

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA )  
 )  
 Plaintiff, )  
 )  
 v. )  
 SOUTHERN INDIANA GAS & ELECTRIC )  
 COMPANY, INC. )  
 )  
 Defendant. )  
 )  
 )  
 \_\_\_\_\_ )

Civil Action No. IP99-1692 C-M/F

CONSENT DECREE

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WHEREAS, the United States of America (“the United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has filed an Amended Complaint, against Southern Indiana Gas and Electric Company, Inc. (“SIGECO”) pursuant to Sections 113(b) and 167 of the Clean Air Act (the “Act”), 42 U.S.C. §§ 7413(b) and 7477, for injunctive relief and the assessment of civil penalties at SIGECO’s F.B. Culley Station (“Culley Station”) coal fired electric generation plant, for alleged violations of:

- (a) the Prevention of Significant Deterioration provisions in Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-92;
- (b) the New Source Performance Standards (NSPS) in 42 U.S.C. §7411; and
- (c) the federally approved and enforceable Indiana State Implementation Plan (“Indiana SIP”).

WHEREAS, in the Amended Complaint, Plaintiff alleges, *inter alia*, that SIGECO failed to obtain the necessary permits and install the controls necessary under the Act to reduce its sulfur dioxide, nitrogen oxides, and/or particulate matter emissions, and that such emissions can damage human health and the environment;

WHEREAS, Plaintiff alleges that its Amended Complaint states claims upon which relief can be granted against SIGECO under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and 28 U.S.C. § 1355;

WHEREAS, SIGECO has denied and continues to deny the violations alleged in the Amended 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 Consent Decree solely to avoid the costs and uncertainties of litigation, and to

reduce its emissions; also, SIGECO acknowledges that had the United States succeeded in this litigation, SIGECO would have been required, among other things, to install Best Available Control Technology at the Culley units in order to continue operation of the units;

WHEREAS, EPA provided SIGECO and the State of Indiana with actual notice of violations pertaining to SIGECO's alleged violations, in accordance with Section 113(a)(1) of the Act;

WHEREAS, the parties anticipate that the installation and operation of pollution control equipment pursuant to this Consent Decree will achieve significant reductions in SO<sub>2</sub>, NO<sub>x</sub> and PM emissions and thereby improve air quality and that certain actions that SIGECO has agreed to undertake are expected to advance technologies and methodologies for reducing certain air emissions;

WHEREAS, Plaintiff and SIGECO have agreed, and the Court by entering this Consent Decree finds: that this Consent Decree has been negotiated in good faith and at arms length; that this settlement is fair, reasonable, in the best interest of the Parties and in the public interest, consistent with the goals of the Act; and that entry of this Consent Decree without further litigation as to the Culley Station is the most appropriate means of resolving this matter;

and

WHEREAS, Plaintiff and SIGECO have consented to entry of this Consent Decree without trial of any issue;

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Amended Complaint, 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, Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and the Indiana SIP, 40 C.F.R. § 52.23. 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 Plaintiff's underlying Amended Complaint, SIGECO waives all objections and defenses that it may have to the claims set forth in the underlying Amended Complaint, and to the jurisdiction of the Court over SIGECO and this action, and to venue in this District. SIGECO shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. For purposes of the Amended Complaint filed by Plaintiff in this matter and resolved by the Consent Decree, and for purposes of entry and enforcement of this Decree, SIGECO waives any defense or objection based on standing. Except as expressly provided for herein, this Consent Decree shall not create any rights in any Party other than Plaintiff and SIGECO. Except as provided by Section XXVI (Public Comment), the Parties consent to entry of this Consent Decree without further notice.

## II. APPLICABILITY

2. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the United States and upon SIGECO, its successors and assigns, and SIGECO's officers, employees, and agents solely in their capacities as such.

3. SIGECO shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or 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, SIGECO shall be responsible for ensuring that all work is performed in accordance with the requirements of Sections IV, V, VI, VII, and IX of this Consent Decree. In any action to enforce this Consent Decree, SIGECO 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 SIGECO establishes that such failure resulted from a Force Majeure Event, as defined in Paragraph 100 of this Consent Decree.

### III. DEFINITIONS

4. A “30-Day Rolling Average Emission Rate” shall be determined by calculating an arithmetic average of all hourly emission rates in lb/mmBTU for the current day and the previous 29 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 start-up, shut down and Malfunction periods within each Operating Day. A Malfunction shall be excluded from this Emission Rate, however, if it is determined to be a Force Majeure Event and satisfies the Force Majeure provisions of this Consent Decree.

5. “30-Day Rolling Average Removal Efficiency” means the percent reduction in the mass of a pollutant achieved by a Unit’s pollution control device over a 30-day period. This percentage shall be calculated by subtracting the outlet 30-Day Rolling Average Emission Rate from the Unit’s inlet 30-Day Rolling Average Emission Rate, dividing that difference by the Unit’s inlet 30-Day Rolling Average Emission Rate, and then multiplying by 100. A new 30-Day Rolling Average Removal Efficiency shall be calculated for each new Operating Day, and

shall include all periods of startup, shutdown and Malfunction within an Operating Day. A Malfunction shall be excluded from this removal efficiency, however, if it is determined to be a Force Majeure Event and satisfies the Force Majeure provisions of this Consent Decree.

6. “CEMS” or “Continuous Emission Monitoring System” means, for obligations involving NO<sub>x</sub> and SO<sub>2</sub> under this Decree, the devices defined in 40 C.F.R. § 72.2 and installed and maintained as required by 40 C.F.R. Part 75.

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

8. “Consent Decree” means this Consent Decree.

9. “Emission Rate” means the number of pounds of pollutant emitted per million BTU of heat input (“lb/mmBTU”), measured in accordance with this Consent Decree.

10. “EPA” means the United States Environmental Protection Agency.

11. “ESP” means electrostatic precipitator, a pollution control device for the reduction of particulate matter (PM).

