



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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JAN 12 2006

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

January 9, 2006

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Southern Illinois Power Cooperative***
PCB No. 04-201

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink that reads "Jennifer Bonkowski".

Jennifer Bonkowski
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JB/pp
Enclosures

RECEIVED
CLERK'S OFFICE

JAN 12 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 SOUTHERN ILLINOIS POWER)
 COOPERATIVE, an Illinois)
 not-for-profit corporation,)
)
)
 Respondent.)

PCB No. 04-201
(Enforcement)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2004), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004). In support of this motion, Complainant states as follows:

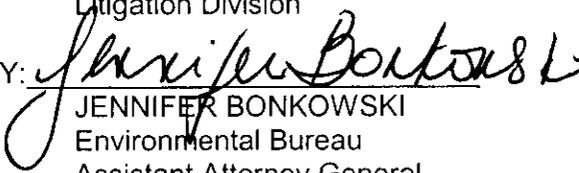
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
JENNIFER BONKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 9, 2006

CERTIFICATE OF SERVICE

I hereby certify that I did on January 9, 2006, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

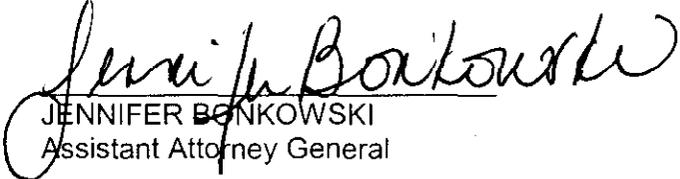
To: Steve Bonebrake
Schiff Hardin & Waite
6600 Sears Tower
Chicago, IL 60606-6473

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


JENNIFER BONKOWSKI
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JAN 12 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 SOUTHERN ILLINOIS POWER)
 COOPERATIVE, an Illinois)
 not-for-profit corporation,)
)
 Respondent.)

PCB No. 04-201
(Enforcement)

NOTICE OF FILING

To: Steve Bonebrake
Schiff Hardin & Waite
6600 Sears Tower
Chicago, IL 60606-6473

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
JENNIFER BONKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 9, 2006

JAN 12 2006

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

SOUTHERN ILLINOIS POWER)
COOPERATIVE, an Illinois)
not-for-profit corporation,)

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB NO. 04-201
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

NOW COME the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency (individually "Illinois EPA" and collectively, the "Complainant"), and Respondent, SOUTHERN ILLINOIS POWER COOPERATIVE ("SIPC"), and hereby submit this Stipulation and Proposal for Settlement ("Stipulation"). The parties agree that this Stipulation is a compromise of a disputed claim. The parties further agree that this Stipulation is made and agreed upon for the purposes of settlement only and that neither the fact that a party has entered into the Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the parties to this Stipulation. Notwithstanding the previous sentence, this Stipulation and any Illinois Pollution Control Board ("Board") order accepting same may be used in any future enforcement action as evidence of a past adjudication of violation solely for purposes of Section 39(a) and (i) and/or 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39 (a) and (i) and/or 42(h) (2002).

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (2002).

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

III.

APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, including the Illinois Attorney General and Illinois EPA, and Respondent and any officer, director, agent, employee or servant of Complainant or Respondent, as well as the Respondent's and Complainant's successors and assigns. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of its officers, directors, agents, servants, or employees to take such action as shall be required to comply with the provisions of this Stipulation.

IV.

STATEMENT OF FACTS AND ALLEGED VIOLATIONS

1. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, inter alia, with the duty of enforcing the Act.

2. Respondent, SIPC, has its business offices at 11543 Lake of Egypt Road, Marion, Williamson County, Illinois 62959. SIPC is an Illinois not-for-profit corporation and is in

good standing. SIPC's registered agent is Tim Reeves, 11543 Lake of Egypt Road, Marion, Illinois 62959.

3. At all times relevant to this Complaint, SIPC operated a fossil fuel-fired power generating plant in Marion, Illinois. Emission sources at the facility include an electric generating unit designated Unit #4. Unit #4 includes a boiler and an associated electrostatic precipitator and flue gas desulfurization system. Unit #4 is subject to a New Source Performance Standard (NSPS) for fossil fuel-fired steam generators.

4. On January 11, 2001, April 6, 2001 and July 3, 2001, respectively, SIPC submitted emission reports for the fourth quarter of calendar year 2000 and the first and second quarters of 2001 to the Illinois EPA. The Illinois EPA reviewed the reports to determine SIPC's compliance with applicable regulations and permit conditions.

