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TECO ENERGY CORP OFFICE

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

CIVIL ACTION NO. 99-2524  
CIV-T-23F

TAMPA ELECTRIC COMPANY, )

Defendant. )

AMENDMENT TO CONSENT DECREE

WHEREAS, on October 4, 2000, this Court entered a Consent Decree resolving this matter;

WHEREAS Tampa Electric Company ("Tampa Electric") has for sometime been undertaking work related to carrying out its obligations under the Consent Decree, including but not limited to work involving scrubbers -- which are pollution control devices that reduce emission of certain pollutants into the air;

WHEREAS Tampa Electric reports that it has not issued its final acceptance to the scrubber contractor for the supply and installation of the scrubber that serves Big Bend Units 1 and 2 and has also retained a consultant to analyze options for improving performance of that scrubber, and Tampa Electric further reports that detailed inspection of the scrubber serving Big Bend Units 3 and 4 reveals that this scrubber will require more maintenance and upgrading than

originally anticipated as part of bringing the scrubber up to performance levels required by the Consent Decree;

WHEREAS Tampa Electric reports that scrubber work necessary for Big Bend Units 3 and 4 would be most easily performed during the next scheduled outage for those units, which should be during April or May 2000;

WHEREAS Tampa Electric has proposed certain adjustments to the Consent Decree to address these issues concerning scrubbers and also has identified several small corrections to the Decree;

WHEREAS the United States believes that the adjustments and corrections effected by this amendment are appropriate;

NOW, THEREFORE, without any admission of fact or law, it is hereby ORDERED AND DECREED that the Consent Decree is amended as follows:

#### A. ADJUSTMENTS

1. Alter first sentence of Paragraph 29 to extend deadline for certain work on the scrubber serving Big Bend Units 1 and 2, by replacing "September 1, 2000," with "December 31, 2000,".
2. Add New Paragraph 30.1, as follows:
  - 30.1. One-time increase in number of days Tampa Electric may operate Big Bend Unit 3 without treatment by a scrubber. In addition to the number of calendar days that Tampa Electric may, under Paragraph 30.A(1) of this

Decree, operate Big Bend Unit 3 without treating emissions from that Unit with a scrubber, Tampa Electric also may operate Unit 3 for up to an additional 30 calendar days without treating emissions from that Unit with a scrubber if and only if:

- A. Each day of such operation (and scrubber outage) under this provision takes place prior to May 31, 2001;
- B. The purpose of the scrubber outage during such operation of Unit 3 is repair, improvement, and/or upgrade of the scrubber;
- C. Tampa Electric complies with paragraph 30.B of this Decree while operating Unit 3 during such scrubber outage; and
- D. Tampa Electric documents in detail each day of Unit 3 operation and scrubber outage that the company claims under this provision, and supplies such documentation as part of the periodic reporting requirements that apply to Tampa Electric under this Decree.

3. Alter Paragraph 53.I by adding "30.1" between "30" and "31" in the list of paragraphs identified in Paragraph 53.I

#### B. CORRECTIONS

1. At page 6, in first line of Paragraph 4 of the Decree, delete "2.2 lb/mmBTU" and replace with "2.2 lbs SO<sub>2</sub> /mmBTU".

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THROUGH ITS UNDERSIGNED REPRESENTATIVES, TAMPA ELECTRIC COMPANY  
AGREES AND CONSENTS TO ENTRY OF THE FOREGOING CONSENT DECREE

FOR TAMPA ELECTRIC COMPANY

Date: \_\_\_\_\_

\_\_\_\_\_  
John B. Ramli  
President  
Tampa Electric Company

\_\_\_\_\_  
Sheila M. McDevitt  
General Counsel  
Tampa Electric Company

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
TAMPA ELECTRIC COMPANY, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CIVIL ACTION NO. 99-2524  
CIV-T-23F

**CONSENT DECREE**

WHEREAS, Plaintiff, the United States of America ("Plaintiff" or "the United States"), on behalf of the United States Environmental Protection Agency ("EPA") filed a Complaint on November 3, 1999, alleging that Defendant, Tampa Electric Company ("Tampa Electric") commenced construction of major modifications of major emitting facilities in violation of the Prevention of Significant Deterioration ("PSD") requirements at Part C of the Clean Air Act ("Act"), 42 U.S.C. §§ 7470-7492;

WHEREAS, EPA issued a Notice of Violation with respect to such allegations to Tampa Electric on November 3, 1999 (the "NOV");

WHEREAS, the parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and at arm's length: that

the parties have voluntarily agreed to this Consent Decree; that implementation of this Consent Decree will avoid prolonged and complicated litigation between the parties; and that this Consent Decree is fair, reasonable, consistent with the goals of the Act, and in the public interest;

WHEREAS, the United States alleges that the Complaint states a claim upon which relief can be granted against Tampa Electric under Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477, and 28 U.S.C. § 1355;

WHEREAS, Tampa Electric has not answered or otherwise responded to the Complaint in light of the settlement memorialized in this Consent Decree;

WHEREAS, Tampa Electric has denied and continues to deny the violations alleged in the NOV and the Complaint; maintains that it has been and remains in compliance with the Clean Air 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 improve the environment in and around the Tampa Bay area of Florida;

WHEREAS, Tampa Electric is the first electric utility of those against which the United States brought enforcement actions in November, 1999, to come forward and invest time and effort sufficient to develop a settlement with the United States;

WHEREAS, Tampa Electric's decision to Re-Power some of its coal-fired electric generating Units with natural gas will significantly reduce emissions of both regulated and unregulated pollutants below levels that would have been achieved merely by

installing appropriate pollution control technologies on Tampa Electric's existing coal-fired electric generating Units;

WHEREAS, prior to the filing of the Complaint or issuance of the Notice of Violation in this matter, Tampa Electric already had placed in service or installed both scrubbers and electrostatic precipitators that serve all existing coal-fired electric generating Units at the company's Big Bend electric generating plant;

WHEREAS, the United States recognizes that a BACT Analysis conducted under existing procedures most likely would not find it cost effective to replace Tampa Electric's existing control equipment at Big Bend for particulate matter, in light of the design and performance of that equipment;

WHEREAS, Tampa Electric and the United States have crafted this Consent Decree to take into account physical and operational constraints resulting from the unique, Riley Stoker wet bottom, turbo-fired boiler technology now in operation at Big Bend, which could limit the efficiency of nitrogen oxides emissions controls installed for those boilers;

WHEREAS, Tampa Electric regularly combusts coal with a sulphur content of five or six pounds per mmBTU heat input;

WHEREAS, Tampa Electric is a mid-sized electric utility and is smaller on a financial basis than some of the other electric utilities against which the United States brought similar enforcement actions in November 1999;

WHEREAS, Tampa Electric owns and operates fewer coal-fired electric



generating plants than some of the other electric utilities against which the United States brought similar enforcement actions in November 1999;

WHEREAS, the two Tampa Electric plants addressed by this enforcement action constitute over ninety percent of the entire base load generating capacity of Tampa Electric;

WHEREAS, the United States and Tampa Electric have agreed that settlement of this action is in the best interest of the parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, the United States and Tampa Electric 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 Complaint or NOV, it is hereby ORDERED AND DECREED as follows:

### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter herein and over the parties consenting hereto pursuant to 28 U.S.C. § 1345 and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477. Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c).

Solely for the purposes of this Consent Decree and the underlying Complaint, Tampa Electric waives all objections and defenses that it may have to the claims set forth in the Complaint, the jurisdiction of the Court or to venue in this District. Tampa Electric shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Except as expressly provided for herein, this Consent Decree shall not create any rights in any party other than the United States and Tampa Electric. Tampa Electric consents to entry of this Consent Decree without further notice.

## **II. APPLICABILITY**

2. The provisions of this Consent Decree shall apply to and be binding upon the United States and upon Tampa Electric, its successors and assigns, and Tampa Electric's officers, employees and agents solely in their capacities as such. If Tampa Electric proposes to sell or transfer any of its real property or operations subject to this Consent Decree, it shall advise the purchaser or transferee in writing of the existence of this Consent Decree, and shall send a copy of such written notification by certified mail, return receipt requested, to EPA sixty (60) days before such sale or transfer. Tampa Electric shall not be relieved of its responsibility to comply with all requirements of this Consent Decree unless the purchaser or transferee assumes responsibility for full performance of Tampa Electric's responsibilities under this Consent Decree, including liabilities for

nonperformance. Tampa Electric shall not purchase or otherwise acquire capacity and/or energy from a third party in lieu of obtaining it from Gannon or Big Bend unless the seller or provider agrees that the facilities providing such capacity and/or energy will meet the emission control requirements set forth in this Consent Decree or equivalent requirements approved in advance by the United States.

3. Tampa Electric shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or other organization performing any of the work described in Sections IV or VII of this Consent Decree. Notwithstanding any retention of contractors, subcontractors or agents to perform any work required under this Consent Decree, Tampa Electric shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, Tampa Electric shall not assert as a defense the failure of its employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree, unless Tampa Electric establishes that such failure resulted from a Force Majeure event as defined in this Consent Decree.

### **III. DEFINITIONS**

4. "Alternative Coal" shall mean coal with a sulphur content of no more than 2.2 lb/mmBTU, on an as determined basis.