12. “Flue gas desulfurization system,” or “FGD,” means a pollution control device that employs flue gas desulfurization technology for the reduction of sulfur dioxide.

13. “Fossil fuel” means any hydrocarbon fuel, including coal, petroleum oil, or natural gas.

14. “lb/mmBTU” means one pound of a pollutant per million British Thermal Units of heat input.

15. “Malfunction” means malfunction as that term is defined under 40 C.F.R. § 60.2.

16. “MW” means a megawatt, or one million Watts.



17. “NO<sub>x</sub>” means oxides of nitrogen, as measured in accordance with the provisions of this Consent Decree.
18. “NSPS” means New Source Performance Standards within the meaning of Part A of Subchapter I, of the Clean Air Act, 42 U.S.C. § 7411, 40 C.F.R. Part 60.
19. “Operating Day” means any calendar day on which a Unit fires fossil fuel.
20. “Party” means SIGECO or the United States.
21. “Plaintiff” means the United States.
22. “PM” means particulate matter, as measured in accordance with the provisions of this Consent Decree.
23. “PM Emission Rate” means the pounds of PM emitted per million BTU of heat input (“lb/mmBTU”), as measured in accordance with the reference methods set forth in 40 C.F.R. Part 60, Appendix A, Method 5.
24. “PM Control Device” means an electrostatic precipitator (ESP) or baghouse technology designed to reduce emissions of particulate matter from coal at coal-fired units, including Illinois basin coal currently used at the Culley Station as of the date of lodging of this Consent Decree.
25. “PPM” means parts per million.
26. “Project Dollars” means SIGECO’s expenditures and payments incurred or made in carrying out the project identified in Section IX of this Consent Decree (Environmental Project) to the extent that such expenditures or payments both: (a) comply with the Project Dollar and other requirements set by this Consent Decree in Section IX of this Consent Decree (Environmental Project); and (b) constitute SIGECO’s external costs for contractors, vendors,

and equipment, and its internal costs consisting of employee time, travel, and other expenses specifically attributable to this particular project and documented in accordance with Generally Accepted Accounting Principles (“GAAP”).

27. “PSD” means Prevention of Significant Deterioration 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.

28. “SCR” means a device that employs selective catalytic reduction technology for the reduction of nitrogen oxides.

29. “SIGECO” means the Southern Indiana Gas and Electric Company, Inc.

30. “SIGECO Culley Station” means, solely for purposes of this Consent Decree, the three (3) coal-fired, steam generating boilers designated as (with the rated MW<sub>(gross)</sub> capacity of each Unit noted in parentheses): F.B. Culley Unit 1 (50 MW), F.B. Culley Unit 2 (100 MW), and F.B. Culley Unit 3 (287 MW).

31. “SO<sub>2</sub>” means sulfur dioxide, as measured in accordance with this Consent Decree.

32. “SO<sub>2</sub> Allowance” means an “allowance,” as defined at 42 U.S.C. § 7651a(3): an authorization, allocated to an affected unit, by the Administrator of EPA under Subchapter IV of the Act, to emit, during or after a specified calendar year, one ton of sulfur dioxide.

33. “State” means the State of Indiana.

34. “Title V Permit” means the permit required of SIGECO’s major sources under Subchapter V of the Clean Air Act, 42 U.S.C. §§ 7661-7661e.

35. “Unit” means, for the purpose of this Consent Decree, collectively, the coal pulverizer, the 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, or systems necessary for the production of electricity. An electric utility steam generating station may be comprised of one or more Unit.

#### IV. UNIT TO BE RE-POWERED AND CONTROLLED OR RETIRED

36. By no later than December 31, 2004, SIGECO shall elect and notify EPA of such decision, to either re-power the F.B. Culley Unit 1 from a coal-fired to a natural gas fired unit, or retire and permanently cease to operate Unit 1.

37. By no later than December 31, 2006, SIGECO shall either complete the re-power of F.B. Culley Unit 1 from a coal-fired to a natural gas fired unit and satisfy the NO<sub>x</sub> emission control requirements of Paragraphs 38 and 41, or retire and permanently cease to operate Unit 1.

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

##### A. NO<sub>x</sub> Emission Controls

38. If SIGECO elects to re-power F.B. Culley Unit 1 under Paragraph 36 above with a new combined cycle system, SIGECO shall install and commence continuous operation of Selective Catalytic Reduction technology ("SCR") so as to achieve a 30-Day Rolling Average Emission Rate not greater than 3.5 ppm NO<sub>x</sub> at F.B. Culley Unit 1 by no later than December 31, 2006. If SIGECO elects to re-power F.B. Culley Unit 1 under Paragraph 36 above using the existing boiler system, SIGECO shall install and commence continuous operation of the SCR for Culley Unit 1 so as to achieve a BACT-level emission rate for NO<sub>x</sub> as determined by the State permitting process, at F.B. Culley Unit 1 by no later than December 31, 2006.

39. SIGECO shall continuously operate the SCR currently installed at F.B. Culley

Unit 3 so as to achieve and maintain a 30-Day Rolling Average Emission Rate for NO<sub>x</sub> of not greater than 0.100 lb/mmBTU by no later than September 1, 2003.

40. At any time after September 30, 2003, SIGECO may submit to the Plaintiff a proposed revision to the applicable 30-Day Rolling Average Emissions Rate for NO<sub>x</sub> on any SIGECO Culley Station Unit equipped with SCR and subject to a 30-Day Rolling Average Emission Rate. To make a successful petition, SIGECO must demonstrate that it cannot consistently achieve the Decree-mandated NO<sub>x</sub> emissions rate for the Unit in question, considering all relevant information, including but not limited to the past performance of the SCR, reasonable measures to achieve the designed level of performance of the SCR in question, the expected frequency of catalyst replacement, the performance of other NO<sub>x</sub> controls installed at the Unit, and the operational history of the Unit. SIGECO shall include in such proposal an alternative 30-Day Rolling Average Emissions Rate. SIGECO also shall retain a qualified contractor to assist in the performance and completion of the petition for an alternate 30-Day Rolling Average Emissions Rate for NO<sub>x</sub>. SIGECO shall deliver with each submission all pertinent documents and data that support or were considered in preparing such submission. If the Plaintiff disapproves the revised emission rate, such disagreement is subject to Section XVI (“Dispute Resolution”). SIGECO shall make any submission for any Unit under this Paragraph no later than fifteen months after the compliance date specified for that Unit in Paragraph 39.

