Mariani, Thomas

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. CASE NO: 8:99-cv-2524-T-23

TAMPA ELECTRIC COMPANY,

Defendant.
_____/

ORDER

The United States' unopposed motion (Doc. 15) "to Enter Second Amendment to Previously-Entered Consent Decree" is **GRANTED**. A separate order on the "Second Amendment to the Consent Decree" ensues.

ORDERED in Tampa, Florida, on June 12, 2009.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

Plea.
90-5-2-1-06932

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Docket Text:
ORDER granting [15]--United States' motion to enter second amendment to previously-entered consent decree. Signed by Judge Steven D. Merryday on 6/12/2009. (BK)
8:99-cv-2524 Notice has been electronically mailed to:
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patricia.galvez@usdoj.gov
Megan A, Proulx maproulx@tecoenergy.com, nxpesqera@tecoenergy.com

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Regional Counsel's Office, Region IV
61 Forsyth St., SW
Atlanta, GA 30303

John C. Cruden
Environmental Enforcement Section
Land & Natural Resources Div.
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044-7611

Lois J. Schiffer
U.S. Department of Justice
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611

Sheila M. McDevitt
Tampa Electric Company
General Counsel
P.O. Box 111
Tampa, FL 33601

Thomas A. Mariani , Jr
U.S. Department of Jusice
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil No. 99-2524 CIV-T-23F
	)	
v.	)	
	)	
TAMPA ELECTRIC COMPANY	)	
	)	
Defendant.	)	
	)	

SECOND AMENDMENT TO THE CONSENT DECREE

WHEREAS, on October 4, 2000, this Court entered a Consent Decree (the "Consent Decree") resolving this matter;

WHEREAS, Since October 4, 2000, Tampa Electric Company ("Tampa Electric") has for sometime been undertaking work to carry out its obligations under the Consent Decree, and implementation of the Consent Decree has led the parties to identify certain provisions in the Consent Decree that should be adjusted;

WHEREAS, on September 10, 2001, this Court entered an Amendment to the Consent Decree proposed by the parties to adjust and correct the Consent Decree in certain respects;

WHEREAS, Tampa Electric has continued to undertake work in fulfillment of its obligations under the Consent Decree since the Amendment to the Consent Decree was entered by this Court, and during this further implementation period – amounting to more than one-half of the time scheduled in the Decree for construction activities – the parties have identified additional Consent Decree provisions that should be adjusted,

to: i) resolve disputes between the parties (involving, e.g., continuous emissions monitors for particulate matter, installation of selective catalytic reduction (SCR) devices, and ammonia back-up systems), ii) conform measurement methods allowed to Tampa Electric with those allowed to other coal-fired power plant operators who settled these kinds of cases after the negotiation of this Consent Decree (e.g., NOx emission rates), and iii) make other improvements to the Decree (clarify limits on retention of NOx allowances by Tampa Electric);

WHEREAS, each of these adjustments is described further in the following clauses of this Amendment, as follows;

WHEREAS, with respect to the control technology known as SCR, the work that has been undertaken by Tampa Electric in fulfillment of its obligations under the Consent Decree includes work related to the design and installation of air pollution control technology known as selective catalytic reduction systems at Tampa Electric's Big Bend electric generating units 1, 2, 3 and 4 ("Big Bend Units");

WHEREAS, Paragraph 37 of the Consent Decree establishes a process for adjustment of the emission rate for nitrogen oxides ("NO_x") emissions that must be achieved at Big Bend Units 1-3 if Tampa Electric elects to continue to burn coal at such units, and the adjustment process is dependent upon a determination of the cost of installation of the SCR at Big Bend Unit 4 and the calculation, based on such cost, of a "cost ceiling" for the cost of installing SCRs at Big Bend Units 1, 2, and 3;

WHEREAS, Tampa Electric has elected to continue burning coal at Big Bend Units 1, 2, and 3;

WHEREAS, Tampa Electric has submitted information to the United States relating to the cost of installation of the SCR at Big Bend Unit 4 and related to the emission rate reductions that could be achieved at Big Bend Units 1-3 within the cost ceiling determined in accordance with Paragraph 37 of the Consent Decree;

