



TABLE OF CONTENTS

I. JURISDICTION AND VENUE.....	3
II. APPLICABILITY.....	4
III. DEFINITIONS.....	4
IV. NO <sub>x</sub> EMISSION REDUCTIONS AND CONTROLS.....	13
V. SO <sub>2</sub> EMISSION REDUCTIONS AND CONTROLS.....	18
VI. PM EMISSION REDUCTIONS AND CONTROLS.....	24
VII. RETIRE STATE LINE.....	30
VIII. PROHIBITION ON NETTING CREDITS OR OFFSETS.....	30
IX. ENVIRONMENTAL MITIGATION PROJECTS.....	32
X. CIVIL PENALTY.....	34
XI. RESOLUTION OF CLAIMS AGAINST DOMINION.....	35
XII. PERIODIC REPORTING.....	36
XIII. REVIEW AND APPROVAL OF SUBMITTALS.....	39
XIV. STIPULATED PENALTIES.....	39
XV. FORCE MAJEURE.....	50
XVI. DISPUTE RESOLUTION.....	53
XVII. PERMITS.....	55
XVIII. INFORMATION COLLECTION AND RETENTION.....	58
XIX. NOTICES.....	59
XX. SALES/TRANSFERS OF OPERATIONAL OR OWNERSHIP INTERESTS...	61
XXI. EFFECTIVE DATE.....	63
XXII. RETENTION OF JURISDICTION.....	63

XXIII. MODIFICATION.....	64
XXIV. GENERAL PROVISIONS.....	64
XXV. SIGNATORIES AND SERVICE.....	67
XXVI. PUBLIC COMMENT.....	68
XXVII. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER DECREE...	68
XXVIII. FINAL JUDGMENT.....	70
APPENDIX A -- ENVIRONMENTAL MITIGATION PROJECTS	

WHEREAS, Plaintiff, the United States of America (“the United States”), on behalf of the United States Environmental Protection Agency (“EPA”), is concurrently filing a Complaint and Consent Decree for injunctive relief and civil penalties pursuant to Sections 113(b)(2) and 167 of the Clean Air Act (the “Act”), 42 U.S.C. §§ 7413(b)(2) and 7477, alleging that Defendants, Dominion Energy, Inc., et al. (hereinafter “Dominion”), violated the Prevention of Significant Deterioration (“PSD”) provisions of Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, the Non-Attainment New Source Review (“NA-NSR”) provisions found at Part D of Subchapter I of the Act, 42 U.S.C. §§ 7501-7515, the New Source Performance Standards (“NSPS”), 42 U.S.C. § 7411, requirements of Title V of the Act, 42 U.S.C. §§ 7661-7661f, and the federally enforceable Indiana, Illinois, and Massachusetts State Implementation Plans (“SIPs”);

WHEREAS, on April 16, 2009, EPA issued a Notice of Violation and Finding of Violation (“NOV/FOV”) to Dominion with respect to certain alleged violations of the CAA;

WHEREAS, the United States provided Dominion and the States of Indiana, Illinois and Massachusetts with actual notice pertaining to Dominion’s alleged violations, in accordance with Section 113 of the Act, 42 U.S.C. § 7413;

WHEREAS, in the Complaint, the United States alleges claims upon which, if proven, relief can be granted against Dominion under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477;

WHEREAS, in the Complaint, the United States alleges, *inter alia*, that Dominion made major modifications to major emitting facilities, and failed to obtain the necessary permits and install and operate the controls necessary under the Act to reduce sulfur dioxide (“SO<sub>2</sub>”),

nitrogen oxides (“NO<sub>x</sub>”), and/or particulate matter (“PM”) emissions, and that such emissions damage human health and the environment;

WHEREAS, Dominion has not answered the Complaint in light of the settlement memorialized in this Decree;

WHEREAS, Dominion has denied and continues to deny the violations alleged in the NOV and Complaint; maintains that it has been and remains in compliance with the Act and is not liable for civil penalties or injunctive relief; and states that it is agreeing to the obligations imposed by this Decree solely to avoid the costs and uncertainties of litigation and to improve the environment;

WHEREAS, the United States and Dominion (collectively, the “Parties”) have agreed that settlement of this action is in the best interests of the Parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

WHEREAS, the Parties anticipate that the installation and operation of pollution control equipment pursuant to this Consent Decree, and the retirement of certain facilities required by this Consent Decree, will achieve significant reductions of SO<sub>2</sub>, NO<sub>x</sub>, and PM emissions, as well as other pollutants, and improve air quality;

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

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

NOW, THEREFORE, without any admission of fact or law, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477. Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). Solely for the purposes of this Consent Decree and the underlying Complaint, and for no other purpose, Dominion waives all objections and defenses that it may have to the Court's jurisdiction over this action, the Court's jurisdiction over Dominion, and to venue in this judicial district. Dominion consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Notwithstanding the foregoing, should this Consent Decree not be entered by this Court, then the waivers and consents set forth in this Section I (Jurisdiction and Venue) shall be null and void and of no effect.
2. Except as expressly provided for herein, this Consent Decree shall not create any rights in or obligations of any party other than the Parties to this Consent Decree. Except as provided in Section XXVI (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice.

## **II. APPLICABILITY**

3. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the United States, and upon Dominion and any successors, assigns, or other entities or persons otherwise bound by law.
4. Dominion shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or other organization retained to perform any of the work required by this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, Dominion shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, Dominion shall not assert as a defense the failure of its officers, directors, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree, unless such failure is determined to be a Force Majeure Event as defined in Paragraph 147 of this Consent Decree.

## **III. DEFINITIONS**

5. Every term expressly defined by this Section shall have the meaning given that term herein. Every other term used in this Consent Decree that is also a term used under the Act or in a federal regulation implementing the Act shall mean in this Consent Decree what such term means under the Act or those regulations.
6. A “12-Month Rolling Average Emission Rate” shall be expressed in lb/mmBTU and calculated in accordance with the following procedure: first, sum the pounds of the pollutant in question emitted from the applicable Unit during the most recent complete Month and the previous eleven (11) Months; second, sum the heat input to the applicable

Unit in mmBTU during the most recent complete Month and the previous eleven (11) Months; and third, divide the total number of pounds of the pollutant emitted during the twelve (12) Months by the total heat input during the twelve (12) Months. A new 12-Month Rolling Average Emission Rate shall be calculated for each new complete Month in accordance with the provisions of this Consent Decree. Each 12-Month Rolling Average Emission Rate shall include all emissions that occur during all periods of operation, including startup, shutdown, and Malfunction, except as otherwise provided by Section XV (Force Majeure).

7. A “30-Day Rolling Average Emission Rate” for a Unit shall be expressed in lb/mmBTU and calculated in accordance with the following procedure: first, sum the total pounds of pollutant emitted from the Unit during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days; second, sum the total heat input to the Unit in mmBTU during the current Unit Operating Day and the previous twenty-nine (29) Unit Operating Days; and third, divide the total number of pounds of pollutant emitted during the thirty (30) Unit Operating Days by the total heat input during the thirty (30) Unit Operating Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. Each 30-Day Rolling Average Emission Rate shall include all emissions that occur during all periods within any Operating Day, including emissions from startup, shutdown, and Malfunction, except as otherwise provided by Section XV (Force Majeure).
8. “Baghouse” means a full stream (fabric filter) particulate emissions control device.



9. “Brayton Point” means, for purposes of this Consent Decree, Dominion’s Brayton Point Power Station consisting of three coal-fired units designated as Unit 1 (244 net MW), Unit 2 (244 net MW), and Unit 3 (612 net MW), located in Somerset, Massachusetts.
10. “CEMS” or “Continuous Emission Monitoring System,” means, for obligations involving the monitoring of NO<sub>x</sub> and SO<sub>2</sub> emissions under this Consent Decree, the devices defined in 40 C.F.R. § 72.2 and installed and maintained as required by 40 C.F.R. Part 75.
11. “Clean Air Act” or “Act” means the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations.
12. “Consent Decree” means this Consent Decree and the Appendix hereto, which is incorporated into the Consent Decree.
13. “Continuous Operation” and “Continuously Operate” mean that when a pollution control technology or combustion control is required to be used at a Unit pursuant to this Consent Decree (including, but not limited to, SCR, FGD, DSI, ESP, Baghouse, LNB, or OFA), it shall be operated at all times such Unit is in operation while burning any coal (except as otherwise provided by Section XV (Force Majeure)), consistent with the technological limitations, manufacturers’ specifications, good engineering and maintenance practices, and good air pollution control practices for minimizing emissions (as defined in 40 C.F.R. § 60.11(d)) for such equipment and the Unit.
14. “Date of Entry” means the date this Consent Decree is approved or signed by the United States District Court Judge.
15. “Date of Lodging” means the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Central District of Illinois.
16. “Day” means calendar day unless otherwise specified in this Consent Decree.

17. “Dominion” or “Defendant” means Dominion Energy, Inc., Dominion Energy Brayton Point, LLC, and Kincaid Generation, LLC.
18. “Dominion System” means the Brayton Point, Kincaid, and State Line facilities as defined herein.
19. “Dry Sorbent Injection” or “DSI” means a process in which a sorbent is pneumatically injected into the ducting downstream of the boiler where the coal is combusted and flue gas is produced, and upstream of the PM Control Device.
20. “Electrostatic Precipitator” or “ESP” means a device for removing particulate matter from combustion gases by imparting an electric charge to the particles and then attracting them to a metal plate or screen of opposite charge before the combustion gases are exhausted to the atmosphere.
21. “Emission Rate” for a given pollutant means the number of pounds of that pollutant emitted per million British thermal units of heat input (lb/mmBTU), calculated in accordance with this Consent Decree.
22. “Environmental Mitigation Projects” or “Projects” means the projects identified in Section IX and Appendix A of this Consent Decree.
23. “EPA” means the United States Environmental Protection Agency.
24. “Flue Gas Desulfurization System” or “FGD” means a pollution control device that removes sulfur compounds from a flue gas stream, including an absorber or absorbers utilizing lime, limestone, or a sodium-based slurry, for the reduction of SO<sub>2</sub> emissions.
25. “Fossil Fuel” means any hydrocarbon fuel, including coal, petroleum coke, petroleum oil, fuel oil, or natural gas.

26. “Kincaid” means Dominion’s Kincaid Power Station consisting of two cyclone boilers, designated as Unit 1 (579 net MW) and Unit 2 (579 net MW), located in Kincaid, Illinois. Kincaid Unit 1 and Unit 2 exhaust to a common stack where all emissions are monitored. Accordingly, so long as the two Units exhaust to a common stack, notwithstanding any other provision, any Emission Rates set forth under this Consent Decree as applicable to each of Kincaid Unit 1 and Unit 2 shall be measured and calculated for the two Units together as if they were a single Unit (e.g., where the Consent Decree specifies that Dominion shall operate controls at Kincaid Unit 1 and Unit 2 to achieve and maintain a 30-Day Rolling Average Emissions Rate for SO<sub>2</sub> of 0.100 lb/mmBTU at each Unit, the emissions rate calculation for the Kincaid Units will be based on the total SO<sub>2</sub> emissions and heat input for the two Units together measured at the stack). A violation of any such rate based on common stack measurements shall be presumed to be two violations, unless Dominion proves to EPA’s satisfaction that the violation is due solely to the mal-performance of one of the two units.
27. “KW” means Kilowatt or one thousand watts.
28. “lb/mmBTU” means one pound per million British thermal units.
29. “Low NO<sub>x</sub> Burner” or “LNB” means commercially available combustion modification technology that minimizes NO<sub>x</sub> formation by introducing coal and combusting air into a boiler such that initial combustion occurs in a manner that promotes rapid coal devolatilization in a fuel-rich (i.e. oxygen deficient) environment and introduces additional air to achieve a final fuel-lean (i.e. oxygen rich) environment to complete the combustion processes.

30. “Malfunction” means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not Malfunctions.
31. “Month” means a calendar month.
32. “MW” means a megawatt or one million watts.
33. “National Ambient Air Quality Standards” or “NAAQS” means national ambient air quality standards promulgated pursuant to Section 109 of the Act, 42 U.S.C. § 7409.
34. “Netting” shall mean the process of determining whether a particular physical change or change in the method of operation of a major stationary source results in a net emissions increase, as that term is defined at 40 C.F.R. § 52.21(b)(3)(i) and/or an applicable SIP.
35. “NO<sub>x</sub>” means oxides of nitrogen, measured in accordance with the provisions of this Consent Decree.
36. “NO<sub>x</sub> Allowance” means an authorization to emit a specified amount of NO<sub>x</sub> that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable State Implementation Plan; provided, however, that with respect to any such program that first applies to emissions occurring after December 31, 2011, a “NO<sub>x</sub> Allowance” shall include an allowance created and allocated to a Dominion System Unit under such program only for control periods starting on or after the fourth anniversary of the Date of Entry of this Consent Decree.
37. “Nonattainment NSR” means the new source review program within the meaning of Part D of Subchapter I of the Act, 42 U.S.C. §§ 7501-7515 and 40 C.F.R. Part 51, and

corresponding provisions of the federally enforceable Illinois, Indiana, or Massachusetts SIPs.

38. “Operational or Ownership Interest” means part or all of Dominion’s legal or equitable operational or ownership interest in any Unit at Brayton Point, Kincaid, or State Line.
39. “Operating Day” means any calendar day on which a Unit fires Fossil Fuel.
40. “Over Fire Air” or “OFA” mean an in-furnace staged combustion control to reduce NO<sub>x</sub> emissions.
41. “Parties” means the United States of America on behalf of EPA; and Dominion. “Party” means one of the named “Parties.”
42. “PM” means total filterable particulate matter, measured in accordance with the provisions of this Consent Decree.
43. “PM CEMS” or “PM Continuous Emission Monitoring System” means, for obligations involving the monitoring of PM emissions under this Consent Decree, the continuous emission monitors installed and maintained as described in 40 C.F.R. § 60.49Da(v).
44. “PM Control Device” means the following devices which reduce emissions of PM: ESPs at Kincaid and State Line, and Baghouses at Brayton Point.
45. “PM Emission Rate” means the number of pounds of PM emitted per million BTU of heat input (lb/mmBTU).
46. “Plant-Wide Annual Tonnage Limitation” means the limitation, as specified in this Consent Decree, on the number of tons of pollutant (SO<sub>2</sub> or NO<sub>x</sub>) that may be emitted from the respective facility during the relevant calendar year (i.e., January 1 through December 31), and shall include all emissions of the specified pollutant that occur during all periods of operation, including startup, shutdown, and Malfunction.

47. “Prevention of Significant Deterioration” or “PSD” means the new source review program within the meaning of Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492 and 40 C.F.R. Part 52, and corresponding provisions of the federally enforceable Illinois, Indiana, or Massachusetts SIPs.
48. “Project Dollars” means Dominion’s expenditures and payments incurred or made in carrying out the Environmental Mitigation Projects identified in Section IX and Appendix A of this Consent Decree to the extent that such expenditures or payments both: (a) comply with the requirements set forth in Section IX and Appendix A of this Consent Decree, and (b) constitute Dominion’s direct payments for such projects, or Dominion’s external costs for contractors, vendors, and equipment.
49. “Retire” means to permanently shut down and physically render the Unit inoperable such that the Unit cannot physically or legally burn coal, and to comply with applicable state and federal requirements for permanently ceasing operation of the Unit as a coal-fired electric generating Unit, including amending any submissions to state air emissions inventories, and submitting applications to amend all applicable permits so as to reflect the permanent shutdown status of such Unit.
50. “SCR” or “Selective Catalytic Reduction” means a pollution control device that destroys  $\text{NO}_x$  by injecting a reducing agent (e.g., ammonia) into the flue gas that, in the presence of a catalyst (e.g., vanadium, titanium, or zeolite), converts  $\text{NO}_x$  into molecular nitrogen and water.
51. “ $\text{SO}_2$ ” means sulfur dioxide, measured in accordance with the provisions of this Consent Decree.