41. SIGECO shall continuously operate each SCR at Units 1 (if elected) and 3 at all times that the Unit it serves is in operation, consistent with the technological limitations, manufacturers’ specifications, and good operating practices for the SCR.

B. Use of NO<sub>x</sub> Emission Allowances or Credits

42. For any and all actions taken by SIGECO to conform to the requirements of this Consent Decree, SIGECO shall not sell or trade any resulting NO<sub>x</sub> allowances or credits in an emissions trading or marketing program of any kind.

43. For any and all actions taken by SIGECO to conform to the requirements of this Consent Decree, NO<sub>x</sub> Allowances or credits generated at Culley Units 1, 2, and 3, may be used at Culley Units 1, 2, and 3 only, for compliance with any emissions trading or marketing program requirement. However, nothing in this Consent Decree shall be deemed to prohibit the use system-wide of any early reduction NO<sub>x</sub> credits resulting from the operation of Culley Unit 3 SCR during the 2003 NO<sub>x</sub> ozone season, in accordance with the Indiana NO<sub>x</sub> SIP.

44. SIGECO may not use, purchase or otherwise obtain NO<sub>x</sub> allowances or credits from another source for purposes of complying with the requirements of this Consent Decree.

C. General NO<sub>x</sub> Provisions

45. In determining Emission Rates for NO<sub>x</sub>, SIGECO shall use CEMS in accordance with those reference methods specified in 40 C.F.R. Part 75.

46. In calculating the 30-day Rolling Average Emission Rate for NO<sub>x</sub> for a given Unit, SIGECO shall not exclude any period of time that the Unit is in operation, including periods in which any NO<sub>x</sub> emission control technology for those Units is not in operation.

VI. SO<sub>2</sub> EMISSION REDUCTIONS AND CONTROLS

A. SO<sub>2</sub> Emission Controls

47. SIGECO shall improve the FGD serving Units 2 and 3 so as to achieve and maintain a 30-Day Rolling Average SO<sub>2</sub> Removal Efficiency of at least 95 percent, by no later

than June 30, 2004.

48. SIGECO shall continuously operate the FGD serving Units 2 and 3 at all times that the Units are in operation, except as provided in Paragraph 49 below. Following startup of the Units, SIGECO need not operate the FGD until either Unit is fired with any coal.

49. In the event of a planned FGD outage, SIGECO may continue to operate Unit 2 but shall burn down the coal existing in the Unit 2 bunker to the extent practicable, and, prior to shutting down the FGD, load Compliance Coal into the bunker for use until such time as the FGD resumes operation. In the event of an unplanned FGD outage, SIGECO shall feed Compliance Coal to the Unit 2 bunker until such time as the FGD resumes operation. Compliance Coal is defined as 2.0 lb/mmBTU SO<sub>2</sub> as demonstrated by a 4-hour composite sample of the feed stock.

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

50. SIGECO shall not sell or trade, in an emissions trading or marketing program of any kind, SO<sub>2</sub> Allowances that correspond to the incremental emissions reductions that result from: (1) the improved percent removal efficiency of the Unit 2 and 3 FGD system as described in Paragraph 47 (the difference between a 95 percent removal efficiency and the average removal efficiency from the years 2000, 2001, and 2002 as applied to the year in question); (2) the emissions reductions associated with the Unit 1 natural gas repowering or retirement as described in Paragraph 36; and (3) the emissions reductions associated with the feeding of Compliance Coal to Unit 2 in accordance with Paragraph 49.

51. SIGECO may use the incremental emissions allowances described in Paragraph 50 only to satisfy the operational needs of Culley Station, provided SIGECO first uses

Allowances allocated for the given year that the emissions occur that are not the incremental allowances described in Paragraph 50 to satisfy the Culley Station operational needs.

52. SIGECO shall surrender the incremental allowances described in Paragraph 50 that exceed such allowances allocated for the given year necessary to meet the Culley Station operational needs as described in Paragraph 51.

53. SIGECO may not use, purchase or otherwise obtain SO<sub>2</sub> allowances from another source for purposes of complying with the requirements of this Consent Decree.

54. For purposes of this Subsection, the “surrender of allowances” means permanently surrendering allowances from the accounts administered by EPA for all units at SIGECO’s Culley Station as specified in Paragraph 52, so that such allowances can never be used to meet any compliance requirement under the Clean Air Act, the Indiana State Implementation Plan, or this Consent Decree.

55. Beginning with calendar year 2004, SIGECO shall surrender to EPA, or transfer to a non-profit third party selected by SIGECO for surrender, any SO<sub>2</sub> Allowances that are required to be surrendered under Paragraph 52. Surrender shall occur annually thereafter and within 45 days of SIGECO’s receipt from EPA of the Annual Deduction Reports for SO<sub>2</sub>. SIGECO shall surrender SO<sub>2</sub> Allowances by the use of applicable United States Environmental Protection Agency Acid Rain Program Allowance Transfer Form.

56. If any allowances are transferred directly to a third party for purposes of surrender, SIGECO shall include a description of such transfer in the next report submitted to the Plaintiff pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall:

(i) provide the identity of the non-profit third-party recipient(s) of the SO<sub>2</sub> Allowances and a

listing of the serial numbers of the transferred SO<sub>2</sub> Allowances; and (ii) include a certification by the third-party recipient(s) stating that the recipient 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 next periodic report due 12 months after the first report due after the transfer, SIGECO shall include in the periodic report to Plaintiff, required under Section XII, a statement that the third-party recipient(s) surrendered the SO<sub>2</sub> Allowances for permanent surrender to EPA within one year after SIGECO transferred the SO<sub>2</sub> Allowances to them. SIGECO shall not have complied with the SO<sub>2</sub> Allowance surrender requirements of this Paragraph until all third-party recipient(s) shall have actually surrendered the transferred SO<sub>2</sub> Allowances to EPA for surrender.