5. "BACT Analysis" shall mean the technical study, analysis, review, and selection of recommendations typically performed in connection with an application for a PSD permit. Except as otherwise provided in this Consent Decree, such study, analysis, review, and selection of recommendations shall be carried out in conformance with applicable federal and state regulations and guidance describing the process and analysis for determining Best Available Control Technology (BACT).
6. "Big Bend" shall mean the electric generating plant, presently coal-fired, owned and operated by Tampa Electric and located in Hillsborough County, Florida, which presently includes four steam generating boilers and associated and ancillary systems and equipment, known as Big Bend Units 1, 2, 3, and 4.
7. "Consent Decree" shall mean this Consent Decree and the Appendix thereto.
8. "Emission Rate" shall mean the average number of pounds of pollutant emitted per million BTU of heat input ("lb/mmBTU") or the average concentration of a pollutant in parts per million by volume ("ppm"), as dictated by the unit of measure specified for the rate in question, where:
  - 1
  - 2 in the case of a coal-fired, steam electric generating unit, such rates shall be calculated as a 30 day rolling average. A 30 day rolling average for an Emission Rate expressed as lb/mmBTU shall be determined by calculating the emission rate for a given operating day, and then arithmetically averaging the emission rates for

the previous 29 operating days with that date. A new 30 day rolling average shall be calculated for each new operating day;

A in the case of a gas-fired, electric generating unit, such rates shall be calculated as a 24-hour rolling average, excluding periods of start up, shutdown, and malfunction as provided by applicable Florida regulations at the time the Emission Rate is calculated. A rolling average for Emission Rates expressed as ppm shall be determined on a given day by summing hourly emission rates for the immediately preceding 24-hour period and dividing by 24;

A the reference methods for determining Emission Rates for SO<sub>2</sub> and NO<sub>x</sub> shall be those specified in 40 C.F.R. Part 75, Appendix F. The reference methods for determining Emission Rates for PM shall be those specified in 40 C.F.R. Part 60, Appendix A, Method 5, Method 5B, or Method 17; and

A nothing in this Consent Decree is intended to nor shall alter applicable law concerning the use of data, for any purpose under the Clean Air Act, generated by methods other than the reference methods specified herein.

9. "EPA" shall mean the United States Environmental Protection Agency.
10. "Gannon" shall mean the electric generating plant, presently coal-fired, owned and operated by Tampa Electric, located in Hillsborough County, Florida, which presently includes six steam generating boilers and associated and ancillary systems and equipment, known as Gannon Units 1, 2, 3, 4, 5, and 6. Tampa Electric intends to rename Gannon "Bayside Power Station" upon completion of

the Re-Powering required under this Consent Decree.

11. "lb/mmBTU" shall mean pounds per million British Thermal Units of heat input.
12. "NOx" shall mean oxides of nitrogen.
13. "NOV" shall mean the Notice of Violation issued by EPA to Tampa Electric dated November 3, 1999.
14. "PM" shall mean total particulate matter, and the reference method for measuring PM shall be that specified in the definition of Emission Rate in this Consent Decree.
15. "ppm" shall mean parts per million by dry volume, corrected to 15% O<sub>2</sub>.
16. "Project Dollars" shall mean Tampa Electric's expenditures and payments incurred or made in carrying out the dollar-limited projects identified in Paragraph 35 of Section IV of this Consent Decree (Early Reductions of NO<sub>x</sub> from Big Bend Units 1 through 3) and in Section VII of this Consent Decree (NO<sub>x</sub> Reduction Projects and Mitigation Projects), to the extent that such expenditures or payments both: (A) comply with the Project Dollar and other requirements set by this Consent Decree for such expenditures and payments in Section VII and in Paragraph 35 of Section IV of this Consent Decree, and (B) constitute either Tampa Electric's properly documented external costs for contractors, vendors, as well as equipment, or its internal costs consisting of employee time, travel, and other out-of-pocket expenses specifically attributable to these particular projects.
17. "PSD" shall mean Prevention of Significant Deterioration within the meaning of

Part C of the Clean Air Act, 42 U.S.C. §§ 7470, et seq.

18. "Re-Power" shall mean the removal or permanent disabling of devices, systems, equipment, and ancillary or supporting systems at a Gannon or Big Bend Unit such that the Unit cannot be fired with coal, and the installation of all devices, systems, equipment, and ancillary or supporting systems needed to fire such Unit with natural gas under the limits set in this Consent Decree (or with No. 2 fuel oil, as a back up fuel only, and under the limits specified by this Consent Decree) plus installation of the control technology and compliance with the Emission Rates called for under this Consent Decree.
19. "Reserve / Standby" shall mean those devices, systems, equipment, and ancillary or supporting systems that: (1) are not used as part of the Units that must be Re-Powered under Paragraph 26, (2) are not in operation subsequent to the Re-Powering required under Paragraph 26, (3) are maintained and held by Tampa Electric for system reliability purposes, and (4) may be restarted only by Re-Powering.
20. "SCR" shall mean Selective Catalytic Reduction.
21. "Shutdown" shall mean the permanent disabling of a coal-fired boiler such that it cannot burn any fuel nor produce any steam for electricity production, other than through Re-Powering.
22. "SO<sub>2</sub>" shall mean sulphur dioxide.
23. "Title V Permit" shall mean the permit required under Subchapter V of the Clean

Air Act, 42 U.S.C. § 7661, et seq.

24. "Total Baseline Emissions" shall mean calendar year 1998 emissions of NO<sub>x</sub>, SO<sub>2</sub>, and PM comprised of the following amounts for each pollutant:

A. for Gannon: 30,763 tons of NO<sub>x</sub>, 64,620 tons of SO<sub>2</sub>, and 1,914 tons of PM; and

A.

B. for Big Bend: 36,077 tons of NO<sub>x</sub>, 107,334 tons of SO<sub>2</sub>, and 3,002 tons of PM.

25. "Unit" shall mean for the purpose of this Consent Decree a generator, the steam turbine that drives the generator, the boiler that produces the steam for the steam turbine, the equipment necessary to operate the generator, turbine and boiler, and all ancillary equipment, including pollution control equipment or systems necessary for the production of electricity. An electric generating plant may be comprised of one or more Units.

#### **IV. EMISSIONS REDUCTIONS AND CONTROLS    - GANNON AND BIG**

##### **BEND**

##### **A. GANNON**

26. Consent Decree-Required Re-Powering of Gannon. Tampa Electric shall Re-Power Units at Gannon with a coal-fired generating capacity of no less than 550 MW ("Megawatt"), as follows.



A. On or before May 1, 2003, Tampa Electric shall Re-Power Units with a coal-fired generating capacity of no less than 200 MW. On or before December 31, 2004, Tampa Electric shall Re-Power additional Units with a coal-fired generating capacity equal to or greater than the difference between 550 MW of coal-fired generating capacity and the MW value of coal-fired generating capacity that Tampa Electric Re-Powered in complying with the first sentence of this Subparagraph A.

A. All Re-Powering required by this Paragraph shall include installation and operation of SCR, other pollution control technology approved in advance and in writing by EPA, or any innovative technology demonstration project approved pursuant to Paragraph, 52.C to control Unit emissions. Each Re-Powered Unit shall, in conformance with the definition of Re-Power, use natural gas as its primary fuel and shall meet an Emission Rate for NO<sub>x</sub> of no greater than 3.5 ppm.

A. A Unit Re-Powered under this or any other provision of this Consent Decree may be fired with No. 2 fuel oil if and only if: (1) the Unit cannot be fired with natural gas; (2) the Unit has not yet been fired with No. 2 fuel oil as a back up fuel for more than 875 full load equivalent hours in the calendar year in which Tampa Electric wishes to fire the Unit with such oil; (3) the oil to be used in firing the Unit has a sulphur content of less than 0.05 percent (by weight); (4) Tampa Electric uses all emission control equipment for that Unit when it is fired with such oil to the maximum extent possible; and (5) Tampa Electric complies with all applicable permit conditions, including emission rates for firing with No. 2 fuel oil, as set forth in applicable preconstruction and operating permits.

A. Tampa Electric shall timely apply for a preconstruction permit under Rule 62-212, F.A.C., prior to commencing such Re-Powering. In applying for such permit Tampa Electric shall seek, as part of the permit, provisions requiring installation of SCR or other EPA-approved control technology and a NO<sub>x</sub> Emission Rate no greater than 3.5 ppm.

27. Schedule for Shutdown of Units. Tampa Electric shall Shutdown and cease any and all operation of all six (6) Gannon coal-fired boilers with a combined coal-fired capacity of not less than 1194 MW on or before December 31, 2004. Notwithstanding the requirements of this Paragraph, Tampa Electric may retain any Unit Shutdown pursuant to this Paragraph on Reserve / Standby, unless such Unit is to be, or has been, Re-Powered under Paragraph 26, above. If Tampa Electric later decides to restart any Shutdown Unit retained on Reserve / Standby, then prior to such re-start, Tampa Electric shall timely apply for a PSD permit for the Unit(s) to be Re-Powered, and Tampa Electric shall abide by the permit issued as a result of that application, including installation of BACT and its corresponding Emission Rate, as determined at the time of the restart. Tampa Electric shall operate the Re-Powered Unit to meet the NO<sub>x</sub> Emission Rate established in the PSD Permit or an Emission Rate for NO<sub>x</sub> of 3.5 ppm, whichever is more stringent. Tampa Electric shall provide a copy of any permit application(s), proposed permit(s), and permit(s) to the United States as specified in Paragraph 82 (Notice). For any Unit Shutdown and placed on Reserve / Standby under this Paragraph, and notwithstanding the definition of Re-Power in

this Consent Decree, Tampa Electric also may elect to fuel such a Unit with a gaseous fuel other than or in addition to natural gas, if and only if Tampa Electric: applies for and secures a PSD permit before using such fuel in any such Unit, complies with all requirements issued in such a permit, and complies with all other requirements of this Consent Decree applicable to Re-Powering.

28. Permanent Bar on Combustion of Coal. Commencing on January 1, 2005, Tampa Electric shall not combust coal in the operation of any Unit at Gannon.

**B. BIG BEND**

29. Initial Reduction and Control of SO<sub>2</sub> Emissions from Big Bend Units 1 and 2 .

Commencing upon the later of the date of entry of this Consent Decree or September 1, 2000, and except as provided in this Paragraph, Tampa Electric shall operate the existing scrubber that treats emissions of SO<sub>2</sub> from Big Bend Units 1 and 2 at all times that either Unit 1 or 2 is in operation. Tampa Electric shall operate the scrubber so that at least 95% of all the SO<sub>2</sub> contained in the flue gas entering the scrubber is removed. Notwithstanding the requirement to operate the scrubber at all times Unit 1 or 2 is operating, the following operating conditions shall apply:

A.

