System
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NSPS	New Source Performance Standards
NH <sub>3</sub>	ammonia
NO <sub>2</sub>	nitrogen dioxide
NO <sub>x</sub>	nitrogen oxides
ppm <sub>w</sub>	parts per million by weight
ppm <sub>vd</sub> @ 3% O <sub>2</sub>	parts per million by volume, dry basis, corrected to three percent oxygen
PAC	powder activated carbon
Pb	lead
PM	particulate matter
PM <sub>10</sub>	particulate matter up to 10 microns in size (condensables included)

**Section 30 (continued)**

PM <sub>2.5</sub>	particulate matter up to 2.5 microns in size (condensables included)
POTW	publicly-owned treatment works
PSD	Prevention of Significant Deterioration
R-C	Research-Cottrell
SCR	selective catalytic reduction
SDA	spray dryer absorber
SIC	Standard Industrial Code
SSM	start-up, shutdown, and malfunction
SO <sub>2</sub>	sulfur dioxide
SO <sub>x</sub>	sulfur oxides
SO <sub>3</sub>	sulfur trioxide
tpy	tons per consecutive twelve-month period
VOC	volatile organic compounds
<	less than
>	greater than
≤	less than or equal to
≥	greater than or equal to
%	percent
ΔP	delta-P; differential pressure

Dominion Energy Brayton Point, LLC

7/25/11 Final Operating Permit

Application No. 4V04019

Transmittal No. W051616

Page 70 of 70

5/30/12 Minor Modification No. SE-11-039

## **APPEAL CONDITIONS FOR OPERATING PERMIT**

This permit is an action of the MassDEP. If you are aggrieved by this action, you may request an adjudicatory hearing within 21 days of issuance of this permit. In addition, any person who participates in any public participation process required by the Federal Clean Air Act, 42 U.S.C. §7401, §502(b)(6) or under 310 CMR 7.00: Appendix C(6), with respect to MassDEP's final action on operating permits governing air emissions, and who has standing to sue with respect to the matter pursuant to federal constitutional law, may initiate an adjudicatory hearing pursuant to Chapter 30A, and may obtain judicial review, pursuant to Chapter 30A, of a final decision therein.

If an adjudicatory hearing is requested, the facility must continue to comply with all existing federal and state applicable requirements to which the facility is currently subject, until a final decision is issued in the case or the appeal is withdrawn. During this period, the application shield shall remain in effect, and the facility shall not be in violation of the Act for operating without a permit.

Under 310 CMR 1.01(6)(b), the request must state clearly and concisely the facts which are the grounds for the request, and the relief sought. Additionally, the request must state why the permit is not consistent with applicable laws and regulations.

The hearing request along with a valid check payable to The Commonwealth of Massachusetts in the amount of one hundred dollars (\$100.00) must be mailed to:

The Commonwealth of Massachusetts  
Department of Environmental Protection  
P.O. Box 4062  
Boston, MA 02211

The request will be dismissed if the filing fee is not paid unless the appellant is exempt or granted a waiver as described below.

The filing fee is not required if the appellant is a city or town (or municipal agency) county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.

MassDEP may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.

**CERTIFICATE OF SERVICE**

The undersigned certifies that on January 29, 2014, the foregoing document **[REVISED PROPOSED] COMPLAINT IN INTERVENTION** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 29, 2014, the foregoing document **[REVISED PROPOSED] COMPLAINT IN INTERVENTION** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
Deanna R. Swits

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and )  
 )  
 THE CITY OF FALL RIVER, )  
 )  
 Plaintiff-Intervenor, )  
 )  
 v. )  
 )  
 DOMINION ENERGY, INC., DOMINION )  
 ENERGY BRAYTON POINT, LLC, AND )  
 KINCAID GENERATION, LLC. )  
 )  
 )  
 Defendants. )  
 )  
 )

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Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM  
IN SUPPORT OF ITS MOTION TO MODIFY CONSENT DECREE**

On April 2, 2013, the United States of America ("United States") and the Defendants, Dominion Energy, Inc. (hereinafter "Dominion"), Dominion Energy Brayton Point, LLC and Kincaid Generation, LLC (collectively referred to as the "Parties"<sup>1</sup>) filed a proposed Consent Decree agreeing upon certain settlement terms in connection with and resolution of a Complaint alleging the Defendants' violation of the Clean Air Act at the Brayton Point power station

<sup>1</sup> The "Parties" includes the substitutions and additions as discussed *supra* note 1.

located in Somerset, Massachusetts, amongst other places.<sup>2</sup> A Motion to Enter the Consent Decree was filed with the Court on July 2, 2013, after the United States so moved, and the Court granted the United States' motion, ordering the Consent Decree entered on July 17, 2013.

As part of the Consent Decree, Dominion was required to consult with the City of Fall River and the Town of Somerset to identify and propose certain environmental mitigation projects totaling \$1,600,000 that would, in turn, be submitted to the Environmental Protection Agency ("EPA") for review and approval pursuant to Section XIII of the Consent Decree. Consent Decree, App. A, Section II, ¶ A; Section XI, ¶¶ A and B ("Dominion in consultation with the Town of Somerset and the City of Fall River ('the municipalities'), shall submit one or more Project Plans to EPA for review and approval . . . .")

The Consent Decree specifically identified the City of Fall River as a beneficiary based on the harms suffered by Fall River and its citizens, stating:

[t]he Parties expectation is that approximately half of the total Project Dollars will be spent in Somerset [and, therefore, the other half in Fall River], but the final distribution will depend on the Projects (and their costs) that can be proposed and implemented within the time frames and other requirements set out in th[e] Appendix.

Consent Decree, App. A., Section XI, ¶ B. Dominion was instructed to submit proposed plans ("Project Plans") to the EPA within 120 days from the entry of the Consent Decree. Consent Decree, App. A., Section II, ¶ A. Yet, as described more fully in the Intervenor Complaint and Motion to Intervene filed concomitantly herewith, Dominion's representatives, particularly the consultant assigned to liaise with Fall River on behalf of Dominion, failed inform Fall River the

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<sup>2</sup> The Complaint alleges that the Defendants also violated the Clean Air Act at the State Line power station in Hammond, Indiana and the Kincaid power station located in Kincaid, Illinois. For the purposes of Fall River's discussion, the midwestern power stations are omitted in the body of the motion.

Consent Decree had been entered, failed to provide a final deadline for Fall River's submission, and, most egregiously, failed to inform Fall River that the assigned consultant's relationship with Dominion actually was terminated on September 1, 2013 due to the sale of the Brayton Point facility from Dominion. The only deadline ever communicated to Fall River was given at the initial July 11, 2013 meeting between Fall River and Dominion, in which Dominion gave Fall River an August 1, 2013 deadline, approximating three weeks, in which to provide a comprehensive Project Plan to Dominion for review.

Unsurprisingly, Fall River was unable to provide its project plan within three weeks given the narrow scope of the environmental mitigation projects, and an extension was approved by the Dominion consultant for an indefinite amount of time. **Exh. 1, ¶ 6.** Fall River maintained communications with the consultant after his termination, working on the proposal and inquiring about the final deadline for submission. Neither the consultant nor any other Dominion representative informed Fall River of the change in personnel or provided a final court deadline. Not until December 17, 2013, when Fall River officials read a newspaper article in the *Herald News* reporting that the neighboring Town of Somerset was likely to receive the full \$1,600,000 award by the EPA did Fall River have a glimmer of notice that a problem existed. **Exh. 1, ¶ 12.**

Upon learning this information, the Mayor of Fall River arranged a conference with H. Curtis Spalding, Administrator for Region 1 at the EPA, Steven Viggiani, Esq., senior enforcement counsel for the EPA, and other City officials. This conference revealed that Dominion informed the EPA in a November 5, 2013, letter that Fall River had not maintained communication, had eventually indicated that it had no viable projects, and that Dominion had no choice but to move forward with only the Town of Somerset's Project Plan. **Exh. 1.** Fall River advised the EPA that the circumstances, as expressed by Dominion, simply were untrue.

and that it had received a Project Plan prepared by Amereseo the same day. EPA officials advised the City that it would wait for Dominion's response to Fall River's offered Project Plan.

**Exh. 1, ¶ 15.**

Over the next two weeks (including the Christmas and New Year's holidays) Fall River corresponded with representatives from the EPA, the Department of Justice, and Dominion. The EPA and Department of Justice representatives made themselves available for a conference on January 7, 2014. Dominion refused to participate and refused to accept Fall River's proposal, indicating that although Dominion agreed to give Fall River additional time to prepare a Project Plan after its self-imposed August 1, 2013, deadline, "Dominion did not, nor could it, extend the Court-imposed deadline of November 14." **Exh. 1, ¶ 18.** Even after the conference with Department of Justice and EPA confirmed that EPA would accept an amended submission from Dominion including the Fall River proposal, and that no modification to the consent decree need occur, Dominion still refused to accept Fall River's proposal or submit the same to the EPA for consideration. **Exh. 2.**

The City was never informed when the time began for the 120 day deadline by or through Dominion's agents, nor was Fall River provided with a copy of the order accepting the Consent Decree. **Exh. 1, ¶ 22.** The failure to communicate the final November 14 deadline (i.e., 120 days after the acceptance of the Consent Decree by the Court), severely prejudiced the City's ability to submit a timely Project Plan to Dominion. Thus, Fall River now must turn to this Court to enforce Dominion's compliance with the Consent Decree, in particular its duty to consult with Fall River, and, if necessary, modify the Consent Decree to allow the EPA to accept Fall River's proposal directly without the involvement of Dominion, thereby enabling the award

of half of the \$1.6 million allocated to be split between Fall River and the Town of Somerset, as specifically written in the Consent Decree.

### ARGUMENT

A court has the inherent authority to enforce and/or modify its orders. And, while a consent judgment has many characteristics of a private contract between litigants, it is nonetheless a judgment bearing the imprimatur (or more appropriately, the *nihil obstat*) of the court and backed by its full authority. *Kasper v. Hayes*, 651 F. Supp. 1311, 1314 (N.D. Ill. 1987); see also *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 616 F.2d 1006, 1013-15 (7th Cir.1980). The Consent Decree entered in this action specifically indicates that this Court retains jurisdiction to enforce the Consent Decree. (Consent Decree, ¶ 87.)

A specifically intended beneficiary to a consent decree has standing to enforce and/or to modify that consent decree. *South v. Rowe*, 759 F.2d 610, 612 (7th Cir. 1985.) And, while some courts have recognized a narrow exception where the government is a party to the consent decree, here, the Clean Air Act itself specifically authorizes the intervention of the City of Fall River. 42 U.S.C. § 7604(b)(1)(B). Moreover, the Seventh Circuit has stated that

This Court has previously stated that “‘Consent’ that is no more than knuckling under to the inevitable is more like an adjudication than a contract.”...[Th]e defendant may enter into a consent decree, not because the plaintiffs' ability to recover is uncertain, but because the parties recognize that the compliance with the law, sooner rather than later, will minimize costs and save both parties time and money. As such, modification is appropriate where an unforeseen obstacle warrants revision of the consent decree, and a proposed modification is necessary in order for the decree to remedy adequately the constitutional or legal violation which it was designed to remedy. Modification is particularly appropriate where the alternative is to vacate the decree, collect the disbursed payments and conduct a damages trial that will likely result in a compensatory award similar to the proposed modification.

*U.S. v. City of Chicago*, 978 F.2d 325, 333 (7th Cir. 1992) (internal citations omitted) (noting also that the court could not put “our desire for finality in the way of rendering substantial justice”).

Additionally, Fed R. Civ. P. 60(b)(5) provides a vehicle whereby a party may ask a court to modify or vacate a judgment or order if ‘a significant change either in factual conditions or in law’ renders continued enforcement ‘detrimental to the public interest.’” *See also Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992). Here, the change in ownership of Dominion that led to the termination of its consultant to Fall River, without informing Fall River of the change or the deadline has created a circumstances that will severely prejudice Fall River and that Fall River is unable to address with Dominion, the U.S. Department of Justice, and the EPA without the intervention of this Court.

For instance, in *U.S. v. City of Northlake*, 942 F.2d 1164, 1167-68 (7th Cir. 1991), the Seventh Circuit held that even after more than two years from the entry of the consent decree, the consent decree could be modified to include additional claims of discrimination. The Seventh Circuit stated there:

Requiring the United States to file a new lawsuit to remedy discrimination already comprehended by the plain language of the consent decree undermines the judiciary's role in overseeing the proper implementation of the decree and unnecessarily delays, frustrates and prejudices the plaintiff in its efforts to obtain enforcement.

*Id.* at 1169.

The *Northlake* opinion highlights the judicial inefficiency with requiring a beneficiary to file a separate suit to enforce rights and interests already contemplated in a consent decree—if

only the consent decree is enforced—and specifically allows for enforcement of a process-related aspect of a consent decree.

Where, as here, the proposed relief—which is simply allowing the EPA to directly consider the proposal of Fall River or requiring Dominion to submit the proposal of Fall River to the EPA at this time—is narrowly tailored to the change in circumstances, a court abuses its discretion ‘when it refuses to **modify** an injunction or **consent decree** in light of such changes.’” *Horne*, 557 U.S. at 447 (quoting *Agostini v. Felton*, 521 U.S. 203, 215, 117 S. Ct. 1997, 138 L. Ed. 2d 391 (1997)); see *System Federation No. 91 Railway Employees' Dep't v. Wright*, 364 U.S. 642, 647, 81 S. Ct. 368, 5 L. Ed. 2d 349 (1961) (“[A] sound judicial discretion may call for the modification of the terms of an injunction decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen.”). The Court should exercise flexibility in its decision and should consider the goals of the original judgment, the factors that are important to the particular litigation — including the public interest where the litigation involves the public's rights — and the nature of the change in circumstances. See *Rufo* at 381, 383; *Horne*, 557 U.S. at 450; see also *Hendrix v. Page*, 986 F.2d 195, 198 (7th Cir. 1993) (*Rufo*'s flexible standard generally applies in all equitable cases).

One of the major, articulated goals of the Consent Decree included mitigating the environmental harm to Fall River from alleged violations of the Clean Air Act by Dominion at the Brayton Point facility, located just across the Taunton River in Somerset. See Consent Decree, ¶ 113; Appx. A, Section XI, ¶ A (“Dominion shall use good faith efforts to secure as much environmental benefit as possible . . .” “Consistent with the requirements of Section II of this Appendix, Dominion, in consultation with the Town of Somerset and the City of Fall River

(“the municipalities”), shall submit one or more Project Plans to EPA for review and approval . . .”). Failure to modify the Consent Decree would frustrate the purpose and intent of the Consent Decree, cause an egregious injustice to Fall River and its inhabitants, be contrary to the public interest, and cause irreparable harm.

### CONCLUSION

Dominion’s failure to communicate in good faith with the City of Fall River, as required by the Consent Decree, severely prejudiced the City’s ability to submit a “timely” Project Plan to Dominion. Thus, Fall River now must turn to this Court to enforce Dominion’s compliance with the Consent Decree, in particular its duty to consult with Fall River, and, if necessary, modify the Consent Decree to allow the EPA to accept Fall River’s proposal directly without the involvement of Dominion, thereby enabling the award of half of the \$1.6 million allocated to be split between Fall River and the Town of Somerset, as specifically written in the Consent Decree.

Dated: January 14, 2014

Respectfully submitted,

s/ Deanna R. Swits  
Deanna R. Swits, IL No. 6287513  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN SUPPORT OF ITS MOTION TO MODIFY CONSENT DECREE** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN SUPPORT OF ITS MOTION TO MODIFY CONSENT DECREE** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
Deanna R. Swits

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# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,  
Plaintiff

v.

C.A. No.:3:13-cv-08086-SEM-BGC

DOMINION ENERGY, INC.,  
BRAYTON POINT ENERGY, LLC  
KINCAID GENERATION, LLC, and  
EQUIPOWER RESOURCES CORP.,  
Defendants

AFFIDAVIT

I, Christy M. DiOrio, being duly sworn, hereby depose and state:

1. That I am assistant corporation counsel for the City of Fall River (hereinafter "Fall River" or "City") in the Commonwealth of Massachusetts.
2. That upon information and belief, representatives from Dominion Energy, Inc. (hereinafter "Dominion"), namely James Smith of Smith, Ruddock & Hayes and Kevin Hennessey, Director of Federal State & Local Affairs from Dominion Resources Services, Inc. met with the following Fall River officials: Shawn Cadime, former City Administrator; Kenneth Pacheco, Director, Department of Community Maintenance and present Interim City Administrator; Mayor William A. Flanagan, and Elizabeth Sousa, Corporation Counsel on July 11, 2013, to discuss the applicable settlement terms of the above-captioned matter as it related to Fall River as a beneficiary of the settlement.
3. That Fall River officials were provided with a copy of the Consent Decree filed in the above-captioned civil action at said July 11, 2013, meeting.
4. That upon information and belief, at said July 11, 2013, meeting, Fall River was not informed or advised as to the projected time frame in which the Consent Decree would be approved by the Court thereby triggering the 120 day court-appointed deadline for Dominion's submission of Project Plan(s) to the Environmental Protection Agency ("EPA").
5. That although the Consent Decree had been granted and approved by this Honorable Court on July 17, 2013, Fall River was never advised of nor received a copy of the entered order.
6. That Fall River missed the August 1, 2013, deadline Dominion established for Fall River to prepare and submit a proposed Project Plan. Upon information and belief, neither the

Director of Community Maintenance nor the Corporation Counsel received any correspondence from Dominion's representatives regarding the missed August 1, 2013, Dominion-imposed deadline. As the then-appointed City Administrator is no longer employed by the City, the undersigned requested that a search of Mr. Cadime's computer be conducted to determine if any email correspondence was received from or delivered to Dominion's representatives. A search yielded no such correspondence. (See affidavit of John L. Niewola attached hereto as **Exhibit A**).

7. That upon information and belief, on or about September 3, 2013, Mayor William A. Flanagan instructed Corporation Counsel to prepare a proposed Project Plan in accordance with the terms of the Consent Decree. Corporation Counsel assigned this matter to the undersigned on or about the same date.
8. That after a review of the terms of the Consent Decree, the undersigned met with Mr. Cadime and Mr. Pacheco to discuss the narrow scope of allowable proposed projects, given the City's completion of a number of comprehensive solar energy projects at its public schools and the replacement of diesel powered public works' vehicles from other funding sources. Thereafter, the City recognized that it needed additional time to formulate a Project Plan that would conform to the narrow scope of the consent decree.
9. That the undersigned requested of Dominion, by and through its representative, James Smith of Smith, Ruddock & Hayes, additional time in which to complete a proposed Project Plan. (See email dated September 5, 2013 attached hereto at **Exhibit B**). Mr. Smith verbally confirmed that the City had additional time to complete the Project Plan and no new deadline was provided or established. At no time did Mr. Smith inform the undersigned that the Consent Decree had been approved and entered by this Honorable Court, thereby triggering the 120 day deadline appearing in Appendix A, ¶ A of the Consent Decree.
10. That Fall River hired Ameresco, an independent third-party contractor, to develop a proposed Project Plan that would conform to the narrow scope of the Consent Decree.
11. That after the verbal confirmation of an extension from Dominion's representative, the City received no further communication from Dominion, either written or verbal.
12. That on or about December 17, 2013, Fall River discovered that the Town of Somerset was "in line to receive all of 1.6 million from Brayton Point Settlement," as reported in the Fall River *Herald News*. (Article attached hereto at **Exhibit C**).
13. That on December 17, 2013, Fall River received a proposed Project Plan from Ameresco.
14. That the undersigned immediately contacted Mr. Smith, Dominion's representative, on December 17, 2013, to determine the veracity of the newspaper article. Mr. Smith agreed that it was "untrue" that Fall River "did not apply for its share" of the settlement money as reported by the *Herald News*, and that he would contact Dominion's legal counsel to

determine what was going on since Fall River had “worked hard” on this Project Proposal. On the same day, Mr. Smith, advised the undersigned that he no longer worked for Dominion.

15. That Mayor Flanagan, Mr. Pacheco and the undersigned had a conference call with H. Curtis Spalding, Region 1 Administrator for the Environmental Protection Agency (“EPA”) and Steven Viggiani, Esq., counsel for the EPA on December 17, 2013, to again determine the veracity of the *Herald News* article. EPA informed the City that it would wait for Dominion’s response to our request to submit our Project Plan to EPA.
16. After the EPA conference call, Mr. Smith advised the undersigned that a phone call from Kevin Hennessey, Director of Federal State & Local Affairs from Dominion Resources Services, Inc. would be forthcoming, advising Fall River that it was “out of the running.”
17. That on the same date, Mr. Hennessey did, indeed, inform the City that it had missed the 120 day deadline required by the Consent Decree, and as such, was not eligible to have its proposed Project Plan submitted to the EPA. Mr. Hennessey also requested that Fall River submit its request for late consideration of its Project Plan in writing so that it could be forwarded to Dominion’s general counsel for review and consideration. (See email and correspondence dated December 18, 2013, attached hereto at **Exhibit D**).
18. That Dominion, by and through its general counsel, declined to accept Fall River’s late proposal. (See email and correspondence dated December 19, 2013, attached hereto at **Exhibit E**).
19. That on December 23, 2013, the undersigned again spoke with Mr. Smith of Smith, Ruddock & Hayes, who stated that his relationship with Dominion terminated on September 1, 2013, after Dominion was sold to EquiPower Resources Corp. (hereinafter “EquiPower”), facts which were never relayed or disclosed to Fall River in our September discussions. Mr. Smith did not instruct the City to contact Kevin Hennessey of Dominion Resources Services, Inc. in the future or any other person employed by Dominion or EquiPower.
20. That no other Dominion representative or EquiPower representative ever contacted City officials after Mr. Smith’s termination to discuss a deadline or advise the City that it would be submitting its proposals to EPA on a certain date. Nor did any other Dominion representative or EquiPower representative inquire with Fall River as to the progress it was making with its proposed Project Plan after its discussions with Mr. Smith in September 2013.
21. That the United States of America filed a Notice Related to Consent Decree with this Honorable Court on December 5, 2013, noting that a “nonmaterial modification” to the Consent Decree may be made by written agreement without need for Court approval, pursuant to Section XXIII, ¶ 188, and that amongst these “nonmaterial modifications” was the fact that on August 29, 2013, Dominion Energy, Inc. “sold and transferred its ownership and operation interest . . .” to affiliates of EquiPower Resources Corp.”

("EquiPower") and that "EquiPower succeeds to Dominion Energy Inc.'s liabilities and obligations under the Consent Decree . . . (except for liabilities and obligations related to the Civil Penalty and Environmental Mitigation Projects required by the Consent Decree)." (emphasis added).

22. That Mr. Smith advised the undersigned on December 23, 2013, that he was also unaware of the 'November 2013 deadline' (i.e., the 120 days referenced in Appendix A, ¶ A of the Consent Decree).
23. That Fall River attempted to provide the Project Plan in good faith, and that efforts to amicably resolve this matter have been met with opposition by Dominion. (See email dated December 23, 2013, attached hereto as **Exhibit F**).

Signed and sworn under the pains and penalties of perjury this 23<sup>rd</sup> day of December 2013.

  
Christy M. DiOrto

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,  
Plaintiff

v.

C.A. No.:3:13-cv-08086-SEM-BGC

DOMINION ENERGY, INC.,  
BRAYTON POINT ENERGY, LLC  
KINCAID GENERATION, LLC, and  
EQUIPOWER RESOURCES CORP.,  
Defendants

AFFIDAVIT

I, John N. Niewola, being duly sworn, hereby depose and state:

1. That I am manager of Information Systems for the City of Fall River (hereinafter "Fall River" or "City") in the Commonwealth of Massachusetts.
2. That on December 20, 2013, Christy M. DiOrio, assistant corporation counsel, requested that I search through former City Administrator, Shawn Cadime's electronic files to determine if there was correspondence regarding the above-captioned matter.
3. That on said date, I ran a query of the terms: "Jim Smith" and "Dominion Energy" to locate any electronic correspondence.
4. That as a result of said search, only three (3) responses matched said query search and included: 1) a meeting request accepted on July 3, 2013, regarding Dominion Energy settlement with Jim Smith; 2) a meeting request sent to Yassara V. M. Todorov, legal assistant for the City's Office of the Corporation Counsel on September 6, 2013, regarding Dominion Energy Settlement; and 3) an email from Terrence Sullivan, Director of Community Utilities for Fall River indicating that Dominion Energy donated \$2,500 in gravel for parking lot construction bids. A copy of said records are attached hereto at **Exhibit 1**.

Signed and sworn under the pains and penalties of perjury this 26<sup>th</sup> day of December 2013.

  
John L. Niewola

# EXHIBIT 1

Shawn Cadime

---

From: Shawn Cadime  
Sent: Wednesday, July 03, 2013 12:21 PM  
To: Mayor  
Subject: Accepted: Jim Smith and Dominion Energy re: Settlement (617-523-0600)

Shawn Cadime

---

From: Shawn Cadime  
Sent: Friday, September 06, 2013 10:23 AM  
To: Yassara V. M. Todorov  
Subject: Accepted: Dominion Energy Settlement

**Shawn Cadime**

---

**From:** Terry Sullivan <tsullivan@fallriverma.org>  
**Sent:** Wednesday, April 11, 2012 2:07 PM  
**To:** Shawn Cadime  
**Subject:** FW: Parking Lot Construction Bid Results

Shawn,  
Per the e mails below we are going to award this small contract to D,S Enterprises for \$3,800.  
This is for a small parking lot for Bioserve visitors on Blossom Road 800 feet south of our Reservation Headquarters (2929 Blossom Road).  
The donations for the gravel are from Dominion Energy (\$2,500) and the Greater Fall River Land Conservancy (\$2,500).  
The \$3,800 for construction by D.S. Enterprises is covered by a DCR grant.  
I bring this to your attention in the event your office gets calls from Biszko.  
Please call me if you have any questions.  
Thanx  
terry

---

**From:** Mike Labossiere [mailto:milabossiere@fallriverma.org]  
**Sent:** Monday, April 09, 2012 10:15 AM  
**To:** Terry Sullivan  
**Cc:** Ted Home; Ted Kaegael  
**Subject:** FW: Parking Lot Construction Bid Results

Terry,

I'm resending this email which summarized the parking lot construction bids.

This morning I have confirmed that we will received two cash donations for gravel in the amount of \$5000. I will apply this donation directly to payment for gravel. I have an invoice from Potter Construction Materials in Westport stating the sum for our material will not exceed \$5000. I am ready to advise the Purchasing Dept. to award the bid to D.S. Enterprises based on this information because they were the low bidder (by \$2690) based on their bid for "Operations Only" and their quality of work is good.

If this is satisfactory to you please let me know at your earliest convenience. Thanks.

Mike

---

**From:** Mike Labossiere [mailto:milabossiere@fallriverma.org]  
**Sent:** Thursday, March 22, 2012 8:29 AM  
**To:** Terry Sullivan (tsullivan@fallriverma.org)  
**Cc:** (jfrlar@fallriverma.org); Ted Kaegael  
**Subject:** Parking Lot Construction Bid Results

Three bids were received by 10:30am on 3/12/12 close of bid.

<u>Company Name</u>	<u>Bid for Total</u>	<u>Bid for Operations Only</u>
Century Paving	\$17,500	\$7,600
Biszko Construction	\$9,712	\$6,490
D.S. Enterprises	\$11,170.75	\$3,800

Award of contract pending outcome of grant request by Water Dept. to conservation group for donation of materials for project. I hope to know about this grant in the next few weeks.

If grant for project is received, bid will be awarded to D.S. Enterprises. If no grant is received bid will be awarded to Biszki Construction.

Thank you.

Mike Labossiere  
*Reservation Superintendent*

Water Division, Treatment and Resources  
Department of Public Utilities  
CITY OF FALL RIVER

WATUPPA RESERVATION  
2929 Blossom Road  
Westport, MA 02790

Office Tel: 508-324-2749  
Email: [mlabossiere@fallriverma.org](mailto:mlabossiere@fallriverma.org)

# EXHIBIT B

**Christy Diorio**

---

**From:** Christy Diorio  
**Sent:** Thursday, September 05, 2013 11:03 AM  
**To:** 'jsmith@srhpublicpolicy.com'  
**Subject:** Dominion Energy Env'tl Mitigation Plan Project

**TimeMattersID:** MB558A24B1DA3807  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Hi Jim,

Can you confirm whether the \$800,000 will be provided as a reimbursement to the City following our expenditure? I need to determine whether the City will need to initially bond for the project we decide to undertake.

I look forward to hearing from you regarding an appropriate extension in which we can put a reasonable plan together which meets the June 24, 2013 Guidelines.

Best,

Christy DiOrio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
508-324-2655 (Fax)

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# EXHIBIT C

# The Herald News

REALITY. DELIVERED DAILY NOW!

## Officials say Somerset schools in line to receive all of \$1.6 million from Brayton Point settlement

Selectmen seek explanation on why funds are not going toward municipal use

By Michael Holtzman  
Herald News Staff Reporter  
Posted Dec 16, 2013 @ 10:33 PM  
Last update Dec 16, 2013 @ 11:09 PM

### Related Stories

Fall River, Somerset split \$1.6M from Dominion for clean energy

Somerset schools outlining clean energy proposals

SOMERSET — Officials are optimistic about the Somerset School Department receiving the lion's share of \$1.6 million in energy-efficient project funding as part of an April 1 settlement between the former owner of Brayton Point and the federal government.

"My understanding is the school department had done everything they were supposed to do and, therefore, they would be rewarded with the whole \$1.6 million," state Rep. Patricia Haddad, D-Somerset, said Monday night.

She said Fall River did not apply for its share.

"We'll have an announcement right after the first of the year. I feel very optimistic," said Somerset School Committee Vice Chairman Jamison Souza, who said he's been working closely with Haddad for months.

"We're going to receive more than we originally planned strictly through the school department," he said.

Among project criteria are energy efficiency and renewable energy, Haddad said.

The Board of Selectmen are scheduled to talk about the issue at Wednesday's 6 p.m. meeting at Town Hall after Chairman Donald Setters asked Town Administrator Dennis Luttrell last week for an update on the settlement funds.

The April 1 settlement between Dominion — owner of Brayton Point until this year — and the U.S. Environmental Protection Agency has been widely known.

As part of a 2010 court agreement over three Dominion power plants found to be in violation of 2010 federal clean air standards, the Virginia-based Dominion agreed to about \$13 million in payments, including \$9.8 million in federal mitigation projects and a \$3.4 million civil penalties, including the \$1.6 million for Somerset and Fall River to share.

In late August, school officials announced they submitted several energy recovery and energy control system projects to a Dominion manager, Alice Prior.

With specific details provided, their plan is to use the cost-saving measures at Somerset Middle School and North, South and Chace elementary schools, Superintendent Richard Medeiros had said.

The projects included:

- \$779,011 to install CO2 energy-recovery exchangers at four schools, with an investment return in four years and a \$1.6 million savings over 20 years.
- \$612,059 to install heating and cooling system energy controls, with a 12-year investment return.
- Among several other proposals, one was to install solar panels at the middle school and North Elementary School to supply at least 20 percent — and potentially three times that amount — of each building's electrical needs.

Questions remain unanswered about how the funds may be submitted to school or town departments, which is part of the reason selectmen want the issue explained.

Selectman Scott Lebean said he understood "originally the money was for municipal use." Lebean said he was "informed that some wording was changed to include the school department."

He said they were awaiting an explanation from Luttrell about what happened.

Haddad, who, along with Souza, said they have worked hard and many months on this funding, had a different explanation.

"I called first to the municipal side, and when they didn't get back to me, I was asked by the secretary (Richard Sullivan, from the state's energy/environmental affairs agency) for the projects, and I went in the school department," Haddad said in a phone interview.

With Somerset and Fall River in line to divide the \$1.6 million evenly, Haddad said she asked municipal officials to put together \$1 million in projects.

Asked whom she contacted, Haddad said, "I hate to throw people under the bus, but I called the town administrator."

Four phone calls were left for Luttrell at his office Monday afternoon and at his home number Monday night. He left a message at The Herald News at 4 p.m. saying he was leaving at the end of the workday and would call again today, and he did not answer messages left at his home at night.

On the \$1.6 million award, Haddad said, "My understanding is that it is going to come directly from the state to the school department and it will not go to the municipality."

When asked why that was an issue, Haddad said she understood from school officials the municipal side wanted "a carrying fee of 10 percent."

"I can't let them take 10 percent (\$160,000) off the top," Haddad said. "It's not free money. There was a lot of work that went into these requests."

Neither Luttrell nor Setters could be reached to comment about the 10 percent fee Haddad alleged town officials were seeking.

Setters said at last week's meeting that while he understood the funding was for the municipal side, the school department benefiting would help the town as a whole.

Email Michael Holtzman at [m Holtzman at mholztzman@heraldnews.com](mailto:mholtzman@heraldnews.com).

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# **EXHIBIT D**

**Christy Diorio**

---

**From:** Christy Diorio  
**Sent:** Wednesday, December 18, 2013 5:07 PM  
**To:** 'kevin.r.hennessey@dom.com'  
**Cc:** 'viggiani.steven@epa.gov'  
**Subject:** USA v. Dominion Energy Inc., et al  
**Attachments:** Kevin Hennessey.pdf; Fall River Potential Energy Conservation Measures.pdf; Herald News Article 12.17.13.pdf; FW: Dominion Energy Env'tl Mitigation Plan Project

**Importance:** High

**TimeMattersID:** M7724A2B3D381643  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Hi Kevin,

Attached please find correspondence requested by you during our telephone conversation yesterday. Kindly forward this letter to your general counsel. Could you provide me with her direct contact information? I would like to follow up with her in the very near future.

I look forward to favorably resolving this issue.

Best,

Christy Diorio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
508-324-2655 (Fax)

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**City of Fall River**  
*Office of the Corporation Counsel*

**WILLIAM A. FLANAGAN**  
Mayor

**ELIZABETH SOUSA**  
Corporation Counsel



**GARY P. HOWAYECK**  
Assistant Corporation Counsel

**CHRISTY M. DIORIO**  
Assistant Corporation Counsel

December 18, 2013

*Via email to Kevin.R.Hennessy@dom.com  
and regular mail*

Kevin R. Hennessey  
Director  
Federal, State & Local Affairs  
Dominion Resources Services, Inc.  
Rope Ferry Road, Route 156  
Waterford, CT 06385

Re: Dominion Energy, Inc. Environmental Mitigation Projects  
USA v. Dominion Energy, Inc., et al  
C.A. No.: 13-03086

Dear Mr. Hennessey:

This correspondence is written in follow up to our telephone conversation yesterday, December 17, 2013, wherein you requested that the City of Fall River (hereinafter "City" or "Fall River") submit its concerns surrounding the environmental mitigation projects required by Dominion Energy, Inc. (hereinafter "Dominion") pursuant to a Consent Decree filed in the United States District Court for the Central District of Illinois. Dominion is required to submit proposed Project Plans to the U.S. Environmental Protection Agency ("EPA") for review and approval in accordance with the Consent Decree, after consultation with the Town of Somerset and the City of Fall River.

The Project Plans require description of anticipated environmental benefits expected to be realized upon completion and implementation of (a) energy efficiency, geothermal, and/or solar photovoltaic projects at one or more public school buildings, and/or (b) clean diesel projects to retrofit or repower higher-polluting diesel powered engines for municipal construction or public works vehicles or equipment.

The City initially met with Dominion representatives on July 11, 2013. Thereafter, the City determined that the City's progress and advancements made with its public schools' energy efficiency as well as the municipal fleet limited Fall River's options as to use of mitigation funds. Over the last several years, the City has completed a number of comprehensive solar energy projects at the public schools, and has, through other funding sources, replaced and

Kevin Hennessey  
December 18, 2013  
Page 2 of 3

upgraded the City's public works diesel powered vehicles, including its garbage and recycle vehicles. Thereafter the City recognized that it needed additional time to formulate a Project Plan that would conform to the narrow scope of the Consent Decree.

In working with Dominion's representative, namely James Smith of Smith, Ruddock & Hayes, the City requested and received additional time to prepare its Project Plan in September. The undersigned explained the difficulty we were having formulating a plan that conformed to the Consent Decree and asked Mr. Smith if he could look into whether there was any leeway on solely providing improvements to school buildings (i.e., prepare plans for other municipal buildings) in an effort to expand the City's ability to use the settlement money. As evidence of this request, an email from the undersigned to Mr. Smith dated September 5, 2013, affirming our request for an extension is enclosed. Mr. Smith responded via telephone that the use of the funds was inflexible. As such, the City immediately sought a preliminary investment grade audit from an independent third-party contractor, Ameresco. The undersigned received assurances from Mr. Smith that the City had additional time to formulate a Project Plan and no final deadline was articulated or expressed.

Ameresco prepared a report entitled, "Potential Energy Conservation Measures for the Dominion Electric Consent Decree" identifying possible enhancements to Fall River schools (copy attached hereto). Primarily, Ameresco identified the possibility of a solar photovoltaic system at Fonseca Elementary and energy management systems at five other schools. After the City was granted additional time in September to have Ameresco prepare the Project Plan, the undersigned was never contacted by Dominion's representative again. Ameresco's proposed Project Plan was submitted to the City on December 17, 2013, the same day in which the *Herald News* reported that the Town of Somerset would likely be receiving the full 1.6 million dollar settlement earmarked in the Court Decree for certain environmental benefits to be realized in Somerset and Fall River. (See attached).

Since the City did not receive any notification from Dominion, by and through its representative, that our previously approved extension was over, and had received adequate assurances of an extension leading it to contract with Ameresco, the City was surprised, to say the least, by the publication's claim, particularly when the City was never informed that Dominion would submit all proposed projects to the EPA by November 17, 2013, and that Dominion had, in fact, submitted Somerset's project proposal without intending to ever honor the extension granted by Dominion's representative.

Thereafter, the City immediately inquired with Dominion, by and through its representative, James Smith, of the veracity of the *Herald News* article, and whether the EPA approved the Somerset proposed Project Plan without consideration of the Fall River project proposal that was undertaken by Ameresco pursuant to the extension granted in September. Additionally, the City called the EPA, who apprised the City of its understanding that Fall River had not been responsive to Dominion's inquiries, and that Dominion informed the EPA in a letter dated on or about November 5, 2013, that it had "no choice" but to submit solely the Somerset Project Plan.

Kevin Hennessey  
December 18, 2013  
Page 3 of 3

Unfortunately, this is not our understanding of events, as the City of Fall River has acted in good faith, believing that its project proposal would be included and submitted when received. Following the unfolding of events yesterday, the City hereby requests that EPA and Dominion review the proposed Project Plan submitted by Ameresco on December 17, 2013, particularly since Fall River is "shovel ready" on its project proposal. Moreover, one of the purposes of the Consent Decree is to mitigate violations of the Clean Air Act, of which Fall River would be unjustly harmed and prejudiced by a refusal to consider our Project Plan, albeit after the time frame required by the Consent Decree. Fall River is specifically intended to be a beneficiary of the Consent Decree, so it appears likely that (provided all parties to the litigation agree, as well as the EPA) the court would not withhold its approval of a joint motion to modify the Consent Decree to consider Fall River's Project Plan after the original deadline. We would expect, of course, given the facts surrounding this request that such an action would come without penalty to Dominion.

In the event that one or both parties to the action decline to petition the court for consideration of Fall River's Project Plan, the City will have no choice but to petition the court directly. The City hopes that Dominion recognizes that it is seeking an opportunity to be fairly considered for an award under the Consent Decree. Furthermore, it is the City's understanding after speaking with H. Curtis Spaulding, Region 1 Administrator and Steven Viggiani, Esq., both of the EPA, that the EPA is awaiting Dominion in response to the City's request. As such, the undersigned respectfully requests that Dominion's corporate counsel respond to this correspondence by January 2, 2014. The City will hold its filing for injunctive relief in abeyance until after said date, provided that no monetary award or decisions regarding award are made prior to said date.

Thank you for your anticipated attention to this matter.

Very truly yours,



Christy M. DiOrio

Enclosures (3)

cc: Steven Viggiani, Esq. (w/ encls.) (via email only)



# Potential Energy Conservation Measures for Dominion Electric Consent Decree

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## Contents

Potential Energy Conservation Measures for Dominion Electric Consent Decree	1
Contents	2
Executive Summary	3
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New Energy Management Systems	7
Renovate Windows	11



## Executive Summary

The City of Fall River has a Comprehensive Energy Management Services contract with Ameresco, Inc. of Framingham Massachusetts. The program is a multi-year, multi-phase energy-efficiency implementation program. Ameresco has developed four (4) comprehensive project phases for City and school buildings and is currently completing construction of Phase 2 and Phase 3 will be complete early next year. The City has instructed Ameresco to develop this project as Phase 5 of the Energy Management Services program and to include only school buildings in the scope of work.

### Summary of Proposed Measures

Energy Efficiency Measure	School	Cost
Solar Photovoltaic System	Mary L. Fonseca Elementary School	\$569,500
New Energy Management System	Westall Elementary School	\$66,938
New Energy Management System	James Tansey Elementary School	\$66,888
New Energy Management System	Samuel Watson Elementary School	\$63,557
New Energy Management System	Old Kuss Middle School	\$87,401
New Energy Management System	Stone Elementary School	\$66,938
Renovate Windows	Henry Lord Middle School	\$117,207
Renovate Windows	Samuel Watson Elementary School	\$153,524
Renovate Windows	Old Kuss Middle School	\$445,676
<b>TOTAL</b>		<b>\$1,807,629.00</b>

This preliminary audit will be followed by a detailed Investment Grade Audit (IGA), once the measures (concept) are approved. The IGA will further analyze and quantify the feasibility of installing the improvements throughout the schools of Fall River. The City is in a unique position in that under the program with Ameresco, can immediately enter into construction, without further municipal bidding and procurement since Ameresco's contract procurement covers all design, acquisition, installation, modification, commissioning and training for the ECMs as presented herein. Unlike typical municipal projects and procurement, the City can implement all these projects in months -- not years.



# Solar Photovoltaic System

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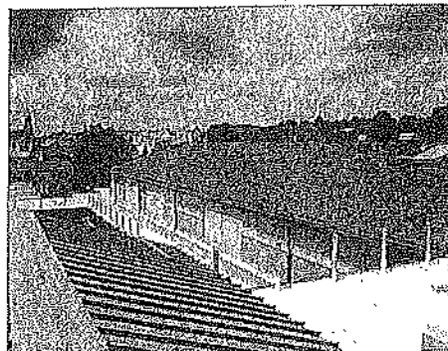
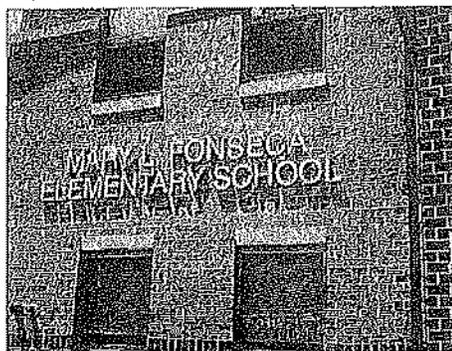
## Mary L. Fonseca Elementary School

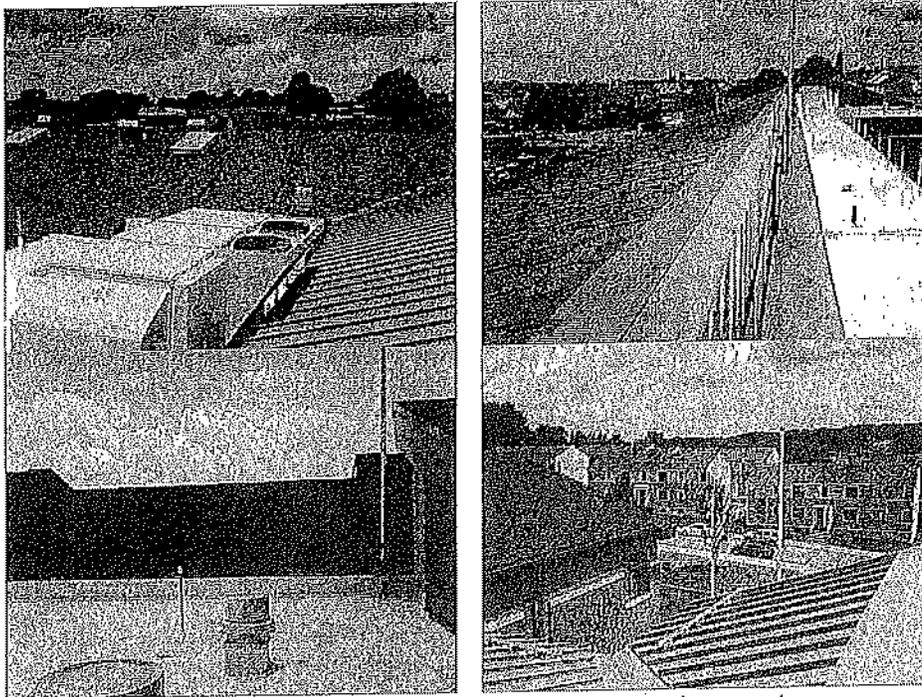
### Current Site Conditions

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The Mary L. Fonseca Elementary School was built in 2008. Considerations are:

- **Roof:** The roof requires reinforcement in one segment of a ridge beam in order to support PV panels. The roof exterior condition appears excellent. As shown in the following pictures, there are open areas for solar PV panels. The panels will be visible to the school students and neighbors. The roof is made of architectural shingles. The panels will be mounted flush to the roof with approximately 500 mechanical attachments into the roof support structure.
- **Building Direction:** The roof line faces towards the south, which is favorable for a solar PV array.
- **Security:** The roof and building appear secure from vandalism.
- **Electrical:** The building's switchgear is at 480 Volts, which is favorable for a solar connection.





## Solar PV System Description

Table 2.2

	Tilt Angle (Deg)	Azimuth (Deg)	kW	kWh	Unshaded Open Area (Sq. Ft.)
Mary L. Fonseca Elementary School 160 Wall Street	18.5	194	161	206,840	11,787
	Inverter		PV Panel	Mounting System	
	Solectria PVI-20TL x 7 Units		CS6P-250P	Unirac	

**Solar PV Modules and Roof Layout:** Ameresco proposes a solar PV grid tied system of 161 kWp rated capacity, to be installed on the sloped roof of the Mary L. Fonseca elementary School, located at 160 Wall Street, Fall River MA. The system will consist of 644, Canadian Solar CS6P-250P solar modules, or equivalent installed on the roof. The module layout is shown in the conceptual system layout drawing below.

**Rack Mounting System:** The solar modules will be installed onto Unirac or similar aluminum rail system on the 18.5 degree pitched roof. The location of the solar modules has been chosen to avoid roof obstructions or any objects casting a shadow onto the solar array. Modules will not be placed closer than 3ft from any roof edge or parapet. The racking system will be secured to the roof with approximately 500 connections into the roofing supports.



Electrical: Each Solar PV module has a rated capacity of 250W. A set of 14 modules will be connected in a source circuit. These source circuits will be connected in parallel using a fused sub-array combiner enclosure. A set of 14 modules will be connected in a source circuit. These source circuits will in turn be connected in parallel using a fused sub-array combiner enclosure. A total of seven sub-array combiners and six fused DC disconnects will be installed. Three disconnects will be installed on the roof and the other three will be installed on ground level closer to the inverter. The DC protection and switching configuration allows for system isolation down to a single source circuit, thereby minimizing system down time during maintenance and/or faultfinding.

The array will be connected to seven (7) Solectria PVI-20TL, 20kW inverters. The seven inverters will produce 480V, 3-phase power and each one will be connected to an AC combiner panel through a 35 A breaker. The AC combiner output will be fed to the main distribution panel located in the main electrical room. The method of interconnection will be by installing a new 250A back feed rated circuit breaker into the existing switchgear.

Data acquisition system (DAS): Ameresco proposes the Drake DAS system



## New Energy Management Systems

---

During the preliminary IGA, Ameresco installed data loggers in a number of facilities to capture a snapshot of the heating operation of the existing systems. Most of the facilities have significant opportunity to reduce operating costs during unoccupied periods by lowering the temperatures in the spaces and better monitoring the operating schedules. Ameresco proposes to improve control of zone temperature and equipment operation by installing new energy management systems (EMS) or programmable thermostats at various Fall River Public Schools facilities.

### Energy Management Systems

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Ameresco proposes to install new direct digital control (DDC) energy management systems or upgrade existing ones as described by location below. As explained in further detail below, the new EMS will enable energy conservation through:

- Deeper unoccupied temperature setback combined with optimum start strategy for morning warm-up,
- Scheduling of holidays and other unoccupied weekdays where 7-day clocks are now used,
- Alerts to staff of out-of-tolerance conditions, and
- Additional strategies as described elsewhere in this section.

The upgrades will make the affected locations internet-accessible, including graphics having the same look and feel as those for Fall River's other web-connected locations. This will enable centralization of the energy management function and more consistent control of scheduling and setpoint parameters.

Ameresco's work at all locations will include commissioning of the installed or upgraded system and training of authorized personnel in scheduling changes, maintaining energy conservation features, and receiving and responding to alerts.

Ameresco proposes to install Schneider Electric energy management systems at the Fall River Public School buildings listed below, for compatibility with the existing network of five web-accessible systems installed in the Kuss, Fonseca, Morton, Letourneau, and Talbot schools. Data logging of temperatures indicate that little or no setback is occurring in most of the schools.



### *Westall Elementary School*

The existing system at Westall is a single steam boiler controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. The terminal units are a mixture of cast iron radiators, bare pipe loops, and exposed fin tube, all of which operate as a single zone. All steam traps are located at the basement level.

Ameresco proposes to install a web-accessible energy management system for boiler control at Westall, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

### *Tansey Elementary School*

The existing system at the original portion of Tansey is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. Heat is delivered by unit ventilators that start whenever their internal aquastats sense steam to their coils. Until the pneumatic system was abandoned, nearly two years ago, classroom thermostats used to respond to day/night air pressures to provide individual zone temperature control and setback. Now the original portion of the school operates as a single zone.

Tansey also has nine modular classrooms that are heated and cooled by rooftop units. Seven have gas heat and electric cooling, while the other two are all-electric.

Ameresco proposes to install a web-enabled, energy management system for boiler control at Tansey, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to wings having different solar and wind exposures, as well as through the other strategies described in this section.

The new EMS for Tansey will also provide setback and optimum start of the nine rooftop units serving the modular classrooms.

### *Watson Elementary School*

The existing system at Watson is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. The terminal units are mostly cast iron radiators with hand valves and thermostatic traps. Unit ventilators were added to the top floor classrooms, apparently to remedy underheating there. The UVs are controlled by internal aquastats and manual switches. It appears there may once have been a pneumatic control system at Watson, but none is present now.

Ameresco proposes to install a web-accessible, energy management system for boiler control at Watson, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.



### *Old Kuss Middle School*

The old Kuss Middle School is currently serving as the Resiliency Preparatory School (RPS). The existing system there is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. A former pneumatic control system was abandoned years ago. The original terminal units are cast iron radiators with hand valves and thermostatic traps. Each classroom also has a unit ventilator.

Ameresco proposes to install a web-accessible energy management system for boiler control at RPS, and to add control valves to the steam distribution system to subdivide it into six heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

### *Stone Elementary School*

The existing system at Stone is a single steam boilers controlled by a single thermostat. The terminal units are cast iron radiators with calibrated hand valves and thermostatic traps.

Ameresco proposes to install a web-accessible, energy management system for boiler control at Stone, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

The following Control Sequences are to be programmed for each building:

#### *Unoccupied Zone Temperature Reset*

Ameresco proposes to fully implement unoccupied zone temperature reset.

#### *Proposed HVAC Scheduling*

Ameresco proposes to implement tighter scheduling of HVAC equipment. Based on review of the existing schedules, HVAC equipment are operating longer than the areas served are occupied. The addition of "Optimum Start/Stop" will allow tighter occupancy schedules.

#### *Optimum Start/Stop of HVAC Equipment*

Ameresco proposes to implement optimum stop/start of HVAC Equipment. System energy will be saved if occupied zone temperature is conditioned to its setpoint as close to the beginning of the occupancy period as is possible. For example, if the occupied zone setpoint is 70°F and one hour is required to "pull the temperature up" to setpoint from the unoccupied temperature, the start time of HVAC equipment will be delayed until one hour before the occupied period. This optimum start time of HVAC equipment is a function of the building characteristics, setpoints, and ambient conditions. The EMS will create a database of measurements for the facility from which an optimum start time will be automatically determined for each day. Similarly, the stop time of HVAC equipment will be determined from this database so burners and compressors will not be started just as occupants are about to leave an area.



### *Boiler and Pump Control Sequences*

Hot water boilers and pumps will be enabled based on both an operating schedule and an outdoor temperature setpoint. During normal operation the boilers and pumps will only be enabled whenever any of the heating related zones are occupied, i.e., classrooms, gymnasiums, etc., and the outside air temperature is less than or equal to 60° (adjustable). During unoccupied periods the boilers and pumps will be off unless the outside air temperature is less than or equal to 37.5°, at which time the boilers will maintain a lower hot water loop temperature and the pumps will be operated continuously to prevent frozen coils. If the pumps are driven by VFDs then they will be operated at the minimum design flow rate and all hot water coils will be commanded open.

For steam boilers, the occupied period operation will be similar to the hot water sequence above. When the unoccupied outside air temperature is less than or equal to 37.5° the boilers will maintain the steam header setpoint.

### *General Zone and Special Area Event Scheduling*

Ameresco proposes to provide operating schedule software for all controlled spaces. For example, during normally unoccupied periods, areas can be maintained in occupied status for special events. This software will permit complicated event scheduling for specific zones in any building. For example, an "auditorium event" will schedule auditorium air handling units on for the occupied periods only while the remainder of the building is in unoccupied mode.

### *Equipment Control and Status*

Ameresco proposes to control HVAC equipment and provide feedback on operating status. All boilers will be enabled by the EMS and operate on their packaged controls. Multiple boilers will be lead/lagged. Supply and exhaust fans will be controlled. Equipment status will be provided to prove operation for all major equipment.



## Renovate Windows

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Ameresco proposes to renovate the existing windows in three schools in Fall River. The existing frames and sash will remain and will be reconditioned as noted for each building below.

### *Lord Middle School*

Lord Middle School has a combination of fixed and horizontal slider windows, as well as some storefront-type glazing in lobby entry areas. The fixed and sliding windows have EFCo aluminum frames with thermal breaks with tempered glass interior storm panels, 1/4" polycarbonate exterior glazing, and 5/8" air space. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect. There are approximately 102 fixed units and 118 sliders.

Ameresco proposes to replace the polycarbonate glazing in the fixed and sliding windows as detailed below. No change is proposed for the storefront-type glazing.

- Remove and store protect storm panel.
- Remove sash from window frame.
- Remove failed polycarbonate lite from sash. Clean and prep frame and new glass.
- Install new, 1/4", tempered glass lite with low-e hard coat in sash, reinstall sash in window frame, and reinstall storm panel.
- Remove and dispose of all debris and return work area to its original condition.

### *Watson Elementary School*

The existing windows at the Watson school are double-glazed, single-hung aluminum frames with thermal breaks, 3/16" clear glass interior lites, 1/4" polycarbonate exterior lites, and 9/16" spacers. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect.

Ameresco proposes to replace the existing glazing units in approximately 112 windows as follows:

- Remove sash from window frame.
- Remove existing glass/polycarbonate units (top and bottom sash).
- Clean and prep frame and new glass.
- Install new tempered glass, low-e, argon-filled units, 7/8" thick, in top and bottom sash.
- Reinstall sash in window frame.
- Remove and dispose of all debris and return work area to its original condition.



### *Old Kuss Middle School*

The Old Kuss Middle School, currently serving as the Resiliency Preparatory School, has approximately 656 single-hung windows. These have high-quality Traco aluminum frames with thermal breaks, but are single-glazed with 1/4" polycarbonate. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect.

Ameresco proposes to replace the polycarbonate glazing as follows:

- Remove sash from window frame.
- Remove existing polycarbonate glazing, top and bottom sash.
- Clean and prep frame and new glass.
- Install new 5/8" total thickness insulated glazing units with 1/8" clear tempered inside glass, 3/8" spacers, argon fill, and 1/8" low-e tempered outside glass.
- Reinstall sash in window frame.
- Remove and dispose of all debris and return work area to its original condition.

**Ameresco**

**Fall River Phase 5  
Emissions Calculations**

7/26/2013

Electricity Saved 228,476 kWh  
 Natural Gas Saved 68,684 Therms  
 Location of Project (State) Massachusetts

Industry: 12.1

		CO2	SO2	NOx	Mercury (lbs)	Pd10
Electric Emission Factors	MWh	1.14	0.00004	0.00441	2.0214E-05	
Natural Gas Emission Factors	Therm	12	0.00068	0.0150	0	0.00010

State-Level Average All (Total) Generation Electricity Emission Factors w/ Transmission & Distribution Line Loss Factor = 7.2%  
 U.S. DOE / EIA (2008) Voluntary Reporting of Greenhouse Gases Appendix C, Adjusted Electricity Emission Factors by State, February, 2008  
 U.S. DOE / EIA (2008) Voluntary Reporting of Greenhouse Gases Appendix F, Fuel and Energy Source, Codes and Emission Coefficients, February, 2008

	Electricity	Nat. Gas	No. 2 Oil	No. 6 Oil	Distel	Coal	Biomass	Total
Total CO2 Reduced:	288,278	688,751	-	-	-	-	-	995,028 Pounds
Total SO2 Reduced:	847	4	-	-	-	-	-	851 Pounds
Total NOx Reduced:	318	886	-	-	-	-	-	1,213 Pounds
Total Energy Saved	80,003,872	5,888	-	-	-	-	-	66,069,941 MBTU
Total Mercury Reduced	0.60	-	-	-	-	-	-	0.59 mg

Cars Removed From the Road 83 Cars  
 OR  
 Houses Powered Each Year 83 Houses  
 OR  
 Acres of pine or fir forests storing carbon for one year 193 Acres  
 Total energy saved 66,069,941 Million BTUs

Calculations based on EPA values from <http://www.epa.gov/air/energy/energy-reports/erl.html>

# EXHIBIT E

**Christy Diorio**

---

**From:** Mary Jo Sheeley (Services - 6) [mary.jo.sheeley@dom.com]  
**Sent:** Thursday, December 19, 2013 3:37 PM  
**To:** Christy Diorio  
**Cc:** Elizabeth Sousa; Viggiani, Steven; Cathy C Taylor (Services - 6); Kevin R Hennessy (Services - 6)  
**Subject:** Dominion Energy, Inc: Federal Consent Decree and Mitigation Project Plans  
**Attachments:** 20131219150753697.pdf

**TimeMattersID:** M6622A2B4AE97734  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Dear Ms. DiOrlo:

I attach a letter which responses to your submittal of last night. Thank you.

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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Dominion Resources Services, Inc.  
Law Department  
P.O. Box 26532, Richmond, VA 23261



December 19, 2013

By E-Mail and U.S. Postal Service

Christy DiOrlo  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722

Re: Consent Decree: Mitigation Project Plans

Dear Ms. DiOrlo:

On December 17, 2013, we were made aware that the City of Fall River was still interested in putting forth a proposed mitigation project plan for Dominion's consideration and submission to the U.S. Environmental Protection Agency ("EPA") pursuant to the federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (Civil Action No. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree"). After close of business last night, Dominion received a proposal from the City. While we appreciate the City's interest, in order to meet the court-imposed deadline, Dominion submitted all of its proposed mitigation plans to EPA by the Consent Decree deadline of November 14, 2013, and will not be making any new submittals.

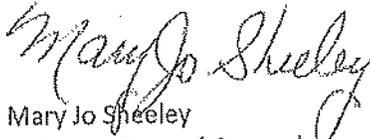
This process has been extensive. Prior to the Court entering the Consent Decree on July 17, 2013, Dominion provided all interested parties, including the City, with extensive written guidelines for each project category to assist in developing and submitting proposed plans to Dominion. We also provided copies of the Consent Decree (which sets forth the November 14 deadline) with the guidelines. The original deadline for making submittals to Dominion was August 1 to allow time for review and revision of the proposal before final submittal by the November deadline imposed in the Consent Decree. We agreed to provide additional time past the August 1 deadline set by Dominion for the Town to submit its proposal. Dominion did not, nor could it, extend the Court-imposed deadline of November 14. Through July and August Dominion made frequent attempts at contacting the City. By September, communications were re-established; however, they tapered off by October with an indication from the City that it would not be submitting a proposal due to the narrow scope of the Consent Decree requirements.

The Consent Decree requires Dominion to fund a variety of different mitigation projects in several states. During the summer Dominion received and processed many proposed plans.

Christy DiOrio  
December 19, 2013  
Page Number 2

Dominion successfully submitted about a dozen plans by the November deadline for all categories of projects, and those plans are in various stages of approval or review by EPA. We regret that the City was unable to submit a proposal within the allotted timeframe. Given the lateness of time and in fairness to those entities that submitted timely plans and have proposals before EPA for approval, Dominion will not be accepting additional project proposals for consideration under the Consent Decree.

Sincerely,

  
Mary Jo Sheeley  
Assistant General Counsel

cc: Elizabeth Sousa, Esquire (City)  
Steven J. Viggiani, Esquire (EPA)  
Cathy C. Taylor  
Kevin R. Hennessy

# EXHIBIT F

**Christy Diorio**

---

**From:** Mary Jo Sheeley (Services - 6) [mary.jo.sheeley@dom.com]  
**Sent:** Monday, December 23, 2013 1:10 PM  
**To:** Christy Diorio  
**Cc:** Viggiani, Steven; Dunn, Jason (ENRD); Jaber, Makram; Johnson, Harry M. ("Pete"); Cathy C Taylor (Services - 6); Kevin R Hennessy (Services - 6)  
**Subject:** Dominion NSR: Mitigation Projects

**TimeMattersID:** M5A1DA2B883B8612  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Christy,

Last week I told you I would confer with my client as to whether Dominion would be interested, at the City's request, in discussing a potential resolution of the City of Fall River's concerns about Dominion not entertaining the City's project plan that was submitted last week well past the time for Dominion to consider it and past the court-imposed deadline (November 14, 2013) for Dominion to submit it to EPA for consideration under the *United States v. Dominion Energy, Inc.*, et al., (civil action no. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree"). Last week you also indicated that the City was planning to submit a petition for permanent injunction to have the federal court reopen the Consent Decree to require Dominion to consider the City's project plan and submit it to EPA. You asked if Dominion would oppose the petition.

I have fully briefed my client on this matter. Dominion does not believe it would be appropriate to alter the process we have undertaken, consistent with the Consent Decree, in reviewing and submitting mitigation project plans to EPA for approval. We also believe it would be unfair to all of the other participants who worked diligently for months to submit plans that allowed Dominion to meet the court-imposed deadline. Dominion, therefore, will not be participating in a conference call with the City about its proposal or its concerns about this process. Dominion also cannot support, and will oppose, any effort to reopen the Consent Decree as the City suggests.

Sincerely,

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Plaintiff-Intervenor,	)	
	)	
v.	)	Civil Action No. 3:13-cv-03086
	)	(SEM)(BGC)
	)	
DOMINION ENERGY, INC., DOMINION	)	
ENERGY BRAYTON POINT, LLC, AND	)	
KINCAID GENERATION, LLC.	)	
	)	
	)	
Defendants.	)	
	)	
	)	
	)	

**PLAINTIFF-INTERVENOR CITY OF FALL RIVER’S MEMORANDUM  
IN SUPPORT OF ITS MOTION TO MODIFY CONSENT DECREE**

On April 2, 2013, the United States of America (“United States”) and the Defendants, Dominion Energy, Inc. (hereinafter “Dominion”), Dominion Energy Brayton Point, LLC and Kincaid Generation, LLC (collectively referred to as the “Parties”<sup>1</sup>) filed a proposed Consent Decree agreeing upon certain settlement terms in connection with and resolution of a Complaint alleging the Defendants’ violation of the Clean Air Act at the Brayton Point power station

<sup>1</sup> The “Parties” includes the substitutions and additions as discussed *supra* note 1.

located in Somerset, Massachusetts, amongst other places.<sup>2</sup> A Motion to Enter the Consent Decree was filed with the Court on July 2, 2013, after the United States so moved, and the Court granted the United States' motion, ordering the Consent Decree entered on July 17, 2013.

As part of the Consent Decree, Dominion was required to consult with the City of Fall River and the Town of Somerset to identify and propose certain environmental mitigation projects totaling \$1,600,000 that would, in turn, be submitted to the Environmental Protection Agency ("EPA") for review and approval pursuant to Section XIII of the Consent Decree. Consent Decree, App. A, Section II, ¶ A; Section XI, ¶¶ A and B ("Dominion in consultation with the Town of Somerset and the City of Fall River ('the municipalities'), shall submit one or more Project Plans to EPA for review and approval . . . .")

The Consent Decree specifically identified the City of Fall River as a beneficiary based on the harms suffered by Fall River and its citizens, stating:

[t]he Parties expectation is that approximately half of the total Project Dollars will be spent in Somerset [and, therefore, the other half in Fall River], but the final distribution will depend on the Projects (and their costs) that can be proposed and implemented within the time frames and other requirements set out in th[e] Appendix.

Consent Decree, App. A., Section XI, ¶ B. Dominion was instructed to submit proposed plans ("Project Plans") to the EPA within 120 days from the entry of the Consent Decree. Consent Decree, App. A., Section II, ¶ A. Yet, as described more fully in the Intervenor Complaint and Motion to Intervene filed concomitantly herewith, Dominion's representatives, particularly the consultant assigned to liaise with Fall River on behalf of Dominion, failed inform Fall River the

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<sup>2</sup> The Complaint alleges that the Defendants also violated the Clean Air Act at the State Line power station in Hammond, Indiana and the Kincaid power station located in Kincaid, Illinois. For the purposes of Fall River's discussion, the midwestern power stations are omitted in the body of the motion.

Consent Decree had been entered, failed to provide a final deadline for Fall River's submission, and, most egregiously, failed to inform Fall River that the assigned consultant's relationship with Dominion actually was terminated on September 1, 2013 due to the sale of the Brayton Point facility from Dominion. The only deadline ever communicated to Fall River was given at the initial July 11, 2013 meeting between Fall River and Dominion, in which Dominion gave Fall River an August 1, 2013 deadline, approximating three weeks, in which to provide a comprehensive Project Plan to Dominion for review.

Unsurprisingly, Fall River was unable to provide its project plan within three weeks given the narrow scope of the environmental mitigation projects, and an extension was approved by the Dominion consultant for an indefinite amount of time. **Exh. 1, ¶ 6.** Fall River maintained communications with the consultant after his termination, working on the proposal and inquiring about the final deadline for submission. Neither the consultant nor any other Dominion representative informed Fall River of the change in personnel or provided a final court deadline. Not until December 17, 2013, when Fall River officials read a newspaper article in the *Herald News* reporting that the neighboring Town of Somerset was likely to receive the full \$1,600,000 award by the EPA did Fall River have a glimmer of notice that a problem existed. **Exh. 1, ¶ 12.**

Upon learning this information, the Mayor of Fall River arranged a conference with H. Curtis Spalding, Administrator for Region 1 at the EPA, Steven Viggiani, Esq., senior enforcement counsel for the EPA, and other City officials. This conference revealed that Dominion informed the EPA in a November 5, 2013, letter that Fall River had not maintained communication, had eventually indicated that it had no viable projects, and that Dominion had no choice but to move forward with only the Town of Somerset's Project Plan. **Exh. 1.** Fall River advised the EPA that the circumstances, as expressed by Dominion, simply were untrue

and that it had received a Project Plan prepared by Ameresco the same day. EPA officials advised the City that it would wait for Dominion's response to Fall River's offered Project Plan.

**Exh. 1, ¶ 15.**

Over the next two weeks (including the Christmas and New Year's holidays) Fall River corresponded with representatives from the EPA, the Department of Justice, and Dominion. The EPA and Department of Justice representatives made themselves available for a conference on January 7, 2014. Dominion refused to participate and refused to accept Fall River's proposal, indicating that although Dominion agreed to give Fall River additional time to prepare a Project Plan after its self-imposed August 1, 2013, deadline, "Dominion did not, nor could it, extend the Court-imposed deadline of November 14." **Exh. 1, ¶ 18.** Even after the conference with Department of Justice and EPA confirmed that EPA would accept an amended submission from Dominion including the Fall River proposal, and that no modification to the consent decree need occur, Dominion still refused to accept Fall River's proposal or submit the same to the EPA for consideration. **Exh. 2.**

The City was never informed when the time began for the 120 day deadline by or through Dominion's agents, nor was Fall River provided with a copy of the order accepting the Consent Decree. **Exh. 1, ¶ 22.** The failure to communicate the final November 14 deadline (i.e., 120 days after the acceptance of the Consent Decree by the Court), severely prejudiced the City's ability to submit a timely Project Plan to Dominion. Thus, Fall River now must turn to this Court to enforce Dominion's compliance with the Consent Decree, in particular its duty to consult with Fall River, and, if necessary, modify the Consent Decree to allow the EPA to accept Fall River's proposal directly without the involvement of Dominion, thereby enabling the award

of half of the \$1.6 million allocated to be split between Fall River and the Town of Somerset, as specifically written in the Consent Decree.

### ARGUMENT

A court has the inherent authority to enforce and/or modify its orders. And, while a consent judgment has many characteristics of a private contract between litigants, it is nonetheless a judgment bearing the imprimatur (or more appropriately, the *nihil obstat*) of the court and backed by its full authority. *Kasper v. Hayes*, 651 F. Supp. 1311, 1314 (N.D. Ill. 1987); see also *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 616 F.2d 1006, 1013-15 (7th Cir.1980). The Consent Decree entered in this action specifically indicates that this Court retains jurisdiction to enforce the Consent Decree. (Consent Decree, ¶ 87.)

A specifically intended beneficiary to a consent decree has standing to enforce and/or to modify that consent decree. *South v. Rowe*, 759 F.2d 610, 612 (7th Cir. 1985.) And, while some courts have recognized a narrow exception where the government is a party to the consent decree, here, the Clean Air Act itself specifically authorizes the intervention of the City of Fall River. 42 U.S.C. § 7604(b)(1)(B). Moreover, the Seventh Circuit has stated that

This Court has previously stated that “‘Consent’ that is no more than knuckling under to the inevitable is more like an adjudication than a contract.”...[Th]e defendant may enter into a consent decree, not because the plaintiffs' ability to recover is uncertain, but because the parties recognize that the compliance with the law, sooner rather than later, will minimize costs and save both parties time and money. As such, modification is appropriate where an unforeseen obstacle warrants revision of the consent decree, and a proposed modification is necessary in order for the decree to remedy adequately the constitutional or legal violation which it was designed to remedy. Modification is particularly appropriate where the alternative is to vacate the decree, collect the disbursed payments and conduct a damages trial that will likely result in a compensatory award similar to the proposed modification.

*U.S. v. City of Chicago*, 978 F.2d 325, 333 (7th Cir. 1992) (internal citations omitted) (noting also that the court could not put “our desire for finality in the way of rendering substantial justice”).

Additionally, Fed R. Civ. P. 60(b)(5) provides a vehicle whereby a party may ask a court to modify or vacate a judgment or order if ‘a significant change either in factual conditions or in law’ renders continued enforcement ‘detrimental to the public interest.’” *See also Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992). Here, the change in ownership of Dominion that led to the termination of its consultant to Fall River, without informing Fall River of the change or the deadline has created a circumstances that will severely prejudice Fall River and that Fall River is unable to address with Dominion, the U.S. Department of Justice, and the EPA without the intervention of this Court.

For instance, in *U.S. v. City of Northlake*, 942 F.2d 1164, 1167-68 (7th Cir. 1991), the Seventh Circuit held that even after more than two years from the entry of the consent decree, the consent decree could be modified to include additional claims of discrimination. The Seventh Circuit stated there:

Requiring the United States to file a new lawsuit to remedy discrimination already comprehended by the plain language of the **consent decree** undermines the judiciary's role in overseeing the proper implementation of the decree and unnecessarily delays, frustrates and prejudices the plaintiff in its efforts to obtain enforcement.

*Id.* at 1169.

The *Northlake* opinion highlights the judicial inefficiency with requiring a beneficiary to file a separate suit to enforce rights and interests already contemplated in a consent decree—if

only the consent decree is enforced—and specifically allows for enforcement of a process-related aspect of a consent decree.

Where, as here, the proposed relief—which is simply allowing the EPA to directly consider the proposal of Fall River or requiring Dominion to submit the proposal of Fall River to the EPA at this time—is narrowly tailored to the change in circumstances, a court abuses its discretion ‘when it refuses to **modify** an injunction or **consent decree** in light of such changes.’” *Horne*, 557 U.S. at 447 (quoting *Agostini v. Felton*, 521 U.S. 203, 215, 117 S. Ct. 1997, 138 L. Ed. 2d 391 (1997)); see *System Federation No. 91 Railway Employees' Dep't v. Wright*, 364 U.S. 642, 647, 81 S. Ct. 368, 5 L. Ed. 2d 349 (1961) (“[A] sound judicial discretion may call for the modification of the terms of an injunction decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen.”). The Court should exercise flexibility in its decision and should consider the goals of the original judgment, the factors that are important to the particular litigation — including the public interest where the litigation involves the public's rights — and the nature of the change in circumstances. See *Rufo* at 381, 383; *Horne*, 557 U.S. at 450; see also *Hendrix v. Page*, 986 F.2d 195, 198 (7th Cir. 1993) (*Rufo*'s flexible standard generally applies in all equitable cases).

One of the major, articulated goals of the Consent Decree included mitigating the environmental harm to Fall River from alleged violations of the Clean Air Act by Dominion at the Brayton Point facility, located just across the Taunton River in Somerset. See Consent Decree, ¶ 113; Appx. A, Section XI, ¶ A (“Dominion shall use good faith efforts to secure as much environmental benefit as possible . . .” “Consistent with the requirements of Section II of this Appendix, Dominion, in consultation with the Town of Somerset and the City of Fall River

(“the municipalities”), shall submit one or more Project Plans to EPA for review and approval . . .”). Failure to modify the Consent Decree would frustrate the purpose and intent of the Consent Decree, cause an egregious injustice to Fall River and its inhabitants, be contrary to the public interest, and cause irreparable harm.

### CONCLUSION

Dominion’s failure to communicate in good faith with the City of Fall River, as required by the Consent Decree, severely prejudiced the City’s ability to submit a “timely” Project Plan to Dominion. Thus, Fall River now must turn to this Court to enforce Dominion’s compliance with the Consent Decree, in particular its duty to consult with Fall River, and, if necessary, modify the Consent Decree to allow the EPA to accept Fall River’s proposal directly without the involvement of Dominion, thereby enabling the award of half of the \$1.6 million allocated to be split between Fall River and the Town of Somerset, as specifically written in the Consent Decree.

Dated: January 14, 2014

Respectfully submitted,

s/ Deanna R. Swits  
Deanna R. Swits, IL No. 6287513  
NIXON PEABODY LLP  
300 South Riverside Plaza, 16<sup>th</sup> Floor  
Chicago, IL 60606  
Phone: (312) 425-3900  
Fax: (312) 425-3909  
Email: [dswits@nixonpeabody.com](mailto:dswits@nixonpeabody.com)

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN SUPPORT OF ITS MOTION TO MODIFY CONSENT DECREE** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on January 14, 2013, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN SUPPORT OF ITS MOTION TO MODIFY CONSENT DECREE** was served upon those listed below via email (where provided) and by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
Deanna R. Swits

Ignacio S. Moreno  
Assistant Attorney General  
Environment & Natural Resources Division  
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Phone: (202) 514-1111  
Facsimile: (202) 616-6583

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J. David Rives  
Senior Vice President–Distribution  
Dominion Virginia Power  
120 Tredegar Street  
Richmond, Virginia 23219

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
Email: [mary.jo.sheeley@dom.com](mailto:mary.jo.sheeley@dom.com)

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,  
Plaintiff

v.

C.A. No.:3:13-cv-08086-SEM-BGC

DOMINION ENERGY, INC.,  
BRAYTON POINT ENERGY, LLC  
KINCAID GENERATION, LLC, and  
EQUIPOWER RESOURCES CORP.,  
Defendants

AFFIDAVIT

I, Christy M. DiOrio, being duly sworn, hereby depose and state:

1. That I am assistant corporation counsel for the City of Fall River (hereinafter "Fall River" or "City") in the Commonwealth of Massachusetts.
2. That upon information and belief, representatives from Dominion Energy, Inc. (hereinafter "Dominion"), namely James Smith of Smith, Ruddock & Hayes and Kevin Hennessey, Director of Federal State & Local Affairs from Dominion Resources Services, Inc. met with the following Fall River officials: Shawn Cadime, former City Administrator; Kenneth Pacheco, Director, Department of Community Maintenance and present Interim City Administrator; Mayor William A. Flanagan, and Elizabeth Sousa, Corporation Counsel on July 11, 2013, to discuss the applicable settlement terms of the above-captioned matter as it related to Fall River as a beneficiary of the settlement.
3. That Fall River officials were provided with a copy of the Consent Decree filed in the above-captioned civil action at said July 11, 2013, meeting.
4. That upon information and belief, at said July 11, 2013, meeting, Fall River was not informed or advised as to the projected time frame in which the Consent Decree would be approved by the Court thereby triggering the 120 day court-appointed deadline for Dominion's submission of Project Plan(s) to the Environmental Protection Agency ("EPA").
5. That although the Consent Decree had been granted and approved by this Honorable Court on July 17, 2013, Fall River was never advised of nor received a copy of the entered order.
6. That Fall River missed the August 1, 2013, deadline Dominion established for Fall River to prepare and submit a proposed Project Plan. Upon information and belief, neither the

Director of Community Maintenance nor the Corporation Counsel received any correspondence from Dominion's representatives regarding the missed August 1, 2013, Dominion-imposed deadline. As the then-appointed City Administrator is no longer employed by the City, the undersigned requested that a search of Mr. Cadime's computer be conducted to determine if any email correspondence was received from or delivered to Dominion's representatives. A search yielded no such correspondence. (See affidavit of John L. Niewola attached hereto as **Exhibit A**).

7. That upon information and belief, on or about September 3, 2013, Mayor William A. Flanagan instructed Corporation Counsel to prepare a proposed Project Plan in accordance with the terms of the Consent Decree. Corporation Counsel assigned this matter to the undersigned on or about the same date.
8. That after a review of the terms of the Consent Decree, the undersigned met with Mr. Cadime and Mr. Pacheco to discuss the narrow scope of allowable proposed projects, given the City's completion of a number of comprehensive solar energy projects at its public schools and the replacement of diesel powered public works' vehicles from other funding sources. Thereafter, the City recognized that it needed additional time to formulate a Project Plan that would conform to the narrow scope of the consent decree.
9. That the undersigned requested of Dominion, by and through its representative, James Smith of Smith, Ruddock & Hayes, additional time in which to complete a proposed Project Plan. (See email dated September 5, 2013 attached hereto at **Exhibit B**). Mr. Smith verbally confirmed that the City had additional time to complete the Project Plan and no new deadline was provided or established. At no time did Mr. Smith inform the undersigned that the Consent Decree had been approved and entered by this Honorable Court, thereby triggering the 120 day deadline appearing in Appendix A, ¶ A of the Consent Decree.
10. That Fall River hired Ameresco, an independent third-party contractor, to develop a proposed Project Plan that would conform to the narrow scope of the Consent Decree.
11. That after the verbal confirmation of an extension from Dominion's representative, the City received no further communication from Dominion, either written or verbal.
12. That on or about December 17, 2013, Fall River discovered that the Town of Somerset was "in line to receive all of 1.6 million from Brayton Point Settlement," as reported in the Fall River *Herald News*. (Article attached hereto at **Exhibit C**).
13. That on December 17, 2013, Fall River received a proposed Project Plan from Ameresco.
14. That the undersigned immediately contacted Mr. Smith, Dominion's representative, on December 17, 2013, to determine the veracity of the newspaper article. Mr. Smith agreed that it was "untrue" that Fall River "did not apply for its share" of the settlement money as reported by the *Herald News*, and that he would contact Dominion's legal counsel to

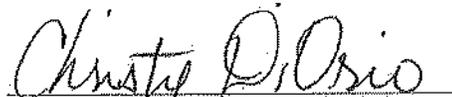
determine what was going on since Fall River had "worked hard" on this Project Proposal. On the same day, Mr. Smith, advised the undersigned that he no longer worked for Dominion.

15. That Mayor Flanagan, Mr. Pacheco and the undersigned had a conference call with H. Curtis Spalding, Region 1 Administrator for the Environmental Protection Agency ("EPA") and Steven Viggiani, Esq., counsel for the EPA on December 17, 2013, to again determine the veracity of the *Herald News* article. EPA informed the City that it would wait for Dominion's response to our request to submit our Project Plan to EPA.
16. After the EPA conference call, Mr. Smith advised the undersigned that a phone call from Kevin Hennessey, Director of Federal State & Local Affairs from Dominion Resources Services, Inc. would be forthcoming, advising Fall River that it was "out of the running."
17. That on the same date, Mr. Hennessey did, indeed, inform the City that it had missed the 120 day deadline required by the Consent Decree, and as such, was not eligible to have its proposed Project Plan submitted to the EPA. Mr. Hennessey also requested that Fall River submit its request for late consideration of its Project Plan in writing so that it could be forwarded to Dominion's general counsel for review and consideration. (See email and correspondence dated December 18, 2013, attached hereto at **Exhibit D**).
18. That Dominion, by and through its general counsel, declined to accept Fall River's late proposal. (See email and correspondence dated December 19, 2013, attached hereto at **Exhibit E**).
19. That on December 23, 2013, the undersigned again spoke with Mr. Smith of Smith, Ruddock & Hayes, who stated that his relationship with Dominion terminated on September 1, 2013, after Dominion was sold to EquiPower Resources Corp. (hereinafter "EquiPower"), facts which were never relayed or disclosed to Fall River in our September discussions. Mr. Smith did not instruct the City to contact Kevin Hennessey of Dominion Resources Services, Inc. in the future or any other person employed by Dominion or EquiPower.
20. That no other Dominion representative or EquiPower representative ever contacted City officials after Mr. Smith's termination to discuss a deadline or advise the City that it would be submitting its proposals to EPA on a certain date. Nor did any other Dominion representative or EquiPower representative inquire with Fall River as to the progress it was making with its proposed Project Plan after its discussions with Mr. Smith in September 2013.
21. That the United States of America filed a Notice Related to Consent Decree with this Honorable Court on December 5, 2013, noting that a "nonmaterial modification" to the Consent Decree may be made by written agreement without need for Court approval, pursuant to Section XXIII, ¶ 188, and that amongst these "nonmaterial modifications" was the fact that on August 29, 2013, Dominion Energy, Inc. "sold and transferred its ownership and operation interest . . ." to affiliates of EquiPower Resources Corp."

("EquiPower") and that "EquiPower succeeds to Dominion Energy Inc.'s liabilities and obligations under the Consent Decree . . . (except for liabilities and obligations related to the Civil Penalty and Environmental Mitigation Projects required by the Consent Decree)." (emphasis added).

22. That Mr. Smith advised the undersigned on December 23, 2013, that he was also unaware of the 'November 2013 deadline' (i.e., the 120 days referenced in Appendix A, ¶ A of the Consent Decree).
23. That Fall River attempted to provide the Project Plan in good faith, and that efforts to amicably resolve this matter have been met with opposition by Dominion. (See email dated December 23, 2013, attached hereto as **Exhibit F**).

Signed and sworn under the pains and penalties of perjury this 23<sup>rd</sup> day of December 2013.

  
Christy M. DiOrto

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,  
Plaintiff

v.

C.A. No.:3:13-cv-08086-SEM-BGC

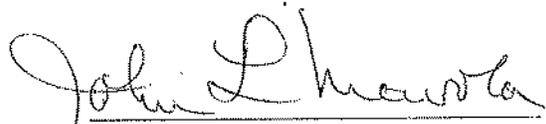
DOMINION ENERGY, INC.,  
BRAYTON POINT ENERGY, LLC  
KINCAID GENERATION, LLC, and  
EQUIPOWER RESOURCES CORP.,  
Defendants

AFFIDAVIT

I, John N. Niewola, being duly sworn, hereby depose and state:

1. That I am manager of Information Systems for the City of Fall River (hereinafter "Fall River" or "City") in the Commonwealth of Massachusetts.
2. That on December 20, 2013, Christy M. DiOrio, assistant corporation counsel, requested that I search through former City Administrator, Shawn Cadime's electronic files to determine if there was correspondence regarding the above-captioned matter.
3. That on said date, I ran a query of the terms: "Jim Smith" and "Dominion Energy" to locate any electronic correspondence.
4. That as a result of said search, only three (3) responses matched said query search and included: 1) a meeting request accepted on July 3, 2013, regarding Dominion Energy settlement with Jim Smith; 2) a meeting request sent to Yassara V. M. Todorov, legal assistant for the City's Office of the Corporation Counsel on September 6, 2013, regarding Dominion Energy Settlement; and 3) an email from Terrence Sullivan, Director of Community Utilities for Fall River indicating that Dominion Energy donated \$2,500 in gravel for parking lot construction bids. A copy of said records are attached hereto at **Exhibit 1**.

Signed and sworn under the pains and penalties of perjury this 26<sup>th</sup> day of December 2013.

  
John L. Niewola

# EXHIBIT 1

**Shawn Cadime**

---

**From:** Shawn Cadime  
**Sent:** Wednesday, July 03, 2013 12:21 PM  
**To:** Mayor  
**Subject:** Accepted: Jim Smith and Dominion Energy re: Settlement (617-523-0600)

**Shawn Cadime**

---

**From:** Shawn Cadime  
**Sent:** Friday, September 06, 2013 10:23 AM  
**To:** Yassara V. M. Todorov  
**Subject:** Accepted: Dominion Energy Settlement

Shawn Cadime

---

**From:** Terry Sullivan <tsullivan@fallriverma.org>  
**Sent:** Wednesday, April 11, 2012 2:07 PM  
**To:** Shawn Cadime  
**Subject:** FW: Parking Lot Construction Bid Results

Shawn,

Per the e mails below we are going to award this small contract to D.S Enterprises for \$3,800. This is for a small parking lot for Bioreserve visitors on Blossom Road 800 feet south of our Reservation Headquarters (2929 Blossom Road). The donations for the gravel are from Dominion Energy (\$2,500) and the Greater Fall River Land Conservancy (\$2,500). The \$3,800 for construction by D.S. Enterprises is covered by a DCR grant. I bring this to your attention in the event your office gets calls from Biszko. Please call me if you have any questions.  
Thanx  
terry

---

**From:** Mike Labossiere [mailto:mlabossiere@fallriverma.org]  
**Sent:** Monday, April 09, 2012 10:15 AM  
**To:** Terry Sullivan  
**Cc:** Ted Home; Ted Kaegael  
**Subject:** FW: Parking Lot Construction Bid Results

Terry,

I'm resending this email which summarized the parking lot construction bids.

This morning I have confirmed that we will received two cash donations for gravel in the amount of \$5000. I will apply this donatlon directly to payment for gravel. I have an invoice from Potter Construction Materials in Westport stating the sum for our material will not exceed \$5000. I am ready to advise the Purchasing Dept. to award the bid to D.S. Enterprises based on this information because they were the low bidder (by \$2690) based on their bid for "Operations Only" and their quality of work is good.

If this is satisfactory to you please let me know at your earliest convenience. Thanks.

Mike

---

**From:** Mike Labossiere [mailto:mlabossiere@fallriverma.org]  
**Sent:** Thursday, March 22, 2012 8:29 AM  
**To:** Terry Sullivan (tsullivan@fallriverma.org)  
**Cc:** (jfrlar@fallriverma.org); Ted Kaegael  
**Subject:** Parking Lot Construction Bid Results

Three bids were received by 10:30am on 3/12/12 close of bid.

<u>Company Name</u>	<u>Bid for Total</u>	<u>Bid for Operations Only</u>
Century Paving	\$17,500	\$7,600
Biszko Construction	\$9,712	\$6,490
D.S. Enterprises	\$11,170.75	\$3,800

Award of contract pending outcome of grant request by Water Dept, to conservation group for donatlon of materials for project. I hope to know about this grant in the next few weeks.

If grant for project is received, bid will be awarded to D.S. Enterprises. If no grant is received bid will be awarded to Biszki Construction.

Thank you.

Mike Labossiere  
*Reservation Superintendent*

Water Division, Treatment and Resources  
Department of Public Utilities  
CITY OF FALL RIVER

WATUPPA RESERVATION  
2929 Blossom Road  
Westport, MA 02790

Office Tel: 508-324-2749  
Email: [mlabossiere@fallriverma.org](mailto:mlabossiere@fallriverma.org)

# **EXHIBIT B**

**Christy Diorio**

---

**From:** Christy Diorio  
**Sent:** Thursday, September 05, 2013 11:03 AM  
**To:** 'jsmith@srhpublicpolicy.com'  
**Subject:** Dominion Energy Env'tl Mitigation Plan Project

**TimeMattersID:** MB558A24B1DA3807  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Hi Jim,

Can you confirm whether the \$800,000 will be provided as a reimbursement to the City following our expenditure? I need to determine whether the City will need to initially bond for the project we decidé to undertake.

I look forward to hearing from you regarding an appropriate extension in which we can put a reasonable plan together which meets the June 24, 2013 Guidelines.

Best,

Christy DiOrio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
508-324-2655 (Fax)

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# EXHIBIT C

# The Herald News

REALITY. DELIVERED DAILY NOW!

## Officials say Somerset schools in line to receive all of \$1.6 million from Brayton Point settlement

Selectmen seek explanation on why funds are not going toward municipal use

By Michael Holtzman  
Herald News Staff Reporter  
Posted Dec 16, 2013 @ 10:33 PM  
Last update Dec 16, 2013 @ 11:39 PM

### Related Stories

Fall River, Somerset split \$1.6M from Dominion for clean energy

Somerset schools mulling clean energy proposals

SOMERSET — Officials are optimistic about the Somerset School Department receiving the lion's share of \$1.6 million in energy-efficient project funding as part of an April 1 settlement between the former owner of Brayton Point and the federal government.

"My understanding is the school department had done everything they were supposed to do and, therefore, they would be rewarded with the whole \$1.6 million," state Rep. Patricia Haddad, D-Somerset, said Monday night.

She said Fall River did not apply for its share.

"We'll have an announcement right after the first of the year. I feel very optimistic," said Somerset School Committee Vice Chairman Jamison Souza, who said he's been working closely with Haddad for months.

"We're going to receive more than we originally planned strictly through the school department," he said.

Among project criteria are energy efficiency and renewable energy, Haddad said.

The Board of Selectmen are scheduled to talk about the issue at Wednesday's 6 p.m. meeting at Town Hall after Chairman Donald Setters asked Town Administrator Dennis Luttrell last week for an update on the settlement funds.

The April 1 settlement between Dominion — owner of Brayton Point until this year — and the U.S. Environmental Protection Agency has been widely known.

As part of a 2010 court agreement over three Dominion power plants found to be in violation of 2010 federal clean air standards, the Virginia-based Dominion agreed to about \$13 million in payments, including \$9.8 million in federal mitigation projects and a \$3.4 million civil penalties, including the \$1.6 million for Somerset and Fall River to share.

In late August, school officials announced they submitted several energy recovery and energy control system projects to a Dominion manager, Allen Prior.

With specific details provided, their plan is to use the cost-saving measures at Somerset Middle School and North, South and Chace elementary schools, Superintendent Richard Medeiros had said.

The projects included:

- \$779,011 to install CO2 energy-recovery exchangers at four schools, with an investment return in four years and a \$1.6 million savings over 20 years.
- \$612,059 to install heating and cooling system energy controls, with a 12-year investment return.
- Among several other proposals, one was to install solar panels at the middle school and North Elementary School to supply at least 20 percent — and potentially three times that amount — of each building's electrical needs.

Questions remain unanswered about how the funds may be submitted to school or town departments, which is part of the reason selectmen want the issue explained.

Selectman Scott Lebeau said he understood "originally the money was for municipal use." Lebeau said he was "informed that some wording was changed to include the school department."

He said they were awaiting an explanation from Luttrell about what happened.

Haddad, who, along with Souza, said they have worked hard and many months on this funding, had a different explanation.

"I called first to the municipal side, and when they didn't get back to me, I was asked by the secretary (Richard Sullivan, from the state's energy/environmental affairs agency) for the projects, and I went to the school department," Haddad said in a phone interview.

With Somerset and Fall River in line to divide the \$1.6 million evenly, Haddad said she asked municipal officials to put together \$1 million in projects.

Asked whom she contacted, Haddad said, "I hate to throw people under the bus, but I called the town administrator."

Four phone calls were left for Luttrell at his office Monday afternoon and at his home number Monday night. He left a message at The Herald News at 4 p.m. saying he was leaving at the end of the workday and would call again today, and he did not answer messages left at his home at night.

On the \$1.6 million award, Haddad said, "My understanding is that it is going to come directly from the state to the school department and it will not go to the municipality."

When asked why that was an issue, Haddad said she understood from school officials the municipal side wanted "a carrying fee of 10 percent."

"I can't let them take 10 percent (\$160,000) off the top," Haddad said. "It's not free money. There was a lot of work that went into these requests."

Neither Luttrell nor Setters could be reached to comment about the 10 percent fee Haddad alleged town officials were seeking.

Setters said at last week's meeting that while he understood the funding was for the municipal side, the school department benefiting would help the town as a whole.

Email Michael Holtzman at [mholtzman@heraldnews.com](mailto:mholtzman@heraldnews.com).

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# EXHIBIT D

**Christy Diorio**

---

**From:** Christy Diorio  
**Sent:** Wednesday, December 18, 2013 5:07 PM  
**To:** 'kevin.r.hennessey@dom.com'  
**Cc:** 'viggiani.steven@epa.gov'  
**Subject:** USA v. Dominion Energy Inc., et al  
**Attachments:** Kevin Hennessey.pdf; Fall River Potential Energy Conservation Measures.pdf; Herald News Article 12.17.13.pdf; FW: Dominion Energy Env'tl Mitigation Plan Project

**Importance:** High

**TimeMattersID:** M7724A2B3D381643  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Hi Kevin,

Attached please find correspondence requested by you during our telephone conversation yesterday. Kindly forward this letter to your general counsel. Could you provide me with her direct contact information? I would like to follow up with her in the very near future.

I look forward to favorably resolving this issue.

Best,

Christy Diorio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
508-324-2655 (Fax)

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**City of Fall River**  
*Office of the Corporation Counsel*

**WILLIAM A. FLANAGAN**  
Mayor

**ELIZABETH SOUSA**  
Corporation Counsel



**GARY P. HOWAYECK**  
Assistant Corporation Counsel

**CHRISTY M. DIORJO**  
Assistant Corporation Counsel

December 18, 2013

*Via email to Kevin.R.Hennessey@dom.com  
and regular mail*

Kevin R. Hennessey  
Director  
Federal, State & Local Affairs  
Dominion Resources Services, Inc.  
Rope Ferry Road, Route 156  
Waterford, CT 06385

Re: Dominion Energy, Inc. Environmental Mitigation Projects  
USA v. Dominion Energy, Inc., et al  
C.A. No.: 13-03086

Dear Mr. Hennessey:

This correspondence is written in follow up to our telephone conversation yesterday, December 17, 2013, wherein you requested that the City of Fall River (hereinafter "City" or "Fall River") submit its concerns surrounding the environmental mitigation projects required by Dominion Energy, Inc. (hereinafter "Dominion") pursuant to a Consent Decree filed in the United States District Court for the Central District of Illinois. Dominion is required to submit proposed Project Plans to the U.S. Environmental Protection Agency ("EPA") for review and approval in accordance with the Consent Decree, after consultation with the Town of Somerset and the City of Fall River.

The Project Plans require description of anticipated environmental benefits expected to be realized upon completion and implementation of (a) energy efficiency, geothermal, and/or solar photovoltaic projects at one or more public school buildings, and/or (b) clean diesel projects to retrofit or repower higher-polluting diesel powered engines for municipal construction or public works vehicles or equipment.

The City initially met with Dominion representatives on July 11, 2013. Thereafter, the City determined that the City's progress and advancements made with its public schools' energy efficiency as well as the municipal fleet limited Fall River's options as to use of mitigation funds. Over the last several years, the City has completed a number of comprehensive solar energy projects at the public schools, and has, through other funding sources, replaced and

Kevin Hennessey  
December 18, 2013  
Page 2 of 3

upgraded the City's public works diesel powered vehicles, including its garbage and recycle vehicles. Thereafter the City recognized that it needed additional time to formulate a Project Plan that would conform to the narrow scope of the Consent Decree.

In working with Dominion's representative, namely James Smith of Smith, Ruddock & Hayes, the City requested and received additional time to prepare its Project Plan in September. The undersigned explained the difficulty we were having formulating a plan that conformed to the Consent Decree and asked Mr. Smith if he could look into whether there was any leeway on solely providing improvements to school buildings (i.e., prepare plans for other municipal buildings) in an effort to expand the City's ability to use the settlement money. As evidence of this request, an email from the undersigned to Mr. Smith dated September 5, 2013, affirming our request for an extension is enclosed. Mr. Smith responded via telephone that the use of the funds was inflexible. As such, the City immediately sought a preliminary investment grade audit from an independent third-party contractor, Ameresco. The undersigned received assurances from Mr. Smith that the City had additional time to formulate a Project Plan and no final deadline was articulated or expressed.

Ameresco prepared a report entitled, "Potential Energy Conservation Measures for the Dominion Electric Consent Decree" identifying possible enhancements to Fall River schools (copy attached hereto). Primarily, Ameresco identified the possibility of a solar photovoltaic system at Fonseca Elementary and energy management systems at five other schools. After the City was granted additional time in September to have Ameresco prepare the Project Plan, the undersigned was never contacted by Dominion's representative again. Ameresco's proposed Project Plan was submitted to the City on December 17, 2013, the same day in which the *Herald News* reported that the Town of Somerset would likely be receiving the full 1.6 million dollar settlement earmarked in the Court Decree for certain environmental benefits to be realized in Somerset and Fall River. (See attached).

Since the City did not receive any notification from Dominion, by and through its representative, that our previously approved extension was over, and had received adequate assurances of an extension leading it to contract with Ameresco, the City was surprised, to say the least, by the publication's claim, particularly when the City was never informed that Dominion would submit all proposed projects to the EPA by November 17, 2013, and that Dominion had, in fact, submitted Somerset's project proposal without intending to ever honor the extension granted by Dominion's representative.

Thereafter, the City immediately inquired with Dominion, by and through its representative, James Smith, of the veracity of the *Herald News* article, and whether the EPA approved the Somerset proposed Project Plan without consideration of the Fall River project proposal that was undertaken by Ameresco pursuant to the extension granted in September. Additionally, the City called the EPA, who apprised the City of its understanding that Fall River had not been responsive to Dominion's inquiries, and that Dominion informed the EPA in a letter dated on or about November 5, 2013, that it had "no choice" but to submit solely the Somerset Project Plan.

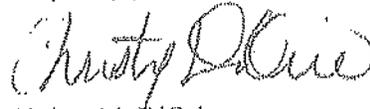
Kevin Hennessey  
December 18, 2013  
Page 3 of 3

Unfortunately, this is not our understanding of events, as the City of Fall River has acted in good faith, believing that its project proposal would be included and submitted when received. Following the unfolding of events yesterday, the City hereby requests that EPA and Dominion review the proposed Project Plan submitted by Ameresco on December 17, 2013, particularly since Fall River is "shovel ready" on its project proposal. Moreover, one of the purposes of the Consent Decree is to mitigate violations of the Clean Air Act, of which Fall River would be unjustly harmed and prejudiced by a refusal to consider our Project Plan, albeit after the time frame required by the Consent Decree. Fall River is specifically intended to be a beneficiary of the Consent Decree, so it appears likely that (provided all parties to the litigation agree, as well as the EPA) the court would not withhold its approval of a joint motion to modify the Consent Decree to consider Fall River's Project Plan after the original deadline. We would expect, of course, given the facts surrounding this request that such an action would come without penalty to Dominion.

In the event that one or both parties to the action decline to petition the court for consideration of Fall River's Project Plan, the City will have no choice but to petition the court directly. The City hopes that Dominion recognizes that it is seeking an opportunity to be fairly considered for an award under the Consent Decree. Furthermore, it is the City's understanding after speaking with H. Curtis Spaulding, Region I Administrator and Steven Viggiani, Esq., both of the EPA, that the EPA is awaiting Dominion in response to the City's request. As such, the undersigned respectfully requests that Dominion's corporate counsel respond to this correspondence by January 2, 2014. The City will hold its filing for injunctive relief in abeyance until after said date, provided that no monetary award or decisions regarding award are made prior to said date.

Thank you for your anticipated attention to this matter.

Very truly yours,



Christy M. DiOrio

Enclosures (3)

cc: Steven Viggiani, Esq. (w/ encls.) (via email only)



# Potential Energy Conservation Measures for Dominion Electric Consent Decree

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## Executive Summary

The City of Fall River has a Comprehensive Energy Management Services contract with Ameresco, Inc. of Framingham Massachusetts. The program is a multi-year, multi-phase energy-efficiency implementation program. Ameresco has developed four (4) comprehensive project phases for City and school buildings and is currently completing construction of Phase 2 and Phase 3 will be complete early next year. The City has instructed Ameresco to develop this project as Phase 5 of the Energy Management Services program and to include only school buildings in the scope of work.

### Summary of Proposed Measures

Energy Efficiency Measure	School	Cost
Solar Photovoltaic System	Mary L. Fonseca Elementary School	\$559,500
New Energy Management System	Westall Elementary School	\$56,938
New Energy Management System	James Tansey Elementary School	\$66,888
New Energy Management System	Samuel Watson Elementary School	\$63,557
New Energy Management System	Old Kuss Middle School	\$87,401
New Energy Management System	Stone Elementary School	\$66,938
Renovate Windows	Henry Lord Middle School	\$117,207
Renovate Windows	Samuel Watson Elementary School	\$153,524
Renovate Windows	Old Kuss Middle School	\$445,676
<b>TOTAL</b>		<b>\$1,607,629.00</b>

This preliminary audit will be followed by a detailed Investment Grade Audit (IGA), once the measures (concept) are approved. The IGA will further analyze and quantify the feasibility of installing the improvements throughout the schools of Fall River. The City is in a unique position in that under the program with Ameresco, can immediately enter into construction, without further municipal bidding and procurement since Ameresco's contract procurement covers all design, acquisition, installation, modification, commissioning and training for the ECMs as presented herein. Unlike typical municipal projects and procurement, the City can implement all these projects in months – not years.



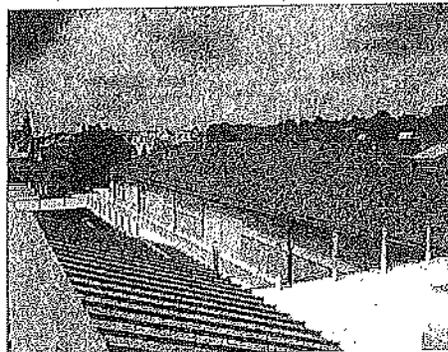
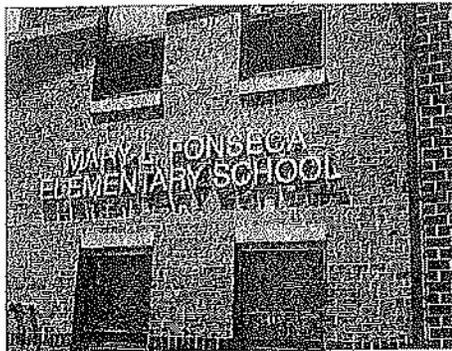
# Solar Photovoltaic System

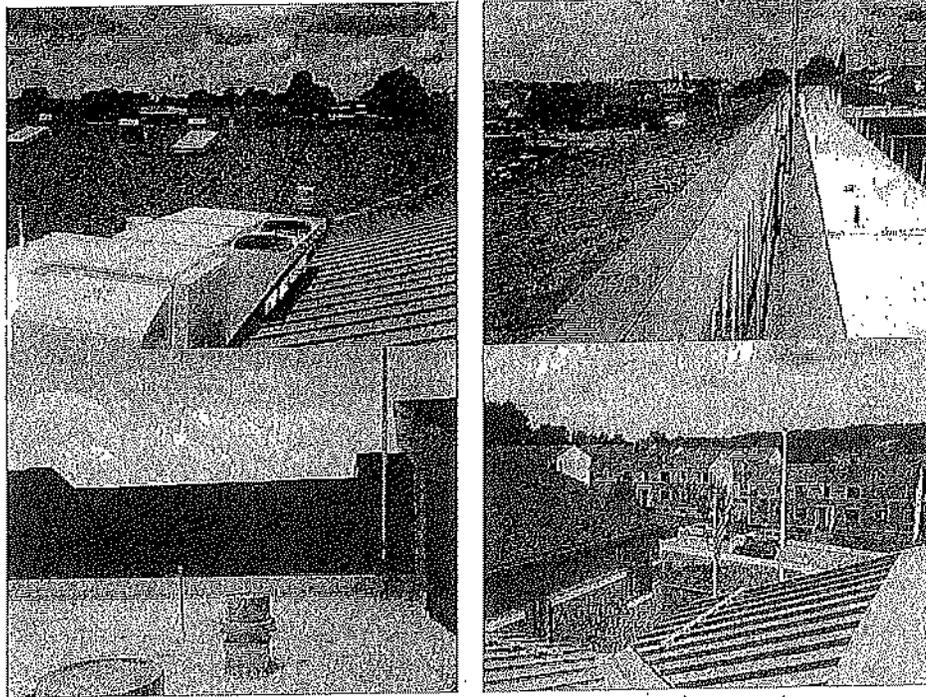
## Mary L. Fonseca Elementary School

### Current Site Conditions

The Mary L. Fonseca Elementary School was built in 2008. Considerations are:

- **Roof:** The roof requires reinforcement in one segment of a ridge beam in order to support PV panels. The roof exterior condition appears excellent. As shown in the following pictures, there are open areas for solar PV panels. The panels will be visible to the school students and neighbors. The roof is made of architectural shingles. The panels will be mounted flush to the roof with approximately 500 mechanical attachments into the roof support structure.
- **Building Direction:** The roof line faces towards the south, which is favorable for a solar PV array.
- **Security:** The roof and building appear secure from vandalism.
- **Electrical:** The building's switchgear is at 480 Volts, which is favorable for a solar connection.





## Solar PV System Description

Table 2.2

	Tilt Angle (Deg)	Azimuth (Deg)	kW	kWh	Unshaded Open Area (Sq. Ft.)
Mary L. Fonseca Elementary School 160 Wall Street	18.5	194	161	206,840	11,787
	Inverter		PV Panel	Mounting System	
	Sollectria PVI-20TL x 7 Units		CS6P-250P	Unirac	

**Solar PV Modules and Roof Layout:** Ameresco proposes a solar PV grid tied system of 161 kWp rated capacity, to be installed on the sloped roof of the Mary L. Fonseca elementary School, located at 160 Wall Street, Fall River MA. The system will consist of 644, Canadian Solar CS6P-250P solar modules; or equivalent installed on the roof. The module layout is shown in the conceptual system layout drawing below.

**Rack Mounting System:** The solar modules will be installed onto Unirac or similar aluminum rail system on the 18.5 degree pitched roof. The location of the solar modules has been chosen to avoid roof obstructions or any objects casting a shadow onto the solar array. Modules will not be placed closer than 3ft from any roof edge or parapet. The racking system will be secured to the roof with approximately 500 connections into the roofing supports.



Electrical: Each Solar PV module has a rated capacity of 250W. A set of 14 modules will be connected in a source circuit. These source circuits will be connected in parallel using a fused sub-array combiner enclosure. A set of 14 modules will be connected in a source circuit. These source circuits will in turn be connected in parallel using a fused sub-array combiner enclosure. A total of seven sub-array combiners and six fused DC disconnects will be installed. Three disconnects will be installed on the roof and the other three will be installed on ground level closer to the inverter. The DC protection and switching configuration allows for system isolation down to a single source circuit, thereby minimizing system down time during maintenance and/or faultfinding.

The array will be connected to seven (7) Solectria PVI-20TL, 20kW inverters. The seven inverters will produce 480V, 3-phase power and each one will be connected to an AC combiner panel through a 35 A breaker. The AC combiner output will be fed to the main distribution panel located in the main electrical room. The method of interconnection will be by installing a new 250A back feed rated circuit breaker into the existing switchgear.

Data acquisition system (DAS): Ameresco proposes the Draker DAS system



## New Energy Management Systems

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During the preliminary IGA, Ameresco installed data loggers in a number of facilities to capture a snapshot of the heating operation of the existing systems. Most of the facilities have significant opportunity to reduce operating costs during unoccupied periods by lowering the temperatures in the spaces and better monitoring the operating schedules. Ameresco proposes to improve control of zone temperature and equipment operation by installing new energy management systems (EMS) or programmable thermostats at various Fall River Public Schools facilities.

### Energy Management Systems

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Ameresco proposes to install new direct digital control (DDC) energy management systems or upgrade existing ones as described by location below. As explained in further detail below, the new EMS will enable energy conservation through:

- Deeper unoccupied temperature setback combined with optimum start strategy for morning warm-up,
- Scheduling of holidays and other unoccupied weekdays where 7-day clocks are now used,
- Alerts to staff of out-of-tolerance conditions, and
- Additional strategies as described elsewhere in this section.

The upgrades will make the affected locations internet-accessible, including graphics having the same look and feel as those for Fall River's other web-connected locations. This will enable centralization of the energy management function and more consistent control of scheduling and setpoint parameters.

Ameresco's work at all locations will include commissioning of the installed or upgraded system and training of authorized personnel in scheduling changes, maintaining energy conservation features, and receiving and responding to alerts.

Ameresco proposes to install Schneider Electric energy management systems at the Fall River Public School buildings listed below, for compatibility with the existing network of five web-accessible systems installed in the Kuss, Fonseca, Morton, Letourneau, and Talbot schools. Data logging of temperatures indicate that little or no setback is occurring in most of the schools.



### *Westall Elementary School*

The existing system at Westall is a single steam boiler controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. The terminal units are a mixture of cast iron radiators, bare pipe loops, and exposed fin tube, all of which operate as a single zone. All steam traps are located at the basement level.

Ameresco proposes to install a web-accessible energy management system for boiler control at Westall, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

### *Tansey Elementary School*

The existing system at the original portion of Tansey is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. Heat is delivered by unit ventilators that start whenever their internal aquastats sense steam to their coils. Until the pneumatic system was abandoned, nearly two years ago, classroom thermostats used to respond to day/night air pressures to provide individual zone temperature control and setback. Now the original portion of the school operates as a single zone.

Tansey also has nine modular classrooms that are heated and cooled by rooftop units. Seven have gas heat and electric cooling, while the other two are all-electric.

Ameresco proposes to install a web-enabled, energy management system for boiler control at Tansey, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to wings having different solar and wind exposures, as well as through the other strategies described in this section.

The new EMS for Tansey will also provide setback and optimum start of the nine rooftop units serving the modular classrooms.

### *Watson Elementary School*

The existing system at Watson is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. The terminal units are mostly cast iron radiators with hand valves and thermostatic traps. Unit ventilators were added to the top floor classrooms, apparently to remedy underheating there. The UVs are controlled by internal aquastats and manual switches. It appears there may once have been a pneumatic control system at Watson, but none is present now.

Ameresco proposes to install a web-accessible, energy management system for boiler control at Watson, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.



### *Old Kuss Middle School*

The old Kuss Middle School is currently serving as the Resiliency Preparatory School (RPS). The existing system there is a pair of steam boilers controlled by a day/night pair of thermostats and an electromechanical, 7-day timer. A former pneumatic control system was abandoned years ago. The original terminal units are cast iron radiators with hand valves and thermostatic traps. Each classroom also has a unit ventilator.

Ameresco proposes to install a web-accessible energy management system for boiler control at RPS, and to add control valves to the steam distribution system to subdivide it into six heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

### *Stone Elementary School*

The existing system at Stone is a single steam boilers controlled by a single thermostat. The terminal units are cast iron radiators with calibrated hand valves and thermostatic traps.

Ameresco proposes to install a web-accessible, energy management system for boiler control at Stone, and to add control valves to the steam distribution system to subdivide it into three heating zones. This will enable energy conservation through modulation of heat to facades having different solar and wind exposures, as well as through the other strategies described in this section.

The following Control Sequences are to be programmed for each building:

#### *Unoccupied Zone Temperature Reset*

Ameresco proposes to fully implement unoccupied zone temperature reset.

#### *Proposed HVAC Scheduling*

Ameresco proposes to implement tighter scheduling of HVAC equipment. Based on review of the existing schedules, HVAC equipment are operating longer than the areas served are occupied. The addition of "Optimum Start/Stop" will allow tighter occupancy schedules.

#### *Optimum Start/Stop of HVAC Equipment*

Ameresco proposes to implement optimum stop/start of HVAC Equipment. System energy will be saved if occupied zone temperature is conditioned to its setpoint as close to the beginning of the occupancy period as is possible. For example, if the occupied zone setpoint is 70°F and one hour is required to "pull the temperature up" to setpoint from the unoccupied temperature, the start time of HVAC equipment will be delayed until one hour before the occupied period. This optimum start time of HVAC equipment is a function of the building characteristics, setpoints, and ambient conditions. The EMS will create a database of measurements for the facility from which an optimum start time will be automatically determined for each day. Similarly, the stop time of HVAC equipment will be determined from this database so burners and compressors will not be started just as occupants are about to leave an area.



### *Boiler and Pump Control Sequences*

Hot water boilers and pumps will be enabled based on both an operating schedule and an outdoor temperature setpoint. During normal operation the boilers and pumps will only be enabled whenever any of the heating related zones are occupied, i.e., classrooms, gymnasiums, etc., and the outside air temperature is less than or equal to 60° (adjustable). During unoccupied periods the boilers and pumps will be off unless the outside air temperature is less than or equal to 37.5°, at which time the boilers will maintain a lower hot water loop temperature and the pumps will be operated continuously to prevent frozen coils. If the pumps are driven by VFDs then they will be operated at the minimum design flow rate and all hot water coils will be commanded open.

For steam boilers, the occupied period operation will be similar to the hot water sequence above. When the unoccupied outside air temperature is less than or equal to 37.5° the boilers will maintain the steam header setpoint.

### *General Zone and Special Area Event Scheduling*

Ameresco proposes to provide operating schedule software for all controlled spaces. For example, during normally unoccupied periods, areas can be maintained in occupied status for special events. This software will permit complicated event scheduling for specific zones in any building. For example, an "auditorium event" will schedule auditorium air handling units on for the occupied periods only while the remainder of the building is in unoccupied mode.

### *Equipment Control and Status*

Ameresco proposes to control HVAC equipment and provide feedback on operating status. All boilers will be enabled by the EMS and operate on their packaged controls. Multiple boilers will be lead/lagged. Supply and exhaust fans will be controlled. Equipment status will be provided to prove operation for all major equipment.



## Renovate Windows

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Ameresco proposes to renovate the existing windows in three schools in Fall River. The existing frames and sash will remain and will be reconditioned as noted for each building below.

### *Lord Middle School*

Lord Middle School has a combination of fixed and horizontal slider windows, as well as some storefront-type glazing in lobby entry areas. The fixed and sliding windows have EFCo aluminum frames with thermal breaks with tempered glass interior storm panels, 1/4" polycarbonate exterior glazing, and 5/8" air space. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect. There are approximately 102 fixed units and 118 sliders.

Ameresco proposes to replace the polycarbonate glazing in the fixed and sliding windows as detailed below. No change is proposed for the storefront-type glazing.

- Remove and store protect storm panel.
- Remove sash from window frame.
- Remove failed polycarbonate lite from sash. Clean and prep frame and new glass.
- Install new, 1/4", tempered glass lite with low-e hard coat in sash, reinstall sash in window frame, and reinstall storm panel.
- Remove and dispose of all debris and return work area to its original condition.

### *Watson Elementary School*

The existing windows at the Watson school are double-glazed, single-hung aluminum frames with thermal breaks, 3/16" clear glass interior lites, 1/4" polycarbonate exterior lites, and 9/16" spacers. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect.

Ameresco proposes to replace the existing glazing units in approximately 112 windows as follows:

- Remove sash from window frame.
- Remove existing glass/polycarbonate units (top and bottom sash).
- Clean and prep frame and new glass.
- Install new tempered glass, low-e, argon-filled units, 7/8" thick, in top and bottom sash.
- Reinstall sash in window frame.
- Remove and dispose of all debris and return work area to its original condition.



### *Old Kuss Middle School*

The Old Kuss Middle School, currently serving as the Resiliency Preparatory School, has approximately 656 single-hung windows. These have high-quality Traco aluminum frames with thermal breaks, but are single-glazed with 1/4" polycarbonate. The polycarbonate has weathered such that visibility is obscured, creating a depressing effect.

Ameresco proposes to replace the polycarbonate glazing as follows:

- Remove sash from window frame.
- Remove existing polycarbonate glazing, top and bottom sash.
- Clean and prep frame and new glass.
- Install new 5/8" total thickness insulated glazing units with 1/8" clear tempered inside glass, 3/8" spacers, argon fill, and 1/8" low-e tempered outside glass.
- Reinstall sash in window frame.
- Remove and dispose of all debris and return work area to its original condition.

**Ameresco**

**Fall River Phase 5  
Emissions Calculations**

Version 2.01

Electricity Saved 225,476 kWh  
 Natural Gas Saved 88,881 Therms  
 Location of Project (State) Massachusetts 12

	CO2	SO2	NOx	Mercury (mg)	PM10
Electric Emission Factors	1314	0.0024	0.0011	2.22E-04	
Natural Gas Emission Factors	12	0.0003	0.0154	0	0.0045

State-Level Average All (Total) Generation Electricity Emission Factors w/ Transmission & Distribution Line Loss Factor = 7.2%  
 U.S. DOE / EIA 1005(b) Voluntary Reporting of Greenhouse Gases Appendix G: Adjusted Electricity Emission Factors by State, February, 2005  
 U.S. DOE / EIA 1005(b) Voluntary Reporting of Greenhouse Gases Appendix F: Fuel and Energy Sources, Costs and Emission Coefficients, February, 2005

	Electricity	Nat. Gas	No. 2 Oil	No. 6 Oil	Diesel	Coal	Biomass	Total
Total CO2 Reduced:	298,278	888,751						1,187,029 Pounds
Total SO2 Reduced:	847	4						851 Pounds
Total NOx Reduced:	316	896						1,213 Pounds
Total Energy Saved	66,069,972	5,868						66,069,941 MMBTU
Total Mercury Reduced	0.50							0.50 mg

Cars Removed From the Road 83 Cars  
 OR  
 Houses Powered Each Year 83 Houses  
 OR  
 Acres of pine or fir forests storing carbon for one year 103 Acres  
 Total energy saved 66,069,941 Million BTU

Calculations based on EPA values from <http://www.epa.gov/publications/nepa/1005-1005-02-05.html>

# EXHIBIT E

**Christy Diorio**

---

**From:** Mary Jo Sheeley (Services - 6) [mary.jo.sheeley@dom.com]  
**Sent:** Thursday, December 19, 2013 3:37 PM  
**To:** Christy Diorio  
**Cc:** Elizabeth Sousa; Viggiani, Steven; Cathy C Taylor (Services - 6); Kevin R Hennessy (Services - 6)  
**Subject:** Dominion Energy, Inc: Federal Consent Decree and Mitigation Project Plans  
**Attachments:** 20131219150753697.pdf

**TimeMattersID:** M6622A2B4AE97734  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Dear Ms. DiOrio:

I attach a letter which responds to your submittal of last night. Thank you.

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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Dominion Resources Services, Inc.  
Law Department  
P.O. Box 26532, Richmond, VA 23261



December 19, 2013

By E-Mail and U.S. Postal Service

Christy DiOrlo  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722

Re: Consent Decree: Mitigation Project Plans

Dear Ms. DiOrlo:

On December 17, 2013, we were made aware that the City of Fall River was still interested in putting forth a proposed mitigation project plan for Dominion's consideration and submission to the U.S. Environmental Protection Agency ("EPA") pursuant to the federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (Civil Action No. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree"). After close of business last night, Dominion received a proposal from the City. While we appreciate the City's interest, in order to meet the court-imposed deadline, Dominion submitted all of its proposed mitigation plans to EPA by the Consent Decree deadline of November 14, 2013, and will not be making any new submittals.

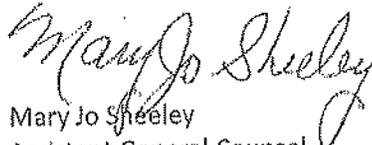
This process has been extensive. Prior to the Court entering the Consent Decree on July 17, 2013, Dominion provided all interested parties, including the City, with extensive written guidelines for each project category to assist in developing and submitting proposed plans to Dominion. We also provided copies of the Consent Decree (which sets forth the November 14 deadline) with the guidelines. The original deadline for making submittals to Dominion was August 1 to allow time for review and revision of the proposal before final submittal by the November deadline imposed in the Consent Decree. We agreed to provide additional time past the August 1 deadline set by Dominion for the Town to submit its proposal. Dominion did not, nor could it, extend the Court-imposed deadline of November 14. Through July and August Dominion made frequent attempts at contacting the City. By September, communications were re-established; however, they tapered off by October with an indication from the City that it would not be submitting a proposal due to the narrow scope of the Consent Decree requirements.

The Consent Decree requires Dominion to fund a variety of different mitigation projects in several states. During the summer Dominion received and processed many proposed plans.

Christy DiOrio  
December 19, 2013  
Page Number 2

Dominion successfully submitted about a dozen plans by the November deadline for all categories of projects, and those plans are in various stages of approval or review by EPA. We regret that the City was unable to submit a proposal within the allotted timeframe. Given the lateness of time and in fairness to those entities that submitted timely plans and have proposals before EPA for approval, Dominion will not be accepting additional project proposals for consideration under the Consent Decree.

Sincerely,

  
Mary Jo Sheeley  
Assistant General Counsel

cc: Elizabeth Sousa, Esquire (City)  
Steven J. Viggiani, Esquire (EPA)  
Cathy C. Taylor  
Kevin R. Hennessy

# EXHIBIT F

**Christy Diorio**

---

**From:** Mary Jo Sheeley (Services - 6) [mary.jo.sheeley@dom.com]  
**Sent:** Monday, December 23, 2013 1:10 PM  
**To:** Christy Diorio  
**Cc:** Viggiani, Steven; Dunn, Jason (ENRD); Jaber, Makram; Johnson, Harry M. ("Pete"); Cathy C Taylor (Services - 6); Kevin R Hennessy (Services - 6)  
**Subject:** Dominion NSR: Mitigation Projects

**TimeMattersID:** M5A1DA2B883B8612  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Christy,

Last week I told you I would confer with my client as to whether Dominion would be interested, at the City's request, in discussing a potential resolution of the City of Fall River's concerns about Dominion not entertaining the City's project plan that was submitted last week well past the time for Dominion to consider it and past the court-imposed deadline (November 14, 2013) for Dominion to submit it to EPA for consideration under the *United States v. Dominion Energy, Inc.*, et al., (civil action no. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree"). Last week you also indicated that the City was planning to submit a petition for permanent injunction to have the federal court reopen the Consent Decree to require Dominion to consider the City's project plan and submit it to EPA. You asked if Dominion would oppose the petition.

I have fully briefed my client on this matter. Dominion does not believe it would be appropriate to alter the process we have undertaken, consistent with the Consent Decree, in reviewing and submitting mitigation project plans to EPA for approval. We also believe it would be unfair to all of the other participants who worked diligently for months to submit plans that allowed Dominion to meet the court-imposed deadline. Dominion, therefore, will not be participating in a conference call with the City about its proposal or its concerns about this process. Dominion also cannot support, and will oppose, any effort to reopen the Consent Decree as the City suggests.

Sincerely,

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and )  
 )  
 THE CITY OF FALL RIVER, )  
 )  
 Plaintiff-Intervenor, )  
 )  
 v. )  
 )  
 DOMINION ENERGY, INC., DOMINION )  
 ENERGY BRAYTON POINT, LLC, )  
 KINCAID GENERATION, LLC, AND )  
 EQUIPOWER RESOURCES CORP.<sup>1</sup> )  
 )  
 Defendants. )  
 )  
 )  
 )  
 )

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

COMPLAINT IN INTERVENTION

COMPLAINT IN INTERVENTION

The City of Fall River alleges, upon information and belief:

1. Dominion Energy, Inc., Dominion Energy Brayton Point, LLC, Kincaid Generation, LLC, and Equipower Resources Corp. (together, “Defendants” or “Dominion”) have, among other things, violated various emission standards and limitations designed to control emissions of sulfur<sup>1</sup> dioxide (“SO<sub>2</sub>”), nitrogen oxides (NOx”), and Particulate Matter (“PM”) as

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<sup>1</sup> The United States of America filed a Notice Related to Consent Decree and accompanying Appendix I on December 5, 2013, noting that on August 29, 2013, Dominion sold and transferred its ownership and operational interest in the Brayton Point and Kincaid power stations, including Dominion Energy Brayton Point, LLC and Kincaid Generation, LLC to affiliates of Equipower Resources Corp. (“Equipower”). The sale constituted a “nonmaterial modification” to the Consent Decree pursuant to Section XXIII, ¶ 188; therefore, the Parties agreed to change the caption of the case to “United States of America v. Dominion Energy, Inc., Brayton Point Energy, LLC, Kincaid Generation, LLC, and Equipower Resources Corp.”

required by the Prevention of Significant Deterioration (“PSD”) provisions of the Clean Air Act (“the Act” or “CAA”), 42 U.S.C. §§ 7470-92, Title V of the Act, 42 U.S.C. §§ 7661-7661(f), and the federally approved and enforceable State Implementation Plan (“SIP”) adopted by the State of Massachusetts approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410.

2. Defendant Dominion Energy Brayton Point, LLC (“Dominion Brayton”) has violated opacity emissions limitations and monitoring requirements, acid rain monitoring requirements, and monitoring requirements for SO<sub>2</sub> and NO<sub>x</sub> and carbon dioxide at Brayton Point Power Station (“Brayton”) located at 1 Brayton Point Road, Somerset, Massachusetts approximately 2.5 kilometers across Mt. Hope Bay from the City of Fall River.

3. As a result of Defendants’ failure to comply with the terms of its Title V permit for its electricity generating unit at Brayton Point, large amounts of SO<sub>2</sub>, NO<sub>x</sub>, and carbon dioxide pollution each year have been, and are still being, released into the atmosphere and are causing direct harm to the environment and to the health and welfare of the inhabitants of the City of Fall River.

#### **A. JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to CAA Sections 113(b) and 167, 42 U.S.C. § 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 2201 and 2202. The relief requested by the Plaintiff and the Plaintiff-Intervenor is authorized by 42 U.S.C. §§ 7413 and 7604 and 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in this District pursuant to CAA Sections 304(c)(1), 42 U.S.C. §7413(b), and 28 U.S.C. §§ 1391(b)(2) because violations that are the subject of the Complaint

occurred and are occurring within this District, and Defendants reside and conduct business within this District.

### **B. NOTICES**

6. U.S. EPA issued a Notice and Finding of Violation (“NOV”) on April 16, 2009, with respect to alleged violations of the CAA, as required by Section 113(a)(1) of the Act, 42 U.S.C. §7413(a)(1).

7. The 30-day period between issuance of the NOV and commencement of a civil action, required under CAA Section 113, 42 U.S.C. § 7413, has elapsed.

8. Upon information and belief, Plaintiff United States provided notice of the commencement of this action to the appropriate State air pollution control agencies in Illinois, Indiana, and Massachusetts, as required by CAA Section 113(b), 42 U.S.C. § 7413(b).

### **C. PARTIES**

9. Plaintiff is the United States of America.

10. Plaintiff-Intervenor is a municipality located within the Commonwealth of Massachusetts.

11. Defendant Dominion Energy, Inc., is a Virginia Corporation registered to do business in Massachusetts and Illinois, and is the parent corporation of, *inter alia*, Dominion Energy Brayton Point, LLC and Kincaid Generation, LLC. Dominion Energy Inc. and its subsidiary Kincaid Generation, LLC own and/or operate the Kincaid Power Station located in Kincaid, Illinois. Dominion Energy and its subsidiary Dominion Energy Brayton Point, LLC

own and/or operate the Brayton Point Power Station located in Somerset, Massachusetts. Dominion Energy, Inc. also owns the State Line Power Station, located in Hammond, Indiana.

12. At all times pertinent to this civil action, Defendant Dominion Energy Inc. has been the owner and/or operator of the Brayton Point Power Station located in Somerset, Massachusetts across Mount Hope Bay from the City of Fall River. The Brayton Point Power Station consists of four steam electric generating units ("Boiler Units"). Boiler Units 1 and 2 are Combustion Engineering water-tube boilers fueled primarily by coal, but may fire natural gas at 25 percent as a secondary fuel and No. 6 or No. 2 fuel oil at 100 percent as a backup fuel. Boiler Units 1 and 2 were installed in 1963 and 1964, respectively. Boiler Unit 3 is a Babcock and Wilcox water-tube boiler, installed in 1968, that is fueled primarily with coal but may also fire natural gas at 10 percent as a secondary fuel and No. 6 or No. 2 fuel oil as a backup fuel. Unit 4 is a Riley Stoker water tube boiler, installed in 1974, that is fueled primarily by residual oil and natural gas. These Boiler Units have net design capacities of 255, 255, 633, and 446 Megawatts (MW), respectively.

13. Plaintiff-Intervenor and Defendants as identified above, are "persons" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7401(b)(1).

14. Plaintiff-Intervenor has standing because the acts and omissions alleged herein exposed and continue to expose the people of the City of Fall River who live, work, and recreate in the vicinity of the plant to harmful pollution that threatens their health and welfare, interferes with their use and enjoyment of property and the surrounding areas, injures their economic interests, denies them protection of their health and well-being protected by the Act and the Title

V permits issued under the Act and the Massachusetts SIP, and negatively impacts their aesthetic and recreational interests. The relief requested herein will redress these injuries.

#### **D. STATUTORY BACKGROUND**

##### **1. The Clean Air Act**

15. The purpose of the Act is the protection and enhancement of the Nation's air resources to promote the public health and welfare and the productive capacity of its population. CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1).

16. The Act requires EPA to establish national ambient air quality standards ("NAAQS") that "allow[] an adequate margin of safety, requisite to protect the public health," and that are "requisite to protect the public welfare." CAA § 109(b), 42 U.S.C. § 7409(b). The Act mandates the use of certain emission control technologies to limit emissions of pollutants that EPA has determined "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." CAA § 108(a)(1)(A), 42 U.S.C. § 7408(a)(1)(A).

17. Fine particulate matter—particles with a size less than or equal to 2.5 micrometers in diameter, "PM2.5"—is one of the air pollutants for which the EPA has established a NAAQS. 40 C.F.R. § 50.7; 78 Fed. Reg. 3,086 (2013).

18. PM2.5 is a mixture of small particles, including organic chemicals, metals, and ash, which can cause severe health and environmental problems. Once inhaled, PM2.5 can affect the heart and lungs and cause serious health effects. See 78 Fed. Reg. 3,103–3,104 (2013); 52 Fed. Reg. 24,663 (1987).

19. Opacity, also known as visible emissions, is not a criteria pollutant; however, visible emissions standards were initially established as a surrogate for assuring compliance with particulate matter standards at a time when continuous emissions monitors for PM were not considered technologically feasible. 76 Fed. Reg. 18,870, 18,872 (2011) (“Although opacity is not a criteria pollutant, opacity standards continue to be used as an indicator of the effectiveness of emission controls for PM emissions, or to assist with implementation and enforcement of PM emission standards for purposes of attaining PM NAAQS”).

20. Under the CAA, each state bears primary responsibility for assuring air quality within its geographic area by submitting an implementation plan for the State which specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in the State. CAA §§ 107, 110(a); 42 U.S.C. §§ 7407, 7410(a). The state implementation plan (“SIP”) must be submitted to the EPA Administrator for approval. CAA § 110(a), 42 U.S.C. § 7410(a).

21. The CAA, in relevant part, mandates that the SIP shall include enforceable emissions limitations and other control measures, as well as periodic reports on emissions, as necessary to meet the requirements of the Act. CAA § 110(a), 42 U.S.C. § 7410(a)(2).

22. A SIP must satisfy the mandates of the CAA before it can receive EPA approval. 42 U.S.C. §§ 7410(a) and (k). See also 40 C.F.R. § 51.110, Appendix V.

## **2. Massachusetts Implementation of the Clean Air Act**

### ***i. The Massachusetts SIP***

23. Massachusetts submitted its SIP to EPA in January 1972. 40 C.F.R. § 52.1120(b). The MA SIP is codified at 40 C.F.R. Part 52, Subpart W. 40 C.F.R. § 52.1119 et seq.

24. Since then, Massachusetts, from time to time, has submitted state regulations to the EPA for approval as revisions to the MA SIP.

*ii. MA SIP Visible Emissions Provisions*

25. The Massachusetts SIP provision that establishes visible emissions limitations for stationary sources such as BRAYTON is set forth at 310 Mass. Code Regs. 7.06. The EPA has approved and incorporated 310 Mass. Code Regs. 7.06(1)(a)-(b) of Massachusetts' visible emissions regulations into the Massachusetts SIP. See 40 C.F.R. § 52.1120(c)(4); 37 Fed. Reg. 23,085 (1972).

26. Under 310 Mass. Code Regs. 7.06, opacity shall not "exceed twenty per cent (20%) opacity for a period or aggregate period of time in excess of two minutes during any one hour provided that, at no time during the said two minutes shall opacity exceed 40%." 310 Mass. Code Regs. 7.06(1)(b).

27. The Massachusetts SIP also prohibits the emission of smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time shall the shade, density or appearance be equal to or greater than No. 2 of the Ringelmann chart. 310 Mass. Code Regs. 7.06(1)(a).

