

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
REGIONAL HEARING  
SEP 30 2002

IN THE MATTER OF: ) Docket No. **CAA-05-2002-0021**  
) )  
Southwestern Electric ) Proceeding to Assess an  
Cooperative, Inc. ) Administrative Penalty  
at its ) under Section 113(d) of the  
Freedom Power Station ) Clean Air Act, REGION V  
St. Elmo, Illinois ) 42 U.S.C. § 7413(d)  
) )  
) )  
Respondent. )  
\_\_\_\_\_ )

CONSENT AGREEMENT AND FINAL ORDER

I. Jurisdictional Allegations

1. This civil administrative proceeding for the assessment of a penalty is initiated pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits" (Consolidated Rules), 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. The Respondent is Southwestern Electric Cooperative, Inc. (Southwestern), which is, and was at all times relevant to the alleged violations, a corporation doing business in Illinois,

with a place of business located at its Freedom Power Station facility at State Road 4, Rural Route #2 in St. Elmo, Illinois.

4. U.S. EPA alleges that Southwestern violated Section 412 of the Act, 42 U.S.C. § 7651k, and 40 C.F.R. § 75.62 by failing to submit a monitoring plan, 40 C.F.R. § 75.63 by failing to submit all initial certification applications and reports, and 40 C.F.R. § 75.64 by failing to submit quarterly reports at its Freedom Power Station facility in St. Elmo, Illinois.

5. The parties have agreed to a settlement of the alleged violations through the entry of this Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.18(b) and (c).

6. This CAFO simultaneously commences and concludes the administrative proceeding as allowed by the Consolidated Rules. 40 C.F.R. § 22.13(b).

## **II. Stipulations**

7. For purposes of settlement, Respondent hereby admits the jurisdictional allegations set forth in this CAFO. 40 C.F.R. § 22.18(b)(2).

8. Respondent hereby neither admits nor denies the factual allegations in this CAFO. 40 C.F.R. § 22.18(b)(2).

9. Respondent consents to assessment of the civil penalty in this CAFO and any other conditions or requirements in this CAFO. 40 C.F.R. § 22.18(b)(2).

10. Respondent waives its right to a hearing under the Consolidated Rules on the penalty or the allegations in this CAFO, and waives its right to appeal the terms of this CAFO under the Consolidated Rules or Section 113(d) of the Act. 40 C.F.R. § 22.18(b)(2), 42 U.S.C. § 7413(d).

11. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

12. Respondent hereby certifies that it is complying fully with the Acid Rain Program at 40 C.F.R. Parts 72 and 75.

### **III. Factual Allegations**

13. Respondent is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

14. Southwestern owns and operates one simple cycle combustion turbine (turbine) at its Freedom Power Station located at State Road 4, Rural Route #2 in St. Elmo, Illinois.

15. The turbine has a rated capacity of approximately 47 megawatts, and is primarily fueled by "pipeline natural gas" as defined in 40 C.F.R. § 72.2.

16. The turbine is a utility unit as defined by 42 U.S.C. § 7651a and 40 C.F.R. § 72.2.

17. The turbine commenced commercial operation on June 1, 2000.

18. The turbine is a new unit as defined by 42 U.S.C. § 7651a and 40 C.F.R. § 72.2.

19. The turbine is an affected unit as defined by 42 U.S.C. § 7651a and 40 C.F.R. § 72.2 and as set forth at 40 C.F.R. § 72.6(a)(3)(i).

20. As an affected unit, Southwestern's turbine is subject to 40 C.F.R. Parts 72 and 75.

#### Count I

21. Complainant incorporates paragraphs 1 through 21 of this CAFO, as if set forth in this paragraph.

22. From July 15, 2000 to September 6, 2002, Southwestern failed to submit a monitoring plan to the Administrator and to the applicable EPA Regional Office and/or local air pollution control agency.

23. From July 15, 2000 to September 6, 2002, Southwestern's failure to submit a monitoring plan to the Administrator and to the applicable EPA Regional Office and/or local air pollution control agency, constitutes violations of 40 C.F.R §§ 75.62.