- B. Tampa Electric may operate Units 1 and/or 2 during outages of the scrubber serving Units 1 and 2, but only so long as Tampa Electric:

- (1) in calendar year 2000, does not operate Unit 1 and/or 2, or any combination of the two of them, on more than sixty (60) calendar days, or any part thereof (providing that when both Units 1 and 2 operate on the same calendar day, such operation shall count as two days of the sixty (60) day limit), and in calendar years 2001 - 2009, does not operate Unit 1 and/or 2, or any combination of the two of them, on more than forty-five (45) calendar days, or any part thereof, in any calendar year (providing that when both Units 1 and 2 operate on the same calendar day, such operation shall count as two days of the forty-five (45) day limit) ; or

A.

- B. must operate Unit 1 and/or 2 in any calendar year from 2000 through 2009 either to avoid interruption of electric service to its customers under interruptible service tariffs, or to respond to a system-wide or state-wide emergency as declared by the Governor of Florida under Section 366.055, F.S. (requiring availability of reserves), or under Section 377.703, F.S.

D. (energy policy contingency plan), or under Section 252.36, F.S. (Emergency management powers of the Governor), in which Tampa Electric must generate power from Unit 1 and/or 2 to meet such emergency.

1.

2. Whenever Tampa Electric operates Units 1 and/or 2 without all emissions from such Unit(s) being treated by the scrubber, Tampa Electric shall: (1) combust only Alternative Coal at the Unit(s) operating during the outage (except for coal already bunkered in the hopper(s) for Units 1 or 2 at the time the outage commences); (2) use all existing electric generating capacity at Big Bend and Gannon that is served by fully operational pollution control equipment before operating Big Bend Units 1 and/or 2; and (3) continue to control SO<sub>2</sub> emissions from Big Bend Units 1 and/or 2 as required by Paragraph 31 (Optimizing Availability of Scrubbers Serving Big Bend Units 1, 2, and 3).

A. In calendar years 2010 through 2012, Tampa Electric may operate Units 1 and/or 2 during outages of the scrubber serving Units 1 and 2, but only so long as Tampa Electric complies with the requirements of Subparagraphs A and B, above, and uses only coal with a sulphur content of 1.2 lb/mmBTU, or less, in place of Alternative Coal.

A. If Tampa Electric Re-Powers Big Bend Unit 1 or 2, or replaces the scrubber or provides additional scrubbing capacity to comply with Paragraph 40, then upon such compliance the provisions of Subparagraphs 29.A, 29.B, and 29.C shall not apply to the affected Unit.

30. Initial Reduction and Control of SO<sub>2</sub> Emissions from Big Bend Unit 3.

Commencing upon entry of the Consent Decree, and except as provided in this Paragraph, Tampa Electric shall operate the existing scrubber that treats emissions of SO<sub>2</sub> from Big Bend Units 3 and 4 at all times that Unit 3 is in operation. When Big Bend Units 3 and 4 are both operating, Tampa Electric shall operate the scrubber so that at least 93% of all the SO<sub>2</sub> contained in the flue gas entering the scrubber is removed. When Big Bend Unit 3 alone is operating, until May 1, 2002, Tampa Electric shall operate the scrubber so that at least 93% of all SO<sub>2</sub> contained in the flue gas entering the scrubber is removed or the Emission Rate for SO<sub>2</sub> for Unit 3 does not exceed 0.35 lb/mmBTU. When Unit 3 alone is operating, from May 1, 2002 until January 1, 2010, Tampa Electric shall operate the scrubber so that at least 95% of the SO<sub>2</sub> contained in the flue gas entering the scrubber is removed or the Emission Rate for SO<sub>2</sub> does not exceed 0.30 lb/mmBTU. Notwithstanding the requirement to operate the scrubber at all times Unit 3 is operating, and providing Tampa Electric is otherwise in compliance with this Consent Decree, the following operating conditions shall apply:

A.

B. In any calendar year from 2000 through 2009, Tampa Electric may operate Unit 3 in the case of outages of the scrubber serving Unit 3, but only so long as Tampa Electric:

- (1) does not operate Unit 3 during outages on more than thirty (30)

calendar days, or any part thereof, in any calendar year; or

A.

B. must operate Unit 3 either: to avoid interruption of electric service to its customers under interruptible service tariffs, or to respond to a system-wide or state-wide emergency as declared by the Governor of Florida under Section 366.055, F.S. (requiring availability of reserves), or under Section 377.703, F.S. (energy policy contingency plan), or under Section 252.36, F.S. (Emergency management powers of the Governor), in which Tampa Electric must generate power from Unit 3 to meet such emergency.

C.

1.

2.

Whenever Tampa Electric operates Unit 3 without treating all emissions from that Unit with the scrubber, Tampa Electric shall: (1) combust only Alternative Coal at Unit 3 during the outage (except for coal already bunkered in the hopper(s) for Unit 3 at the time the outage commences); (2) use all existing electric generating capacity at Big Bend and Gannon that is served by fully operational pollution control equipment before operating Big Bend Unit 3; and (3) continue to control SO<sub>2</sub> emissions from Big Bend Unit 3 as required by Paragraph 31 (Optimizing Availability of Scrubbers Serving Big Bend Units, 1, 2, and 3).

A.

If Tampa Electric Re-Powers Big Bend Unit 3, or replaces the scrubber or provides additional scrubbing capacity to comply with Paragraph 40, then upon

compliance with Paragraph 40 the provisions of Subparagraphs 30.A and 30.B shall not apply to Unit 3.

A.

B. Nothing in this Consent Decree shall alter requirements of the New Source Performance Standards (NSPS), 40 C.F.R. Part 60 Subpart Da. that apply to operation of the scrubber serving Unit 4.

31. Optimizing Availability of Scrubbers Serving Big Bend Units 1, 2, and 3.

Tampa Electric shall maximize the availability of the scrubbers to treat the emissions of Big Bend Units 1, 2, and 3, as follows:

A. As soon as possible after entry of this Consent Decree, Tampa Electric shall submit to EPA for review and approval a plan addressing all operation and maintenance changes to be made that would maximize the availability of the existing scrubbers treating emissions of SO<sub>2</sub> from Big Bend Units 1 and 2, and from Unit 3. In order to improve operations and maintenance practices as soon as possible, Tampa Electric may submit the plan in two phases.

(1) Each phase of the plan proposed by Tampa Electric shall include a schedule pursuant to which Tampa Electric will implement measures relating to operation and maintenance of the scrubbers called for by that phase of the plan, within sixty days of its approval by EPA. Tampa Electric shall implement each phase of the plan as approved by EPA.



Such plan may be modified from time to time with prior written approval of EPA.

(2) The proposed plan shall include operation and maintenance activities that will minimize instances during which SO<sub>2</sub> emissions are not scrubbed, including but not limited to improvements in the flexibility of scheduling maintenance on the scrubbers, increases in the stock of spare parts kept on hand to repair the scrubbers, a commitment to use of overtime labor to perform work necessary to minimize periods when the scrubbers are not functioning, and use of all existing capacity at Big Bend and Gannon Units that are served by available, operational pollution control equipment to minimize pollutant emissions while meeting power needs.

(3) If Tampa Electric elects to submit the plan to EPA in two phases, the first phase to be submitted shall address, at a minimum, use of overtime hours to accomplish repairs and maintenance of the scrubber and increasing the stock of scrubber spare parts that Tampa Electric shall keep at Big Bend to speed future maintenance and repairs. If Tampa Electric elects to submit the plan in two phases, EPA shall complete review of the first phase within fifteen business days of receipt. For the second phase of the plan or submission of the plan in its entirety, EPA shall complete review of such plan or phase thereof within 60 days of receipt. Within sixty days after EPA's approval of the plan or any phase of the plan.

Tampa Electric shall complete implementation of that plan or phase and continue operation under it subject only to the terms of this Consent Decree.

32. PM Emission Minimization and Monitoring at Big Bend.

- A. Within twelve months after entry of this Consent Decree, Tampa Electric shall complete an optimization study which shall recommend the best operational practices to minimize emissions from each Electrostatic Precipitator (ESP) and shall deliver the completed study to EPA for review and approval. Tampa Electric shall implement these recommendations within sixty days after EPA has approved them and shall operate each ESP in conformance with the study and its recommendations until otherwise specified under this Consent Decree.
- B. Within twelve months after entry of this Consent Decree, Tampa Electric shall complete a BACT Analysis for upgrading each existing ESP now located at Big Bend and shall deliver the Analysis to EPA for review and approval. Notwithstanding the definition of BACT Analysis in this Consent Decree, Tampa Electric need not consider in this BACT Analysis the replacement of any existing ESP with a new ESP, scrubber, or baghouse, or the installation of a supplemental pollution control device of similar cost to a replacement ESP, scrubber, or baghouse. Tampa Electric shall simultaneously deliver to EPA all documents that support the BACT

Analysis or that were considered in preparing the Analysis. Tampa Electric shall retain a qualified contractor to assist in the performance and completion of the BACT Analysis. On or before May 1, 2004, after EPA approval of the recommendation(s) made by the BACT Analysis, Tampa Electric shall complete installation of all equipment called for in the recommendation(s) of the Analysis and thereafter shall operate each ESP in conformance with the recommendation(s), including compliance with the Emission Rate(s) specified by the recommendation(s).

- C. Within six months after Tampa Electric completes installation of the equipment called for by the BACT Analysis, as approved by EPA, Tampa Electric shall revise the previous optimization study and shall recommend the best operational practices to minimize emissions from each ESP, taking into account the recommendations from the BACT Analysis required by this Paragraph, and shall deliver the completed study to EPA for review and approval. Commencing no later than 180 days after EPA approves the study and its recommendation(s), Tampa Electric shall operate each ESP in conformance with the study's recommendation.
- D. Tampa Electric shall include the recommended operational practices for each ESP and the recommendations from the BACT Analysis in Tampa Electric's Title V Permit application and all other relevant applications for operating or construction permits.