52. “SO<sub>2</sub> Allowance” means an authorization to emit a specified amount of SO<sub>2</sub> that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable State Implementation Plan; provided, however, that with respect to any such program that first applies to emissions occurring after December 31, 2011, an “SO<sub>2</sub> Allowance” shall include an allowance created and allocated to a Dominion System Unit under such program only for control periods starting on or after the fourth anniversary of the Date of Entry of this Consent Decree.
53. “State Implementation Plan” or “SIP” means regulations and other materials promulgated by a state for purposes of meeting the requirements of the Clean Air Act that have been approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410.
54. “State Line” means Dominion’s State Line Power Station consisting of two coal-fired generating units designated as Unit 3 (197 net MW) and Unit 4 (318 net MW), located in Hammond, Indiana.
55. “Surrender” or “Surrender of Allowances” means, for purposes of SO<sub>2</sub> or NO<sub>x</sub> Allowances, permanently surrendering allowances from the accounts administered by EPA and Indiana, Illinois, and Massachusetts for all Units in the Dominion System, so that such allowances can never be used thereafter to meet any compliance requirements under the Clean Air Act, a SIP, or this Consent Decree.
56. “Title V Permit” means the permit required for Defendant’s major sources pursuant to Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.
57. “Unit” means collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine, and boiler,

and all ancillary equipment, including pollution control equipment and systems necessary for production of electricity. An electric steam generating station may comprise one or more Units.

#### **IV. NO<sub>x</sub> EMISSION REDUCTIONS AND CONTROLS**

##### **A. NO<sub>x</sub> Emission Limitations and Control Requirements**

###### **1. Selective Catalytic Reduction, Low NO<sub>x</sub> Burner and Over Fire Air, Operation and Performance Requirements at Brayton Point Unit 1 and Unit 3**

58. Commencing no later than thirty (30) Days after the Date of Entry of the Consent Decree, and continuing thereafter, Dominion shall Continuously Operate the SCR, OFA, and LNB at Unit 1 and Unit 3. Commencing no later than thirty (30) Operating Days thereafter, Dominion shall Continuously Operate such SCR, OFA, and LNB so that each Unit achieves and maintains a 30-Day Rolling Average NO<sub>x</sub> Emission Rate of no greater than 0.080 lb/mmBTU. During any 30-Day period used to calculate a 30-Day Rolling Average NO<sub>x</sub> Emission Rate for Brayton Point Unit 1 or Unit 3, if the dispatch of either Unit requires operation of such Unit(s) burning only natural gas at a load level that results in flue gas temperature so low that it becomes technically infeasible to Continuously Operate the SCR despite Dominion's best efforts to do so, Dominion shall not be subject to stipulated penalties pursuant to Section XIV (Stipulated Penalties) for violating the Emission Rate required by this Paragraph provided that Dominion's emissions do not exceed a 30-Day Rolling Average NO<sub>x</sub> Emission Rate of 0.090 lb/mmBTU and Dominion provides EPA with data and calculations to demonstrate that but for such low load operation burning only natural gas, Dominion would have achieved and maintained



a 30-Day Rolling Average NO<sub>x</sub> Emission Rate of no greater than 0.080 lb/mmBTU at such Unit(s).

**2. Low NO<sub>x</sub> Burner and Over Fire Air Operation and Performance Requirements at Brayton Point Unit 2**

59. Commencing no later than thirty (30) Days after the Date of Entry of the Consent Decree, and continuing thereafter, Dominion shall Continuously Operate the LNB and OFA at Unit 2. Commencing no later than thirty (30) Operating Days thereafter, Dominion shall Continuously Operate such LNB and OFA so that the Unit achieves and maintains a 30-Day Rolling Average NO<sub>x</sub> Emission Rate of no greater than 0.280 lb/mmBTU.

**3. Selective Catalytic Reduction and Over Fire Air Operation and Performance Requirements at Kincaid Unit 1 and Unit 2**

60. Commencing on March 1, 2013, and continuing thereafter, Dominion shall Continuously Operate each SCR and OFA at Kincaid Unit 1 and Unit 2. Commencing no later than thirty (30) Operating Days thereafter, Dominion shall Continuously Operate each such SCR and OFA so that each Unit achieves and maintains a 30-Day Rolling Average Emission Rate for NO<sub>x</sub> of no greater than 0.080 lb/mmBTU. During any 30-Day period used to calculate a 30-Day Rolling Average NO<sub>x</sub> Emission Rate for Kincaid Unit 1 or Unit 2, if the dispatch of either Unit requires operation of such Unit(s) at a load level that results in flue gas temperature so low that it becomes technically infeasible to Continuously Operate the SCR despite Dominion's best efforts to do so (including, but not limited to, maintaining minimum load operation which provides for achieving sufficient inlet temperatures for injection of ammonia to the SCR), Dominion shall not be subject to stipulated penalties pursuant to Section XIV (Stipulated Penalties) for violating

the Emission Rate required by this Paragraph provided that Dominion's emissions do not exceed a 30-Day Rolling Average NO<sub>x</sub> Emission Rate of 0.090 lb/mmBTU and Dominion provides EPA with data and calculations to demonstrate that but for such low load operation, Dominion would have achieved and maintained a 30-Day Rolling Average NO<sub>x</sub> Emission Rate of no greater than 0.080 lb/mmBTU at such Unit(s).

#### **4. Annual NO<sub>x</sub> Tonnage Limitations**

61. In calendar year 2014, and in each calendar year thereafter, Kincaid shall not exceed a Plant-Wide Annual Tonnage Limitation of 3,500 tons of NO<sub>x</sub>, and Brayton Point shall not exceed a Plant-Wide Annual Tonnage Limitation of 4,600 tons of NO<sub>x</sub>.

#### **B. Monitoring of NO<sub>x</sub> Emissions**

62. In determining a 30-Day Rolling Average NO<sub>x</sub> Emission Rate, Dominion shall use CEMS in accordance with the procedures of 40 C.F.R. Part 75 and 40 C.F.R. Part 60, Appendix F, Procedure 1, except that NO<sub>x</sub> emissions data for the 30-Day Rolling Average NO<sub>x</sub> Emission Rate need not be bias adjusted and the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply.
63. For purposes of calculating the Plant-Wide Annual NO<sub>x</sub> Tonnage Limitation, Dominion shall use CEMS in accordance with the procedures at 40 C.F.R. Part 75.

#### **C. Use and Surrender of NO<sub>x</sub> Allowances**

64. Except as may be necessary to comply with Section XIV (Stipulated Penalties), Dominion shall not use NO<sub>x</sub> Allowances to comply with any requirement of this Consent Decree, including by claiming compliance with any emission limitation required by this Consent Decree by using, tendering, or otherwise applying NO<sub>x</sub> Allowances to offset any excess emissions (i.e., emissions above the limits set forth in this Consent Decree).

65. Except as provided in this Consent Decree, and except as required under the current Power Purchase Agreement (“PPA”) with ComEd for Kincaid, which will expire on February 28, 2013, beginning in calendar year 2013 Dominion shall not sell, bank, trade, or transfer any NO<sub>x</sub> Allowances allocated to the Dominion System.
66. Beginning in calendar year 2013, and continuing each calendar year thereafter, Dominion shall Surrender all NO<sub>x</sub> Allowances (other than those NO<sub>x</sub> Allowances required to be transferred to the previous owner of Kincaid under the PPA referenced in Paragraph 65) allocated to the Dominion System for that calendar year that Dominion does not need in order to meet its own federal and/or state Clean Air Act regulatory requirements for the Dominion System Units. However, NO<sub>x</sub> Allowances allocated to the Dominion System may be used by Dominion to meets its own federal and/or state Clean Air Act regulatory requirements for such Units.
67. Nothing in this Consent Decree shall prevent Dominion from purchasing or otherwise obtaining NO<sub>x</sub> Allowances from another source for purposes of complying with federal and/or state Clean Air Act regulatory requirements to the extent otherwise allowed by law.
68. The requirements of this Consent Decree pertaining to Dominion’s use and Surrender of NO<sub>x</sub> Allowances are permanent injunctions not subject to any termination provision of this Consent Decree.

**D. Super-Compliant NO<sub>x</sub> Allowances**

69. Notwithstanding Paragraphs 65 and 66, in each calendar year beginning in 2014, and continuing thereafter, Dominion may sell, bank, use, trade, or transfer NO<sub>x</sub> Allowances made available in that calendar year solely as a result of:

- a. the installation and operation of any NO<sub>x</sub> pollution control that is not otherwise required by, or necessary to maintain compliance with, any provision of this Consent Decree, and is not otherwise required by law; or
- b. achievement and maintenance of an Emission Rate below an applicable 30-Day Rolling Average NO<sub>x</sub> Emission Rate,

provided that Dominion is also in compliance for that calendar year with all emission limitations for NO<sub>x</sub> set forth in this Consent Decree. Dominion shall timely report the generation of such super-compliant NO<sub>x</sub> Allowances in accordance with Section XII (Periodic Reporting) of this Consent Decree.

**E. Method for Surrender of NO<sub>x</sub> Allowances**

70. Dominion shall Surrender, or transfer to a non-profit third-party selected by Dominion for Surrender, all NO<sub>x</sub> Allowances required to be Surrendered pursuant to Paragraph 66 by April 30 of the immediately following calendar year.
71. If any NO<sub>x</sub> Allowances required to be Surrendered under this Consent Decree are transferred directly to a non-profit third-party, Dominion shall include a description of such transfer in the next report submitted to EPA pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall: (a) identify the non-profit third-party recipient(s) of the NO<sub>x</sub> Allowances and list the serial numbers of the transferred NO<sub>x</sub> Allowances; and (b) include a certification by the third-party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the NO<sub>x</sub> Allowances and will not use any of the NO<sub>x</sub> Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any NO<sub>x</sub> Allowances, Dominion shall include a statement that the third-party recipient(s)

Surrendered the NO<sub>x</sub> Allowances for permanent Surrender to EPA in accordance with the provisions of Paragraph 72 within one (1) year after Dominion transferred the NO<sub>x</sub> Allowances to them. Dominion shall not have complied with the NO<sub>x</sub> Allowance Surrender requirements of this Paragraph until all third-party recipient(s) have actually Surrendered the transferred NO<sub>x</sub> Allowances to EPA.

72. For all NO<sub>x</sub> Allowances required to be Surrendered, Dominion or the third-party recipient(s) (as the case may be) shall first submit a NO<sub>x</sub> Allowance transfer request to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such NO<sub>x</sub> Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. Such NO<sub>x</sub> Allowance transfer requests may be made in an electronic manner using the EPA's Clean Air Markets Division Business System or similar system provided by EPA. As part of submitting these transfer requests, Dominion or the third-party recipient(s) shall irrevocably authorize the transfer of these NO<sub>x</sub> Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the NO<sub>x</sub> Allowances being Surrendered.

## **V. SO<sub>2</sub> EMISSION REDUCTIONS AND CONTROLS**

### **A. SO<sub>2</sub> Emission Limitations and Control Requirements**

#### **1. Dry FGD Operation and Performance Requirements at Brayton Point Unit 1 and Unit 2**

73. Commencing no later than sixty (60) Days after the Date of Entry of this Consent Decree, and continuing thereafter, Dominion shall Continuously Operate the existing dry FGDs at

both Brayton Point Unit 1 and Unit 2 so that each Unit achieves and maintains a 12-Month Rolling Average Emission Rate for SO<sub>2</sub> of no greater than 0.150 lb/mmBTU.

74. Commencing on December 31, 2014, and continuing thereafter, Dominion shall Continuously Operate the dry FGDs at both Brayton Point Unit 1 and Unit 2 so that each Unit achieves and maintains a 30-Day Rolling Average Emission Rate for SO<sub>2</sub> of no greater than 0.150 lb/mmBTU. Days on which there is a “gas curtailment” shall be excluded from the calculation of the 30-Day Rolling Average Emission Rate required by this Paragraph. For purposes of this Paragraph, “gas curtailment” means: (a) that ISO-New England has requested that Brayton Point not burn gas during a declared “Energy Emergency” under Operating Procedure No. 21 or during a declared “Cold Weather Event” under Section III.H.3.4(c) of Market Rule 1, Appendix H; (b) that the natural gas transmission pipeline operator (e.g., currently, Algonquin Gas Transmission Company) has posted a notice to its Electronic Bulletin Board that restricts deliveries on the “G-System,” or issues an Operational Flow Order, which limits the delivery of gas to Brayton Point; or (c) that there is a physical disruption in the delivery of natural gas to Brayton Point. To exclude a period of gas curtailment under this Paragraph, Dominion must provide notice to EPA of such curtailment within 10 Days of such curtailment, and provide EPA with data or information in the next scheduled periodic report required by Section XII of this Consent Decree that demonstrates that but for such curtailment, Dominion would have achieved and maintained the 30-Day Rolling Average Emission Rate otherwise required by this Paragraph. A gas curtailment shall not be deemed to occur on the basis of any increase in the cost of supply or transportation of otherwise available natural gas to Brayton Point.

**2. Dry Flue Gas Desulfurization Operation and Performance Requirements at Brayton Point Unit 3**

75. Commencing on July 1, 2013, and continuing thereafter, Dominion shall Continuously Operate dry FGD at Brayton Point Unit 3. Commencing no later than thirty (30) Operating Days thereafter, Dominion shall Continuously Operate such dry FGD so as to achieve and maintain (a) a 30-Day Rolling Average Emission Rate for SO<sub>2</sub> of no greater than 0.100 lb/mmBTU, and (b) a 12-Month Rolling Average Emission Rate for SO<sub>2</sub> of no greater than 0.080 lb/mmBTU.

**3. Dry Sorbent Injection and Performance Requirements at Kincaid**

76. Commencing on January 1, 2014, and continuing thereafter, Dominion shall Continuously Operate DSI at Kincaid Unit 1 and Unit 2. Commencing no later than thirty (30) Operating Days thereafter, Dominion shall Continuously Operate each such DSI so that each Unit achieves and maintains a 30-Day Rolling Average Emission Rate for SO<sub>2</sub> of no greater than 0.100 lb/mmBTU.

**4. Annual SO<sub>2</sub> Tonnage Limitations**

77. In calendar year 2014 and in each calendar year thereafter, Kincaid shall not exceed a Plant-Wide Annual Tonnage Limitation of 4,400 tons of SO<sub>2</sub>, and Brayton Point shall not exceed a Plant-Wide Annual Tonnage Limitation of 4,100 tons of SO<sub>2</sub>.