57. For all SO<sub>2</sub> Allowances surrendered to EPA, SIGECO shall first submit an SO<sub>2</sub> Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of the SO<sub>2</sub> Allowances held or controlled by SIGECO to the EPA Enforcement Surrender Account or to any other EPA account that the Agency may direct. As part of submitting these transfer requests, SIGECO 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.

58. The requirements in Paragraphs 52 and 55 of this Decree pertaining to SIGECO's surrender of SO<sub>2</sub> Allowances are permanent injunctions not subject to any termination provision of this Decree. These provisions shall survive any termination of this Decree in whole or in part.



C. General SO<sub>2</sub> Provisions

59. In determining Emission Rates for SO<sub>2</sub>, SIGECO shall use CEMS in accordance with those reference methods specified in 40 C.F.R. Part 75 and 40 C.F.R. Part 60.

60. For Units that are required to be equipped with SO<sub>2</sub> control equipment and that are subject to the 95% removal provisions, the outlet SO<sub>2</sub> Emission Rate and the inlet SO<sub>2</sub> Emission Rate shall be determined in accordance with 40 C.F.R. § 75.15 (using SO<sub>2</sub> CEMS data from both the inlet and outlet of the control device).

VII. PM EMISSION REDUCTIONS AND CONTROLS

A. Optimization of PM Controls

61. By no later than July 15, 2003 and continuing thereafter, SIGECO shall continuously operate, at all times the Unit is combusting coal, each ESP on its Culley Station Units to maximize PM emission reductions, consistent with the operational and maintenance limitations of the Units. Specifically, SIGECO shall take measures including: (a) energize each section of the ESP for each Unit, regardless of whether that action is needed to comply with opacity limits; (b) maintain the energy or power levels delivered to the ESPs for each Unit to achieve the greatest possible removal of PM; and (c) make best efforts to expeditiously repair and return to service transformer-rectifier sets when they fail.

B. Installation and Operation of a Baghouse

62. By no later than June 30, 2007, SIGECO shall install and operate a Baghouse (a PM Control Device) at Unit 3 that achieves and maintains a PM Emission Rate of 0.015 lb/mmBTU.

63. SIGECO shall continuously operate the Baghouse at all times that Unit 3 is

combusting coal.

C. PM Monitoring

64. By no later than December 31, 2003, and continuing biennially thereafter, SIGECO shall conduct performance testing on F.B. Culley Unit 3. Such performance tests may be satisfied by stack tests conducted in accordance with SIGECO's permit from the State of Indiana.

65. In determining the PM Emission Rate, SIGECO shall use the reference methods specified in 40 C.F.R. Part 60, Appendix A, Method 5, using stack tests, or alternative methods that are requested by SIGECO and approved by EPA. SIGECO shall also calculate the PM Emission Rates from biennial stack tests in accordance with 40 C.F.R. § 60.8(f). The results of each PM stack test shall be submitted to EPA within 45 days of completion of each test.

VIII. PROHIBITION ON NETTING CREDITS FROM REQUIRED CONTROLS

66. For any and all actions taken by SIGECO to comply with the requirements of this Consent Decree, any emission reductions generated shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a netting credit under the Clean Air Act's PSD program.

IX. ENVIRONMENTAL PROJECT

67. SIGECO shall design, construct, operate, and analyze a Sulfuric Acid Reduction Project ("Project") to reduce SO<sub>3</sub> content in the flue gas of Culley Unit 3. The Project requires the injection of sodium bi-sulfite/sulfate in variable concentrations to determine the removal efficiency and viability of operation. The Project includes, but is not limited to, installation of pollution control technology including an injection grid, piping, pumps, storage tanks and a

control system.

68. SIGECO shall, by no later than June 30, 2004, commence operation of the Project.

69. By no later than December 31, 2003, SIGECO shall submit to the Plaintiff for review and approval pursuant to Section XIII of this Consent Decree a plan for the implementation of the Project, including the date by which SIGECO will commence design and construction of the Project. To the extent that any changes to the Project may be required, SIGECO shall notify the Plaintiff of such changes within 60 days of becoming aware a change is necessary. SIGECO shall implement the Project in compliance with the schedules and terms of this Consent Decree and the plans for such Project approved under this Decree.

70. For purposes of this Consent Decree, in performing the Project, including costs of operation (which includes the fair market value of the sodium bisulfite/sulfate solution), SIGECO shall, prior to December 31, 2007, spend no less than \$2.5 million in Project Dollars (measured in calendar year 2003 constant dollars). SIGECO shall maintain all documents required by Generally Accepted Accounting Principles to substantiate the Project Dollars spent by SIGECO, and shall provide copies of these documents to the Plaintiff within 30 days of a request by the Plaintiff for these documents.

71. All plans and reports prepared by SIGECO pursuant to the requirements of this Section in this Consent Decree shall be publicly available without charge, subject to the limitations contained in Paragraph 127.

72. SIGECO shall certify, as part of each plan submitted to the Plaintiff for the Project, that it is unaware that the Project is required by law, other than by this Consent Decree.

73. Within 60 days following the completion of the Project, SIGECO shall submit to EPA a report that documents the date that the Project was completed, SIGECO's results of implementing the Project, including the emission reductions, the ability to ameliorate any incremental particulate loading from the SCR, or other environmental benefits achieved, and the Project Dollars expended by SIGECO in implementing the Project.