28. As standards or limitations under the Massachusetts SIP, the visible emission standards cited in Paragraphs 25-27 above constitute "emission standards or limitations" under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a).

29. "Emissions standards" is defined in section 302(k) of the CAA as "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter." CAA § 302(k), 42 U.S.C. § 7602(k).

30. Continuous compliance is necessary because of the severe health impacts that may occur as a result of even short-term exposure to air pollution.

### *iii. MA SIP Monitoring Requirements*

31. The Massachusetts SIP provides that any person who owns or operates an emission source as described in 40 C.F.R. Part 51, Appendix P, shall continuously monitor emissions of opacity, nitrogen oxides ("NO<sub>x</sub>"), sulfur dioxide ("SO<sub>2</sub>"), and carbon dioxide ("CO<sub>2</sub>"). 310 Mass. Code Regs. 7.14(2). Appendix P applies to fossil fuel-fired steam generators, including Brayton. 40 C.F.R. Part 51, Appendix P.

32. The Massachusetts SIP also requires facilities with the potential to emit 50 tons per year or more of NO<sub>x</sub> to continuously monitor emissions of NO<sub>x</sub> and carbon monoxide ("CO"). 310 Mass. Code Regs. 7.19(13). Brayton is a facility with the potential to emit 50 tons per year or more of NO<sub>x</sub>.

33. As standards or limitations under the Massachusetts SIP, the monitoring requirements cited in Paragraphs 31–32 above constitute "emission standards or limitations" under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a).

### 3. The Massachusetts Title V Permit Program

34. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources.” The purpose of Title V is to ensure that all “applicable requirements” for compliance with the Act, including opacity and SIP requirements, are collected in one place.

35. A “major source” for purposes of Title V is defined, among other things, as a source with a potential to emit greater than 100 tons per year of any criteria pollutant. 42 U.S.C. § 7661(2).

36. Massachusetts’ Title V operating permit program was granted interim approval by EPA on May 15, 1996 (61 Fed. Reg. 24,460) and final approval on November 27, 2001. 66 Fed. Reg. 49,541 (2001). Massachusetts’ Title V permit program is codified at 310 CMR 7.00: Appendix C.

37. Section 502(a) of the Act, 42 U.S.C. 7661a(a), and the Massachusetts Title V operating permit program have at all relevant times made it unlawful for any person to operate a major source except in compliance with a permit issued under Title V.

38. Section 503(c) of the Act, 42 U.S.C. § 7661b(c), the Title V regulations at 40 C.F.R. §§ 70.5(a), (c), and (d), and the Massachusetts Title V program, have at all relevant times required the owner or operator of a source to submit an application for a Title V permit that is timely and complete and which, among other things, identifies all applicable requirements (including any opacity monitoring requirements), certifies compliance with all applicable requirements, and contains a compliance plan for all applicable requirements for which the source is not in compliance.

39. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), implementing the regulations of the Act, 40 C.F.R. § 70.2, and the Massachusetts Title V operating permit program regulations have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Clean Air Act and the requirements of the applicable SIP, including any applicable opacity requirements.

40. At all times relevant to this Complaint, Brayton operated under a federal enforceable Title V permit. From February 22, 2008 to July 25, 2011, Brayton operated under Title V Operating Permit No. 4V95056 (attached hereto as Exhibit A); from July 26, 2011, to the present, Brayton operated under Title V Operating Permit No. 4V04019 (attached hereto as Exhibit B) (collectively, "Title V Permits"). The Title V Permits incorporated applicable portions of the SIP as well as permit conditions from the earlier state approvals.

41. The Title V Permits limit all four Brayton Units to opacity emissions no greater than 20%, except that the units may emit at an opacity between 20% and 40% for equal to or less than 2 minutes during any one hour; the units are not to exceed 40% at any time. *See* Exhibit A and 5-7; Exhibit B at 9, 11, 12.

42. The Title V permit in effect from July 26, 2011 to the present also requires that opacity at Unit 3 shall not exceed 10% after installation of the dry scrubber and fabric filter, for a period or aggregate period in excess of 2 minutes during any one hour provided that at no time during the 2 minutes shall opacity exceed 20%. *See* Exhibit B at 11.

43. The Title V permits prohibit emissions of smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for a period, or aggregate period of time in excess of six

minutes during any one hour, provided that at no time shall the shade, density or appearance be equal to or greater than No. 2 of the Ringelmann chart at all four BPS Units. *See* Exhibit A at 5-7; Exhibit B at 9, 11, 12.

44. The Title V Permits incorporate the continuous monitoring, reporting and recordkeeping requirements established in 310 Mass. Code Regs. 7.14. *See* Exhibit A at 11-13; Exhibit B at 19-20.

45. The Title V Permits also require BPS to monitor flue gas volumetric flow with a Continuous Emission Monitoring System ("CEMS") pursuant to the federal Acid Rain Program, 40 C.F.R. Part 72, and the Massachusetts Acid Rain Law, 310 Mass. Code Regs. 7.22. *See* Exhibit A at 11; Exhibit B at 19.

46. As standards or limitations established under a permit in effect pursuant to CAA Title V and/or the Massachusetts SIP, the visible emissions limitations and monitoring requirements contained in the Title V Permits (referenced at Paragraphs 41-45 above) constitute "emission standards or limitations" under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a)(1).

#### **E. ENFORCEMENT PROVISIONS**

47. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. §§ 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with CAA Section 113(b) whenever on the basis of any information available, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of, among other things: (1) Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or (3) the Massachusetts SIP or any permit issued thereunder.

48. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes EPA to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring before January 31, 1997; \$27,500 per day for each violation occurring after January 31, 1997; \$32,500 per day for each violation occurring after March 15, 2004; and \$37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated or is in violation of, among other things, the requirements or prohibitions described in the preceding paragraph.

49. 40 C.F.R. § 52.23 provides, among other things, that any failure by a person to comply with any provisions of 40 C.F.R., Part 52, or with any approved regulatory provision of a SIP, shall render such person in violation of the applicable SIP, and subject to enforcement action pursuant to CAA Section 113, 42 U.S.C. § 7413.

*CAA*  
*intervention*  
50. Fed. R. Civ. P. 24 provides that, on timely motion, the Court must permit anyone to intervene in an action if such intervention is authorized by a federal statute; or "has an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24.

*CAA*  
51. Section 304(b)(1)(B) of the Act, 42 U.S.C. § 7604(b) provides that: "No action may be commenced – (1) under subsection A of this section—[ ...] (B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation or order, *but in any such action in a*

Incorporate this in the Intervention Memo

court of the United States any person may intervene as a matter of right.” 42 U.S.C. § 7604(b)(1)(B) (emphasis added). “Thus, Section 304(b)(1)(B) curtails the right to initiate a citizen suit under Section 304(a)(1), but permits intervention as a matter of right. *United States v. Duke Energy Corp.*, 171 F. Supp. 2d 560, 563 (MD NC 2001) (granting environmental group’s petition to intervene in federal enforcement action against utility who allegedly violated CAA permits); see also, *United States v. PG&E*, 776 F. Supp. 2d 1007, 1017 (ND Cal. 2011) (holding that Section 304 authorizes a party to intervene in a federal or state enforcement action for violations of the CAA). Accordingly, the City of Fall River is authorized under Fed. R. Civ. P. 24 and Section 304(b) of the Act to intervene in the instant action brought by U.S. EPA.

**FIRST CLAIM FOR RELIEF**

(Opacity Violations of Massachusetts SIP and Title V Permit)

52. Paragraphs 1 – 51 are realleged and incorporated here by reference.

53. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions limitations contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 25-27 and 41-45 above.

54. Since at least June 9, 2008, Defendant has repeatedly emitted air pollution with opacity of greater than 20% for an aggregate of 2 minutes and emitted air pollution with opacity of greater than 40%.

55. The emissions described in the preceding paragraph exceed the visible emissions standards in the Massachusetts SIP and the Title V Permits.

56. These violations are well documented in Brayton's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MassDEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

57. These violations of visible emissions standards in the Massachusetts SIP and the Title V permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by enforcement action.

### **SECOND CLAIM FOR RELIEF**

(Smoke Emission Violations of Massachusetts SIP and Title V Permit)

58. Paragraphs 1 – 57 are realleged and incorporated here by reference.

59. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions limitations contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 27 and 45.

60. Since at least October 23, 2008, Defendant has repeatedly emitted smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for periods in excess of six minutes during an hour and smoke with a shade, density or appearance equal to or greater than No. 2 of the Ringelmann chart.

61. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 Mass. Code Regs. 7.14, and 40 C.F.R. Part 51, Appendix P.

62. These violations of visible emissions standards in the Massachusetts SIP and the Title V Permits constitute violations of “emissions standards and limitations” under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

### **THIRD CLAIM FOR RELIEF**

(Violations of Visible Emissions Monitoring Requirements)

63. Paragraphs 1 – 62 are realleged and incorporated here by reference.

64. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions monitoring requirements contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 31 and 46.

65. Since at least April 10, 2008, Defendant has repeatedly failed to monitor visible emissions for each unit.

66. These violations are well documented in BPS’s quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

67. These violations of the visible emissions monitoring requirements of the Massachusetts SIP and the Title V permits constitute violations of “emissions standards and limitations” under the CAA that are redressable by enforcement action.

### **FOURTH CLAIM FOR RELIEF**

(Violations of Monitoring Requirements for NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub>)

68. The allegations of paragraphs 1-67 are realleged incorporated here by reference.

69. Upon information and belief, Defendant repeatedly has violated and is in violation of the monitoring requirements for NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 31-32 and 47.

70. Since at least January 3, 2011, Defendant has repeatedly failed to monitor NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> emissions.

71. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

72. These violations of the NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> Monitoring Requirements of the Massachusetts SIP and the Title V permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

#### **FIFTH CLAIM FOR RELIEF**

(Violations of Acid Rain Monitoring Requirements)

73. The allegations of paragraph 1-72 are realleged and incorporated here by reference.

74. Upon information and belief, Defendant repeatedly has violated and is in violation of the Acid Rain Monitoring Requirements of the Title V Permits referenced in Paragraph 47.

75. Since at least January 3, 2011, Defendant has repeatedly failed to monitor the flue gas volumetric flow for each unit, as required by the Acid Rain Monitoring Requirements of the Title V permits.

76. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.

77. These violations of the Acid Rain Monitoring Requirements of the Title V permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

#### **PRAYER FOR RELIEF**

WHEREFORE, based upon all the allegations set forth above, Plaintiff-Intervenor City of Fall River requests that this Court:

1. Declare that Defendant has violated and is continuing to violate the Clean Air Act by exceeding the visible emissions limitations contained in the Massachusetts SIP and the Title V Permits for Units 1-4;
2. Declare that Defendant has violated and continues to be in violation of monitoring requirements set forth in the Massachusetts SIP and the Title V Permits;
3. Enjoin Defendant from operating BPS, except in accordance with a compliance schedule that will prevent BPS from causing further violations of these standards and requirements;

4. Order Defendant to take all necessary steps to comply with emission standards, including, but not limited to, installing adequate pollution controls, conducting opacity audits, and developing protocols and processes to eliminate opacity violations;
5. Order Defendant to install continuous emissions monitors to measure filterable PM<sub>2.5</sub>;
6. Order Defendant to take all necessary steps to comply with monitoring requirements;
7. Order Defendant to pay civil penalties of up to \$32,500 per violation per day for emissions violations occurring on or after March 15, 2004 and up to \$37,500 per violation per day for violations occurring on or after January 12, 2009, consistent with the CAA (42 U.S.C. §§ 7413(b), 7413(e), and 7604(a); 40 C.F.R. §§ 19.2 and 19.4 (2008));
8. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to the public health and the environment caused by the violations of the CAA alleged above;
9. Award Plaintiff-Intervenor its costs of this action; and
10. Grant such other relief as the Court deems just and proper.

Dated: January \_\_\_\_, 2014

Respectfully submitted,

---

Deanna R. Swits  
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Chicago, IL 60606  
Phone: (312) 425-3900  
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**CERTIFICATE OF SERVICE**

I, Deanna R. Swits, an attorney, state that on \_\_\_\_\_, I served the foregoing \_\_\_\_\_ upon those listed below by enclosing copies thereof in envelopes, addressed as shown, with First Class postage prepaid, and depositing in the U.S. Mail Depository at 300 S. Riverside Plaza, Chicago, Illinois 60606.

\_\_\_\_\_  
Deanna R. Swits

Ignacio S. Moreno  
Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice  
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Restraining Order and/or Preliminary Injunction. That point bears repeating. Dominion has not, in any of the over sixty pages of memoranda it has filed, addressed Fall River's right to intervene under the Clean Air Act.

Instead, Dominion ignores Fall River's unconditional statutory right to intervene and has filed the instant motion alleging that Fall River has failed to cite controlling authority, failed to cite a controlling paragraph of the Consent Decree, and has improperly alleged jurisdiction over its claims under the Clean Air Act. Fall River has reviewed Dominion's claims thoroughly, and Dominion's claims of impropriety lack credence.<sup>1</sup> Instead, the timing of Dominion's actions and the disregard of Fall River's statutory right to intervene demonstrate that this motion for sanctions is simply a tactic to distract the Court and the parties from the true issues here and to harass Fall River. Dominion served this motion for sanctions *after* this Court's January 29 deadline for Fall River to amend its motions—even though Dominion had threatened the possibility of such a motion weeks earlier on January 15. (See Exhibit 2, Transcript at 7:21-8:21.) During the pendency of the "safe harbor" period under Federal Rule of Civil Procedure 11, Dominion filed its Responses to the pending Fall River motions that included the same arguments alleged in the instant motion for sanctions, thereby nullifying Fall River's ability to affirmatively raise any issues with this Court, if necessary. Counsel for Fall River sent responsive correspondence to counsel for Dominion on March 6, 2014, the day before the "safe harbor" period expired,<sup>2</sup> explaining its positions and that Dominion's presentation of its

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<sup>1</sup> Each of these arguments also is made in the Responses filed by Dominion on February 26, 2014 (Dkt. Nos. 29-31), and Fall River hereby incorporates its Replies filed March 10, 2014 (Dkt. Nos. 40-43).

<sup>2</sup> Dominion incorrectly calculated the "safe harbor" period and filed its Motion on March 6, 2014, one-day before permitted under FRCP 11. (Dkt. No. 35) In its motion to withdraw and re-file, Dominion states that "Fall River requested..." Counsel for Fall River informed counsel for Dominion of the filing

arguments for sanctions through its Responses effectively mooted any potential corrective action Fall River could have taken.<sup>3</sup>

Yet Dominion ignored this correspondence and filed its motion for sanctions unedited. Importantly, none of the allegations made by Dominion rise to the level of sanctionable conduct, as is evidenced in Fall River's Reply memoranda filed March 10, 2014. And, because any precedent or other information cited by Dominion is now before the Court, and was there before the expiration of the safe harbor period, there is little left for Fall River to do in way of correction even if it was necessary. While Fall River appreciates that Dominion disagrees with Fall River's position, Fall River's claims and actions before this Court are in no way improper. The only improper action is that taken by Dominion in filing the instant motion for sanctions.

Fall River's statutory right to intervene under the Clean Air Act is unconditional, however, as is addressed in the motion to intervene that was filed concurrently with the underlying motion to this Reply. The concurrent Motion to Modify presumes that Fall River has intervened as party and focuses only why the limited modification that Fall River seeks to make to the Consent Decree—that is, to add Fall River to the Consent Decree so that it may seek to enforce that provision of the Consent Decree that requires Dominion to review its submission for proposed mitigation activities under Article IX and Appendix A, Article XI—is appropriate and warranted. Fall River has not requested and does not intend to seek any substantive modifications, and because the ultimate relief that it seeks already is encompassed within the

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<sup>3</sup> Counsel for Fall River addressed this exact issue in its correspondence to counsel for Dominion on March 6, 2014, stating “we believe that Dominion’s proposed motion for sanctions is now mooted. If Dominion still intends to file a motion for sanctions, Fall River asks that Dominion respond to this correspondence and address why the issues raised therein are not mooted and a motion for sanctions is appropriate.” (See Ex. 1, ¶ 2.) Counsel for Dominion did not respond and instead filed its motion for sanctions the next day. (See Ex. 1, ¶ 2.)

current Consent Decree, the proposed simple modification/enforcement of that Consent Decree is appropriate to advance the efficient resolution of the issues.

Dominion's motion for sanctions should be denied.

### ARGUMENT

Dominion's arguments in support of its motion for sanctions highlight Dominion's misapprehension of the procedural requirements of the Federal Rules of Civil Procedure and ignore Fall River's unconditional right to intervene under the Clean Air Act.

#### **A. Dominion Ignores Fall River's Unconditional Statutory Right to Intervene.**

Fall River's Motion to Intervene is predicated on a statutory right of intervention granted under section 304(b)(1)(B) of the Clean Air Act. 42 U.S.C. §7604(b)(1)(B). Section 304(b)(1)(b) provides a right of intervention for parties who would otherwise have standing under the Clean Air Act's citizen suit provision to intervene in enforcement actions brought by the State or Administrator. Statutory rights of intervention, such as the right granted here, are subject only to those restrictions explicitly set forth in the statute, or pursuant to Fed. R. Civ. P. 24. Section 304(b)(1)(A) does not explicitly or implicitly impose limitations as to who or under what circumstances a party may intervene: "if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right." *Id.* Likewise, Rule 24(a) provides that "[o]n timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute..." FED. R. CIV. P. 24(a). Alternatively, permissive intervention is appropriate where there exists a claim or defense with a question of fact or law in common with the main action—and none of the parties assert that Fall River's

claims do not share a common question of fact with this Action. *See City of Chicago v. FEMA*, 660 F.3d 980, 986 (7th Cir. Ill. 2011) *citing Solid Waste Agency of Northern Cook County v. United States Army Corps of Eng'rs*, 101 F.3d 503, 509 (7th Cir. Ill. 1996) (later overturned on other grounds) (“*SWANCC*”). Finally, the Seventh Circuit has acknowledged that the bar to standing is low where a right to intervene exists under Rule 24, as to have standing, or to be “aggrieved,” requires only

“(1) having suffered (or having the prospect of suffering) the kind of harm (that is, concrete and personal) that would support a suit at common law, whether or not the particular harm is one that the common law created a remedy for, provided (2) that the harm is to an interest that is protected by the statute claimed to provide the ground of relief.

*SWANCC*, 101 F.3d at 505, *citing Air Courier Conf. v. Am. Postal Workers Union*, 498 U.S. 517, 523, 112 L. Ed. 2d 1125, 111 S. Ct. 913 (1991; *Lujan v. Nat'l Wildlife Federation*, 497 U.S. 871, 883, 111 L. Ed. 2d 695, 110 S. Ct. 3177 (1990)). There is no question that the harms to Fall River’s interests are protected by the CAA. Fall River has an unconditional right to intervene under the CAA, or at the very least is entitled to permissive intervention, and there is no question is satisfies the requirement for standing.

Dominion does not assert a single argument that takes aim at Fall River’s statutory right to intervene in this matter. Rather, Dominion asserts the following three arguments: (1) Fall River cannot benefit from the Consent Decree because it is not a party to it; (2) the Consent Decree expressly denies rights to non-parties; and (3) the “Consent Decree does not address any opacity or monitoring claims at the Brayton Point station.” (Dkt. No. 29, Resp. at 11, citing Consent Decree ¶ 121.)

Dominion’s first two arguments are essentially duplicative of one another. In essence, Dominion takes the tautological position that Fall River may not intervene in this action because

it is not already a party. Because the relief that Fall River is ultimately seeking stems from certain provisions of the Consent Decree, Dominion argues that Fall River may not seek its relief because it is not a party to that Consent Decree. Fall River concedes that as a third party, it has no rights under the Consent Decree—which is the precise reason why Fall River has filed a Motion to Intervene in this action and a parallel Motion to Modify the Consent Decree in which Fall River asks this Court to add it as a party to that Consent Decree. Even if Dominion's arguments did have any effect on Fall River's statutory right to intervene in this action—which they do not—Dominion has failed to apprehend Fall River's procedural approach.

**1. Fall River Appropriately Relies on Authority in Support of Its Claims.**

*Blue Chip Stamps* is not controlling authority for this case. *Blue Chip Stamps* holds that a private damages action under the Securities and Exchange Commission's Rule 10b-5 (See 17 C.F.R. 240) is confined to actual purchasers or sellers of securities, following the Birnbaum rule, and that those purported beneficiaries without standing to bring a private damages action under Rule 10b-5 cannot move to enforce or modify a consent decree. Both Dominion and the Government acknowledge that courts have held that *Blue Chip Stamps* is limited to cases under Rule 10b-5. *IBM Corp. v. Comdisco, Inc.*, which Dominion relies upon, notes that *Blue Chips Stamps* has been so limited. 834 F. Supp. 264, 267 (N.D. Ill. 1993). As this matter arises under the Clean Air Act and has no relation to any claim arising under any SEC rule, *Blue Chip Stamps* clearly does not apply.

Moreover, even if *Blue Chips Stamps* was not limited to securities matters, it would not apply here because that case addresses situations in which no statutory right to intervene exists. Dominion ignores that Fall River concurrently has filed a motion to intervene *as a party*, as a *right*, under section 304(b)(1)(B) of the Clean Air Act. The proposed intervenors in *Blue Chip*

*Stamps* based their motion to modify the consent decree only on the status conveyed to them by the consent decree itself. Fall River, with the Clean Air Act's provision for intervention, is simply not similarly situated.

While Dominion is free to advance the argument that *Blue Chip Stamps* should extend to this situation, it is by no means controlling authority in every case that involves a consent decree, as Dominion asserts—let alone where an unconditional right to intervene by statute exists. The Seventh Circuit had an opportunity to address and cite *Blue Chip Stamps* ten years later in *South v. Rowe*, but did not. *South v. Rowe* holds that a third party has standing to intervene to modify a consent decree as of right under Rule 24(a) when the consent decree at issue is clearly intended to benefit the proposed intervenor. 759 F.2d 610, 612 (7th Cir. 1985). In *South v. Rowe*, the Seventh Circuit explicitly acknowledges the efficiencies rendered by allowing a beneficiary to intervene in a suit to modify a consent decree instead of filing a separate suit—the same efficiencies that would be realized here. Moreover, that the Seventh Circuit did not address *Blue Chip Stamps* in *South v. Rowe* at minimum demonstrates that reasonable minds may disagree and sanctions are not appropriate. Finally, Dominion's assertion that maybe the Seventh Circuit just “missed” *Blue Chip Stamps* when drafting the opinion seems particularly unlikely given that Judge Posner sat also on the panel for *Gatrecaux v. Pierce*, a case relied upon by Dominion in which *Blue Chip Stamps* is discussed. (Dkt. 30, Resp. at 7.)

Dominion's further assertion that Fall River is attempting to “hide” the Consent Decree's provisions of Paragraphs 2, 187-88, and 198 is without merit. First, the Consent Decree was entered by the Court in which these motions are pending and is at the center of the controversy. Second, because Fall River is advancing its right to intervene as a right under the CAA, these four (4) paragraphs of the Consent Decree, which state that they “do not create any rights or

obligations...” and do not “limit, enlarge, or affect the rights of any Party to this Consent Decree as against any third parties” simply do not affect Fall River’s right to intervene under the CAA. Again, Dominion was free to argue that these provisions somehow trump Fall River’s statutory, unconditional right to intervene (which it does not). Not preemptively explaining that those particular provisions of the Consent Decree do not apply is not, however, sanctionable conduct.

## 2. Fall River Has Standing to Assert Its Claims.

Dominion asserts that Fall River has no standing because the allegations in its Revised Proposed Complaint focus on certain opacity and monitoring violations that are not expressly addressed in the Consent Decree. First, Fall River explicitly states in its Complaint that it seeks to intervene in the Government’s pending enforcement action with respect to the Brayton Point Station. (Dkt. No. 25, Mot. Ex. 1, Proposed Compl., ¶¶ 50-51.) Moreover, the Clean Air Act’s intervention provision at section 304(b)(1)(B) does not require that a proposed intervenor assert identical claims. Rather, as set forth at Fed. R. Civ. P. 19(a), an intervening party who joins an extant action must be a party who “claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may: (i) as a practical matter impair or impede the person’s ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.” Fed. R. Civ. P. 19(a)(1)(B). In *United States v. Kerr-Mcgee Corp.*, for instance, the Court granted the Rocky Mountain Clean Air Action and the Natural Resources Defense Council’s (RMCAA and NRDC) motion to intervene under the CAA where it alleged one count that mirrored the United States’ complaint and a second count that asserted that the acts alleged in the first also constituted breaches of defendant’s operating permits. 2008 U.S. Dist. LEXIS 24494, \* (D. Colo. Mar. 26, 2008) (the Court ultimately denied the intervenors’ request that the

proposed Consent Decree not be approved on several bases; the intervenors, however, were granted the right to intervene to file a response to the proposed consent decree).

Here, there is no question that the Consent Decree addresses alleged violations of Clean Air Act standards and limitations at the Brayton Point Station. There is no factual dispute that the City of Fall River, which is located less than three (3) miles from the Brayton Point Station, has and will continue to suffer actual harm as a result of emissions violations from the Brayton Point Station. Thus, the City of Fall River has a legitimate, specific, and actual interest in this action which *specifically names Brayton Point Energy, LLC* as a defendant. Whether Fall River's claims directly align with the United States' claims is neither relevant nor dispositive—it is enough that Fall River seeks to join the Government's action with respect to the Brayton Point Station.

To the extent that Dominion is taking the position that the instant Action does not actually contain claims against the Brayton Point Station, Dominion is precluded from asserting such a position under principles of estoppel and the doctrine of invited error. *See Burton v. GMC*, 2008 U.S. Dist. LEXIS 62758, No. 1:95-cv-1054-DFH-TAB, \* 38-41 (S.D. Ind. Aug. 15, 2008) (holding that where the court gave an instruction that was substantially similar to the instruction proposed by that party, if that instruction was an error, it was an error invited by that party), *citing Susan Wakeen Doll Co. v. Ashton Drake Galleries*, 272 F.3d 441, 455 (7th Cir. 2001) (party could not object on appeal to special verdict question that party had drafted); *McVeigh v. McGurren*, 117 F. 2d 672, 680 (7th Cir. 1940) (where defendant did not object to instructions given, assignment of error on appeal would not be considered); *see also In re Marriage of Davies*, 95 Ill. 2d 474, 477 (Ill. 1983) *citing Henry v. Metz* 382 Ill. 297, 306 (1942) (stating “parties cannot blow hot and cold in a lawsuit”). Brayton Point Station is a

defendant in this Action, and the Consent Decree, agreed to both by the Government and by Dominion, disposes of the Government's claims with regard to the Brayton Point Station. It is illogical now for Dominion to assert that this Action contains no claims relating to Brayton Point Station, and Dominion is precluded from such an argument under principles of estoppel and the doctrine of invited error.

Dominion also asserts that this Court has no subject matter jurisdiction over the claims asserted by Fall River in its Revised Proposed Complaint because the facts and claims "bear no relationship to those resolved in this case for the Brayton Point Station in Massachusetts." These assertions are also without support and should be disregarded by this Court. It is apparent from both the Complaint and the Consent Decree that this Action addresses the harms arising from Dominion's alleged violations of standards and emissions imposed by the Clean Air Act at its Brayton Point facility—the same polluting actions that the City of Fall River has asserted claims and has standing upon which to intervene under the Clean Air Act.

Paragraph 121 of the Consent Decree actually states that

"Entry of this Consent Decree shall resolve all civil claims of the United States against Dominion that arose from any modifications commenced at any Dominion System Unit prior to the Date of Lodging of this Consent Decree..."

As is discussed more fully in the Reply memoranda filed on March 10, "Dominion System Unit" is defined to include Brayton Point Station. If the Complaint filed by the United States is sufficient to confer subject matter jurisdiction on this Court to resolve the claims against Defendant Dominion Energy Brayton Point regarding the Brayton Point facility, then there can be no question that there is subject matter jurisdiction for this Court to address both the claims therein that Fall River seeks to join and the related claims in Fall River's Complaint.

**B. Dominion Should be Responsible for Fall River's Attorney's Fees in Defending Against the Instant Motion for Sanctions.**

A court may award to the person who prevails on a motion under Rule 11—including the target of the motion—reasonable expenses, including attorney's fees, incurred in opposing the motion. *See* FED. R. CIV. P. 11(c)(2) (2013), and Advisory Committee Note, 1993 Amendments, Subdivisions (b) and (c) (stating “service of a cross motion under Rule 11 should rarely be needed since under the revision the court may award to the person who prevails on a motion under Rule 11...”). Ostensibly, Dominion filed its motion based on alleged violation of Subsection 11(b)(2), which requires that,

“to the best of the person’s knowledge, information, and belief, formed after a reasonable inquiry...the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.

*Id.* at Subsection (b)(2).

The Advisory Committee Notes to Rule 11 are instructive in evaluating allegations of violations of the Rule. *See, e.g., Olson v. Reynolds*, 484 Fed. Appx. 61, 64 (7th Cir. 2012) (relying on Advisory Committee Notes to Rule 11 in affirming district court holding that a motion for sanctions served after the ability to cure any potential problems was untimely); *see also Allied Beacon Partners, Inc. v. Bosco*, 2014 WL 551712, \*4 (N.D. Ill. Feb. 12, 2014) (stating that, in evaluating a motion for sanctions, a court considers whether a reasonable attorney would or should have known that the filing is being presented for an improper purpose and that the argument presented is “warranted by existing law or by a nonfrivolous argument” for changing the law); *Int’l Broth. of Elec. Workers, AFL-CIO, Local 1427 v. Commonwealth Edison Co.*, 1993 WL 68105, \*8 (N.D. Ill. March 10, 1993) (denying a motion for Rule 11

sanctions, stating that an “attorney must make a reasonable inquiry into the facts and law, must act in good faith, must ascertain that the action is warranted by existing law or good faith argument for modification or reversal of existing law, and must ascertain that the action is well-grounded in fact”).

These Notes also make evident that Dominion’s motion for sanctions is not well-founded.

First, the Advisory Committee Note to the 1983 Amendments states that

“what constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleadings, motion, or other paper; whether the pleadings, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the bar.

*Id.* Next, the Advisory Committee Note to the 1993 Amendments to Rule 11 clarifies that “to the extent to which a litigant has researched the issues and found *some support* for its theories even in minority opinions, in law review articles, or through consultation with other attorneys should certainly be taken into account in determining whether paragraph (2) has been violated.” *Id.* at Advisory Committee Note, 1993 Amendments, Subdivisions (b) and (c). Moreover, “arguments for a change of law are not required to be specifically so identified,” even though “a contention that is so identified should be viewed with greater tolerance under the rule.” *Id.* As demonstrated and explained in Section A, *supra*, not only are Fall River’s claims not sanctionable, they should be meritorious. The Advisory Committee Notes, however, illustrate that even if this Court ultimately finds Fall River’s claims and arguments in support thereof unpersuasive, Fall River has appropriately asserted those claims based on existing law and nonfrivolous extensions thereof. *See, e.g., Hernandez v. Central Die Casting, Inc., Local No. 2154-19*, 1997 WL 627651, \*6 (N.D. Ill. Oct. 2, 1997) (“In defining frivolousness for purposes

of Rule 11, courts have resorted to an articulation of what it is not: A motion is not frivolous because of the absence of legal precedent, the presentation of unreasonable legal argument, or the failure to prevail on the merits”) (citation omitted).

The Advisory Committee Notes also emphasize that “Rule 11 motions should not be made or threatened for minor, inconsequential violations of the standards prescribed by subdivision (b).” *Id.* Because the arguments that Dominion identifies in its proposed motion for sanctions are all advanced in its Responses filed on February 26, 2014, there can be no consequence even if Fall River previously should have alerted the Court to the arguments advanced therein. *See Olson*, 484 Fed. Appx. at 64. Fall River’s first corrective opportunity was in the Reply memoranda filed on March 10, 2014—and Fall River fully addressed the assertions made by Dominion therein. *See Maxwell v. KPMG, LLP*, 2008 U.S. App. LEXIS 23708, No. 07-2819, \*5-6 (7th Cir. Aug. 19, 2008) (finding sanctions appropriate only when a litigant absolutely failed to address or challenge controlling authority, even after brought to its attention by the opposing party); *see also Thompson v. Duke*, 940 F.2d 192, 198 (7th Cir. 1991) (reversing an award of sanctions because “[w]hile the omission of a citation of controlling authority would make an argument frivolous and therefore sanctionable, the omission of a citation that arguably does not control, while imprudent and unprofessional, is not, standing alone, a basis for sanctions”) (internal citation omitted).

The Advisory Committee Notes also address a variety of improper bases for filing Rule 11 motions, stating that Rule 11 motions

“should not be employed as a discovery device or to test the legal sufficiency or efficacy of allegations in the pleadings; other motions are available for those purposes. Nor should Rule 11 motions be prepared to emphasize the merits of a party’s position,

to exact an unjust settlement, to intimidate an adversary into withdrawing contentions that are fairly debatable, to increase the costs of litigation, [or] to create a conflict of interest between attorney and client...

FED. R. CIV. P. 11(c)(2) (2013) Advisory Committee Note, 1993 Amendments, Subdivisions (b) and (e). Both the timing of Dominion's service of its motion for sanctions and the assertions contained therein indicate that Dominion is employing this motion for sanctions for several of the reasons listed above—in particular, testing the legal sufficiency of Fall River's pleadings, emphasizing the "merits" of Dominion's position, and most troubling, attempting to intimidate an adversary with far more limited resources into withdrawing contentions that are fairly debatable and increasing costs of litigation.

Rule 11's "safe harbor" requires only that the party advancing a motion for sanctions wait until the expiration of the "safe harbor" to file its motion—not that the motion be filed as soon as the "safe harbor" has expired. *Id.* Dominion was and is under no time constraint in advancing a motion for sanctions, and the Advisory Committee Notes again point out that a court may defer its ruling until final resolution of the case. *Id.* In the instant situation, final resolution of the case is only a short time away—oral argument is scheduled for two weeks from today's date. A more prudent approach would be to file a motion for sanctions only if this Court found Fall River's claims utterly lacking merit.

Dominion timed the service of its motion such that Fall River had no realistic opportunity to make any correction (if any was necessary) before Dominion filed its Response Memoranda.<sup>4</sup>

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<sup>4</sup> Additionally, the Advisory Committee Notes also state that "[i]n most cases ... counsel should be expected to give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion." *Id.* As stated *supra* at page 2, while counsel for Dominion raised the threat of a potential sanctions motion at the hearing of  
*(Footnote continued on next page)*

Dominion's timing also was such that the safe harbor would expire just days before Fall River's Reply Memoranda were due—allowing Dominion to file a motion for sanctions while Fall River was in the final process of preparing its memoranda. Dominion's actions in filing its motion for sanctions smack of gamesmanship, and this Court should award Fall River its reasonable expenses incurred in defending itself.

### CONCLUSION

The City of Fall River respectfully requests that this Court deny Dominion's Motion for Sanctions and award Fall River its reasonable expenses, including attorneys' fees, incurred in opposing that Motion.

Dated: March 24, 2014

Respectfully submitted,

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January 15, Dominion did not identify any basis for its threat to Fall River before serving its Rule 11 motion. (See Ex. 1, ¶ 4.)

**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 24, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN RESPONSE TO DOMINION ENERGY, INC.'S MOTION FOR SANCTIONS** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on March 24, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN RESPONSE TO DOMINION ENERGY, INC.'S MOTION FOR SANCTIONS** was served upon those listed below by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
Deanna R. Swits

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# EXHIBIT 1



3. Attached as Exhibit B is a true and accurate copy of an email dated March 6, 2014 from myself to Harry M. Johnson, III. Again, Mr. Johnson did not respond.

4. I did not receive any correspondence or other communications from Dominion or its counsel regarding any potentially sanctionable conduct or actions prior to being served with its proposed motion for sanctions on February 10, 2014.

I certify under penalty of perjury that the foregoing statements are true and correct. This the 24<sup>th</sup> day of March 2014.

/s/ Deanna R. Swits  
Deanna R. Swits, IL No. 6287513

# EXHIBIT A



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March 6, 2014

VIA EMAIL

Harry M. Johnson, III  
HUNTON & WILLIAM LLP  
951 East Byrd Street  
Richmond, VA 23219-4074  
pjohnson@hunton.com

Re: United States of America v. Dominion Energy, Inc. et. al., 13-cv-3086 (C. D. Ill.)

Counsel:

We are in receipt of your correspondence of February 10, 2014 and the proposed motion for sanctions enclosed within. We are disappointed in the use of this tactic, which serves no purpose other than to waste the Court's limited resources and drive up costs for all parties.

In the Motion for Sanctions, Dominion alleges that Fall River has failed to cite controlling authority, failed to cite a controlling paragraph of the Consent Decree, and has improperly alleged jurisdiction over its claims under the Clean Air Act. We note that each of these arguments also has been made in the Responses filed by Dominion on February 26, 2014 (Dkt. 29-31.) As these arguments are now before the Court, there is little left for Fall River to do in way of correction other than to address the arguments in its Replies due March 10, 2014. Importantly, none of the allegations made by Dominion rise to the level of sanctionable conduct, as will be evidenced in Fall River's Replies. We appreciate that Dominion disagrees with Fall River's position. But Dominion's positions in its proposed motion for sanctions are incorrect.

First, *Blue Chip Stamps* is not controlling authority for this case. *Blue Chip Stamps* holds that a private damages action under Rule 10b-5 is confined to actual purchasers or sellers of securities, following the *Birnbaum* rule, and that those purported beneficiaries without standing to bring a private damages action under Rule 10b-5 cannot move to enforce or modify a consent decree. Courts have held that *Blue Chip Stamps* is strictly limited to this situation in later cases. *IBM Corp. v. Comdisco, Inc.*, which Dominion relies upon, notes that *Blue Chips Stamps* has been so limited. 834 F. Supp. 264, 267 (N.D. Ill. 1993). Dominion's authority

March 6, 2014  
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relates to situations in which no statutory right to intervene exists—Dominion surely does not assert that the Clean Air Act does not include such a right. While Dominion is free to advance the argument that *Blue Chip Stamps* should extend to this situation, it is by no means controlling authority in every case that involves a consent decree, as Dominion asserts. Moreover, that the Seventh Circuit did not address *Blue Chip Stamps ten years later* in *South v. Rowe* when holding that a third party *does* have standing to intervene to modify a consent decree seems to be conclusive that *Blue Chip Stamps* is not controlling authority where there is a statutory right to intervene, as there is here. Again, given that Judge Posner also sat on the panel for *South v. Rowe*, it is unlikely he would have ignored the applicability of *Blue Chip Stamps* having addressed it two years prior in *Gautreaux v. Pierce*, another case that Dominion relies upon here.

As to Dominion's argument that the Consent Decree's provision does not create rights for third parties, including Fall River, and therefore Fall River has no right to intervene, again, Dominion is free to advance that argument. That argument ignores Fall River's *independent right to intervene* as provided in the Clean Air Act. Dominion's further assertion that Fall River is attempting to "hide" that provision is specious. The Consent Decree was entered by the Court in which these motions are pending and is at the center of the controversy. Fall River is under no obligation to bring to the Court's attention this specific provision and its lack of effect on Fall River's independent right to intervene under the Clean Air Act.

Finally, Dominion's argument that Fall River's claims under the Clean Air Act are not identical to those harms identified in the Consent Decree and/or to the harms alleged in the CLF complaint also fails to allege any sanctionable conduct, and, frankly, lacks merit. There is no question that Fall River's claims rise out of the same nucleus of facts as the harms identified in the Consent Decree and in the CLF complaint. Moreover, there appears to be a factual dispute as to whether the CLF complaint was dismissed in response to the entry of the Consent Decree. Fall River believes the facts will demonstrate that the CLF complaint was, in fact, dismissed directly in response to the entry of the Consent Decree. A factual dispute, however, is a far cry from sanctionable conduct.

Filing a frivolous motion for sanctions is itself sanctionable. *See* FED. R. CIV. P. 11(c)(2) (2013) Advisory Committee Note, 1993 Amendments, Subdivisions (b) and (c) (stating "service of a cross motion under Rule 11 should rarely be needed since under the revision the court may award to the person who prevails on a motion under Rule 11..."). Because the arguments that Dominion identifies in its proposed motion for sanctions are all advanced in its Responses filed on February 26, 2014, there is no reason for Fall River to alert the Court to the arguments advanced therein. Fall River's only corrective opportunity now lies in the Replies to be filed on March 10, 2014. Therefore, we believe that Dominion's proposed motion for sanctions is now mooted. If Dominion still intends to file a motion for sanctions, Fall River asks that Dominion respond to this correspondence and address why the issues raised therein are not mooted and a motion for sanctions is appropriate.

March 6, 2014  
Page 3

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Sincerely,

/s/ Deanna R. Swits  
Attorney for City of Fall River

DRS

# **EXHIBIT B**

**Swits, Deanna**

---

**From:** Swits, Deanna  
**Sent:** Thursday, March 06, 2014 3:23 PM  
**To:** 'Johnson, Harry M. ("Pete")'; Cooper, Donald; Simon Lento, Jennifer  
**Cc:** Jaber, Makram; Cooper, Jessica  
**Subject:** United States of America v. Dominion Energy, Inc. et. al., 13-cv-3086 (CDIL)  
**Attachments:** 201.03.06 Letter\_to\_Dominion\_Counsel.pdf

**Importance:** High

Counsel:

Please see attached correspondence in response to your correspondence of February 10, 2014. Also, we just received ecf notices of the filing of Docket Nos. 35-36, which purport to be a Motion for Sanctions and a Memorandum in Support thereof. Please withdraw those filings **IMMEDIATELY**. Under Rule 11, you are not permitted to file any motion for sanctions **within 21 days** after its service, plus three days for mail/email service. That means that no motion can be filed until tomorrow, March 7, 2014. The Clerk's office is open today for another hour; we request that you contact the clerk's office and have these filings sealed and withdrawn immediately.



**NP**

**Deanna R. Swits**

Attorney

dswits@nixonpeabody.com

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# **EXHIBIT 2**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,	)	
PLAINTIFF,	)	13-CV-03086
and	)	
CITY OF FALL RIVER,	)	
PLAINTIFF-INTERVENOR,	)	
VS.	)	
DOMINION ENERGY, INC.,	)	SPRINGFIELD, ILLINOIS
et al.,	)	
DEFENDANTS.	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SUE MYERSCOUGH  
UNITED STATES DISTRICT JUDGE

JANUARY 15, 2014

A P P E A R A N C E S :  
FOR THE PLAINTIFF:

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ASST. U.S. ATTORNEY  
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PEORIA, ILLINOIS  
JASON ANTHONY DUNN  
SCOTT SCHACHTER  
U.S. DEPT. OF JUSTICE  
BOX 7611 BEN FRANKLIN STA.  
WASHINGTON, DC

FOR PLAINTIFF-INTERVENORS:

DEANNA SWITS  
JENNIFER SIMON-LENTO  
NIXON PEABODY, LLC  
300 S. RIVERSIDE PLAZA  
CHICAGO, ILLINOIS

FOR THE DEFENDANTS:

MAKRAM B. JABER  
HARRY M. JOHNSON, III  
HUNTON & WILLIAMS  
951 E. BYRD STREET  
RICHMOND, VA

COURT REPORTER:

KATHY J. SULLIVAN, CSR, RPR, CRR  
OFFICIAL COURT REPORTER  
600 E. MONROE  
SPRINGFIELD, ILLINOIS  
(217)492-4810

1 THE COURT: Ms. Swits, is there a response  
2 to that?

3 MS. SWITS: Well, I think our response  
4 would simply be that, you know, the back end  
5 deadline is not going to be affected that much by a  
6 couple of weeks here. Particularly since there has  
7 been no approval of any project at this point. So I  
8 don't see how the back end deadline could be  
9 affected by a project that hasn't actually been  
10 approved to start yet. So I don't see that argument  
11 there.

12 Moreover, to the extent that Somerset schools  
13 would be harmed; I think the harm would be greater  
14 to Fall River in not being considered at all under  
15 the consent decree provision, than if by some  
16 stretch there was any harm to Somerset.

17 THE COURT: So --

18 MR. JOHNSON: Your Honor, this is -- I'm  
19 sorry.

20 THE COURT: Go ahead.

21 MR. JOHNSON: This is Harry Johnson again  
22 on behalf of Dominion entities.

23 But I think it's incumbent upon me to point out  
24 that there are very, very serious questions about  
25 the Court's jurisdiction even to entertain the

1 current motions that are pending.

2 Under the consent decree itself it is clear  
3 that third parties have no rights to come in and  
4 seek modification of the decree. And in fact, it's  
5 very clear that the consent decree creates no rights  
6 in those third parties.

7 Moreover, the attempt to intervene here on the  
8 basis of a complaint that is far different from the  
9 complaint that was filed by the Government to  
10 institute this action; in fact, there's no overlap  
11 whatsoever; also has serious standing and subject  
12 matter jurisdiction issues.

13 In fact, the claims raised in the complaint,  
14 the proposed complaint in intervention, clearly do  
15 not comply with the Citizens Suit lawsuit rules  
16 under the Clean Air Act.

17 And just to be -- to be completely candid here,  
18 we are seriously considering filing -- or serving,  
19 rather, the appropriate papers seeking to have all  
20 of these motions withdrawn on the grounds that  
21 they're -- they're frivolous.

22 THE COURT: So the bottom line is Dominion  
23 and EPA are not willing to consent to allowing Fall  
24 River to submit its plan and to consider that plan  
25 before making a final -- before EPA making a final

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Proposed Plaintiff-Intervenor,	)	
	)	
v.	)	Civil Action No. 3:13-cv-03086
	)	(SEM)(BGC)
	)	
DOMINION ENERGY, INC., BRAYTON	)	
POINT, LLC, AND KINCAID GENERA-	)	
TION, LLC, AND EQUIPOWER RE-	)	
SOURCES CORP.,	)	
	)	
Defendants.	)	
	)	

**MOTION FOR LEAVE TO FILE LIMITED REPLY BRIEF**

Dominion Energy, Inc. ("Dominion") moves the Court for leave to file the attached limited reply brief in response to Plaintiff-Intervenor City of Fall River's Memorandum in Response to Dominion Energy Inc.'s Motion for Sanctions [Dkt. 45] ("Fall River's Response"). Dominion recognizes that Local Rule 7.1(B)(3) does not permit replies, but respectfully submits a limited reply is appropriate here to correct two gross misstatements in Fall River's Response.

1. On March 7, 2014, Dominion filed its Motion for Sanctions Pursuant to Fed. R. Civ. P. 11. [Dkt. 38.] Fall River filed its response to the motion on March 24, 2014. [Dkt. 45.]
2. Dominion strongly disagrees with the substance of Fall River's Response, and continues to maintain that Fall River's filings fall below the minimum standards of Fed. R. Civ. P. 11. In light of Local Rule 7.1(B)(3), Dominion will present its substantive reply arguments at

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )

Plaintiff, )

and )

THE CITY OF FALL RIVER, )

Proposed Plaintiff-Intervenor, )

v. )

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

DOMINION ENERGY, INC., BRAYTON )  
POINT, LLC, AND KINCAID )  
GENERATION, LLC., AND EQUIPOWER )  
RESOURCES CORP., )

Defendants. )

**LIMITED REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS  
PURSUANT TO RULE 11 OF FEDERAL RULES OF CIVIL PROCEDURE**

Dominion Energy, Inc. ("Dominion") files this Limited Reply Memorandum in Support of its Motion for Sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure.

**I. PRELIMINARY STATEMENT**

On March 7, 2014, Dominion filed its Motion for Sanctions. [Dkt. 38.] Fall River thereafter filed its response ("Fall River's Response"). [Dkt. 45.] Dominion strongly disagrees with the substance of Fall River's Response, and continues to maintain that Fall River's filings fall below the minimum standards of Fed. R. Civ. P. 11. Dominion will present its substantive reply arguments at the hearing on this matter on April 7, 2014, but two false assertions demand immediate reply.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Proposed Plaintiff-Intervenor,	)	
	)	Civil Action No. 3:13-cv-03086
v.	)	(SEM)(BGC)
	)	
DOMINION ENERGY, INC., BRAYTON	)	
POINT, LLC, AND KINCAID	)	
GENERATION, LLC., AND EQUIPOWER	)	
RESOURCES CORP.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

---

**PROPOSED ORDER**

Dominion Energy, Inc. ("Dominion") has moved for leave to file a limited reply brief in response to Plaintiff-Intervenor City of Fall River's Memorandum in Response to Dominion Energy Inc.'s Motion for Sanctions [Dkt. 45]. Dominion's motion is hereby GRANTED. The reply brief attached to Dominion's motion shall be deemed filed as of this date.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
/Sue E. Myerscough  
SUE E. MYERSCOUGH  
United States District Court Judge  
Central District of Illinois

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
and	)
	)
THE CITY OF FALL RIVER,	)
	)
Proposed Plaintiff-Intervenor,	)
	)
v.	)
	)
DOMINION ENERGY, INC., BRAYTON	)
POINT, LLC, AND KINCAID	)
GENERATION, LLC., AND EQUIPOWER	)
RESOURCES CORP.,	)
	)
Defendants.	)
	)

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**MOTION FOR SANCTIONS PURSUANT TO RULE 11 OF THE FEDERAL RULES OF  
CIVIL PROCEDURE**

Pursuant to Federal Rule of Civil Procedure 11, Dominion Energy, Inc. (“Dominion”) respectfully moves the Court to impose sanctions against The City of Fall River (“Fall River”) for failing to conduct a reasonable pre-filing inquiry into (i) whether its alleged claims and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, or (ii) whether its factual contentions had evidentiary support. Dominion seeks sanctions, including but not limited to expenses and attorneys’ fees incurred in responding to the motions and papers identified below.

In support of its motion, Dominion states as follows:

1. On April 2, 2013, the United States filed a complaint against Dominion and Kincaid Generation, LLC (“Kincaid”) for alleged violations of the Prevention of Significant

Deterioration (“PSD”) provisions of the Clean Air Act (“CAA”) at the Kincaid Power Station located in Kincaid, Illinois. [Dkt. 1.] The United States simultaneously lodged a proposed Consent Decree resolving the alleged claims against Dominion and Kincaid. [Dkt. 3.]

2. The Consent Decree also resolved PSD claims involving other plants, including the Brayton Point facility in Massachusetts, even though those plants were not named in the United States’ Complaint. *See id.* ¶ 121.

3. As is plain on its face and despite Fall River’s claims to the contrary, the Consent Decree does not resolve “opacity” or “monitoring” claims at the Brayton Point facility in Massachusetts.

4. The Consent Decree also contains specific provisions confirming that it confers no rights on third-parties that are enforceable in this Court. *See id.* ¶¶ 2, 187, 198.

5. On January 14, 2014, Fall River filed a number of motions and memoranda in this Court seeking to intervene, to enforce or modify the terms of the Consent Decree, and to obtain a temporary restraining order and/or preliminary injunction. [Dkt. 13-18.] The Court held an emergency hearing on January 15, 2014, and set a deadline for Fall River of January 29, 2014, to file any supplemental papers, effectively giving Fall River a further opportunity to investigate and reconsider all its filings. Fall River filed a revised Motion to Intervene with revised proposed complaint [Dkt. 25] along with a revised Memorandum in Support of its Motion to Intervene [Dkt. 26], and supplement to its Memorandum to Modify the Consent Decree [Dkt. 27].

6. As more fully explained in the accompanying memorandum, Fall River’s filings fail to meet the bare minimum standards of Rule 11:

- a. Fall River seeks to intervene and “modify or enforce” the Consent Decree without mentioning relevant precedent from the United States Supreme Court;
- b. Fall River fails to cite the terms of the Consent Decree confirming that third parties, such as Fall River, do not have rights to pursue the relief that Fall River seeks; and
- c. Fall River bases its attempted intervention on a proposed complaint that is belied both by black-letter law and by incontrovertible facts.

7. The above defects would have been evident had Fall River or its counsel conducted even a cursory investigation of the relevant law, the Consent Decree, the relevant facts, and the docket in this case.

8. Pursuant to Local Rule 7.1(A)(2), Dominion requests oral argument on this motion.

9. This Motion and its accompanying memorandum in support are being served in advance of filing with the Court in accordance with Fed. R. Civ. P. 11(e)(2).

WHEREFORE, Dominion respectfully requests that the Court impose sanctions on City of Fall River pursuant to Fed. R. Civ. P. 11 and award fees and expenses incurred for responding to Fall River’s motion to intervene and motion to modify the consent decree.

**DOMINION ENERGY, INC.**

s/Harry M. Johnson, III  
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*Counsel for Dominion Energy, Inc.*

CERTIFICATE OF SERVICE

I certify that on February 10, 2014, the foregoing was served by overnight mail and via email to counsel of record for Proposed Plaintiff-Intervenor. Further, I certify that on March 7, 2014, the foregoing was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district, and was served upon those listed below via email.

Steven Viggiani, Esquire  
Senior Enforcement Counsel, Region 1  
U.S. Environmental Protection Agency  
Mail Code OESO4-3  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Seema Kakade, Esquire  
Attorney-Advisor  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2242A)  
Washington, DC 20460

/s Harry M. Johnson, III

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Proposed Plaintiff-Intervenor,	)	
	)	Civil Action No. 3:13-cv-03086
v.	)	(SEM)(BGC)
	)	
DOMINION ENERGY, INC., BRAYTON POINT	)	
ENERGY, LLC, AND KINCAID GENERATION,	)	
LLC, AND EQUIPOWER RESOURCES CORP.,	)	
	)	
	)	
Defendants.	)	
	)	
	)	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SANCTIONS  
PURSUANT TO RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Dominion Energy, Inc. (“Dominion”) files this memorandum of law in support of its motion for sanctions. For the reasons set forth below, Dominion requests that the Court impose monetary sanctions, including court costs and Dominion’s reasonable attorney fees, against the Proposed Plaintiff-Intervenor, City of Fall River (“Fall River”).<sup>1</sup>

**I. PRELIMINARY STATEMENT**

Dominion does not file its motion lightly. Rather, it does so because Fall River’s filings are so defective that they cannot withstand Rule 11 scrutiny. The filings are baseless, are not

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<sup>1</sup> If this motion is granted, Dominion will submit appropriate support for its fees and costs incurred in defending this action.

warranted by existing law, and contain false allegations. These deficiencies lead to the inescapable conclusion that Fall River filed its papers without reasonable inquiry.

Claiming to be a “third-party beneficiary,” Fall River seeks to intervene and “modify or enforce” the Consent Decree in this case. But, Fall River does not mention precedent from the United States Supreme Court that is directly on point. The Supreme Court stated succinctly and unequivocally:

[A] well-settled line of authority from this Court establishes that a consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it even though they were intended to be benefited by it.

*Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 750 (1975) (citations and footnotes omitted). Even if Fall River plans to argue that *Blue Chip Stamps* should be read to exclude “third-party beneficiaries” (an argument it has not made), Fall River ignores the actual provisions in the Consent Decree. Those provisions make clear that non-parties like Fall River have no rights under the Consent Decree. In combination, Fall River’s silence about *Blue Chip Stamps* and the applicable terms of the Consent Decree represent a violation of Rule 11.

Further, Fall River bases its claims for relief on a “[*Revised Proposed*] Complaint in Intervention” [Dkt. 25-1] (“Proposed Complaint”) that reflects its utter failure to investigate the applicable law and facts it alleges. Most fundamentally, the claims in the Proposed Complaint bear no relation to the claims resolved by the Consent Decree that Fall River seeks to modify or enforce. The Proposed Complaint is merely a cut-and-paste of a complaint in an unrelated environmental case in Massachusetts involving the Brayton Point station formerly owned by

Dominion Energy Brayton Point, LLC (“Dominion Energy Brayton Point”).<sup>2</sup> If Fall River simply had reviewed this Court’s docket, it would have discovered that the Massachusetts lawsuit and this case “involve completely separate causes of action.” *See* Memorandum in Support of Motion to Enter Consent Decree at 19-20 (EPA’s responses to comments on the Consent Decree) [Dkt. 7-1].<sup>3</sup> With minimal investigation, Fall River would have realized that the Massachusetts lawsuit does not – even conceivably – confer jurisdiction upon this Court.

Whether it was Fall River’s failure to inquire or to understand the law and the case into which it was trying to intervene, or it is simply Fall River grasping at straws to save face for missing out on a significant opportunity for its citizens,<sup>4</sup> this Court should not condone Fall River’s substandard filings. Instead, the Court should impose sanctions for the violations of Rule 11.

## II. BACKGROUND

### A. The Scope and Terms of the Consent Decree.

The scope of the Consent Decree is indisputable. It does not extend to opacity<sup>5</sup> and monitoring claims at Brayton Point station, and it does not confer rights on third parties to bring independent actions to “modify or enforce” it.

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<sup>2</sup> As shown in this Court’s docket, Dominion had sold its ownership and operational interests in the Brayton Point station and in Dominion Energy Brayton Point before Fall River filed the Proposed Complaint. *See* Notice Related to Consent Decree at 2 [Dkt. 11]. The purchaser, EquiPower Resources Corporation (“EquiPower”), changed the corporate name of Dominion Energy Brayton Point to Brayton Point Energy, LLC. *Id.* The transaction was the subject of numerous newspaper reports in the Brayton Point area of Massachusetts. *See, e.g.,* <http://www.bostonglobe.com/business/2013/08/30/dominion-sells-brayton-point-power-station/T6sanuLLML0e69uN8FtYjP/story.html>.

<sup>3</sup> The Proposed Complaint is replete with other defects. *See infra* at pp. 16-18.

<sup>4</sup> *See infra* Section II.B.

<sup>5</sup> In this context, “opacity” refers to the visibility of plumes from stacks at a facility. Such visible emissions are subject to limitations arising from the Clean Air Act (“CAA” or “the

1. *The Claims Resolved in This Court's Consent Decree.*

On April 2, 2013, the United States filed a complaint and simultaneously lodged a proposed Consent Decree settling this case. [Dkt. 1 and 3.] At that time, the party defendants included Dominion, Dominion Energy Brayton Point, and Kincaid Generation, LLC (“Kincaid”) (collectively, the “Parties”). The Complaint alleged that Dominion’s Kincaid facility, located in this District, had violated certain Prevention of Significant Deterioration (“PSD”) provisions of the CAA. U.S. Complaint ¶ 1 [Dkt. 1]. The proposed Consent Decree was broader than the Complaint. But, it was very specific, as it must, about the claims it resolved. The Consent Decree resolved the alleged claims at three facilities then owned by Dominion and its subsidiaries: Kincaid, in this District; the Brayton Point facility, in Massachusetts, and Dominion’s former State Line facility in Indiana. The resolved claims involved: (i) the Act’s PSD and New Source Review (“NSR”) provisions; (i) the Act’s New Source Performance Standards provisions; and (i) the Act’s Title V provisions “but only to the extent such” Title V claims are based on alleged violations of NSR. Consent Decree ¶ 121 [Dkt. 3].<sup>6</sup> As plainly

---

Act”) and state law. The Massachusetts complaint, as parroted by Fall River in its Proposed Complaint here, allege violations related only to opacity and monitoring requirements.

<sup>6</sup> The full text of the “Resolution of Claims” provision is as follows:

Claims of the United States Based on Modifications Occurring Before the Date of Lodging of this Consent Decree. Entry of this Consent Decree shall resolve all civil claims of the United States against Dominion that arose from any modifications commenced at any Dominion System Unit prior to the Date of Lodging of this Consent Decree, including but not limited to those modifications alleged in the NOV/FOV issued by EPA to Dominion on April 16, 2009 and the Complaint filed in this civil action, under any or all of: (a) Parts C or D of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, 7501-7515, and the implementing PSD and Nonattainment NSR provisions of the relevant SIPs; (b) Section 111 of the Clean Air Act and 40 C.F.R. Section 60.14; and (c) Title V of the Clean Air Act, 42 U.S.C. § 7661-7661f, but only to the extent that such Title V claims are based on Dominion’s failure to

stated in ¶ 121 of the Consent Decree, opacity claims were also resolved, but only for the State Line facility. The Consent Decree does not address any opacity or monitoring claims at Brayton Point station.

2. *The Consent Decree's Treatment of Third-Party Rights.*

The Consent Decree – totaling 87 pages with its Appendix – was painstakingly negotiated by the United States and Dominion to settle the specified claims. As the terms of the Consent Decree show, the Parties intended to preclude third parties from interfering with its implementation:

- “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.” Consent Decree ¶ 2 [Dkt. 3].
- Only “Parties” to the Consent Decree can apply to the Court for any relief necessary to construe or effectuate the Consent Decree. *Id.* ¶ 187.
- The Consent Decree “does not limit, enlarge, or affect the rights of any Party to this Consent Decree as against any third parties.” *Id.* ¶ 198.

3. *The Provisions Related to Environmental Mitigation Projects (“EMPs”).*

Among its requirements, the Consent Decree obligates Dominion to fund EMPS. *Id.*, Section IX and App’x A. Dominion was to develop plans to implement projects from nine different categories, as set forth in Appendix A, that would span five different states. Dominion was to submit the EMP plans to EPA for approval within 120 days after entry of the Consent

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obtain an operating permit that reflects applicable requirements imposed under Parts C or D of Subchapter I of the Clean Air Act. Entry of this Consent Decree shall also resolve the civil claims of the United States for any opacity claims at State Line that occurred prior to the lodging of this Consent Decree, including the opacity violations alleged in EPA’s April 16, 2009 NOV/FOV.

Consent Decree ¶ 121 [Dkt. 3].

Decree.<sup>7</sup> For the Northeast Clean Energy and Clean Diesel Projects (*id.*, App'x A, Section XI), Dominion was required to submit the plan after consulting with Fall River and the Town of Somerset regarding potential projects in those municipalities. *Id.*, App'x A at 14. The decision on which projects to submit to EPA was and still is solely Dominion's. *Id.* Based on the quality of the proposals it received, Dominion could have decided to accept projects from either one or both of the municipalities. *See, e.g., id.* (Dominion "shall submit *one or more* Project Plans to EPA for review and approval...") (emphasis added).

When Dominion sold the Kincaid and Brayton Point entities, the parties filed a Stipulation in this Court transferring liability for the operational requirements of the Consent Decree to the new owner. Stipulation to Non-Material Modification of Consent Decree ¶ 3 [Dkt. 11-1] ("Except as provided in Paragraph 4, below, Dominion shall have no further liability with respect to rights and obligations related to the Kincaid and Brayton Point power stations under the Consent Decree."). Dominion retained sole liability for implementation of the EMPs. *Id.* ¶4.

**B. The Facts About Dominion's Dealings with Fall River.**

Although Fall River now levels numerous charges against Dominion (which Dominion denies)<sup>8</sup>, there are certain facts that Fall River cannot dispute about Dominion's consultation with it. They include the following:

- On July 11, 2013, Dominion met with the Mayor of Fall River, the City Solicitor, and several other representatives of the City to discuss the availability of funds to support EMPs.

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<sup>7</sup> This Court entered the Consent Decree on July 17, 2013. [Dkt. 8.]

<sup>8</sup> Although Dominion does not base its motion for sanctions directly on Fall River's factual misstatements and mischaracterizations about Dominion's dealings with Fall River, the factual background may be useful in evaluating Fall River's conduct here.

- At the meeting, Dominion distributed detailed guidelines for any projects that Fall River may choose to propose (“Guidelines”). The Guidelines contained an express deadline of August 1 to submit projects for Dominion’s consideration.
- Dominion also gave Fall River a copy of the Consent Decree as lodged, with the case number and all information Fall River and its chief lawyer in attendance needed to track the case.
- Dominion’s Kevin Hennessy followed up via email to Fall River on July 19, 2013, offering himself as a contact person at Dominion in the event Fall River had any questions.<sup>9</sup>
- Fall River did not contact Dominion by the August 1, 2013, deadline in the Guidelines.
- Nonetheless, through its representative (James Smith), Dominion contacted the Mayor during the first week of August. The Mayor promised Mr. Smith that Fall River would submit projects within the next few days.
- Dominion had heard nothing from Fall River as August was drawing to a close. At Dominion’s request, Mr. Smith again contacted the Mayor directly, who responded that the City Solicitor would handle the EMPs.
- Mr. Smith called the City Solicitor twice during the last week in August before getting a call back from her on September 3, 2013, saying that another attorney at Fall River would be responsible for the EMPs.
- On September 5, the Assistant City Solicitor contacted Mr. Smith. Among other things, she expressed concern about Fall River’s ability to propose projects that qualified under the Consent Decree’s requirements. Neither Mr. Smith nor Dominion denies that he was representing Dominion at that time.<sup>10</sup>

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<sup>9</sup> Fall River alleges that Dominion never followed up in written correspondence or emails after July 11 (*see* Memorandum in Support of Motion for Temporary Restraining Order and/or Preliminary Injunction [Dkt. 16 at 4]), a statement which a reasonable investigation would have shown to be untrue. Moreover, by artfully limiting its allegation to *written* correspondence, Fall River tries to create the misimpression that Dominion initiated few communications with Fall River after July 11. As Fall River knows, Dominion repeatedly contacted it to encourage it to submit a project proposal.

<sup>10</sup> While Mr. Smith was no longer formally retained by Dominion after September 1, 2013, he maintained contact with Dominion as a professional courtesy, and he continued in communication with Dominion throughout the entire relevant period.

- Dominion's deadline under the Consent Decree for submitting its EMP plan was November 14, 2013, as could have been verified easily by any interested person checking this Court's docket. Dominion met that deadline.
- After September 5, Fall River did not contact Dominion again until December 17, 2013.

These facts show that Dominion explained the EMP process to Fall River at the July 11 meeting, that it left written materials with Fall River, and that it reached out to Fall River repeatedly thereafter through the first part of September – long after the August 1 deadline Dominion set for potential recipients to submit proposals to it. During this time Mr. Smith continued to offer his assistance to Dominion and Fall River even after the Brayton Point facility was sold. When Fall River eventually contacted Mr. Smith on September 5, its Assistant City Solicitor asked for more time, explaining Fall River's difficulty identifying qualified projects. Mr. Smith advised the Assistant City Solicitor that things were moving quickly and Fall River needed to respond soon.<sup>11</sup> Fall River, however, remained silent between September 5 and December 17, at which time it finally reached out to Dominion, immediately after an article was published by the local newspaper discussing the potential funding of Somerset projects. By then, it was too late.<sup>12</sup>

It is worth noting that, during this time, Dominion solicited proposals from and worked with eleven different municipalities, government agencies and private organizations to develop project proposals across five separate states. Ten proposed project plans were submitted to EPA by the November 14 deadline. This was not a small task. But all the local bodies, agencies and

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<sup>11</sup> These facts will be verified in affidavits accompanying Dominion's responses to Fall River's motions.

<sup>12</sup> Given these facts, it is particularly brazen for Fall River to claim that "Dominion dropped the ball." It was Fall River who "dropped the ball," only to pick it up again more than four months later, in response to a newspaper article.

organizations responded promptly and enthusiastically, except for Fall River. It was only due to the timely responses and submittal by these entities, as well as their continual contact and discussions about proposed projects and plans with Dominion, that Dominion could meet its obligation under the Consent Decree to submit EMP plans by the November 14 deadline.

**C. Fall River's Filings**

Despite having no rights under the Consent Decree, Fall River filed numerous motions in this Court late on January 14, 2014. They included a Motion to Intervene with an attached proposed complaint [Dkt. 13 and 13-1], a Motion for a Temporary Restraining Order and/or Preliminary Injunction [Dkt. 15], and a Motion to Enforce and or Modify the Consent Decree [Dkt. 17]. On January 15, 2014, the Court held an emergency hearing. During the hearing, counsel for Dominion stated that it was considering invoking the procedures of Rule 11 as to Fall River's filings given their many defects. The Court set a briefing schedule allowing Fall River to file any additional submissions by noon on January 29, 2014. [Dkt. 19.] On January 29, 2014, Fall River filed a Revised Motion to Intervene with the Proposed Complaint [Dkt. 25 and 25-1], along with a Revised Memorandum in Support of its Motion to Intervene [Dkt. 26] and Supplement to its Memorandum to Modify the Consent Decree [Dkt. 27].

These filings, even as revised, are fundamentally flawed. Most notably,

- Fall River's filings fail to cite to this Court or attempt to distinguish Supreme Court precedent that on its face precludes the relief sought by Fall River;
- Fall River's filings completely ignore the provisions of the Consent Decree – an Order of this Court, once it was entered – that preclude third parties such as Fall River from claiming any rights under or seeking to enforce the Consent Decree; and
- Fall River's filings, and in particular its Proposed Complaint, are based on a plainly incorrect premise, which the most minimal investigation by Fall River and its counsel – merely a review of the docket in this case – would have shown to be false. This is no small matter: as a result of its failure to investigate, Fall River asserts claims that are

completely unrelated to the claims resolved in this case – claims over which this Court has no jurisdiction.<sup>13</sup>

### III. ARGUMENT

#### A. Standard of Review

When filing a written motion or other paper in federal court, an attorney certifies pursuant to Rule 11 that “to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances ... [that] claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.” Fed. R. Civ. P. 11(b). Moreover, the attorney certifies that “the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.” *Id.* at (b)(3). Fall River has not met this standard.

A court can “impose sanctions on lawyers or parties (or both) for submissions that are filed for an improper purpose or without a reasonable investigation of the facts and law necessary to support their claims.” See *Senese v. Chicago Area I.B. of T. Pension Fund*, 237 F.3d 819, 823-24 (7th Cir. 2001). The court must “undertake an objective inquiry into whether the party or his counsel should have known that his position was groundless.” See *Cuna Mut. Ins. Soc’y v. Office and Prof’l Emps. Int’l Union, Local 39*, 443 F.3d 556, 560 (7th Cir. 2006) (quoting *CNPA v. Chicago Web Printing Pressmen’s Union No. 7*, 821 F.2d 390, 397 (7th Cir. 1987)). “[T]he central purpose of Rule 11 is to deter baseless filings in the district court.” *Johnson v. A.W. Chesterton Co.*, 18 F.3d 1362, 1365 (7th Cir. 1994) (quoting *Cooter & Gell v.*

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<sup>13</sup> The Proposed Complaint contains numerous additional mistakes, as explained in more detail below. For example; it contains false venue allegations and is filed in an improper venue; it contains false notice allegations; and it purports to compel Dominion to undertake specific action at Brayton Point even though no Dominion entity owns or operates the facility any longer.

*Hartmarx Corp.*, 496 U.S. 384, 393 (1990)). A court “can sanction a litigant for filing a frivolous suit or claim regardless of the motives for such filing.” See *Vollmer v. Selden*, 350 F.3d 656, 659 (7th Cir. 2003). Thus, “a paper filed in the best of faith, by a lawyer convinced of the justice of his client’s case, is sanctionable if counsel neglected to make ‘reasonable inquiry’ beforehand.” *Janky v. Batistatos*, 259 F.R.D. 373, 378 (N.D. Ind. 2009) (quoting *Mars Steel Corp. v. Cont’l Bank N.A.*, 880 F.2d 928, 932 (7th Cir. 1989)).

Rule 11 places the burden of reasonable investigation on the proponent of a proposition, rather than the opponent. See *Johnson*, 18 F.3d at 1366 (affirming sanctions award after concluding that plaintiff’s claim against defendant was barred by the statute of limitation and easily discoverable). Accord, *Brubaker v. City of Richmond*, 943 F.2d 1363, 1384-85 (4th Cir. 1991) (same). “Counsel may not drop papers into the hopper and insist that the court or opposing counsel undertake bothersome factual and legal investigation.” See *Retired Chicago Police Ass’n v. Fireman’s Annuity and Benefit Fund of Chicago*, 145 F.3d 929, 933 (7th Cir. 1998) (quoting *Mars Steel*, 880 F.2d at 932).

The Court has broad discretion in imposing sanctions that it believes will serve as a deterrent under Rule 11. See *Divane Jr. v. Krull Elec. Co.*, 319 F.3d 307, 314 (7th Cir. 2003). A common form of sanction is directing the offending party to pay the other party’s reasonable attorney’s fees. *Id.*

**B. Without Justification, Fall River Seeks to Enforce or Modify the Consent Decree Without Citing Supreme Court Precedent or the Applicable Terms of the Consent Decree.**

The Supreme Court has stated that a consent decree cannot be enforced directly or in collateral proceedings by nonparties to the decree even if they were intended to be benefitted by it:

The Court of Appeals recognized, and respondent concedes here, that a well-settled line of authority from this Court establishes that a consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it, even though they were intended to be benefited by it.

*Blue Chip Stamps*, 421 U.S. at 750 (citations and footnotes omitted). See also *IBM Corp., v. Comdisco, Inc.*, 834 F. Supp. 264, 267 (N.D. Ill. 1993) (quoting *Blue Chip Stamps* and citing other cases).<sup>14</sup> Fall River's papers nowhere acknowledge or even attempt to distinguish *Blue Chip Stamps*. Fall River cites only one case on this point, *South v. Rowe*, 759 F.2d 610, 612 (7th Cir. 1985). See Memorandum in Support of Motion to Modify Consent Decree at 5 [Dkt. 18] (claiming Fall River is an "intended beneficiary" of the Consent Decree and may therefore move to enforce or modify it). But, there is no indication that the parties in *South* raised *Blue Chip Stamps*, and the court's opinion does not address it. In light of this silence, *South* certainly cannot excuse ignoring Supreme Court precedent on the fundamental question of Fall River's right to modify or enforce the Consent Decree here.

The inexplicable silence about *Blue Chip Stamps* is compounded by Fall River's failure to address the express terms of the Consent Decree confirming that Fall River has no right to pursue the relief it seeks here. The United States and Dominion agreed – and this Court entered as an order – that a third party has no rights or obligations under the Consent Decree: "[e]xcept 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." Consent Decree ¶ 2 [Dkt. 3]. Fall

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<sup>14</sup> The policy reasons underpinning these holdings are especially strong and unequivocal when the consent decree is with the government. See, e.g., *Rafferty v. NYNEX Corp.*, 60 F.3d 844, 849 (D.C. Cir. 1995) (absent express stipulation that a third party may enforce a government consent decree, only the parties to it can seek enforcement). The United States vindicates the public interest and, in so doing, determines when modification or enforcement serves the public interests that the decree was intended to address. And Fall River, of course, is free to seek to persuade the United States in this case that the Consent Decree should be modified or enforced in a particular way.

River is nowhere afforded the right to come to this Court to change or “enforce” the Parties’ agreement. Indeed, the Consent Decree confirms that third parties do not have rights against the Parties: “This Consent Decree does not limit, enlarge, or affect the rights of any Party to this Consent Decree as against any third parties.” *Id.* ¶ 198. The authority to seek a modification is expressly limited to the parties themselves. *Id.* ¶ 187. Nowhere can be found even a hint that the Parties to the Consent Decree intended to grant third parties a right to invoke the Court’s jurisdiction to change or enforce their agreement, much less to do so over the objection of the Parties.

Thus, even to the extent Fall River could argue that status as a third-party beneficiary under general contract principles avoids the express holding of *Blue Chip Stamps*, the terms of the Consent Decree itself make clear that the Parties did not intend for such a result in *this* case. *See United States v. FMC Corp.*, 531 F.3d 813, 823 (9th Cir. 2008) (“[w]hen a consent decree or contract explicitly provides that a third party is not to have enforcement rights, that third party is considered an incidental beneficiary even if the parties to the decree or contract intended to confer a direct benefit upon that party.”) (citing *SEC v. Prudential Sec. Inc.*, 136 F.3d 153, 159 (D.C. Cir. 1998)).

To establish any conceivable right to ask this Court to modify or enforce the Consent Decree, Fall River must show both that *Blue Chip Stamps* does not apply and that Fall River has third party rights under the Consent Decree.<sup>15</sup> By failing to call this Court’s attention either to

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<sup>15</sup> This minimal analytical framework is clear from Seventh Circuit case law. *See Gautreaux v. Pierce*, 707 F.2d 265 (7th Cir. 1983) (Posner, J., concurring). In *Gautreaux*, the majority expressly found it unnecessary to reach the issue of intervention by strangers to a consent decree, but in his concurrence, Judge Posner addressed it. After acknowledging that *Blue Chip Stamps* appears to bar intervention by non-parties, he ultimately did not have to answer the question because the appellants were not third-party beneficiaries in any event. *Id.* at 272-73.

*Blue Chip Stamps* or to the Consent Decree's provisions denying third party rights, Fall River violated its obligations under Rule 11.

**C. As Even Minimal Investigation Would Have Revealed, Fall River Bases Its Proposed Complaint on a Fundamentally Incorrect Premise.**

Fall River's Proposed Complaint bears no relationship to this case. Fall River's claims pertain to alleged opacity and monitoring violations at Brayton Point. *See* Proposed Complaint ¶¶ 53-77 [Dkt. 25-1]. These alleged claims, Fall River candidly explains, were actually asserted in *another* case by *another* citizen-party in the District of Massachusetts. *See id.* at ¶ 5 n.1 (citing *Conservation Law Foundation, Inc., et al. v. Dominion Energy Brayton Point, LLC*, No. 13-cv-10346 (D. Mass. filed Feb. 22, 2013)). In fact, Fall River's Proposed Complaint is a cut-and-paste transfer of the Conservation Law Foundation's ("CLF") claims in that separate lawsuit. *Compare* Proposed Complaint ¶¶ 53-77 [Dkt. 25-1] *with* Massachusetts Complaint ¶¶ 44-69 [attached as Exhibit A]. Fall River nonetheless baldly asserts: "the United States and the Defendant in the Illinois Action agreed to resolve the alleged [opacity and monitoring] violations at Brayton Point by and through the Consent Decree issued in the Illinois Action." Proposed Complaint at ¶ 5 n.1. But the most minimal of investigations would have revealed to Fall River and its counsel that this statement is false, because the claims they assert were never asserted or resolved in this case, and that this Court therefore lacks jurisdiction over the Proposed Complaint.

The United States' Complaint plainly did not allege any opacity or monitoring violations at Brayton Point. *See* Dkt. 1. And equally plainly, the Consent Decree did not resolve such allegations. Consent Decree ¶ 121 (Resolution of Claims) [Dkt. 3]; *see generally* Dkt. 3 (Consent Decree nowhere even mentions opacity or monitoring claims at Brayton Point). But, if

there could be any doubt whatsoever, the United States removed it by explicitly confirming to this Court that the Consent Decree did not “resolve or otherwise impact” the specific claims at Brayton Point that CLF had asserted in Massachusetts:

*CLF’s et al.’s first comment asks for additional detail on the impact of the Consent Decree on their separate enforcement action alleging “opacity” violations at the Brayton Point plant.... The United States believes the Consent Decree requires no additional clarification with respect to the potential effect on CLF’s opacity lawsuit, because the express terms of the Consent Decree resolve only NSR and related NSPS and Title V claims at the Brayton Point plant, and do not purport to resolve any opacity claims at Brayton Point. CD ¶ 121. (In contrast, the Consent Decree does expressly resolve opacity claims at the State Line plant. *Id.*). **The present case and CLF’s opacity case involve completely separate causes of action, and the Decree does not resolve or otherwise impact CLF’s cause of action for alleged opacity violations at Brayton Point.***

Motion for Entry of Consent Decree at 19-20 [Dkt. 7-1] (emphasis added). This was done before the entry of the Consent Decree, and long before Fall River ever filed its papers. Given the United States’ Complaint, the Consent Decree, and the United States’ further confirmation in its motion to enter the Consent Decree – the three fundamental pleadings in the very case that Fall River seeks to intervene in – Fall River’s statement that “The United States and the Defendant in the Illinois Action agreed to resolve the alleged [opacity and monitoring] violations at Brayton Point by and through the Consent Decree issued in the Illinois Action,” Proposed Complaint ¶ 5 n.1 [Dkt. 25-1], is plainly false, and Fall River and its counsel should have known so.<sup>16</sup>

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<sup>16</sup> That Fall River inserted the phrase “upon information and belief” before making this false statement does not excuse its failure to investigate. *See Janky*, 259 F.R.D. at 378 (“[A] paper filed in the best of faith, by a lawyer convinced of the justice of his client’s case, is sanctionable if counsel neglected to make ‘reasonable inquiry’ beforehand.” (quoting *Mars Steel Corp.*, 880 F.2d at 932)). *See also Truesdell v. S. Cal. Permanente Medical Group*, 293 F.3d 1146, 1153 (9th Cir. 2002) (awarding sanctions where allegations were prefaced with “upon information and belief” because allegations lacked evidentiary support and “counsel must have known [they] were false.”).

This is no small, inconsequential “mistake.” Because the Massachusetts lawsuit and this case “involve completely separate causes of action,” this Court does not have (and never had) jurisdiction over the claims in the Massachusetts lawsuit or Fall River’s identical claims. Indeed, the Consent Decree makes clear that the Court retains jurisdiction solely over the Consent Decree, not new or separate claims :

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 the interpretation, construction, execution, or modification of the Consent Decree, or for 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.

Consent Decree ¶ 187 [Dkt. 3.] Nothing in the Consent Decree allows a third party to expand this case now by asserting claims totally unconnected with the claims resolved in the Consent Decree or the subject matter of this case. The Consent Decree itself, therefore, is enough to bar Fall River’s pursuit of “separate causes of action.”<sup>17</sup>

Furthermore, because Fall River is trying to shoehorn claims into this Court that are unrelated and “completely separate,” the Proposed Complaint contains other examples of the failure to conduct a reasonable pre-filing investigation into the law and facts. For instance, despite Fall River’s argument to the contrary, it is beyond dispute that Fall River has no right to intervene in this case on the basis of 42 U.S.C. §7604(b)(1)(B) (allowing person to intervene in an action that the United States is “diligently prosecuting” in court to pursue the same claims),

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<sup>17</sup> Indeed, if Fall River were allowed to intervene, it is unclear what would happen to the Brayton Point opacity and monitoring claims alleged in the Proposed Complaint. Because those claims are outside the Consent Decree and have not been resolved, they would presumably remain pending on this Court’s docket at least until their many jurisdictional and substantive flaws could be addressed. Fall River’s willingness to state claims without any regard to their ultimate fate reinforces the lack of reasonable pre-filing investigation.

because Fall River is not asserting *any* of the same claims as the United States in this case. See Revised Motion to Intervene at 3 [Dkt. 25].

Likewise, there can be no “independent jurisdiction” (as Fall River blithely asserts)<sup>18</sup> to file separate causes of action alleging opacity and monitoring violations at Brayton Point in this Court. To pursue claims separate from those asserted by United States, Fall River would be required to satisfy the notice and venue requirements of 42 U.S.C. §7604. But, Fall River has failed to serve the requisite notice, which the Seventh Circuit, like every other court that has reviewed the issue, recognizes as mandatory and jurisdictional. See *Village of Oconomowoc Lake v. Dayton Hudson Corp.*, 24 F.3d 962, 963 (7th Cir. 1994) (“Notice provisions pervade environmental statutes, and would-be plaintiffs often appear to be desperate to evade them.”). Moreover, the alleged opacity and monitoring violations occurred in Massachusetts, not in *this* District, and therefore venue in this Court is improper. See 42 U.S.C. §7604(c). The incorrect legal premises led to false factual allegations. See, e.g., Proposed Complaint ¶ 5 [Dkt. 25-1] (falsely alleging that the Brayton Point opacity and monitoring violations in Fall River’s Proposed Complaint “occurred and are occurring within this District”); *id.* at ¶¶ 6-8 (falsely alleging that notice was provided by United States for the claims Fall River is asserting in its Proposed Complaint).

Because the Proposed Complaint is not related in any way to the claims in this Court, it also demands “relief” that is nonsensical as it applies to Dominion. Among other things, Fall River seeks an order that an unspecified Dominion entity undertake a variety of “steps to comply with” emission standards and monitoring requirements and to install various equipment at Brayton Point. See *id.* at pp. 18. But, Dominion does not own or operate the Brayton Point

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<sup>18</sup> See Revised Memorandum in Support of Revised Motion to Intervene at 15 [Dkt. 26].

station any more, as Fall River was well aware when it filed the proposed complaint. *See* Memorandum in Support of Motion for Temporary Restraining Order and/or Preliminary Injunction at 6 [Dkt. 16]. *See also* Stipulation to Non-Material Modification of Consent Decree at 2 [Dkt. 11-1].

In short, Fall River has proposed a woefully deficient complaint, as a direct result of its complete failure to conduct a “reasonable inquiry” into the law and facts governing this case. That is a violation of Rule 11.

#### IV. CONCLUSION

Based on the foregoing, Dominion Energy respectfully requests that the Court impose Rule 11 sanctions against Fall River and its counsel for failing to conduct a reasonable pre-filing inquiry into (i) whether its alleged claims and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, or (ii) whether its factual contentions had evidentiary support.

#### DOMINION ENERGY, INC.

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CERTIFICATE OF COMPLIANCE PURSUANT TO LOCAL RULE 7.1(B)

The undersigned counsel hereby certifies that the foregoing is doubled-spaced and contains approximately 5787 words in compliance with Local Rule 7.1(B)(4).

This 10th day of February, 2014.

/s Harry M. Johnson, III

CERTIFICATE OF SERVICE

I certify that on February 10, 2014, the foregoing was served by overnight mail and via email to counsel of record for Proposed Plaintiff-Intervenor. Further, I certify that on March 7, 2014, the foregoing was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district, and was served upon those listed below via email.

Steven Viggiani, Esquire  
Senior Enforcement Counsel, Region 1  
U.S. Environmental Protection Agency  
Mail Code OESO4-3  
5 Post Office Square, Suite 100  
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Seema Kakade, Esquire  
Attorney-Advisor  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2242A)  
Washington, DC 20460

/s Harry M. Johnson, III

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
CONSERVATION LAW FOUNDATION,	)	
INC.,	)	
CLEAN WATER ACTION,	)	
and	)	
TOXICS ACTION CENTER,	)	
	)	
Plaintiffs,	)	Case No.
	)	
v.	)	
	)	Complaint
DOMINION ENERGY	)	
BRAYTON POINT, LLC,	)	
	)	
Defendant.	)	
_____	)	

**I. INTRODUCTION**

1. This is a citizen suit, brought under Section 304 of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7604. Plaintiffs Conservation Law Foundation (“CLF”), Clean Water Action (“CWA”), and Toxics Action Center (“TAC”) (collectively, “Plaintiffs”) seek a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys and expert witness fees, for significant and ongoing violations of the Clean Air Act by Dominion Energy Brayton Point, LLC (“Defendant”). Defendant has violated opacity emissions limitations and monitoring requirements, acid rain monitoring requirements, and monitoring requirements for nitrogen oxides, carbon dioxide, and sulfur dioxide at Brayton Point Station (“BPS”) located at 1 Brayton Point Road, Somerset, Massachusetts.

EXHIBIT A

## II. JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 42 U.S.C. § 7604(a)(1) and 28 U.S.C. § 1331 and 28 U.S.C. §§ 2201 and 2202. The relief requested by the Plaintiffs is authorized by 42 U.S.C. §§ 7413 and 7604 and 28 U.S.C. §§ 2201 and 2202.
3. Pursuant to Section 304(b)(1)(A) of the CAA, 42 U.S.C. § 7604(b)(1)(A), and 40 C.F.R. Part 54, on December 13, 2012, Plaintiffs served a Notice Letter on Defendant, describing the Defendant's violations of the CAA and notifying Defendant of Plaintiffs' intent to sue under the CAA ("Notice Letter"). A true and accurate copy of the Notice Letter is attached hereto as Exhibit 1. Plaintiffs also sent copies of the Notice Letter to the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA Region 1, the Commissioner of the Massachusetts Department of Environmental Protection ("MA DEP"), the Governor of Massachusetts, and the Resident Agent of Defendant.
4. More than sixty days have passed since Plaintiffs served the Notice Letter on Defendant. The CAA violations complained of in the Notice Letter are of a continuing nature, are ongoing, or are reasonably likely to recur. Defendant remains in violation of the CAA. As of the filing of this Complaint, neither EPA nor Massachusetts has commenced an enforcement action to redress the violations identified in the Notice Letter.
5. Venue is proper in the District of Massachusetts pursuant to Section 304(c)(1) of the CAA, 42 U.S.C. § 7604(c)(1), and 28 U.S.C. § 1391(b)(2) because the facility and the violations that are the subject of this complaint are located in Massachusetts.

### III. PARTIES

6. Plaintiff, CLF, is a nonprofit, member-supported organization incorporated under the laws of Massachusetts with a principal place of business at 62 Summer Street, Boston, MA 02110. CLF is a regional organization with approximately 4,000 members throughout New England and is dedicated to protecting New England's environment. CLF has a long history of working to reduce the harmful air emissions of coal-fired and other fossil fuel fired power plants through enforcement of the CAA on behalf of its members. CLF is especially concerned with the severe health impacts associated with fine particulate matter pollution (commonly referred to as PM<sub>2.5</sub>) which is regulated under the CAA but for which emissions are not continuously monitored at BPS.
7. Plaintiff, CWA, is a one million-member organization of diverse people and groups joined together to protect the environment, health, economic well-being and community quality of life. CWA's goals include clean, safe, and affordable water; prevention of health threatening pollution; creation of environmentally safe jobs and businesses; and empowerment of people to make democracy work. CWA organizes strong grassroots groups and coalitions and campaigns to elect environmental candidates and solve environmental and community problems. CWA's headquarters is located at 1010 Vermont Avenue, NW, Suite 400, Washington, D.C. 20005, and its Massachusetts office is located at 262 Washington Street, Suite 601, Boston, MA 02108.
8. Plaintiff, TAC, is a New England-wide public health and environmental non-profit that organizes with communities to clean up and prevent pollution and develops non-

traditional leaders to strengthen the environmental and social change movements. Founded in Massachusetts in 1987, TAC has assisted more than 700 neighborhood groups to ensure clean air and clean water by training residents to organize and protect their communities from toxic hazards. Over the last 25 years, TAC has directly trained more than 10,000 individuals, and TAC's work has led to hundreds of victories. TAC currently has more than 800 active members in Massachusetts. TAC's headquarters is located at 44 Winter Street, 4th Floor, Boston, MA 02108.

9. CLF, CWA, and TAC each meet the definition of a "person," pursuant to section 302(e) of the CAA, 42 U.S.C. § 7602(e), who may commence an action under section 304(a) of the CAA, 42 U.S.C. § 7604(a). CLF sues on behalf of itself and its individual members who live in the vicinity of and downwind of BPS and on behalf of CWA, TAC, and its members. CLF and its members, CWA and its members, and TAC and its members, have suffered, and will continue to suffer, actual and threatened injury to their health and welfare due to Defendant's violations of the CAA, the Massachusetts State Implementation Plan ("SIP"), and the CAA Title V program described herein. The violations have exposed and continue to expose CLF, CWA, and TAC members to unlawful excess particulate matter emissions and other air pollution from BPS.
10. Plaintiffs have standing because the acts and omissions alleged herein exposed and continue to expose their individual members who live, work, and recreate in the vicinity of the plant to harmful pollution that threatens their health and welfare, interferes with their use and enjoyment of property and the surrounding areas, injures their economic interests, denies them protection of their health and well-being

protected by the CAA and the Title V permits issued under the CAA and the Massachusetts SIP, and negatively impacts their aesthetic and recreational interests. The relief requested herein will redress these injuries.

11. Defendant owns and operates BPS, a coal, natural gas, and oil-fired electricity generating station with four combustion units located at 1 Brayton Point Road, Somerset, Massachusetts. Defendant is a foreign limited liability company registered to conduct business in Massachusetts. Its principal place of business is in Richmond, Virginia. Its mailing address is in Somerset, Massachusetts. Defendant is, and operates as, a subsidiary of Dominion Resources, Inc., a Virginia corporation with a principal place of business in Richmond, Virginia.

#### **IV. STATUTORY AND REGULATORY BACKGROUND**

##### **A. The Clean Air Act**

12. The purpose of the CAA is the protection and enhancement of the Nation's air resources to promote the public health and welfare and the productive capacity of its population. CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1).
13. The CAA requires EPA to establish national ambient air quality standards ("NAAQS") that "allow[] an adequate margin of safety, requisite to protect the public health," and that are "requisite to protect the public welfare." CAA § 109(b), 42 U.S.C. § 7409(b). The CAA mandates the use of certain emission control technologies to limit emissions of pollutants that EPA has determined "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." CAA § 108(a)(1)(A), 42 U.S.C. § 7408(a)(1)(A).

14. Fine particulate matter—particles with a size less than or equal to 2.5 micrometers in diameter, “PM<sub>2.5</sub>”—is one of the air pollutants for which the EPA has established a NAAQS. 40 C.F.R. § 50.7; 78 Fed. Reg. 3,086 (2013).
15. PM<sub>2.5</sub> is a mixture of small particles, including organic chemicals, metals, and ash, which can cause severe health and environmental problems. Once inhaled, PM<sub>2.5</sub> can affect the heart and lungs and cause serious health effects. *See* 78 Fed. Reg. 3,103–3,104 (2013); 52 Fed. Reg. 24,663 (1987).
16. Opacity, also known as visible emissions, is not a criteria pollutant; however, visible emissions standards were initially established as a surrogate for assuring compliance with particulate matter standards at a time when continuous emissions monitors for PM were not considered technologically feasible. 76 Fed. Reg. 18,870, 18,872 (2011) (“Although opacity is not a criteria pollutant, opacity standards continue to be used as an indicator of the effectiveness of emission controls for PM emissions, or to assist with implementation and enforcement of PM emission standards for purposes of attaining PM NAAQS”).
17. Under the CAA, each state bears primary responsibility for assuring air quality within its geographic area by submitting an implementation plan for the State which specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in the State. CAA §§ 107, 110(a); 42 U.S.C. §§ 7407, 7410(a). The state implementation plan (“SIP”) must be submitted to the EPA Administrator for approval. CAA § 110(a), 42 U.S.C. § 7410(a).

18. The CAA, in relevant part, mandates that the SIP shall include enforceable emissions limitations and other control measures, as well as periodic reports on emissions, as necessary to meet the requirements of the Act. CAA § 110(a), 42 U.S.C. § 7410(a)(2).
19. A SIP must satisfy the mandates of the CAA before it can receive EPA approval. 42 U.S.C. §§ 7410(a) and (k). *See also* 40 C.F.R. § 51.110, Appendix V.

### **B. Massachusetts Implementation of the Clean Air Act**

#### 1. The Massachusetts SIP

20. Massachusetts submitted its SIP to EPA in January 1972. 40 C.F.R. § 52.1120(b). The MA SIP is codified at 40 C.F.R. Part 52, Subpart W. 40 C.F.R. § 52.1119 *et seq.*
21. Since then, Massachusetts, from time to time, has submitted state regulations to the EPA for approval as revisions to the MA SIP.

#### *a. MA SIP Visible Emissions Provisions*

22. The Massachusetts SIP provision that establishes visible emissions limitations for stationary sources such as BPS is set forth at 310 Mass. Code Regs. 7.06. The EPA has approved and incorporated 310 Mass. Code Regs. 7.06(1)(a)–(b) of Massachusetts' visible emissions regulations into the Massachusetts SIP. *See* 40 C.F.R. § 52.1120(c)(4); 37 Fed. Reg. 23,085 (1972).<sup>1</sup>
23. Under 310 Mass. Code Regs. 7.06, opacity shall not “exceed twenty per cent (20%) opacity for a period or aggregate period of time in excess of two minutes during any one hour provided that, at no time during the said two minutes shall opacity exceed 40%.” 310 Mass. Code Regs. 7.06(1)(b).

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<sup>1</sup> Despite the fact that Massachusetts has proposed revisions to the visible emissions standard, EPA has not approved such revisions. *See* 68 Fed. Reg. 33,875 (2003); 68 Fed. Reg. 16,959 (2003); 49 Fed. Reg. 49,454 (1984); 45 Fed. Reg. 53,476 (1980); 44 Fed. Reg. 7,712 (1979).

24. The Massachusetts SIP also prohibits the emission of smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time shall the shade, density or appearance be equal to or greater than No. 2 of the Ringelmann chart. 310 Mass. Code Regs. 7.06(1)(a).
25. As standards or limitations under the Massachusetts SIP, the visible emission standards cited in Paragraphs 22-24 above constitute "emission standards or limitations" under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a).
26. "Emissions standards" is defined in section 302(k) of the CAA as "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter." CAA § 302(k), 42 U.S.C. § 7602(k).
27. Continuous compliance is necessary because of the severe health impacts that may occur as a result of even short-term exposure to air pollution.

*b. MA SIP Monitoring Requirements*

28. The Massachusetts SIP provides that any person who owns or operates an emission source as described in 40 C.F.R. Part 51, Appendix P, shall continuously monitor emissions of opacity, nitrogen oxides ("NO<sub>x</sub>"), sulfur dioxide ("SO<sub>2</sub>"), and carbon dioxide ("CO<sub>2</sub>"). 310 Mass. Code Regs. 7.14(2). Appendix P applies to fossil fuel-fired steam generators, including BPS. 40 C.F.R. Part 51, Appendix P.

29. The Massachusetts SIP also requires facilities with the potential to emit 50 tons per year or more of NO<sub>x</sub> to continuously monitor emissions of NO<sub>x</sub> and carbon monoxide (“CO”). 310 Mass. Code Regs. 7.19(13). BPS is a facility with the potential to emit 50 tons per year or more of NO<sub>x</sub>.
30. As standards or limitations under the Massachusetts SIP, the monitoring requirements cited in Paragraphs 28–29 above constitute “emission standards or limitations” under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a).

## 2. The Massachusetts Title V Permit Program

31. Title V of the CAA, 42 U.S.C. §§ 7661–7661f, established an operating permit program for certain sources of air pollution, including “major sources.” CAA §§ 501(2) and 502(a), 42 U.S.C. §§ 7661(2), 7661a(a).
32. At all times pertinent to this civil action, BPS was a “major source” within the meaning of Title V of the Act.
33. The regulations implementing Title V of the CAA allow a state to implement a comprehensive state operating permitting system consistent with Title V of the CAA, §§ 501–506, 42 U.S.C. §§ 7661–7661e. 40 C.F.R. § 70.1.
34. The Title V program is intended to enhance compliance by providing a single, comprehensive statement of all air pollution control requirements that apply to operation of a facility to which Title V applies; it combines all state and federal CAA requirements in a single document with defined compliance reporting provisions.

35. Massachusetts has adopted such an operating permit program. 40 C.F.R. Part 70, Appendix A (“Massachusetts”). The EPA fully approved Massachusetts’ Title V program effective November 27, 2001. *See id.*; 66 Fed. Reg. 49,541 (2001).
36. A Title V permit for a major source of air pollution, such as BPS, must enumerate all applicable requirements imposed on the facility under the CAA for all relevant emissions units within the major source. 40 C.F.R. § 70.3(c)(1).
37. At all times relevant to this Complaint, BPS operated under a federally enforceable Title V permit. From February 22, 2008 to July 25, 2011, BPS operated under Title V Operating Permit No. 4V95056 (attached hereto as Exhibit 2); from July 26, 2011, to the present, BPS operated under Title V Operating Permit No. 4V04019 (attached hereto as Exhibit 3) (collectively, “Title V Permits”). The Title V Permits incorporated applicable portions of the SIP as well as permit conditions from the earlier state approvals.
38. The Title V Permits limit all four BPS Units to opacity emissions no greater than 20%, except that the units may emit at an opacity between 20% and 40% for equal to or less than 2 minutes during any one hour; the units are not to exceed 40% at any time. *See Exhibit 2 at 5–7; Exhibit 3 at 9, 11, 12.*
39. The Title V permit in effect from July 26, 2011, to the present also requires that opacity at Unit 3 shall not exceed 10% after installation of the dry scrubber and fabric filter, for a period or aggregate period in excess of 2 minutes during any one hour provided that at no time during the 2 minutes shall opacity exceed 20%. *See Exhibit 3 at 11.*

40. The Title V permits prohibit emissions of smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time shall the shade, density or appearance be equal to or greater than No. 2 of the Ringelmann chart at all four BPS Units. *See* Exhibit 2 at 5–7; Exhibit 3 at 9, 11, 12.
41. The Title V Permits incorporate the continuous monitoring, reporting and recordkeeping requirements established in 310 Mass. Code Regs. 7.14. *See* Exhibit 2 at 11–13; Exhibit 3 at 19–20.
42. The Title V Permits also require BPS to monitor flue gas volumetric flow with a Continuous Emission Monitoring System (“CEMS”) pursuant to the federal Acid Rain Program, 40 C.F.R. Part 72, and the Massachusetts Acid Rain Law, 310 Mass. Code Regs. 7.22. *See* Exhibit 2 at 11; Exhibit 3 at 19.
43. As standards or limitations established under a permit in effect pursuant to CAA Title V and/or the Massachusetts SIP, the visible emissions limitations and monitoring requirements contained in the Title V Permits (referenced at Paragraphs 38–42 above) constitute “emission standards or limitations” under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a)(1).

#### **V. CLAIMS FOR RELIEF**

##### **Count 1: Opacity Violations of State Implementation Plan and Title V Permit**

44. The allegations in all of the preceding paragraphs are incorporated herein by reference.

45. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions limitations contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 23 and 38-39.
46. Since at least June 9, 2008, Defendant has repeatedly emitted air pollution with opacity of greater than 20% for an aggregate of 2 minutes and emitted air pollution with opacity of greater than 40%.
47. The emissions described in the preceding paragraph exceed the visible emissions standards in the Massachusetts SIP and the Title V Permits.
48. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.
49. These violations of visible emissions standards in the Massachusetts SIP and the Title V Permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

**Count 2: Smoke Emission Violations of State Implementation Plan and Title V Permits**

50. The allegations in all of the preceding paragraphs are incorporated herein by reference.
51. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions limitations contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 24 and 40.
52. Since at least October 23, 2008, Defendant has repeatedly emitted smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for periods in excess

of six minutes during an hour and smoke with a shade, density or appearance equal to or greater than No. 2 of the Ringelmann chart.

53. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 Mass. Code Regs. 7.14, and 40 C.F.R. Part 51, Appendix P.
54. These violations of visible emissions standards in the Massachusetts SIP and the Title V Permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

**Count 3: Violations of Visible Emissions Monitoring Requirements**

55. The allegations of all preceding paragraphs are incorporated herein by reference.
56. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions monitoring requirements contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 28 and 41.
57. Since at least April 10, 2008, Defendant has repeatedly failed to monitor visible emissions for each unit.
58. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.
59. These violations of the visible emissions monitoring requirements of the Massachusetts SIP and the Title V permits constitute violations of "emissions

standards and limitations” under the CAA that are redressable by citizen suit. 42

U.S.C. § 7604(f)(4).

**Count 4: Violations of Monitoring Requirements for NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub>**

60. The allegations of all preceding paragraphs are incorporated herein by reference.
61. Upon information and belief, Defendant repeatedly has violated and is in violation of the monitoring requirements for NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 28-29 and 41.
62. Since at least January 3, 2011, Defendant has repeatedly failed to monitor NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> emissions.
63. These violations are well documented in BPS’s quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.
64. These violations of the NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> Monitoring Requirements of the Massachusetts SIP and the Title V permits constitute violations of “emissions standards and limitations” under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

**Count 5: Violations of Acid Rain Monitoring Requirements**

65. The allegations of all preceding paragraphs are incorporated herein by reference.
66. Upon information and belief, Defendant repeatedly has violated and is in violation of the Acid Rain Monitoring Requirements of the Title V Permits referenced in Paragraph 42.

67. Since at least January 3, 2011, Defendant has repeatedly failed to monitor the flue gas volumetric flow for each unit, as required by the Acid Rain Monitoring Requirements of the Title V permits.
68. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.
69. These violations of the Acid Rain Monitoring Requirements of the Title V permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that Defendant has violated and is continuing to violate the Clean Air Act by exceeding the visible emissions limitations contained in the Massachusetts SIP and the Title V Permits for Units 1-4;
2. Declare that Defendant has violated and continues to be in violation of monitoring requirements set forth in the Massachusetts SIP and the Title V Permits;
3. Enjoin Defendant from operating BPS, except in accordance with a compliance schedule that will prevent BPS from causing further violations of these standards and requirements;
4. Order Defendant to take all necessary steps to comply with emission standards, including, but not limited to, installing adequate pollution controls, conducting

opacity audits, and developing protocols and processes to eliminate opacity violations;

5. Order Defendant to install continuous emissions monitors to measure filterable PM<sub>2.5</sub>;
6. Order Defendant to take all necessary steps to comply with monitoring requirements;
7. Order Defendant to pay civil penalties of up to \$32,500 per violation per day for emissions violations occurring on or after March 15, 2004 and up to \$37,500 per violation per day for violations occurring on or after January 12, 2009, consistent with the CAA (42 U.S.C. §§ 7413(b), 7413(e), and 7604(a); 40 C.F.R. §§ 19.2 and 19.4 (2008));
8. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to the public health and the environment caused by the violations of the CAA alleged above;
9. Award Plaintiffs their reasonable costs and attorneys' fees; and
10. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

CONSERVATION LAW FOUNDATION,  
INC.,  
CLEAN WATER ACTION,  
and TOXICS ACTION CENTER

By Their Attorney:

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Dated: February 22, 2013

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
and	)
	)
THE CITY OF FALL RIVER,	)
	)
Proposed Plaintiff-Intervenor,	)
	)
v.	)
	)
DOMINION ENERGY, INC., BRAYTON	)
POINT, LLC, AND KINCAID	)
GENERATION, LLC., AND EQUIPOWER	)
RESOURCES CORP.,	)
	)
Defendants.	)
	)
	)

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**PROPOSED ORDER**

This matter came to be heard on Dominion Energy, Inc.’s (“Dominion”) Motion For Sanctions Pursuant To Rule 11 of the Federal Rules of Civil Procedure [Dkt. \_\_\_]. Having considered the briefs, the arguments of counsel, and for good cause shown, the motion is hereby GRANTED.

Dominion shall submit within ten (10) days of entry of this Order any declarations or other evidence of its reasonable fees and expenses incurred in defending this matter, including fees and expenses incurred for the instant motion. After receiving such evidence, the Court shall enter a further order in accordance with Fed. R. Civ. P. 11(c)(6) providing the specific sanctions awarded.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2014.

/Sue E. Myerscough

SUE E. MYERSCOUGH  
United States District Court Judge  
Central District of Illinois

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Proposed Plaintiff-Intervenor,	)	
	)	Civil Action No. 3:13-cv-03086
v.	)	(SEM)(BGC)
	)	
DOMINION ENERGY, INC., BRAYTON	)	
POINT, LLC, AND KINCAID	)	
GENERATION, LLC., AND EQUIPOWER	)	
RESOURCES CORP.,	)	
	)	
Defendants.	)	
	)	

**NOTICE OF WITHDRAWAL AND INTENT TO RE-FILE**

Dominion Energy, Inc. (“Dominion”) hereby provides notice of its withdrawal and intent to re-file its Motion for Sanctions Pursuant to Rule 11 of the Federal Rules of Civil Procedure (Dkt. 35) and Memorandum in Support thereof (Dkt. 36) filed today. Counsel for the City Fall River (“Fall River”) has asserted that Fed. R. Civ. P. 11(c)(2) required Dominion to wait another day before filing the motion (i.e., until 25 days after service of the motion instead of 24 days). Fall River has further advised that, in any event, it does not intend to use the 21-day “safe harbor” to withdraw or file corrected versions of the filings at issue in the Motion for Sanctions served on February 10, 2014. Consequently, irrespective of the merits of Fall River’s position about the timeliness of the motion and to remove any doubt about compliance with Fed. R. Civ. P 11(c)(2), Dominion is withdrawing the Motion and will re-file it on March 7, 2014.

March 6, 2014

**DOMINION ENERGY, INC.**

s/Harry M. Johnson, III  
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*Counsel for Dominion Energy, Inc.*

CERTIFICATE OF SERVICE

I certify that on March 6, 2014, the foregoing was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district, and was served upon those listed below via email.

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/s Harry M. Johnson, III

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and )  
 )  
 THE CITY OF FALL RIVER, )  
 )  
 Proposed Plaintiff-Intervenor, )  
 )  
 v. )  
 )  
 DOMINION ENERGY, INC., BRAYTON )  
 POINT, LLC, AND KINCAID )  
 GENERATION, LLC., AND EQUIPOWER )  
 RESOURCES CORP., )  
 )  
 Defendants. )

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**MOTION FOR SANCTIONS PURSUANT TO RULE 11 OF THE FEDERAL RULES OF  
CIVIL PROCEDURE**

Pursuant to Federal Rule of Civil Procedure 11, Dominion Energy, Inc. (“Dominion”) respectfully moves the Court to impose sanctions against The City of Fall River (“Fall River”) for failing to conduct a reasonable pre-filing inquiry into (i) whether its alleged claims and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, or (ii) whether its factual contentions had evidentiary support. Dominion seeks sanctions, including but not limited to expenses and attorneys’ fees incurred in responding to the motions and papers identified below.

In support of its motion, Dominion states as follows:

1. On April 2, 2013, the United States filed a complaint against Dominion and Kincaid Generation, LLC (“Kincaid”) for alleged violations of the Prevention of Significant

Deterioration (“PSD”) provisions of the Clean Air Act (“CAA”) at the Kincaid Power Station located in Kincaid, Illinois. [Dkt. 1.] The United States simultaneously lodged a proposed Consent Decree resolving the alleged claims against Dominion and Kincaid. [Dkt. 3.]

2. The Consent Decree also resolved PSD claims involving other plants, including the Brayton Point facility in Massachusetts, even though those plants were not named in the United States’ Complaint. *See id.* ¶ 121.

3. As is plain on its face and despite Fall River’s claims to the contrary, the Consent Decree does not resolve “opacity” or “monitoring” claims at the Brayton Point facility in Massachusetts.

4. The Consent Decree also contains specific provisions confirming that it confers no rights on third-parties that are enforceable in this Court. *See id.* ¶¶ 2, 187, 198.

5. On January 14, 2014, Fall River filed a number of motions and memoranda in this Court seeking to intervene, to enforce or modify the terms of the Consent Decree, and to obtain a temporary restraining order and/or preliminary injunction. [Dkt. 13-18.] The Court held an emergency hearing on January 15, 2014, and set a deadline for Fall River of January 29, 2014, to file any supplemental papers, effectively giving Fall River a further opportunity to investigate and reconsider all its filings. Fall River filed a revised Motion to Intervene with revised proposed complaint [Dkt. 25] along with a revised Memorandum in Support of its Motion to Intervene [Dkt. 26], and supplement to its Memorandum to Modify the Consent Decree [Dkt. 27].

6. As more fully explained in the accompanying memorandum, Fall River’s filings fail to meet the bare minimum standards of Rule 11:

- a. Fall River seeks to intervene and “modify or enforce” the Consent Decree without mentioning relevant precedent from the United States Supreme Court;
- b. Fall River fails to cite the terms of the Consent Decree confirming that third parties, such as Fall River, do not have rights to pursue the relief that Fall River seeks; and
- c. Fall River bases its attempted intervention on a proposed complaint that is belied both by black-letter law and by incontrovertible facts.

7. The above defects would have been evident had Fall River or its counsel conducted even a cursory investigation of the relevant law, the Consent Decree, the relevant facts, and the docket in this case.

8. Pursuant to Local Rule 7.1(A)(2), Dominion requests oral argument on this motion.

9. This Motion and its accompanying memorandum in support are being served in advance of filing with the Court in accordance with Fed. R. Civ. P. 11(c)(2).

WHEREFORE, Dominion respectfully requests that the Court impose sanctions on City of Fall River pursuant to Fed. R. Civ. P. 11 and award fees and expenses incurred for responding to Fall River’s motion to intervene and motion to modify the consent decree.

**DOMINION ENERGY, INC.**

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*Counsel for Dominion Energy, Inc.*

CERTIFICATE OF SERVICE

I certify that on February 10, 2014, the foregoing was served by overnight mail and via email to counsel of record for Proposed Plaintiff-Intervenor. Further, I certify that on March 6, 2014, the foregoing was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district, and was served upon those listed below via email.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and )  
 )  
 THE CITY OF FALL RIVER, )  
 )  
 Proposed Plaintiff-Intervenor, )  
 )  
 v. )  
 )  
 DOMINION ENERGY, INC., BRAYTON )  
 POINT, LLC, AND KINCAID )  
 GENERATION, LLC., AND EQUIPOWER )  
 RESOURCES CORP. )  
 )  
 Defendants. )  
 )  
 )  
 )  
 )

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Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**ATTACHMENT ONE**

PLAINTIFF UNITED STATES' CONSOLIDATED MEMORANDUM IN OPPOSITION TO  
PROPOSED PLAINTIFF-INTERVENOR FALL RIVER'S MOTION TO INTERVENE,  
MOTION TO ENFORCE CONSENT DECREE AND MOTION FOR PRELIMINARY  
INJUNCTIVE RELIEF



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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), respectfully submits this consolidated memorandum in opposition to various motions filed by proposed Plaintiff-Intervenor City of Fall River (“Fall River”). Fall River’s motions are meritless because Fall River has no right to intervene in the present case and no right to enforce or modify the Consent Decree that this Court entered between the United States and Defendant Dominion Energy, Inc. (“Dominion”).

Fall River originally filed three motions in this action. On January 14, 2014, Fall River filed a Motion to Intervene (ECF No. 13), a Motion for a Temporary Restraining Order and/or Preliminary Injunction (ECF No. 15), and a Motion to Enforce and/or Modify the Consent Decree (ECF No. 17). On January 15, 2014, the Court held a telephonic hearing during which the United States and Dominion opposed Fall River’s requested relief but agreed, *inter alia*, to take no action under the Consent Decree affecting Fall River until the Court rules on the merits of Fall River’s motions. See ECF No. 19 (Jan. 15, 2014 Order). The parties later memorialized this commitment in a January 22, 2014 Joint Stipulation (ECF No. 22). On January 29, 2014, Fall River filed a Revised Motion to Intervene and Memorandum in Support (ECF Nos. 25 and 26), and a Supplement (ECF No. 27) to its Memorandum in Support of its Motion to Enforce and/or Modify the Consent Decree.

The United States respectfully opposes Fall River’s Motion for a Temporary Restraining Order and/or Preliminary Injunction, Motion to Intervene and Motion to Enforce and/or Modify the Consent Decree, both as originally filed and as supplemented. The United States files this single consolidated memorandum in opposition in light of the significant overlap in the factual issues and legal arguments raised by Fall River. A hearing on the merits of Fall River’s motions is scheduled for April 7, 2014.

## INTRODUCTION

In July 2013, this Court entered a Consent Decree negotiated by the United States and Defendants. ECF No. 8 (Order). The Consent Decree covers three power plants in Illinois, Indiana, and Massachusetts: the Kincaid plant, located in Kincaid, Illinois; the State Line plant located in Hammond, Indiana; and the Brayton Point plant, located in Somerset, Massachusetts. The Consent Decree resolves Dominion's liability for past civil claims that arose from unpermitted "modifications" undertaken at all three plants under the Clean Air Act's ("CAA") Prevention of Significant Deterioration ("PSD") provisions, 42 U.S.C. §§ 7470-7479, Nonattainment New Source Review ("NNSR") provisions, 42 U.S.C. §§ 7501-7515, New Source Performance Standards ("NSPS"), 42 U.S.C. § 7411, and Title V provisions. See ECF No. 3 (Consent Decree) at ¶ 121.<sup>1</sup> These provisions generally prohibit owners and operators of large air pollutant emission sources from making certain modifications to those sources without also obtaining permits and meeting stringent emission limits. *Env'tl. Defense v. Duke Energy Corp.*, 549 U.S. 561, 567-69 (2007); *Citizens Against Ruining the Env't. v. EPA*, 535 F.3d 670, 673 n.3 (7th Cir. 2008); *Wisc. Elec. Power Co. v. Reilly*, 893 F.2d 901 (7th Cir. 1990). In addition, the Consent Decree resolves past civil claims for certain "opacity" claims at the State Line plant. ECF No. 3 (Consent Decree) at ¶ 121.

The Consent Decree was lodged with this Court on April 1, 2013 (ECF No. 2), along with a contemporaneously-filed complaint (ECF No. 1) alleging that the Kincaid plant had been illegally modified. Although the United States' Complaint addresses alleged CAA violations

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<sup>1</sup> The PSD and NNSR provisions are part of the CAA's New Source Review ("NSR") permitting program. The CAA's Title V program, 42 U.S.C. §§ 7661-7661f, requires major sources of air pollution to obtain additional operating permits, which must identify all requirements (including NSR requirements) applicable to a source.

only at the Kincaid plant, the Consent Decree secures injunctive relief at Kincaid, State Line and Brayton Point, in return for resolving Defendants' potential liability for NSR, NSPS, and Title V violations at all three plants. The Consent Decree specifically requires Defendants to continuously operate pollution controls and meet stringent pollution limits at the Kincaid and Brayton Point plants, and to permanently retire the State Line plant. All told, the Consent Decree's emission limitations secure annual reductions of approximately 22,000 tons of nitrogen oxides ("NO<sub>x</sub>") and 49,000 tons of sulfur dioxide ("SO<sub>2</sub>"). At the Brayton Point plant alone, the Consent Decree reduces such pollution by thousands of tons per year. *See* ECF No. 7-1 (Memo in Support of Motion to Enter) at 6-8.

The Consent Decree also requires Dominion to perform a number of environmentally beneficial projects that go beyond prospectively controlling its plants' emissions.<sup>2</sup> As a means of mitigating some of the environmental effects of past emissions, the Consent Decree requires Dominion to spend \$9.75 million on environmental mitigation projects which will benefit human health and the environment. ECF No. 3 (Consent Decree) at ¶¶ 109–117 & App. A. The harmful effects of a plant's air pollution can extend for hundreds of miles and the Consent Decree thus requires a mix of projects in communities over a wide geographic area in the Midwest and New England regions. The implementation plans for these projects must meet certain conditions to ensure that they are environmentally beneficial and are completed on schedule, and are subject to review and approval by EPA. *Id.* at App. A § II.

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<sup>2</sup> The Brayton Point and Kincaid plants were subsequently sold by Dominion to affiliates of EquiPower Resources Corp., which agreed to undertake all Decree obligations related to the Brayton Point and Kincaid plants and to be substituted for Dominion in the Consent Decree for such purposes. Dominion, however, retained sole responsibility for the environmental mitigation projects required under the Decree. *See* ECF No. 11 (Dec. 5, 2013 Notice).

The specific environmental mitigation projects at issue in the present dispute are known as the “Northeast Clean Energy and Clean Diesel Projects.” *Id.* at App. A § XI.A. The Consent Decree required Dominion to consult with the Town of Somerset and the City of Fall River. *Id.* After consultation, Dominion is required to submit to EPA for approval “one or more” project plans for specified types of projects in “either or both municipalities” that would require the expenditure of up to \$1,600,000. *Id.* at App. A § XI.A, B. The Consent Decree explicitly acknowledged the “expectation” that “approximately” half of the project dollars would be spent in Somerset, but that the final amount would depend on the projects that could “be proposed and implemented within the time frames and other requirements” set out in the Consent Decree. *Id.* at App. A § XI.B. The deadline for submitting the plan or plans was 120 days after the entry of the Consent Decree (*i.e.*, by November 14, 2013). *Id.* at App. A § II.A. Upon EPA approval, the projects must be completed in accordance with the approved plan. *Id.* at § II.E. If Dominion is unable to spend all of the money or complete such a project due to a third party’s failure to fulfill its obligations under an approved plan, the Consent Decree provides a process for either amending the plan or redirecting unspent funds to other projects. *Id.* at § II.C & I.

Public notice of the terms of the Consent Decree was published in the *Federal Register* on April 8, 2013. *See* 78 Fed. Reg. 20,947 (Apr. 8, 2013). The United States received eight sets of public comments, which largely focused on the environmental mitigation projects. ECF No. 7-1 at 37-129. In those comments, various municipalities, organizations, and an individual asserted that they should also be eligible for mitigation projects in their communities. ECF No. 7-1 at 17-30, 37-129. Additionally, Conservation Law Foundation, Clean Water Action, and the Coalition for Clean Air South Coast (collectively, CLF) filed comments, questioning how the

Consent Decree would affect their separate enforcement action filed in the State of Massachusetts alleging opacity violations at Brayton Point. *Id.* at 19.

On July 2, 2013 the United States moved to enter the Consent Decree. ECF No. 6. The United States argued that the public comments should not prevent entry of the Consent Decree because, while the communities understandably wanted the mitigation projects in their communities, those communities would achieve significant air pollution reductions due to the injunctive relief measures at the various plants as well as the benefit of the mitigation projects in nearby communities. ECF No. 7-1 at 17-30. Therefore, these communities were substantially benefiting from the Consent Decree and the Consent Decree reflected a fairly negotiated compromise. *Id.* at 18-19. Further, the United States confirmed that “[t]he present case and CLF’s opacity cases involve completely separate causes of action, and the Consent Decree does not resolve or otherwise impact CLF’s cause of action for alleged opacity violations at Brayton Point.” *Id.* at 20. On July 17, 2013, this Court entered the Consent Decree. ECF No. 8 (July 17, 2013 Order).

In accordance with the terms of the Consent Decree, Dominion prepared project plans for environmental mitigations projects. On November 13, 2013, Dominion submitted to EPA a total of five project plans, including a plan for Dominion’s Northeast Clean Energy and Clean Diesel Projects. *See* Nov. 5, 2013 Letter from Pamela F. Faggert, Vice President and Chief Environmental Officer, Dominion (attached as Exhibit 1 hereto). As relevant to this dispute, Dominion’s Northeast Clean Energy and Clean Diesel Projects included \$1,600,000 to be spent on eligible projects only in Somerset. *Id.* Dominion recounted its efforts to consult with Fall River, and explained that Fall River had failed to submit any project plans to Dominion, leaving Dominion no choice but to proceed solely with Somerset. *Id.* Fall River subsequently submitted

proposed projects to Dominion in mid-December 2013, one month after the Consent Decree deadline, and has filed the present motions in an effort to obtain funding for those projects.

#### SUMMARY OF ARGUMENT

Fall River's motion for intervention should be denied. Fall River has not demonstrated that it meets the requirements of either Fed. R. Civ. P. 24(a) (as to an unconditional right to intervene) or Fed. R. Civ. P. 24(b) (as to a permissive right to intervene). Fall River's proposed complaint in intervention mirrors allegations in CLF's complaint in Massachusetts, alleging opacity and other unrelated CAA violations. Fall River's proposed complaint therefore seeks relief wholly unrelated to the instant action. Therefore, Fall River should not be permitted to intervene in this matter.

Additionally, Fall River cannot demonstrate any right to modify or enforce the Consent Decree. The Consent Decree itself expressly excludes any such rights by third parties. Even to the extent that Fall River could be considered a third-party beneficiary of the Consent Decree, it is well settled that only the United States can enforce its Consent Decree, not third parties. Therefore, Fall River has no right to enforce or modify the terms of the Consent Decree.

In any event, Dominion's proposed project plans are consistent with the terms of the Consent Decree. The Consent Decree required Dominion to consult with both Fall River and Somerset in order to solicit and develop environmental mitigation projects and to then propose specific projects to EPA by November 14, 2013. Dominion consulted with Fall River but, for reasons best known to Dominion and Fall River, Fall River did not propose any projects that enabled Dominion to meet Dominion's November 14 deadline with EPA. Although the Consent Decree expresses an expectation that approximately half of the Projects' funds would be spent in Somerset, it also expressly acknowledges that approved projects may occur in "either or both"

municipalities. Thus, after consulting with both Somerset and Fall River, Dominion's submittal of a Somerset-only plan was expressly allowed by the Consent Decree. However, because EPA has not yet approved Dominion's plan, Dominion would not be prohibited from resubmitting a new plan for EPA approval without a need to modify the Consent Decree. Resubmitting a plan for EPA's approval would be within Dominion's discretion.

Finally, Fall River's motion for a preliminary injunction should also be denied. Because Fall River has brought no claims against the United States, Fall River has asserted no basis for an injunction against the United States. In any event, Fall River cannot prove a likelihood of success on the merits for the relief it is seeking because it has no right to intervene in this case nor any right to enforce the Consent Decree. Furthermore, public policy strongly favors settlement, and Fall River cannot prove that preliminary relief would further the public interest, nor that it would suffer irreparable harm without such relief.

### ARGUMENT

#### I. Fall River's Motion to Intervene Should be Denied

Fall River incorrectly claims it has an unconditional right to intervene by statute under Fed. R. Civ. P. 24(a) or, in the alternative, a permissive right to intervene under Fed. R. Civ. P. 24(b). As explained below, both arguments fail because Fall River's proposed complaint seeks to allege claims that are wholly unrelated to the claims at issue in this case.

Fall River's proposed complaint alleges the following violations at Brayton Point: (1) opacity violations of the Massachusetts State Implementation Plan ("SIP"); (2) smoke emission violations of the Massachusetts SIP; (3) violations of visible emissions monitoring requirements contained in the Massachusetts SIP; (4) violations of certain monitoring requirements in the Massachusetts SIP; and (5) violations of acid rain monitoring requirements. *See* ECF No. 25-1

(Revised Proposed Complaint-in-intervention). Fall River's complaint mirrors claims made by CLF in federal district court in Massachusetts. *See* ECF No. 26 (Revised Memo in Support of Motion to Intervene) at 2, n.2 (citing *Conservation Law Foundation, Inc., Clean Water Action, and Toxics Action Center v. Dominion Energy Brayton Point, LLC*, Case No. 1:13-cv-10346-JLT (D. Mass.)); *see also* CLF's Complaint (attached hereto as Exhibit 2).

A. Fall River Does Not Have an Unconditional Right to Intervene

Under Fed. R. Civ. P. 24(a)(1), a court must permit anyone to intervene who "is given an unconditional right to intervene by statute." The citizen suit provisions of the CAA allow citizen-plaintiffs to commence certain civil actions for violations of CAA emission standards, limitations, or administrative orders. *See* 42 U.S.C. § 7604(a)(1). These provisions also impose certain conditions on such citizen suits, and identify when a citizen has an unconditional right to intervene in an existing EPA lawsuit that alleges such violations:

No action may be commenced – (1) under subsection (a)(1) of this section – (A) prior to 60 days after the plaintiff has given notice of the violation .... or (B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

42 U.S.C. § 7604(b)(1).

Fall River cites subsection (b)(1)(B) of this provision for the proposition that it has an unconditional right to intervene in this action. But the language on which Fall River relies is inapplicable because Fall River's proposed complaint-in-intervention does not allege a violation of a "standard, limitation, or order" actually at issue in this case.<sup>3</sup> First, the United States'

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<sup>3</sup> The only case Fall River cites to support the proposition that the CAA gives it an unconditional right to intervene is an unpublished district court opinion, *United States v. Republic Steel*, 1980 U.S. Dist. LEXIS 17371 (N.D. Ill. 1980). However, *Republic Steel* does not discuss intervenors who allege violations unrelated to the causes of action in the original

complaint only alleged violations at the Kincaid Plant, *see* ECF No. 1 (Complaint), while Fall River alleges violations at the Brayton Point Plant, *see* ECF No. 25-1 (Revised Complaint-In-Intervention). Therefore, it is impossible for Fall River's proposed complaint to "mirror the claims" in the United States' complaint.

Second, the Consent Decree resolves violations arising from unpermitted "modifications" under the CAA's NSR, NSPS and Title V provisions. ECF No. 3 (Consent Decree) at ¶ 121. Fall River's proposed complaint is entirely unrelated to NSR, NSPS, and the associated Title V claims as it focuses on opacity emissions, smoke emissions, and monitoring requirements. Such opacity and monitoring allegations are entirely distinct and separate from the NSR, NSPS, and Title V modification violations at issue in this case. They were neither alleged in the United States' Complaint, nor resolved by the Consent Decree. *See* ECF No. 1 at ¶¶ 37-45 (alleging PSD and related Title V claims); ECF No. 3 at ¶ 121 (resolution of NSR, NSPS, and related Title V claims at the Brayton Point plant). As such, Fall River's claims -- which mirror those of the CLF complaint -- have nothing to do with the emission standards and limitations identified in the civil action "commenced and . . . diligently prosecuted" by the United States. 42 U.S.C. § 7604(b)(1)(B). The United States made this point clear in its response to comments submitted by CLF during the Decree's public comment period. Accordingly, the intervention-as-of-right provision of the CAA is inapplicable.

If Fall River wishes to allege unrelated Massachusetts claims at Brayton Point, the proper means by which to do so are described in 42 U.S.C. § 7604, which requires a plaintiff in a citizen suit to meet certain statutory notice requirements and then file suit in the United States District

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complaint, nor does it contain any holdings or *dicta* that run counter to the arguments in this memorandum.

Court in which the source is located. 42 U.S.C. § 7604(a)(1), (b)(1)(A), (c)(1); *cf. United States v. Duke Energy*, 171 F.Supp.2d 560, 564, 565 (M.D.N.C. 2001) (finding 42 U.S.C.

§ 7604(b)(1)(B) did provide unconditional statutory right to intervene under Rule 24(a)(1) where intervenors sought to “enfore[e] the construction permit requirement found in the [CAA’s] PSD provisions”); *see also* Fed. R. Civ. P. 24(c) (requiring intervenor to state grounds for intervention and attach a pleading setting forth claim or defense for which intervention is sought).

Fall River also implies that the allegations in CLF’s lawsuit may have been resolved by this Court’s Consent Decree, thereby cleansing Fall River’s proposed complaint of its jurisdictional defects. *See* ECF No. 26 at 2, n.2. However, Fall River’s supposition is contradicted by the language of the Consent Decree, which makes clear that it resolves *only* NSR, NSPS, and Title V violations, and not the opacity and monitoring claims alleged in the CLF’s Lawsuit and repeated in Fall River’s proposed complaint.<sup>4</sup> As the United States noted in its response to public comments, the express terms of the Consent Decree make clear that this Court’s entry of the Consent Decree resolves “only NSR and related NSPS and Title V claims at the Brayton Point plant, and do[es] not purport to resolve any opacity claims at Brayton Point.” *Id.*; *see also* ECF No. 3 at ¶ 121.

Thus, directly contrary to Fall River’s claim, none of the claims alleged in the CLF’s lawsuit and re-alleged in Fall River’s proposed complaint were resolved by this Court’s Consent Decree. Because Fall River’s proposed complaint alleges entirely different claims than those at

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<sup>4</sup> The only opacity claims at issue in this case that are even remotely similar to those at issue in the Massachusetts Lawsuit pertain to claims at the State Line plant in Indiana. Paragraph 121 of the Decree (ECF No. 3) resolved opacity claims at the State Line plant in return for Dominion’s commitment to permanently retire that plant. By contrast, the Decree expressly does not resolve any potential opacity claims at Brayton Point or Kincaid. *Id.*; *see also* ECF No. 7-1 at 19-20.

issue in this case, the intervention-as-of-right language of 42 U.S.C. § 7604(b)(1)(B) and Fed. R. Civ. P. 24(a)(1) is inapplicable.

B. Fall River Does Not Otherwise Have a Right of Intervention to Protect Its Interests

Fall River also suggests it has a right of intervention under the factors set forth in Fed. R. Civ. P. 24(a)(2).<sup>5</sup> The Seventh Circuit grants intervention of right under Fed. R. Civ. P. 24(a)(2) when all four of the following conditions are met: (1) the application is timely; (2) the applicant has an “interest” in the property or transaction which is the subject of the action; (3) disposition of the action as a practical matter may impede or impair the applicant’s ability to protect that interest; and (4) no existing party adequately represents the applicant’s interest. *Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1380 (7th Cir. 1995). The absence of any one of these factors requires a denial of the motion for intervention. *Id.*; *Bankers Trust Co. of California N.A. v. Beneficial Illinois Inc.*, 92 F.3d 1187, 1996 WL 442773 at \*2 (7th Cir. 1996).

Fall River cannot claim intervention of right under Fed. R. Civ. P. 24(a)(2) because, at the very least, it cannot meet the second or third factors of this test, as it has no legally cognizable interest in the transaction which is the subject of the action.<sup>6</sup> The Supreme Court has

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<sup>5</sup> Fall River has not cited Fed. R. Civ. P. 24(a)(2) in its motions. However, because Fall River’s memorandum in support of its motion to intervene devotes significant space to discussing the timeliness standard under Fed. R. Civ. P. 24(a)(2), the United States addresses Rule 24(a)(2) here.

<sup>6</sup> In addition, Fall River does not attempt to meet the fourth factor. Nor can it, as described in Section II.B. “Adequacy [of representation] can be presumed when the party on whose behalf the applicant seeks intervention is a governmental body or officer charged by law with representing the interests of the proposed intervenor.” *Keith v. Daley*, 764 F.2d 1265, 1270 (7th Cir. 1985). Here, EPA is charged with the enforcement of the Consent Decree and the Clean Air Act.

said that in the context of Rule 24(a)(2), an “interest” must be a “significantly protectable interest.” *Donaldson v. United States*, 400 U.S. 517, 531 (1971). Seventh Circuit case law has further interpreted an “interest” under Rule 24(a)(2) to be a “direct, significant, legally protectable” one. *American Nat’l Bank v. City of Chicago*, 865 F.2d 144, 146 (7th Cir. 1989); *Sec. Ins. Co. of Hartford*, 69 F.3d at 1380. This interest must be something more than a mere “betting” interest. *Reich v. ABC/York Estes Corp.*, 64 F.3d 316, 322 (7th Cir. 1995). Furthermore, whether a party has an interest sufficient to warrant intervention as a matter of right is highly fact-specific, making comparisons to other cases of limited value. *Sec. Ins. Co. of Hartford*, 69 F.3d at 1381; *Wisconsin Educ. Ass’n Council v. Walker*, 705 F.3d 640, 658 (7th Cir. 2013).