WHEREAS, during the Parties' discussions relating to determination of the emission rate for NO_x under Paragraph 37 of the Consent Decree, the Parties noted that the method of calculating the emission rate of NO_x under this Consent Decree differs from the method established in some other, subsequent Consent Decrees with other operators of coal-fired power plants and that the alternate method established in some other Consent Decrees would, in light of the operations of the Big Bend Units, provide a more accurate reflection of actual emissions at the Big Bend Units. Based on the conclusion that the alternative methodology for calculating the emission rate is an appropriate measure for use in this Consent Decree, the Parties are proposing an adjustment to the definition of "30-Day Rolling Average Emission Rate" in the Consent Decree;

WHEREAS, Tampa Electric will maintain a necessary back-up system to provide for the supply of ammonia for its SCR operations (in the event the primary, piped-in supply of ammonia fails), but such back-up supply will depend on a facility and operation not part of Big Bend and not party to the Consent Decree;

WHEREAS, with respect to use of certain NOx emission allowances, Tampa Electric has also proposed a change to the Consent Decree that would make clear the Company's right to retain NO_x emission allowances in the event of supercompliance

(achievement of certain emission reductions beyond those required by the Consent Decree);

WHEREAS, with respect to installation and operation of continuous emissions monitors for particulate matter (PM CEM), the parties disagree over the efficacy of the PM CEM already installed and operated under the Consent Decree (see Paragraphs 32.E & F) as well as the terms under which a second PM CEM is to be installed and operated (see Paragraph 32.G) and wish to alter the terms of those Paragraphs in order to resolve that dispute;

WHEREAS, the United States believes that the adjustments effected by this Amendment are appropriate;

NOW THEREFORE, without any other admission of fact or law, and upon the consent and agreement of the Parties, it is hereby ORDERED and DECREED that the Consent Decree is amended as follows:

The Consent Decree shall remain in full force and effect in accordance with its terms, except as follows:

A. AMENDMENTS

1. Calculation of Emission Rate. Current Subparagraph 8 A. is deleted, and new Subparagraph 8 A. is inserted in its place, as follows:

8 A. in the case of a coal-fired, steam electric generating unit at Big Bend, each such rate shall be calculated as a 30-Day Rolling Average Emission Rate. A "30-Day Rolling Average Emission Rate" shall be

herein defined as the Emission Rate expressed as lb/mmBTU and calculated in accordance with the following procedure: first, sum the total pounds of the pollutant in question emitted from the Unit during an Operating Day and the previous twenty-nine (29) Operating Days; second, sum the total heat input to the Unit in mmBTU during the Operating Day and the previous twenty-nine (29) Operating Days; and third, divide the total number of pounds of the pollutant emitted during the thirty (30) Operating Days by the total heat input during the thirty (30) Operating Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. In calculating all 30-Day Rolling Average Emission Rates, Tampa Electric:

(1) shall include all emissions and BTUs commencing from the time the Unit is synchronized with a utility electric distribution system through the time that the unit ceases to be synchronized with such utility electric distribution system, except as provided by Subparagraph 8A(2), (3), or (4);

(2) shall use the methodologies and procedures set forth in 40 C.F.R. Part 75, Appendix F;

(3) may exclude emissions of NO_x and BTUs occurring during the fifth and subsequent Cold Start Up Period(s) that occur in any 30-day period if inclusion of such emissions would result in a violation of any applicable 30-Day Rolling Average Emission Rate, and if Tampa Electric has installed, operated and maintained the SCR in question in

accordance with manufacturers' specifications and good engineering practices. A "Cold Start Up Period" occurs whenever there has been no fire in the boiler of a Unit (no combustion of any fossil fuel) for a period of six hours of more. The emissions to be excluded during the fifth and subsequent Cold Start Up Period(s) shall be the lesser of: (1) those NO_x emissions emitted during the eight hour period commencing when the Unit is synchronized with a utility electric distribution system and concluding eight hours later, or (2) those emitted prior to the time that the flue gas has achieved the SCR operational temperature as specified by the catalyst manufacturer; and

(4) may exclude NO_x emissions and BTUs occurring during any period of malfunction (as defined at 40 C.F.R. 60.2) of the SCR.

