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COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
2ND FLOOR - RACHEL CARSON STATE OFFICE BUILDING
400 MARKET STREET, P.O. BOX 8487
HARRISBURG, PA 17105-8487

WILLIAM T. PHILLIPY IV
SECRETARY TO THE BOARD

*Contract
Settlement 7/11/03. done
be
not*

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and LOWER MOUNT
BETHEL ENERGY LLC, Permittee

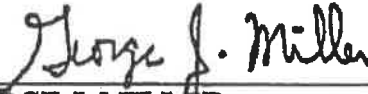
EHB Docket No. 2001-280-C

ORDER

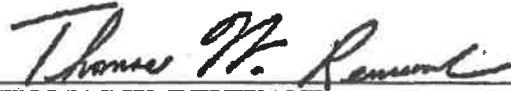
AND NOW, this 31st day of October 2003, in consideration of the joint letter signed by all parties which informs the Board that the parties have agreed to termination of the above appeal as a result of a settlement agreement, and upon consideration that the parties have provided the Board with a copy of the settlement agreement for inclusion in the record, with the request that the notice of the settlement be published in the *Pennsylvania Bulletin* in accordance with the requirements of 25 Pa. Code § 1021.141(b), IT IS ORDERED that this proceeding be marked settled and the proceeding terminated.

ENVIRONMENTAL HEARING BOARD

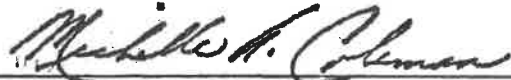
MICHAEL L. KRANCER
Administrative Law Judge
Chairman



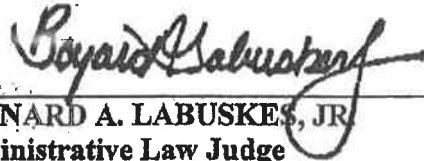
GEORGE J. MILLER
Administrative Law Judge
Member



THOMAS W. RENWAND
Administrative Law Judge
Member



MICHELLE A. COLEMAN
Administrative Law Judge
Member



BERNARD A. LABUSKES, JR.
Administrative Law Judge
Member

Dated: October 31, 2003

c: For the Commonwealth, DEP:
Sean L. Robbins, Esquire
Northeastern Regional Counsel
and
Douglas G. White, Esquire
Southeastern Regional Counsel

For Appellant:
Howard Geduldig, Deputy Attorney General
Robert S. Baranowski, Jr., Deputy Attorney General
Department of Law and Public Safety, Div. of Law
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 093
Trenton, New Jersey 08625-0093

For Permittee:
Terry Bossert, Esquire
STEVENS & LEE, P.C.
P. O. Box 11670
Harrisburg, PA 17108-1670



JAMES E. MCGREEVEY
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 093
TRENTON, NJ 08625-0093

PETER C. HARVEY
Attorney General

PAUL P. JOSEPHSON
*Assistant Attorney General
Director*

October 24, 2003

The Honorable Michelle A. Coleman
Environmental Hearing Board
PO Box 8457
Harrisburg, PA 17105-8457

Re: NJDEP v PADEP and Lower Mount Bethel Energy, LLC
EHB Docket No. 2001-280-C

Dear Judge Coleman:

Consistent with the Board's rules at 25 Pa. Code §1021.141(b)(3), the Parties are submitting this joint letter signed in counterparts to notify the Board that the captioned matter has been settled. Enclosed herewith is a copy of the Settlement Agreement for inclusion in the record. The Parties further request that the enclosed notice be published in the Pennsylvania Bulletin and that the case be marked as settled.

The Parties would, once again, like to take this opportunity to express their appreciation with your patience and understanding in this complex matter.

Sincerely yours,




October 24, 2003

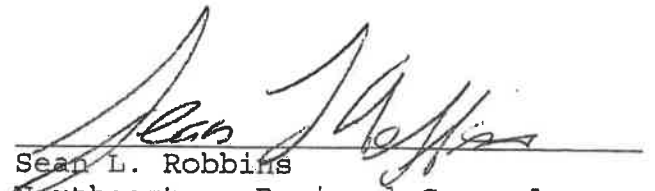
Page 2

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By:



Howard Geduldig
Deputy Attorney General

October 24, 2003
Page 3



Sean L. Robbins
Northeastern Regional Counsel
Commonwealth of Pennsylvania

October 24, 2003
Page 4



Terry R. Bossert, Esq.
Stevens & Lee, PC
For Lower Mount Bethel Energy, LLC

Enclosures

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Notice of Publication in the Pennsylvania Bulletin

RE: New Jersey Department of Environmental Protection v.
Commonwealth of Pennsylvania, Department of Environmental
Protection and Lower Mount Bethel Energy
EHB Docket No. 2001-280-C

The New Jersey Department of Environmental Protection (NJDEP), the Commonwealth of Pennsylvania Department of Environmental Protection (PADEP), and Lower Mt. Bethel Energy, LLC have agreed to a settlement of the above matter. PPL Generation, LLC and its subsidiaries, PPL Martins Creek, LLC and PPL Interstate Energy, LLC, have joined in the settlement to the extent that the terms are applicable to each.

