



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV - 4 2014

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Scott R. Alexander  
Taft Stettinius & Hollister LLP  
One Indiana Square, Suite 3500  
Indianapolis, Indiana 46204-2023

Dear Mr. Alexander:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket no. CAA-05-2015-0006. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on NOV 4 2014.

Pursuant to paragraph 112 of the CAFO, Duke Energy Indiana, Inc. must pay the civil penalty within 30 days of NOV 4 2014. Your check must display the docket number CAA-05-2015-0006.

Please direct any questions regarding this case to Nidhi O'Meara, Associate Regional Counsel at (312) 886-0568.

Sincerely,

Nathan A. Frank, Chief  
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Nidhi O'Meara/C-14J  
Phil Perry, IDEM



6. Respondent consents to the assessment of the civil penalty specified in this CAFO and the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Section 109 of the CAA, 42 U.S.C. § 7409, requires the Administrator of the EPA to promulgate national primary and secondary ambient air quality standards.

10. 40 C.F.R. Part 50 sets forth national primary and secondary ambient air quality standards as required by Section 109 of the CAA.

### **Indiana State Implementation Plan**

11. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to the Administrator of the EPA a plan which provides for the implementation, maintenance, and enforcement of the national primary and secondary ambient air quality standards promulgated under Section 109 of the CAA within such state.

12. 40 C.F.R. Part 52, Subpart P sets forth the applicable State Implementation Plan (SIP) for Indiana, under Section 110 of the CAA. *See* 40 C.F.R. §§ 52.770 and 52.773.

13. 40 C.F.R. § 52.23 states that failure to comply with any provision of 40 C.F.R. Part 52, or with any approved regulatory provision of a SIP, or with any permit condition contained within an operating permit issued under an EPA-approved program that is

incorporated into a SIP, shall render the person so failing to comply in violation of the requirement of an applicable SIP and subject to enforcement under Section 113 of the CAA.

14. On December 28, 2009, EPA approved Indiana's revised continuous monitoring requirements for applicable air pollutants at 326 IAC 3-5 as part of its federally enforceable SIP. *See* 74 Fed. Reg. 68541.

15. 326 IAC 3-5-1(b)(2) of the Indiana SIP states that the owner or operator of a fossil fuel fired steam generator of greater than 100 million British thermal units per hour (MMBtu/hr heat) input capacity shall continuously monitor opacity.

16. 326 IAC 3-5-2(1) of the Indiana SIP states that owners or operators of monitoring equipment installed to comply with 326 IAC 3-5 shall comply with the performance specifications (PS) set forth in 40 C.F.R. Part 60, Appendix B.

17. 40 C.F.R. Part 60, Appendix B, PS-1, Section 8-1(2) states that the owner or operator must install the opacity monitor at a location where the opacity measurements are representative of the total emissions from the affected facility and where condensed water vapor is not present.

18. 326 IAC 3-5-8 states that the owner or operator of a continuous opacity monitoring system (COMS) required by federal or state regulation or permit shall install, calibrate, maintain, operate and certify the COMS in accordance with applicable federal regulations, 326 IAC 5 and any applicable permit.

19. On June 15, 1995, EPA approved Indiana's opacity regulations at 326 IAC 5-1 as part of its federally enforceable SIP. *See* 60 Fed. Reg. 31412.

20. On July 16, 2002, EPA approved Indiana's revised opacity regulations at 326 IAC 5-1, as a revision to its federally enforceable SIP. *See* 67 Fed. Reg. 46589.

21. 326 IAC 5-1-1(a) of the Indiana SIP states that the opacity limitations set forth in 326 IAC 5-1 apply to opacity, not including condensed water vapor, emitted by facilities or sources located in areas not listed in 326 IAC 5-1-1.

22. 326 IAC 5-1-2(1) of the Indiana SIP states, in pertinent part, that opacity from a source or facility shall not exceed an average of forty percent (40%) in any one (1), six (6)-minute averaging period.

23. 326 IAC 5-1-3 of the Indiana SIP sets forth temporary alternative opacity limitations (TAOLs).