74. Following the expenditure of \$2.5 million for this Project, SIGECO shall continue to operate the Project, unless the Parties agree that the Project is no longer viable and effective to reduce emission of sulfuric acid, or the Project is no longer cost-effective to operate. In no event shall SIGECO be required to continue to operate the Project beyond December 31, 2010.

75. SIGECO shall not financially benefit from the sale or transfer of the technology or the collection or distribution of information collected during the Project.

76. SIGECO shall provide EPA with semi-annual updates concerning the progress of the Project. SIGECO also shall make information concerning the performance of the Project available to the public in an expeditious manner. Such information disclosure shall include, but not be limited to, release of periodic progress reports identifying the reduction of sulfuric acid, sorbent injection rates, and cost. In addition, periodic technology transfer open houses and plant tours shall be scheduled.

#### X. CIVIL PENALTY

77. Within thirty (30) calendar days of entry of this Consent Decree, SIGECO shall pay to the United States a civil penalty in the amount of \$600,000. 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 the USAO File Number 1999V00828 and

DOJ Case Number 90-5-2-1-06966 and the civil action case name and case number of this action, with notice given to the Plaintiff, in accordance with Section XIX (Notices) of this Consent Decree. The costs of such EFT shall be SIGECO's responsibility. Payment shall be made in accordance with instructions provided to SIGECO by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Indiana. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, SIGECO shall provide notice of payment, referencing the USAO File Number, DOJ Case Number 90-5-2-1-06966, and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Paragraph 129 (Notice) of this Consent Decree.

78. Failure to timely pay the civil penalty shall subject SIGECO 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 SIGECO 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.

79. Payments made pursuant to this Section 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 PAST CLAIMS

80. Entry of this Consent Decree shall resolve all civil claims of the United States that arose from any modifications that commenced at the Culley plant prior to the date of lodging of this Consent Decree, including those modifications alleged against SIGECO in the Amended Complaint filed January 4, 2000.

## XII. PERIODIC REPORTING

81. Within 180 days of the installation of the Baghouse in Paragraph 62, or the SCR on Unit 1 if elected in accordance with Paragraph 36, SIGECO shall conduct performance tests that demonstrate compliance with the Emission Rate or Removal Efficiency required by this Consent Decree. Within 45 days of each such performance test, SIGECO shall submit the results of the performance test to EPA at the address specified in Section XIX (Notices) of this Consent Decree.

82. Beginning thirty days after the calendar quarter ending December 31, 2003, continuing on a semi-annual basis until December 31, 2010, unless prior to this date the Consent Decree terminates under Section XXVII, and in addition to any other express reporting requirement in this Consent Decree, SIGECO shall submit to EPA a progress report.

83. The progress report shall contain the following information:

- a. all information necessary to determine compliance with this Consent Decree; and
- b. all information indicating that the installation and/or commencement of operation for a pollution control device may be delayed, including the nature and cause of the delay, and any steps taken by SIGECO to mitigate such delay.

84. In any periodic progress report submitted pursuant to this Section, SIGECO may incorporate by reference information previously submitted under its Title V permitting requirements, provided that SIGECO attaches the Title V permit report and provides a specific reference to the provisions of the Title V permit report that are responsive to the information sought in the periodic progress report.

85. In addition to the progress reports required pursuant to this Section, SIGECO shall provide a written report to the Plaintiff of any violation of the requirements of this Consent Decree, including, but not limited to, exceedances of required Emission Rates and removal efficiencies, within 10 business days of when SIGECO knew or should have known of any such violation. In this report, SIGECO shall explain the cause or causes of the violation and all measures taken or to be taken by SIGECO to prevent such violations in the future.

86. Each SIGECO report shall be signed by a SIGECO Vice President, Environmental Director, the General Counsel, or similarly ranked company official, 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 directions 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.

87. If any allowances are surrendered to any third party pursuant to Section VI.B of this Consent Decree, the third party's certification shall be signed by a managing officer of the third party and shall contain the following language:

I certify under penalty of law that, \_\_\_\_\_ [name of 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 false, inaccurate, or incomplete information to the United States.

### XIII. REVIEW AND APPROVAL OF SUBMITTALS

88. SIGECO shall submit and complete each plan, report, or other item to Plaintiff whenever such a document is required to be submitted for review or approval pursuant to this

Consent Decree. EPA may approve the submittal or decline to approve it and provide written comments. Within 60 days of receiving written comments from EPA, SIGECO shall either: (i) alter the submittal consistent with the written comments and provide the revised submittal for final approval to EPA if called for in this Consent Decree; or (ii) submit the matter for dispute resolution, including the period of informal negotiations, under Section XVI (Dispute Resolution) of this Consent Decree.

89. Upon receipt of EPA’s final approval of the submittal, or after dispute resolution, SIGECO shall implement the approved submittal or the submittal as revised by dispute resolution.

**XIV. STIPULATED PENALTIES**

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

<b>Consent Decree Violation</b>	<b>Stipulated Penalty (Per day per violation, unless otherwise specified)</b>
a. Failure to pay the civil penalty as specified in Section X (Civil Penalty) of this Consent Decree	\$10,000
b. Failure to meet any 30-Day Rolling Average Emission Rate, any 30-Day Rolling Average Removal Efficiency, or any other Emission Rate or emission limitation, where the violation is less than 5% in excess of the limits set forth in this Consent Decree	\$2,500