The Commonwealth, through PADEP, issued a plan approval (#48-328-004) to Lower Mt. Bethel Energy, LLC, for the construction of a 600 MW gas-fired, combined cycle electric generating turbine plant located adjacent to the existing Martins Creek electric generating facility, operated by PPL Martins Creek, LLC, in Northampton County on October 29, 2001. NJDEP filed an appeal to the issuance of the plan approval on November 29, 2001.

The parties have agreed to a settlement on October 10, 2003, the major provisions of which include:

1. Modification of the Lower Mt. Bethel Energy, LLC Plan Approval and PPL Martins Creek Title V Operating Permit as follows:
 - (a) commencing May 1, 2004, limit Units 1 and 2 (existing coal-fired units) SO₂ emissions to 3.3 pounds/mmBtu heat input on daily basis, not to be exceeded at any time; and 3.1 pounds/mmBtu heat input on daily basis, not to be exceeded more than 14 times per 12-month rolling period;
 - (b) by September 15, 2007, cease operations of existing boilers serving Units 1 and 2;

- (c) commencing May 1, 2004, limit Units 3 and 4 (existing oil-fired units) fuel oil sulfur content to 0.70 percent;
 - (d) commencing December 31, 2003, limit Auxiliary Boiler 4B to natural gas combustion only;
 - (e) by May 31, 2004, and by each May 31st thereafter, until shutdown, conduct annual source testing of Units 1 and 2 particulate emissions; and
 - (f) maintain Units 1 and 2 electrostatic precipitators in accordance with PADEP-approved maintenance plan and good engineering practice;
- 2. PPL Martins Creek shall donate and transfer to the Pennsylvania Environmental Council (PEC) 70 percent of the SO₂ allowances, NO_x Budget allowances, and NO_x emission reduction credits (ERCs) made available from the aforementioned cessation of operations of existing boilers serving Units 1 and 2;
 - 3. PADEP shall expeditiously process applications for the changes of the Lower Mt. Bethel Energy, LLC Plan Approval and PPL Martins Creek Title V Operating Permit;
 - 4. PADEP shall expeditiously make available to NJDEP relevant documentation to determine compliance with the Settlement Agreement by PPL Martins Creek, LLC and Lower Mt. Bethel, LLC;
 - 5. NJDEP shall take no action against PPL Martins Creek, LLC alleging violations for past violations at Units 1 and 2 of Federal Clean Air Act or Pennsylvania Air Pollution Control Act new source review provisions;
 - 6. NJDEP shall not appeal PADEP approvals of the PPL Martins Creek, LLC or Lower Mt. Bethel Energy, LLC permit changes required by this Settlement Agreement nor PADEP approval for the conversion of

existing Martins Creek combustion turbines to gas consistent with both the existing plan approval (#48-328-004) and April 1, 2003 PPL Martins Creek, LLC application for the conversion;

7. Once PPL Generation, LLC and its subsidiaries have implemented the provisions of this Settlement Agreement, NJDEP shall submit a complete redesignation request to USEPA Region 2 in order to redesignate Warren County, New Jersey, to attainment for the SO2 NAAQS based on monitoring and other relevant information supporting such a determination.

Copies of the full agreement are in the hands of:

Howard Geduldig, Esq.
Deputy Attorney General
Division of Law
R.J. Hughes Justice Complex -- 7th Floor
25 Market Street
PO Box 093
Trenton, New Jersey 08625-0093
(609) 633-8109

Sean L. Robbins, Esq.
Assistant Counsel
Pennsylvania Department of Environmental Protection
2 Public Square
Wilkes-Barre, Pennsylvania 18711-0790
(570) 826-2519

Terry R. Bossert, Esq.
Stevens & Lee, P.C.
PO Box 11670
Harrisburg, Pennsylvania 17108-1670
(717) 561-5274

and at the office of the Environmental Hearing Board, and may be reviewed by any interested party on request during normal business hours.

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
2ND FLOOR - RACHEL CARSON STATE OFFICE BUILDING
400 MARKET STREET, P.O. BOX 8457
HARRISBURG, PA 17105-8457

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION
Appellant

v.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION
Appellee

And

LOWER MOUNT BETHEL ENERGY
Permittee

EHB Docket No. 2001-280-C

SETTLEMENT AGREEMENT

WHEREAS, the State of New Jersey ("New Jersey") acting by and through the New Jersey Department of Environmental Protection ("NJDEP"), filed an appeal in this matter on or about November 29, 2001, before the Environmental Hearing Board at Docket No. 2001-280-C; and

WHEREAS the appeal filed by NJDEP challenged the plan approval issued on or about October 29, 2001 by the Pennsylvania Department of

Environmental Protection ("PADEP") to Lower Mt. Bethel Energy, LLC ("Lower Mt. Bethel") for a gas-fired facility in Northampton County ("LMBE"); and

WHEREAS, the LMBE plant is contiguous to a facility owned by PPL Martins Creek, LLC ("PPL Martins Creek"); and

WHEREAS, both Lower Mt. Bethel and PPL Martins Creek are subsidiaries of PPL Generation, LLC ("PPL Generation"); and

WHEREAS, PPL Rights, LLC ("PPL Rights") is a subsidiary of PPL Generation and holds NOx and SO2 allowances in connection with facilities owned and operated by PPL Generation and its subsidiaries; and

WHEREAS, PPL Interstate Energy Company (PPL Interstate Energy) is a subsidiary of PPL Generation and owns the Martins Creek tank farm; and

WHEREAS, the subject matter of this agreement pertains to provisions of Pennsylvania's Air Pollution Control Act, Act of January 8, 1960, P.L. 2119 (1959), No. 787, *as amended*, 35 P.S. §§4001-4015 ("PA APCA"); and the rules and regulations promulgated thereunder at 25 Pa. Code Chapters 121 - 145; and the federal Clean Air Act, 42 U.S.C. §§7401 to 7671q ("CAA"); and the rules and regulations promulgated thereunder at 40 C.F.R. Subchapter C - Air Programs; and Pennsylvania's federally enforceable State Implementation Plan (SIP), 40 C.F.R.