Here, Fall River has not identified any legally cognizable interest protected by intervention. The Consent Decree commands that Dominion consult with both Somerset and Fall River, and solicit projects from both. The Consent Decree further states that Dominion must implement “one or more” projects at “either or both” municipalities. ECF No. 3 (Consent Decree at App. A, § XI.A. While the Consent Decree expresses the parties’ expectation that approximately half of the total Project Dollars will be spent in Somerset, “the final distribution will depend on the Projects (and their costs) that can be proposed and implemented within the time frames and other requirements set out in this Appendix.” *Id.* at § XI.B. The Consent Decree also provides a mechanism that included the possibility of redistributing unspent funds. *Id.* at § II.G. This language makes clear that neither municipality is absolutely assured any projects from Dominion. Rather, Dominion was required to consult with both municipalities and submit projects that comply with the specific requirements of the Consent Decree. The only “interest” that Fall River could potentially claim is the interest it would have had in the mitigation projects

that could have been performed there if: (1) Fall River submitted projects to Dominion on time; (2) those projects met the requirements of the Consent Decree; and (3) those projects were submitted by Dominion to EPA; and (4) EPA approved Dominion's submission. Ensuring the performance of projects in Fall River is neither an entitlement under the Consent Decree nor a legally cognizable interest that rises above the level of a mere "betting" interest. Because Fall River has not identified any legally cognizable interest in having a project performed in Fall River, it cannot rely on Fed. R. Civ. P. 24(a)(2) to intervene as a matter of right.

C. Fall River Does Not Have a Right to Permissive Intervention

Fall River also invokes Fed. R. Civ. P. 24(b)(2), which provides courts with discretion to allow permissive intervention when an intervenor "has a claim or defense that shares with the main action a common question of law or fact." In the Seventh Circuit, two separate requirements must be met before a court may exercise its discretionary power to grant permissive intervention. The proposed intervenor must demonstrate both: (1) a common question of law or fact; and (2) independent grounds for jurisdiction. *Sec. Ins. Co. of Hartford*, 69 F.3d at 1381; *Ligas ex. Rel. Foster v. Maram*, 478 F.3d 771, 775 (7th Cir. 2007). Fall River is unable to meet either of these criteria.

First, Fall River's proposed complaint shares no common questions of law or fact with the main action. As described above, the United States' case involves violations of the "modification" requirements of the NSR, NSPS, and related Title V provisions. By contrast, Fall River's proposed complaint states completely distinct and separate causes of action regarding

itoring requirements that are not resolved by the Consent  
thus do not share common law or facts with those of the

IS this true?  
Last ¶ p. 13  
Do we allege  
NSR, NSPS & Title V  
provisions are  
violated?

Second, Fall River has not established independent grounds for jurisdiction over alleged violations at the Brayton Point plant. If Fall River wishes to allege unrelated CAA claims involving at Brayton Point, it must meet the notice and jurisdictional requirements of 42 U.S.C. § 7604, which would require it to provide notice to EPA, Massachusetts, and the actual owner of the Brayton Point plant (here, Equipower Resources, see *supra* note 2), and file suit in the United States District Court in which the source is located. 42 U.S.C. § 7604(a)(1), (b)(1)(A), (c)(1). The case before this Court is simply not the vehicle for alleging unrelated CAA violations in Massachusetts.

II. Fall River Has No Right to Enforce or Modify the Consent Decree

A. Fall River is Not a Specifically Intended Beneficiary of the Consent Decree

Putting its proposed intervention aside, Fall River asserts that it has a right to enforce the Consent Decree because it is a specifically intended beneficiary to the Consent Decree. ECF No. 18 (Mem. in Supp. of Mot. to Modify Cons. Consent Decree) at 2, 5. In support of this assertion, Fall River emphasizes that the Consent Decree identifies the City of Fall River and expresses “the parties’ expectation . . . that approximately half of the total Project Dollars will be spent in Somerset...” *Id.* at 2. Fall River then posits that by necessary implication, approximately half of the award will be spent in Fall River.

Seventh Circuit case law is clear that in determining whether a party is an intended third-party beneficiary, “the fact that a third party is named in the contract, or that performance is to run directly to the third party, is not conclusive.” *Corrugated Paper Products, Inc. v. Longview Fibre Co.*, 868 F.2d 908, 911 (7th Cir. 1989). Instead, courts must look to the intent of the parties and to the language of the consent decree in determining whether a third party was an intended, as opposed to a merely incidental, beneficiary. Here, the language of the Consent

Decree demonstrates that the parties did not intend to create rights in any third party to enforce the Consent Decree.

In examining the standing of third-party beneficiaries to enforce a contract, the Seventh Circuit has looked both to cases dealing with consent decrees and cases dealing with other kinds of contracts. Consent decrees have many similarities with private contracts, and case law often expressly borrows terminology and rules of construction from contract cases in order to explain the rights created by consent decrees. *See South v. Rowe*, 759 F.2d 610, 613 (7th Cir. 1985) (“[W]e note that a consent decree is a form of contract, and, as such, the rules of contract interpretation are applicable.”); *Ferrell v. Pierce*, 743 F.2d 454, 461 (7th Cir. 1984) (“The construction of a consent decree is a matter of contract interpretation”); *United States v. Bd. Of Educ. of City of Chicago*, 717 F.2d 378, 382 (7th Cir. 1983) (“It is clear that consent decrees are construed according to precepts of contract construction. Thus, the interpretation of consent decree provisions, like the interpretation of contract provisions, is a matter of law...”); *Dunn v. Carey*, 808 F.2d 555, 559 (7th Cir. 1986) (“Consent decrees are judgments as well as contracts.”).

In explaining why courts consider the intent of the parties in determining third party standing, the Seventh Circuit has explained:

Contracts often benefit persons besides the signatories, and a breach harms them. To allow all these injured beneficiaries to sue would expose contract promisors to enormous potential liabilities...And how can there be a meeting of the minds between a party and a nonparty? But these puzzles dissipate when attention is shifted to the intentions of the contracting parties. The parties may for their own purposes want to confer a power of enforcing their contract upon a third party. If they make this intention adequately clear in the contract, the concept of freedom of contract becomes a compelling ground for allowing the third party to enforce the contract.

*Vidimos, Inc. v. Laser Lab Ltd.*, 99 F.3d 217, 219-20 (7th Cir. 1996).

The Seventh Circuit has also stated that the mere fact that parties “might have had motives for conferring party status... is not proof that they did so. We must look for clues to their realized intentions in the contract itself.” *Id.* at 220. Here, although Fall River was mentioned specifically in the Consent Decree, such mention does not automatically confer Fall River with intended third-party beneficiary status. Instead, the Court must look to the actual language of the Consent Decree. That language makes clear that neither Dominion nor the United States expressed any intention to confer third-party intended beneficiary status to any entity, whether that entity was mentioned in the Consent Decree or not. To the contrary, the Consent Decree makes plain that “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.” ECF No. 3 at ¶ 2. This limitation is mimicked in other provisions in the Consent Decree. The Decree’s jurisdiction provision explicitly provides that “any Party to this Consent Decree” can seek relief from the court, not third parties. *Id.* at ¶ 187. Finally, the Decree further provides that it “does not limit, enlarge, or affect the rights of any Party to this Consent Decree against any third parties.” *Id.* at ¶ 198. Therefore, the Consent Decree’s provisions clearly establish that it was not intended to create a third-party beneficiary.

In the past, the Seventh Circuit has given great weight to any express language in a consent decree making it clear that a right was not intended to be conferred to any third party. “Courts look to the language of the consent decree itself to determine whether a clear intent to permit third parties to enforce the decree exists.... Had the parties intended [for the petitioners] to be third-party beneficiaries, they easily could have said so in the Consent Decree.” *Hodges by Hodges v. Pub. Bldg. Comm’n of Chicago*, 864 F. Supp. 1493, 1509 (N.D. Ill. 1994); *see also*

*Golden v. Barenborg*, 53 F.3d 866, 870 (7th Cir. 1995) (“This test is determined by the manifestation of the parties’ intent expressed through the language of the contract. The contract at issue here expressly states that it confers no rights on any party not a party to the contract.”) The fact that the Consent Decree at issue expressly declines to create any right in any other party negates Fall River’s assertion that it is an intended third-party beneficiary with the right to enforce or modify the Decree merely because it is mentioned by name.

B. Fall River Does Not Have the Right to Modify or Enforce the Consent Decree in Any Event, Because the Government is a Party

Even if Fall River is presumed, *arguendo*, to have the status of a third-party intended beneficiary, Fall River still would not have the authority to enforce or modify the Consent Decree, because even specifically intended third-party beneficiaries cannot enforce or modify consent decrees resulting from actions brought by the United States. *Hodges*, 864 F. Supp. at 1508-09 (N.D. Ill. 1994).<sup>7</sup> The Supreme Court has held that “a well-settled line of authority from this Court establishes that a consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it even though they were intended to be benefited by it.” *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 750 (1975). In practice, the application of *Blue Chip* has been narrowed by some courts to sometimes allow intended, as opposed to incidental, third-party beneficiaries to enforce consent decrees. *See Hook v. Dept. of Corrections*, 972 F.2d 1012, 1015 (9th Cir. 1992); *Beckett v. Air Line Pilots Ass’n*, 995 F.2d 280,

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<sup>7</sup> Fall River briefly acknowledges the existence of this prohibition against third-party enforcement and modification of governmental consent decrees. *See* ECF No. 18 (Mem. in Supp. of Mot. to Modify Consent Decree) at 5. Nonetheless, Fall River attempts to get around this prohibition by citing the CAA’s intervention-of-right provisions set forth at 42 U.S.C. § 7604(b)(1)(B). However, as explained above, these provisions do not grant Fall River the right to intervene by simply filing a wholly unrelated lawsuit, as is the case here.

288 (D.C. Cir. 1993). However, even these cases make clear that this exception “does not apply to consent decrees resulting from actions brought by the government.” *Hodges*, 864 F.Supp. at 1508-09; *Beckett*, 995 F.2d at 288. Accordingly, “only the Government can seek enforcement of its consent decrees; therefore, even if the Government intended its consent decree to benefit a third party, that party could not enforce it unless the decree so provided.” *Hodges*, 864 F. Supp at 1508 (internal citations omitted). As discussed above, the Consent Decree in this case has expressly declined to create any such enforcement rights in any party not party to the Consent Decree.

The proposition that only the government can enforce its consent decrees is derived from the principle that because the government is presumed to be acting to benefit the general public, third-party beneficiaries of a government contract are generally assumed to be incidental beneficiaries. Restatement (Second) of Contracts § 313 (1981); *see also Biovail Corp. Int'l v. Hoechst Aktiengesellschaft*, 49 F. Supp. 2d. 750, 763 (D.N.J. 1999) (“[T]o have standing as a nonparty to enforce a government consent decree, one must show that the government explicitly authorized third-party enforcement.”); *Dahlberg v. Avis Rent A Car Sys. Inc.*, 92 F. Supp 2d. 1091, 1107 (D. Colo. 2000) (“Where...the government enters a consent decree for the benefit of third parties...enforcement of the consent decree generally is limited to the contracting parties because in such circumstances the numerous third-party beneficiaries are assumed to merely be incidental beneficiaries without the right of enforcement”).<sup>8</sup>

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<sup>8</sup> Even among courts that do not endorse this government exception as a bright line rule, many still work under a strong legal presumption that third party beneficiaries are merely incidental. *See United States v. FMC Corp.*, 531 F.3d 813, 821 (9th Cir. 2008), *S.E.C. v. Prudential Sec. Inc.*, 136 F.3d 153, 158 (D.C. Cir. 1998) (“[C]ourts are more loath to allow third parties to enforce consent decrees when the government is involved...because the government usually acts in the general public interest [and] third parties are presumed to be incidental

In sum, the clear contractual language of the parties expressly declines to create rights in any third parties and, absent such express language, only the United States can enforce its own consent decrees.

C. Federal Rule of Civil Procedure 60(b)(5) is Not Applicable to This Case

Fall River also cites Federal Rule of Civil Procedure 60(b)(5) as conferring the right to modify the Consent Decree. ECF No. 18 at 6. Rule 60(b)(5) permits a court, on motion, to relieve a party from a final judgment, order or proceeding. Fed. R. Civ. P. 60(b)(5). However, any reliance on Rule 60 is misplaced because that Rule plainly applies to the parties that were signatories to the Consent Decree, not to third parties.

The language of Rule 60(b)(5) reads, “[T]he court may relieve a party or its legal representative from a final judgment, order, or proceeding...” Fed. R. Civ. P. 60(b)(5). The parties to the Consent Decree at issue in this case are the Defendants and the United States. Rule 60(b)(5) addresses the possibility that one of these parties could seek relief from the Consent Decree. The language of the Rule does not provide that a third party can ask for relief from a judgment to which it was not a party.

Notably, Fall River cites no case in which a third party has invoked Rule 60(b)(5). Both cases it does cite, *Rufo v Inmates of Suffolk Cnty. Jail*, 502 U.S. 367 (1992) and *U.S. v. City of Northlake*, 942 F.2d 1164 (7th Cir. 1991), involve the original parties to a consent decree seeking to modify their own agreement. Furthermore, the language in Seventh Circuit cases regarding

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beneficiaries.”). Once again, courts working under this legal presumption look to the language of the consent decree. *Id.* at 160. Here, as discussed above, the clear language of the decree makes plain that no rights are created in any non-parties, and the Consent Decree is thus only enforceable by the United States.

the appropriate use of Rule 60(b)(5) is limited to a discussion of the original parties. For instance, in *Rufo*, the court noted that,

Modification of a consent decree may be warranted when changed factual conditions make compliance with the decree substantially more onerous [...] If it is clear that a party anticipated changing conditions that would make performance of the decree more onerous but nevertheless agreed to the decree, that party would have to satisfy a heavy burden to convince a court that it [...] should be relieved of the undertaking.

*Rufo*, 502 U.S. at 384-85.

Further evidence that Rule 60's application is to be reserved to the parties to a consent decree is found by observing the situations in which modification is proper. For instance, modification may be permitted "if the parties had based their agreement on a misunderstanding of the governing law." *Balark v. Chicago*, 81 F.3d 658, 664 (7th Cir. 1996). Obviously, what a third party did, or did not, understand is simply irrelevant to such an analysis. In short, Fall River cannot invoke Rule 60(b)(5) to gain relief from a Consent Decree to which it was not a party.

### III. Dominion Consulted With Fall River as Required by the Consent Decree

Even if Fall River could enforce the Consent Decree, it would still not be entitled to the relief it seeks in this case: one half of the up to \$1,600,000 that Dominion must spend on the Northeast Clean Energy and Clean Diesel Projects. Fall River was entitled to consultation with Dominion, and was impliedly entitled to have Dominion propose to EPA, within the Consent Decree's established deadlines, one or more proposed projects developed after these consultations *if* Fall River timely submitted its initial proposals to Dominion and *if* such proposals accorded with the Consent Decree's substantive requirements for the projects. But as

discussed below, the evidence indicates that Dominion consulted with Fall River and that Fall River produced no proposals within the deadlines required by the Consent Decree.

A. Fall River Had No Absolute Right to Split Funding

Fall River says it is seeking an “award of half of the \$1.6 million allocated to be split between Fall River and the Town of Somerset, as specifically written in the Consent Decree.” ECF No. 18 at 8. However, what Fall River is requesting is inconsistent with the Consent Decree’s actual language, which does not require an equal division of funding between the two municipalities, and which specifically contemplated that project plans could be submitted by Dominion for only one municipality.

The Consent Decree requires that after consultation with both Somerset and Fall River, Dominion shall submit:

*one or more* Project Plans to EPA for review and approval to implement (a) Energy Efficiency, Geothermal, and/or Solar Photovoltaic (“PV”) Projects at one or more public school buildings in *either or both* municipalities, and/or (b) Clean Diesel Project(s) to retrofit or repower higher-polluting diesel engines in *either or both municipalities*. The proposed Projects may include the installation of centrally-monitored digital controls and timers for heating/cooling systems in school buildings in *either or both* municipalities (“Energy Efficiency Project”). The proposed Projects may also include the installation of a geothermal heating and/or cooling system (“Geothermal Project”), and/or a solar photovoltaic project consisting of electricity-generating solar panels (“PV Project”) for public school buildings in *either or both* municipalities. The Projects may also include the retrofit or repower of eligible diesel engines on diesel-powered municipal construction or public works vehicles or equipment owned or operated on a long-term basis by *either or both* municipalities in order to reduce diesel pollutant emissions (“Clean Diesel Retrofit and Repower Project”).

ECF No. 3 at App. A, § XI.A (emphasis added).

The Consent Decree also allows for less than \$1.6 million to be spent on the projects for the municipalities, and provides a mechanism for unspent sums to be spent

on other projects. *See id.* at §§ II.C & G, XI.B. And, it expressly permits the submission of “one or more Project Plans.” *Id.* at § XI.A. Additionally, every type of project is permitted to be done in “either or both” municipalities. *Id.* Although the Consent Decree does express an “expectation” that “approximately half” of the total Project Dollars will be spent in Somerset, the Consent Decree states that “the final distribution [of funds] will depend on the Projects (and their costs) that can be proposed and implemented within the time frames and other requirements of this Appendix.” *Id.* at § XI.B. This language, taken as a whole, clearly contemplates circumstances where either municipality could receive the majority, or even all, of the available project funding if that municipality’s projects met the Consent Decree’s requirements and could be both proposed and implemented within its time frames.

B. Dominion Submitted its Plan After Consulting with Both Municipalities

Dominion submitted its proposed plan for the Northeast Clean Energy and Clean Diesel Projects to EPA on November 13, 2013 via cover letter dated November 5, 2013. *See* Nov. 5, 2013 Letter from Pamela F. Faggert, Vice President and Chief Environmental Officer, Dominion (attached as Exhibit 1 hereto). In that submission, Dominion recounted its efforts to consult with Fall River, and explained that Fall River had failed to submit any project plans to Dominion. *Id.* Dominion’s November 5 submittal was consistent with prior correspondence provided to EPA, in which Dominion further described its attempts to coordinate with Fall River, both before and after the Consent Decree was entered. *See* Email to Viggiani (attached hereto as Exhibit 3). According to Dominion, these efforts included meetings, contacts and conversations with Fall River officials and representatives in July, August, and September. By mid-September Dominion concluded that Fall River was not going to pursue any projects that could be approved under the

Consent Decree.<sup>9</sup> Consequently, Dominion stated that it had no choice but to proceed to develop a plan with Somerset. *See id.*<sup>10</sup>

Based on the information described above, EPA believes that Dominion discharged its obligation to consult with Fall River in accordance with the Consent Decree.<sup>11</sup> In summary, Dominion claims it met with the Mayor and other Fall River officials on July 11, and made repeated follow-up calls to Fall River officials in July and August, during which Dominion stated that it was extending its original August 1 deadline for project proposal submission. Dominion apparently re-connected with Fall River in early September, had multiple conversations with the City's newly designated contact on the matter, and concluded from these conversations that Fall River was not going to propose projects that would comply with the substantive requirements of the Consent Decree. Although the Consent Decree expresses an expectation that half of the projects would occur in Somerset, it also contemplates that projects could occur in "either or both" municipalities, depending on the results of the consultation and whether timely approvable projects could be submitted. If Dominion's representations are accurate, its submittal of a Somerset-only plan after consulting with both Somerset and

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<sup>9</sup> According to Dominion, Fall River was not interested in the type of school projects contemplated by the Consent Decree, and instead wanted to pursue solar installations on non-school city-owned buildings. *See id.*

<sup>10</sup> This same basic chronology of contacts and Dominion's conclusion to proceed solely with Somerset was repeated in a subsequent December 9 letter from Dominion to Fall River. *See* December 19, 2013, Letter from Mary Jo Sheeley (attached hereto as Exhibit 4).

<sup>11</sup> The United States recognizes that the above-described claims have not yet been supported by briefs or affidavits filed by Dominion in this matter. Nonetheless, they form a basis for the United States to conclude that Dominion did consult with Fall River as required by the Consent Decree.

Fall River complied with the Consent Decree. It bears noting, however, that because EPA has not yet approved Dominion's plan, Dominion would not be prohibited from resubmitting a new plan for EPA approval that included one or more Fall River projects without modification of the terms of the Consent Decree.<sup>12</sup> Such action is not required of Dominion, but would be within Dominion's discretion and compliant with the Consent Decree.

IV. Fall River's Motion for a Preliminary Injunction Should be Denied

Finally, the Court should deny Fall River's Motion for a Preliminary Injunction because Fall River is not entitled to any of the permanent relief it seeks on the merits, as set forth above.<sup>13</sup> In its motion, Fall River requested this Court order (1) Dominion to accept its project plan; (2) submit the project plan to the EPA for review; (3) stay EPA's approval of Dominion's previously submitted project plans for the Northeast Clean Energy and Clean Diesel Projects; (4) stay an award of monies for the Clean Energy and Clean Diesel Projects; and (5) order Dominion to fund the Fall River project plan upon review and approval by the EPA.

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<sup>12</sup> As was stated during the Court's January 14, 2014 hearing, EPA has informed Dominion that it would not object to such a new plan provided that it otherwise meets the requirements of the Consent Decree. Also, on January 9, 2014, EPA provided initial comments to Dominion regarding its Somerset-only project plan (see EPA comments on Dominion's Proposed Projects, attached hereto as Exhibit 5), but did not approve any of the proposed projects. In accordance with United States' representations and the Parties' Joint Stipulations (ECF No. 22) in this matter, EPA has taken no further action regarding the Somerset projects.

<sup>13</sup> The Temporary Restraining Order sought by Fall River against the United States was mooted by the parties' January 22, 2014 Joint Stipulation (ECF No. 22) and commitment to await briefing of the merits of Fall River's motions. This discussion is therefore limited to Fall River's motion for a preliminary injunction.

Fall River's Motion for a Preliminary Injunction should be denied as to the United States EPA because Fall River's proposed complaint-in-intervention does not actually allege any claims against the United States. To enjoin the United States under the traditional four-factor test for preliminary relief, Fall River would have to demonstrate, *inter alia*, that it is likely to succeed on the merits of a claim against the United States. See *Smith v. Exec. Dir. of Indiana War Mem. Comm'n*, 2014 WL 407138, at \*2 (7th Cir. Feb. 4, 2014) ("To obtain a preliminary injunction, [a party must] establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the "balance of equities" tips in his favor . . . and that issuing an injunction is in the public interest."). Fall River has brought no claims against the United States in either its original or revised complaints and has provided no grounds for an injunction against the United States. Indeed, although Fall River's brief seeks to address the traditional four-part test for injunctive relief, Fall River has not even argued that it is likely to succeed on any claim against the United States.

Moreover, even measured against the merits of the relief it has sought in the case, Fall River cannot establish that it is likely to succeed on the merits of its Motion to Intervene or Motion to Enforce the Consent Decree. As discussed *supra* Section II and III, Fall River motions all must be denied on the merits because its proposed complaint is wholly unrelated to the claims in the Consent Decree and Fall River has no right to enforce the Consent Decree.

In addition to being unable to demonstrate success on the merits, Fall River also cannot show that it would suffer irreparable harm without the relief it requests. First,

any harm the city might suffer is not irreparable, because as explained *supra* section III, Fall River had no entitlement to money or projects. Rather, it was afforded the opportunity to be consulted in good faith, and the opportunity to timely submit potential projects to Dominion for Dominion to subsequently submit to EPA. Moreover, financial injury alone, short of catastrophic loss or financial ruin, cannot be irreparable harm for injunctive purposes. See *Wisc. Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985) (“It is also well settled that economic loss does not, in and of itself, constitute irreparable harm.”). Furthermore, Fall River has made no showing that any financial loss cannot be recovered through a claim for damages. *Id.* (“The possibility that adequate compensatory or other relief will be available at a later date...weighs heavily against a claim of irreparable harm.”).

Second, even if Fall River would suffer harm should it be denied relief, any such harm would be small because the only time during which this harm could materialize would be prior to ruling on Fall River’s other motions. For instance, if Fall River’s Motion to Intervene and/or Motion to Enforce are denied, this matter will have been disposed of, and Fall River will not have suffered irreparable harm. Similarly, if this Court grants Fall River the rights of intervention and/or enforcement, Fall River will have suffered no irreparable harm. Consequently, Fall River cannot demonstrate that it would suffer irreparable harm should it be denied preliminary relief.

Further, Fall River cannot show that a preliminary injunction would favor the public interest. Contrarily, the public interest would be best served by operation of the terms that settled this litigation. Seventh Circuit case law makes clear that “[p]ublic policy strongly favors settlement of disputes without litigation.” *Donovan v. Robbins*,

752 F.2d 1170, 1177 (7th Cir. 1984), *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1372 (6th Cir. 1976). The presumption in favor of voluntary settlement “is particularly strong where a consent decree has been negotiated by the Department of Justice on behalf of a federal administrative agency like the EPA which enjoys substantial expertise in the environmental field.” *United States v. Akzo Coatings*, 949 F.2d 1409, 1436 (6th Cir. 1991); *see also United States v. Cannons Eng’g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990) (favoritism towards these types of settlements “has particular force where, as here, a government actor committed to the protection of the public interest has pulled the laboring oar in constructing the proposed settlement”).

Here, the Consent Decree especially benefits the public interest because the settlement indisputably accomplishes environmental benefits for Fall River as well as other downwind communities. Fall River will benefit from the significant injunctive relief at the Brayton Point plant and the environmental mitigation projects in areas surrounding the Brayton Point plant, including the reduction of over 20,000 tons per year of SO<sub>2</sub> and NO<sub>x</sub>.<sup>14</sup> ECF No. 7-1 at 17-19.

Because Fall River has not shown likelihood for success on the merits, nor has it identified any irreparable harm in the absence of preliminary relief or that such relief is in the public interest, Fall River’s Motion for a Preliminary Injunction should be denied.

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<sup>14</sup> The New England Woodstove Changeout Project, set out in Section III of Appendix A of the Consent Decree and funded up to \$2,025,000, will be performed in Connecticut, Rhode Island and Massachusetts, and will reduce particulate pollution in communities surrounding the plant. ECF No. 7-1 at 9.

**CONCLUSION**

For the foregoing reasons, this Court should deny Fall River's Motion to Intervene (ECF No. 13), Motion for a Temporary Restraining Order and/or Preliminary Injunction (ECF No. 15), and Motion to Enforce and/or Modify the Consent Decree (ECF No. 17).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this day, the foregoing PLAINTIFF UNITED STATES' CONSOLIDATED MEMORANDUM IN OPPOSITION TO PROPOSED PLAINTIFF-INTERVENOR FALL RIVER'S MOTION TO INTERVENE, MOTION TO ENFORCE CONSENT DECREE AND MOTION FOR PRELIMINARY INJUNCTIVE RELIEF was filed electronically with the Clerk of the Court using the Court's Electronic Court Filing System.

Dated: February 26, 2014

s/ Jason A. Dunn  
Jason A. Dunn

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Proposed Plaintiff-Intervenor,	)	
	)	
v.	)	
	)	
DOMINION ENERGY, INC., BRAYTON	)	
POINT, LLC, AND KINCAID	)	
GENERATION, LLC., AND EQUIPOWER	)	
RESOURCES CORP.	)	
	)	
Defendants.	)	
	)	
	)	

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**PLAINTIFF UNITED STATES' CONSOLIDATED MEMORANDUM IN OPPOSITION  
TO PROPOSED PLAINTIFF-INTERVENOR FALL RIVER'S MOTION TO  
INTERVENE, MOTION TO ENFORCE CONSENT DECREE AND MOTION FOR  
PRELIMINARY INJUNCTIVE RELIEF**

**EXHIBIT ONE**

Nov. 5, 2013 Letter from Pamela F. Faggert,  
Vice President and Chief Environmental Officer, Dominion

Pamela E. Faggert  
Vice President and Chief Environmental Officer

Dominion Resources Services, Inc.  
5000 Dominion Boulevard, Glen Allen, VA 23060  
Phone: 804-273-3467



November 5, 2013

**BY UNITED STATES MAIL SERVICE**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044-7611

Director, Air Division  
U.S. Environmental Protection Agency,  
Region 5  
77 W. Jackson Blvd. (AE-17J)  
Chicago, IL 60604

Director, Air Enforcement Division  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency  
Mail Code 2242A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Director, Office of Environmental  
Stewardship  
U.S. Environmental Protection Agency,  
Region 1  
Mail Code OES04-5  
5 Post Office Square, Suite 100  
Boston, MA 02190-3912

Re: Mitigation Project Plan Submittal  
*United States v. Dominion Energy, Inc., et al.*  
(civil action no. 13-cv-3806)

To Addressees:

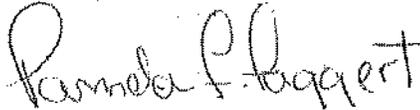
Pursuant to a federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (entered July 17, 2013) ("Consent Decree"), Dominion Energy, Inc. ("DEI") agreed to fund various Environmental Mitigation Projects as provided in Appendix A to the Consent Decree. Within 120 days of the entry of the Consent Decree, DEI is required to submit project plans to the U.S. Environmental Protection Agency ("USEPA") for its review and approval prior to the projects being implemented. DEI is permitted under the Consent Decree to contribute Project Dollar funds to other entities to carry out projects in lieu of DEI. Consent Decree, § 114. Section XI of Appendix A requires DEI to expend \$1,600,000 in Project Dollars on the Northeast Clean Energy and Clean Diesel Projects.

Section XI.A further required Dominion to consult with both the Town of Fall River and the City of Somerset, Massachusetts, and submit one or more projects pursuant to this section of Appendix A. Dominion consulted with both the Town and City, and only the City submitted a plan for consideration. Over a two-month period from mid-July to mid-September, repeated attempts were made to solicit a project from the Town of Fall River to no avail. Dominion representatives met with Town representatives, including Mayor Will Flanagan, Chief Administrator Shawn Cadime, Corporation Counsel Elizabeth Souza and two others to brief them on the NSR settlement and Fall River's eligibility. Dominion made multiple follow-up

calls with the Corporation Counsel, the Mayor and other to see how they were progressing and if they had any questions. The Town never produced a proposed project, leaving Dominion no recourse other than to proceed solely with the City of Somerset. As a result, Dominion decided to expend the \$1,600,000 in Project Dollars on the City of Somerset project called Somerset Public Schools Energy Recovery System (ERS) and 200 kW Photovoltaic Project (the "Project"). Enclosed with this letter is a Plan to implement the Project, which DEI submits for USEPA's review and approval.

Pursuant to paragraph 112 of the Consent Decree, Dominion certifies that Dominion is not otherwise required by law to perform the Project described in the enclosed Plan, that Dominion is unaware of any other person who is required by law to perform the Project, and that Dominion 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 or energy efficiency portfolio standards.

Sincerely,

A handwritten signature in cursive script that reads "Pamela F. Faggert".

Pamela F. Faggert

Attachment

**CC:**

**Alice G Prior (Services - 6);**

**Cathy C Taylor (Services - 6);**

**Mary Jo Sheeley (Services - 6);**

**j.david.rives@dom.com;**

**Kevin R Hennesy (Services - 6)**

**Marc Furtado [furtadom@sbrregional.org]**

November 4, 2013

United States v. Dominion Energy, Inc.

**Environmental Mitigation Projects: Somerset Public Schools Energy Recovery System (ERS) and 200 kW Photovoltaic (PV) Project Plans**

Per EPA Consent Decree lodged 7/16/2013, Appendix A, Paragraph XI

**A. Overview**

Pursuant to a federal consent decree entitled *United States v. Dominion Energy, Inc., etc.*, (civil action no. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree") Dominion Energy, Inc. ("DEI") has agreed to fund various Environmental Mitigation Projects as provided in Appendix A to the Consent Decree. Within 120 days of the entry of the Consent Decree, DEI is required to submit Project Plans to the U.S. Environmental Protection Agency ("USEPA") for its approval prior to the projects being implemented. DEI is permitted under the Consent Decree to contribute Project Dollar funds to another entity to carry out a project in lieu of DEI. The requirements for doing so are spelled out in the Consent Decree and Appendix A.

Appendix A, section XI, of the Consent Decree is entitled the Northeast Clean Energy and Clean Diesel Projects and is directed towards the implementation of projects in either or both of the Town of Somerset and the City of Fall River, Massachusetts. Section XI provides for the funding by DEI of \$1,600,000 in Project Dollars for "(a) Energy Efficiency, Geothermal, and/or Solar Photovoltaic ("PV") Projects at one or more public school buildings in either or both municipalities and/or (b) Clean Diesel Projects to retrofit or repower higher-polluting diesel engines in either or both municipalities" as those projects are described in Appendix A, section XI. See Appendix A, section XI.A. DEI may fund one or more projects. DEI did not receive proposals from the City of Fall River, but did receive proposals from the City of Somerset for its public schools.

As set forth in this Project Plan, DEI will provide a total of \$1,600,000 in Project Dollars to the City of Somerset on behalf of the Somerset School District ("School District" or "District"), and the School District will implement the following two projects: the Somerset Energy Recovery System Project and the 200 kW Photovoltaic Project. Attachment A is a letter providing documentation of the City of Somerset's legal authority to accept funding for the Project and the School District's legal authority to implement the Project Plan in lieu of DEI.

The School District hired SouthCoast Greenlight, a third-party contractor located in Swansea, Massachusetts, to develop proposals for the School District projects described below. Those proposals form the basis for the project plans. Upon approval of the project

plans, the School District will contract with SouthCoast Greenlight to implement both projects. SouthCoast Greenlight's relevant accreditations/certificates are found in Attachment B, as required by the Consent Decree, Appendix A, Section X.I.

## **B. Somerset Energy Recovery System (ERS) Project Plan**

DEI will provide \$779,011 in Project Dollars to the School District to fund the design and installation of an Energy Recovery System (ERS) at four of the five School District schools as provided in this project plan ("ERS Project Plan"). Once operational the ERS will provide energy efficiencies and savings to the School District by replacing the four schools' direct ventilation systems with heat exchangers that will temper the incoming fresh air by absorbing some of the heat from the exhausted air before it is discharged outside the building. Because the incoming air flow is at ambient conditions and at lower temperatures than the exhausted air flow, the amount of energy needed to heat the incoming air is reduced. This temperature differential allows heat transfer and thus energy transfer, or in this case, recovery.

### 1. ERS Project Description

SouthCoast Greenlight will perform all aspects of the ERS installation for the School District on a turnkey basis, to include:

- Filing for all mechanical permits and inspections required by the town
- Installation of all major equipment and controls necessary to integrate the ERS system with the existing air duct systems
- Installation of ERS system and connecting ductwork and mechanical insulation
- Connecting and terminating all condensate drains from each ERS unit to outside
- Electrical wiring

The ERS will utilize heat exchangers for heating and cooling systems designed by *BPE (Buildings Performance Equipment, Inc.)*. The design is based on the load calculation derived from current ventilation standards for public schools. The *BPE* heat exchangers will replace all direct ventilation in each school building. The ERS will reduce energy costs by 30-40%.

SouthCoast Greenlight will develop a mechanical engineer certified design of the ERS for each building. The ERS system will replace direct ventilation using a heat exchanger to temper the incoming fresh air by absorbing the heat from the exhaust air before it is discharged outside each building. These systems will operate with CO2 sensors located in the exhaust air ducts, and the CO2 levels will be maintained at 800 parts per million (ppm). The energy efficient ventilation systems selected for the Project are as follows:

Somerset Middle School	A 14,000 CFM ERS using 9 <i>BPE</i> XE MIR 2000 units
North Elementary School	A 12,000 CFM ERS using 8 <i>BPE</i> XE MIR 2000 units
Chace Street School	An 8,000 CFM ERS using 5 <i>BPE</i> XE MIR 2000 units

South Elementary School

A 6,000 CFM ERS using 4 BPE XE MIR 2000 units

A complete BPE Energy Analysis for Somerset Middle School, with cost savings and flow profiles, is attached in Attachment C. Total annual energy savings are estimated to be 115,810 kilowatt hours (kW-hrs), equivalent to 2,970,809 million British thermal units (MBTU). Savings for the other schools are not included in this analysis, but extrapolation (kW-hrs/CFM times total CFM) would indicate a total savings of approximately 330,885 kW-hrs per year for all schools.

## 2. ERS Project Budget

The following is a summary-level budget for the expenditures to be made for each of the four Somerset public schools pursuant to the ERS Project:

- Somerset Middle School \$269,595
- North Elementary School \$239,640
- Chace Street School \$149,775
- South Elementary School \$119,821

Total Expenditures: \$779,011

## 3. ERS Project Funding

Upon receiving USEPA's approval of the ERS Project Plan, DEI and the City of Somerset on behalf of the School District will enter into a project funding agreement by which DEI will provide Project Dollars to the City of Somerset and the Somerset School District will implement the USEPA-approved ERS Project Plan. DEI will pay the Project Dollars to the City of Somerset for the use of School District as follows:

- The first payment of \$584,258 will be transferred to the City of Somerset within 30 days after EPA approves the ERS Project Plan.
- The final payment of \$194,753 will be transferred to the City of Somerset within 30 days of a request for payment made by the School District at any time after the Project is 50% complete.

## 4. ERS Project Environmental Benefits

The project for Somerset Middle School is expected to save approximately 3,000,000 million BTUs (British thermal units) annually and include reductions of approximately 1.3 million pounds of carbon dioxide (CO<sub>2</sub>), 3,000 pounds of sulfur dioxide (SO<sub>2</sub>), and 3,000 pounds of oxides of nitrogen (NO<sub>x</sub>) annually.

While the installations and investments at the others schools in the School District would be

smaller, the returns would be relatively equal for each dollar invested. Extrapolating based on energy reductions, the Project has the potential of reducing CO<sub>2</sub> by 3.7 million pounds, and SO<sub>2</sub> and NO<sub>x</sub> by 8,600 pounds, respectively.

See Attachment D, which is BPE Performance Calculator for Reduced Pollution, as applicable to Somerset Middle School only.

#### 5. ERS Project Reporting

The School District will submit periodic reports to DEI within 30 days, and DEI to EPA within 60 days, after the end of each half of the calendar year until completion of the Project. The periodic reports will include "a summary of actions implemented and expenditures made pursuant to Implementation of the Environmental Mitigation Projects" as required in the Consent Decree and Appendix A. (CD, para. 122.h; see also App. A, II.F)

The School District will submit a final report to DEI within 30 days, and DEI to EPA within 60 days, of completion of the Project. The Final Reports will document:

- The date the Project was completed.
- The results of Implementation of the Project, including the estimated emission reductions or other environmental benefits achieved.
- The Project Dollars incurred in implementing the Project.

The School District may submit the reports for the ERS Project and the PV Project on the same schedule in the same report.

#### 6. ERS Project Timeline

Section X.I.B of Appendix A to the Consent Decree provides that the ERS Project must be completed no later than three years after the Date of Entry of the Consent Decree. Section X.I.B also provides for an extension of the completion date if, despite best efforts, the project cannot be completed within the three year period. Section II.D and Section XI.I of Appendix A of the Consent Decree require that the Plan contain a schedule and timeline for implementing the Project, making payments and submitting reports.

The ERS Project shall be implemented on the following schedule:

July 17, 2013	Consent Decree Entered
Day 0	USEPA Approves Project Plan
Day 15	DEI and District sign funding agreement
Day 15 (est.)	District signs contract with SouthCoast Greenlight
Day 30	DEI makes first payment to District

Day 60 (est.)	Design work completed
January 30, 2014	District submits periodic report to DEI
February 28, 2014	DEI submits periodic report to USEPA
July 30, 2014	District submits periodic report to DEI
August 30, 2014	DEI submits periodic report to USEPA
January 6, 2015 (est.)	DEI makes second and final payment to District
January 30, 2015	District submits periodic report to DEI
February 28, 2015	DEI submits periodic report to USEPA
July 30, 2015	District submits periodic report to DEI
August 30, 2015	DEI submits periodic report to USEPA
January 30, 2016	District submits periodic report to DEI
February 28, 2016	DEI submits periodic report to USEPA
July 30, 2016	District submits periodic report to DEI
August 30, 2016	DEI submits periodic report to USEPA
July 1, 2016 (est.)	Project Completed
July 31, 2016	District submits final report to DEI
August 30, 2016	DEI submits final report to USEPA

If the Project is completed on an earlier schedule, the School District will submit the final report to DEI within 30 days of completing the Project, and DEI will submit the final report to EPA within 60 days of the completion date. All subsequent dates on the schedule above would then become obsolete.

**C. School District 200 kW PV Project Plan**

DEI will provide \$820,989 in Project Dollars to the City of Somerset to fund the School District's installation of a 200 kW DC photovoltaic (PV) array (the "System") on the roof of a Somerset school building as provided in this Project Plan ("PV Project Plan"). As noted above, the Project Plan is based on a proposal prepared by SouthCoast Greenlight.

**1. PV Project Description**

SouthCoast Greenlight will perform all aspects of the PV Project installation for the School District on a turnkey basis, to include all engineering, construction, controls, wiring, and permits. The PV Project specifies Westinghouse panels and appropriately sized Solectria Inverters. See Attachment E for technical specifications of the Westinghouse PV panels and the Solectria Inverters. The panels are guaranteed to generate electricity at 80% of their new rate after 25 years. The Solectria Inverters and the Westinghouse panels are guaranteed for 25 years.

The PV Project provides for the installation of solar panels with unobstructed solar access and appropriate mounting equipment that will produce electricity that does not exceed the total annual electricity base load of the school building upon which the PV is mounted. The PV Project provides for a grid-tied inverter that will be appropriately sized for the capacity

of the solar panels installed at the school. It also provide for wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid.

A System description is provided below:

<b>System Description</b>	
<b>Total System Size:</b>	200.00 kW DC Power (STC)
	180.000 kW (PTC)
	172.800 kW AC Power (CEC Size)
<b>Net Cost per Watt:</b>	\$2.45 / Watt DC Power (STC)
	\$2.72 / watt (PTC)
	\$2.84 / watt AC Power (CEC Size)
<b>Estimated Annual Production</b>	217,755 kWh
<b>Array Information</b>	
<b>Proposed Array Sizes (STC)</b>	200.000 kW DC
<b>Number of PV Panels:</b>	800
<b>PV Panel Description:</b>	Westinghouse Solar Model: WTW-250-1-AC2-D-B 250W DC, Polycrystalline ACPV Module
<b>Inverters:</b>	Qty. 2 Solectria Renewables Model: PVI100kW-208 100 kW 208Vac Commercial Grid-Tied Solar PV Inverter
<b>Output due to Shade Factors:</b>	90%
<b>Array Area &amp; Orientation:</b>	Roof Mount: 17,500 sq-ft Tilt: 5°, Azimuth: 180° (S)

The School District will hire SouthCoast Greenlight to install the 200 kW DC PV system on the roof of the North Elementary School (first choice) or the Somerset Middle School (second choice) (See Attachment F for Google views of the school rooftops and buildings). The North Elementary School is the newer of the two, having been built in the mid 1970's. The Middle School was built in the mid 1960's. It is believed that the Elementary School roof is more exposed to the Sun than the Middle School is. Both schools originally had ballasted roofs (gravel on top) and both now have PVC roofs. Ballasted roofs are significantly heavier than PVC roofs. The School District's PVC roof supplier believes that, without the gravel roofs, the PV System can be sustained structurally. The School District will undertake a structural study to confirm that the building can support the PV System.

The PV system would supply approximately 34% of the annual electrical requirements of the designated school. Based on the expected 25 year life of the system, the school would save approximately \$1,600,000 in energy costs. (See Attachment G for more details on the Energy Analysis).

The PV system will be tied to the grid, but installed on the customer side of the meter. All

related environmental benefits will be retained by the School District as the system owner.

To the extent practicable, North American Board of Certified Energy Practitioners (NACEP) certified energy professionals will perform the installation of the PV Project to ensure the highest quality installation and performance of the system.

a. Educational Kiosk

A 50" Flat Screen WIFI enabled TV will be mounted outside the main office of the school and will draw data from a Web-based monitoring system to enable students, teachers, staff and families to monitor various aspects of the System such as the System's total and hourly energy output, environmental benefits delivered (including, but not limited to pounds of CO2 avoided), hourly ambient temperature and cell temperature, irradiance (W/M<sup>2</sup>), as well as time sensitive voltage, power and other metrics. (See Attachment H for more details on the Web-based monitoring system).

b. Ongoing Maintenance Contract

The District's contract with SouthCoast Greenlight will provide for the ongoing maintenance of and ensure the performance of the PV System, consistent with established industry practice for no less than 25 years for the panels, including annual system checkups for performance and annual solar panel (module) cleaning. In addition, the inverter will have a 25-year warranty. Any costs associated with this contract provision will be paid for out of Project Dollars used to fund the PV Project.

2. PV Project Budget

The expected cost for the installation of the 200 kW DC PV System is \$700,000. An additional \$120,989 will fund Project management, the structural and electrical studies, the educational kiosk and the ongoing maintenance contract. Total Project Dollars will equal \$820,989.

3. PV Project Funding

Upon receiving USEPA's approval of the PV Project Plan, DEI and the City of Somerset will enter into a project funding agreement by which DEI will provide Project Dollar funding to the City of Somerset on behalf of the School District, and the School District will implement the USEPA-approved PV Project Plan. DEI will pay the Program Dollars to the City of Somerset as follows:

- The first payment of \$525,000 will be transferred to the City of Somerset within 30 days after EPA approves the Project Plan.
- The final payment of \$175,000 will be transferred to the City of Somerset

within 30 days of a request for payment made by the District at any time after the Project is 50% complete.

4. PV Project Environmental Benefits

The Project will save approximately 220,000 kWh annually for the School District. Reductions of approximately 3,729 tons of CO2 over the 25-year life of the System are expected, which is equivalent to 6.8 million medium-sized vehicle miles. See Attachment I for more details on the Environmental Impact Analysis.

5. PV Project Reporting

The School District and DEI will submit reports for the PV Project in the same manner as provided for the ERS Project in section B.5 above. The School District and DEI may submit the reports for the ERS Project and the PV Project on the same schedule in the same report.

6. Somerset PV Project Timeline

Section X.I.B of Appendix A to the Consent Decree provides that the PV Project must be completed no later than three years after the Date of Entry of the Consent Decree. Section X.I.B also provides for an extension of the completion date if, despite best efforts, the Project cannot be completed within the three year period. Section II.D and Section XI.I of Appendix A of the Consent Decree requires that the Plan contain a schedule and timeline for implementing the Project, making payments and submitting reports.

The construction phase of the PV Project is expected to take approximately six months to complete. This estimate does not include the time necessary for the initial structural engineering and for the installing the educational kiosk-related monitoring equipment.

The PV Project shall be implemented on the following schedule:

July 17, 2013	Consent Decree Entered
Day 0	USEPA Approves Project Plan
Day 15	DEI and District sign funding agreement
Day 15 (est.)	District signs contract with SouthCoast Greenlight
Day 30	DEI makes first payment to District
Day 60 (est.)	Design/engineering work completed
January 30, 2014	District submits periodic report to DEI
February 28, 2014	DEI submits periodic report to USEPA
July 30, 2014	District submits periodic report to DEI
August 30, 2014	DEI submits periodic report to USEPA
January 6, 2015 (est.)	DEI makes second and final payment to District
January 30, 2015	District submits periodic report to DEI
February 28, 2015	DEI submits periodic report to USEPA
July 30, 2015	District submits periodic report to DEI

August 30, 2015	DEI submits periodic report to USEPA
January 30, 2016	District submits periodic report to DEI
February 28, 2016	DEI submits periodic report to USEPA
July 1, 2016 (est.)	Project completed
July 31, 2016	District submits final report to DEI
August 30, 2016	DEI submits final report to USEPA

If the Project is completed on an earlier schedule, the District will submit the final report to DEI within 30 days of completing the Project, and DEI will submit the final report to EPA within 60 days of the completion date. All subsequent dates on the schedule above would then become obsolete.

## **Attachment A**

# Somerset Public Schools Somerset-Berkley Regional School District

Marc Furtado, Director of Business and Finance

580 Whatstone Hill Road  
Somerset MA 02726-3700  
Telephone: (508) 324-3100, x-212  
Fax: (508) 324-3104

Ms Alice Prior  
Environmental Projects Advisor  
Dominion Environmental Services  
500 Dominion Blvd 2NW  
Glen Allen, VA 23060

RE: Northeast Clean Energy Projects in Somerset, MA

October 21, 2013

Dear Ms Prior:

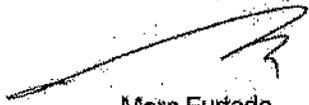
Pursuant to Massachusetts General Laws, Chapter 44, Section 53, the Town of Somerset is required to accept funds to administer special projects, such as the Clean Energy Projects specified in Appendix A, paragraph XI sections A-J of the consent decree between the EPA and Dominion Energy, Inc lodged July 17, 2013.

Arrangements will be made with the Town of Somerset for the disbursement of the funds to the school district, consistent with the proposals made to Dominion in our August 20, 2013 submission, upon project approval and award of funding by the US Environmental Protection Agency.

We look forward to working with Dominion Environmental on this important Clean Energy program that will be of great benefit to the students of our district and to the greater Somerset community.

Please contact me directly should you have any questions.

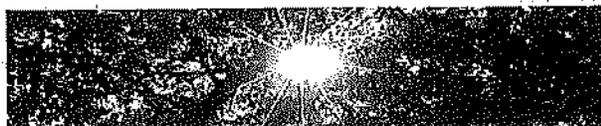
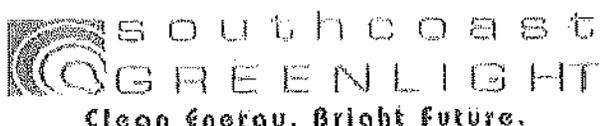
Best Regards,



Marc Furtado  
Director of Business  
Somerset Public Schools

Cc: Patricia A. Haddad, State Representative 5<sup>th</sup> Bristol District  
Robert Camara, Chair, Somerset School Committee  
Richard Medeiros, Superintendent of Schools  
Don Setters, Chair, Somerset Board of Selectmen  
Christopher Godet, Chair, Somerset Audit and Finance Committee  
Joseph Bolton, Somerset Director of Finance

## **Attachment B**



I got three estimates, SCGL beat the price of the bigger companies by more than half.  
- Mark Laubenstein

- Home
- Photo-voltaic
- Geothermal
- Solar Thermal
- Case Studies
- Testimonials / Photos
- About Us
- Contact Us

*Renewable* *Clean* *Energy*

PHOTOVOLTAIC      GEOTHERMAL      SOLAR THERMAL

Southcoast Greenlight is a full service renewable energy contracting firm specializing in the design and installation of geothermal and solar energy systems. We serve the commercial and residential markets in New England from Providence Rhode Island to Boston Massachusetts offering cost-effective professionally installed solar and geothermal HVAC systems

**Solar Solutions:**

Our Solar Division specializes in residential and commercial ground mounted arrays and solar carports as well as roof mounted designs. We offer complete construction services including design and engineering. SCGL will oversee your project from start to finish. Our solar services include: Site Surveys, system design, EPC contracting, Site work, Steel frame construction for ground arrays and solar carports, system monitoring and power purchase agreements (PPA).

**Geothermal Solutions:**

Our Geothermal HVAC division provides unmatched system design and mechanical installation for ground source heat pump systems. All our work is performed in house from initial design to start up as well as service and maintenance to protect your investment going forward.

**Our geothermal services include:**

System Design, Heat Loss Calculations, Closed Loop design and Install, Standing Column Well Design and Install, Sheet Metal Fabrication and Install, Radiant Heat design and install.

Contact Us to find out more about what we have to offer!

Massachusetts geothermal installers offering closed loop installation, HVAC, standing column well installation and radiant heat. Massachusetts solar installers offering, solar ground mounted arrays, solar carports design engineering and construction,

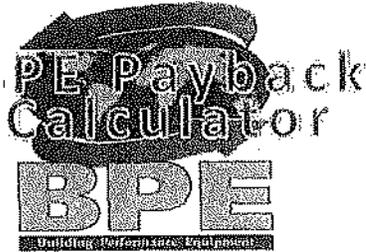
SEBANE  
Solar Energy Business Association of New England

CERTIFIED Solar PV Installer  
NORTH AMERICAN BOARD OF CERTIFIED ENERGY PRACTITIONERS

NESEA  
Northeast Sustainable Energy Association

IGSHPA  
Push to Earth Energy

## **Attachment C**



Enter in the requested information below. If you are not sure of a value, See our recommendations in the comment boxes (red arrows).

Thank you for using BPE, Inc.®  
For more specific engineering analysis, please see the BPE Performance Calculator at: [www.LowKWH.com](http://www.LowKWH.com)

SYSTEM GENERAL INFO	
Heating System Type	Gas Fired
Cooling System Type	None
Outdoor Air Flow (OA)	14,000 scfm
Percent Outdoor Air (OA/SA, %)	40 %
Building Type	Commercial (< 5,000 SF)
Nearest Location	Newark, NJ

Number of Units			
2000	1000	500	200
9	0	0	0

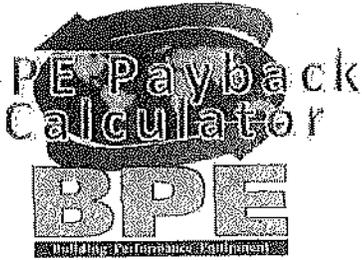
UTILITY INFORMATION	
Electric Rate (\$/kWh)	0.15
Peak Demand Charge (\$/kW)	8.00
Months of Peak Demand Charge	4
Gas Rates (\$/Therm)	1.05

COST ASSUMPTIONS	
Installed Cost per Ton (\$/Ton)	2,500
ERV Installed Cost	\$ 269,595
Maintenance Savings	\$ -
Total Incentives	\$ -

\*Use for New Construction or Major Retrofits

SYSTEM EFFICIENCIES	
Heating Efficiency	80 %
Cooling Efficiency	9.5 kW/Ton
BPE Effectiveness	80 %

CONTROLS AND SETPOINTS	
CO <sub>2</sub> Controller	Yes
Percent Run-time	30 %
Summer (Cooling)	74 °F (db)
Winter (Heating)	70 °F (db)



**20 Years of Savings!**

BPE Energy Recovery Ventilators are guaranteed for 20 years not to become unusable for providing breathable air as a result from rust, rot, or corrosion. This does not apply to other gases other than breathable air. See Limited Lifetime Warranty for more details.

ENERGY ANALYSIS	
BPE Cooling Capacity	23.69 TONS
BPE Heating Capacity	816.48 MBH
Peak Demand Reduction	29.92 KW
Annual Electric Energy Saved	395,262 MBTU
Annual Thermal Energy Saved	2,575,547 MBTU
<b>TOTAL Savings</b>	<b>2,970,809 MBTU</b>

OPERATING COST ANALYSIS	
<b>Maintenance Savings</b>	\$ -
Cooling Cost Savings	\$ (604)
Peak Demand Cost Savings	\$ (957)
Heating Cost Savings (Gas or HP)	\$ (27,043)
Electrical Cost Savings (ER+Fans)	\$ (26,426)
Electric Resistive Savings	(9,658)
Reduced Supply + Exhaust Fan Savings	(19,515)
BPE Parasitic Fan Cost	2,747
<b>TOTAL Savings</b>	<b>\$ (55,000)</b>

CAPITAL EXPENSE ANALYSIS	
HVAC Initial Cost Avoidance	\$ (59,220)
Added Cost of ERV	\$ 269,595
Total Incentives/Funding	\$ -
Net Capital Expenditure	\$ 210,375
<b>Simple Payback (Years)</b>	<b>3.82</b>
<b>Internal Rate of Return (IRR)</b>	<b>20%</b>
<b>Net Present Value (20 Yr Life Cycle)</b>	<b>\$1,235,111.42</b>
<b>Emission Reduction (Cars/yr)</b>	<b>113.41</b>

200	500	1,000	2,000
0	0	0	9

All Weather Air Mitigation

Ex Eff	80%
Evaporative Eff	Net Load
Winter Sp TS	70
Summer Sp TS	74

Equipment Operation and Efficiencies			
Del. Heat Eff	50%	Gas	2.5
	1.05	sfTherm	0.15
	NA	Gas	1.25
Del. Cool Eff	1.05	sfTherm	0.15
			3.00
			SRAT

System Air Flow Profile

Normal CFM	18,000
Actual CFM	14,000
Supply CFM	35,000
Exhaust CFM	14,000



Time of Year	Mid-Pls	DB (F)	Profile of Energy Savings				Annually Saved BTUs
			OA Temp DB (F)	OA Supply Temp DB (F)	Space Temp DB (F)	Exhaust Temp DB (F)	
Summer Cooling	117.5	15.0	12.0	82.7	74	108.8	0
	112.5	13.0	11.5	81.7	74	104.8	0
	107.5	10.0	11.0	80.7	74	100.8	0
	102.5	10.0	10.5	79.7	74	96.8	0
	97.5	9.5	10.0	78.7	74	92.8	2,151,250
	92.5	9.0	9.5	77.7	74	88.8	283,778
	87.5	8.5	9.0	76.7	74	84.8	163,298
	82.5	8.0	8.5	75.7	74	80.8	102,816
	77.5	7.5	8.0	74.7	74	76.8	64,260,000
	72.5	7.0	7.5	73.7	74	72.8	42,336
Free Cooling	67.5	6.5	7.0	72.7	74	71.4	0
	62.5	6.0	6.5	71.7	74	70.4	0
	57.5	5.5	6.0	70.7	74	69.4	0
	52.5	5.0	5.5	69.7	74	68.4	0
	47.5	4.5	5.0	68.7	70	67.4	0
	42.5	4.0	4.5	67.7	70	66.4	0
	37.5	3.5	4.0	66.7	70	65.4	0
	32.5	3.0	3.5	65.7	70	64.4	0
	27.5	2.5	3.0	64.7	70	63.4	0
	22.5	2.0	2.5	63.7	70	62.4	0
Winter Heating	17.5	15.0	15.0	59.5	70	24.0	195,253,000
	12.5	10.0	10.0	58.5	70	23.0	165,526
	7.5	5.0	5.0	57.5	70	22.0	135,800
	2.5	0.0	0.0	56.5	70	21.0	106,074
	-2.5	-5.0	-5.0	55.5	70	20.0	76,348
	-7.5	-10.0	-10.0	54.5	70	19.0	46,622
	-12.5	-15.0	-15.0	53.5	70	18.0	16,896
	-17.5	-20.0	-20.0	52.5	70	17.0	7,170
	-22.5	-25.0	-25.0	51.5	70	16.0	2,444
	-27.5	-30.0	-30.0	50.5	70	15.0	270
ERV Operating Hours =	1,379						
AIR Operating Hours =	8,799						
% Cooling =	25%						
% Heating =	51%						

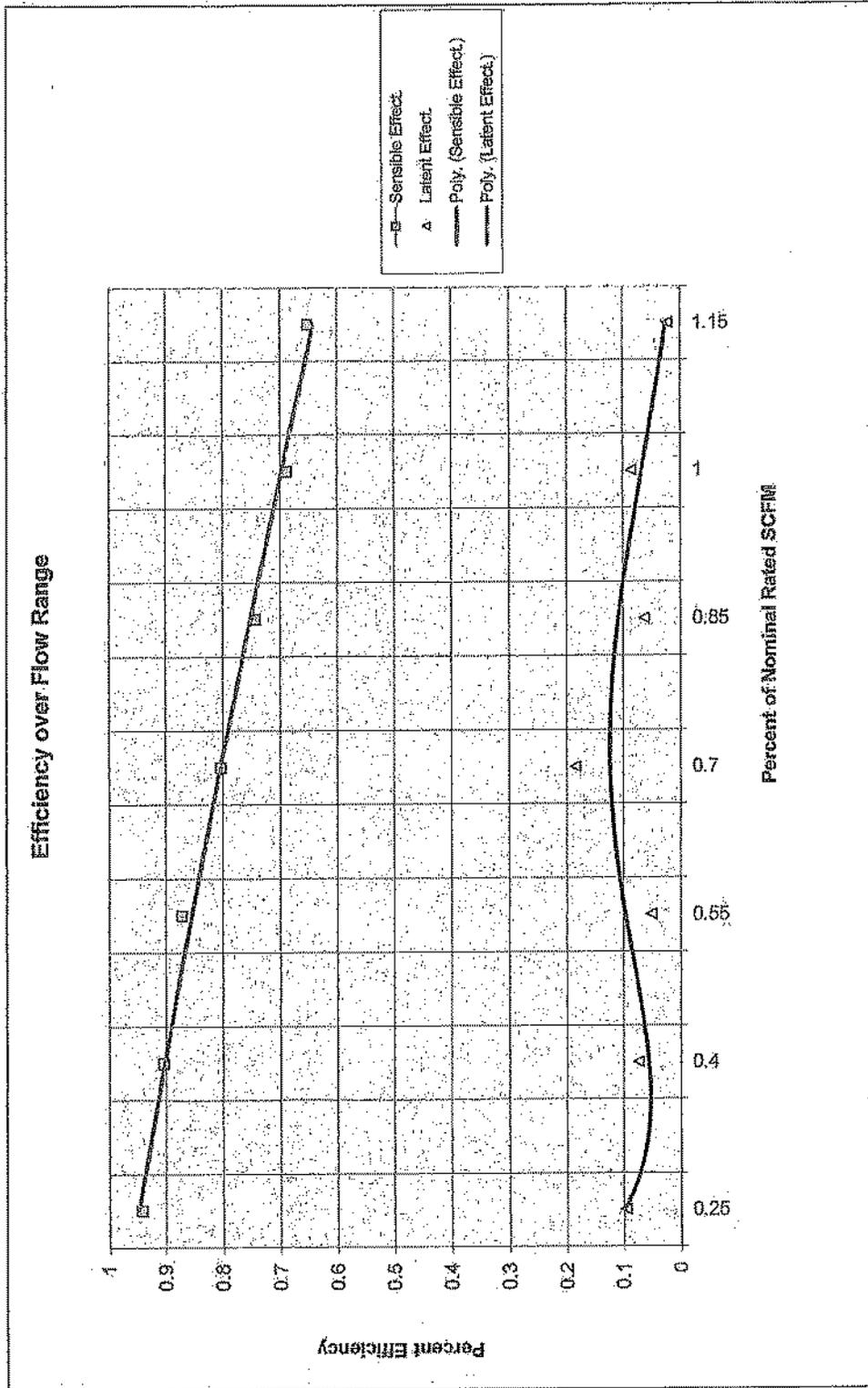
Operational Hours	115,810.81
Peak Tonnage Reduction =	385,252.28
Total System Cfm =	2,575,547.80
Cfm Reduction =	18,890.16
Bigger HVAC Fan (HP) =	385
Smaller HVAC Fan (HP) =	25
kWh Savings =	2,970,309.28
Smaller HVAC Fan Savings =	125,924

Supply	1.1
Fan HP/1,000 cfm*	23.92
Peak Tonnage Reduction =	35,000
Total System Cfm =	11,893
Cfm Reduction =	38.00
Bigger HVAC Fan (HP) =	10.97
Smaller HVAC Fan (HP) =	125,924
kWh Savings =	18,890.16

Exhaust	1.2
Fan HP/1,000 cfm*	N/A
Peak Tonnage Reduction =	N/A
Total System Cfm =	14,000
Cfm Reduction =	N/A
Bigger HVAC Fan (HP) =	13.30
Smaller HVAC Fan (HP) =	5.45
kWh Savings =	4,155
Smaller HVAC Fan Savings =	524.72

Note: Actual savings will depend on operating conditions and application.  
 Electric 115,810.81 kWh.  
 Heating (GJE) 25,755  
 Total Energy 2,970,309.28 kWh

Net Savings = \$ 55,038.65  
 Cost of Project = \$ 210,315.00  
 Simple Payback (Yrs) = 3.82



## **Attachment D**

### BPE Performance Calculator for Reduced Pollution

Total ERV CFM =  CFM

Operating Efficiency =  Thermal Eff.

A/C Efficiency =  kWh/Ton

Heating Efficiency =  Thermal Eff.

### BPE Pollution Reduction Per Year of Operation

Energy	Savings per Year	Cost in \$ 2010 \$
Electric (kWh)	115,810.81	\$18,240.20
Gas Savings (Therms)	25,755.47	\$28,395.41
Totals Savings (BTU)	2,970,709,873	\$46,635.61

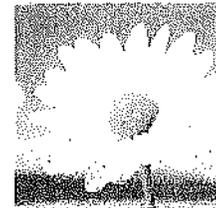
CO2 Reduced	SO2 Reduced	NOx Reduced	Cars* Removed
64,043.38	191.74	158.45	5.59
1,234,503.43	2,525.68	3,054.32	107.82
1,298,546.81	2,717.42	3,212.77	
Total Pollution Reduction in Cars Removed from the Road =			<b>113.41</b>

\* Equivalent number of passenger cars taken off the road in one year, based on estimated average 12,500 miles traveled per year, releasing an estimated 11,450 pounds of CO2 per year.

Referencing EPA Office for Transportation and Air Quality at  
[www.epa.gov/otaq/consumer/f00013.htm](http://www.epa.gov/otaq/consumer/f00013.htm)

Note: All default values can be changed to represent accurately actual equipment efficiencies.

## **Attachment E**



SUN FOR OVER 7000

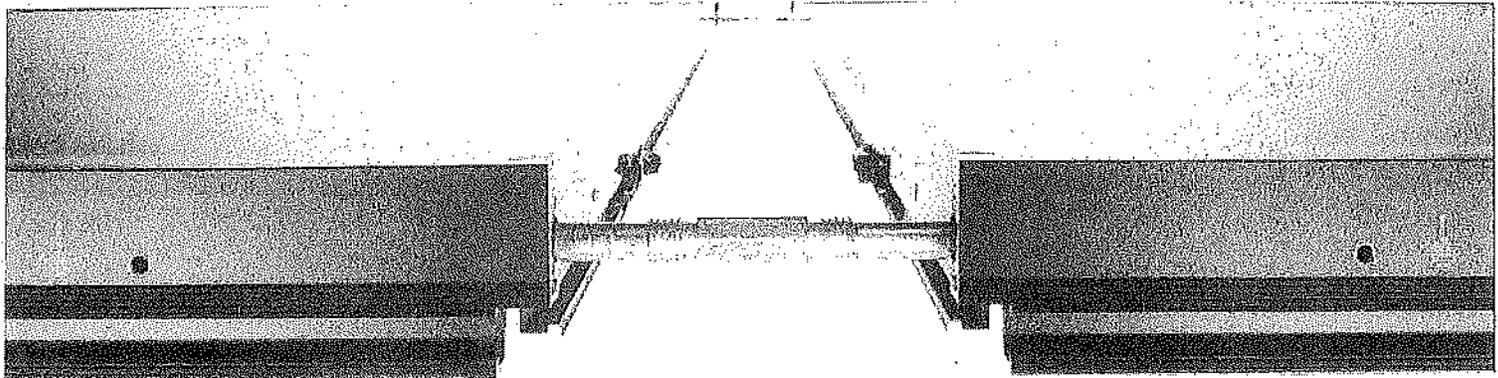


# INSTANT CONNECT® AC 245/250



For more than a century, Westinghouse has stood for reliability and innovation—developing products that deliver safe and efficient electricity, and bringing comfort and convenience to the lives of millions. Today, that tradition continues with Westinghouse Solar's Instant Connect systems, which are safer, more powerful, and more reliable than ordinary solar power systems, while backed by the proven quality of the Westinghouse name.

**Instant Connect Technology - The World's First Fully Integrated Plug-and-Play Solar Power System**



**Incredibly Simple.** Patented design eliminates need for separate rack systems and automates panel-to-panel grounding and electrical connections. With 80% fewer parts and 60% less labor, the system is easy to design and fast to install.

**5-25% more energy collection** than ordinary solar panels. Advanced panel technology efficiently captures and converts more of the sun's energy into usable power.

**Reliable performance.** Integrated micro-inverter, wiring and grounding systems eliminate the hazards of exposed wiring and corrosive environmental effects, providing decades of optimal performance.

**Ruggedized construction.** Instant Connect systems are engineered to exceed wind and snow load requirements established by local building codes, enabling installations in more regions than any other rooftop solar power system.

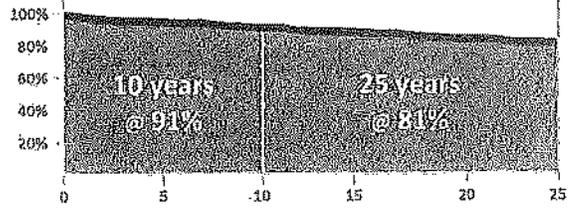
**Monitor your system anywhere in the world.** Web-based monitoring system delivers real-time energy production and savings analysis directly to your browser or smart-phone.

**Integrated Mounting Systems.** Westinghouse Solar Instant Connect panels seamlessly integrate with our sloped and flat roof mounting systems, minimizing part count and maximizing reliability.



The Westinghouse Solar Power Warranty  
**PANELS 25 YEARS | INVERTERS 25 YEARS**

You have our word. Every Solar Power System is backed by the proven reliability of the Westinghouse name—for more than a century a guarantee of quality. Panel warranty provides 25 year power output warranty—10 yrs @ 91% & 25 yrs @ 81%.



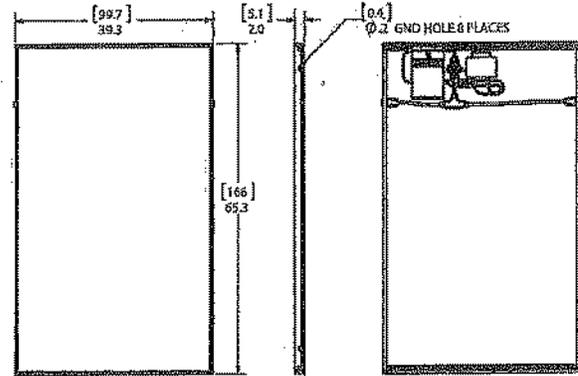
**AC Module Technical Specifications**

**WTW-245-1-AC2-D-B / WTW-250-1-AC2-D-B**

	AC Output @ 200 Vac	AC Output @ 240 Vac
Maximum AC Power Output	215W	216W
Nominal output current	1.0A	0.9A
Nominal voltage/range	208V/183V-229V	240V/211V-254V
Nominal frequency/range	60.0/59.3-60.5 Hz	60.0/59.3-60.5 Hz
Extended frequency/range	60.0/59.2-60.6 Hz	60.0/59.2-60.6 Hz
Power factor	>0.95	>0.95
Maximum units per 20A branch	15 (three phase)	17 (single phase)
Maximum output fault current	1.05 Arms, over 3 cycles; 25.2 Apeak, 1.74ms duration	
CEC weighted efficiency	96.0%	96.0%
Peak Inverter efficiency	96.3%	96.3%
Night time power consumption	46mW	46mW
Operating temperature range	-40°C to +85°C	-40°C to +85°C
Cooling	Natural Convection - No Fans	
Enclosure environment rating	Outdoor - NEMA 6 (interior/inverter only)	
Communication	Powerline	
Compliance	UL1741/IEEE1547, FCC Part 15 Class B CAN/CSA-C22.2 NO. 0-M91, 0.4-0.4, and 107.1-01	

**Mechanical Specifications - Module**

Length x Width: 65.3 x 99.7 inches / 166 x 99.7 cm  
 Thickness: 2.0 inches / 5.1 cm  
 Weight: 51.6 lbs / 23.4 kg

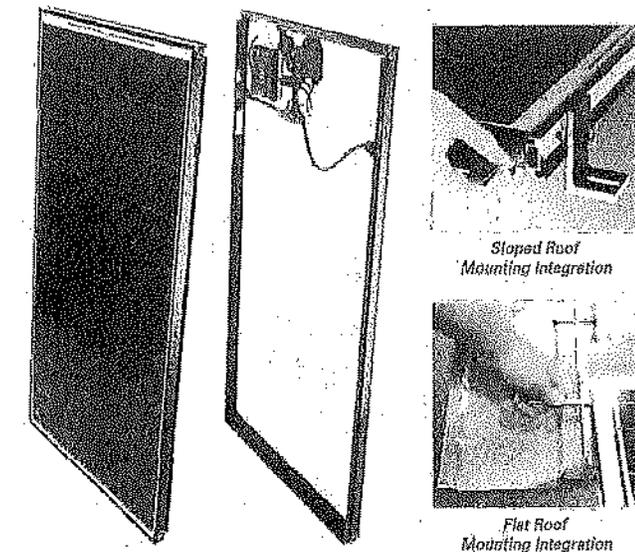


**Electrical Characteristics at Standard Test Conditions**

		245W	250W
Peak DC Power <sup>1</sup>	P <sub>max</sub>	245W	250W
Output Tolerance		+5%	+5%
Cell Technology		60 Cell Poly-Si, 156 x 156mm (6.14 Inch)	
White back sheet for high efficiency			

**Mechanical Specifications - System**

	Westinghouse Solar	Ordinary Solar
Racking Hardware	Integrated	External
Module-to-Module Grounding	Integrated	External
Module-to-Module Wiring	Integrated	Separate Trunk Cable
Module-to-Module Connection	Integrated (Threaded)	External (Friction Clip)
Space Between Modules	1/8"	Up to 3"
Roof Penetrations	25% Fewer	Standard
Installation Materials	 Westinghouse Solar Power Systems	 Ordinary Solar



Certified wind and snow load tested to 5400Pa  
 Protected by U.S. patents 7,406,800; 7,832,157 and 7,866,098.  
 Other patents pending.



1475 South Bascom Ave, Suite 101 Campbell, CA 95008  
 www.westinghousesolar.com | t: 888.395.2248



COMMERCIAL INVERTERS

- PVI 50KW
- PVI 60KW
- PVI 75KW
- PVI 85KW
- PVI 100KW

FEATURES

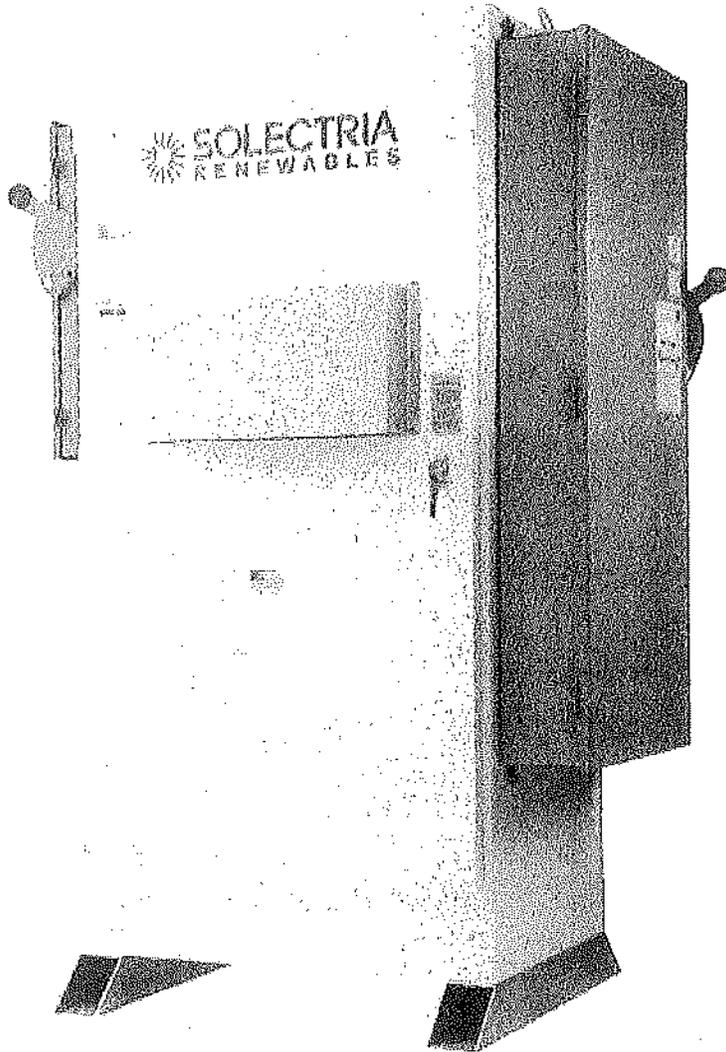
- AC disconnect and DC disconnect
- 100 amp or greater AC output
- Integrated AC and DC disconnects
- Transformer isolation
- 208 VAC, 240 VAC, 480 VAC or 600 VAC
- Web-based monitoring
- EMI/RFI shielded

OPTIONS

- Premium efficiency models
- Integrated fused or breaker subcombiners
- Forward facing disconnects
- Stainless steel enclosure
- Web-based and sub-array monitoring
- Built-in cellular connectivity
- Dust filter

OPTIONS FOR GALLERIES

- Red power and ground
- Rear fire panel cover
- Web-based monitoring
- Compliant for the grid



COMMERCIAL INVERTERS

The most customizable full-line of commercial grid-tied PV inverters available today, the PVI 50-100KW series has been utilized in projects ranging from 30kW to multi-megawatt solar farms. This series of inverters is capable of operating at 208 VAC, 240 VAC, 480 VAC, and 600 VAC and comes standard with AC and DC disconnects, transformer isolation, LCD display, and monitoring gateway. Options include premium efficient models, integrated fused or breaker subcombiners, forward facing disconnects, stainless steel enclosure, web-based and sub-array monitoring, built-in cellular connectivity, and a dust filter. AC voltage and frequency settings may be customized according to utility specifications.



SPECIFICATIONS	PVI 50KW	PVI 60KW	PVI 75KW PVI 75KW-PE	PVI 85KW PVI 85KW-PE	PVI 100KW PVI 100KW-PE
Absolute Maximum Input Voltage	600 VDC				
MPPT Input Voltage Range	300-500 VDC				
Maximum Operating Input Current	176 A	211 A	264 A	299 A	351 A
Nominal Output Voltage	208, 240, 480 or 600 VAC, 3-Ph (3 wire standard, 4 wire option)				
AC Voltage Range (Standard)	-12%/+10%				
Continuous Output Power	50 kW	60 kW	75 kW	85 kW	100 kW
Continuous Output Current	208 VAC 139 A	167 A	208 A	236 A	270 A
	240 VAC 120 A	144 A	180 A	205 A	240 A
	480 VAC 60 A	72 A	90 A	102 A	120 A
	600 VAC 48 A	58 A	72 A	82 A	96 A
Maximum Backfeed Current	0 A				
Nominal Output Frequency	60 Hz				
Output Frequency Range	59.3-60.5 Hz				
Power Factor	1.0				
Total Harmonic Distortion (THD)	<3%				
Peak Efficiency	208 or 240 VAC	96.7%	97.3%	96.6%	96.5%
	208 VAC Premium (PE)	--	97.8%	--	97.0%
	480 or 600 VAC	96.5%	97.2%	--	96.9%
	480 VAC Premium (PE)	--	97.8%	--	97.9%
CEC Efficiency	208 or 240 VAC	96.0%	97.0%	--	96.0%
	208 VAC Premium (PE)	--	97.5%	--	96.5%
	480 VAC	96.0%	97.0%	--	96.5%
	480 VAC Premium (PE)	--	97.5%	--	97.0%
Tare Loss	3 W				
Fuses or Breakers	2-B positions, 40-300 A				
Ambient Temperature Range (full power)	-40°F to +131°F (-40°C to +55°C)				
Storage Temperature Range	-40°F to +131°F (-40°C to +55°C)				
Relative Humidity (non-condensing)	0-93%				
Web-based Monitoring (Inverter Direct)	SolrenView				
Revenue Grade Monitoring	External				
Sub-Array Monitoring (SolZone)	2-B zones				
Cellular Communication	SolrenView AIR				
Third Party Compatibility	Standard via Modbus				
Safety Listings & Certifications	UL 1741/IEEE 1547, IEEE 1547.1, CSA C22.2#107.1, FCC part 15 B				
Certification Agency	ETL				
Standard	5 year				
Optional	10, 15, 20 year; extended service agreement; uptime guarantee				
Transformer	Standard, fully-integrated (internal)				
AC/DC Disconnects	Standard, fully-integrated				
Dimensions - Side Facing Disconnects (H x W x D)	78.2 in. x 50-53 in. x 33 in. (1986 mm x 1270-1346 mm x 838 mm)*				
Dimensions - Forward Facing Disconnects (H x W x D)	78.2 in. x 79-88 in. x 33 in. (1986 mm x 2007-2235 mm x 838 mm)*				
Weight	1450 lbs (659 kg)		1875 lbs (852 kg)		2070 lbs (941 kg)
Enclosure Rating	NEMA 3R				
Enclosure Finish	Polyester powder coated steel; Optional 316 stainless steel				

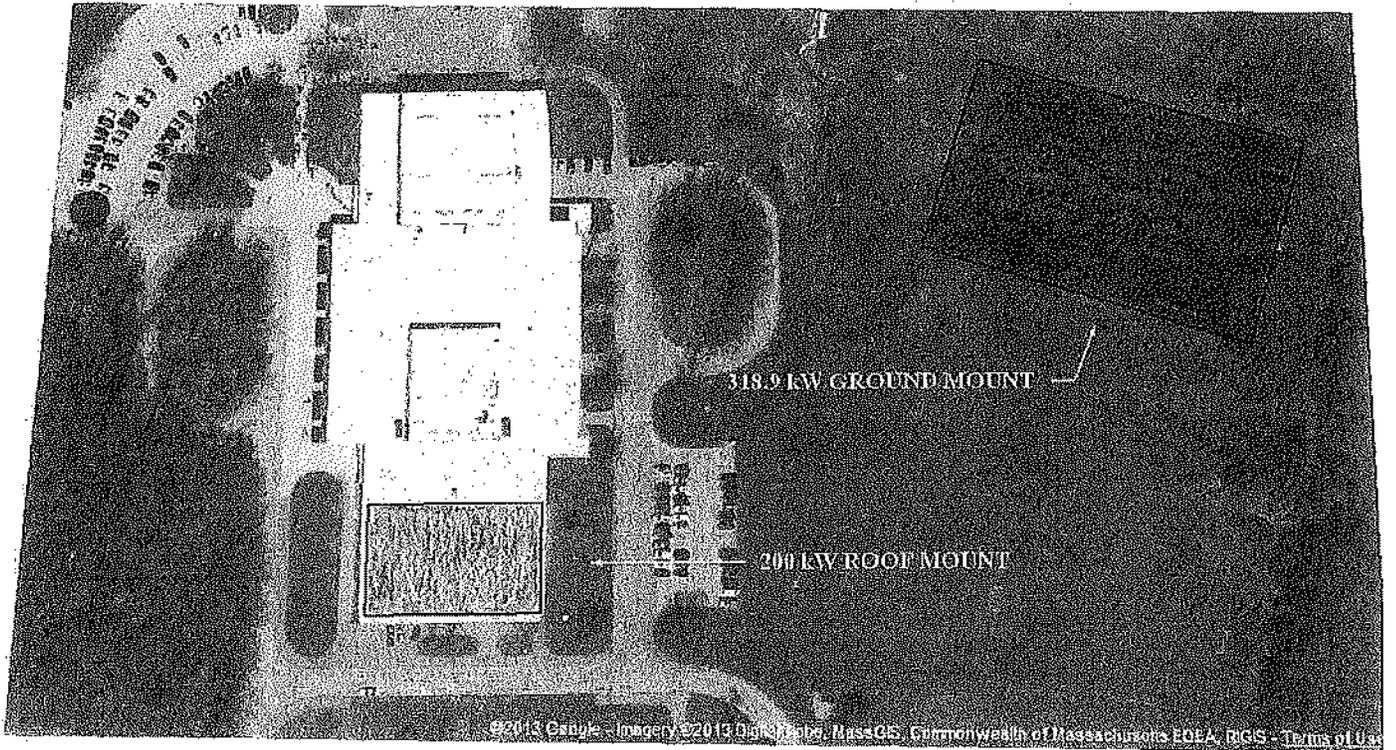
\*Width dependent upon rating of disconnect chosen

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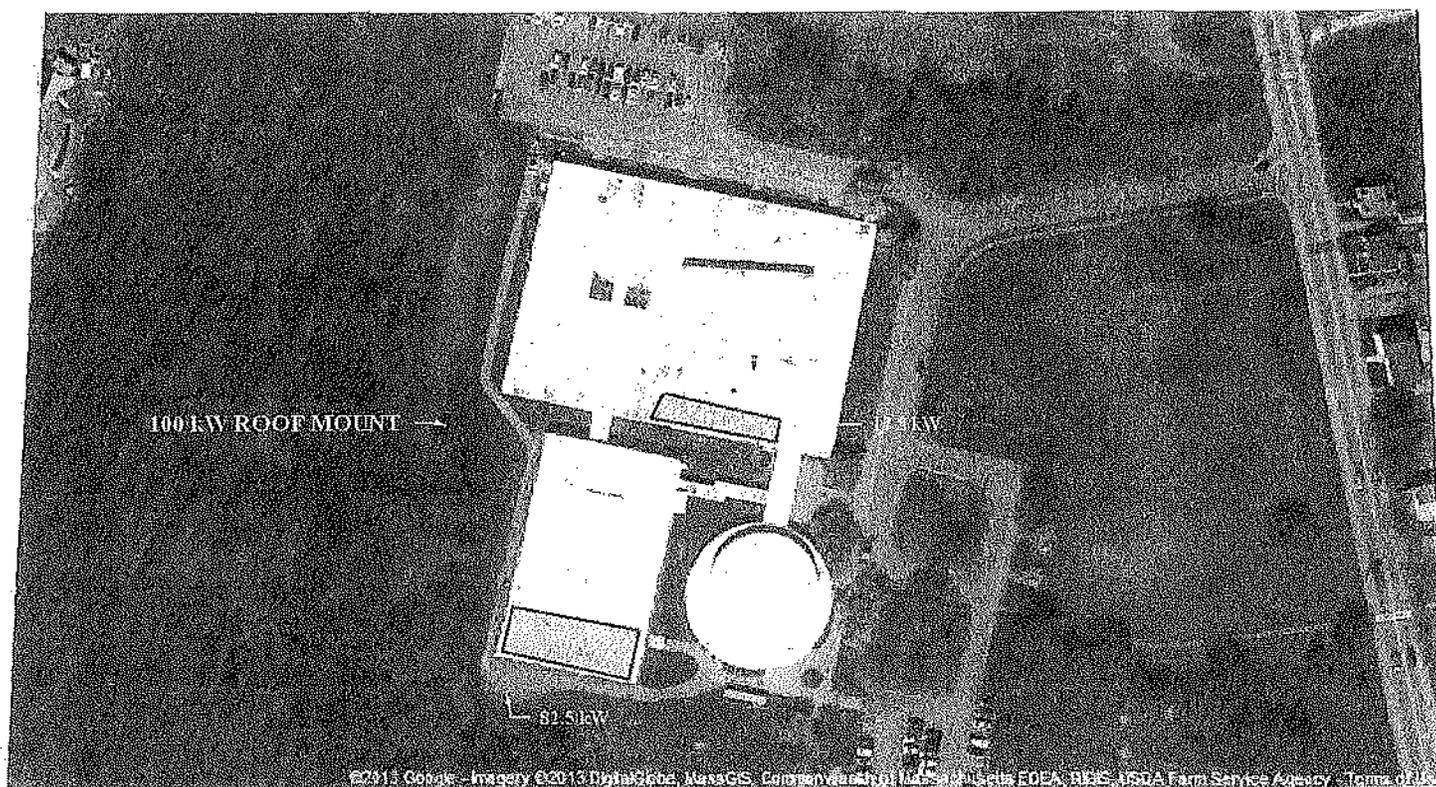


## **Attachment F**

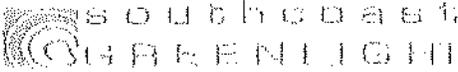
NORTH ELEMENTARY SCHOOL



MIDDLE SCHOOL



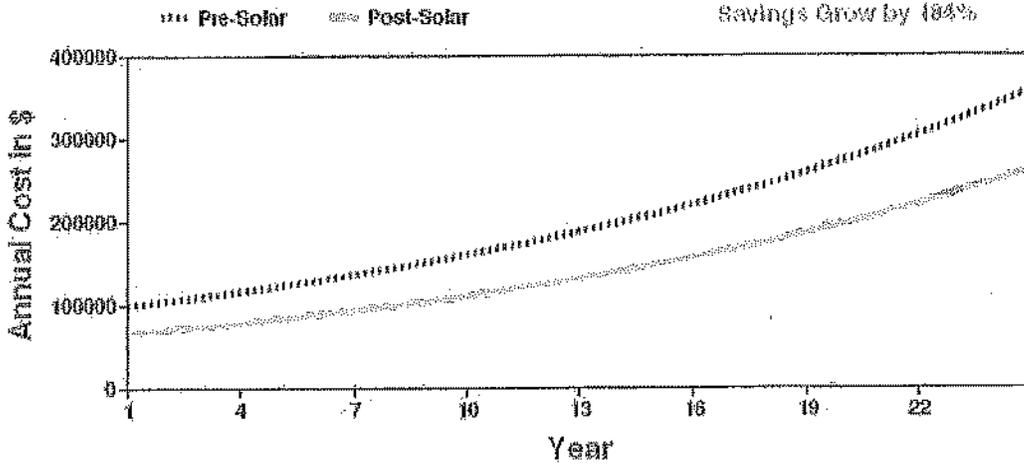
## Attachment G



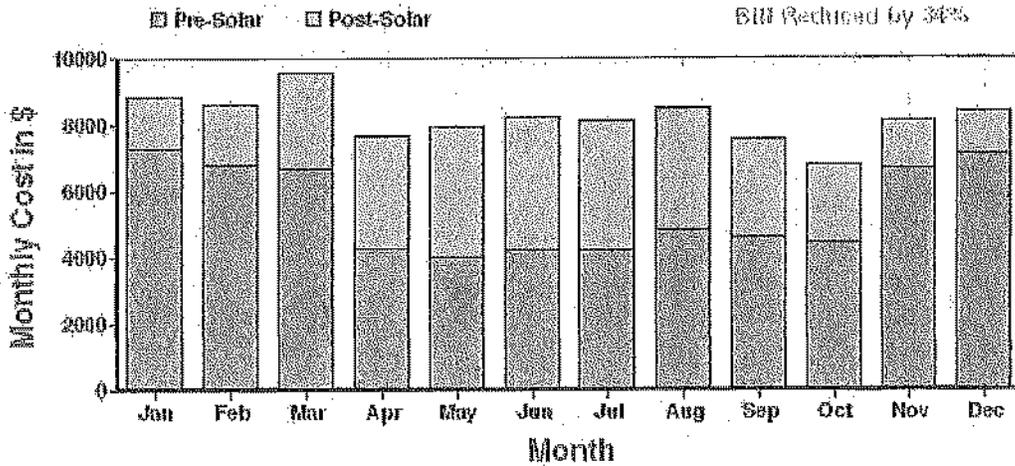
## Energy Analysis

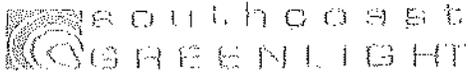
Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

### Annual Electricity Bill Savings Over Time



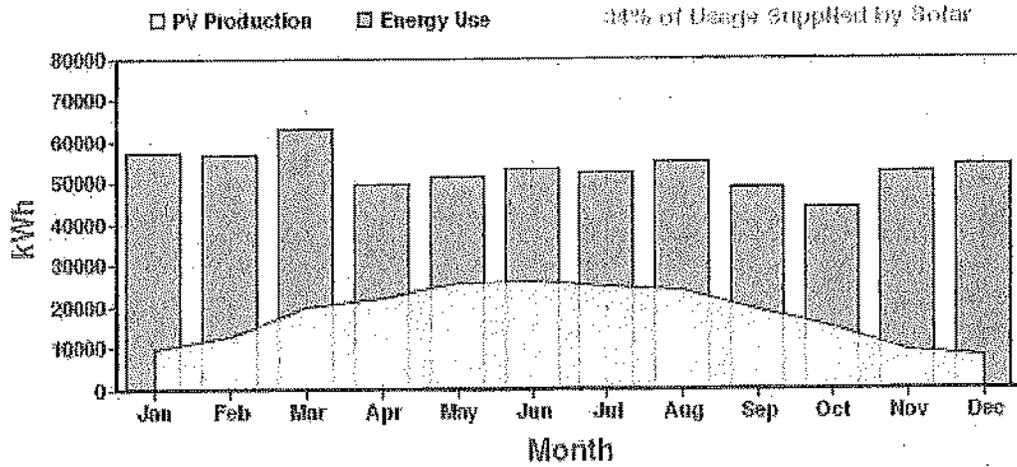
### Monthly Electricity Bill Savings





Proposal prepared for Marc Furtado

### Monthly Electricity Use and Amount Supplied by Solar



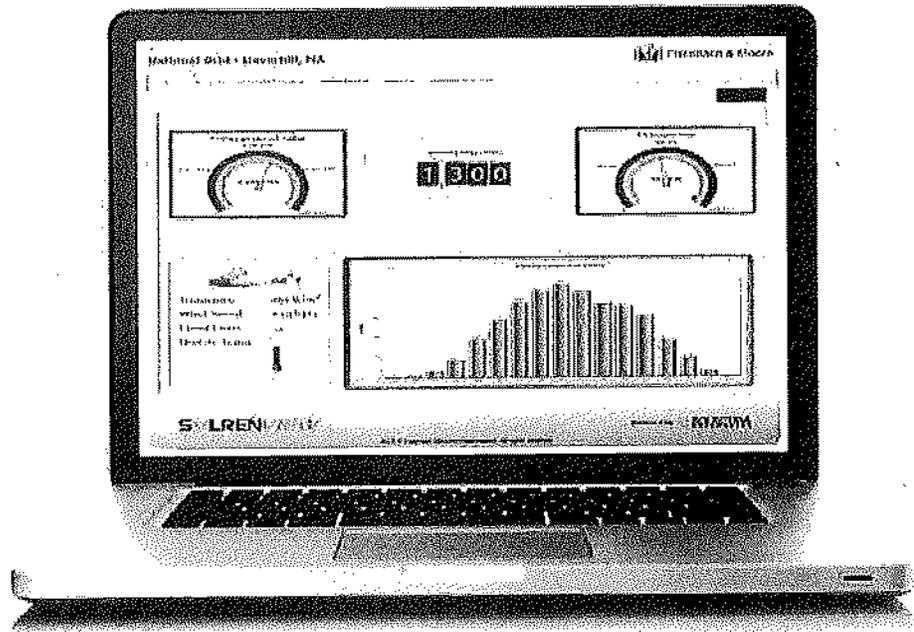
Assumptions: Post-Solar Electric Rate Schedule for National Grid is Regular Residential (Fixed) (Rate Code: R-1) Annual utility inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.

## Attachment H



WEB-BASED MONITORING

# SOLRENVIEW



**FEATURES**

- Inverter direct & revenue grade monitoring
- Performance charting
- Real-time status notifications
- Detailed system data
- Reliable, safe & secure data storage

**OPTIONS**

- Sub-array monitoring (SolZone)
- Weather station
- Kiosk View (Flash View)
- Automated agency reporting
- Sun Spec alliance compatible

## WEB-BASED MONITORING

Solectria Renewables' SolrenView web-based monitoring solution is available for use with residential, commercial or SMARTGRID Inverters, allowing for real-time, seamless recording and reporting of PV system production. The SolrenView gateway hardware provides data via Ethernet (standard) or cellular modem. The required hardware comes standard and fully-integrated within all commercial and SMARTGRID Inverters. A stand alone version is available for residential use with LCD or LITE gateway systems. The complete SolrenView system features Inverter direct monitoring, revenue grade monitoring, agency reporting, SolZone sub-array current monitoring, a Kiosk View (flash view) and a weather station.



Built for the real world.

## SolrenView™ Inverter Direct

### STANDARD DATA MONITORING PACKAGE

SolrenView™ Inverter Direct monitoring allows customers to see detailed operational Inverter data (DC and AC) using a web browser. This standard package allows customers to view daily, weekly, monthly, and annual graphs up to 5 years in the past viewing single events or long-term performance trends. The package includes e-mail and cell phone alerts with detailed descriptions of system issues and a recommended course of action. This service is only available for the industry-leading Sollectria PVI and SGI series Inverters.

## SolrenView™ Revenue Grade Energy Production Meter

### OPTIONAL MONITORING PACKAGE

SolrenView™ Revenue Grade Energy Production monitoring package option keeps an accurate count of every kWh produced by a customer's PV system. The energy produced is automatically reported to a solar program agency for convenience. This package option also includes e-mail alarms with detailed descriptions of system problems and a recommended course of action. This package option is available for systems any Sollectria inverter model 1.8 kW to 2 MW.

## SolrenView™ Agency Reporting

### OPTION

The SolrenView™ Agency Reporting is an ideal option for customers that require Revenue Grade reporting to be sent to an agency such as Mass CEC, SCE, CCSE, NEPOOL and PGE. A report is generated from SolrenView™ Revenue Grade outputs and sent directly to the agency of choice. Sollectria Renewables' staff works directly with agencies to activate and maintain solar rebates.

## SolrenView™ Kiosk View (Flash View)

### OPTION

The Kiosk View (Flash View) option provides customers with a clean, simple view and quick, easy access to a customer's PV system performance. This is a great tool for advertising and public viewing. This option only requires a standard Internet browser with Javascript. It can be used to provide an automated view of PV performance on all size displays.

## SolrenView™ SolZone™ DC Current Sub-Array Monitoring

### OPTION

While SolrenView™ provides to the customer the ability to view the total system performance, SolZone™ provides an extra level of granularity to see multiple sub-array DC currents. SolZone™ has the ability to compare individual PV zones against each other based on the number of sub-array fuses or 'zones' built into a Sollectria factory-installed DC sub-combiner. Each sub-array zone may be monitored and compared against each other. SolZone™ is also compatible with many third party monitoring systems.

## SolrenView™ Weather Station

### OPTION

The real-time weather package allows customers to view accurate readings for crucial environmental information that affect the performance of your PV system. The weather station comes standard with a solar irradiance sensor as well as temperature sensors for ambient and module measurements. Wind speed and wind direction sensors are options that may be added to the weather station. This is a great educational tool and a must for PPAs.

### Viewable Measurements:

- Solar Irradiance
- Ambient Temperature
- Module Temperature
- Wind Speed and Direction (optional)

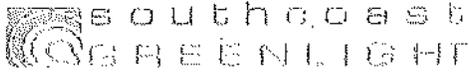
## SolrenView™ AIR

### OPTION

SolrenView™ AIR is factory integrated for any inverter 50 kW and greater (PVI 50-100kW & SGI 225-500). It permits customers to take advantage of SolrenView™ web-based monitoring features when standard internet access is not available. This option allows the SolrenView™ gateway to provide data to the SolrenView server via a fully-integrated 3G access point.



## Attachment I



Proposal prepared for Marc Furtado

## Environmental Impact Analysis

Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by **3,729 tons of CO<sub>2</sub>**  
(Over 25 years)

### Equivalent CO<sub>2</sub> Reductions

Small Car:	12,641,017 miles
Medium Car:	6,780,182 miles
SUV:	4,750,446 miles
Air Miles:	7,668,866 miles
Trees Planted:	149,164 trees planted
CO <sub>2</sub> from Trash & Waste:	6,780 persons

**City of Fall River Claim Form**

1. Claimant's name: \_\_\_\_\_

2. Claimant's complete address:

3. Telephone number: Home: \_\_\_\_\_ Work: \_\_\_\_\_

4. Nature of claim: (e.g., an auto accident, slip and fall on public way or property damage):  
\_\_\_\_\_

5. Date and time of accident: \_\_\_\_\_ Amount of damages claimed:  
\_\_\_\_\_

6. Exact location of the incident: (include as much detail as possible):  
\_\_\_\_\_

7. Circumstances of the incident: \_\_\_\_\_

8. Have you submitted a claim to any insurance company for damages arising from this incident? If so, name and address of insurance company:  Yes  No

Be sure to attach the original of any bills insured or any written estimates of repair or replacement costs. (Any documents that you provide will become the property of the City of Fall River. Therefore, it is suggested you keep copies of any such documents for your files.) Attach any other information you believe will be helpful in the processing of your claim (for example, names and addresses of any witnesses, written medical records if personal injury was sustained).

I swear that the facts stated above are true to the best of my knowledge.

Date: \_\_\_\_\_ Claimant's signature: \_\_\_\_\_

WHEN TO FILE: If your claim is based on a defect in a public way, you must file within 30 days of the incident. If your claim is based on the negligence or wrongful act or omission of the City or its employees, you must file within two years of the incident. PLEASE KEEP A COPY OF THIS FORM FOR YOUR RECORDS.

**Return this form to : City Clerk, 2<sup>nd</sup> Fl., City Hall, Fall River, MA 02722**

Official use only.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
and	)
	)
THE CITY OF FALL RIVER,	)
	)
Proposed Plaintiff-Intervenor,	)
	)
v.	)
	)
DOMINION ENERGY, INC., BRAYTON	)
POINT, LLC, AND KINCAID	)
GENERATION, LLC., AND EQUIPOWER	)
RESOURCES CORP.	)
	)
Defendants.	)
	)
	)
	)

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**PLAINTIFF UNITED STATES' CONSOLIDATED MEMORANDUM IN OPPOSITION  
TO PROPOSED PLAINTIFF-INTERVENOR FALL RIVER'S MOTION TO  
INTERVENE, MOTION TO ENFORCE CONSENT DECREE AND MOTION FOR  
PRELIMINARY INJUNCTIVE RELIEF**

**EXHIBIT TWO**  
CLF's Complaint

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CONSERVATION LAW FOUNDATION, INC., CLEAN WATER ACTION, and TOXICS ACTION CENTER,	)	
	)	
Plaintiffs,	)	Case No.
	)	
v.	)	
	)	Complaint
DOMINION ENERGY BRAYTON POINT, LLC,	)	
	)	
Defendant.	)	

**I. INTRODUCTION**

1. This is a citizen suit, brought under Section 304 of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7604. Plaintiffs Conservation Law Foundation (“CLF”), Clean Water Action (“CWA”), and Toxics Action Center (“TAC”) (collectively, “Plaintiffs”) seek a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys and expert witness fees, for significant and ongoing violations of the Clean Air Act by Dominion Energy Brayton Point, LLC (“Defendant”). Defendant has violated opacity emissions limitations and monitoring requirements, acid rain monitoring requirements, and monitoring requirements for nitrogen oxides, carbon dioxide, and sulfur dioxide at Brayton Point Station (“BPS”) located at 1 Brayton Point Road, Somerset, Massachusetts.

EXHIBIT A

## II. JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 42 U.S.C. § 7604(a)(1) and 28 U.S.C. § 1331 and 28 U.S.C. §§ 2201 and 2202. The relief requested by the Plaintiffs is authorized by 42 U.S.C. §§ 7413 and 7604 and 28 U.S.C. §§ 2201 and 2202.
3. Pursuant to Section 304(b)(1)(A) of the CAA, 42 U.S.C. § 7604(b)(1)(A), and 40 C.F.R. Part 54, on December 13, 2012, Plaintiffs served a Notice Letter on Defendant, describing the Defendant's violations of the CAA and notifying Defendant of Plaintiffs' intent to sue under the CAA ("Notice Letter"). A true and accurate copy of the Notice Letter is attached hereto as Exhibit 1. Plaintiffs also sent copies of the Notice Letter to the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA Region 1, the Commissioner of the Massachusetts Department of Environmental Protection ("MA DEP"), the Governor of Massachusetts, and the Resident Agent of Defendant.
4. More than sixty days have passed since Plaintiffs served the Notice Letter on Defendant. The CAA violations complained of in the Notice Letter are of a continuing nature, are ongoing, or are reasonably likely to recur. Defendant remains in violation of the CAA. As of the filing of this Complaint, neither EPA nor Massachusetts has commenced an enforcement action to redress the violations identified in the Notice Letter.
5. Venue is proper in the District of Massachusetts pursuant to Section 304(c)(1) of the CAA, 42 U.S.C. § 7604(c)(1), and 28 U.S.C. § 1391(b)(2) because the facility and the violations that are the subject of this complaint are located in Massachusetts.

### III. PARTIES

6. Plaintiff, CLF, is a nonprofit, member-supported organization incorporated under the laws of Massachusetts with a principal place of business at 62 Summer Street, Boston, MA 02110. CLF is a regional organization with approximately 4,000 members throughout New England and is dedicated to protecting New England's environment. CLF has a long history of working to reduce the harmful air emissions of coal-fired and other fossil fuel fired power plants through enforcement of the CAA on behalf of its members. CLF is especially concerned with the severe health impacts associated with fine particulate matter pollution (commonly referred to as PM<sub>2.5</sub>) which is regulated under the CAA but for which emissions are not continuously monitored at BPS.
7. Plaintiff, CWA, is a one million-member organization of diverse people and groups joined together to protect the environment, health, economic well-being and community quality of life. CWA's goals include clean, safe, and affordable water; prevention of health threatening pollution; creation of environmentally safe jobs and businesses; and empowerment of people to make democracy work. CWA organizes strong grassroots groups and coalitions and campaigns to elect environmental candidates and solve environmental and community problems. CWA's headquarters is located at 1010 Vermont Avenue, NW, Suite 400, Washington, D.C. 20005, and its Massachusetts office is located at 262 Washington Street, Suite 601, Boston, MA 02108.
8. Plaintiff, TAC, is a New England-wide public health and environmental non-profit that organizes with communities to clean up and prevent pollution and develops non-

traditional leaders to strengthen the environmental and social change movements. Founded in Massachusetts in 1987, TAC has assisted more than 700 neighborhood groups to ensure clean air and clean water by training residents to organize and protect their communities from toxic hazards. Over the last 25 years, TAC has directly trained more than 10,000 individuals, and TAC's work has led to hundreds of victories. TAC currently has more than 800 active members in Massachusetts. TAC's headquarters is located at 44 Winter Street, 4th Floor, Boston, MA 02108.

9. CLF, CWA, and TAC each meet the definition of a "person," pursuant to section 302(e) of the CAA, 42 U.S.C. § 7602(e), who may commence an action under section 304(a) of the CAA, 42 U.S.C. § 7604(a). CLF sues on behalf of itself and its individual members who live in the vicinity of and downwind of BPS and on behalf of CWA, TAC, and its members. CLF and its members, CWA and its members, and TAC and its members, have suffered, and will continue to suffer, actual and threatened injury to their health and welfare due to Defendant's violations of the CAA, the Massachusetts State Implementation Plan ("SIP"), and the CAA Title V program described herein. The violations have exposed and continue to expose CLF, CWA, and TAC members to unlawful excess particulate matter emissions and other air pollution from BPS.
10. Plaintiffs have standing because the acts and omissions alleged herein exposed and continue to expose their individual members who live, work, and recreate in the vicinity of the plant to harmful pollution that threatens their health and welfare, interferes with their use and enjoyment of property and the surrounding areas, injures their economic interests, denies them protection of their health and well-being

protected by the CAA and the Title V permits issued under the CAA and the Massachusetts SIP, and negatively impacts their aesthetic and recreational interests. The relief requested herein will redress these injuries.

11. Defendant owns and operates BPS, a coal, natural gas, and oil-fired electricity generating station with four combustion units located at 1 Brayton Point Road, Somerset, Massachusetts. Defendant is a foreign limited liability company registered to conduct business in Massachusetts. Its principal place of business is in Richmond, Virginia. Its mailing address is in Somerset, Massachusetts. Defendant is, and operates as, a subsidiary of Dominion Resources, Inc., a Virginia corporation with a principal place of business in Richmond, Virginia.

#### **IV. STATUTORY AND REGULATORY BACKGROUND**

##### **A. The Clean Air Act**

12. The purpose of the CAA is the protection and enhancement of the Nation's air resources to promote the public health and welfare and the productive capacity of its population. CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1).
13. The CAA requires EPA to establish national ambient air quality standards ("NAAQS") that "allow[] an adequate margin of safety, requisite to protect the public health," and that are "requisite to protect the public welfare." CAA § 109(b), 42 U.S.C. § 7409(b). The CAA mandates the use of certain emission control technologies to limit emissions of pollutants that EPA has determined "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." CAA § 108(a)(1)(A), 42 U.S.C. § 7408(a)(1)(A).

14. Fine particulate matter—particles with a size less than or equal to 2.5 micrometers in diameter, “PM<sub>2.5</sub>”—is one of the air pollutants for which the EPA has established a NAAQS. 40 C.F.R. § 50.7; 78 Fed. Reg. 3,086 (2013).
15. PM<sub>2.5</sub> is a mixture of small particles, including organic chemicals, metals, and ash, which can cause severe health and environmental problems. Once inhaled, PM<sub>2.5</sub> can affect the heart and lungs and cause serious health effects. *See* 78 Fed. Reg. 3,103–3,104 (2013); 52 Fed. Reg. 24,663 (1987).
16. Opacity, also known as visible emissions, is not a criteria pollutant; however, visible emissions standards were initially established as a surrogate for assuring compliance with particulate matter standards at a time when continuous emissions monitors for PM were not considered technologically feasible. 76 Fed. Reg. 18,870, 18,872 (2011) (“Although opacity is not a criteria pollutant, opacity standards continue to be used as an indicator of the effectiveness of emission controls for PM emissions, or to assist with implementation and enforcement of PM emission standards for purposes of attaining PM NAAQS”).
17. Under the CAA, each state bears primary responsibility for assuring air quality within its geographic area by submitting an implementation plan for the State which specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in the State. CAA §§ 107, 110(a); 42 U.S.C. §§ 7407, 7410(a). The state implementation plan (“SIP”) must be submitted to the EPA Administrator for approval. CAA § 110(a), 42 U.S.C. § 7410(a).

18. The CAA, in relevant part, mandates that the SIP shall include enforceable emissions limitations and other control measures, as well as periodic reports on emissions, as necessary to meet the requirements of the Act. CAA § 110(a), 42 U.S.C. § 7410(a)(2).
19. A SIP must satisfy the mandates of the CAA before it can receive EPA approval. 42 U.S.C. §§ 7410(a) and (k). *See also* 40 C.F.R. § 51.110, Appendix V.

## **B. Massachusetts Implementation of the Clean Air Act**

### I. The Massachusetts SIP

20. Massachusetts submitted its SIP to EPA in January 1972. 40 C.F.R. § 52.1120(b). The MA SIP is codified at 40 C.F.R. Part 52, Subpart W, 40 C.F.R. § 52.1119 *et seq.*
21. Since then, Massachusetts, from time to time, has submitted state regulations to the EPA for approval as revisions to the MA SIP.

#### *a. MA SIP Visible Emissions Provisions*

22. The Massachusetts SIP provision that establishes visible emissions limitations for stationary sources such as BPS is set forth at 310 Mass. Code Regs. 7.06. The EPA has approved and incorporated 310 Mass. Code Regs. 7.06(1)(a)–(b) of Massachusetts' visible emissions regulations into the Massachusetts SIP. *See* 40 C.F.R. § 52.1120(c)(4); 37 Fed. Reg. 23,085 (1972).<sup>1</sup>
23. Under 310 Mass. Code Regs. 7.06, opacity shall not “exceed twenty per cent (20%) opacity for a period or aggregate period of time in excess of two minutes during any one hour provided that, at no time during the said two minutes shall opacity exceed 40%.” 310 Mass. Code Regs. 7.06(1)(b).

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<sup>1</sup> Despite the fact that Massachusetts has proposed revisions to the visible emissions standard, EPA has not approved such revisions. *See* 68 Fed. Reg. 33,875 (2003); 68 Fed. Reg. 16,959 (2003); 49 Fed. Reg. 49,454 (1984); 45 Fed. Reg. 53,476 (1980); 44 Fed. Reg. 7,712 (1979).

24. The Massachusetts SIP also prohibits the emission of smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time shall the shade, density or appearance be equal to or greater than No. 2 of the Ringelmann chart. 310 Mass. Code Regs. 7.06(1)(a).
25. As standards or limitations under the Massachusetts SIP, the visible emission standards cited in Paragraphs 22-24 above constitute “emission standards or limitations” under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a).
26. “Emissions standards” is defined in section 302(k) of the CAA as “a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter.” CAA § 302(k), 42 U.S.C. § 7602(k).
27. Continuous compliance is necessary because of the severe health impacts that may occur as a result of even short-term exposure to air pollution.

*b. MA SIP Monitoring Requirements*

28. The Massachusetts SIP provides that any person who owns or operates an emission source as described in 40 C.F.R. Part 51, Appendix P, shall continuously monitor emissions of opacity, nitrogen oxides (“NO<sub>x</sub>”), sulfur dioxide (“SO<sub>2</sub>”), and carbon dioxide (“CO<sub>2</sub>”). 310 Mass. Code Regs. 7.14(2). Appendix P applies to fossil fuel-fired steam generators, including BPS. 40 C.F.R. Part 51, Appendix P.

29. The Massachusetts SIP also requires facilities with the potential to emit 50 tons per year or more of NO<sub>x</sub> to continuously monitor emissions of NO<sub>x</sub> and carbon monoxide (“CO”). 310 Mass. Code Regs. 7.19(13). BPS is a facility with the potential to emit 50 tons per year or more of NO<sub>x</sub>.
30. As standards or limitations under the Massachusetts SIP, the monitoring requirements cited in Paragraphs 28–29 above constitute “emission standards or limitations” under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a).

#### 2. The Massachusetts Title V Permit Program

31. Title V of the CAA, 42 U.S.C. §§ 7661–7661f, established an operating permit program for certain sources of air pollution, including “major sources.” CAA §§ 501(2) and 502(a), 42 U.S.C. §§ 7661(2), 7661a(a).
32. At all times pertinent to this civil action, BPS was a “major source” within the meaning of Title V of the Act.
33. The regulations implementing Title V of the CAA allow a state to implement a comprehensive state operating permitting system consistent with Title V of the CAA, §§ 501–506, 42 U.S.C. §§ 7661–7661e. 40 C.F.R. § 70.1.
34. The Title V program is intended to enhance compliance by providing a single, comprehensive statement of all air pollution control requirements that apply to operation of a facility to which Title V applies; it combines all state and federal CAA requirements in a single document with defined compliance reporting provisions.

35. Massachusetts has adopted such an operating permit program. 40 C.F.R. Part 70, Appendix A (“Massachusetts”). The EPA fully approved Massachusetts’ Title V program effective November 27, 2001. *See id.*; 66 Fed. Reg. 49,541 (2001).
36. A Title V permit for a major source of air pollution, such as BPS, must enumerate all applicable requirements imposed on the facility under the CAA for all relevant emissions units within the major source. 40 C.F.R. § 70.3(c)(1).
37. At all times relevant to this Complaint, BPS operated under a federally enforceable Title V permit. From February 22, 2008 to July 25, 2011, BPS operated under Title V Operating Permit No. 4V95056 (attached hereto as Exhibit 2); from July 26, 2011, to the present, BPS operated under Title V Operating Permit No. 4V04019 (attached hereto as Exhibit 3) (collectively, “Title V Permits”). The Title V Permits incorporated applicable portions of the SIP as well as permit conditions from the earlier state approvals.
38. The Title V Permits limit all four BPS Units to opacity emissions no greater than 20%, except that the units may emit at an opacity between 20% and 40% for equal to or less than 2 minutes during any one hour; the units are not to exceed 40% at any time. *See* Exhibit 2 at 5–7; Exhibit 3 at 9, 11, 12.
39. The Title V permit in effect from July 26, 2011, to the present also requires that opacity at Unit 3 shall not exceed 10% after installation of the dry scrubber and fabric filter, for a period or aggregate period in excess of 2 minutes during any one hour provided that at no time during the 2 minutes shall opacity exceed 20%. *See* Exhibit 3 at 11.

40. The Title V permits prohibit emissions of smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time shall the shade, density or appearance be equal to or greater than No. 2 of the Ringelmann chart at all four BPS Units. *See* Exhibit 2 at 5–7; Exhibit 3 at 9, 11, 12.
41. The Title V Permits incorporate the continuous monitoring, reporting and recordkeeping requirements established in 310 Mass. Code Regs. 7.14. *See* Exhibit 2 at 11–13; Exhibit 3 at 19–20.
42. The Title V Permits also require BPS to monitor flue gas volumetric flow with a Continuous Emission Monitoring System (“CEMS”) pursuant to the federal Acid Rain Program, 40 C.F.R. Part 72, and the Massachusetts Acid Rain Law, 310 Mass. Code Regs. 7.22. *See* Exhibit 2 at 11; Exhibit 3 at 19.
43. As standards or limitations established under a permit in effect pursuant to CAA Title V and/or the Massachusetts SIP, the visible emissions limitations and monitoring requirements contained in the Title V Permits (referenced at Paragraphs 38–42 above) constitute “emission standards or limitations” under 42 U.S.C. § 7604(f)(4) that are subject to citizen enforcement under 42 U.S.C. § 7604(a)(1).

#### **V. CLAIMS FOR RELIEF**

##### **Count 1: Opacity Violations of State Implementation Plan and Title V Permit**

44. The allegations in all of the preceding paragraphs are incorporated herein by reference.

45. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions limitations contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 23 and 38-39.
46. Since at least June 9, 2008, Defendant has repeatedly emitted air pollution with opacity of greater than 20% for an aggregate of 2 minutes and emitted air pollution with opacity of greater than 40%.
47. The emissions described in the preceding paragraph exceed the visible emissions standards in the Massachusetts SIP and the Title V Permits.
48. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.
49. These violations of visible emissions standards in the Massachusetts SIP and the Title V Permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

**Count 2: Smoke Emission Violations of State Implementation Plan and Title V Permits**

50. The allegations in all of the preceding paragraphs are incorporated herein by reference.
51. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions limitations contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 24 and 40.
52. Since at least October 23, 2008, Defendant has repeatedly emitted smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for periods in excess

of six minutes during an hour and smoke with a shade, density or appearance equal to or greater than No. 2 of the Ringelmann chart.

53. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 Mass. Code Regs. 7.14, and 40 C.F.R. Part 51, Appendix P.
54. These violations of visible emissions standards in the Massachusetts SIP and the Title V Permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

**Count 3: Violations of Visible Emissions Monitoring Requirements**

55. The allegations of all preceding paragraphs are incorporated herein by reference.
56. Upon information and belief, Defendant repeatedly has violated and is in violation of the visible emissions monitoring requirements contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 28 and 41.
57. Since at least April 10, 2008, Defendant has repeatedly failed to monitor visible emissions for each unit.
58. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.
59. These violations of the visible emissions monitoring requirements of the Massachusetts SIP and the Title V permits constitute violations of "emissions

standards and limitations” under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

**Count 4: Violations of Monitoring Requirements for NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub>**

60. The allegations of all preceding paragraphs are incorporated herein by reference.
61. Upon information and belief, Defendant repeatedly has violated and is in violation of the monitoring requirements for NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> contained in the Massachusetts SIP and the Title V permits referenced in Paragraphs 28-29 and 41.
62. Since at least January 3, 2011, Defendant has repeatedly failed to monitor NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> emissions.
63. These violations are well documented in BPS’s quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.
64. These violations of the NO<sub>x</sub>, CO, SO<sub>2</sub>, and CO<sub>2</sub> Monitoring Requirements of the Massachusetts SIP and the Title V permits constitute violations of “emissions standards and limitations” under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

**Count 5: Violations of Acid Rain Monitoring Requirements**

65. The allegations of all preceding paragraphs are incorporated herein by reference.
66. Upon information and belief, Defendant repeatedly has violated and is in violation of the Acid Rain Monitoring Requirements of the Title V Permits referenced in Paragraph 42.

67. Since at least January 3, 2011, Defendant has repeatedly failed to monitor the flue gas volumetric flow for each unit, as required by the Acid Rain Monitoring Requirements of the Title V permits.
68. These violations are well documented in BPS's quarterly monitoring reports, semi-annual compliance reports, annual compliance reports, and operating permit deviation reports, which the Defendant is required to provide to MA DEP, pursuant to facility permits, 310 CMR 7.14, and 40 C.F.R. Part 51, Appendix P.
69. These violations of the Acid Rain Monitoring Requirements of the Title V permits constitute violations of "emissions standards and limitations" under the CAA that are redressable by citizen suit. 42 U.S.C. § 7604(f)(4).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that Defendant has violated and is continuing to violate the Clean Air Act by exceeding the visible emissions limitations contained in the Massachusetts SIP and the Title V Permits for Units 1-4;
2. Declare that Defendant has violated and continues to be in violation of monitoring requirements set forth in the Massachusetts SIP and the Title V Permits;
3. Enjoin Defendant from operating BPS, except in accordance with a compliance schedule that will prevent BPS from causing further violations of these standards and requirements;
4. Order Defendant to take all necessary steps to comply with emission standards, including, but not limited to, installing adequate pollution controls, conducting

- opacity audits, and developing protocols and processes to eliminate opacity violations;
5. Order Defendant to install continuous emissions monitors to measure filterable PM<sub>2.5</sub>;
  6. Order Defendant to take all necessary steps to comply with monitoring requirements;
  7. Order Defendant to pay civil penalties of up to \$32,500 per violation per day for emissions violations occurring on or after March 15, 2004 and up to \$37,500 per violation per day for violations occurring on or after January 12, 2009, consistent with the CAA (42 U.S.C. §§ 7413(b), 7413(e), and 7604(a); 40 C.F.R. §§ 19.2 and 19.4 (2008));
  8. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to the public health and the environment caused by the violations of the CAA alleged above;
  9. Award Plaintiffs their reasonable costs and attorneys' fees; and
  10. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

CONSERVATION LAW FOUNDATION,  
INC.,  
CLEAN WATER ACTION,  
and TOXICS ACTION CENTER

By Their Attorney:

/s/ Shanna Cleveland  
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Dated: February 22, 2013



**From:** Mary Jo Sheeley (Services - 6) [<mailto:mary.jo.sheeley@dom.com>]  
**Sent:** Tuesday, October 29, 2013 5:52 PM  
**To:** Viggiani, Steven  
**Cc:** Makram Jaber ([mjaber@hunton.com](mailto:mjaber@hunton.com)); Dunn, Jason (ENRD)  
**Subject:** Dominion NSR Mitigation Projects - Correspondence with the Town of Fall River

Steve,

Yesterday you asked for details regarding our outreach to the Town of Fall River about the Town proposing an environmental mitigation project under section XI of Appendix A to the Dominion NSR Consent Decree. Kevin Hennessy is our Director of Federal, State & Local Affairs for New England. He and one of our consultants in Massachusetts repeatedly reached out to the Town (see below), but the Town never put together a project to propose to Dominion. The City of Somerset, however, supplied several projects with detailed information. As I told you yesterday, as a result of the Town's non-responsiveness, Dominion proceeded to develop a proposed project plan with Somerset for the full amount of Project Dollars (\$1,600,000) provided for in section XI of Appendix A. The proposed Project Plan should be ready for submittal within a week. The proposal provides for two projects: (1) the Somerset Energy Recovery System, which would fund the design and installation of an Energy Recovery System at four of the five Somerset Schools, and (2) a 200 kW Photovoltaic Project, which would fund the installation of a PV array on the roof of one of the Somerset schools.

The following is a timeline Kevin prepared of Dominion's efforts to engage Fall River in the project development process (all communications were made by Kevin or our consultant in MA, Jim Smith):

- 7/11/13 (before CD was entered) – went to Fall River City Hall and met with Mayor Will Flanagan, Chief Administrator Shawn Cadime, Corporation Counsel Elizabeth Souza and two others to brief them on the NSR settlement and Fall River's eligibility. The Town was given a copy of guidelines (see attached) we prepared to help the Town develop a project proposal. Dominion requested that proposed projects be submitted by 8/1;
- 7/19/13 – followed up with Shawn Cadime about meeting to see how they were progressing and if there were any questions I could answer (never heard back);
- Early to mid-August – multiple follow-up calls to Corporation Counsel and Mayor – let them know extension beyond 8/1 was fine;
- End of August more calls to Mayor and Corp Counsel;
- 9/3/13 – re-connected with Corporation Counsel who designated Christy DiOrio, Asst Corporation Counsel, as our point of contact;
- 9/5/13 – contact established with Christy DiOrio;
- Mid-September – after multiple conversations with Ms. DiOrio, it became clear Fall River was not going to pursue projects. They were not interested in projects for the school, instead wanting to broaden the scope of the section XI of Appendix A so they could pursue solar installations on non-school city-owned buildings. The Consent Decree, however, does not permit doing so, which we told the Town.

During our call yesterday you expressed concern that Dominion would not be proposing a project for the Town of Fall River. You felt that a Somerset-only project plan proposal would not be well received by some at EPA Region 1. As you can see, great effort was made over a two-month period to engage the Town of Fall River in the process, including extending our deadline for submitting project plans for our consideration. Because of the extensive amount of work and time that goes into developing projects – we have spent countless hours over the past 3 ½ months -- Dominion had to decide to move on with the proposed plans we had received so as to meet the Consent Decree deadline for submitting proposed project plans, which is November 15. If we were dealing with only one project, perhaps there might have been more time to push the Town along (again, assuming they were even interested). Dominion, however, has been working diligently to develop a total of eleven project plans and get them submitted on time, working with ten different entities in three different states.

I would also like to note that, as we collectively drafted Appendix A, section XI does not mandate that Dominion expend section XI Project Dollars in both the Town of Fall River and the City of Somerset. Section XI.A requires Dominion to consult with both the Town and City (which we did) and says only that we are to submit projects for "either or both municipalities." Section XI.B also states that there is an expectation that approximately half will be spent in Somerset, but that the final distribution will depend on the projects that can be proposed and implemented within the timeframe set forth in Appendix A. Dominion was fully ready to submit plans for both Fall River and Somerset, but Fall River failed to work with us to do so. Thus it was not possible to propose a project for Fall River that could meet the deadline imposed by the Consent Decree.

I hope this satisfies your need to know why Fall River did not participate in this mitigation project funding opportunity and your need to understand the extensive effort that was made by Dominion with Fall River. We have developed eleven very solid mitigation projects that are worthy of being implemented and EPA's approval.

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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**Christy Diorio**

---

**From:** Mary Jo Sheeley (Services - 6) [mary.jo.sheeley@dom.com]  
**Sent:** Thursday, December 19, 2013 3:37 PM  
**To:** Christy Diorio  
**Cc:** Elizabeth Sousa; Viggiani, Steven; Cathy C Taylor (Services - 6); Kevin R Hennessy (Services - 6)  
**Subject:** Dominion Energy, Inc: Federal Consent Decree and Mitigation Project Plans  
**Attachments:** 20131219150753697.pdf

**TimeMattersID:** M6622A2B4AE97734  
**TM Contact:** Fall River Law Department  
**TM Matter No:** 13-1572  
**TM Matter Reference:** USA v. Dominion Energy, Inc.

Dear Ms. Diorio:

I attach a letter which responses to your submittal of last night. Thank you.

Mary Jo Sheeley  
Assistant General Counsel, Law Department  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
804-819-2819  
fax: 804-819-2183

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Dominion Resources Services, Inc.  
Law Department  
P.O. Box 26532, Richmond, VA 23261



December 19, 2013

By E-Mail and U.S. Postal Service

Christy DiOrlo  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722

Re: Consent Decree: Mitigation Project Plans

Dear Ms. DiOrlo:

On December 17, 2013, we were made aware that the City of Fall River was still interested in putting forth a proposed mitigation project plan for Dominion's consideration and submission to the U.S. Environmental Protection Agency ("EPA") pursuant to the federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (Civil Action No. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree"). After close of business last night, Dominion received a proposal from the City. While we appreciate the City's interest, in order to meet the court-imposed deadline, Dominion submitted all of its proposed mitigation plans to EPA by the Consent Decree deadline of November 14, 2013, and will not be making any new submittals.

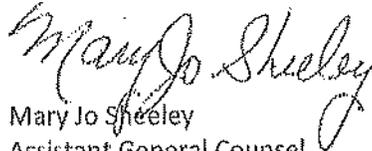
This process has been extensive. Prior to the Court entering the Consent Decree on July 17, 2013, Dominion provided all interested parties, including the City, with extensive written guidelines for each project category to assist in developing and submitting proposed plans to Dominion. We also provided copies of the Consent Decree (which sets forth the November 14 deadline) with the guidelines. The original deadline for making submittals to Dominion was August 1 to allow time for review and revision of the proposal before final submittal by the November deadline imposed in the Consent Decree. We agreed to provide additional time past the August 1 deadline set by Dominion for the Town to submit its proposal. Dominion did not, nor could it, extend the Court-imposed deadline of November 14. Through July and August Dominion made frequent attempts at contacting the City. By September, communications were re-established; however, they tapered off by October with an indication from the City that it would not be submitting a proposal due to the narrow scope of the Consent Decree requirements.

The Consent Decree requires Dominion to fund a variety of different mitigation projects in several states. During the summer Dominion received and processed many proposed plans.

Christy DiOrlo  
December 19, 2013  
Page Number 2

Dominion successfully submitted about a dozen plans by the November deadline for all categories of projects, and those plans are in various stages of approval or review by EPA. We regret that the City was unable to submit a proposal within the allotted timeframe. Given the lateness of time and in fairness to those entities that submitted timely plans and have proposals before EPA for approval, Dominion will not be accepting additional project proposals for consideration under the Consent Decree.

Sincerely,



Mary Jo Sheeley  
Assistant General Counsel

cc: Elizabeth Sousa, Esquire (City)  
Steven J. Viggiani, Esquire (EPA)  
Cathy C. Taylor  
Kevin R. Hennessy

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and )  
 )  
 THE CITY OF FALL RIVER, )  
 )  
 Proposed Plaintiff-Intervenor, )  
 )  
 v. )  
 )  
 DOMINION ENERGY, INC., BRAYTON )  
 POINT, LLC, AND KINCAID )  
 GENERATION, LLC., AND EQUIPOWER )  
 RESOURCES CORP. )  
 )  
 Defendants. )  
 )  
 )  
 )  
 )

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**PLAINTIFF UNITED STATES' CONSOLIDATED MEMORANDUM IN OPPOSITION  
TO PROPOSED PLAINTIFF-INTERVENOR FALL RIVER'S MOTION TO  
INTERVENE, MOTION TO ENFORCE CONSENT DECREE AND MOTION FOR  
PRELIMINARY INJUNCTIVE RELIEF**

**EXHIBIT FIVE**

EPA comments on Dominion's Proposed Projects

EPA Region 1 Comments on Dominion's Proposed Plan for the Northeast Clean Energy and Clean Diesel Projects with the Town of Somerset, Massachusetts ("Proposed Clean Energy Plan") – January 9, 2014

EPA's comments below are made to the Proposed Plan submitted to EPA on November 13, 2013 via letter dated November 5, 2013. The Proposed Plan was one of five proposed plans submitted by Dominion to EPA on that date. EPA's comments include those previously provided to Dominion via conference call.

A. The Somerset Public Schools Photovoltaic Project

- Overview. The proposed Photovoltaic Project ("PV Project"), discussed Sections A and C of the Proposed Plan, identifies the North Elementary School and the Somerset Middle School as potential sites for the rooftop installation of a PV system for solar-generated electric power. The North Elementary School is identified as the first choice for the installation of a 200 kW PV system.
- Comments. Section C.1.b of the Proposed Plan ("Ongoing Maintenance Contract") contains various provisions regarding the maintenance contract required by Section XI.E of Appendix A of the Consent Decree, but does not "include the establishment of an escrow account with funding sufficient to support one or more service contracts (or their equivalent) to ensure the ongoing maintenance and performance of the PV system ... for no less than 25 years." The revised Proposed Plan must include discussion of the escrow account required by Section XI.E of Appendix A. In addition, Section C.2 of the Proposed Plan ("PV Project Budget") provides that \$120,989 will be used to fund Project management, structural and electrical studies, the required educational kiosk, and the ongoing maintenance contract. The revised Proposed Plan should identify the portion of this figure that will be used to fund the maintenance contract and the other items identified above.
- Section C.3 of the Proposed Plan ("PV Project Funding") states that after receiving EPA approval of the PV Project, Dominion and the Town of Somerset will enter into a project funding agreement under which Dominion will provide project funding to the Town on behalf of the School District, and the School District will implement the project. Attachment A to the Proposed Plan contains a letter from the Somerset Public Schools stating that arrangements will be made with the Town of Somerset for disbursement of project funds to the School District. The revised Proposed Plan should confirm that the Town of Somerset will be prepared to enter into the above-described agreement.
- Attachment E to the Proposed Plan contains manufacturer's literature on various equipment to be used in the PV system. The first page of this literature describes a solar power system as including "integrated micro-inverters." EPA believes that these would eliminate the need for the central inverter listed in the System Description table (Plan, p.6). It may be that some of the Attachment E literature does not precisely describe some of the PV Project's equipment. In any event, the revised Proposed Plan should clarify

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and )  
 )  
 THE CITY OF FALL RIVER, )  
 )  
 Proposed Plaintiff-Intervenor, )  
 )  
 v. )  
 )  
 DOMINION ENERGY, INC., BRAYTON )  
 POINT, LLC, AND KINCAID )  
 GENERATION, LLC., AND EQUIPOWER )  
 RESOURCES CORP. )  
 )  
 Defendants. )  
 )  
 )  
 )

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Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**ATTACHMENT TWO**

PROPOSED ORDER

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Proposed Plaintiff-Intervenor,	)	
	)	Civil Action No. 3:13-cv-03086
v.	)	(SEM)(BGC)
	)	
DOMINION ENERGY, INC., BRAYTON	)	
POINT, LLC, AND KINCAID	)	
GENERATION, LLC., AND EQUIPOWER	)	
RESOURCES CORP.	)	
	)	
Defendants.	)	
	)	
	)	
	)	

**ORDER GRANTING MOTION FOR EXTENSION OF THE PAGE LIMIT**

For good cause shown, the United States' Motion For Extension of the Page Limit is hereby GRANTED. The United States may file a single consolidated memorandum of no more than thirty pages in opposition to proposed plaintiff-intervenor Fall River's Motion to Intervene, Motion to Enforce and/or Modify Consent Decree and Motion for a Temporary Restraining Order and/or a Preliminary Injunction.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
SUE E. MYERSCOUGH  
United States District Court Judge  
Central District of Illinois

**IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

**UNITED STATES OF AMERICA,** )

**Plaintiff,** )

**CITY OF FALL RIVER,** )

**Proposed Plaintiff-Intervenor** )

**v.** )

**No. 13-cv-03086**

**DOMINION ENERGY, INC.,** )

**BRAYTON POINT ENERGY, LLC,** )

**KINCAID GENERATION, LLC, and** )

**EQUIPOWER RESOURCES CORP.** )

**Defendants.** )

**OPINION**

**SUE E. MYERSCOUGH, U.S. DISTRICT JUDGE:**

After the Court entered a Consent Decree in this case, the City of Fall River, Massachusetts filed a Motion to Intervene (d/e 13 and revised as d/e 25), a Motion for a Temporary Restraining Order and/or a Preliminary Injunction (d/e 15), and a Motion to Enforce and/or Modify the Consent Decree (d/e 17). Dominion Energy, Inc. later filed a Motion for Sanctions (d/e 38). After considering the

arguments of the parties and the City of Fall River, the Court DENIES all of these pending motions.

