

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
)
STATE OF NEW YORK,)
STATE OF NEW JERSEY,)
STATE OF CONNECTICUT,)
HOOSIER ENVIRONMENTAL COUNCIL,))
and OHIO ENVIRONMENTAL COUNCIL,))
Plaintiff-Intervenors,)
)
vs.) 1:99-cv-1693-LJM-JMS
)
)
PSI ENERGY, INC. and)
THE CINCINNATI GAS & ELECTRIC)
COMPANY,)
Defendants.)

SPECIAL VERDICT FORM

**PROJECTS FOR WHICH DEFENDANTS ASSERT A
ROUTINE MAINTENANCE, REPAIR, AND REPLACEMENT DEFENSE**

1. Project #4: Condensor retubing at Beckjord unit 5 from January 1991 to February 1991;
- a. Did Defendants prove by a preponderance of the evidence that the project qualified as RMRR activity?
- _____ YES ✓ NO

If you answered yes, return a verdict for Defendants on this project on the Verdict Form and proceed to the next project. If you answered no, then proceed to questions 1.b. and 1.c. below.

- b. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

____ YES ✓ NO

- c. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in nitrogen oxides emissions of 40 tons or more per year as a result of the project?

____ YES ✓ NO

If you answered yes to either question 1.b. or 1.c., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered no to both questions 1.b. and 1.c., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

2. Project #5: Condensor retubing at Beckjord unit 6 from September 1994 to November 1994;

- a. Did Defendants prove by a preponderance of the evidence that the project qualified as RMRR activity?

____ YES ✓ NO

If you answered yes, return a verdict for Defendants on this project on the Verdict Form and proceed to the next project. If you answered no, then proceed to question 2.b. below.

- b. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

____ YES ✓ NO

If you answered yes to question 2.b., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered

no to questions 2.b., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

3. Project #11: Replacement of the front wall radiant superheater at Wabash River unit 2 from June 1989 to July 1989;

a. Did Defendants prove by a preponderance of the evidence that the project qualified as RMRR activity?

YES

NO

If you answered yes, return a verdict for Defendants on this project on the Verdict Form and proceed to the next project. If you answered no, then proceed to questions 3.b. and 3.c. below.

b. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

YES

NO

c. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in nitrogen oxides emissions of 40 tons or more per year as a result of the project?

YES

NO

If you answered yes to either question 3.b. or 3.c., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered no to both questions 3.b. and 3.c., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

4. Project #12: Replacement of the high temperature finishing superheater tubes and upper reheater tubing assemblies at Wabash River unit 2 from May 1992 to September 1992;

a. Did Defendants prove by a preponderance of the evidence that the project qualified as RMRR activity?

YES

NO

If you answered yes, return a verdict for Defendants on this project on the Verdict Form and proceed to the next project. If you answered no, then proceed to question 4.b. below.

b. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

YES

NO

If you answered yes to question 4.b., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered no to question 4.b., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

5. Project #13: Replacement of the finishing, intermediate, and radiant superheater tubes and upper reheat tube bundles at Wabash River unit 3 from June 1989 to October 1989;

a. Did Defendants prove by a preponderance of the evidence that the project qualified as RMRR activity?

YES

NO

If you answered yes, return a verdict for Defendants on this project on the Verdict Form and proceed to the next project. If you answered no, then proceed to questions 5.b. and 5.c. below.

b. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

YES NO

- c. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in nitrogen oxides emissions of 40 tons or more per year as a result of the project?

YES NO

If you answered yes to either question 5.b. or 5.c., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered no to both questions 5.b. and 5.c., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

6. Project #15: Replacement of the boiler pass and heat recovery actions at Wabash River unit 5 from February 1990 to May 1990;

- a. Did Defendants prove by a preponderance of the evidence that the project qualified as RMRR activity?

YES NO

If you answered yes, return a verdict for Defendants on this project on the Verdict Form and proceed to the next section. If you answered no, then proceed to questions 6.b. and 6.c. below.

- b. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

YES NO

- c. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in nitrogen oxides emissions of 40 tons or more per year as a result of the project?

YES NO

If you answered yes to either question 6.b. or 6.c., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next section. If you answered no to both questions 6.b. and 6.c., return a verdict for Defendants on this project on the Verdict Form and proceed to the next section.

REMAINING PROJECTS

7. Project #1: Life extension project at Beckjord unit 1 from November 1987 to February 1988;

a. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

YES NO

b. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in nitrogen oxides emissions of 40 tons or more per year as a result of the project?

YES NO

If you answered yes to either question 7.a. or 7.b., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered no to both questions 7.a. and 7.b., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

8. Project #2: Life extension project at Beckjord unit 2 from October 1987 to January 1988;

a. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

YES NO

- b. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in nitrogen oxides emissions of 40 tons or more per year as a result of the project?

YES

NO

If you answered yes to either question 8.a. or 8.b., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered no to both questions 8.a. and 8.b., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

9. Project #3: Life extension project at Beckjord unit 3 from October 1985 to January 1986;

- a. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

YES

NO

- b. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in nitrogen oxides emissions of 40 tons or more per year as a result of the project?

YES

NO

If you answered yes to either question 9.a. or 9.b., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered no to both questions 9.a. and 9.b., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

10. Project # 6: Replacement of the pulverizers at Gallagher unit 1 from April 1998 to July 1998;

- a. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in

sulfur dioxide emissions of 40 tons or more per year as a result of the project?

YES NO

If you answered yes to question 10.a., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered no to both questions 10.a., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

11. Project #7: Condensor retubing at Gallagher unit 2 from August 1990 to December 1990;

a. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

YES NO

If you answered yes to question 11.a., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered no to both questions 11.a., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

12. Project # 8: Replacement of the pulverizers at Gallagher unit 3 from February 1999 to April 1999;

a. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

YES NO

If you answered yes to question 12.a., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered no to question 12.a., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

13. Project #9: Replacement of the reheater tube section at Gibson unit 2 from February 2001 to May 2001;

a. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did

Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

___ YES ✓ NO

If you answered yes to question 13.a., return a verdict for Plaintiffs on this project on the Verdict Form and proceed to the next project. If you answered no to both questions 13.a., return a verdict for Defendants on this project on the Verdict Form and proceed to the next project.

14. Project # 10: Replacement of the slope tubes and lower headers at Miami Fort unit 5, January 1995 to March 1995;

a. After considering any demand growth exclusion that you find Defendants have proven by a preponderance of the evidence for this project, did Plaintiffs prove by a preponderance of the evidence that a reasonable power plant owner or operator would have expected a net increase in sulfur dioxide emissions of 40 tons or more per year as a result of the project?

___ YES ✓ NO

If you answered yes to question 14.a., return a verdict for Plaintiffs on this project on the Verdict Form. If you answered no to both question 14.a., return a verdict for Defendants on this project on the Verdict Form.

Once you have completed all of the questions on this Special Verdict Form and filled out the Verdict Form, sign and date both this Special Verdict Form and the Verdict Form and inform the Bailiff that you have reached a verdict.



Date May 22, 2008