2. Add paragraph 13A. As follows:

13A. "Operating Day" shall mean any calendar day on which a Unit burns fossil fuel.

3. SCR Installation and Operation. Current Subparagraphs 37 A., 37 B., 37 C., 37 D., and 37 E. are deleted, and new Subparagraphs 37 A. and 37 B. shall be inserted as follows:

37 A. Tampa Electric shall acquire, install, commence operating SCRs, and meet at each of Big Bend Units 1, 2, and 3 a 30-Day Rolling Average

Emission Rate of 0.12 lb/mmBTU NO_x, according to the schedule in Paragraph 37 B.

37 B. Tampa Electric shall meet the 30-Day Rolling Average Emission Rate specified in Subparagraph 37 A., in accordance with the following schedule:

Big Bend Unit 3 - on or before June 1, 2008

Big Bend Unit 2 - on or before June 1, 2009

Big Bend Unit 1 - on or before June 1, 2010

4. NOx Allowances. Immediately following Subparagraph 46 C., new Subparagraph 46 D. shall be added as follows:

46 D. Notwithstanding the provisions of paragraphs 46.A, B, or C, Tampa Electric may retain for its own use in meeting any NO_x emissions reductions required by law, rule or regulation, all NO_x allowances or credits generated as a result of actions taken pursuant to this Consent Decree, and if Tampa Electric achieves NOx emissions that are below the 30-Day Rolling Average Emission Rate of 0.12 lb/mmBTU NO_x at Big Bend Units 1-3 or 0.10 lb/mmBTU NOx at Big Bend Unit 4, then Tampa Electric shall be entitled to retain for its own use or for use in any applicable trading market, NO_x emission allowances equal to the number of tons of NO_x that Tampa Electric reduced from its emissions that are in excess of the NO_x reductions required by this Decree.

5. PM CEM. Delete current Subparagraph 32.E and replace with the following new Subparagraph 32.E:

32.E. Option to Replace PM CEM Now in Operation. At its choice, Tampa Electric may replace the PM CEM already installed at Big Bend. If Tampa Electric makes this replacement, the Company must install, calibrate, and commence continuous operation of the replacement PM CEM (in compliance with all applicable EPA regulation and guidance, including achievement of the acceptance criteria during the process undertaken for the initial correlation testing, which must be done in compliance with the EPA standard known as PS-11), all of which must be completed on or before December 31, 2010. The Company must submit to EPA, for comment only, the Company plan for collecting any and all data the Company will use for assessing the new PM CEM's achievement of acceptance criteria. Tampa Electric may then proceed with its data gathering so long as the Company has submitted to EPA the Company's plan for collecting data at least forty-five days prior to the first collection of data. Also, If Tampa Electric replaces the currently-installed PM CEM and the replacement PM CEM measures particulate matter from more than one Big Bend Unit then by the same deadline for operation and installation, Tampa Electric also must submit to the United States a protocol which Tampa Electric certifies as a valid and appropriate method for allocating the PM CEM monitoring results between the Units served by the PM CEM. Such protocol must conform to any applicable EPA regulation or guidance, and certification of the protocol must be endorsed by an engineer

of appropriate licensing and experience. Tampa Electric must keep in continuous operation the PM CEM already in place at Big Bend, unless and until Tampa Electric replaces that PM CEM with a new one, in conformance with the terms of this Subparagraph. Upon entry of this Amendment by the Court, any and all of Tampa Electric's pending petitions or requests to EPA concerning the feasibility or infeasibility of continued operation of the current PM CEM operating at Big Bend are withdrawn. No such request may be renewed except in accord with the standards set in the Consent Decree for such a request and not until at least two years after Tampa Electric has kept in continuous operation the replacement PM CEM that the Company is authorized to install under this Subparagraph.