**B. Monitoring of SO<sub>2</sub> Emissions**

78. In determining a 30-Day Rolling Average SO<sub>2</sub> Emission Rate or a 12-Month Rolling Average SO<sub>2</sub> Emission Rate, Dominion shall use CEMS in accordance with the procedures of 40 C.F.R. Part 75 and 40 C.F.R. Part 60, Appendix F, Procedure 1, except that SO<sub>2</sub> emissions data for the 30-Day Rolling Average SO<sub>2</sub> Emission Rate need not be

bias adjusted and the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply.

79. For purposes of calculating the Plant-Wide Annual SO<sub>2</sub> Tonnage Limitation, Dominion shall use CEMS in accordance with the procedures specified in 40 C.F.R. Part 75.

**C. Use and Surrender of SO<sub>2</sub> Allowances**

80. Except as may be necessary to comply with Section XIV (Stipulated Penalties), Dominion shall not use SO<sub>2</sub> Allowances to comply with any requirement of this Consent Decree, including by claiming compliance with any emission limitation required by this Consent Decree by using, tendering, or otherwise applying SO<sub>2</sub> Allowances to offset any excess emissions.
81. Except as provided in this Consent Decree, and except as required under the current PPA with ComEd for Kincaid, which will expire on February 28, 2013, beginning in calendar year 2013 Dominion shall not sell, bank, trade, or transfer any SO<sub>2</sub> Allowances allocated to the Dominion System. The Parties recognize that this obligation does not apply with respect to specific Allowances that were previously allocated to the prior owner of any Dominion System Unit under the 1990 Clean Air Act Amendments' Acid Rain Program and that are not owned or controlled by Dominion.
82. Beginning in calendar year 2013, and continuing each year through calendar year 2015, Dominion shall Surrender all SO<sub>2</sub> Allowances (other than those SO<sub>2</sub> Allowances required to be transferred to the previous owner of Kincaid under the PPA referenced in Paragraph 81 and other than the SO<sub>2</sub> Allowances that were previously allocated to the prior owner of any Dominion System Unit under the 1990 Clean Air Act Amendments'



Acid Rain Program and that are not owned or controlled by Dominion) provided to Dominion for the Dominion System for that calendar year that Dominion does not need in order to meet its own federal and/or state Clean Air Act regulatory requirements for the Dominion System Units. Beginning in calendar year 2016, and continuing each calendar year thereafter, Dominion shall Surrender all SO<sub>2</sub> Allowances allocated to the Dominion System for that calendar year that Dominion does not need in order to meet its own federal and/or state Clean Air Act regulatory requirements for the Dominion System Units. However, SO<sub>2</sub> Allowances allocated to the Dominion System may be used by Dominion to meet its own federal and/or state Clean Air Act regulatory requirements for such Units.

83. Nothing in this Consent Decree shall prevent Dominion from purchasing or otherwise obtaining SO<sub>2</sub> Allowances from another source for purposes of complying with federal and/or state regulatory requirements to the extent otherwise allowed by law.
84. The requirements of this Consent Decree pertaining to Dominion's use and Surrender of SO<sub>2</sub> Allowances are permanent injunctions not subject to any termination provision of this Consent Decree.

**D. Super-Compliant SO<sub>2</sub> Allowances**

85. Notwithstanding Paragraphs 81 and 82, in each calendar year beginning in 2014, and continuing thereafter, Dominion may sell, bank, use, trade, or transfer SO<sub>2</sub> Allowances made available in that calendar year solely as a result of:
  - a. the installation and operation of any SO<sub>2</sub> pollution control that is not otherwise required by, or necessary to maintain compliance with, any provision of this Consent Decree, and is not otherwise required by law; or

b. achievement and maintenance of an Emission Rate below an applicable 30-Day Rolling Average SO<sub>2</sub> Emission Rate, provided that Dominion is also in compliance for that calendar year with all emission limitations for SO<sub>2</sub> set forth in this Consent Decree. Dominion shall timely report the generation of such super-compliant SO<sub>2</sub> Allowances in accordance with Section XII (Periodic Reporting) of this Consent Decree.

**E. Method for Surrender of SO<sub>2</sub> Allowances**

86. Dominion shall Surrender, or transfer to a non-profit third party selected by Dominion for Surrender, all SO<sub>2</sub> Allowances required to be Surrendered pursuant to Paragraph 82 by April 30 of the immediately following calendar year.
87. If any SO<sub>2</sub> Allowances required to be Surrendered under this Consent Decree are transferred directly to a non-profit third party, Dominion shall include a description of such transfer in the next report submitted to EPA pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall: (a) identify the non-profit third party recipient(s) of the SO<sub>2</sub> Allowances and list the serial numbers of the transferred SO<sub>2</sub> Allowances; and (b) include a certification by the non-profit third party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the allowances and will not use any of the SO<sub>2</sub> Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any SO<sub>2</sub> Allowances, Dominion shall include a statement that the non-profit third party recipient(s) Surrendered the SO<sub>2</sub> Allowances for permanent Surrender to EPA in accordance with the provisions of Paragraph 88 within one (1) year after Dominion transferred the SO<sub>2</sub> Allowances to them. Dominion shall not have complied with the SO<sub>2</sub>

Allowance Surrender requirements of this Paragraph until all third party recipient(s) have actually Surrendered the transferred SO<sub>2</sub> Allowances to EPA.

88. For all SO<sub>2</sub> Allowances required to be Surrendered, Dominion or the third party recipient(s) (as the case may be) shall first submit an SO<sub>2</sub> Allowance transfer request to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such SO<sub>2</sub> Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. Such SO<sub>2</sub> Allowance transfer requests may be made in an electronic manner using the EPA's Clean Air Markets Division Business System or similar system provided by EPA. As part of submitting these transfer requests, Dominion or the third party recipient(s) shall irrevocably authorize the transfer of these SO<sub>2</sub> Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the SO<sub>2</sub> Allowances being Surrendered.

## **VI. PM EMISSION REDUCTIONS AND CONTROLS**

### **A. Optimization of Baghouse and Existing ESPs**

89. By no later than thirty (30) Days from the Date of Entry of this Consent Decree, and continuing thereafter, Dominion shall Continuously Operate each PM Control Device on each Unit in the Dominion System. Dominion shall, at a minimum, to the extent practicable: (a) fully energize each section of the ESP for each Unit, where applicable; operate each compartment of the Baghouse for each Unit (except the compartment provided as a spare compartment under the design of the baghouse), where applicable (regardless of whether those actions are needed to comply with opacity limits); and repair any failed ESP section or Baghouse compartment at the next planned Unit outage (or

unplanned outage of sufficient length); (b) operate automatic control systems on each ESP to maximize PM collection efficiency, where applicable; (c) maintain and replace bags on each Baghouse as needed to maximize collection efficiency, where applicable; and (d) inspect for and repair during the next planned Unit outage (or unplanned outage of sufficient length) any openings in ESP or Baghouse casings, ductwork and expansion joints to minimize air leakage.

**B. PM Emission Rate and Monitoring Requirements**

90. Commencing no later than sixty (60) Days from the Date of Entry of this Consent Decree, and continuing thereafter, Dominion shall Continuously Operate the Baghouses at Brayton Point Unit 1 and Unit 2 so that each Unit achieves and maintains a PM Emission Rate of no greater than 0.015 lb/mmBTU.
91. Commencing on July 1, 2013, and continuing thereafter, Dominion shall Continuously Operate a Baghouse at Brayton Point Unit 3 so as to achieve and maintain a PM Emission Rate of no greater than 0.015 lb/mmBTU.
92. Commencing no later than sixty (60) Days from the Date of Entry of this Consent Decree, and continuing thereafter, Dominion shall Continuously Operate the ESPs at Kincaid Unit 1 and Unit 2 so as to achieve and maintain a PM Emission Rate of no greater than 0.030 lb/mmBTU.
93. Commencing in calendar year 2013, and continuing annually thereafter, Dominion shall conduct a stack test for PM pursuant to Paragraph 94 for Brayton Point Unit 1, Unit 2 and Unit 3, and Kincaid Unit 1 and Unit 2. The annual performance test requirement imposed on Dominion by this Paragraph may be satisfied by stack tests conducted by Dominion as may be required by its permits from the applicable State for any year that

such stack tests are required under the permits. Dominion may perform testing every other year, rather than every year, provided that two of the most recently completed test results from tests conducted in accordance with the methods and procedures specified in this Consent Decree demonstrate that the PM emissions are equal to or less than 0.015 lb/mmBTU for those units with an ESP and 0.010 lb/mmBTU for those units with a Baghouse. Dominion shall perform testing every year, rather than every other year, beginning in the year immediately following any test result demonstrating that the PM emissions are greater than 0.015 lb/mmBTU for those units with an ESP or 0.010 lb/mmBTU for those units with a Baghouse .

94. To determine compliance with the PM Emission Rate established in Paragraphs 90-92, Dominion shall use the applicable reference methods and procedures (filterable portion only) specified in its Clean Air Act permits and applicable SIP. Each test shall consist of three separate runs performed under representative operating conditions not including periods of startup, shutdown, or Malfunction. The sampling time for each run shall be at least 120 minutes and the volume of each run shall be at least 1.70 dry standard cubic meters (60 dry standard cubic feet). Dominion shall calculate the PM Emission Rate from the stack test results in accordance with 40 C.F.R. § 60.8(f). The results of each PM stack test shall be submitted to EPA within sixty (60) Days of completion of each test.
95. Commencing in calendar year 2013, and continuing thereafter in each year that testing is required pursuant to Paragraph 93, Dominion shall conduct a PM stack test for condensable PM at Brayton Point Unit 1, Unit 2 and Unit 3, and Kincaid Unit 1 and Unit 2, using the reference methods and procedures set forth at 40 C.F.R. Part 51, Appendix M, Method 202 and as set forth in Paragraph 94. Each test shall consist of three separate

runs performed under representative operating conditions not including periods of startup, shutdown, or Malfunction. The sampling time for each run shall be at least 120 minutes and the volume of each run shall be 1.70 dry standard cubic meters (60 dry standard cubic feet). Dominion shall calculate the number of pounds of condensable PM emitted in lb/mmBTU of heat input from the stack test results in accordance with 40 C.F.R. § 60.8(f). The results of the PM stack test conducted pursuant to this Paragraph shall not be used for the purpose of determining compliance with the PM Emission Rates required by this Consent Decree. The results of each PM stack test shall be submitted to EPA and the applicable state agency within sixty (60) Days of completion of each test.

96. When Dominion submits the application for amendment to its Title V Permit pursuant to Paragraph 168, that application shall include a Compliance Assurance Monitoring (“CAM”) plan, under 40 C.F.R. Part 64, for the PM Emission Rate in Paragraphs 90-92. The PM CEMS required under Paragraphs 97-101 may be used in that CAM plan.

### **C. PM CEMS**

97. Dominion shall install, correlate, maintain, and operate PM CEMS on Brayton Point Unit 1, Unit 2, and Unit 3, and Kincaid Unit 1 and Unit 2, as specified below. The PM CEMS shall comprise a continuous particle mass monitor measuring particulate matter concentration, directly or indirectly, on an hourly average basis and a diluent monitor used to convert the concentration to units expressed in lb/mmBTU. The PM CEMS installed at each Unit must be appropriate for the anticipated stack conditions and capable of measuring PM concentrations on an hourly average basis. Installation and operation of a single PM CEMS at the common stack of Kincaid Units 1 and 2 shall serve the requirement for both units. Dominion shall maintain, in an electronic database, the

hourly average emission values of all PM CEMS in lb/mmBTU. Except for periods of monitor malfunction, maintenance, or repair, Dominion shall continuously operate the PM CEMS at all times when the Unit it serves is operating.

98. By no later than nine (9) Months from the Date of Entry of this Consent Decree, Dominion shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree a plan for the installation and correlation of the PM CEMS for Brayton Point Unit 1, Unit 2 and Unit 3, and the common stack of Kincaid Unit 1 and Unit 2.
99. By no later than twelve (12) Months from the Date of Entry of this Consent Decree, Dominion shall submit to EPA for review and approval pursuant to Section XIII (Review and Approval of Submittals) of this Consent Decree a proposed Quality Assurance/Quality Control (“QA/QC”) protocol that shall be followed for such PM CEMS. The proposed QA/QC protocol may include a process for streamlined revisions to stay current with regulatory changes (e.g., PS 11) and PM monitor vendor recommendations.
100. In developing both the plan for installation and correlation of the PM CEMS and the QA/QC protocol, Dominion shall use the criteria set forth in 40 C.F.R. Part 60, Appendix B, Performance Specification 11, and Appendix F, Procedure 2. Following EPA’s approval (in consultation with the appropriate state agency) of the plan described in Paragraph 98 and the QA/QC protocol described in Paragraph 99, Dominion shall thereafter operate the PM CEMS in accordance with the approved plan and QA/QC protocol.

101. By no later than eighteen (18) Months after the date that EPA approves the plan for the installation of the PM CEMS for Kincaid Units 1 and 2, and by no later than twenty four (24) months after the date that EPA approves the plan for the installation of the PM CEMS for Brayton Point Units 1, 2, and 3, Dominion shall install, correlate, maintain, and operate PM CEMS at each Unit or stack, conduct performance specification tests on the PM CEMS, and demonstrate compliance with the plan and protocol submitted to and approved by EPA in accordance with Paragraphs 98 and 99. Dominion shall report, pursuant to Section XII (Periodic Reporting), the data recorded by the PM CEMS, expressed in lb/mmBTU on a rolling average 3-hour basis and a rolling average 24-hour basis in electronic format (Microsoft Excel compatible) to EPA. Notwithstanding any other provision of this Consent Decree, exceedances of the PM Emission Rate that occur as a result of detuning emission controls as required to achieve the high level PM test runs during the correlation testing shall not be considered a violation of the requirements of this Consent Decree and shall not be subject to stipulated penalties; provided, however, that Dominion shall make best efforts to keep the high level PM test runs during such correlation testing below the applicable PM Emission Rate.

#### **D. General PM Provisions**

102. Stack testing shall be used to determine compliance with the PM Emission Rate established by this Consent Decree. Data from PM CEMS shall be used, at a minimum, to monitor progress in reducing PM emissions on a continuous basis.
103. Nothing in this Consent Decree is intended to, or shall, alter or waive any applicable law (including but not limited to any defenses, entitlements, challenges, or clarifications



related to the Credible Evidence Rule, 62 Fed. Reg. 8314 (Feb. 24, 1997)) concerning the use of data for any purpose under the Act.

#### **VII. RETIRE STATE LINE**

104. No later than June 1, 2012, Dominion shall permanently shut down State Line Unit 3 and Unit 4. No later than the Date of Entry of this Consent Decree, Dominion shall implement all other requirements to Retire State Line Unit 3 and Unit 4.