#### **New Source Performance Standards**

24. Section 111 of the CAA, 42 U.S.C. § 7411, requires the Administrator of the EPA to establish federal standards of performance for new sources within the list of categories of stationary sources.

25. Section 111(e) of the CAA, 42 U.S.C. § 7411(e) states it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

26. 40 C.F.R. Part 60 sets forth the standards of performance for new stationary sources pursuant to Section 111 of the CAA.

27. 40 C.F.R. § 60.11(c) states that the opacity standards set forth in 40 C.F.R. Part 60 shall apply at all times except during startup, shutdown, malfunction, and as otherwise provided in the applicable standard.

28. 40 C.F.R. § 60.13(f) states that all continuous monitoring systems shall be installed such that representative measurements of emissions or process parameters from the affected facility are obtained.

29. 40 C.F.R. Part 60, Subpart D sets forth the standards of performance for Fossil-Fuel-Fired Steam Generators for which construction is commenced after August 17, 1971.

30. 40 C.F.R. § 60.42(a)(2) states that no owner or operator subject to the provisions of 40 C.F.R. Part 60, Subpart D shall cause to be discharged into the atmosphere from any affected facility any gases that exhibit greater than twenty percent (20%) opacity except for one, six-minute period per hour of not more than twenty-seven percent (27%) opacity.

31. 40 C.F.R. § 60.45(a) states, in pertinent part, that each owner or operator shall install, calibrate, maintain, and operate continuous opacity monitoring systems for measuring opacity. *See also* 40 C.F.R. Part 60, Appendix B, PS-1.

#### **Title V (Part 70) Operating Permits**

32. Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), requires the Administrator of the EPA to promulgate regulations which established the minimum elements of a permit program to be administered by any air pollution control agency.

33. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), states it shall be unlawful for any person to violate any requirement of a permit issued under Title V of the CAA, 42 U.S.C. § 7661 et seq. *See also* 40 C.F.R. § 70.7(b).

34. 40 C.F.R. Part 70 provides for the establishment of comprehensive state air quality permitting systems consistent with the requirements of Title V of the CAA.

35. 40 C.F.R. § 70.3 requires States to provide for the permitting of any major source or any source subject to Section 111 of the CAA.

36. 40 C.F.R. Part 70, Appendix A, provides the approval status of Indiana's operating permit program. Indiana was granted final full approval of its operating permit program on November 20, 2001. *See* 66 Fed. Reg. 62969 (December 4, 2001). *See also* 326 IAC 2-7.

37. 40 C.F.R. § 52.788 states that emissions limitations and other provisions contained in operating permits issued by the state in accordance with the provisions of the federally approved permit program shall be the applicable requirements of the federally approved SIP for Indiana for the purposes of Section 113 of the CAA and shall be enforceable by EPA. *See also* 326 IAC 2-7-7(a).

### **Definitions**

38. All terms in this CAFO shall have the definition assigned to such terms in the CAA, its implementing regulations, the Indiana SIP or the applicable Title V, Part 70 Operating Permit (Part 70 Operating Permit). In the absence of a definition in the CAA, its implementing regulations, the Indiana SIP or the applicable Part 70 Operating Permit, the ordinary meaning of such term shall apply.

39. "Affected facility" means, with reference to a stationary source, any apparatus to which a standard is applicable under 40 C.F.R. Part 60. *See* 40 C.F.R. § 60.2.

40. "Continuous monitoring system" means the total equipment, required under the emission monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters. *See* 40 C.F.R. § 60.2.

41. "Continuous opacity monitoring system" or "COMS" means the equipment required by the applicable permit, state rule, or federal regulation used to measure the opacity of the effluent on a continuous basis as either the optical density of the effluent gas or the opacity of the effluent gas. *See* 326 IAC 3-4-1(4).

42. "Emission limitation and emission standard" means a requirement established by the state or EPA which limits the quantity, rate, or concentration of emissions of air pollutants on

a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under the CAA. *See* Section 302 of the CAA and 326 IAC 3-4-1(6).