§§52.2020–52.2062; and air permits issued pursuant to the foregoing statutory and regulatory provisions; and the parties to this agreement seek to resolve issues regarding the aforementioned statutory and regulatory provisions; and

WHEREAS, the terms and conditions of this Settlement Agreement are adopted in order to achieve respective goals of PADEP, NJDEP, PPL Martins Creek, PPL Generation, PPL Interstate Energy and Lower Mt. Bethel (collectively “the Parties” and singly “Party”) for achieving emission reductions of certain air pollutants at the electric generating stations covered under this agreement; and

WHEREAS, the Parties recognize that this agreement has been negotiated in good faith and at arm's length, that the parties have not acted under duress and have voluntarily entered into this agreement, that implementation of this agreement will avoid prolonged and complicated litigation among PADEP, NJDEP and Lower Mount Bethel, and that this agreement is fair and reasonable, is not unconscionable as to any of the Parties, is not the result of overreaching on the part of any of the Parties, is consistent with the requirements of the PA APCA and the CAA, and implementing regulations, and in the public interest; and

WHEREAS, the Parties would like to resolve this matter without further litigation on the terms stated below;

NOW, THEREFORE, without any admission of fact or law, and without any admission of any matter alleged in the appeal, the Parties, intending to be legally bound, hereby agree as follows:

I. Applicability

1. Notwithstanding any other paragraphs of the Settlement Agreement, the provisions of this Settlement Agreement shall apply to and be binding upon: PADEP, NJDEP, PPL Martins Creek, PPL Generation, PPL Interstate Energy and Lower Mt. Bethel, their successors and assigns and their officers, employees and agents solely in their capacities as such.

2. If PPL Martins Creek or Lower Mt. Bethel proposes to sell or transfer any of its assets or operations subject to the requirements of the Settlement Agreement, it shall advise the purchaser or transferee in writing of the existence of this Settlement Agreement, and shall, twenty days before such sale or transfer, send a copy of such written notification by certified mail, return receipt requested, to the NJDEP contact designated under Section VII hereof. Any partial or complete sale or transfer of any assets or operations subject to this Settlement Agreement must satisfy the PADEP requirements for transfer of plan approvals and operating permits, including the requirements of 25 Pa Code §§ 127.32, 127.450(a)(4) and 127.464 to document the change of ownership and obtain PADEP approval of the transfer of the obligations hereunder.

II. Definitions

3. (a) "24-Hour Daily" means midnight to midnight.

- (b) "ERC " or "Emission Reduction Credit" means, for purposes of this Settlement Agreement, a permanent, enforceable, quantifiable and surplus emissions reduction certified and registered by PADEP in accordance with 25 Pa. Code §§127.206 – 209.
- (c) "Effective Date" is as defined in Paragraph 30.
- (d) "NOx allowance" means, as defined in 25 Pa. Code §145.2, an authorization by the PADEP under the NOx Budget Trading Program to emit up to 1 ton of NOx during the control period of the specified year or of any year thereafter, except as provided under §145.54(f) (relating to compliance).
- (e) "Plan Approval" means Plan Approval No. 48-328-004, issued to Lower Mt. Bethel Energy, LLC by PADEP on October 29, 2001, approving plans for the construction and temporary operation of a combined cycle turbine electric generating plant.
- (f) "Repowering" for the purpose of this Settlement Agreement, means the shutdown and replacement of either or both of the existing Units 1 and 2 boilers. Repowering can be accomplished with the clean coal technologies defined in 40 CFR §52.21(b)35, including atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired

turbines, integrated gasification fuel cells, or as determined by the EPA Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

- (g) "Retirement," means for the purposes of this Settlement Agreement, the permanent surrender of SO₂ and NO_x allowances or NO_x emission reduction credits, so that such retired allowances or emission reduction credits can never be used by any person to comply with any federal or state law including the federal Clean Air Act or Pennsylvania Air Pollution Control Act.
- (h) "Shutdown" means to permanently cease operation.
- (i) "Title V Operating Permit" means the Title V Operating Permit, issued to PPL Martins Creek on March 20, 2000 and designated at that time as No. 48-00011.

**III. PPL Martins Creek and Lower Mt. Bethel
Commitments for Emission Reductions and Controls**

4. Prior to commencement and operation of the combustion turbines covered by the Plan Approval, PPL Martins Creek and Lower Mount Bethel shall submit to PADEP the appropriate applications to simultaneously amend or modify, as consistent with PADEP regulations, the Plan Approval and the Title V Operating Permit to incorporate the obligations set forth in Section III of this Settlement Agreement.