#### **VIII. PROHIBITION ON NETTING CREDITS OR OFFSETS**

105. Emission reductions that result from actions to be taken by Dominion after the Date of Entry of this Consent Decree to comply with the requirements of this Consent Decree shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a Netting credit or offset under the Clean Air Act's Nonattainment NSR and PSD programs. Notwithstanding the preceding sentence, and subject to the limitations provided in the following Paragraph 106, Dominion may treat up to (a) 75 tons of NO<sub>x</sub>, 75 tons of SO<sub>2</sub>, and 15 tons of PM emission reductions at the Kincaid plant as if they were not otherwise required by this Consent Decree for purposes of netting at the Kincaid plant, and (b) 75 tons of NO<sub>x</sub>, 75 tons of SO<sub>2</sub>, and 15 tons of PM emission reductions at Brayton Point Unit 3 as if they were not otherwise required by this Consent Decree for purposes of Netting at Brayton Point Unit 3.
106. Use of the Netting credits provided in Paragraph 105 is subject to the following additional restrictions:
- (a) The emission reductions of NO<sub>x</sub>, SO<sub>2</sub>, and PM Dominion intends to utilize for Netting purposes must be contemporaneous and otherwise creditable within the meaning of the Act and the applicable SIP, and Dominion must comply with, and be subject to, all

requirements and criteria for creating contemporaneous creditable decreases as set forth in 40 C.F.R. § 52.21(b) and the applicable SIP, subject to the limitations of this Section,

(b) Dominion must apply for, and obtain, any required minor NSR permits for any project in which emission reductions under Paragraph 105 are used for Netting.

Dominion shall provide notice and a copy of its permit application to EPA in accordance with Section XIX (Notices), concurrent with its permit application submission to the relevant permitting authority,

(c) The emission reductions of NO<sub>x</sub>, SO<sub>2</sub>, and PM Dominion intends to utilize for Netting shall not be available under this Section if such use would result in an exceedance of a PSD increment, an adverse impact on a Class I area, or an interference with “reasonable further progress” toward attainment of a NAAQS in accordance with Part D of the CAA, and

(d) Dominion must be and remain in full compliance with the provisions of this Consent Decree establishing performance, operational, maintenance, and control technology requirements at the plant at which netting is used or proposed to be used, including Emission Rates, Plant-Wide Annual Tonnage Limitations, and the requirements pertaining to the Surrender of SO<sub>2</sub> and NO<sub>x</sub> Allowances.

107. The limitations on the generation and use of Netting credits and offsets set forth in this Section do not apply to emission reductions achieved by a particular Dominion System Unit that are greater than those required under this Consent Decree for that particular Dominion System Unit. For purposes of this Paragraph, emission reductions from a Dominion System Unit are greater than those required under this Consent Decree if they result from such Unit’s compliance with federally-enforceable emission limits that are

more stringent than those limits imposed on the Unit under this Consent Decree and under applicable provisions of the Clean Air Act or the applicable SIP.

108. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by the applicable state regulatory agency or EPA for the purpose of attainment demonstrations submitted pursuant to § 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on National Ambient Air Quality Standards, PSD increment, or air quality related values, including visibility, in a Class I area.

#### **IX. ENVIRONMENTAL MITIGATION PROJECTS**

109. Dominion shall implement the Environmental Mitigation Projects (“Projects”) described in Appendix A to this Consent Decree in compliance with the approved plans and schedules for such Projects and other terms of this Consent Decree. In implementing the Projects, Dominion shall spend no less than \$9.75 million in Project Dollars. Dominion shall not include its own personnel costs in overseeing the implementation of the Projects as Project Dollars.
110. Dominion shall maintain, and present to EPA upon request, all documents to substantiate the Project Dollars expended to implement the Projects described in Appendix A, and shall provide these documents to EPA within thirty (30) Days of a request for the documents.
111. All plans and reports prepared by Dominion pursuant to the requirements of this Section IX of the Consent Decree and required to be submitted to EPA shall be publicly available from Dominion without charge.

112. Dominion shall certify, as part of each plan submitted to EPA for any Project, that Dominion is not otherwise required by law to perform the Project described in the 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.
113. Dominion shall 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.
114. If Dominion elects (where such an election is allowed) to undertake a Project by contributing funds to another person or entity that will carry out the Project in lieu of Dominion, but not including Dominion's agents or contractors, that person or instrumentality must, in writing: (a) identify its legal authority for accepting such funding; and (b) identify its legal authority to conduct the Project for which Dominion contributes the funds. Regardless of whether Dominion elects (where such election is allowed) to undertake a Project by itself or to do so by contributing funds to another person or instrumentality that will carry out the Project, Dominion acknowledges that it will receive credit for the expenditure of such funds as Project Dollars only if Dominion demonstrates that the funds have been actually spent by either Dominion or by the person or instrumentality receiving them, and that such expenditures met all requirements of this Consent Decree.
115. Dominion shall comply with the reporting requirements described in Appendix A.

116. In connection with any communication to the public or to shareholders regarding Dominion's actions or expenditures relating in any way to the Environmental Mitigation Projects in this Consent Decree, Dominion shall include prominently in the communication the information that the actions and expenditures were required as part of a consent decree to resolve allegations that Dominion violated the Clean Air Act.
117. Within sixty (60) Days following the completion of each Project required under this Consent Decree (including any applicable periods of demonstration or testing), Dominion shall submit to the United States a report that documents the date that the Project was completed, the results achieved by implementing the Project, including the emission reductions or other environmental benefits, and the Project Dollars expended by Dominion in implementing the Project.

#### **X. CIVIL PENALTY**

118. Within thirty (30) Days after the Date of Entry of this Consent Decree, Dominion shall pay to the United States a civil penalty in the amount of \$3.4 million. The civil penalty shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number 2013V00150, DOJ Case Number 90-5-2-1-09860, and the civil action case name and case number of this action. The costs of such EFT shall be Dominion's responsibility. Payment shall be made in accordance with instructions provided to Dominion by the Financial Litigation Unit of the U.S. Attorney's Office for the Central District of Illinois. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, Dominion shall provide notice of payment, referencing the USAO File Number, the DOJ Case Number, and the civil action case name and case number, to

the United States Department of Justice and to EPA in accordance with Section XIX (Notices) of this Consent Decree.

119. Failure to timely pay the civil penalty shall subject Dominion to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961, and shall render Dominion liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment.
120. Payments made pursuant to this Section, and payments made pursuant to Section XIV (Stipulated Penalties), are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures for purposes of federal law.

## **XI. RESOLUTION OF CLAIMS AGAINST DOMINION**

### **A. Resolution of U.S. Civil Claims**

121. 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 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.

## **XII. PERIODIC REPORTING**

122. After entry of this Consent Decree, Dominion shall submit to EPA a periodic report, within sixty (60) Days after the end of each half of the calendar year (January through June and July through December). The report shall include the following information:
- a. all information necessary to determine compliance with the requirements of the following provisions of this Consent Decree: Section IV concerning NO<sub>x</sub> emissions and monitoring (including all information necessary to determine whether it is technically infeasible to Continuously Operate the SCR as provided in Paragraphs 58 and 60), and the surrender of NO<sub>x</sub> Allowances; Section V concerning SO<sub>2</sub> emissions and monitoring (including all information concerning gas curtailments as provided in Paragraph 74), and the surrender of SO<sub>2</sub> Allowances; Section VI concerning PM emissions and monitoring;
  - b. 3-hour rolling average and 24-hour rolling average PM CEMS data as required by Paragraph 101 in electronic format (Microsoft Excel compatible), and an identification of all periods of monitor malfunction, maintenance, and/or repair as provided in Paragraph 97;

- c. Any submittals to the applicable permitting authority requesting use of Netting credits or offsets generated by Paragraph 105 of this Consent Decree.
  - d. all information relating to Super-Compliant NO<sub>x</sub> and SO<sub>2</sub> Allowances that Dominion claims to have generated in accordance with Sections IV.D and V.D through compliance beyond the requirements of this Consent Decree;
  - e. all information indicating that the installation or upgrade and commencement of operation of a new or upgraded pollution control device may be delayed, including the nature and cause of the delay, and any steps taken by Dominion to mitigate such delay;
  - f. all affirmative defenses asserted pursuant to Paragraphs 138 through 144 during the period covered by the progress report;
  - g. an identification of all periods when any pollution control device required by this Consent Decree to Continuously Operate was not operating, the reason(s) for the equipment not operating, and the basis for Dominion's compliance or non-compliance with the Continuous Operation requirements of this Consent Decree; and
  - h. a summary of actions implemented and expenditures made pursuant to implementation of the Environmental Mitigation Projects required pursuant to Section IX and Appendix A.
123. In any periodic report submitted pursuant to this Section, Dominion may incorporate by reference information previously submitted under its Title V permitting requirements, provided that Dominion attaches the Title V Permit report (or the pertinent portions of



such report) and provides a specific reference to the provisions of the Title V Permit report that are responsive to the information required in the periodic report.

124. In addition to the reports required pursuant to this Section, if Dominion violates or deviates from any provision of this Consent Decree, Dominion shall submit to EPA a report on the violation or deviation within ten (10) business days after Dominion knew or should have known of the event. In the report, Dominion shall explain the cause or causes of the violation or deviation and any measures taken or to be taken by Dominion to cure the reported violation or deviation or to prevent such violation or deviation in the future. If at any time, the provisions of this Consent Decree are included in Title V Permits, consistent with the requirements for such inclusion in this Consent Decree, then the deviation reports required under applicable Title V regulations shall be deemed to satisfy all the requirements of this Paragraph.
125. Each Dominion report shall be signed by Dominion's Responsible Official as defined in Title V of the Clean Air Act, or his or her equivalent or designee of at least the rank of Vice President, and shall contain the following certification:

This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

126. If any NO<sub>x</sub> or SO<sub>2</sub> Allowances are surrendered to any non-profit third party pursuant to Paragraphs 71 and/or 87, the non-profit third party's certification shall be signed by a managing officer of the non-profit third party and shall contain the following language:

I certify under penalty of law that \_\_\_\_\_ [name of non-profit third party] will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for making misrepresentations to or misleading the United States.

### **XIII. REVIEW AND APPROVAL OF SUBMITTALS**

127. Dominion shall submit each plan, report, or other submission required by this Consent Decree to EPA whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. For any submittal requiring EPA approval under this Consent Decree, EPA may approve the submittal or decline to approve it and provide written comments explaining the bases for declining such approval as soon as reasonably practicable. Within sixty (60) Days of receiving written comments from EPA, Dominion shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal to EPA; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XVI (Dispute Resolution) of this Consent Decree.
128. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, Dominion shall implement the approved submittal in accordance with the schedule specified therein or another EPA-approved schedule.

### **XIV. STIPULATED PENALTIES**

129. For any failure by Dominion to comply with the terms of this Consent Decree, and subject to the provisions of Sections XV (Force Majeure) and XVI (Dispute Resolution), Dominion shall pay, within thirty (30) Days after receipt of written demand to Dominion by the United States, the following stipulated penalties to the United States:

<b>Consent Decree Violation</b>	<b>Stipulated Penalty</b>
a. Failure to pay the civil penalty as required by Section X (Civil Penalty) of this Consent Decree	\$10,000 per Day
b. Failure to comply with any applicable 30-Day Rolling Average Emission Rate.	<p>\$2,500 per Day per violation where the violation is less than 5% in excess of the lb/mmBTU limits</p> <p>\$5,000 per Day per violation where the violation is equal to or greater than 5% but less than 10% in excess of the lb/mmBTU limits</p> <p>\$10,000 per Day per violation where the violation is equal to or greater than 10% in excess of the lb/mmBTU limits</p>
c. Failure to comply with any applicable 12-Month Rolling Average Emission Rate	<p>\$200 per Operating Day per violation where the violation is less than 5% in excess of the lb/mmBTU limits</p> <p>\$400 per Operating Day per violation where the violation is equal to or greater than 5% but less than 10% in excess of the lb/mmBTU limits</p> <p>\$800 per Operating Day per violation where the violation is equal to or greater than 10% in excess of the lb/mmBTU limits</p>
d. Failure to comply with an applicable Plant-Wide Annual Tonnage Limitation	\$5,000 per ton for first 100 tons, \$10,000 per ton for each additional ton above 100 tons, plus the surrender of NO <sub>x</sub> or SO <sub>2</sub> Allowances in an amount equal to two times the number of tons of NO <sub>x</sub> or SO <sub>2</sub> emitted that exceeded the Plant-Wide Annual Tonnage Limitation

e. Failure to install, commence Continuous Operation, or Continuously Operate a NO <sub>x</sub> , SO <sub>2</sub> , or PM control device as required by this Consent Decree	\$10,000 per Day per violation during the first 30 Days; \$37,500 per Day per violation thereafter
f. Failure to comply with any applicable PM Emission Rate, where the violation is less than 5% in excess of the lb/mmBTU limit	\$2,500 per Operating Day per violation, starting on the Day a stack test result demonstrates a violation and continuing each Operating Day thereafter until and excluding such Day on which a subsequent stack test* demonstrates compliance with the applicable PM Emission Rate
g. Failure to comply with any applicable PM Emission Rate, where the violation is equal to or greater than 5% but less than 10% in excess of the lb/mmBTU limit	\$5,000 per Operating Day per violation, starting on the Day a stack test result demonstrates a violation and continuing each Operating Day thereafter until and excluding such Day on which a subsequent stack test* demonstrates compliance with the applicable PM Emission Rate
h. Failure to comply with any applicable PM Emission Rate, where the violation is equal to or greater than 10% in excess of the lb/mmBTU limit	\$10,000 per Operating Day per violation, starting on the Day a stack test result demonstrates a violation and continuing each Operating Day thereafter until and excluding such Day on which a subsequent stack test* demonstrates compliance with the applicable PM Emission Rate
i. Failure to Retire a Unit as required by this Consent Decree	\$10,000 per Day per violation during the first 30 Days; \$37,500 per Day per violation thereafter
j. Failure to conduct a stack test for PM and as required by Section VI of this Consent Decree	\$1,000 per Day per violation
k. Failure to install or operate CEMS as required by this Consent Decree	\$1,000 per Day per violation

l. Failure to apply for any permit required by Section XVII of this Consent Decree	\$1,000 per Day per violation
m. Failure to timely submit, modify, or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	\$750 per Day per violation during the first 10 Days; \$1,000 per Day per violation thereafter
n. Failure to surrender SO <sub>2</sub> Allowances as required by this Consent Decree	\$37,500 per Day, plus \$1,000 per SO <sub>2</sub> Allowance not surrendered
o. Failure to surrender NO <sub>x</sub> Allowances as required by this Consent Decree	\$37,500 per Day, plus \$1,000 per NO <sub>x</sub> Allowance not surrendered
p. Using, selling, banking, trading, or transferring NO <sub>x</sub> Allowances or SO <sub>2</sub> Allowances except as permitted by this Consent Decree	The surrender of Allowances in an amount equal to four (4) times the number of Allowances used, sold, banked, traded, or transferred in violation of this Consent Decree
q. Failure to demonstrate the third-party surrender of a NO <sub>x</sub> or SO <sub>2</sub> Allowance as required by Paragraphs 72 and 88 of this Consent Decree	\$2,500 per Day per violation
r. Failure to optimize the existing ESPs and baghouses as required by Paragraph 89 of this Consent Decree	\$1,000 per Day per violation
s. Failure to undertake and complete any of the Environmental Mitigation Projects in compliance with Section IX and Appendix A of this Consent Decree	\$1,000 per Day per violation during the first 30 Days; \$5,000 per Day per violation thereafter
t. Any other violation of this Consent Decree	\$1,000 per Day per violation

\*Dominion shall not be required to make any submission, including any notice or test protocol, or to obtain any approval to or from EPA in advance of conducting such a subsequent stack test, provided that Dominion uses test protocols previously approved by EPA.