43. “Exceedance” means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and indicates that emissions (or opacity) are greater than the applicable emission limitation or standard consistent with any averaging period specified for averaging the results of the monitoring. *See* 326 IAC 3-4-1(9).

44. “Facility” means any one structure, piece of equipment, installation or operation which emits or has the potential to emit any air contaminant. *See* 326 IAC 1-2-27.

45. “Fossil fuel fired steam generating unit” means a furnace or boiler used in the process of burning fossil fuel for the purpose of producing steam by heat transfer. *See* 40 C.F.R. § 60.41.

46. “Major source” is defined at 40 C.F.R. § 70.2 and 326 IAC 2-7-1(22).

47. “Opacity” means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. *See* 40 C.F.R. § 60.2.

48. “Owner or operator” means any person who owns, leases, operates, controls, or supervises an affected facility. *See* 40 C.F.R. § 60.2 and 326 IAC 1-2-51.

49. “Person” includes an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof. *See* Section 302(e) of the CAA.

50. “Stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant. *See* Section 302(z) of the CAA, 42 U.S.C. § 7602(z) and 40 C.F.R. § 60.2.

### **Federal Enforcement**

51. Section 113(a) of the CAA, 42 U.S.C. § 7413(a) states whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable SIP or permit, the Administrator of the EPA shall notify, both the person who is in violation of any requirement or prohibition of an applicable SIP or permit and the applicable State in which the plan applies, of such finding. At any time after the expiration of 30 days following the date on which such notice of violation (NOV) was issued, the Administrator may issue an administrative penalty order in accordance with Section 113(d) of the CAA.

52. Section 113(d) of the CAA, 42 U.S.C. 7413(d), states the Administrator of the EPA may issue an administrative order against any person assessing a civil penalty of up to \$32,500, per day of violation, up to a total of \$270,000, for violations that occurred through January 12, 2009 and \$37,500 per day of violation, up to a total of \$295,000, for violations that occurred after January 12, 2009, whenever the Administrator finds that such person has violated any requirement or prohibition of an applicable SIP or any other requirements of Subchapter I or V of the CAA. *See* 40 C.F.R. Part 19.

53. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator’s authority to matters where the total penalty does not exceed \$295,000 and the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that

a matter involving a larger penalty amount or longer period of violation is appropriate for an administrative penalty action.

54. Section 113(e) of the CAA, 42 U.S.C. § 7413(e), states that in determining the amount of any penalty, the Administrator shall take into consideration (in addition to other factors as justice may require) the size of business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

### **Factual Allegations and Alleged Violations**

#### **General Factual Allegations**

55. At all times relevant to the CAFO, Respondent owned<sup>1</sup> and operated a stationary Electric Utility Generating Station, located at 1097 N Country Road 950 W, Owensville, Indiana 47665 in Gibson County (Gibson Station).

56. At all times relevant to the CAFO, Respondent was a person as defined in Section— 302(e) of the CAA, 42 U.S.C. § 7602(e).

57. At all times relevant to the CAFO, Gibson Station was a major source as that term is defined in 40 C.F.R. § 70.2. *See also* 326 IAC 2-7-1(22) and Section A.4 of Respondent's 2004 and 2009 Part 70 Operating Permits.

58. At all times relevant to the CAFO, the following fossil fuel steam generating units were operating at Gibson Station:

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<sup>1</sup> Gibson Station Unit 5 is co-owned by Duke and other entities. Solely for purposes of this CAFO and for convenience of reference, these entities will collectively be referenced as "Duke" or the "Respondent."