SO₂ Reductions

5. PPL Martins Creek shall implement the following operational standards and revise Section (E) Group 1 (Units 1 and 2) Condition #005 of the Title V Operating-Permit for PPL Martins Creek to add the following limit:

"Commencing on May 1, 2004, the permittee may not permit the emission into the atmosphere of sulfur oxides, expressed as SO₂, from either Unit 1 or Unit 2 fired by solid fossil fuel in excess of the following:

- (1) 3.3 pounds SO₂ per million Btu heat input, on a 24-hour Daily basis, not to be exceeded at any time.
- (2) 3.1 pounds SO₂ per million Btu heat input, on a 24-hour Daily basis, not to be exceeded more than fourteen 24-hour daily periods per 12-month rolling period."

6. By September 15, 2007, PPL Martins Creek shall permanently cease operations of the boilers serving Units 1 and 2. Nothing herein precludes PPL

Martins Creek from (i) replacing Unit 1, Unit 2, or both Units in their entirety; or (ii) repowering the Unit 1 boiler, Unit 2 boiler, or both Units' boilers. Under options (i) or (ii), PPL Martins Creek shall satisfy all applicable federal and state control requirements including PADEP Best Available Technology requirements. The Title V Operating Permit shall be amended or modified, as consistent with PADEP regulations, to reflect the provisions contained in this paragraph.

7. (a) The Title V Operating Permit shall be amended or modified, as consistent with PADEP regulations, to reflect the provisions contained in this paragraph and its subparagraphs. PPL Martins Creek shall implement the following operational standards and Section E Group II (Units 3 and 4) Condition #002(1) of the Title V Operating Permit for PPL Martins Creek shall be revised to add the following limits: "(3) Commencing on May 1, 2004, the 1.0% sulfur oil limit stated in sub-section (1) (a) and (c) above shall be reduced to 0.70% sulfur oil and sub-condition (1) (d) above shall be eliminated."

(b) Notwithstanding any provision to the contrary in the Title V Permit or any other air quality permit issued by PADEP, commencing on May 1, 2004, in no event shall PPL Martins Creek burn oil with a sulfur content greater than 0.70%.

(c) PPL Martins Creek's compliance with the requirements of (a) and (b) above shall be determined as follows:

(1) Fuel oil samples shall be taken from each tank at the PPL Interstate Energy Company's Martins Creek tank farm after completion of each pump cycle (or from the

Marcus Hook shore tanks as provided in Appendix 1) and tested for sulfur content. Prior to transfer of the oil from any tank to the Martins Creek day tank, the oil shall be confirmed to have a sulfur content of 0.70% or lower consistent with Appendix 1.

(2) Monthly samples of the fuel oil in the Martins Creek day tank shall be taken to confirm that the sulfur content of the fuel oil is 0.70% or lower.

(3) Within 60 days following the end of the second calendar quarter in 2004 and within 60 days following each subsequent calendar quarter, PPL Martins Creek shall submit to PADEP documentation of the results of the sampling taken during that calendar quarter pursuant to this section.

Particulates

8. On and after December 31, 2003, PPL Martins Creek shall not combust any fuel other than natural gas in Auxiliary Boiler 4B. The Title V Operating Permit shall be amended or modified, as consistent with PADEP regulations, to reflect the provisions contained in this paragraph.

9. By no later than May 31, 2004, and by May 31st of each successive calendar year, and continuing until PPL Martins Creek complies with Paragraph 6 above, PPL Martins Creek shall conduct annual source testing of total

particulate emissions for Units 1 and 2 under a protocol approved by PADEP. For the first annual source test PPL Martins Creek shall test for both PM-10 and total particulate emissions in accordance with this paragraph. Thereafter, PPL Martins Creek shall not be required to test for PM-10 emissions during annual source tests required by this Settlement Agreement. Source tests conducted by PPL Martins Creek as required by its Title V Operating Permit may be used to satisfy this paragraph to the extent those source tests include results for total particulate and/or total PM-10 emissions, as applicable, and only for the annual testing periods during which the Title V Operating Permit source tests are conducted. PPL Martins Creek shall file the results of its source tests with PADEP within 60 days following completion of the source test unless PADEP agrees to additional time in which to submit such test results.

10. Within 30 days after the Effective Date, PPL Martins Creek shall submit to PADEP for approval a precipitator maintenance plan for the electrostatic precipitators on Units 1 and 2. PPL Martins Creek shall maintain those electrostatic precipitators in accordance with the PADEP-approved precipitator maintenance plan and good engineering practice.

IV. PPL Martins Creek Commitment to Donate and Transfer Allowances and Credits for Retirement

11. (a) PPL Martins Creek shall donate and transfer the following quantities of allowances and emission reduction credits (ERCs) to the Pennsylvania

Environmental Council (PEC) for Retirement, pursuant to all applicable provisions of federal law and Pennsylvania law including the Pa. Code:

(j) For SO₂ allowances under Title IV of the Clean Air Act, 70% of the number of allowances allocated to Unit 1 and Unit 2, for each vintage year from 2008 through 2032;

(ii) For NO_x allowances under Pennsylvania's NO_x Budget Trading Program, 70% of the number of allowances allocated to Unit 1 and Unit 2, for each vintage year from 2008 through 2017; and

(iii) For NO_x emission reductions resulting from the Shutdown of the two existing boilers at Unit 1 and 2, 70% of the ERCs certified and registered under Subparagraph 11(b) below.