130. Violations of any limit based on a 30-Day rolling average constitutes thirty (30) Days of violation but where such a violation (for the same pollutant and from the same Unit) recurs within periods less than thirty (30) Days, Dominion shall not be obligated to pay a daily stipulated penalty for any Day of the recurrence for which a stipulated penalty has already been paid.

131. Violations of any limit based on a 12-Month rolling average shall be assessed a stipulated penalty for each Operating Day in the 365 Days comprising the 12-Month period at issue, excluding any Operating Day for which a stipulated penalty has already been paid for a violation of an applicable 30-Day Rolling Average Emission Rate (for the same pollutant and from the same Unit). Where such a violation of the 12-Month Rolling Average Emission Rate (for the same pollutant and from the same Unit) recurs within periods less than 12 Months, Dominion shall not be obligated to pay a monthly stipulated penalty for any Day of the recurrence for which a stipulated penalty has already been paid.
132. All stipulated penalties shall begin to accrue on the Day after the performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases, whichever is applicable. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.
133. Dominion shall pay all stipulated penalties to the United States within thirty (30) Days of receipt of written demand to Dominion from the United States, and shall continue to make such payments every thirty (30) Days thereafter until the violation(s) no longer continues, unless Dominion elects within twenty (20) Days of receipt of written demand to Dominion from the United States to dispute the accrual of stipulated penalties in accordance with the provisions in Section XVI (Dispute Resolution) of this Consent Decree.
134. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 132 during any dispute, with interest on accrued stipulated penalties payable and

calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

- a. If the dispute is resolved by agreement, or by a decision of the United States pursuant to Section XVI (Dispute Resolution) of this Consent Decree that is not appealed to the Court, accrued stipulated penalties agreed or determined to be owing, together with accrued interest, shall be paid within thirty (30) Days of the effective date of the agreement or of the receipt of the United States' decision;
- b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Dominion shall, within thirty (30) Days of receipt of the Court's decision or order, pay all accrued stipulated penalties determined by the Court to be owing, together with interest accrued on such penalties determined by the Court to be owing, except as provided in Subparagraph (c), below;
- c. If the Court's decision is appealed by either Party, Dominion shall, within fifteen (15) Days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined by the appellate court to be owing, together with interest accrued on such stipulated penalties.

Notwithstanding any other provision of this Consent Decree, the accrued stipulated penalties agreed by the United States and Dominion, or determined by the United States through Dispute Resolution, to be owing may be less than the stipulated penalty amounts set forth in Paragraph 129.

135. All monetary stipulated penalties shall be paid in the manner set forth in Section X (Civil Penalty) of this Consent Decree, and all Allowance Surrender stipulated penalties shall comply with the Allowance Surrender procedures of Paragraphs 70-72 and 86-88.

136. Should Dominion fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.
137. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States by reason of Dominion's failure to comply with any requirement of this Consent Decree or applicable law, except that for any violation of the Act for which this Consent Decree provides for payment of a stipulated penalty, Dominion shall be allowed a credit for stipulated penalties paid against any statutory penalties also imposed for such violation.
138. Affirmative Defense as to Stipulated Penalties for Excess Emissions Occurring During Malfunctions: If any of the Units at Brayton or Kincaid exceed an applicable 30-Day Rolling Average Emission Rate for NO<sub>x</sub> or SO<sub>2</sub> set forth in this Consent Decree due to Malfunction, Dominion, bearing the burden of proof, has an affirmative defense to stipulated penalties under this Consent Decree, if Dominion has complied with the reporting requirements of Paragraphs 143 and 144 and has demonstrated all of the following:
- a. the excess emissions were caused by a sudden, unavoidable breakdown of technology, beyond Dominion's control;
  - b. the excess emissions (1) did not stem from any activity or event that could have been foreseen and avoided, or planned for, and (2) could not have been avoided by better operation and maintenance practices;



- c. to the maximum extent practicable, the air pollution control equipment and processes were maintained and operated in a manner consistent with good practice for minimizing emissions;
- d. repairs were made in an expeditious fashion when Dominion knew or should have known that an applicable 30-Day Rolling Average Emission Rate was being or would be exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;
- e. the amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;
- f. all possible steps were taken to minimize the impact of the excess emissions on ambient air quality;
- g. all emission monitoring systems were kept in operation if at all possible;
- h. Dominion's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence;
- i. the excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and
- j. Dominion properly and promptly notified EPA as required by this Consent Decree.

139. To assert an affirmative defense for Malfunction under Paragraph 138, Dominion shall submit all data demonstrating the actual emissions for the Day the Malfunction occurs and the 29-Day period following the Day the Malfunction occurs. Dominion may, if it

elects, submit emissions data for the same 30-Day period but that excludes the excess emissions.

140. Affirmative Defense as to Stipulated Penalties for Excess Emissions Occurring During Startup and Shutdown: If any of the Units at Brayton or Kincaid exceed an applicable 30-Day Rolling Average Emission Rate for NO<sub>x</sub> or SO<sub>2</sub> set forth in this Consent Decree due to startup or shutdown, Dominion, bearing the burden of proof, has an affirmative defense to stipulated penalties under this Consent Decree, if Dominion has complied with the reporting requirements of Paragraphs 143 and 144 and has demonstrated all of the following:

- a. the periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design consistent with good engineering, operation, and maintenance practices and manufacturers' specifications and recommendations;
- b. the excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- c. if the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- d. at all time, the facility was operated in a manner consistent with good practice for minimizing emissions;
- e. the frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable and consistent with good

engineering, operation, and maintenance practices and manufacturers' specifications and recommendations;

f. all possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

g. All emissions monitoring systems were kept in operation if at all possible;

h. Dominion's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence; and

i. Dominion properly and promptly notified EPA as required by this Consent Decree.

141. To assert an affirmative defense for startup or shutdown under Paragraph 140, Dominion shall submit all data demonstrating the actual emissions for the Day the excess emissions from startup or shutdown occurs and the 29-Day period following the Day the excess emissions from startup or shutdown occurs. Dominion may, if it elects, submit emissions data for the same 30-Day period but that excludes the excess emissions.
142. If excess emissions occur due to a Malfunction during routine startup and shutdown, then those instances shall be treated as other Malfunctions subject to Paragraph 138.
143. For an affirmative defense under Paragraphs 138 and 140, Dominion, bearing the burden of proof, shall demonstrate, through submission of the data and information under the reporting provisions of this Section, that all reasonable and practicable measures within Dominion's control were implemented to prevent the occurrence of the excess emissions.
144. Dominion shall provide notice to EPA in writing of Dominion's intent to assert an affirmative defense for Malfunction, startup, or shutdown under Paragraphs 138 and 140,

in Dominion's semi-annual progress reports as required by Paragraph 122. This notice shall be submitted to EPA pursuant to the provisions of Section XIX (Notices). The notice shall contain:

- a. The identity of each stack or other emission point where the excess emissions occurred;
- b. The magnitude of the excess emissions expressed in lb/mmBTU and the operating data and calculations used in determining the magnitude of the excess emissions;
- c. The time and duration or expected duration of the excess emissions;
- d. The identity of the equipment from which the excess emissions emanated;
- e. The nature and cause of the excess emissions;
- f. The steps taken, if the excess emissions were the result of a Malfunction, to remedy the Malfunction and the steps taken or planned to prevent the recurrence of the Malfunction;
- g. The steps that were or are being taken to limit the excess emissions; and
- h. If applicable, a list of the steps taken to comply with permit conditions governing Unit operation during periods of startup, shutdown, and/or Malfunction.

145. A Malfunction, startup, or shutdown shall not constitute a Force Majeure Event unless the Malfunction, startup, or shutdown meets the definition of a Force Majeure Event, as provided in Section XV (Force Majeure).

146. The affirmative defense provided herein is only an affirmative defense to stipulated penalties for violations of this Consent Decree, and not a defense to any civil or administrative action for injunctive relief.

#### **XV. FORCE MAJEURE**

147. For purposes of this Consent Decree, a “Force Majeure Event” shall mean an event that has been or will be caused by circumstances beyond the control of Dominion, its contractors, or any entity controlled by Dominion that delays or prevents compliance with any provision of this Consent Decree or otherwise causes noncompliance with any provision of this Consent Decree despite Dominion’s best efforts to fulfill the obligation. “Best efforts to fulfill the obligation” include using the best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring, and (b) after it has occurred, such that the delay or noncompliance, and any adverse environmental effect of the delay or noncompliance, is minimized to the greatest extent possible.

148. Notice of Force Majeure Events. If any event occurs or has occurred that may delay or prevent compliance with or otherwise cause noncompliance with any obligation under this Consent Decree, as to which Dominion intends to assert a claim of Force Majeure, Dominion shall notify the United States in writing as soon as practicable, but in no event later than fourteen (14) Days following the date Dominion first knew, or by the exercise of due diligence should have known, that the event caused or may cause such delay or noncompliance. In this notice, Dominion shall reference this Paragraph of this Consent Decree and describe the anticipated length of time that the delay or noncompliance may persist, the cause or causes of the delay or noncompliance, all measures taken or to be

taken by Dominion to prevent or minimize the delay or noncompliance and any adverse environmental effect of the delay or noncompliance, the schedule by which Dominion proposes to implement those measures, and Dominion's rationale for attributing a delay or noncompliance to a Force Majeure Event. Dominion shall adopt all reasonable measures to avoid or minimize such delays or noncompliance. Dominion shall be deemed to know of any circumstance which Dominion, its contractors, or any entity controlled by Dominion knew or should have known.

149. Failure to Give Notice. If Dominion fails to comply with the notice requirements of this Section, the United States may void Dominion's claim for Force Majeure as to the specific event for which Dominion has failed to comply with such notice requirement.

150. United States' Response. The United States shall notify Dominion in writing regarding Dominion's claim of Force Majeure as soon as reasonably practicable. If the United States agrees that a Force Majeure Event has delayed or prevented, or will delay or prevent, compliance with any provision of this Consent Decree, or has otherwise caused or will cause noncompliance with any provision of this Consent Decree, the United States and Dominion shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay or period of noncompliance actually caused by the event.

151. Disagreement. If the United States does not accept Dominion's claim of Force Majeure, or if the United States and Dominion cannot agree on the length of the delay or noncompliance actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XVI (Dispute Resolution) of this Consent Decree.

152. Burden of Proof. In any dispute regarding Force Majeure, Dominion shall bear the burden of proving that any delay in performance or any other noncompliance with any requirement of this Consent Decree was caused by or will be caused by a Force Majeure Event. Dominion shall also bear the burden of proving that Dominion gave the notice required by this Section and the burden of proving the anticipated duration and extent of any delay(s) or noncompliance attributable to a Force Majeure Event. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.
153. Events Excluded. Unanticipated or increased costs or expenses associated with the performance of Dominion's obligations under this Consent Decree shall not constitute a Force Majeure Event.
154. Potential Force Majeure Events. The Parties agree that, depending upon the circumstances related to an event and Dominion's response to such circumstances, the kinds of events listed below are among those that could qualify as Force Majeure Events within the meaning of this Section: construction, labor, or equipment delays; Malfunction of a Unit or emission control device; unanticipated coal supply or pollution control reagent delivery interruptions; acts of God; acts of war or terrorism; and orders by a government official, government agency, other regulatory authority, or a regional transmission organization, acting under and authorized by applicable law, that direct Dominion to supply electricity in response to a system-wide (state-wide or regional) emergency (which could include unanticipated required operation to avoid loss of load or unserved load or to preserve the reliability of the bulk power system). Depending upon the circumstances and Dominion's response to such circumstances, failure of a permitting

authority to issue a necessary permit in a timely fashion may constitute a Force Majeure Event where the failure of the permitting authority to act is beyond the control of Dominion and Dominion has taken all steps available to it to obtain the necessary permit, including, but not limited to: submitting a complete permit application; responding to requests for additional information by the permitting authority in a timely fashion; and accepting lawful permit terms and conditions after expeditiously exhausting any legal rights to appeal terms and conditions imposed by the permitting authority.

155. As part of the resolution of any matter submitted to this Court under Section XVI (Dispute Resolution) regarding a claim of Force Majeure, the United States and Dominion by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay agreed to by the United States or approved by the Court. Dominion shall be liable for stipulated penalties pursuant to Section XIV (Stipulated Penalties) for its failure thereafter to complete the work in accordance with the extended or modified schedule (provided that Dominion shall not be precluded from making a further claim of Force Majeure with regard to meeting any such extended or modified schedule).

#### **XVI. DISPUTE RESOLUTION**

156. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Party.
157. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Party advising of a dispute pursuant to this Section. The notice



- shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) Days following receipt of such notice.
158. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not extend beyond thirty (30) Days from the date of the first meeting between the Parties' representatives unless they agree in writing to shorten or extend this period.
159. If the Parties are unable to reach agreement during the informal negotiation period, the United States shall provide Dominion with a written summary of its position regarding the dispute. The written position provided by the United States shall be considered binding unless, within forty-five (45) Days thereafter, Dominion seeks judicial resolution of the dispute by filing a petition with this Court. The United States may submit a response to the petition within forty-five (45) Days of filing.
160. The time periods set out in this Section may be shortened or lengthened upon motion to the Court of one of the Parties to the dispute, explaining the Party's basis for seeking such a scheduling modification.
161. This Court shall not draw any inferences nor establish any presumptions adverse to either Party as a result of invocation of this Section or the Parties' inability to reach agreement.
162. As part of the resolution of any dispute under this Section, in appropriate circumstances the Parties may agree, or this Court may order, an extension or modification of the schedule for the completion of the activities required under this Consent Decree to

account for the delay that occurred as a result of dispute resolution. Dominion shall be liable for stipulated penalties pursuant to Section XIV (Stipulated Penalties) for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that Dominion shall not be precluded from asserting that a Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

163. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their filings with the Court under Paragraph 159, the Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

#### **XVII. PERMITS**

164. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires Dominion to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under applicable state law, Dominion shall make such application in a timely manner. EPA shall use best efforts to review expeditiously, to the extent applicable, all permit applications submitted by Dominion to meet the requirements of this Consent Decree.
165. Notwithstanding Paragraph 164, nothing in this Consent Decree shall be construed to require Dominion to apply for or obtain a PSD or Nonattainment NSR permit for physical changes in, or changes in the method of operation of, any Dominion System Unit that would give rise to claims resolved by Section XI (Resolution of Claims Against Dominion) of this Consent Decree.

166. When permits are required, Dominion shall complete and submit applications for such permits to the applicable state agency to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by the applicable state agency. Any failure by Dominion to submit a timely permit application for Dominion System Units shall bar any use by Dominion of Section XV (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.
167. Notwithstanding the reference to Title V Permits in this Consent Decree, the enforcement of such permits shall be in accordance with their own terms and the Act and its implementing regulations. The Title V Permits shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V Permit, subject to the terms of Section XXVII (Conditional Termination of Enforcement Under Decree) of this Consent Decree.
168. Within one hundred eighty (180) Days after the Date of Entry of this Consent Decree, Dominion shall modify any applicable Title V Permit application(s), or apply for modifications of its Title V Permits, to include a schedule for all Unit-specific, plant-specific, and system-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, (a) Emission Rates, (b) Plant-Wide Annual Tonnage Limitations, (c) the requirements pertaining to the Surrender of SO<sub>2</sub> and NO<sub>x</sub> Allowances, and (d) the requirements pertaining to Retirement of State Line.