- a. One dry bottom, pulverized coal-fired boiler, with a nominal heat input capacity of 5875 MMBtu/hr, which commenced construction prior to August 17, 1971 (Unit 1).
- b. One dry bottom, pulverized coal-fired boiler, with a nominal heat input capacity of 5875 MMBtu/hr, which commenced construction prior to August 17, 1971 (Unit 2).
- c. One dry bottom, pulverized coal-fired boiler, with a nominal heat input capacity of 5897 MMBtu/hr, which commenced construction prior to August 17, 1971 (Unit 3).
- d. One dry bottom, pulverized coal-fired boiler, with a nominal heat input capacity of 5897 MMBtu/hr, which commenced construction prior to August 17, 1971 (Unit 4).
- e. One dry bottom, pulverized coal-fired boiler, with a nominal heat input capacity of 5900 MMBtu/hr, installed in 1982 (Unit 5).

#### **Continuous Monitoring of Opacity**

59. At all times relevant to the CAFO, Respondent was required to continuously monitor opacity at Units 1 through 5 at Gibson Station because each unit is a fossil fuel-fired generator of greater than 100 MMBtu/hr heat input capacity. *See* 326 IAC 3-5-1(b)(2).

60. At all times relevant to the CAFO, Respondent was required to continuously monitor opacity at Unit 5 at Gibson Station because Unit 5 (for which construction commenced after August 17, 1971) is a fossil fuel-fired generator of greater than 250 MMBtu/hr heat input capacity. *See* 40 C.F.R. § 60.45(a).

61. At all times relevant to the CAFO, Respondent operated a COMS at Units 1 through 5, which continuously measured opacity at each of the units.

62. At all times relevant to the CAFO, the Respondent operated the COMS at Units 1 through 5 in accordance with 40 C.F.R. Part 60, Appendix B, PS-1.

#### **Part 70 Operating Permits and NSPS Requirements**

63. At all times relevant to the CAFO, Units 1 through 5 of Gibson Station were subject to Indiana's opacity regulations which are a part of Indiana's federally enforceable SIP.

64. At all times relevant to the CAFO, Unit 5 of Gibson Station was an "affected facility" as defined at 40 C.F.R. § 60.2 because the unit is a fossil fuel fired steam generating unit with more than 250 million MMBtu/hr of heat input capacity for which construction was commenced after August 17, 1971.

65. As a result, at all times relevant to the CAFO, Unit 5 of Gibson Station was subject to standards of performance for new sources, as set forth in 40 C.F.R. Part 60, Subpart D.

66. At all times relevant to the CAFO, Respondent was required to have a Title V permit for Gibson Station because it is a major source and subject to Section 111 of the CAA, in accordance with 40 C.F.R. Part 70.

67. On July 7, 2004, Indiana Department of Environmental Management (IDEM) issued a Part 70 Operating Permit to PSI Energy, Inc., (which later became Duke), for Gibson Station, Operation Permit No. T 051-7175-00013 (expired July 7, 2009) (hereinafter 2004 Permit).

68. On June 8, 2009, IDEM renewed Respondent's Part 70 Operating Permit for Gibson Station, Operation Permit Renewal No. T 051-27086-00013 (expired June 8, 2014) (hereinafter 2009 Permit).

69. Respondent was authorized to operate Gibson Station subject to the conditions contained in its 2004 and 2009 Permits.

70. The 2004 and 2009 Permits state that noncompliance with any provisions of the permits constitute a violation of the CAA. *See* Introduction and Section B of both the 2004 and 2009 Permits, Section B.3 of the 2004 Permit and Section B.4 of the 2009 Permit.

71. Section C.12(a) of both the 2004 and 2009 Permits require the Respondent to install, calibrate, maintain, and operate all necessary COMS for Units 1 through 5.

72. Section C.12(b) of both the 2004 and 2009 Permits require Respondent's COMS to meet the performance specifications of 40 C.F.R. Part 60, Appendix B, PS-1.

***Opacity Limitations for Units 1 through 4***

73. Section C.2 of both the 2004 and 2009 Permits sets forth opacity limitations for Units 1 through 4, with the exception of TAOLs set forth in Section D of the permits.

74. Section C.2 of both the 2004 and 2009 Permits, in pertinent part, prohibits opacity from exceeding an average of forty percent (40%) in any one (1), six (6)-minute averaging period.