(b) PPL Martins Creek may use all or any portion of the NO_x emission reductions generated by the shutdown of the two existing boilers at Units 1 and 2 to "net out" of Prevention of Significant Deterioration (PSD) and/or Non-Attainment New Source Review (NNSR) during an applicability determination for a replacement or repowering of Unit 1 and/or Unit 2 for which a plan approval has been issued by PADEP on or before September 15, 2007. Any NO_x emission reductions approved for "netting out" as set forth in such plan approval in effect on September 15, 2007 shall not be used for any other project or purpose. Not later than September 15, 2007, PPL Martins Creek shall submit an ERC Registry

Application to PADEP for certification and registration of ERCs generated from any NOx emission reductions not used for such netting out. In the event that PPL Martins Creek has not obtained a plan approval for replacement or repowering of Unit 1 and/or 2 by September 15, 2007, PPL Martins Creek shall submit an ERC Registry Application to PADEP to certify and register as NO_x ERCs all of the NOx emission reductions generated from the shutdown of the boilers at Units 1 and 2. The ERC Registry Application shall be submitted to PADEP not later than September 15, 2007. PPL Martins Creek may trade or use the remaining 30% of the registered ERCs in any manner consistent with applicable federal and Pennsylvania law.

(c) By September 15, 2007, PPL Martins Creek shall make the donation and transfer to PEC of SO₂ allowances required under (a)(i) above and the donation and transfer to PEC of NOx allowances for vintage years 2008 through 2012 required under (a)(ii) above. Within 30 days after the NOx Budget Administrator places in PPL Martins Creek's NOx Allowance Tracking System Account the Unit 1 and Unit 2 NOx allowances for vintage years 2013 through 2017, PPL Martins Creek shall make the donation and its "Authorized Account Representative" shall transfer to PEC the NOx allowances for vintage years 2013 through 2017 required under (a)(ii) above. Within 30 days after certification and registration by PADEP of the NOx ERCs, PPL Martins Creek shall donate and transfer to PEC 70% of the ERCs created under (b) above. Within 15 days after the NOx allowances for vintage years 2013 through 2017 are placed in PPL Martins Creek's NOx Allowance Tracking System Account for Units 1 and Unit 2, PPL Martins Creek shall notify PADEP and NJDEP that the allowances have been placed in the

account. Within 30 days after PPL Martins Creek submits to EPA each request to transfer SO₂ or NO_x allowances in accordance with this paragraph, PPL Martins Creek shall provide PADEP and NJDEP with documentation evidencing each allowance transfer request. Within 30 days after PPL Martins Creek submits to PADEP a request to transfer ERCs in accordance with this paragraph, PPL Martins Creek shall provide NJDEP with documentation evidencing the ERC transfer request.

V. PADEP Commitments

12. Notwithstanding any other provisions of this Settlement Agreement, within fifteen days after receipt of the precipitator maintenance plan from PPL Martins Creek under Section 10 above, PADEP shall provide to NJDEP a complete copy of the plan. Within 15 days after PADEP approves the plan, PADEP shall provide to NJDEP a complete copy of the PADEP-approved precipitator maintenance plan for PPL Martins Creek.

13. In accordance with Pennsylvania law, PADEP shall expeditiously process the modifications or amendments to the Lower Mt. Bethel Plan Approval and the Title V Operating Permit required by this Settlement Agreement. For plan approval and Title V Operating Permit modifications or amendments subject to this Settlement Agreement, PADEP shall provide NJDEP with copies of all applications for changes to Plan Approvals or the Title V Operating Permit for Lower Mt. Bethel and PPL Martins Creek within fifteen (15) days of a determination by PADEP that the applications are administratively complete.

14. At least five (5) days prior to publication in the Pennsylvania Bulletin of notice of each of the following PADEP actions, PADEP shall provide NJDEP with copies of proposed and final plan approvals and operating permits (or changes thereto) for the LMBE and PPL Martins Creek facilities, when applicable to determine compliance with the terms and conditions of this Settlement Agreement. PADEP shall provide to NJDEP, within seven (7) days of issuance, PADEP's letter approving the transfer of NOx ERCs pursuant to Paragraph 11. PADEP shall provide to NJDEP, within 45 days of receipt, copies of documentation filed by PPL Martins Creek concerning compliance with this Settlement Agreement including, but not limited to:

- (a) Quarterly monitoring reports of sulfur dioxide emission rates from Units 1 and 2, referenced in paragraph 5, beginning on May 1, 2004;
- (b) Units 1 and 2 particulate emission source test data filed with PADEP and referenced in paragraph 9.
- (c) Quarterly reports of the results of oil sampling for sulfur from both the tank farm and the day tank.