169. Within one (1) year from the Date of Entry of this Consent Decree, Dominion shall either apply to permanently include the requirements and limitations enumerated in this Consent Decree into a federally enforceable non-Title V permit, or request a site-specific amendment to the applicable SIP to include the requirements and limitations enumerated in this Consent Decree. The federally enforceable permit or SIP amendment shall require compliance with all Unit-specific, plant-specific, and system-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, (a) Emission Rates, (b) Plant-Wide Annual Tonnage Limitations, (c) the requirements pertaining to the Surrender of SO<sub>2</sub> and NO<sub>x</sub> Allowances, and (d) the requirements pertaining to Retirement of State Line.
170. As soon as practicable, but in no event later than one hundred eighty (180) Days after the issuance of the permit or SIP amendment required by Paragraph 169, Dominion shall file a complete application to the appropriate permitting authority to incorporate the requirements of the permit or SIP amendment into the Title V operating permit for each plant.
171. Dominion shall provide the United States with a copy of each application for a federally enforceable permit or SIP amendment, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity.
172. Prior to conditional termination of enforcement through this Consent Decree, Dominion shall obtain enforceable provisions in its Title V permits that incorporate all Unit-specific, plant-specific, and system-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not

limited to, (a) Emission Rates, (b) Plant-Wide Annual Tonnage Limitations, and (c) the requirements pertaining to the Surrender of SO<sub>2</sub> and NO<sub>x</sub> Allowances.

173. If Dominion proposes to sell or transfer to an entity unrelated to Dominion (“Third Party Purchaser”) part or all of its Operational or Ownership Interest covered under this Consent Decree, Dominion shall comply with the requirements of Section XX (Sales or Transfers of Operational or Ownership Interests) of this Consent Decree with regard to that Operational or Ownership Interest prior to any such sale or transfer.

### **XVIII. INFORMATION COLLECTION AND RETENTION**

174. Any authorized representative of the United States, including its attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of an Dominion System Unit at any reasonable time for the purpose of:

- a. monitoring the progress of activities required under this Consent Decree;
- b. verifying any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtaining samples and, upon request, splits of any samples taken by Dominion or its representatives, contractors, or consultants; and
- d. assessing Dominion’s compliance with this Consent Decree.

175. Dominion shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) that are now in its or its contractors’ or agents’ possession or control, and that directly relate to Dominion’s performance of its obligations under this Consent Decree for the following periods: (a) until December 31, 2023 for records concerning physical or operational changes undertaken in accordance with Section IV (NO<sub>x</sub> Emission

Reductions and Controls), Section V (SO<sub>2</sub> Emission Reductions and Controls), and Section VI (PM Emission Reductions and Controls); and (b) until December 31, 2019 for all other records. This record retention requirement shall apply regardless of any corporate document retention policy to the contrary.

176. All information and documents submitted by Dominion pursuant to this Consent Decree shall be subject to any requests under applicable law providing public disclosure of documents unless (a) the information and documents are subject to legal privileges or protection, or (b) Dominion claims and substantiates in accordance with 40 C.F.R. Part 2 that the information and documents contain confidential business information.
177. Nothing in this Consent Decree shall limit the authority of EPA to conduct tests and inspections at Dominion's facilities under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal laws, regulations, or permits.

### **XIX. NOTICES**

178. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States of America:

(if by 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  
DJ# 90-5-2-1-09860

(if by commercial delivery service)  
Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

ENRD Mailroom, Room 2121  
601 D Street, NW  
Washington, DC 20004  
DJ# 90-5-2-1-09860

and

(if by mail service)  
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

(if by commercial delivery service)  
Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios South Building, Room 1119  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

and

(by mail or commercial delivery service)  
Director, Air Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Blvd. (AE-17J)  
Chicago, IL 60604

and

(by mail or commercial delivery service)  
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

As to DOMINION:

Senior Vice President – Fossil and Hydro  
Dominion Energy – Dominion Generation  
5000 Dominion Boulevard  
Glen Allen, VA 23060

179. All notifications, communications, or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or overnight delivery service with signature required for delivery, or (b) certified or registered mail, return receipt requested. All notifications, communications, and transmissions sent by overnight, certified, or registered mail shall be deemed submitted on the date they are postmarked, or, if sent by overnight delivery service, they shall be deemed submitted on the date they are delivered to the delivery service.
180. Either Party may change either the notice recipient or the address for providing notices to it by serving the other Party with a notice setting forth such new notice recipient or address.

**XX. SALES OR TRANSFERS OF OPERATIONAL OR OWNERSHIP INTERESTS**

181. If Dominion proposes to sell or transfer an Operational or Ownership Interest in Kincaid or Brayton Point to an entity unrelated to Dominion (a “Third Party Purchaser”), Dominion shall advise the Third Party Purchaser in writing of the existence of this Consent Decree prior to such sale or transfer, and shall send a copy of such written notification to the United States pursuant to Section XIX (Notices) of this Consent Decree at least sixty (60) Days before such proposed sale or transfer.
182. No sale or transfer of an Operational or Ownership Interest, whether in compliance with the procedures of this Section or otherwise, shall relieve Dominion of its obligation to



ensure that the terms of this Consent Decree are implemented, unless (1) the proposed transferee agrees to undertake all of the obligations required by this Consent Decree that may be applicable to the transferred or purchased Operational or Ownership Interests, and to be substituted for Dominion as a Party under the Decree pursuant to Section XXIII (Modification) and thus be bound by the terms thereof, and (2) the United States consents to relieve Dominion of its obligations. The United States may refuse to approve the substitution of the proposed transferee for Dominion if it determines that the proposed transferee does not possess the requisite technical abilities or financial means to comply with the Consent Decree. Dominion shall provide the United States with a copy of any proposed written agreement transferring an Operation or Ownership Interest at least 30 Days prior to such transfer, in accordance with Section XIX (Notices). The United States shall inform Dominion if it does not consent to relieve Dominion of its obligations within thirty (30) Days of receipt of such proposed written agreement.

183. This Consent Decree shall not be construed to impede the transfer of any Operational or Ownership Interests between Dominion and any Third Party Purchaser so long as the requirements of this Consent Decree are met. Any transfer of ownership or operation of Kincaid or Brayton Point without complying with this Section constitutes a violation of this Consent Decree.
184. Dominion may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Operational or Ownership Interests, including the obligations set forth in Sections IX (Environmental Mitigation Projects) and X (Civil Penalty).

185. Paragraphs 182 through 184 of this Consent Decree do not apply if an Operational or Ownership Interest is sold or transferred solely as collateral security in order to consummate a financing arrangement (not including a sale-leaseback), so long as Dominion: (a) remains the operator (as that term is used and interpreted under the Clean Air Act) of the subject Unit(s); (b) remains subject to and liable for all obligations and liabilities of this Consent Decree; and (c) supplies Plaintiff with the following certification within thirty (30) Days of the sale or transfer:

“Certification of Change in Ownership Interest Solely for Purpose of Consummating Financing. We, the Chief Executive Officer and General Counsel of Dominion Energy, Inc. (“Dominion”), hereby jointly certify under Title 18 U.S.C. Section 1001, on our own behalf and on behalf of Dominion, that any change in Dominion’s Ownership Interest in any Unit that is caused by the sale or transfer as collateral security of such Ownership Interest in such Unit(s) pursuant to the financing agreement consummated on [insert applicable date] between Dominion and [insert applicable entity]: a) is made solely for the purpose of providing collateral security in order to consummate a financing arrangement; b) does not impair Dominion’s ability, legally or otherwise, to comply timely with all terms and provisions of the Consent Decree entered in *United States v. Dominion Energy, Inc., et al.*, Civil Action \_\_\_\_\_; c) does not affect Dominion’s operational control of any Unit covered by that Consent Decree in a manner that is inconsistent with Dominion’s performance of its obligations under the Consent Decree; and d) in no way affects the status of Dominion’s obligations or liabilities under that Consent Decree.”

#### **XXI. EFFECTIVE DATE**

186. The effective date of this Consent Decree shall be the Date of Entry.

#### **XXII. RETENTION OF JURISDICTION**

187. 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.

### **XXIII. MODIFICATION**

188. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

### **XXIV. GENERAL PROVISIONS**

189. When this Consent Decree specifies that Dominion shall achieve and maintain a 30-Day Rolling Average Emission Rate, the Parties expressly recognize that compliance with such 30-Day Rolling Average Emission Rate shall commence immediately upon the date specified, and that compliance as of such specified date (e.g., December 30) shall be determined based on data from the 29 prior Unit Operating Days (e.g., December 1-29).
190. When this Consent Decree specifies that Dominion shall achieve and maintain a 12-Month Rolling Average Emission Rate, then the Month Containing that Day if that Day is the first Day of the Month, or if that Day is not the first Day of the Month then the next complete Month, shall be the first Month subject to the specified 12-Month limitation. For example, if the specified 12-Month Rolling Average Emission Rate is to be achieved starting December 31, 2012, then January 2013 is the first Month included in the first applicable 12-Month Rolling Average Emission Rate, such that the first complete 12-Month Rolling Average Emission Rate period would include January 2013 through December 2013.
191. This Consent Decree is not a permit. Compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws or

regulations. The emission rates and removal efficiencies set forth herein do not relieve Dominion from any obligation to comply with other state and federal requirements under the Clean Air Act, including Dominion's obligation to satisfy any state modeling requirements set forth in the applicable SIP.

192. This Consent Decree does not apply to any claim(s) of alleged criminal liability.
193. In any subsequent administrative or judicial action initiated by the United States for injunctive relief or civil penalties relating to any of the facilities in the Dominion System as covered by this Consent Decree, Dominion shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by the United States in the subsequent proceeding were brought, or should have been brought, in the instant case; provided, however, that nothing in this Paragraph is intended to affect the validity of Section XI (Resolution of Claims Against Dominion).
194. Nothing in this Consent Decree shall relieve Dominion of its obligation to comply with all applicable federal, state, and local laws and regulations, including, but not limited to, the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES) implementing regulations, National Ambient Air Quality Standards, the National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units (Utility MACT), and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-commercial-Institutional, and Small Industrial Commercial-Institutional Steam Generating Units (Utility NSPS). Nothing in this Consent Decree shall be construed to provide any relief from the emission limits or deadlines for the installation of pollution controls or the implementation of other

pollution control-related measures specified in these regulations, nor shall this Decree be construed as a pre-determination of eligibility for the one year extension that may be provided under 42 U.S.C. § 7412(i)(3)(B).

195. Subject to the provisions in Section XI (Resolution of Claims Against Dominion), nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.
196. Each limit and/or other requirement established by or under this Consent Decree is a separate, independent requirement.
197. Performance standards, emissions limits, and other quantitative standards set by or under this Consent Decree must be met to the number of significant digits in which the standard or limit is expressed. For example, an Emission Rate of 0.100 is not met if the actual Emission Rate is 0.101. Dominion shall round the fourth significant digit to the nearest third significant digit, or the third significant digit to the nearest second significant digit, depending upon whether the limit is expressed to three or two significant digits. For example, if an actual Emission Rate is 0.1004, that shall be reported as 0.100, and shall be in compliance with an Emission Rate of 0.100, and if an actual Emission Rate is 0.1005, that shall be reported as 0.101, and shall not be in compliance with an Emission Rate of 0.100. Dominion shall report data to the number of significant digits in which the standard or limit is expressed.
198. This Consent Decree does not limit, enlarge, or affect the rights of any Party to this Consent Decree as against any third parties.

199. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and supersedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.
200. Each Party to this action shall bear its own costs and attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Dominion.

#### **XXV. SIGNATORIES AND SERVICE**

201. Each undersigned representative of Dominion, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind to this document the Party he or she represents.
202. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.
203. Each Party hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

204. Unless otherwise ordered by the Court, the United States agrees that Dominion will not be required to file any answer or other pleading responsive to the Complaint in this matter until and unless the Court expressly declines to enter this Consent Decree, in which case Dominion shall have no less than thirty (30) Days after receiving notice of such express declination to file an answer or other pleading in response to the Complaint.

#### **XXVI. PUBLIC COMMENT**

205. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Dominion shall not oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified Dominion, in writing, that the United States no longer supports entry of this Consent Decree.

#### **XXVII. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER DECREE**

206. Termination as to Completed Tasks. As soon as Dominion completes a construction project or any other requirement of this Consent Decree that is not ongoing or recurring, Dominion may, by motion to this Court, seek termination of the provision or provisions of this Consent Decree that imposed the requirement.

207. Conditional Termination of Enforcement Through this Consent Decree. Subject to the provisions of Paragraph 208, after Dominion:

a. has successfully completed construction, and has maintained operation, of all pollution controls as required by this Consent Decree for a period of two (2) years, and has successfully completed all actions necessary to Retire State Line; and

b. has obtained all the final permits and/or site-specific SIP amendments (1) as required by Section XVII (Permits) of this Consent Decree, and (2) that include as federally enforceable permit terms, all Unit-specific, plant-specific, and system-specific performance, operational, maintenance, and control technology requirements established by this Consent Decree;

then Dominion may so certify these facts to the United States and this Court. If the United States does not object in writing with specific reasons within sixty (60) Days of receipt of Dominion's certification, then, for any violations of this Consent Decree that occur after the filing of notice, the United States shall pursue enforcement of the requirements through the applicable permits and/or other enforcement authorities and not through this Consent Decree.

208. Resort to Enforcement Under this Consent Decree. Notwithstanding Paragraph 207, if enforcement of a provision in this Consent Decree cannot be pursued by the United States under the applicable permit(s) issued pursuant to the Clean Air Act or its implementing regulations ("CAA Permit"), or if a Consent Decree requirement was intended to be part of a CAA Permit and did not become or remain part of such permit, then such requirement may be enforced under the terms of this Consent Decree at any time.



**XXVIII. FINAL JUDGMENT**

209. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Parties.