24. Southwestern's violation of 40 C.F.R. § 72.62 subjects Southwestern to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

#### Count II

25. Complainant incorporates paragraphs 1 through 24 of this Complaint, as if set forth in this paragraph.

26. From October 15, 2000 to October 2, 2002, Southwestern failed to submit all initial applications and reports, in accordance with 40 C.F.R. § 75.63.

27. From October 15, 2000 to October 2, 2002, Southwestern's failure to submit all applications and reports, in accordance with 40 C.F.R. § 75.63, constitutes a violation of 40 C.F.R. § 75.63.

28. Southwestern's violation of 40 C.F.R. § 75.63 subjects Southwestern to the issuance of an Administrative Order assessing

a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

**Count III**

29. Complainant incorporates paragraphs 1 through 28 of this Complaint, as if set forth in this paragraph.

29. From October 30, 2000 to August 13, 2002, Southwestern failed to submit quarterly reports constitutes a violation of 40 C.F.R. § 75.64.

30. From October 30, 2000 to August 13, 2002, Southwestern's failure to submit quarterly reports constitutes a violation of 40 C.F.R. § 75.64. Each failure to submit each required quarterly report constitutes a separate violation.

31. Southwestern's violation of 40 C.F.R. § 75.64 subjects Southwestern to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

**Civil Penalty**

32. In consideration of Southwestern's correction of the alleged violations, cooperation during pre-filing investigation and good faith cooperation to resolve this matter, U.S. EPA agrees to a proposed penalty of \$85,492.

33. Southwestern must pay the \$85,492 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

34. Southwestern must send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

35. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Nidhi K. O'Meara, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.

Chicago, Illinois 60604-3509

36. This civil penalty is not deductible for federal tax purposes.

37. If Southwestern does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Southwestern will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Southwestern will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

**General Provisions**

39. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in this CAFO.

40. Nothing in this CAFO restricts U.S. EPA's authority to seek Southwestern's compliance with the Act and other applicable laws and regulations.

41. This CAFO does not affect Southwestern's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

42. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Southwestern's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

43. The terms of this CAFO bind Southwestern, and its successors, and assigns.

44. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

45. Each party agrees to bear its own costs and fees in this action.

46. This CAFO constitutes the entire agreement between the parties.

CAA-05- 2002-0021

CONSENT AGREEMENT AND FINAL ORDER  
Southwestern Electric Cooperative, Inc.  
Docket No.

U.S. Environmental Protection  
Agency, Complainant

Date:

9/27/2002

By:

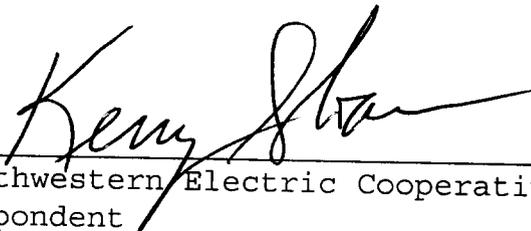


Stephen Rothblatt, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

Date:

9-25-02

By:



Southwestern Electric Cooperative, Inc.,  
Respondent

CONSENT AGREEMENT AND FINAL ORDER  
Southwestern Electric Cooperative, Inc.  
Docket No. CAA-05-2002-0021

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: 9-27-02

*fn*   
\_\_\_\_\_  
Thomas V. Skinner  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

In the Matter of Southwestern Electric Cooperative, Inc.  
Docket No.

CAA-05- 2002 - 0 0 21 RECEIVED  
REGIONAL HEARING  
CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the  
original of the combined Complaint and Consent Agreement and  
Final Order, docket number CAA-05- 2002 - 0 0 21 to the Regional  
Hearing Clerk, Region 5, United States Environmental Protection  
Agency, and that I mailed correct copies by first-class, postage  
prepaid, certified mail, return receipt requested, to  
Southwestern Electric Cooperative, Inc.'s Counsel by placing them  
in the custody of the United States Postal Service addressed as  
follows:

Mathew R. Hortenstine  
Taylor Law Offices  
122 East Washington Avenue  
Effingham, Illinois 62401

I also certify that a copy of the combined Complaint and  
Consent Agreement and Final Order was sent by First Class Mail  
to:

Julie Armitage, Acting Manager  
Compliance and Enforcement Section  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

on the 30<sup>th</sup> day of September, 2002.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0178 4674