VI. NJDEP Commitments

15. NJDEP shall take no action against PPL Martins Creek, its successors or assigns or their affiliates, officers, employees or agents alleging any violations of the NSR provisions of the Clean Air Act that are set forth at 42 U.S.C.A. 7470 through 7479, 7501 through 7515, 7661a through 7661f, or its implementing

regulations in 40 CFR, Parts 51 and 52, or the PA APCA that are set forth at 35 P.S. 4001 et seq., or its implementing regulations in 25 Pa. Code Chapter 127, Subchapters D and E, with respect to any physical or operational change at PPL Martins Creek Units 1 or 2 undertaken prior to the Effective Date.

16. NJDEP shall neither appeal the Lower Mount Bethel Plan Approval amendments or modifications required under this Settlement Agreement, nor shall NJDEP appeal or challenge by petition to USEPA the modified or amended Title V Operating Permit required by this Settlement Agreement to the extent that these documents incorporate and implement the provisions of Section III of this Settlement Agreement. Notwithstanding the above, however, this paragraph shall not apply to any provisions in these documents that do not incorporate and implement the provisions of Section III of this Settlement Agreement that are otherwise subject to appeal or challenge by petition to EPA.

17. NJDEP shall not appeal or challenge any PADEP approval for the planned conversion of the combustion turbines at the PPL Martins Creek plant to gas operation if consistent with the provisions of the existing Plan Approval, including operational and emissions limits, and the provisions of the Plan Approval application filed with PADEP on April 1, 2003.

18. Based on the sulfur dioxide reductions contemplated by the terms of this Settlement Agreement, NJDEP believe that after the implementation of the terms of this Settlement Agreement emissions from the facility owned by PPL Martins Creek in Northampton County, Pennsylvania, will not be causing nonattainment in the USEPA-designated Warren County, New Jersey sulfur dioxide

nonattainment area. Further, based on continuing monitoring and modeling efforts, NJDEP will be in a position to determine what emissions from the PPL Martins Creek and Lower Mt. Bethel facilities are contributing to ambient sulfur dioxide concentrations in Warren County, New Jersey. NJDEP will submit a complete redesignation request to USEPA Region 2 in order to redesignate the Warren County sulfur dioxide nonattainment area to attainment for the sulfur dioxide National Ambient Air Quality Standards (NAAQS) after all of the following occur: (1) PPL Generation and its subsidiaries listed in Paragraph 1 implement the provisions of this agreement, (2) the sulfur dioxide NAAQS maintenance plan and SIP revision is developed for the nonattainment areas within Warren County, New Jersey by NJDEP, (3) and, based on continuing monitoring efforts and any other relevant information, NJDEP has determined that the sulfur dioxide NAAQS is being attained in Warren County, New Jersey.

VII. General

19. This Settlement Agreement shall be fully enforceable as specified herein:

- a. Any action against PADEP for breach of a provision of the Settlement Agreement shall be brought in the Pennsylvania Commonwealth Court or, if required under 42 P.S. §761 (a)(1)(iv), the Pennsylvania Board of Claims;
- b. Any action against NJDEP for breach of a provision of the Settlement Agreement shall be brought in the Superior Court of New Jersey; and

- c. Any action against PPL Martins Creek, PPL Generation, PPL Interstate Energy and/or Lower Mt. Bethel shall be brought in the Pennsylvania Commonwealth Court, the Pennsylvania Courts of Common Pleas, or the U.S. District Court for the Eastern District of Pennsylvania.

Nothing herein shall preclude any Party from asserting the terms of this Settlement Agreement as a defense in, or in support of any motion to dismiss, any action brought in any forum.

20. Every term expressly defined by this Settlement Agreement shall have the meaning given to that term by this Settlement Agreement. If not defined in this Settlement Agreement, the term shall be construed as defined in the Plan Approval, Title V Operating Permit, the PA APCA or the regulations adopted thereunder.

21. Nothing in this Settlement Agreement shall relieve PPL Martins Creek or Lower Mt. Bethel of its obligation to comply with all applicable federal, state and local laws and regulations.

22. This Agreement does not limit, enlarge or affect the rights of any party to this Agreement as against any third parties.

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

24. Unless otherwise provided herein, notifications to or communications with a Party shall be deemed submitted on the date they are postmarked and sent either by overnight mail or by certified or registered mail, return

receipt requested. Except as otherwise provided herein, when written notification to or communication with a Party is required by the terms of this Settlement Agreement, it shall be addressed as follows:

As to the State of New Jersey:

Administrator
Air Compliance and Enforcement
401 East State Street
4th Floor, East Wing
P.O. Box 422
Trenton, NJ 08625

Section Chief
Environmental Enforcement
Division of Law Department of Law and Public Safety
State of New Jersey
R.J. Hughes Justice Complex
P.O. Box 093
Trenton, NJ 08625

As to PPL Martins Creek and Lower Mt. Bethel:

Mr. Thomas G. Eppehimer
PPL Martins Creek LLC
6605 Foul Rift Rd.
Bangor, PA 18013-4857

Arundhati Khanwalkar, Esquire
Senior Counsel
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101

As to PADEP:

Sean L. Robbins, Esquire
Assistant Counsel
Office of Chief Counsel
Northeast Regional Office
Two Public Square
Wilkes-Barre, PA 18711-0790

Mr. Thomas A. DiLazaro
Regional Air Quality Program Manager
Northeast Regional Office
Two Public Square
Wilkes-Barre, PA 18711-0790

25. Any Party may change either the notice recipient or the address for providing notices to it by serving all other parties with a written notice, by certified mail, setting forth such new notice recipient or address.