Signature Page for *United States of America v. Dominion Energy, Inc. et al.* Consent Decree  
FOR THE UNITED STATES DEPARTMENT OF JUSTICE

Respectfully submitted,

*s/ Ignacia S. Moreno*  
IGNACIA S. MORENO  
Assistant Attorney General  
Environment & Natural Resources Division

*s/ Jason A. Dunn*  
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  
Facsimile: (202) 616-6583  
[Jason.Dunn@usdoj.gov](mailto:Jason.Dunn@usdoj.gov)

FOR THE UNITED STATES DEPARTMENT OF JUSTICE

Respectfully submitted,

JAMES A. LEWIS  
United States Attorney

By: *s/ Gerard A. Brost*  
Gerard A. Brost, IL Bar 3125997  
Assistant United States Attorney  
One Technology Plaza  
211 Fulton St., Ste. 400  
Peoria, Illinois 61602  
Telephone: 309 / 671-7050  
Email: Gerard.brost@usdoj.gov

Signature Page for *United States of America v. Dominion Energy, Inc. et al.* Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respectfully submitted,

*s/ Cynthia Giles*

CYNTHIA GILES

Assistant Administrator

Office of Enforcement and

Compliance Assurance

United States Environmental

Protection Agency

*s/ Phillip A. Brooks*

PHILLIP A. BROOKS

Director, Air Enforcement Division

United States Environmental

Protection Agency

*s/ Seema Kakade*

SEEMA KAKADE

Attorney-Advisor

United States Environmental

Protection Agency

1200 Pennsylvania Ave, N.W. (2242A)

Washington, DC 20460

Signature Page for *United States of America v. Dominion Energy, Inc. et al.* Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respectfully submitted,

*s/ Susan Hedman*

\_\_\_\_\_  
SUSAN HEDMAN

Regional Administrator

United States Environmental

Protection Agency, Region 5

*s/ Nicole Wood-Chi*

\_\_\_\_\_  
NICOLE WOOD-CHI

Associate Regional Counsel

United States Environmental

Protection Agency, Region 5

77 W. Jackson Blvd. (C-14J)

Chicago, IL 60604

Signature Page for *United States of America v. Dominion Energy, Inc. et al.* Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respectfully submitted,

*s/ Curt Spalding*  
CURT SPALDING  
Regional Administrator  
United States Environmental  
Protection Agency, Region 1

*s/ Susan Studlein*  
SUSAN STUDLIEN  
Director, Office of Environmental Stewardship  
United States Environmental  
Protection Agency, Region 1

*s/ Steven Viggiani*  
STEVEN VIGGIANI  
Senior Enforcement Counsel  
United States Environmental  
Protection Agency, Region 1  
Mail Code OES04-3  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Signature Page for *United States of America v. Dominion Energy, Inc. et al.* Consent Decree

FOR DOMINION ENERGY, INC., DOMINION ENERGY BRAYTON POINT, LLC, AND  
KINCAID GENERATION, LLC

Respectfully submitted,

By: *s/J. David Rives*  
J. DAVID RIVES  
Senior Vice President – Fossil & Hydro  
Dominion Energy, Inc.

**APPENDIX A**  
**ENVIRONMENTAL MITIGATION PROJECTS**

Dominion shall spend \$9,750,000, and shall comply with the requirements of this Appendix and with Section IX of this Consent Decree (Environmental Mitigation Projects) to implement and secure the environmental benefits of the Environmental Mitigation Projects described below.

**I. Forest Service/Park Service Mitigation**

- A. Within forty-five (45) days from the Date of Entry, Dominion shall pay to the United States Forest Service the sum of \$250,000 to be used in accordance with 16 U.S.C. § 579c, for the improvement, protection, or rehabilitation of lands under the administration of the Forest Service. The Project(s) shall focus on one or more areas alleged by Plaintiffs to have been injured by emissions from Dominion System plants, including but not limited to the Shawnee National Forest and the Midewin National Tallgrass Prairie.
- B. Within forty-five (45) days from the Date of Entry, Dominion shall pay to the National Park Service the sum of \$500,000 to be used in accordance with the Park System Resource Protection Act, 16 U.S.C. § 19jj, for the restoration of land, watersheds, vegetation, and forests using techniques designed to improve ecosystem health and mitigate harmful effects from air pollution. The Project(s) shall focus on one or more areas alleged by Plaintiffs to have been injured by emissions from Dominion System plants, including but not limited to the Cape Cod National Seashore, Indiana Dunes National Lakeshore, and the Boston Harbor Islands National Recreation Area.
- C. Payment of the amounts specified in the preceding paragraphs shall be made to the Forest Service and Park Service pursuant to payment instructions provided to Dominion before or after the Date of Lodging. Notwithstanding Section I.A of this Appendix, payment of funds by Dominion is not due until ten (10) days after receipt of payment instructions, or forty-five (45) days after the Date of Entry, whichever is later.
- D. Upon payment of the amount specified in Section I.A of this Appendix, Dominion shall have no further responsibilities regarding the implementation of any Projects selected by the Forest Service or Park Service in connection with this provision of the Consent Decree.



## **II. Overall Schedule and Budget for Additional Environmental Mitigation Projects**

- A. Within one hundred twenty (120) days of the Date of Entry, unless otherwise specified by this Appendix, Dominion shall submit proposed plans (“Project Plans”) to EPA for review and approval pursuant to Section XIII of the Consent Decree (Review and Approval of Submittals) for spending \$9,000,000 in Project Dollars for the Projects listed in Sections III through XI below in accordance with the deadlines established in this Appendix. Dominion shall ensure that \$3,625,000 is spent in Massachusetts, Rhode Island and Connecticut, and \$5,375,000 is spent in Illinois and Indiana. EPA reserves the right to disapprove any project after an analysis of its Project Plan and potential environmental impacts.
- B. Dominion may, at its election, consolidate the Project Plans required by this Appendix into one or more Project Plans.
- C. Unless otherwise specified by this Appendix, Dominion may, at its election, spread its payments for Environmental Mitigation Projects over the five-year period commencing upon the Date of Entry. Dominion may also accelerate its payments to better effectuate a proposed mitigation plan, but Dominion shall not be entitled to any reduction in the nominal amount of the required payments by virtue of the early expenditures. Any funds designated for a specific Project that are left unspent, or are projected to be left unspent, at the Project’s completion may be redirected by Dominion, after consultation with and approval by EPA, to one or more of the Projects listed in Sections III-XI below. Unspent funds for New England projects shall be redirected to other New England projects; unspent funds for Midwestern projects, to other Midwestern projects.
- D. All proposed Project Plans shall include the following:
1. A plan for implementing the Project.
  2. A summary-level budget for the Project.
  3. A time line for implementation of the Project.
  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.
- E. Upon approval by EPA of the plan(s) required by this Appendix, Dominion shall complete the approved Projects according to the approved plan(s). Nothing in this Consent Decree shall be interpreted to prohibit Dominion or any third party from completing the Projects ahead of schedule.
- F. Commencing with its first progress report due pursuant to Section XII (Periodic Reporting) of the Consent Decree, and continuing annually thereafter

until completion of the Projects, Dominion will include in the progress report information describing the progress of each Project and the Project Dollars expended on each Project to date.

- G. In accordance with the requirements of Paragraph 117, within sixty (60) days following the completion of each Project, Dominion shall submit to the United States for approval, a report that documents:
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 by Dominion in implementing the Project.
- H. If EPA concludes based on the project completion report or subsequent information provided by Dominion that a Project has been performed and completed in accordance with the Consent Decree, then EPA will approve completion of the Project for purposes of the Consent Decree. Nothing in this Consent Decree or Appendix shall be construed to require Dominion to spend more than the amounts set forth in Paragraph 109 of the Consent Decree and in Sections I and II.A of this Appendix on Environmental Mitigation Projects, provided that the amounts expended by Dominion and any third party are spent in compliance with all requirements of the Consent Decree and this Appendix.
- I. The Parties recognize that implementation of the Projects in this Appendix may require action by third parties, such as non-profit organizations (e.g., Projects in Sections III and IV), other non-government entities (e.g., Project in Section V), and state or local government entities (e.g., Projects in Sections VII and IX to XI). If Dominion is unable to complete an approved Project in accordance with this Appendix and the approved Project Plan due to such third-party's failure to fulfill its obligations under the Plan, and that failure is not caused by Dominion and is beyond the control of Dominion despite Dominion's best efforts to fulfill its obligations regarding the Project as set out in the Consent Decree, this Appendix, and any approved Project Plan, then EPA and Dominion may agree to (1) allow Dominion and the third party(ies) to amend the Project Plan as appropriate to successfully complete the Project, or (2) cancel the Project and redirect any unspent funds for the Project to one or more of the Projects listed in Sections III-XI below. Unspent funds for New England projects shall be redirected to other New England projects; unspent funds for Midwestern projects, to other Midwestern projects.

### **III. New England Wood Stove Changeout Project**

- A. Consistent with the requirements of Section II of this Appendix, Dominion shall propose a plan to sponsor a wood-burning appliance changeout and retrofit project (“Wood Stove Changeout Project” or “WSC Project”) that shall be implemented by one or more state, local or tribal air pollution control agencies, or by one or more third-party non-profit organizations or entities, in areas that would benefit from reductions of fine particle pollution and hazardous air pollutants. The air pollutant reductions shall be obtained by replacing, retrofitting or upgrading inefficient, higher polluting wood-burning appliances (e.g., outdoor boilers and stoves) with cleaner burning appliances and technologies, such as: (1) retrofitting older hydronic heaters (aka outdoor wood boilers) to meet EPA Phase II hydronic heater standards; (2) replacing older hydronic heaters with EPA Phase II hydronic heaters, or with EPA-certified wood stoves, other cleaner burning, more energy efficient hearth appliances (e.g., wood pellet, gas or propane appliances), or EPA Energy Star qualified heating appliances; (3) replacing non EPA-certified wood stoves with EPA-certified wood stoves or cleaner burning, more energy-efficient hearth appliances; and (4) replacing spent catalysts in EPA-certified wood stoves. To qualify for replacement, retrofitting or upgrading, the older wood-burning appliance must currently be used as a source of residential heat.
- B. Dominion shall spend a maximum of \$2,025,000 in Project Dollars to implement the WSC Project, and shall complete it not later than four years after the Date of Entry, except that Dominion may request an extension of time to complete the project if it appears likely that all Project Dollars will not be spent within such four year period despite Dominion’s best efforts to implement the WSC Project.
- C. Dominion shall sponsor the implementation of the WSC Project in Bristol, Plymouth and Norfolk Counties in Massachusetts, in Bristol, Newport, Providence, Kent and Washington Counties in Rhode Island, and in New London and Windham Counties in Connecticut. If two years after the Date of Entry it appears that the full amount of Project Dollars allocated for the Project will not be spent within four years after the Date of Entry, Dominion may, in consultation with its implementation partner(s) and with EPA, and in accordance with the other requirements of this Appendix, expand the implementation area to other counties in Eastern Massachusetts. In determining the specific areas to implement this project within the aforementioned geographic areas, Dominion shall give priority to: (1) areas with high amounts of air pollution, especially particle pollution and hazardous air pollutants; (2) areas located within a geography and topography that make them susceptible to high levels of particle pollution; (3) areas that have a significant number of older hydronic heaters and non EPA-certified wood stoves; and (4) areas with dense residential populations.

- D. Dominion and the air pollution control agency(ies) or non-profit organization(s) that will implement the WSC Project shall consult with EPA's Residential Wood Smoke Reduction Team and shall implement the WSC Project consistent with the materials available on EPA's Burn Wise website at <http://www.epa.gov/burnwise>.
- E. Dominion shall limit the use of Project Dollars for administrative costs associated with implementation of the WSC Project to no greater than 10% of the Project Dollars that Dominion provides to a specific air pollution control agency or non-profit organization. If, after two years after the Date of Entry, significant additional administrative costs (e.g., additional advertising or outreach costs), not contemplated at the WSC Project's inception, will be required to fully implement the Project within the time frames set forth in this Section, the air pollution control agency or non-profit organization(s) administering the Project may request that Dominion allow the use of additional Project Dollars for such costs, and Dominion may, after consultation with EPA, allow for no more than an additional 2% of Project Dollars to be applied to them.
- F. The WSC Project shall provide incentives for the older wood-burning appliance replacements, retrofits and upgrades described above in this Section through rebates, vouchers and/or discounts. The WSC Project shall provide for the issuance of rebates, vouchers and/or discounts to residential homeowners in amounts ranging from \$2,000 to \$5,000 for replacing or retrofitting older hydronic heaters, \$1,000 to \$2,000 for each replacement wood stove or hearth appliance, and \$100 to \$300 for replacement catalyst. The WSC Project may also provide rebates or vouchers for the full cost of replacing older hydronic heaters and non EPA-certified wood stoves for income-qualified residential homeowners, if such full cost rebates or vouchers are included and approved in the Plan in accordance with the requirements of Section H.5 below.
- G. The WSC Project shall provide educational information and outreach regarding the energy efficiency, health and safety benefits of cleaner-burning alternatives to older hydronic heaters and non EPA-certified wood stoves, and the proper operation of wood-burning heaters, stoves and hearth appliances. Particular emphasis shall be given to the importance of burning dry seasoned wood and the use of moisture meters to test firewood moisture levels.
- H. The WSC Project Plan proposed by Dominion shall:
1. Identify the air pollution control agency(ies) or non-profit organization(s) that have agreed to implement the WSC Project.
  2. Describe the schedule and the budgetary increments in which Dominion shall provide the necessary funding to the air pollution control agency(ies) or non-profit organization(s) to implement the WSC Project.

3. Describe all of the elements of the WSC Project that the air pollution control agency(ies) and/or non-profit(s) will implement.
4. Include measures to ensure that the air pollution control agency(ies), or non-profit organization(s), that are acting on Dominion's behalf shall implement the WSC Project in accordance with the requirements of this Appendix, and that the Project Dollars will be used to support the actual replacement, retrofitting, and/or upgrading of wood-burning stoves and boilers currently used as a source of residential heat.
5. If the plan proposes to provide rebates or vouchers for the full cost of replacing older hydronic heaters or non EPA-certified wood stoves for income-qualified residential homeowners, describe and estimate the number of energy efficient appliances it intends to make available, the cost per unit, and the criteria the air pollution control agency(ies) or nonprofit organization(s) will use to determine which residential homeowners should be eligible for such full cost replacement. If applicable, identify any organizations or entities with which the air pollution control agency(ies) or non-profit organization(s) will partner to implement the WSC Project, including wood-burning appliance trade associations, national or local health organizations, facilities that will dispose of the older wood-burning appliances so that they cannot be resold or reused, individual wood stove retailers, propane dealers, housing assistance agencies, local fire departments, and local green energy organizations.
6. Describe how the air pollution control agency(ies) or non-profit organization(s) will ensure that the older, inefficient, higher polluting wood-burning appliances that are replaced under the WSC Project will be properly recycled or disposed.
7. Describe how the air pollution control agency(ies) or non-profit organization(s) will conduct outreach in the Massachusetts, Rhode Island, and Connecticut counties within the geographic area of the WSC Project.

#### **IV. Illinois and Indiana Wood Stove Changeout Project**

- A. The Illinois and Indiana WSC Project shall be planned and implemented in accordance with the requirements for the WSC Project set out in Section III above, except where local circumstances make such requirements inapplicable.
- B. Dominion shall spend \$525,000 in Project Dollars to implement the Illinois and Indiana WSC Project, and shall sponsor the implementation of the Project in Christian County in Illinois, Lake County in Indiana, and any adjacent counties thereto in Illinois and Indiana.

## V. Switcher Locomotive Idle Reduction Project

- A. Consistent with the requirements of Section II of this Appendix, Dominion shall spend \$400,000 in Project Dollars to outfit switcher locomotives with equipment necessary to enable use of a layover heating system and for installation of the layover system infrastructure at some or all of Norfolk Southern Railway Company's ("NSRC") Calumet (Stony Island Ave. and East 103<sup>rd</sup> St.), Park Manor (East 63<sup>rd</sup> St.), 47<sup>th</sup> Street (between W 47<sup>th</sup> St and W. Garfield Blvd.), Landers (West Columbus Ave. and West 79<sup>th</sup> St.), and Ashland (South Ashland Ave and Pershing Rd.) Yards, all of which are located in Chicago, Illinois; and Colehour (parallel to South Indianapolis Ave.) Yard, located in both Chicago and Whiting, Indiana ("Rail Yards"). These Rail Yards are a significant transportation and railroad hub located in a potential environmental justice area on the south side of Chicago. Chicago is currently located in an area designated as non-attainment with the National Ambient Air Quality Standards ("NAAQS") for ozone (smog), fine particulate matter, and lead.
- B. Project Scope: The switching locomotive project at NSRC's Rail Yards will include the installation of the infrastructure necessary to support locomotive layover heating systems, and the installation of layover heating systems on an estimated twelve existing locomotives. Due to the nature of rail yard operations, a switching locomotive spends a considerable amount of time idling, sometimes totaling up to eight to twelve hours within a day, depending on operational needs and weather conditions. Traditional switching locomotives do not use antifreeze, and cannot be shut down during colder weather due to the likelihood of freezing water irreparably damaging the engine block. Therefore, even where it is contemplated that a locomotive may not be used for a period of time, it is necessary in certain cold weather conditions to keep the engine running to eliminate the risk of engine damage.