75. Sections D.1.2(a) and D.2.2(a) of both the 2004 and 2009 Permits set forth the following TAOL for Units 1 through 2: When building a new fire in a boiler, opacity may exceed the forty percent (40%) limitation for a period not to exceed four (4) hours (forty (40), six (6)-minute averaging periods, consecutive or non-consecutive) OR until the flue gas temperature reaches two hundred fifty (250) degrees Fahrenheit, whichever occurs first.

76. Sections D.3.2(a) and D.4.2(a) of both the 2004 and 2009 Permits set forth the following TAOL for Units 3 through 4: When building a new fire in a boiler, opacity may exceed the forty percent (40%) limitation for a period not to exceed five (5) hours (fifty (50), six (6)-minute averaging periods, consecutive or non-consecutive) OR until the flue gas temperature reaches two hundred fifty (250) degrees Fahrenheit, whichever occurs first.

77. Sections (b) and (d) of D.1.2, D.2.2, D.3.2 and D.4.2 of both the 2004 and 2009 Permits set forth the following additional TAOLs for Units 1 through 4:

- a. When shutting down a boiler, opacity may exceed the forty percent (40%) limitation for a period not to exceed four (4) hours (forty (40), six (6)-minute averaging periods, consecutive or non-consecutive).
- b. When removing ashes from the fuel bed or furnace in a boiler or blowing tubes, opacity may exceed the applicable limit. However, opacity levels shall not exceed sixty percent (60%) for any six (6)-minute averaging period and opacity in excess of the limit shall not continue for more than one (1), six (6)-minute averaging period, in any sixty (60) minute period. The averaging periods shall not be permitted for more than three (3), six (6) - minute averaging periods, in a twelve (12) hour period.

78. Sections D.1.2, D.2.2, D.3.2 and D.4.2 of only the 2009 Permit set forth an additional TAOL for Units 1 through 4, which allows Respondent one start up and shut down per calendar year as follows:

- a. When building a new fire in a boiler, opacity may exceed the forty percent (40%) limitation for a period not to exceed a total of seven (7) hours (seventy (70), 6 (6)-minute averaging periods, consecutive or non-consecutive) OR until the flue gas temperature reaches two hundred fifty (250) degrees Fahrenheit, whichever occurs first.
- b. When shutting down a boiler, opacity may exceed the forty percent (40%) limitation for a period not to exceed a total of five (5) hours (fifty (50), six (6)-minute averaging periods, consecutive or non-consecutive).

#### ***Opacity Limitations for Unit 5***

79. Section D.5.1(b) of both the 2004 and 2009 Permits states that pursuant to 40 C.F.R. Part 60, Unit 5 shall not exceed twenty percent (20%) opacity except for one (1), six (6)-minute period per hour, of not more than twenty-seven percent (27%) opacity.

80. Section D.5.1(b) of both the 2004 and 2009 Permits also states that the opacity standard is not applicable during periods of start up, shut down, or malfunction.

### **Specific Factual Allegations**

#### **Unit 1**

81. From January 1, 2009 through December 31, 2013, the COMS data for Unit 1 showed that Unit 1 exceeded the opacity limitation of forty percent (40%) on at least 82 separate occasions.

82. On at least these 82 occasions, none of the TAOLs applied to Unit 1 as set forth in 2004 and 2009 Permits.

#### **Unit 2**

83. From January 1, 2009 through December 31, 2013, the COMS data for Unit 2 showed that Unit 2 exceeded the opacity limitation of forty percent (40%) on at least 200 separate occasions.

84. On at least these 200 occasions, none of the TAOLs applied to Unit 2 as set forth in the 2004 and 2009 Permits.

#### **Unit 3**

85. From January 1, 2009 through December 31, 2013, the COMS data for Unit 3 showed that Unit 3 exceeded the opacity limitation of forty percent (40%) on at least 2,373 separate occasions.

86. On at least these 2,373 occasions, none of the TAOLs applied to Unit 3 as set forth in the 2004 and 2009 Permits.

#### **Unit 4**

87. From January 1, 2009 through December 31, 2013, the COMS data for Unit 4 showed that Unit 4 exceeded the opacity limitation of forty percent (40%) on at least 230 separate occasions.