26. Except as otherwise required by law there shall be no modification of this Settlement Agreement without prior written approval by the Parties.

27. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties to this Settlement Agreement with respect to the settlement embodied in this Settlement Agreement. The Parties to this Settlement Agreement acknowledge that there are no representations, agreements or understandings relating to the settlement, whether written or oral, other than those expressly contained in this Settlement Agreement.

28. This Settlement Agreement may be signed in counterparts, and such counterpart signature pages shall be given full force and effect. The undersigned representative of each Party certifies that he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the Party on whose behalf the representative is signing.

29. Each Party hereby agrees to accept service of process by certified mail with respect to all matters arising under or relating to this Settlement

Agreement, and to waive the formal service requirements that may otherwise be applicable.


30. This Settlement Agreement shall become effective ("Effective Date") when all Parties have executed it.

31. Pursuant to this Settlement Agreement, the appeal at Docket No. 2001-280-C is settled. Within ten (10) days of the Effective Date of this Settlement Agreement, the Parties shall make all necessary filings with the Environmental Hearing Board (EHB), to terminate the appeal at Docket No. 2001-280-C pursuant to the Board's rules at 25 Pa. Code §1021.141(b)(3), including, but not limited to submitting a joint letter (which may be signed in counterparts) notifying the Board that the case has been settled, providing the Board with a copy of the settlement agreement for inclusion in the record, requesting the notice of the settlement be published in the Pennsylvania Bulletin and requesting that the case be marked as settled. The notice of publication shall be in substantially the form specified in the Board's rules at 25 Pa. Code §1021.141(b)(3) and shall be attached to the joint letter.

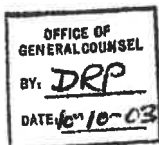
32. The Parties' obligations under this Settlement Agreement shall terminate upon PPL Martins Creek's compliance with paragraph 11, except that the obligations under paragraph 10 shall terminate when PPL Martins Creek has complied with Paragraph 6 and except that paragraphs 6, 7(b), 8, 15 and 18 are deemed non-lapsing obligations and shall have no termination date.

For:

Lower Mt. Bethel Energy, LLC
PPL Martins Creek, LLC
PPL Generation, LLC
PPL Interstate Energy Company

By: 
James H. Miller, President
PPL Generation, LLC

Dated: 10/10/03



For

The State of New Jersey
Department of Environmental Protection

By: 

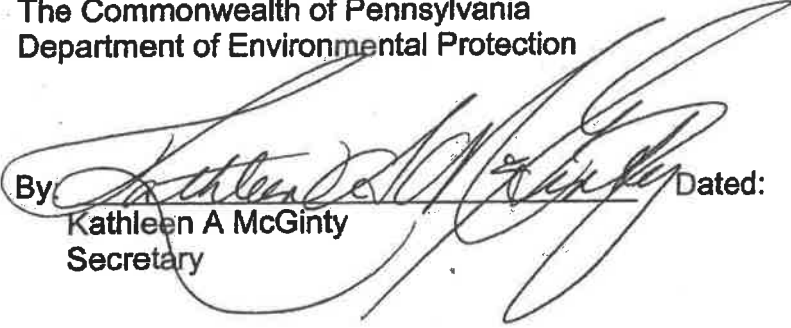
Bradley M. Campbell
Commissioner

Dated: October 10, 2003

For

The Commonwealth of Pennsylvania
Department of Environmental Protection

By


Kathleen A McGinty
Secretary

Dated:

10/18/08

APPENDIX 1

No. 6 FUEL OIL TESTING PROTOCOL PPL MARTINS CREEK

I. Background

- Fuel oil that is purchased for PPL Martins Creek (PPL MC) is obtained from worldwide markets.
- Initial delivery, blending and storage of these various oils occur at Marcus Hook Terminal (MH) pending pump cycles.
- Oil is delivered to Martins Creek Tank Farm (MCTF) to PPL MC via an 84 mile pipeline operated by PPL Interstate Energy Company (IEC) originating at the Marcus Hook Terminal.
- Oil is transferred to MCTF approximately 2 to 4 times a year with each pump cycle lasting approximately 2 to 4 weeks.
- #6 oil is stored at MCTF in any of four (4) on-site tanks with a combined storage capacity of 1,750,000 barrels.
- The pipeline is maintained/conditioned to be capable of delivering natural gas except during the oil pump cycles.
- Oil is stored in the active 100,000 barrel "day tank" at the PPL MC plant

II Compliance Testing Protocol – Martin’s Creek Tank Farm (MCTF)

Because the MCTF is strictly managed and controlled by PPL and the quality of the oil, once in the tanks, cannot change until the next pump cycle, MCTF will be the primary point of delivery to demonstrate compliance with the 0.70 % sulfur limit.