6. PM CEM. Delete current Subparagraph 32.G and replace with the following new Subparagraph 32.G :

32.G. Installation and Operation of the Second PM Monitor. Notwithstanding whether Tampa Electric elects to exercise the option under Subparagraph 32.E to replace the PM CEM already operating at Big Bend, on or before eighteen months from the effective date of this Second Amendment, Tampa Electric also must install, calibrate, and commence continuous operation of a second PM CEM (in compliance with all applicable EPA regulation and guidance, including achievement of the acceptance criteria during the process undertaken for the initial correlation testing, which must be done in compliance with the EPA standard known as PS-11), which must serve one or more other Big

Bend Units. Tampa Electric must submit to EPA, for comment only, the Company plan for collecting any and all data the Company will use for assessing the new PM CEM's achievement of the acceptance criteria. Tampa Electric may then proceed with its data gathering so long as the Company has submitted to EPA the Company's plan for collecting data at least forty-five days prior to the first collection of data. If this second PM CEM measures particulate matter from more than one Big Bend Unit, then by the same deadline for installation and operation of this PM CEM, Tampa Electric also must submit to the United States a protocol which Tampa Electric certifies as a valid and appropriate method for allocating the PM CEM's monitoring results between the Units served by the PM CEM. Such protocol must conform to any applicable EPA regulation or guidance, and certification of the protocol must be endorsed by an engineer of appropriate licensing and experience.

7. Add the following to the end of the list in Paragraph 63:

; and the failure of the commercial pipeline on which Tampa Electric relies to supply ammonia to its Big Bend facility.

B. GENERAL PROVISIONS

8. All provisions of this amendment shall be treated as part of the original Consent Decree (as previously amended) and are to be construed, implemented, and enforced as part of that Decree.

9. Public Notice and Opportunity for Comment. The parties agree and acknowledge that final approval by the United States and entry of this Second Amendment to the Consent Decree is subject to the provisions of 28 C.F.R. Section 50.7, which provides for notices of the lodging of this Amendment 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 consideration which indicate that the Consent Decree is inappropriate, improper, or inadequate. Tampa Electric agrees to entry of this Amendment without further notice.

IT IS SO ORDERED.

Dated this 12th day of June, 2009.

UNITED STATES DISTRICT JUDGE

Second Amendment to the February 2000 Consent Decree in United States v. Tampa Electric Company Civil Action No. 99-2524 CIV-T-23F

FOR PLAINTIFF
THE UNITED STATES OF AMERICA:

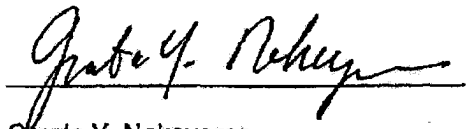
Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Thomas A. Mariani, Jr.
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington , D.C. 20044-7611
202-514-4620
202-616-6584 (facsimile)
Tom.Mariani@usdoj.gov

Robert E. O'Neill
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
400 North Tampa Street (#3200)
Tampa, Florida 33602
Florida Bar No. 0337129
813-274-6000
813-274-6198 (facsimile)
Whitney.Schmidt@usdoj.gov

Second Amendment to the February 2000 Consent Decree in United States v. Tampa Electric Company Civil Action No. 99-2524 CIV-T-23F



Granta Y. Nakayama
Assistant Administrator
Office of Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
Washington, D.C.

Second Amendment to the February 2000 Consent Decree in United States v. Tampa Electric Company Civil Action No. 99-2524 CIV-T-23F

J. I. Palmer, Jr.
Regional Administrator
U.S. Environmental Protection Agency -
Region IV
Atlanta, Georgia

Second Amendment to the February 2000 Consent Decree in United States v. Tampa Electric Company Civil Action No. 99-2524 CIV-T-23F

FOR DEFENDANT TAMPA ELECTRIC CO.

Sheila M. McDevitt
Consultant to Tampa Electric Company with Authority to Execute Second Amendment to Consent Decree

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Megan A, Proulx maproulx@tecoenergy.com, nxpesqera@tecoenergy.com

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P.O. Box 7611
Washington, DC 20044-7611

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Sheila M. McDevitt

Tampa Electric Company
General Counsel
P.O. Box 111
Tampa, FL 33601

Thomas A. Mariani , Jr
U.S. Department of Jusice
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

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Thomas A. Mariani Jr.
U.S. Department of Jusice
P.O. Box 7611
Washington, DC 20044-7611