88. On at least these 230 occasions, none of the TAOLs applied to Unit 4 as set forth in the 2004 and 2009 Permits.

#### Unit 5

89. From January 1, 2009 through December 31, 2013, the COMS data for Unit 5 showed that Unit 5 exceeded the opacity limitation of twenty percent (20%) on at least 940 separate occasions.

90. On at least these 940 occasions, Unit 5 was not otherwise excused from meeting the twenty percent (20%) opacity limitation under 40 C.F.R. § 60.42(a)(2).

91. On at least these 940 occasions, Unit 5 was not in a period of startup, shutdown or malfunction.

#### **Prefiling Documents**

92. On or about June 23, 2011 and July 16, 2013, EPA issued NOVs to the Respondent, alleging that Respondent had violated the CAA, its implementing regulations, the Indiana SIP, and its 2004 and 2009 Permits.

93. EPA also sent a copy of the June 23, 2011 and July 16, 2013 NOVs to IDEM.

94. The Administrator and the Attorney General of the United States, each through their respective delegates, jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this CAFO and the NOVs.

95. On July 17, 2013 (and on numerous subsequent dates which modified the Tolling Agreement to extend the tolling period), EPA and Respondent entered into a Tolling Agreement

which states: “the period commencing on August 1, 2013 and ending on December 1, 2014, inclusive, shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA” regarding the claims identified in this CAFO. (See Attachment A for the Tolling Agreement and subsequent Modifications of the Tolling Agreement).

### **Alleged Violations**

#### **Count 1 - Unit 1**

96. Complainant incorporates by reference the allegations contained in paragraphs 1 through 94.

97. On or about January 1, 2009 through December 31, 2013, Respondent violated Sections 110 and 502 of the CAA, 40 C.F.R. Parts 52 and 70, the Indiana SIP and its 2004 and 2009 Permits by exceeding the opacity limitation of forty percent (40%) at Unit 1 on at least 82 separate occasions.

98. Respondent’s violation of Sections 110 and 502 of the CAA, 40 C.F.R. Parts 52 and 70, the Indiana SIP and its 2004 and 2009 Permits at Unit 1 on at least 82 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 113(d) of the CAA, for each day of violation.

#### **Count 2 - Unit 2**

99. Complainant incorporates by reference the allegations contained in paragraphs 1 through 94.

100. On or about January 1, 2009 through December 31, 2013, Respondent violated Sections 110 and 502 of the CAA, 40 C.F.R. Parts 52 and 70, the Indiana SIP and its 2004 and

2009 Permits by exceeding the opacity limitation of forty percent (40%) at Unit 2 on at least 200 separate occasions.

101. Respondent's violation of Sections 110 and 502 of the CAA, 40 C.F.R. Parts 52 and 70, the Indiana SIP and its 2004 and 2009 Permits at Unit 2 on at least 200 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 113(d) of the CAA, for each day of violation.

**Count 3 - Unit 3**

102. Complainant incorporates by reference the allegations contained in paragraphs 1 through 94.

103. On or about January 1, 2009 through December 31, 2013, Respondent violated Sections 110 and 502 of the CAA, 40 C.F.R. Parts 52 and 70, the Indiana SIP and its 2004 and 2009 Permits by exceeding the opacity limitation of forty percent (40%) at Unit 3 on at least 2,373 separate occasions.

104. Respondent's violation of Sections 110 and 502 of the CAA, 40 C.F.R. Parts 52 and 70, the Indiana SIP and its 2004 and 2009 Permits at Unit 3 on at least 2,373 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 113(d) of the CAA, for each day of violation.

**Count 4 - Unit 4**

105. Complainant incorporates by reference the allegations contained in paragraphs 1 through 94.

106. On or about January 1, 2009 through December 31, 2013, Respondent violated Sections 110 and 502 of the CAA, 40 C.F.R. Parts 52 and 70, the Indiana SIP and its 2004 and 2009 Permits by exceeding the opacity limitation of forty percent (40%) at Unit 4 on at least 230 separate occasions.