5. On August 24, 2001, the Illinois EPA issued Violation Notice (VN) A-2001-00126 to SIPC alleging that SIPC failed to submit required summary reports to the Illinois EPA, and alleging excess opacity emissions during the operation of Unit #4, excess SO₂ emissions from Unit #4 and failure to maintain and operate Unit #4 in a manner consistent with good air pollution control practices.

6. While SIPC submitted quarterly excess emission reports to the Illinois EPA for Unit #4, Complainant alleges the reports for the fourth quarter of calendar year 2000 and the first and second quarters of calendar year 2001, were not in the form required by 40 CFR Part 60.

7. Complainant also alleges that, by failing to submit excess emissions and monitoring systems performance reports with an accompanying summary report, the Respondent has violated 40 CFR 60.7(c) and (d).

8. Complainant alleges that, by violating the federal regulations adopted pursuant to the Clean Air Act, the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

9. Complainant alleges that, by failing to fulfill the applicable reporting requirements of the NSPS, 40 CFR 60.7, the Respondent has violated Special Condition number 4 of operating permit number 80010054.

10. Complainant alleges that, by constructing, installing or operating any equipment, facility, vehicle, vessel, or air craft capable of causing or contributing to air pollution or designed to prevent air pollution in violation of any conditions imposed by such permit, the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

11. The Complainant alleges that the emissions report submitted to the Illinois EPA by SIPC for the first quarter of 2001 indicates that SIPC had six-minute opacity averages greater than 20% except for one six-minute period per hour of not more than 27% opacity on 2,115 occasions during the operation of Unit #4.

12. The Complainant also alleges excess SO₂ emissions. SIPC allegedly had excess SO₂ 3.9% of the total operating time for Unit #4 in the second quarter of 2001.

13. In connection with its proposed Compliance Commitment Agreement, SIPC noted a number of conditions may have contributed to its Unit 4 opacity or sulfur dioxide levels, including efforts to improve the efficiency of the SO₂ scrubber, an overfire air technology system that caused unburned carbon to remain in the gas stream, resulting in additional particulate loading to the electrostatic precipitator; a shortage of coal forcing SIPC to purchase poor quality coal that added to particulate loading; and an additional booster fan added to Unit #4 caused additional moisture in the precipitator to freeze during the winter months, shorting out equipment.

14. Complainant alleges that, by having six-minute opacity averages greater than 20% except for one six-minute period per hour of not more than 27% opacity on 2,115 occasions during the operation of Unit #4 during the first quarter of 2001, the Respondent has violated 40 CFR 60.42(a)(2) and Special Condition 1(b) of Operating Permit number 80010054.

15. Complainant alleges that, by violating the federal regulations adopted pursuant to the Clean Air Act, the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

16. Complainant alleges that, by failing to comply with the terms and conditions of its permit, the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

17. Complainant alleges that, by causing to be discharged into the atmosphere from its facility excess SO₂ emissions 3.9% of the total operating time, the Respondent has violated 40 CFR 60.43(a)(2) and Special Condition 1(b) of Operating Permit number 80010054.

18. Complainant alleges that, by violating the federal regulations adopted pursuant to the Clean Air Act, the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

19. Complainant alleges that, by failing to comply with the terms and conditions of its permit, the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

20. Complainant alleges that SIPC has failed to maintain and operate Unit #4 in a manner consistent with good air pollution control practices.

21. Complainant alleges that, by failing to maintain and operate Unit #4 in a manner consistent with good air pollution control practices, the Respondent has violated 40 CFR 60.11(d) and Condition 1(c) of operating permit 80010054.

22. Complainant alleges that, by violating the federal regulations adopted pursuant to the Clean Air Act, the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

23. Complainant alleges that, by failing to comply with the terms and conditions of its permit, the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

V.

FUTURE PLANS OF COMPLIANCE

Respondent shall continue to diligently conform to the Act, 415 ILCS 5/1 et seq. (2002), federal NSPS regulations, and the Board's Air Pollution Regulations, 35 Ill. Adm. Code Subtitle B, and the terms and conditions of its permit.

VI.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), provides;

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question or priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties state as follows:

1. Complainant contends that the injury to, or interference with, the protection of the health, general welfare, and physical property of the State would be characterized as air pollution and the degree of injury would be dependent upon the extent of the pollution and the degree of exposure to that pollution;
2. The parties agree that Respondent's facility is of social and economic benefit;

3. Respondent's facility is located at 11543 Lake of Egypt Road, Marion, Williamson County, Illinois. The facility is located in a rural area approximately 10 miles from Marion;

4. The parties agree that complying with the provisions of the Act and regulations at issue is technically practicable and economically reasonable; and

5. Respondent implemented measures subsequent to the alleged violations that are the subject of the Complaint in this matter in order to address the alleged violations.