## I. BACKGROUND

### **A. The Consent Decree Signed by the United States and Dominion Resolved Civil Claims Against Power Plants in Illinois, Indiana, and Massachusetts.**

One section of a 96-page Consent Decree negotiated and signed by Plaintiff United States (“United States”) and Dominion Energy, Inc. (“Dominion”),<sup>1</sup> Dominion Brayton Point, LLC, and Kincaid Generation, LLC that this Court entered on July 18, 2013 has incited a vigorous dispute that led to the four currently pending motions. Under the Consent Decree, Dominion agreed to spend \$9.75 million to implement environmental mitigation projects in specific locations affected by Defendants’ power plants in Kincaid, Illinois; Hammond, Indiana; and Brayton Point, Massachusetts. Consent Decree, d/e 3, § IX, ¶ 109. These projects included the

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<sup>1</sup> While not an original party to the instant action or the Consent Decree, EquiPower Resources Corp. replaced Dominion Energy as the entity responsible for executing obligations in the Consent Decree related to the Brayton Point and Kincaid plants when EquiPower Resources Corp. acquired those two plants after the Court entered the Consent Decree. See Notice Related to Consent Decree, d/e 11 at 1-2 (noting also the name change of “Dominion Energy Brayton Point LLC” to “Brayton Point Energy, LLC”). Because Dominion retained sole responsibility to complete the environmental projects outlined in the Consent Decree, Dominion is the party responding to Fall River’s currently pending Motions. See *id.*, App. I, ¶ 4.

“Northeast Clean Energy and Clean Diesel Projects” (the “Northeast Projects”). Id., App. A., § XI.

For the Northeast Projects, Dominion was required to “consult[ ]” with the Town of Somerset, Massachusetts, where Dominion’s Brayton Point power plant was located, and the City of Fall River, Massachusetts, which lies within 2.5 kilometers of the Brayton Point plant, about proposing projects. Id. ¶ A; Fall River Memorandum, d/e 26 at 3. Dominion was then required to submit “one or more” project proposals to the U.S. Environmental Protection Agency (“EPA”) for approval to implement specified types of projects in “either or both municipalities.” Id. The Consent Decree also stated that although the “Parties’ expectation” was that half of the maximum \$1.6 million allotted for the Northeast Projects “will be spent in Somerset . . . the final distribution will depend on the Projects (and their costs) that can be proposed and implemented within the time frames and other requirements set out in this Appendix.” Id. ¶ B. The Consent Decree also required Dominion to submit all of the project proposals—not only the Northeast Projects proposals—to the EPA for approval within 120 days of the Court entering the Consent Decree. Id. § II, ¶ A.

**B. The Complaint Filed by the United States Alleged Violations of the Clean Air Act at the Kincaid Power Station in Illinois.**

On April 2, 2013, the United States brought a civil enforcement action against Dominion and its subsidiary Kincaid Generation, LLC, alleging that Dominion made unpermitted modifications to the Kincaid Power Station, in violation of the Prevention of Significant Deterioration provisions of the Clean Air Act (“CAA”), Title V of the CAA, and the State Implementation Plan (“SIP”) adopted by Illinois and approved by the EPA. See Complaint, d/e 1. These provisions all seek to reduce the emission of pollutants such as nitrogen oxides, sulfur dioxide, and particulate matter harmful to human health and the environment. See Government’s Response, d/e 32-1 at 2. The United States joined Dominion Energy Brayton Point, LLC, which operated the Brayton Point Power Station in Somerset, Massachusetts, as a necessary party under Federal Rule of Civil Procedure 19(a). See Complaint, d/e 1 ¶ 1.

The scope of the Consent Decree was much broader than the United States’ Complaint here. While the Complaint alleged only “modification” violations at the Kincaid Plant in Illinois, the Consent

Decree resolved *all* civil claims of the United States against Dominion for unpermitted modifications made at the Kincaid, Brayton Point, and State Line power plants. Compare *id.* ¶¶ 37-45 with Consent Decree, d/e 3 ¶ 121. The Consent Decree also resolved all past claims by the United States arising from “opacity” violations at the State Line Station in Hammond, Indiana. Consent Decree, d/e 1 ¶ 121. Notably, before the Court entered the Consent Decree on July 18, 2013, the United States clarified that the Consent Decree did *not* resolve alleged violations of opacity standards at the Brayton Point power plant in Somerset, Massachusetts. The United States made this clarification in response to a question from a group of environmental organizations that sued Dominion Energy Brayton Point, LLC for opacity violations under the CAA and the Massachusetts SIP. See U.S. Memorandum, d/e 7-1 at 19-20. During the public-comment period before the Consent Decree was entered, this group of organizations (consisting of the Conservation Law Foundation, Clean Water Action, Toxics Action Center, and the Coalition for Clean Air South Coast) (the “Massachusetts Plaintiffs”) inquired how the Consent Decree would affect their pending lawsuit. Id. at

19. In response, the United States explained that although the Consent Decree resolves opacity claims at the State Line plant in Indiana, the “express terms of the Consent Decree . . . do not purport to resolve any opacity violations at Brayton Point.” Id. at 20.

**C. The Consent Decree Named Fall River as One of Two Municipalities That Could Benefit from the Environmental Mitigation Projects.**

On July 11, 2013, less than two weeks after the United States moved to enter the Consent Decree and one week before the Court actually entered the Consent Decree on July 18, 2013, representatives from Dominion Energy met with the employees of Fall River who were to be involved in preparing proposals for the Northeast Projects. See Aff. of Kenneth Pacheco, d/e 14-2 ¶ 3. At this meeting, Dominion gave Fall River “Proposal Guidelines” requiring Fall River and Somerset to submit proposals to Dominion by August 1, 2013. See Aff. of James Smith, 29-3 ¶ 5. The Proposal Guidelines also stated that Dominion’s deadline to submit proposals to the EPA was 120 days after the Court entered the Consent Decree. Proposal Guidelines, d/e 30-1 at 9. The Proposal Guidelines were dated June 24, 2013, and stated in a footnote that

“the United States soon will move to enter the Consent Decree, which will then take effect when the Court enters it.” Id. The subsequent entry of the Court’s Consent Decree on July 18, 2013 set Dominion’s 120-day deadline to November 14, 2013. See Fall River Memorandum, d/e 26 at 7. Fall River contends Dominion never told Fall River that the Court had entered the Consent Decree triggering the 120-day deadline. Id.

Somerset submitted a proposal to Dominion Energy on August 1, 2013, the date of the deadline. See Dominion Memorandum, Att. E, d/e 29-2 at 25. On December 17, 2013, Fall River officials read in a local newspaper that Somerset was expected to receive the full \$1.6 million of funding for the Northeast Projects because Fall River had failed to submit a proposal. Aff. of Christie DiOrio, d/e 14-1 ¶ 12. The next day, Fall River submitted a proposal, exceeding Dominion’s deadline to submit proposals to the EPA by more than one month. See Aff. of Kevin Hennessy, d/e 29-2 ¶ 23. Dominion told Fall River that Dominion had to refuse Fall River’s proposal because Dominion had already submitted the selected plans to the EPA and could not extend the 120-day deadline imposed in the Consent Decree. See Fall River Memorandum, d/e 16-5 at 2.

Fall River responded by filing a Motion for a Temporary Restraining Order and/or Preliminary Injunction, a Motion to Intervene, and a Motion to Enforce and/or Modify the Consent Decree in this Court on January 14, 2014. Pursuant to Federal Rule of Civil Procedure 24(c), Fall River attached a proposed complaint to the Motion to Intervene, alleging claims against Dominion's Brayton Point plant identical to those in the complaint filed by the Massachusetts Plaintiffs in their Massachusetts lawsuit: opacity and smoke emission violations of the Massachusetts SIP, violations of monitoring requirements of the Massachusetts SIP, and violations of acid rain monitoring requirements. Compare Fall River Proposed Complaint in Intervention, d/e 31-1 with Complaint, d/e 1 in Conservation Law Foundation, Inc., Clean Water Action, and Toxics Action Center v. Dominion Energy Brayton Point, LLC, No. 13-10346 (D. Mass. filed Feb. 22, 2013).

On January 15, 2014, at a telephone hearing on the Motion for a Preliminary Injunction, the United States agreed not to conduct further review of the plans Dominion had submitted for the Northeast Projects until the Court resolved Fall River's Motion to Intervene. See Minute Entry dated Jan. 15, 2014 and Joint

Stipulation, d/e 22. The Court also set a briefing schedule at the hearing that allowed Fall River to revise any of its motions and reply to the responses to Fall River's motions. See Order, d/e 19.

Dominion Energy later filed a Motion for Sanctions against Fall River (d/e 38). On April 7, 2014, despite some technical difficulties, the Court held an interstate video hearing on Fall River's Motion to Intervene.

Dominion and Fall River argue at length about why Fall River's proposal was tardy. In short, Fall River blames Dominion for failing to tell Fall River when the Court entered the Consent Decree triggering Dominion's 120-day deadline. Dominion blames Fall River for not submitting a timely proposal. While this factual disagreement may bear on the balancing test the Court conducts when considering a Motion for a Temporary Restraining Order and/or Preliminary Injunction, the disagreement is irrelevant to the Motion to Intervene. Further, the Court's DENIAL of the Motion to Intervene moots the Motion for a Preliminary Injunction and the need to resolve who was at fault for Fall River's untimely submission.

## II. ANALYSIS

### 1. Fall River Seeks to Intervene under Federal Rule of Civil Procedure 24.

Federal Rule of Civil Procedure 24 provides three avenues proposed plaintiff-intervenors may take to intervene in a federal case. Because the citizen-suit provision of the CAA blocks Fall River from taking any of these routes to intervention, the Court DENIES the Motion to Intervene.

#### **A. Fall River Cannot Intervene Under Fed. R. Civ. P. 24(a) Because The Clean Air Act Does Not Provide Fall River with an Unconditional Right to Intervene.**

Under Rule 24(a)(1), the court must permit anyone to intervene who has an unconditional right to intervene under federal statute and who files a timely motion to intervene. The CAA allows citizens to prosecute violations of the CAA by bringing civil actions in federal courts. 42 U.S.C. § 7604(a). However, a citizen cannot sue under this “citizen-suit provision” of the CAA if the state or federal government “has commenced or is diligently prosecuting” violations of “the standard, limitation, or order” of the CAA the

citizen also wishes to enforce.<sup>2</sup> Id. at § (b)(1)(B). This section of the citizen-suit provision (the “intervention section”) ensures that courts are not overburdened with citizen suits that are duplicative of ongoing governmental actions under the CAA. Although the intervention section serves to restrict citizen suits when the state or federal government has started to prosecute “any such action,” the CAA grants the citizens a right to intervene in the government’s case “as a matter of right.” Id. Further, the citizen-suit provision of the CAA also includes a venue provision, which states that “[a]ny action respecting a violation by a stationary source of an emissions standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.” Id. at § (c)(1) (emphasis added).

The United States and Dominion argue Fall River must allege Dominion violated the same “standard, limitation, or order” of the CAA that the United States alleged in its Complaint in order to obtain this unconditional right to intervene. Fall River disagrees

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<sup>2</sup> “(b) No action may be commenced—(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.”

but concedes that the claims in its proposed complaint, which allege violations of opacity, smoke, and monitoring requirements at the Brayton Point plant, are not identical to claims in the United States' Complaint, which involve violations of modifications requirements at the Kincaid plant.

Relying on a federal district court case from Colorado, United States v. Kerr-Mcgee Corp., Fall River argues that the proposed intervenor's claims do not need to be the same the United States' claims. Rather, Fall River's claims need only stem from the "same nexus of facts and law" as the claims the United States alleges in its Complaint. Fall River Reply, d/e 44 at 2. Kerr-Mcgee does not persuade this Court that Fall River has a right to intervene based on its proposed complaint.

In United States v. Kerr-Mcgee Corp., a Colorado district court allowed a group of organizations to intervene in a case brought by the United States under the CAA where the first claim in the group's proposed two-count complaint, which alleged that the defendant failed to install oxidation catalysts, mirrored the United States' complaint, and the second claim alleged that the failure to install oxidation catalysts also breached the defendant's operating

permits. 2008 U.S. Dist. LEXIS 24494, at \*2, n.2 (D. Colo. Mar. 26, 2008). Because of the many differences between Kerr-Mcgee and the present action, Kerr-Mcgee does not actually support Fall River's argument.

In Kerr-Mcgee, one of the counts in the proposed intervenor's complaint was identical to one of the counts in the United States' complaint, so Kerr-Mcgee could indisputably intervene under the CAA. Additionally, the conduct underlying the second count in the proposed intervenor's complaint in Kerr-Mcgee was the same as the conduct alleged in the intervenor's first claim and thus, the United States' mirrored claim.

In contrast to Kerr-Mcgee, none of the conduct underlying Fall River's proposed complaint forms the basis of the Complaint in this case. Even if Kerr-Mcgee stands for the proposition Fall River contends it does—that the citizen-suit provision allows intervention in a governmental action when citizens assert the “same nexus of facts and law”—Kerr-Mcgee does not support Fall River's intervention because Fall River's proposed complaint is based on different facts altogether.

Although Fall River briefly cited U.S. v. Duke Energy Corp., 171 F. Supp. 2d 560, 565 (M.D.N.C 2001) in the Reply to Dominion's Response to the Motion to Intervene, counsel for Fall River repeatedly relied on Duke Energy during the video hearing. See Fall River Reply, d/e 44 at 2. However, Duke Energy does not support Fall River's position. The issue in Duke Energy was whether the defendant's failure to obtain permits necessary to modify a power plant fell under the definition of an "emission standard or limitation" that could be enforced under the CAA's citizen-suit provision. 171 F. Supp. 2d at 562–65. Because the district court determined that the failure to obtain the permits could be prosecuted under the citizen-suit provision, a group of public-interest organizations had an "unconditional right to intervene" in the United States' case against the power plant. Id. at 565.

If Fall River, like the organizations that sought intervention in Duke Energy, were in fact alleging the same violations as the United States in this case, Duke Energy may have been applicable. At best, Duke Energy demonstrates how the intervention clause of the

citizen-suit provision applies when the claims of the intervenors and the United States are identical.

Whether claims of prospective intervenors must mirror claims of the United States under the citizen-suit provision of the CAA is perhaps seldom addressed in case law because the plain language of the statute so clearly requires uniformity. This intervention section serves to grant certain third parties a right to intervene and yet restricts the ability of third parties to bring their own independent actions under the CAA. Various courts have simply assumed that the intervention section applies when a citizen and the government are seeking to enforce the same limitation, standard, or order of the CAA.

*Plain language of CAA*

When analyzing the intervention section of the citizen-suit provision of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(B)—a verbatim reproduction of the CAA’s intervention section—a Connecticut federal district court injected the word “same” before the phrase, “standard, limitation, or order,” to express the understanding that the intervention section applied when the government’s and third party’s claims were identical. The court granted the defendant’s motion to dismiss after finding that the

*CWA*

*Identical claims of the gov.*

State of Connecticut was “diligently prosecuting” an enforcement suit against the defendant “to require compliance with the [same] standard, order or limitation” plaintiff was seeking to enforce.

Conn. Fund for the Env't v. Contract Plating Co., Inc., 631 F. Supp. 1291, 1294 (D. Conn. 1986).

Similarly, when a district court in the Eastern District of Texas reviewed the CAA’s intervention statute, the court noted that if a citizens’ group was seeking to prosecute the “same CAA standard, limitation, or order” that the State of Texas had started to diligently prosecute, the court would lack jurisdiction over the citizen’s independent action. Glazer v. Am. Ecology Env'tl. Servs. Corp., 894 F. Supp. 1029, 1035 (E.D. Tex. 1995). On the other hand, if the alleged violations in citizens’ and state’s suits involved a “different CAA standard, limitation or order” or were based on “different activity,” the intervention section would not apply to prohibit the plaintiff’s cause of action. Id. To determine whether the “same” violations were alleged in both suits, the district court needed only to compare the pleadings in both cases. Id. (“Certainly, Congress did not intend to overburden the courts by requiring protracted litigation regarding the similarities between the state’s action and

the citizen suit.”). Further, a court from the District of Maryland relied on Glazer to find that the EPA’s enforcement of a single standard against an emission source did not bar citizen suits seeking to enforce different standards against the same emission source. See Dodge v. Mirant Mid-Atl., LLC, 732 F. Supp. 2d 578, 585–86 (D. Md. 2010).

This Court agrees with the Contract Plating, Glazer, and Dodge courts’ interpretation of the plain language of the intervention section of the CAA. The Court notes that Congress chose to use the definite article “the” in that phrase rather than “any” or “a.” The similarly worded citizen-suit provision of the Resource Conservation and Recovery Act (“RCRA”) bars citizen suits when a federal or state entity is enforcing compliance with “such permit, standard . . . or order.” 42 U.S.C. § 6972(b)(1)(B); see Adkins v. VIM Recycling, Inc., 644 F.3d 483, 494 (7th Cir. 2011) (finding that an earlier governmental action would prohibit a plaintiff’s citizen suit under the RCRA “if it sought to require compliance with the same requirements that the plaintiffs seek to enforce in this suit”) (emphasis added). No doubt this language more clearly requires compliance with the same standard or order.

However, the word “the” is included in the intervention section of the CAA for good reason: if citizens could intervene in cases brought by the United States when alleging CAA violations different from those of United States, citizens would be barred from bringing independent actions against defendants for violations the United States chose not to prosecute. Fall River’s argument to allow intervention based on allegations that differ from those of the United States would essentially gut the citizen-suit provision.

*Intervene  
Rational  
State*

The Ninth Circuit case, United States v. Stone Container Corp., 196 F.3d 1066 (9th Cir. 1999), provides an example of how the CAA’s citizen-suit provision works to ensure citizens can act as “private attorney generals” to enforce violations the United States does not pursue. In Stone Container, a citizens’ group filed a 21-count complaint against a defendant for violating the CAA. 196 F.3d at 1067. The United States then filed a separate suit against the same defendant. Id. The citizens’ group intervened in the governmental suit based on three of the counts in its own complaint that mirrored three counts in the United States’ suit. Id. at 1068. After the court allowed the group to intervene, the group dismissed the three identical violations from its own suit and proceeded in the

*Intervene  
when  
Claims  
Central  
and  
Citizen  
suit  
don't have  
own  
Civil  
suit*

independent case on the remaining 18 violations that the United States had not sought to prosecute. Id. Consent decrees were then entered in both cases: one between the United States and the defendant, and the other between the citizens' group and the defendant in the independent action. Id.

Unlike the intervenors in Stone Container, Fall River is seeking intervention, rather than an independent action, to prosecute opacity and monitoring violations of the CAA that differ from the United States' allegations of unpermitted modifications. Therefore, Fall River does not have a statutory right to intervene and cannot intervene under Federal Rule of Civil Procedure 24(a)(1).

Conclusion

**B. Fall River Does Not Meet the Requirements for Permissive Intervention Under Fed. R. Civ. P. 24(b).**

Fall River does not argue intervention under Federal Rule of Civil Procedure 24(a)(2), which requires a proposed intervenor to show that disposing of an action would impair its ability to guard a protectible interest. Rather, Fall River seeks permissive intervention under Rule 24(b):

- (1) *In General.* On timely motion, the court may permit anyone to intervene who:

(b) has a claim or defense that shares with the main action a common question of law or fact.

The Seventh Circuit requires that permissive intervenors file a timely motion and show 1) a question of law or fact in common with the main action and 2) independent jurisdiction. See, e.g., Ligas ex rel. Foster v. Maram, 478 F.3d 771, 775 (7th Cir. 2007); Flying J, Inc. v. Van Hollen, 578 F.3d 569, 573 (7th Cir. 2009) (“Like anyone who wants to maintain an action in federal court, the [proposed intervenor] has to have standing in the Article III sense . . .”).

Even if these requirements are met, the Court has discretion whether to allow the intervention and should consider the impact of intervention on all of the parties. Ligas, 478 F.3d at 775.

The differences in the violations alleged in Fall River’s and the United States’ complaints demonstrate that Fall River does not share a question of law or fact with the present action. Indeed, Fall

River does not suggest a common question of law or fact in the Motion to Intervene. Fall River does reference the “common questions of law and fact that surround the harms suffered by Fall River based on the emissions at issue in this Action” when replying to Dominion’s and the United States’ Responses to the Motion to

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or fact in  
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to intervene  
out suggest  
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of law & fact  
surrounding harms  
caused on emissions  
in its reply.*

Enforce and/or Modify the Consent Decree. See Fall River Reply, d/e 41 at 4. However, the Complaint in this cause of action involves only alleged violations at the Kincaid power plant in Illinois. And while the Consent Decree resolves some claims against the Brayton Point plant, nowhere in its four corners does it purport to resolve the opacity and monitoring claims Fall River alleges in its proposed complaint. See Alliance to End Repression v. City of Chicago, 742 F.2d 1007, 1011 (7th Cir. 1984) (“[T]he scope of a consent decree must be discerned within its four corners.”) (citing United States v. Armour & Co., 402 U.S. 673, 682 (1971) (internal citations omitted)).

*OR  
claims  
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of fact*

Additionally, the Seventh Circuit’s second requirement for intervention—independent jurisdiction—is another insurmountable obstacle Fall River cannot clear because of the venue and notice requirements of the CAA’s citizen-suit provision. To independently pursue the claims in the proposed complaint, Fall River would also have to satisfy the notice requirement of the citizen-suit provision, which means Fall River would have to give the EPA Administrator, the State of Massachusetts, and the proper Defendant 60 days’ notice before filing Fall River’s complaint. See 42 U.S.C.

*It has  
no  
indep  
juris*

*must  
satisfy  
notice  
REQ*

§ 7604(b)(1). Nothing in the record indicates Fall River gave such notice.

Even more problematic, however, is the venue requirement of the citizen-suit provision of the CAA. See 42 U.S.C. § 7604(c)(1). The Seventh Circuit has recognized the contrast of the CAA, one of several statutes “with ‘special’ i.e. mandatory, venue provisions which are explicit in limiting venue. . . .” against other statutes that “allow permissive venue.” In re VMS Sec. Litig., 21 F.3d 139, 144 (7th Cir. 1994). The CAA clearly states that “any action respecting a violation by a stationary source of an emission standard . . . may be brought only in the judicial district in which such source is located.” 42 U.S.C. § 7604(c)(1).

Fall River argues that venue is proper in “this District . . . because violations that are the subject of the Complaint occurred in this District.” Fall River Motion to Intervene, d/e 26 at 16. The “Complaint” Fall River cites to, however, is the United States’ Complaint, not Fall River’s proposed complaint. See id. (citing Docket Entry “1,” which is the Complaint filed by the United States). And Fall River’s proposed complaint—not the Complaint initiating the underlying suit—must be the basis of independent

*Venue*

*FR's complaint  
not US must  
be the basis  
of indep  
juris*

jurisdiction. See FED. R. CIV. P. 24(c) (stating that a motion to intervene must “be accompanied by a pleading that sets out the claim or defense for which intervention is sought”).

In a footnote to the venue paragraph of Fall River’s proposed complaint, Fall River asserts that this Court has jurisdiction over Fall River’s claims because this Court entered a Consent Decree that resolved alleged claims against the Brayton Point plant. *Revised Proposed Complaint*, d/e 25-1 at 2 n.1. The unpermitted modification claims related to Brayton Point in the Consent Decree, however, are completely different than the opacity and monitoring violations Fall River alleges in its proposed complaint. Fall River provides no authority to show how the scope of the Consent Decree, which is permissibly broader than the scope of the United States’ Complaint, expands this Court’s power to hear unrelated allegations of violations at the Brayton Point plant in Massachusetts. Therefore, sitting in Illinois, this Court does not have independent jurisdiction over Fall River’s proposed complaint and will not permit Fall River to intervene.

FR would have had to bring an action in Mass.

Although Fall River emphasizes why the Motion to Intervene is timely in the memorandum supporting the Motion, the Court will

not address timeliness because Fall River cannot meet the other requirements of Fed. R. Civ. P. 24(a)(1) and (b)(1)(B). See Fall River Memorandum, d/e 26 at 8-13.

*It doesn't address timeliness*

In conclusion, Fall River lacks a statutory right to intervene under the CAA because the claims in the proposed complaint Fall River filed pursuant to Rule 24(c) differ from the claims the United States alleged in its Complaint in this case. Accordingly, Fall River cannot intervene under Rule 24(a)(1). Additionally, this Court will not allow Fall River to intervene under Rule 24(b) because Fall River cannot show a common question of law or fact or independent jurisdiction to pursue its claims in this Court. The Court DENIES Fall River's *revised* Motion to Intervene (d/e 25) and DENIES AS MOOT Fall River's initial Motion to Intervene (d/e 13). Fall River acknowledges that the Court's denial of the Motion to Intervene MOOTS the Motion for a Preliminary Injunction (d/e 15). Therefore, the Court DENIES AS MOOT Fall River's Motion for a Preliminary Injunction (d/e 15).

**2. The Denial of the Motion to Intervene Moots the Motion to Enforce and/or Modify the Consent Decree, But Further Discussion is Warranted.**

In the Motion to Enforce/Modify the Consent Decree, Fall River asks this Court to enforce Dominion's compliance with the Consent Decree and modify the Consent Decree to allow the EPA to accept Fall River's proposal directly. Fall River Motion, d/e 17 at 5. Fall River concedes that the Court's denial of the Motion to Intervene moots the Motion to Enforce and/or Modify the Consent Decree. See Fall River Reply, d/e 41 at 2. This could be the end of the discussion on this Motion because the Court denied the Motion to Intervene. The lively dispute between Fall River and the Parties about the applicability of Blue Chip Stamps v. Manor Drug Store, 421 U.S. 723 (1975), however, compels further discussion.

*Blue  
Chip  
Stamps*

This disagreement about Blue Chip Stamps arises from Fall River's assertion that Fall River can enforce and/or modify the Consent Decree as an intended beneficiary of the Consent Decree. In Blue Chip Stamps, the Supreme Court stated:

[A] well-settled line of authority from this Court establishes that a consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it even though they were intended to be benefited by it.

Id. at 750.

The Parties and Fall River dispute the applicability of this holding from Blue Chip Stamps because after that case, the Seventh Circuit allowed an intended third-party beneficiary to intervene and enforce a consent decree without citing Blue Chip Stamps. In South v. Rowe, 759 F.2d 610 (7th Cir. 1985), the Seventh Circuit found that an inmate was an intended beneficiary with a right to intervene under Rule 24(a)(2) and enforce a Consent Decree between a former inmate and the State of Illinois. Fall River relies on Rowe for the proposition that an intended beneficiary could modify a Consent Decree and argues that Blue Chip Stamps only applied to private damages actions brought under the Securities and Exchange Commission's Rule 10b-5. Fall River Reply, d/e 41 at 2-3.

South v  
Rowe

The only other time the Seventh Circuit has referenced the holding in Blue Chip Stamps as prohibiting an intended beneficiary from modifying a consent decree was in a concurring opinion. See Gautreaux v. Pierce, 707 F.2d 265 (7th Cir. 1983). Although the majority in that case did not decide whether third parties could intervene and modify a consent decree, Judge Posner briefly acknowledged that Blue Chip Stamps bars third parties from

Judge Posner

enforcing consent decrees. Id. at 273 (“It might make a difference if the appellants were third-party beneficiaries of the decree, though there is authority that it would not, see Manor Drug Stores v. Blue Chip Stamps, 339 F. Supp. 35, 38 (C.D. Cal.1971), *rev’d on other grounds*, 492 F.2d 136 (9th Cir.1973), *rev’d on other grounds*, 421 U.S. 723 (1975).”) (Posner, J., concurring).

Other circuits have more specifically ruled on the applicability of Blue Chip Stamps, complicating the dispute over this issue between the United States, Dominion, and Fall River. In brief, the Second, Ninth, Tenth, and D.C. Circuits have narrowed Blue Chip Stamps to prohibit only *incidental* beneficiaries from enforcing non-governmental consent decrees. See, e.g., Berger v. Heckler, 771 F.2d 1556, 1565 (2d Cir.1985) (“[W]e think that [Blue Chip Stamps] was not intended to preclude nonparties from intervening to enforce a consent decree where otherwise authorized by the federal rules of civil procedure.”); Hook v. State of Ariz., Dep’t of Corr., 972 F.2d 1012, 1014-15 (9th Cir. 1992)(“The holding in Blue Chip Stamps is thus limited to incidental beneficiaries or beneficiaries of consent decrees where the government was the plaintiff; it does not apply to intended third party beneficiaries.”); Floyd v. Ortiz, 300 F.3d 1223,

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1226 (10th Cir. 2002) (“[I]ntended third-party beneficiaries of consent decrees have standing to enforce those decrees.”); Beckett v. Air Line Pilots Ass’n, 995 F.2d 280, 288 (D.C. Cir. 1993) (“Blue Chip Stamps is best read as prohibiting, at most, suits to enforce consent decrees by incidental third party beneficiaries, or, perhaps, by third party beneficiaries of a consent decree obtained by the Government.”).

However, with the exception of the Tenth Circuit, the circuits that have adopted this more narrow reading of Blue Chip Stamps require third parties to show that the consent decree they are seeking to enforce conferred not only a benefit, but enforcement power to the third-party beneficiary. See, e.g., Consol. Edison, Inc. v. Ne. Utils., 426 F.3d 524, 528 (2d Cir. 2005) (rejecting the right of a third party to enforce a contract because “the parties to the Agreement clearly created a third-party right, but just as clearly they took pains to assure that the right was limited ... [and] not a right to sue”); United States v. FMC Corp., 531 F.3d 813, 821 (9th Cir. 2008)(finding third party could not enforce a governmental consent decree when the decree “disclaim[ed] an intent to grant rights to third parties”); SEC v. Prudential Secs., Inc., 136 F.3d 153,

*Benefit + enforcement power*

159 (D.C. Cir. 1998) (“When a consent decree or contract explicitly provides that a third party is not to have enforcement rights, that third party is considered an incidental beneficiary even if the parties to the decree or contract intended to confer a direct benefit upon that party.”); Hodges by Hodges v. Pub. Bldg. Comm’n of Chicago, 864 F. Supp. 1493, 1508 (N.D. Ill. 1994) (“[O]nly the Government can seek enforcement of its consent decrees; therefore, even if the Government intended its consent decree to benefit a third party, that party could not enforce it unless the decree so provided.”) (relying on Beckett v. Air Line Pilots Ass’n, 995 F.2d 280, 288 (D.C. Cir.1993) (internal citations omitted); see also Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 958 (8th Cir. 2002) (“In order for a third party to be able to enforce a consent decree, the third party must, at a minimum, show that the parties to the consent decree not only intended to confer a benefit upon that third party, but also intended to give that third party a legally binding and enforceable right to that benefit.”).

The Ninth Circuit observed that when applying the narrow reading of Blue Chip Stamps to a consent decree to which the government is a party, courts can view Blue Chip Stamps and its

MDA Cir:  
2 views of  
Blue Chip  
Stamps

progeny in two ways: either third-party beneficiaries *never* have standing to enforce governmental consent decrees unless the consent decree specifically says they do, or third-party beneficiaries are presumed to be *incidental* unless the consent decree clearly makes them *intended* beneficiaries. FMC Corp., 531 F.3d at 821. Either way, the court's decision turns on whether the consent

decrees contains language that shows the parties' intention to give third parties enforcement power. Therefore, even if the Seventh Circuit chose to adopt the narrower reading of Blue Chip Stamps, this Court should still look to the language of the Consent Decree to determine whether the Parties, one of which is the government, conferred enforcement power to third parties like Fall River. See, e.g., Dunn v. Carey, 808 F.2d 555, 559 (7th Cir. 1986) ("Consent decrees are judgments as well as contracts."); Golden v. Barenborg, 53 F.3d 866, 870 (7th Cir. 1995) (relying on "the manifestation of the parties' intent expressed through the language of the contract" to determine whether a third party is an intended or incidental beneficiary under Illinois law).

SO, even  
if 7th Cir  
adopts  
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it still  
looks to  
enforcement  
provisions  
of consent  
decrees.

Three provisions of the Consent Decree demonstrate the intent of the United States and Dominion not to include but to explicitly

*3rd parties  
specifically  
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exclude, third parties from enforcing or modifying the Consent Decree. Paragraph 187 grants the power to enforce the Consent Decree only to “any Party to this Consent Decree.” Consent Decree, d/e 6 ¶ 187. Permitted modifications to the Consent Decree can be made only “by a subsequent written agreement signed by the Parties.” Id. ¶ 188. And to further ensure that third parties did not interfere, paragraph 198 states: “This Consent Decree does not limit, enlarge, or affect the rights of any Party to this Consent Decree against third parties.” Id. ¶ 198. Accordingly, under Blue Chip Stamps and its progeny and general principles of contract law, Fall River cannot modify or enforce the Consent Decree as an intended beneficiary. #

Furthermore, the denial of the Motion to Intervene moots Fall River’s Motion to Enforce and/or Modify the Consent Decree as a party as well as Fall River’s argument that Fall River can seek modification under Federal Rule of Civil Procedure 60. Nat’l Acceptance Co. of Am., Inc. v. Frigidmeats, Inc., 627 F.2d 764, 766 (7th Cir. 1980) (“[I]t is well-settled that . . . one who was not a party lacks standing to make a (60(b) motion.”) (citing 11 C. Wright & A. Miller, Federal Practice and Procedure s 2865 at 225–26 (1973)); see

also United States v. 8136 S. Dobson St., Chicago, Ill., 125 F.3d 1076, 1082 (7th Cir. 1997) (“The person seeking relief [under Fed. R. Civ. P. 60] must have been a party.”). Therefore, the Court DENIES Fall River’s Motion to Modify and/or Enforce the Consent Decree.

**3. The Court Denies Dominion’s Motion for Sanctions and Fall River’s Request for Expenses.**

On March 7, 2014, Dominion filed a Motion for Sanctions (d/e 38) under Federal Rule of Civil Procedure 11 with an accompanying 18-page memorandum (d/e 39). Dominion asserts that Fall River failed to conduct a reasonable pre-filing inquiry into whether Fall River’s legal arguments were supported by existing law and whether Fall River had evidentiary support for its factual contentions. See Dominion Memorandum, d/e 39 at 18. Rule 11(b) requires an attorney to certify that the claims, defenses, and legal contentions she submits to the court are warranted by existing law or by a nonfrivolous argument to extend, modify or reverse existing law, or establish new law. The belief on which this certification is based is formed after a reasonable investigation or inquiry. FED. R. CIV. P. 11(b).

Advisory Committee Notes to Rule 11 advise that a “reasonable inquiry” may depend on a variety of factors, including the time available for an investigation and whether counsel had to rely on a client for information. FED. R. CIV. P. 11 advisory committee’s note to amend. 1983. The district court has discretion to impose sanctions when submissions are filed for an improper purpose or without a reasonable investigation of the facts and law. Gay v. Chandra, 682 F.3d 590, 596 (7th Cir. 2012). Courts must also consider whether sanctions would further the purpose of Rule 11, which is to deter comparable conduct by similarly situated attorneys. FED. R. CIV. P. 11(c)(4). Sanctions are appropriate when the court finds that an attorney should have known her position was “groundless.” Cuna Mut. Ins. Soc’y Office and Prof’l Emps. Int’l Union, Local 39, 443 F.3d 556, 560 (7th Cir. 2006).

Dominion asserts that Fall River’s filings are “baseless, are not warranted by existing law, and contain false allegations.” Dominion Memorandum, d/e 39 at 1–2. In support of the Motion for Sanctions, Dominion discusses Fall River’s failure to cite Blue Chip Stamps when Fall River was seeking to modify and/or enforce the Consent Decree as a third-party beneficiary. Id. at 12–14.

① Dominion's sanctions arg

②

Dominion also argues that Fall River's failure to recognize that this Court did not have jurisdiction over Fall River's proposed complaint is another reason sanctions are warranted. Id. at 14–18.

③

Additionally, Dominion highlights Fall River's ignorance of the Consent Decree provisions regarding third parties. Dominion Motion, d/e 38, ¶ 6.

In response, Fall River asserts once again that Fall River has an unconditional right to intervene under the CAA and that South v. Rowe, the Seventh Circuit case that allowed a third-party to intervene and enforce a consent decree, trumps any applicability of Blue Chips Stamps to this case. Fall River Response, d/e 45 at 4–8. Fall River also contends that this Court has jurisdiction because Brayton Point Station is a defendant in this case and a defendant in the Consent Decree, and the Consent Decree disposes of the United States' claims against the Brayton Point Station. Id. at 8–10. Fall River also asks for attorney's fees and costs in responding to the Motion for Sanction. Id. at 11–15; see FED. R. CIV. P. 11(c)(2) (stating that the court may award reasonable expenses, including attorney's fees and costs, to the prevailing party of a motion for sanctions).

Although some of Fall River's assertions are problematic—such as Fall River's claim that the parties "acknowledge" that Blue Chip Stamps is limited to securities' actions or that this Court has jurisdiction over Fall River's proposed complaint—Fall River's submissions do not warrant sanctions. Fall River's failure to cite Blue Chip Stamps does not justify the harsh penalty of sanctions. See Thompson v. Duke, 940 F.2d 192, 198 (7th Cir. 1991) ("[O]mission of a citation that arguably does not control, while imprudent and unprofessional, is not, standing alone, a basis for sanctions"). Additionally, when confronted with Blue Chip Stamps in the United States' and Dominion's responses to Fall River's Motion to Intervene, Fall River addressed the case and conceded that if Fall River could not intervene, Fall River could not enforce or modify the Consent Decree. See Fall River Reply, d/e 41 at 2.

Therefore, the Court DENIES Dominion's Motion for Sanctions (d/e 38) and Fall River's request for expenses and attorney's fees under Rule 11.

### III. CONCLUSION

**The Court DENIES Fall River's *revised* Motion to Intervene (d/e 25) because Fall River does not have a statutory right to**

**intervene under the Clean Air Act, 42 U.S.C. § 7604(b)(1)(B), and cannot meet the requirements for permissive intervention under Federal Rule of Civil Procedure 24(b). Therefore, the Motion to Enforce and/or Modify the Consent Decree (d/e 17), the Motion for a Temporary Restraining Order and/or Preliminary Injunction (d/e 15), and the initial Motion to Intervene (d/e 13) are DENIED AS MOOT. Finally, the Court DENIES Dominion's Motion for Sanctions (d/e 38) after finding that sanctions are not warranted.**

**ENTERED: April 15, 2014**

/s/ Sue E. Myerscough  
SUE E. MYERSCOUGH  
United States District Court  
Judge

**You do not have access to this transcript.**

NOTICE OF FILING OFFICIAL TRANSCRIPT of Motion Hearing held on 1/15/2014, before Judge Sue E. Myerscough. Court Reporter/Transcriber K.S. Transcript purchased by:Deanne Swits.

**IMPORTANT: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. Within 21 days of the filing of the transcript, a Motion of Requested Redactions shall be e-filed with the Court. Access to this motion will be restricted to the Court and the attorneys of record in the case. If no such Notice and Motion are filed, the transcript may be made remotely, electronically available to the public, without redaction, 90 days from the date initially filed. Any party needing a copy of the transcript to review for redaction purposes may view the transcript at the Clerk's Office public terminal or contact the Court Reporter for purchase. Counsel are strongly urged to share this notice with all clients so that an informed decision about the inclusion of certain materials may be made. The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk and Court Reporter will not review each transcript for compliance with this rule.**

Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/28/2014. Redacted Transcript Deadline set for 5/8/2014. Release of Transcript Restriction set for 7/7/2014. (ME, ilcd)

03/12/2014	TEXT ORDER: On March 6, 2014, Defendant Dominion Energy filed a Motion for Sanctions <u>35</u> and a Memorandum in Support of the Motion for Sanctions <u>36</u> . The next day, Defendant Dominion Energy filed a Notice of Withdrawal and Intent to refile <u>37</u> the Motion for Sanctions <u>35</u> and the Memorandum in Support of the Motion for Sanctions <u>36</u> . On March 7, 2014, Defendant Dominion Energy refilled the Motion for Sanctions <u>38</u> and Memorandum in Support of that Motion <u>39</u> . The Court will treat Defendant Dominion Energy's Notice <u>37</u> as a Motion to Withdraw the first Motion for Sanctions and accompanying Memorandum. Accordingly, the Court STRIKES the Motion for Sanctions <u>35</u> and Memorandum in Support of that Motion <u>36</u> filed on March 6, 2014. Entered by Judge Sue E. Myerscough on 3/12/2014. (MJ, iled) (Entered: 03/12/2014)
03/12/2014	TEXT ORDER: The Court GRANTS Proposed Plaintiff-Intervenor City of Fall River's Motion for Extension of the Page Length <u>43</u> . City of Fall River may file a reply memorandum of no more than seven pages in opposition to Defendant Dominion Energy's Response <u>29</u> to the Revised Motion to Intervene. Entered by Judge Sue E. Myerscough on 3/12/2014. (MJ, iled) (Entered: 03/12/2014)
03/25/2014	TEXT ORDER: Pursuant to instructions from Chief Judge James E. Shadid, this case is now referred to Magistrate Judge Tom Sehanzle-Haskins due to his appointment as U.S. Magistrate Judge for the Central District of Illinois. Entered by Chief Judge James E. Shadid on 3/25/2014. (MC, iled) (Entered: 03/25/2014)
03/27/2014	TEXT ORDER: After reviewing all of the submissions related to the pending motions by the Proposed-Intervenor, the Court finds that an evidentiary hearing on the pending motions is unnecessary. Accordingly, the Court will not hear testimony at the hearing on April 7, 2014 at 1:30 P.M. The hearing is scheduled for one hour and the Court will hear argument from counsel on the pending motions. Due to the brevity of the hearing, the Court again encourages counsel to appear by video. Chambers will send all counsel an email with the software needed to appear by video in case counsel decide to take advantage of this technology. Thus far, Attorney Joshua Levin of the U.S. Department of Justice has reported that he will appear by video. Entered by Judge Sue E. Myerscough on 3/27/2014. (ME, iled) (Entered: 03/27/2014)
03/31/2014	TEXT ORDER: The Court DENIES Defendant Dominion Energy's Motion for Leave to File Limited Reply Brief <u>46</u> . As Defendant notes in the Motion for Leave, the Court will provide an opportunity for Defendant to reply to Fall River's Response to Defendant's Motion for Sanction at the hearing on April 7, 2014. Entered by Judge Sue E. Myersecough on 3/31/2014. (MAS, iled) (Entered: 03/31/2014)

01/30/2014		TEXT ORDER: The parties and the City of Fall River have now all contacted the Court about their availability for a hearing on the issues raised by the City of Fall River in the motions filed on January 14, 2014, d/e <u>13</u> , <u>15</u> , <u>17</u> and January 29, 2014, d/e <u>25</u> . The hearing is SCHEDULED for Monday, April 7, 2014 at 1:30 P.M. before Judge Myerseough in Courtroom 1 in Springfield, Illinois. As the Court previously indicated, the Court permits and encourages counsel to appear by video, if doing so is more convenient than appearing in person. Any attorney who wishes to appear by video should contact the Court for instructions at least two weeks before the hearing. Entered by Judge Sue E. Myerseough on 1/30/2014. (MAS, ilcd) (Entered: 01/30/2014)
02/13/2014		TEXT ORDER: Pursuant to instructions from Chief Judge James E. Shadid, the assignment of this case to Magistrate Judge Byron G. Cudmore is withdrawn due to his resignation. The district judge assigned to this case will handle all matters until a new magistrate judge is appointed. Entered by Chief Judge James E. Shadid on 2/13/2014. (MC, ilcd) Modified on 2/13/2014 (MC, ilcd). (Entered: 02/13/2014)
02/19/2014	<u>28</u>	NOTICE of Appearance of Attorney by Jennifer Erin Simon on behalf of City of Fall River (Simon, Jennifer) (Entered: 02/19/2014)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Plaintiff-Intervenor,	)	
	)	Civil Action No. 3:13-cv-03086
v.	)	(SEM)(BGC)
	)	
DOMINION ENERGY, INC., DOMINION	)	
ENERGY BRAYTON POINT, LLC, AND	)	
KINCAID GENERATION, LLC.	)	
	)	
	)	
Defendants.	)	
	)	
	)	

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**PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN REPLY  
TO DOMINION ENERGY, INC.'S OPPOSITION TO IT'S MOTION TO  
ENFORCE AND/OR MODIFY CONSENT DECREE**

Plaintiff-Intervenor City of Fall River ("Fall River") respectfully submits the following reply memorandum in opposition to Dominion Energy, Inc.'s (hereinafter "Dominion") response (Dkt No. 30) to its Motion To Enforce And/Or Modify Consent Decree (Dkt No. 17).

**INTRODUCTION**

Fall River has moved this Court to intervene in this Action under Section 304(b)(1)(B) of the Clean Air Act and seeks redress of Clean Air Act violations arising out of the same facts leading to the tConsent Decree and SO<sub>2</sub>, NO<sub>x</sub>, and PM emissions limitations addressed therein. *See generally U.S. v. Duke Energy Corp.*, 171 F. Supp. 2d 560, 565 (M.D.N.C. 2001) (holding

that the “right to intervene is unconditional because states that if the government has initiated an action to require compliance with an emission standard or limitation ‘any person may intervene as a matter of right’”). Fall River does not ask this Court to modify and/or enforce the Consent Decree based only on its status as intended beneficiary—Fall River asks this Court to modify and/or enforce the Consent Decree based on its standing as a party. Fall River concedes that if this Court finds it has no standing upon which to intervene, then the motion to modify and/or enforce the consent decree would be mooted. Fall River’s right to intervene is unconditional, however, as is addressed in the motion to intervene that was filed concurrently with the underlying motion to this Reply. The underlying Motion to Modify presumes that Fall River has intervened as party and focuses only why the limited modification that Fall River seeks to make to the Consent Decree—to add Fall River as a party that it has standing to enforce that provision of the Consent Decree that requires Dominion to review its submission for proposed mitigation activities under Article IX and Appendix A, Article XI of the Consent Decree—is appropriate and warranted. Fall River has not requested and does not intend to seek any substantive modifications, and because the ultimate relief that it seeks already is encompassed within the current Consent Decree, the proposed simple modification/enforcement of that Consent Decree is appropriate to advance the efficient resolution of the issues.

### ARGUMENT

Dominion’s Response to Fall River’s Motion to Modify and/or Enforce the Consent Decree complicates and obscures the very simple nature of the relief that Fall River seeks—enforcement of the provision of the Consent Decree that requires Dominion to consult with Fall River and review Fall River’s submission. Dominion focuses much of its efforts alleging that Fall River has attempted to “hide the ball” and addresses Fall River’s motion to modify the

Consent Decree as if it had not been filed in tandem with Fall River's Motion to Intervene in enforcement action brought by the United States.

First, *Blue Chip Stamps* is not controlling authority for this case. *Blue Chip Stamps* holds that a private damages action under the Securities and Exchange Commission's Rule 10b-5 (See 17 C.F.R. 240) is confined to actual purchasers or sellers of securities, following the Birnbaum rule, and that those purported beneficiaries without standing to bring a private damages action under Rule 10b-5 cannot move to enforce or modify a consent decree. Both Dominion and the Government acknowledge that courts have held that *Blue Chip Stamps* is limited to cases under Rule 10b-5. *IBM Corp. v. Comdisco, Inc.*, which Dominion relies upon, notes that *Blue Chips Stamps* has been so limited. 834 F. Supp. 264, 267 (N.D. Ill. 1993). As this matter arises under the Clean Air Act and has no relation to any claim arising under any SEC rule, *Blue Chip Stamps* clearly does not apply.

Moreover, even if *Blue Chips Stamps* was not limited to securities matters, it would not apply here because that case addresses situations in which no statutory right to intervene exists. Dominion ignores that Fall River concurrently has filed a motion to intervene *as a party*, as a *right*, under section 304(b)(1)(B) of the Clean Air Act. The proposed intervenors in *Blue Chip Stamps* based their motion to modify the consent decree only on the status conveyed to them by the consent decree itself. Fall River, with the Clean Air Act's provision for intervention, is simply not similarly situated.

While Dominion is free to advance the argument that *Blue Chip Stamps* should extend to this situation, it is by no means controlling authority in every case that involves a consent decree, as Dominion asserts—let alone where an unconditional right to intervene by statute exists. Moreover, when the Seventh Circuit had an opportunity to address and cite *Blue Chip*

*Stamps* ten years later in *South v. Rowe* seems to be conclusive that *Blue Chip Stamps* is not controlling authority where there is a right to intervene under Federal Rule of Civil Procedure 24(a), as there is here.<sup>1</sup> *South v. Rowe* holds that a third party has standing to intervene to modify a consent decree as of right under Rule 24(a) when the consent decree at issue is clearly intended to benefit the proposed intervenor. 759 F.2d 610, 612 (7th Cir. 1985). In *South v. Rowe*, the Seventh Circuit explicitly acknowledges the efficiencies rendered by allowing a beneficiary to intervene in a suit to modify a consent decree instead of filing a separate suit—the same efficiencies that would be realized here. In fact, the cases cited by Fall River in its Memorandum of Law in support of the underlying Motion to Modify demonstrate that because of the efficiency of the process to intervene and modify an already existing consent decree versus filing a new case, courts have held that third parties *without* any independent right to intervene in a case have been granted intervention in order to modify an already existing consent decree.

Dominion also asserts that the Consent Decree does not create rights for third parties such as Fall River. Fall River concedes this point. Again, Fall River does not rely on the Consent Decree for its right to intervene—it relies upon Section 304(b)(1)(B) of the Clean Air Act and the common questions of law and fact that surround the harms suffered by Fall River based on the emissions at issue in this Action. Dominion's further assertion that Fall River is attempting to "hide" the Consent Decree's provisions of Paragraphs 2, 187-88, and 198 is without merit. First, the Consent Decree was entered by the Court in which these motions are pending and is at the center of the controversy. Moreover, because Fall River is advancing its right to intervene as a right under the CAA, these provisions, which on their face state that they

---

<sup>1</sup> Given that Judge Posner also sat on the panel for *South v. Rowe*, it is unlikely he would have ignored the applicability of *Blue Chip Stamps* having addressed it two years prior in *Gautreaux v. Pierce*, another case upon which Dominion relies. (Dkt. 30, Resp. at 7.)

“do not create any rights or obligations...” and do not “limit, enlarge, or affect the rights of any Party to this Consent Decree as against any third parties” simply do not affect Fall River’s right to intervene under the CAA.

Finally, Dominion here asserts a number of facts, some of which contradict the facts relied upon by Fall River<sup>2</sup> and some of which, simply, are irrelevant and inflammatory. There is no factual dispute, however, that Dominion unilaterally decided that Fall River did not have a project to submit, even though the Mayor indicated that the City was working on a submission. There is no factual dispute that the consultant assigned to consult with Fall River no longer worked for Dominion after September 1, 2013. Dominion asserts that Fall River should have offensively sought more contact with Dominion. Yet as the old axiom states, “liability follows control.” Here, Dominion asserts that only it could control the process for submission of EMPs under the Consent Decree. It was, therefore, incumbent upon Dominion to ensure that the submission process was clear to each of the participants, and Dominion should have taken extra precautions in light of the change of control that occurred with the sale of the Brayton Point facility. Dominion did not.

### CONCLUSION

The City of Fall River respectfully requests that this Court grant its limited request to modify the Consent Decree to add Dominion as a party such that Dominion and/or the EPA may consider Fall River’s EMP proposal.

---

<sup>2</sup> Should the Court reach these factual issues, Fall River requests that it be granted leave to conduct limited discovery regarding the facts here and, particularly the settlement of the CLF lawsuit against Dominion, where notably, Dominion’s present counsel was also representing its interests.

Dated: March 10, 2014

Respectfully submitted,

/s/ Deanna R. Swits

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 10, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN REPLY TO DOMINION ENERGY, INC.'S OPPOSITION TO IT'S MOTION TO ENFORCE AND/OR MODIFY CONSENT DECREE** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on March 10, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN REPLY TO DOMINION ENERGY, INC.'S OPPOSITION TO IT'S MOTION TO ENFORCE AND/OR MODIFY CONSENT DECREE** was served upon those listed below by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

/s Deanna R. Swits  
Deanna R. Swits

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
and )  
)  
THE CITY OF FALL RIVER, )  
)  
Plaintiff-Intervenor, )  
)  
v. )  
)  
DOMINION ENERGY, INC., DOMINION )  
ENERGY BRAYTON POINT, LLC, AND )  
KINCAID GENERATION, LLC. )  
)  
)  
Defendants. )  
)  
\_\_\_\_\_ )

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN REPLY  
TO DOMINION ENERGY, INC.'S OPPOSITION TO IT'S MOTION FOR  
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Plaintiff-Intervenor City of Fall River respectfully submits the following reply memorandum in opposition to Dominion Energy, Inc.'s (hereinafter "Dominion") response [Dkt No. 31] to its Motion For Temporary Restraining Order And/Or Preliminary Injunction [Dkt No. 15].

As an initial matter, Fall River acknowledges that should this Court deny its request to intervene and its request to modify and/or enforce the Consent Decree, the request for preliminary injunction would be moot. Moreover, because the parties have stipulated that no action will be taken until the Court resolves the motion to intervene and the motion to modify the

consent decree, any request for a temporary restraining order or preliminary injunction before the resolution of these motions by the Court is likewise moot.

In its Response, Dominion addresses each of the factors considered when determining whether to grant injunctive relief. *See generally, Planned Parenthood of Indiana, Inc. v. Comm'r of Indiana State Dep't Health*, 699 F.3d 962, 972 (7th Cir. 2012). Because Fall River agrees that its request for injunctive relief is, for all purposes, moot, Fall River only addresses Dominion's arguments with regard to the public interest.

Dominion asserts that granting any relief by this Court will result in "bad precedent." First, generally the determination of whether the public interest will be served is limited to an analysis of the granting of injunctive relief—not necessarily what precedent the ultimate conclusion of the litigation will bring. Regardless, Fall River asserts that the ultimate relief requested here by Fall River—that it be permitted to intervene as of right under the Clean Air Act for the limited purpose of submitting its plan proposal under the Consent Decree—would not be "bad precedent." Not only does the Clean Air Act provide a statutory basis for Fall River's unconditional right to intervene, the Consent Decree itself is designed to remedy the harms caused by the pollutants spewed into the air by Dominion's facilities. Granting Fall River's right to intervene for this limited purpose supports the specific intent of the Clean Air Act that those who are affected by the pollution which is at issue in an action brought by the Government against a polluter.

In fact, the Clean Air Act would permit any person, including those listed by Dominion, to intervene. This is not "bad precedent"—it is congressional intent.

Dated: March 10, 2014

Respectfully submitted,

/s/ Deanna R. Swits

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 10, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN REPLY TO DOMINION ENERGY, INC.'S OPPOSITION TO IT'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on March 10, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN REPLY TO DOMINION ENERGY, INC.'S OPPOSITION TO IT'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION** was served upon those listed below by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

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Deanna R. Swits

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## INTRODUCTION

Though the Government acknowledges that Dominion would not be prohibited from resubmitting a new plan for EPA approval that included one or more Fall River projects without modification of the terms of the Consent Decree, the Government still opposes Fall River's intervention as a party under the Clean Air Act ("CAA"), the modification or enforcement of the Consent Decree, and Fall River's request for a preliminary injunction.<sup>1</sup> Yet Dominion refuses to accept Fall River's proposal for review—even if Dominion would not submit it to the EPA. The City of Fall River's only recourse is to seek to intervene in this Action under the Clean Air Act, which provides an unconditional right to intervene to the City of Fall River.

## ARGUMENT

While both the Government and Dominion assert that this Action and the Consent Decree do not involve the same claims as asserted by Fall River, Fall River respectfully asserts that the provision of the Clean Air Act that authorizes third party intervention does not require a third party's claims to precisely mimic the claims asserted by the Administrator. 42 U.S.C. §7604(b)(1)(B). Rather, the claims of an intervenor simply must arise out of the same nexus of law and fact pursuant to Fed. R. Civ. P. 24(a) under the Clean Air Act. Fall River's claims pertain to emissions violations and/or other alleged violations of Clean Air Act standards and limitations from the Brayton Point Station. There is no dispute that this case arises under the Clean Air Act and that violations of Clean Air Act standards and limitations at the Brayton Point

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<sup>1</sup> Fall River acknowledges that should this Court deny its request to intervene and its request to modify and/or enforce the Consent Decree, the request for preliminary injunction would be moot. Moreover, because the parties have stipulated that no action will be taken until the Court resolves the motion to intervene and the motion to modify the consent decree, any request for a temporary restraining order or preliminary injunction before the resolution of these motions by the Court is likewise moot. Fall River, therefore, does not address any further issues with regard to its request for injunctive relief here.

Station are addressed in the Consent Decree. The City of Fall River has sought leave to intervene in those claims and has advanced other claims pertaining to the same emissions violations under the Clean Air Act as well. Section 304(b)(1)(B) of the Clean Air Act does not require that the claims be mirror images or identical. Instead, it permits the intervention by any person affected by that action to require compliance with that standard, limitation, or order.<sup>2</sup> Under the notice pleading standards, Fall River's allegations are sufficient to intervene in the instant Action, and this Court should grant Fall River's request to intervene.

There is no doubt that the City of Fall River is affected by Clean Air Act violations occurring at the Brayton Point Station and has standing here to so intervene. Further, any arguments asserted with respect to whether the Brayton Point Station is addressed in the lawsuit brought by the Government in the District Court of Illinois are clearly without merit as demonstrated through the Complaint, where Dominion Energy Brayton Point is a named Defendant (Dkt. 1, Compl. ¶ 9), through the Consent Decree, where emissions violations at the Brayton Point Station are specifically addressed (Dkt. 3, Consent Decree ¶¶ 26, 101, 121), and likewise through the Memorandum in Support thereof (Dkt. 7-1, Memo. at 5-10, specifically discussing Fall River's proximity to the Brayton Point Station).

Additionally, the Complaint specifically includes Dominion Energy Brayton Point as a necessary party under Rule 19. And, while the Memorandum in Support of the Consent Decree points out that it does not address the CLF opacity claims, the Consent Decree resolves "all civil claims of the United States against Dominion that arose from any modifications commenced at

---

<sup>2</sup> Upon information and belief, Fall River has asserted that the CLF Action in Massachusetts was dismissed, with prejudice, in light of the resolution provided through the Consent Decree here. That Action, filed in April 2013, was dismissed in October 2013, after the entry of the Consent Decree. Again, should this Court reach this factual issue, Fall River requests leave to conduct limited discovery on the settlement negotiations in that Action.

any Dominion System Unit prior to the Date of Lodging of this Consent Decree, including but not limited to..." Based on this, any claim that the United States could bring against Dominion arising from "the modifications commenced at any Dominion System<sup>3</sup> Unit" would be included in the Consent Decree—and it is these claims that Fall River seeks to join and upon which it seeks to intervene.

Finally, in its Response, the Government asserts that Dominion consulted with Fall River as required by the Consent Decree. The Government, unfortunately, seems to rely only the facts and information it has received from Dominion. (Dkt. 32-1, Resp. at 21.) Additionally, the Government also opposes Fall River's attempts to take certain actions as a "third party," including any modification or enforcement of the Consent Decree. Again, Fall River does not seek redress as a third party—it seeks to intervene as a *party* in order to request the limited relief it seeks in its Motion to Modify and/or Enforce the Consent Decree.

### CONCLUSION

The City of Fall River respectfully requests that this Court grant its Motion to Intervene and for the limited purpose of submitting its proposal to Dominion and/or the EPA, as requested in the Motion to Modify and/or Enforce the Consent Decree.

Dated: March 10, 2014

Respectfully submitted,

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---

<sup>3</sup> "Dominion System" is defined within the Consent Decree to include the Brayton Point facility. (Dkt. 3, Consent Decree ¶ 18.)

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 10, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN REPLY TO UNITED STATES' CONSOLIDATED OPPOSITION TO IT'S REVISED MOTION TO INTERVENE, MOTION TO ENFORCE AND/OR MODIFY CONSENT DECREE, AND MOTION FOR PRELIMINARY INJUNCTIVE RELIEF** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on March 10, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN REPLY TO UNITED STATES' CONSOLIDATED OPPOSITION TO IT'S REVISED MOTION TO INTERVENE, MOTION TO ENFORCE AND/OR MODIFY CONSENT DECREE, AND MOTION FOR PRELIMINARY INJUNCTIVE RELIEF** was served upon those listed below by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

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# Exhibit 1

Plaintiff-Intervenor City of Fall River respectfully requests that the Court grant The City of Fall River leave to file a reply memorandum of no more than seven pages in opposition to Defendant's Response to its *Revised* Motion to Intervene. City of Fall River notes that Defendant's Response was 22 pages in length. Attached hereto as Attachment 1 is City of Fall River's Memorandum in Reply to Defendant Dominion's Opposition to the *Revised* Motion to Intervene. Attached hereto as Attachment 2 is a proposed order granting The City of Fall River's Motion for Extension of the Page Limit.

**MOTION FOR EXTENSION OF THE PAGE LENGTH**

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,  
Plaintiff,  
and  
THE CITY OF FALL RIVER,  
Plaintiff-Intervenor,  
v.  
DOMINION ENERGY, INC., DOMINION  
ENERGY BRAYTON POINT, LLC, AND  
KINCAID GENERATION, LLC.  
Defendants.

Dated: March 10, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 10, 2014, the foregoing document MOTION FOR EXTENSION OF THE PAGE LENGTH was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s/ Deanna R. Swits  
Deanna R. Swits

I, Deanna R. Swits, an attorney, state that on March 10, 2014, the foregoing document MOTION FOR EXTENSION OF THE PAGE LENGTH was served upon those listed below by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

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# Exhibit 2

SUE E. MYERSCOUGH  
United States District Court Judge  
Central District of Illinois Fax: (312) 425-3909

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

For good cause shown, the City of Fall River's Motion For Extension of the Page Limit is hereby GRANTED. The City of Fall River may file a reply memorandum of no more than seven pages in opposition to Defendant Dominion's Responses to its Revised Motion to Intervene.

**LIMIT**  
**[PROPOSED] ORDER GRANTING MOTION FOR EXTENSION OF THE PAGE**

)	UNITED STATES OF AMERICA,
)	Plaintiff,
)	and
)	THE CITY OF FALL RIVER,
)	Plaintiff-Intervenor,
)	v.
)	DOMINION ENERGY, INC., DOMINION
)	ENERGY BRAYTON POINT, LLC, AND
)	KINCAID GENERATION, LLC,
)	Defendants.
)	

Civil Action No. 3:13-cv-03086 (SEM)(BGC)

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

Fall River filed its Motion to Intervene pursuant to a statutory right of intervention explicitly provided under section 304(b)(1)(B) of the Clean Air Act. Fall River filed this motion for the sole purpose of securing the appropriate standing to enforce a very narrow provision of the Consent Decree issued to resolve the claims set forth in the original Complaint. The instant Action is an action under the Clean Air Act (the "CAA") against Defendant Dominion Energy,

**INTRODUCTION**

Memorandum to Dominion Energy, Inc.'s (hereinafter "Dominion") Response [Dkt No. 29] to its *Revised* Motion to Intervene [Dkt No. 25]. Plaintiff-Intervenor City of Fall River respectfully submits the following Reply

**PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM  
IN REPLY TO DOMINION ENERGY, INC.'S OPPOSITION TO ITS  
REVISED MOTION TO INTERVENE**

Civil Action No. 3:13-cv-03086  
(SEM)(BGC)

UNITED STATES OF AMERICA,  
Plaintiff,  
and  
THE CITY OF FALL RIVER,  
Plaintiff-Intervenor,  
v.  
DOMINION ENERGY, INC., DOMINION  
ENERGY BRAYTON POINT, LLC, AND  
KINCAID GENERATION, LLC,  
Defendants.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

Inc., Dominion Energy Brayton Point, LLC and Kincaid Generation, LLC ("Dominion" or "Defendants") based on Defendants' operation of coal-fired electricity generating units in Illinois, Indiana and Massachusetts that are subject to standards and limitations regarding emissions of sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxides ("NO<sub>x</sub>"), and Particulate Matter ("PM") among other things under the Clean Air Act. (Compl. ¶¶ 1-3.) Although the original Complaint filed in this Action does not specifically assert any claims for relief with respect to the Brayton Point Station, the Complaint names Defendant Dominion Energy Brayton Point, LLC as a defendant. Dominion Energy Brayton Point, LLC was included as a necessary party pursuant to Rule 19(a) of the Federal Rules of Civil Procedure and the All Writs Act, 28 U.S.C. § 1651 because alleged violations occurring at the Brayton Point facility were resolved by and through the Consent Decree that was entered to resolve the issues alleged in the Complaint at the Indiana and Illinois facilities. (Compl. ¶ 1.)

Proposed Plaintiff City of Fall River has an unconditional right to intervene in this Action under section 304(b)(1)(B) of the CAA to join the Government's suit with respect to the Brayton Point Station. Moreover, Fall River's additional requests for relief arise out of the same nexus of facts and law with respect to the Brayton Point Station's alleged violations of Clean Air Act standards and limitations and the resolutions set forth in the Consent Decree. 42 U.S.C. § 7604(b)(1)(B); see *U.S. v. Duke Energy Corp.*, 171 F. Supp. 2d 560, 565 (M.D.N.C. 2001) (holding that the "right to intervene is unconditional because Section 304(b)(1)(B) states that if the government has initiated an action to require compliance with an emission standard or limitation 'any person may intervene as a matter of right'"). Specifically, Section 304(b)(1)(B) states that if the government has initiated an action to require compliance with an emission standard or limitation "any person may intervene as a matter of right." *Id.*

Contrary to Dominion's representations otherwise, the City of Fall River needs no other basis upon which to intervene in this action.

### ARGUMENT

Dominion's arguments in support its opposition to Fall River's Motion to Intervene do not and cannot upset Fall River's right to intervene as authorized under the Clean Air Act. Instead, Dominion offers three arguments that range between baseless and nonsensical.

Fall River's Motion to Intervene is predicated on a statutory right of intervention granted under section 304(b)(1)(B) of the Clean Air Act. 42 U.S.C. §7604(b)(1)(B). Section 304(b)(1)(b) provides a right of intervention for parties who would otherwise have standing under the Clean Air Act's citizen suit provision to intervene in enforcement actions brought by the State or Administrator. Statutory rights of intervention, such as the right granted here, are subject only to those restrictions explicitly set forth in the statute, or pursuant to Fed. R. Civ. P. 24. Section 304(b)(1)(A) does not explicitly or implicitly impose limitations as to who or under what circumstances a party may intervene: "If the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right." *Id.* Likewise, Rule 24(a) provides that "[o]n timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute..." Fed. R. Civ. P. 24(a). Finally, permissive intervention is appropriate where there exists a claim or defense with a question of fact or law in common with the main action—and none of the parties assert that Fall River's claims do not share a common question of fact with this Action. See *City of Chicago v. FEMA*, 660 F.3d 980, 986 (7th Cir. Ill. 2011) *citing Solid Waste Agency v. United States Army Corps of*

*Eng'rs*, 101 F.3d 503, 509 (7th Cir. Ill. 1996) (later overturned on other grounds). Finally, the Seventh Circuit has acknowledged that the bar to standing is low where a right to intervene exists under Rule 24, as to have standing, or to be "aggrieved," requires only

"(1) having suffered (or having the prospect of suffering) the kind of harm (that is, concrete and personal) that would support a suit at common law, whether or not the particular harm is one that the common law created a remedy for, provided (2) that the harm is to an interest that is protected by the statute claimed to provide the ground of relief.

*Solid Waste*, 101 F.3d at 505, *citing Air Courier Conf. v. Am. Postal Workers Union*, 498 U.S. 517, 523, 112 L. Ed. 2d 1125, 111 S. Ct. 913 (1991); *Lujan v. Nat'l Wildlife Federation*, 497 U.S. 871, 883, 111 L. Ed. 2d 695, 110 S. Ct. 3177 (1990). There is no question that the harms to Fall River's interests are protected by the CAA. Fall River has an unconditional right to intervene under the CAA, or at the very least is entitled to permissive intervention, and there is no question is satisfies the requirement for standing.

Dominion does not assert a single argument that takes aim at Fall River's statutory right to intervene in this matter. Rather, Dominion asserts the following three arguments: (1) Fall River cannot benefit from the Consent Decree because it is not a party to it; (2) the Consent Decree expressly denies rights to non-parties; and (3) the "Consent Decree does not address any opacity or monitoring claims at the Brayton Point station." (Dkt. 29, Resp. at 11, citing Consent Decree ¶ 121.)

Dominion's first two arguments are essentially duplicative of one another. In essence, Dominion takes the tautological position that Fall River may not intervene in this action because it is not already a party. Because the relief that Fall River is ultimately seeking stems from certain provisions of the Consent Decree, Dominion argues that Fall River may not seek its relief because it is not a party to that Consent Decree. Fall River concedes that as a third party, it has

no rights under the Consent Decree—which is the precise reason why Fall River has filed a Motion to Intervene in this action and a parallel Motion to Modify the Consent Decree in which Fall River asks this Court to add it as a party to that Consent Decree. Even if Dominion's arguments did have any effect on Fall River's statutory right to intervene in this action—which they do not—Dominion has failed to apprehend Fall River's procedural approach.

Dominion's third argument, which states that this Court has no subject matter jurisdiction of the claims asserted by Fall River in its Revised Proposed Complaint because the facts and claims "bear no relationship to those resolved in this case for the Brayton Point Station in Massachusetts" are also without support and should be disregarded by this Court.

Paragraph 121 of the Consent Decree actually states that

"Entry of this Consent Decree shall resolve all civil claims of the United States against Dominion that arose from any modifications commenced at any Dominion System Unit prior to the Date of Lodging of this Consent Decree..."

It is apparent from both the Complaint and the Consent Decree that this Action addresses the harms arising from Dominion's alleged violations of standards and emissions imposed by the Clean Air Act at its Brayton Point facility—the same polluting actions that the City of Fall River has asserted claims and has standing upon which to intervene under the Clean Air Act.

Dominion asserts that Fall River has no standing because the allegations in its Revised Proposed Complaint focus on certain opacity and monitoring violations that are not expressly addressed in the Consent Decree. First, Fall River explicitly states in its Complaint that it seeks to intervene in the Government's pending enforcement action with respect to the Brayton Point Station. (Dkt. 25, Mot. Ex. 1, Proposed Compl., ¶¶ 50-51.) Moreover, the Clean Air Act's intervention provision at section 304(b)(1)(B) does not require that a proposed intervenor assert identical claims. Rather, as set forth at Fed. R. Civ. P. 19(a), an intervening party who joins an

extant action must be a party who "claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." Fed. R. Civ. P. 19(a)(1)(B). In *United States v. Kerr-Mcgee Corp.*, for instance, the Court granted the Rocky Mountain Clean Air Action and the Natural Resources Defense Council's (RMCAA and NRDC) motion to intervene under the CAA where it alleged one count that mirrored the United States' complaint and a second count that asserted that the acts alleged in the first also constituted breaches of defendant's operating permits. 2008 U.S. Dist. LEXIS 24494, \* (D. Colo. Mar. 26, 2008) (the Court ultimately denied the intervenors' request that the proposed Consent Decree not be approved on several bases; the intervenors, however, were granted the right to intervene to file a response to the proposed consent decree).

Here, there is no question that the Consent Decree addresses alleged violations of Clean Air Act standards and limitations at the Brayton Point Station. There is no factual dispute that the City of Fall River, which is located less than three (3) miles from the Brayton Point Station, has and will continue to suffer actual harm as a result of emissions violations from the Brayton Point Station. Thus, the City of Fall River has a legitimate, specific, and actual interest in this action which specifically names *Brayton Point Energy, LLC* as a defendant. Whether Fall River's claims directly align with the United States' claims is not relevant or dispositive—it is enough that Fall River seeks to join the Government's action with respect to the Brayton Point Station.<sup>1</sup>

<sup>1</sup> To the extent that Dominion is taking the position that the instant Action does not actually contain claims against the Brayton Point Station, Dominion is precluded from asserting such a position under principles of estoppel and the doctrine of invited error. See *In re Marriage of Davies*, 95 Ill. 2d 474, 477 (Footnote continued on next page)

**CONCLUSION**

The City of Fall River respectfully requests that this Court grant its Motion to Intervene pursuant to 42 U.S.C. §7604(b)(1)(B) and Federal Rule of Civil Procedure 24(a)(2) and/or (b).

Dated: March 10, 2014

Respectfully submitted,

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(Ill. 1983)  *citing Henry v. Metz 382 Ill. 297, 306 (1942) (stating "parties cannot blow hot and cold in a lawsuit"). Brayton Point Station is a defendant in this Action, and the Consent Decree, agreed to both by the Government and by Dominion, disposes of the Government's claims with regard to the Brayton Point Station. It is illogical now for Dominion to assert that this Action contains no claims relating to Brayton Point Station, and Dominion is precluded from such an argument under principles of estoppel and the doctrine of invited error.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 10, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN REPLY TO DOMINION ENERGY, INC.'S OPPOSITION TO IT'S REVISED MOTION TO INTERVENE** was filed and served upon all parties that are registered or otherwise entitled to receive electronic notices via the electronic notification system pursuant to the CM/ECF procedures in this district.

/s/ Deanna R. Swits  
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I, Deanna R. Swits, an attorney, state that on March 10, 2014, the foregoing document **PLAINTIFF-INTERVENOR CITY OF FALL RIVER'S MEMORANDUM IN REPLY TO DOMINION ENERGY, INC.'S OPPOSITION TO IT'S REVISED MOTION TO INTERVENE** was served upon those listed below by enclosing copies thereof in envelopes, addressed as shown, with U.S. First Class postage prepaid.

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harm” that Fall River claims is squarely the result of its own conduct, so it cannot invoke this Court’s equitable powers and cannot meet the threshold test for injunctive relief. This memorandum focuses primarily on the public interest prong of the analysis.

The ramifications would extend far beyond this dispute if the Court were to accommodate Fall River’s request for extraordinary relief. Fall River seeks to establish a precedent that any disgruntled “beneficiary” of a consent decree can come to Court after-the-fact to complain about decisions made by the parties implementing their settlement agreement. Not only would this complicate the orderly implementation of complex and painstakingly-negotiated consent decrees, but it would unnecessarily entangle the Court in decisions that the decrees have appropriately left to the agency experts supervising the implementation. In fact, the Court need look no further than implementation of the Consent Decree *in this case* to find specific examples where third parties could potentially challenge implementation decisions by the United States Environmental Protection Agency (“EPA”). Consequently, even if Fall River had a colorable claim here (and it surely does not), the public interest will not be served by allowing strangers to consent decrees to challenge implementation decisions on grounds that those strangers are “beneficiaries” of the decree.

## I. BACKGROUND

### A. Facts

The bulk of the salient facts have already been laid out in Dominion’s other memoranda. But, there are additional facts of particular relevance to the public interest impacts of Fall River’s request for injunctive relief.

Fall River is just one of many municipalities and entities that can claim to be “beneficiaries” of the Consent Decree. Appendix A to the Consent Decree consists of seventeen single-spaced pages of requirements for ten separate categories of Environmental Mitigation

Projects (“EMPs”) in five different states. Consent Decree, App. A [Dkt. 3]. The Northeast Clean Energy and Clean Diesel Projects at issue here comprise just one of the ten categories. The Consent Decree provides that Dominion must expend \$9.75 million to fund EMPs that range from a Switcher Locomotive Idle Reduction Project at specific rail yards in Illinois and Indiana to a New England Wood Stove Changeout Project in various counties of Massachusetts, Rhode Island, and Connecticut. *Id.* Sections III, V. Even a cursory review of Appendix A reveals that numerous entities have been expressly identified as potential recipients of funds for EMPs, and other entities and citizens are clearly intended to benefit. For instance, Section VI of Appendix A provides for funding of up to \$2.5 million for acquisition and restoration of lands in the Lake Michigan watershed of Lake and Porter counties in Indiana. *Id.* Section VI, ¶ A. Likewise, Section VIII provides for up to \$750,000 in funds for energy efficiency and geothermal projects for the Central Illinois FoodBank in Springfield. *Id.* Section VIII, ¶¶ A-C.

The Consent Decree prescribes the process for Dominion’s developing and submitting proposed Project Plans to EPA for review and approval. *Id.* Section II; *see also* Consent Decree ¶ 114 [Dkt. 3] (providing additional requirements when Dominion is contributing funds to third parties for projects). But it does not require any particular project proposed by an entity to be selected or submitted to EPA. With respect to the Northeast Clean Energy and Clean Diesel Projects at issue here, the Consent Decree makes it absolutely clear that Dominion selects the projects for submittal and that projects may be submitted in the Town of Somerset, Massachusetts, Fall River, or both. *See* Consent Decree, App. A, Section XI, ¶ A (“Dominion, in consultation with the Town of Somerset and the City of Fall River (‘the municipalities’), shall submit *one or more* Project Plans to EPA for review and approval to implement (a) Energy Efficiency, Geothermal, and/or Solar Photovoltaic (‘PV’) Projects at *one or more* public school

buildings *in either or both* municipalities....”) (emphasis added). The Consent Decree further makes clear that “EPA reserves the right to disapprove any project after an analysis of its Project Plan and potential environmental impacts.” *Id.*, Section II, ¶ A. In short, there are detailed procedures, analyses, and approvals that must occur before any project is actually funded. And, if a project is not submitted or is not approved, the putative “beneficiary” of the project may disagree with the details of any of those procedures, analyses, or approvals.

In fact, although Fall River is the only entity that did not cooperate fully in the process, Fall River is not the only example of a “beneficiary” whose project has not been funded as it had hoped. EPA did not approve a substantial project submitted on behalf of the City of Hammond, Indiana, and Hammond officials have expressed their strong disagreement with EPA’s decision:

The City of Hammond proposed various restoration mitigation projects to Dominion for funding under the Lake Michigan Watershed and Indiana Dunes National Lakeshore Land Acquisition and Restoration Project pursuant to Appendix A, section II, of the Consent Decree. Dominion submitted a Hammond proposed EMP to EPA before the November 2013 deadline. EPA rejected the proposal, stating that, in its view, the proposal did not meet the requirements of the Consent Decree. Dominion, Hammond and EPA have engaged in extensive negotiations, which at times have been contentious. Representatives from Hammond’s Congressional delegates have also participated in some of these discussions. No resolution has been reached yet.

Decl. of Alice G. Prior ¶ 13 (attached as Ex. 1). EPA has also disapproved part of the proposed project submitted on behalf of the Central Illinois FoodBank that is expressly contemplated by Section VIII of Appendix A to the Consent Decree. *See id.* ¶ 14 (“Dominion submitted a FoodBank-proposed EMP to EPA before the November 2013 deadline. EPA has indicated that, in its view, various portions of the proposal do not meet the requirements of the Consent Decree and cannot be approved.”); Consent Decree, App. A, Section VIII, ¶¶ A-C. Thus, Fall River is not the only entity that – if the Court allows Fall River to proceed – could conceivably seek to

litigate and overturn decisions by EPA and Dominion. Indeed, there would be nothing to prevent the Town of Somerset from intervening to assert its interest in the Northeast Clean Energy and Clean Diesel funds that Fall River now pursues.<sup>1</sup>

**B. Fall River's Motion For TRO and/or Preliminary Injunction**

Fall River seeks an order for a preliminary injunction consisting of the following relief:

1) ordering Dominion to accept its Project Plan, 2) submit Fall River's Project Plan to the EPA for review, 3) stay EPA's approval of Dominion's previously submitted Project Plan as it relates to the Northeast Clean Energy and Clean Diesel provisions of the Consent Decree, and 4) ordering Dominion to fund the Fall River Project Plan upon review and approval by the EPA pursuant to other pertinent provisions of the Consent Decree.

Mem. in Supp. of Mot. for a TRO and/or Prelim. Inj. at 14-15 [Dkt. 16].

The requested relief goes far beyond the requirements of the Consent Decree, and it completely disregards the detailed procedures, analyses, and approvals called for under the Consent Decree. *See generally* Consent Decree, Section IX & App. A. As has been addressed in Dominion's Memorandum in Opposition to Fall River's Motion to Enforce and/or Modify, granting such relief would impermissibly amount to a re-writing of the terms agreed to by Dominion and the United States. *See, e.g., United States v. Cannons Eng'g Corp.*, 899 F.2d 79,

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<sup>1</sup> As the Court may recall, the Town of Swansea in Massachusetts also commented on the Consent Decree during the public comment period before the decree was entered. *See* Mem. In Supp. Of Mot. To Enter Consent Decree at 17-19 [Dkt. 7-1]. Swansea complained that it had not been included in the Northeast Clean Energy and Clean Diesel Projects, and asked that the Consent Decree be amended to add projects in Swansea. *Id.* at 17. The United States responded in detail, noting that Swansea and its residents were already benefitting from other commitments in the Consent Decree. *See, e.g., id.* at 18, 19 ("the parties have unquestionably secured wide-ranging and significant reductions in air pollution that benefit the health and environment of many communities (including Swansea) while avoiding the additional delays and risks associated with litigation.... [T]he Consent Decree unquestionably secures significant environmental benefits for residents of Swansea, as well as other communities downwind of the Brayton Power plant, without resort to further litigation."). Thus, the universe of potential "beneficiaries" under the Consent Decree – that is, the universe of those who could litigate on the same theory as Fall River is pursuing here – is not small.

84 (1st Cir. 1990) (court's role is not to modify consent decree or reweigh the parties' judgments in crafting a negotiated compromise). The Court must enforce a consent decree as it is written, not as a moving party wishes it were written. *See United States v. Armour & Co.*, 402 U.S. 673, 682 (1971).

## II. ARGUMENT

### A. Standard for Preliminary Injunction

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *see also Cooper v. Salazar*, 196 F.3d 809, 813 (7th Cir. 1999) ("[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.") (internal quotes and citation omitted). A preliminary injunction should only be granted where there is a clear showing of need. *Cooper*, 196 F.3d at 813; *see also Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the U.S. of Am., Inc.*, 549 F.3d 1079, 1085 (7th Cir. 2008) ("An equitable, interlocutory form of relief, a preliminary injunction is an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it.") (internal quotes and citation omitted).

For a preliminary injunction in this Circuit, the analysis "proceeds in two distinct phases: a threshold phase and a balancing phase." *Girl Scouts of Manitou Council, Inc.*, 549 F.3d at 1085-86. The moving party must show in the threshold phase that it has "[1] a reasonable likelihood of success on the merits, [2] no adequate remedy at law, and [3] irreparable harm absent the injunction." *See Planned Parenthood of Ind., Inc. v. Comm'r of the Ind. Dep't of Health*, 699 F.3d 962, 972 (7th Cir. 2012), *cert. denied*, 133 S. Ct. 2738 (2013) (citations omitted). If the court finds that the moving party has failed to demonstrate any of these three threshold requirements, then the injunction must be denied. *See Girl Scouts of Manitou Council*,

*Inc.*, 549 F.3d at 1086. If those three conditions have been met, the court proceeds to the balancing phase of the analysis where the relative harms are evaluated. *Id.* The public interest enters the analysis at the balancing phase. *Id.* And, the public interest is a critical factor: “[i]n exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Winter*, 555 U.S. at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)).

**B. Fall River is Not Likely to Succeed on the Merits**

Fall River is not likely to succeed on the merits. Consequently, it cannot pass the initial test for a preliminary injunction. As explained elsewhere, Fall River has no legal authority to modify or enforce the Consent Decree. And, even if it had the authority, the facts do not support a viable claim. *See generally* Dominion Energy, Inc.’s Memorandum in Opposition to Fall River’s Revised Motion to Intervene; Dominion Energy, Inc.’s Memorandum in Opposition to Fall River’s Motion to Enforce and/or Modify Consent Decree (both filed the same day as this Memorandum).

Under *Winter* and its Seventh Circuit progeny, the lack of merit in Fall River’s claims alone defeats its motion for preliminary injunctive relief.

**C. Fall River Is To Blame for Any Purported Harm That It Has Suffered**

To overcome its threshold burden, Fall River must also prove that it will suffer irreparable harm. But, in this Circuit, a party may not claim irreparable harm if that “harm” is the result of the party’s own dilatory conduct. *See, e.g., Original Great Am. Chocolate Chip Cookie Co. v. River Valley Cookies, Ltd.*, 970 F.2d 273, 277 (7th Cir. 1992) (“This is a wobbly footing for a finding of irreparable harm. The Cookie Company gave the Sigels an opportunity to assign the franchise back in August 1990, and again in October of that year (the suit was not brought until February 1991). They have only themselves to blame if they dallied in taking up

either offer.”). This principle applies directly and powerfully to Fall River in this case. Any “harm” from the submittal of Somerset-only projects to EPA was solely the result of Fall River’s dilatory conduct. It was Fall River that chose to “dally” in responding to the opportunity that Dominion presented to Fall River’s Mayor and other high officials. It was Fall River that chose to disregard the unambiguous project guidelines that Dominion has supplied. And it was Fall River that chose not to respond to the request for submittals until months after its deadline had passed. Thus, the purported harm to Fall River does not qualify as irreparable harm for purposes of an award of injunctive relief.

In a similar vein,<sup>2</sup> Fall River is also barred from seeking equitable relief by the well-established doctrine of unclean hands:

Today, “unclean hands” really just means that in equity as in law the plaintiff’s fault, like the defendant’s, is relevant to the question of what if any remedy the plaintiff is entitled to.... The most common formulation of the “unclean hands” doctrine in recent Illinois cases is that “one seeking equitable relief cannot take advantage of his own wrong.” ... If the plaintiff creates or contributes to the situation on which it relies, the court denies equitable relief in order to deter the wrongful conduct.

*Polk Bros., Inc. v. Forest City Enters., Inc.*, 776 F.2d 185, 193 (7th Cir. 1985) (internal citations omitted). Fall River here is at fault for its lack of responsiveness and cooperation. It may not seek equitable relief from this Court when Fall River itself “create[d] or contribute[d] to the situation on which it relies.” *Id.*

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<sup>2</sup> As shown from a recitation of the complete facts in this matter in Dominion’s Memorandum in Opposition to Fall River’s Revised Motion to Intervene, Fall River’s action is a remarkable display of chutzpah. As the Second Circuit noted, “‘Chutzpah’ as a legal term of art is analytically similar to ‘unclean hands....’” *Motorola Credit Corp. v. Uzan*, 561 F.3d 123, 128 n.5 (2d Cir. 2009).

Without threshold showings of likelihood success on the merits and of irreparable harm, Fall River cannot meet the threshold criteria for preliminary injunctive relief. Its motion must therefore be denied.

**D. The Public Interest Strongly Favors Denial of the Motion**

Notwithstanding Fall River's failure even to reach the balancing phase of the preliminary injunction test, it is important to examine the impacts on the public interest if Fall River were to prevail here. When evaluating the public interest, the court must consider the "consequences of granting or denying the injunction to non-parties." *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 12 (7th Cir. 1992); *see also Girl Scouts of Manitou Council, Inc.*, 549 F.3d at 1100 ("it is also appropriate to take into account any public interest, which includes the ramifications of granting or denying the preliminary injunction on nonparties to the litigation.").

The public interest would be implicated in at least two ways if Fall River were to obtain preliminary injunctive relief here. First, granting relief would set a precedent that would encourage disgruntled beneficiaries of consent decrees to litigate – or threaten litigation – whenever they are dissatisfied with decisions made under the decree. Second, the Town of Somerset and its schoolchildren would be directly impacted by the additional delay and potential loss of funding for projects to benefit those schools.

1. Granting Fall River's Requested Relief Would Set Bad Precedent for Implementation of Consent Decrees

While Fall River portrays its dispute here as a parochial matter with little or no impact outside its city limits, the consequences are actually quite substantial and extend far beyond Fall River's borders. To grant Fall River a preliminary injunction, the Court must hold that a non-party claiming a benefit under the Consent Decree has the authority to seek the Court's intervention in a dispute about how the parties are implementing their settlement agreement. As

noted previously, the Consent Decree in this case confers direct benefits on municipalities, non-profit entities, and residents over a five-state area. Although they are all enjoying the environmental and health benefits conferred by other requirements of the Consent Decree, they are also vying for millions of dollars in funding. It is inevitable that some parties will feel aggrieved if they receive less funding than they hoped for. And, while Fall River is the only non-party that has stepped forward to litigate the implementation at this point,<sup>3</sup> there can be no doubt that other third parties will be more willing to consider or threaten litigation if this Court were to reward Fall River for challenging the implementation of the Consent Decree in this case. As noted earlier, other beneficiaries under the Consent Decree have not received what they believe they should be entitled to, and it is conceivable that they could litigate their grievances in this Court if Fall River reaps a benefit from doing so.

Collateral litigation is detrimental to the public interest. Such litigation – as here – is completely unrelated to the claims asserted in the underlying case that was settled, and it imposes costs that were not contemplated when the case was settled. In the future, parties will understandably think twice about beneficial projects such as the EMPs at issue here if they run the risk of being haled into court by any putative “beneficiary.” Agreement to these types of environmental projects will be discouraged, and the orderly and prompt implementation of such projects will be delayed. *Cf. Pigford v. Veneman*, 292 F.3d 918, 925 (D.C. Cir. 2002) (“To hold now that the district court, through either some ‘ancillary’ authority to enforce the decree absent a violation or some ‘inherent’ authority to interpret it, may permit extensions of Track B deadlines would not only deny the Department the benefit of its bargain, but would also discourage settlements.”).

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<sup>3</sup> Presumably, other third parties have determined that the law precludes them from litigating any perceived grievances, just as Fall River should have realized.

In addition, it was never the parties' intent to entangle the Court in the minute details of the administration of the EMPs. The Consent Decree was written to place the burden expressly on the parties themselves to implement the EMPs in a timely and efficient fashion. Allowing third parties to second-guess those decisions invariably leads to delay of the substantial benefits from the EMPs, just as it has delayed implementation of the Northeast Clean Energy and Clean Diesel Projects here. The public interest is not served by encouraging third parties to litigate implementation of the EMPs.

2. Granting Fall River's Requested Relief Would Have a Negative Impact on Schools and Schoolchildren in Somerset

Granting Fall River injunctive relief will have a direct impact on Somerset. Fall River's filings have already delayed implementation of the Northeast Clean Energy and Clean Diesel Projects, thereby delaying a specific benefit that the Consent Decree was designed to provide.

Mr. Marc Furtado has verified the impacts on Somerset. He is the Public Schools Business Manager for the Somerset Public Schools and Somerset-Berkley Regional School District in Somerset. Decl. of Marc Furtado ¶ 2 (attached as Ex. 2). He explains in his declaration that Fall River's actions in this case have already caused consideration of Somerset's proposed projects to be put on hold for at least several months. *Id.* ¶ 10. Those projects are renewable energy and energy efficiency projects for schools in Somerset. According to Mr. Furtado, "[t]he proposed projects are projected to reduce utility costs by twenty percent in our schools. Utility costs are high and rising rapidly. Our costs are likely to increase substantially when our natural gas contract expires in May 2014. We had hoped the proposed projects would be completed as soon as possible to mitigate these rising costs, especially given that our school budgets are tight." *Id.*

Mr. Furtado further describes the potential impacts on the Somerset schoolchildren because of the delay in considering the projects:

The proposed projects are estimated to take between four and six months to be completed. Somerset submitted its proposed projects anticipating that much of the construction would occur over the summer when schools are on break to minimize impacts on the students. The delay increases the likelihood that construction will occur entirely during the school term. This will increase the disturbance to the students, and it is also likely to increase the duration of the construction because the schools will be occupied when the work is occurring, which likely will increase costs.

*Id.* ¶ 11.

Fall River is not likely to succeed on the merits of its claim and it will suffer no irreparable harm beyond the “harm” that it brought upon itself by its own unresponsiveness. In addition to those dispositive considerations, the public interest weighs heavily against Fall River.

### III. CONCLUSION

Fall River is not entitled to the extraordinary relief it seeks here on the facts, the law, or the equities. Moreover, granting Fall River any relief would set a bad precedent with negative ramifications for the implementation of consent decrees in this and other cases. The motion must be denied.

Respectfully submitted,

**DOMINION ENERGY, INC.**

s/Harry M. Johnson, III  
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*Counsel for Dominion Energy, Inc.*

February 26, 2014

CERTIFICATE OF COMPLIANCE PURSUANT TO LOCAL RULE 7.1(B)

Pursuant to Local Rule 7.1(B), I hereby certify that the foregoing Dominion Energy, Inc.'s Memorandum in Opposition to Motion for Temporary Restraining Order and/or Preliminary Injunction contains 3,725 words, as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, and therefore is within the word limit set by the Court.

/s Harry M. Johnson, III

Dated: February 26, 2014

CERTIFICATE OF SERVICE

Pursuant to Local Rule 5.3, I hereby certify that on February 26, 2014, the foregoing Dominion Energy, Inc.'s Memorandum in Opposition to Motion for Temporary Restraining Order and/or Preliminary Injunction was served electronically upon all parties that are registered or otherwise entitled to receive electronic notices via the Court's CM/ECF system. The foregoing was also served upon those listed below via email.

Steven Viggiani, Esquire  
Senior Enforcement Counsel, Region 1  
U.S. Environmental Protection Agency  
Mail Code OESO4-3  
5 Post Office Square, Suite 100.  
Boston, MA 02109-3912

Seema Kakade, Esquire  
Attorney-Advisor  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Mail Code 2242A  
Washington, D.C. 20460

/s Harry M. Johnson, III

**EXHIBIT 1**  
**TO**  
**DOMINION ENERGY, INC.'S**  
**MEMORANDUM IN**  
**OPPOSITION TO**  
**MOTION FOR TEMPORARY**  
**RESTRAINING ORDER AND/OR**  
**PRELIMINARY INJUNCTION**



4. As the Environmental Projects Advisor I have been and continue to be responsible for overseeing the development of all of the EMPs and their implementation once they are approved by EPA. The Dominion's Environmental Mitigation Projects: Plan Proposal Guidelines list me as the Dominion contact person to whom proposed projects plans were to be submitted. The Guidelines explained the criteria in the Consent Decree for projects to qualify for potential funding, and was designed to assist the municipalities with a roadmap for developing a proposed plan. The Guidelines are attached as Attachment A. The Guidelines included a deadline of August 1, 2013 for submitting projects to Dominion.

5. In this role I also served as the primary coordinator between Dominion and the applicants seeking funding of an EMP under the Consent Decree. I provided feedback to applicants on their proposed plans with suggestions for revisions to make sure they conformed to the requirements of the Consent Decree. I also coordinated with EPA on its comments to the proposed plans Dominion had submitted to it.

6. On August 1, 2013, the Somerset Public Schools submitted three project plans by e-mail to Kevin Hennessy who is DRS's Director of Federal, State, and Local Affairs. Mr. Hennessy forwarded that e-mail with the attached plans to me on the same day. E-mail and proposal are attached as Attachment B.

7. On August 20, 2013, because of its size the Somerset Public Schools sent by overnight mail a more fully developed version of Somerset's proposed project plans to both Mr. Hennessy and me. The August 20, 2013 letter with proposal is attached as Attachment C.

8. Dominion submitted the final proposed Northeast Clean Energy EMP to EPA on November 5, 2013, which is attached as Attachment D.

9. Between August 20 and November 5, Marc Furtado, the Business Manager for the Somerset Public Schools, and I were in frequent contact about Somerset's proposed projects as we worked on preparing them for inclusion in the Plan submitted to EPA. We were also in frequent contact after receiving comments from EPA. The e-mail correspondence is attached as Attachment E. Mr. Furtado and the Somerset Public Schools District were very responsive and promptly provided Dominion any information requested. We discontinued our communication about the proposed Northeast Clean Energy EMP upon being told that Dominion had agreed in this litigation not to work any more on the EMP until this matter was resolved.

10. Throughout this time various other organizations, municipalities and governmental agencies submitted proposed plans for EMPs that resulted in Dominion submitting a total of ten proposed EMPs to EPA by the November deadline. The project proposals covered five separate states.

11. Fall River did not send a proposed EMP to me by the August 1, 2013, deadline in the Guidelines and, in fact, I was never contacted by Fall River about developing or submitting a proposed project plan.

12. At this time EPA has approved seven of the ten EMPs that Dominion submitted to EPA in November 2013. Three proposed EMPs remain outstanding: the Somerset project, which is on hold due to this litigation; a proposed project for the City of Hammond, Indiana, the city in which the State Line Power Station was located; and a proposed project for the Central Illinois FoodBank, in Springfield, Illinois.

13. The City of Hammond proposed various restoration mitigation projects to Dominion for funding under the Lake Michigan Watershed and Indiana Dunes National Lakeshore Land Acquisition and Restoration Project pursuant to Appendix A, section II, of the

Consent Decree. Dominion submitted a Hammond proposed EMP to EPA before the November 2013 deadline. EPA rejected the proposal, stating that, in its view, the proposal did not meet the requirements of the Consent Decree. Dominion, Hammond and EPA have engaged in extensive negotiations, which at times have been contentious. Representatives from Hammond's Congressional delegates have also participated in some of these discussions. No resolution has been reached yet.

14. The FoodBank proposed an EMP plan to Dominion for funding under the Energy Efficiency and Geothermal Projects for the Central Illinois FoodBank pursuant to Appendix A, section VIII, of the Consent Decree. This EMP under Appendix A, section VIII, of the Consent Decree requires the expenditure of \$750,000 at the new FoodBank facility in Springfield, Illinois. Dominion submitted a FoodBank-proposed EMP to EPA before the November 2013 deadline. EPA has indicated that, in its view, various portions of the proposal do not meet the requirements of the Consent Decree and cannot be approved. Dominion, the FoodBank and EPA continue to work on this proposed EMP, but it is possible the FoodBank will not receive the entire \$750,000 under Appendix A, section VIII, of the Consent Decree.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26<sup>th</sup> day of February, 2014.

  
\_\_\_\_\_  
Alice G. Prior

**EXHIBIT 2**  
**TO**  
**DOMINION ENERGY, INC.'S**  
**MEMORANDUM IN**  
**OPPOSITION TO**  
**MOTION FOR TEMPORARY**  
**RESTRAINING ORDER AND/OR**  
**PRELIMINARY INJUNCTION**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Proposed Plaintiff-Intervenor,	)	
	)	Civil Action No. 3:13-cv-03086
v.	)	(SEM)(SMJ)
	)	
DOMINION ENERGY, INC., BRAYTON	)	
POINT ENERGY, LLC, AND KINCAID	)	
GENERATION, LLC., AND EQUIPOWER	)	
RESOURCES CORP.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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**DECLARATION OF MARC FURTADO**

I, Marc Furtado, being first and duly sworn depose and say the following, based upon my own personal knowledge and belief:

1. I am over the age of 18 and am competent to make this declaration.
2. I am the Public Schools Business Manager for the Somerset Public Schools and Somerset-Berkley Regional School District in Somerset, Massachusetts ("Somerset").
3. On July 11, 2013, I met with two representatives of Dominion Energy, Inc. ("Dominion") to discuss the potential for Dominion's funding a solar photovoltaic ("PV") or geothermal project pursuant to the terms of a consent decree that Dominion had reached with the United States. The Dominion representatives were Kevin Hennessy, Director of Federal State & Local Affairs, Dominion Resources Services, Inc. and James Smith of Smith, Ruddock & Hayes.

4. Mr. Hennessy and Mr. Smith told me that they had just come directly from a similar meeting with representatives of the City of Fall River.

5. At the July 11, 2013 meeting, Mr. Hennessy and Mr. Smith provided me with Environmental Mitigation Projects: Plan Proposal Guidelines ("Guidelines") and with the Consent Decree. The Guidelines are attached as Attachment A.

6. Mr. Hennessy told me that Dominion was required to submit proposed projects to the United States EPA that satisfied the terms of the Consent Decree in the total amount of \$1.6 million for PV or geothermal projects at local schools. The projects could come from either Somerset or Fall River, or from both. He made clear that Dominion could not guarantee funding for any submitted projects. It was clearly understood that funding for the projects could range from no funding to the entire settlement money. For this reason, we were careful in Somerset to act promptly, to follow the Guidelines, and to submit several projects in an amount exceeding \$1.6 million.

7. On July 19, 2013, I received an email from Mr. Hennessy following up after the meeting to make sure that I did not have any questions about the implementation plan for the project. I promptly responded with an update on our progress in Somerset.

8. On August 1, 2013, by the deadline required under the Guidelines, Richard W. Madeiros, Superintendent of Somerset Public Schools, submitted three proposed projects to Dominion. [Transmittal Memorandum from Mr. Richard W. Madeiros to Mr. Kevin Hennessy attached as Attachment B].

9. During the first few weeks of August 2013, Somerset revised its initial proposal to provide additional technical detail and propose additional projects. On August 20, 2013,

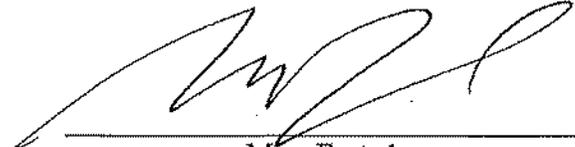
submitted Somerset's final proposal to Dominion in accordance with the Guidelines. I kept in touch with Dominion afterwards to make sure our proposed projects were satisfactory.

10. Dominion recently advised me that, as a result of Fall River's actions in this case, all action on our proposed projects is on hold for at least several months. This delay will have an impact on Somerset. Assuming that some of our projects would be approved by EPA, we had hoped that we could begin implementing those projects as soon as possible. The proposed projects are projected to reduce utility costs by twenty percent in our schools. Utility costs are high and rising rapidly. Our costs are likely to increase substantially when our natural gas contract expires in May 2014. We had hoped the proposed projects would be completed as soon as possible to mitigate these rising costs, especially given that our school budgets are tight.

11. The delay will have a further impact on Somerset's schools. The proposed projects are estimated to take between four and six months to be completed. Somerset submitted its proposed projects anticipating that much of the construction would occur over the summer when schools are on break to minimize impacts on the students. The delay increases the likelihood that construction will occur entirely during the school term. This will increase the disturbance to the students, and it is also likely to increase the duration of the construction because the schools will be occupied when the work is occurring, which likely will increase costs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21<sup>st</sup> day of February, 2014.

  
\_\_\_\_\_  
Marc Furtado

**ATTACHMENT A**

Dominion Energy, Inc.  
Environmental Mitigation Projects: Plan Proposal Guidelines  
(June 24, 2013)

**Environmental Mitigation Project: Northeast Clean Energy and Clean Diesel Projects**

**I. Overview**

Pursuant to a federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (civil action no. 13-cv-3806) (C.D. Ill. Lodged, Apr. 2, 2013) ("Consent Decree") (attached),<sup>1</sup> Dominion Energy, Inc. ("DEI") has agreed to fund various Environmental Mitigation Projects as provided in Appendix A to the Consent Decree. Within 120 days of the entry of the Consent Decree, DEI is required to submit Project Plans to the U.S. Environmental Protection Agency ("USEPA") for its approval prior to the projects being implemented. DEI is permitted under the Consent Decree to contribute Project Dollar funds to another entity to carry out a project in lieu of DEI. The requirements for doing so are spelled out in the Consent Decree and Appendix A.

Appendix A, section XI, is entitled the Northeast Clean Energy and Clean Diesel Projects and is directed towards the implementation of projects in the Town of Somerset and the City of Fall River, Massachusetts. Section XI provides for the funding of various types of projects grouped in two categories: clean energy projects and clean diesel projects. DEI will fund \$1,600,000 in Project Dollars for "Energy Efficiency, Geothermal, PV, and/or Clean Diesel Retrofit and Repower Projects" as those projects are described in Appendix A, section XI. DEI may fund one or more projects, so it is encouraged to submit plans for projects that can be approved in whole or part based on the availability of Project Dollars. It is expected that approximately half of the total Project Dollars will be spent in Somerset. App. A, section XI.B.

Project Plans for the Northeast Clean Energy and Clean Diesel Projects must provide for expending the Project Dollars within three years of the entry of the Consent Decree.

DEI is asking for the submission of proposed project plans **by August 1, 2013**, for DEI's consideration in determining which Project Plans to provide to USEPA for approval and eventual implementation, if approved, by the Town of Somerset and/or the City of Fall River. This document outlines what must be included in a proposed Project Plan. In addition to relying on this document, the Town and City should also review the relevant portions of the Consent Decree.

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<sup>1</sup> The United States soon will move to enter the Consent Decree, which will then take effect when the Court enters it.

## **II. General Project Plan Elements**

According to the Consent Decree all Project Plans must include the following:

1. A plan for implementing the Project. (App. A, II.D)
2. A summary-level budget for the Project. (App. A, II.D)
3. A timeline for implementation of the Project. (App. A, II.D) The timeline shall include a schedule for completing and funding each portion of the project. As noted above, the Projects are to be completed within three years. The schedule shall provide for periodic reporting as set forth in section III below.
4. A description of the anticipated environmental benefits of the Project, including an estimate of emission reductions (e.g., SO<sub>2</sub>, NO<sub>x</sub>, PM, mercury, CO<sub>2</sub>) expected to be realized. (App. A, II.D)
5. The entity seeking funding and submitting a plan for consideration must also provide a written statement (a) identifying its legal authority for accepting such funding and (b) identifying its legal authority to conduct the Project. (CD, para. 114)

## **III. Periodic and Final Reporting Requirements**

The Consent Decree requires that DEI submit periodic reports to USEPA within 60 days after the end of each half of the calendar year (January through June and July through December) (CD, para. 122) and a final report within 60 days of completing a project (App. A, II.G).

Regarding the mitigation projects, periodic reports must include "a summary of actions implemented and expenditures made pursuant to implementation of the Environmental Mitigation Projects" required in the Consent Decree and Appendix A. (CD, para. 122.h; see also App. A, II.F)

Accordingly, in order for DEI to meet these Consent Decree requirements, Project Plans must provide in the schedule for the submission of periodic reports to DEI within 30 days after the end of each half of the calendar year until completion of the project. The schedule must also provide for the submission of a final report within 30 days of completion of the Project. The Final Report shall document:

1. The date the Project was completed.
2. The results of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved.
3. The Project Dollars incurred in implementing the Project.

#### **IV. Plan Specific Elements for Clean Energy Projects**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a Clean Energy Project to implement "Energy Efficiency, Geothermal, and/or Solar Photovoltaic ('PV') Projects at one or more public school buildings in either or both municipalities." App. A, XI.A. The proposed Clean Energy Projects "may include the installation of centrally-monitored digital controls and timers for heating/cooling systems in school buildings in either or both municipalities ('Energy Efficiency Project'). The proposed Projects may also include the installation of a geothermal heating and/or cooling system ('Geothermal Project'), and/or a solar photovoltaic project consisting of electricity-generating solar panels ('PV Project') for public school buildings in either or both municipalities." App. A, XI.A.

Appendix A sets forth general Project Plan requirements for Clean Energy Projects, and identifies additional Clean Energy Plan requirements for Geothermal and PV Projects. The additional requirements are set forth in subsections below. The following are the general plan requirements that must be included in any type of proposed Clean Energy Project Plan that seeks funding as an Energy Efficiency, Geothermal, or PV Project:

1. Identification of the specific proposed Project(s) to be implemented;
2. Implementation timelines and expected completion dates for each Project;
3. Description of each proposed Project's system design;
4. Identification of any project designers, contractors, or other third parties with whom the municipality's school system will contract or partner with to implement the Project(s), and a list of any relevant accreditations or certifications held by such contractors, designers or parties; and
5. Description of the schedule and the budgetary increments needed to provide the necessary funding by DEI to the municipality's school system or its project designers/contractors to implement the Project.

Appendix A, Section X.I.

##### **A. Geothermal Project: Additional Specific Plan Elements**

The Plan for a Geothermal Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Describe the proposed geothermal system design (e.g., a closed loop design with either horizontal or vertical loop well fields, a standing column well, or station surface sources). The Project shall be limited to serving space heating and cooling building loads, with the option to add a desuperheater to the project to serve hot water loads when practical.
2. Provide for the purchase and installation of a geothermal heat pump system that utilizes the earth as a heat source in the winter and a heat sink in the summer to reduce energy consumption. The system shall include the equipment necessary to support the installation and operation of a geothermal heat pump, including the exterior building components (e.g., well field holes, subsurface piping, and circulation pumps), the heat pump unit (evaporator and condenser, compressor, expansion valve and refrigerant) and any internal building components (e.g., HVAC distribution system and ductwork) necessary for the proper operation of the new system. Heat pumps should be Air-Conditioning, Heating and Refrigeration Institute (AHRI) and Energy Star rated. Heat pumps should meet the minimum EER and COP ratings required by Energy Star at the time the heat pumps are installed.
3. System Application and Design: The Plan shall provide that, prior to the design modeling of the system and production loop installation, the contractor/project designer conduct an in-situ formation thermal conductivity test for ambient deep earth temperature, thermal conductivity, and thermal diffusivity, for a minimum of 40 hours to assess the subsurface soil conditions. The Plan shall provide that the contract with the contractor/project designer shall require that the designer provide the building owner with copies of the related site drilling logs, soil sample documentation and in-situ thermal conductivity analyses. The Plan shall also provide that the contract with the contractor/project designer shall require that the designer employ quality assurance measures to prevent "short looping" of well field bore holes during the drilling process.
4. Provide for the installation of monitoring equipment to allow facility managers and staff to monitor the operation and performance of the system.
5. Provide for system commissioning and performance optimization within the first year of system operation.
6. Provide for the restoration of the project site, particularly the well field to its original or near-original condition.
7. Provide for the installation of onsite monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor the operation and performance of the

geothermal system.

8. Identify the contractor/project designer(s) and/or other third parties with whom the Town or City will contract or partner with to implement the Project, and list any relevant accreditations or certifications held by such contractor/designer(s) or parties. The Plan shall provide that the Project's design, installation and system commissioning will be performed by International Ground Source Heat Pump Association (IGSHPA) professionals or by other professionals certified by geothermal manufacturers to design and/or install the manufacturers' systems. The Plan shall also provide that best efforts will be made to select project designers and installers (including engineers, architects, and bore hole drillers) with experience on at least three successful geothermal projects.
9. End-user Documentation and Training Requirements: The Plan shall provide that the developer/contractor will provide the Town/City with:
  - System design drawings including a map detailing the subsurface location of well field bore holes;
  - Copies of permits and inspections demonstrating compliance with local codes;
  - Copies of the drilling logs, soil sample documentation and in-situ thermal conductivity analysis;
  - Copies of simulated design and financial performance (energy and cost saving) analyses of the system;
  - System documentation including, system maintenance and operational requirements, component manuals, operation manuals and warranty information; and
  - In-person, on-site, system operation user training.
10. Maintenance: The Project Plan may request Project Dollars for funding the establishment of an escrow account to maintain and/or replace the heat pump unit or other elements of the system, or for the funding or pre-payment for an extended warranty or service contract for such maintenance/replacement.

**B. PV Project: Additional Plan Elements**

The Plan for a PV Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Provide for the installation of solar panels with unobstructed solar access, producing electricity not to exceed the total annual electricity base load of the building the project serves.
2. Provide for a grid-tied inverter, appropriately sized for the capacity of the solar panels installed at the location.
3. Provide for the appropriate solar panel mounting equipment for the particular school.
4. Provide for wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid.
5. Provide for appropriate monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor various aspects of the system, e.g., the total and hourly energy output of the system (kilowatt hours), environmental benefits delivered (pounds CO<sub>2</sub> avoided), hourly ambient temperature and cell temperature (C<sup>o</sup>), irradiance (W/M<sup>2</sup>), as well as time sensitive voltage, power and current metrics.
6. Provide for the installation of the system on the customer side of the meter with ownership of the system being by the Somerset Public School system or Fall River Public School System, as appropriate. The Plan shall also provide that all related environmental benefits will be retained by the system owner, including associated renewable energy certificates.
7. Provide, to the extent practicable, that North American Board of Certified Energy Practitioners (NACEP) certified energy professionals perform the installation of the PV Projects to ensure the highest quality installation and performance of the system.
8. Provide for the inclusion of manufacturer parts warranties for major system components, specifically, a minimum 25 year warranty for the solar panels (modules) and a minimum 10 year warranty for the inverter(s).
9. Provide for the establishment of an escrow account with funding from Project Dollars sufficient to support one or more service contracts (or their equivalent) to ensure the ongoing maintenance and performance of the PV

system consistent with established industry practice for no less than 25 years, including annual system checkups, annual solar panel (module) cleaning, expected inverter replacements, and remote system monitoring.

#### **V. Clean Diesel Retrofit and Repower Projects: Plan Specific Elements**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a "Clean Diesel Retrofit and Repower Project" to retrofit or repower higher-polluting diesel engines in either or both the municipalities (the Town of Somerset and the City of Fall River). These Projects would include the "retrofit or repower of eligible diesel engines on diesel-powered municipal construction or public works vehicles or equipment owned or operated on a long-term basis by either or both municipalities in order to reduce diesel pollutant emissions." App. A, XI.A.

In addition to the general Project Plan requirements identified above in sections II and III, proposed Clean Diesel Retrofit and Repower Project Plans shall include the following:

1. For diesel engine retrofits, a plan element to use exhaust control technologies verified either by EPA or by the California Air Resources Board (CARB);
2. For diesel engine retrofits, a plan element to purchase and install EPA or CARB-verified diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs) on diesel-powered municipal construction or public works vehicles or equipment. A list of EPA-verified retrofit technologies can be found at <http://epa.gov/cleandiesel/verification/verif-list.htm>; a list of CARB-verified technologies can be found at [www.arb.ca.gov/diesel/verdev/vt/cvt.htm](http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm).
3. If the Project includes DPF retrofits, the plan must provide for the purchase of DPF service equipment required for proper DPF maintenance.
4. For diesel engine repowering, the plan must provide for the use of technologies certified by EPA or by CARB if available.
5. For diesel engine repowering, the plan must provide for the use of new engine configurations certified to emission standards. Information on engine certification can be found at [www.epa.gov/otaq/certdata.htm](http://www.epa.gov/otaq/certdata.htm).
6. In determining which vehicles or equipment to retrofit or repower under the Clean Diesel Retrofit and Repower Project, priority should be given to older, higher-polluting vehicles and equipment that have high annual usage rates and/or vehicle miles travelled, so that the pollution reductions obtained from the Project will be maximized.

**VI. Submission of Proposed Project Plans; Inquiries**

Proposed Project Plans are to be submitted by August 1, 2013, to Alice Pryor, Environmental Projects Manager, Dominion Resources Services, Inc. at [alice.g.pryor@dom.com](mailto:alice.g.pryor@dom.com).

**ATTACHMENT B**



## Somerset Public Schools

580 Whetstone Hill Road  
Somerset, Massachusetts 02726-3100  
Telephone (508) 324-3100

### MEMORANDUM

TO: Mr. Kevin Hennessy

FROM: Mr. Richard W. Medeiros *RWM*

DATE: August 1, 2013

RE: Dominion Energy/Somerset Projects

Please be informed that I am submitting three Project Plans for the Somerset Public Schools. Each plan contains a plan, summary-level budget, timeline, and a description of the anticipated environmental benefits.

We are very excited about this wonderful opportunity for our schools and community. If you have any questions or need additional information, please contact me or my Director of Facilities, Carlos Campos at 508-324-3113. Thank you.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )

Plaintiff, )

and )

THE CITY OF FALL RIVER, )

Proposed Plaintiff-Intervenor, )

v. )

DOMINION ENERGY, INC., BRAYTON )

POINT ENERGY, LLC, KINCAID )

GENERATION, LLC., AND EQUIPOWER )

RESOURCES CORP., )

Defendants. )

Civil Action No. 3:13-cv-03086-SEM-SMJ

**DOMINION ENERGY, INC.'S MEMORANDUM IN OPPOSITION TO  
CITY OF FALL RIVER'S REVISED MOTION TO INTERVENE**

As discussed in the three oppositions that Dominion Energy, Inc. ("Dominion") respectfully submits today, there are fundamental legal principles that compel this Court's denial of all three motions filed by the City of Fall River ("Fall River"):

- The Supreme Court has admonished that "a consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it even though they were intended to be benefited by it." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 750 (1975) (citations and footnotes omitted).
- The Consent Decree [Dkt. 3] explicitly provides that non-parties like Fall River have no rights under the Consent Decree.
- This Court lacks subject matter jurisdiction over the claims Fall River seeks to assert in its Revised Proposed Complaint, because these claims bear no relationship to those resolved in this case for the Brayton Point Station in Massachusetts.

There are also factual reasons for denying the motions. First, even if the facts are as portrayed in Fall River's filings and the affidavit of the City's Assistant Corporation Counsel, Ms. Christy DiOrio – and they most certainly are not – these facts show that (1) Dominion “consulted” with Fall River, which is all that the Consent Decree requires; and, more importantly, (2) Fall River's response to Dominion's consultation was so woefully inadequate that Dominion reasonably concluded Fall River had chosen not to propose projects for consideration as Environmental Mitigation Projects (“EMPs”) under the Consent Decree. Second, the facts as portrayed by Fall River and its counsel are not accurate – they are at best incomplete; at worst, some of them are false. The facts, when considered in their entirety, show even more unequivocally that Dominion “bent over backwards” to solicit a proposal from Fall River, and that Fall River was unresponsive and uncooperative.

With respect to Fall River's Revised Motion to Intervene [Dkt. 25], neither the law nor the facts support Fall River's intervention of right or permissively. The motion must be denied.

## I. BACKGROUND

### A. Facts

The legal flaws in Fall River's motions are so fundamental that this Court should deny the motions solely on the basis of the law, regardless of facts. But, Fall River has painted such a grossly misleading picture of the facts in this matter that Dominion must set the record straight. In addition, the factual backdrop is useful to put the Revised Motion to Intervene into proper context.

1. Even as Described by Fall River, the Facts Demonstrate that Dominion Complied with its Obligations Under the Consent Decree to “Consult” with Fall River and that Fall River's Response to Dominion's Consultation was Woefully Inadequate.

The salient facts, as portrayed in Fall River's own filings, are based primarily on the affidavit of Ms. DiOrio:

a. On July 11, 2013, Dominion representatives (Kevin Hennessy and Jim Smith) met with Fall River officials – the City’s Mayor, Corporation Counsel, and Administrator, as well as others – and gave them Dominion’s Guidelines for submitting proposed projects for consideration as EMPs under the Consent Decree, and the Consent Decree as lodged in this Court. Affidavit of Christy M. DiOrio ¶¶ 2-3 [Dkt. 14-1] (“DiOrio Aff.”). The Guidelines required submittal of any such proposed projects by August 1, 2013. *Id.* ¶ 6.

b. Dominion did not advise Fall River when this Court entered the Consent Decree. *Id.* ¶¶ 4-5.

c. Fall River missed the August 1, 2013 deadline, and Fall River did not receive “any correspondence *from* Dominion’s representatives regarding” the missed deadline. *Id.* ¶ 6 (emphasis added).

d. “On or about September 3, 2013,” the Mayor (finally, about seven weeks after the July 11 meeting and one month after the missed August 1 deadline) “instructed Corporation Counsel to prepare a proposed Project Plan in accordance with the terms of the Consent Decree,” a task that the Corporation Counsel quickly assigned to her Assistant Corporation Counsel, Ms. Diorio. *Id.* ¶ 7.

e. It was only then that Ms. DiOrio and other Fall River staff reviewed the terms of the Consent Decree and “recognized that [the City] needed additional time to formulate a Project Plan that would conform to the narrow scope of the consent decree.” *Id.* ¶ 8.

f. Ms. DiOrio requested additional time by sending an e-mail to Mr. Smith, who – she claims – “confirmed that the City had additional time to complete the Project Plan and no new deadline was provided or established.” *Id.* ¶ 9.<sup>1</sup>

g. Sometime thereafter, Fall River hired an independent third-party contractor to develop a plan for the City. *Id.* ¶ 10.

h. Yet, Fall River did not submit a Project Plan until December 18, 2013, the day after reading a newspaper article reporting that Dominion had submitted Somerset’s proposed projects to EPA. *Id.* ¶¶ 12-13, 17.

i. Mr. Smith told Ms. DiOrio that his relationship with Dominion had terminated on September 1, 2013, after Dominion sold the Brayton Point Station to EquiPower Resources Corp. No one had advised the City of that fact before December 17, 2013. *Id.* ¶¶ 14, 19.

j. No other representative of Dominion “ever contacted City officials after Mr. Smith’s termination to discuss a deadline or advise the City” about Dominion’s submittal to EPA. Nor did Dominion “inquire with Fall River as to the progress it was making with its proposed Project Plan.” *Id.* ¶ 20.

It is astounding that Fall River believes these facts make its case. Fall River received a copy of the Consent Decree. Under the Consent Decree, it is clear that Dominion is responsible for the relevant EMPs and was required to “consult” with the cities of Somerset and Fall River. Consent Decree, App. A, Section XI, ¶ A. Once that consultation had taken place, Dominion could submit projects from either or both municipalities. *See id.* (Dominion required to “submit *one or more* Project Plans to EPA for review and approval to implement (a) Energy Efficiency,

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<sup>1</sup> As noted below, Mr. Smith strongly disputes this characterization of the communications between him and Ms. DiOrio.

Geothermal, and/or Solar Photovoltaic (“PV”) Projects at *one or more* public school buildings *in either or both* municipalities....”) (emphasis added). To discharge its duty under the Consent Decree, Dominion prepared project Guidelines and provided them to Fall River and Somerset. Dominion further explained the Guidelines in meetings with each municipality and offered to provide any additional assistance needed. The Guidelines set a deadline of August 1, 2013, for submittal by the project proponents, and made clear that Dominion would have to review the submittals from the proposing entities and ultimately would select project plans to submit to EPA for approval and eventual implementation “by the Town of Somerset *and/or* the City of Fall River.” Guidelines at 1 (emphasis added) (attached as Ex. 1).

As Ms. DiOrio freely acknowledges, however, Fall River not only failed to meet the August 1 deadline, it did not make even a token effort to meet the deadline. In fact, Fall River did not consider putting a plan together until early September 2013 – about seven weeks after the July 11 meeting and one month after the missed August 1 deadline. It was only then that Fall River finally reviewed the Consent Decree (and, presumably, the Guidelines) and realized that it might need “additional time to formulate a plan that would conform to the narrow scope of the Consent Decree.” *See* DiOrio Aff. ¶¶ 6-8. Ms. DiOrio admits that Fall River did not bother to contact Dominion about the missed deadline at any time in August. Rather, ignoring the numerous times Dominion had reached out to her superiors, she faults *Dominion* for not continuing to prod Fall River. *Id.* ¶ 6.

Ms. DiOrio claims that when Fall River finally started reviewing the critical documents in early September, she contacted Mr. Smith to ask for more time and that no specific deadline was established. *Id.* ¶ 9. Yet, the next time she attempted to contact Dominion and submit a plan was December 17-18, 2013, more than three and a half months after she purportedly

received an unspecified “extension.” *Id.* ¶¶ 12-13, 17. Ms. DiOrio does not attempt to explain why, even if she believed Fall River had obtained an “extension” in early September, Fall River was completely silent for more than three months after that, despite having already missed the initial deadline of August 1, 2013. She admits that Fall River never provided any update on its progress or a likely submittal date – however late – at any time in September, October, November, and more than half of December. Instead, incredibly, Ms. DiOrio appears to fault *Dominion* for failing to “inquire with Fall River as to the progress it was making with its Proposed Project Plan.” *Id.* ¶ 20.

In an effort to excuse its utter failure to follow *Dominion*’s Guidelines (which were prepared to enable *Dominion* to discharge its obligations to review the proposals and submit timely plans to EPA conforming to the Consent Decree) and to justify its silence for so many months, Fall River points to the fact that Mr. Smith was no longer under a formal retainer with *Dominion*<sup>2</sup> after September 1. But, Fall River never explains why that fact would make any difference. It obviously did not influence Fall River’s behavior because Fall River did not contact Mr. Smith, nor anyone else representing *Dominion*, for three-and-a-half months thereafter. And when Fall River finally did contact Mr. Smith in mid-December, he immediately reported to *Dominion*.<sup>3</sup>

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<sup>2</sup> As noted below, neither *Dominion* nor Mr. Smith deny that he continued to represent *Dominion* on this specific issue after September 1.

<sup>3</sup> Fall River also ascribes great importance to the fact that *Dominion* did not notify Fall River when the Consent Decree was entered and when *Dominion* was required to submit EMPs to EPA under the Consent Decree. But this claim rings hollow, especially given that two lawyers (the City’s chief counsel and her assistant) were responsible for Fall River’s effort. Those lawyers had the case caption and number of the Consent Decree. It would have been easy for them to check the docket to determine the status. And, in any event, the Consent Decree did not establish a deadline for Fall River to submit any proposal to *Dominion*. Rather, the Consent Decree established *Dominion*’s deadline. Consent Decree, App., Section II, ¶ A. *Dominion* distributed the Guidelines to enable it to obtain the information necessary to complete its review

In short, even as laid out by Fall River, the facts demonstrate that Dominion consulted with Fall River by meeting with it and providing it with detailed guidelines for submitting project proposals. Nevertheless, Fall River (1) failed to meet the deadline for submitting projects; (2) failed to contact Dominion about the missed deadline; (3) did not even start evaluating potential projects until more than a month after the deadline; and (4) failed to contact Dominion about anything – the status of the effort or a proposed submittal date, however late – for an additional three-and-a-half months after finally responding to Dominion’s repeated overtures. Under these circumstances, Dominion reasonably concluded that Fall River had elected not to submit a plan, and reasonably proceeded to meet its own requirements under the Consent Decree.

2. The Facts, When Considered In Their Entirety, Show Even More Unequivocally That Dominion “Bent Over Backwards” To Solicit A Proposal From Fall River, And That Fall River Was Unresponsive.

The facts are *not* as described by Fall River. Fall River’s rendition is incomplete and, at times, false. A full rendition of the facts demonstrates that Fall River was the uncooperative party here.

For instance, Fall River states: “There is no correspondence, including email or regular mail that indicates that Dominion attempted to contact Fall River after July 11, 2013.” Fall River’s Mem. in Supp. of Mot. for a TRO and/or Prelim. Inj. at 4 [Dkt. 16]. That statement is both false and misleading. It is false because Mr. Hennessy, one of Dominion’s representatives at the July 11 meeting, sent an email to Fall River the next week in which he “checked in to ‘make sure your implementation plan for the projects is going well and make myself available if you have any questions.’” Decl. of Kevin R. Hennessy ¶ 9 (“Hennessy Decl.”) (attached as Ex.

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in sufficient time to meet its deadline to submit EMPs to EPA. Fall River had those Guidelines yet chose to ignore them.

2). No one from Fall River responded, however.<sup>4</sup> *Id.* Fall River's statement is also misleading because it cleverly focuses on written communication ("email or regular mail") and does not acknowledge Dominion's frequent oral overtures to Fall River, at the highest level. Specifically, when Dominion timely received Somerset's proposal on August 1, but heard nothing from Fall River, Mr. Hennessy contacted Mr. Smith and asked him to inquire. *Id.* ¶ 12; Decl. of James E. Smith ¶ 7 ("Smith Decl.") (attached as Ex. 3). Mr. Smith did so and spoke to the Mayor himself, who said that he had assigned the matter to the Corporation Counsel (Ms. Sousa), and a proposal would be submitted within a few days.<sup>5</sup> Hennessy Decl. ¶ 12; Smith Decl. ¶ 7. When no information was forthcoming from Ms. Sousa by August 5, Mr. Hennessy again contacted Mr. Smith and asked that he be advised immediately when Mr. Smith heard from her. Hennessy Decl. ¶ 13; Smith Decl. ¶ 8.

By the end of August, almost an entire month after the Mayor's statement that Ms. Sousa would call Mr. Smith, he (and Dominion) had heard nothing. Once again, Dominion initiated the contact, trying to prod Fall River into proposing projects for the benefit of the City. On August 28, 2013, Mr. Smith again called the Mayor and reported to Mr. Hennessy "that the Mayor said 'he would make sure that she [Sousa] called me back today.'" Hennessy Decl. ¶ 13; Smith Decl. ¶ 8. Mr. Smith further advised that he had two phone calls in to Ms. Sousa. She did not call back that day or that week. *Id.*

Finally, Ms. DiOrio made contact on September 3 and 5. As Ms. DiOrio candidly admits, Fall River had apparently not lifted a finger on a proposal to Dominion seven weeks after

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<sup>4</sup> By contrast, Somerset immediately responded with an update on its progress when Mr. Hennessy sent a similar e-mail to Somerset on the same day. Hennessy Decl. ¶ 10.

<sup>5</sup> It is telling (and disturbing) that neither Ms. DiOrio nor anyone else on behalf of Fall River included any reference to this, or any other oral contact between Mr. Smith and the Mayor, in Fall River's filings.

the July 11 meeting and one month after the August 1 deadline. DiOrio Aff. ¶ 7. The first thing she asked for was a copy of Somerset's proposal to use as a "template." Smith Decl. ¶¶ 10, 11. Although Mr. Smith no longer had a formal retainer with Dominion after September 1, he continued on this matter. He stayed in touch with Mr. Hennessy, and he reported to Dominion on every contact from or with Fall River. Smith Decl. ¶ 9; Hennessy Decl. ¶ 14. Accordingly, Mr. Smith promptly transmitted Ms. DiOrio's request for Somerset's proposal to Dominion. Smith Decl. ¶ 10; Hennessy Decl. ¶ 15. Mr. Smith also communicated to Mr. Hennessy about the conversation and e-mails with Ms. DiOrio. Hennessy Decl. ¶ 16.

Every inquiry that Ms. DiOrio made in her e-mails dated September 5 is telling:

In the first e-mail, Ms. DiOrio asked (1) whether the EMP funds would be "provided as reimbursement to the City following [its] expenditure"; and (2) despite the passage of time since the initial July 11 meeting, for an "appropriate extension." In the second e-mail, Ms. DiOrio also asked (3) "whether there's any leeway on solely providing improvements to school buildings."

Smith Decl ¶ 11. On the first issue – which is indicative of Fall River's casual presumptuousness about obtaining funds with little or no effort – Mr. Smith advised DiOrio that the EMP funds must be used to fund specific projects proposed by Fall River, submitted by Dominion, and approved by EPA under the Consent Decree. *Id.* ¶ 12. On the second issue, Mr. Smith advised DiOrio "unequivocally that 'this is happening' and Fall River 'needs to move quickly.'" He "did not promise or mention anything about considering a further 'extension.'" Rather, he "stressed that Fall River must hurry if it wants its projects to be considered." *Id.* Unlike Fall River's version of the events, Mr. Smith's version makes sense. Fall River was already late more than a month and Somerset had submitted its proposed projects in a timely fashion. On the third issue, Mr. Smith told Ms. DiOrio that the scope of the projects could not be expanded; "the Consent Decree is a legal document." *Id.* ¶ 13. Ms. DiOrio then told Mr. Smith

that Fall River may have difficulty proposing projects fitting within the specified parameters because Fall River's schools are generally new, and they already had some solar energy capability. *Id.*; Hennessy Decl. ¶ 16.

By late September, 2013, when there had been no submittal nor communication from Fall River, Dominion concluded that no project proposal was likely forthcoming. This was a reasonable conclusion, given Fall River's statement that it could not find projects within the scope of the Guidelines and Consent Decree, as well as the passage of substantial time. Accordingly, Dominion proceeded with preparing its EMP Plan based on the proposals received so as to meet its obligations under the Consent Decree. Hennessy Decl. ¶ 19. Dominion's conclusion was even more reasonable in early November, when Dominion finalized and submitted the EMP plan to EPA, still having heard nothing from Fall River.

In short, Fall River admits it did not submit a proposed project plan to Dominion for *three and half months* after the September 3 contact—more than *five months* after Dominion met with the City's highest officials and gave them helpful Guidelines on developing a project plan, and *four months and a half* after Dominion's initial deadline for the City to submit such proposals. Indeed, except for one set of contacts initiated by Ms. DiOrio in early September—after Dominion repeatedly called the Mayor and the Corporation Counsel to solicit a response—Fall River did not even have the courtesy to contact Dominion, or Dominion's representative Mr. Smith, to update them on progress, status, an estimated submittal date; *nothing*. Yet, its filings blame Dominion for failing to follow up, and Fall River's counsel brazenly said during the January 15, 2014, telephone hearing with the Court that “Dominion simply dropped the ball.”

Despite these egregious facts, Fall River asks this Court to allow intervention, to exercise extraordinary injunctive power and modify the Consent Decree that Dominion and the United

States had painstakingly negotiated, to force Dominion to accept Fall River's extremely late submittal, or even allow Fall River to bypass Dominion altogether and submit its plan to EPA directly. "The 'classic definition' of chutzpah has been described as 'that quality enshrined in a man who, having killed his mother and father, throws himself on the mercy of the court because he is an orphan.'" *Motorola Credit Corp. v. Uzan*, 561 F. 3d 123, 128 n.5 (2d Cir. 2009) (quoting Leo Rosten, *The Joys of Yiddish* 92 (1968)).