The proposed layover heating system will provide a means for locomotive engines to be shut down for extended periods of time even in colder weather when those engines otherwise would have had to idle.

The funding provided by Dominion for this project will be used to install the necessary infrastructure in the Rail Yards to support the layover heating system and to outfit an estimated twelve locomotives with the equipment necessary to enable use of the layover heating system, including a battery charger. The layover heating system is a Verified Idling Reduction Technology as evaluated by EPA's Smartway Technology Program under which it is identified as a Shore Connection System for locomotives. The infrastructure to be installed at the Rail Yards will consist of the necessary power lines, poles, transformer, and a power

distribution panel that will monitor the power for electric grounds.

- C. Benefits: This project will result in reduced idling time and therefore reduced fuel usage, reduced emissions of PM, NO<sub>x</sub>, VOCs and toxics, and reduced noise in an urban environment.
- D. Costs: Dominion shall spend \$400,000 in Project Dollars in performing this Project. The estimated portion of the total costs to be paid by Dominion for this project includes approximately \$243,000 for the heating system infrastructure at the six Rail Yards and approximately \$175,000 for the necessary compatibility equipment on twelve locomotives that will operate in and around the Rail Yards.
- E. Performance: Within ninety (90) days from the Date of Entry, Dominion shall enter into an agreement (“performance agreement”) with NRSC requiring:
  - 1. Completion Date: NSRC to complete the entire Project Scope above within two years from the effective date of the performance agreement between NRSC and Dominion, provided that the local utility timely installs new service as requested by NSRC. In the event that delays caused by failure of the local utility to install the new electric service required for the layover system cause a delay in the completion of the Project Scope (despite diligent efforts on the part of NSRC to obtain that service), the two year timeline will be delayed commensurate with the delay in utility service.
  - 2. That any costs greater than the cost allotted by this Consent Decree shall be paid by NSRC for completion of the project.
  - 3. Fuel Savings: NSRC to submit a report to Dominion and EPA annually for two years detailing the estimated fuel savings realized due to the project. The report shall be due within sixty (60) days after the end of each year the project was implemented.
  - 4. Final Report: Within thirty (30) days after project completion, NSRC to submit a final report to Dominion and EPA that includes the following:
    - i. A detailed timeline of all completed construction activities for the Project.
    - ii. A breakdown of the total costs (funded and unfunded by Dominion) by NSRC to implement the Project.
    - iii. The results of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved.
    - iv. A description of any significant problems that occurred during implementation of the Project and how they were overcome.

- F. Project Completion Report: In addition to the information required by Section II of this Appendix, Dominion's project completion report for this Project shall include the following:
1. A detailed timeline of all completed construction activities for the Project.
  2. A breakdown of the total costs (funded and unfunded by Dominion) by NSRC to implement the Project.
  3. A description of any significant problems that occurred during implementation of the Project and how they were overcome.

**VI. Lake Michigan Watershed and Indiana Dunes National Lakeshore Land Acquisition and Restoration Project(s)**

- A. Consistent with the requirements of Section II of this Appendix, Dominion shall submit a Project Plan to EPA for review and approval for the use of up to \$2,500,000 in Project Dollars for acquisition and restoration of lands that are part of, adjacent to, or near the Indiana Dunes National Lakeshore and have an ecological or environmental significance to the ecosystems in the Lake Michigan Watershed of Lake and Porter Counties in the State of Indiana. The Project Dollars for this project are in addition to the funding described in Section I of this Appendix (Forest Service/Park Service Mitigation).
- B. The goal of this Project is the protection through acquisition and/or restoration of ecologically significant land, watersheds, vegetation, and forests using adaptive management techniques designed to improve ecosystem health and mitigate harmful effects from air pollution. In addition the funding shall be used to provide for public use of acquired areas in a manner consistent with the ecology of the area.

For purposes of this Appendix and Section IX (Environmental Mitigation Projects) of this Consent Decree, land acquisition means purchase of interests in land, including fee ownership, easements, or other restrictions that run with the land that provide for the perpetual protection of the acquired land. Restoration may include (but is not limited to), reforestation or revegetation (using plants native to the area) and/or removal of non-native, invasive plant species. Any restoration action must incorporate the acquisition of an interest in the restored lands sufficient to ensure perpetual protection of the restored land.

- C. In addition to the information required by Section II of this Appendix, the Project Plan shall include:



1. A general description of the areas proposed to be acquired or restored, including a map clearly identifying the location of the land relative to the decommissioned State Line Power Station and all city, state, or federal publically protected lands/parks in the area surrounding the proposed land to be acquired/restored.
  2. A justification of why the area should be considered ecologically and/or environmentally significant and warrants preservation and/or restoration.
  3. A description of the projected cost of the land acquisition and/or restoration.
  4. Identification of any person or entity(s) other than Dominion that will be involved in the land acquisition and restoration. Dominion shall describe the third-party's roles in the action and the basis for asserting that such entity is able and suited to perform the intended role. Any proposed third-party must be legally authorized to perform the proposed action or receive Project Dollars.
  5. A schedule for completing and funding each portion of the project.
- D. Upon EPA's approval of the Project Plan, Dominion may transfer up to \$2,500,000 of Project Dollars to one or more land acquisition funds, such as Save the Dunes Conservation Fund, for partial or full implementation of the land acquisitions and restorations described in the Project Plan.
- E. Performance: All Project Dollars shall be expended in accordance with subsections A through C above and within two years of entry of the Consent Decree.
- F. Project Completion Report: In addition to the information required by Section II of this Appendix, Dominion's project completion report for this Project shall include any reports related to this Project that Save the Dunes or applicable third party fund or organization provided to Dominion.

**VII. Energy Efficiency Project for South Fork School District in Kincaid, Illinois**

- A. Consistent with the requirements of Section II of this Appendix, Dominion shall submit a Project Plan to EPA for review and approval to spend a maximum of \$200,000 in Project Dollars to implement and complete an Energy Efficiency/ Weatherization project to reduce the energy demand in one or more of the schools that make up the South Fork School District 14 in the town of Kincaid, Illinois, which are in the Kincaid Generation power station service area. The project may

include (1) the replacement of leaking windows and entrance doors at the high school and gym and (2) weatherization of the high school building exterior.

- B. Upon EPA's approval of the Project Plan for the Energy Efficiency Project for South Fork School District, Dominion shall implement the Project according to the approved plan.
- C. Completion Date: The entire Project above shall be completed within three (3) years from the Date of Entry, except that Dominion may request an extension of time to complete the project if it appears likely that all Project Dollars will not be spent within such three year period despite Dominion's best efforts to implement the Project within such period.

### **VIII. Energy Efficiency and Geothermal Projects for the Central Illinois FoodBank**

- A. Consistent with the requirements of Section II of this Appendix, Dominion shall submit a Project Plan to EPA for review and approval to spend a maximum of \$750,000 in Project Dollars to implement and complete the Energy Efficiency/Weatherization and Geothermal Projects that will reduce the energy demand at the new FoodBank location in Springfield, Illinois. The Central Illinois FoodBank covers 21 counties in central Illinois and distributes over eight million pounds of food a year to more than 150 food pantries in its service territory.
- B. The Energy Efficiency/Weatherization Project may include (1) a new energy efficient freezer/cold storage area (approximately 10,000 sq. ft), (2) new energy efficient, motion activated lighting, and (3) motion-activated, insulated loading-dock doors.
- C. The Geothermal Project shall include 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 geothermal heat pump 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. The Project shall include funding for system commissioning and performance optimization within the first year of system operation. The Project shall also include funding to restore the project site, particularly the well field to its original or near-original condition.

System Application and Design: 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. Prior to the design modeling of the system and production loop installation, the contractor/project designer shall 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 contractor/project designer shall provide the building owner with copies of the related site drilling logs, soil sample documentation and in-situ thermal conductivity analyses). The contractor/project designer shall employ quality assurance measures to prevent “short looping” of well field bore holes during the drilling process.

Contractor/Project Designer Selection: The Project’s design, installation and system commissioning shall 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. Best efforts shall be made to select project designers and installers (including engineers, architects, and bore hole drillers) with experience on at least three successful geothermal projects.

Manufacturer, Equipment and 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. The system shall include the installation of monitoring equipment to allow facility managers and staff to monitor the operation and performance of the system.

Maintenance: The Project may include the establishment of an escrow account for the FoodBank to maintain and/or replace the heat pump unit or other elements of the system, or may otherwise include funding or pre-payment for an extended warranty or service contract for such maintenance/replacement.

End-user Documentation and Training Requirements: The project developer/contractor shall provide the FoodBank 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.

D. In addition to the information required by Section II.D of this Appendix, the Project Plan for this project shall:

1. Describe how Dominion and/or the project developer/contractor(s) will meet the requirements set forth in Subparagraphs B and C of this Section;
2. 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); and
3. Identify the contractor/project designer(s) and/or other third parties with whom Dominion and/or the FoodBank will contract or partner with to implement the Project, and list any relevant accreditations or certifications held by such contractor/designer(s) or parties.

E. Completion Date: The entire Project above shall be completed within three (3) years from the Date of Entry, except that Dominion may request an extension of time to complete the project if it appears likely that all Project Dollars will not be spent within such three year period despite Dominion's best efforts to implement the Project within such period.

## **IX. Illinois Clean Diesel Project**

A. Consistent with the requirements of Section II of this Appendix, Dominion shall submit a Project Plan to EPA for review and approval for the completion of an Illinois Clean Diesel Project in which Dominion shall spend \$500,000 in Project Dollars to fund retrofit, replacement or repowering of busses in the Chicagoland and Kincaid areas.

The Project Plan may provide for transfer of funds to the Illinois EPA Clean Diesel Grant Program, which administers a grant program that provides grants for heavy-duty natural gas or propane-powered trucks and buses. The stated goal of this program is "to reduce particulate matter emissions and other pollutants from diesel-powered vehicles and to improve public health." See <http://www.illinoisgreenfleets.org/clean-diesel-grant/diesel-fact-sheet.pdf>.

B. Completion Date: The Project above shall be completed within three (3) years from the Date of Entry, except that Dominion may request an extension of time

to complete the project if it appears likely that all Project Dollars will not be spent within such three year period despite Dominion's best efforts to implement the Project within such period.

**X. Northern Indiana Clean Diesel Project**

- A. Consistent with the requirements of Section II of this Appendix, Dominion shall submit to EPA a Project Plan for the completion of the Indiana Clean Diesel Project in which Dominion shall spend \$500,000 in Project Dollars to fund clean air projects that will significantly reduce diesel emissions from diesel engines and vehicles that serve public needs in Northern Indiana. The diesel engines and vehicles must be based and operated in or near the cities of Gary, Hammond, Michigan City, South Bend, Elkhart, and/or Fort Wayne.

The Project Plan may provide for the transfer of funds to the Indiana Department of Environmental Management's DieselWise Indiana Program, which funds clean air projects that reduce emissions from diesel engines and vehicles.

- B. Completion Date: The Project above shall be completed within three (3) years from the Date of Entry, except that Dominion may request an extension of time to complete the project if it appears likely that all Project Dollars will not be spent within such three year period despite Dominion's best efforts to implement the Project within such period.

**XI. Northeast Clean Energy and Clean Diesel Projects**

- A. 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 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").

- B. Dominion shall spend a maximum of \$1,600,000 in Project Dollars to implement the Energy Efficiency, Geothermal, PV, and/or Clean Diesel Retrofit and Repower Projects described in this Section, and shall complete them not later than three years after the Date of Entry, except that Dominion may request an extension of time to complete one or more of the Projects if it appears likely that, despite Dominion's best efforts, the Projects will not be completed within such three year period. The Projects shall be planned and implemented with the municipalities and with other third parties as needed. The Parties' expectation is that approximately half of the total Project Dollars will be spent in Somerset, 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.
- C. The Geothermal Project identified in Section XI.A shall consist of all equipment and installation necessary to construct and implement the Project at public school buildings in either or both municipalities. This Project shall be planned and implemented in accordance with the requirements for the geothermal project set out in Sections VIII.C - VIII.D above, except where local circumstances make such requirements inapplicable. In addition to the above-referenced requirements, the Project shall include 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.
- D. The PV Project identified in Section XI.A shall, at a minimum, consist of: (1) 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) a grid-tied inverter, appropriately sized for the capacity of the solar panels installed at the location; (3) the appropriate solar panel mounting equipment for the particular school; (4) wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator to the utility grid; and (5) 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. The PV Project shall be installed on the customer side of the meter and ownership of the system shall be conveyed to the Somerset Public School system or Fall River Public School System, as appropriate. All related environmental benefits shall be retained by the system owner, including associated renewable energy certificates. To the extent practicable, North American Board of Certified Energy Practitioners (NACEP) certified energy professionals shall perform the

installation of the PV Projects to ensure the highest quality installation and performance of the system.

- E. The PV Project shall include 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). The Project shall also 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 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.
- F. All diesel engine retrofits conducted under the Clean Diesel Retrofit and Repower Project shall use exhaust control technologies verified either by EPA or by the California Air Resources Board (CARB), and shall consist of the purchase and installation of 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). If the Project includes DPF retrofits, the Project may also include the purchase of DPF service equipment required for proper DPF maintenance.
- G. All diesel engine repowering conducted under the Clean Diesel Retrofit and Repower Project shall use technologies certified by EPA, or by CARB if available, and shall consist 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).
- H. 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.
- I. The Energy Efficiency, Geothermal, and/or PV Projects plan(s) proposed by Dominion shall:
  - 1. Identify the specific proposed Projects to be implemented, and provide implementation timelines and expected completion dates for each Project;
  - 2. Describe each proposed Project's system design;

3. Identify any project designers, contractors, or other third parties with whom the municipality's school system will contract or partner with to implement the Projects, and list any relevant accreditations or certifications held by such contractors, designers or parties; and
  4. Describe the schedule and the budgetary increments in which Dominion shall provide the necessary funding to the municipality's school system or its project designers/contractors to implement the Projects.
- J. The Clean Diesel Retrofit and Repower Project plan(s) proposed by Dominion shall:
1. List the specific proposed vehicles, equipment and diesel engines to be retrofitted or repowered, including model, make and year of manufacture of the vehicles, equipment and engines (and for engines, the engine family name and horsepower), and the EPA or CARB-certified technology with which each engine will be retrofitted or repowered, and include the estimated costs (or contract costs, if available) for the equipment and installation of the proposed retrofits and repowers;
  2. Provide implementation timelines and expected completion dates for the proposed retrofits and repowers;
  3. Identify any contractors or other third parties with whom the municipality will contract or partner with to implement the Project; and
  4. Describe the schedule and the budgetary increments in which Dominion shall provide the necessary funding to the municipality and/or their contractors to implement the Projects.