107. Respondent's violation of Sections 110 and 502 of the CAA, 40 C.F.R. Parts 52 and 70, the Indiana SIP and its 2004 and 2009 Permits at Unit 4 on at least 230 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 113(d) of the CAA, for each day of violation.

**Count 5 - Unit 5**

108. Complainant incorporates by reference the allegations contained in paragraphs 1 through 94.

109. On or about January 1, 2009 through December 31, 2013, Respondent violated Sections 110, 111 and 502 of the CAA, 40 C.F.R. Parts 52, 60 and 70, the Indiana SIP and its 2004 and 2009 Permits by exceeding the opacity limitation of twenty percent (20%) at Unit 5 on at least 940 separate occasions.

110. Respondent's violation of Sections 110, 111 and 502 of the CAA, 40 C.F.R. Parts 52, 60 and 70, the Indiana SIP and its 2004 and 2009 Permits at Unit 5 on at least 940 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 113(d) of the CAA, for each day of violation.

**Civil Penalty**

111. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent's cooperation and agreement to enter into an Administrative Consent Order (ACO) under Section 113(a) and 114(a) to bring Gibson Station

into compliance with its continuous monitoring requirements, Complainant has determined that an appropriate civil penalty to settle this action is \$199,000.

112. Within 30 days after the effective date of this CAFO, Respondent must pay a \$199,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes) sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note Respondent's name, docket number of this CAFO and the billing document number. Alternatively, the Respondent can pay the \$199,000 civil penalty electronically. For electronic funds transfer, make payable to "Treasurer, United States of America," and send to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name, the docket number of this CAFO and the billing document number.

113. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO and the billing document number to EPA at the following addresses when it pays the penalty:

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

Nidhi K. O'Meara (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

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

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

116. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. 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. 42 U.S.C. § 7413(d)(5).

### **General Provisions**

117. This CAFO resolves all of Respondent's liability for federal civil penalties for all the violations alleged and/or referenced in this CAFO and the NOV's referenced in paragraph 92.

118. Complainant covenants not to sue the Respondent for injunctive relief or other equitable relief for all the violations alleged and/or referenced in the CAFO and the NOV's referenced in paragraph 92 on the condition that Respondent satisfy the terms of the Administrative Consent Order (ACO) signed by the parties on or about the same day as this CAFO.

119. The CAFO does not affect the rights of EPA or the United States to pursue criminal sanctions for any violation of law.

120. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraphs 117 and 118, above, compliance with this CAFO and the ACO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

121. Respondent certifies that it is complying fully with the CAA and other applicable federal, state and local laws.

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

123. The terms of this CAFO bind Respondent, its successors and assigns.

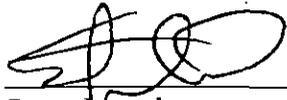
124. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

125. Each party agrees to bear its own costs and attorneys' fees in this action.

126. This CAFO constitutes the entire agreement between the parties to settle the civil penalties associated with the violations alleged in this CAFO.

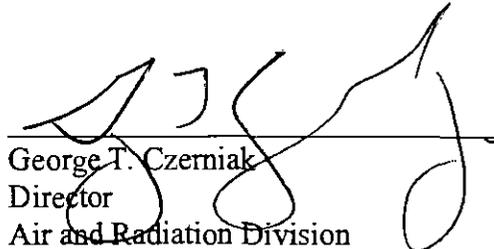
**Duke Energy Indiana, Inc., Respondent**

10/14/14  
Date

  
\_\_\_\_\_  
Steve Humel  
Vice President, Midwest Regulated Operations  
Duke Energy

**United States Environmental Protection Agency, Complainant**

10/31/14  
Date

  
\_\_\_\_\_  
George T. Czerniak  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Duke Energy Indiana, Inc.**  
**Docket No.**

CAA-05-2015-0006

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10/31/14  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Duke Energy Indiana, Inc.**  
Docket No. CAA-05-2015-0006

**Certificate of Service**

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA 05 2015 0006 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Scott R. Alexander  
Taft Stettinius & Hollister LLP  
One Indiana Square, Suite 3500  
Indianapolis, Indiana 46204-2023

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle  
Regional Judicial Officer (C-14J)  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Phil Perry, Branch Chief  
Office of Air Quality / Compliance Branch  
Indiana Department of Environmental Management  
100 North Senate Avenue / Room IGCN 1003  
Indianapolis, Indiana 46204-2251

On the 4 day of November 2014.