**B. The Underlying Claims in This Case**

The United States filed a complaint and simultaneously lodged a proposed Consent Decree settling this case on April 2, 2013 [Dkts. 1 and 3]. The United States complaint contained allegations that Dominion's Kincaid Generation, LLC facility, located in this District, had violated certain Prevention of Significant Deterioration provisions of the Clean Air Act ("CAA"). U.S. Compl. ¶ 1 [Dkt. 1]. The proposed Consent Decree was broader than the Complaint, but it specified the claims that it resolved. The Consent Decree resolved alleged claims at three facilities then owned by Dominion and its subsidiaries: Kincaid, in this District; the Brayton Point facility, in Massachusetts, and Dominion's former State Line facility in Indiana. Consent Decree ¶ 121. Paragraph 121 of the Consent Decree states that opacity claims are resolved, but only for the State Line facility. The Consent Decree does not address any opacity or monitoring claims at the Brayton Point station.

**C. Fall River's Revised Motion to Intervene**

Rule 24(c) requires that a motion to intervene must "be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). Attempting to comply with the rule, Fall River attached a revised proposed complaint ("Proposed Complaint") to its Revised Motion to Intervene purporting to set forth the claims on which Fall River seeks intervention. *See* Proposed Compl. ¶¶ 53-77 [Dkt. 25-1]. Notably, the Proposed

Complaint asserts claims that are completely unrelated to the claims that were the subject of this lawsuit. Fall River's claims pertain to alleged opacity and monitoring violations at Brayton Point, whereas the Consent Decree resolved other claims. *Compare id. with* Consent Decree ¶ 121. Moreover, and notwithstanding the express requirement of Rule 24(c), the Revised Motion to Intervene states that Fall River seeks intervention *not* on the claims in Fall River's Proposed Complaint, but rather on the Consent Decree. *See* Revised Motion to Intervene at 2-3 [Dkt. 25].

## II. ARGUMENT

### A. As a Preliminary Matter, Fall River Has No Right to Intervene to Enforce or Modify the Consent Decree

Fall River's status as a non-party to the Consent Decree precludes it from intervening in this action to enforce or modify the decree. This is addressed in detail in Dominion's Memorandum in Opposition to Fall River's Motion to Enforce and/or Modify Consent Decree filed simultaneously herewith, and will not be repeated in full here. In short, the Supreme Court has held unequivocally that third parties have no right to enforce a Consent Decree:

[A] well-settled line of authority from this Court establishes that a consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it *even though they were intended to be benefitted by it.*

*Blue Chip*, 421 U.S. at 750 (citations and footnotes omitted) (emphasis added). *See also IBM Corp. v. Comdisco, Inc.*, 834 F. Supp. 264, 267 (N.D. Ill. 1993) (quoting *Blue Chip*). Nowhere in its papers does Fall River even mention this Supreme Court precedent, much less address it. And, even if Fall River were to argue for some exception to *Blue Chip Stamps* (which it has not done), the Consent Decree itself makes clear that third parties have no legally enforceable rights under it. Thus, the Revised Motion to Intervene should be denied outright on these bases alone.

**B. Fall River Cannot Satisfy the Requirements for Intervention of Right**

In addition to the legal bar preventing third parties from seeking to enforce or modify consent decrees, Fall River cannot meet the standards for intervention under Rule 24.

1. Legal Standard for Intervention of Right

Fall River asserts that it is entitled to intervention of right under Fed. R. Civ. P. 24(a), which provides:

On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute;  
or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

As interpreted by the Seventh Circuit, parties seeking to intervene as of right under Rule 24(a)(2) are required to show: “(1) their motions to intervene were timely; (2) they possess an interest related to the subject matter of the . . . action; (3) disposition of the action threatens to impair that interest; and (4) the [existing parties] fail to represent adequately their interest.” *Ligas v. Maram*, 478 F.3d 771, 773 (7th Cir. 2007) (citations omitted). The court must deny the petition if any of the elements are not met. *Id.*

Fall River cannot meet these required elements. With respect to Rule 24(a)(1), no federal statute gives Fall River an unconditional right to intervene. And with respect to Rule 24(a)(2), Fall River does not have a sufficient interest in the litigation to justify intervention in this case. Moreover, Fall River has not overcome the presumption that the United States can adequately represent whatever “interest” Fall River may assert.

2. Fall River Does Not Have an “Unconditional Right” by Statute to Intervene

No federal statute grants Fall River an unconditional right to intervene in this case. It is true that, under the CAA’s citizen suit provision (42 U.S.C. § 7604(b)(1)(B)), a citizen may intervene in an environmental enforcement action that the United States *is* diligently prosecuting. But, as shown below, that statute does not confer any basis to grant right to Fall River’s Revised Motion to Intervene in this case. First, the statute provides that a citizen may intervene of right to assert the same environmental claims that the United States is pursuing. But, Fall River is asserting claims in its Proposed Complaint that are completely unrelated to the United States’ claims.<sup>6</sup> Moreover, even if Fall River were asserting the same claims as the United States (which Fall River is not), those environmental claims have already been resolved by the Consent Decree. There is no ongoing enforcement action left in which Fall River can intervene pursuant to 42 U.S.C. § 7604(b)(1)(B).

Section 7604(b)(1)(B) prohibits a citizen from filing an enforcement action if the government is already “diligently prosecuting” the same action. However, the statute provides the citizen a right to intervene in the government’s action. *Id.* Thus, to establish intervention of right in this case, Fall River must assert the same claims as the government. But, it is plain that the respective claims of Fall River and the United States are not the same. Fall River’s claims relate to alleged opacity and monitoring violations at the Brayton Point facility in Massachusetts. *See* Proposed Compl. ¶¶ 53-77 [Dkt. 25-1]. The United States’ Complaint here did not allege any opacity or monitoring violations at Brayton Point. Moreover, the Consent Decree did not resolve any such allegations. Consent Decree, Section XI.A (entitled “Resolution of U.S. Civil

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<sup>6</sup> This is no small “mistake.” Because Fall River’s claims are not the same as those in this case, not only is there no right of intervention under the CAA, but this Court has no subject matter jurisdiction over these claims. *See infra* Part II.C.2.

Claims”). In fact, the United States *confirmed* this fact in this Court’s docket: “the express terms of the Consent Decree ... do not purport to resolve any opacity claims at Brayton Point.” Mem. in Supp. of Mot. to Enter Consent Decree at 19 [Dkt. 7-1].<sup>7</sup> Thus, § 7604(b)(1)(B) does not justify Fall River’s intervention in this case.

Fall River cannot cure this defect. If Fall River were to try to amend its Proposed Complaint again to assert the same claims as the United States, it would be asserting claims that have already been resolved by the Consent Decree. There are no viable “claims” left for Fall River to assert. Section 7604(b)(1)(B) confers rights to intervene only to assert claims that have not been resolved. Consequently, Fall River cannot establish a right to intervene under 42 U.S.C. § 7604(b)(1)(B).

3. Fall River Cannot Establish Intervention of Right Under Rule 24(a)(2)

- a. *Neither the Proposed Complaint nor the Consent Decree Establishes an Enforceable Interest Related to the Property or Transaction that is the Subject Matter of the Lawsuit in this Court.*

To satisfy the “interest” element of Rule 24(a), Fall River must establish a “direct, significant legally protectable interest.” *Am. Nat’l Bank & Trust Co. v. City of Chicago*, 865 F.2d 144, 146-47 (7th Cir. 1989) (quoting *Wade v. Goldschmidt*, 673 F.2d 182, 185 (7th Cir. 1982)). It must be “more than a mere betting interest.” *Security Ins. Co. of Hartford v. Schipporeit*, 69 F.3d 1377, 1380 (7th Cir. 1995) (citations omitted). It is “where the would-be intervenor has a legal claim that could be made the basis of an independent suit against the

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<sup>7</sup> Despite the plain terms of the Consent Decree and the additional confirmation in the Docket, Fall River nonetheless baldly asserts in its Proposed Complaint: “the United States and the Defendant in the Illinois Action agreed to resolve the alleged [opacity and monitoring] violations at Brayton Point by and through the Consent Decree issued in the Illinois Action.” Proposed Compl. at ¶ 5 n.1 [Dkt. 25-1]. The most minimal of investigations would have revealed to Fall River and its counsel that this statement is false.

defendant in the action in which he seeks to intervene.” *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng’rs*, 101 F.3d 503, 506 (7th Cir 1996).

Not only must a proposed intervenor’s interest be definite and legally enforceable, the Seventh Circuit has held that it must be related to the subject of the underlying lawsuit itself. *Wade*, 673 F.2d at 186. Otherwise, the motion to intervene must be denied:

It is critical to the determination of the propriety of granting a motion to intervene for us to crystalize the relevant scope of the trial in which applicants seek to intervene.... “In the context of intervention the question is not whether a lawsuit should be begun [or defended], *but whether already initiated litigation should be extended to include additional parties.*”

*Id.* at 184 (emphasis added) (quoting *Smuck v. Hobson*, 408 F.2d 175, 179 (D.C. Cir. 1969)).

Here, the subject matter of the United States’ lawsuit against various Dominion entities was specific alleged violations of environmental statutes. As previously explained, the Proposed Complaint deals with entirely different claims. Thus, Fall River’s Proposed Complaint does not establish any interest in the subject matter of the litigation in this Court. Under straightforward Seventh Circuit precedent, the Proposed Complaint cannot support the Revised Motion to Intervene, and the motion must be denied.

Likewise, Fall River cannot establish a “direct, significant legally protectable interest” in any aspect of the Consent Decree.<sup>8</sup> The Consent Decree makes abundantly clear that it confers no rights on third parties and that third parties have no right to apply to this Court for any relief:

- “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.”  
Consent Decree ¶ 2.

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<sup>8</sup> As noted above, Rule 24(c) required Fall River to state its “claims” in the Proposed Complaint, so the focus of the Court’s inquiry should be on the Proposed Complaint and not on the Consent Decree. Nonetheless, Fall River also lacks a legally protectable interest in the Consent Decree.

- Only “Part[ies]” to the Consent Decree can apply to the Court “for any relief necessary to construe or effectuate th[e] Consent Decree.” *Id.* ¶ 187.
- Only “Parties” to the Consent Decree can seek to modify it. *Id.* ¶ 188.
- The Consent Decree “does not limit, enlarge, or affect the rights of any Party to this Consent Decree as against any third parties.” *Id.* ¶ 198.

These terms demonstrate that the United States and Dominion specifically intended to preclude third parties from meddling in the Consent Decree.<sup>9</sup>

The D.C. Circuit addressed this very issue in *SEC v. Prudential Securities Inc.*, 136 F.3d 153 (D.C. Cir. 1998), where third parties were attempting to intervene to enforce a consent decree. The Court affirmed the denial of the motion to intervene on grounds that the proposed intervenors “could not show a legally protected interest in the proceedings between the Commission and Prudential because ... third party beneficiaries of a government consent decree may not enforce it when the consent decree contains unambiguous language establishing that the government did not intend them to have enforcement rights.” *Id.* at 156 (referencing *Blue Chip*, 421 U.S. at 723). Citing the Seventh Circuit, the Court further clarified that – to be a sufficient “interest” for purposes of intervention – the consent decree must at a minimum reflect the intention of the parties to confer a right to sue on third parties:

To the contrary: a third party to a consent decree is not an “intended beneficiary” unless the parties “intended that a third party should receive a benefit which might be enforced in the courts.” *Corrugated Paper Prods. v. Longview Fibre Co.*, 868 F.2d 908, 911 (7th Cir. 1989)... The test is not, as appellants appear to suggest, only whether the contracting parties intended to confer a benefit directly on the third parties, but also whether the parties intended the third party to be able to sue to protect that benefit.

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<sup>9</sup> It is well established that the scope of a Consent Decree must be interpreted within its four corners and “the instrument must be construed as it is written.” *United States v. Armour & Co.*, 402 U.S. 673, 682 (1971).

*Id.* at 159 (internal citations omitted).

Fall River is careful in its Revised Motion to Intervene to avoid mentioning the express terms of the Consent Decree regarding the rights, or lack thereof, of third parties. But, those terms are plain and unambiguous: the United States and Dominion did not intend to confer rights to sue on Fall River or any other third party. Consequently, Fall River cannot satisfy the “interest” requirement of Rule 24(a)(2).

b. *The Consent Decree Does Not Confer Upon Fall River a Sufficient Interest in EMPs to Justify Intervention of Right*

Even if the Consent Decree provided third parties with authority to enforce any purported rights (which it clearly does not), the Consent Decree does not confer upon Fall River any “right” to require Dominion to submit an EMP on Fall River’s behalf. Dominion had the express choice to accept projects from either Somerset or Fall River or both of the municipalities. *See, e.g.,* Consent Decree, App. A, Section XI, ¶ A (Dominion “shall submit *one or more* Project Plans to EPA for review and approval to implement (a) Energy Efficiency, Geothermal, and/or Solar Photovoltaic (‘PV’) Projects at *one or more* public school buildings *in either or both* municipalities....”) (emphasis added). There was never a guarantee that a Fall River project would be funded, and this was true even if Fall River had submitted a project in a timely manner, which of course it did not. At most, Fall River had the equivalent of a “betting interest” that Dominion would select a project from Fall River, and such an interest will not support intervention. *See Sec. Ins. Co. of Hartford*, 69 F.3d at 1380.

Nor is it sufficient for Fall River to point to the language in the Consent Decree about the United States and Dominion’s “expectation” that approximately half of the total funds would be spent in Somerset. Consent Decree, App. A, Section XI, ¶ B. Not only is that “expectation” far less than a direct, significant, and legally protectable interest, but it was expressly qualified as

follows: “but the final distribution will depend on the Projects (and their costs) that can be proposed and implemented within the time frames and other requirements set out in this Appendix.” *Id.* In other words, the expectation assumed that both Fall River and Somerset would cooperate and propose timely and compliant projects. There was no expectation on anyone’s part that late or noncompliant proposals would be considered, much less funded. Thus, the Consent Decree provides no basis for Fall River to elaim a legally-protected interest in funding its late-submitted proposal.

4. Fall River Has Not Overcome the Presumption That the United States is Adequately Representing Fall River’s Interest

Fall River also fails to establish that the United States is inadequately representing the interests of third parties. In the Seventh Circuit, “when the representative party is a governmental body charged by law with protecting the interests of the proposed intervenors, the representative is presumed to adequately represent their interests unless there is a showing of gross negligence or bad faith.” *Ligas*, 478 F.3d at 774 (citations omitted). *See also Wade*, 673 F.2d at 186 n.7 (“Even if we were to assume arguendo that applicants have a direct legally protectable interest, applicants have not overcome the presumption of adequacy of representation that arises when the proposed intervenor and a party to the suit (especially if it is the state) have the same ultimate objective.... Additionally it is clear that adequacy of representation is established when no collusion is shown between the representative and an opposing party, when the representative does not have or represent an interest adverse to the proposed intervenor, and when the representative has not failed in the fulfillment of his duty.” (internal citations omitted)).

Fall River has not alleged – nor could it – that the United States has been grossly negligent or acting in bad faith in its representation of the public interest or the interests of third

parties benefitting from the Consent Decree. Therefore, Fall River is not entitled to intervene as of right.

**C. Fall River Does Not Meet the Requirements for Permissive Intervention**

The Court should also deny permissive intervention under Rule 24(b). Among other things, a party seeking to intervene under Rule 24(b) must demonstrate that (1) “the applicant’s claim and the main action share common issues of law or fact” and (2) independent jurisdiction exists. *Ligas*, 478 F.3d at 775-76. Permissive intervention is discretionary. *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000).

**1. Fall River’s Proposed Complaint Does Not Share Common Issues of Law or Fact With the “Main Action”**

As noted previously, the claims in Fall River’s Proposed Complaint are not the same as the claims of the United States in this case. Further, the Proposed Complaint does not share common issues of law or fact with the main action. Fall River alleges specific types of environmental violations at the Brayton Point facility in Massachusetts. By contrast, the only allegations related to Brayton Point in the main action (even interpreting “main action” to include claims resolved by the Consent Decree) involved entirely different legal claims and facts. *Compare* Consent Decree ¶ 121 *with* Proposed Complaint ¶¶ 53-77.

Indeed, the stark differences between the main action and Fall River’s Proposed Complaint are highlighted when one considers the ramifications of allowing Fall River to intervene. If the Court allows Fall River to intervene here, the Proposed Complaint will be deemed filed. Because its claims are not encompassed or resolved by the Consent Decree, presumably those claims will remain pending on this Court’s docket. Does Fall River actually

intend to litigate those claims in this Court? Permissive intervention is discretionary, and this fact alone strongly militates against allowing Fall River to intervene.<sup>10</sup>

## 2. No Independent Jurisdiction Exists

Permissive intervention is not proper unless the intervenor establishes “independent jurisdiction” over its claims. *See, e.g., Reedsburg Bank v. Apollo*, 508 F.2d 995, 1000 (7th Cir. 1975) (affirming district court’s denial of permissive intervention based on failure to establish the existence of independent jurisdiction). As the Seventh Circuit explained, “there is no compelling reason to permit the litigation of a claim or a defense that could not have been asserted had the intervenor been an original plaintiff or defendant.” *Id.*

There is no “independent jurisdiction” for Fall River’s claims alleging opacity and monitoring violations at Brayton Point. To pursue claims separate from those asserted by United States, Fall River is required to satisfy the notice requirements of 42 U.S.C. § 7604(b). But, Fall River has failed to serve the requisite notice, which the Seventh Circuit, like every other court that has reviewed the issue, recognizes as mandatory and *jurisdictional*. *See Vill. of Oconomowoc Lake v. Dayton Hudson Corp.*, 24 F. 3d 962, 963 (7th Cir. 1994) (“Notice provisions pervade environmental statutes, and would-be plaintiffs often appear to be desperate to evade them.”). *Cf.* Proposed Complaint at ¶¶ 6-8 (falsely alleging with no factual basis

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<sup>10</sup> Even assuming Fall River could meet the minimum standards for permissive intervention, there is another reason for the Court to decline to exercise its discretion here. This forum is not the proper venue for Fall River’s claims. The alleged opacity and monitoring violations occurred in Massachusetts, not in *this* District, and therefore venue in this Court is improper. *See* 42 U.S.C. § 7604(c)(1) (“Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.”). *Cf.* Proposed Complaint ¶ 5 (remarkably and falsely alleging that the Brayton Point opacity and monitoring violations alleged in Fall River’s Proposed Complaint “occurred and are occurring within this District” despite the fact the Brayton Point is in Massachusetts).

whatsoever that notice was provided by United States for the opacity and monitoring claims asserted by Fall River in its Proposed Complaint).

Because Fall River has not and cannot satisfy the "independent jurisdiction" requirement of Rule 24(b), permissive intervention is improper.

#### IV. CONCLUSION

Fall River has not met the standards under Rule 24 either for intervention of right or for permissive intervention. The Revised Motion to Intervene should be denied.

Respectfully submitted,

**DOMINION ENERGY, INC.**

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*Counsel for Dominion Energy, Inc.*

February 26, 2014

CERTIFICATE OF COMPLIANCE PURSUANT TO LOCAL RULE 7.1(B)

Pursuant to Local Rule 7.1(B), I hereby certify that the foregoing Dominion Energy, Inc.'s Memorandum in Opposition to City of Fall River's Revised Motion to Intervene contains 6,825 words as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, and therefore is within the word limit set by the Court.

Dated: February 26, 2014.

/s Harry M. Johnson, III

CERTIFICATE OF SERVICE

Pursuant to Local Rule 5.3, I hereby certify that on February 26, 2014, the foregoing Dominion Energy, Inc.'s Memorandum in Opposition to City of Fall River's Revised Motion to Intervene was served electronically upon all parties that are registered or otherwise entitled to receive electronic notices via the Court's CM/ECF system. The foregoing was also served upon those listed below via email.

Steven Viggiani, Esquire  
Senior Enforcement Counsel, Region 1  
U.S. Environmental Protection Agency  
Mail Code OESO4-3  
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Seema Kakade, Esquire  
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Washington, D.C. 20460

/s Harry M. Johnson, III

**EXHIBIT 1**  
**TO**  
**DOMINION ENERGY, INC.'S**  
**MEMORANDUM IN**  
**OPPOSITION TO**  
**CITY OF FALL RIVER'S**  
**REVISED MOTION TO**  
**INTERVENE**

Dominion Energy, Inc.  
Environmental Mitigation Projects: Plan Proposal Guidelines  
(June 24, 2013)

**Environmental Mitigation Project: Northeast Clean Energy and Clean Diesel Projects**

**I. Overview**

Pursuant to a federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (civil action no. 13-cv-3806) (C.D. Ill. Lodged, Apr. 2, 2013) ("Consent Decree") (attached),<sup>1</sup> Dominion Energy, Inc. ("DEI") has agreed to fund various Environmental Mitigation Projects as provided in Appendix A to the Consent Decree. Within 120 days of the entry of the Consent Decree, DEI is required to submit Project Plans to the U.S. Environmental Protection Agency ("USEPA") for its approval prior to the projects being implemented. DEI is permitted under the Consent Decree to contribute Project Dollar funds to another entity to carry out a project in lieu of DEI. The requirements for doing so are spelled out in the Consent Decree and Appendix A.

Appendix A, section XI, is entitled the Northeast Clean Energy and Clean Diesel Projects and is directed towards the implementation of projects in the Town of Somerset and the City of Fall River, Massachusetts. Section XI provides for the funding of various types of projects grouped in two categories: clean energy projects and clean diesel projects. DEI will fund \$1,600,000 in Project Dollars for "Energy Efficiency, Geothermal, PV, and/or Clean Diesel Retrofit and Repower Projects" as those projects are described in Appendix A, section XI. DEI may fund one or more projects, so it is encouraged to submit plans for projects that can be approved in whole or part based on the availability of Project Dollars. It is expected that approximately half of the total Project Dollars will be spent in Somerset. App. A, section XI.B.

Project Plans for the Northeast Clean Energy and Clean Diesel Projects must provide for expending the Project Dollars within three years of the entry of the Consent Decree.

DEI is asking for the submission of proposed project plans **by August 1, 2013**, for DEI's consideration in determining which Project Plans to provide to USEPA for approval and eventual implementation, if approved, by the Town of Somerset and/or the City of Fall River. This document outlines what must be included in a proposed Project Plan. In addition to relying on this document, the Town and City should also review the relevant portions of the Consent Decree.

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<sup>1</sup> The United States soon will move to enter the Consent Decree, which will then take effect when the Court enters it.

## **II. General Project Plan Elements**

According to the Consent Decree all Project Plans must include the following:

1. A plan for implementing the Project. (App. A, II.D)
2. A summary-level budget for the Project. (App. A, II.D)
3. A timeline for implementation of the Project. (App. A, II.D) The timeline shall include a schedule for completing and funding each portion of the project. As noted above, the Projects are to be completed within three years. The schedule shall provide for periodic reporting as set forth in section III below.
4. A description of the anticipated environmental benefits of the Project, including an estimate of emission reductions (e.g., SO<sub>2</sub>, NO<sub>x</sub>, PM, mercury, CO<sub>2</sub>) expected to be realized. (App. A, II.D)
5. The entity seeking funding and submitting a plan for consideration must also provide a written statement (a) identifying its legal authority for accepting such funding and (b) identifying its legal authority to conduct the Project. (CD, para. 114)

## **III. Periodic and Final Reporting Requirements**

The Consent Decree requires that DEI submit periodic reports to USEPA within 60 days after the end of each half of the calendar year (January through June and July through December) (CD, para. 122) and a final report within 60 days of completing a project (App. A, II.G). Regarding the mitigation projects, periodic reports must include "a summary of actions implemented and expenditures made pursuant to implementation of the Environmental Mitigation Projects" required in the Consent Decree and Appendix A. (CD, para. 122.h; see also App. A, II.F)

Accordingly, in order for DEI to meet these Consent Decree requirements, Project Plans must provide in the schedule for the submission of periodic reports to DEI within 30 days after the end of each half of the calendar year until completion of the project. The schedule must also provide for the submission of a final report within 30 days of completion of the Project. The Final Report shall document:

1. The date the Project was completed.
2. The results of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved.
3. The Project Dollars incurred in implementing the Project.

#### **IV. Plan Specific Elements for Clean Energy Projects**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a Clean Energy Project to implement "Energy Efficiency, Geothermal, and/or Solar Photovoltaic ('PV') Projects at one or more public school buildings in either or both municipalities." App. A, XI.A. The proposed Clean Energy Projects "may include the installation of centrally-monitored digital controls and timers for heating/cooling systems in school buildings in either or both municipalities ('Energy Efficiency Project'). The proposed Projects may also include the installation of a geothermal heating and/or cooling system ('Geothermal Project'), and/or a solar photovoltaic project consisting of electricity-generating solar panels ('PV Project') for public school buildings in either or both municipalities." App. A, XI.A.

Appendix A sets forth general Project Plan requirements for Clean Energy Projects, and identifies additional Clean Energy Plan requirements for Geothermal and PV Projects. The additional requirements are set forth in subsections below. The following are the general plan requirements that must be included in any type of proposed Clean Energy Project Plan that seeks funding as an Energy Efficiency, Geothermal, or PV Project:

1. Identification of the specific proposed Project(s) to be implemented;
2. Implementation timelines and expected completion dates for each Project;
3. Description of each proposed Project's system design;
4. Identification of any project designers, contractors, or other third parties with whom the municipality's school system will contract or partner with to implement the Project(s), and a list of any relevant accreditations or certifications held by such contractors, designers or parties; and
5. Description of the schedule and the budgetary increments needed to provide the necessary funding by DEI to the municipality's school system or its project designers/contractors to implement the Project.

Appendix A, Section X.I.

##### **A. Geothermal Project: Additional Specific Plan Elements**

The Plan for a Geothermal Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Describe the proposed geothermal system design (e.g., a closed loop design with either horizontal or vertical loop well fields, a standing column well, or station surface sources). The Project shall be limited to serving space heating and cooling building loads, with the option to add a desuperheater to the project to serve hot water loads when practical.
2. Provide for the purchase and installation of a geothermal heat pump system that utilizes the earth as a heat source in the winter and a heat sink in the summer to reduce energy consumption. The system shall include the equipment necessary to support the installation and operation of a geothermal heat pump, including the exterior building components (e.g., well field holes, subsurface piping, and circulation pumps), the heat pump unit (evaporator and condenser, compressor, expansion valve and refrigerant) and any internal building components (e.g., HVAC distribution system and ductwork) necessary for the proper operation of the new system. Heat pumps should be Air-Conditioning, Heating and Refrigeration Institute (AHRI) and Energy Star rated. Heat pumps should meet the minimum EER and COP ratings required by Energy Star at the time the heat pumps are installed.
3. System Application and Design: The Plan shall provide that, prior to the design modeling of the system and production loop installation, the contractor/project designer conduct an in-situ formation thermal conductivity test for ambient deep earth temperature, thermal conductivity, and thermal diffusivity, for a minimum of 40 hours to assess the subsurface soil conditions. The Plan shall provide that the contract with the contractor/project designer shall require that the designer provide the building owner with copies of the related site drilling logs, soil sample documentation and in-situ thermal conductivity analyses. The Plan shall also provide that the contract with the contractor/project designer shall require that the designer employ quality assurance measures to prevent "short looping" of well field bore holes during the drilling process.
4. Provide for the installation of monitoring equipment to allow facility managers and staff to monitor the operation and performance of the system.
5. Provide for system commissioning and performance optimization within the first year of system operation.
6. Provide for the restoration of the project site, particularly the well field to its original or near-original condition.
7. Provide for the installation of onsite monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor the operation and performance of the

geothermal system.

8. Identify the contractor/project designer(s) and/or other third parties with whom the Town or City will contract or partner with to implement the Project, and list any relevant accreditations or certifications held by such contractor/designer(s) or parties. The Plan shall provide that the Project's design, installation and system commissioning will be performed by International Ground Source Heat Pump Association (IGSHPA) professionals or by other professionals certified by geothermal manufacturers to design and/or install the manufacturers' systems. The Plan shall also provide that best efforts will be made to select project designers and installers (including engineers, architects, and bore hole drillers) with experience on at least three successful geothermal projects.
9. End-user Documentation and Training Requirements: The Plan shall provide that the developer/contractor will provide the Town/City with:
  - System design drawings including a map detailing the subsurface location of well field bore holes;
  - Copies of permits and inspections demonstrating compliance with local codes;
  - Copies of the drilling logs, soil sample documentation and in-situ thermal conductivity analysis;
  - Copies of simulated design and financial performance (energy and cost saving) analyses of the system;
  - System documentation including, system maintenance and operational requirements, component manuals, operation manuals and warranty information; and
  - In-person, on-site, system operation user training.
10. Maintenance: The Project Plan may request Project Dollars for funding the establishment of an escrow account to maintain and/or replace the heat pump unit or other elements of the system, or for the funding or pre-payment for an extended warranty or service contract for such maintenance/replacement.

**B. PV Project: Additional Plan Elements**

The Plan for a PV Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Provide for the installation of solar panels with unobstructed solar access, producing electricity not to exceed the total annual electricity base load of the building the project serves.
2. Provide for a grid-tied inverter, appropriately sized for the capacity of the solar panels installed at the location.
3. Provide for the appropriate solar panel mounting equipment for the particular school.
4. Provide for wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid.
5. Provide for appropriate monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor various aspects of the system, e.g., the total and hourly energy output of the system (kilowatt hours), environmental benefits delivered (pounds CO<sub>2</sub> avoided), hourly ambient temperature and cell temperature (C°), irradiance (W/M<sup>2</sup>), as well as time sensitive voltage, power and current metrics.
6. Provide for the installation of the system on the customer side of the meter with ownership of the system being by the Somerset Public School system or Fall River Public School System, as appropriate. The Plan shall also provide that all related environmental benefits will be retained by the system owner, including associated renewable energy certificates.
7. Provide, to the extent practicable, that North American Board of Certified Energy Practitioners (NACEP) certified energy professionals perform the installation of the PV Projects to ensure the highest quality installation and performance of the system.
8. Provide for the inclusion of manufacturer parts warranties for major system components, specifically, a minimum 25 year warranty for the solar panels (modules) and a minimum 10 year warranty for the inverter(s).
9. Provide for the establishment of an escrow account with funding from Project Dollars sufficient to support one or more service contracts (or their equivalent) to ensure the ongoing maintenance and performance of the PV

system consistent with established industry practice for no less than 25 years, including annual system checkups, annual solar panel (module) cleaning, expected inverter replacements, and remote system monitoring.

#### **V. Clean Diesel Retrofit and Repower Projects: Plan Specific Elements**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a "Clean Diesel Retrofit and Repower Project" to retrofit or repower higher-polluting diesel engines in either or both the municipalities (the Town of Somerset and the City of Fall River). These Projects would include the "retrofit or repower of eligible diesel engines on diesel-powered municipal construction or public works vehicles or equipment owned or operated on a long-term basis by either or both municipalities in order to reduce diesel pollutant emissions." App. A, XI.A.

In addition to the general Project Plan requirements identified above in sections II and III, proposed Clean Diesel Retrofit and Repower Project Plans shall include the following:

1. For diesel engine retrofits, a plan element to use exhaust control technologies verified either by EPA or by the California Air Resources Board (CARB);
2. For diesel engine retrofits, a plan element to purchase and install EPA or CARB-verified diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs) on diesel-powered municipal construction or public works vehicles or equipment. A list of EPA-verified retrofit technologies can be found at <http://epa.gov/cleandiesel/verification/verif-list.htm>; a list of CARB-verified technologies can be found at [www.arb.ca.gov/diesel/verdev/vt/cvt.htm](http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm).
3. If the Project includes DPF retrofits, the plan must provide for the purchase of DPF service equipment required for proper DPF maintenance.
4. For diesel engine repowering, the plan must provide for the use of technologies certified by EPA or by CARB if available.
5. For diesel engine repowering, the plan must provide for the use of new engine configurations certified to emission standards. Information on engine certification can be found at [www.epa.gov/otaq/certdata.htm](http://www.epa.gov/otaq/certdata.htm).
6. In determining which vehicles or equipment to retrofit or repower under the Clean Diesel Retrofit and Repower Project, priority should be given to older, higher-polluting vehicles and equipment that have high annual usage rates and/or vehicle miles travelled, so that the pollution reductions obtained from the Project will be maximized.

**VI. Submission of Proposed Project Plans; Inquiries**

Proposed Project Plans are to be submitted by August 1, 2013, to Alice Pryor, Environmental Projects Manager, Dominión Resources Services, Inc. at [alice.g.pryor@dom.com](mailto:alice.g.pryor@dom.com).

**EXHIBIT 2**  
**TO**  
**DOMINION ENERGY, INC.'S**  
**MEMORANDUM IN**  
**OPPOSITION TO**  
**CITY OF FALL RIVER'S**  
**REVISED MOTION TO**  
**INTERVENE**



submit them to the United States Environmental Protection Agency (“EPA”) for review and approval.

4. I was responsible for reaching out to the Town of Somerset and the City of Fall River to solicit qualifying projects for the Northeast Clean Energy and Clean Diesel Projects. James Smith assisted me. He is a consultant in Boston, Massachusetts, who had been representing Dominion in connection with the Brayton Point station since the time Dominion had acquired it. Mr. Smith has longstanding ties to the communities near the facility. He has personal contacts in Fall River, including with the Mayor.

5. On July 11, 2013, Mr. Smith and I met with at least five representatives of Fall River in the Mayor’s office. Attendees included Mayor Flanagan, City Solicitor Sousa, City Administrator Cadime, and others. The purpose of the meeting was to discuss the potential for Dominion’s funding of qualifying EMPs pursuant to the Consent Decree. Mr. Cadime asked the most questions during the meeting, and it appeared to me that he had been designated as responsible for Fall River’s submittal.

6. At the meeting I also distributed copies of Dominion’s Environmental Mitigation Projects: Plan Proposal Guidelines (“Guidelines”) and the Consent Decree. The Guidelines explained the criteria in the Consent Decree for projects to qualify for potential funding, and was designed to assist the municipalities with a roadmap for developing a proposed plan. The Guidelines are attached as Attachment A. The Consent Decree was also provided as a reference, with the case information plainly visible. The cover page of the Consent Decree, as distributed, is attached as Attachment B.

7. I advised Fall River’s representatives that Dominion was required to submit proposed projects to EPA in the total amount of \$1.6 million from either Somerset, Fall River, or

both. I reiterated that Dominion could not guarantee funding for any projects. I also explained that Dominion had worked hard during negotiations with EPA to include EMP funds specifically for Somerset and Fall River.

8. According to the Guidelines, the deadline for submittal of projects to Dominion by Fall River and Somerset was August 1, 2013. At the meeting on July 11, 2013, I told Fall River's representatives that the deadline could be relaxed "a couple of weeks" if they needed more time. They did not request an extension at the meeting. At no time did I indicate or imply that Fall River's deadline for submitting projects to us was, or could be, extended for an unlimited time.

9. I sent an email to Fall River's City Administrator, Mr. Cadime, the next week on July 19, 2013. I thanked him for meeting with us and checked in to "make sure your implementation plan for the projects is going well and make myself available if you have any questions." This email is attached as Attachment C. No one from Fall River responded with any questions or comments.

10. I sent a similar e-mail on the same day to Marc Furtado, of the Somerset Public Schools District. I immediately received a response updating Dominion on Somerset's progress. [See Email attached as Attachment D]

11. Fall River did not contact Dominion by the August 1, 2013, deadline in the Guidelines. Meanwhile, Somerset was in frequent contact with us about its proposed projects, and it submitted its proposal to Dominion on August 1.

12. Because we had not heard anything from Fall River as of August 1, I contacted Mr. Smith. There had already been local newspaper reports about Somerset's projects. Mr. Smith then contacted the Mayor, and the Mayor told Mr. Smith that Fall River would submit

projects within the next few days. [See Email attached as Attachment E.] The Mayor also told Mr. Smith that City Solicitor Sousa would be handling the matter.

13. As of the end of the day Monday, August 5, we had still heard nothing from the City Solicitor. I asked Mr. Smith to let me know if and when he heard anything. [See Email attached as Attachment F.] No one from Fall River called us back in August. On August 28, Mr. Smith called the Mayor again. In an email, Mr. Smith advised me that the Mayor said "he would make sure that she [Sousa] called me back today." [See Email attached as Attachment G.] Mr. Smith further advised that he had two phone calls in to Ms. Sousa. She did not call back that day or that week.

14. While Mr. Smith was no longer formally retained by Dominion after September 1, 2013, he maintained contact with me and Dominion as a professional courtesy about this matter. Because he has longstanding ties to the local communities and to the Brayton Point station, I felt it was appropriate to maintain those connections.

15. On September 3, Mr. Smith contacted me and said that he had spoken with the person at Fall River who would be responsible. According to Mr. Smith, she was aware that Somerset had already submitted its proposed projects, and she wanted to see copies of Somerset's proposal. Dominion declined.

16. Mr. Smith later that week told me that he had spoken with Fall River's point person (Ms. DiOrio) again on September 5, 2013. He reported that she expressed concern that Fall River may not be able to propose projects that fit within the parameters set forth in the Guidelines and asked whether Dominion could expand the permissible scope of the projects under the Consent Decree; he told her that was not possible because the scope is defined by the Consent Decree, which is a legal document.

17. After September 5, Fall River did not contact Dominion (or Mr. Smith, to my knowledge) again until December 17, 2013.

18. During that period, Fall River did not submit any proposed projects for Dominion to consider as part of the EMP plans required under the Consent Decree.

19. By late September, 2013, when there had been no submittal nor communication from Fall River—about 2 months and a half after Dominion’s initial meeting with Fall River, almost 2 months after the initial August 1 deadline, and almost a month after Fall River had finally identified Ms. DiOrio as the contact for a possible proposal—Dominion concluded that no project proposal was likely forthcoming from Fall River, given Fall River’s statement that it could not find projects within the scope of the Guidelines and Consent Decree, and the passage of substantial time. Accordingly, Dominion proceeded with preparing an EMP Plan for the Northeast Clean Energy and Clean Diesel Projects based on the proposals received so as to meet its obligations under the Consent Decree.

20. Dominion was not free to ignore the Consent Decree. We submitted our EMP plans to EPA, which received them by November 13, 2013.

21. Dominion solicited proposals from and worked with eleven different municipalities, government agencies and private organizations to develop project proposals across five separate states. Ten proposed project plans were submitted to EPA by the November deadline. This was not a small task. But all the local bodies, agencies and organizations responded promptly and enthusiastically, except for Fall River.

22. Fall River remained silent until December 17, at which time it finally reached out to Dominion. This coincided with the publication of an article in the local newspaper that same day discussing the potential funding of Somerset projects.

23. I believe these facts show clearly that Dominion "consulted with" Fall River. We explained the EMP process to Fall River at the July 11 meeting, we left written materials with them, and we reached out to them repeatedly thereafter through the first part of September. We offered ourselves to answer questions, and we continually encouraged them to submit qualifying projects. Fall River chose not to do so until December 18.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24<sup>th</sup> day of February, 2014.

  
Kevin R. Hennessy

**ATTACHMENT A**

Dominion Energy, Inc.  
Environmental Mitigation Projects: Plan Proposal Guidelines  
(June 24, 2013)

**Environmental Mitigation Project: Northeast Clean Energy and Clean Diesel Projects**

**I. Overview**

Pursuant to a federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (civil action no. 13-cv-3806) (C.D. Ill. Lodged, Apr. 2, 2013) ("Consent Decree") (attached),<sup>1</sup> Dominion Energy, Inc. ("DEI") has agreed to fund various Environmental Mitigation Projects as provided in Appendix A to the Consent Decree. Within 120 days of the entry of the Consent Decree, DEI is required to submit Project Plans to the U.S. Environmental Protection Agency ("USEPA") for its approval prior to the projects being implemented. DEI is permitted under the Consent Decree to contribute Project Dollar funds to another entity to carry out a project in lieu of DEI. The requirements for doing so are spelled out in the Consent Decree and Appendix A.

Appendix A, section XI, is entitled the Northeast Clean Energy and Clean Diesel Projects and is directed towards the implementation of projects in the Town of Somerset and the City of Fall River, Massachusetts. Section XI provides for the funding of various types of projects grouped in two categories: clean energy projects and clean diesel projects. DEI will fund \$1,600,000 in Project Dollars for "Energy Efficiency, Geothermal, PV, and/or Clean Diesel Retrofit and Repower Projects" as those projects are described in Appendix A, section XI. DEI may fund one or more projects, so it is encouraged to submit plans for projects that can be approved in whole or part based on the availability of Project Dollars. It is expected that approximately half of the total Project Dollars will be spent in Somerset. App. A, section XI.B.

Project Plans for the Northeast Clean Energy and Clean Diesel Projects must provide for expending the Project Dollars within three years of the entry of the Consent Decree.

DEI is asking for the submission of proposed project plans **by August 1, 2013**, for DEI's consideration in determining which Project Plans to provide to USEPA for approval and eventual implementation, if approved, by the Town of Somerset and/or the City of Fall River. This document outlines what must be included in a proposed Project Plan. In addition to relying on this document, the Town and City should also review the relevant portions of the Consent Decree.

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<sup>1</sup> The United States soon will move to enter the Consent Decree, which will then take effect when the Court enters it.

## **II. General Project Plan Elements**

According to the Consent Decree all Project Plans much include the following:

1. A plan for implementing the Project. (App. A, II.D)
2. A summary-level budget for the Project. (App. A, II.D)
3. A timeline for implementation of the Project. (App. A, II.D) The timeline shall include a schedule for completing and funding each portion of the project. As noted above, the Projects are to be completed within three years. The schedule shall provide for periodic reporting as set forth in section III below.
4. A description of the anticipated environmental benefits of the Project, including an estimate of emission reductions (e.g., SO<sub>2</sub>, NO<sub>x</sub>, PM, mercury, CO<sub>2</sub>) expected to be realized. (App. A, II.D)
5. The entity seeking funding and submitting a plan for consideration must also provide a written statement (a) identifying its legal authority for accepting such funding and (b) identifying its legal authority to conduct the Project. (CD, para. 114)

## **III. Periodic and Final Reporting Requirements**

The Consent Decree requires that DEI submit periodic reports to USEPA within 60 days after the end of each half of the calendar year (January through June and July through December) (CD, para. 122) and a final report within 60 days of completing a project (App. A, II.G). Regarding the mitigation projects, periodic reports must include "a summary of actions implemented and expenditures made pursuant to implementation of the Environmental Mitigation Projects" required in the Consent Decree and Appendix A. (CD, para. 122.h; see also App. A, II.F)

Accordingly, in order for DEI to meet these Consent Decree requirement, Project Plans must provide in the schedule for the submission of periodic reports to DEI within 30 days after the end of each half of the calendar year until completion of the project. The schedule must also provide for the submission of a final report within 30 days of completion of the Project. The Final Report shall document:

1. The date the Project was completed.
2. The results of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved.
3. The Project Dollars incurred in Implementing the Project.

#### **IV. Plan Specific Elements for Clean Energy Projects**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a Clean Energy Project to implement "Energy Efficiency, Geothermal, and/or Solar Photovoltaic ("PV") Projects at one or more public school buildings in either or both municipalities." App. A, XI.A. The proposed Clean Energy Projects "may include the installation of centrally-monitored digital controls and timers for heating/cooling systems in school buildings in either or both municipalities ('Energy Efficiency Project'). The proposed Projects may also include the installation of a geothermal heating and/or cooling system ('Geothermal Project'), and/or a solar photovoltaic project consisting of electricity-generating solar panels ('PV Project') for public school buildings in either or both municipalities." App. A, XI.A.

Appendix A sets forth general Project Plan requirements for Clean Energy Projects, and identifies additional Clean Energy Plan requirements for Geothermal and PV Projects. The additional requirements are set forth in subsections below. The following are the general plan requirements that must be included in any type of proposed Clean Energy Project Plan that seeks funding as an Energy Efficiency, Geothermal, or PV Project:

1. Identification of the specific proposed Project(s) to be implemented;
2. Implementation timelines and expected completion dates for each Project;
3. Description of each proposed Project's system design;
4. Identification of any project designers, contractors, or other third parties with whom the municipality's school system will contract or partner with to implement the Project(s), and a list of any relevant accreditations or certifications held by such contractors, designers or parties; and
5. Description of the schedule and the budgetary increments needed to provide the necessary funding by DEI to the municipality's school system or its project designers/contractors to implement the Project.

Appendix A, Section X.I.

##### **A. Geothermal Project: Additional Specific Plan Elements**

The Plan for a Geothermal Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Describe the proposed geothermal system design (e.g., a closed loop design with either horizontal or vertical loop well fields, a standing column well, or station surface sources). The Project shall be limited to serving space heating and cooling building loads, with the option to add a desuperheater to the project to serve hot water loads when practical.
2. Provide for the purchase and installation of a geothermal heat pump system that utilizes the earth as a heat source in the winter and a heat sink in the summer to reduce energy consumption. The system shall include the equipment necessary to support the installation and operation of a geothermal heat pump, including the exterior building components (e.g., well field holes, subsurface piping, and circulation pumps), the heat pump unit (evaporator and condenser, compressor, expansion valve and refrigerant) and any internal building components (e.g., HVAC distribution system and ductwork) necessary for the proper operation of the new system. Heat pumps should be Air-Conditioning, Heating and Refrigeration Institute (AHRI) and Energy Star rated. Heat pumps should meet the minimum EER and COP ratings required by Energy Star at the time the heat pumps are installed.
3. System Application and Design: The Plan shall provide that, prior to the design modeling of the system and production loop installation, the contractor/project designer conduct an In-situ formation thermal conductivity test for ambient deep earth temperature, thermal conductivity, and thermal diffusivity, for a minimum of 40 hours to assess the subsurface soil conditions. The Plan shall provide that the contract with the contractor/project designer shall require that the designer provide the building owner with copies of the related site drilling logs, soil sample documentation and in-situ thermal conductivity analyses. The Plan shall also provide that the contract with the contractor/project designer shall require that the designer employ quality assurance measures to prevent "short looping" of well field bore holes during the drilling process.
4. Provide for the installation of monitoring equipment to allow facility managers and staff to monitor the operation and performance of the system.
5. Provide for system commissioning and performance optimization within the first year of system operation.
6. Provide for the restoration of the project site, particularly the well field to its original or near-original condition.
7. Provide for the installation of onsite monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor the operation and performance of the

geothermal system.

8. Identify the contractor/project designer(s) and/or other third parties with whom the Town or City will contract or partner with to implement the Project, and list any relevant accreditations or certifications held by such contractor/designer(s) or parties. The Plan shall provide that the Project's design, installation and system commissioning will be performed by International Ground Source Heat Pump Association (IGSHPA) professionals or by other professionals certified by geothermal manufacturers to design and/or install the manufacturers' systems. The Plan shall also provide that best efforts will be made to select project designers and installers (including engineers, architects, and bore hole drillers) with experience on at least three successful geothermal projects.
9. End-user Documentation and Training Requirements: The Plan shall provide that the developer/contractor will provide the Town/City with:
  - System design drawings including a map detailing the subsurface location of well field bore holes;
  - Copies of permits and inspections demonstrating compliance with local codes;
  - Copies of the drilling logs, soil sample documentation and in-situ thermal conductivity analysis;
  - Copies of simulated design and financial performance (energy and cost saving) analyses of the system;
  - System documentation including, system maintenance and operational requirements, component manuals, operation manuals and warranty information; and
  - In-person, on-site, system operation user training.
10. Maintenance: The Project Plan may request Project Dollars for funding the establishment of an escrow account to maintain and/or replace the heat pump unit or other elements of the system, or for the funding or pre-payment for an extended warranty or service contract for such maintenance/replacement.

**B. PV Project: Additional Plan Elements**

The Plan for a PV Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Provide for the installation of solar panels with unobstructed solar access, producing electricity not to exceed the total annual electricity base load of the building the project serves.
2. Provide for a grid-tied inverter, appropriately sized for the capacity of the solar panels installed at the location.
3. Provide for the appropriate solar panel mounting equipment for the particular school.
4. Provide for wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid.
5. Provide for appropriate monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor various aspects of the system, e.g., the total and hourly energy output of the system (kilowatt hours), environmental benefits delivered (pounds CO<sub>2</sub> avoided), hourly ambient temperature and cell temperature (C<sup>o</sup>), irradiance (W/M<sup>2</sup>), as well as time sensitive voltage, power and current metrics.
6. Provide for the installation of the system on the customer side of the meter with ownership of the system being by the Somerset Public School system or Fall River Public School System, as appropriate. The Plan shall also provide that all related environmental benefits will be retained by the system owner, including associated renewable energy certificates.
7. Provide, to the extent practicable, that North American Board of Certified Energy Practitioners (NACEP) certified energy professionals perform the installation of the PV Projects to ensure the highest quality installation and performance of the system.
8. Provide for the inclusion of manufacturer parts warranties for major system components, specifically, a minimum 25 year warranty for the solar panels (modules) and a minimum 10 year warranty for the inverter(s).
9. Provide for the establishment of an escrow account with funding from Project Dollars sufficient to support one or more service contracts (or their equivalent) to ensure the ongoing maintenance and performance of the PV

system consistent with established industry practice for no less than 25 years, including annual system checkups, annual solar panel (module) cleaning, expected inverter replacements, and remote system monitoring.

#### **V. Clean Diesel Retrofit and Repower Projects: Plan Specific Elements**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a "Clean Diesel Retrofit and Repower Project" to retrofit or repower higher-polluting diesel engines in either or both the municipalities (the Town of Somerset and the City of Fall River). These Projects would include the "retrofit or repower of eligible diesel engines on diesel-powered municipal construction or public works vehicles or equipment owned or operated on a long-term basis by either or both municipalities in order to reduce diesel pollutant emissions." App. A, XI.A.

In addition to the general Project Plan requirements identified above in sections II and III, proposed Clean Diesel Retrofit and Repower Project Plans shall include the following:

1. For diesel engine retrofits, a plan element to use exhaust control technologies verified either by EPA or by the California Air Resources Board (CARB);
2. For diesel engine retrofits, a plan element to purchase and install EPA or CARB-verified diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs) on diesel-powered municipal construction or public works vehicles or equipment. A list of EPA-verified retrofit technologies can be found at <http://epa.gov/cleandiesel/verification/verif-list.htm>; a list of CARB-verified technologies can be found at [www.arb.ca.gov/diesel/verdev/vt/cvt.htm](http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm).
3. If the Project includes DPF retrofits, the plan must provide for the purchase of DPF service equipment required for proper DPF maintenance.
4. For diesel engine repowering, the plan must provide for the use of technologies certified by EPA or by CARB if available.
5. For diesel engine repowering, the plan must provide for the use of new engine configurations certified to emission standards. Information on engine certification can be found at [www.epa.gov/otaq/certdata.htm](http://www.epa.gov/otaq/certdata.htm).
6. In determining which vehicles or equipment to retrofit or repower under the Clean Diesel Retrofit and Repower Project, priority should be given to older, higher-polluting vehicles and equipment that have high annual usage rates and/or vehicle miles travelled, so that the pollution reductions obtained from the Project will be maximized.

**VI. Submission of Proposed Project Plans; Inquiries**

Proposed Project Plans are to be submitted by August 1, 2013, to Alice Pryor, Environmental Projects Manager, Dominion Resources Services, Inc. at [alice.g.pryor@dom.com](mailto:alice.g.pryor@dom.com).

**ATTACHMENT B**



**ATTACHMENT C**

**Kevin R Hennessy (Services - 6)**

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**From:** Kevin R Hennessy (Services - 6)  
**Sent:** Friday, July 19, 2013 11:31 AM  
**To:** scadlme@fallriverma.org  
**Cc:** Jim Smith  
**Subject:** Environmental Projects

Hi Shawn,

Thanks for meeting with us last week with Mayor Flanagan. Just wanted to check in and make sure your implementation plan for the projects is going well and make myself available if you have any questions.

Best,  
Kevin

Kevin R. Hennessy  
Director - Federal, State & Local Affairs - New England  
Dominion Resources, Inc.  
Rope Ferry Road  
PO Box 128  
Waterford, CT 06385  
860-444-5656 (office)  
860-912-5124 (mobile)  
[Kevin.R.Hennessy@dom.com](mailto:Kevin.R.Hennessy@dom.com)

**ATTACHMENT D**

**Kevin R Hennessy (Services - 6)**

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**From:** Marc Furtado [furtadom@sbrregional.org]  
**Sent:** Friday, July 19, 2013 11:39 AM  
**To:** Kevin R Hennessy (Services - 6); Richard Medeiros; jsmith  
**Subject:** Re: Checking in

Kevin

We are progressing with the development of multiple proposals. I learned that the South School heating system is steam, not hot water, based and therefore not eligible for a Geothermal application. We have moved forward requesting proposals on our two big schools for both geothermal and PV projects from multiple vendors, so we feel very confident that while we will only have budget development type numbers, they will be relatively reliable. Coupled with these two we will have a solid digital control proposal and we will have one other involving heat exchangers for air intake that is part of the geothermal work. All in all we will be showing significant energy savings as well as significant emissions reductions associated with the work and will have a full menu from which the EPA can make choices.

We expect to have formal documents ready for you in the first week of August.

We greatly appreciate the help and work both you and Jim did on our behalf and look forward to what appears to be a very exciting outcome for the schools here.

Marc

On Fri, Jul 19, 2013 at 11:25 AM, Kevin R Hennessy <[Kevin.R.Hennessy@dom.com](mailto:Kevin.R.Hennessy@dom.com)> wrote:

Hi Marc,

Thanks for meeting with us last week and introducing us to Superintendent Medeiros. Just wanted to check in and make sure you didn't have any questions regarding the implementation plan for the project.

Best,

Kevin

Kevin R. Hennessy

Director - Federal, State & Local Affairs - New England

Dominion Resources, Inc.

Rope Ferry Road

PO Box 128

Waterford, CT 06385

860-444-5656 (office)

860-912-5124 (mobile)

Kevin.R.Hennessy@dom.com

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**ATTACHMENT E**

**Mary Jo Sheeley (Services - 6)**

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**From:** Mary Jo Sheeley (Services - 6)  
**Sent:** Tuesday, August 06, 2013 9:13 AM  
**To:** Kevin R Hennessy (Services - 6)  
**Subject:** RE: Somerset Schools Proposals

Great!

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**From:** Kevin R Hennessy (Services - 6)  
**Sent:** Tuesday, August 06, 2013 8:29 AM  
**To:** Mary Jo Sheeley (Services - 6)  
**Cc:** Cathy C Taylor (Services - 6); Alice G Prior (Services - 6)  
**Subject:** RE: Somerset Schools Proposals

Was told by the mayor of Fall River that we should get their proposed projects from the city solicitor in the next few days.

Kevin

Kevin R. Hennessy  
Director - Federal, State & Local Affairs - New England  
Dominion Resources, Inc.  
Rope Ferry Road  
PO Box 128  
Waterford, CT 06385  
860-444-5656 (office)  
860-912-5124 (mobile)  
[Kevin.R.Hennessy@dom.com](mailto:Kevin.R.Hennessy@dom.com)

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**From:** Mary Jo Sheeley (Services - 6)  
**Sent:** Monday, August 05, 2013 11:54 AM  
**To:** Kevin R Hennessy (Services - 6)  
**Cc:** Cathy C Taylor (Services - 6); Alice G Prior (Services - 6)  
**Subject:** RE: Somerset Schools Proposals

Thanks, Kevin. Cathy and I have discussed, and there are worthy projects here. The projects are not written up in the project plan format, but we can deal with that later. We thought we should get something from Fall River first so we could decide where the money will go and then get them in project plan form.

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**From:** Kevin R Hennessy (Services - 6)  
**Sent:** Thursday, August 01, 2013 2:35 PM  
**To:** Alice G Prior (Services - 6); Mary Jo Sheeley (Services - 6)  
**Subject:** FW: Somerset Schools Proposals

FYI – attached is the NSR settlement project proposals from Somerset – received today. Very punctual.

Kevin

Kevin R. Hennessy  
Director - Federal, State & Local Affairs - New England  
Dominion Resources, Inc.

Rope Ferry Road  
PO Box 128  
Waterford, CT 06385  
860-444-5656 (office)  
860-912-5124 (mobile)  
[Kevin.R.Hennessy@dom.com](mailto:Kevin.R.Hennessy@dom.com)

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**From:** Richard Medeiros [<mailto:medeirosr@somerset.k12.ma.us>]  
**Sent:** Thursday, August 01, 2013 12:34 PM  
**To:** Kevin R Hennessy (Services - 6)  
**Subject:** Somerset Schools Proposals

Kevin,

Per our phone conversation today, I am submitting all three projects with pertinent information for your review and acceptance. Thanks, R. Medeiros

Richard W. Medeiros  
Superintendent of Schools  
Somerset Public Schools  
(508) 324-3113

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**ATTACHMENT F**

**Kevin R Hennessy (Services - 6)**

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**From:** Kevin R Hennessy (Services - 6)  
**Sent:** Monday, August 05, 2013 4:57 PM  
**To:** Jim Smith  
**Subject:** Fall River

Got your message - haven't heard from city solicitor. Let me know when you do.

Thx,  
Kevin

Sent from my iPhone

**ATTACHMENT G**

**Kevin R Hennessy (Services - 6)**

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**From:** Jim Smith [JSmith@publicpolicylaw.com]  
**Sent:** Wednesday, August 28, 2013 3:05 PM  
**To:** Kevin R Hennessy (Services - 6)  
**Subject:** Fall River

Kevin,

I spoke to Mayor Flanagan again directly. I have two calls into City Solicitor Elizabeth Sousa. He told me that he would make sure that she called me back today. She told him that she thought they were waiting on something from us. I made it very clear to him that was not the case.

I also mentioned the other fellow in the meeting who I thought was pretty sharp, but he still thought that Elizabeth Sousa should handle it. I expect back from her at any time now.

Thank you.

Jim

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James E. Smith  
Smith, Segel, Ruddock & Hayes  
50 Congress Street, Suite 500  
Boston, MA 02109  
Tel.: 617.523.0600  
FAX: 617.523.7171  
[www.srhpublicpolicy.com](http://www.srhpublicpolicy.com)

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**EXHIBIT 3**  
**TO**  
**DOMINION ENERGY, INC.'S**  
**MEMORANDUM IN**  
**OPPOSITION TO**  
**CITY OF FALL RIVER'S**  
**REVISED MOTION TO**  
**INTERVENE**



3. I assisted Dominion in connection with its consultation with the Town of Somerset and the City of Fall River to solicit qualifying environmental projects to satisfy Dominion's obligations under its Consent Decree.

4. I arranged for a meeting in the office of the Mayor of Fall River on July 11, 2013. Kevin Hennessy of Dominion and I met with Mayor Flanagan, the City Solicitor, the City Administrator, and other Fall River representatives. The City Administrator asked the most questions during the meeting, and it appeared to me that he would be responsible from Fall River's perspective.

5. At the meeting, Mr. Hennessy distributed copies of Dominion's Guidelines and the Consent Decree. He said that Fall River and Somerset had an opportunity to apply for \$1.6 million in funds for environmental projects. He told them that the scope of the projects was limited to the types of projects specified in the Consent Decree, and that no funds were guaranteed to either Somerset or Fall River.

6. It was clear from the meeting that Dominion was operating under deadlines to submit plans to the government. Dominion set a deadline of August 1 for the communities to submit proposed projects to Dominion. Mr. Hennessy told Fall River's representatives that there was flexibility to have a "couple weeks" past August 1 if they needed it.

7. Fall River did not contact me by August 1, 2013. Mr. Hennessy contacted me that day and noted that local newspapers were reporting on Somerset's potential projects. I called the Mayor, who told me that City Solicitor Sousa would be handling the matter and would be submitting projects within the next few days. I advised Mr. Hennessy of this call.

8. As of the end of the day Monday, August 5, I had heard nothing from the City Solicitor. Mr. Hennessy contacted me and asked to advise him if and when I heard anything. I

heard nothing back until August 28, when I called the Mayor again. The Mayor told me he would make sure that Ms. Sousa would call me back that day. I placed two phone calls to Ms. Sousa, but did not hear back from her that week.

9. Due to the sale of Brayton Point by Dominion, I was no longer under a formal retainer agreement with Dominion as of September 1, 2013. However, I continued on this specific project because I had started it and wanted to see it through. I did this as a professional courtesy for a longtime client. I stayed in touch with Mr. Hennessy; and I reported to Mr. Hennessy on every contact from or with Fall River promptly.

10. Assistant City Solicitor, Ms. DiOrio, called me on September 3, 2013, and informed me that she would be responsible for the projects submittal for Fall River. Ms. DiOrio also said she was aware that Somerset had already submitted its proposed projects, and she asked me if she could see copies of Somerset's proposal as a "template." I asked Mr. Hennessy, and Dominion declined.

11. On September 5, Ms. DiOrio, contacted me again. She sent me two emails, one at 11:03 am and the second shortly thereafter at 11:13 am. [Attachment A.] In the first e-mail, Ms. DiOrio asked (1) whether the environmental projects funds would be "provided as reimbursement to the City following [its] expenditure"; and (2) despite the passage of time since the initial July 11 meeting, for an "appropriate extension." In the second e-mail, Ms. DiOrio also asked (3) "whether there's any leeway on solely providing improvements to school buildings."

12. I spoke to Ms. DiOrio by phone after receiving these two e-mails. On the first issue, I advised her that the funds must be used to fund specific projects approved under the Consent Decree. On the second issue, I advised her unequivocally that "this is happening" and Fall River "needs to move quickly." I did not promise or mention anything about considering a

further “extension.” Rather, I stressed that Fall River must hurry if it wants its projects to be considered.

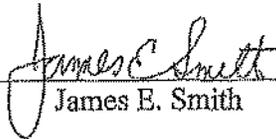
13. On the third issue in paragraph 11 above, Ms. DiOrio told me that Fall River could not fit into the specified parameters for the environmental projects. She asked whether Dominion could expand the permissible scope of the projects. I told her no; the Consent Decree is a legal document. Ms. DiOrio told me that Fall River may have difficulty proposing projects that fit within the specified parameters because Fall River’s schools are generally new, and they already have some solar energy capability.

14. No one from Fall River contacted me again about this matter until December 17, 2013, when an article was published in the local newspaper discussing the Somerset projects. I was extremely surprised that Ms. DiOrio called me back about these projects, given that our last conversation was almost three and half months earlier and I had heard nothing from Fall River all this time. I told her the process is over. Ms. DiOrio’s account in her affidavit of her conversation with me on December 17 is not accurate. I did not agree “that it was ‘untrue’ that Fall River ‘did not apply for its share’ of the settlement money.” I would not and could not have said that, because I knew that Fall River had not submitted a proposed project. I did say I would contact Dominion (Mr. Hennessy is my contact, not “Dominion’s legal counsel”), because I always did so when I received communication from Fall River or any other entity in connection with Dominion. If I said that “Fall River had ‘worked hard’ on this Project Proposal”—which I do not recall—it would have been simply repeating Ms. Diorio’s statement to me. I have no personal knowledge about whether Fall River “worked hard” on its proposal. I did make it clear that I believed Ms. DiOrio’s request was too late.

15. I believe these facts show that Dominion clearly offered Fall River an opportunity to apply for potential environmental projects. I strongly disagree that anything I said or did could have been reasonably interpreted to suggest Fall River had no deadline for submitting proposed projects to Dominion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24<sup>th</sup> day of February, 2014.

  
\_\_\_\_\_  
James E. Smith

**ATTACHMENT A**

**Jim Smith**

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**From:** Christy Diorio <cdiorio@fallriverma.org>  
**Sent:** Thursday, September 05, 2013 11:13 AM  
**To:** Jim Smith  
**Subject:** FW: Dominion Energy Env'tl Mitigation Plan Project

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Hi Jim,

Also, if you could look into whether there's any leeway on solely providing improvements to school buildings, that would be fantastic (vehicles, or other public buildings would greatly expand the City's ability to use the settlement money).

Best,

Christy DiOrio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
508-324-2655 (Fax)

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**From:** Christy Diorio  
**Sent:** Thursday, September 05, 2013 11:03 AM  
**To:** 'jsmith@srhpublicpolicy.com'  
**Subject:** Dominion Energy Env'tl Mitigation Plan Project

Hi Jim,

Can you confirm whether the \$800,000 will be provided as a reimbursement to the City following our expenditure? I need to determine whether the City will need to initially bond for the project we decide to undertake.

I look forward to hearing from you regarding an appropriate extension in which we can put a reasonable plan together which meets the June 24, 2013 Guidelines.

Best,

Christy DiOrio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
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command of the Supreme Court, but one that some courts have adopted—the unanimous precedent on this issue demonstrates unequivocally that Fall River does not qualify for such a limited “exception” because (1) the Government is the Plaintiff in this case and (2) the Consent Decree explicitly provides non-parties like Fall River have no rights under the Consent Decree.

Should this Court reach the merits despite all of that, it should deny Fall River’s motion to enforce or modify because (1) Dominion Energy, Inc. (“Dominion”) *has* complied with its obligation to “consult” about Environmental Mitigation Projects (“EMPs”) under the plain terms of the Consent Decree and (2) the circumstances here are far from the “exceptional circumstances” that can possibly justify such “an extraordinary remedy.” *United States v. 8136 S. Dobson Street, Chicago, Ill.*, 125 F.3d 1076, 1082 (7th Cir. 1997) (internal quotes and citation omitted).

## I. BACKGROUND

### A. The Consent Decree

On April 2, 2013, the United States filed a complaint and simultaneously lodged a proposed Consent Decree settling alleged violations of the Clean Air Act by Dominion.<sup>1</sup> [Dkts. 1 and 3.] The Consent Decree – totaling 87 pages with its Appendix – was painstakingly negotiated by the parties, and it included explicit terms reflecting the parties’ intent to preclude non-parties from interfering with its implementation:

- “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.” Consent Decree ¶ 2 [Dkt. 3].
- Only “Part[ies]” to the Consent Decree can apply to the Court “for any relief necessary to construe or effectuate th[e] Consent Decree.” *Id.* ¶ 187.

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<sup>1</sup> The Consent Decree resolved alleged violations at the Kincaid facility, in this District, the Brayton Point facility, in Massachusetts, and the now-closed State Line facility in Indiana.

- Only “Parties” to the Consent Decree can seek to modify it. *Id.* ¶ 188.
- The Consent Decree “does not limit, enlarge, or affect the rights of any Party to this Consent Decree as against any third parties.” *Id.* ¶ 198.

The Consent Decree also contained provisions requiring Dominion to fund EMPs. *Id.*

Section IX and App. A. Dominion was to develop plans to implement projects from nine different categories, as set forth in Appendix A, that would span five different states. Dominion was to submit the EMP plans to EPA for approval within 120 days after entry of the Consent Decree.<sup>2</sup> For the Northeast Clean Energy and Clean Diesel Projects (*id.* App. A, Section XI), Dominion was required to submit the plan after consulting with Fall River and the Town of Somerset regarding potential projects in those municipalities. *Id.* App. A at 14. The decision on which projects to submit to EPA was and still is solely Dominion’s. *Id.* Based on the quality of the proposals it received, Dominion could have decided to accept projects from either one or both of the municipalities. *See, e.g., id.* (Dominion “shall submit *one or more* Project Plans to EPA for review and approval....”) (emphasis added).

Although Dominion has since sold its interest in all three facilities subject to this Consent Decree, Dominion retains sole liability for implementation of the EMPs. Stipulation to Non-Material Modification of Consent Decree ¶ 4 [Dkt. 11-1].

**B. Facts<sup>3</sup>**

The preparation of EMP plans from nine different categories, spanning five different states in the Midwest and Northeast, is no small task. And the responsibility to (and the liability

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<sup>2</sup> Consent Decree, App. A, Section II, ¶ A. This Court entered the Consent Decree on July 17, 2013. [Dkt. 8]. Accordingly, Dominion was required to submit all of the EMP plans to EPA by November 14, 2013.

<sup>3</sup> This memorandum includes a summary of the relevant facts. A more detailed description is included in Dominion’s Opposition to Fall River’s Motion to Intervene (filed same day as this document).

for failing to) prepare and submit the proposed EMP plans—in a form that complies with all the detailed requirements of the Consent Decree and its Appendix A—to the U.S. Environmental Protection Agency (“EPA”) within 120 days of entry of the Consent Decree is solely Dominion’s. Yet, Dominion could not meet that requirement on its own. Not only did Dominion have to solicit proposed projects from eleven different municipalities, government agencies, and private organizations, Decl. of Kevin R. Hennessy ¶ 21 (“Hennessy Decl.”) (attached as Ex. 1), it also had to review those proposals, work with these various entities to ensure the plans complied with all the requirements of, and included the various authority and financial assurance instruments required by, the Consent Decree. So Dominion started the process early—even before the Consent Decree had been entered—to ensure it can work with these entities to produce the required plans.

Dominion prepared “Guidelines” tailored to each EMP and provided them to the various entities in early July. *See* Hennessy Decl. ¶¶ 5-6 (describing the process as to Somerset and Fall River). Dominion met with some of the entities. *See id.* And it gave them an initial deadline of August 1, 2013. *See id.* ¶ 8. The local bodies, agencies, and organizations responded promptly and enthusiastically, *id.* ¶ 21, which allowed Dominion the necessary time to review the proposals, discuss them with the proposing entities, and ultimately ensure a timely submittal of the plans to EPA in a form that complies with the numerous requirements of the Consent Decree. *See, e.g.,* Decl. of Alice G. Prior ¶ 9 & Attach. E (“Prior Decl.”) (attached as Ex. 2) (emails between Dominion technical personnel and Somerset schools personnel over a period of a month to ensure the submittal ultimately complies with the requirements.)

The sole exception was Fall River.

On July 11, 2013, Dominion met with the Mayor of Fall River, the City Corporation Counsel, and other representatives to discuss the requirements of the EMPs. Dominion gave them a copy of the Consent Decree and the Guidelines for their specific EMP. Dominion highlighted the August 1, 2013 deadline, but also helpfully advised that this deadline could be extended by a “couple of weeks,” should Fall River ask for it. Fall River did not submit a project proposal by August 1, 2013; nor did it even contact Dominion to request an extension by that date, or even to give Dominion a status update. Honnessy Decl. ¶¶ 5-11.

Dominion attempted to communicate with Fall River on numerous occasions: a July 19 follow-up e-mail was not answered, *Id.* ¶ 9; Dominion called the Mayor in early August 2013, only to get a promise that the City Corporation Counsel would soon submit proposed projects—a promise that was not fulfilled, *id.* ¶ 12; Dominion called the Mayor again on August 28, only to hear the same promise, *id.* ¶ 13. According to Fall River’s own admission, the Mayor did not actually instruct the City’s counsel to start preparing a proposed plan until early September. *Aff. of Christy M. DiOrio* ¶ 7 (“DiOrio Aff.”) [Dkt. 18-1]. And when the City’s Assistant Corporate Counsel finally looked at the Consent Decree and Guidelines (but failed to check the docket in this Court), she asked (1) whether Dominion can simply reimburse the City for projects it does; (2) if the scope of the projects under the Consent Decree can be expanded by Dominion, because Fall River had relatively new schools that are already energy-efficient; and (3) for an “appropriate extension.” Decl. of James E. Smith ¶ 11 (“Smith Decl.”) (attached as Ex. 3). According to its Assistant Corporation Counsel, Fall River after that “worked hard” to hire a contractor and put together a proposal. *DiOrio Aff.* ¶ 14. Yet, September passed, October passed, November passed, and more than half of December passed without any communication *from* Fall River. The City did not call or e-mail Dominion to inquire about its “extension”; or to

update Dominion about its status; or to give Dominion an expected date for a submittal. And it did not submit a project proposal. Until, that is, it read in a newspaper on December 17, 2013 that Dominion's EMP plans had been submitted to EPA long ago.

Fall River filed the instant Motion to Enforce and/or Modify Consent Decree [Dkt. 17]. It asks this Court to (i) purportedly enforce the Consent Decree by requiring Dominion to submit Fall River's proposed EMPs irrespective of their compliance with the Consent Decree or Dominion's other obligations under the Consent Decree regarding EMPs, or (ii) modify the Consent Decree to allow Fall River to submit its proposed EMPs directly to EPA without Dominion's involvement. *Id.* at 2.

## II. ARGUMENT

### A. Fall River has No Standing to Enforce or Modify the Consent Decree.

1. The Supreme Court has unequivocally held that third-parties—even intended beneficiaries—have no standing to enforce the Consent Decree.

The Supreme Court has unequivocally held:

[A] well-settled line of authority from this Court establishes that a consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it *even though they were intended to be benefited by it.*

*Blue Chip*, 421 U.S. at 750 (citations and footnotes omitted) (emphasis added). That should be the end of this matter. Fall River is not a party to this Consent Decree and thus cannot seek to enforce it.

2. Even if this Court were to carve an “exception” to the Supreme Court's Blue Chip Rule, Fall River would still have no standing to enforce the Consent Decree.

Incredibly, Fall River's filings do not cite, acknowledge, or seek to distinguish *Blue Chip*. Instead, almost in passing, Fall River cites *South v. Rowe*, 759 F.2d 610, 612 (7th Cir. 1985), as authority for “enforcing” the Consent Decree. But *South* did not acknowledge, much less

discuss, *Blue Chip*. As between explicit Supreme Court precedent, and the court of appeals decision that, on its face, is flatly and inexplicably<sup>4</sup> inconsistent with that precedent, this Court is bound by the Supreme Court's decision. See, e.g., *U. S. EEOC v. Sidley Austin Brown & Wood LLP*, 406 F.Supp.2d 991, 995-96 (N.D. Ill. 2005) (“[T]he District Judge *is* free to disregard circuit precedent that is contrary to the rule pronounced by the court possessing final authority to decide that particular question of law.”), *aff’d* 437 F.3d 695 (7th Cir. 2006); *Wis. Bell Inc. v. TCG Milwaukee, Inc.*, 301 F.Supp.2d 893, 897-98 (W.D. Wis. 2002) (“[W]hen the Seventh Circuit and Supreme Court conflict, it is the Supreme Court that district courts must follow.”). Cf. *IBM Corp. v. Comdisco, Inc.*, 834 F.Supp. 264, 267 (N.D. Ill. 1993) (following *Blue Chip*) (also citing *Gautreaux v. Pierce*, 707 F.2d 265, 272-73 (7th Cir. 1983) (Posner, J., concurring)).<sup>5</sup>

In short, this Court must address *Blue Chip*.<sup>6</sup> We respectfully submit the Court should apply the Supreme Court's command and deny the motions. If the Court, however, is inclined to

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<sup>4</sup> There is no indication the parties in *South* raised *Blue Chip*. Perhaps that, and the failure of any of the judges' clerks to locate it, explains *South*'s silence. The latter may be understandable, in lights of the facts. Much like *Hook v. Ariz., Dep't of Corr.*, 972 F.2d 1012 (9th Cir. 1992) and *Floyd v. Ortiz*, 300 F.3d 1223, 1226 (10th Cir. 2002), discussed *infra*, this was a prison reform case, in which the original plaintiff had long left prison when the current inmates were allegedly subjected to action inconsistent with the consent decree—a decree clearly intended to apply to these later inmates. Under these circumstances, it is at least superficially attractive to conclude the consent decree itself intended to provide the specifically-intended beneficiaries of the entire consent decree—not just a relatively incidental piece, such as the EMPs in this case—with a right to enforce it. And there is nothing in *South* indicating the consent decree in that case included *any* language, much less the explicit language in this Consent Decree, precluding the specifically-intended beneficiaries—the inmates—from enforcing it.

<sup>5</sup> In *Gautreaux*, the majority expressly found it unnecessary to reach the issue of intervention by strangers to a consent decree, 707 F.2d at 267 n.2, because the parties did not contest it and the court, in any event, denied the relief requested. In his concurrence, Judge Posner addressed it. After acknowledging that *Blue Chip* appears to bar intervention by non-parties, he ultimately did not have to answer the question because the appellants were not third-party beneficiaries in any event. *Id.* at 272-73.

<sup>6</sup> *United States v. Forman*, 990 F.Supp. 875 (E.D. Mich. 1997), is instructive. The district court faced a Sixth Circuit case that conflicted with longstanding Supreme Court

carve out an exception to *Blue Chip*, it is not without precedent to consider. Surprisingly, some lower courts have carved out a limited exception to what otherwise appears to be an unequivocal Supreme Court command. But even under these cases, Fall River very clearly does not qualify for that exception.

The Ninth and D.C. Circuits have provided the most fulsome explanations for their “limiting” of explicit Supreme Court precedent. In *Hook*, the court was faced with a request by an inmate to enforce a consent decree against the prison system that had settled alleged constitutional violations by a putative class of prisoners. 972 F.2d at 1013-14. The class had not been certified before the original named plaintiffs had left prison or were not among the inmates seeking enforcement. *Id.* at 1013. The Ninth Circuit reasoned that because (1) *Blue Chip* involved a consent decree with the Government, (2) it was “well-settled that only the Government can seek enforcement of its consent decrees,” and (3) “[i]n contract law, third party beneficiaries of the government’s rights under a contract are normally assumed to be only incidental beneficiaries and are precluded from enforcing the contract absent a clear expression of a different intent”; “[t]he holding in *Blue Chip Stamps* is thus limited to incidental beneficiaries or beneficiaries of consent decrees where the government was the plaintiff.” *Id.* at 1015 (internal quotes and citations omitted).

The Ninth Circuit elaborated in *United States v. FMC Corp.*, 531 F.3d 813, (9th Cir. 2008). *FMC* was not a prison reform case. The third-party beneficiaries seeking to enforce a

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precedent, and the Sixth Circuit had not even mentioned the Supreme Court case. The court explained that if it “determines that [the court of appeals’ decision] squarely violates established Supreme Court precedent, ... this Court must follow that precedent.” *Id.* at 882. The district court felt it was “duty-bound” to attempt to distinguish and harmonize the Sixth Circuit precedent with the Supreme Court if possible. To do so, the court went to great lengths to distinguish the offending Sixth Circuit case based on a narrow difference in its facts (so narrow that the court “confesse[d] that it is not completely comfortable with this analytical distinction”) and went on to follow the Supreme Court’s precedent. *Id.* at 883-84.

consent decree were Tribes with regulatory authority over the facility in question that had been given specific rights under the Consent Decree, though they were not named parties to the Consent Decree. In other words, the Tribes in *FMC* had much more at stake in the Consent Decree than Fall River has here—as they were clear third-party beneficiaries (not possible, like Fall River, had it only did what it was supposed to do) of multiple, specific substantive obligations from the Defendant. Still, the court held, in light of *Blue Chip* (even as “limited” by *Hook*), “[t]wo key facts undermine the Tribes’ argument: *the identity of the parties* to the Consent Decree and *the text* of the Consent Decree.” *Id.* at 821 (emphasis added).

The crucial first factor, the court explained, was that the Government is the plaintiff in *FMC*. A rule that “when the government is the plaintiff, third-party beneficiaries *never* have standing to enforce the consent decree” makes sense, because unlike the prison reform cases such as *Hook* “where the original plaintiffs lacked any remaining interest in enforcing the decree, the government has an ongoing incentive to enforce its contracts.” *Id.*

Even if that absolute rule were to be softened to hold that “when the government is the plaintiff, third-party beneficiaries are *presumed* to be incidental *in the absence of a clear expression of a different intent* in the consent decree,” *id.* (second emphasis added), the Tribes—though named beneficiaries—could not enforce because *the text* of the consent decree did not evince such intent. In fact, it evinced “the parties’ intent that third parties *cannot* enforce the Consent Decree.” *Id.* The *text* of the Consent Decree in this case clearly evinces the same intent. *See supra* at 2-3 (citing Consent Decree ¶¶ 2, 187, 188, 198). Accordingly, Fall River cannot seek to enforce.

Further confirming this intent, the *FMC* court explained, the consent decree “specifies mechanisms for resolving disputes,” and “those provisions apply only to ‘either party,’ *i.e.*, not the Tribes,” even though they are named beneficiaries. 531 F.3d at 823.

If the Tribes could enforce the Consent Decree directly, the Tribes could hale the parties into federal court without invoking any of the prescribed dispute resolution mechanisms. We do not think that the Consent Decree could have intended to grant a broader range of dispute-resolving rights to the Tribes than to the parties themselves.

*Id.* This is on all fours similar to the Consent Decree before this Court. *See* Consent Decree, Section XVI (setting forth elaborate “Dispute Resolution” mechanisms for the *parties*). Even if third-party beneficiaries of a consent decree in which the Government is the plaintiff could seek to enforce—and they cannot—the Consent Decree here explicitly precludes non-parties, such as Fall River, from enforcing. Further, it should not be lost on this Court that if Fall River “could haul the parties into federal court” because it is unhappy with the result of its lack of communication with Dominion, then every one of the eleven local bodies, agencies, and organization could also do the same—whether because they are unhappy with the way Dominion conducted the process to select projects, or because they are unhappy with EPA’s comments on or rejection of a proposed project. The parties did *not* intend such chaos; nor did they intend to entangle the court with the business of determining the details of the proposed projects for EMPs.

The D.C. Circuit has followed essentially the same reasoning of the Ninth Circuit, in a series of cases. The first of those cases acknowledged *Blue Chip*, and “like the Ninth Circuit,” limited it to “*incidental* third party beneficiaries,” while explaining “third party beneficiaries of a Government contract are generally assumed to be merely *incidental* beneficiaries, and may not enforce the contract absent clear intent to the contrary.” *Beckett v. Air Line Pilots Ass’n*, 995

F.2d 280, 288 (D.C. Cir. 1993) (internal quotes and citations omitted) (emphases in original). “Only the Government can seek enforcement of its consent decrees ...; therefore, even if the Government intended its consent decree to benefit a third party, that party could not enforce it unless the decree so provided.” *Id.*; see also *SEC v. Prudential Secs., Inc.*, 136 F.3d 153, 159 (D.C. Cir. 1998) (“The test is not, as appellants appear to suggest, only whether the contracting parties intended to confer a benefit directly on the third parties, but also whether the parties intended the third party to be able to sue to protect that benefit.”); *Rafferty v. NYNEX Corp.*, 60 F.3d 844, 849 (D.C. Cir. 1995) (per curiam) (“Unless a government consent decree stipulates that it may be enforced by a third party beneficiary, only the parties to the decree can seek enforcement of it.”); accord *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 958 (8th Cir. 2002) (“In order for a third party to be able to enforce a consent decree, the third party must, at a minimum, show that the parties to the consent decree not only intended to confer a benefit upon that third party, but also intended to give that third party a legally binding and enforceable right to that benefit. This standard applies whether or not the government is a party to the consent decree.”) (citing *Prudential Secs.*, 136 F.3d at 159) (internal citation and parenthetical omitted).<sup>7</sup>

In short, even if this Court were inclined to carve a limited exception to *Blue Chip* as these courts have done, there is no question that such exception would not apply to Fall River

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<sup>7</sup> See also *Floyd*, 300 F.3d at 1226 (a prison case similar to *Hook*, following, without analysis, the position that “intended third-party beneficiaries of consent decrees have standing to enforce those decrees”) (citing, *Becket* and *Hook*). The Second Circuit in *Berger v. Heckler*, 771 F.2d 1556 (2d Cir. 1985), faced a situation similar to *Hook*, in that the third-party beneficiaries who were seeking to enforce a consent decree were members of a class that had not yet been certified before the settlement was reached. The court held there was no need to certify the class before enforcing the consent decree in favor of the putative class members, because “it is undisputed that the Secretary agreed, in signing the decree, to confer certain benefits on nonparties. It is clear to this court that, in so doing, she also agreed to the *enforcement* of the decree in favor of nonparties.” *Id.* at 1567. In other words, the Second Circuit discerned a specific intent in the consent decree to allow beneficiaries who were technically not parties a right to enforce.

because “[t]wo key facts undermine [Fall River’s] argument [had it been made]: *the identity of the parties* to the Consent Decree and *the text* of the Consent Decree.” See *FMC*, 531 F.3d at 821 (emphasis added). Here, as in *FMC*, *Rafferty*, and *Prudential Secs.* (all of which denied enforcement), the Government is the plaintiff in the underlying Consent Decree. And, here as in *FMC*, *Rafferty*, and *Prudential Secs.*, as well as *Pure Country* (which also denied enforcement), the plain text of the Consent Decree not only does not “stipulate[] that it may be enforced by a third party beneficiary,” see *Rafferty* 60 F.3d at 849, it unequivocally precludes anyone other than the parties from having any enforcement rights under the Consent Decree.

But we again respectfully submit this Court should not carve an exception from *Blue Chip*. Rather, as the en banc Sixth Circuit succinctly put it:

The plain language of *Blue Chip* indicates that even *intended* third-party beneficiaries of a consent decree lack standing to enforce its terms. Although other circuits have held to the contrary, ... we are unable to join them until the Supreme Court revisits the unequivocal language of *Blue Chip*.

*Aiken v. City of Memphis*, 37 F.3d 1155, 1168 (6th Cir. 1994) (en banc).

This Court should deny Fall River’s motion to enforce or modify on the basis of a straightforward application of the Supreme Court’s command in *Blue Chip*.

**B. Even if *Blue Chip* and its Progeny Do Not Categorically Preclude Fall River’s Motion to Enforce or Modify, this Court Must deny the Motion Because Dominion Has Complied with the Consent Decree and Fall River Is Not Entitled to the “Extraordinary Remedy” of Modification.**

1. Dominion has complied with its Consent Decree obligation to consult with Fall River.

Although Fall River characterizes this action as one to “enforce” the Consent Decree, the so-called “duty” Fall River seeks to enforce far exceeds any obligation actually contained in the Consent Decree. The Court must enforce a consent decree as it is written, not as a moving party wishes it were written. See *United States v. Armour & Co.*, 402 U.S. 673, 682 (1971). On its

face, the Consent Decree requires nothing more from Dominion than to engage in “consultation” with Fall River. Consent Decree, App. A, Section XI, ¶ A. No further obligation can be discerned from the Consent Decree: thus, given that Dominion consulted with Fall River on numerous occasions, no duty is left for this Court to enforce.

For the purpose of construction and enforcement, “a judicially approved consent decree is essentially a contract.” *United States v. Alshabkhoun*, 277 F.3d 930, 934 (7th Cir. 2002); *IBM*, 834 F.Supp. at 266 (citing *United States v. ITT Cont'l*, 420 U.S. 223, 238 (1975)). The parties’ agreement in the consent decree itself is “the source of the court’s authority to enter any judgment at all.” *Alshabkhoun*, 277 F.3d at 934. Accordingly, fundamental principles of contract interpretation apply when interpreting the provisions of a consent decree. *United States v. City of Northlake, Ill.*, 942 F.2d 1164, 1167 (7th Cir. 1991).

Foremost among these is the Supreme Court’s command that “the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it.” *Armour & Co.*, 402 U.S. at 682 (declining to interpret consent decree to prohibit defendant’s conduct absent explicit terms in agreement addressing that conduct); *see also Sealy Mattress Co. of Mich., Inc. v. Sealy, Inc.*, 789 F.2d 582, 585 (7th Cir. 1986) (Consent decree “is to be interpreted strictly in accordance with its own language and not in accordance with its purposes.”). The enforcing court looks “to the plain language of the written agreement as the best expression of the parties’ intent,” and if the language of the consent decree unambiguously answers the question at hand, “the inquiry is over.” *City of Northlake, Ill.*, 942 F.2d at 1167 (internal quotes omitted). A decree “will not be expanded by implication or intendment beyond the meaning of its terms.” *Sportmart, Inc. v. Wolverine World Wide, Inc.*,

601 F.2d 313, 318 (7th Cir. 1979) (quoting *Terminal R.R. Ass'n v. United States*, 266 U.S. 17, 29 (1924)).

Here, Dominion's only obligation regarding Fall River within the four corners of the Consent Decree is to engage in "consultation" with Fall River and the Town of Somerset regarding the submission of one or more project plans to EPA. Consent Decree, App. A, Section XI, ¶ A. Dominion fully carried out this duty, by meeting with several high-level Fall River officials, providing them with Guidelines, and repeatedly attempting to communicate with them regarding project plans. *See Supra* Section I.B (Facts). Fall River was completely and utterly unresponsive, did not even start taking steps to put together a plan until more than a month after the deadline set forth by Dominion—which is the party ultimately responsible for timely submitting proposed plans to EPA—and did not submit a proposed plan until four months and a half after that deadline. *Id.*

Quite simply, there is no duty left for this Court to enforce with regard to Fall River. Dominion had no obligation to inform Fall River of the Consent Decree's entry and subsequent hardening of the deadlines it contained or of Dominion's sale of Brayton Point. *See* Fall River's Mem. in Supp. of Its Mot. to Modify Consent Decree at 6 [Dkt. 18] ("Mem. Supp. Mot. to Modify Consent Decree"). First, clearly the Consent Decree does not so state, as it left the consultation process for the parties to implement. Second, the deadline for Dominion to submit plans to EPA is just that: a deadline *for Dominion*. Whether that deadline is one, two, or three months after the deadline that Dominion set for Fall River (and all of the other entities involved in similar processes) is of no moment to Fall River. Dominion set that date early because it knew there would be a lot of work after each entity submitted initial proposed projects before a plan that complies with the specific requirements of the Consent Decree could be submitted to

EPA. Remarkably, out of ten other entities, not one had the same issue as Fall River. Hennessy Decl. ¶ 21. And, in any event, Fall River had its Corporation Counsel office “in charge” of its process. If the Dominion deadline were relevant to Fall River’s response—which it obviously is not—surely someone in that office could have checked PACER to determine when that was. Third, the sale of Dominion’s interest in Brayton Point had no effect on Fall River’s ability to consult with Dominion. When Fall River communicated with Dominion’s representative in early September 2013, he immediately informed Dominion. Smith Decl. ¶ 10; Hennessy Decl. ¶¶ 15-16. And when Fall River called him on December 17, 2013, he also immediately informed Dominion. Smith Decl. ¶ 14.

The problem was that Fall River went into “radio silence” for the intervening three months and a half. Dominion had already more than fulfilled its consultation duties under the Consent Decree. Nothing in the Consent Decree says it was Dominion’s duty in this period to beg Fall River to finally submit a project. Common sense, if not common courtesy, required Fall River at least to keep Dominion abreast of its progress, especially that Fall River did not even start looking at *whether* it could submit projects until early September 2013, seven weeks after it was given the Guidelines and Consent Decree and more than a month after the original deadline. Fall River did not do so.

Contrary to Fall River’s claim, nothing in the Consent Decree asserts that any environmental harm occurred to Fall River, or that Dominion was required to fund an EMP in Fall River in order to mitigate such alleged harm. *See* Mem. Supp. Mot. to Modify Consent Decree at 7.<sup>8</sup> Indeed, nothing within the terms of the Consent Decree suggests any more

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<sup>8</sup> While Somerset and Fall River were eligible for EMPs as a result of the parties’ settlement, another adjacent city—Swansea—was not. Swansea strenuously objected. The Government explained in its Motion to Enter the Consent Decree this was not reason for this

rigorous consultation was required, or any particular substantive outcome must result from such consultation. The projects contemplated in the Consent Decree could be carried out “in either or both municipalities,” so it was actually envisioned that no projects would necessarily be implemented in Fall River (or Somerset, for that matter). Consent Decree, App. A, Section XI, ¶ A. Both Fall River and Somerset were explicitly told that, in addition to being provided with a copy of the Consent Decree which made this fact clear. Hennessy Decl. ¶ 7; Decl. of Marc Furtado ¶ 6 (“Furtado Decl.”) (attached as Ex. 4).

Fall River incorrectly states that it was “specifically written in the Consent Decree” that one half of the \$1.6 million award be allocated to Fall River. Mem. Supp. Mot. to Modify Consent Decree at 5, 8. Not so. The Consent Decree merely notes the parties’ “expectation” that the funds would be evenly split, while recognizing “the final distribution will depend on the Projects (and their costs) that *can be proposed and implemented within the time frames* and other requirements set out in this Appendix.” Consent Decree, App. A, Section XI, ¶ B (emphasis added). Among these time frames is the requirement that any project plans be submitted to EPA within 120 days of the Consent Decree’s entry—a deadline that no potential project for Fall River was able to meet due to the city’s own gross unresponsiveness. Moreover, the “expectation” in the Consent Decree for half the EMP funds to be used in Somerset (and, if that is the case, the other half in Fall River) was based on a reasonable expectation of both cities diligently participating in the consultation process and, ultimately, proposing worthy projects that comply with the Consent Decree in that process. It was not based on an assumption of gross unresponsiveness from Fall River.

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Court to reject the Consent Decree, and this Court entered it. Mem. in Supp. of Mot. to Enter Consent Decree at 17-19 [Dkt. 7-1]; Order Entering Consent Decree [Dkt. 8].

In short, nothing in the Consent Decree requires Dominion to do more than it has already done. The Court should deny the Motion to Enforce on this ground too.

2. The text of Federal Rule of Civil Procedure 60(b) and the Consent Decree prohibit Fall River from seeking to modify the Consent Decree.

Fall River also seeks to modify the Consent Decree under Federal Rule of Civil Procedure 60(b)(5) so that EPA may accept Fall River's project proposal directly. Yet by the clear terms of this Consent Decree and Rule 60(b) itself, Fall River may not seek to modify the agreement because it is not a party to the Consent Decree.

Dominion and EPA explicitly defined the exclusive procedure for modification of the Consent Decree: it "may be modified *only* by a subsequent written agreement signed by the Parties." Consent Decree ¶ 188 (emphasis added). The "Parties" to the Consent Decree are the Government and Dominion (and the new owner of the facilities). *Id.* ¶ 41. The unambiguous language of this Consent Decree leave no role for third parties to modify its carefully negotiated terms over the objections of the actual parties to the agreement.

Likewise, even if the express terms of the Consent Decree did not preclude Fall River from altering the agreement, Fall River cannot modify the Consent Decree under Rule 60(b) because it is not a party. Rule 60(b) provides that, "[o]n motion and just terms, the court may relieve a *party or its legal representative* from a final judgment, order, or proceeding ...." Fed. R. Civ. P. 60(b) (emphasis added). "It is well-settled that ... one who was not a party lacks standing to make a 60(b) motion." *Nat'l Acceptance Co. of Am., Inc. v. Frigidmeats, Inc.*, 627 F.2d 764, 766 (7th Cir. 1980) (internal quotes and alteration omitted); *8136 S. Dobson Street*, 125 F.3d at 1082 ("The person seeking relief [under Rule 60(b)] must have been a party.").

Accordingly, Fall River's motion to modify the Consent Decree must be denied.

3. Even if Fall River could seek a modification, the circumstances do not warrant that extraordinary remedy.

Modification under Rule 60(b) “is an extraordinary remedy and is granted only in exceptional circumstances.” *8136 S. Dobson Street*, 125 F.3d at 1082 (quoting *Dickerson v. Bd. of Educ.*, 32 F.3d 1114, 1116 (7th Cir. 1994)).<sup>9</sup> Rule 60(b) provides that a court may relieve a party from a final judgment in particular circumstances, including, as relevant to Fall River’s motion, when “applying [the consent decree] prospectively is no longer equitable.” Fed. R. Civ. P. 60(b)(5). A party seeking modification of a consent decree under Rule 60(b)(5) bears the burden of establishing a “significant change in circumstances,” either factual or legal, warrants revision of the decree. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383 (1992); see *Hodge*, 862 F.2d at 862 (“Before exercising its power to modify, a court must be convinced by the party seeking relief that existing conditions differ *so substantially* from those which precipitated the decree as to warrant judicial adjustment.”) (emphasis added).

A significant change may be found where new factual conditions make compliance with the decree substantially more onerous; where a decree proves to be unworkable due to unforeseen obstacles; or where changed factual conditions render enforcement of the decree detrimental to the public interest. *Rufo*, 502 U.S. at 384. Generally, these criteria are only found

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<sup>9</sup> Courts have explained Rule 60(b)(5) is essentially a codification of the courts’ “[i]nherent ... power to modify an injunction in adaptation to changed conditions, though it was entered by consent.” *Hodge v. Dep’t of Housing & Urban Dev., Housing Div., Dade Cnty., Fla.*, 862 F.2d 859, 861-62 (11th Cir. 1989) (per curiam) (internal quotes and citation omitted). Accordingly, any appeals to this Court’s “inherent power” to enforce and/or modify the Consent Decree are subject to the constraints discussed in the text above. It should be noted, however, that while “inherent power” to modify has been recognized by the courts in exceptional circumstances, there is no such authority to enforce, except as provided by the terms of the consent decree. See *Pigford v. Veneman*, 292 F.3d 918, 925 (D.C. Cir. 2002) (“[T]he district court’s interpretive and enforcement authority depends on the terms of the decree and related court order, rather than on some ‘ancillary’ or ‘inherent’ power.”) (citation omitted). Here, the Consent Decree specifies third-parties have no standing to seek enforcement.

in truly extraordinary factual circumstances. *See, e.g., id.* at 384 (unanticipated increase in jail population rendered number of cells contemplated in consent decree for construction of jail insufficient); *Duran v. Elrod*, 760 F.2d 756, 759-61 (7th Cir. 1985) (refusal to modify consent decree and allow double bunking would lead to pretrial release of 500 accused felons); *Philadelphia Welfare Rights Org. v. Shapp*, 602 F.2d 1114, 1120-21 (3d Cir. 1979) (numerical quotas for patient screenings eliminated where sufficient patients not available despite State's diligent outreach efforts); *New York State Ass'n for Retarded Children, Inc. v. Carey*, 706 F.2d 956, 957, 966 (2d Cir. 1983) (unforeseen housing shortage, neighborhood opposition, and funding conditions limited ability to transfer patients to small group homes, and proposed modification was preferable to continued housing in "inhuman" institutional home). In contrast, relief under Rule 60(b)(5) is not warranted where present circumstances were known or foreseen previously. *See Agostini v. Felton*, 521 U.S. 203, 216 (1997).

Even assuming Fall River may pursue a modification under Rule 60(b), it has failed to carry its burden of establishing a significant change in circumstances warranting relief from the terms of the Consent Decree. The only change in factual conditions Fall River identifies is "the change in ownership of [Brayton Point] that led to the termination of its consultant to Fall River, without informing Fall River of the change or the deadline . . . ." Mem. Supp. Mot. to Modify Consent Decree at 6. These events are a far cry in their significance from the extraordinary changed circumstances that have justified relief under Rule 60(b) in previous cases. Fall River does not explain how the change in ownership, or the end of Dominion's formal relationship with its consultant, made compliance with the Consent Decree onerous or unworkable. Nor could it—these changes did not impact Dominion's consultation with Fall River in any way, since Dominion's consultant continued to relay any communications from Fall River to

Dominion throughout the time in question. Smith Decl. ¶ 9; Hennessy Decl. ¶¶ 12-16. Fall River's theory appears to be that it was Dominion's burden to reach out to Fall River, when it did not hear *anything*—not even a status or an expected date of submittal—from Fall River for months after the start of September. But there was no such duty under the Consent Decree.

The entry of the Consent Decree (and the subsequent hardening of Dominion's deadline for submitting project plans to EPA) is similarly irrelevant. That deadline applied to Dominion alone and did not affect Fall River. Fall River was given an August 1 deadline to submit project plans. It did not meet it. And it did not submit proposed projects until four months and a half later. Nor was it unforeseeable that, at some point shortly after the Consent Decree is lodged and the comment period ends, this Court would enter it. If that was relevant information—and it was not—Fall River's Corporate Counsel's office could have easily obtained it by checking this Court's docket. Or someone at Fall River could have simply e-mailed or called Dominion to inquire. Fall River has simply failed to identify any significant change in circumstances justifying a modification to the Consent Decree.

Indeed, the only unforeseen change in factual circumstances here was Fall River's inexplicable failure to cooperate with Dominion by submitting project plans within a time frame that allowed Dominion to meet its Consent Decree obligations. This is not a case in which Dominion imposed a deadline of August 1, and Fall River missed it by a few days, or even a few weeks. Fall River submitted nothing, and was completely unresponsive, until four months and a half after the deadline. Meanwhile, every other local body, agency, and organization involved in a similar process, including Somerset, stayed in touch with Dominion, eagerly worked with Dominion, and submitted timely project proposals. Hennessy Decl. ¶ 21; Furtado Decl. ¶ 8.

Fall River cannot rely on its own lack of diligence in consulting with Dominion to justify resorting to the extraordinary remedy of modifying the Consent Decree. Relief under Rule 60(b) is “essentially equitable in nature and is to be administered upon equitable principles,” *C.K.S. Eng’rs, Inc. v. White Mtn. Gypsum Co.*, 726 F.2d 1202, 1208 (7th Cir. 1984), which include the equitable defense of “unclean hands,” *Shondel v. McDermott*, 775 F.2d 859, 868 (7th Cir. 1985) (“Unclean hands” doctrine means “the plaintiff’s fault, like the defendant’s, may be relevant to the question of what if any remedy the plaintiff is entitled to.”). Given its gross failure to remain in communication with Dominion, Fall River cannot claim to have clean hands in petitioning this Court for equitable relief.

### III. CONCLUSION

For the foregoing reasons, the Motion to Enforce or Modify the Consent Decree should be denied.

Respectfully submitted,

DOMINION ENERGY, INC.

/s/ Harry M. Johnson, III

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*Counsel for Dominion Energy, Inc.*

February 26, 2014

**CERTIFICATE OF COMPLIANCE PURSUANT TO LOCAL RULE 7.1(B)**

Pursuant to Local Rule 7.1(B), I hereby certify that the foregoing Dominion Energy, Inc.'s Memorandum in Opposition to City of Fall River's Motion to Enforce and/or Modify Consent Decree contains 6,934 words, as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, and therefore is within the word limit set by the Court.

/s/ Harry M. Johnson, III  
Harry M. Johnson, III

Dated: February 26, 2014

**CERTIFICATE OF SERVICE**

Pursuant to Local Rule 5.3, I hereby certify that on February 26, 2014, the foregoing Dominion Energy, Inc.'s Memorandum in Opposition to City of Fall River's Motion to Enforce and/or Modify Consent Decree was served electronically upon all parties that are registered or otherwise entitled to receive electronic notices via the Court's CM/ECF system. The foregoing was also served upon those listed below via e-mail.

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/s/ Harry M. Johnson, III  
Harry M. Johnson, III

**EXHIBIT 1**  
**TO**  
**DOMINION ENERGY, INC.'S**  
**MEMORANDUM IN**  
**OPPOSITION TO CITY OF FALL**  
**RIVER'S MOTION TO ENFORCE**  
**AND/OR MODIFY**  
**CONSENT DECREE**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and )  
 )  
 THE CITY OF FALL RIVER, )  
 )  
 Proposed Plaintiff-Intervenor, )  
 )  
 v. )  
 )  
 DOMINION ENERGY, INC., BRAYTON )  
 POINT ENERGY, LLC, KINCAID )  
 GENERATION, LLC., AND EQUIPOWER )  
 RESOURCES CORP., )  
 )  
 Defendants. )  
 )  
 )  
 )

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Civil Action No. 3:13-cv-03086  
(SEM)(SMJ)

**DECLARATION OF KEVIN R. HENNESSY**

I, Kevin R. Hennessy, being first and duly sworn depose and say the following, based upon my own personal knowledge and belief:

1. I am over the age of 18 and am competent to make this declaration.
2. I am Director of Federal, State, and Local Affairs for Dominion Resources Services, Inc.
3. The United States and Dominion Energy, Inc. ("Dominion") are parties to a Consent Decree requiring Dominion to fund certain Environmental Mitigation Projects ("EMPs") in the amount of \$9.75 million, of which \$1.6 million is dedicated to Northeast Clean Energy and Clean Diesel Projects to be performed in Massachusetts. Dominion was required to prepare plans for all the proposed EMPs and, within 120 days of entry of the Consent Decree,

submit them to the United States Environmental Protection Agency (“EPA”) for review and approval.

4. I was responsible for reaching out to the Town of Somerset and the City of Fall River to solicit qualifying projects for the Northeast Clean Energy and Clean Diesel Projects. James Smith assisted me. He is a consultant in Boston, Massachusetts, who had been representing Dominion in connection with the Brayton Point station since the time Dominion had acquired it. Mr. Smith has longstanding ties to the communities near the facility. He has personal contacts in Fall River, including with the Mayor.

5. On July 11, 2013, Mr. Smith and I met with at least five representatives of Fall River in the Mayor’s office. Attendees included Mayor Flanagan, City Solicitor Sousa, City Administrator Cadime, and others. The purpose of the meeting was to discuss the potential for Dominion’s funding of qualifying EMPs pursuant to the Consent Decree. Mr. Cadime asked the most questions during the meeting, and it appeared to me that he had been designated as responsible for Fall River’s submittal.

6. At the meeting I also distributed copies of Dominion’s Environmental Mitigation Projects: Plan Proposal Guidelines (“Guidelines”) and the Consent Decree. The Guidelines explained the criteria in the Consent Decree for projects to qualify for potential funding, and was designed to assist the municipalities with a roadmap for developing a proposed plan. The Guidelines are attached as Attachment A. The Consent Decree was also provided as a reference, with the case information plainly visible. The cover page of the Consent Decree, as distributed, is attached as Attachment B.

7. I advised Fall River’s representatives that Dominion was required to submit proposed projects to EPA in the total amount of \$1.6 million from either Somerset, Fall River, or

both. I reiterated that Dominion could not guarantee funding for any projects. I also explained that Dominion had worked hard during negotiations with EPA to include EMP funds specifically for Somerset and Fall River.

8. According to the Guidelines, the deadline for submittal of projects to Dominion by Fall River and Somerset was August 1, 2013. At the meeting on July 11, 2013, I told Fall River's representatives that the deadline could be relaxed "a couple of weeks" if they needed more time. They did not request an extension at the meeting. At no time did I indicate or imply that Fall River's deadline for submitting projects to us was, or could be, extended for an unlimited time.

9. I sent an email to Fall River's City Administrator, Mr. Cadime, the next week on July 19, 2013. I thanked him for meeting with us and checked in to "make sure your implementation plan for the projects is going well and make myself available if you have any questions." This email is attached as Attachment C. No one from Fall River responded with any questions or comments.

10. I sent a similar e-mail on the same day to Marc Furtado, of the Somerset Public Schools District. I immediately received a response updating Dominion on Somerset's progress. [See Email attached as Attachment D]

11. Fall River did not contact Dominion by the August 1, 2013, deadline in the Guidelines. Meanwhile, Somerset was in frequent contact with us about its proposed projects, and it submitted its proposal to Dominion on August 1.

12. Because we had not heard anything from Fall River as of August 1, I contacted Mr. Smith. There had already been local newspaper reports about Somerset's projects. Mr. Smith then contacted the Mayor, and the Mayor told Mr. Smith that Fall River would submit

projects within the next few days. [See Email attached as Attachment E.] The Mayor also told Mr. Smith that City Solicitor Sousa would be handling the matter.

13. As of the end of the day Monday, August 5, we had still heard nothing from the City Solicitor. I asked Mr. Smith to let me know if and when he heard anything. [See Email attached as Attachment F.] No one from Fall River called us back in August. On August 28, Mr. Smith called the Mayor again. In an email, Mr. Smith advised me that the Mayor said "he would make sure that she [Sousa] called me back today." [See Email attached as Attachment G.] Mr. Smith further advised that he had two phone calls in to Ms. Sousa. She did not call back that day or that week.

14. While Mr. Smith was no longer formally retained by Dominion after September 1, 2013, he maintained contact with me and Dominion as a professional courtesy about this matter. Because he has longstanding ties to the local communities and to the Brayton Point station, I felt it was appropriate to maintain those connections.

15. On September 3, Mr. Smith contacted me and said that he had spoken with the person at Fall River who would be responsible. According to Mr. Smith, she was aware that Somerset had already submitted its proposed projects, and she wanted to see copies of Somerset's proposal. Dominion declined.

16. Mr. Smith later that week told me that he had spoken with Fall River's point person (Ms. DiOrio) again on September 5, 2013. He reported that she expressed concern that Fall River may not be able to propose projects that fit within the parameters set forth in the Guidelines and asked whether Dominion could expand the permissible scope of the projects under the Consent Decree; he told her that was not possible because the scope is defined by the Consent Decree, which is a legal document.

17. After September 5, Fall River did not contact Dominion (or Mr. Smith, to my knowledge) again until December 17, 2013.

18. During that period, Fall River did not submit any proposed projects for Dominion to consider as part of the EMP plans required under the Consent Decree.

19. By late September, 2013, when there had been no submittal nor communication from Fall River—about 2 months and a half after Dominion's initial meeting with Fall River, almost 2 months after the initial August 1 deadline, and almost a month after Fall River had finally identified Ms. DiOrio as the contact for a possible proposal—Dominion concluded that no project proposal was likely forthcoming from Fall River, given Fall River's statement that it could not find projects within the scope of the Guidelines and Consent Decree, and the passage of substantial time. Accordingly, Dominion proceeded with preparing an EMP Plan for the Northeast Clean Energy and Clean Diesel Projects based on the proposals received so as to meet its obligations under the Consent Decree.

20. Dominion was not free to ignore the Consent Decree. We submitted our EMP plans to EPA, which received them by November 13, 2013.

21. Dominion solicited proposals from and worked with eleven different municipalities, government agencies and private organizations to develop project proposals across five separate states. Ten proposed project plans were submitted to EPA by the November deadline. This was not a small task. But all the local bodies, agencies and organizations responded promptly and enthusiastically, except for Fall River.

22. Fall River remained silent until December 17, at which time it finally reached out to Dominion. This coincided with the publication of an article in the local newspaper that same day discussing the potential funding of Somerset projects.

23. I believe these facts show clearly that Dominion "consulted with" Fall River. We explained the EMP process to Fall River at the July 11 meeting, we left written materials with them, and we reached out to them repeatedly thereafter through the first part of September. We offered ourselves to answer questions, and we continually encouraged them to submit qualifying projects. Fall River chose not to do so until December 18.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24<sup>th</sup> day of February, 2014.

  
Kevin R. Hennessy

**ATTACHMENT A**

Dominion Energy, Inc.  
Environmental Mitigation Projects: Plan Proposal Guidelines  
(June 24, 2013)

**Environmental Mitigation Project:** Northeast Clean Energy and Clean Diesel Projects

**I. Overview**

Pursuant to a federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (civil action no. 13-cv-3806) (C.D. Ill. Lodged, Apr. 2, 2013) ("Consent Decree") (attached),<sup>1</sup> Dominion Energy, Inc. ("DEI") has agreed to fund various Environmental Mitigation Projects as provided in Appendix A to the Consent Decree. Within 120 days of the entry of the Consent Decree, DEI is required to submit Project Plans to the U.S. Environmental Protection Agency ("USEPA") for its approval prior to the projects being implemented. DEI is permitted under the Consent Decree to contribute Project Dollar funds to another entity to carry out a project in lieu of DEI. The requirements for doing so are spelled out in the Consent Decree and Appendix A.

Appendix A, section XI, is entitled the Northeast Clean Energy and Clean Diesel Projects and is directed towards the implementation of projects in the Town of Somerset and the City of Fall River, Massachusetts. Section XI provides for the funding of various types of projects grouped in two categories: clean energy projects and clean diesel projects. DEI will fund \$1,600,000 in Project Dollars for "Energy Efficiency, Geothermal, PV, and/or Clean Diesel Retrofit and Repower Projects" as those projects are described in Appendix A, section XI. DEI may fund one or more projects, so it is encouraged to submit plans for projects that can be approved in whole or part based on the availability of Project Dollars. It is expected that approximately half of the total Project Dollars will be spent in Somerset. App. A, section XI.B.

Project Plans for the Northeast Clean Energy and Clean Diesel Projects must provide for expending the Project Dollars within three years of the entry of the Consent Decree.

DEI is asking for the submission of proposed project plans **by August 1, 2013**, for DEI's consideration in determining which Project Plans to provide to USEPA for approval and eventual implementation, if approved, by the Town of Somerset and/or the City of Fall River. This document outlines what must be included in a proposed Project Plan. In addition to relying on this document, the Town and City should also review the relevant portions of the Consent Decree.

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<sup>1</sup> The United States soon will move to enter the Consent Decree, which will then take effect when the Court enters it.

## **II. General Project Plan Elements**

According to the Consent Decree all Project Plans must include the following:

1. A plan for implementing the Project. (App. A, II.D)
2. A summary-level budget for the Project. (App. A, II.D)
3. A timeline for implementation of the Project. (App. A, II.D) The timeline shall include a schedule for completing and funding each portion of the project. As noted above, the Projects are to be completed within three years. The schedule shall provide for periodic reporting as set forth in section III below.
4. A description of the anticipated environmental benefits of the Project, including an estimate of emission reductions (e.g., SO<sub>2</sub>, NO<sub>x</sub>, PM, mercury, CO<sub>2</sub>) expected to be realized. (App. A, II.D)
5. The entity seeking funding and submitting a plan for consideration must also provide a written statement (a) identifying its legal authority for accepting such funding and (b) identifying its legal authority to conduct the Project. (CD, para. 114)

## **III. Periodic and Final Reporting Requirements**

The Consent Decree requires that DEI submit periodic reports to USEPA within 60 days after the end of each half of the calendar year (January through June and July through December) (CD, para. 122) and a final report within 60 days of completing a project (App. A, II.G). Regarding the mitigation projects, periodic reports must include "a summary of actions implemented and expenditures made pursuant to implementation of the Environmental Mitigation Projects" required in the Consent Decree and Appendix A. (CD, para. 122.h; see also App. A, II.F)

Accordingly, in order for DEI to meet these Consent Decree requirement, Project Plans must provide in the schedule for the submission of periodic reports to DEI within 30 days after the end of each half of the calendar year until completion of the project. The schedule must also provide for the submission of a final report within 30 days of completion of the Project. The Final Report shall document:

1. The date the Project was completed.
2. The results of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved.
3. The Project Dollars Incurred in implementing the Project.

#### **IV. Plan Specific Elements for Clean Energy Projects**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a Clean Energy Project to implement "Energy Efficiency, Geothermal, and/or Solar Photovoltaic ('PV') Projects at one or more public school buildings in either or both municipalities." App. A, XI.A. The proposed Clean Energy Projects "may include the installation of centrally-monitored digital controls and timers for heating/cooling systems in school buildings in either or both municipalities ('Energy Efficiency Project'). The proposed Projects may also include the installation of a geothermal heating and/or cooling system ('Geothermal Project'), and/or a solar photovoltaic project consisting of electricity-generating solar panels ('PV Project') for public school buildings in either or both municipalities." App. A, XI.A.

Appendix A sets forth general Project Plan requirements for Clean Energy Projects, and identifies additional Clean Energy Plan requirements for Geothermal and PV Projects. The additional requirements are set forth in subsections below. The following are the general plan requirements that must be included in any type of proposed Clean Energy Project Plan that seeks funding as an Energy Efficiency, Geothermal, or PV Project:

1. Identification of the specific proposed Project(s) to be implemented;
2. Implementation timelines and expected completion dates for each Project;
3. Description of each proposed Project's system design;
4. Identification of any project designers, contractors, or other third parties with whom the municipality's school system will contract or partner with to implement the Project(s), and a list of any relevant accreditations or certifications held by such contractors, designers or parties; and
5. Description of the schedule and the budgetary increments needed to provide the necessary funding by DEI to the municipality's school system or its project designers/contractors to implement the Project.

Appendix A, Section X.I.

##### **A. Geothermal Project: Additional Specific Plan Elements**

The Plan for a Geothermal Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Describe the proposed geothermal system design (e.g., a closed loop design with either horizontal or vertical loop well fields, a standing column well, or station surface sources). The Project shall be limited to serving space heating and cooling building loads, with the option to add a desuperheater to the project to serve hot water loads when practical.
2. Provide for the purchase and installation of a geothermal heat pump system that utilizes the earth as a heat source in the winter and a heat sink in the summer to reduce energy consumption. The system shall include the equipment necessary to support the installation and operation of a geothermal heat pump, including the exterior building components (e.g., well field holes, subsurface piping, and circulation pumps), the heat pump unit (evaporator and condenser, compressor, expansion valve and refrigerant) and any internal building components (e.g., HVAC distribution system and ductwork) necessary for the proper operation of the new system. Heat pumps should be Air-Conditioning, Heating and Refrigeration Institute (AHRI) and Energy Star rated. Heat pumps should meet the minimum EER and COP ratings required by Energy Star at the time the heat pumps are installed.
3. System Application and Design: The Plan shall provide that, prior to the design modeling of the system and production loop installation, the contractor/project designer conduct an in-situ formation thermal conductivity test for ambient deep earth temperature, thermal conductivity, and thermal diffusivity, for a minimum of 40 hours to assess the subsurface soil conditions. The Plan shall provide that the contract with the contractor/project designer shall require that the designer provide the building owner with copies of the related site drilling logs, soil sample documentation and in-situ thermal conductivity analyses. The Plan shall also provide that the contract with the contractor/project designer shall require that the designer employ quality assurance measures to prevent "short looping" of well field bore holes during the drilling process.
4. Provide for the installation of monitoring equipment to allow facility managers and staff to monitor the operation and performance of the system.
5. Provide for system commissioning and performance optimization within the first year of system operation.
6. Provide for the restoration of the project site, particularly the well field to its original or near-original condition.
7. Provide for the installation of onsite monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor the operation and performance of the

geothermal system.

8. Identify the contractor/project designer(s) and/or other third parties with whom the Town or City will contract or partner with to implement the Project, and list any relevant accreditations or certifications held by such contractor/designer(s) or parties. The Plan shall provide that the Project's design, installation and system commissioning will be performed by International Ground Source Heat Pump Association (IGSHPA) professionals or by other professionals certified by geothermal manufacturers to design and/or install the manufacturers' systems. The Plan shall also provide that best efforts will be made to select project designers and installers (including engineers, architects, and bore hole drillers) with experience on at least three successful geothermal projects.
9. End-user Documentation and Training Requirements: The Plan shall provide that the developer/contractor will provide the Town/City with:
  - System design drawings including a map detailing the subsurface location of well field bore holes;
  - Copies of permits and inspections demonstrating compliance with local codes;
  - Copies of the drilling logs, soil sample documentation and in-situ thermal conductivity analysis;
  - Copies of simulated design and financial performance (energy and cost saving) analyses of the system;
  - System documentation including, system maintenance and operational requirements, component manuals, operation manuals and warranty information; and
  - In-person, on-site, system operation user training.
10. Maintenance: The Project Plan may request Project Dollars for funding the establishment of an escrow account to maintain and/or replace the heat pump unit or other elements of the system, or for the funding or pre-payment for an extended warranty or service contract for such maintenance/replacement.

**B. PV Project: Additional Plan Elements**

The Plan for a PV Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Provide for the installation of solar panels with unobstructed solar access, producing electricity not to exceed the total annual electricity base load of the building the project serves.
2. Provide for a grid-tied inverter, appropriately sized for the capacity of the solar panels installed at the location.
3. Provide for the appropriate solar panel mounting equipment for the particular school.
4. Provide for wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid.
5. Provide for appropriate monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor various aspects of the system, e.g., the total and hourly energy output of the system (kilowatt hours), environmental benefits delivered (pounds CO<sub>2</sub> avoided), hourly ambient temperature and cell temperature (C<sup>o</sup>), irradiance (W/M<sup>2</sup>), as well as time sensitive voltage, power and current metrics.
6. Provide for the installation of the system on the customer side of the meter with ownership of the system being by the Somerset Public School system or Fall River Public School System, as appropriate. The Plan shall also provide that all related environmental benefits will be retained by the system owner, including associated renewable energy certificates.
7. Provide, to the extent practicable, that North American Board of Certified Energy Practitioners (NACEP) certified energy professionals perform the installation of the PV Projects to ensure the highest quality installation and performance of the system.
8. Provide for the inclusion of manufacturer parts warranties for major system components, specifically, a minimum 25-year warranty for the solar panels (modules) and a minimum 10-year warranty for the inverter(s).
9. Provide for the establishment of an escrow account with funding from Project Dollars sufficient to support one or more service contracts (or their equivalent) to ensure the ongoing maintenance and performance of the PV

system consistent with established industry practice for no less than 25 years, including annual system checkups, annual solar panel (module) cleaning, expected inverter replacements, and remote system monitoring.

#### **V. Clean Diesel Retrofit and Repower Projects: Plan Specific Elements**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a "Clean Diesel Retrofit and Repower Project" to retrofit or repower higher-polluting diesel engines in either or both the municipalities (the Town of Somerset and the City of Fall River). These Projects would include the "retrofit or repower of eligible diesel engines on diesel-powered municipal construction or public works vehicles or equipment owned or operated on a long-term basis by either or both municipalities in order to reduce diesel pollutant emissions." App. A, XI.A.

In addition to the general Project Plan requirements identified above in sections II and III, proposed Clean Diesel Retrofit and Repower Project Plans shall include the following:

1. For diesel engine retrofits, a plan element to use exhaust control technologies verified either by EPA or by the California Air Resources Board (CARB);
2. For diesel engine retrofits, a plan element to purchase and install EPA or CARB-verified diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs) on diesel-powered municipal construction or public works vehicles or equipment. A list of EPA-verified retrofit technologies can be found at <http://epa.gov/cleandiesel/verification/verif-list.htm>; a list of CARB-verified technologies can be found at [www.arb.ca.gov/diesel/verdev/vt/cvt.htm](http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm).
3. If the Project includes DPF retrofits, the plan must provide for the purchase of DPF service equipment required for proper DPF maintenance.
4. For diesel engine repowering, the plan must provide for the use of technologies certified by EPA or by CARB if available.
5. For diesel engine repowering, the plan must provide for the use of new engine configurations certified to emission standards. Information on engine certification can be found at [www.epa.gov/otaq/certdata.htm](http://www.epa.gov/otaq/certdata.htm).
6. In determining which vehicles or equipment to retrofit or repower under the Clean Diesel Retrofit and Repower Project, priority should be given to older, higher-polluting vehicles and equipment that have high annual usage rates and/or vehicle miles travelled, so that the pollution reductions obtained from the Project will be maximized.

**VI. Submission of Proposed Project Plans; Inquiries**

Proposed Project Plans are to be submitted by August 1, 2013, to Alice Pryor, Environmental Projects Manager, Dominion Resources Services, Inc. at [alice.g.pryor@dom.com](mailto:alice.g.pryor@dom.com).

**ATTACHMENT B**



**ATTACHMENT C**

**Kevin R Hennessy (Services - 6)**

---

**From:** Kevin R Hennessy (Services - 6)  
**Sent:** Friday, July 19, 2013 11:31 AM  
**To:** scadime@fallriverma.org  
**Cc:** Jim Smith  
**Subject:** Environmental Projects

Hi Shawn,

Thanks for meeting with us last week with Mayor Flanagan. Just wanted to check in and make sure your implementation plan for the projects is going well and make myself available if you have any questions.

Best,  
Kevin

Kevin R. Hennessy  
Director - Federal, State & Local Affairs - New England  
DomInlon Resources, Inc.  
Rope Ferry Road  
PO Box 128  
Waterford, CT 06385  
860-444-5656 (office)  
860-912-5124 (mobile)  
[Kevin.R.Hennessy@dom.com](mailto:Kevin.R.Hennessy@dom.com)

**ATTACHMENT D**

**Kevin R Hennessy (Services - 6)**

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**From:** Marc Furtado [furtadom@sbregional.org]  
**Sent:** Friday, July 19, 2013 11:39 AM  
**To:** Kevin R Hennessy (Services - 6); Richard Medeiros; jsm1th  
**Subject:** Re: Checking in

Kevin

We are progressing with the development of multiple proposals. I learned that the South School heating system is steam, not hot water, based and therefore not eligible for a Geothermal application. We have moved forward requesting proposals on our two big schools for both geothermal and PV projects from multiple vendors, so we feel very confident that while we will only have budget development type numbers, they will be relatively reliable. Coupled with these two we will have a solid digital control proposal and we will have one other involving heat exchangers for air intake that is part of the geothermal work. All in all we will be showing significant energy savings as well as significant emissions reductions associated with the work and will have a full menu from which the EPA can make choices.

We expect to have formal documents ready for you in the first week of August.

We greatly appreciate the help and work both you and Jim did on our behalf and look forward to what appears to be a very exciting outcome for the schools here.

Marc

On Fri, Jul 19, 2013 at 11:25 AM, Kevin R Hennessy <[Kevin.R.Hennessy@dom.com](mailto:Kevin.R.Hennessy@dom.com)> wrote:

Hi Marc,

Thanks for meeting with us last week and introducing us to Superintendent Medeiros. Just wanted to check in and make sure you didn't have any questions regarding the implementation plan for the project.

Best,

Kevin

Kevin R. Hennessy

Director - Federal, State & Local Affairs - New England

Dominion Resources, Inc.

Rope Ferry Road

PO Box 128

Waterford, CT 06385

860-444-5656 (office)

860-912-5124 (mobile)

Kevin.R.Hennessy@dom.com

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**ATTACHMENT E**

**Mary Jo Sheeley (Services - 6)**

---

**From:** Mary Jo Sheeley (Services - 6)  
**Sent:** Tuesday, August 06, 2013 9:13 AM  
**To:** Kevin R Hennessy (Services - 6)  
**Subject:** RE: Somerset Schools Proposals

Great!

---

**From:** Kevin R Hennessy (Services - 6)  
**Sent:** Tuesday, August 06, 2013 8:29 AM  
**To:** Mary Jo Sheeley (Services - 6)  
**Cc:** Cathy C Taylor (Services - 6); Alice G Prior (Services - 6)  
**Subject:** RE: Somerset Schools Proposals

Was told by the mayor of Fall River that we should get their proposed projects from the city solicitor in the next few days.

Kevin

Kevin R. Hennessy  
Director - Federal, State & Local Affairs - New England  
Dominion Resources, Inc.  
Rope Ferry Road  
PO Box 128  
Waterford, CT 06385  
860-444-5656 (office)  
860-912-5124 (mobile)  
[Kevin.R.Hennessy@dom.com](mailto:Kevin.R.Hennessy@dom.com)

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**From:** Mary Jo Sheeley (Services - 6)  
**Sent:** Monday, August 05, 2013 11:54 AM  
**To:** Kevin R Hennessy (Services - 6)  
**Cc:** Cathy C Taylor (Services - 6); Alice G Prior (Services - 6)  
**Subject:** RE: Somerset Schools Proposals

Thanks, Kevin. Cathy and I have discussed, and there are worthy projects here. The projects are not written up in the project plan format, but we can deal with that later. We thought we should get something from Fall River first so we could decide where the money will go and then get them in project plan form.

---

**From:** Kevin R Hennessy (Services - 6)  
**Sent:** Thursday, August 01, 2013 2:35 PM  
**To:** Alice G Prior (Services - 6); Mary Jo Sheeley (Services - 6)  
**Subject:** FW: Somerset Schools Proposals

FYI -- attached is the NSR settlement project proposals from Somerset -- received today. Very punctual.

Kevin

Kevin R. Hennessy  
Director - Federal, State & Local Affairs - New England  
Dominion Resources, Inc.

Rope Ferry Road  
PO Box 128  
Waterford, CT 06385  
860-444-5656 (office)  
860-912-5124 (mobile)  
[Kevin.R.Hennessy@dom.com](mailto:Kevin.R.Hennessy@dom.com)

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**From:** Richard Medeiros [<mailto:medeirosr@somerset.k12.ma.us>]  
**Sent:** Thursday, August 01, 2013 12:34 PM  
**To:** Kevin R Hennessy (Services - 6)  
**Subject:** Somerset Schools Proposals

Kevin,

Per our phone conversation today, I am submitting all three projects with pertinent information for your review and acceptance. Thanks, R. Medeiros

Richard W. Medeiros  
Superintendent of Schools  
Somerset Public Schools  
(508) 324-3113

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**ATTACHMENT F**

**Kevin R Hennessy (Services - 6)**

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**From:** Kevin R Hennessy (Services - 6)  
**Sent:** Monday, August 05, 2013 4:57 PM  
**To:** Jim Smith  
**Subject:** Fall River

Got your message - haven't heard from city solicitor. Let me know when you do.

Thx,  
Kevin

Sent from my iPhone

**ATTACHMENT G**

**Kevin R Hennessy (Services - 6)**

---

**From:** Jim Smith [JSmith@publicpolicylaw.com]  
**Sent:** Wednesday, August 28, 2013 3:05 PM  
**To:** Kevin R Hennessy (Services - 6)  
**Subject:** Fall River

Kevln,

I spoke to Mayor Flanagan again directly. I have two calls into City Solicitor Elizabeth Sousa. He told me that he would make sure that she called me back today. She told him that she thought they were waiting on something from us. I made it very clear to him that was not the case.

I also mentioned the other fellow in the meeting who I thought was pretty sharp, but he still thought that Elizabeth Sousa should handle it. I expect back from her at any time now.

Thank you.

Jim

---

James E. Smith  
Smith, Segel, Ruddock & Hayes  
50 Congress Street, Suite 500  
Boston, MA 02109  
Tel.: 617.523.0600  
FAX: 617.523.7171  
[www.srhpublicpolicy.com](http://www.srhpublicpolicy.com)

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**EXHIBIT 2**  
**TO**  
**DOMINION ENERGY, INC.'S**  
**MEMORANDUM IN**  
**OPPOSITION TO CITY OF FALL**  
**RIVER'S MOTION TO ENFORCE**  
**AND/OR MODIFY**  
**CONSENT DECREE**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
THE CITY OF FALL RIVER,	)	
	)	
Proposed Plaintiff-Intervenor,	)	
	)	Civil Action No. 3:13-cv-03086
v.	)	(SEM)(SMJ)
	)	
DOMINION ENERGY, INC., BRAYTON	)	
POINT ENERGY, LLC, AND KINCAID	)	
GENERATION, LLC., AND EQUIPOWER	)	
RESOURCES CORP.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

**DECLARATION OF ALICE G. PRIOR**

I, Alice G. Prior, declare as follows:

1. I am over the age of 18 and am competent to make this declaration.
2. I am the Environmental Projects Advisor for Dominion Environmental Services with Dominion Resources Services, Inc (“DRS”).
3. The United States and Dominion Energy, Inc. (“Dominion”) are parties to a Consent Decree [Dkt. 3] requiring Dominion to fund certain Environmental Mitigation Projects (“EMPs”) in the amount of \$9.75 million. Dominion was required to prepare plans for all the proposed EMPs and, within 120 days of entry of the Consent Decree, submit them to the United States Environmental Protection Agency (“EPA”) for review and approval.

4. As the Environmental Projects Advisor I have been and continue to be responsible for overseeing the development of all of the EMPs and their implementation once they are approved by EPA. The Dominion's Environmental Mitigation Projects: Plan Proposal Guidelines list me as the Dominion contact person to whom proposed projects plans were to be submitted. The Guidelines explained the criteria in the Consent Decree for projects to qualify for potential funding, and was designed to assist the municipalities with a roadmap for developing a proposed plan. The Guidelines are attached as Attachment A. The Guidelines included a deadline of August 1, 2013 for submitting projects to Dominion.

5. In this role I also served as the primary coordinator between Dominion and the applicants seeking funding of an EMP under the Consent Decree. I provided feedback to applicants on their proposed plans with suggestions for revisions to make sure they conformed to the requirements of the Consent Decree. I also coordinated with EPA on its comments to the proposed plans Dominion had submitted to it.

6. On August 1, 2013, the Somerset Public Schools submitted three project plans by e-mail to Kevin Hennessy who is DRS's Director of Federal, State, and Local Affairs. Mr. Hennessy forwarded that e-mail with the attached plans to me on the same day. E-mail and proposal are attached as Attachment B.

7. On August 20, 2013, because of its size the Somerset Public Schools sent by overnight mail a more fully developed version of Somerset's proposed project plans to both Mr. Hennessy and me. The August 20, 2013 letter with proposal is attached as Attachment C.

8. Dominion submitted the final proposed Northeast Clean Energy EMP to EPA on November 5, 2013, which is attached as Attachment D.

9. Between August 20 and November 5, Marc Furtado, the Business Manager for the Somerset Public Schools, and I were in frequent contact about Somerset's proposed projects as we worked on preparing them for inclusion in the Plan submitted to EPA. We were also in frequent contact after receiving comments from EPA. The e-mail correspondence is attached as Attachment E. Mr. Furtado and the Somerset Public Schools District were very responsive and promptly provided Dominion any information requested. We discontinued our communication about the proposed Northeast Clean Energy EMP upon being told that Dominion had agreed in this litigation not to work any more on the EMP until this matter was resolved.

10. Throughout this time various other organizations, municipalities and governmental agencies submitted proposed plans for EMPs that resulted in Dominion submitting a total of ten proposed EMPs to EPA by the November deadline. The project proposals covered five separate states.

11. Fall River did not send a proposed EMP to me by the August 1, 2013, deadline in the Guidelines and, in fact, I was never contacted by Fall River about developing or submitting a proposed project plan.

12. At this time EPA has approved seven of the ten EMPs that Dominion submitted to EPA in November 2013. Three proposed EMPs remain outstanding: the Somerset project, which is on hold due to this litigation; a proposed project for the City of Hammond, Indiana, the city in which the State Line Power Station was located; and a proposed project for the Central Illinois FoodBank, in Springfield, Illinois.

13. The City of Hammond proposed various restoration mitigation projects to Dominion for funding under the Lake Michigan Watershed and Indiana Dunes National Lakeshore Land Acquisition and Restoration Project pursuant to Appendix A, section II, of the

Consent Decree. Dominion submitted a Hammond proposed EMP to EPA before the November 2013 deadline. EPA rejected the proposal, stating that, in its view, the proposal did not meet the requirements of the Consent Decree. Dominion, Hammond and EPA have engaged in extensive negotiations, which at times have been contentious. Representatives from Hammond's Congressional delegates have also participated in some of these discussions. No resolution has been reached yet.

14. The FoodBank proposed an EMP plan to Dominion for funding under the Energy Efficiency and Geothermal Projects for the Central Illinois FoodBank pursuant to Appendix A, section VIII, of the Consent Decree. This EMP under Appendix A, section VIII, of the Consent Decree requires the expenditure of \$750,000 at the new FoodBank facility in Springfield, Illinois. Dominion submitted a FoodBank-proposed EMP to EPA before the November 2013 deadline. EPA has indicated that, in its view, various portions of the proposal do not meet the requirements of the Consent Decree and cannot be approved. Dominion, the FoodBank and EPA continue to work on this proposed EMP, but it is possible the FoodBank will not receive the entire \$750,000 under Appendix A, section VIII, of the Consent Decree.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26<sup>th</sup> day of February, 2014.