- E. Installation and Operation of a PM Monitor. On or before March 1, 2002, Defendant shall install, calibrate, and commence continuous operation of a continuous particulate matter emissions monitor (PM CEM) in the duct at Big Bend that services Unit 4. Data from the PM CEM shall be used by Tampa Electric, at a minimum, to monitor progress in reducing PM emissions.
- F. "Continuous operation" of the PM CEM shall mean operation at all times that Unit 4 operates, except for periods of malfunction of the PM CEM or routine maintenance performed on the PM CEM. If after Tampa Electric operates this PM CEM for at least two years, and if the parties then agree that it is infeasible to sustain continuous operation of the PM CEM, Tampa Electric shall submit an alternative PM monitoring plan for review and approval by EPA. The plan shall include an explanation of the basis for stopping operation of the PM CEM and a proposal for an alternative monitoring protocol. Until EPA approves such plan, Tampa Electric shall continue to operate the PM CEM.
- G. Installation and Operation of Second PM Monitor. If Tampa Electric advises EPA, pursuant to Paragraph 36, that it has elected to continue to combust coal at Big Bend Units 1, 2, or 3, and Tampa Electric has not ceased operating the first PM CEM as described in Subparagraph F, above, then Tampa Electric shall install, calibrate, and commence

continuous operation of a PM CEM on a second duct at Big Bend on or before May 1, 2007. The requirement to operate a PM CEM under any provision of this Paragraph shall terminate if and when the Unit monitored by the PM CEM is Re-Powered.

H. Testing and Reporting Requirement. Prior to installation of the PM CEM on each duct, Tampa Electric shall conduct a stack test on each stack at Big Bend on at least an annual basis and report its results to EPA as part of the quarterly report under Section V. The stack test requirement in this Subparagraph may be satisfied by Tampa Electric's annual stack tests conducted as required by its permit from the State of Florida. Following installation of each PM CEM, Defendant shall include in its quarterly reports to EPA pursuant to Section V all data recorded by the PM CEM, in electronic format, if available.

I. Nothing in this Consent Decree is intended to nor shall alter applicable law concerning the use of data, for any purpose under the Clean Air Act, generated by the PM CEMs.

33. Election for Big Bend Unit 4: Shutdown, Re-Power, or Continued Combustion of Coal. Tampa Electric shall advise EPA in writing, on or before May 1, 2005, whether Big Bend Unit 4 will be Shutdown, will be Re-Powered, or will continue to be fired by coal.

34. Reduction of NO<sub>x</sub> at Big Bend Unit 4 after 2005 Election. Based on Tampa Electric's election in Paragraph 33, Tampa Electric shall take one of the following actions:

7.

8. If Tampa Electric elects to continue firing Unit 4 with coal, on or before June 1, 2007, Tampa Electric shall install and commence operation of SCR, or other technology if approved in writing by EPA in advance, sufficient to limit the coal-fired Emission Rate of NO<sub>x</sub> from Unit 4 to no more than 0.10 lb/mmBTU. Thereafter, Tampa Electric shall continue operation of SCR or other EPA approved control technology, and Tampa Electric shall continue to meet an Emission Rate for NO<sub>x</sub> from Unit 4 no greater than 0.10 lb/mmBTU; or

A. If Tampa Electric elects to Re-Power Unit 4, Tampa Electric shall not combust coal at Unit 4 on or after June 1, 2007. Tampa Electric shall timely apply for a preconstruction permit under Rule 62-212, F.A.C., prior to commencing construction of the Re-Powering of Unit 4. In applying for such permit, Tampa Electric shall seek, as part of the permit, provisions requiring installation of SCR or other EPA approved control technology and a NO<sub>x</sub> Emission Rate no greater than 3.5 ppm. Tampa Electric shall operate the Re-Powered Unit 4 to meet an Emission Rate for NO<sub>x</sub> of no greater than 3.5 ppm or the rate established in the preconstruction permit, whichever is more stringent; or

A. If Tampa Electric elects to Shutdown Big Bend Unit 4, Tampa Electric

shall complete Shutdown of Big Bend Unit 4 on or before June 1, 2007.

Notwithstanding the requirements of this Subparagraph, Tampa Electric may retain this Unit, after it is Shutdown pursuant to this Subparagraph, on Reserve / Standby. If Tampa Electric later decides to restart Unit 4 then, prior to such restart, Tampa Electric shall timely apply for a PSD permit, and Tampa Electric shall abide by the permit issued as a result of that application, including installation of BACT and its corresponding Emission Rate, as determined at the time of the restart. Tampa Electric shall operate the Re-Powered Unit 4 to meet an Emission Rate for  $\text{NO}_x$  of no greater than 3.5 ppm or the Emission Rate established in the PSD permit, whichever is more stringent. Tampa Electric shall provide a copy of any permit application(s), proposed permit(s), and permit(s) to the United States as specified in Paragraph 82 (Notice). Upon Shutdown of a Unit under this Subparagraph, Tampa Electric may never again use coal to fire that Unit.

A. Notwithstanding the provisions of Subparagraphs B and C above or the definition of Re-Power in this Consent Decree, Tampa Electric may also elect to fuel Big Bend Unit 4 with a gaseous fuel other than or in addition to natural gas, if and only if Tampa Electric applies for and secures a PSD permit before using such fuel in this Unit, complies with all requirements issued in such a permit, and complies with all requirements of this Consent Decree applicable to Re-Powering.

35. Early Reductions of  $\text{NO}_x$  from Big Bend Units 1 through 3: On or before

December 31, 2001, Tampa Electric shall submit to EPA for review and comment a plan to reduce NO<sub>x</sub> emissions from Big Bend Units 1, 2 and 3, through the expenditure of up to \$3 million Project Dollars on combustion optimization using commercially available methods, techniques, systems, or equipment, or combinations thereof. Subject only to the financial limit stated in the previous sentence, for Units 1 and 2 the goal of the combustion optimization shall be to reduce the NO<sub>x</sub> Emission Rate by at least 30% when compared against the NO<sub>x</sub> Emissions Rate for these Units during calendar year 1998, which the United States and Tampa Electric agree was 0.86 lb/mmBTU. For Unit 3 the goal of the combustion optimization shall be to reduce the NO<sub>x</sub> Emissions Rate by at least 15% when compared against the NO<sub>x</sub> Emission Rate for this Unit during calendar year 1998, which the United States and Tampa Electric agree was 0.57 lb/mmBTU. If the financial limit in this Paragraph precludes designing and installing combustion controls that will meet the percentage reduction goals for the NO<sub>x</sub> Emission Rates specified in this Paragraph for all three Units, then Tampa Electric's plan shall first maximize the Emission Rate reductions at Units 1 and 2 and then at Unit 3. Unless the United States has sought dispute resolution on Tampa Electric's plan on or before May 30, 2002, Tampa Electric shall implement all aspects of its plan at Big Bend Units 1, 2, and 3 on or before December 31, 2002. On or before April 1, 2003, Tampa Electric shall submit to EPA a report that documents the date(s) of complete implementation of the plan,



the results obtained from implementing the plan, including the emission reductions or benefits achieved, and the Project Dollars expended by Tampa Electric in implementing the plan.

36. Election for Big Bend Units 1 through 3: Shutdown, Re-Power, or Continued Combustion of Coal. Tampa Electric shall advise EPA in writing, on or before May 1, 2007, whether Big Bend Units 1, 2, or 3, or any combination of them, will be Shutdown, will be Re-Powered, or will continue to be fired by coal.

37. Further NO<sub>x</sub> Reduction Requirements if Big Bend Units 1, 2, and/or 3 Remain Coal-fired. If Tampa Electric advises EPA in writing, pursuant to Paragraph 36, above, that Tampa Electric will continue to combust coal at Units 1, 2, and/or 3, then:

A. Subject only to Subparagraphs B and D, Tampa Electric shall timely solicit contract proposals to acquire, install, and operate SCR, or other technology if approved in writing by EPA in advance, sufficient to limit the Emission Rate of NO<sub>x</sub> to no more than 0.10 lb/mmBTU at each Unit that will combust coal. Tampa Electric shall install and operate such equipment on all Units that will continue to combust coal and shall achieve an Emission Rate of NO<sub>x</sub> on each such Unit no less stringent than 0.10 lb/mmBTU.

A. Notwithstanding Subparagraph A, Tampa Electric shall not be required to install SCR to limit the Emission Rate of NO<sub>x</sub> at Units 1, 2 and/or 3 to 0.10 lb/mmBTU if the "installation cost ceiling" contained in this Paragraph will be exceeded by such installation. If Tampa Electric decides to continue burning coal at Units 1, 2 and 3, the

installation cost ceiling for SCR at Units 1, 2, and 3 shall be three times the cost of installing SCR at Big Bend Unit 4 plus forty-five (45%) percent of the cost of installing SCR at Big Bend 4. If Tampa Electric decides to continue burning coal at only two Units at Big Bend, the installation cost ceiling for SCR at those two Units shall be two times the cost of installing SCR at Big Bend 4 plus forty-five (45) percent of the cost of installing SCR at Big Bend Unit 4. If Tampa Electric decides to continue burning coal at only one Unit at Big Bend, the installation cost ceiling for SCR at that Unit shall be the cost of installing SCR at Big Bend 4 plus forty five (45) percent.