- a. Fuel oil samples will be taken from each tank at MCTF, (except the PPL MC “day tank”), during or after a pump cycle as each specific tank completes delivery and the tank is determined to be static. A tank will be determined to be static once it has completed a filling cycle. Any oil additions to the tank after that point will constitute a new filling cycle and require new oil sampling to be conducted.
- b. All tank farm fuel oil samples will be sent to a certified, independent off-site inspector/laboratory for analysis using ASTM test methods listed below or Department approved equivalents.
- c. These include the following:
 - Heating value (BTU/lb.): ASTM D240-02
 - Percent Sulfur (by weight): ASTM D4294/D4294-02
 - Percent Ash (by weight): ASTM D482-03
 - Viscosity: ASTM D445-03 or D2161-93(1999)e2
 - API gravity: ASTM D287
- d. Samples will be taken from each tank. Spot samples will be taken at the upper, middle, and lower levels of each tank using the core thief or stoppered bottle spot sampling procedure. The three samples from each tank will be composited and compared with the 0.70 % sulfur limitation.

Specific sampling procedures will follow:

ASTM D4057 Section 13(Tank Sampling)

ASTM D4057 Section 13.4.1 (Core Thief Spot Sampling Procedure).

ASTM D4057 Section 13.4.2 (Bottle/Beaker Spot Sampling Method).

- e. Samples will be labeled/tagged immediately using a hard pencil or waterproof/oil proof ink. The label/tag will include the name of the sampler, date and time, the type of material and the tank identification from which the sample was taken.
- f. Duplicate composite samples from each tank sampling will be kept on hand by MCTF for unannounced Department inspections and possible subsequent Department laboratory analysis. Duplicate samples are to be retained for 1 year.
- g. Oil will not be transferred from any specific tank at the tank farm to the PPL MC day tank until sample results are received for that tank at the tank farm and

confirm the oil in that tank is within the required specification of 0.70 % or less of sulfur.

- h. These results (per tank and pump cycle) will be reported quarterly to PA DEP.

III Compliance Testing Protocol – Martin’s Creek Day Tank

- a. Monthly grab samples will be taken from the fuel oil system. The sample will be analyzed and compared with the 0.70 % sulfur limitation. The specific sampling procedures will follow ASTM D4057, Section 13.6 (TAP Sampling).
- b. Testing may be conducted by PPL Generation test Laboratory personnel.
- c. Test results will include:
 - 1. Heating value (in BTU/lb) using ASTM method D240-02
 - 2. Percent sulfur (by weight) using ASTM method ASTM D4294/D4294-02.
- d. The results will be reported quarterly to the PA DEP.

IV Compliance Testing Protocol – Marcus Hook Tank Farm

In the event it should become necessary to deliver oil directly to PPL MC via the pipeline from the MH shore tanks due to: tank outages at MCTF, before MCTF static tank results are available, or pipeline pump cycle timing, the MH shore tanks will be the alternative point of delivery to demonstrate compliance. The tank results will be utilized only if it becomes necessary for no. 6 fuel oil to be transferred directly to the PPL MC “day tank” via pipeline above for the MCTF.

- a. Fuel oil samples will be taken from each shore tank at MH after each specific tank completes all receipts and the tank is determined to be static and ready for delivery into the PPLIEC pipeline. A tank will be determined to be static once it has completed a filling cycle. Any oil additions to the tank after that point will constitute a new filling cycle and require new oil sampling to be conducted
- b. All MH tank farm fuel oil samples will be sent to a certified, independent off-site inspector/laboratory for analysis using the ASTM test methods listed below or Department approved equivalents.
- c. These include the following:
 - Heating value (BTU/lb.): ASTM D240-02
 - Percent Sulfur (by weight): ASTM D4294/D4294-02
 - Percent Ash (by weight): ASTM D482-03
 - Viscosity: ASTM D445-03 or D2161-93(1999)e2
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- d. Samples will be taken from each tank. Spot samples will be taken at the upper, middle, and lower levels of each tank using the core thief or stoppered bottle spot sampling procedure. The three samples from each tank will be composited and compared with the 0.70 % sulfur limitation.
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ASTM D4057 Section13.4.2 (Bottle/Beaker Spot Sampling Method).
- f. Samples will be labeled/tagged immediately using a hard pencil or waterproof/oil proof ink. The label/tag will include the name of the sampler, date and time, the type of material and the tank identification from which the sample was taken.
- h. Duplicate composite samples from each tank sampling will be retained by the independent laboratory for at least 90 days. In the event that oil from a MH tank is transferred directly to the PPL MC "day tank", the sample for that MH tank will be sent to MCTF for storage and availability for unannounced Department inspections and possible subsequent Department laboratory analysis. Duplicate samples are to be retained for 1 year.
- i. Oil will not be directly transferred to the PPL MC "day tank" via the 84 mile pipeline until sample results are received for the tank from which the oil will be transferred and the results confirm the oil is within the required specification of 0.70 % or less of sulfur.
- j. The results (per tank and pump cycle) will be reported quarterly to PA DEP.

Note: referenced "Department" is PA DEP.

FAX TRANSMISSION

State of New Jersey
Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex
P.O. Box 093
Trenton, NJ 08625
Phone No.: 609-633-8109
Fax: 609-341-5030

To: Ed.Choromanski **Fax #:** 2-9938
From: Howard Geduldig, DAG **Pages:** 37 , including this cover sheet.
Date: April 14, 2005
Subject: Commonwealth of PA v. DEP

COMMENTS:

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- b. All tank farm fuel oil samples will be sent to a certified, independent off-site inspector/laboratory for analysis using ASTM test methods listed below or Department approved equivalents.
- c. These include the following:
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