Alice G. Prior

**ATTACHMENT A**

Dominion Energy, Inc.  
Environmental Mitigation Projects: Plan Proposal Guidelines  
(June 24, 2013)

**Environmental Mitigation Project:** Northeast Clean Energy and Clean Diesel Projects

**I. Overview**

Pursuant to a federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (civil action no. 13-cv-3806) (C.D. Ill. Lodged, Apr. 2, 2013) ("Consent Decree") (attached),<sup>1</sup> Dominion Energy, Inc. ("DEI") has agreed to fund various Environmental Mitigation Projects as provided in Appendix A to the Consent Decree. Within 120 days of the entry of the Consent Decree, DEI is required to submit Project Plans to the U.S. Environmental Protection Agency ("USEPA") for its approval prior to the projects being implemented. DEI is permitted under the Consent Decree to contribute Project Dollar funds to another entity to carry out a project in lieu of DEI. The requirements for doing so are spelled out in the Consent Decree and Appendix A.

Appendix A, section XI, is entitled the Northeast Clean Energy and Clean Diesel Projects and is directed towards the implementation of projects in the Town of Somerset and the City of Fall River, Massachusetts. Section XI provides for the funding of various types of projects grouped in two categories: clean energy projects and clean diesel projects. DEI will fund \$1,600,000 in Project Dollars for "Energy Efficiency, Geothermal, PV, and/or Clean Diesel Retrofit and Repower Projects" as those projects are described in Appendix A, section XI. DEI may fund one or more projects, so it is encouraged to submit plans for projects that can be approved in whole or part based on the availability of Project Dollars. It is expected that approximately half of the total Project Dollars will be spent in Somerset. App. A, section XI.B.

Project Plans for the Northeast Clean Energy and Clean Diesel Projects must provide for expending the Project Dollars within three years of the entry of the Consent Decree.

DEI is asking for the submission of proposed project plans **by August 1, 2013**, for DEI's consideration in determining which Project Plans to provide to USEPA for approval and eventual implementation, if approved, by the Town of Somerset and/or the City of Fall River. This document outlines what must be included in a proposed Project Plan. In addition to relying on this document, the Town and City should also review the relevant portions of the Consent Decree.

---

<sup>1</sup> The United States soon will move to enter the Consent Decree, which will then take effect when the Court enters it.

## **II. General Project Plan Elements**

According to the Consent Decree all Project Plans must include the following:

1. A plan for implementing the Project. (App. A, II.D)
2. A summary-level budget for the Project. (App. A, II.D)
3. A timeline for implementation of the Project. (App. A, II.D) The timeline shall include a schedule for completing and funding each portion of the project. As noted above, the Projects are to be completed within three years. The schedule shall provide for periodic reporting as set forth in section III below.
4. A description of the anticipated environmental benefits of the Project, including an estimate of emission reductions (e.g., SO<sub>2</sub>, NO<sub>x</sub>, PM, mercury, CO<sub>2</sub>) expected to be realized. (App. A, II.D)
5. The entity seeking funding and submitting a plan for consideration must also provide a written statement (a) identifying its legal authority for accepting such funding and (b) identifying its legal authority to conduct the Project. (CD, para. 114)

## **III. Periodic and Final Reporting Requirements**

The Consent Decree requires that DEI submit periodic reports to USEPA within 60 days after the end of each half of the calendar year (January through June and July through December) (CD, para. 122) and a final report within 60 days of completing a project (App. A, II.G).

Regarding the mitigation projects, periodic reports must include "a summary of actions implemented and expenditures made pursuant to implementation of the Environmental Mitigation Projects" required in the Consent Decree and Appendix A. (CD, para. 122.h; see also App. A, II.F)

Accordingly, in order for DEI to meet these Consent Decree requirements, Project Plans must provide in the schedule for the submission of periodic reports to DEI within 30 days after the end of each half of the calendar year until completion of the project. The schedule must also provide for the submission of a final report within 30 days of completion of the Project. The Final Report shall document:

1. The date the Project was completed.
2. The results of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved.
3. The Project Dollars incurred in implementing the Project.

#### **IV. Plan Specific Elements for Clean Energy Projects**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a Clean Energy Project to implement "Energy Efficiency, Geothermal, and/or Solar Photovoltaic ('PV') Projects at one or more public school buildings in either or both municipalities." App. A, XI.A. The proposed Clean Energy Projects "may include the installation of centrally-monitored digital controls and timers for heating/cooling systems in school buildings in either or both municipalities ('Energy Efficiency Project'). The proposed Projects may also include the installation of a geothermal heating and/or cooling system ('Geothermal Project'), and/or a solar photovoltaic project consisting of electricity-generating solar panels ('PV Project') for public school buildings in either or both municipalities." App. A, XI.A.

Appendix A sets forth general Project Plan requirements for Clean Energy Projects, and identifies additional Clean Energy Plan requirements for Geothermal and PV Projects. The additional requirements are set forth in subsections below. The following are the general plan requirements that must be included in any type of proposed Clean Energy Project Plan that seeks funding as an Energy Efficiency, Geothermal, or PV Project:

1. Identification of the specific proposed Project(s) to be implemented;
2. Implementation timelines and expected completion dates for each Project;
3. Description of each proposed Project's system design;
4. Identification of any project designers, contractors, or other third parties with whom the municipality's school system will contract or partner with to implement the Project(s), and a list of any relevant accreditations or certifications held by such contractors, designers or parties; and
5. Description of the schedule and the budgetary increments needed to provide the necessary funding by DEI to the municipality's school system or its project designers/contractors to implement the Project.

Appendix A, Section X.I.

##### **A. Geothermal Project: Additional Specific Plan Elements**

The Plan for a Geothermal Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Describe the proposed geothermal system design (e.g., a closed loop design with either horizontal or vertical loop well fields, a standing column well, or station surface sources). The Project shall be limited to serving space heating and cooling building loads, with the option to add a desuperheater to the project to serve hot water loads when practical.
2. Provide for the purchase and installation of a geothermal heat pump system that utilizes the earth as a heat source in the winter and a heat sink in the summer to reduce energy consumption. The system shall include the equipment necessary to support the installation and operation of a geothermal heat pump, including the exterior building components (e.g., well field holes, subsurface piping, and circulation pumps), the heat pump unit (evaporator and condenser, compressor, expansion valve and refrigerant) and any internal building components (e.g., HVAC distribution system and ductwork) necessary for the proper operation of the new system. Heat pumps should be Air-Conditioning, Heating and Refrigeration Institute (AHRI) and Energy Star rated. Heat pumps should meet the minimum EER and COP ratings required by Energy Star at the time the heat pumps are installed.
3. System Application and Design: The Plan shall provide that, prior to the design modeling of the system and production loop installation, the contractor/project designer conduct an in-situ formation thermal conductivity test for ambient deep earth temperature, thermal conductivity, and thermal diffusivity, for a minimum of 40 hours to assess the subsurface soil conditions. The Plan shall provide that the contract with the contractor/project designer shall require that the designer provide the building owner with copies of the related site drilling logs, soil sample documentation and in-situ thermal conductivity analyses. The Plan shall also provide that the contract with the contractor/project designer shall require that the designer employ quality assurance measures to prevent "short looping" of well field bore holes during the drilling process.
4. Provide for the installation of monitoring equipment to allow facility managers and staff to monitor the operation and performance of the system.
5. Provide for system commissioning and performance optimization within the first year of system operation.
6. Provide for the restoration of the project site, particularly the well field to its original or near-original condition.
7. Provide for the installation of onsite monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor the operation and performance of the

geothermal system.

8. Identify the contractor/project designer(s) and/or other third parties with whom the Town or City will contract or partner with to implement the Project, and list any relevant accreditations or certifications held by such contractor/designer(s) or parties. The Plan shall provide that the Project's design, installation and system commissioning will be performed by International Ground Source Heat Pump Association (IGSHPA) professionals or by other professionals certified by geothermal manufacturers to design and/or install the manufacturers' systems. The Plan shall also provide that best efforts will be made to select project designers and installers (including engineers, architects, and bore hole drillers) with experience on at least three successful geothermal projects.
9. End-user Documentation and Training Requirements: The Plan shall provide that the developer/contractor will provide the Town/City with:
  - System design drawings including a map detailing the subsurface location of well field bore holes;
  - Copies of permits and inspections demonstrating compliance with local codes;
  - Copies of the drilling logs, soil sample documentation and in-situ thermal conductivity analysis;
  - Copies of simulated design and financial performance (energy and cost saving) analyses of the system;
  - System documentation including, system maintenance and operational requirements, component manuals, operation manuals and warranty information; and
  - In-person, on-site, system operation user training.
10. Maintenance: The Project Plan may request Project Dollars for funding the establishment of an escrow account to maintain and/or replace the heat pump unit or other elements of the system, or for the funding or pre-payment for an extended warranty or service contract for such maintenance/replacement.

**B. PV Project: Additional Plan Elements**

The Plan for a PV Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Provide for the installation of solar panels with unobstructed solar access, producing electricity not to exceed the total annual electricity base load of the building the project serves.
2. Provide for a grid-tied inverter, appropriately sized for the capacity of the solar panels installed at the location.
3. Provide for the appropriate solar panel mounting equipment for the particular school.
4. Provide for wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid.
5. Provide for appropriate monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor various aspects of the system, e.g., the total and hourly energy output of the system (kilowatt hours), environmental benefits delivered (pounds CO<sub>2</sub> avoided), hourly ambient temperature and cell temperature (C°), irradiance (W/M<sup>2</sup>), as well as time sensitive voltage, power and current metrics.
6. Provide for the installation of the system on the customer side of the meter with ownership of the system being by the Somerset Public School system or Fall River Public School System, as appropriate. The Plan shall also provide that all related environmental benefits will be retained by the system owner, including associated renewable energy certificates.
7. Provide, to the extent practicable, that North American Board of Certified Energy Practitioners (NACEP) certified energy professionals perform the installation of the PV Projects to ensure the highest quality installation and performance of the system.
8. Provide for the inclusion of manufacturer parts warranties for major system components, specifically, a minimum 25 year warranty for the solar panels (modules) and a minimum 10 year warranty for the inverter(s).
9. Provide for the establishment of an escrow account with funding from Project Dollars sufficient to support one or more service contracts (or their equivalent) to ensure the ongoing maintenance and performance of the PV

system consistent with established industry practice for no less than 25 years, including annual system checkups, annual solar panel (module) cleaning, expected inverter replacements, and remote system monitoring.

#### **V. Clean Diesel Retrofit and Repower Projects: Plan Specific Elements**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a "Clean Diesel Retrofit and Repower Project" to retrofit or repower higher-polluting diesel engines in either or both the municipalities (the Town of Somerset and the City of Fall River). These Projects would include the "retrofit or repower of eligible diesel engines on diesel-powered municipal construction or public works vehicles or equipment owned or operated on a long-term basis by either or both municipalities in order to reduce diesel pollutant emissions." App. A, XI.A.

In addition to the general Project Plan requirements identified above in sections II and III, proposed Clean Diesel Retrofit and Repower Project Plans shall include the following:

1. For diesel engine retrofits, a plan element to use exhaust control technologies verified either by EPA or by the California Air Resources Board (CARB);
2. For diesel engine retrofits, a plan element to purchase and install EPA or CARB-verified diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs) on diesel-powered municipal construction or public works vehicles or equipment. A list of EPA-verified retrofit technologies can be found at <http://epa.gov/cleandiesel/verification/verif-list.htm>; a list of CARB-verified technologies can be found at [www.arb.ca.gov/diesel/verdev/vt/cvt.htm](http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm).
3. If the Project includes DPF retrofits, the plan must provide for the purchase of DPF service equipment required for proper DPF maintenance.
4. For diesel engine repowering, the plan must provide for the use of technologies certified by EPA or by CARB if available.
5. For diesel engine repowering, the plan must provide for the use of new engine configurations certified to emission standards. Information on engine certification can be found at [www.epa.gov/otaq/certdata.htm](http://www.epa.gov/otaq/certdata.htm).
6. In determining which vehicles or equipment to retrofit or repower under the Clean Diesel Retrofit and Repower Project, priority should be given to older, higher-polluting vehicles and equipment that have high annual usage rates and/or vehicle miles travelled, so that the pollution reductions obtained from the Project will be maximized.

**VI. Submission of Proposed Project Plans; Inquiries**

Proposed Project Plans are to be submitted by August 1, 2013, to Alice Pryor, Environmental Projects Manager, Dominion Resources Services, Inc. at [alice.g.pryor@dom.com](mailto:alice.g.pryor@dom.com).

**ATTACHMENT B**

**Alice G Prior (Services - 6)**

---

**From:** Mary Jo Sheeley (Services - 6)  
**Sent:** Monday, August 05, 2013 11:54 AM  
**To:** Kevin R Hennessy (Services - 6)  
**Cc:** Cathy C Taylor (Services - 6); Alice G Prior (Services - 6)  
**Subject:** RE: Somerset Schools Proposals

Thanks, Kevin. Cathy and I have discussed, and there are worthy projects here. The projects are not written up in the project plan format, but we can deal with that later. We thought we should get something from Fall River first so we could decide where the money will go and then get them in project plan form.

---

**From:** Kevin R Hennessy (Services - 6)  
**Sent:** Thursday, August 01, 2013 2:35 PM  
**To:** Alice G Prior (Services - 6); Mary Jo Sheeley (Services - 6)  
**Subject:** FW: Somerset Schools Proposals

FYI – attached is the NSR settlement project proposals from Somerset – received today. Very punctual.

Kevin

Kevin R. Hennessy  
Director - Federal, State & Local Affairs - New England  
Dominion Resources, Inc.  
Rope Ferry Road  
PO Box 128  
Waterford, CT 06385  
860-444-5656 (office)  
860-912-5124 (mobile)  
[Kevin.R.Hennessy@dom.com](mailto:Kevin.R.Hennessy@dom.com)

---

**From:** Richard Medeiros [<mailto:medeirosr@somerset.k12.ma.us>]  
**Sent:** Thursday, August 01, 2013 12:34 PM  
**To:** Kevin R Hennessy (Services - 6)  
**Subject:** Somerset Schools Proposals

Kevin,

Per our phone conversation today, I am submitting all three projects with pertinent information for your review and acceptance. Thanks, R. Medeiros

Richard W. Medeiros  
Superintendent of Schools  
Somerset Public Schools  
(508) 324-3113

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## Somerset Public Schools

580. Whetstone Hill Road  
Somerset, Massachusetts 02726-3100  
Telephone (508) 324-3100

### MEMORANDUM

**TO:** Mr. Kevin Hennessy  
**FROM:** Mr. Richard W. Medeiros *RWM*  
**DATE:** August 1, 2013  
**RE:** Dominion Energy/Somerset Projects

Please be informed that I am submitting three Project Plans for the Somerset Public Schools. Each plan contains a plan, summary-level budget, timeline, and a description of the anticipated environmental benefits.

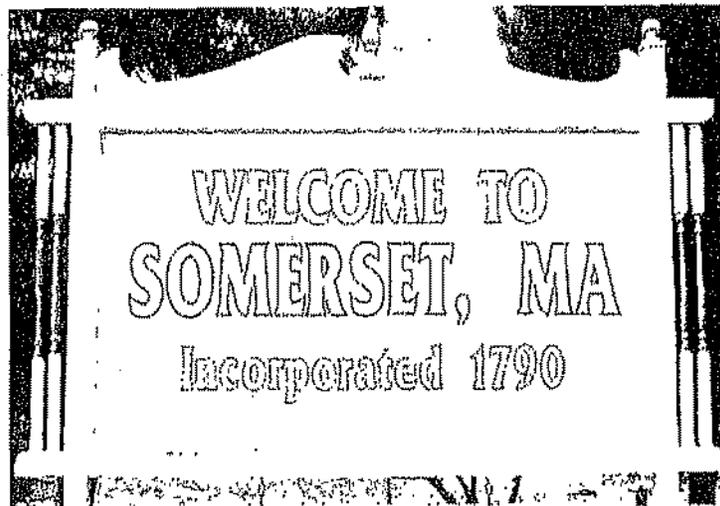
We are very excited about this wonderful opportunity for our schools and community. If you have any questions or need additional information, please contact me or my Director of Facilities, Carlos Campos at 508-324-3113. Thank you.



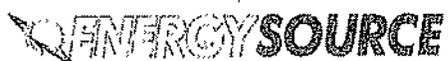
1.

PROPOSAL CREATED FOR:

Somerset Public Schools



580 Whetstone Hill Road  
Somerset, MA 02726



July 25, 2013

Dear Mr. Campos,

Energy Source is pleased to present you with this energy conservation proposal. We trust you will find this proposal a cost effective means to, not only reducing your energy costs, but also improving the quality of the environment throughout your facility.

Other factors to consider as you evaluate this proposal are existing equipment related disruptions and maintenance costs are eliminated or minimized until the new equipment enters its end of life – typically several years.

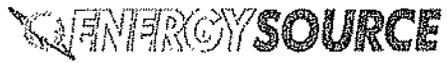
In the attached proposal you will find detailed reports recommending the installation of digital controls, electronic actuators, new control valves, sensors and an Energy Management System.

Energy Source will secure incentives from National Grid which substantially reduced the net cost of this project. The utility incentives reflected in this proposal are estimated and are subject to change until projects are reviewed by National Grid.

I hope you find this proposal informative. If you have any questions please do not hesitate to contact me.

Sincerely,

Jim Howard  
Energy Source



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**Disclaimer**

This report is not for general use and is the property of Energy Source.

All savings estimates and rebates must be considered estimated until reviewed and approved by the utility companies designated within this report.

For any questions regarding this report, please contact Jim Howard, Energy Efficiency Consultant for Energy Source, Inc. at 401-490-7555 x222. Any additional use of this report is prohibited unless permission is given in writing from Energy Source, Inc.



## Executive Summary

Energy Source recently conducted an energy survey of the High School for the Attleboro School Department.

Our recommendations are separated into two Energy Conservation Measures which are outlined in two separate reports.

The expected energy savings were determined based on current operating hours of equipment surveyed. Poorly performing equipment will reduce the effectiveness of employing these ECMs, and the cost to repair or replace that equipment is not covered in this estimate.

<b>Summary of All Energy Conservation Measures</b>							
<b>ECM's</b>	<b>Project Costs</b>	<b>NGrid Incentives</b>	<b>Kwh Saved</b>	<b>Therms Saved</b>	<b>Customer Costs</b>	<b>Electric/Gas Savings</b>	<b>Year Payback</b>
<i>North Elementary</i>	\$237,256	\$36,000	44,212	9,600	\$201,256	\$17,968	11.2
<i>Middle School</i>	\$256,482	\$36,000	47,212	10,600	\$220,482	\$19,623	11.2
<i>Chace Elementary</i>	\$136,589	\$13,500	22,212	3,960	\$123,089	\$7,948	15.5
<i>South Elementary</i>	\$71,732	\$4,500	20,212	1,922	\$67,232	\$5,130	13.1
<i>Wilbur Elementary</i>	\$76,747	\$4,500	18,212	2,610	\$72,247	\$5,720	12.6
<b>Total</b>	\$778,809	\$94,500	152,060	28,692	\$684,306	\$56,389	12.1

\*energy savings calculated at \$0.135 per kilowatt hour and \$1.25 per therm



### **ECM#1 Install EMS (Energy Management System) at the Somerset North School**

Install controls for the main air handling units, re-heat coils and new boilers and pumps

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

- 25 Air Handling units
- 20 CUH's and fin tube radiation valves
- 20 Re-heat coils
- 3 Boilers and two pumps and VFD's
- 44 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperature
5. Maintenance alarms based upon actual runtime of fan motors

The new controls will also integrate into the existing boiler controls allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



## **ECM#2 Install EMS (Energy Management System) at the Somerset Middle School**

Install controls for the main air handling units, re-heat coils, new boiler existing boilers and pumps

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

51 Air Handling units & Unit ventilators  
20 CUH's and fin tube radiation valves  
15 Re-heat coils  
Office RTU and associated re-heats  
3 Boilers and two pumps and VFD's  
23 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



### **ECM#3 Install EMS (Energy Management System) at the Chase Street Elementary School**

Install controls for the air handling units, classroom unit ventilators, cabinet unit heaters baseboard, new boiler and existing boilers and pumps

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

36 Unit ventilators  
16 CUH's and fin tube radiation valves  
3 Boilers and two pumps and VFD's  
16 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



#### **ECM#4 Install EMS (Energy Management System) at the South Elementary School**

Install controls for the air handling units, classroom unit ventilators, cabinet unit heaters convectors, baseboard and existing boilers.

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

- 15 Unit ventilators
- 19 CUH's and fin tube radiation valves
- 1 Boilers
- 6 Exhaust fans

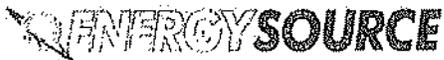
The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers. The unit ventilator, cabinet unit heaters and air handling unit steam traps will be replaced as part of this work.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



### **ECM#5 Install EMS (Energy Management System) at the Wilbur Elementary School**

Install controls for the air handling units, classroom unit ventilators, cabinet unit heaters convectors, baseboard and existing boilers.

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls-native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

- 16 Unit ventilators
- 1 AHU
- 19 CUH's and fin tube radiation valves
- 1 Boilers
- 6 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers. The unit ventilator, cabinet unit heaters and air handling unit steam traps will be replaced as part of this work.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



## Installation and Warranty Information

If you decide to proceed with this proposal, Energy Source will be responsible for the following tasks:

- Develop final equipment specifications and equipment layout
- Processing and filing application for utility incentives
- Material ordering and receiving
- Dismantling and removing existing systems from premises
- Construction
- Final walk-through with you
- Development and delivery of comprehensive project completion manual.

## Installation

Energy Source assumes after school installation for most of the measures associated with this project. All installation staff will agree to submit to a CORI check before proceeding with project.

The removal and disposal of asbestos and toxic materials if present are the owner's responsibility and should be determined before proceeding with the project.

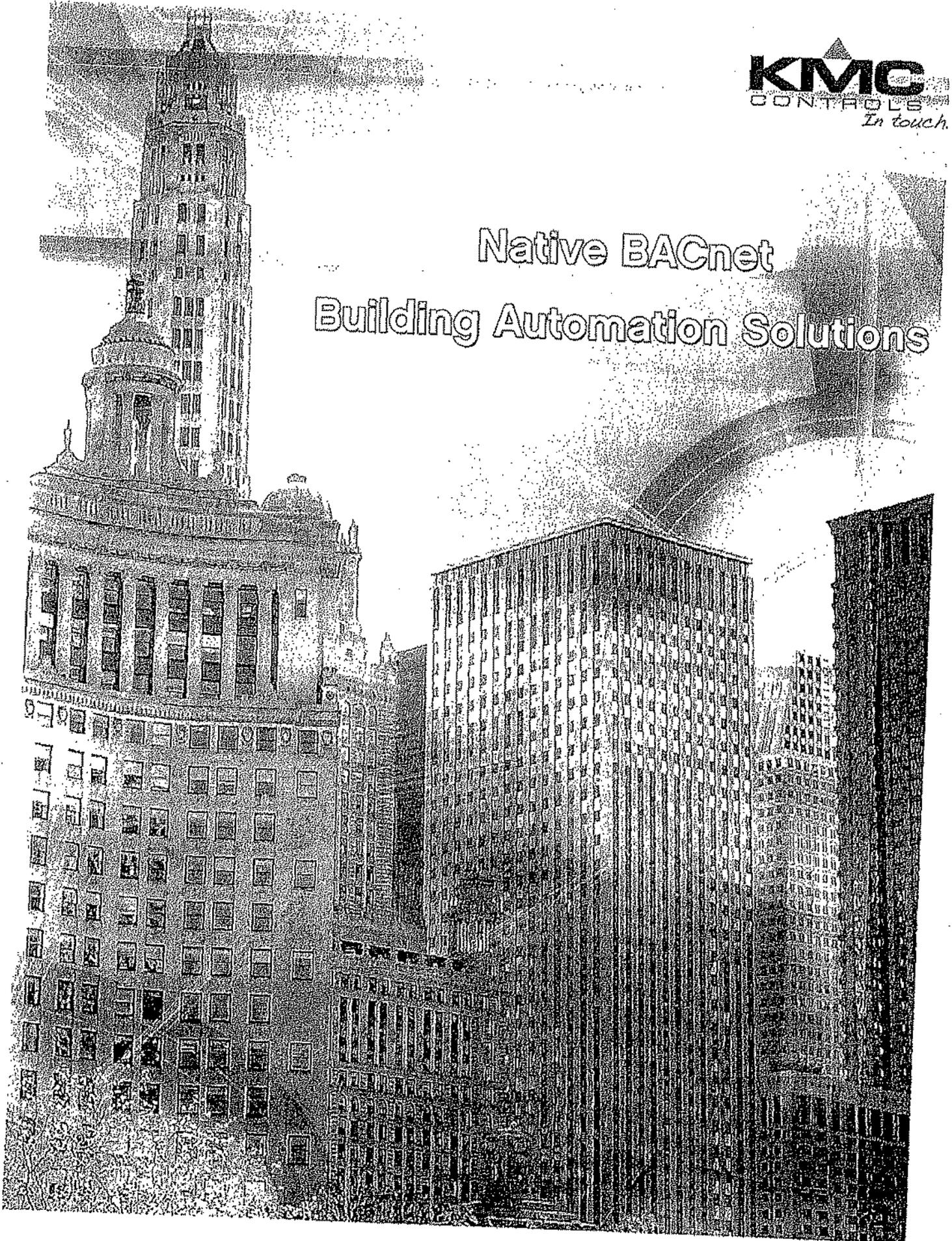
## Warranty

Included with your project is a one-year warranty on all labor and materials provided by Energy Source. At the end of the first year materials remain covered by standard warranties provided by their manufacturers. Warranty periods begin when the installation is completed. The owner has a one-month period following the completion of the installation to accept or reject work performed by Energy Source, after which time we will assume that the work has been accepted.

Due to the fluctuation in commodities this proposal is valid for a period of 30 days from the date shown at the top of this proposal, after which time we will be happy to provide an adjusted quote if necessary.



# Native BACnet Building Automation Solutions



# Thinking About KMC and BACnet

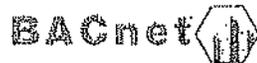
## Sustainability, Interoperability, Reliability

These words will drive the future of building automation controls in the 21st Century. These words describe what is provided by KMC BACnet solutions...today!

Sustainable, "green" buildings will become the expected norm in the future. The U.S. Green Building Council has been paving the way with its Leadership in Energy and Environmental Design (LEED®) Green Building Rating System. Earning LEED certification points in the crucial categories of Indoor Environmental Quality and Energy and Atmosphere requires an efficient building automation system, which is what BACnet® and KMC Controls® are all about.

## Why BACnet?

BACnet (for Building Automation and Control NETWORKS) is the only communications protocol that was designed for open system interoperability and specifically intended for building systems. Interoperability means that products from different manufacturers can communicate with each other and work together. The concept of interoperability blends well with the integrated project design of LEED and other green approaches.



An open system also helps reduce future risk for building owners. If a BAS vendor for an installed proprietary system goes out of business, future maintenance and upgrades might require the old BAS to be torn out and entirely replaced by something new. Interoperability, however, means that new can build on the old, and it helps future-proof life-cycle costs.

An uncertain future means we can't be content with the best practices of the past. Working groups within BACnet International are constantly striving to evolve the standards to help meet the new environmental and energy challenges of tomorrow.

## Why BACnet from KMC Controls?

When opting for a BACnet system, why choose BACnet products by KMC (a long-time member of BACnet International)? Carefully consider these KMC BACnet pointers before starting your building project.

### Flexible Configuration and Deployment

For AHU, FCU, HPU, RTU, and VAV applications, we offer models of controllers with built-in standard application sequences and optimized outputs, which allow rapid deployment of controllers on a job. However, many sites require customization to their unique needs. For maximum flexibility, all KMC BACnet controllers are Fully Field Programmable so you can customize your applications as much as you need



## Pondering Proprietary Objects and Properties

While the BACnet standard defines required objects and properties, it also provides manufacturers the freedom to create proprietary objects or properties of objects. Such moves, however, can block true interoperability. KMC Controls is committed to BACnet the way it was meant to be, and we refrain from using proprietary objects or proprietary properties in the standard objects of our "native" BACnet controllers.

## Talking the Talk

Participation in annual BACnet interoperability workshops enables manufacturers to test the communication capability of their products with other BACnet equipment and to resolve problems that might arise in the field. KMC Controls has been an active participant in such workshops since their inception. Our products have communicated effectively with comparable products from all major BACnet manufacturers.

In the past, getting new controllers to communicate with other controllers on a network has often been one of the most time-consuming aspects of a network installation. KMC's built-in auto addressing automatically assigns MAC addresses and device instance numbers to our advanced application controllers, simplifying installation of a BACnet network.



## BTL Listed (the BACnet Seal of Approval)

A "listing" from the BACnet Testing Laboratory (BTL) is the assurance that BACnet devices not only meet the standard, but also the more rigorous test requirements of the BTL. BTL testing demands a greater level of engineering commitment from manufacturers. KMC is committed to BTL listing for our native BACnet devices.

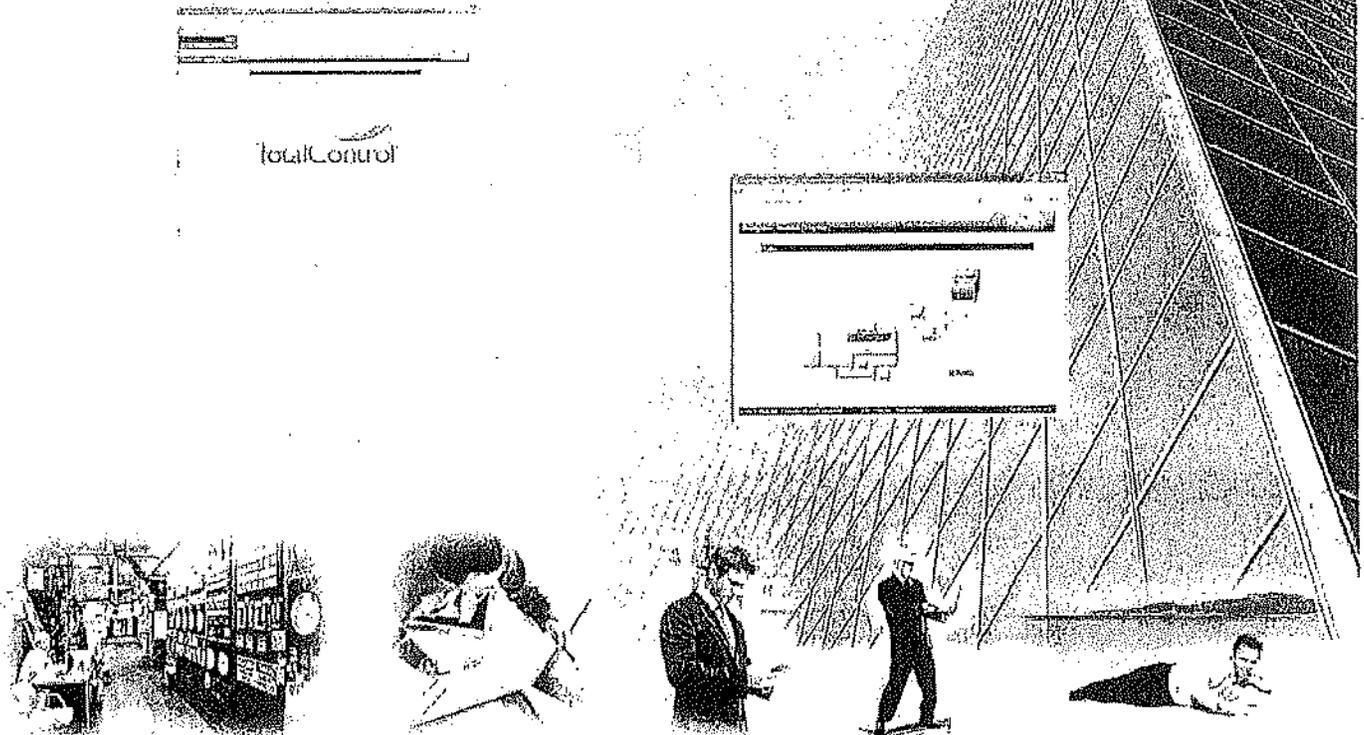


## Robust Reliability...Sometimes Repackaged

After installation, the superior quality design and construction of KMC controllers will provide years of trouble-free operation even in demanding conditions. Our industry-leading five-year warranty shows our confidence in our products. Our products have been recognized even by other manufacturers as being among the best in the business. We privately label our controllers for a variety of corporations...but it is what's inside that counts whatever the outward label says.

So whether building new or augmenting an existing BACnet installation, KMC Controls is the intelligent choice. The following pages describe KMC software tools, show sample installations of varying sizes, and further describe our hardware products. For more information about KMC, download our Corporate Brochure (SB-052) from our award-winning web site.

# Thinking Outside the Box (Software Solutions)



Rising energy costs, increased environmental and security concerns, and the promise of enhanced productivity inside optimized work environments have made the need to control building automation systems more important than ever before. The capability to link multiple building systems, manage building environments remotely, and manage multi-manufacturer interoperability issues can now be brought under control over the Internet.

## TotalControl

**TotalControl** from KMC Controls, Inc. makes web-based monitoring and managing of everything from single rooms to multiple buildings simple. TotalControl and the Internet are all you need to access and manage the critical functions of complex building automation systems.

TotalControl's Design Studio module is used to custom-build the Building Services web interface. Design of the interface is usually done by the controls contractor in consultation with the facility's owner/operator. Once designed, only the Building Services module is needed to monitor and control the building automation system... from anywhere.

Behind the scenes, the Building Services module collects data from multiple BAS protocols, stores (trends, schedules, and alarm) data in a central database, and serves web pages.

Then, only a web browser is required for the operator to interact with the trends, schedules, alarms, and pages managed from the Building Services computer. The web interface allows operators to control building automation systems via a company network or the Internet. Operators can immediately see and change environmental controls or related building automation systems using just a web browser from an office desktop...or from a laptop at the beach.

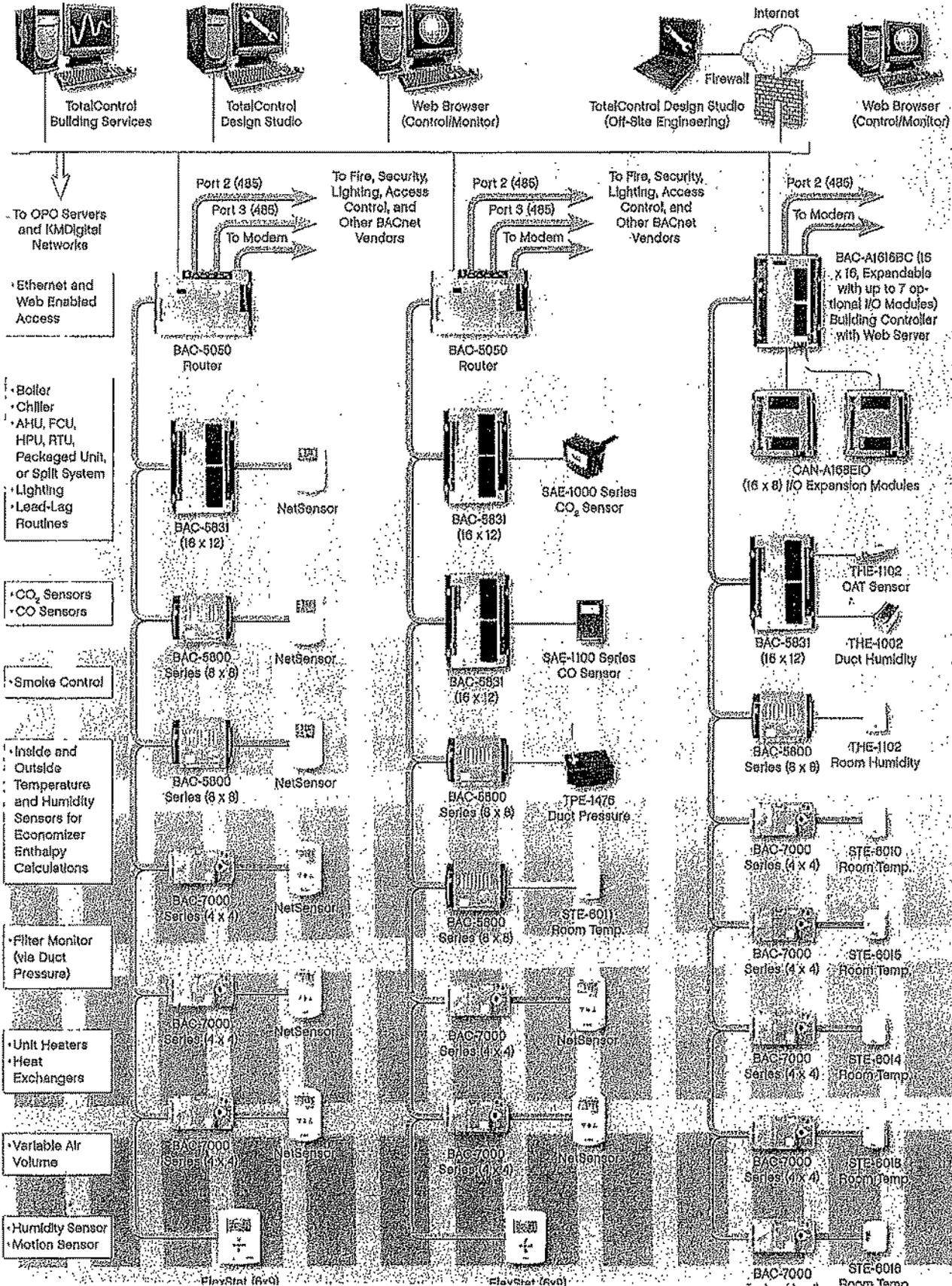
## Other Control Tools

The KMC Controls **BACnet Module for Niagara<sup>AX</sup>** adds the required functionality to the Niagara<sup>AX</sup> framework to fully integrate KMC BACnet controllers into a Niagara-managed controls system. Once installed, all objects and properties in KMC BACnet controllers can be configured from either Niagara Workbench or through a JACE panel.

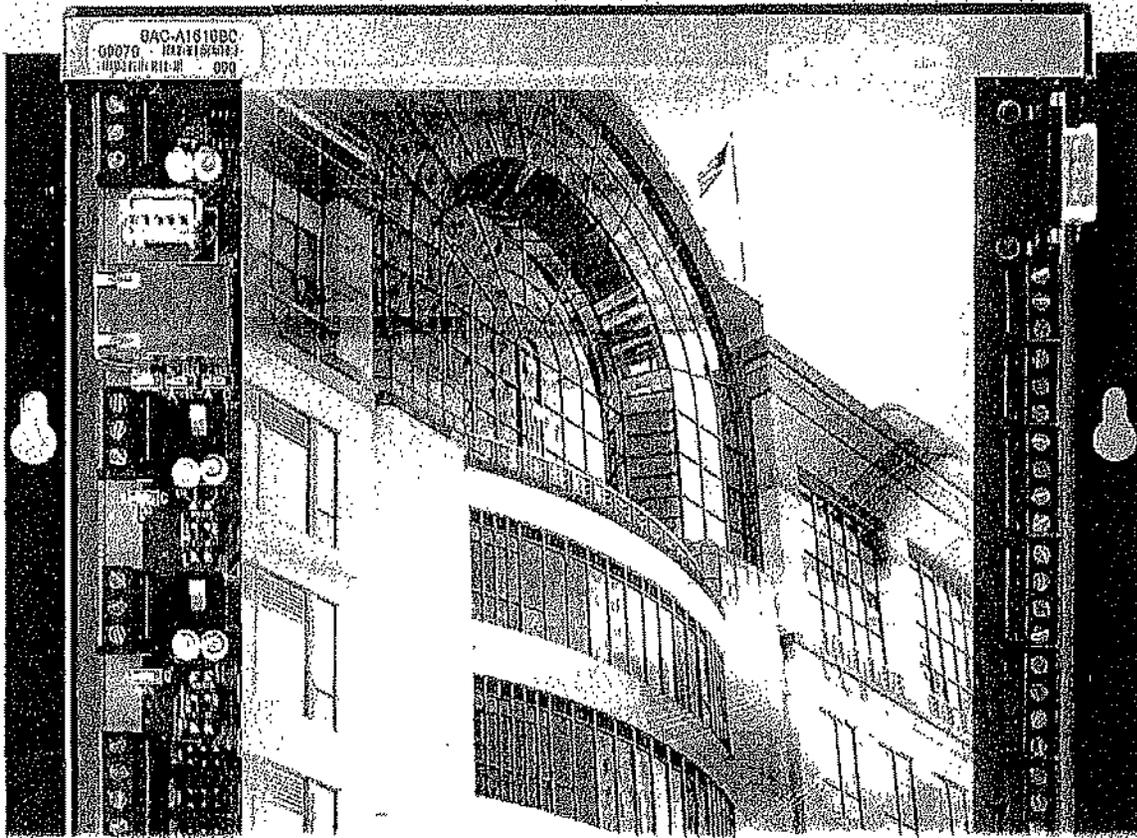
For less complex jobs, the **BACstage+** service tool helps configure controllers and build graphical interfaces for its own operator workstation. In addition to permanent network connections, BACstage can also be used on a laptop to make quick, easy, temporary network connections through the data ports in most KMC controllers, NetSensors, FlexStats, and some models of STE-6000 series sensors. KMC also supplies other software utilities to help facilitate the system configuration and programming process.



# Large or Multiple Buildings



## Thinking Inside the Box (Hardware Solutions)



Even though you can't conveniently package a building, you can have its automation controls in one box. Software sends commands and shows the results, but hardware does the grunt work.

With native BACnet functionality and field programmability, our BACnet hardware fulfills the promise of interoperability while providing our flexibility in implementation.

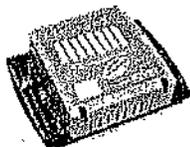
### Advanced Application Controllers

The following models are representative of our line of native BACnet Advanced Application Controllers. While some offer built-in programming for specific purposes, all are fully field programmable.

### General Purpose Models

These direct digital controllers are BACnet MS/TP compliant and offer universal inputs and outputs (each of which is programmable as an analog or binary object).

BAC-5801/5802 (8 x 8) controllers are very popular for general purpose HVAC and building automation applications. For added flexibility, you can add up to eight output override boards featuring triac, relay, and 4-20 mA options.



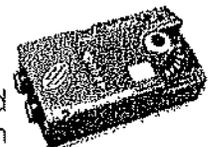
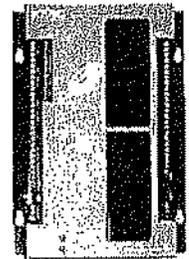
For more complex installations, multiple controllers can be networked together. Also, the larger BAC-5831 (16 x 12) controllers provide additional inputs and outputs.

### Application Specific Models

Whether designed for AHU, FCU, HPU, RTU, or VAV applications, these controllers feature built-in sequences and are also fully programmable.

BAC-7000 series (4 x 4) controllers have built-in airflow sensors and actuators for VAV applications. Each also has a NetSensor connection and supplied programs, which make them ideal for stand-alone or networked VAV applications.

BAC-7300/7400 series (4 x 4) AHU, FCU, HPU, and RTU controllers have universal inputs and a combination of relays, triacs, and universal outputs, depending on the intended application. They also have built-in programming sequences for their intended uses.



### Sensors, Interfaces, and Thermostats

Controllers are blind without sensors, and KMC offers a variety of sensors to meet almost any need.

#### NetSensors

KMD-116x/118x/12x1 series NetSensors<sup>®</sup> are wall-mounted, temperature sensing, programmable operator interfaces for use in KMC BACnet as well as our proprietary KMDigital<sup>™</sup> systems.

Optional built-in humidity and motion sensors are also available so that you can now have room temperature and humidity control linked to occupancy. After all, there's no reason to heat or cool a room when nobody's home. Programmed schedules are fine for most days...except for vacations, sick days, business trips, long meetings, and other disruptions to the routine. Room occupancy is optionally detected via a built-in passive infrared motion sensor with a range of up to 33 feet (10 meters).

NetSensors, available in white or light almond, offer a large, easy to read, backlit LCD display for easy temperature viewing, plus smaller characters for time and relative humidity. Convenient setpoint buttons are instantly accessible, and additional buttons behind the hinged cover may be programmed to control or display the value of an object (such as outside air temperature) in the attached controller.

#### FlexStats (Thermostats, Controllers with Sensors)

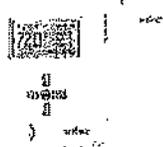
Sharing many similarities with NetSensors, FlexStats<sup>™</sup> combine the power of a controller (having up to nine relay and/or analog outputs) with an LCD display, a built-in temperature sensor, optional humidity, motion, and CO<sub>2</sub> sensors, as well as up to six input terminals for additional sensors. Plus, they have an easily configurable built-in library of AHU, FCU, HPU, and RTU applications that cover a great range of situations...or you can field-program them for the ultimate in flexibility.

#### Analog Sensors

KMC also offers many analog sensors that can be connected to a controller's inputs for monitoring and controlling humidity, CO, CO<sub>2</sub>, room/duct/outside temperature, duct pressure, fan status, smoke, setpoint, and override.

#### Router

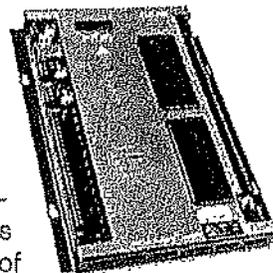
The multi-port BAC-5050 FullBAC<sup>+</sup> Router provides communication between BACnet IP LANs, BACnet MS/TP controller networks, foreign



devices, and an Ethernet 802.3 network. It also provides a debug and modem connection among other features. The product's name derives from the robust connectivity it offers to the most demanding BACnet jobs.

#### Building Controllers

For the most demanding applications, the BAC-A1616BC BACnet Building Controller (B-BC) is a high-performance, native BACnet direct digital controller. This 16 x 16 B-BC provides precise monitoring and control of connected points. Integrated into the controller is a BACnet router, a web server, and expandable I/O.



A web server allows a remote web browser to configure I/Os, set up objects, and monitor values (configuration/monitoring are also available through TotalControl). Firmware is easily upgradable (without requiring physical access) through the Ethernet connection.

Additionally, up to seven CAN-A168EIO Expansion Modules can be connected (via standard shielded twisted-pair wire up to 200 feet from the B-BC). Each provides another 16 universal inputs and 8 universal outputs (for a maximum total of 128 inputs and 72 outputs)...if you have to think outside this box.

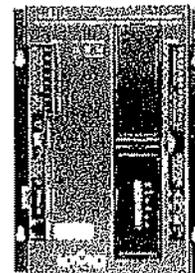
#### Lighting Controls

Lighting consumes between 15 and 40% of a building's energy costs, and heat generated by lighting adds to the cooling load and energy used by the building's HVAC system. KMC's controllers, such as the L900 series Lighting Controls, can optimize illumination while minimizing energy usage through schedules, motion sensors, and other controls.



#### Gateways

Ideally, interoperability means being able to talk to anything... even other protocols. If you need to link a BACnet system to a legacy KMDigital system, KMD-5210 series KMDigital LAN Controllers with BACnet Interfaces or the KMD-5270-001 KMDigital WebLite Controller with BACnet Interface can serve as Interfaces. BACnet Ethernet 802.3 and MS/TP versions are available.



For more information about individual products, see their respective data sheets and other documents on our award-winning web site ([www.kmcccontrols.com](http://www.kmcccontrols.com)).



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New Paris, IN 46553, U.S.A.  
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**Carlos Campos**

**From:** Luke Biello <somersetfloorsurfacing@aol.com>  
**To:** <camposc@somerset.k12.ma.us>  
**Cc:**  
**Date:** 07/25/13 7:36 AM  
**Subject:** Elementry and Middle school

Carlos

I have not changed the price for the Wilbur , North Elementary and Somerset Middle schools gym floor. Below you will find the prices for each school. This will include Buffing, Vacuuming, and two coats of Bona super sport water based gym finish. The estimated completion date for the Wilbur school and North Elementary school will be the week of Monday August 19th 2013. The estimated completion date for the Somerset Middle school is during the winter vacation Between December 23 2013 and December 31 2013. I will need A purchase order at your convenience .

North Elementary School .....	\$ 4,100:00
Wilbur Elementary School .....	\$ 1,850:00
Somerset Middle School .....	\$ 2,800:00

Luke Biello  
somersetfloorsurfacing@aol.com

2.

PROPOSAL CREATED FOR:

Somerset Public Schools



580 Whetstone Hill Road  
Somerset, MA 02726

## Summary

**Customer**

1141 Brayton Ave. Somerset MA  
 1141 Brayton Ave. Somerset MA

**Site Address**

Somerset, MA 02728

**Company Contact**

Roland Moulin  
 Senior Sales Executive - Solar  
 Munro Solar  
 33 Commercial St.,  
 Raynham, MA 02767

### 25 Year Financial Analysis

Utility Savings Over Initial Term	\$836,574
	\$2,789 / mo (avg)
Payback Period	6-7 years
Total Life Cycle Payback (Cash Flow compared to Net Cost)	343%
Rate of Return on Cash Invested	14.9%
Levelized Cost of Solar Energy	\$0.123 / kWh

### Cost Breakdown

Installer Contract Cost	\$345,756	(\$3.46/watt DC, \$4.05/watt AC)
Net Cost (year of installation)	\$345,756	(\$3.46/watt DC, \$4.05/watt AC)
\$300 per SREC	(\$359,113)	
Net Cost (all years)	(\$13,357)	(-\$0.13/watt DC, -\$0.16/watt AC)

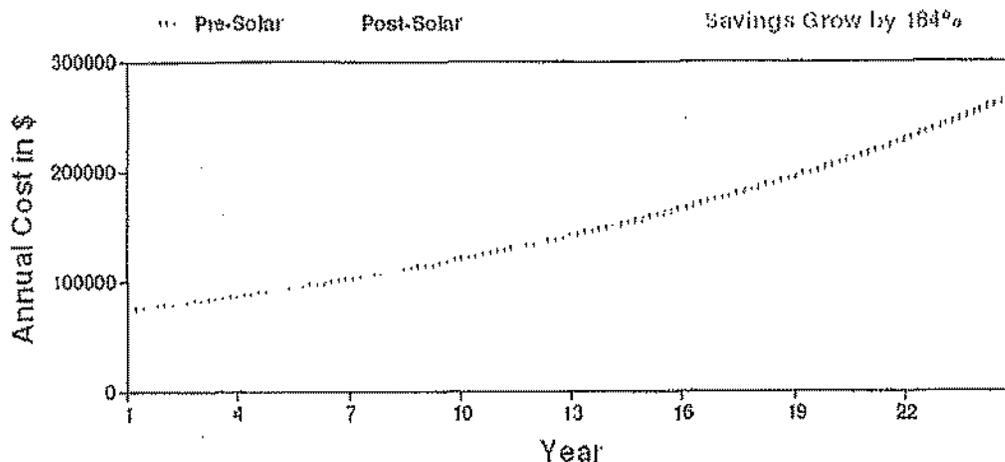
### System Description

Total System Size	99.905 kW DC Power (STC) / 85.361 kW AC Power (CEC)
Estimated Annual Production	128,455 kWh
PV Panel Description	Qty. 377 - LG Electronics Solar Cell Division Model: LG265S1C-G3
Inverters	Qty. 1 - Sollectria Renewables Model: PV182kW-208

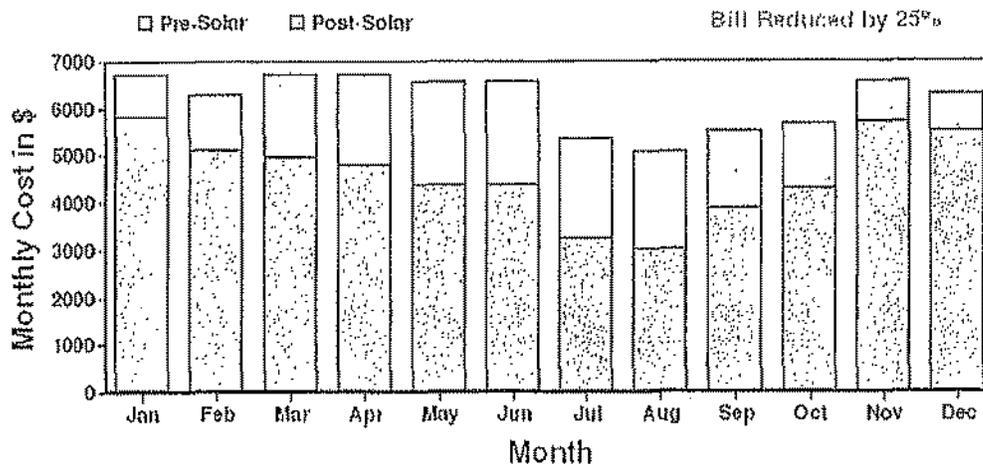
## Energy Analysis

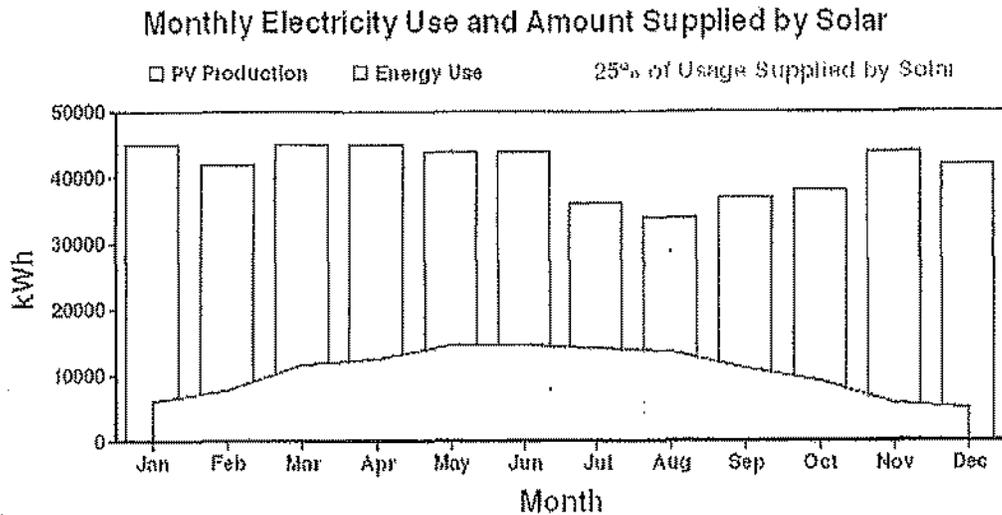
Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

### Annual Electricity Bill Savings Over Time



### Monthly Electricity Bill Savings





Assumptions: Post-Solar Electric Rate Schedule for National Grid is G 1 @ 0.135 Annual utility inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.

## Energy Bill Estimate

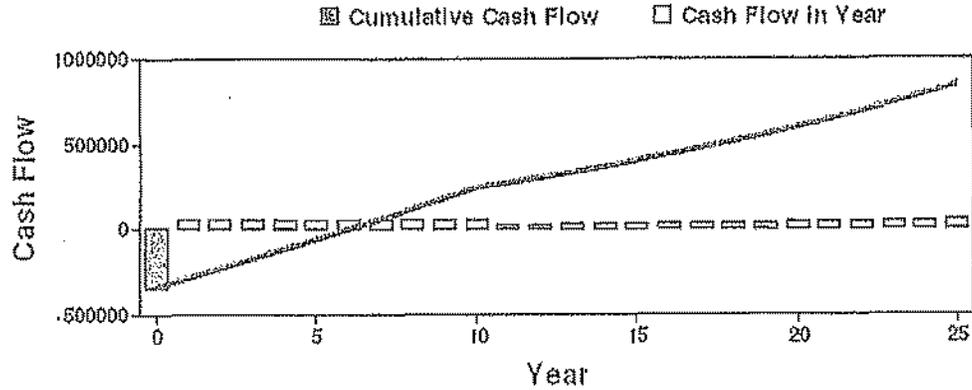
The following energy bill estimate is without any tax effects applied.

(kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Usage without Solar	45.0k	42.0k	46.0k	45.0k	44.0k	44.0k	36.0k	34.0k	37.0k	38.0k	44.0k	42.0k	496k
Solar Production	6,119	7,743	11.7k	12.6k	14.6k	14.6k	14.2k	13.6k	11.1k	9,191	5,819	5,120	126k
Utility Usage with Solar	38.9k	34.3k	33.0k	32.4k	29.4k	29.4k	21.8k	20.4k	25.9k	28.8k	38.2k	36.9k	370k
(Cost)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Bill without Solar*	\$6,730	\$6,281	\$6,730	\$6,730	\$6,580	\$6,580	\$5,384	\$5,085	\$5,533	\$5,683	\$6,580	\$6,281	\$74.2k
Utility Bill with Solar*	\$5,814	\$5,123	\$4,978	\$4,840	\$4,399	\$4,391	\$3,262	\$3,045	\$3,879	\$4,308	\$5,710	\$5,515	\$55.3k
Utility Bill Savings	\$916	\$1,158	\$1,752	\$1,890	\$2,181	\$2,189	\$2,122	\$2,040	\$1,654	\$1,375	\$870	\$766	\$18.9k

\*Includes utility rate increase of 5.50%

## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



### Financial Summary

Utility Savings Over Initial Term	\$836,574
Average Monthly Utility Savings	\$2,789 (over system life)
Net Cost (In year of installation)	\$345,756
Payback Period	6-7 years
Rate of Return on Cash Invested	14.9%
Total Life-Cycle Payback (Cash flow compared to Net Cost)	343%
Levelized Cost of Solar Energy (Net Cost / lifetime energy production)	\$0.123 / kWh

## Environmental Impact Analysis

Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by 2,166 tons of CO<sub>2</sub>  
(Over 25 years)

#### Equivalent CO<sub>2</sub> Reductions

Small Car:	7,340,678 miles
Medium Car:	3,937,273 miles
SUV:	2,758,599 miles
Air Miles:	4,464,948 miles
Trees Planted:	86,620 trees planted
CO <sub>2</sub> from Trash & Waste:	3,937 persons

## Cash Flow by Year

The following table of estimated cash flows includes any tax effects, rate and cost inflation and other time-related cash flow factors. Refer to the Disclaimers & Assumptions section (below) for further clarification.

Year:	0	1	2	3	4
\$300 per SREC	\$0	\$37,557	\$37,181	\$36,810	\$36,442
Energy Bill Savings	\$0	\$18,913	\$19,754	\$20,632	\$21,549
Installation, Operation & Maintenance Costs					
<b>Total Annual Cash Flow</b>	<b>\$0</b>	<b>\$56,470</b>	<b>\$56,935</b>	<b>\$57,442</b>	<b>\$57,991</b>
<b>Cumulative Cash Flow</b>	<b>\$0</b>	<b>\$56,470</b>	<b>\$113,365</b>	<b>\$170,807</b>	<b>\$228,798</b>

Year:	5	6	7	8	9
\$300 per SREC	\$36,077	\$35,716	\$35,359	\$35,006	\$34,656
Energy Bill Savings	\$22,506	\$23,507	\$24,552	\$25,544	\$26,783
Installation, Operation & Maintenance Costs					
<b>Total Annual Cash Flow</b>	<b>\$58,583</b>	<b>\$59,223</b>	<b>\$59,911</b>	<b>\$60,550</b>	<b>\$61,439</b>
<b>Cumulative Cash Flow</b>	<b>\$58,583</b>	<b>\$117,806</b>	<b>\$177,717</b>	<b>\$238,267</b>	<b>\$300,006</b>

Year:	10	11	12	13	14
\$300 per SREC	\$34,309	\$0	\$0	\$0	\$0
Energy Bill Savings	\$27,974	\$29,217	\$30,516	\$31,872	\$33,289
Installation, Operation & Maintenance Costs					
<b>Total Annual Cash Flow</b>	<b>\$62,283</b>	<b>\$29,217</b>	<b>\$30,516</b>	<b>\$31,872</b>	<b>\$33,289</b>
<b>Cumulative Cash Flow</b>	<b>\$124,566</b>	<b>\$153,783</b>	<b>\$184,299</b>	<b>\$216,171</b>	<b>\$250,460</b>

Year:	15	16	17	18	19
\$300 per SREC	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$34,768	\$36,314	\$37,928	\$39,614	\$41,378
Installation, Operation & Maintenance Costs					
<b>Total Annual Cash Flow</b>	<b>\$34,367</b>	<b>\$35,909</b>	<b>\$37,519</b>	<b>\$39,201</b>	<b>\$40,959</b>
Cumulative Cash Flow	\$399,219	\$435,128	\$472,847	\$511,848	\$552,807

Year:	20	21	22	23	24	25
\$300 per SREC	\$0	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$43,214	\$45,135	\$47,141	\$49,237	\$51,425	\$53,711
Installation, Operation & Maintenance Costs						
<b>Total Annual Cash Flow</b>	<b>\$42,793</b>	<b>\$44,709</b>	<b>\$46,711</b>	<b>\$48,803</b>	<b>\$50,987</b>	<b>\$53,268</b>
Cumulative Cash Flow	\$595,600	\$640,309	\$687,020	\$735,823	\$786,810	\$840,078

## Disclaimers & Assumptions

### Operation, Maintenance, and Inflation Rates

This estimate assumes the following system operation, maintenance and inflation rates:

System Life:	25 years
Operation & Maintenance:	0.10% of system cost per annum
PV Degradation:	1.00% per annum
Estimated Inverter Life:	15 years
O&M Inflation Rate:	1.0% per annum
Inverter Replacement Inflation Rate:	1.0% per annum

### System Size Ratings & Performance

There are three methods commonly used to rate PV system size: STC, PTC and CEC. The Standard Test Condition rating ("STC" also called "DC" or "nameplate") assumes a standard set of optimal operating conditions. The STC rating is most often used by manufacturers to classify the power output of PV modules. The PV-USA Test Condition ("PTC") and California Energy Commission ("CEC") ratings were designed to approximate system performance in more realistic operating conditions.

The Energy production for the first year is based on PVWatts Version 2. To calculate the system's energy production for any future year, the expected degradation in system performance is included (See "PV Degradation", in table above).

## Tax Credits & Deductions

Income tax rate assumed: 42.00% (Federal 33.00% - State: 9.00%)

To calculate the estimated cash flow in this proposal, our analysis used these tax rates. We should stress that we cannot provide tax or investment guidance. You should consult your tax preparer or investment adviser for these services. This analysis calculates the cash flows based only on the assumptions entered into the proposal.

This analysis assumes Federal Income Tax is not applied to any rebates. Therefore, the basis for the Federal ITC is the installation cost less 100% of any and all rebates.

### Commercial:

In calculating the cash flow, our analysis assumes that your business' utility expense is tax deductible. Since your utility bill will be reduced by installing the solar energy system, the resulting tax deduction is similarly reduced. Our analysis takes this into account.

It also assumes that when you install your solar energy system, you will be able to receive tax benefits from the investment tax credit, depreciation of the equipment, annual maintenance expense, and interest used in financing. Unlike a residential system, the financing does not have to be secured by real estate in order for the interest to qualify as a tax deduction.

MACRS Depreciation: Any commercial entity that invests in or purchases qualified solar energy property may use the Modified Accelerated Cost Recovery System (MACRS) accelerated depreciation schedule: Year 1=20.00%, Year 2=32.00%, Year 3=19.20%, Year 4=11.52%, Year 5=11.52%, Year 6=5.76%.

This analysis assumes Federal Income Tax is not applied to any state or local incentives. Therefore, the basis for depreciation is the installation cost less 50% of any Federal energy tax credits less 100% of any and all state or local incentives received in year 0.

See IRS Publications 946 and 587.

In this analysis, year 0 is the year in which the solar energy system is installed. Our analysis assumes that you will benefit from the Investment Tax Credit in year 0 (by knowing you won't have to pay as much tax), though you apply for it in year 1.

For all following years, tax deductions are applied to the year in which they occurred. The tax effect of deductions in year 1 are applied to year 1, and so forth.

## (Net) Energy Bill Savings

For an individual, electric bills are not usually deductible against income taxes.

For a business, electric bills are usually deductible against income taxes. If an income tax rate is defined, the cash flow displays a "Net" Energy Bill Savings line item which is the Energy Bill Savings less the loss in tax deduction due to the PV system's lowering of the electric bill. Cost inflation for the utility rate and degradation of system performance are also taken into account.

## Average Monthly Utility Savings

"Average Monthly Utility Savings" is the average monthly (Net) Energy Bill Savings expected over the system life. This takes into account utility rate inflation and any expected degradation in system performance. This estimate has not assumed any changes in the amount or timing in your building's energy use.

## Rate of Return (IRR) on Cash Invested

"Rate of Return on Cash Invested" (also called "Internal Rate of Return" or "IRR") is the annual compounded rate of return that the cash flows (savings, incentives, tax benefits, etc.) bring based upon the net cash invested in the year of installation ("Year 0"). In financial math terms, IRR is the discount rate required to make the sum of the present values of each annual cash flow equal zero. If you financed your system 100%, IRR does not apply since you did not actually invest cash.

## Total Life-Cycle Payback

"Total Life-Cycle Payback" is the total cash flows (savings, incentives, tax benefits, etc.) for all years after installation as a percentage of the net cash invested in the year of installation ("Year 0"). This ROI calculation is not adjusted for inflation or the time-value of money.

## Levelized Cost of Energy

"Levelized Cost of Energy" (or LCOE) is an approximation of the average cost of energy from your solar system (\$/kWh). To determine LCOE, the system Net Cost (\$ in the installation year) is divided by the amount of energy produced (kWh) over the system life (years). For this calculation, energy produced over system life is limited to the annual energy consumption of the building times the system life in years. The Net Cost does not include incentives which may materialize in later years, such as tax credits or deductions or production rebates. This calculation is not adjusted for the time-value of money.

## Environmental Analysis

CO<sub>2</sub> gas emissions avoided per passenger via various travel methods:

Travel Method	Emissions / mile
Small Car	.59 pounds
Medium Car	1.10 pounds
SUV/4 Wheel Drive	1.57 pounds
Airplane (Boeing 747)	0.97 pounds

Air travel average USA capacity.

Tree offset calculation is based on a tree planted in the humid tropics absorbing on average 50 pounds (22 kg) of carbon dioxide annually over 40 years - each tree will absorb 1 ton of CO<sub>2</sub> over its lifetime; but as trees grow, they compete for resources and some may die or be destroyed - not all will achieve their full carbon sequestration potential. This calculator assumes that 5 trees should be planted to ensure that at least one lives to 40 years or that their combined sequestration equals 1 ton.

General waste is based on the USA average carbon dioxide emission equivalent of 1,010 pounds per person per year.

Sources: [Sightline Institute](#), [Trees for the Future](#) and [USA Environmental Protection Agency](#)

## Electric Utility Rates & Assumptions

Utility:	National Grid
Rate Name (Post Installation):	G 1 @ 0.135
Annual Inflation:	5.5% (assumed)

## Utility Electric Rate Inflation: Historical References

National Averages: In 2009, the average retail electricity price for all customers across the United States rose to 9.83 cents per kWh, a small increase over 2008. Over the two year period though, from 2007 to 2009, the average retail price rose 7.7 percent.

See the following Dept of Energy source for more detail on regional and state inflation patterns.

Source: [http://www.eia.doe.gov/cneaf/electricity/esr/esr\\_sum.html](http://www.eia.doe.gov/cneaf/electricity/esr/esr_sum.html)

## Summary

**Customer**

580 Whetstone Hill Road Somerset MA  
 580 Whetstone Hill Road Somerset MA

**Site Address**

Somerset, MA 02726

**Company Contact**

Roland Moulin  
 Senior Sales Executive - Solar  
 Munro Solar  
 33 Commercial St.,  
 Raynham, MA 02767

### 25 Year Financial Analysis

Utility Savings Over Initial Term	\$790,525
	\$2,635 / mo (avg)
Payback Period	6-7 years
Total Life-Cycle Payback (Cash Flow compared to Net Cost)	324%
Rate of Return on Cash Invested	13.9%
Levelized Cost of Solar Energy	\$0.130 / kWh

### Cost Breakdown

Installer Contract Cost	\$345,756	(\$3.46/watt DC, \$3.99/watt AC)
Net Cost (year of installation)	\$345,766	(\$3.46/watt DC, \$3.99/watt AC)
\$300 per SREC	(\$339,406)	
Net Cost (all years)	\$6,360	(\$0.06/watt DC, \$0.07/watt AC)

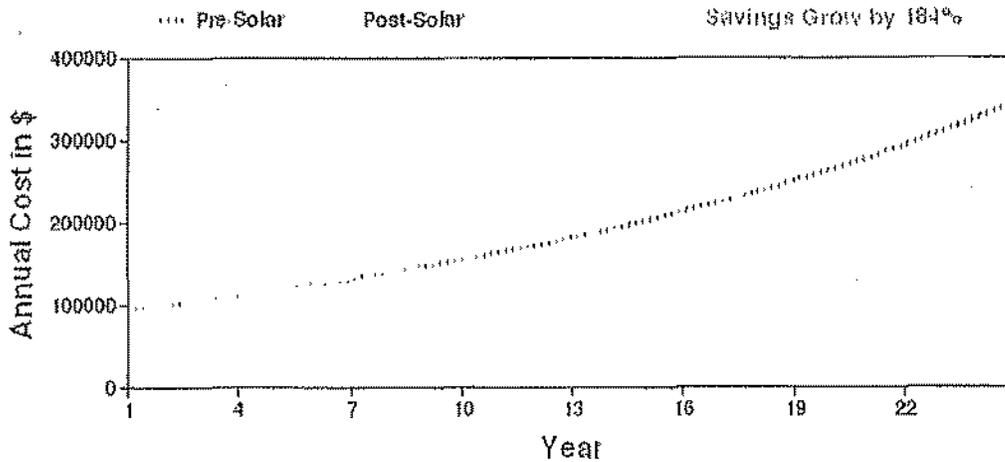
### System Description

Total System Size	99.905 kW DC Power (STC) / 86.716 kW AC Power (CEC)
Estimated Annual Production	119,515 kWh
PV Panel Description	Qty. 377 - LG Electronics Solar Cell Division Model: LG265S1C-G3
Inverters	Qty. 1 - Solectria Renewables Model: PVI85kW-240

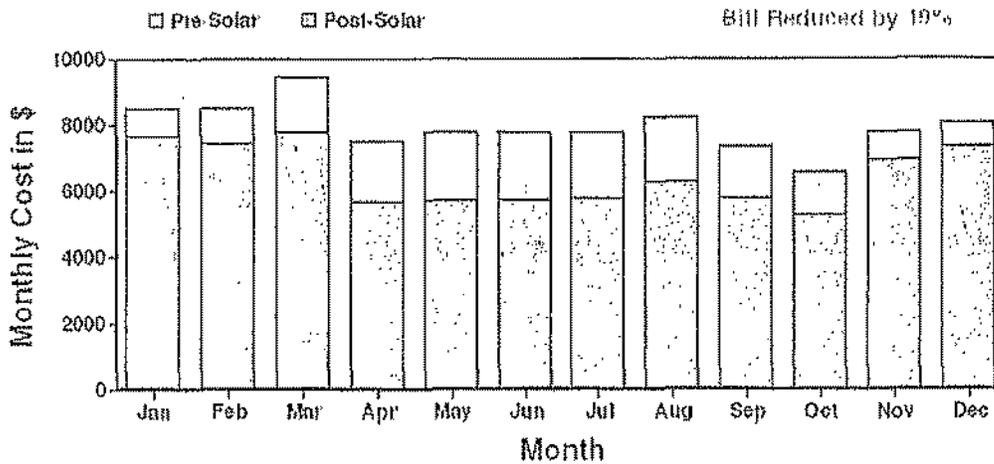
## Energy Analysis

Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

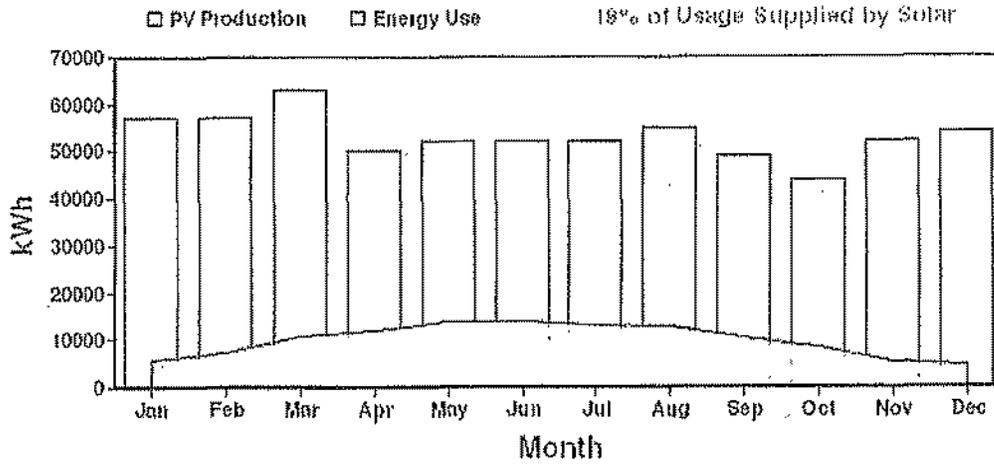
### Annual Electricity Bill Savings Over Time



### Monthly Electricity Bill Savings



### Monthly Electricity Use and Amount Supplied by Solar



Assumptions: Post-Solar Electric Rate Schedule for National Grid is G 1 @ 0.135 Annual utility inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.

## Energy Bill Estimate

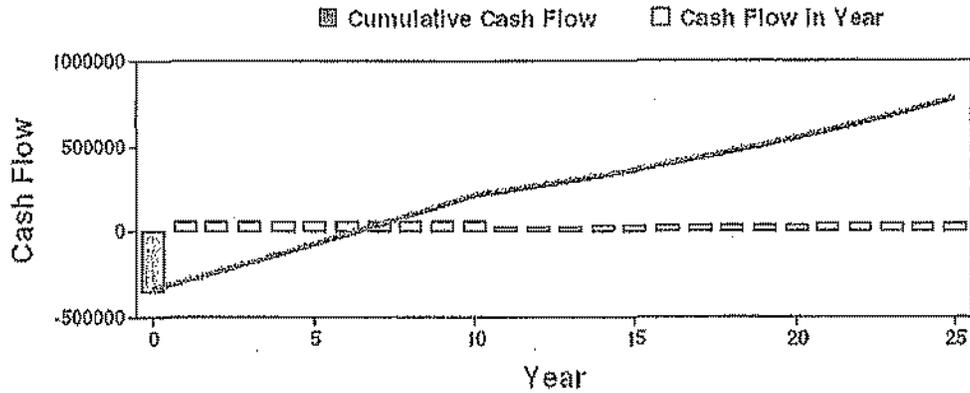
The following energy bill estimate is without any tax effects applied.

(kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Usage without Solar	57.0k	57.0k	63.0k	60.0k	52.0k	52.0k	52.0k	55.0k	49.0k	44.0k	52.0k	54.0k	637k
Solar Production	5,789	7,308	11.1k	12.0k	13.8k	13.9k	13.4k	12.9k	10.4k	8,684	5,481	4,817	120k
Utility Usage with Solar	51.2k	49.7k	51.9k	38.0k	38.2k	38.1k	38.6k	42.1k	38.6k	35.3k	46.5k	49.2k	517k
(Cost)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Bill without Solar*	\$8,524	\$8,524	\$9,421	\$7,477	\$7,776	\$7,776	\$7,776	\$8,225	\$7,328	\$6,580	\$7,776	\$8,075	\$95.3k
Utility Bill with Solar*	\$7,658	\$7,431	\$7,764	\$5,689	\$5,711	\$5,704	\$5,772	\$6,298	\$5,766	\$5,281	\$6,957	\$7,355	\$77.4k
Utility Bill Savings	\$866	\$1,093	\$1,657	\$1,788	\$2,065	\$2,072	\$2,004	\$1,927	\$1,562	\$1,299	\$819	\$720	\$17.9k

\*Includes utility rate increase of 5.50%

## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



### Financial Summary

Utility Savings Over Initial Term	\$790,525
Average Monthly Utility Savings	\$2,635 (over system life)
Net Cost (In year of installation)	\$345,756
Payback Period	6-7 years
Rate of Return on Cash Invested	13.9%
Total Life-Cycle Payback (Cash flow compared to Net Cost)	324%
Levelized Cost of Solar Energy (Net Cost / lifetime energy production)	\$0.130 / kWh

## Environmental Impact Analysis

Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by 2,047 tons of CO<sub>2</sub>  
(Over 25 years)

#### Equivalent CO<sub>2</sub> Reductions

Small Car:	6,937,966 miles
Medium Car:	3,721,273 miles
SUV:	2,607,261 miles
Air Miles:	4,220,000 miles
Trees Planted:	81,868 trees planted
CO <sub>2</sub> from Trash & Waste:	3,721 persons

## Cash Flow by Year

The following table of estimated cash flows includes any tax effects, rate and cost inflation and other time-related cash flow factors. Refer to the Disclaimers & Assumptions section (below) for further clarification.

Year:	0	1	2	3	4
\$300 per SREC	\$0	\$35,486	\$35,141	\$34,790	\$34,442
Energy Bill Savings	\$0	\$17,872	\$18,666	\$19,497	\$20,363
Installation, Operation & Maintenance Costs					
<b>Total Annual Cash Flow</b>	<b>\$0</b>	<b>\$53,019</b>	<b>\$53,455</b>	<b>\$53,931</b>	<b>\$54,448</b>
<b>Cumulative Cash Flow</b>	<b>\$0</b>	<b>\$53,019</b>	<b>\$106,914</b>	<b>\$160,845</b>	<b>\$215,293</b>

Year:	5	6	7	8	9
\$300 per SREC	\$34,097	\$33,756	\$33,419	\$33,085	\$32,754
Energy Bill Savings	\$21,268	\$22,213	\$23,201	\$24,232	\$25,309
Installation, Operation & Maintenance Costs					
<b>Total Annual Cash Flow</b>	<b>\$55,002</b>	<b>\$55,602</b>	<b>\$56,250</b>	<b>\$56,943</b>	<b>\$57,685</b>
<b>Cumulative Cash Flow</b>	<b>\$55,002</b>	<b>\$110,604</b>	<b>\$166,854</b>	<b>\$223,797</b>	<b>\$281,482</b>

Year:	10	11	12	13	14
\$300 per SREC	\$32,426	\$0	\$0	\$0	\$0
Energy Bill Savings	\$26,434	\$27,609	\$28,836	\$30,118	\$31,457
Installation, Operation & Maintenance Costs					
<b>Total Annual Cash Flow</b>	<b>\$58,479</b>	<b>\$27,224</b>	<b>\$28,447</b>	<b>\$29,725</b>	<b>\$31,060</b>
<b>Cumulative Cash Flow</b>	<b>\$209,066</b>	<b>\$236,280</b>	<b>\$264,727</b>	<b>\$294,452</b>	<b>\$325,512</b>

Year:	15	16	17	18	19
\$300 per SREC	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$32,855	\$34,315	\$35,841	\$37,433	\$39,098
Installation, Operation & Maintenance Costs					
<b>Total Annual Cash Flow</b>	<b>\$32,454</b>	<b>\$33,910</b>	<b>\$35,432</b>	<b>\$37,020</b>	<b>\$38,681</b>
Cumulative Cash Flow	\$357,966	\$391,876	\$427,308	\$464,328	\$503,009

Year:	20	21	22	23	24	25
\$300 per SREC	\$0	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$40,836	\$42,651	\$44,546	\$46,527	\$48,594	\$50,755
Installation, Operation & Maintenance Costs						
<b>Total Annual Cash Flow</b>	<b>\$40,415</b>	<b>\$42,225</b>	<b>\$44,116</b>	<b>\$46,093</b>	<b>\$48,155</b>	<b>\$50,312</b>
Cumulative Cash Flow	\$543,424	\$585,649	\$629,765	\$675,858	\$724,013	\$774,325

## Disclaimers & Assumptions

### Operation, Maintenance, and Inflation Rates

This estimate assumes the following system operation, maintenance and inflation rates:

System Life:	25 years
Operation & Maintenance:	0.10% of system cost per annum
PV Degradation:	1.00% per annum
Estimated Inverter Life:	15 years
O&M Inflation Rate:	1.0% per annum
Inverter Replacement Inflation Rate:	1.0% per annum

### System Size Ratings & Performance

There are three methods commonly used to rate PV system size: STC, PTC and CEC. The Standard Test Condition rating ("STC" also called "DC" or "nameplate") assumes a standard set of optimal operating conditions. The STC rating is most often used by manufacturers to classify the power output of PV modules. The PV-USA Test Condition ("PTC") and California Energy Commission ("CEC") ratings were designed to approximate system performance in more realistic operating conditions.

The Energy production for the first year is based on PVWatts Version 2. To calculate the system's energy production for any future year, the expected degradation in system performance is included (See "PV Degradation", in table above).

## Tax Credits & Deductions

Income tax rate assumed: 42.00% (Federal 33.00% - State: 9.00%)

To calculate the estimated cash flow in this proposal, our analysis used these tax rates. We should stress that we cannot provide tax or investment guidance. You should consult your tax preparer or investment adviser for these services. This analysis calculates the cash flows based only on the assumptions entered into the proposal.

This analysis assumes Federal income Tax is not applied to any rebates. Therefore, the basis for the Federal ITC is the installation cost less 100% of any and all rebates.

### Commercial:

In calculating the cash flow, our analysis assumes that your business' utility expense is tax deductible. Since your utility bill will be reduced by installing the solar energy system, the resulting tax deduction is similarly reduced. Our analysis takes this into account.

It also assumes that when you install your solar energy system, you will be able to receive tax benefits from the investment tax credit, depreciation of the equipment, annual maintenance expense, and interest used in financing. Unlike a residential system, the financing does not have to be secured by real estate in order for the interest to qualify as a tax deduction.

MACRS Depreciation: Any commercial entity that invests in or purchases qualified solar energy property may use the Modified Accelerated Cost Recovery System (MACRS) accelerated depreciation schedule: Year 1=20.00%, Year 2=32.00%, Year 3=19.20%, Year 4=11.52%, Year 5=11.52%, Year 6=5.76%.

This analysis assumes Federal income Tax is not applied to any state or local incentives. Therefore, the basis for depreciation is the installation cost less 50% of any Federal energy tax credits less 100% of any and all state or local incentives received in year 0.

See IRS Publications 946 and 587.

In this analysis, year 0 is the year in which the solar energy system is installed. Our analysis assumes that you will benefit from the Investment Tax Credit in year 0 (by knowing you won't have to pay as much tax), though you apply for it in year 1.

For all following years, tax deductions are applied to the year in which they occurred. The tax effect of deductions in year 1 are applied to year 1, and so forth.

## (Net) Energy Bill Savings

For an individual, electric bills are not usually deductible against income taxes.

For a business, electric bills are usually deductible against income taxes. If an income tax rate is defined, the cash flow displays a "Net" Energy Bill Savings line item which is the Energy Bill Savings less the loss in tax deduction due to the PV system's lowering of the electric bill. Cost inflation for the utility rate and degradation of system performance are also taken into account.

## Average Monthly Utility Savings

"Average Monthly Utility Savings" is the average monthly (Net) Energy Bill Savings expected over the system life. This takes into account utility rate inflation and any expected degradation in system performance. This estimate has not assumed any changes in the amount or timing in your building's energy use.

## Rate of Return (IRR) on Cash Invested

"Rate of Return on Cash Invested" (also called "Internal Rate of Return" or "IRR") is the annual compounded rate of return that the cash flows (savings, incentives, tax benefits, etc.) bring based upon the net cash invested in the year of installation ("Year 0"). In financial math terms, IRR is the discount rate required to make the sum of the present values of each annual cash flow equal zero. If you financed your system 100%, IRR does not apply since you did not actually invest cash.

## Total Life-Cycle Payback

"Total Life-Cycle Payback" is the total cash flows (savings, incentives, tax benefits, etc.) for all years after installation as a percentage of the net cash invested in the year of installation ("Year 0"). This ROI calculation is not adjusted for inflation or the time-value of money.

## Levelized Cost of Energy

"Levelized Cost of Energy" (or LCOE) is an approximation of the average cost of energy from your solar system (\$/kWh). To determine LCOE, the system Net Cost (\$ in the installation year) is divided by the amount of energy produced (kWh) over the system life (years). For this calculation, energy produced over system life is limited to the annual energy consumption of the building times the system life in years. The Net Cost does not include incentives which may materialize in later years, such as tax credits or deductions or production rebates. This calculation is not adjusted for the time-value of money.

## Environmental Analysis

CO<sub>2</sub> gas emissions avoided per passenger via various travel methods:

Travel Method	Emissions / mile
Small Car	.59 pounds
Medium Car	1.10 pounds
SUV/4 Wheel Drive	1.57 pounds
Airplane (Boeing 747)	0.97 pounds

Air travel average USA capacity.

Tree offset calculation is based on a tree planted in the humid tropics absorbing on average 50 pounds (22 kg) of carbon dioxide annually over 40 years - each tree will absorb 1 ton of CO<sub>2</sub> over its lifetime; but as trees grow, they compete for resources and some may die or be destroyed - not all will achieve their full carbon sequestration potential. This calculator assumes that 5 trees should be planted to ensure that at least one lives to 40 years or that their combined sequestration equals 1 ton.

General waste is based on the USA average carbon dioxide emission equivalent of 1,010 pounds per person per year.

Sources: [Sightline Institute](#), [Trees for the Future](#) and [USA Environmental Protection Agency](#)

## Electric Utility Rates & Assumptions

Utility:	National Grid
Rate Name (Post Installation):	G 1 @ 0.135
Annual Inflation:	5.5% (assumed)

## Utility Electric Rate Inflation: Historical References

National Averages: In 2009, the average retail electricity price for all customers across the United States rose to 9.83 cents per kWh, a small increase over 2008. Over the two year period though, from 2007 to 2009, the average retail price rose 7.7 percent.

See the following Dept of Energy source for more detail on regional and state inflation patterns.

Source: [http://www.eia.doe.gov/cneaf/electricity/esr/esr\\_sum.html](http://www.eia.doe.gov/cneaf/electricity/esr/esr_sum.html)

3.

PROPOSAL CREATED FOR:

Somerset Public Schools



580 Whetstone Hill Road  
Somerset, MA 02726

# John A Moniz Electrical Contractors Inc.

John@monizelectrical.com - 508-324-9669

Date: 05/16/2013

Page 1 of 2

Re: North Elementary  
Somerset, MA

Attn: Bids

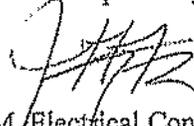
We are pleased to submit our proposal for the above subject project as described within.

Thank you for the opportunity to submit our proposal as requested.

We sincerely appreciate your interest in our Company, and we want you to know we are committed to providing you with the highest quality equipment, and service support.

If I can be of further assistance, please contact me.

Respectfully Submitted,



J.A.M. Electrical Contractors Inc.  
John A Moniz  
Vice President

Accepted for: \_\_\_\_\_ P.O.  
Number \_\_\_\_\_  
Company \_\_\_\_\_

By: \_\_\_\_\_ Date \_\_\_\_\_  
Signature Title

This proposal is subject to terms and conditions printed on attached form , unless otherwise specified below, and the terms govern all Pages of multi-page proposals. Any past due balances will accrue an interest rate of 18 % annum (1.5% per month.) The above signed hereby agrees to pay attorneys fees, cost and interest regarding any outstanding balance. Should you decide to proceed with this proposal , Please sign and return one copy. This proposal expires in 20 days.

*Date: 05/16/2013*

*Page 2 of 2*

*RE: North Elementary*

**Work Scope:** Supply and install the following electrical installation as noted below:

**Quote Includes:**

- All Working Permits
- 50 Kw Generator 480/277 volt 3 Phase
- Cement Pad Approx 30 Ft. Away From School
- Trenching
- 6 Ft. Chain Link Fence
- Gas Piping
- Utilizing Existing Disconnect, Transfer Switch
- Turn Key Operation
- 

**Exclusions:**

- Removal Of Existing Generator

**Total Amount - \$ 41,796.78**



**ATTACHMENT C**  
**(part 1 of 3)**



## Somerset Public Schools

580 Whetstone Hill Road  
Somerset, Massachusetts 02726-3100  
Telephone (508) 324-3100

August 20, 2013

Ms. Alice Prior  
Environmental Projects Manager  
Dominion Resources Services, Inc

Mr. Kevin Hennessy  
Director Federal, State and Local Affairs  
Dominion Resources Services, Inc

Dear Ms. Prior and Mr. Hennessy:

The Somerset Public School District is happy to propose the following projects for consideration for funding via the Environmental Mitigation Project component of the *United States v. Dominion Energy, Inc et al* Consent Decree.

The proposed projects are the result of multiple vendor meetings across four main project areas:

1. Heat Exchangers/Energy Recovery Systems; allowable under the "Energy Efficiency" component of Appendix A of the Plan Proposal Guidelines, Section IV.
2. Digital Control of Environmental Systems; allowable under the "Energy Efficiency" component of Appendix A of the Plan Proposal Guidelines, Section IV.
3. Photovoltaics ; allowable under the "Energy Efficiency" component of Appendix A of the Plan Proposal Guidelines, Section IV with additional specific plan elements under Section XI.D,E, I (1-4)
4. Geothermal; allowable under the "Energy Efficiency" component of Appendix A of the Plan Proposal Guidelines, Section IV with additional specific plan elements under Section XI. C & I (1-4)

Of the eight (8) proposals investigated, the biggest environmental impact and biggest return to the school district in terms of energy efficiencies and savings would be with the installation of Energy Recovery Systems controlled by CO2 sensors in four (4) of the five (5) schools in the district. We have excluded the Wilbur School from this proposal due to questions about the long term viability of the building. The specifics to this program were developed for the Somerset Middle School and are contained in **Appendix A** of this document.

This project for the Middle School has a ROI of four (4) years and will save approximately 3,000,000 MBTU annually. Reductions of approximately 1.3 million lbs of CO2, 3,000 lbs of SO2 and 3,000 lbs of NOx annually would accompany these efficiency improvements.

While the installations and investments at the other schools in the district would be smaller, the returns would be relatively equal for each dollar invested.

The overall investment by school would break out as follows:

Somerset Middle School	\$269,595
North Elementary School	\$239,640
Chace Street School	\$149,775
South Elementary School	\$119,821
Wilbur Elementary School	excluded
<b>TOTAL ENERGY RECOVERY PROGRAM</b>	<b>\$779,011</b>

Installation would be on a turnkey basis with the Contractor, SouthCoast Greenlight, being responsible for all aspects of system installation including all engineering, duct work, controls, wiring and permits. BPE-MIR XE-2000 Heat Exchangers are specified and are guaranteed for 20 years not to become unusable for providing breathable air and are expected to result in a net savings of over \$1.6 million in energy cost during that period at the Somerset Middle School alone.

**Budgetary Increments:** A 25% deposit is required to initiate project. A second 25% payment would be made in with delivery of equipment to sites, a third 25% payment at the project's midpoint and the final 25% at project completion.

It is expected that the project time line would be. It will require five to six (5-6) months for all schools to be completed, including permitting.

The second proposal is for digital controls on all of the environmental systems in four (4) of the district's five (5) schools. This proposal addresses a critical need for central control over the district's heating and cooling systems which does not exist currently. We have excluded the Wilbur School from this proposal due to questions about the long term viability of the building. While the ROI is longer than optimally desired (12 years), the operational benefits to the district would be substantial from a safety and student quality of life perspective. The details of this proposal are contained in **Appendix B** of this document.

This project has a ROI of approximately twelve (12) years after incentives and rebates and will save approximately 3,000,000 MBTU annually. Reductions of approximately 500,000 lbs of CO<sub>2</sub>, 600 lbs of SO<sub>2</sub> and 600 lbs of NO<sub>x</sub> annually would accompany these efficiency improvements.

The overall investment by school would break out as follows (net of incentives and rebates):

Somerset Middle School	\$220,482
North Elementary School	\$201,256
Chace Street School	\$123,089
South Elementary School	\$ 67,232
Wilbur Elementary School	excluded
<b>TOTAL ENERGY RECOVERY PROGRAM</b>	<b>\$612,059</b>

Installation would be on a turnkey basis with the Contractor, Energy Source, being responsible for all aspects of system installation including all engineering, duct work, controls, wiring and permits. KMC Controls are specified. Energy Source will cover the guarantee for the systems in

Budgetary increments: A 33% deposit is required to initiate project upon delivery of materials. A second 33% payment would be made with the completion of the rough wiring, and third 34% final payment would be made at project completion.

It is expected that the project time line would be: Work would be performed between 2:30 pm and 10:30 pm in order to not impact the school day and normal function of the environmental systems. It is expected that the entire project will take six (6) months to complete.

**CAVEATS TO THIS PROPOSAL: No structural engineering work has been done to determine if the buildings can structurally support at 100kW or 200kW system on the roof. For the 300kW system, no discussion has yet taken place with the Town on this use of the school grounds.**

A Geothermal project was reviewed for this proposal. The formal document is Appendix D of this proposal. It was found that a Geothermal System was not economically feasible at this time for two reasons:

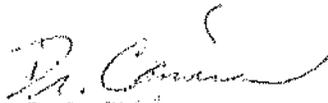
1. The highly inefficient air handling systems would greatly depress the economic impact of any Geothermal System. The forty (40) ton system proposed for the Middle School would result in annual gas savings of only \$5,000/yr on a \$350,000 investment.
2. Our hope was to have the system serve two schools as the South School abuts the Somerset Middle School, however the South School's heating system is steam based and therefore not conducive to a partial Geothermal conversion.

We do not wish to include the Geothermal proposal in our request at this time, however have included the particulars in the form of the vendor proposal for your review. That is Appendix D of this document.

Overall our preferences are to do the Energy Recovery project due to its significant energy usage/savings impact. We would also like to do a photovoltaic project, although that is contingent on the buildings supporting the PV structure. From our perspective the controls project would come third due to the extended ROI. A geothermal project is not viable at this time, although the Energy Recovery work would make it much more viable for the future.

I want to again thank you for the opportunity to make these proposals to improve the environmental footprint of our school district and to better serve our students and community. Should you have any questions or require any additional follow up, I would ask that you direct your questions to Marc Furtado, Director of Finance and Facilities. He can be reached at 508-822-5220, x-304 or at [furtadom@sbrgional.org](mailto:furtadom@sbrgional.org).

Sincerely,



Dr. Pauline Camara

Acting Superintendent, Somerset Public Schools

c: Robert Camara, Chair Somerset School Committee  
Jamison Sousa, Somerset School Committee  
Patricia A. Haddad, House District-5<sup>th</sup> Bristol

the first year and the manufacturer's guarantee will be in effect thereafter. The installation of the controls is expected to result in a net savings of over \$55,000 in energy cost per year.

Budgetary Increments: A 33% deposit is required to initiate project upon delivery of materials. A second 33% payment would be made with the completion of the rough wiring, and third 34% final payment would be made at project completion.

It is expected that the project time line would be: Work would be performed between 2:30 pm and 10:30 pm in order to not impact the school day and normal function of the environmental systems. It is expected that the entire project will take six (6) months to complete.

A third proposal is for photovoltaic arrays at the North Elementary School and/or the Somerset Middle School. These proposals are structured to address the requirements set forth in Appendix A of the Plan Proposal Guidelines, Section IV with additional specific plan elements under Section XI.D,E, I (1-4). The ROI calculation is dependent on where the system is installed, ground based vs rooftop based and on the size of the system (100 kW, 200 kW or 300kW). 100kW and 200kW systems are assumed to be roof mounted, while the 300kW system is ground mounted. Average ROI is estimated to be 5 years. The details of the various proposals are contained in Appendix C of this document.

This project has a ROI of approximately five (5) years after incentives and rebates and will save approximately 125,000 kWh annually per building for a 100 kW system, and 220,000 kWh annually per building for a 200 kW system. Reductions of approximately 2,200 tons of CO2 over the twenty five year life of the system as well as saving approximately \$800,000 in energy cost to the district per school for the 100kW system. It is estimated that these figures double for a 200 kW system. The 100kW system would supply approximately 20-22% of the annual electrical requirement of the building it serves; a 200kW system would supply approximately 34% and the 300kW system would supply approximately 67% of the building annual electrical requirement. A 300kW system would be ground mounted.

The overall investment by school would break out as follows (does NOT include S-REC Program, MACRS Depreciation or any Federal Tax Credits):

	100kW	200kW	300kW
Somerset Middle School	\$350,000	\$700,000	
North Elementary School	\$350,000	\$700,000	\$1,150,000
<b>TOTAL PHOTOVOLTAIC PROGRAM</b>	<b>\$700,000</b>	<b>\$1,400,000</b>	<b>\$1,150,000</b>

Installation would be on a turnkey basis with the Contractor being responsible for all aspects of system installation including all engineering, construction, controls, wiring and permits. The two proposals received are essentially the same from a cost perspective. One vendor specified LG Electronics panels and a Solectria Inverter, the other specified Westinghouse panels and a Solectria Inverter. The panels are guaranteed to be generating electricity at 80% of their new rate after twenty five (25) years. The Solectria Inverter with the Westinghouse panels is guaranteed for twenty five (25) years, the Solectria with the LG panels is guaranteed for fifteen (15) years.



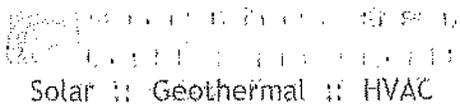
CLEAN ENERGY. BRIGHT FUTURE.

347 WILBUR AVE  
SWANSEA, MA 02777

ENERGY RECOVERY SYSTEM PROPOSAL

MARC FURTADO  
SOMERSET SCHOOL DISTRICT  
580 WHEATSTONE HILL RD.  
SOMERSET, MA 02726  
508.324.3100

# APPENDIX A



527 Wilbur Avenue  
Swansea, MA 02777  
Tel. 508.673.1100  
Fax. 508.678.2542

Somerset School District  
580 Whetstone Hill Rd.  
Somerset, Ma 02726  
Attention: Marc Furtado:508.324.3100 ext.212

August 8, 2013

We are pleased to present a proposal to design and install an Energy Recovery System (ERS). The design is based on the load calculation derived from current ventilation standards for public schools. The BPE heat exchangers will replace all direct ventilation in each school building. This ERS system will reduce energy costs for heating by 50-60%.

**Project Summary:**

A mechanical engineer certified design of the ERS system will be performed for each building. The ERS system will replace direct ventilation using a heat exchanger to temper the incoming fresh air by absorbing the heat from the exhaust air before it is discharged outside each building. These systems will operate with co2 sensors located in the exhaust air ducts, the co2 levels will be maintained @ 800 ppm.

**The ERS systems will be designated as follows:**

- Middle School @ Brayton Ave. A 14,000 CFM ERS using 9 BPE MIR EX 2000 units.
- North School @ Whetstone Hill Rd. A 12,000 CFM ERS using 8 BPE MIR EX 2000 units.
- Chase St.School @ Chase St. A 8,000 CFM ERS using 5 BPE MIR EX 2000 units.
- South Elementary School @ Read St. A 6,000 CFM ERS using 4 BPE MIR EX 2000 units.
- Wilbur School @ Brayton Pt. Rd. A 4,000 CFM ERS using 3 BPE MIR EX 2000 units.

**Scope of Services:**

**Complete design and installation for a BPE ERS system.**

1. File for all mechanical permits and inspections required by the town.
2. Installation of all major equipment and controls necessary to integrate the ERS system with the existing air duct systems.
3. Installation of ERS system and connecting ductwork and mechanical insulation.
4. Connect and terminate all condensate drains from each ERS unit to outside.
5. Electrical wiring is included.

Solar :: Geothermal :: HVAC

577 Wilbur Avenue  
Swanton, MA 07777  
Tel: 508.673.1100  
Fax: 508.673.2511

**Equipment Detail:**

All units are BPE – MIR- XE- 2000 heat exchangers

**Cost Detail:**

Total BPE ERS Equipment & Install Cost  
Includes all engineering, duct work, fan controls, piping & wiring:

Middle School @ Brayton Ave.	\$269,595.00
North School @ Whetstone Hill Rd.	\$239,640.00
Chase St.School @ Chase St.	\$149,775.00
South Elementary School @ Read St.	\$119,821.00
Wilbur School @ Brayton Pt. Rd.	\$89,865.00
<b>Total cost for all Schools</b>	<b>\$ 868,696.00</b>

Deposit 25% upon acceptance \$

Prepared By: \_\_\_\_\_

Accepted By: \_\_\_\_\_

Upon acceptance of this proposal a contract will be drawn to the above mentioned specifications. Should any changes in the building construction change before work begins, owner/ contractor is required to notify SCGL so that the heat loss/ gain can be adjusted and resulting changes can be addressed. This proposal is for budgetary purpose and is accurate with a margin of + Or - 10%. After a design is complete for each building an exact cost will be used as the contract price. SCGL will produce the designed ERS system after the client executes a contract and SCGL receives the 25% deposit required.

Prices are valid for 30 days from delivery of proposal  
We look forward to doing business with you

Solar :: Geothermal :: HVAC

527 Wilbur Avenue  
Swansea, MA 02777  
Tel. 508.673.1100  
Fax. 508.673.2542

Somerset School District  
580 Whetstone Hill Rd.  
Somerset, Ma 02726  
Attention: Marc Furtado 508 324 3100 ext.212

August 8, 2013

We are pleased to present a proposal to design and install an Energy Recovery System (ERS). The design is based on the load calculation derived from current ventilation standards for public schools. The BPE heat exchangers will replace all direct ventilation in each school building. This ERS system will reduce energy costs for heating by 50-60%

**Project Summary:**

A mechanical engineer certified design of the ERS system will be performed for each building. The ERS system will replace direct ventilation using a heat exchanger to temper the incoming fresh air by absorbing the heat from the exhaust air before it is discharged outside each building. These systems will operate with co2 sensors located in the exhaust air ducts, the co2 levels will be maintained @ 800 ppm.

**The ERS systems will be designated as follows:**

Middle School @ Brayton Ave.	A 14,000 CFM ERS using 9 BPE MIR EX 2000 units.
North School @ Whetstone Hill Rd.	A 12,000 CFM ERS using 8 BPE MIR EX 2000 units.
Chase St. School @ Chase St.	A 8,000 CFM ERS using 5 BPE MIR EX 2000 units.
South Elementary School @ Read St.	A 6,000 CFM ERS using 4 BPE MIR EX 2000 units.
Wilbur School @ Brayton Pt. Rd.	A 4,000 CFM ERS using 3 BPE MIR EX 2000 units.

**Scope of Services:**

**Complete design and installation for a BPE ERS system.**

1. File for all mechanical permits and inspections required by the town.
2. Installation of all major equipment and controls necessary to integrate the ERS system with the existing air duct systems.
3. Installation of ERS system and connecting ductwork and mechanical insulation.
4. Connect and terminate all condensate drains from each ERS unit to outside.
5. Electrical wiring is included.

SCGL  
Solar :: Geothermal :: HVAC

527 Wilbur Avenue  
Swansea, MA 01777  
Tel: 508.673.1100  
Fax: 508.678.2512

**Equipment Detail:**

All units are BPE – MIR- XE- 2000 heat exchangers

**Cost Detail:**

Total BPE ERS Equipment & Install Cost

Includes all engineering, duct work, fan controls, piping & wiring:

Middle School @ Brayton Ave.	\$269,595.00
North School @ Whetstone Hill Rd.	\$239,640.00
Chase St. School @ Chase St.	\$149,775.00
South Elementary School @ Read St.	\$119,821.00
Wilbur School @ Brayton Pt. Rd.	\$89,865.00
<b>Total cost for all Schools</b>	<b>\$ 868,696.00</b>

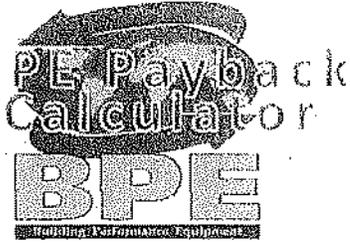
Deposit 25% upon acceptance \$

Prepared By: \_\_\_\_\_

Accepted By: \_\_\_\_\_

Upon acceptance of this proposal a contract will be drawn to the above mentioned specifications. Should any changes in the building construction change before work begins, owner/ contractor is required to notify SCGL so that the heat loss/ gain can be adjusted and resulting changes can be addressed. This proposal is for budgetary purpose and is accurate with a margin of + Or – 10%. After a design is complete for each building an exact cost will be used as the contract price. SCGL will produce the designed ERS system after the client executes a contract and SCGL receives the 25% deposit required.

Prices are valid for 30 days from delivery of proposal.  
We look forward to doing business with you.



Enter in the requested information below. If you are not sure of a value, See our recommendations in the comment boxes (red arrows).

Thank you for using BPE, Inc.®  
For more specific engineering analysis, please see the BPE Performance Calculator at: [www.LowKWH.com](http://www.LowKWH.com)

SYSTEM CHARACTERISTICS	
Heating System Type	Gas Fired
Cooling System Type	None
Outdoor Air Flow (OA)	14,000 scfm
Percent Outdoor Air (OA/SA, %)	40 %
Building Type	Commercial (< 5,000 SF)
Nearest Location	Newark, NJ

Number of Units			
2000	3000	4000	5000
9	0	0	0

UTILITY INFORMATION	
Electric Rate (\$/kWh)	0.15
Peak Demand Charge (\$/kW)	8.00
Months of Peak Demand Charge	4
Gas Rates (\$/Therm)	1.05

COST ASSUMPTIONS	
Installed Cost per Ton (\$/Ton)	2,500
ERV Installed Cost	\$ 260,595
Maintenance Savings	\$ -
Total Incentives	\$ -

\*Use for New Construction or Major Retrofits

SYSTEM EFFICIENCIES	
Heating Efficiency	80 %
Cooling Efficiency	9.5 kW/Ton
BPE Effectiveness	80 %

CONTROLS/NOISE/STANDARDS	
CO <sub>2</sub> Controller	Yes
Percent Run-time Summer (Cooling)	30 %
Winter (Heating)	74 °F (db)
	70 °F (db)



### 20 Years of Savings!

BPE Energy Recovery Ventilators are guaranteed for 20 years not to become unusable for providing breathable air as a result from rust, rot, or corrosion. This does not apply to other gases other than breathable air. See Limited Lifetime Warranty for more details.

ENERGY ANALYSIS	
BPE Cooling Capacity	23.69 TONS
BPE Heating Capacity	816.48 MBH
Peak Demand Reduction	29.92 KW
Annual Electric Energy Saved	395,262 MBTU
Annual Thermal Energy Saved	2,575,547 MBTU
<b>TOTAL Savings</b>	<b>2,970,809 MBTU</b>

OPERATING COST ANALYSIS	
Maintenance Savings	\$ -
Cooling Cost Savings	\$ (604)
Peak Demand Cost Savings	\$ (957)
Heating Cost Savings (Gas or HP)	\$ (27,043)
Electrical Cost Savings (ER+Fans)	\$ (26,426)
Electric Resistive Savings	(9,658)
Reduced Supply + Exhaust Fan Savings	(19,615)
BPE Parasitic Fan Cost	2,747
<b>TOTAL Savings</b>	<b>\$ (45,030)</b>

CAPITAL EXPENSE ANALYSIS	
HVAC Initial Cost Avoidance	\$ (59,220)
Added Cost of ERV	\$ 269,595
Total Incentives/Funding	\$ -
Net Capital Expenditure	\$ 210,375
<b>Simple Payback (Years)</b>	<b>3.82</b>
<b>Internal Rate of Return (IRR)</b>	<b>20%</b>
<b>Net Present Value (20 Yr Life Cycle)</b>	<b>\$1,285,111.42</b>
<b>Emission Reduction (Cars/yr)</b>	<b>163.41</b>

Products:	200	500	1000	2000
	0	0	0	9

All Weather Air Management	
EX-EFF	60%
Evaporative Eff	Not Used
Winter SP T3	70
Summer SP T3	74

Equipment Operation and Efficiencies		System Air Flow Profile	
Del. Heat Eff	Gas	Normal CFM	Annual CFM
	0.15	18,000	44,000
Del. Cool Eff	Water	Supply CFM	Exhaust CFM
	1.28	95,000	14,000
	0.15		
	2.00		



Time of Year	WB-Tp	DB (F)	Total	Profile of Energy Savings				Recoverable BTU/Hr	Annually Saved BTUs
				OA Temp DB (F)	OA Supply Temp DB (F)	Space Temp DB (F)	Exhaust Temp DB (F)		
Summer Cooling	117.5	115.0 to 120	0	117.5	87.7	74	103.8	0	0
	112.5	110.0 to 115	0	112.5	87.7	74	104.8	0	0
	107.5	105.0 to 110	0	107.5	80.8	74	98.8	0	0
	102.5	100.0 to 105	6	102.5	78.7	74	92.8	294,256	2,181,920
	97.5	95.0 to 100	40	97.5	77.7	74	88.8	223,775	1,148,800
	92.5	90.0 to 95	122	92.5	75.7	74	84.8	165,293	24,907,840
	87.5	85.0 to 90	290	87.5	73.7	74	80.8	102,518	64,280,000
	82.5	80.0 to 85	520	82.5	72.7	74	76.8	42,336	32,810,400
	77.5	75.0 to 80	847	77.5	71.7	74	72.8	19,144	14,250,000
	72.5	70.0 to 75	1,179	72.5	70.7	74	71.4	8,624	6,400,000
Free Cooling	67.5	65.0 to 70	671	67.5	72.7	74	71.4	8,624	6,400,000
	62.5	60.0 to 65	527	62.5	71.7	74	70.4	1,338,164	10,000,000
	57.5	55.0 to 60	350	57.5	70.7	74	69.4	1,982,584	15,000,000
	52.5	50.0 to 55	230	52.5	68.7	70	68.0	2,112,580	16,000,000
	47.5	45.0 to 50	154	47.5	66.7	70	67.0	2,212,580	17,000,000
	42.5	40.0 to 45	103	42.5	64.7	70	66.0	2,282,580	17,500,000
	37.5	35.0 to 40	73	37.5	62.7	70	65.0	2,332,580	18,000,000
	32.5	30.0 to 35	53	32.5	60.7	70	64.0	2,362,580	18,500,000
	27.5	25.0 to 30	39	27.5	58.7	70	63.0	2,382,580	19,000,000
	22.5	20.0 to 25	29	22.5	56.7	70	62.0	2,392,580	19,500,000
Winter Heating	17.5	15.0 to 20	125	17.5	58.8	70	58.8	635,040	4,800,000
	12.5	10.0 to 15	47	12.5	56.8	70	56.8	695,520	5,200,000
	7.5	5.0 to 10	34	7.5	54.8	70	54.8	756,000	5,600,000
	2.5	0.0 to 5	1	2.5	52.8	70	52.8	816,480	6,000,000
	-2.5	-1.0 to 0	0	-2.5	50.8	70	50.8	876,960	6,400,000
	-7.5	-1.0 to -5	0	-7.5	48.8	70	48.8	937,440	6,800,000
			1,379		46.8	70	46.8	997,920	7,200,000
			5,180		44.8	70	44.8	1,058,400	7,600,000
			2%		42.8	70	42.8	1,118,880	8,000,000
			51%		40.8	70	40.8	1,179,360	8,400,000

Operational Hours	ASHRAE Std. 90, 1-2004, Table 6.5.3.3.1 Fan Power: Limitation assuming Constant Volume Handbook of Energy Audits, Thomas, F.E.R.A. Albert, Third Ed. 1992
% Cooling =	23%
% Heating =	51%
% Free =	26%
Peak Tonnage Reduction =	4,000
Total System Cfm =	35,000
Cfm Reduction =	11,968
Bigger HVAC Fan (HP) =	38.50
Smaller HVAC Fan (HP) =	10.97
XHP Savings =	125,024
Smaller HVAC Fan Savings =	\$ 18,859.78
Supply Fan HP (1,000 cfm) =	1.1
Supply Fan HP (1,000 cfm) =	29.92
Peak Energy Savings (\$ for MW) =	\$ 4,028.51
Total Cooling Power Saved (KW) =	\$ 957.49
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## BPE Performance Calculator for Reduced Pollution

Total ERV CFM =  CFM

Operating Efficiency =  Thermal Eff.

A/C Efficiency =  kWh/Ton

Heating Efficiency =  Thermal Eff.

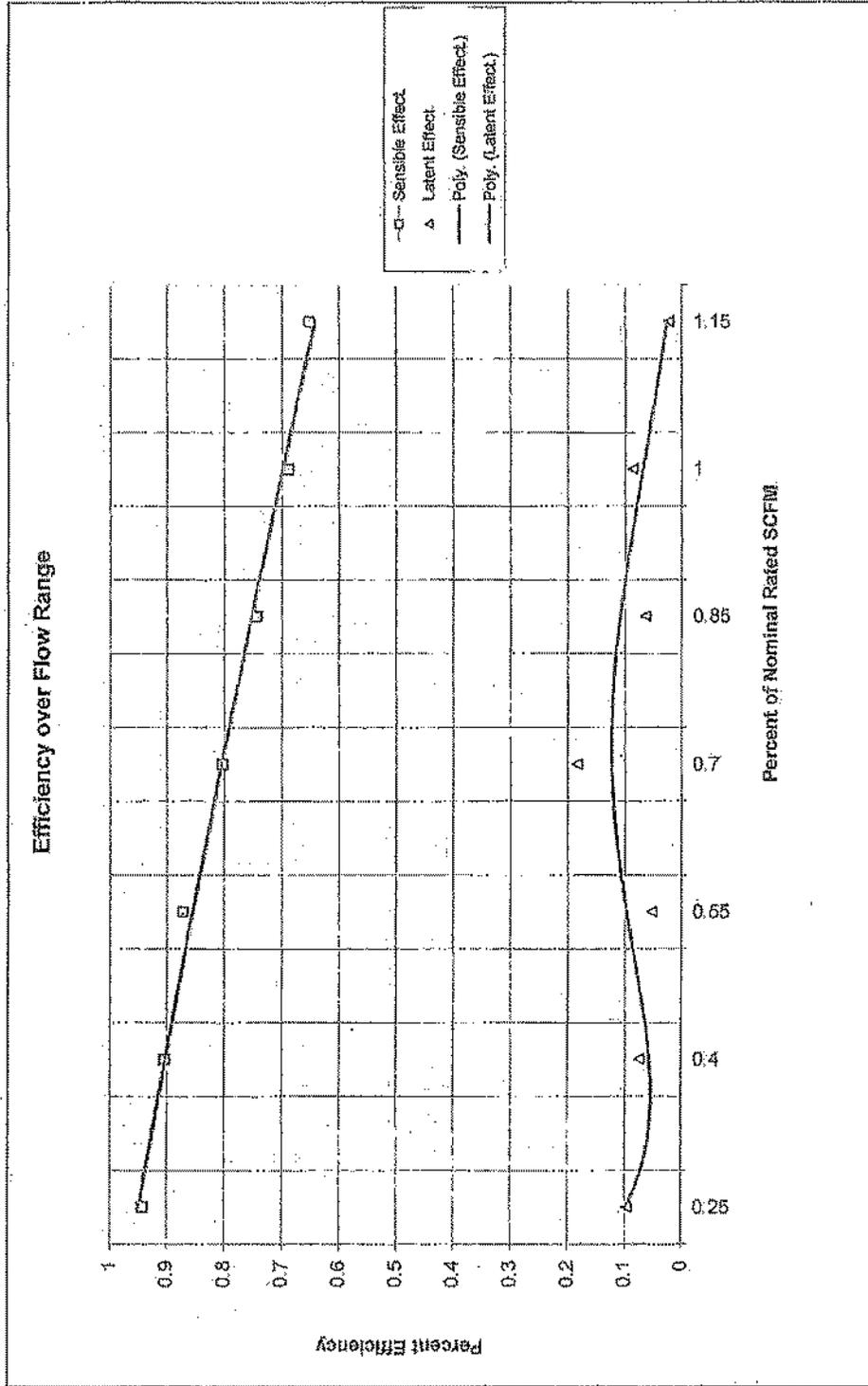
BPE Pollution Reductions Per Year of Operation						
Energy	Savings per Year	Cost in \$ 2010 \$	CO <sub>2</sub> Reduced	SO <sub>2</sub> Reduced	NOx Reduced	Cars* Removed
Electric (kWh)	115,810.81	18240.20	64043.38	191.74	158.45	5.59
Gas Savings (Therms)	25755.47	28395.41	1234503.43	2525.68	3054.32	107.82
Total Savings (BTU)	2,970,709,873	\$ 46,635.61	#####	2,717.42	3,212.77	

Total Pollution Reduction in Cars Removed from the Road =

\* Equivalent number of passenger cars taken off the road in 1 year, based on estimated average 12,500 miles traveled per year, releasing an estimated 11,450 pounds of CO<sub>2</sub> per year.

Referencing EPA Office for Transportation and Air Quality at [www.epa.gov/otaq/consumer/f00013.htm](http://www.epa.gov/otaq/consumer/f00013.htm)

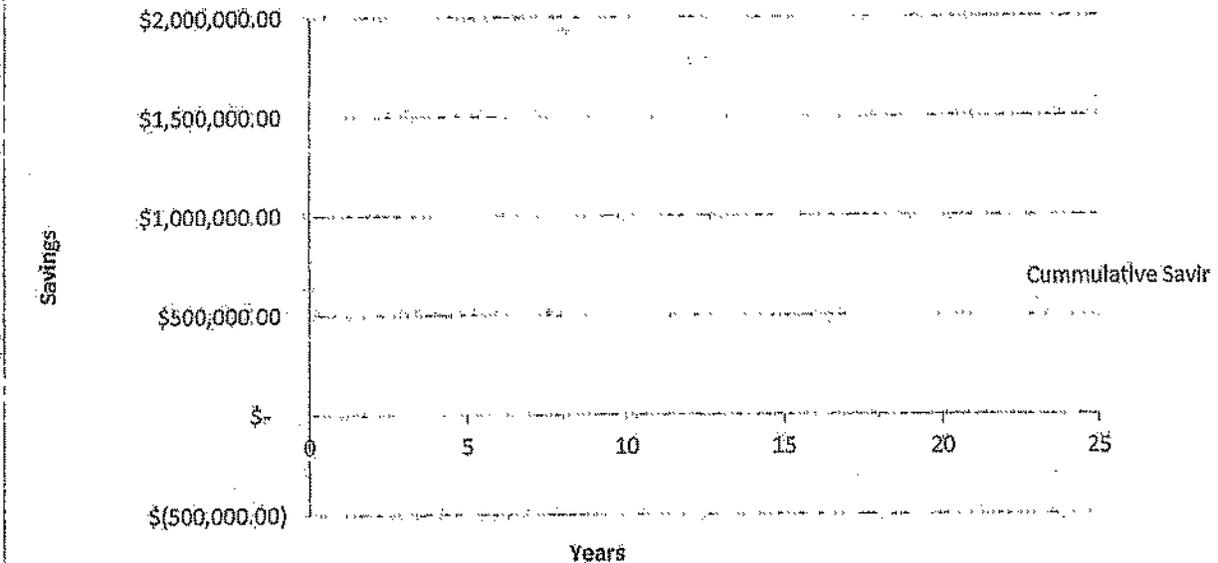
Note: All default values can be changed to represent accurately actual equipment efficiencies.



Year	Annual PV	Cumulative Savings
0	\$ (210,375.00)	\$ (210,375.00)
1	\$ 56,143.12	\$ (154,231.88)
2	\$ 58,950.28	\$ (95,281.60)
3	\$ 61,897.79	\$ (33,383.81)
4	\$ 64,992.68	\$ 31,608.87
5	\$ 68,242.31	\$ 99,851.18
6	\$ 71,654.43	\$ 171,505.61
7	\$ 75,237.15	\$ 246,742.77
8	\$ 78,999.01	\$ 325,741.77
9	\$ 82,948.96	\$ 408,690.73
10	\$ 87,096.41	\$ 495,787.14
11	\$ 91,451.23	\$ 587,238.37
12	\$ 96,023.79	\$ 683,262.16
13	\$ 100,824.98	\$ 784,087.14
14	\$ 105,866.23	\$ 889,953.37
15	\$ 111,159.54	\$ 1,001,112.91
16	\$ 116,717.52	\$ 1,117,830.42
17	\$ 122,553.39	\$ 1,240,383.81
18	\$ 128,681.06	\$ 1,369,064.88
19	\$ 135,115.11	\$ 1,504,179.99
20	\$ 141,870.87	\$ 1,646,050.86

\$1,235,111.42 NPV  
31% IRR

### Pay Back Analysis



# APPENDIX B



PROPOSAL CREATED FOR:

Somerset Public Schools



580 Whetstone Hill Road  
Somerset, MA 02726



July 25, 2013

Dear Mr. Campos,

Energy Source is pleased to present you with this energy conservation proposal. We trust you will find this proposal a cost effective means to, not only reducing your energy costs, but also improving the quality of the environment throughout your facility.

Other factors to consider as you evaluate this proposal are existing equipment related disruptions and maintenance costs are eliminated or minimized until the new equipment enters its end of life – typically several years.

In the attached proposal you will find detailed reports recommending the installation of digital controls, electronic actuators, new control valves, sensors and an Energy Management System.

Energy Source will secure incentives from National Grid which substantially reduced the net cost of this project. The utility incentives reflected in this proposal are estimated and are subject to change until projects are reviewed by National Grid.

I hope you find this proposal informative. If you have any questions please do not hesitate to contact me.

Sincerely,

Jim Howard  
Energy Source



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**Disclaimer**

This report is not for general use and is the property of Energy Source.

All savings estimates and rebates must be considered estimated until reviewed and approved by the utility companies designated within this report.

For any questions regarding this report, please contact Jim Howard, Energy Efficiency Consultant for Energy Source, Inc. at 401-490-7555 x222. Any additional use of this report is prohibited unless permission is given in writing from Energy Source, Inc.



### Executive Summary

Energy Source recently conducted an energy survey of the High School for the Attleboro School Department.

Our recommendations are separated into two Energy Conservation Measures which are outlined in two separate reports.

The expected energy savings were determined based on current operating hours of equipment surveyed. Poorly performing equipment will reduce the effectiveness of employing these ECMs, and the cost to repair or replace that equipment is not covered in this estimate.

<i>Summary of All Energy Conservation Measures</i>							
ECM's	Project Costs	NGrid/ Incentives	Kwh Saved	Therms Saved	Customer Costs	Electric/Gas Savings	Year Payback
<i>North Elementary</i>	\$237,256	\$36,000	44,212	9,600	\$201,256	\$17,968	11.2
<i>Middle School</i>	\$256,482	\$36,000	47,212	10,600	\$220,482	\$19,623	11.2
<i>Chace Elementary</i>	\$136,589	\$13,500	22,212	3,960	\$123,089	\$7,948	15.5
<i>South Elementary</i>	\$71,732	\$4,500	20,212	1,922	\$67,232	\$5,130	13.1
<i>Wilbur Elementary</i>	\$76,747	\$4,500	18,212	2,610	\$72,247	\$5,720	12.6
<i>Total</i>	\$778,809	\$94,500	152,060	28,692	\$684,306	\$56,389	12.1

\*energy savings calculated at \$0.135 per kilowatt hour and \$1.25 per therm



### **ECM#1 Install EMS (Energy Management System) at the Somerset North School**

Install controls for the main air handling units, re-heat coils and new boilers and pumps

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

- 25 Air Handling units
- 20 CUH's and fin tube radiation valves
- 20 Re-heat coils
- 3 Boilers and two pumps and VFD's
- 44 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperature
5. Maintenance alarms based upon actual runtime of fan motors

The new controls will also integrate into the existing boiler controls allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



**ECM#2 Install EMS (Energy Management System) at the Somerset Middle School**

Install controls for the main air handling units, re-heat coils, new boiler existing boilers and pumps

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

- 51 Air Handling units & Unit ventilators
- 20 CUP's and fin tube radiation valves
- 15 Re-heat coils
- Office RTU and associated re-heats
- 3 Boilers and two pumps and VFD's
- 23 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



**ECM#3 Install EMS (Energy Management System) at the Chase Street Elementary School**

Install controls for the air handling units, classroom unit ventilators, cabinet unit heaters baseboard, new boiler and existing boilers and pumps.

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

- 36 Unit ventilators
- 16 CUH's and fin tube radiation valves
- 3 Boilers and two pumps and VFD's
- 16 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



**ECM#4 Install EMS (Energy Management System) at the South Elementary School**

Install controls for the air handling units, classroom unit ventilators, cabinet unit heaters convectors, baseboard and existing boilers.

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls,

- 15 Unit ventilators
- 19 CUH's and fin tube radiation valves
- 1 Boilers
- 6 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers. The unit ventilator, cabinet unit heaters and air handling unit steam traps will be replaced as part of this work.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



**ECM#5 Install EMS (Energy Management System) at the Wilbur Elementary School**

Install controls for the air handling units, classroom unit ventilators, cabinet unit heaters convectors, baseboard and existing boilers.

The installation of the new controls will be required to allow for Web access to the school heating system from the Facilities office. We will be using the Tridium Niagara AX front end to accomplish the remote access, graphics, trending alarms and notification services. All field devices will be KMC-Controls native Bacnet controllers.

The following equipment will have the controls converted from pneumatic to direct digital controls.

- 16 Unit ventilators
- 1 AHU
- 19 CUH's and fin tube radiation valves
- 1 Boilers
- 6 Exhaust fans

The work will include removal of all of the pneumatic valves devices and install new direct digital controls, electronic actuators, new control valves, sensors and controllers. The unit ventilator, cabinet unit heaters and air handling unit steam traps will be replaced as part of this work.

This will also include the installation of CO2 sensors for the spaces served by the air handling units to allow for CO2 demand controlled ventilation of fresh air to reduce the energy consumption.

1. CO2 demand controlled ventilation sequence to include proper ventilation of spaces
2. Optimal start and stop of the system by using the occupancy sensor to determine occupancy as well as weekly and holiday scheduling
3. Trending, notification and remote alarm indication via E-mail or text message
4. Unoccupied setback of the individual room temperatures
5. Maintenance alarms based upon actual runtime of fan motors

New controls will also installed on the existing boilers allow for the following sequences to be executed.

1. Trending, notification and remote alarm indication
2. Flame failure/freeze notification via E-mail or Text message
3. Weekly and annual scheduling of boilers and pumps



### **Installation and Warranty Information**

If you decide to proceed with this proposal, Energy Source will be responsible for the following tasks:

- Develop final equipment specifications and equipment layout
- Processing and filing application for utility incentives
- Material ordering and receiving
- Dismantling and removing existing systems from premises
- Construction
- Final walk-through with you
- Development and delivery of comprehensive project completion manual.

### **Installation**

Energy Source assumes after school installation for most of the measures associated with this project. All installation staff will agree to submit to a CORI check before proceeding with project.

The removal and disposal of asbestos and toxic materials if present are the owner's responsibility and should be determined before proceeding with the project.

### **Warranty**

Included with your project is a one-year warranty on all labor and materials provided by Energy Source. At the end of the first year materials remain covered by standard warranties provided by their manufacturers. Warranty periods begin when the installation is completed. The owner has a one-month period following the completion of the installation to accept or reject work performed by Energy Source, after which time we will assume that the work has been accepted.

Due to the fluctuation in commodities this proposal is valid for a period of 30 days from the date shown at the top of this proposal, after which time we will be happy to provide an adjusted quote if necessary.

**Environmental Impact of This Project**

Of the total energy consumed in America, about 39% is used to generate electricity. Therefore, electricity consumption is an important portion of a consumer's environmental footprint. All forms of electricity generation have some level of environmental impact.

Some greenhouse gases occur naturally in the atmosphere, while others result from human activities. Naturally occurring greenhouse gases include water vapor, carbon dioxide, methane, nitrous oxide, and ozone. Certain human activities, however, add to the levels of most of these naturally occurring gases:

Carbon dioxide is released to the atmosphere when solid waste, fossil fuels (oil, natural gas, and coal), and wood and wood products are burned.

Sulfur dioxide Over 65% of SO<sub>2</sub> released to the air, or more than 13 million tons per year, comes from electric utilities, especially those that burn coal.

Nitrous oxide is emitted during agricultural and industrial activities, as well as during combustion of solid waste and fossil fuels.

Using energy more efficiently through more efficient end-uses, reduces the amount of fuel required to produce a unit of energy output and reduces the corresponding emissions of pollutants and greenhouse gases.

<http://www.environmental.ca.gov/resources/pollutioncalculator.html>

As a result of the energy reductions outlined in this proposal, the estimated pounds of air pollutants will be reduced as follows:

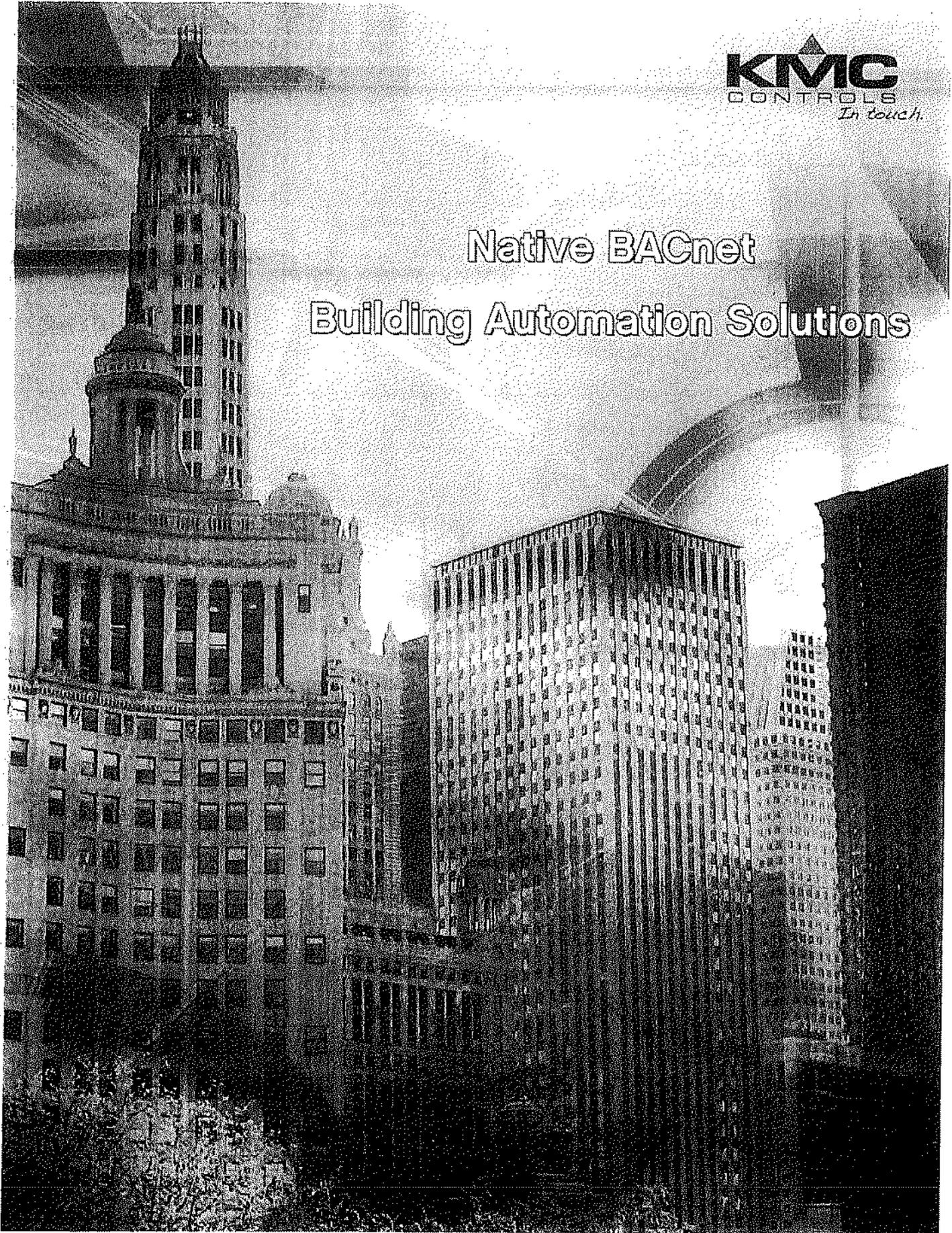
530,137.00	Pounds of Carbon Dioxide (CO <sub>2</sub> )
605.00	Pounds of Sulfur Dioxide (SO <sub>2</sub> )
583.00	Pounds of Nitrogen Oxide (NO <sub>x</sub> )

By eliminating the air pollutants referenced above, the environmental impact would be the equivalent of:

Planting	72	Acres of Trees or
Removing	46	Cars from the roads annually or
Saving	34,725	Gallons of gas annually



# Native BACnet Building Automation Solutions



# Thinking About KMC and BACnet

## Sustainability, Interoperability, Reliability

These words will drive the future of building automation controls in the 21st Century. These words describe what is provided by KMC BACnet solutions...today!

Sustainable, "green" buildings will become the expected norm in the future. The U.S. Green Building Council has been paving the way with its Leadership in Energy and Environmental Design (LEED®) Green Building Rating System. Earning LEED certification points in the crucial categories of Indoor Environmental Quality and Energy and Atmosphere requires an efficient building automation system, which is what BACnet® and KMC Controls® are all about.

## Why BACnet?

BACnet (for Building Automation and Control NETWORKS) is the only communications protocol that was designed for open system interoperability and specifically intended for building systems. Interoperability means that products from different manufacturers can communicate with each other and work together. The concept of interoperability blends well with the integrated project design of LEED and other green approaches.



An open system also helps reduce future risk for building owners. If a BAS vendor for an installed proprietary system goes out of business, future maintenance and upgrades might require the old BAS to be torn out and entirely replaced by something new. Interoperability, however, means that new can build on the old, and it helps future-proof life-cycle costs.