- A. If, based on the contract proposals obtained under Subparagraph A, Tampa Electric determines that the projected cost of proposed control equipment satisfying a 0.10 lb/mmBTU Emission Rate will not exceed the "installation cost ceiling," Tampa Electric shall install and operate such equipment on all Units that will continue to combust coal and shall achieve a NO<sub>x</sub> Emission Rate on each Unit no less stringent than 0.10 lb/mmBTU. If, based on the contract proposals, Tampa Electric determines that the projected cost will exceed the installation cost ceiling, Tampa Electric shall so advise EPA and shall provide EPA with the basis for Tampa Electric's determination, including all documentation sufficient to replicate and evaluate Tampa Electric's cost projections.
- A. Unless EPA contests Tampa Electric's determination that the installation cost ceiling will be exceeded by installing control equipment to reduce NO<sub>x</sub> emissions to 0.10

lb/mmBTU or less, Tampa Electric shall install, at each Unit that will continue to combust coal, the NO<sub>x</sub> control technology designed to achieve the lowest Emission Rate that can be attained within the "installation cost ceiling." Notwithstanding any provision of this Consent Decree, including the "installation cost ceiling," Tampa Electric shall install NO<sub>x</sub> control technology that is designed to achieve an Emission Rate no less stringent than 0.15 lb/mmBTU. Each Unit combusting coal and its NO<sub>x</sub> controls shall meet the Emission Rate for which they are designed.

A. Tampa Electric shall acquire, install, commence operating emission control equipment, and meet the applicable Emission Rate for NO<sub>x</sub> at each of the Units to remain coal-fired, as follows: (1) for the first of the Units to remain coal-fired, or if only one Unit is to be coal-fired, on or before May 1, 2008; (2) for the second Unit, if there is one, on or before May 1, 2009; (3) for the third Unit, if there is one, on or before May 1, 2010.

38. Tampa Electric's NO<sub>x</sub> Reduction Requirements if Tampa Electric Re-Powers Units 1, 2, and/or 3. If, by May 1, 2007, Tampa Electric advises EPA that Tampa Electric has elected to Re-Power one or more of Units 1, 2, and 3 at Big Bend, then Tampa Electric shall complete all steps necessary to accomplish such Re-Powering in a time frame to commence operation of the Re-Powered Unit(s) no later than May 1, 2010. Any Unit(s) to be replaced by a Re-Powered Unit may continue to operate until the earlier of six months after the date the Re-Powered

Unit begins commercial operation on December 31, 2010. Tampa Electric shall timely apply for a preconstruction permit under Rule 62-212, F.A.C., prior to commencing construction of any Re-Powered Unit at Big Bend. In applying for such permit Tampa Electric shall seek, as part of the permit, provisions requiring installation of SCR or other EPA approved control technology and a NO<sub>x</sub> Emission Rate no greater than 3.5 ppm. Tampa Electric shall operate any Unit Re-Powered under this Paragraph to meet an Emission Rate for NO<sub>x</sub> of no greater than 3.5 ppm or the rate established in the preconstruction permit, whichever is more stringent. Notwithstanding the provisions of this Paragraph or the definition of Re-Power in this Consent Decree, Tampa Electric may also elect to fuel Units 1, 2, or 3 with a gaseous fuel other than or in addition to natural gas, if and only if Tampa Electric applies for and secures a PSD permit before using such fuel in any of these Units, complies with all requirements issued in such a permit, and complies with all requirements of this Consent Decree applicable to Re-Powering.

39. Requirements Applicable to Big Bend Units 1, 2, and/or 3 if Shutdown. If Tampa Electric elects to Shutdown one or more of Units 1, 2, and 3, Tampa Electric shall complete Shutdown of the first such Unit on or before May 1, 2008; of the second Unit, if applicable, on or before May 1, 2009, and of the third Unit, if applicable, on or before May 1, 2010. Notwithstanding the requirements of this Paragraph, Tampa Electric may retain any Unit Shutdown pursuant to this Paragraph on

Reserve / Standby. If Tampa Electric later decides to restart such Unit retained on Reserve / Standby by Re-Powering it then, prior to such restart, Tampa Electric shall timely apply for a PSD permit for the Unit(s) to be Re-Powered, and Tampa Electric shall abide by the permit issued as result of that application, including installation of BACT and its corresponding Emission Rate determined at the time of the restart. Tampa Electric shall operate each Unit Re-Powered under this Paragraph to meet an Emission Rate for NO<sub>x</sub> of no greater than 3.5 ppm or the Emission Rate established in the PSD permit, whichever is more stringent. Tampa Electric shall provide a copy of any permit application(s), proposed permit(s), and permit(s) to the United States as specified in Paragraph 82 (Notice). Upon Shutdown of a Unit under this Paragraph, Tampa Electric may never again use coal to fire that Unit. For any Unit Shutdown and placed on on Reserve / Standby under this Paragraph, and notwithstanding the definition of Re-Power in this Consent Decree, Tampa Electric also may elect to fuel such a Unit with a gaseous fuel other than or in addition to natural gas, if and only if Tampa Electric: applies for and secures a PSD permit before using such fuel in any of such Unit, complies with all requirements issued in such a permit, and complies with all requirements of this Consent Decree applicable to Re-Powering.

40. Further SO<sub>2</sub> Reduction Requirements if Big Bend Units 1, 2, or 3 Remains Coal-fired. If Tampa Electric elects under Paragraph 36 to continue combusting coal at Units 1, 2, and/or 3, Tampa Electric shall meet the following requirements.

A. Removal Efficiency or Emission Rate. Commencing on dates set forth in Subparagraph C and continuing thereafter, Tampa Electric shall operate coal-fired Units and the scrubbers that serve those Units so that emissions from the Units shall meet at least one of the following limits:

- (1) the scrubber shall remove at least 95% of the SO<sub>2</sub> in the flue gas that entered the scrubber; or
- (2) the Emission Rate for SO<sub>2</sub> from each Unit does not exceed 0.25 lb/mmBTU.

A. Availability Criteria. Commencing on the deadlines set in this Paragraph and continuing thereafter, Tampa Electric shall not allow emissions of SO<sub>2</sub> from Big Bend Units 1, 2, or 3 without scrubbing the flue gas from those Units and using other equipment designed to control SO<sub>2</sub> emissions. Notwithstanding the preceding sentence, to the extent that the Clean Air Act New Source Performance Standards identify circumstances during which Bend Unit 4 may operate without its scrubber, this Consent Decree shall allow Big Bend Units 1, 2, and/or 3 to operate when those same circumstances are present at Big Bend Units 1, 2, and/or 3.

A. Deadlines. Big Bend Unit 3 and the scrubber(s) serving it shall be subject to the requirements of this Paragraph beginning January 1, 2010 and continuing thereafter. Until January 1, 2010, Tampa Electric shall control SO<sub>2</sub> emissions from Unit 3 as required by Paragraphs 30 and 31. Big Bend Units 1 and 2 and the scrubber(s) serving them shall

be subject to the requirements of this Paragraph beginning January 1, 2013 and continuing thereafter. Until January 1, 2013, Tampa Electric shall control SO<sub>2</sub> emissions from Units 1 and 2 as required by Paragraphs 29 and 31.

- A. Nothing in this Consent Decree shall alter requirements of NSPS, 40 C.F.R. Part 60 Subpart Da, that apply to operation of Unit 4 and the scrubber serving it.

**C. BIG BEND AND GANNON -- PERMITS AND RESOLUTION OF CLAIMS**

41. Timely Application for Permits. Except as otherwise stated in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires Tampa Electric to secure a permit to authorize constructing or operating any device under this Consent Decree, Tampa Electric shall make such application in a timely manner. Such applications shall be completed and submitted to the appropriate authorities to allow sufficient time for all legally required processing and review of the permit request. Failure to comply with this provision shall bar any use by Tampa Electric of the Force Majeure provisions of this Consent Decree.

42. Title V Permits.

A.

- B. On or before January 1, 2004, Tampa Electric shall apply for a Title V Permit(s), or for an amendment to an existing Title V Permit(s), to include all performance,

operational, maintenance, and control technology requirements established by or determined under this Consent Decree for Gannon, including but not limited to Emission Rates, removal efficiencies, limits on fuel use (including those imposed on Re-Powered or Shutdown Units), and operation and maintenance optimization requirements.

A. On or before January 1, 2009, Tampa Electric shall apply for a Title V Permit(s), or for an amendment to an existing Title V Permit(s), to include all performance, operational, maintenance, and control technology requirements established by or determined under this Consent Decree for Big Bend, including but not limited to Emission Rates, removal efficiencies, limits on fuel use (including those imposed on Re-Powered or Shutdown Units), and operation and maintenance optimization requirements.

A. Except as this Consent Decree expressly requires otherwise, this Consent Decree shall not be construed to require Tampa Electric to apply for or obtain a permit pursuant to the Prevention of Significant Deterioration requirements of the Clean Air Act for any work performed by Tampa Electric within the scope of the Resolution of Claims provisions of Paragraphs 43 and 44, below.

43. Resolution of Past Claims - This Consent Decree resolves all of Plaintiff's civil claims for liability arising from violations of either: (1) the Prevention of Significant Deterioration or Non-Attainment provisions of Parts C and D of the Clean Air Act, 42 U.S.C. § 7401, et seq at Units at Big Bend or Gannon, or (2) 40 C.F.R. Section 60.14 at Units at Big Bend or Gannon, that :



A.

B. are alleged in the Complaint filed November 3, 1999, or in the NOV issued on that date;

A. could have been alleged by the United States in the Complaint filed November 3, 1999, or in the NOV issued on that date; or

A. have arisen from Tampa Electric's actions that occurred between November 3, 1999 and the date on which this Consent Decree is entered by the Court.

44. Resolution of Future Claims - Covenant not to Sue. The United States covenants not to sue Tampa Electric for civil claims arising from the Prevention of Significant Deterioration or Non-Attainment provisions of Parts C and D of the Clean Air Act, 42 U.S.C. § 7401 et seq., at Big Bend or Gannon Units and that are based on failure to obtain PSD or nonattainment New Source Review (NSR) permits for:

A. work that this Consent Decree expressly directs Tampa Electric to undertake; or

A. physical changes or changes in the method of operation of Big Bend or Gannon Units not required by this Consent Decree, if and only if:

A.