c. Failure to meet any 30-Day Rolling Average Emission Rate, any 30-Day Rolling Average Removal Efficiency, or any other Emission Rate or emission limitation, where the violation is equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree	\$5,000
d. Failure to meet any 30-Day Rolling Average Emission Rate, any 30-Day Rolling Average Removal Efficiency, or any other Emission Rate or emission limitation, where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree	\$10,000
e. Failure to install, commence operation, or continue operation of the NO <sub>x</sub> , SO <sub>2</sub> , and PM pollution control devices on any Unit, or failure to retire a Unit	\$10,000 during the first 30 days, \$27,500 thereafter
f. Failure to conduct performance tests of PM emissions, as required by Section VII	\$1,000
g. Failure to apply for the permits required by Section XVII	\$1,000
h. Failure to timely submit, modify, or implement as approved the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	\$750 for the first ten days, \$1,000 thereafter.
i. Using, selling, or transferring SO <sub>2</sub> Allowances in contravention of Section VI	(a) \$2,000 per SO <sub>2</sub> Allowance ton, plus (b) the surrender of SO <sub>2</sub> Allowances in an amount equal to the SO <sub>2</sub> Allowances used, sold, or transferred in violation of the Decree
j. Using, selling or transferring NO <sub>x</sub> allowances or credits in contravention of Section V	(a) \$4,000 per NO <sub>x</sub> Allowance and credit ton, plus (b) the surrender of NO <sub>x</sub> allowances or credits in an amount equal to the NO <sub>x</sub> allowances or credits used, sold, or transferred in violation of the Decree
k. Failure to surrender an SO <sub>2</sub> Allowance in accordance with Section VI	(a) \$27,500 plus (b) \$1,000 per SO <sub>2</sub> Allowance

l. Failure to demonstrate the third-party surrender of an SO <sub>2</sub> Allowance in accordance with Section VI	\$2,500
m. Failure to undertake and complete the Environmental Project in compliance with Section IX (Environmental Project)	\$1,000 for the first 30 days, \$5,000 thereafter
n. Any other violation of this Consent Decree	\$1,000

91. Violation of an Emission Rate or Removal Efficiency that is based on a 30-Day Rolling Average is a violation on every day on which the average is based.

92. Where a violation of a 30-Day Rolling Average Emission Rate or Removal Efficiency (for the same pollutant and from the same source) recurs within periods less than 30 days, SIGECO shall not pay a daily stipulated penalty for any day of the recurrence for which a stipulated penalty has already been paid.

93. 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. Nothing herein shall preclude the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

94. SIGECO shall not be liable for stipulated penalties for failure to meet the emissions rate requirement in Paragraph 39 until January 1, 2004.

95. SIGECO shall pay all stipulated penalties to the United States, in the manner set forth below in Paragraph 97, within 30 days of any violation of this Consent Decree, and shall continue to make such payments every 30 days thereafter until the violation(s) no longer continues, unless SIGECO elects within 20 days of the violation to dispute the accrual of stipulated penalties in accordance with the provisions in Section XVI (Dispute Resolution) of

this Consent Decree.

96. Penalties shall continue to accrue as provided in accordance with Paragraph 93 during any dispute, with interest on accrued 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 Plaintiff that is not appealed to the Court, accrued penalties determined to be owing, together with accrued interest, shall be paid to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision or order;
- b. If the dispute is appealed to the Court and the Plaintiff prevails in whole or in part, SIGECO shall, within sixty (60) days of receipt of the Court's decision or order, pay all accrued penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph c, below;
- c. If the District Court's decision is appealed by any Party, SIGECO shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued penalties determined to be owing to the United States, together with accrued interest.

97. All stipulated penalties must be paid within thirty (30) days of the date payable, and payment shall be made in the manner set forth in Section X of this Consent Decree (Civil Penalty).

98. Should SIGECO 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.

99. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the Plaintiff by reason of SIGECO'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 also provides for payment of a stipulated penalty, SIGECO shall be allowed a credit for stipulated penalties paid against any statutory penalties imposed for such violation.

#### XV. FORCE MAJEURE

100. 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 SIGECO, its contractors, or any entity controlled by SIGECO that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite SIGECO's best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" includes using 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 violation is minimized to the greatest extent possible.

101. Notice. If any event occurs or has occurred that may delay compliance with or otherwise cause a violation of any obligation under this Consent Decree, as to which SIGECO intends to assert a claim of force majeure, SIGECO shall notify the Plaintiff in writing as soon as practicable, but in no event later than fourteen (14) business days following the date SIGECO first knew, or by the exercise of due diligence should have known, that the Force Majeure Event caused or may cause such delay or violation. In this notice SIGECO shall reference this

Paragraph of this Consent Decree and describe the anticipated length of time that the delay or violation may persist, the cause or causes of the delay or violation, all measures taken or to be taken by SIGECO to prevent or minimize the delay or violation, the schedule by which SIGECO proposes to implement those measures, and SIGECO's rationale for attributing a delay or violation to Force Majeure Event. SIGECO shall adopt all reasonable measures to avoid or minimize such delays or violations. SIGECO shall be deemed to know of any circumstance of which SIGECO, its contractors, or any entity controlled by SIGECO knew or should have known.

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

103. Plaintiff's Response. The EPA shall notify SIGECO in writing regarding SIGECO's claim of Force Majeure within (20) twenty business days of receipt of the notice provided under Paragraph 101. If the Plaintiff agrees that a delay in performance has been or will be caused by a Force Majeure Event, the Parties shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement by a period not to exceed the delay actually caused by the event. In such circumstances, an appropriate modification shall be made pursuant to Section XXIII of this Consent Decree (Modification).

104. Disagreement. If the Plaintiff does not accept SIGECO's claim of Force Majeure, the matter shall be resolved in accordance with Section XVI of this Consent Decree (Dispute Resolution).

105. Burden of Proof. In any dispute regarding Force Majeure, SIGECO shall bear the

burden of proving that any delay in performance or any other violation of any requirement of this Consent Decree was caused by or will be caused by a Force Majeure Event. SIGECO shall also bear the burden of proving that SIGECO gave the notice required by this Section and the anticipated duration and extent of any delay(s) 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.

106. Events Excluded. Unanticipated or increased costs or expenses associated with the performance of SIGECO's obligations under this Consent Decree shall not constitute a Force Majeure Event.

107. Potential Force Majeure Events. The Parties agree that, depending upon the circumstances related to an event and SIGECO'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; acts of God; acts of war or terrorism; and Malfunctions, as defined herein. Depending upon the circumstances and SIGECO'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 SIGECO and SIGECO 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, accepting lawful permit terms and conditions, and prosecuting in an expeditious fashion appeals of any allegedly unlawful terms and conditions imposed by the permitting authority.