An uncertain future means we can't be content with the best practices of the past. Working groups within BACnet International are constantly striving to evolve the standards to help meet the new environmental and energy challenges of tomorrow.

## Why BACnet from KMC Controls?

When opting for a BACnet system, why choose BACnet products by KMC (a long-time member of BACnet International)? Carefully consider these KMC BACnet pointers before starting your building project.

## Flexible Configuration and Deployment

For AHU, FCU, HPU, RTU, and VAV applications, we offer models of controllers with built-in standard application sequences and optimized outputs, which allow rapid deployment of controllers on a job. However, many sites require customization to their unique needs. For maximum flexibility, all KMC BACnet controllers are Fully Field Programmable so you can customize your applications as much as you need.



## Pondering Proprietary Objects and Properties

While the BACnet standard defines required objects and properties, it also provides manufacturers the freedom to create proprietary objects or properties of objects. Such moves, however, can block true interoperability. KMC Controls is committed to BACnet the way it was meant to be, and we refrain from using proprietary objects or proprietary properties in the standard objects of our "native" BACnet controllers.

## Talking the Talk

Participation in annual BACnet interoperability workshops enables manufacturers to test the communication capability of their products with other BACnet equipment and to resolve problems that might arise in the field. KMC Controls has been an active participant in such workshops since their inception. Our products have communicated effectively with comparable products from all major BACnet manufacturers.

In the past, getting new controllers to communicate with other controllers on a network has often been one of the most time-consuming aspects of a network installation. KMC's built-in auto addressing automatically assigns MAC addresses and device instance numbers to our advanced application controllers, simplifying installation of a BACnet network.



## BTL Listed (the BACnet Seal of Approval)

A "listing" from the BACnet Testing Laboratory (BTL) is the assurance that BACnet devices not only meet the standard, but also the more rigorous test requirements of the BTL. BTL testing demands a greater level of engineering commitment from manufacturers. KMC is committed to BTL listing for our native BACnet devices.

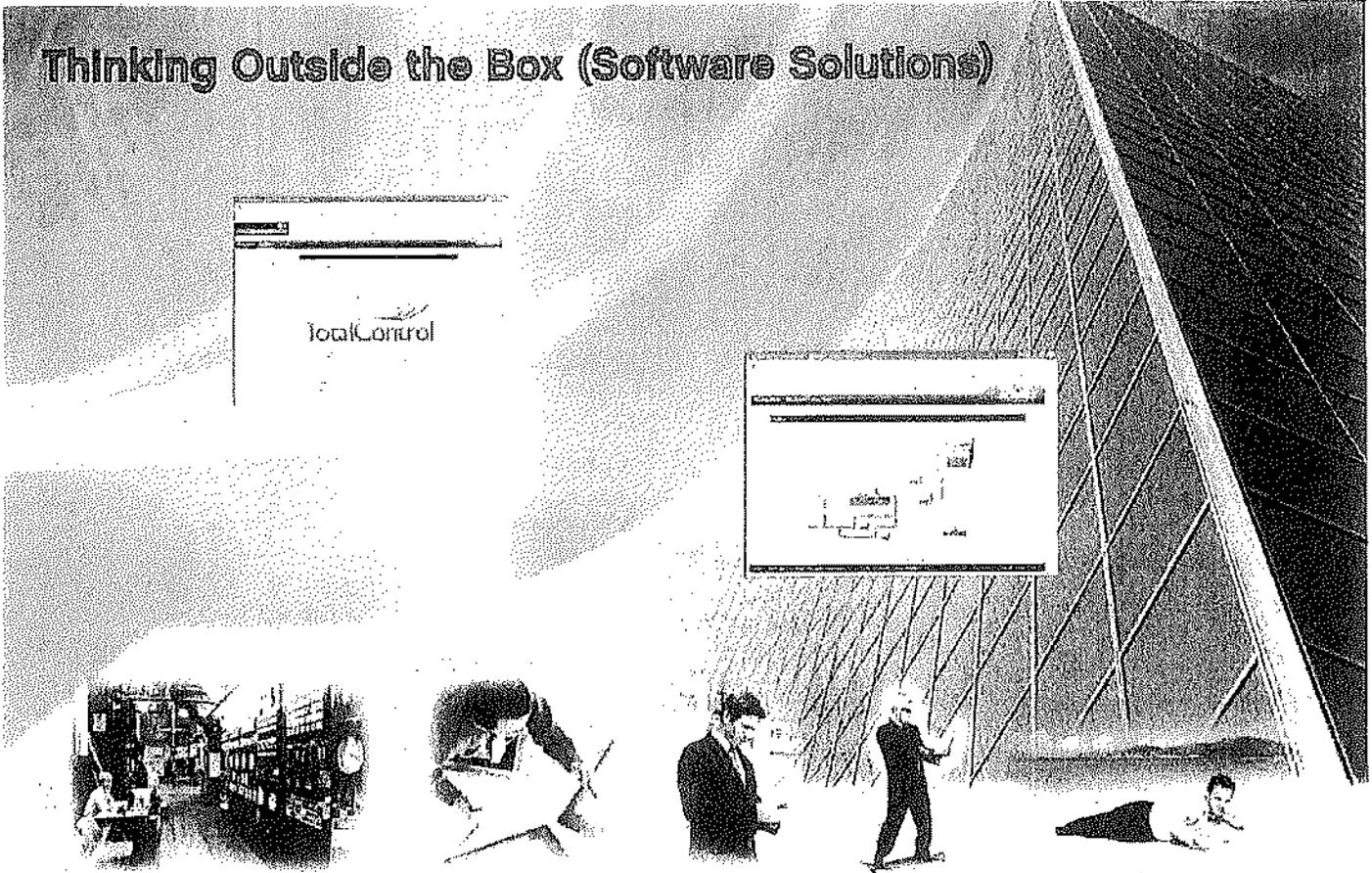


## Robust Reliability...Sometimes Repackaged

After installation, the superior quality design and construction of KMC controllers will provide years of trouble-free operation even in demanding conditions. Our industry-leading five-year warranty shows our confidence in our products. Our products have been recognized even by other manufacturers as being among the best in the business. We privately label our controllers for a variety of corporations...but it is what's inside that counts whatever the outward label says.

So whether building new or augmenting an existing BACnet installation, KMC Controls is the intelligent choice. The following pages describe KMC software tools, show sample installations of varying sizes, and further describe our hardware products. For more information about KMC, download our Corporate Brochure (SB-052) from our award-winning web site.

## Thinking Outside the Box (Software Solutions)



Rising energy costs, increased environmental and security concerns, and the promise of enhanced productivity inside optimized work environments have made the need to **control** building automation systems more important than ever before. The capability to link multiple building systems, manage building environments remotely, and manage multi-manufacturer interoperability issues can now be brought under control over the Internet.

### TotalControl

**TotalControl™** from KMC Controls, Inc. makes web-based monitoring and managing of everything from single rooms to multiple buildings simple. TotalControl and the Internet are all you need to access and manage the critical functions of complex building automation systems.

TotalControl's Design Studio module is used to custom-build the Building Services web interface. Design of the interface is usually done by the controls contractor in consultation with the facility's owner/operator. Once designed, only the Building Services module is needed to monitor and control the building automation system... from anywhere.

Behind the scenes, the Building Services module collects data from multiple BAS protocols, stores (trends, schedules, and alarm) data in a central database, and serves web pages.

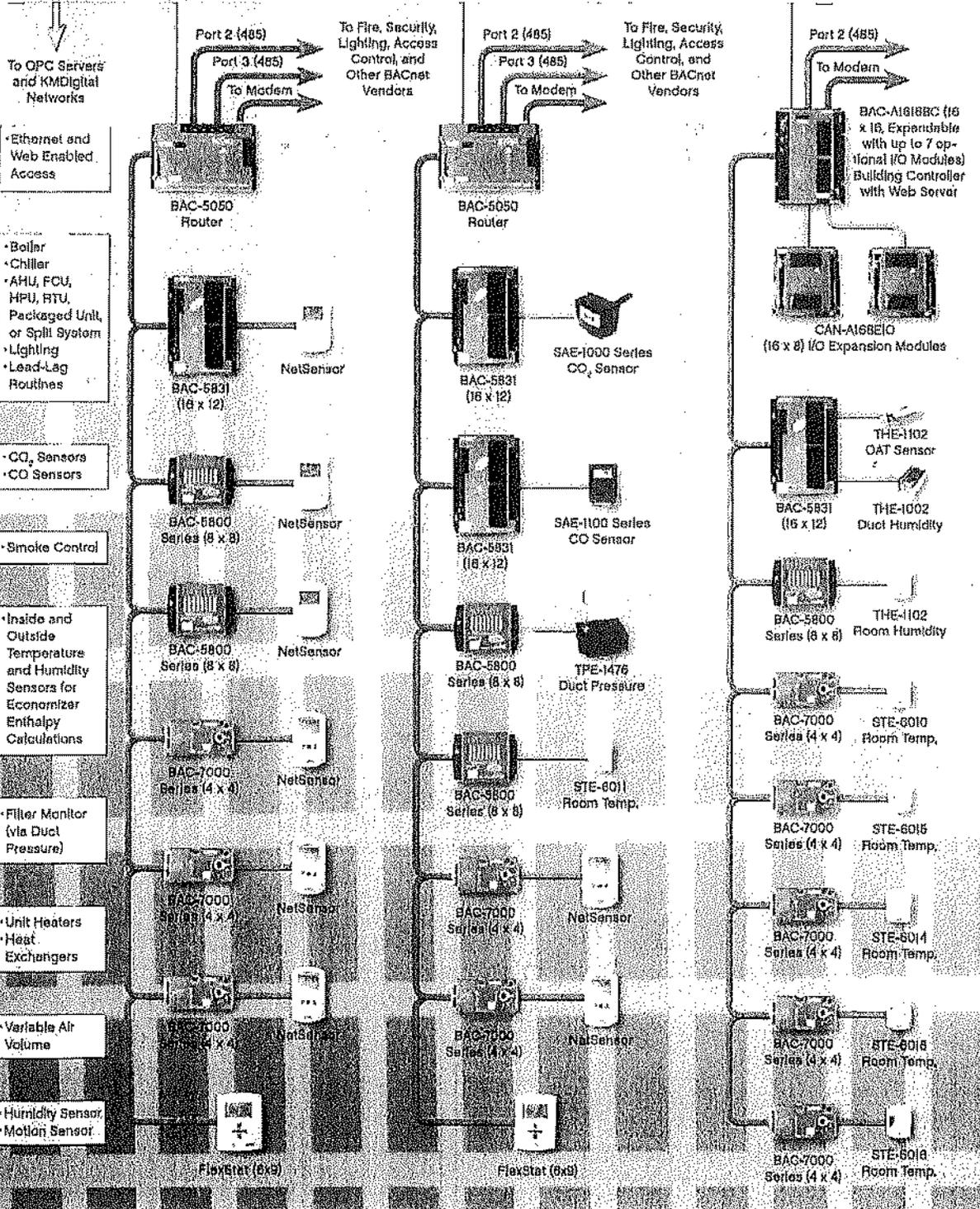
Then, only a web browser is required for the operator to interact with the trends, schedules, alarms, and pages managed from the Building Services computer. The web interface allows operators to control building automation systems via a company network or the Internet. Operators can immediately see and change environmental controls or related building automation systems using just a web browser from an office desktop...or from a laptop at the beach.

### Other Control Tools

The KMC Controls **BACnet Module for Niagara<sup>AX</sup>** adds the required functionality to the Niagara<sup>AX</sup> framework to fully integrate KMC BACnet controllers into a Niagara-managed controls system. Once installed, all objects and properties in KMC BACnet controllers can be configured from either Niagara Workbench or through a JACE panel.

For less complex jobs, the **BACstage™** service tool helps configure controllers and build graphical interfaces for its own operator workstation. In addition to permanent network connections, BACstage can also be used on a laptop to make quick, easy, temporary network connections through the data ports in most KMC controllers, NetSensors, FlexStats, and some models of STE-6000 series sensors. KMC also supplies other software utilities to help facilitate the system configuration and programming process.

# Large or Multiple Buildings



## Sensors, Interfaces, and Thermostats

Controllers are blind without sensors, and KMC offers a variety of sensors to meet almost any need.

### NetSensors

**KMD-116x/118x/121 series NetSensors®** are wall-mounted, temperature sensing, programmable operator interfaces for use in KMC BACnet as well as our proprietary KMDigital® systems.

Optional built-in humidity and motion sensors are also available so that you can now have room temperature and humidity control linked to occupancy. After all, there's no reason to heat or cool a room when nobody's home. Programmed schedules are fine for most days...except for vacations, sick days, business trips, long meetings, and other disruptions to the routine. Room occupancy is optionally detected via a built-in passive Infrared motion sensor with a range of up to 33 feet (10 meters).



NetSensors, available in white or light almond, offer a large, easy to read, backlit LCD display for easy temperature viewing, plus smaller characters for time and relative humidity. Convenient setpoint buttons are instantly accessible, and additional buttons behind the hinged cover may be programmed to control or display the value of an object (such as outside air temperature) in the attached controller.

### FlexStats (Thermostats, Controllers with Sensors)

Sharing many similarities with NetSensors, **FlexStats™** combine the power of a controller (having up to nine relay and/or analog outputs) with an LCD display, a built-in temperature sensor, optional humidity, motion, and CO<sub>2</sub> sensors, as well as up to six input terminals for additional sensors. Plus, they have an easily configurable built-in library of AHU, FCU, HPU, and RTU applications that cover a great range of situations...or you can field-program them for the ultimate in flexibility.



### Analog Sensors

KMC also offers many analog sensors that can be connected to a controller's inputs for monitoring and controlling humidity, CO, CO<sub>2</sub>, room/duct/outside temperature, duct pressure, fan status, smoke, setpoint, and override.

### Router

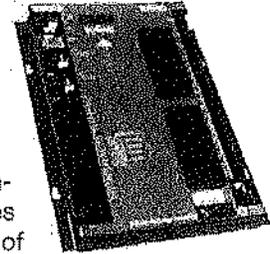
The multi-port **BAC-5050 FullBAC™ Router** provides communication between BACnet IP LANs, BACnet MS/TP controller networks, foreign



devices, and an Ethernet 802.3 network. It also provides a debug and modem connection among other features. The product's name derives from the robust connectivity it offers to the most demanding BACnet jobs.

### Building Controllers

For the most demanding applications, the **BAC-A1616BC BACnet Building Controller (B-BC)** is a high-performance, native BACnet direct digital controller. This 16 x 16 B-BC provides precise monitoring and control of connected points. Integrated into the controller is a BACnet router, a web server, and expandable I/O.



A web server allows a remote web browser to configure I/Os, set up objects, and monitor values (configuration/monitoring are also available through TotalControl). Firmware is easily upgradable (without requiring physical access) through the Ethernet connection.

Additionally, up to seven **CAN-A168EIO Expansion Modules** can be connected (via standard shielded twisted-pair wire up to 200 feet from the B-BC). Each provides another 16 universal inputs and 8 universal outputs (for a maximum total of 128 inputs and 72 outputs)...if you have to think outside this box.

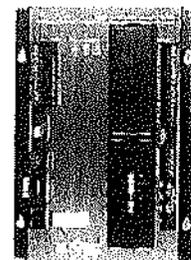
### Lighting Controls

Lighting consumes between 15 and 40% of a building's energy costs, and heat generated by lighting adds to the cooling load and energy used by the building's HVAC system. KMC's controllers, such as the **L900 series Lighting Controls**, can optimize illumination while minimizing energy usage through schedules, motion sensors, and other controls.



### Gateways

Ideally, interoperability means being able to talk to anything... even other protocols. If you need to link a BACnet system to a legacy KMDigital system, **KMD-5210 series KMDigital LAN Controllers with BACnet Interfaces** or the **KMD-5270-001 KMDigital WebLite Controller with BACnet Interface** can serve as interfaces. BACnet Ethernet 802.3 and MS/TP versions are available.



For more information about individual products, see their respective data sheets and other documents on our award-winning web site ([www.kmcccontrols.com](http://www.kmcccontrols.com)).

**ATTACHMENT C**  
**(part 2 of 3)**

**KMC**  
CONTROLS  
*In touch.*



19476 Industrial Drive  
New Paris, IN 46553, U.S.A.  
Telephone: 877.444.5622 (574.831.5250)  
Fax: 574.831.5252  
Web: [www.kmcccontrols.com](http://www.kmcccontrols.com)  
Email: [info@kmcccontrols.com](mailto:info@kmcccontrols.com)

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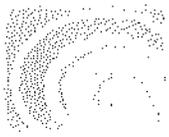
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# APPENDIX C

WESTINGHOUSE PHOTOVOLTAIC



100 kW PV SYSTEM PROPOSAL - ROOF MOUNT  
SOMERSET SCHOOL DISTRICT

CLEAN ENERGY. BRIGHT FUTURE.

527 WILBUR AVE.  
SWANSEA, MA, 02777

100 KW PV SYSTEM PROPOSAL - ROOF MOUNT

MARC FURTADO  
SOMERSET SCHOOL DISTRICT  
MIDDLE SCHOOL  
1141 BRAYTON AVE.  
SOMERSET, MA 02728  
508.324.3100

PROPOSED ENERGY CONTRACT

Proposal prepared for Marc Furtado

---

Marc Furtado  
Somerset School District  
Middle School, 1141 Brayton Ave.,  
Somerset, MA 02726

*Mailing Address:*

Marc Furtado  
Somerset School District  
580 Whetstone Hill Rd.  
Somerset, MA 02726

Dear Marc Furtado

We are pleased to submit a proposal for your solar electric energy system. Solar electric systems are environmentally friendly and reduce your reliance on energy from the utility. Instead of renting your electricity from your utility, you can now own your own clean energy production.

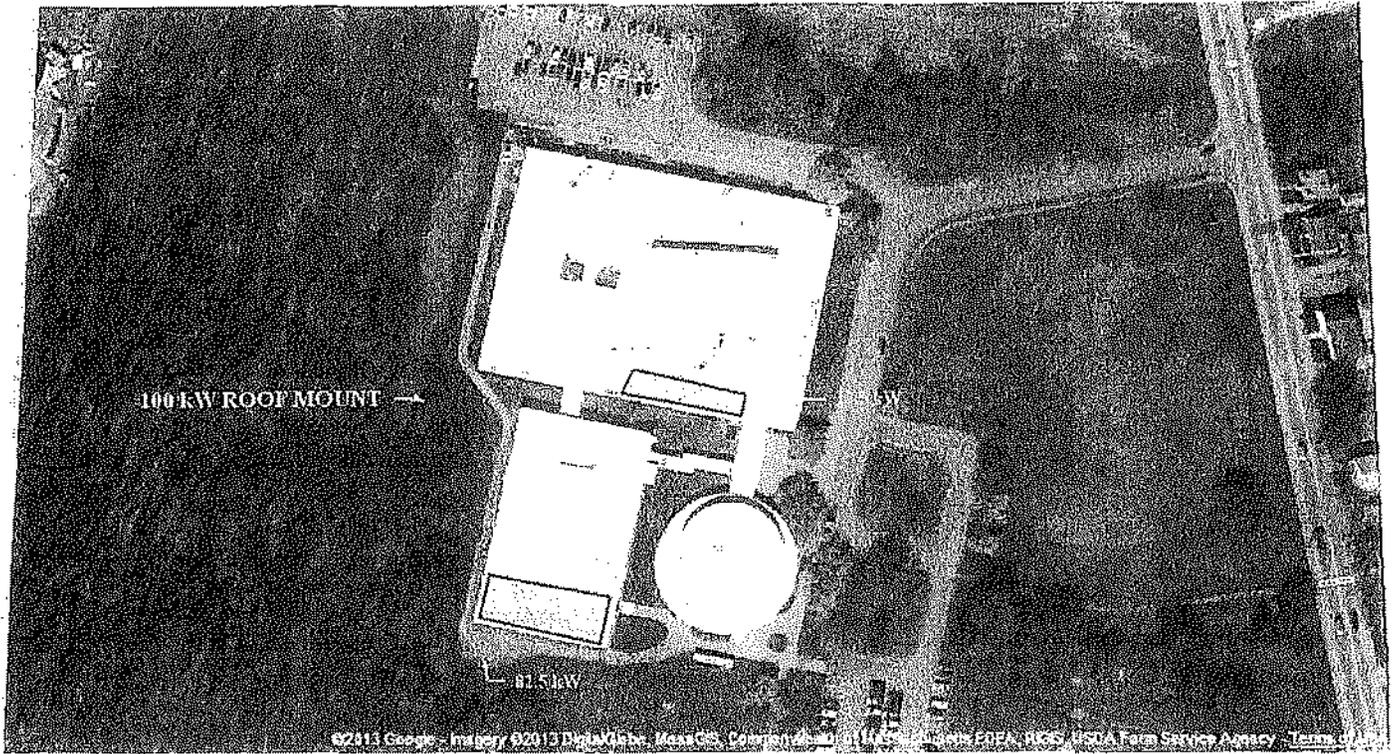
We have designed a system that achieves the best energy cost savings for you. This includes an analysis of your energy requirements, a study of the best energy production design and the application of any available state and federal rebates.

We are committed to a quality installation and to ensuring your total satisfaction with our products and service. The next step is signing the necessary agreements so we can reserve your rebate and begin the engineering and permitting processes. This proposal is valid for 30 days.

We look forward to helping you achieve energy independence, make a positive environmental impact, and ensure a great investment. Please contact us with any questions.

Gary Cyr  
Tel: 508-673-1100

MIDDLE SCHOOL



Proposal prepared for Marc Furtado

## Summary

<b>Customer</b>	<b>Site Address</b>	<b>Mailing Address</b>	<b>Company Contact</b>
Marc Furtado	Middle School, 1141 Brayton Ave.	580 Whelstone Hill Rd.	Gary Cyr
Somerset School District	Somerset, MA 02726	Somerset, MA 02726	Southcoast Greenlight
508-324-3100			527 Wilbur Ave.
turtadom@SBRregional.org			Swansea, MA 02777

### 25 Year Financial Analysis

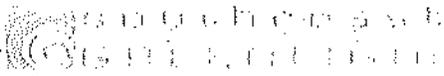
Utility Savings Over Initial Term	\$742,315
	\$2,474 / mo (avg)
Payback Period	3-4 years
Total Life-Cycle Payback (Cash Flow compared to Net Cost)	397%
Rate of Return on Cash Invested	23.8%
Levelized Cost of Solar Energy	\$0.101 / kWh

### Cost Breakdown

Installer Contract Cost	\$349,547	(\$3.50/watt DC, \$4.05/watt AC)
Federal Tax Credit/Tax Impact	(\$104,864)	
<b>Net Cost (year of installation)</b>	<b>\$244,683</b>	<b>(\$2.45/watt DC, \$2.83/watt AC)</b>
MACRS Depreciation	(\$124,788)	
Minimum Standard S-REC program	(\$206,129)	
<b>Net Cost (all years)</b>	<b>(\$86,234)</b>	<b>(-\$0.86/watt DC, -\$1.00/watt AC)</b>

### System Description

Total System Size	100.000 kW DC Power (STC) / 86.400 kW AC Power (CEC)
Estimated Annual Production	106,878 kWh
PV Panel Description	Qty. 400 - Westinghouse Solar Model: WTW-250-1-AC2-D-B
Inverters	Qty. 1 - Soletrix Renewables Model: PV1100kW-208

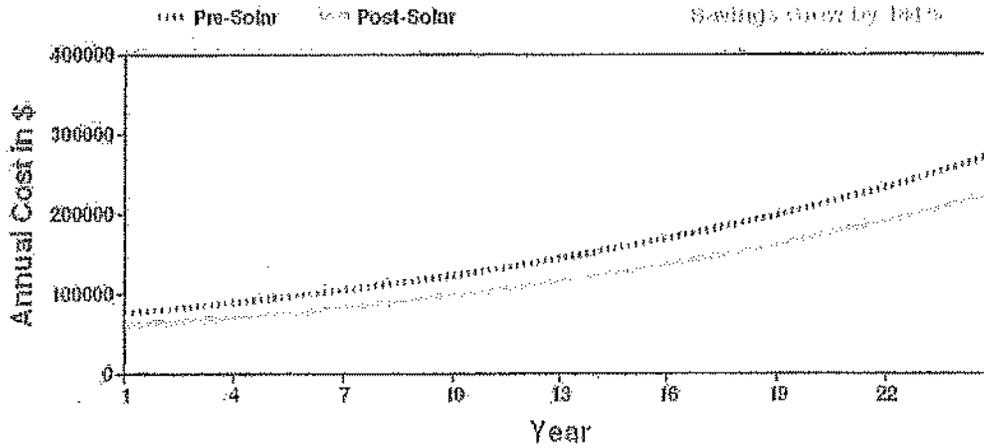


Proposal prepared for Marc Furtado

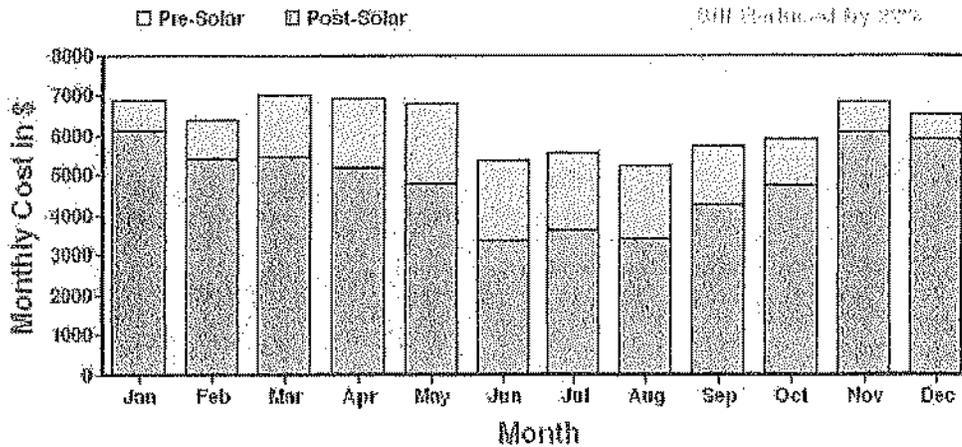
## Energy Analysis

Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

### Annual Electricity Bill Savings Over Time



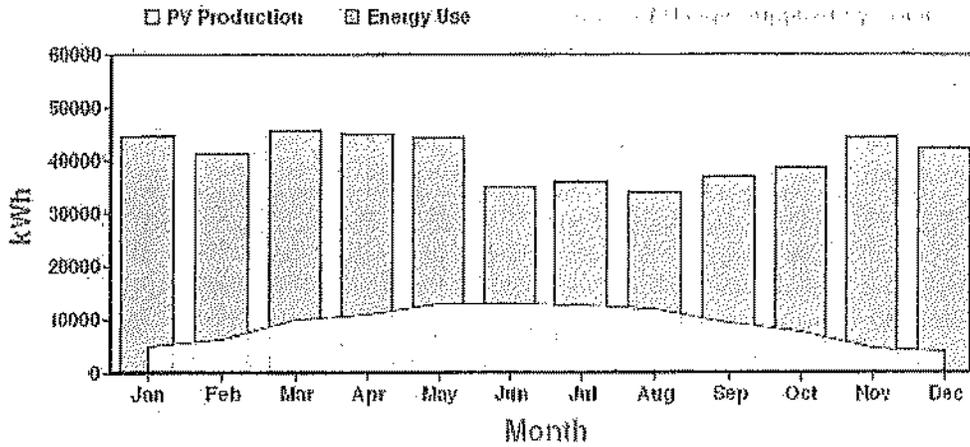
### Monthly Electricity Bill Savings



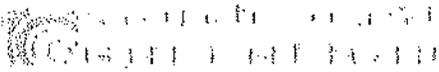


Proposal prepared for Marc Furtado

### Monthly Electricity Use and Amount Supplied by Solar



Assumptions: Post-Solar Electric Rate Schedule for National Grid is Regular Residential (Fixed) (Rate Code: R-1) Annual utility Inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.



Proposal prepared for Marc Furtado

## Energy Bill Estimate

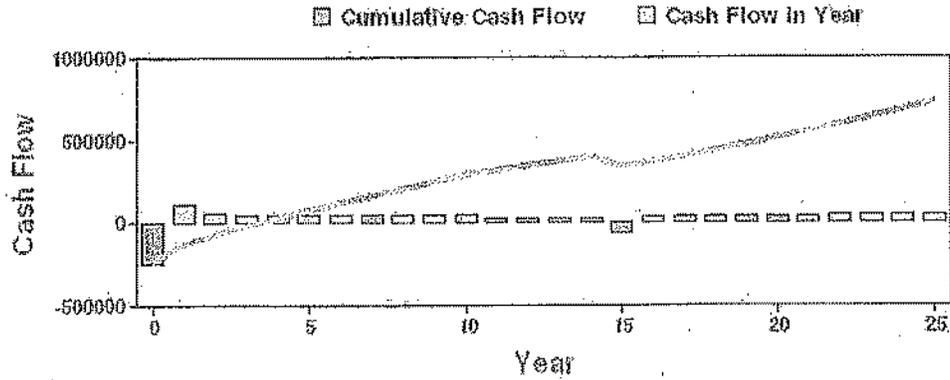
The following energy bill estimate is without any tax effects applied.

(kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Usage Without Solar	44.7k	41.8k	45.5k	44.9k	44.2k	35.0k	36.1k	34.0k	37.1k	38.5k	44.3k	42.3k	488k
Solar Production	4,950	6,435	10.1k	11.1k	13.0k	13.0k	12.5k	11.8k	9,495	7,660	4,703	4,050	100k
Utility Usage with Solar	39.8k	35.1k	35.4k	33.8k	31.2k	22.0k	23.6k	22.1k	27.6k	30.9k	39.6k	38.3k	379k
(Cost)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Bill without Solar*	\$6,889	\$6,396	\$7,012	\$6,920	\$6,812	\$5,394	\$5,563	\$5,240	\$5,718	\$5,933	\$6,827	\$6,519	\$75.2k
Utility Bill with Solar*	\$6,126	\$5,404	\$6,459	\$5,210	\$4,814	\$3,386	\$3,632	\$3,405	\$4,264	\$4,754	\$6,102	\$5,896	\$68.4k
Utility Bill Savings	\$763	\$992	\$1,553	\$1,710	\$1,998	\$2,008	\$1,931	\$1,835	\$1,454	\$1,179	\$725	\$624	\$16.8k

\*Includes utility rate increase of 5.50%

## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



### Financial Summary

Utility Savings Over Initial Term	\$742,315
Average Monthly Utility Savings	\$2,474 (over system life)
Net Cost (In year of installation)	\$244,683
Payback Period	3-4 years
Rate of Return on Cash Invested	23.8%
Total Life-Cycle Payback (Cash flow compared to Net Cost)	397%
Levelized Cost of Solar Energy (Net Cost / lifetime energy production)	\$0.101 / kWh



Proposal prepared for Marc Furtado

## Environmental Impact Analysis

Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by 1,865 tons of CO<sub>2</sub>  
(Over 25 years)

#### Equivalent CO<sub>2</sub> Reductions

Small Car:	6,320,339 miles
Medium Car:	3,390,000 miles
SUV:	2,375,150 miles
Air Miles:	3,844,330 miles
Trees Planted:	74,580 trees planted
CO <sub>2</sub> from Trash & Waste:	3,390 persons

## Cost Detail & System Description

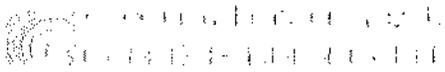
This is a summary of the cost and a description of the solar system we are quoting.

### Net Cost Detail

Gross Cost	\$349,547
<b>Incentives Received in Year of Installation</b>	
Federal Individual Tax Credit (30%)	(\$104,864)
<b>Total Incentives:</b> (In year of installation)	<b>(\$104,864)</b>
<b>Net Cost:</b> (In year of installation)	<b>\$244,683</b>
<b>Contract Cost:</b>	<b>\$349,547</b>
Other Cash Incentives: (In later years)	\$208,131

### System Description

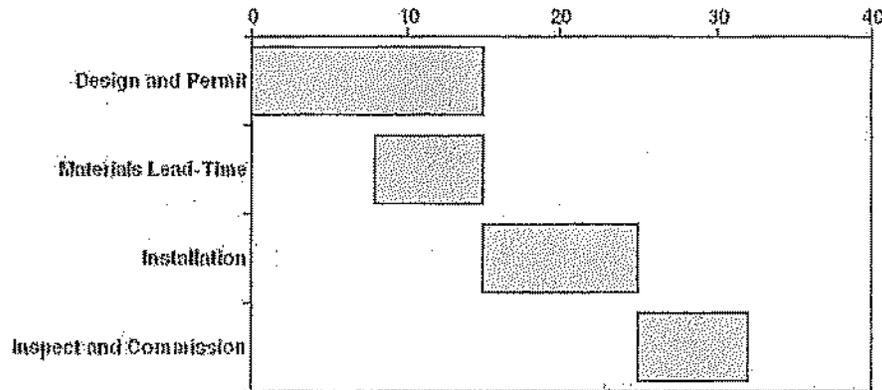
Total System Size:	100,000 kW DC Power (STC) 90,000 kW (PTC) 116,100 kW AC Power (CEC Size)
Net Cost per Watt:	\$2.46 / Watt DC Power (STC) \$2.72 / watt (PTC) \$2.83 / watt AC Power (CEC Size)
Estimated Annual Production:	108,878 kWh
Proposed Array Sizes (STC):	Array 1: 82,500 kW Array 2: 17,500 kW
Number of PV Panels:	Array 1: 330 Array 2: 70
PV Panel Description:	Array 1: Westinghouse Solar Model: WTW-250-1-AC2-D-B 250W DC, Polycrystalline ACPV Module Array 2: Westinghouse Solar Model: WTW-250-1-AC2-D-B 250W DC, Polycrystalline ACPV Module
Inverters:	Array 1: Qty. 1 Solectria Renewables Model: PVI100kW-208 100 kW 208Vac Commercial Grid-Tied Solar PV Inverter Array 2: Qty. 0 Solectria Renewables Model: PVI100kW-208 100 kW 208Vac Commercial Grid-Tied Solar PV Inverter
Output due to Shade Factors:	90%
Array Area & Orientation:	Array 1: Roof Mount: 6,250 sq-ft Tilt: 5°, Azimuth: 180° (S) Array 2: Roof Mount: 6,250 sq-ft Tilt: 5°, Azimuth: 180° (S)



Proposal prepared for Marc Furtado

## Job Schedule

The job schedule provided below summarizes our schedule for meeting four key milestones.



Proposal prepared for Marc Furtado

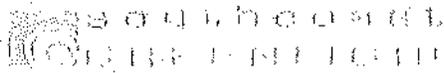
## Cash Flow by Year

The following table of estimated cash flows includes any tax effects, rate and cost inflation and other time-related cash flow factors. Refer to the Disclaimers & Assumptions section (below) for further clarification.

Year:	0	1	2	3	4
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$74,873	\$19,966	\$11,980	\$7,168
Minimum Standard S-REC program	\$0	\$21,558	\$21,342	\$21,129	\$20,917
Federal Individual Tax Credit (30%)	\$104,864	\$0	\$0	\$0	\$0
Energy Bill Savings	\$0	\$16,792	\$17,528	\$18,307	\$19,121
Installation, Operation & Maintenance Costs	(\$349,517)	(\$353)	(\$356)	(\$360)	(\$363)
<b>Total Annual Cash Flow</b>	<b>(\$244,683)</b>	<b>\$112,860</b>	<b>\$58,480</b>	<b>\$51,056</b>	<b>\$46,883</b>
<b>Cumulative Cash Flow</b>	<b>(\$244,683)</b>	<b>(\$131,823)</b>	<b>(\$73,343)</b>	<b>(\$22,287)</b>	<b>\$24,576</b>

Year:	5	6	7	8	9
MACRS 6-year Accelerated Depreciation (Fed & State Tax Avoided)	\$7,168	\$3,584	\$0	\$0	\$0
Minimum Standard S-REC program	\$20,708	\$20,501	\$20,296	\$20,093	\$19,892
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$19,971	\$20,858	\$21,786	\$22,754	\$23,768
Installation, Operation & Maintenance Costs	(\$367)	(\$371)	(\$374)	(\$378)	(\$382)
<b>Total Annual Cash Flow</b>	<b>\$47,500</b>	<b>\$44,582</b>	<b>\$41,708</b>	<b>\$42,469</b>	<b>\$43,276</b>
<b>Cumulative Cash Flow</b>	<b>\$72,076</b>	<b>\$116,658</b>	<b>\$158,366</b>	<b>\$200,835</b>	<b>\$244,111</b>

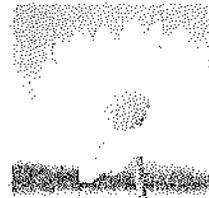
Year:	10	11	12	13	14
MACRS 6-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$19,693	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$24,822	\$25,925	\$27,078	\$28,282	\$29,538
Installation, Operation & Maintenance Costs	(\$306)	(\$303)	(\$301)	(\$307)	(\$311)
<b>Total Annual Cash Flow</b>	<b>\$44,129</b>	<b>\$25,538</b>	<b>\$26,686</b>	<b>\$27,885</b>	<b>\$29,137</b>
<b>Cumulative Cash Flow</b>	<b>\$288,240</b>	<b>\$313,778</b>	<b>\$340,461</b>	<b>\$368,346</b>	<b>\$397,483</b>



Proposal prepared for Marc Furtado

Year:	15	16	17	18	19
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$0	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$30,851	\$32,223	\$33,655	\$35,150	\$36,714
Installation, Operation & Maintenance Costs	(\$33,271)	(\$409)	(\$413)	(\$410)	(\$422)
<b>Total Annual Cash Flow</b>	<b>(\$62,420)</b>	<b>\$31,814</b>	<b>\$33,242</b>	<b>\$34,732</b>	<b>\$36,292</b>
<b>Cumulative Cash Flow</b>	<b>\$335,063</b>	<b>\$366,877</b>	<b>\$400,119</b>	<b>\$434,851</b>	<b>\$471,143</b>

Year:	20	21	22	23	24	25
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$0	\$0	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$38,345	\$40,049	\$41,830	\$43,689	\$45,631	\$47,659
Installation, Operation & Maintenance Costs	(\$425)	(\$430)	(\$435)	(\$430)	(\$443)	(\$448)
<b>Total Annual Cash Flow</b>	<b>\$37,919</b>	<b>\$39,619</b>	<b>\$41,395</b>	<b>\$43,259</b>	<b>\$45,188</b>	<b>\$47,211</b>
<b>Cumulative Cash Flow</b>	<b>\$509,062</b>	<b>\$548,681</b>	<b>\$590,076</b>	<b>\$633,326</b>	<b>\$678,514</b>	<b>\$725,725</b>

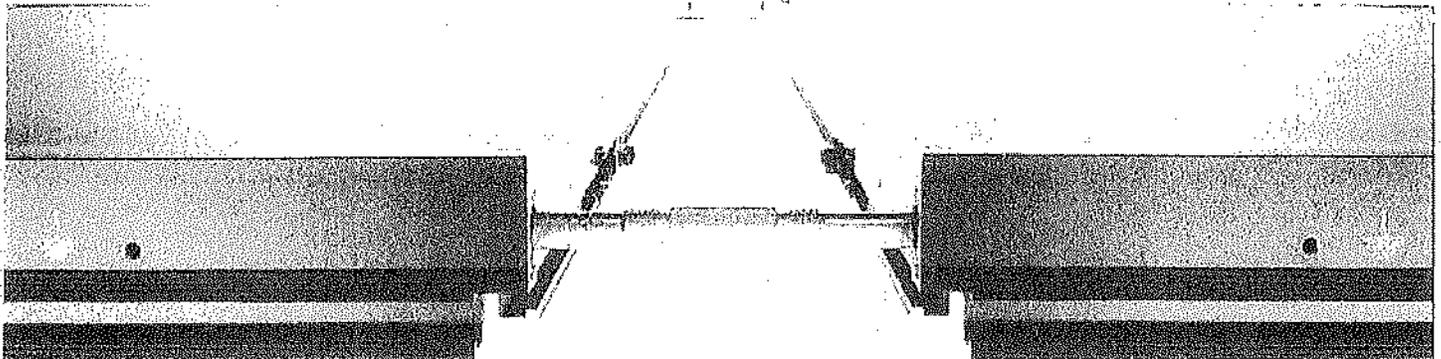


# INSTANT CONNECT<sup>®</sup> AC 245/250



For more than a century, Westinghouse has stood for reliability and innovation—developing products that deliver safe and efficient electricity, and bringing comfort and convenience to the lives of millions. Today, that tradition continues with Westinghouse Solar's Instant Connect systems, which are safer, more powerful, and more reliable than ordinary solar power systems, while backed by the proven quality of the Westinghouse name.

Instant Connect Technology - The World's First Fully Integrated *Plug-and-Play* Solar Power System



**Incredibly Simple.** Patented Design eliminates need for separate rack systems and automates panel-to-panel grounding and electrical connections. With 80% fewer parts and 90% less labor, the system is easy to design and fast to install.

**1-25% more energy collection** than ordinary solar panels. Advanced panel technology efficiently captures and converts more of the sun's energy into usable power.

**Reliable performance.** Integrated micro-inverter wiring and grounding systems eliminate the hazards of exposed wiring and corrosive environmental effects, providing decades of optimal performance.

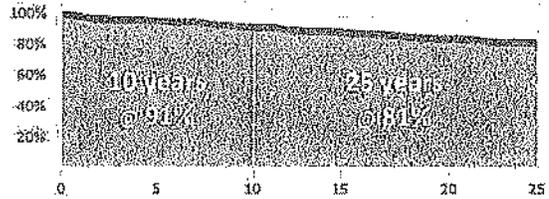
**Proven construction.** Instant Connect systems are engineered to exceed wind and snow load requirements established by local building codes, enabling installations in more regions than any other rooftop solar power system.

**Monitor your system anywhere in the world.** Web-based monitoring system delivers real-time energy production and savings analysis directly to your browser or smartphone.

**Integrated Mounting Systems.** Westinghouse Solar Instant Connect panels seamlessly integrate with our sloped and flat roof racking systems, minimizing part count and maximizing reliability.



You have our word. Every Solar Power System is backed by the proven reliability of the Westinghouse name — for more than a century a guarantee of quality. Panel warranty provides 25 year power output warranty— 10 yrs @ 91% & 25 yrs @ 81%.

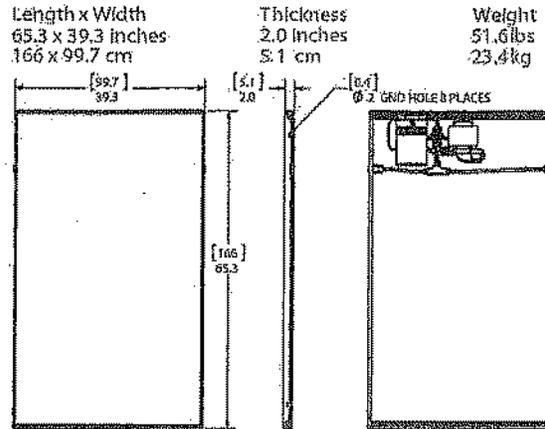


**AC Module Technical Specifications**

**WTW-245-1-AC2-D-B / WTW-250-1-AC2-D-B**

	AC Output @ 208 Vac	AC Output @ 240 Vac
Maximum AC Power Output	215W	215W
Nominal output current	1.0A	0.9A
Nominal voltage/range	208V/183V-228V	240V/211V-264V
Nominal frequency/range	60.0/59.3-60.5 Hz	60.0/59.3-60.5 Hz
Extended frequency/range	60.0/59.2-60.6 Hz	60.0/59.2-60.6 Hz
Power factor	>0.98	>0.98
Maximum units per 20A branch	18 (three phase)	17 (single phase)
Maximum output fault current	1.05 Arms, over 3 cycles; 25.2 Apeak, 1.74ms duration	
CEC weighted efficiency	96.0%	96.0%
Peak inverter efficiency	96.3%	96.3%
Night time power consumption	46mW	46mW
Operating temperature range	-40°C to +85°C	-40°C to +88°C
Cooling	Natural Convection - No Fans	
Enclosure environment rating	Outdoor - NEMA 6 (inverter only)	
Communication	Powerline	
Compliance	UL1741/IEEE1547, FCC Part 15 Class B, CAN/CSA-C22.2 NO. 0-M91, 0-4-04, and 107.1-01	

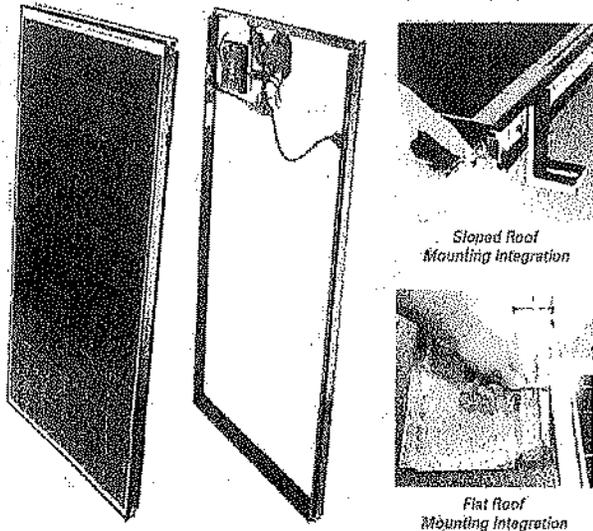
**Mechanical Specifications - Module**



**Electrical Characteristics at Standard Test Conditions**

		245W	250W
Peak DC Power <sup>1</sup>	Power	245W	250W
Output Tolerance		+5%	+5%
Cell Technology		60 Cell Poly-Si, 156 x 156mm (6.14 Inch)	
White back sheet for high efficiency			

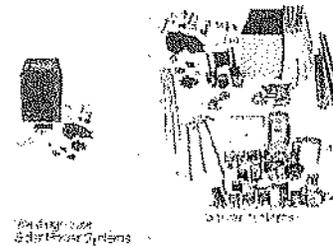
<sup>1</sup>Peak power at Standard Test Conditions



**Mechanical Specifications - System**

	Westinghouse Solar	Ordinary Solar
Racking Hardware	Integrated	External
Module-to-Module Grounding	Integrated	External
Module-to-Module Wiring	Integrated	Separate Trunk Cable
Module-to-Module Connection	Integrated (Threaded)	External (Friction Clip)
Space Between Modules	1/8"	Up to 3"
Roof Penetrations	25% Fewer	Standard

**Installation Materials**



Certified wind and snow load tested to 5400Pa  
 Protected by U.S. patents (7,806,800; 7,832,157 and 7,885,008).  
 Other patents pending.



1475 South Bascom Ave. Suite 101 Campbell, CA 95008  
 www.westinghousesolar.com | t: 888.395.2248

SOLECTRIA  
RENEWABLES

PVI 50KW  
PVI 60KW  
PVI 75KW  
PVI 85KW  
PVI 100KW

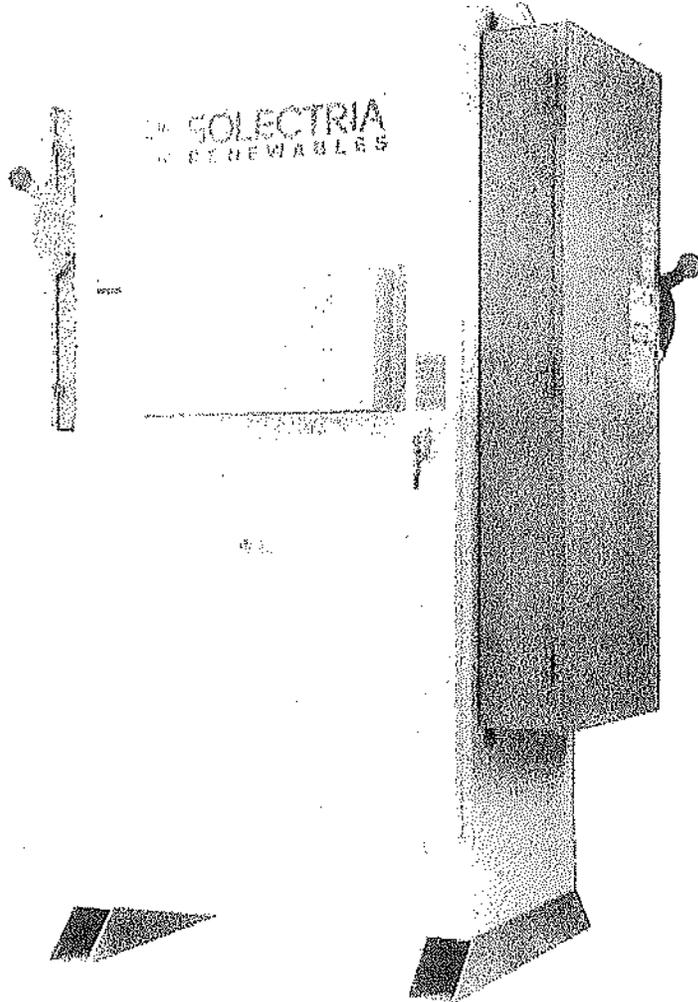
FEATURES

- High efficiency
- Wide input voltage range
- High power density
- Low total harmonic distortion
- Low temperature rise
- Low maintenance
- Low noise
- Low cost
- Low weight
- Low volume
- Low cost

OPTIONS

- High efficiency
- Wide input voltage range
- High power density
- Low total harmonic distortion
- Low temperature rise
- Low maintenance
- Low noise
- Low cost
- Low weight
- Low volume
- Low cost

SOLECTRIA  
RENEWABLES



COMMERCIAL INVERTERS

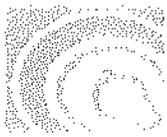
The most customizable full-line of commercial grid-tied PV inverters available today, the PVI 50-100KW series has been utilized in projects ranging from 30kW to multi-megawatt solar farms. This series of Inverters is capable of operating at 208 VAC, 240 VAC, 480 VAC, and 600 VAC and comes standard with AC and DC disconnects, transformer isolation, LCD display, and monitoring gateway. Options include premium efficient models, integrated fused or breaker subcombiners, forward facing disconnects, stainless steel enclosure, web-based and sub-array monitoring, built-in cellular connectivity, and a dust filter. AC voltage and frequency settings may be customized according to utility specifications.



SPECIFICATIONS	PV/50KW	PV/60KW	PV/75KW PV/75KW/PE	PV/85KW PV/85KW/PE	PV/100KW PV/100KW/PE
Absolute Maximum Input Voltage	600 VDC				
MPPT Input Voltage Range	300-500 VDC				
Maximum Operating Input Current	176 A	211 A	264 A	299 A	351 A
Nominal Output Voltage	208, 240, 480 or 600 VAC, 3-Ph (3 wire standard, 4 wire option)				
AC Voltage Range (Standard)	-12%/+10%				
Continuous Output Power	50 kW	60 kW	75 kW	85 kW	100 kW
208 VAC	139 A	167 A	208 A	236 A	278 A
240 VAC	120 A	144 A	180 A	205 A	240 A
Continuous Output Current	60 A	72 A	90 A	102 A	120 A
480 VAC	48 A	58 A	72 A	82 A	96 A
600 VAC					
Maximum Backfeed Current	0 A				
Nominal Output Frequency	60 Hz				
Output Frequency Range	59.3-60.5 Hz				
Power Factor	1.0				
Total Harmonic Distortion (THD)	<3%				
Peak Efficiency	208 or 240 VAC	96.7%	97.3%	96.6%	96.5%
208 VAC Premium (PE)	--	--	97.8%	--	97.0%
480 or 600 VAC	96.5%	97.2%	--	96.9%	--
480 VAC Premium (PE)	--	--	97.8%	--	97.3%
208 or 240 VAC	96.8%	97.0%	--	96.8%	--
CEC Efficiency	208 VAC Premium (PE)	--	97.5%	--	96.3%
480 VAC	96.0%	97.0%	--	96.5%	--
600 VAC Premium (PE)	--	--	97.5%	--	97.0%
Total Loss	3 W				
Fuses or Breakers	2-B positions, 40-300 A				
Ambient Temperature Range (full power)	-40°F to +131°F (-40°C to +55°C)				
Storage Temperature Range	-40°F to +131°F (-40°C to +55°C)				
Relative Humidity (non-condensing)	0-95%				
Web-based Monitoring (Inverter Direct)	SolrenView				
Revenue Grade Monitoring	External				
Sub-Array Monitoring (SolZone)	2-8 zones				
Cellular Communication	SolrenView AIR				
Third Party Compatibility	Standard via Modbus				
Safety Listings & Certifications	UL 1741/IEEE 1547, IEEE 1547.1, CSA C22.2#107.1, FCC part 15 B				
Certification Agency	ETL				
Standard	5 year				
Optional	10, 15, 20 year; extended service agreement; uptime guarantee				
Transformer	Standard, fully-integrated (Internal)				
AC/DC Disconnects	Standard, fully integrated				
Dimensions - Side Facing Disconnects (H x W x D)	78.2 in. x 50-53 in. x 33 in. (1986 mm x 1270-1346 mm x 838 mm)*				
Dimensions - Forward Facing Disconnects (H x W x D)	78.2 in. x 79-88 in. x 33 in. (1986 mm x 2007-2235 mm x 838 mm)*				
Weight	1450 lbs (659 kg)		1875 lbs (852 kg)		2070 lbs (941 kg)
Enclosure Rating	NEMA 3R				
Enclosure Finish	Polyester powder coated steel; Optional 316 stainless steel				

\*Width dependent upon rating of disconnect chosen

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S O L A R E N E R G Y  
B R I G H T F U T U R E

CLEAN ENERGY. BRIGHT FUTURE.

827 WILBUR AVE.

SWANSEA, MA. 02777

200 KW PV SYSTEM PROPOSAL - ROOF MOUNT

MARC FURTADO

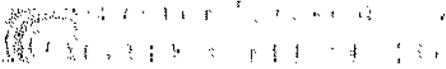
SOMERSET SCHOOL DISTRICT

NORTH ELEMENTARY SCHOOL

580 WHETSTONE HILL RD.

SOMERSET, MA 02726

508.324.3100



Proposal prepared for Marc Furtado

Marc Furtado  
Somerset School District  
North Elementary, 580 Whetstone Hill Road  
Somerset, MA 02726

*Mailing Address:*

Marc Furtado  
Somerset School District  
580 Whetstone Hill Road  
Somerset, MA 02726

Dear Marc Furtado

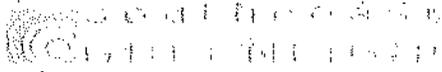
We are pleased to submit a proposal for your solar electric energy system. Solar electric systems are environmentally friendly and reduce your reliance on energy from the utility. Instead of renting your electricity from your utility, you can now own your own clean energy production.

We have designed a system that achieves the best energy cost savings for you. This includes an analysis of your energy requirements, a study of the best energy production design and the application of any available state and federal rebates.

We are committed to a quality installation and to ensuring your total satisfaction with our products and service. The next step is signing the necessary agreements so we can reserve your rebate and begin the engineering and permitting processes. This proposal is valid for 30 days.

We look forward to helping you achieve energy independence, make a positive environmental impact, and ensure a great investment. Please contact us with any questions.

Gary Cyr  
Tel: 508-673-1100



Proposal prepared for Marc Furtado.

## Summary

<b>Customer</b>	<b>Site Address</b>	<b>Mailing Address</b>	<b>Company Contact</b>
Marc Furtado Somerset School District 508-324-3100 furtadom@SBRregional.org	North Elementary, 580 Whetstone Hill Road Somerset, MA 02726	580 Whetstone Hill Road Somerset, MA 02726	Gary Cyr Southcoast Greenlight 527 Wilbur Ave. Swansea, MA 02777

### 25 Year Financial Analysis

Utility Savings Over Initial Term	\$1,469,317 \$4,898 / mo (avg)
Payback Period	3-4 years
Total Life-Cycle Payback (Cash Flow compared to Net Cost)	393%
Rate of Return on Cash Invested	23.6%
Levelized Cost of Solar Energy	\$0.101 / kWh

### Cost Breakdown

Installer Contract Cost	\$700,000	(\$3.50/watt DC, \$4.05/watt AC)
Federal Tax Credit/Tax Impact	(\$210,000)	
<b>Net Cost (year of installation)</b>	<b>\$490,000</b>	<b>(\$2.45/watt DC, \$2.84/watt AC)</b>
MACRS Depreciation	(\$249,900)	
Minimum Standard S-REC program	(\$412,260)	
<b>Net Cost (all years)</b>	<b>(\$172,160)</b>	<b>(-\$0.86/watt DC, -\$1.00/watt AC)</b>

### System Description

Total System Size	200.000 kW DC Power (STC) / 172.800 kW AC Power (CEC)
Estimated Annual Production	217,755 kWh
PV Panel Description	Qty. 800 - Westinghouse Solar Model: WTW-250-1-AC2-D-B
Inverters	Qty. 2 - Solectria Renewables Model: PVI100kW-208

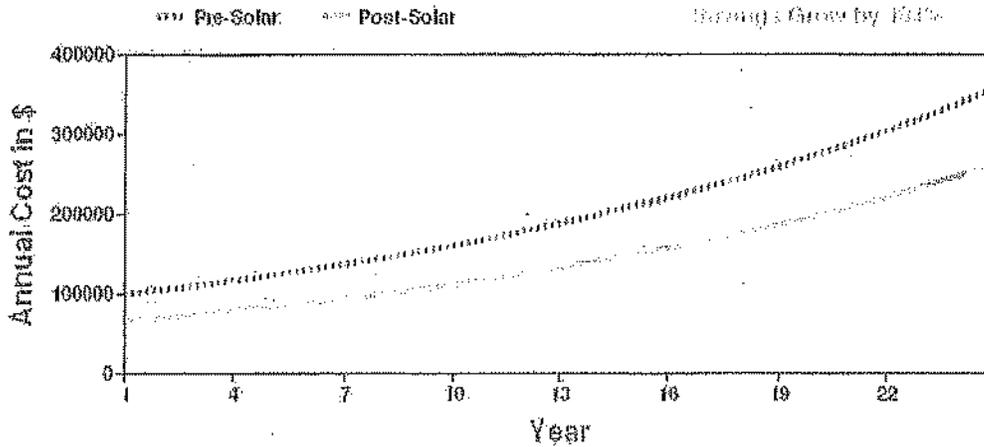


Proposal prepared for Marc Furtado

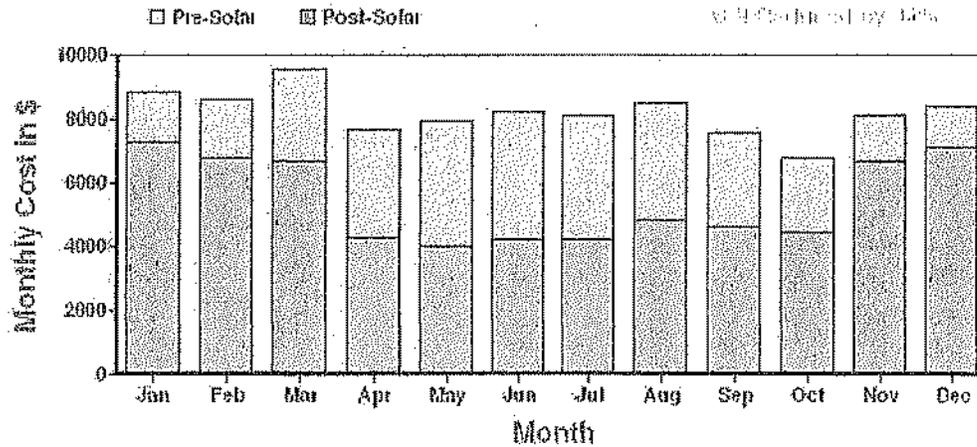
## Energy Analysis

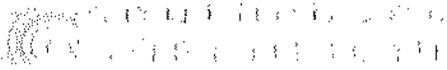
Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

### Annual Electricity Bill Savings Over Time



### Monthly Electricity Bill Savings

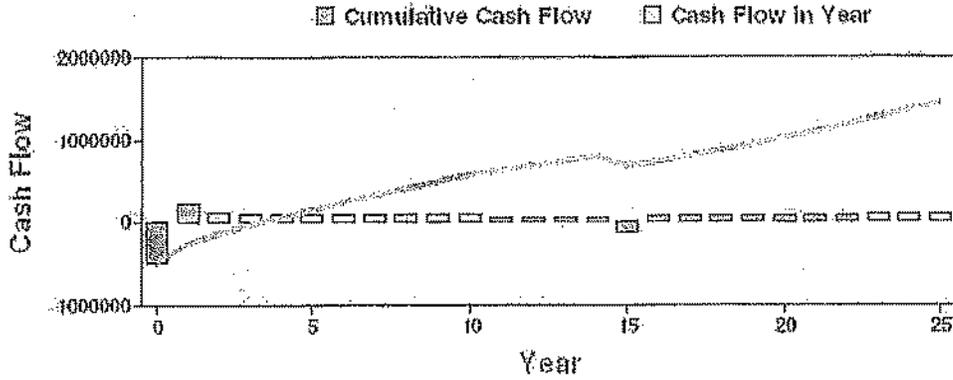




Proposal prepared for Marc Furtado

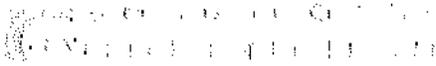
## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



### Financial Summary

Utility Savings Over Initial Term	\$1,469,317
Average Monthly Utility Savings	\$4,898 (over system life)
Net Cost (In year of installation)	\$490,000
Payback Period	3-4 years
Rate of Return on Cash Invested	23.6%
Total Life-Cycle Payback (Cash flow compared to Net Cost)	393%
Levelized Cost of Solar Energy (Net Cost / lifetime energy production)	\$0.101 / kWh



Proposal prepared for Marc Furtado.

## Environmental Impact Analysis

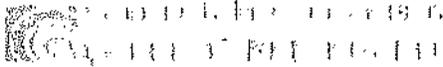
Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by 3,729 tons of CO<sub>2</sub>  
(Over 25 years)

#### Equivalent CO<sub>2</sub> Reductions

Small Car:	12,641,017 miles
Medium Car:	6,780,182 miles
SUV:	4,750,446 miles
Air Miles:	7,688,866 miles
Trees Planted:	149,164 trees planted
CO <sub>2</sub> from Trash & Waste:	6,780 persons



Proposal prepared for Marc Furtado

## Cost Detail & System Description

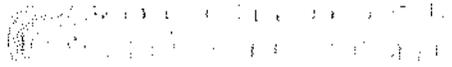
This is a summary of the cost and a description of the solar system we are quoting.

### Net Cost Detail

	Gross Cost	\$700,000
Incentives Received in Year of Installation:		
	Federal Individual Tax Credit (30%)	(\$210,000)
	Total Incentives: (in year of installation)	(\$210,000)
	Net Cost: (in year of installation)	\$490,000
	Contract Cost:	\$700,000
	Other Cash Incentives: (in later years)	\$412,281

### System Description

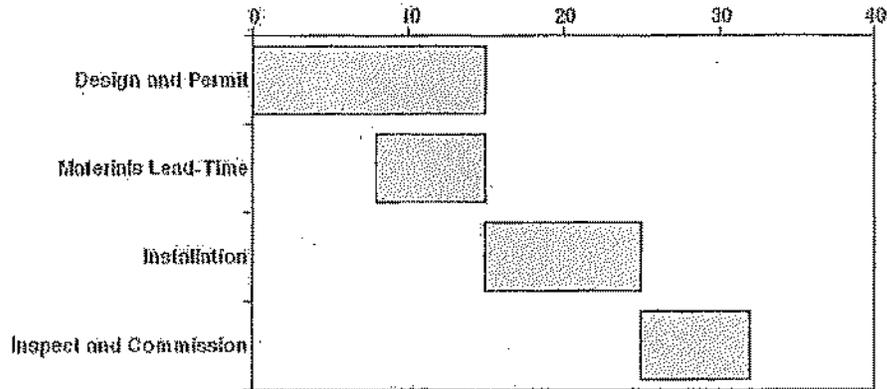
Total System Size:	200,000 kW DC Power (STC) 180,000 kW (PTC) 172,800 kW AC Power (CEC Size)
Net Cost per Watt:	\$2.46 / Watt DC Power (STC) \$2.72 / watt (PTC) \$2.84 / watt AC Power (CEC Size)
Estimated Annual Production:	217,755 kWh Array '1
Proposed Array Sizes (STC):	200,000 kW
Number of PV Panels:	800
PV Panel Description:	Westinghouse Solar Model: WTW-250-1-AC2-D-B 250W DC, Polycrystalline ACPV Module
Inverters:	Qty. 2 Solectria Renewables Model: PVI100kW-208 100 kW 208Vac Commercial Grid-Tied Solar PV Inverter
Output due to Shade Factors:	90%
Array Area & Orientation:	Roof Mount: 17,500 sq-ft Tilt: 6°, Azimuth: 180° (S)

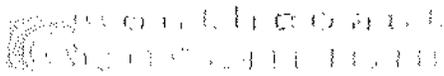


Proposal prepared for Marc Furtado

## Job Schedule

The job schedule provided below summarizes our schedule for meeting four key milestones.





Proposal prepared for Marc Furtado

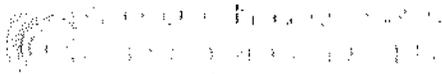
## Cash Flow by Year

The following table of estimated cash flows includes any tax effects, rate and cost inflation and other time-related cash flow factors. Refer to the Disclaimers & Assumptions section (below) for further clarification.

Year:	0	1	2	3	4
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$149,940	\$39,984	\$23,890	\$14,394
Minimum Standard S-REC program	\$0	\$43,115	\$42,684	\$42,257	\$41,835
Federal Individual Tax Credit (30%)	\$210,000	\$0	\$0	\$0	\$0
Energy Bill Savings	\$0	\$33,218	\$34,694	\$36,237	\$37,848
Installation, Operation & Maintenance Costs	(\$700,000)	(\$707)	(\$714)	(\$721)	(\$728)
<b>Total Annual Cash Flow</b>	<b>(\$490,000)</b>	<b>\$225,566</b>	<b>\$116,648</b>	<b>\$101,763</b>	<b>\$93,349</b>
<b>Cumulative Cash Flow</b>	<b>(\$490,000)</b>	<b>(\$264,434)</b>	<b>(\$147,786)</b>	<b>(\$46,023)</b>	<b>\$47,326</b>

Year:	5	6	7	8	9
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$14,394	\$7,197	\$0	\$0	\$0
Minimum Standard S-REC program	\$41,417	\$41,002	\$40,592	\$40,186	\$39,785
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$39,529	\$41,268	\$43,122	\$45,039	\$47,040
Installation, Operation & Maintenance Costs	(\$735)	(\$743)	(\$750)	(\$757)	(\$765)
<b>Total Annual Cash Flow</b>	<b>\$94,605</b>	<b>\$88,742</b>	<b>\$82,964</b>	<b>\$84,468</b>	<b>\$86,060</b>
<b>Cumulative Cash Flow</b>	<b>\$141,931</b>	<b>\$230,673</b>	<b>\$313,637</b>	<b>\$398,105</b>	<b>\$484,165</b>

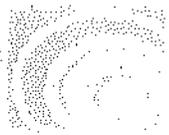
Year:	10	11	12	13	14
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program	\$39,387	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$49,131	\$51,316	\$53,597	\$55,979	\$58,467
Installation, Operation & Maintenance Costs	(\$773)	(\$780)	(\$788)	(\$796)	(\$804)
<b>Total Annual Cash Flow</b>	<b>\$87,745</b>	<b>\$80,536</b>	<b>\$82,909</b>	<b>\$85,183</b>	<b>\$87,663</b>
<b>Cumulative Cash Flow</b>	<b>\$671,910</b>	<b>\$622,446</b>	<b>\$675,255</b>	<b>\$730,438</b>	<b>\$788,101</b>



Proposal prepared for Marc Furtado

	Year:	15	16	17	18	19
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)		\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program		\$0	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)		\$0	\$0	\$0	\$0	\$0
Energy Bill Savings		\$61,066	\$63,781	\$66,615	\$69,577	\$72,670
Installation, Operation & Maintenance Costs		(\$186,918)	(\$820)	(\$829)	(\$837)	(\$845)
<b>Total Annual Cash Flow</b>		<b>(\$125,852)</b>	<b>\$62,961</b>	<b>\$65,786</b>	<b>\$68,740</b>	<b>\$71,825</b>
<b>Cumulative Cash Flow</b>		<b>\$682,249</b>	<b>\$725,210</b>	<b>\$790,996</b>	<b>\$869,736</b>	<b>\$931,561</b>

	Year:	20	21	22	23	24	25
MACRS 5-year Accelerated Depreciation (Fed & State Tax Avoided)		\$0	\$0	\$0	\$0	\$0	\$0
Minimum Standard S-REC program		\$0	\$0	\$0	\$0	\$0	\$0
Federal Individual Tax Credit (30%)		\$0	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings		\$75,900	\$79,274	\$82,796	\$86,478	\$90,321	\$94,336
Installation, Operation & Maintenance Costs		(\$854)	(\$852)	(\$871)	(\$880)	(\$888)	(\$897)
<b>Total Annual Cash Flow</b>		<b>\$75,046</b>	<b>\$78,412</b>	<b>\$81,925</b>	<b>\$85,698</b>	<b>\$89,433</b>	<b>\$93,439</b>
<b>Cumulative Cash Flow</b>		<b>\$1,006,607</b>	<b>\$1,085,019</b>	<b>\$1,166,944</b>	<b>\$1,252,542</b>	<b>\$1,341,975</b>	<b>\$1,435,414</b>



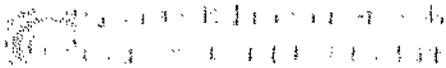
CLEAN ENERGY. BRIGHT FUTURE.

132 / WILBUR AVE.  
SWANSEA, MA 02777

318.9 KW PV SYSTEM PROPOSAL - GROUND MOUNT

MARC FURTADO  
SOMERSET SCHOOL DISTRICT  
NORTH ELEMENTARY  
590 WHETSTONE HILL RD.  
SOMERSET, MA 02726  
508.324.3100





Proposal prepared for Marc Furtado

Marc Furtado  
Somerset School District  
North Elementary, 580 Whetstone Hill Road (Field)  
Somerset, MA 02726

*Mailing Address:*

Marc Furtado  
Somerset School District  
580 Whetstone Hill Road  
Somerset, MA 02726

Dear Marc Furtado

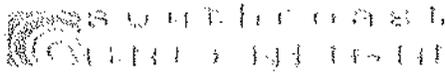
We are pleased to submit a proposal for your solar electric energy system. Solar electric systems are environmentally friendly and reduce your reliance on energy from the utility. Instead of renting your electricity from your utility, you can now own your own clean energy production.

We have designed a system that achieves the best energy cost savings for you. This includes an analysis of your energy requirements, a study of the best energy production design and the application of any available state and federal rebates.

We are committed to a quality installation and to ensuring your total satisfaction with our products and service. The next step is signing the necessary agreements so we can reserve your rebate and begin the engineering and permitting processes. This proposal is valid for 30 days.

We look forward to helping you achieve energy independence, make a positive environmental impact, and ensure a great investment. Please contact us with any questions.

Gary Cyr  
Tel: 508-673-1100



Proposal prepared for Marc Furtado

## Summary

<b>Customer</b>	<b>Site Address</b>	<b>Mailing Address</b>	<b>Company Contact</b>
Marc Furtado	North Elementary, 680	580 Whetstone Hill Road	Gary Cyr
Somerset School District	Whetstone Hill Road (Field)	Somerset, MA 02726	Southcoast Greenlight
508-324-3100	Somerset, MA 02726		527 Wilbur Ave.
furtadom@SBRegional.org			Swansea, MA 02777

### 25-Year Financial Analysis

Utility Savings Over Initial Term	\$2,891,352
	\$9,638 / mo (avg)
Payback Period	3-4 years
Total Life-Cycle Payback (Cash Flow compared to Net Cost)	48.1%
Rate of Return on Cash Invested	28.1%
Levelized Cost of Solar Energy	\$0.086 / kWh

### Cost Breakdown

Installer Contract Cost	\$1,148,040	(\$3.60/watt DC, \$4.17/watt AC)
Federal Tax Credit/Tax Impact	(\$344,412)	
<b>Net Cost (year of installation)</b>	<b>\$803,628</b>	<b>(\$2.52/watt DC, \$2.92/watt AC)</b>
MACRS Depreciation	(\$409,850)	
Minimum Standard S-REC program	(\$807,218)	
<b>Net Cost (all years)</b>	<b>(\$413,440)</b>	<b>(-\$1.30/watt DC, -\$1.50/watt AC)</b>

### System Description

Total System Size	318,900 kW DC Power (STC) / 275,211 kW AC Power (CEC)
Estimated Annual Production	426,369 kWh
PV Panel Description	Qty. 1063 - Chint Solar (Zhejiang) Model: CHSM6612P-300
Inverters	Qty. 3 - Solectria Renewables Model: PV195kW-480

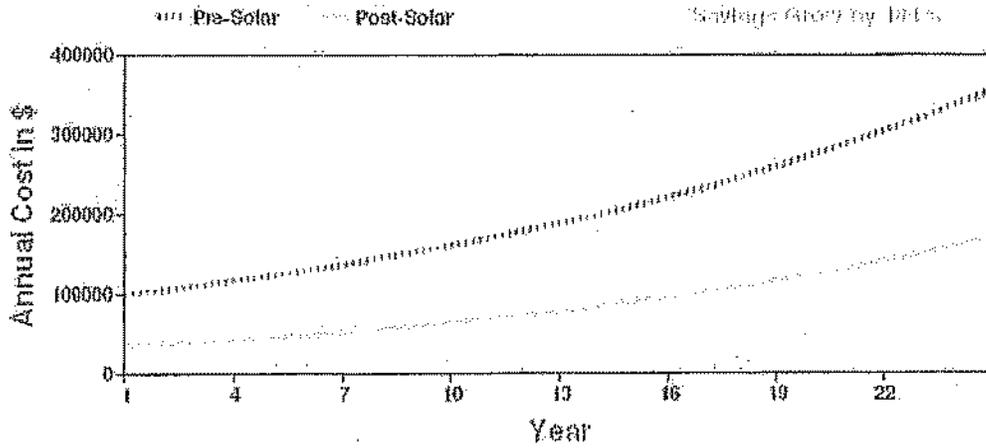


Proposal prepared for Marc Furtado

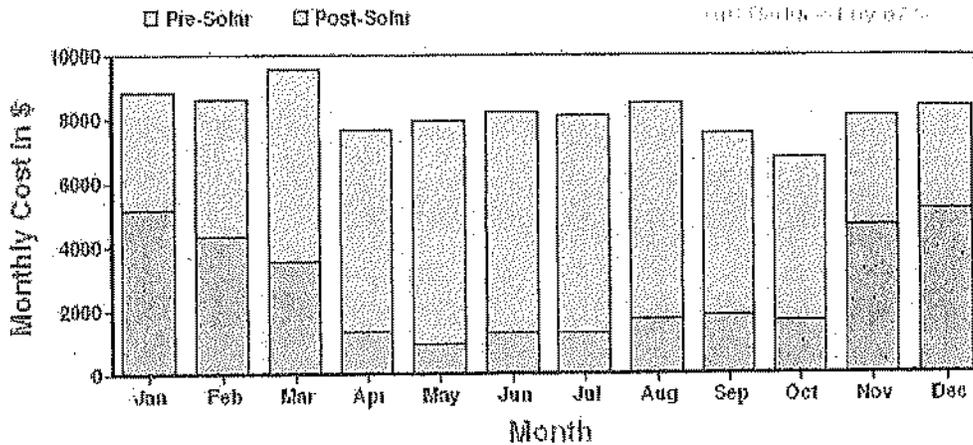
## Energy Analysis

Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

### Annual Electricity Bill Savings Over Time



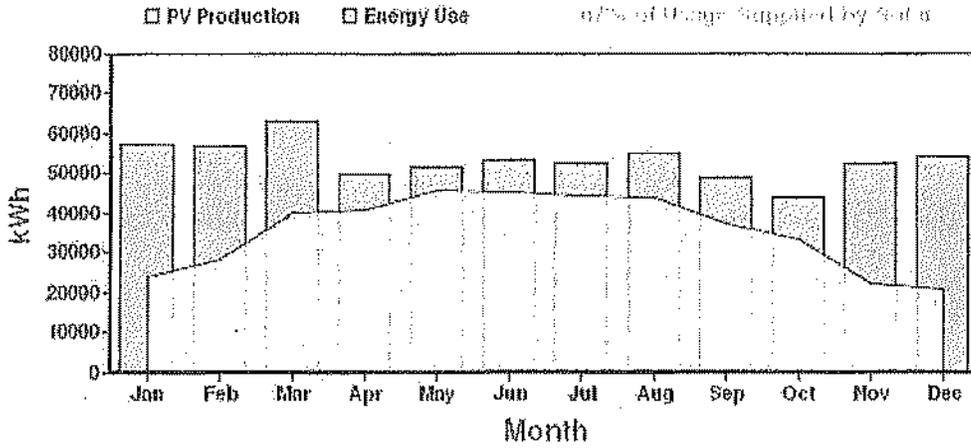
### Monthly Electricity Bill Savings



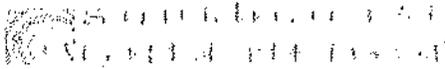


Proposal prepared for Marc Furtado

### Monthly Electricity Use and Amount Supplied by Solar



Assumptions: Post-Solar Electric Rate Schedule for National Grid is Regular Residential (Fixed) (Rate Code: R-1) Annual utility inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.



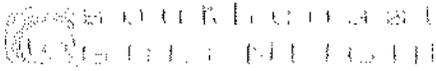
Proposal prepared for Marc Furtado

## Energy Bill Estimate

The following energy bill estimate is without any tax effects applied.

(kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Usage without Solar	57.3k	56.9k	63.3k	49.8k	51.7k	53.5k	52.5k	55.0k	49.0k	44.1k	52.5k	54.3k	640k
Solar Production	23.8k	28.8k	40.2k	41.0k	45.7k	45.9k	44.9k	43.9k	37.2k	33.2k	22.3k	20.7k	426k
Utility Usage with Solar	33.5k	28.3k	23.1k	8,821	6,018	8,216	8,173	11.1k	11.8k	10.9k	30.2k	33.6k	214k
(Cost)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Bill without Solar*	\$8,831	\$8,629	\$9,554	\$7,675	\$7,968	\$8,245	\$8,091	\$8,476	\$7,551	\$6,796	\$8,091	\$8,368	\$98.3k
Utility Bill with Solar*	\$5,157	\$4,358	\$3,563	\$1,359	\$927	\$1,266	\$1,280	\$1,708	\$1,814	\$1,673	\$4,651	\$5,174	\$32.9k
Utility Bill Savings	\$3,674	\$4,271	\$5,991	\$6,316	\$7,041	\$6,979	\$6,831	\$6,770	\$5,737	\$5,123	\$3,440	\$3,194	\$65.4k

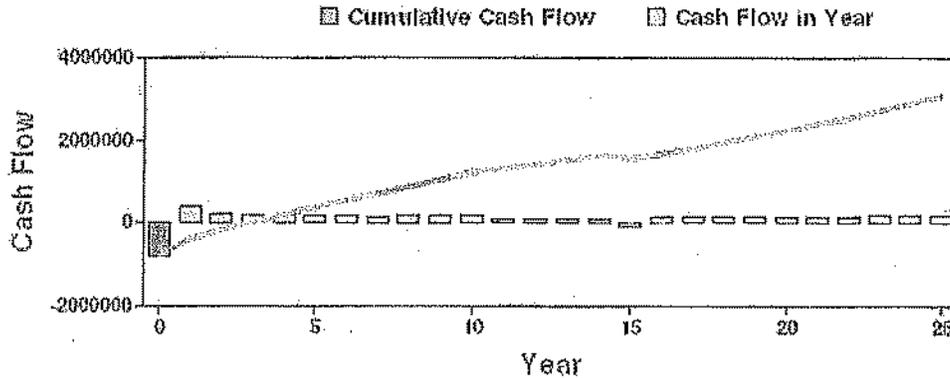
\*Includes utility rate increase of 5.50%



Proposal prepared for Marc Furtado

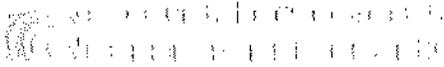
## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



### Financial Summary

Utility Savings Over Initial Term	\$2,891,352
Average Monthly Utility Savings	\$9,638 (over system life)
Net Cost	
(In year of installation)	\$803,628
Payback Period	3-4 years
Rate of Return on Cash Invested	28.1%
Total Life-Cycle Payback	
(Cash flow compared to Net Cost)	481%
Levelized Cost of Solar Energy	
(Net Cost / Lifetime energy production)	\$0.085 / kWh



Proposal prepared for Maro Furtado

## Environmental Impact Analysis

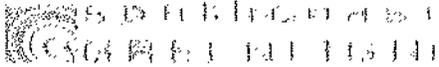
Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by 7,302 tons of CO<sub>2</sub>  
(Over 25 years)

#### Equivalent CO<sub>2</sub> Reductions

Small Car:	24,751,186 miles
Medium Car:	13,275,636 miles
SUV:	9,301,401 miles
Air Miles:	15,054,845 miles
Trees Planted:	292,064 trees planted
CO <sub>2</sub> from Trash & Waste:	13,276 persons



Proposal prepared for Marc Furtado.

## Cost Detail & System Description

This is a summary of the cost and a description of the solar system we are quoting.

### Net Cost Detail

	Gross Cost	\$1,148,040
<b>Incentives Received in Year of Installation</b>		
	Federal Individual Tax Credit (30%)	(\$344,412)
	<b>Total Incentives:</b> (In year of Installation)	<b>(\$344,412)</b>
	<b>Net Cost:</b> (In year of Installation)	<b>\$803,628</b>
	Contract Cost:	\$1,148,040
	Other Cash Incentives: (In later years)	\$807,217

### System Description

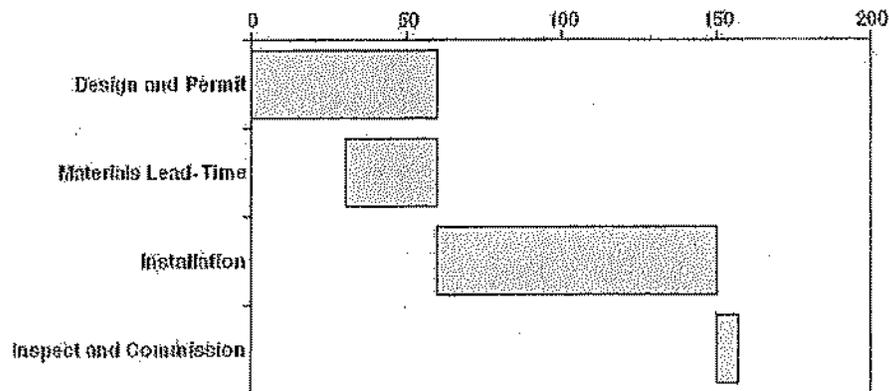
Total System Size:	318.900 kW DC Power (STC) 288.179 kW (PTC) 275.211 kW AC Power (CEC Size)
Net Cost per Watt:	\$2.62 / Watt DC Power (STC) \$2.79 / watt (PTC) \$2.92 / watt AC Power (CEC Size)
Estimated Annual Production:	426,369 kWh
Proposed Array Sizes (STC):	Array 1 318.900 kW
Number of PV Panels:	1,063
PV Panel Description:	Chint Solar (Zhejiang) Model: CHSM6612P-300 300W Polycrystalline Module
Inverters:	Qty: 3 Sofeltra Renewables Model: PV96kW-480 96 kW 480Vac Commercial Grid-Tied Solar PV Inverter
Output due to Shade Factors:	100%
Array Area & Orientation:	Ground Mount, 62,500 sq-ft Tilt: 23°, Azimuth: 180° (S)



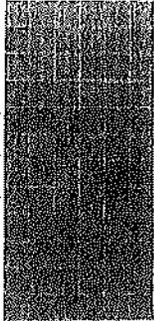
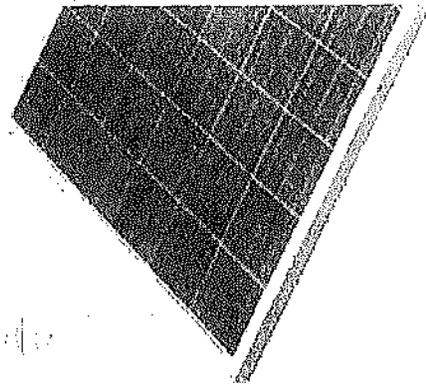
Proposal prepared for Marc Furtado

## Job Schedule

The job schedule provided below summarizes our schedule for meeting four key milestones.







# Datasheet

## Crystalline PV Module

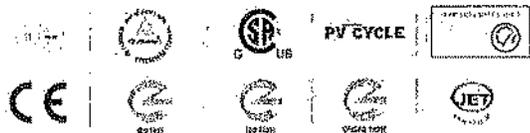
### AM61 / 61 Series

AM61 / 61 Series

AM61 / 61 Series

	275 Wp	280 Wp	285 Wp	290 Wp	295 Wp	300 Wp	305 Wp	310 Wp
STC rated output (P <sub>mpp</sub> )*	275 Wp	280 Wp	285 Wp	290 Wp	295 Wp	300 Wp	305 Wp	310 Wp
PTC rated output (P <sub>mpp</sub> )* <sup>1</sup>	247.2 Wp	251.8 Wp	256.5 Wp	261.1 Wp	265.7 Wp	270.3 Wp	275.0 Wp	279.6 Wp
Standard sorted output	-0/+5 Wp							
Warranted power output STC (P <sub>mpp min</sub> )	275 Wp	280 Wp	285 Wp	290 Wp	295 Wp	300 Wp	305 Wp	310 Wp
Rated voltage (V <sub>mpp</sub> ) at STC	35.60 V	35.63 V	35.66 V	35.68 V	35.72 V	35.74 V	35.77 V	35.80 V
Rated current (I <sub>mp</sub> ) at STC	7.76 A	7.90 A	8.04 A	8.15 A	8.30 A	8.40 A	8.53 A	8.68 A
Open circuit voltage (V <sub>oc</sub> ) at STC	44.51 V	44.64 V	44.77 V	44.90 V	45.03 V	45.16 V	45.29 V	45.42 V
Short circuit current (I <sub>sc</sub> ) at STC	8.56 A	8.71 A	8.86 A	8.94 A	9.16 A	9.27 A	9.42 A	9.56 A
Module efficiency	14.1%	14.4%	14.7%	14.9%	15.2%	15.4%	15.7%	15.9%
Rated output (P <sub>mpp</sub> ) at NOCT	192.0 Wp	195.5 Wp	199.0 Wp	202.5 Wp	206.0 Wp	209.5 Wp	213.0 Wp	216.5 Wp
Rated voltage (V <sub>mpp</sub> ) at NOCT	32.38 V	32.38 V	32.39 V	32.51 V	32.47 V	32.63 V	32.67 V	32.70 V
Rated current (I <sub>mp</sub> ) at NOCT	5.93 A	6.04 A	6.14 A	6.23 A	6.34 A	6.42 A	6.52 A	6.62 A
Open circuit voltage (V <sub>oc</sub> ) at NOCT	40.84 V	40.96 V	41.08 V	41.20 V	41.32 V	41.44 V	41.56 V	41.68 V
Short circuit current (I <sub>sc</sub> ) at NOCT	6.62 A	6.74 A	6.85 A	6.91 A	7.09 A	7.17 A	7.28 A	7.39 A
Temperature coefficient (P <sub>mpp</sub> )	-0.451%/K		Maximum system voltage SCIE				1000 Vdc	
Temperature coefficient (I <sub>sc</sub> )	+0.087%/K		Maximum system voltage NEC				600 Vdc / 1000 Vdc	
Temperature coefficient (I <sub>mp</sub> )	+0.007%/K		Number of diodes				6	
Temperature coefficient (V <sub>mpp</sub> )	-0.445%/K		Maximum series fuse rating				15 A	
Temperature coefficient (V <sub>oc</sub> )	-0.332%/K							
Normal operating cell temperature (NOCT)	46±2°C							

\* All components tolerance ± 1%  
 † Standard



Product standard	IEC 61215, 61730 / UL 1703
Extended product warranty	10 years
Output warranty of 90% performance $P_{mpo}$ (STC)	10 years
Output warranty of 80% performance $P_{mpo}$ (STC)	25 years
MunichRe Warranty	25 years

Cell type	polycrystalline
Number of cells / cell arrangement	72 / 6 x 12
Cells dimension	6"

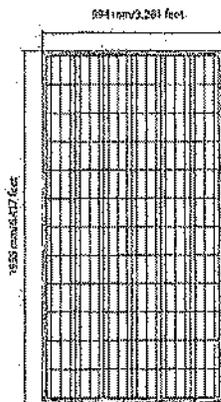
Outer dimensions (L x W x H)	1956 x 994 x 50 mm 77.01 x 39.13 x 1.97 in
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Packing unit	20 modules
Weight of packing unit	528 kg / 1162 lbs

Frame technology	Aluminum, silver anodized
Module composition	Glass / EVA / Backsheet (white)
Weight (module only)	23.5 kg / 51.7 lbs
Front glass thickness	3.2 mm / 0.13 in
Junction box IP rating	IP 65
Cable length / diameter (UL)	1200 mm / 47.24 in / 12 AWG
Cable length / diameter (IEC)	1150 mm / 45.28 in / 4 mm <sup>2</sup>
Maximum load capacity	5400 Pa
Fire class	C
Connector type (UL)	Multi Contact type 4 / MC type 4 compatible
Connector type (TUV)	MC type 4 compatible

Model	Article No. (IEC)	Article No. (UL)
CHSM6612P-275	200032	200039
CHSM6612P-280	200033	200040
CHSM6612P-285	200034	200041
CHSM6612P-290	200035	200042
CHSM6612P-295	200036	200043
CHSM6612P-300	200209	200211
CHSM6612P-305	200210	200212
CHSM6612P-310	200277	200278

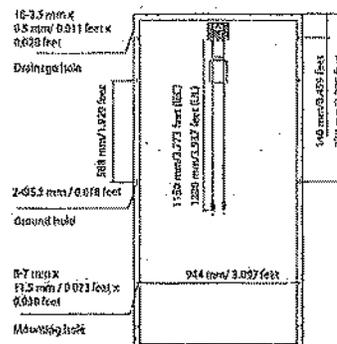
Front view



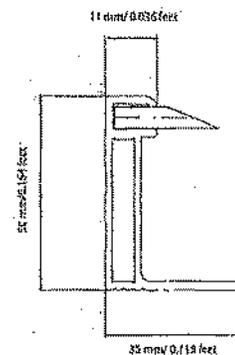
Side view



Rear view



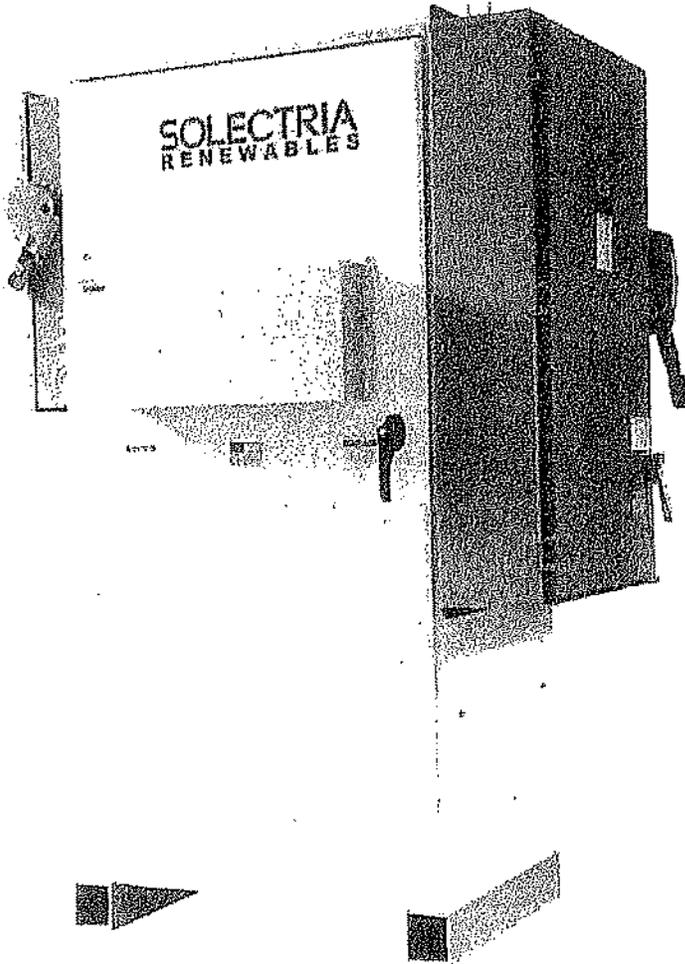
Frame cross section



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**SOLECTRIA  
RENEWABLES**

**PVI 60KW  
PVI 82KW  
PVI 95KW**



**FEATURES**

- High efficiency conversion
- High power factor
- 208 VAC, 240 VAC, 480 VAC, 600 VAC
- Modbus communication
- High inrush current capability

**OPTIONS**

- Integrated subcombiner
- Forward facing disconnect
- Stainless steel enclosure
- Web-based monitoring
- AC/DC disconnect
- High inrush current capability

**PROGRAMS FOR UTILITIES**

- Real-time monitoring
- Remote control of output
- Voltage ride through
- Frequency ride through

**COMMERCIAL INVERTERS**

The most fully customizable line of commercial grid-tied PV Inverters available today, the PVI 60KW, PVI 82KW, and PVI 95KW series of Solectria Renewables inverters has been utilized in projects ranging from 50kW to multi-megawatt solar farms. This series of inverters is capable of operating at 208 VAC, 240 VAC, 480 VAC, and 600 VAC and comes standard with AC and DC disconnects, Isolation transformer, LCD display and monitoring gateway. Options include an Integrated fused subcombiner, forward facing disconnects, stainless steel enclosure and web-based monitoring. AC voltage and frequency settings may be customized according to utility specifications.



Full range and world

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Specifications	PVI 60kW	PVI 82kW	PVI 95kW	
<b>INPUT</b>				
Absolute Maximum Input Voltage		600 VDC		
MPPT Input Voltage Range		312-500 VDC		
MPPT Input Voltage Range - Low Voltage Option		296-500 VDC		
Maximum Operating Input Current	201 A	278 A	320 A	
Maximum Operating Input Current - Low Voltage Option	212 A	293 A	337 A	
<b>OUTPUT</b>				
Nominal Output Voltage	208, 240, 480 or 600 VAC, 3-Ph (4 wire option)			
AC Voltage Range (Standard)	-12%/+10%			
Continuous Output Power	60 kW	82 kW	95 kW	
Continuous Output Current	208 VAC	167 A	264 A	
	240 VAC	145 A	229 A	
	480 VAC	73 A	115 A	
	600 VAC	58 A	92 A	
Maximum Backfeed Current	0 A			
Nominal Output Frequency	60 Hz			
Output Frequency Range	59.3-60.3 Hz			
Power Factor	Unity, >0.99			
Total Harmonic Distortion (THD)	<3%			
<b>EFFICIENCY</b>				
Peak Efficiency	208/240 VAC	95.7%	95.6%	95.3%
	480/600 VAC	96.5%	96.5%	96.5%
CEC Efficiency	208 VAC	94.0%	94.5%	94.5%
	480 VAC	95.5%	95.5%	95.5%
Tare Loss	208 VAC	4 W		
	240 VAC	4 W		
	480 VAC	5 W		
	600 VAC	7 W		
<b>ENVIRONMENTAL</b>				
	2-8 positions, 40-275 A			
<b>OPERATING ENVIRONMENT</b>				
Ambient Temperature Range (full power)	-13°F to +122°F (-25°C to +50°C)			
Storage Temperature Range	-13°F to +122°F (-25°C to +50°C)			
Relative Humidity (non-condensing)	5-99%			
<b>MONITORING</b>				
Web-based Monitoring (Inverter Direct)	SolrenView			
Revenue Grade Monitoring	External			
Sub-Array Monitoring (SolZone)	2-8 zones			
Cellular Communication	SolrenView AIR			
Third Party Compatibility	Standard via MODBUS			
<b>SAFETY LISTINGS &amp; CERTIFICATIONS</b>				
Safety Listings & Certifications	UL 1741/IEEE 1547, IEEE 1547.1, IEEE 62.41.2, IEEE 62.45, IEEE C37.90.2, CSA C22.2#107.1, FCC part 15 B			
Testing Agency	ETL			
<b>WARRANTY</b>				
Standard	5 year			
Optional	10, 15, 20 year; extended service agreement; uptime guarantee			
<b>MECHANICAL</b>				
Transformer	Standard, fully-integrated (Internal)			
AC/DC Disconnects	Standard, fully-integrated			
Dimensions 208/240 VAC (H x W x D)	76 in. x 56 in. x 29.3 in. (1930 mm x 1422 mm x 744 mm)			
Dimensions 480/600 VAC (H x W x D)	76 in. x 54 in. x 25.3 in. (1930 mm x 1372 mm x 643 mm)			
Weight	1526 lbs (694 kg)	1615 lbs (734 kg)	1748 lbs (794 kg)	
Enclosure Rating	NEMA 3R			
Enclosure Finish	Polyester powder coated steel; Optional stainless steel			



*[Faint, illegible text]*

*[Faint, illegible text]*

<b>Robert Horowitz</b> 994 Kempton St. New Bedford, Ma	3.8 KW	508 971 1250
Thomas Aldous 161 Danforth St. Rehoboth, Ma	5.4 KW	508 272 8667
<b>Vui Le</b> "Vintage Barn" 580 GAR Hwy. Swansea, Ma	28.4 KW	617 335 9120
<b>Munro Electric</b> 115 North Seventh St. Fall River, Ma	24.6 KW	508 889 3854 Kevin Munro
<b>Swansea Oil Co.</b> 531 Wilbur Ave. Swansea, Ma	2.4 KW	508 673 0352
Susan Collins 335 Pearse Rd. Swansea, Ma	4.56 KW	508 676 7891
Susan Beetler 122 Reynolds Ave. Rehoboth, Ma	4.56 KW	508 252 3583
Mark Laubenstein 5 Smelt Pond Rd. Kingston, Ma	4.4 KW	508 345 5034
Randy Corwin 16 Longmeadow Rd. Norfolk, Ma	4.4 KW	508 654 2194
Stan Treloar 17 Weaver St. Swansea, Ma	2.6 KW	508 642 9275
Will Gardner 17 Cottage St. Fairhaven, Ma	1.8 KW	508 542 7153
<b>Fernandes Masonry</b> 1031 Phillips Rd. New Bedford, Ma	33 KW	508 998 2121 Victor & Vera
Ossama Labib 833 Old Warren Rd. Swansea, Ma	22.5 KW	401 578 4375
<b>Dominican Sisters</b> 3012 Elm St. Dighton, Ma	50.6 KW	508 669 5460 Sister Marie
<b>BayCoast Bank</b> 330 Swansea Mall Dr. Swansea, Ma	185.5 KW	508 675 6617 Jim Wallace
945 GAR Hwy. Somerset, Ma	4.2 KW	
1485 Pleasant St. Fall River, ma	12.7 KW	

*[Faint, illegible text]*

<b>Hilleo Paul Janell CFO</b>	<b>Heat &amp; DhW</b>	<b>Sunmaxx30's</b>	<b>508-699-4406 ext.3018 *</b>
Susan Collins 335 Pearse Rd. Swansea, Ma	SDHW	AET solar	508 676 7891
Mike Carter 122 Barton Ave. Swansea, Ma	SDHW	AET solar	508 971 0243
Paul Sarró 38 Chase Rd. Freetown, Ma	SDHW	AET solar	580 763 8636
Gary Arruda 55 Elwick St. Dartmouth, Ma	SDHW	AET solar	508 263 8423

**ATTACHMENT C**  
**(part 3 of 3)**

Ken Briffhante 14 Barnum St. Taunton, Ma	SDFFW	Stiebel Eltron	508 822 6006
Rob Horowitz 14 Bay Point Rd. Swansea, Ma	SDHW	Stiebel Eltron	508 971-1250
Lisa Heagney 52 Broad St. Plainville, Ma	SDHW	AET solar	508 397 7206
Mark Laubenstein 5 Smelt Pond Rd. Kingston, Ma	SDHW	AET solar	508 345 5034

**Commercial Systems in Bold type**

**\*Largest solar thermal system with Evacuated Tube collectors in New England to date.**

*RESIDENTIAL AND COMMERCIAL SYSTEMS*

Susan Collins 335 Pearse Rd. Swansea, Ma	Air 4-ton	retrofit	508 676 7891
Rich Tula 38 John Scott Blvd. Norton, Ma	Water/ Water / Air 8 ton	new const.	508-884 5010
Bill Leblanc 190 Pleasant St. Rehoboth, Ma	Water / Water 4 ton	retrofit	508 252 4633
Ben Brayton 86 Summerfield Lane Middletown, RI	Water / Air 5 ton	new const.	401-864 2322
Eric Nathan 5 Rivers Edge Way Assonet, Ma	Air 4-ton	retrofit	774 315 6858
Steve Carey 48 Long Pasture Rd. Little Compton, RI	Air 5 Ton	new const.	860 575 0470
Robert Truesdale 40 Powisset Rd. Dover, Ma	several units	retrofit	508-785-9996
Dave & Kim Resare 7 Wayland Ave. Bristol, RI	Air 4 ton	retrofit	401-654-3939
Frank Dias 15 Evelyn Way Seekonk, Ma	Air 5 ton	new const.	401-265-2797
Kevin & Aimee Munro 250 Bay Point Rd. Swansea	5 ton Hybrid	new const.	508 536 9913
Gordon Hutton 101 Boyce Ave. Barrington, RI	Water/ Air/ Radiant	new const.	401 486 0471
Joel Morgenstern 19 Juniper Rd. Medway, Ma	Water/ Air 7 ton	retrofit	508 533 1961
Tom Liang 7 Capen Hill Rd. Sharon, Ma	Water/ Air 3 ton	retrofit	617 320 0832
Kevin Bartlett 69 Spring Grove Rd. Chepachet, RI	Water/ Water 5 ton	new const.	401 484 4919
Ossama Labib 833 Old Warren Rd, Swansea, Ma	Water/ Water 15 ton	retrofit	401 578 4375

*RESIDENTIAL AND COMMERCIAL SYSTEMS*

**Hilco Paul Janell CFO Data Center 5 ton cooling with BPE MIR 2000 heat exchanger  
508-699-4406 ext.3018 \***

**ANNEX 86,000 Btu heating with BPE MIR 2000 heat exchanger**

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**NABCEP CERTIFICATION FOR PHOTOVOLTAIC'S**

**IGSHPA CERTIFIED GROUND LOOP INSTALLER**

**MASS. MASTER SHEET METAL LICENSE**

**RI CONTRACTORS LIC #6907**

**MASS. CONSTRUCTION SUPERVISORS LICENSE**

**RI PIPEFITTERS LICENSE**

**MASS MASTER PIPEFITTER LICENSE**

**MASS CONTRACTORS REGISTRATION 133057**

**MASS HOISTING OPERATOR'S LICENSE**

THESE ARE THE ONLY LICENSES THAT QUALIFY YOU TO BE EMPLOYED BY ANY OTHER FIRM

LG PHOTOVOLTAIC

## Summary

**Customer**  
 580 Whetstone Hill Road Somerset MA  
 580 Whetstone Hill Road Somerset MA

**Site Address**  
 Somerset, MA 02726

**Company Contact**  
 Roland Moulin  
 Senior Sales Executive - Solar  
 Munro Solar  
 33 Commercial St.,  
 Raynham, MA 02767

### 25 Year Financial Analysis

Utility Savings Over Initial Term \$790,525  
 \$2,635 / mo (avg)  
 Payback Period 6-7 years  
 Total Life-Cycle Payback 324%  
 (Cash Flow compared to Net Cost)  
 Rate of Return on Cash Invested 13.9%  
 Levelized Cost of Solar Energy \$0.130 / kWh

### Cost Breakdown

Installer Contract Cost	\$345,756	(\$3.46/watt DC, \$3.99/watt AC)
Net Cost (year of installation)	\$345,756	(\$3.46/watt DC, \$3.99/watt AC)
\$300 per SREC	(\$339,406)	
Net Cost (all years)	\$6,350	(\$0.06/watt DC, \$0.07/watt AC)

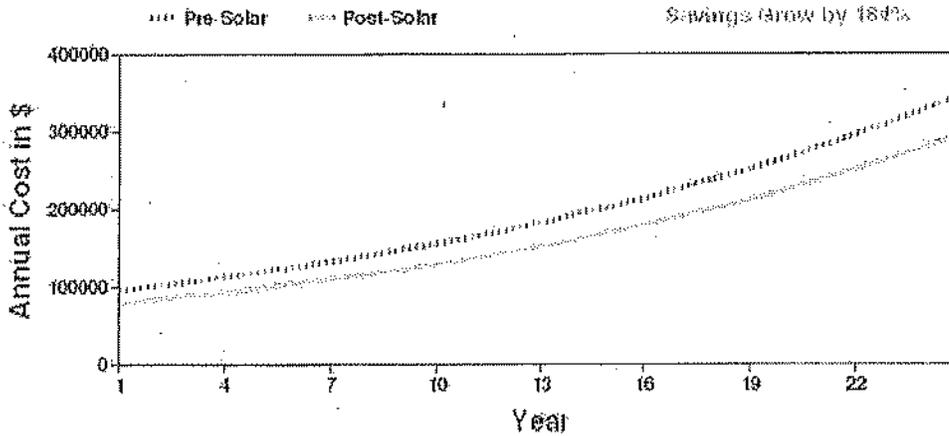
### System Description

Total System Size 99.905 kW DC Power (STC) / 86.716 kW AC Power (CEC)  
 Estimated Annual Production 119,515 kWh  
 PV Panel Description Qty: 377 - LG Electronics Solar Cell Division Model: LG266S1C-G3  
 Inverters Qty: 1 - Solectria Renewables Model: PVI85kW-240

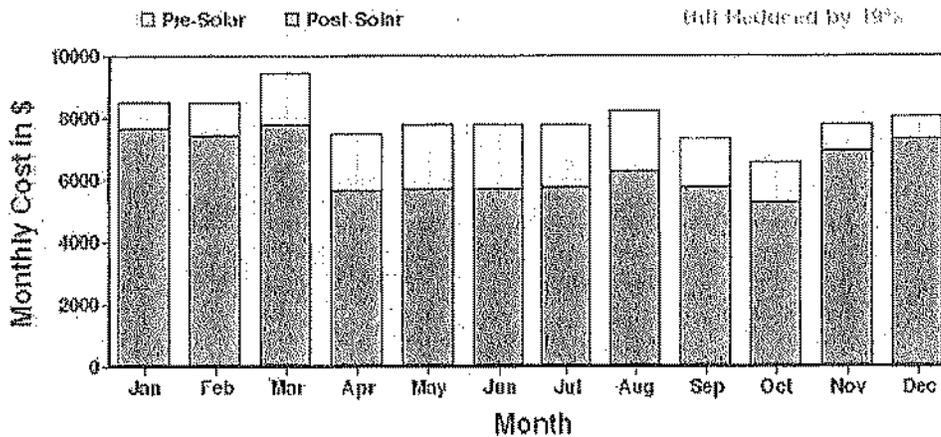
## Energy Analysis

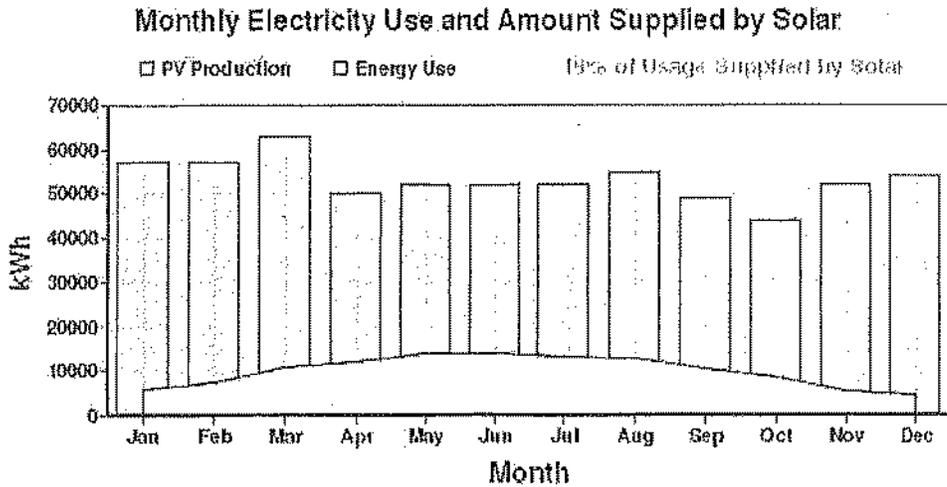
Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

### Annual Electricity Bill Savings Over Time



### Monthly Electricity Bill Savings





Assumptions: Post-Solar Electric Rate Schedule for National Grid is G 1 @ 0.135 Annual utility inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.

## Energy Bill Estimate

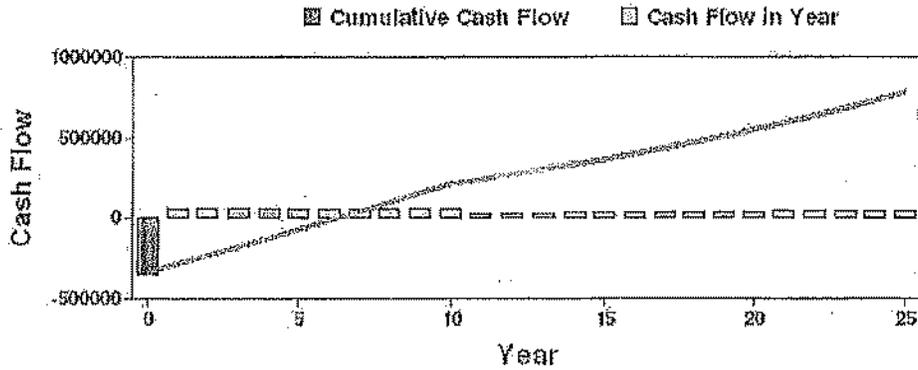
The following energy bill estimate is without any tax effects applied.

(kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Usage without Solar	57.0k	57.0k	63.0k	50.0k	52.0k	52.0k	52.0k	55.0k	49.0k	44.0k	52.0k	64.0k	637k
Solar Production	6,789	7,308	11.1k	12.0k	13.8k	13.9k	13.4k	12.9k	10.4k	8,684	5,481	4,817	120k
Utility Usage with Solar	51.2k	49.7k	51.9k	38.0k	38.2k	38.1k	38.6k	42.1k	38.6k	35.3k	46.5k	49.2k	517k
(Cost)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Bill without Solar*	\$8,524	\$8,524	\$9,421	\$7,477	\$7,776	\$7,776	\$7,776	\$8,225	\$7,328	\$6,580	\$7,776	\$8,075	\$95.3k
Utility Bill with Solar*	\$7,658	\$7,431	\$7,764	\$5,689	\$5,711	\$5,704	\$5,772	\$6,298	\$5,769	\$5,281	\$6,957	\$7,365	\$77.4k
Utility Bill Savings	\$866	\$1,093	\$1,657	\$1,788	\$2,065	\$2,072	\$2,004	\$1,927	\$1,562	\$1,299	\$819	\$720	\$17.9k

\*Includes utility rate increase of 5.60%

## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



### Financial Summary

Utility Savings Over Initial Term	\$790,525
Average Monthly Utility Savings	\$2,635 (over system life)
Net Cost (in year of installation)	\$345,756
Payback Period	6-7 years
Rate of Return on Cash Invested	13.9%
Total Life-Cycle Payback (Cash flow compared to Net Cost)	324%
Levelized Cost of Solar Energy (Net Cost / lifetime energy production)	\$0.130 / kWh

## Environmental Impact Analysis

Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by 2,047 tons of CO<sub>2</sub>  
(Over 25 years)

#### Equivalent CO<sub>2</sub> Reductions

Small Car: 6,937,966 miles  
Medium Car: 3,721,273 miles  
SUV: 2,607,261 miles  
Air Miles: 4,220,000 miles  
Trees Planted: 81,868 trees planted  
CO<sub>2</sub> from Trash & Waste: 3,721 persons

## Cash Flow by Year

The following table of estimated cash flows includes any tax effects, rate and cost inflation and other time-related cash flow factors. Refer to the Disclosures & Assumptions section (below) for further clarification.

Year:	0	1	2	3	4
\$300 per SREC	\$0	\$35,496	\$35,141	\$34,790	\$34,442
Energy Bill Savings	\$0	\$17,872	\$18,666	\$19,497	\$20,363
Installation, Operation & Maintenance Costs	(\$345,750)	(\$349)	(\$352)	(\$356)	(\$359)
<b>Total Annual Cash Flow</b>	<b>(\$345,750)</b>	<b>\$53,019</b>	<b>\$53,455</b>	<b>\$53,931</b>	<b>\$54,446</b>
<b>Cumulative Cash Flow</b>	<b>(\$345,750)</b>	<b>(\$292,737)</b>	<b>(\$239,282)</b>	<b>(\$185,351)</b>	<b>(\$130,905)</b>

Year:	5	6	7	8	9
\$300 per SREC	\$34,097	\$33,756	\$33,419	\$33,085	\$32,754
Energy Bill Savings	\$21,268	\$22,213	\$23,201	\$24,232	\$25,309
Installation, Operation & Maintenance Costs	(\$353)	(\$357)	(\$370)	(\$376)	(\$378)
<b>Total Annual Cash Flow</b>	<b>\$55,012</b>	<b>\$55,602</b>	<b>\$56,250</b>	<b>\$56,943</b>	<b>\$57,685</b>
<b>Cumulative Cash Flow</b>	<b>(\$75,003)</b>	<b>(\$19,301)</b>	<b>\$35,949</b>	<b>\$92,892</b>	<b>\$150,577</b>

Year:	10	11	12	13	14
\$300 per SREC	\$32,426	\$0	\$0	\$0	\$0
Energy Bill Savings	\$26,434	\$27,609	\$28,836	\$30,118	\$31,457
Installation, Operation & Maintenance Costs	(\$361)	(\$385)	(\$399)	(\$409)	(\$397)
<b>Total Annual Cash Flow</b>	<b>\$58,479</b>	<b>\$27,224</b>	<b>\$28,447</b>	<b>\$29,725</b>	<b>\$31,060</b>
<b>Cumulative Cash Flow</b>	<b>\$209,066</b>	<b>\$236,280</b>	<b>\$264,727</b>	<b>\$294,452</b>	<b>\$325,512</b>

Year:	15	16	17	18	19
\$300 per SREC	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$32,856	\$34,315	\$35,841	\$37,433	\$39,098
Installation, Operation & Maintenance Costs	(\$401)	(\$405)	(\$400)	(\$413)	(\$417)
<b>Total Annual Cash Flow</b>	<b>\$32,454</b>	<b>\$33,910</b>	<b>\$35,432</b>	<b>\$37,020</b>	<b>\$38,681</b>
<b>Cumulative Cash Flow</b>	<b>\$387,966</b>	<b>\$391,876</b>	<b>\$427,308</b>	<b>\$464,328</b>	<b>\$503,009</b>

Year:	20	21	22	23	24	25
\$300 per SREC	\$0	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$40,836	\$42,651	\$44,546	\$46,527	\$48,594	\$50,755
Installation, Operation & Maintenance Costs	(\$421)	(\$426)	(\$430)	(\$434)	(\$439)	(\$443)
<b>Total Annual Cash Flow</b>	<b>\$40,415</b>	<b>\$42,225</b>	<b>\$44,116</b>	<b>\$46,093</b>	<b>\$48,155</b>	<b>\$50,312</b>
<b>Cumulative Cash Flow</b>	<b>\$643,424</b>	<b>\$685,649</b>	<b>\$629,765</b>	<b>\$675,858</b>	<b>\$724,013</b>	<b>\$774,325</b>

## Disclaimers & Assumptions

### Operation, Maintenance, and Inflation Rates

This estimate assumes the following system operation, maintenance and inflation rates:

System Life:	25 years
Operation & Maintenance:	0.10% of system cost per annum
PV Degradation:	1.00% per annum
Estimated Inverter Life:	15 years
O&M Inflation Rate:	1.0% per annum
Inverter Replacement Inflation Rate:	1.0% per annum

### System Size Ratings & Performance

There are three methods commonly used to rate PV system size: STC, PTC and CEC. The Standard Test Condition rating ("STC" also called "DC" or "nameplate") assumes a standard set of optimal operating conditions. The STC rating is most often used by manufacturers to classify the power output of PV modules. The PV-USA Test Condition ("PTC") and California Energy Commission ("CEC") ratings were designed to approximate system performance in more realistic operating conditions.

The Energy production for the first year is based on PVWatts Version 2. To calculate the system's energy production for any future year, the expected degradation in system performance is included (See "PV Degradation", in table above).

## Tax Credits & Deductions

Income tax rate assumed: 42.00% (Federal 33.00% - State: 9.00%)

To calculate the estimated cash flow in this proposal, our analysis used these tax rates. We should stress that we cannot provide tax or investment guidance. You should consult your tax preparer or investment adviser for these services. This analysis calculates the cash flows based only on the assumptions entered into the proposal.

This analysis assumes Federal Income Tax is not applied to any rebates. Therefore, the basis for the Federal ITC is the installation cost less 100% of any and all rebates.

### Commercial:

In calculating the cash flow, our analysis assumes that your business' utility expense is tax deductible. Since your utility bill will be reduced by installing the solar energy system, the resulting tax deduction is similarly reduced, our analysis takes this into account.

It also assumes that when you install your solar energy system, you will be able to receive tax benefits from the investment tax credit, depreciation of the equipment, annual maintenance expense, and interest used in financing. Unlike a residential system, the financing does not have to be secured by real estate in order for the interest to qualify as a tax deduction.

MACRS Depreciation: Any commercial entity that invests in or purchases qualified solar energy property may use the Modified Accelerated Cost Recovery System (MACRS) accelerated depreciation schedule: Year 1=20.00%, Year 2=32.00%, Year 3=19.20%, Year 4=11.52%, Year 5=11.52%, Year 6=5.76%.

This analysis assumes Federal income tax is not applied to any state or local incentives. Therefore, the basis for depreciation is the installation cost less 50% of any Federal energy tax credits less 100% of any and all state or local incentives received in year 0.

See IRS Publications 946 and 587.

In this analysis, year 0 is the year in which the solar energy system is installed. Our analysis assumes that you will benefit from the Investment Tax Credit in year 0 (by knowing you won't have to pay as much tax), though you apply for it in year 1.

For all following years, tax deductions are applied to the year in which they occurred. The tax effect of deductions in year 1 are applied to year 1, and so forth.

## (Net) Energy Bill Savings

For an individual, electric bills are not usually deductible against income taxes.

For a business, electric bills are usually deductible against income taxes. If an income tax rate is defined, the cash flow displays a "Net" Energy Bill Savings line item which is the Energy Bill Savings less the loss in tax deduction due to the PV system's lowering of the electric bill. Cost inflation for the utility rate and degradation of system performance are also taken into account.

## Average Monthly Utility Savings

"Average Monthly Utility Savings" is the average monthly (Net) Energy Bill Savings expected over the system life. This takes into account utility rate inflation and any expected degradation in system performance. This estimate has not assumed any changes in the amount or timing in your building's energy use.

## Rate of Return (IRR) on Cash Invested

"Rate of Return on Cash Invested" (also called "Internal Rate of Return" or "IRR") is the annual compounded rate of return that the cash flows (savings, incentives, tax benefits, etc.) bring based upon the net cash invested in the year of installation ("Year 0"). In financial math terms, IRR is the discount rate required to make the sum of the present values of each annual cash flow equal zero. If you financed your system 100%, IRR does not apply since you did not actually invest cash.

## Total Life-Cycle Payback

"Total Life-Cycle Payback" is the total cash flows (savings, incentives, tax benefits, etc.) for all years after installation as a percentage of the net cash invested in the year of installation ("Year 0"). This ROI calculation is not adjusted for inflation or the time-value of money.

## Levelized Cost of Energy

"Levelized Cost of Energy" (or LCOE) is an approximation of the average cost of energy from your solar system (\$/kWh). To determine LCOE, the system Net-Cost (\$) in the installation year is divided by the amount of energy produced (kWh) over the system life (years). For this calculation, energy produced over system life is limited to the annual energy consumption of the building times the system life in years. The Net Cost does not include incentives which may materialize in later years, such as tax credits or deductions or production rebates. This calculation is not adjusted for the time-value of money.

## Environmental Analysis

CO<sub>2</sub> gas emissions avoided per passenger via various travel methods:

Travel Method	Emissions / mile
Small Car	.59 pounds
Medium Car	1.10 pounds
SUV/4 Wheel Drive	1.57 pounds
Airplane (Boeing 747)	0.97 pounds

Air travel average USA capacity.

Tree offset calculation is based on a tree planted in the humid tropics absorbing on average 50 pounds (22 kg) of carbon dioxide annually over 40 years - each tree will absorb 1 ton of CO<sub>2</sub> over its lifetime; but as trees grow, they compete for resources and some may die or be destroyed - not all will achieve their full carbon sequestration potential. This calculator assumes that 5 trees should be planted to ensure that at least one lives to 40 years or that their combined sequestration equals 1 ton.

General waste is based on the USA average carbon dioxide emission equivalent of 1,010 pounds per person per year.

Sources: [Sightline Institute](#), [Trees for the Future](#) and [USA Environmental Protection Agency](#)

## Electric Utility Rates & Assumptions

Utility:	National Grid
Rate Name (Post Installation):	G 1 @ 0.135
Annual Inflation:	5.5% (assumed)

## Utility Electric Rate Inflation: Historical References

National Averages: In 2009, the average retail electricity price for all customers across the United States rose to 9.83 cents per kWh, a small increase over 2008. Over the two year period though, from 2007 to 2009, the average retail price rose 7.7 percent.

See the following Dept of Energy source for more detail on regional and state inflation patterns.

Source: [http://www.eia.doe.gov/cneaf/electricity/esr/esr\\_sum.html](http://www.eia.doe.gov/cneaf/electricity/esr/esr_sum.html)

## Summary

**Customer**  
 1141 Brayton Ave. Somerset MA  
 1141 Brayton Avé. Somerset MA

**Site Address**  
 Somerset, MA 02726

**Company Contact**  
 Roland Moulin  
 Senior Sales Executive - Solar  
 Munro Solar  
 33 Commercial St.,  
 Raynham, MA 02767

### 25 Year Financial Analysis

Utility Savings Over Initial Term \$836,574  
 \$2,789 / mo (avg)  
 Payback Period 6-7 years  
 Total Life-Cycle Payback 343%  
 (Cash Flow compared to Net Cost)  
 Rate of Return on Cash Invested 14.9%  
 Levelized Cost of Solar Energy \$0.123 / kWh

### Cost Breakdown

Installer Contract Cost	\$345,756	(\$3.46/watt DC, \$4.05/watt AC)
Net Cost (year of installation)	\$345,756	(\$3.46/watt DC, \$4.05/watt AC)
\$300 per SREC	(\$359,113)	
Net Cost (all years)	(\$13,357)	(-\$0.13/watt DC, -\$0.16/watt AC)

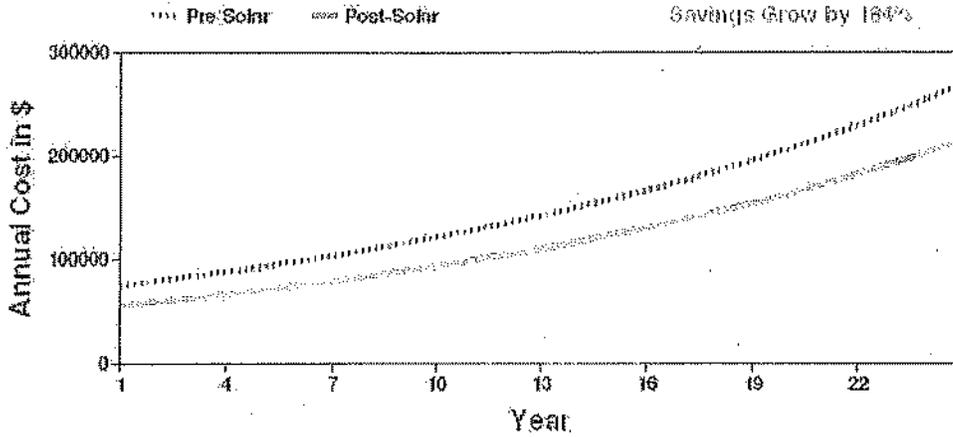
### System Description

Total System Size 99.906 kW DC Power (STC) / 85.361 kW AC Power (CEC)  
 Estimated Annual Production 126,455 kWh  
 PV Panel Description Qty. 377 - LG Electronics Solar Cell Division Model: LG265S1C-G3  
 Inverters Qty. 1 - Solectria Renewables Model: PV182kW-208

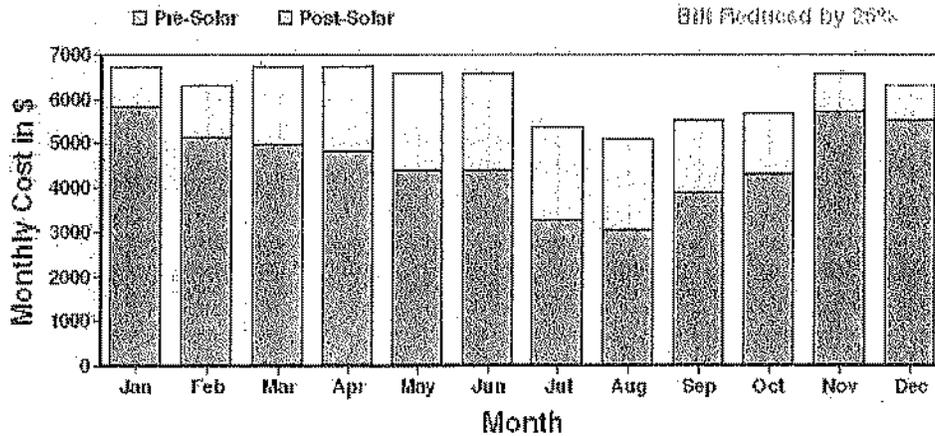
## Energy Analysis

Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

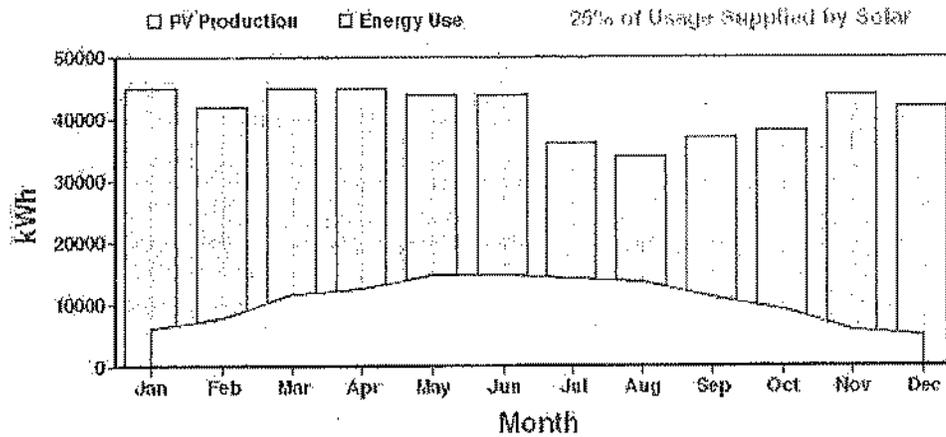
### Annual Electricity Bill Savings Over Time



### Monthly Electricity Bill Savings



### Monthly Electricity Use and Amount Supplied by Solar



Assumptions: Post-Solar Electric Rate Schedule for National Grid is C-1 @ 0.135 Annual utility inflation: 6.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.

## Energy Bill Estimate

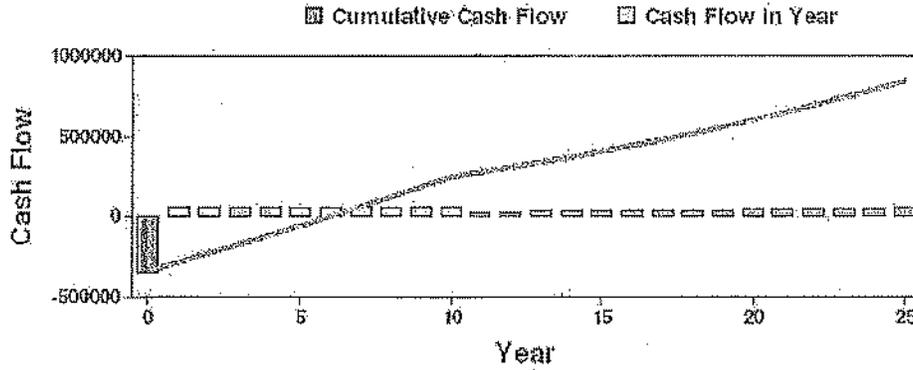
The following energy bill estimate is without any tax effects applied.

(kWh)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Usage without Solar	45.0k	42.0k	45.0k	46.0k	44.0k	44.0k	36.0k	34.0k	37.0k	36.0k	44.0k	42.0k	496k
Solar Production	6,119	7,743	11.7k	12.6k	14.6k	14.6k	14.2k	13.6k	11.1k	9,191	5,819	5,120	126k
Utility Usage with Solar	38.9k	34.3k	33.3k	32.4k	29.4k	29.4k	21.8k	20.4k	25.9k	26.8k	38.2k	36.9k	370k
(Cost)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Utility Bill without Solar*	\$8,730	\$6,281	\$6,730	\$6,730	\$6,560	\$6,560	\$5,394	\$5,065	\$5,533	\$5,663	\$6,560	\$6,281	\$74.2k
Utility Bill with Solar*	\$5,814	\$5,123	\$4,978	\$4,840	\$4,399	\$4,391	\$3,262	\$3,045	\$3,879	\$4,308	\$5,710	\$5,515	\$55.3k
Utility Bill Savings	\$916	\$1,158	\$1,752	\$1,890	\$2,161	\$2,169	\$2,122	\$2,040	\$1,654	\$1,375	\$870	\$766	\$18.9k

\*Includes utility rate increase of 5.50%

## Financial Analysis

The first chart summarizes the cash flow you can expect from the system quoted. Key financial measures are also provided.



### Financial Summary

Utility Savings Over Initial Term	\$836,574
Average Monthly Utility Savings	\$2,789 (over system life)
Net Cost (In year of installation)	\$345,766
Payback Period	6-7 years
Rate of Return on Cash Invested	14.9%
Total Life-Cycle Payback (Cash flow compared to Net Cost)	343%
Levelized Cost of Solar Energy (Net Cost / lifetime energy production)	\$0.123 / kWh

## Environmental Impact Analysis

Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by 2,166 tons of CO<sub>2</sub>  
(Over 25 years)

#### Equivalent CO<sub>2</sub> Reductions

Small Car: 7,340,676 miles  
Medium Car: 3,937,273 miles  
SUV: 2,756,599 miles  
Air Miles: 4,464,948 miles  
Trees Planted: 86,620 trees planted  
CO<sub>2</sub> from Trash & Waste: 3,937 persons

## Cash Flow by Year

The following table of estimated cash flows includes any tax effects, rate and cost inflation and other time-related cash flow factors. Refer to the Disclaimers & Assumptions section (below) for further clarification.

Year:	0	1	2	3	4
\$300 per SREC	\$0	\$37,557	\$37,181	\$36,810	\$36,442
Energy Bill Savings	\$0	\$18,913	\$19,754	\$20,632	\$21,549
Installation, Operation & Maintenance Costs	(\$345,756)	(\$349)	(\$352)	(\$356)	(\$359)
<b>Total Annual Cash Flow</b>	<b>(\$345,756)</b>	<b>\$56,121</b>	<b>\$56,583</b>	<b>\$57,086</b>	<b>\$57,632</b>
<b>Cumulative Cash Flow</b>	<b>(\$345,756)</b>	<b>(\$289,635)</b>	<b>(\$233,052)</b>	<b>(\$176,066)</b>	<b>(\$118,434)</b>

Year:	5	6	7	8	9
\$300 per SREC	\$36,077	\$35,716	\$35,359	\$35,006	\$34,656
Energy Bill Savings	\$22,506	\$23,507	\$24,552	\$25,644	\$26,783
Installation, Operation & Maintenance Costs	(\$343)	(\$387)	(\$370)	(\$374)	(\$378)
<b>Total Annual Cash Flow</b>	<b>\$58,220</b>	<b>\$58,836</b>	<b>\$59,541</b>	<b>\$60,276</b>	<b>\$61,061</b>
<b>Cumulative Cash Flow</b>	<b>\$60,114</b>	<b>\$118,950</b>	<b>\$178,491</b>	<b>\$238,767</b>	<b>\$299,828</b>

Year:	10	11	12	13	14
\$300 per SREC	\$34,309	\$0	\$0	\$0	\$0
Energy Bill Savings	\$27,974	\$29,217	\$30,516	\$31,872	\$33,289
Installation, Operation & Maintenance Costs	(\$301)	(\$305)	(\$308)	(\$312)	(\$317)
<b>Total Annual Cash Flow</b>	<b>\$61,962</b>	<b>\$28,832</b>	<b>\$30,127</b>	<b>\$31,479</b>	<b>\$32,892</b>
<b>Cumulative Cash Flow</b>	<b>\$241,522</b>	<b>\$270,354</b>	<b>\$300,481</b>	<b>\$331,960</b>	<b>\$364,852</b>

Year:	15	16	17	18	19
\$300 per SREC	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$34,768	\$36,314	\$37,928	\$39,614	\$41,376
Installation, Operation & Maintenance Costs	(\$101)	(\$105)	(\$109)	(\$113)	(\$117)
<b>Total Annual Cash Flow</b>	<b>\$34,367</b>	<b>\$36,909</b>	<b>\$37,819</b>	<b>\$39,201</b>	<b>\$40,959</b>
Cumulative Cash Flow	\$338,218	\$435,128	\$472,647	\$511,848	\$552,807

Year:	20	21	22	23	24	25
\$300 per SREC	\$0	\$0	\$0	\$0	\$0	\$0
Energy Bill Savings	\$43,214	\$45,135	\$47,141	\$49,237	\$51,426	\$53,711
Installation, Operation & Maintenance Costs	(\$121)	(\$126)	(\$130)	(\$134)	(\$139)	(\$143)
<b>Total Annual Cash Flow</b>	<b>\$42,793</b>	<b>\$44,709</b>	<b>\$46,711</b>	<b>\$48,803</b>	<b>\$50,987</b>	<b>\$53,268</b>
Cumulative Cash Flow	\$595,600	\$640,309	\$687,020	\$735,823	\$786,810	\$840,078

## Disclaimers & Assumptions

### Operation, Maintenance, and Inflation Rates

This estimate assumes the following system operation, maintenance and inflation rates:

System Life:	25 years
Operation & Maintenance:	0.10% of system cost per annum
PV Degradation:	1.00% per annum
Estimated Inverter Life:	15 years
O&M Inflation Rate:	1.0% per annum
Inverter Replacement Inflation Rate:	1.0% per annum

### System Size Ratings & Performance

There are three methods commonly used to rate PV system size: STC, PTC and CEC. The Standard Test Condition rating ("STC" also called "DC" or "nameplate") assumes a standard set of optimal operating conditions. The STC rating is most often used by manufacturers to classify the power output of PV modules. The PV-USA Test Condition ("PTC") and California Energy Commission ("CEC") ratings were designed to approximate system performance in more realistic operating conditions.