B. such change is commenced after Tampa Electric is implementing the plan, or the first phase of the plan if applicable, approved by EPA under Paragraph 31 (Optimizing Availability of Scrubbers),

1. such change is commenced, within the meaning of 40 C.F.R. Section 52.21(b)(9),

during the time this Consent Decree applies to the Unit at which this change has been made ;

- (3) Tampa Electric is otherwise in compliance with this Consent Decree;
- (4) hourly Emission Rates of NO<sub>x</sub>, SO<sub>2</sub>, or PM at the changed Unit(s) do not exceed their respective hourly Emission Rates prior to the change, as measured by 40 C.F.R. § 60.14(h); and
- (5) in any calendar year following the change, emissions of no pollutant within the scope of Total Baseline Emissions exceed the emissions of that pollutant in the Total Baseline Emissions.

45. Separate Limitation on Resolution of Claims. Notwithstanding the provisions of Section XIII ("Termination"), the provisions of Paragraph 44 ("Resolution of Future Claims - Covenant Not to Sue") shall terminate at Gannon and Big Bend, as follows. On December 31, 2006, the provisions of Paragraph 44 shall terminate and be of no further effect as to physical changes or changes in the method of operation at Gannon. On December 31, 2012, the provisions of Paragraph 44 shall terminate and be of no further effect as to physical changes or changes in the method of operation at Big Bend. If Tampa Electric Re-Powers any Unit at Big Bend under the terms provided by this Consent Decree, then for each such Unit the provisions of Paragraph 44 shall terminate two years after each such Unit is Re-Powered or on December 31, 2012, whichever is earlier.

46. Exclusion of Certain Emission Allowances. For any and all actions taken by Tampa Electric pursuant to the terms of this Consent Decree, including but not limited to upgrading of ESPs and scrubbers, installation of NO<sub>x</sub> controls, Re-Powering, and Shutdown, Tampa Electric shall not use or sell any resulting NO<sub>x</sub> or SO<sub>2</sub> emission allowances or credits in any emission trading or marketing program of any kind; provided, however, that:

A. SO<sub>2</sub> credits allocated to Tampa Electric by the Administrator of EPA under the Act, due to the Re-Powering or Shutdown of Gannon, may be retained by Tampa Electric during the year in which they are allocated, but only for Tampa Electric's own use in meeting any acid rain requirement imposed under the Act. For any such allowances not used by Tampa Electric for this purpose by June 30 of the following calendar year, Tampa Electric shall not use, sell, trade, or otherwise transfer these allowances for its benefit or the benefit of a third party unless such a transfer would result in the retiring of such allowances without their ever being used.

A. If Tampa Electric decides to Re-Power any Unit at Big Bend, then Tampa Electric shall be entitled to retain for any purpose under law the difference between the emission allowances that would have resulted from installing BACT-level NO<sub>x</sub> and SO<sub>2</sub> controls at the existing coal-fired Unit and the emission allowances that result from Re-Powering that Unit. Before Tampa Electric uses any allowances within the scope of this Subparagraph, Tampa Electric shall submit the calculation of the net emission allowances for approval by the United States.

A. Nothing in this Consent Decree shall preclude Tampa Electric from using or selling emission allowances arising from Tampa Electric's activities occurring prior to December 31, 1999, or Tampa Electric's activities after that date that are not related to actions required of Tampa Electric under this Consent Decree. The United States and Tampa Electric agree that the operation of the SO<sub>2</sub> scrubber serving Big Bend Units 1 and 2 meets the requirements of this Subparagraph, and that emission allowances resulting from the operation of this scrubber shall not be treated as an activity related to or required under this Consent Decree.

#### **V. REPORTING AND RECORD KEEPING**

47. Beginning at the end of the first calendar quarter after entry of this Consent Decree, and in addition to any other express reporting requirement in this Consent Decree, Tampa Electric shall submit to EPA a quarterly report, consistent with the form attached to this Consent Decree as the Appendix, within thirty (30) days after the end of each calendar quarter until this Consent Decree is terminated.
48. Tampa Electric's report shall be signed by Tampa Electric's Vice President, Environmental and Fuels, or, in his or her absence, Vice President, Energy Supply, or higher ranking official, and shall contain the following certification:

I certify under penalty of law that this information was prepared 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 directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I understand that there are significant penalties for making misrepresentations to

or misleading the United States.

## **VI. CIVIL PENALTY**

49. Within thirty (30) calendar days of entry of this Consent Decree, Tampa Electric shall pay to the United States a civil penalty in the amount of \$3.5 million. The civil penalty shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File Number and DOJ Case Number 90-5-2-1-06932 and the civil action case name and case number of this action. The costs of such EFT shall be Tampa Electric's responsibility. Payment shall be made in accordance with instructions provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Middle District of Florida. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. Tampa Electric shall provide notice of payment, referencing the USAO File Number, DOJ Case Number 90-5-2-1-06932, and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Paragraph 82 (Notice). Failure to timely pay the civil penalty shall subject Tampa Electric 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 Tampa Electric 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.

## **VII. NO<sub>x</sub> REDUCTION PROJECTS AND MITIGATION PROJECTS**

50. Tampa Electric shall submit plans for and shall implement the NO<sub>x</sub> Reduction and Other Mitigation Projects (referred to together as "Projects") described in this Section, and in Paragraph 35 of this Consent Decree, in compliance with the schedules and terms of this Consent Decree. In performing these Projects, Tampa Electric shall spend no less than \$10 million in Project Dollars, in total, unless the Additional NO<sub>x</sub> Reduction Project(s) selected under Paragraph 52.C is estimated to cost more than \$5 million, in which case Tampa Electric shall spend no less than \$10 million but no more than \$11 million in Project Dollars, in total. Tampa Electric shall expend the full amount of the Project Dollars required by this Paragraph on or before May 1, 2010. Tampa Electric shall maintain for review by EPA, upon its request, all documents identifying Project Dollars spent by Tampa Electric.
51. All plans and reports prepared by Tampa Electric pursuant to the requirements of Paragraph 35 and this Section of the Consent Decree shall be publicly available without charge.
52. Tampa Electric shall submit the required plans for and complete the following Projects:
- (1)
  - (2) Early NO<sub>x</sub> reductions through combustion optimization as described in Paragraph 35 of this Consent Decree.

(A) Performance of Air Chemistry Work in Tampa Bay Estuary. Tampa

Electric shall expend no more than \$2 million Project Dollars in conducting or financing stack tests, emissions estimation, ambient air monitoring, data acquisition and analysis, and any combination thereof that: (1) is not otherwise required by law, (2) will provide data or analysis that is not already available, (3) will complement work carried out by other persons examining the air chemistry of Tampa Bay Estuary, and (4) will help close gaps in current understanding of air chemistry in the Tampa Bay Estuary. Tampa Electric shall either conduct this work itself, fund other persons already conducting such work on a non-profit basis, or both. For work Tampa Electric intends to conduct itself, the company shall describe the proposed work and a schedule for completion to EPA, in writing, at least 90 days prior to the date on which Tampa Electric intends to start such work, including an explanation of why the proposed work meets all the requirements of this Subparagraph. Unless EPA objects to the proposed work on the grounds it does not comply with the requirements of this Subparagraph, Tampa Electric shall undertake and complete the work according to the proposed schedule. If Tampa Electric elects to spend some or all of the \$2 million Project Dollars to finance work to be performed by other persons or organizations, the company shall provide to EPA for review and approval a plan that describes the work to be performed, the persons or organizations conducting the work, the schedule for its completion, the schedule for Tampa Electric's payments, and an explanation of why the proposed payment(s) meets all the requirements of this Subparagraph. The plan shall be provided to EPA at least 90 days prior to the date on

which Tampa Electric will begin transferring the money to finance such work.

All payments to persons or organizations under such a plan shall be completed by Tampa Electric no later than June 30, 2002. Before Tampa Electric makes such payments for the benefit of any person or organization carrying out work under this Paragraph, Tampa Electric shall secure a written, signed commitment from such person to provide Tampa Electric and EPA with the results of the work.

C. Additional NO<sub>x</sub> Reductions Project(s).

(1) General Requirement. Tampa Electric shall expend the remainder of the Project Dollars required under this Consent Decree to: (i) demonstrate innovative NO<sub>x</sub> control technologies on any of its Units or boilers at Gannon or Big Bend not Shutdown or on Reserve / Standby; and/or (ii) reduce the NO<sub>x</sub> Emission Rate for any Big Bend coal-combusting Unit below the lowest rate otherwise applicable to it under this Consent Decree.

(1) For any Project(s) at Gannon. If Tampa Electric elects to undertake a project on an eligible Gannon Unit(s) to demonstrate any innovative NO<sub>x</sub> control technology, within six months after entry of this Consent Decree Tampa Electric shall submit a plan to EPA, for review and approval, which sets forth: (a) the NO<sub>x</sub> demonstration or innovative control technology projects being proposed; (b) the anticipated cost of the projects; (c) the reduction in NO<sub>x</sub> or other environmental benefits anticipated to result from the project, and (d) a schedule for implementation of the project providing for



commencement and completion in accordance with the requirements of this Subparagraph. . EPA shall complete its review of this plan within 60 days after receipt. If such project is approved, Tampa Electric shall complete installation of the technology no later than December 31, 2004 as part of the Re-Powering of such Units; provided, however, that nothing in this Paragraph alters Tampa Electric's obligation under Paragraph 26 of this Consent Decree.