108. For purposes of this Section, a “Malfunction” shall have the meaning set forth in 40 C.F.R. § 60.2: 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.

109. As part of the resolution of any matter submitted to this Court under this Section, the Parties 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 Plaintiff or approved by this Court. SIGECO shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

#### XVI. DISPUTE RESOLUTION

110. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, except as provided in either this Section (Dispute Resolution) or Section XV (Force Majeure) of this Consent Decree, provided that the Party making such application has first made a good faith attempt to resolve the matter with the other Party.

111. The dispute resolution procedure required herein shall be invoked by one Party to this Consent Decree giving written notice to the other party to this Consent Decree 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.

112. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations among the disputing Parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting among the disputing Parties' representatives unless they agree to shorten or extend this period.

113. If the disputing Parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide SIGECO with a written summary of its position regarding the dispute. The written position provided by the Plaintiff shall be considered binding unless, within forty-five (45) calendar days thereafter, SIGECO seeks judicial resolution of the dispute by filing with this Court a petition. The Plaintiff may respond to the petition within forty-five (45) calendar days of filing.

114. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon motion of one of the Parties to the dispute.

115. This Court shall not draw any inferences nor establish any presumptions adverse to any disputing Party as a result of invocation of this Section or the disputing Parties' inability to reach agreement.

116. As part of the resolution of any dispute under this Section, in appropriate circumstances the disputing 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. SIGECO shall be



liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

117. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their initial filings with the Court under Paragraph 113, the disputing Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

#### XVII. PERMITS AND STATE IMPLEMENTATION PLAN

118. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires SIGECO to secure a permit to authorize constructing or operating any device, including all preconstruction, construction, and operating permits required under state law, SIGECO shall make such application in a timely manner. EPA will use its best efforts to expeditiously review all permit applications submitted pursuant to this Consent Decree.

119. When permits are required by Paragraph 118, SIGECO shall complete and submit applications for such permits to the appropriate authorities to allow sufficient time for all legally required processing and review of the permit request. Any failure by SIGECO to submit a timely permit application for any Unit at the Culley plant shall bar any use by SIGECO of Section XV (Force Majeure), where a Force Majeure claim is based on that permitting delay.

120. 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. The Title V permits shall not be directly enforceable under this Decree, although any term or limit established by or under this Decree shall be enforceable under this Decree regardless of whether

such term has or will become part of a Title V permit, subject to the terms of Section XXVII (Termination of Consent Decree).

121. Within ninety (90) days of entry of this Consent Decree, SIGECO shall amend any applicable Title V permit application, or apply for amendments of its Title V permits, to include a schedule for all performance, operational, maintenance, and control technology requirements established by this Consent Decree, including but not limited to, Emission Rates, Removal Efficiencies, and the requirements in Paragraphs 52 and 55 pertaining to surrender of SO<sub>2</sub> Allowances.

122. Within one year from the commencement of operation of each pollution control device to be installed, upgraded or operated on a continuous basis under this Consent Decree, SIGECO shall apply to modify its Title V permit for the Unit where such device is installed, upgraded or operated to reflect all new requirements applicable to that Unit, including, but not limited to any applicable 30-Day Rolling Average Emission Rate or Removal Efficiency.

123. SIGECO shall provide Plaintiff with a copy of each application to amend its Title V permit, 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.

124. SIGECO shall request a source-specific SIP revision that incorporates enforceable unit-specific emission limitations and control requirements.

#### XVIII. INFORMATION COLLECTION AND RETENTION

125. Any authorized representative of the United States or Indiana, including their attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of the Culley Generation Station 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 Plaintiff in accordance with the terms of this Consent Decree;
- c. obtaining samples and, upon request, splits of any samples taken by SIGECO or its representatives, contractors, or consultants; and
- d. assessing SIGECO's compliance with this Consent Decree.

126. SIGECO 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) now in its or its contractors' or agents' possession or control, and that directly relate to SIGECO's performance of its obligations under this Consent Decree for a period of ten years from date of entry of the decree. This record retention requirement shall apply regardless of any corporate document-retention policy to the contrary.

127. All information and documents submitted by SIGECO 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) SIGECO claims and substantiates that the information and documents contain confidential business information in accordance with 40 C.F.R. Part 2.

128. Nothing in this Consent Decree shall limit the authority of the Plaintiff to conduct tests and inspections at Culley Generation Station under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal or state laws, regulations, or permits.

## XIX. NOTICES

129. 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:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
DJ# 90-5-2-1-06966

and

Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building [2242A]  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

and

Regional Administrator  
U.S. EPA Region V  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

As to SIGECO :

Angila M. Retherford, Environmental Director  
SOUTHERN INDIANA GAS & ELECTRIC COMPANY  
20 NW Fourth Street  
Evansville, Indiana 47741

and

Ronald E. Christian  
Executive Vice President

SOUTHERN INDIANA GAS & ELECTRIC COMPANY  
20 NW Fourth Street  
Evansville, Indiana 47741

130. All notifications, communications, or submissions made pursuant to this Section shall be sent by overnight mail or by 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.

131. Any Party may change either the notice recipient or the address for providing notices to it by serving all other Parties with a notice setting forth such new notice recipient or address.

XX. SALES OR TRANSFERS OF OWNERSHIP INTERESTS

132. If SIGECO proposes to sell or transfer part or all of its ownership interest in any Unit at SIGECO Culley Station (“Ownership Interest”) to an entity unrelated to SIGECO (Third Party Purchaser), it 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 Plaintiff pursuant to Section XIX (Notices) at least 60 days before such proposed sale or transfer.