VII.

CONSIDERATION OF SECTION 42(H) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2002), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action

brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. The alleged violations occurred in the fourth quarter of calendar year 2000 and the first and second quarters of calendar year 2001.

2. In advance of, as well as in response to, notices of noncompliance issued by the Illinois EPA, the Respondent worked with the Illinois EPA to resolve its alleged violations. As soon as the Respondent learned of Complainant's assertion that it was not submitting the summary report referred to in 40 CFR Part 60 in the form requested by Complainant, it filed the requested summary report form with its next quarterly report and has done so ever since. In order to ensure compliance with the opacity requirements, the Respondent replaced the precipitator's transformer rectifier ("TR") that was not working properly and generally adjusted the boiler process. A preventative maintenance program was put in place to monitor TR function by drawing and evaluating oil samples from the TR sets on a semi-annual basis. The Respondent also hired an outside contractor to teach a precipitator repair class for the Respondent's electricians. A separate alarm system was installed in the Unit process control system to give warning to the boiler operators when opacity reaches 18%.

3. Complainant alleges that the economic benefit of Respondent's alleged noncompliance is the savings realized by failing to submit the correct summary report form and not timely having maintained the precipitator's transformer rectifiers.

4. Complainant has determined, in this instance, that a penalty of forty-eight thousand dollars (\$48,000.00) will serve to deter any further violations and aid in future enforcement of the Act and applicable regulations.

5. Respondent has no previously adjudicated violations of the Act.

6. Self-disclosure is not an issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

VIII.

TERMS OF SETTLEMENT

A. MONETARY PAYMENT

The Respondent shall pay a monetary penalty of forty eight thousand dollars (\$48,000) into the Illinois Environmental Protection Trust Fund within ten (10) days from the date on which the Pollution Control Board issues a final order approving this Stipulation. Payment shall be made by certified check or money order, payable to the Illinois EPA, designated to the Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Respondent's Federal Employer Identification Number ("FEIN") shall be written upon the certified check or money order. Respondent's FEIN is: 37-0801403. A copy of the payment transmittal and check shall be simultaneously submitted to:

Peggy Poitevint
Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

Maureen Wozniak
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

B. NO ADMISSION OF VIOLATIONS

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint or set forth herein, and this Stipulation shall not be interpreted as including such admission.

IX.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibility of Respondent to comply with any federal, state, or local regulations, including but not limited to the Act, 415 ILCS 5/1 et seq. (2002), and the Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A through H.

X.

CEASE AND DESIST

The Respondent shall cease and desist from any violations of the Act and regulations that were the subject matter of the Complaint.

XI.

RELEASES, WAIVERS AND DISCHARGES

In consideration of the cease and desist provision set forth above and Respondent's payment of a \$48,000 penalty, and upon the payment of such penalty, Complainant releases and discharges Respondent and Respondent's affiliates, successors, assigns, employees, agents, officers and directors from, and waives, any further liability or penalties for violations of the Act, permit provisions and regulations that were the subject matter of the Complaint. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint in this matter filed on or about May 18, 2004. Nothing in this Stipulation shall be construed as a waiver by Complainant of the right to redress future

violations or obtain penalties with respect thereto. The Complainant reserves, and the Stipulation is without prejudice to, all rights of the Complainant, including the State of Illinois, against the Respondent with respect to all matters other than those expressly set forth above, but not limited to, the following:

- a. criminal liability;
- b. liability for future violations of state, federal, local and common laws and/or regulations;
- c. liability for natural resource damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of the Stipulation;

Nothing in this Stipulation and Proposal for Settlement is intended as a waiver, discharge, release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined in Section 3.26, 415 ILCS 5/3.26 (2002), or entity other than Respondent and Respondent's affiliates, successors, assigns, employees, agents, officers and directors.

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

Respectfully,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General
State of Illinois,

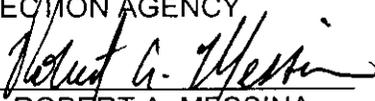
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

Dated: 11/15/05

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

Dated: 1/4/06

BY: 
ROBERT A. MESSINA
Chief Legal Counsel
Division of Legal Counsel

SOUTHERN ILLINOIS POWER COOPERATIVE,
an Illinois not-for-profit corporation,
Respondent

Dated: 10/28/05

BY: 
Tim Reeves
President and General Manager