The Energy production for the first year is based on PVWatts Version 2. To calculate the system's energy production for any future year, the expected degradation in system performance is included (See "PV Degradation" in table above).

## Tax Credits & Deductions

Income tax rate assumed: 42.00% (Federal 33.00% - State: 9.00%).

To calculate the estimated cash flow in this proposal, our analysis used these tax rates. We should stress that we cannot provide tax or investment guidance. You should consult your tax preparer or investment adviser for these services. This analysis calculates the cash flows based only on the assumptions entered into the proposal.

This analysis assumes Federal income Tax is not applied to any rebates. Therefore, the basis for the Federal ITC is the installation cost less 100% of any and all rebates.

### Commercial:

In calculating the cash flow, our analysis assumes that your business' utility expense is tax deductible. Since your utility bill will be reduced by installing the solar energy system, the resulting tax deduction is similarly reduced. Our analysis takes this into account.

It also assumes that when you install your solar energy system, you will be able to receive tax benefits from the investment tax credit, depreciation of the equipment, annual maintenance expense, and interest used in financing. Unlike a residential system, the financing does not have to be secured by real estate in order for the interest to qualify as a tax deduction.

MACRS Depreciation: Any commercial entity that invests in or purchases qualified solar energy property may use the Modified Accelerated Cost Recovery System (MACRS) accelerated depreciation schedule: Year 1=20.00%, Year 2=32.00%, Year 3=19.20%, Year 4=11.52%, Year 5=11.52%, Year 6=5.76%.

This analysis assumes Federal income Tax is not applied to any state or local incentives. Therefore, the basis for depreciation is the installation cost less 50% of any Federal energy tax credits less 100% of any and all state or local incentives received in year 0.

See IRS Publications 946 and 587.

In this analysis, year 0 is the year in which the solar energy system is installed. Our analysis assumes that you will benefit from the Investment Tax Credit in year 0 (by knowing you won't have to pay as much tax), though you apply for it in year 1.

For all following years, tax deductions are applied to the year in which they occurred. The tax effect of deductions in year 1 are applied to year 1, and so forth.

## (Net) Energy Bill Savings

For an individual, electric bills are not usually deductible against income taxes.

For a business, electric bills are usually deductible against income taxes. If an income tax rate is defined, the cash flow displays a "Net" Energy Bill Savings line item which is the Energy Bill Savings less the loss in tax deduction due to the PV system's lowering of the electric bill. Cost inflation for the utility rate and degradation of system performance are also taken into account.

## Average Monthly Utility Savings

"Average Monthly Utility Savings" is the average monthly (Net) Energy Bill Savings expected over the system life. This takes into account utility rate inflation and any expected degradation in system performance. This estimate has not assumed any changes in the amount or timing in your building's energy use.

## Rate of Return (IRR) on Cash Invested

"Rate of Return on Cash Invested" (also called "Internal Rate of Return" or "IRR") is the annual compounded rate of return that the cash flows (savings, incentives, tax benefits, etc.) bring based upon the net cash invested in the year of installation ("Year 0"). In financial math terms, IRR is the discount rate required to make the sum of the present values of each annual cash flow equal zero. If you financed your system 100%, IRR does not apply since you did not actually invest cash.

## Total Life-Cycle Payback

"Total Life-Cycle Payback" is the total cash flows (savings, incentives, tax benefits, etc.) for all years after installation as a percentage of the net cash invested in the year of installation ("Year 0"). This ROI calculation is not adjusted for inflation or the time-value of money.

## Levelized Cost of Energy

"Levelized Cost of Energy" (or LCOE) is an approximation of the average cost of energy from your solar system (\$/kWh). To determine LCOE, the system Net Cost (\$ in the installation year) is divided by the amount of energy produced (kWh) over the system life (years). For this calculation, energy produced over system life is limited to the annual energy consumption of the building times the system life in years. The Net Cost does not include incentives which may materialize in later years, such as tax credits or deductions or production rebates. This calculation is not adjusted for the time-value of money.

## Environmental Analysis

CO<sub>2</sub> gas emissions avoided per passenger via various travel methods:

Travel Method	Emissions / mile
Small Car	.59 pounds
Medium Car	1.10 pounds
SUV/4 Wheel Drive	1.57 pounds
Airplane (Boeing 747)	0.97 pounds

Air travel average USA capacity.

Tree offset calculation is based on a tree planted in the humid tropics absorbing on average 50 pounds (22 kg) of carbon dioxide annually over 40 years - each tree will absorb 1 ton of CO<sub>2</sub> over its lifetime, but as trees grow, they compete for resources and some may die or be destroyed - not all will achieve their full carbon sequestration potential. This calculator assumes that 5 trees should be planted to ensure that at least one lives to 40 years or that their combined sequestration equals 1 ton.

General waste is based on the USA average carbon dioxide emission equivalent of 1,010 pounds per person per year.

Sources: [Sighting Institute, Trees for the Future](#) and [USA Environmental Protection Agency](#)

## Electric Utility Rates & Assumptions

Utility:	National Grid
Rate Name (Post installation):	G 1 @ 0.136
Annual Inflation:	5.5% (assumed)

## Utility Electric Rate Inflation: Historical References

National Averages: In 2009, the average retail electricity price for all customers across the United States rose to 9.83 cents per kWh, a small increase over 2008. Over the two year period though, from 2007 to 2009, the average retail price rose 7.7 percent.

See the following Dept of Energy source for more detail on regional and state inflation patterns.

Source: [http://www.eia.doe.gov/coal/electricitywestest\\_sam.html](http://www.eia.doe.gov/coal/electricitywestest_sam.html)

# APPENDIX D

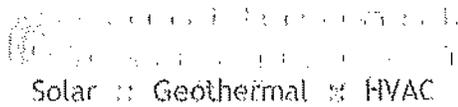


CLEAN ENERGY. BRIGHT FUTURE.

627 WILSON AVE.  
SWANSEA, MA 01977

GEOTHERMAL SYSTEM PROPOSAL

MARC FURTADE  
SOMERSET SCHOOL DISTRICT  
580 WHETSTONE HILL RD.  
SOMERSET, MA 02726  
508.324.9100



327 Wilbur Avenue  
Swansea, MA 02777  
Tel: 508.673.1100  
Fax: 508.678.2542

Somerset School District  
580 Whetstone Hill Rd.  
Somerset, Ma 02726  
Attention: Marc Furtado 508 324 3100 ext.212

August 8, 2013

We are pleased to present a proposal to design and install a geothermal heating and cooling system for your Middle School. The design is based on the load calculation derived from your current natural gas use. The total heat loss on your building will require a 300 Ton heating system to satisfy the load based on an outdoor low temperature of 0 degrees F and an indoor set point of 70 F. The 40 ton geothermal HVAC system will provide 12-15% of the current heating load of this building. The Comfort-Aire Heat pumps specified for this project carries a standard 10 year warranty and SCGL provides a 2 year workmanship guaranty.

**Project Summary:**

We are proposing a Geothermal retrofit to the existing heating and cooling system to condition the space within building. The geothermal exchange system will be a vertical closed loop well system. We believe that this is the best option for this building. The system will include three (4) water to water two stage reversible heat pumps. The geothermal exchange field will consist of sixteen (16) vertical closed loop wells 430' deep. Actual location and setbacks to be determined upon final design. Domestic hot water will be pre heated by a desuperheater and fed into the existing 120 gallon hot water heater.

**The zones will be designated as follows:**

- Zone A. Heat pump #1 & Heat pump #2 will be connected to a 120 gallon buffer tank to provide heating and
- Zone B. Heat pump #3 & Heat pump #4 will be connected to a 120 gallon buffer tank to provide heating and cooling to all of the main building conditioned space.

**Scope of Services:**

**Complete design and installation for a 40 Ton geothermal HVAC system.**

1. Design geothermal system and provide a plan of the system integrated with existing heating system.
2. File for all mechanical permits and inspections required by the town.
3. Installation of all major equipment and controls necessary to integrate the zoned distribution system with the water source heat pump system.
4. Installation of 16 vertical closed loop well field.
5. Install all piping runs inside the building and connect from heat pumps to buffer tanks. Connect Ground source heat exchanger to heat pumps with associated piping and complete flushing & pressure testing of system before startup.
6. Start up and testing of equipment and balance system.

Solar :: Geothermal :: HVAC

527 Wilbur Avenue  
Swansea, MA 01777  
Tel. 508.673.1100  
Fax 508.678.2512

**Equipment Detail:**

**All heat pumps by Comfort-Aire and buffer tanks by Vaughn.**

1. 4 Comfort-Aire 10 ton water to water GSHP
2. 2 Vaughn 120 gallon stone lined water storage tanks
3. 4 Comfort-Aire 60 gpm flow centers
4. All manifolds and piping required for well field.
5. Manifolds, pumps, line sets and H&C controls to connect to existing heating system.

**Cost Detail:**

Total Geothermal Equipment Design & Install Cost  
Includes all duct work, zone controls, piping & wiring: \$ 225,804.00

Estimate for Vertical Closed Loop Wells: \$172,000.00

**Total Geothermal Cost: \$ 397,804.00**

**Federal Tax Credit 10%: \$ (39,780.00)**

**Net Cost: \$ 358,024.00**

Deposit 25% upon acceptance

Prepared By: \_\_\_\_\_

Accepted By: \_\_\_\_\_

Upon acceptance of this proposal a contract will be drawn to the above mentioned specifications. Should any changes in the building construction change before work begins, owner/ contractor is required to notify SCGL so that the heat loss/ gain can be adjusted and resulting changes can be addressed. This proposal is for budgetary purpose and is accurate with a margin of + Or - 10%. After a design is complete for each building an exact cost will be used as the contract price. SCGL will produce the designed Geothermal system after the client executes a contract and SCGL receives the 25% deposit required.

Prices are valid for 30 days from delivery of proposal.

We look forward to doing business with you.





8303 Patterson Ave,  
Suite A

**ATTACHMENT D**

Pamela F. Faggert  
Vice President and Chief Environmental Officer

Dominion Resources Services, Inc.  
5000 Dominion Boulevard, Glen Allen, VA 23060  
Phone: 804-273-3467



November 5, 2013

**BY UNITED STATES MAIL SERVICE**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044-7611

Director, Air Division  
U.S. Environmental Protection Agency,  
Region 5  
77 W. Jackson Blvd. (AE-17J)  
Chicago, IL 60604

Director, Air Enforcement Division  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency  
Mail Code 2242A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Director, Office of Environmental  
Stewardship  
U.S. Environmental Protection Agency,  
Region 1  
Mail Code OES04-5  
5 Post Office Square, Suite 100  
Boston, MA 02190-3912

Re: Mitigation Project Plan Submittal  
*United States v. Dominion Energy, Inc., et al,*  
(civil action no. 13-cv-3806)

To Addressees:

Pursuant to a federal consent decree entitled *United States v. Dominion Energy, Inc., et al*, (entered July 17, 2013) ("Consent Decree"), Dominion Energy, Inc. ("DEI") agreed to fund various Environmental Mitigation Projects as provided in Appendix A to the Consent Decree. Within 120 days of the entry of the Consent Decree, DEI is required to submit project plans to the U.S. Environmental Protection Agency ("USEPA") for its review and approval prior to the projects being implemented. DEI is permitted under the Consent Decree to contribute Project Dollar funds to other entities to carry out projects in lieu of DEI. Consent Decree, § 114. Section XI of Appendix A requires DEI to expend \$1,600,000 in Project Dollars on the Northeast Clean Energy and Clean Diesel Projects.

Section XI.A further required Dominion to consult with both the Town of Fall River and the City of Somerset, Massachusetts, and submit one or more projects pursuant to this section of Appendix A. Dominion consulted with both the Town and City, and only the City submitted a plan for consideration. Over a two-month period from mid-July to mid-September, repeated attempts were made to solicit a project from the Town of Fall River to no avail. Dominion representatives met with Town representatives, including Mayor Will Flanagan, Chief Administrator Shawn Cadime, Corporation Counsel Elizabeth Souza and two others to brief them on the NSR settlement and Fall River's eligibility. Dominion made multiple follow-up

calls with the Corporation Counsel, the Mayor and other to see how they were progressing and if they had any questions. The Town never produced a proposed project, leaving Dominion no recourse other than to proceed solely with the City of Somerset. As a result, Dominion decided to expend the \$1,600,000 in Project Dollars on the City of Somerset project called Somerset Public Schools Energy Recovery System (ERS) and 200 kW Photovoltaic Project (the "Project"). Enclosed with this letter is a Plan to implement the Project, which DEI submits for USEPA's review and approval.

Pursuant to paragraph 112 of the Consent Decree, Dominion certifies that Dominion is not otherwise required by law to perform the Project described in the enclosed Plan, that Dominion is unaware of any other person who is required by law to perform the Project, and that Dominion 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 or energy efficiency portfolio standards.

Sincerely,

A handwritten signature in cursive script that reads "Pamela F. Faggert". The signature is written in dark ink and is positioned above the printed name.

Pamela F. Faggert

Attachment

**CC:**

**Alice G Prior (Services - 6);**  
**Cathy C Taylor (Services - 6);**  
**Mary Jo Sheeley (Services - 6);**  
j.david.rives@dom.com;  
**Kevin R Hennessy (Services - 6)**  
Marc Furtado [furtadom@sbrregional.org]

November 4, 2013

United States v. Dominion Energy, Inc.

**Environmental Mitigation Projects: Somerset Public Schools Energy Recovery System (ERS) and 200 kW Photovoltaic (PV) Project Plans**

Per EPA Consent Decree lodged 7/16/2013, Appendix A, Paragraph XI

**A. Overview**

Pursuant to a federal consent decree entitled *United States v. Dominion Energy, Inc., etc.*, (civil action no. 13-cv-3806) (C.D. Ill. Entered July 17, 2013) ("Consent Decree"), Dominion Energy, Inc. ("DEI") has agreed to fund various Environmental Mitigation Projects as provided in Appendix A to the Consent Decree. Within 120 days of the entry of the Consent Decree, DEI is required to submit Project Plans to the U.S. Environmental Protection Agency ("USEPA") for its approval prior to the projects being implemented. DEI is permitted under the Consent Decree to contribute Project Dollar funds to another entity to carry out a project in lieu of DEI. The requirements for doing so are spelled out in the Consent Decree and Appendix A.

Appendix A, section XI, of the Consent Decree is entitled the Northeast Clean Energy and Clean Diesel Projects and is directed towards the implementation of projects in either or both of the Town of Somerset and the City of Fall River, Massachusetts. Section XI provides for the funding by DEI of \$1,600,000 in Project Dollars for "(a) Energy Efficiency, Geothermal, and/or Solar Photovoltaic ("PV") Projects at one or more public school buildings in either or both municipalities and/or (b) Clean Diesel Projects to retrofit or repower higher-polluting diesel engines in either or both municipalities" as those projects are described in Appendix A, section XI. See Appendix A, section XI.A. DEI may fund one or more projects. DEI did not receive proposals from the City of Fall River, but did receive proposals from the City of Somerset for its public schools.

As set forth in this Project Plan, DEI will provide a total of \$1,600,000 in Project Dollars to the City of Somerset on behalf of the Somerset School District ("School District" or "District"), and the School District will implement the following two projects: the Somerset Energy Recovery System Project and the 200 kW Photovoltaic Project. Attachment A is a letter providing documentation of the City of Somerset's legal authority to accept funding for the Project and the School District's legal authority to implement the Project Plan in lieu of DEI.

The School District hired SouthCoast Greenlight, a third-party contractor located in Swansea, Massachusetts, to develop proposals for the School District projects described below. Those proposals form the basis for the project plans. Upon approval of the project

plans, the School District will contract with SouthCoast Greenlight to implement both projects. SouthCoast Greenlight's relevant accreditations/certificates are found in Attachment B, as required by the Consent Decree, Appendix A, Section X.I.

**B. Somerset Energy Recovery System (ERS) Project Plan**

DEI will provide \$779,011 in Project Dollars to the School District to fund the design and installation of an Energy Recovery System (ERS) at four of the five School District schools as provided in this project plan ("ERS Project Plan"). Once operational the ERS will provide energy efficiencies and savings to the School District by replacing the four schools' direct ventilation systems with heat exchangers that will temper the incoming fresh air by absorbing some of the heat from the exhausted air before it is discharged outside the building. Because the incoming air flow is at ambient conditions and at lower temperatures than the exhausted air flow, the amount of energy needed to heat the incoming air is reduced. This temperature differential allows heat transfer and thus energy transfer, or in this case, recovery.

**1. ERS Project Description**

SouthCoast Greenlight will perform all aspects of the ERS installation for the School District on a turnkey basis, to include:

- Filing for all mechanical permits and inspections required by the town
- Installation of all major equipment and controls necessary to integrate the ERS system with the existing air duct systems
- Installation of ERS system and connecting ductwork and mechanical insulation
- Connecting and terminating all condensate drains from each ERS unit to outside
- Electrical wiring

The ERS will utilize heat exchangers for heating and cooling systems designed by *BPE (Buildings Performance Equipment, Inc.)*. The design is based on the load calculation derived from current ventilation standards for public schools. The *BPE* heat exchangers will replace all direct ventilation in each school building. The ERS will reduce energy costs by 30-40%.

SouthCoast Greenlight will develop a mechanical engineer certified design of the ERS for each building. The ERS system will replace direct ventilation using a heat exchanger to temper the incoming fresh air by absorbing the heat from the exhaust air before it is discharged outside each building. These systems will operate with CO2 sensors located in the exhaust air ducts, and the CO2 levels will be maintained at 800 parts per million (ppm). The energy efficient ventilation systems selected for the Project are as follows:

Somerset Middle School	A 14,000 CFM ERS using 9 <i>BPE</i> XE MIR 2000 units
North Elementary School	A 12,000 CFM ERS using 8 <i>BPE</i> XE MIR 2000 units
Chace Street School	An 8,000 CFM ERS using 5 <i>BPE</i> XE MIR 2000 units

South Elementary School

A 6,000 CFM ERS using 4 BPE XE MIR 2000 units

A complete BPE Energy Analysis for Somerset Middle School, with cost savings and flow profiles, is attached in Attachment C. Total annual energy savings are estimated to be 115,810 kilowatt hours (kW-hrs), equivalent to 2,970,809 million British thermal units (MBTU). Savings for the other schools are not included in this analysis, but extrapolation (kW-hrs/CFM times total CFM) would indicate a total savings of approximately 330,885 kW-hrs per year for all schools.

## 2. ERS Project Budget

The following is a summary-level budget for the expenditures to be made for each of the four Somerset public schools pursuant to the ERS Project:

- Somerset Middle School \$269,595
- North Elementary School \$239,640
- Chace Street School \$149,775
- South Elementary School \$119,821

Total Expenditures: \$779,011

## 3. ERS Project Funding

Upon receiving USEPA's approval of the ERS Project Plan, DEI and the City of Somerset on behalf of the School District will enter into a project funding agreement by which DEI will provide Project Dollars to the City of Somerset and the Somerset School District will implement the USEPA-approved ERS Project Plan. DEI will pay the Project Dollars to the City of Somerset for the use of School District as follows:

- The first payment of \$584,258 will be transferred to the City of Somerset within 30 days after EPA approves the ERS Project Plan.
- The final payment of \$194,753 will be transferred to the City of Somerset within 30 days of a request for payment made by the School District at any time after the Project is 50% complete.

## 4. ERS Project Environmental Benefits

The project for Somerset Middle School is expected to save approximately 3,000,000 million BTUs (British thermal units) annually and include reductions of approximately 1.3 million pounds of carbon dioxide (CO<sub>2</sub>), 3,000 pounds of sulfur dioxide (SO<sub>2</sub>), and 3,000 pounds of oxides of nitrogen (NO<sub>x</sub>) annually.

While the installations and investments at the others schools in the School District would be

smaller, the returns would be relatively equal for each dollar invested. Extrapolating based on energy reductions, the Project has the potential of reducing CO<sub>2</sub> by 3.7 million pounds, and SO<sub>2</sub> and NO<sub>x</sub> by 8,600 pounds, respectively.

See Attachment D, which is BPE Performance Calculator for Reduced Pollution, as applicable to Somerset Middle School only.

#### 5. ERS Project Reporting

The School District will submit periodic reports to DEI within 30 days, and DEI to EPA within 60 days, after the end of each half of the calendar year until completion of the Project. The periodic reports will include "a summary of actions implemented and expenditures made pursuant to implementation of the Environmental Mitigation Projects" as required in the Consent Decree and Appendix A. (CD, para. 122.h; see also App. A, II.F)

The School District will submit a final report to DEI within 30 days, and DEI to EPA within 60 days, of completion of the Project. The Final Reports will document:

- o The date the Project was completed.
- o The results of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved.
- o The Project Dollars incurred in implementing the Project.

The School District may submit the reports for the ERS Project and the PV Project on the same schedule in the same report.

#### 6. ERS Project Timeline

Section X.I.B of Appendix A to the Consent Decree provides that the ERS Project must be completed no later than three years after the Date of Entry of the Consent Decree. Section X.I.B also provides for an extension of the completion date if, despite best efforts, the project cannot be completed within the three year period. Section II.D and Section XI.I of Appendix A of the Consent Decree require that the Plan contain a schedule and timeline for implementing the Project, making payments and submitting reports.

The ERS Project shall be implemented on the following schedule:

July 17, 2013	Consent Decree Entered
Day 0	USEPA Approves Project Plan
Day 15	DEI and District sign funding agreement
Day 15 (est.)	District signs contract with SouthCoast Greenlight
Day 30	DEI makes first payment to District

Day 60 (est.)	Design work completed
January 30, 2014	District submits periodic report to DEI
February 28, 2014	DEI submits periodic report to USEPA
July 30, 2014	District submits periodic report to DEI
August 30, 2014	DEI submits periodic report to USEPA
January 6, 2015 (est.)	DEI makes second and final payment to District
January 30, 2015	District submits periodic report to DEI
February 28, 2015	DEI submits periodic report to USEPA
July 30, 2015	District submits periodic report to DEI
August 30, 2015	DEI submits periodic report to USEPA
January 30, 2016	District submits periodic report to DEI
February 28, 2016	DEI submits periodic report to USEPA
July 30, 2016	District submits periodic report to DEI
August 30, 2016	DEI submits periodic report to USEPA
July 1, 2016 (est.)	Project Completed
July 31, 2016	District submits final report to DEI
August 30, 2016	DEI submits final report to USEPA

If the Project is completed on an earlier schedule, the School District will submit the final report to DEI within 30 days of completing the Project, and DEI will submit the final report to EPA within 60 days of the completion date. All subsequent dates on the schedule above would then become obsolete.

**C. School District 200 kW PV Project Plan**

DEI will provide \$820,989 in Project Dollars to the City of Somerset to fund the School District's installation of a 200 kW DC photovoltaic (PV) array (the "System") on the roof of a Somerset school building as provided in this Project Plan ("PV Project Plan"). As noted above, the Project Plan is based on a proposal prepared by SouthCoast Greenlight.

**1. PV Project Description**

SouthCoast Greenlight will perform all aspects of the PV Project installation for the School District on a turnkey basis, to include all engineering, construction, controls, wiring, and permits. The PV Project specifies Westinghouse panels and appropriately sized Solectria Inverters. See Attachment E for technical specifications of the Westinghouse PV panels and the Solectria Inverters. The panels are guaranteed to generate electricity at 80% of their new rate after 25 years. The Solectria inverters and the Westinghouse panels are guaranteed for 25 years.

The PV Project provides for the installation of solar panels with unobstructed solar access and appropriate mounting equipment that will produce electricity that does not exceed the total annual electricity base load of the school building upon which the PV is mounted. The PV Project provides for a grid-tied Inverter that will be appropriately sized for the capacity

of the solar panels installed at the school. It also provide for wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid.

A System description is provided below:

System Description	
Total System Size:	200.00 kW DC Power (STC)
	180.000 kW (PTC)
	172.800 kW AC Power (CEC Size)
Net Cost per Watt:	\$2.45 / Watt DC Power (STC)
	\$2.72 / watt (PTC)
	\$2.84 / watt AC Power (CEC Size)
Estimated Annual Production	217,755 kWh
<b>Array Information</b>	
Proposed Array Sizes (STC)	200.000 kW DC
Number of PV Panels:	800
PV Panel Description:	Westinghouse Solar Model: WTW-250-1-AC2-D-B 250W DC, Polycrystalline ACPV Module
Inverters:	Qty. 2 Solectria Renewables Model: PVI100kW-208 100kW 208Vac Commercial Grid-Tied Solar PV Inverter
Output due to Shade Factors:	90%
Array Area & Orientation:	Roof Mount: 17,500 sq-ft Tilt: 5°, Azimuth: 180° (S)

The School District will hire SouthCoast Greenlight to install the 200 kW DC PV system on the roof of the North Elementary School (first choice) or the Somerset Middle School (second choice) (See Attachment F for Google views of the school rooftops and buildings). The North Elementary School is the newer of the two, having been built in the mid 1970's. The Middle School was built in the mid 1960's. It is believed that the Elementary School roof is more exposed to the Sun than the Middle School is. Both schools originally had ballasted roofs (gravel on top) and both now have PVC roofs. Ballasted roofs are significantly heavier than PVC roofs. The School District's PVC roof supplier believes that, without the gravel roofs, the PV System can be sustained structurally. The School District will undertake a structural study to confirm that the building can support the PV System.

The PV system would supply approximately 34% of the annual electrical requirements of the designated school. Based on the expected 25 year life of the system, the school would save approximately \$1,600,000 in energy costs. (See Attachment G for more details on the Energy Analysis).

The PV system will be tied to the grid, but installed on the customer side of the meter. All

related environmental benefits will be retained by the School District as the system owner.

To the extent practicable, North American Board of Certified Energy Practitioners (NACEP) certified energy professionals will perform the installation of the PV Project to ensure the highest quality installation and performance of the system.

a. Educational Kiosk

A 50" Flat Screen WiFi enabled TV will be mounted outside the main office of the school and will draw data from a Web-based monitoring system to enable students, teachers, staff and families to monitor various aspects of the System such as the System's total and hourly energy output, environmental benefits delivered (including, but not limited to pounds of CO2 avoided), hourly ambient temperature and cell temperature, irradiance (W/M2), as well as time sensitive voltage, power and other metrics. (See Attachment H for more details on the Web-based monitoring system).

b. Ongoing Maintenance Contract

The District's contract with SouthCoast Greenlight will provide for the ongoing maintenance of and ensure the performance of the PV System, consistent with established industry practice for no less than 25 years for the panels, including annual system checkups for performance and annual solar panel (module) cleaning. In addition, the inverter will have a 25-year warranty. Any costs associated with this contract provision will be paid for out of Project Dollars used to fund the PV Project.

2. PV Project Budget

The expected cost for the installation of the 200 kW DC PV System is \$700,000. An additional \$120,989 will fund Project management, the structural and electrical studies, the educational kiosk and the ongoing maintenance contract. Total Project Dollars will equal \$820,989.

3. PV Project Funding

Upon receiving USEPA's approval of the PV Project Plan, DEI and the City of Somerset will enter into a project funding agreement by which DEI will provide Project Dollar funding to the City of Somerset on behalf of the School District, and the School District will implement the USEPA-approved PV Project Plan. DEI will pay the Program Dollars to the City of Somerset as follows:

- The first payment of \$525,000 will be transferred to the City of Somerset within 30 days after EPA approves the Project Plan.
- The final payment of \$175,000 will be transferred to the City of Somerset

within 30 days of a request for payment made by the District at any time after the Project is 50% complete.

4. PV Project Environmental Benefits

The Project will save approximately 220,000 kWh annually for the School District. Reductions of approximately 3,729 tons of CO<sub>2</sub> over the 25-year life of the System are expected, which is equivalent to 6.8 million medium-sized vehicle miles. See Attachment I for more details on the Environmental Impact Analysis.

5. PV Project Reporting

The School District and DEI will submit reports for the PV Project in the same manner as provided for the ERS Project in section B.5 above. The School District and DEI may submit the reports for the ERS Project and the PV Project on the same schedule in the same report.

6. Somerset PV Project Timeline

Section X.I.B of Appendix A to the Consent Decree provides that the PV Project must be completed no later than three years after the Date of Entry of the Consent Decree. Section X.I.B also provides for an extension of the completion date if, despite best efforts, the Project cannot be completed within the three year period. Section II.D and Section XI.I of Appendix A of the Consent Decree requires that the Plan contain a schedule and timeline for implementing the Project, making payments and submitting reports.

The construction phase of the PV Project is expected to take approximately six months to complete. This estimate does not include the time necessary for the initial structural engineering and for the installing the educational kiosk-related monitoring equipment.

The PV Project shall be implemented on the following schedule:

July 17, 2013	Consent Decree Entered
Day 0	USEPA Approves Project Plan
Day 15	DEI and District sign funding agreement
Day 15 (est.)	District signs contract with SouthCoast Greenlight
Day 30	DEI makes first payment to District
Day 60 (est.)	Design/engineering work completed
January 30, 2014	District submits periodic report to DEI
February 28, 2014	DEI submits periodic report to USEPA
July 30, 2014	District submits periodic report to DEI
August 30, 2014	DEI submits periodic report to USEPA
January 6, 2015 (est.)	DEI makes second and final payment to District
January 30, 2015	District submits periodic report to DEI
February 28, 2015	DEI submits periodic report to USEPA
July 30, 2015	District submits periodic report to DEI

August 30, 2015	DEI submits periodic report to USEPA
January 30, 2016	District submits periodic report to DEI
February 28, 2016	DEI submits periodic report to USEPA
July 1, 2016 (est.)	Project completed
July 31, 2016	District submits final report to DEI
August 30, 2016	DEI submits final report to USEPA

If the Project is completed on an earlier schedule, the District will submit the final report to DEI within 30 days of completing the Project, and DEI will submit the final report to EPA within 60 days of the completion date. All subsequent dates on the schedule above would then become obsolete.

## **Attachment A**

## Somerset Public Schools Somerset-Berkley Regional School District

Marc Furtado, Director of Business and Finance

580 Whetstone Hill Road  
Somerset MA 02726-3700  
Telephone: (508) 324-3100, x-212  
Fax: (508) 324-3104

Ms Alice Prior  
Environmental Projects Advisor  
Dominion Environmental Services  
500 Dominion Blvd 2NW  
Glen Allen, VA 23060

RE: Northeast Clean Energy Projects in Somerset, MA

October 21, 2013

Dear Ms Prior:

Pursuant to Massachusetts General Laws, Chapter 44, Section 53, the Town of Somerset is required to accept funds to administer special projects, such as the Clean Energy Projects specified in Appendix A, paragraph XI sections A-J of the consent decree between the EPA and Dominion Energy, Inc lodged July 17, 2013.

Arrangements will be made with the Town of Somerset for the disbursement of the funds to the school district, consistent with the proposals made to Dominion in our August 20, 2013 submission, upon project approval and award of funding by the US Environmental Protection Agency.

We look forward to working with Dominion Environmental on this important Clean Energy program that will be of great benefit to the students of our district and to the greater Somerset community.

Please contact me directly should you have any questions.

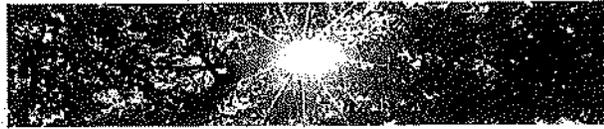
Best Regards,



Marc Furtado  
Director of Business  
Somerset Public Schools

Cc: Patricia A. Haddad, State Representative 5<sup>th</sup> Bristol District  
Robert Camara, Chair, Somerset School Committee  
Richard Medeiros, Superintendent of Schools  
Don Setters, Chair, Somerset Board of Selectmen  
Christopher Godet, Chair, Somerset Audit and Finance Committee  
Joseph Bolton, Somerset Director of Finance

**Attachment B**



I got three estimates, SCGL beat the price of the bigger companies by more than half.

- Mark Laubenstein



Renewable



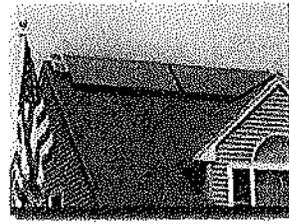
PHOTOVOLTAIC

Clean



GEOTHERMAL

Energy



SOLAR THERMAL

Southcoast Greenlight is a full service renewable energy contracting firm specializing in the design and installation of geothermal and solar energy systems. We serve the commercial and residential markets in New England from Providence Rhode Island to Boston Massachusetts offering cost-effective professionally installed solar and geothermal HVAC systems

**Solar Solutions:**

Our Solar Division specializes in residential and commercial ground mounted arrays and solar carports as well as roof mounted designs. We offer complete construction services including design and engineering. SGE will oversee your project from start to finish. Our solar services include: Site Surveys, system design, EPC contracting, Site work, Steel frame construction for ground arrays and solar carports, system monitoring and power purchase agreements (PPA).

**Geothermal Solutions:**

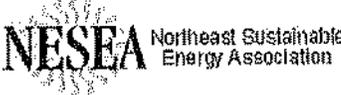
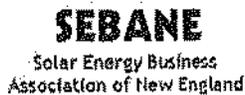
Our Geothermal HVAC division provides unmatched system design and mechanical installation for ground source-heat pump systems. All our work is performed in house from initial design to start up as well as service and maintenance to protect your investment going forward.

**Our geothermal services include:**

System Design, Heat Loss Calculations, Closed Loop design and Install, Standing Column Well Design and Install, Sheet Metal Fabrication and Install, Radiant Heat design and Install.

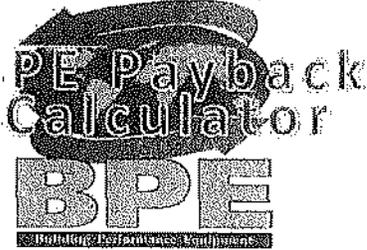
**Contact Us to find out more about what we have to offer!**

Massachusetts geothermal installers offering closed loop installation, HVAC, standing column well installation and radiant heat. Massachusetts solar installers offering solar ground mounted arrays, solar carports design engineering and construction.



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## **Attachment C**



Enter in the requested information below. If you are not sure of a value, See our recommendations in the comment boxes (red arrows).

Thank you for using BPE, Inc.®  
For more specific engineering analysis, please see the BPE Performance Calculator at: [www.LowKWH.com](http://www.LowKWH.com)

SYSTEM GENERAL INFO	
Heating System Type	Gas Fired
Cooling System Type	None
Outdoor Air Flow (OA)	14,000
Percent Outdoor Air (OA/SA, %)	40
Building Type	Commercial (< 5,000 SF)
Nearest Location	Newark, NJ

Number of Units			
2000	1000	500	200
9	0	0	0

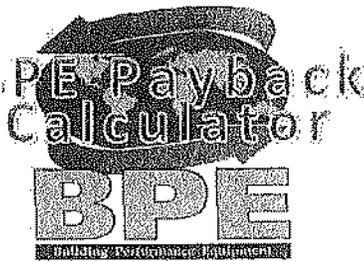
UTILITY INFORMATION	
Electric Rate (\$/kWh)	0.15
Peak Demand Charge (\$/kW)	8.00
Months of Peak Demand Charge	4
Gas Rates (\$/Therm)	1.05

COST ASSUMPTIONS	
Installed Cost per Ton (\$/Ton)	2,500
ERV Installed Cost	\$ 269,595
Maintenance Savings	\$ -
Total Incentives	\$ -

\*Use for New Construction or Major Retrofits

SYSTEM EFFICIENCIES		
Heating Efficiency	80	%
Cooling Efficiency	9.5	kW/Ton
BPE Effectiveness	80	%

CONTROLS AND SET POINTS		
CO <sub>2</sub> Controller	Yes	
Percent Run-time	30	%
Summer (Cooling)	74	°F (db)
Winter (Heating)	70	°F (db)



**20 Years of Savings!**

BPE Energy Recovery Ventilators are guaranteed for 20 years not to become unusable for providing breathable air as a result from rust, rot, or corrosion. This does not apply to other gases other than breathable air. See Limited Lifetime Warranty for more details.

ENERGY ANALYSIS		
BPE Cooling Capacity	23.69	TONS
BPE Heating Capacity	816.48	MBH
Peak Demand Reduction	29.92	KW
Annual Electric Energy Saved	395,262	MBTU
Annual Thermal Energy Saved	2,575,647	MBTU
<b>TOTAL Savings</b>	<b>2,970,909</b>	<b>MBTU</b>

OPERATING COST ANALYSIS	
Maintenance Savings	\$ -
Cooling Cost Savings	\$ (604)
Peak Demand Cost Savings	\$ (957)
Heating Cost Savings (Gas or HP)	\$ (27,043)
Electrical Cost Savings (ER+Fans)	\$ (26,426)
Electric Resistive Savings	(9,658)
Reduced Supply + Exhaust Fan Savings	(19,515)
BPE Parasitic Fan Cost	2,747
<b>TOTAL Savings</b>	<b>\$ (65,031)</b>

CAPITAL EXPENSE ANALYSIS	
HVAC Initial Cost Avoidance	\$ (59,220)
Added Cost of ERV	\$ 269,595
Total Incentives/Funding	\$ -
Net Capital Expenditure	\$ 210,375
<b>Simple Payback (Years)</b>	<b>3.82</b>
<b>Internal Rate of Return (IRR)</b>	<b>20%</b>
<b>Net Present Value (20 Yr Life Cycle)</b>	<b>\$1,235,111.42</b>
<b>Emission Reduction (Cars/yr)</b>	<b>113.41</b>

200°	500	1000	2000
0	0	0	0

Products:

Ex Eff	60%
Evaporative Eff	Not Used
Winter SP T3	70
Summer SP T3	74

Equipment Operation and Efficiencies

Del. Heat Eff	Gas	2.5	RWH Eff/Thm	18,000	Supply CFM	35,000	Exhaust CFM	14,000
Del. Cool Eff	Gas	0.15	RWH Eff/Ton	18,000	Supply CFM	35,000	Exhaust CFM	14,000
	Gas	1.25	RWH Eff/Ton	18,000	Supply CFM	35,000	Exhaust CFM	14,000
	Gas	0.15	RWH	18,000	Supply CFM	35,000	Exhaust CFM	14,000
	Gas	8.00	SRWH	18,000	Supply CFM	35,000	Exhaust CFM	14,000
	Gas	8.00	SRWH	18,000	Supply CFM	35,000	Exhaust CFM	14,000



System Air Flow Profile

Time of Year	Min. Pts	DB (F)	Total	OA Temp DB (F)	OA Supply Temp DB (F)	Space Temp DB (F)	Exhaust Temp DB (F)	Recovered BTU/H	Annual Saved BTUs			
Summer Cooling	317.5	115 to 120	0	103.8	74	74	103.8	0	0			
	102.5	110 to 115	0	112.5	74	74	104.8	0	0			
	107.5	105 to 110	0	107.5	74	74	100.8	0	0			
	102.5	100 to 105	6	102.5	74	74	98.8	0	0			
	97.5	95 to 100	5	97.5	74	74	92.8	284,296	2,421,920			
	92.5	90 to 95	48	92.5	74	74	88.8	223,776	1,189,000			
	87.5	85 to 90	122	87.5	74	74	84.8	152,288	24,922,840			
	82.5	80 to 85	500	82.5	74	74	80.8	102,816	64,260,000			
	77.5	75 to 80	820	77.5	74	74	76.8	42,336	32,810,400			
	72.5	70 to 75	847	72.5	74	74	72.8	(18,144)	0			
Free Cooling	67.5	65 to 70	571	67.5	74	74	71.4	(76,624)	0			
	62.5	60 to 65	927	62.5	74	74	64.8	(138,104)	0			
	57.5	55 to 60	800	57.5	74	74	60.8	(189,584)	0			
	52.5	50 to 55	730	52.5	70	70	56.8	(271,600)	0			
	47.5	45 to 50	634	47.5	70	70	52.8	(272,160)	0			
	42.5	40 to 45	513	42.5	70	70	48.8	(332,640)	213,825,400			
	37.5	35 to 40	1023	37.5	70	70	44.8	(502,702,400)	0			
	32.5	30 to 35	734	32.5	70	70	40.8	(453,600)	416,178,000			
	27.5	25 to 30	391	27.5	70	70	36.8	(574,580)	251,258,000			
	22.5	20 to 25	195	22.5	70	70	32.8	(574,580)	140,449,000			
Winter Heating	17.5	15 to 20	125	17.5	70	70	28.8	(595,040)	139,245,000			
	12.5	10 to 15	47	12.5	70	70	24.8	(685,520)	40,891,000			
	7.5	5 to 10	34	7.5	70	70	20.8	(735,000)	132,130,000			
	2.5	0 to 5	1	2.5	70	70	16.8	(675,480)	1,320,000			
	-2.5	-5 to 0	0	-2.5	70	70	12.8	-	-			
	-7.5	-10 to -5	0	-7.5	70	70	8.8	-	-			
	All Operating Hours =		1,579	Fan Power Cost =		2,746.38	Total Cooling Saved (STU) =		18,312	Fan HP/1,000 cfm =		1.2
	ERV Operating Hours =		8,750	Total Peak Demand kW heaved =		283,360	Peak Energy Savings (\$ for kW) =		29,52	Total System Cfm =		14,000
	% Cooling =		28%	Total Cooling Power Saved (kW) =		4,923.51	Cooling Savings =		633.53	Cfm Reduction =		N/A
	% Heating =		25%	Total Heating Saved (Thms or kW) =		1,661.02	Total Heating Saved (Thms or kW) =		28,755	Bigger HVAC Fan (HP) =		13.50
Peak Tonnage Reduction =		368,262.28	Total Microelectric Savings =		26,425.40	Total Microelectric Savings =		26,425.40	Smaller HVAC Fan (HP) =		9.45	
Total System Cfm =		35,000	Maintenance Savings =		-	Net Savings =		85,032.88	Cost of Project =		3,422	
Cfm Reduction =		11,660	Simple Payback (Yrs) =		-	Total Energy		2,979,309.29	BTUs		-	
Bigger HVAC Fan (HP) =		38.50			-			-			-	
Smaller HVAC Fan (HP) =		10.97			-			-			-	
kW Savings =		125,554			-			-			-	
Smaller HVAC Fan Savings =		18,890.18			-			-			-	

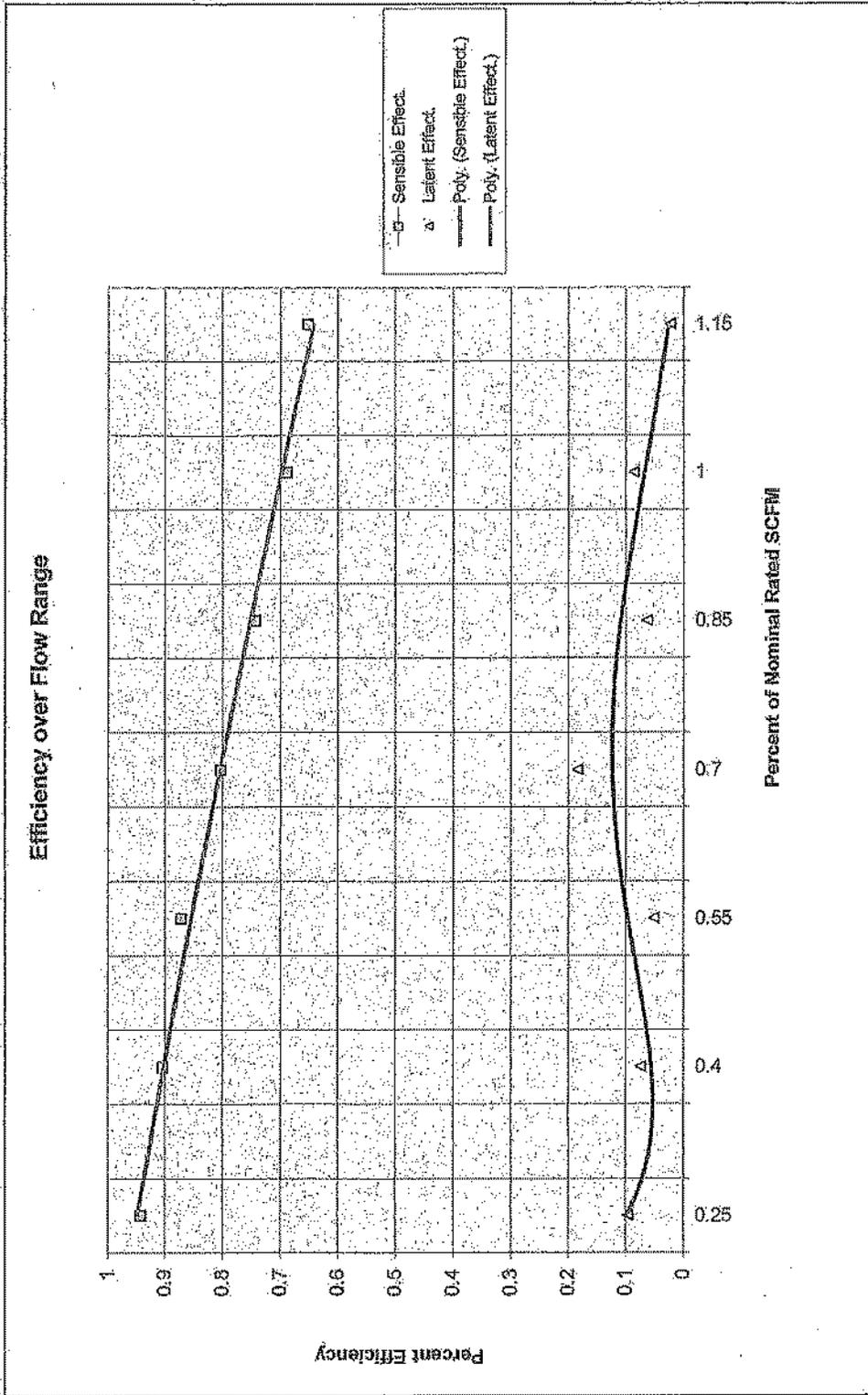
Operational Hours

Electric	115,910.81	kWh	368,262.28	MBtus
Heating (GJ)	25,755	Thms or kWh	2,979,309.29	MBtus
Total Energy				

Notes: Actual savings will depend on operating conditions and application

Profile of Energy Savings

Time of Year	Min. Pts	DB (F)	Total	OA Temp DB (F)	OA Supply Temp DB (F)	Space Temp DB (F)	Exhaust Temp DB (F)	Recovered BTU/H	Annual Saved BTUs			
Summer Cooling	317.5	115 to 120	0	103.8	74	74	103.8	0	0			
	102.5	110 to 115	0	112.5	74	74	104.8	0	0			
	107.5	105 to 110	0	107.5	74	74	100.8	0	0			
	102.5	100 to 105	6	102.5	74	74	98.8	0	0			
	97.5	95 to 100	5	97.5	74	74	92.8	284,296	2,421,920			
	92.5	90 to 95	48	92.5	74	74	88.8	223,776	1,189,000			
	87.5	85 to 90	122	87.5	74	74	84.8	152,288	24,922,840			
	82.5	80 to 85	500	82.5	74	74	80.8	102,816	64,260,000			
	77.5	75 to 80	820	77.5	74	74	76.8	42,336	32,810,400			
	72.5	70 to 75	847	72.5	74	74	72.8	(18,144)	0			
Free Cooling	67.5	65 to 70	571	67.5	74	74	71.4	(76,624)	0			
	62.5	60 to 65	927	62.5	74	74	64.8	(138,104)	0			
	57.5	55 to 60	800	57.5	74	74	60.8	(189,584)	0			
	52.5	50 to 55	730	52.5	70	70	56.8	(271,600)	0			
	47.5	45 to 50	634	47.5	70	70	52.8	(272,160)	0			
	42.5	40 to 45	513	42.5	70	70	48.8	(332,640)	213,825,400			
	37.5	35 to 40	1023	37.5	70	70	44.8	(502,702,400)	0			
	32.5	30 to 35	734	32.5	70	70	40.8	(453,600)	416,178,000			
	27.5	25 to 30	391	27.5	70	70	36.8	(574,580)	251,258,000			
	22.5	20 to 25	195	22.5	70	70	32.8	(574,580)	140,449,000			
Winter Heating	17.5	15 to 20	125	17.5	70	70	28.8	(595,040)	139,245,000			
	12.5	10 to 15	47	12.5	70	70	24.8	(685,520)	40,891,000			
	7.5	5 to 10	34	7.5	70	70	20.8	(735,000)	132,130,000			
	2.5	0 to 5	1	2.5	70	70	16.8	(675,480)	1,320,000			
	-2.5	-5 to 0	0	-2.5	70	70	12.8	-	-			
	-7.5	-10 to -5	0	-7.5	70	70	8.8	-	-			
	All Operating Hours =		1,579	Fan Power Cost =		2,746.38	Total Cooling Saved (STU) =		18,312	Fan HP/1,000 cfm =		1.2
	ERV Operating Hours =		8,750	Total Peak Demand kW heaved =		283,360	Peak Energy Savings (\$ for kW) =		29,52	Total System Cfm =		14,000
	% Cooling =		28%	Total Cooling Power Saved (kW) =		4,923.51	Cooling Savings =		633.53	Cfm Reduction =		N/A
	% Heating =		25%	Total Heating Saved (Thms or kW) =		1,661.02	Total Heating Saved (Thms or kW) =		28,755	Bigger HVAC Fan (HP) =		13.50
Peak Tonnage Reduction =		368,262.28	Total Microelectric Savings =		26,425.40	Total Microelectric Savings =		26,425.40	Smaller HVAC Fan (HP) =		9.45	
Total System Cfm =		35,000			-			-			-	
Cfm Reduction =		11,660			-			-			-	
Bigger HVAC Fan (HP) =		38.50			-			-			-	
Smaller HVAC Fan (HP) =		10.97			-			-			-	
kW Savings =		125,554			-			-			-	
Smaller HVAC Fan Savings =		18,890.18			-			-			-	



**Attachment D**

**BPE Performance Calculator for Reduced Pollution**

Total ERV CFM =  CFM

Operating Efficiency =  Thermal Eff.

A/C Efficiency =  kWh/Ton

Heating Efficiency =  Thermal Eff.

**BPE Pollution Reduction Per Year of Operation**

Energy	Savings per Year	Cost in \$ 2010 \$
Electric (kWh)	115,810.81	\$18,240.20
Gas Savings (Therms)	25,755.47	\$28,395.41
Totals Savings (BTU)	2,970,709,873	\$46,635.61

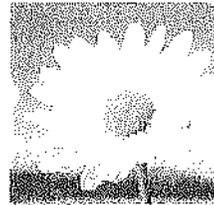
CO2 Reduced	SO2 Reduced	NOx Reduced	Cars* Removed
64,043.38	191.74	158.45	5.59
1,234,503.43	2,525.68	3,054.32	107.82
1,298,546.81	2,717.42	3,212.77	
Total Pollution Reduction in Cars Removed from the Road =			113.41

\* Equivalent number of passenger cars taken off the road in one year, based on estimated average 12,500 miles traveled per year, releasing an estimated 11,450 pounds of CO2 per year.

Referencing EPA Office for Transportation and Air Quality at [www.epa.gov/otaq/consumer/f00013.htm](http://www.epa.gov/otaq/consumer/f00013.htm)

Note: All default values can be changed to represent accurately actual equipment efficiencies.

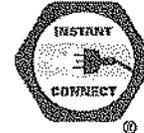
**Attachment E**



Sun for everyone

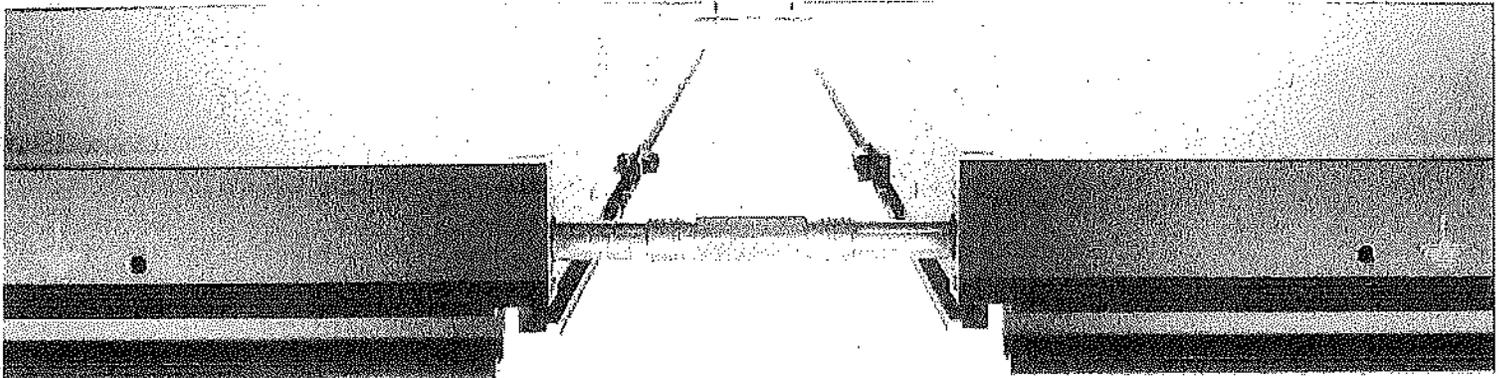


# INSTANT CONNECT<sup>®</sup> AC 245/250



For more than a century, Westinghouse has stood for reliability and innovation—developing products that deliver safe and efficient electricity, and bringing comfort and convenience to the lives of millions. Today, that tradition continues with Westinghouse Solar's Instant Connect systems, which are safer, more powerful, and more reliable than ordinary solar power systems, while backed by the proven quality of the Westinghouse name.

*Instant Connect Technology – The World's First Fully Integrated Plug-and-Play Solar Power System*



**Incredibly Simple.** Patented design eliminates need for separate rack systems and automates panel-to-panel grounding and electrical connections. With 80% fewer parts and 50% less labor, the system is easy to design and fast to install.

**5-25% more energy collection than ordinary solar panels.** Advanced panel technology efficiently captures and converts more of the sun's energy into usable power.

**Reliable performance.** Integrated micro-inverter, wiring and grounding systems eliminate the hazards of exposed wiring and corrosive environmental effects, providing decades of optimal performance.

**Ruggedized construction.** Instant Connect systems are engineered to exceed wind and snow load requirements established by local building codes, enabling installations in more regions than any other rooftop solar power system.

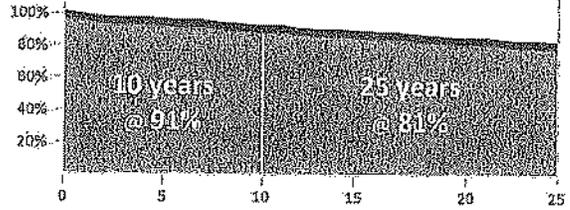
**Monitor your system anywhere in the world.** Web-based monitoring system delivers real-time energy production and savings analysis directly to your browser or smart-phone.

**Integrated Mounting Systems.** Westinghouse Solar Instant Connect panels seamlessly integrate with our sloped and flat roof mounting systems, minimizing part count and maximizing reliability.



The Westinghouse Solar Power Warranty  
 PANELS 25-YEARS | INVERTERS 25-YEARS

You have our word. Every Solar Power System is backed by the proven reliability of the Westinghouse name — for more than a century a guarantee of quality. Panel warranty provides 25 year power output warranty — 10 yrs @ 91% & 25 yrs @ 81%.



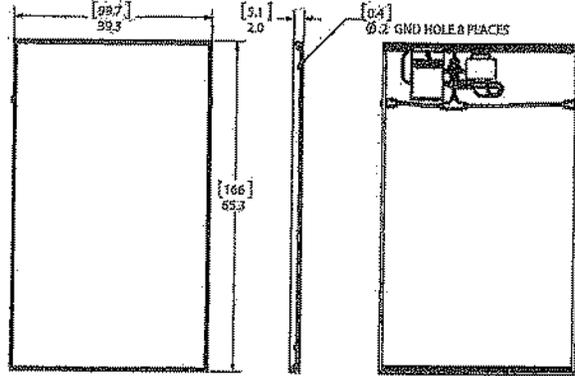
**AC Module Technical Specifications**

**WTW-245-1-AC2-D-B / WTW-250-1-AC2-D-B**

	AC Output @ 208 Vac	AC Output @ 240 Vac
Maximum AC Power Output	216W	216W
Nominal output current	1.0A	0.9A
Nominal voltage/range	208V/183V-220V	240V/211V-264V
Nominal frequency/range	60.0/59.3-60.6 Hz	60.0/59.3-60.6 Hz
Extended frequency/range	60.0/59.2-60.6 Hz	60.0/59.2-60.6 Hz
Power factor	>0.95	>0.95
Maximum units per 20A branch	15 (three phase)	17 (single phase)
Maximum output fault current	1.05 Arms, over 3 cycles; 25,2 A peak, 1.74ms duration	
CEC weighted efficiency	96.0%	96.0%
Peak inverter efficiency	96.3%	95.3%
Night time power consumption	46mW	46mW
Operating temperature range	-40°C to +85°C	-40°C to +85°C
Cooling	Natural Convection - No Fans	
Enclosure environment rating	Outdoor - NEMA 9 (injection molded only)	
Communication	Powerline	
Compliance	UL1741/IEEE1547, FCC Part 15 Class B, CAN/CSA-C22.2 NO. 0-M91, 0-4-04, and 107.1-01	

**Mechanical Specifications - Module**

Length x Width: 65.3 x 39.3 inches / 166 x 99.7 cm  
 Thickness: 2.0 inches / 5.1 cm  
 Weight: 51.6lbs / 23.4kg

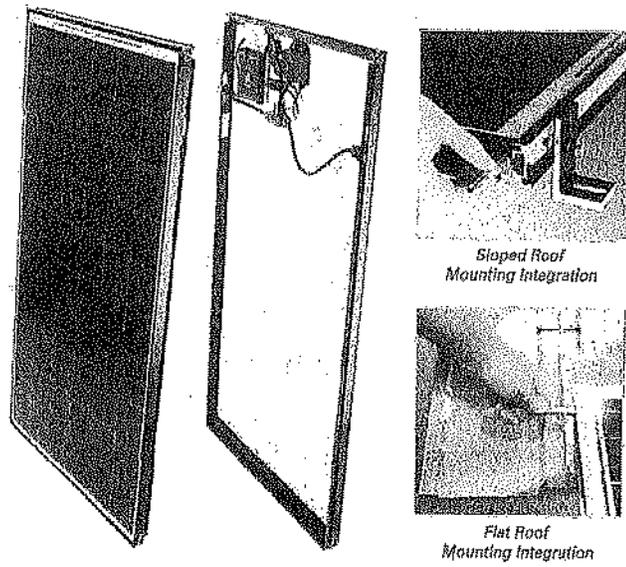


**Electrical Characteristics at Standard Test Conditions**

	245W	250W
Peak DC Power <sup>1</sup> P <sub>max</sub>	245W	250W
Output Tolerance	+5%	+5%
Cell Technology	60 Cell Poly-Si, 156 x 156mm (6.14 inch)	
White back sheet for high efficiency		

**Mechanical Specifications - System**

	Westinghouse Solar	Ordinary Solar
Roofing Hardware	Integrated	External
Module-to-Module Grounding	Integrated	External
Module-to-Module Wiring	Integrated	Separate Trunk Cable
Module-to-Module Connection	Integrated (Threaded)	External (Friction Clip)
Space Between Modules	1/8"	Up to 3"
Roof Penetrations	26% Fewer	Standard
Installation Materials		



Certified wind and snow load tested to 5400Pa

Protected by U.S. patents (7,406,800; 7,832,157 and 7,866,098).  
 Other patents pending.

Certified by Conforms to UL 1741 and 1703



1475 South Bascom Ave. Suite 101 Campbell, CA 95008  
 www.westinghousesolar.com | t: 888.395.2248

**SOLECTRIA  
RENEWABLES**

COMMERCIAL INVERTERS

- PVI 50KW
- PVI 60KW
- PVI 75KW
- PVI 85KW
- PVI 100KW

**FEATURES**

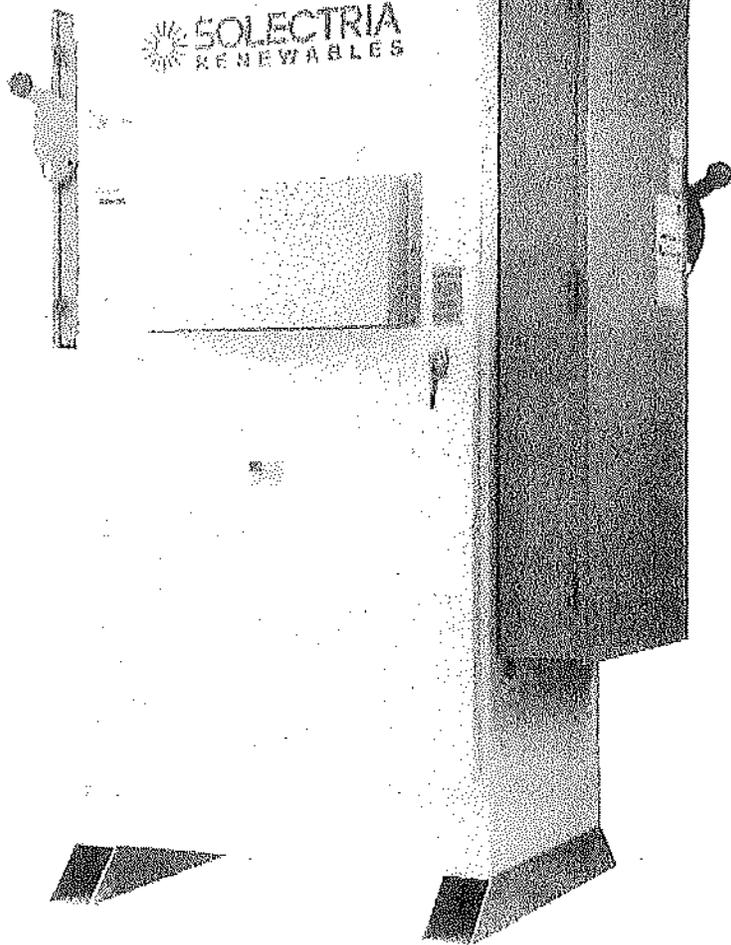
- Multiple panel and/or string inputs
- AC output: 208VAC, 240VAC, 480VAC, 600VAC
- Integrated AC and DC disconnects
- Non-fused and breaker options
- 480VAC, 600VAC and 240VAC, 480VAC
- Multiple communication options
- User-selective AC

**OPTIONS**

- Premium efficiency models
- Forward facing disconnects
- Integrated fused or breaker subcombiners
- Stainless steel enclosure
- Web-based and sub-array monitoring
- Built-in cellular connectivity
- Dust filter

**OPTIONS FOR UTILITIES**

- Real power calculation
- Real-time metering
- Voltage ride-through
- Standby power



COMMERCIAL INVERTERS

The most customizable full-line of commercial grid-tied PV Inverters available today, the PVI 50-100KW series has been utilized in projects ranging from 30kW to multi-megawatt solar farms. This series of inverters is capable of operating at 208 VAC, 240 VAC, 480 VAC, and 600 VAC and comes standard with AC and DC disconnects, transformer isolation, LCD display, and monitoring gateway. Options include premium efficient models, integrated fused or breaker subcombiners, forward facing disconnects, stainless steel enclosure, web-based and sub-array monitoring, built-in cellular connectivity, and a dust filter. AC voltage and frequency settings may be customized according to utility specifications.



For more information

SPECIFICATIONS	PVI 50KW	PVI 60KW	PVI 75KW PVI 75(KW-PE)	PVI 85KW PVI 85KW-PE	PVI 100KW PVI 100KW-PE
<b>General</b>					
Absolute Maximum Input Voltage	600 VDC				
MPPT Input Voltage Range	500-500 VDC				
Maximum Operating Input Current	176 A	211 A	264 A	299 A	351 A
<b>Performance</b>					
Nominal Output Voltage	208, 240, 480 or 600 VAC, 3-Ph (3 wire standard, 4 wire option)				
AC Voltage Range (Standard)	-12%/+10%				
Continuous Output Power	50 kW	60 kW	75 kW	85 kW	100 kW
	208 VAC	139 A	167 A	236 A	278 A
	240 VAC	120 A	144 A	205 A	240 A
	480 VAC	60 A	72 A	90 A	120 A
	600 VAC	48 A	58 A	72 A	96 A
Continuous Output Current					
Maximum Backfeed Current	0 A				
Nominal Output Frequency	60 Hz				
Output Frequency Range	59.3-60.5 Hz				
Power Factor	1.0				
Total Harmonic Distortion (THD)	3%				
<b>Efficiency</b>					
Peak Efficiency	208 or 240 VAC	96.7%	97.3%	96.6%	96.5%
	208 VAC Premium (PE)	--	97.8%	--	97.0%
	480 or 600 VAC	96.5%	97.2%	--	96.9%
	480 VAC Premium (PE)	--	97.8%	--	97.5%
CEC Efficiency	208 or 240 VAC	96.0%	97.0%	--	96.0%
	208 VAC Premium (PE)	--	97.5%	--	96.5%
	480 VAC	96.0%	97.0%	--	96.5%
	480 VAC Premium (PE)	--	97.5%	--	97.0%
Tare Loss	3 W				
<b>Installation Options</b>					
Fuses or Breakers	2-8 positions, 40-300 A				
<b>Operating Conditions</b>					
Ambient Temperature Range (full power)	-40°F to +131°F (-40°C to +55°C)				
Storage Temperature Range	-40°F to +131°F (-40°C to +55°C)				
Relative Humidity (non-condensing)	0-95%				
<b>Monitoring &amp; Control</b>					
Web-based Monitoring (Inverter Direct)	SolrenView				
Revenue Grade Monitoring	External				
Sub-Array Monitoring (SolZone)	2-8 zones				
Cellular Communication	SolrenView AIR				
Third Party Compatibility	Standard via Modbus				
<b>Safety Listings &amp; Certifications</b>					
Safety Listings & Certifications	UL 1741/IEEE 1547, IEEE 1547.1, CSA C22.2#107.1, FCC part 15 B				
Certification Agency	ETL				
<b>Warranty</b>					
Standard	5 year				
Optional	10, 15, 20 year; extended service agreement; uptime guarantee				
<b>Physical</b>					
Transformer	Standard, fully-integrated (internal)				
AC/DC Disconnects	Standard, fully-integrated				
Dimensions - Side Facing Disconnects (H x W x D)	78.2 in. x 50-53 in. x 33 in. (1986 mm x 1270-1346 mm x 838 mm)*				
Dimensions - Forward Facing Disconnects (H x W x D)	78.2 in. x 79-88 in. x 33 in. (1986 mm x 2007-2235 mm x 838 mm)*				
Weight	1450 lbs (659 kg)	1875 lbs (852 kg)	2070 lbs (941 kg)		
Enclosure Rating	NEMA 3R				
Enclosure Finish	Polyester powder coated steel; Optional 316 stainless steel				

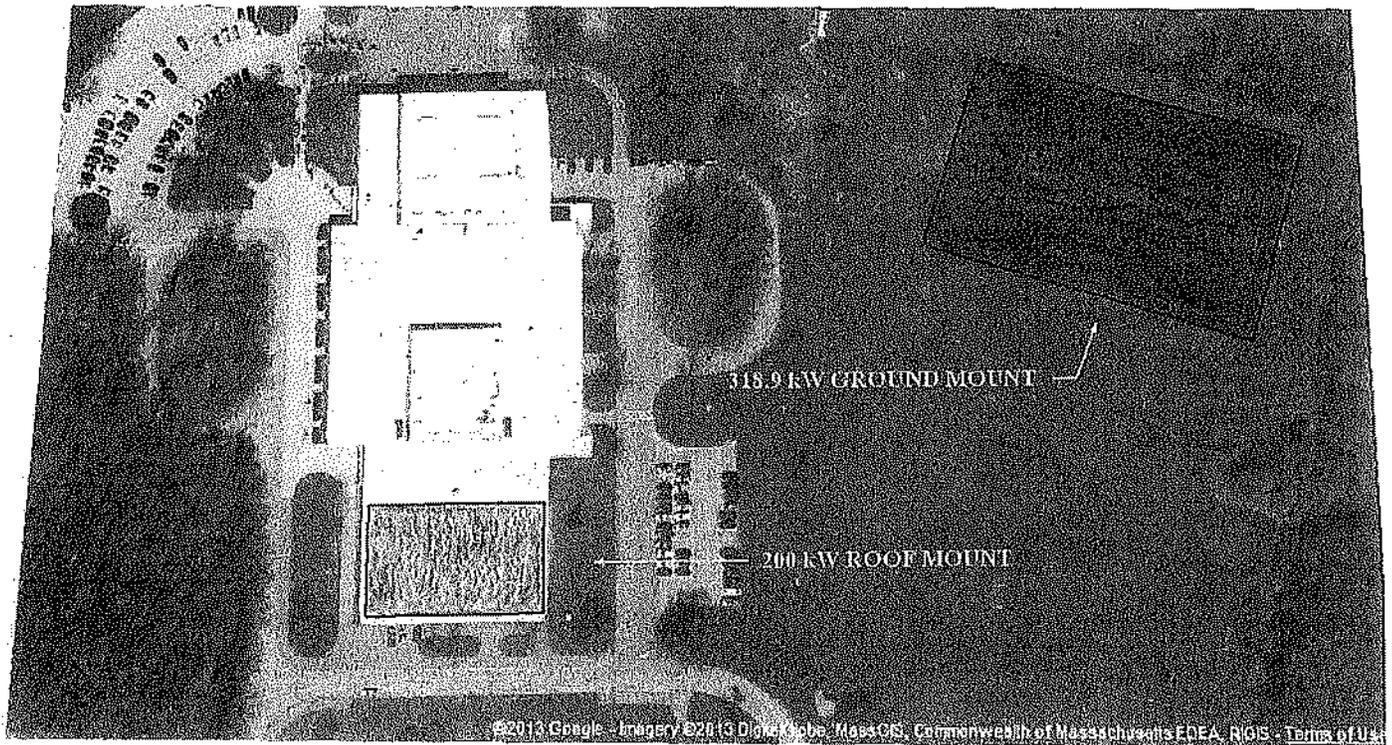
\*Width dependent upon rating of disconnect chosen.

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## Attachment F

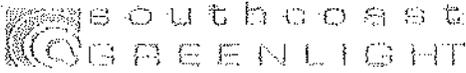
NORTH ELEMENTARY SCHOOL



MIDDLE SCHOOL



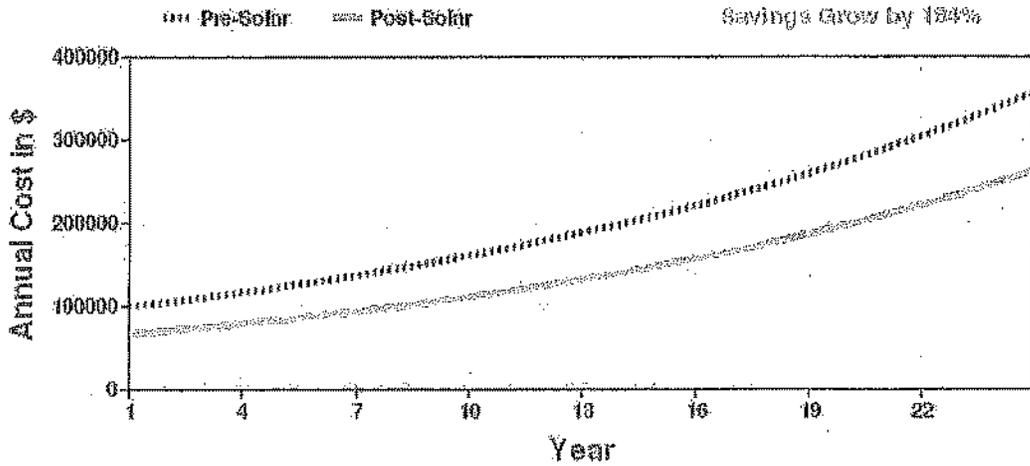
## **Attachment G**



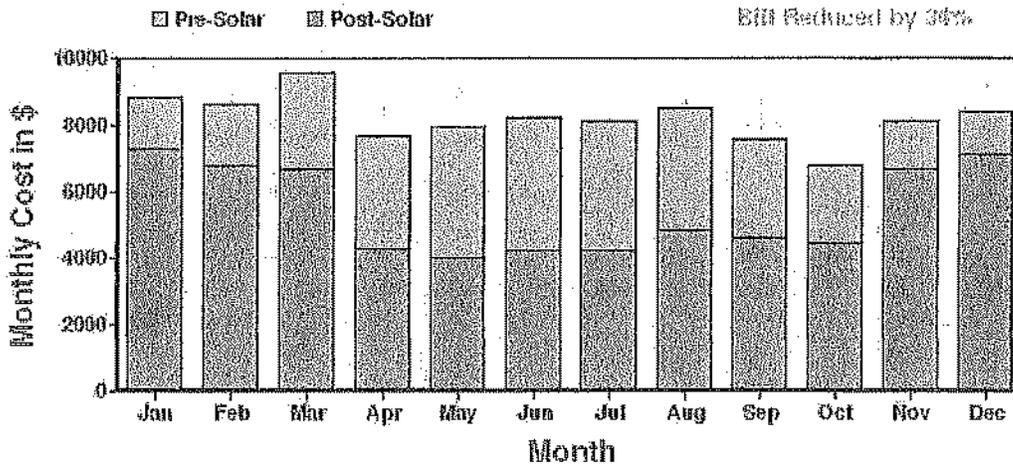
## Energy Analysis

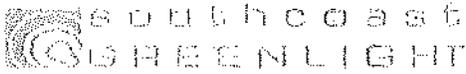
Your historical energy usage was used to help size your solar system. Based upon the system size suggested, the expected electricity bill savings over a 25 year period are provided. In addition, the first-year electricity bill savings you can expect are provided together with a chart of the monthly solar system output (PV production) you can expect.

### Annual Electricity Bill Savings Over Time



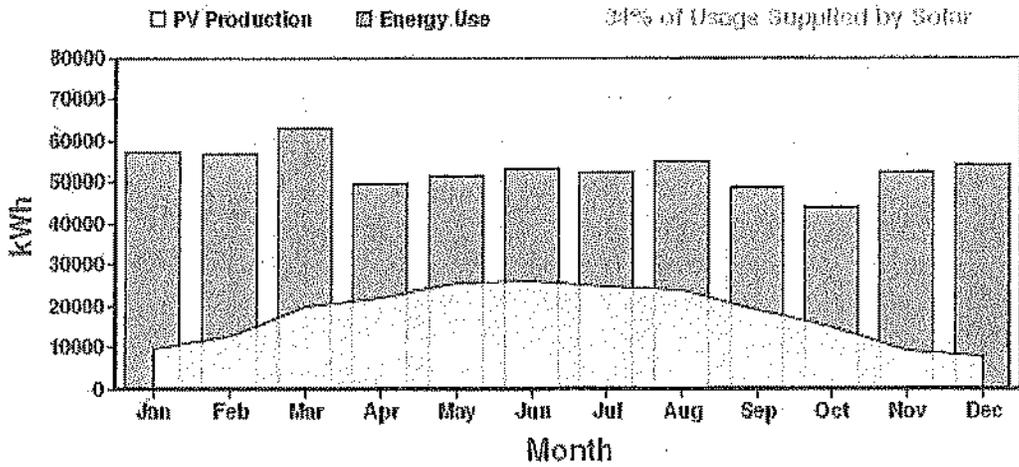
### Monthly Electricity Bill Savings





Proposal prepared for Marc Furtado

### Monthly Electricity Use and Amount Supplied by Solar



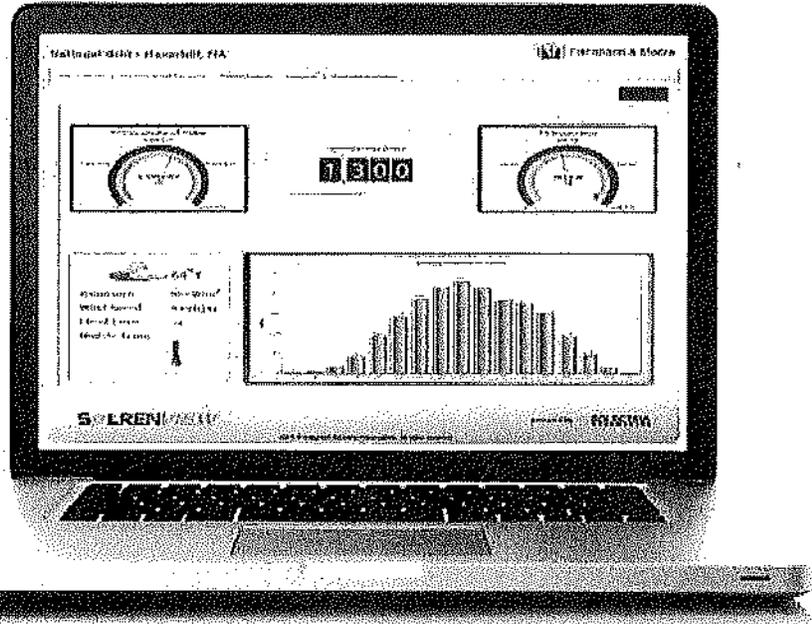
Assumptions: Post-Solar Electric Rate Schedule for National Grid is Regular Residential (Fixed) (Rate Code: R-1) Annual utility inflation: 5.50% (assumed). Energy Bill Savings are actual, without any tax effects applied.

## Attachment H



WEB-BASED MONITORING

# SOLRENVIEW



## FEATURES

- Inverter direct & revenue grade monitoring
- Performance charting
- Real-time status notifications
- Detailed system data
- Reliable, safe & secure data storage

## OPTIONS

- Sub-array monitoring (SolZone)
- Weather station
- Kiosk View (Flash View)
- Automated agency reporting
- Sun Spec alliance compatible

## WEB-BASED MONITORING

Solectria Renewables' SolrenView web-based monitoring solution is available for use with residential, commercial or SMARTGRID Inverters, allowing for real-time, seamless recording and reporting of PV system production. The SolrenView gateway hardware provides data via Ethernet (standard) or cellular modem. The required hardware comes standard and fully-integrated within all commercial and SMARTGRID Inverters. A stand alone version is available for residential use with LCD or LITE gateway systems. The complete SolrenView system features Inverter direct monitoring, revenue grade monitoring, agency reporting, SolZone sub-array current monitoring, a Kiosk View (flash view) and a weather station.



Built for the real world

## SolrenView™ Inverter Direct

### STANDARD DATA MONITORING PACKAGE

SolrenView™ Inverter Direct monitoring allows customers to see detailed operational inverter data (DC and AC) using a web browser. This standard package allows customers to view daily, weekly, monthly, and annual graphs up to 5 years in the past viewing single events or long-term performance trends. The package includes e-mail and cell phone alerts with detailed descriptions of system issues and a recommended course of action. This service is only available for the industry-leading Sollectria PVI and SGI-series inverters.

## SolrenView™ Revenue Grade Energy Production Meter

### OPTIONAL MONITORING PACKAGE

SolrenView™ Revenue Grade Energy Production monitoring package option keeps an accurate count of every kWh produced by a customer's PV system. The energy produced is automatically reported to a solar program agency for conformance. This package option also includes e-mail alarms with detailed descriptions of system problems and a recommended course of action. This package option is available for systems any Sollectria inverter model 1.8 kW to 2 MW.

## SolrenView™ Agency Reporting

### OPTION

The SolrenView™ Agency Reporting is an ideal option for customers that require Revenue Grade reporting to be sent to an agency such as Mass CEC, SCE, CCSE, NEPOOL and PGE. A report is generated from SolrenView™ Revenue Grade outputs and sent directly to the agency of choice. Sollectria Renewables' staff works directly with agencies to activate and maintain solar rebates.

## SolrenView™ Kiosk View (Flash View)

### OPTION

The Kiosk View (Flash View) option provides customers with a clean, simple view and quick, easy access to a customer's PV system performance. This is a great tool for advertising and public viewing. This option only requires a standard Internet browser with javascript. It can be used to provide an automated view of PV performance on all size displays.

## SolrenView™ SolZone™ DC Current Sub-Array Monitoring

### OPTION

While SolrenView™ provides to the customer the ability to view the total system performance, SolZone™ provides an extra level of granularity to see multiple sub-array DC currents. SolZone™ has the ability to compare individual PV zones against each other based on the number of sub-array fuses or 'zones' built into a Sollectria factory-installed DC sub-combiner. Each sub-array zone may be monitored and compared against each other. SolZone™ is also compatible with many third party monitoring systems.

## SolrenView™ Weather Station

### OPTION

The real-time weather package allows customers to view accurate readings for crucial environmental information that affect the performance of your PV system. The weather station comes standard with a solar irradiance sensor as well as temperature sensors for ambient and module measurements. Wind speed and wind direction sensors are options that may be added to the weather station. This is a great educational tool and a must for PPAs.

### Viewable Measurements:

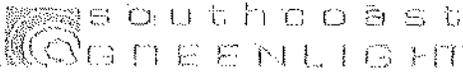
- Solar Irradiance
- Ambient Temperature
- Module Temperature
- Wind Speed and Direction (optional)

## SolrenView™ AIR

### OPTION

SolrenView™ AIR is factory integrated for any inverter 50 kW and greater (PVI 50-100kW & SGI 225-500). It permits customers to take advantage of SolrenView™ web-based monitoring features when standard Internet access is not available. This option allows the SolrenView™ gateway to provide data to the SolrenView server via a fully integrated 3G access point.

## Attachment I



Proposal prepared for Marc Furtado

## Environmental Impact Analysis

Your solar system will generate significant environmental benefits. These come primarily from avoided power plant emissions. Below is a summary of environmental benefits your solar system will provide.

### Your New, Lower Carbon Footprint

Your solar system will reduce Green House Gas emissions by **3,729 tons of CO2**  
(Over 25 years)

#### Equivalent CO2 Reductions

Small Car:	12,641,017 miles
Medium Car:	6,780,182 miles
SUV:	4,750,446 miles
Air Miles:	7,668,866 miles
Trees Planted:	149,164 trees planted
CO2 from Trash & Waste:	6,780 persons

**ATTACHMENT E**

**Alice G Prior (Services - 6)**

---

**From:** Marc Furtado [furtadom@sbrregional.org]  
**Sent:** Tuesday, October 08, 2013 2:28 PM  
**To:** Alice G Prior (Services - 6)  
**Subject:** Re: Draft Somerset Plan for review and need info  
**Attachments:** Somerset draft plan.docx

Alice

I have supplied the requested information in the draft plan (see attached). Please let me know if the material is sufficient or if you need further information/clarification. The projects will all need to be bid out, the data used in the plan was for budget purposes only and I cannot assure that the suppliers identified will be awarded the contract, but can assure that the systems profiled will be what is specified.

Please let me know if there is anything else....my personal cell phone number is 401 474-5552 and is a sure way of reaching me.

On Wed, Sep 25, 2013 at 9:47 AM, Alice G Prior (Services - 6) <[alice.g.prior@dom.com](mailto:alice.g.prior@dom.com)> wrote:

Marc and internal Dominion folks,

I have a rough draft of a plan for Somerset School District to review. I still need you, Marc, to fill out the details about an educational kiosk for the solar project, as well as describe how you are going to establish an escrow account for annual maintenance as described in highlighted yellow.

Please let me know if you have any corrections, comments, suggestions to make it better. We have to make sure we meet all the specifications in the decree so that EPA will give their approval.

There are two attachments, one is the draft plan, the other contains all the appendices.

Thanks,

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

---

**From:** Marc Furtado [mailto:[furtadom@sblogical.org](mailto:furtadom@sblogical.org)]  
**Sent:** Tuesday, September 24, 2013 3:51 PM  
**To:** Alice G Prior (Services - 6)  
**Cc:** Richard Medeiros; [bobcamara@comcast.net](mailto:bobcamara@comcast.net); [idsouza11@yahoo.com](mailto:idsouza11@yahoo.com)  
**Subject:** Re: Somerset proposals

Alice

Yes I have received your e mails....

I was asked to identify who the funding should be delivered to; the School District or the vendors involved. I believe it is best for the School District to receive the funds involved as it will provide better assurance that the work undertaken is completed per specification--better assures vendor performance. In addition, due to the magnitude of the projects the district would most likely engage an outside project manager to oversee all installation/construction. As I explained on the phone, we would establish, through our school committee, a formal "special" account for these funds to be deposited into once we are formally notified that the funds have been awarded.

For your benefit there will be a 45 day time line associated with the procurement/bidding process that we would need to go through in order to award contracts for the projects identified. Therefore we could have a shovel in the ground approximately 45 days after formal notification of the award.

I will be happy to supply any additional information you would need to arrive at your recommendation to the EPA; please let me know if you need anything else.

One behalf of the Somerset School Committee, the Town of Somerset and the students, faculty and staff of the Somerset Public Schools, we are extremely grateful for your time and consideration on our behalf.

On Tue, Sep 24, 2013 at 11:05 AM, Alice G Prior (Services - 6) <[alice.g.prior@dom.com](mailto:alice.g.prior@dom.com)> wrote:

Marc,

Just verifying that you got my email.

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

---

**From:** Alice G Prior (Services - 6)  
**Sent:** Thursday, September 19, 2013 4:11 PM  
**To:** 'Marc Furtado'  
**Subject:** Somerset proposals

Marc,

In addition to the payment information I asked you for on the phone, I see a few other decree requirements that we have to ensure get into the proposal so that EPA accepts it.

1. Provide for appropriate monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor various aspects of the system, e.g., the total and hourly energy output of the system (kilowatt hours), environmental benefits delivered (pounds CO<sub>2</sub> avoided), hourly ambient temperature and cell temperature (CQ), irradiance (W/M<sup>2</sup>), as well as time sensitive voltage,

power and current metrics.

2. Provide for the establishment of an escrow account with funding from Project Dollars sufficient to support one or more service contracts (or their equivalent) to ensure the ongoing maintenance and performance of the PV

system consistent with established industry practice for no less than 25 years, including annual system checkups, annual solar panel (module) cleaning, expected inverter replacements, and remote system monitoring.

I think that, due to the tax credits and other incentives the school system will get for the solar panels, if we give you the full \$700,000 plus \$120,989 (to get you to \$1.6 million when combined with the \$779,011 for energy recovery systems), then there should be enough for you all to propose the kiosk and the maintenance plan.

I can incorporate these two items in the draft plan, but I need to know that the school is committing to do them as stated above.

However, I need some kind of cost estimate for both items so that I can incorporate into plan. Please get with your contractor to get me these estimates and proposals as soon as you can.

Thanks.

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

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--

*Marc Furtado*

Director of Finance and Facilities

Somerset Berkley Regional School District

--

*Marc Furtado*

Director of Finance and Facilities

Somerset Berkley Regional School District

Somerset Public Schools

508 324-3100, x-212

**Alice G Prior (Services - 6)**

---

**From:** Marc Furtado [furtadom@sbrregional.org]  
**Sent:** Wednesday, October 09, 2013 9:47 AM  
**To:** Alice G Prior (Services - 6)  
**Subject:** Somerset  
**Attachments:** SolRenView Web-Based Monitoring datasheet V.2 6-12.pdf

Alice

This is the overview and specs on the web based monitoring that will be viewed on the flat screen TV's in the school with the PV system

--

*Marc Furtado*  
Director of Finance and Facilities  
Somerset Berkley Regional School District  
Somerset Public Schools  
508 324-3100, x-212

**Alice G Prior (Services - 6)**

---

**From:** Marc Furtado [furtadom@sbrregional.org]  
**Sent:** Monday, October 21, 2013 5:04 PM  
**To:** Alice G Prior (Services - 6)  
**Subject:** Re: FW: Draft Somerset Plan for review and need Info  
**Attachments:** Authorization.doc

Alice

The school committee has approved the attached. If it meets your requirements I will sign and forward to you. Please advise.

On Mon, Oct 14, 2013 at 3:13 PM, Alice G Prior (Services - 6) <[alice.g.prior@dom.com](mailto:alice.g.prior@dom.com)> wrote:

Hi Marc,

Status update on this legal authority letter? I'm almost done with your plan.

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

---

**From:** Alice G Prior (Services - 6)  
**Sent:** Wednesday, October 09, 2013 11:27 AM  
**To:** 'Marc Furtado'  
**Subject:** RE: Draft Somerset Plan for review and need info

Marc,

I need one additional brief letter from you that meets this requirement:

The entity seeking funding and submitting a plan for consideration must also provide a written statement (a) identifying its legal authority for accepting such funding and (b) identifying its legal authority to conduct the Project. (CD, para. 114)

I am attaching an example that you can follow. You will have to identify the correct statute for Somerset schools.  
Thanks,

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

---

**From:** Marc Furtado [<mailto:furtadom@sbregional.org>]

**Sent:** Tuesday, October 08, 2013 2:28 PM

**To:** Alice G Prior (Services - 6)

**Subject:** Re: Draft Somerset Plan for review and need info

Alice

I have supplied the requested information in the draft plan (see attached). Please let me know if the material is sufficient or if you need further information/clarification. The projects will all need to be bid out, the data used in the plan was for budget purposes only and I cannot assure that the suppliers identified will be awarded the contract, but can assure that the systems profiled will be what is specified.

Please let me know if there is anything else....my personal cell phone number is 401 474-5552 and is a sure way of reaching me.

On Wed, Sep 25, 2013 at 9:47 AM, Alice G Prior (Services - 6) <[alice.g.prior@dom.com](mailto:alice.g.prior@dom.com)> wrote:

Marc and internal Dominion folks,

I have a rough draft of a plan for Somerset School District to review. I still need you, Marc, to fill out the details about an educational kiosk for the solar project, as well as describe how you are going to establish an escrow account for annual maintenance as described in highlighted yellow.

Please let me know if you have any corrections, comments, suggestions to make it better. We have to make sure we meet all the specifications in the decree so that EPA will give their approval.

There are two attachments, one is the draft plan, the other contains all the appendices.

Thanks,

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

---

**From:** Marc Furtado [mailto:[furtadom@sbregional.org](mailto:furtadom@sbregional.org)]

**Sent:** Tuesday, September 24, 2013 3:51 PM

**To:** Alice G Prior (Services - 6)

Cc: Richard Medeiros; [bobcamara@comcast.net](mailto:bobcamara@comcast.net); [jdsouza11@yahoo.com](mailto:jdsouza11@yahoo.com)

Subject: Re: Somerset proposals

Alice

Yes I have received your e mails....

I was asked to identify who the funding should be delivered to; the School District or the vendors involved. I believe it is best for the School District to receive the funds involved as it will provide better assurance that the work undertaken is completed per specification--better assures vendor performance. In addition, due to the magnitude of the projects the district would most likely engage an outside project manager to oversee all installation/construction. As I explained on the phone, we would establish, through our school committee, a formal "special" account for these funds to be deposited into once we are formally notified that the funds have been awarded.

For your benefit there will be a 45 day time line associated with the procurement/bidding process that we would need to go through in order to award contracts for the projects identified. Therefore we could have a shovel in the ground approximately 45 days after formal notification of the award.

I will be happy to supply any additional information you would need to arrive at your recommendation to the EPA; please let me know if you need anything else.

One behalf of the Somerset School Committee, the Town of Somerset and the students, faculty and staff of the Somerset Public Schools, we are extremely grateful for your time and consideration on our behalf.

On Tue, Sep 24, 2013 at 11:05 AM, Alice G Prior (Services - 6) <[alice.g.prior@dom.com](mailto:alice.g.prior@dom.com)> wrote:

Marc,

Just verifying that you got my email.

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

---

**From:** Alice G Prior (Services - 6)

**Sent:** Thursday, September 19, 2013 4:11 PM

**To:** 'Marc Furtado'

**Subject:** Somerset proposals

Marc,

In addition to the payment information I asked you for on the phone, I see a few other decree requirements that we have to ensure get into the proposal so that EPA accepts it.

1. Provide for appropriate monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor various aspects of the system, e.g., the total and hourly energy output of the system (kilowatt hours), environmental benefits delivered (pounds CO<sub>2</sub> avoided), hourly ambient temperature and cell temperature (CQ), irradiance (W/M<sup>2</sup>), as well as time sensitive voltage,

power and current metrics.

2. Provide for the establishment of an escrow account with funding from Project Dollars sufficient to support one or more service contracts (or their equivalent) to ensure the ongoing maintenance and performance of the PV

system consistent with established industry practice for no less than 25 years, including annual system checkups, annual solar panel (module) cleaning expected inverter replacements, and remote system monitoring

I think that, due to the tax credits and other incentives the school system will get for the solar panels, if we give you the full \$700,000 plus \$120,989 (to get you to \$1.6 million when combined with the \$779,011 for energy recovery systems), then there should be enough for you all to propose the kiosk and the maintenance plan.

I can incorporate these two items in the draft plan, but I need to know that the school is committing to do them as stated above.

However, I need some kind of cost estimate for both items so that I can incorporate into plan. Please get with your contractor to get me these estimates and proposals as soon as you can.

Thanks.

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

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of this information is prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender that you have received the message in error, and delete it. Thank you.

--  
*Marc Furtado*

Director of Finance and Facilities

Somerset Berkley Regional School District

--  
*Marc Furtado*

Director of Finance and Facilities

Somerset Berkley Regional School District

Somerset Public Schools

508 324-3100, x-212

--  
*Marc Furtado*

Director of Finance and Facilities

Somerset Berkley Regional School District

Somerset Public Schools

508 324-3100, x-212

**Alice G Prior (Services - 6)**

---

**From:** Marc Furtado [furtadom@sbrregional.org]  
**Sent:** Thursday, October 24, 2013 2:21 PM  
**To:** Alice G Prior (Services - 6)  
**Cc:** Mary Jo Sheeley (Services - 6); Cathy C Taylor (Services - 6)  
**Subject:** Re: rooftop structural analysis for PV

Alice

Those are our two newest buildings with the Middle School being constructed in the mid 1960's and the North Elementary in the mid 1970's. We think that the roof at the North is more exposed than at the Middle School, and therefore more appropriate--in addition, given that the system is going to go for at least 25 years, it is far less likely that North would be rebuilt or rehabbed in that time.

BOTH schools originally had ballasted roofs (the roofs with the gravel on top) and both now have PVC roofs. The ballasted roofs are significantly heavier and the PV supplier we spoke with felt that the fact that the ballasted roof is now off all but assures us that the system can be sustained structurally, however we would undertake a structural study to be sure. The \$120,000 identified in the budget would pay for the structural and electrical studies for whichever building and pay for project management to the extent needed. The budget figures for the system will allow for the information broadcast equipment as well as for annual maintenance, which will be part of the RFP.

I am now at my desk and can talk if you have any more questions 508 324-3100, x-212

On Thu, Oct 24, 2013 at 2:07 PM, Alice G Prior (Services - 6) <[alice.g.prior@dom.com](mailto:alice.g.prior@dom.com)> wrote:

Marc,

I spoke with your admin earlier, who said emailing you might be the best way to get hold of you today.

We have a question about the structural integrity/applicability of the school rooftops for the solar PV system. Your proposal specifically gave caveat to the fact that no structural engineering work had been done. We are proposing the middle school, with the elementary school as backup, for the 200kW system. How confident are you that one or the other school rooftops will be an adequate site? Did your contractor do some initial assessments? Do we need a backup plan?

Please advise. Thanks,

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

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—  
*Marc Furtado*

Director of Finance and Facilities  
Somerset Berkley Regional School District  
Somerset Public Schools  
508 324-3100, x-212

**Alice G Prior (Services - 6)**

---

**From:** Marc Furtado [furtadom@sbregeional.org]  
**Sent:** Thursday, October 24, 2013 2:22 PM  
**To:** Alice G Prior (Services - 6)  
**Subject:** Re: rooftop structural analysis for PV  
**Attachments:** approval.pdf

Alice

Also here is the signed letter we exchanged last week

On Thu, Oct 24, 2013 at 2:20 PM, Marc Furtado <furtadom@sbregeional.org> wrote:  
Alice

Those are our two newest buildings with the Middle School being constructed in the mid 1960's and the North Elementary in the mid 1970's. We think that the roof at the North is more exposed than at the Middle School, and therefore more appropriate--in addition, given that the system is going to go for at least 25 years, it is far less likely that North would be rebuilt or rehabbed in that time.

BOTH schools originally had ballasted roofs (the roofs with the gravel on top) and both now have PVC roofs. The ballasted roofs are significantly heavier and the PV supplier we spoke with felt that the fact that the ballasted roof is now off all but assures us that the system can be sustained structurally, however we would undertake a structural study to be sure. The \$120,000 identified in the budget would pay for the structural and electrical studies for whichever building and pay for project management to the extent needed. The budget figures for the system will allow for the information broadcast equipment as well as for annual maintenance, which will be part of the RFP.

I am now at my desk and can talk if you have any more questions [508 324-3100, x-212](tel:5083243100)

On Thu, Oct 24, 2013 at 2:07 PM, Alice G Prior (Services - 6) <alice.g.prior@dom.com> wrote:

Marc,

I spoke with your admin earlier, who said emailing you might be the best way to get hold of you today.

We have a question about the structural integrity/applicability of the school rooftops for the solar PV system. Your proposal specifically gave caveat to the fact that no structural engineering work had been done. We are proposing the middle school, with the elementary school as backup, for the 200kW system. How confident are you that one or the other school rooftops will be an adequate site? Did your contractor do some initial assessments? Do we need a backup plan?

Please advise. Thanks,

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

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--  
*Marc Furtado*  
Director of Finance and Facilities  
Somerset Berkley Regional School District  
Somerset Public Schools  
508 324-3100, x-212

\*\*\*  
*Marc Furtado*  
Director of Finance and Facilities  
Somerset Berkley Regional School District  
Somerset Public Schools  
508 324-3100, x-212

Vertical text on the right margin, possibly a page number or document identifier, appearing as a series of small characters.

# Somerset Public Schools Somerset-Berkley Regional School District

Marc Furtado, Director of Business and Finance

580 Whetstone Hill Road  
Somerset MA 02726-3700  
Telephone: (508) 324-3100, x-212  
Fax: (508) 324-3104

Ms Alice Prior  
Environmental Projects Advisor  
Dominion Environmental Services  
500 Dominion Blvd 2NW  
Glen Allan, VA 23060

RE: Northeast Clean Energy Projects in Somerset, MA

October 21, 2013

Dear Ms Prior:

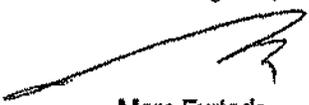
Pursuant to Massachusetts General Laws, Chapter 44, Section 53, the Town of Somerset is required to accept funds to administer special projects, such as the Clean Energy Projects specified in Appendix A, paragraph XI sections A-J of the consent decree between the EPA and Dominion Energy, Inc lodged July 17, 2013.

Arrangements will be made with the Town of Somerset for the disbursement of the funds to the school district, consistent with the proposals made to Dominion in our August 20, 2013 submission, upon project approval and award of funding by the US Environmental Protection Agency.

We look forward to working with Dominion Environmental on this important Clean Energy program that will be of great benefit to the students of our district and to the greater Somerset community.

Please contact me directly should you have any questions.

Best Regards,



Marc Furtado  
Director of Business  
Somerset Public Schools

Cc: Patricia A. Haddad, State Representative 5<sup>th</sup> Bristol District  
Robert Camara, Chair, Somerset School Committee  
Richard Medeiros, Superintendent of Schools  
Don Setters, Chair, Somerset Board of Selectmen  
Christopher Godet, Chair, Somerset Audit and Finance Committee  
Joseph Bolton, Somerset Director of Finance

**Alice G Prior (Services - 6)**

---

**From:** Marc Furtado [furtadom@sbregional.org]  
**Sent:** Thursday, December 19, 2013 3:25 PM  
**To:** Alice G Prior (Services - 6)  
**Cc:** Cathy C Taylor (Services - 6); Mary Jo Sheeley (Services - 6)  
**Subject:** Re: Somerset's mitigation plan

Alice

Thank you so much for connecting before you go off and hopefully have a great break/holiday.

As you are aware, we had numerous potential projects proposed. One that did not go forward was digital control (EMS) of our HVAC systems. We were surprised that the Heat Exchangers were chosen over this proposal, and remarkably the cost for each is almost identical. If that could not be revisited, we have two school buildings (The Somerset Middle School and the North Elementary School) which could accommodate the PV System that the EPA seems to be favoring and therefore could do two installations.

I am available any time that week that you would be free (7th, 8th, 10th) so let me know. Again thanks and enjoy your break.

Marc

On Thu, Dec 19, 2013 at 3:13 PM, Alice G Prior (Services - 6) <[alice.g.prior@dom.com](mailto:alice.g.prior@dom.com)> wrote:

Marc,

We got some initial feedback from EPA on the mitigation projects we proposed (the solar PV and the energy efficiency heat exchangers). They liked the solar project, but have some issues with the other one.

I am about to go on vacation, but wanted to ask you to think about some time in early January (the week of the 6<sup>th</sup>) for a phone call to discuss next steps. Right now my calendar is open except for the afternoon of the 6<sup>th</sup> and most of Thursday the 9<sup>th</sup> is full.

Thanks, and have a great holiday!

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

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---  
*Marc Furtado*  
Director of Finance and Facilities  
Somerset Berkley Regional School District  
Somerset Public Schools  
508 324-3100, x-212

**Alice G Prior (Services - 6)**

---

**From:** Marc Furtado [furtadom@sbrregional.org]  
**Sent:** Wednesday, January 08, 2014 2:56 PM  
**To:** Alice G Prior (Services - 6)  
**Subject:** Re: Somerset's mitigation plan

Alice

Just wanted you to know that I have called in.

Marc

On Thu, Dec 19, 2013 at 4:34 PM, Alice G Prior (Services - 6) <[alice.g.prior@dom.com](mailto:alice.g.prior@dom.com)> wrote:

Let's plan to talk at 3pm, January 8<sup>th</sup> (Wednesday).

Use Readytalk Number [1-866-740-1260](tel:1-866-740-1260), passcode 273-4127

Thanks,

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

[\(804\) 273-4127](tel:8042734127)

---

**From:** Marc Furtado [mailto:[furtadom@sbrregional.org](mailto:furtadom@sbrregional.org)]  
**Sent:** Thursday, December 19, 2013 3:25 PM

To: Alice G Prior (Services - 6)

Cc: Cathy C Taylor (Services - 6); Mary Jo Sheeley (Services - 6)

Subject: Re: Somerset's mitigation plan

Alice

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As you are aware, we had numerous potential projects proposed. One that did not go forward was digital control (EMS) of our HVAC systems. We were surprised that the Heat Exchangers were chosen over this proposal, and remarkably the cost for each is almost identical. If that could not be revisited, we have two school buildings (The Somerset Middle School and the North Elementary School) which could accommodate the PV System that the EPA seems to be favoring and therefore could do two installations.

I am available any time that week that you would be free (7th, 8th, 10th) so let me know. Again thanks and enjoy your break.

Marc

On Thu, Dec 19, 2013 at 3:13 PM, Alice G Prior (Services - 6) <[alice.g.prior@dom.com](mailto:alice.g.prior@dom.com)> wrote:

Marc,

We got some initial feedback from EPA on the mitigation projects we proposed (the solar PV and the energy efficiency heat exchangers). They liked the solar project, but have some issues with the other one.

I am about to go on vacation, but wanted to ask you to think about some time in early January (the week of the 6<sup>th</sup>) for a phone call to discuss next steps. Right now my calendar is open except for the afternoon of the 6<sup>th</sup> and most of Thursday the 9<sup>th</sup> is full.

Thanks, and have a great holiday!

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

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--

*Marc Furtado*

Director of Finance and Facilities

Somerset Berkley Regional School District

Somerset Public Schools

508 324-3100, x-212

--

*Marc Furtado*

Director of Finance and Facilities

Somerset Berkley Regional School District

Somerset Public Schools

508 324-3100, x-212

**Alice G Prior (Services - 6)**

---

**From:** Marc Furtado [furtadom@sbregional.org]  
**Sent:** Thursday, January 09, 2014 2:16 PM  
**To:** Alice G Prior (Services - 6)  
**Subject:** Fwd: DOE and EPA on Heat Recovery Ventilation

Alice

This came in from the heat exchanger vendor we used for our proposal. For what it is worth.

Marc

----- Forwarded message -----

**From:** Gary Cyr <gtc1950@gmail.com>  
**Date:** Wed, Jan 8, 2014 at 3:49 PM  
**Subject:** Fwd: DOE and EPA on Heat Recovery Ventilation  
**To:** Marc Furtado <furtadom@sbregional.org>

----- Forwarded message -----

**From:** Gary Cyr <gary@southcoastgreenlight.com>  
**Date:** Wed, Jan 8, 2014 at 2:17 PM  
**Subject:** DOE and EPA on Heat Recovery Ventilation  
**To:** Gary Cyr - <gtc1950@gmail.com>

Gary,

This is the most I've got so far. Once you open it up there's a few links on the page itself to DOE and EPA pages.

<http://www.airxchange.com/airxchange-technology-schools.htm>

-Sal

Thank You,

*Gary Cyr*

President/CEO

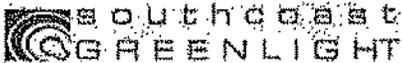
Southcoast Greenlight

P 508.673.1100

F 508.678.2542

[gary@southcoastgreenlight.com](mailto:gary@southcoastgreenlight.com)

[www.southcoastgreenlight.com](http://www.southcoastgreenlight.com)



Gary T. Cyr

SOUTHCOAST GREENLIGHT ENERGY INC.

527 Wilbur Avenue  
Swansea, MA 02777

Tel. 508.673.1100  
Fax. 508.678.2542  
[www.southcoastgreenlight.com](http://www.southcoastgreenlight.com)  
[gary@southcoastgreenlight.com](mailto:gary@southcoastgreenlight.com)

Hi Marc,  
Glad we talked I just want to pass this info on because it comes from the EPA website.  
It is curious that they do not believe in the savings I presented for the CO2 controlled ERV system.

3:13-cv-03086-SEM-SMJ # 30-9 Page 26 of 30

Why did they reject those proposals when on the EPA website they claim that ERV systems can save 70-75% of the energy costs in a School building. They specifically target Schools.

Regards,

Gary Cyr

--  
*Marc Furtado*  
Director of Finance and Facilities  
Somerset Berkley Regional School District  
Somerset Public Schools  
508 324-3100, x-212

**Alice G Prior (Services - 6)**

---

**From:** Marc Furtado [furtadom@sregional.org]  
**Sent:** Tuesday, January 14, 2014 2:46 PM  
**To:** Alice G Prior (Services - 6)  
**Subject:** Re: FW: EPA Comments on Dominion's Proposed Plan for NE Clean Energy Projects with Town of Somerset  
**Attachments:** Response to EPA Questions of January 9.docx

Alice

Please see attached.

Let me know if you think you need more.

Marc

On Fri, Jan 10, 2014 at 8:29 AM, Alice G Prior (Services - 6) <[alice.g.prior@dom.com](mailto:alice.g.prior@dom.com)> wrote:

Marc,

We got some detailed written comments from EPA on the solar PV project. Can you send me a response back as to how to address each of their concerns? It doesn't need to be formal, just an email is fine. I will incorporate the responses into the revision I'm working on.

Thanks,

*Alice Prior*

Environmental Projects Advisor

Dominion Environmental Services

5000 Dominion Blvd., 2NW

Glen Allen, VA 23060

(804) 273-4127

**From:** Viggiani, Steven [mailto:[viggiani.steven@epa.gov](mailto:viggiani.steven@epa.gov)]

**Sent:** Thursday, January 09, 2014 5:28 PM

**To:** Mary Jo Sheeley (Services - 6)

**Cc:** Alice G Prior (Services - 6); Jaber, Makram; Dunn, Jason (ENRD); Kakade, Seema; Wood, Nicole

**Subject:** EPA Comments on Dominion's Proposed Plan for NE Clean Energy Projects with Town of Somerset

Dear Mary Jo –

Attached are EPA Region's 1 comments regarding Dominion's proposed project implementation plan ("Proposed Plan") for the Northeast Clean Energy and Clean Diesel Projects pursuant to Sections II and XI of Appendix A of the Dominion Energy Consent Decree. Dominion submitted the Proposed Plan to EPA on November 13, 2013 via cover letter dated November 5, 2013. The cover letter states that Dominion consulted with both the City of Fall River and the Town of Somerset, Massachusetts regarding potential projects, but that Fall River "never produced a proposed project" and that consequently Dominion proceeded solely with projects from Somerset.

EPA's comments to the Proposed Plan are provided pursuant to Section XIII, and to Section II of Appendix A, of the Consent Decree. If you have any questions regarding them, please feel free to e-mail or call me at (617) 918-1729.

Best regards, Steve V.

Steven J. Viggiani

Senior Enforcement Counsel

U.S. Environmental Protection Agency, Region 1

5 Post Office Square, Suite 100

Mail Code OES04-3

Boston, MA 02109-3912

o. 617-918-1729

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--

*Marc Furtado*  
Director of Finance and Facilities  
Somerset Berkley Regional School District  
Somerset Public Schools  
508 324-3100, x-212

**EXHIBIT 3**  
**TO**  
**DOMINION ENERGY, INC.'S**  
**MEMORANDUM IN**  
**OPPOSITION TO CITY OF FALL**  
**RIVER'S MOTION TO ENFORCE**  
**AND/OR MODIFY**  
**CONSENT DECREE**



3. I assisted Dominion in connection with its consultation with the Town of Somerset and the City of Fall River to solicit qualifying environmental projects to satisfy Dominion's obligations under its Consent Decree.

4. I arranged for a meeting in the office of the Mayor of Fall River on July 11, 2013. Kevin Hennessy of Dominion and I met with Mayor Flanagan, the City Solicitor, the City Administrator, and other Fall River representatives. The City Administrator asked the most questions during the meeting, and it appeared to me that he would be responsible from Fall River's perspective.

5. At the meeting, Mr. Hennessy distributed copies of Dominion's Guidelines and the Consent Decree. He said that Fall River and Somerset had an opportunity to apply for \$1.6 million in funds for environmental projects. He told them that the scope of the projects was limited to the types of projects specified in the Consent Decree, and that no funds were guaranteed to either Somerset or Fall River.

6. It was clear from the meeting that Dominion was operating under deadlines to submit plans to the government. Dominion set a deadline of August 1 for the communities to submit proposed projects to Dominion. Mr. Hennessy told Fall River's representatives that there was flexibility to have a "couple weeks" past August 1 if they needed it.

7. Fall River did not contact me by August 1, 2013. Mr. Hennessy contacted me that day and noted that local newspapers were reporting on Somerset's potential projects. I called the Mayor, who told me that City Solicitor Sousa would be handling the matter and would be submitting projects within the next few days. I advised Mr. Hennessy of this call.

8. As of the end of the day Monday, August 5, I had heard nothing from the City Solicitor. Mr. Hennessy contacted me and asked to advise him if and when I heard anything. I

heard nothing back until August 28, when I called the Mayor again. The Mayor told me he would make sure that Ms. Sousa would call me back that day. I placed two phone calls to Ms. Sousa, but did not hear back from her that week.

9. Due to the sale of Brayton Point by Dominion, I was no longer under a formal retainer agreement with Dominion as of September 1, 2013. However, I continued on this specific project because I had started it and wanted to see it through. I did this as a professional courtesy for a longtime client. I stayed in touch with Mr. Hennessy; and I reported to Mr. Hennessy on every contact from or with Fall River promptly.

10. Assistant City Solicitor, Ms. DiOrio, called me on September 3, 2013, and informed me that she would be responsible for the projects submittal for Fall River. Ms. DiOrio also said she was aware that Somerset had already submitted its proposed projects, and she asked me if she could see copies of Somerset's proposal as a "template." I asked Mr. Hennessy, and Dominion declined.

11. On September 5, Ms. DiOrio, contacted me again. She sent me two emails, one at 11:03 am and the second shortly thereafter at 11:13 am. [Attachment A.] In the first e-mail, Ms. DiOrio asked (1) whether the environmental projects funds would be "provided as reimbursement to the City following [its] expenditure"; and (2) despite the passage of time since the initial July 11 meeting, for an "appropriate extension." In the second e-mail, Ms. DiOrio also asked (3) "whether there's any leeway on solely providing improvements to school buildings."

12. I spoke to Ms. DiOrio by phone after receiving these two e-mails. On the first issue, I advised her that the funds must be used to fund specific projects approved under the Consent Decree. On the second issue, I advised her unequivocally that "this is happening" and Fall River "needs to move quickly." I did not promise or mention anything about considering a

further “extension.” Rather, I stressed that Fall River must hurry if it wants its projects to be considered.

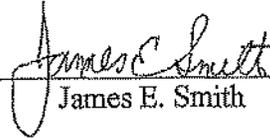
13. On the third issue in paragraph 11 above, Ms. DiOrio told me that Fall River could not fit into the specified parameters for the environmental projects. She asked whether Dominion could expand the permissible scope of the projects. I told her no; the Consent Decree is a legal document. Ms. DiOrio told me that Fall River may have difficulty proposing projects that fit within the specified parameters because Fall River’s schools are generally new, and they already have some solar energy capability.

14. No one from Fall River contacted me again about this matter until December 17, 2013, when an article was published in the local newspaper discussing the Somerset projects. I was extremely surprised that Ms. DiOrio called me back about these projects, given that our last conversation was almost three and half months earlier and I had heard nothing from Fall River all this time. I told her the process is over. Ms. DiOrio’s account in her affidavit of her conversation with me on December 17 is not accurate. I did not agree “that it was ‘untrue’ that Fall River ‘did not apply for its share’ of the settlement money.” I would not and could not have said that, because I knew that Fall River had not submitted a proposed project. I did say I would contact Dominion (Mr. Hennessy is my contact, not “Dominion’s legal counsel”), because I always did so when I received communication from Fall River or any other entity in connection with Dominion. If I said that “Fall River had ‘worked hard’ on this Project Proposal”—which I do not recall—it would have been simply repeating Ms. DiOrio’s statement to me. I have no personal knowledge about whether Fall River “worked hard” on its proposal. I did make it clear that I believed Ms. DiOrio’s request was too late.

15. I believe these facts show that Dominion clearly offered Fall River an opportunity to apply for potential environmental projects. I strongly disagree that anything I said or did could have been reasonably interpreted to suggest Fall River had no deadline for submitting proposed projects to Dominion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24<sup>th</sup> day of February, 2014.

  
James E. Smith

**ATTACHMENT A**

**Jim Smith**

---

**From:** Christy Diorio <cdiorio@fallriverma.org>  
**Sent:** Thursday, September 05, 2013 11:13 AM  
**To:** Jim Smith  
**Subject:** FW: Dominion Energy Emt'l Mitigation Plan Project

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Hi Jim,

Also, if you could look into whether there's any leeway on solely providing improvements to school buildings, that would be fantastic (vehicles, or other public buildings would greatly expand the City's ability to use the settlement money).

Best,

Christy Diorio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
508-324-2655 (Fax)

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**From:** Christy Diorio  
**Sent:** Thursday, September 05, 2013 11:03 AM  
**To:** 'jsmith@srhpublicpolicy.com'  
**Subject:** Dominion Energy Emt'l Mitigation Plan Project

Hi Jim,

Can you confirm whether the \$800,000 will be provided as a reimbursement to the City following our expenditure? I need to determine whether the City will need to initially bond for the project we decide to undertake.

I look forward to hearing from you regarding an appropriate extension in which we can put a reasonable plan together which meets the June 24, 2013 Guidelines.

Best,

Christy DiOrio  
Assistant Corporation Counsel  
City of Fall River  
One Government Center  
Fall River, MA 02722  
508-324-2650 (Tel)  
508-324-2655 (Fax)

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**EXHIBIT 4**  
**TO**  
**DOMINION ENERGY, INC.'S**  
**MEMORANDUM IN**  
**OPPOSITION TO CITY OF FALL**  
**RIVER'S MOTION TO ENFORCE**  
**AND/OR MODIFY**  
**CONSENT DECREE**



4. Mr. Hennessy and Mr. Smith told me that they had just come directly from a similar meeting with representatives of the City of Fall River.

5. At the July 11, 2013 meeting, Mr. Hennessy and Mr. Smith provided me with Environmental Mitigation Projects: Plan Proposal Guidelines ("Guidelines") and with the Consent Decree. The Guidelines are attached as Attachment A.

6. Mr. Hennessy told me that Dominion was required to submit proposed projects to the United States EPA that satisfied the terms of the Consent Decree in the total amount of \$1.6 million for PV or geothermal projects at local schools. The projects could come from either Somerset or Fall River, or from both. He made clear that Dominion could not guarantee funding for any submitted projects. It was clearly understood that funding for the projects could range from no funding to the entire settlement money. For this reason, we were careful in Somerset to act promptly, to follow the Guidelines, and to submit several projects in an amount exceeding \$1.6 million.

7. On July 19, 2013, I received an email from Mr. Hennessy following up after the meeting to make sure that I did not have any questions about the implementation plan for the project. I promptly responded with an update on our progress in Somerset.

8. On August 1, 2013, by the deadline required under the Guidelines, Richard W. Madeiros, Superintendent of Somerset Public Schools, submitted three proposed projects to Dominion. [Transmittal Memorandum from Mr. Richard W. Madeiros to Mr. Kevin Hennessy attached as Attachment B].

9. During the first few weeks of August 2013, Somerset revised its initial proposal to provide additional technical detail and propose additional projects. On August 20, 2013,

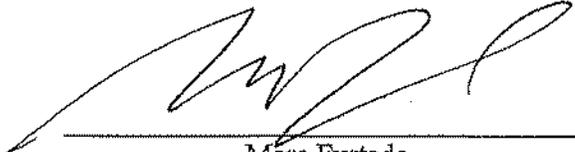
submitted Somerset's final proposal to Dominion in accordance with the Guidelines. I kept in touch with Dominion afterwards to make sure our proposed projects were satisfactory.

10. Dominion recently advised me that, as a result of Fall River's actions in this case, all action on our proposed projects is on hold for at least several months. This delay will have an impact on Somerset. Assuming that some of our projects would be approved by EPA, we had hoped that we could begin implementing those projects as soon as possible. The proposed projects are projected to reduce utility costs by twenty percent in our schools. Utility costs are high and rising rapidly. Our costs are likely to increase substantially when our natural gas contract expires in May 2014. We had hoped the proposed projects would be completed as soon as possible to mitigate these rising costs, especially given that our school budgets are tight.

11. The delay will have a further impact on Somerset's schools. The proposed projects are estimated to take between four and six months to be completed. Somerset submitted its proposed projects anticipating that much of the construction would occur over the summer when schools are on break to minimize impacts on the students. The delay increases the likelihood that construction will occur entirely during the school term. This will increase the disturbance to the students, and it is also likely to increase the duration of the construction because the schools will be occupied when the work is occurring, which likely will increase costs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21<sup>st</sup> day of February, 2014.

  
\_\_\_\_\_  
Marc Furtado

**ATTACHMENT A**

Dominion Energy, Inc.  
Environmental Mitigation Projects: Plan Proposal Guidelines  
(June 24, 2013)

**Environmental Mitigation Project: Northeast Clean Energy and Clean Diesel Projects**

**I. Overview**

Pursuant to a federal consent decree entitled *United States v. Dominion Energy, Inc., et al.*, (civil action no. 13-cv-3806) (C.D. Ill. Lodged, Apr. 2, 2013) ("Consent Decree") (attached),<sup>1</sup> Dominion Energy, Inc. ("DEI") has agreed to fund various Environmental Mitigation Projects as provided in Appendix A to the Consent Decree. Within 120 days of the entry of the Consent Decree, DEI is required to submit Project Plans to the U.S. Environmental Protection Agency ("USEPA") for its approval prior to the projects being implemented. DEI is permitted under the Consent Decree to contribute Project Dollar funds to another entity to carry out a project in lieu of DEI. The requirements for doing so are spelled out in the Consent Decree and Appendix A.

Appendix A, section XI, is entitled the Northeast Clean Energy and Clean Diesel Projects and is directed towards the implementation of projects in the Town of Somerset and the City of Fall River, Massachusetts. Section XI provides for the funding of various types of projects grouped in two categories: clean energy projects and clean diesel projects. DEI will fund \$1,600,000 in Project Dollars for "Energy Efficiency, Geothermal, PV, and/or Clean Diesel Retrofit and Repower Projects" as those projects are described in Appendix A, section XI. DEI may fund one or more projects, so it is encouraged to submit plans for projects that can be approved in whole or part based on the availability of Project Dollars. It is expected that approximately half of the total Project Dollars will be spent in Somerset. App. A, section XI.B.

Project Plans for the Northeast Clean Energy and Clean Diesel Projects must provide for expending the Project Dollars within three years of the entry of the Consent Decree.

DEI is asking for the submission of proposed project plans **by August 1, 2013**, for DEI's consideration in determining which Project Plans to provide to USEPA for approval and eventual implementation, if approved, by the Town of Somerset and/or the City of Fall River. This document outlines what must be included in a proposed Project Plan. In addition to relying on this document, the Town and City should also review the relevant portions of the Consent Decree.

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<sup>1</sup> The United States soon will move to enter the Consent Decree, which will then take effect when the Court enters it.

## **II. General Project Plan Elements**

According to the Consent Decree all Project Plans must include the following:

1. A plan for implementing the Project. (App. A, II.D)
2. A summary-level budget for the Project. (App. A, II.D)
3. A timeline for implementation of the Project. (App. A, II.D) The timeline shall include a schedule for completing and funding each portion of the project. As noted above, the Projects are to be completed within three years. The schedule shall provide for periodic reporting as set forth in section III below.
4. A description of the anticipated environmental benefits of the Project, including an estimate of emission reductions (e.g., SO<sub>2</sub>, NO<sub>x</sub>, PM, mercury, CO<sub>2</sub>) expected to be realized. (App. A, II.D)
5. The entity seeking funding and submitting a plan for consideration must also provide a written statement (a) identifying its legal authority for accepting such funding and (b) identifying its legal authority to conduct the Project. (CD, para. 114)

## **III. Periodic and Final Reporting Requirements**

The Consent Decree requires that DEI submit periodic reports to USEPA within 60 days after the end of each half of the calendar year (January through June and July through December) (CD, para. 122) and a final report within 60 days of completing a project (App. A, II.G).

Regarding the mitigation projects, periodic reports must include "a summary of actions implemented and expenditures made pursuant to implementation of the Environmental Mitigation Projects" required in the Consent Decree and Appendix A. (CD, para. 122.h; *see also* App. A, II.F)

Accordingly, in order for DEI to meet these Consent Decree requirements, Project Plans must provide in the schedule for the submission of periodic reports to DEI within 30 days after the end of each half of the calendar year until completion of the project. The schedule must also provide for the submission of a final report within 30 days of completion of the Project. The Final Report shall document:

1. The date the Project was completed.
2. The results of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved.
3. The Project Dollars incurred in implementing the Project.

#### **IV. Plan Specific Elements for Clean Energy Projects**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a Clean Energy Project to implement "Energy Efficiency, Geothermal, and/or Solar Photovoltaic ('PV') Projects at one or more public school buildings in either or both municipalities." App. A, XI.A. The proposed Clean Energy Projects "may include the installation of centrally-monitored digital controls and timers for heating/cooling systems in school buildings in either or both municipalities ('Energy Efficiency Project'). The proposed Projects may also include the installation of a geothermal heating and/or cooling system ('Geothermal Project'), and/or a solar photovoltaic project consisting of electricity-generating solar panels ('PV Project') for public school buildings in either or both municipalities." App. A, XI.A.

Appendix A sets forth general Project Plan requirements for Clean Energy Projects, and identifies additional Clean Energy Plan requirements for Geothermal and PV Projects. The additional requirements are set forth in subsections below. The following are the general plan requirements that must be included in any type of proposed Clean Energy Project Plan that seeks funding as an Energy Efficiency, Geothermal, or PV Project:

1. Identification of the specific proposed Project(s) to be implemented;
2. Implementation timelines and expected completion dates for each Project;
3. Description of each proposed Project's system design;
4. Identification of any project designers, contractors, or other third parties with whom the municipality's school system will contract or partner with to implement the Project(s), and a list of any relevant accreditations or certifications held by such contractors, designers or parties; and
5. Description of the schedule and the budgetary increments needed to provide the necessary funding by DEI to the municipality's school system or its project designers/contractors to implement the Project.

Appendix A, Section XI.

##### **A. Geothermal Project: Additional Specific Plan Elements**

The Plan for a Geothermal Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Describe the proposed geothermal system design (e.g., a closed loop design with either horizontal or vertical loop well fields, a standing column well, or station surface sources). The Project shall be limited to serving space heating and cooling building loads, with the option to add a desuperheater to the project to serve hot water loads when practical.
2. Provide for the purchase and installation of a geothermal heat pump system that utilizes the earth as a heat source in the winter and a heat sink in the summer to reduce energy consumption. The system shall include the equipment necessary to support the installation and operation of a geothermal heat pump, including the exterior building components (e.g., well field holes, subsurface piping, and circulation pumps), the heat pump unit (evaporator and condenser, compressor, expansion valve and refrigerant) and any internal building components (e.g., HVAC distribution system and ductwork) necessary for the proper operation of the new system. Heat pumps should be Air-Conditioning, Heating and Refrigeration Institute (AHRI) and Energy Star rated. Heat pumps should meet the minimum EER and COP ratings required by Energy Star at the time the heat pumps are installed.
3. System Application and Design: The Plan shall provide that, prior to the design modeling of the system and production loop installation, the contractor/project designer conduct an in-situ formation thermal conductivity test for ambient deep earth temperature, thermal conductivity, and thermal diffusivity, for a minimum of 40 hours to assess the subsurface soil conditions. The Plan shall provide that the contract with the contractor/project designer shall require that the designer provide the building owner with copies of the related site drilling logs, soil sample documentation and in-situ thermal conductivity analyses. The Plan shall also provide that the contract with the contractor/project designer shall require that the designer employ quality assurance measures to prevent "short looping" of well field bore holes during the drilling process.
4. Provide for the installation of monitoring equipment to allow facility managers and staff to monitor the operation and performance of the system.
5. Provide for system commissioning and performance optimization within the first year of system operation.
6. Provide for the restoration of the project site, particularly the well field to its original or near-original condition.
7. Provide for the installation of onsite monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor the operation and performance of the

geothermal system.

8. Identify the contractor/project designer(s) and/or other third parties with whom the Town or City will contract or partner with to implement the Project, and list any relevant accreditations or certifications held by such contractor/designer(s) or parties. The Plan shall provide that the Project's design, installation and system commissioning will be performed by International Ground Source Heat Pump Association (IGSHPA) professionals or by other professionals certified by geothermal manufacturers to design and/or install the manufacturers' systems. The Plan shall also provide that best efforts will be made to select project designers and installers (including engineers, architects, and bore hole drillers) with experience on at least three successful geothermal projects.
  
9. End-user Documentation and Training Requirements: The Plan shall provide that the developer/contractor will provide the Town/City with:
  - System design drawings including a map detailing the subsurface location of well field bore holes;
  - Copies of permits and inspections demonstrating compliance with local codes;
  - Copies of the drilling logs, soil sample documentation and in-situ thermal conductivity analysis;
  - Copies of simulated design and financial performance (energy and cost saving) analyses of the system;
  - System documentation including, system maintenance and operational requirements, component manuals, operation manuals and warranty information; and
  - In-person, on-site, system operation user training.
  
10. Maintenance: The Project Plan may request Project Dollars for funding the establishment of an escrow account to maintain and/or replace the heat pump unit or other elements of the system, or for the funding or pre-payment for an extended warranty or service contract for such maintenance/replacement.

**B. PV Project: Additional Plan Elements**

The Plan for a PV Project shall provide for all equipment and installation necessary to construct and implement the Project at public school buildings. The Plan shall:

1. Provide for the installation of solar panels with unobstructed solar access, producing electricity not to exceed the total annual electricity base load of the building the project serves.
2. Provide for a grid-tied inverter, appropriately sized for the capacity of the solar panels installed at the location.
3. Provide for the appropriate solar panel mounting equipment for the particular school.
4. Provide for wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid.
5. Provide for appropriate monitoring equipment supported by kiosk-delivered educational software to enable students, teachers, and facility managers and staff to monitor various aspects of the system, e.g., the total and hourly energy output of the system (kilowatt hours), environmental benefits delivered (pounds CO<sub>2</sub> avoided), hourly ambient temperature and cell temperature (C<sup>o</sup>), irradiance (W/M<sup>2</sup>), as well as time sensitive voltage, power and current metrics.
6. Provide for the installation of the system on the customer side of the meter with ownership of the system being by the Somerset Public School system or Fall River Public School System, as appropriate. The Plan shall also provide that all related environmental benefits will be retained by the system owner, including associated renewable energy certificates.
7. Provide, to the extent practicable, that North American Board of Certified Energy Practitioners (NACEP) certified energy professionals perform the installation of the PV Projects to ensure the highest quality installation and performance of the system.
8. Provide for the inclusion of manufacturer parts warranties for major system components, specifically, a minimum 25 year warranty for the solar panels (modules) and a minimum 10 year warranty for the inverter(s).
9. Provide for the establishment of an escrow account with funding from Project Dollars sufficient to support one or more service contracts (or their equivalent) to ensure the ongoing maintenance and performance of the PV

system consistent with established industry practice for no less than 25 years, including annual system checkups, annual solar panel (module) cleaning, expected inverter replacements, and remote system monitoring.

#### **V. Clean Diesel Retrofit and Repower Projects: Plan Specific Elements**

One or more Project Plans may be submitted to DEI for review and possible funding, if approved by USEPA, as a "Clean Diesel Retrofit and Repower Project" to retrofit or repower higher-polluting diesel engines in either or both the municipalities (the Town of Somerset and the City of Fall River). These Projects would include the "retrofit or repower of eligible diesel engines on diesel-powered municipal construction or public works vehicles or equipment owned or operated on a long-term basis by either or both municipalities in order to reduce diesel pollutant emissions." App. A, XI.A.

In addition to the general Project Plan requirements identified above in sections II and III, proposed Clean Diesel Retrofit and Repower Project Plans shall include the following:

1. For diesel engine retrofits, a plan element to use exhaust control technologies verified either by EPA or by the California Air Resources Board (CARB);
2. For diesel engine retrofits, a plan element to purchase and install EPA or CARB-verified diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs) on diesel-powered municipal construction or public works vehicles or equipment. A list of EPA-verified retrofit technologies can be found at <http://epa.gov/cleandiesel/verification/verif-list.htm>; a list of CARB-verified technologies can be found at [www.arb.ca.gov/diesel/verdev/vt/cvt.htm](http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm).
3. If the Project includes DPF retrofits, the plan must provide for the purchase of DPF service equipment required for proper DPF maintenance.
4. For diesel engine repowering, the plan must provide for the use of technologies certified by EPA or by CARB if available.
5. For diesel engine repowering, the plan must provide for the use of new engine configurations certified to emission standards. Information on engine certification can be found at [www.epa.gov/otaq/certdata.htm](http://www.epa.gov/otaq/certdata.htm).
6. In determining which vehicles or equipment to retrofit or repower under the Clean Diesel Retrofit and Repower Project, priority should be given to older, higher-polluting vehicles and equipment that have high annual usage rates and/or vehicle miles travelled, so that the pollution reductions obtained from the Project will be maximized.

**VI. Submission of Proposed Project Plans; Inquiries**

Proposed Project Plans are to be submitted by August 1, 2013, to Alice Pryor, Environmental Projects Manager, Dominion Resources Services, Inc. at [alice.g.pryor@dom.com](mailto:alice.g.pryor@dom.com).

**ATTACHMENT B**



## Somerset Public Schools

580 Whetstone Hill Road  
Somerset, Massachusetts 02726-3100  
Telephone (508) 324-3100

### MEMORANDUM

TO: Mr. Kevin Hennessy

FROM: Mr. Richard W. Medeiros *RWM*

DATE: August 1, 2013

RE: Dominion Energy/Somerset Projects

Please be informed that I am submitting three Project Plans for the Somerset Public Schools. Each plan contains a plan, summary-level budget, timeline, and a description of the anticipated environmental benefits.

We are very excited about this wonderful opportunity for our schools and community. If you have any questions or need additional information, please contact me or my Director of Facilities, Carlos Campos at 508-324-3113. Thank you.