(1) For any Project(s) at Big Bend. At least three (3) years prior to the date on which the expenditure of any Project Dollars is to commence on Big Bend under this Subparagraph C, Tampa Electric shall submit a plan to EPA for review and approval which sets forth: (a) the NO<sub>x</sub> demonstration or innovative control technology projects being proposed; (b) the anticipated cost of the projects; (c) the reduction in NO<sub>x</sub> or other environmental benefits anticipated to result from the project, and (d) a schedule for implementation of the project providing for commencement and completion in accordance with the requirements of this Subparagraph. If EPA approves the projects contained in the plan, Tampa Electric shall implement the project(s). Projects that would demonstrate innovative NO<sub>x</sub> control technology or reduce the NO<sub>x</sub> Emission Rate for any Big Bend coal-fired or Re-Powered Unit shall be operating and achieving reductions or demonstrating the performance of the innovative technology, as applicable, not later than May 1, 2010.

(1) Follow-up Report(s). Within sixty (60) days following the implementation of each EPA-approved project, Tampa Electric shall submit to EPA a report that documents the date that all aspects of the project were implemented, Tampa Electric's results in implementing the project, including the emission reductions or other environmental benefits achieved, and the Project Dollars expended by Tampa Electric in implementing the project.

### **VIII. STIPULATED PENALTIES**

53. For purposes of this Consent Decree, within thirty days after written demand from the United States, and subject to the provisions of Sections X (Force Majeure) and XI (Dispute Resolution), Tampa Electric shall pay the following stipulated penalties to the United States for each failure by Tampa Electric to comply with the terms of this Consent Decree.

A. For failure to pay timely the civil penalty as specified in Section VI of this Consent Decree, \$10,000 per day.

A. For all violations of a 24 hour Emission Rate – (1) Less than 5% in excess of limit: \$4,000 per day, per violation; (2) more than 5% but less than 10% in excess of limit: \$9,000 per day per violation; (3) equal to or greater than 10% in excess of limit: \$27,500 per day, per violation

A. For all violations of 30-day rolling average Emission Rates – (1) Less

than 5% in excess of limit: \$150 per day per violation; (2) more than 5% but less than 10% in excess of limit: \$300 per day per violation; (3) equal to or greater than 10% in excess of limit: \$800 per day per violation. Violation of an Emission Rate that is based on a 30 day rolling average is a violation on every day of the 30 day period on which the average is based. Where a violation of a 30 day rolling monthly average Emission Rate (for the same pollutant and from the same source) recurs within periods less than 30 days, Tampa Electric shall not pay a daily stipulated penalty for any day of the recurrence for which a stipulated penalty has already been paid.

A. For all violations of a 95% removal efficiency requirement – (1) For removal efficiency less than 95% but greater than or equal to 94%, \$4,000 per day, per violation; (2) for removal efficiency less than 94% but greater than or equal to 91%, \$9,000 per day, per violation; (3) for removal efficiency less than 91%, \$27,500 per day, per violation. For all violations of a 93% removal efficiency requirement – (1) For removal efficiency less than 93% but greater than or equal to 92%, \$4,000 per day, per violation; (2) for removal efficiency less than 92% but greater than or equal to 90%, \$9,000 per day, per violation; (3) for removal efficiency less than 90%, \$27,500 per day, per violation;

A. Violation of deadlines for Shutdown of boilers or Units or megawatt capacity — \$27,500 per day, per violation.

A. Failure to apply for the permits required by Paragraphs 26, 27, 34, 38, and

42 — \$1,000 per day, per violation.

A. Failure to implement the recommendations of the PM BACT Analysis or the PM optimization study by May 1, 2004 — \$5,000 per day, per violation for first 30 days; \$15,000 per day, per violation, for next 30 days; \$27,500 per day, per violation, thereafter.

A. Failure to commence combustion optimization at Big Bend Units 1, 2, or 3 on or before May 30, 2003 as required by Paragraph 35, \$10,000 per day, per violation.

A. Failure to operate the scrubbers at Big Bend Units 1, 2, or 3 on any day except as permitted by Paragraphs 29, 30, or 31, \$27,500 per day, per violation.

A. Failure to submit quarterly progress and monitoring report — \$100 per day, per violation, for first ten days late, and \$500 per day for each day thereafter.

A. Failure to complete timely any action or payment required by or established under Subparagraph 52(B) (Performance of Air Chemistry Work in Tampa Bay Estuary), \$5,000 per day, per violation

A. Failure to perform NO<sub>x</sub> reduction or demonstration project(s), by the deadline(s) established in Subparagraph 52.C (Additional NO<sub>x</sub> Reductions Project(s)), \$10,000 per day, per violation;

A. For failure to spend at least the number of Project Dollars required by this Consent Decree by date specified in Paragraph 50, \$5,000 per day, per violation;

A. Violation of any Consent Decree prohibition on use of allowances as provided in Paragraph 46 — three times the market value of the improperly used

allowance as measured at the time of the improper use.

54. Should Tampa Electric dispute its obligation to pay part or all of a stipulated penalty demanded by the United States, it may avoid the imposition of a separate stipulated penalty for the failure to pay the disputed penalty by depositing the disputed amount in a commercial escrow account pending resolution of the matter and by invoking the Dispute Resolution provisions of this Consent Decree within the time provided in this Section VIII of the Consent Decree for payment of the disputed penalty. If the dispute is thereafter resolved in Tampa Electric's favor, the escrowed amount plus accrued interest shall be returned to Tampa Electric. If the dispute is resolved in favor of the United States, it shall be entitled to the escrowed amount determined to be due by the Court, plus accrued interest. The balance in the escrow account, if any, shall be returned to Tampa Electric.
55. The United States reserves the right to pursue any other remedies to which it is entitled, including, but not limited to, a new civil enforcement action and additional injunctive relief for Tampa Electric's violations of this Consent Decree. If the United States elects to seek civil or contempt penalties after having collected stipulated penalties for the same violation, any further penalty awarded shall be reduced by the amount of the stipulated penalty timely paid or escrowed by Tampa Electric. Tampa Electric shall not be required to remit any stipulated penalty to the United States that is disputed in compliance with Part XI of this Consent Decree until the dispute is resolved in favor of the United

States. However, nothing in this Paragraph shall be construed to cease the accrual of the stipulated penalties until the dispute is resolved.

#### **IX. RIGHT OF ENTRY**

56. Any authorized representative of EPA or an appropriate state agency, including independent contractors, upon presentation of credentials, shall have a right of entry upon the premises of Tampa Electric's plants identified herein at any reasonable time for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment and inspecting and copying all records maintained by Tampa Electric required by this Consent Decree. Tampa Electric shall retain such records for a period of twelve (12) years from the date of entry of this Consent Decree. Nothing in this Consent Decree shall limit the authority of EPA to conduct tests and inspections at Tampa Electric's facilities under Section 114 of the Act, 42 U.S.C. § 7414.

#### **X. FORCE MAJEURE**

57. If any event occurs which causes or may cause a delay in complying with any provision of this Consent Decree, Tampa Electric shall notify the United States in writing as soon as practicable, but in no event later than seven (7) business days following the date Tampa Electric first knew, or within ten (10) business days following the date Tampa Electric should have known by the exercise of due

diligence, that the event caused or may cause such delay. In this notice Tampa Electric shall reference this Paragraph of this Consent Decree and describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by Tampa Electric to prevent or minimize the delay, and the schedule by which those measures will be implemented. Tampa Electric shall adopt all reasonable measures to avoid or minimize such delays.

58. Failure by Tampa Electric to comply with the notice requirements of Paragraph 57 shall render this Section X voidable by the United States as to the specific event for which Tampa Electric has failed to comply with such notice requirement. If voided, the provisions of this Section shall have no effect as to the particular event involved.
59. The United States shall notify Tampa Electric in writing regarding Tampa Electric's claim of a delay in performance within (15) fifteen business days of receipt of the Force Majeure notice provided under Paragraph 57. If the United States agrees that the delay in performance has been or will be caused by circumstances beyond the control of Tampa Electric, including any entity controlled by Tampa Electric, and that Tampa Electric could not have prevented the delay through the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay for a period equivalent to the delay actually caused by such circumstances. Such stipulation shall be filed as a modification to this Consent Decree in order to be

effective. Tampa Electric shall not be liable for stipulated penalties for the period of any such delay.

60. If the United States does not accept Tampa Electric's claim of a delay in performance, to avoid the imposition of stipulated penalties Tampa Electric must submit the matter to this Court for resolution by filing a petition for determination. Once Tampa Electric has submitted the matter, the United States shall have fifteen business days to file its response. If Tampa Electric submits the matter to this Court for resolution, and the Court determines that the delay in performance has been or will be caused by circumstances beyond the control of Tampa Electric, including any entity controlled by Tampa Electric, and that Tampa Electric could not have prevented the delay by the exercise of due diligence, Tampa Electric shall be excused as to that event(s) and delay (including stipulated penalties otherwise applicable), but only for the period of time equivalent to the delay caused by such circumstances.

61. Tampa Electric shall bear the burden of proving that any delay in performance of any requirement of this Consent Decree was caused by or will be caused by circumstances beyond its control, including any entity controlled by it, and that Tampa Electric could not have prevented the delay by the exercise of due diligence. Tampa Electric shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. 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.

62. Unanticipated or increased costs or expenses associated with the performance of Tampa Electric's obligations under this Consent Decree shall not constitute circumstances beyond the control of Tampa Electric or serve as a basis for an extension of time under this Section. However, 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 Tampa Electric and Tampa Electric 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 appeals of any allegedly unlawful terms and conditions imposed by the permitting authority in an expeditious fashion.
63. The parties agree that, depending upon the circumstances related to an event and Tampa Electric's response to such circumstances, the kinds of events listed below could also qualify as Force Majeure events within the meaning of this Section X of the Consent Decree: Construction, labor, or equipment delays; natural gas and gas transportation availability delays; acts of God; and the failure of an innovative technology approved under Paragraph 26.B and 52.C.
64. Notwithstanding any other provision of this Consent Decree, this Court shall not draw any inferences nor establish any presumptions adverse to either party as a

result of Tampa Electric delivering a notice pursuant to this Section or the parties' inability to reach agreement on a dispute under this Part.