133. No sale or transfer of an Ownership Interest shall take place before the Third Party Purchaser and EPA have executed, and the Court has approved, a modification pursuant to Section XXIII (Modification) of this Consent Decree making the Third Party Purchaser a party defendant to this Consent Decree and jointly and severally liable with SIGECO for all the requirements of this Decree that may be applicable to the transferred or purchased Ownership Interests, including joint and several liability with SIGECO for all requirements specific to the

Units at SIGECO Culley Station, as well as all requirements in this Consent Decree that are not specific to these Units, except as provided in Paragraph 135.

134. This Consent Decree shall not be construed to impede the transfer of any Ownership Interests between SIGECO and any Third Party Purchaser as long the requirements of this Consent Decree are met. This Consent Decree shall not be construed to prohibit a contractual allocation – as between SIGECO and any Third Party Purchaser of Ownership Interests – of the burdens of compliance with this Decree, provided that SIGECO and such Third Party Purchaser shall remain liable to the Plaintiff for the obligations of the Decree applicable to the transferred or purchased Ownership Interests, except as provided in Paragraph 135.

135. If EPA agrees, EPA, SIGECO, and the Third Party Purchaser that has become a party defendant to this Consent Decree pursuant to Paragraph 133 above, may execute a modification that relieves SIGECO of its liability under this Consent Decree and makes the Third Party Purchaser liable for all obligations and liabilities applicable to the purchased or transferred Ownership Interests. Notwithstanding the foregoing, however, SIGECO may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Ownership Interests, including the obligations set forth in Sections IX (Environmental Project) and X (Civil Penalty). SIGECO may propose and the EPA may agree to restrict the scope of joint and several liability of any purchaser or transferee for any obligations of this Consent Decree that are not specific to the Unit, to the extent such obligations may be adequately separated in an enforceable manner.

#### XXI. EFFECTIVE DATE

136. The effective date of this Consent Decree shall be the date upon which this

Consent Decree is entered by the Court.

## XXII. RETENTION OF JURISDICTION

137. Continuing Jurisdiction. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, modification, or adjudication of disputes. During the term of this Consent Decree, any Party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

## XXIII. MODIFICATION

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

## XXIV. GENERAL PROVISIONS

139. 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.

140. This Consent Decree does not apply to any claim(s) of alleged criminal liability.

141. In any subsequent administrative or judicial action initiated by the Plaintiff for injunctive relief or civil penalties relating to the facilities covered by this Consent Decree, SIGECO 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 Plaintiff 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 Past Claims).

142. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve SIGECO of its obligation to comply with all applicable Federal, State, and Local laws and regulations. Subject to the provisions in Section XI (Resolution of Past Claims) of this Consent Decree, nothing contained in this Consent Decree shall be construed to prevent or limit the United States's rights to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.

143. Every term expressly defined by this Consent Decree shall have the meaning given to that term by this Consent Decree, and, except as otherwise provided in this Decree, every other term used in this Decree that is also a term under the Act or the regulations implementing the Act shall mean in this Decree what such term means under the Act or those implementing regulations.

144. Nothing in this Consent Decree alters or waives any applicable law (including but not limited to, any defenses, entitlements, or clarifications related to the Credible Evidence Rule (62 Fed. Reg. 8314, Feb. 27, 1997)), concerning the use of data for any purpose under the Act, generated by the reference methods specified herein or otherwise.

145. Each limit and/or other requirement established by or under this Decree is a separate, independent requirement.

146. This Consent Decree does not limit, enlarge or affect the rights of any Party to this Consent Decree as against any third parties.

147. 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 supercedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, or understanding, or promise constitutes any part of this Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

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

149. This Decree may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Decree.

#### XXV. SIGNATORIES AND SERVICE

150. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

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

152. 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.

#### XXVI. PUBLIC COMMENT

153. 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 the Consent Decree is inappropriate, improper, or inadequate. SIGECO 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 SIGECO, in writing, that the United States no longer supports entry of the Consent Decree.

#### XXVII. TERMINATION OF CONSENT DECREE

154. Termination as to Completed Tasks. As soon as SIGECO completes a construction project or any other requirement of this Consent Decree that is not ongoing or recurring, SIGECO may seek termination of the provisions of this Consent Decree that impose the requirement.

155. Plaintiff or SIGECO may seek termination of this Consent Decree, provided SIGECO:

- a. has successfully installed and commenced operation of all pollution controls required by this Decree;
- b. has requested and obtained a source-specific SIP revision that incorporates enforceable unit-specific emission limitations and other requirements under this Consent Decree;
- c. has requested and obtained a final Title V permit as required by the terms of this Consent Decree, that covers all Units in this Consent Decree, and that includes as enforceable permit terms all of the Unit performance and other requirements under Section XVII (Permits);
- d. has paid all penalties prescribed in Sections X and XIV, and has expended \$2.5 million for the Project described in Section IX;

e. has otherwise complied with every other obligation of this Consent Decree;

and

f. has certified the information in a, b, c, d, and e above, and the Plaintiff agrees, following receipt of SIGECO's certification, that the obligations outlined in a, b, c, d, and e above have been met.

156. In the event that the State of Indiana does not act on SIGECO's request set forth in Paragraph 155b and c above, SIGECO may nevertheless seek to terminate this Consent Decree, with the exception of emission rates or limitations and monitoring requirements of the Consent Decree.

#### XVIII. FINAL JUDGMENT

157. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Plaintiff and SIGECO.

SO ORDERED, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2003.

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UNITED STATES DISTRICT COURT JUDGE

**FOR THE UNITED STATES OF AMERICA:**

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Assistant Attorney General  
Environmental and Natural Resources Division  
United States Department of Justice

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ARNOLD ROSENTHAL  
Senior Attorney  
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Environmental and Natural Resources Division  
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SUSAN W. BROOKS  
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THOMAS E. KIEPER  
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REGINALD A. PALLESEN  
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United States Environmental Protection Agency

**FOR SIGECO :**

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WILLIAM S. DOTY

President

SOUTHERN INDIANA GAS & ELECTRIC  
COMPANY