65. 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 United States or approved by this Court. Tampa Electric shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

#### **XI. DISPUTE RESOLUTION**

66. The dispute resolution procedure provided by this Section XI shall be available to resolve all disputes arising under this Consent Decree, except as provided in Section X regarding Force Majeure, or in this Section XI, provided that the party making such application has made a good faith attempt to resolve the matter with the other party.
67. The dispute resolution procedure required herein shall be invoked by one party to this Consent Decree giving written notice to another advising of a dispute pursuant to this Section XI. 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

shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice.

68. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting between representatives of the United States and Tampa Electric unless the parties' representatives agree to shorten or extend this period.
69. If the parties are unable to reach agreement during the informal negotiation period, the United States shall provide Tampa Electric with a written summary of its position regarding the dispute. The written position provided by the United States shall be considered binding unless, within thirty (30) calendar days thereafter, Tampa Electric files with this Court a petition which describes the nature of the dispute and seeks resolution. The United States may respond to the petition within forty-five (45) calendar days of filing.
70. 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.
71. This Court shall not draw any inferences nor establish any presumptions adverse to either party as a result of invocation of this Section or the parties' inability to reach agreement.

72. As part of the resolution of any dispute under this Section, in appropriate circumstances the parties may agree, or this Court may order, an extension or modification of the schedule for completion of work under this Consent Decree to account for the delay that occurred as a result of dispute resolution. Tampa Electric shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.
73. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes; provided, however, that the United States and Tampa Electric reserve their rights to argue for what the applicable standard of law should be for resolving any particular dispute. Notwithstanding the preceding sentence of this Paragraph, as to disputes arising under Paragraph 32, the Court shall sustain the position of the United States as to the BACT Analysis recommendations and the optimization study measures that should be installed and implemented, unless Tampa Electric demonstrates that the position of the United States is arbitrary or capricious.

## **XII. GENERAL PROVISIONS**

74. Effect of Settlement. This Consent Decree is not a permit; compliance with its terms does not guarantee compliance with all applicable Federal, State or Local laws or regulations.
75. Satisfaction of all of the requirements of this Consent Decree constitutes full

settlement of and shall resolve and release Tampa Electric from all civil liability of Tampa Electric to the United States for the claims referred to in Paragraphs 43 and 44 of this Consent Decree. This Consent Decree does not apply to any claim(s) of alleged criminal liability, which are reserved.

76. In any subsequent administrative or judicial action initiated by the United States for injunctive relief or civil penalties relating to the facilities covered by this Consent Decree, Tampa Electric shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defense based upon any contention that the claims raised by the United States in the subsequent proceeding were brought, or should have been brought, in the instant case; provided, however, that nothing in this Paragraph is intended to affect the enforceability of the Resolution of Claims provisions of Paragraphs 43 and 44 of this Consent Decree..
77. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Tampa Electric of its obligation to comply with all applicable Federal, State and Local laws and regulations. Subject to Paragraph 43 and 44, nothing contained in this Consent Decree shall be construed to prevent or limit the United States' rights to obtain penalties or injunctive relief under the Clean Air Act or other federal, state or local statutes or regulations.
78. Third Parties. This Consent Decree does not limit, enlarge or affect the rights of any party to this Consent Decree as against any third parties.

79. Costs. Each party to this action shall bear its own costs and attorneys' fees.
80. Public Documents. All information and documents submitted by Tampa Electric to the United States pursuant to this Consent Decree shall be subject to public inspection, unless subject to legal privileges or protection or identified and supported as business confidential by Tampa Electric in accordance with 40 C.F.R. Part 2.
81. Public Comments. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements 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.
82. Notice. Unless otherwise provided herein, notifications to or communications with the United States or Tampa Electric shall be deemed submitted on the date they are postmarked and sent either by overnight mail, return receipt requested, or by certified or registered mail, return receipt requested. Except as otherwise provided herein, when written notification to or communication with the United States, EPA, or Tampa Electric is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States of America:

For U.S. DOJ –

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# 90-5-2-1-06932

Whitney L. Schmidt  
Coordinator, Affirmative Civil Enforcement Program  
Office of the United States Attorney  
Middle District of Florida  
400 N. Tampa Street  
Tampa, FL 33602

For U.S. EPA -

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 IV  
61 Forsyth Street, S.E.  
Atlanta, GA 30303

As to Tampa Electric:

Sheila M. McDevitt  
General Counsel  
Tampa Electric Company  
P.O. Box 111  
Tampa, FL 333601-0111

83. 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.
84. Modification. Except as otherwise allowed by law, there shall be no modification of this Consent Decree without written approval by the United States and Tampa Electric, and approval of such modification by the Court.
85. 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, or modification. During the term of this Consent Decree, any party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.
86. Complete Agreement. 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. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. An Appendix is attached to and incorporated into this Consent Decree by this reference.

### **XIII. TERMINATION**

87. Except as provided in Paragraphs 43, 44, and 45 (involving resolution of claims),



this Consent Decree shall be subject to termination upon motion by either party after Tampa Electric satisfies all requirements of this Consent Decree, including payment of all stipulated penalties that may be due, installation of control technology systems as specified herein, the receipt of all permits specified herein, securing valid Title V Permits for Gannon and Big Bend that incorporate all emission and fuel limits from this Consent Decree as well as all operational limits established under this Consent Decree, and the submission of all final reports indicating satisfaction of the requirements for implementation of all acts called for under Part VII of this Consent Decree.

88. If Tampa Electric believes it has achieved compliance with the requirements of this Consent Decree, then Tampa Electric shall so certify to the United States. Unless the United States objects in writing with specific reasons within 60 days of receipt of Tampa Electric's certification, the Court shall order that this Consent Decree be terminated on Tampa Electric's motion. If the United States objects to Tampa Electric's certification, then the matter shall be submitted to the Court for resolution under Section XI of this Consent Decree. In such case, Tampa Electric shall bear the burden of proving that this Consent Decree should be terminated.

SO ORDERED, THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2000.

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UNITED STATES DISTRICT JUDGE

Signature Page for Consent Decree in United States v. Tampa Electric Company,  
Civ. No. 99-2524 CIV-T-23F

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Steve A. Herman  
Assistant Administrator for Enforcement  
U.S. Environmental Protection Agency  
Washington, D.C.



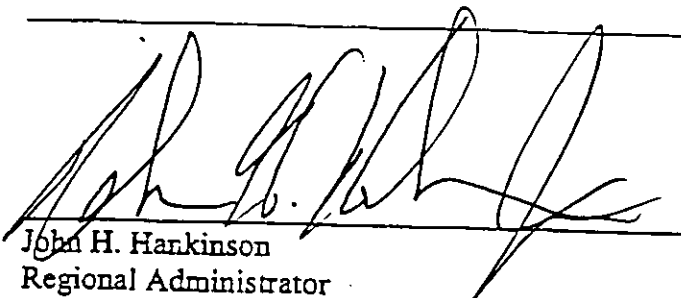
Bruce Buckheit  
Director

Gregory Jaffe  
Senior Enforcement Counsel

Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Washington, D.C.

Signature Page for Consent Decree in United States v. Tampa Electric Company,  
Civ. No. 99-2524 CIV-T-23F

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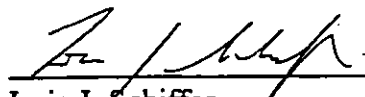


John H. Hankinson  
Regional Administrator  
U.S. Environmental Protection Agency (Region IV)  
Atlanta, Georgia

Signature Page for Consent Decree in United States v. Tampa Electric Company,  
Civ. No. 99-2524 CIV-T-23F

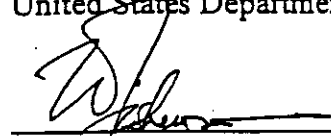
THROUGH ITS UNDERSIGNED REPRESENTATIVES, THE UNITED STATES AGREES  
AND CONSENTS TO ENTRY OF THE FOREGOING CONSENT DECREE:

FOR PLAINTIFF  
UNITED STATES OF AMERICA:



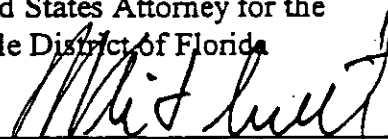
Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources  
Division  
United States Department of Justice

Date: 2/28/00



W. Benjamin Fisherow  
Assistant Chief  
Thomas A. Mariani, Jr.  
Jon A. Mueller  
Senior Attorneys  
Environmental Enforcement Section  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 514-4620

Donna A. Bucella  
United States Attorney for the  
Middle District of Florida

By: 

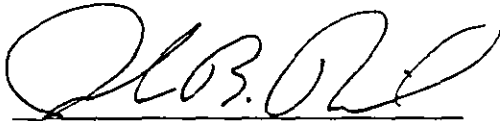
Whitney L. Schmidt  
Affirmative Civil Enforcement Coordinator  
Assistant United States Attorney  
United States Attorney's Office  
Middle District of Florida  
Florida Bar No. 0337129  
Tampa, Florida 33602  
(813) 274-6000  
(813) 274-6198 (facsimile)

Signature Page for Consent Decree in United States v. Tampa Electric Company,  
Civ. No. 99-2524 CIV-T-23F

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THROUGH ITS UNDERSIGNED REPRESENTATIVES, TAMPA ELECTRIC COMPANY  
AGREES AND CONSENTS TO ENTRY OF THE FOREGOING CONSENT DECREE

FOR TAMPA ELECTRIC COMPANY

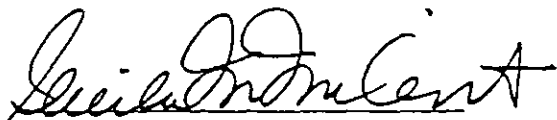


John B. Ramil

President

Tampa Electric Company

Date: 2/29/00



Sheila M. McDevitt

General Counsel

Tampa Electric Company