Kathy Jones  
for Loretta Shaffer, Administrative  
Program Assistant  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7611 1150 0000 2639 3690

Attachment A: Tolling Agreement and Modifications of the Tolling Agreement

**Attachment A:**  
**Tolling Agreement and**  
**Modifications to the Tolling**  
**Agreement**

**MODIFICATION OF THE JULY 17, 2013 TOLLING AGREEMENT AND THE  
EXTENSIONS OF TOLLING PERIOD (DATED AUGUST 30, 2013,  
NOVEMBER 12, 2013, JANUARY 14, 2014, FEBRUARY 5, 2014, FEBRUARY  
27, 2014, MARCH 20, 2014, APRIL 15, 2014, MAY 15, 2014 AND JULY 29, 2014)  
BETWEEN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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UNDER THE CLEAN AIR ACT AT ITS GIBSON GENERATING STATION**

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Pursuant to Paragraph No. 6 of the July 17, 2013 Tolling Agreement, the Parties may modify the Tolling Agreement in writing.

**EXTENSION OF TOLLING PERIOD**

The Parties hereby stipulate and agree to modify the Tolling Agreement (See Attachment A) by extending the tolling period, as follows:

1. Subject to the provisions of Paragraph No. 7 of the July 17, 2013 Tolling Agreement, the period commencing on August 1, 2013, and ending on December 1, 2014, inclusive, shall not be included in computing the running of any statute of limitations potentially applicable to an action brought by the EPA regarding the Tolled Claims as defined in the July 17, 2013 Tolling Agreement.
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3. This Modification of the Tolling Agreement is effective upon execution by Duke Energy and without the requirement of filing with a Court and may be signed in counterparts.

The undersigned representative(s) of each of the Parties certifies that he or she is fully authorized to enter into this Modification of the Tolling Agreement and to legally bind such Party to all terms and conditions of this document. This Modification of the Tolling Agreement shall be binding upon the EPA and Duke Energy, its subsidiaries and successors.

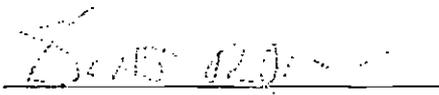
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**SIGNATURES**

Duke Energy, Indiana, Inc. consents to the terms and conditions of this Modification of the Tolling Agreement by its duly authorized representative.

Duke Energy, Indiana, Inc.

By: 

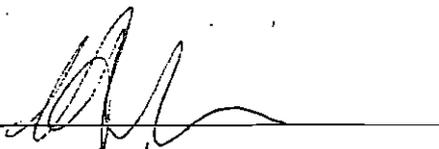
Date: 9/4/14

Printed: Scott R. Alexander

Title: Attorney for Duke Energy Indiana, Inc.

The United States Environmental Protection Agency consents to the terms and conditions of this Modification of the Tolling Agreement by its duly authorized representative.

United States Environmental Protection Agency

By: 

Date: 9/4/2014

Printed: Nidhi K. O'Meara

Title: Attorney for United States Environmental Protection Agency

# Attachment A

**MODIFICATION OF THE JULY 17, 2013 TOLLING AGREEMENT AND THE  
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**SIGNATURES**

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Duke Energy, Indiana, Inc.

By: 

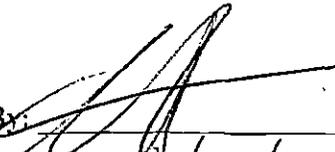
Date: 7/29/14

Printed: Scott R. Alexander

Title: Attorney for Duke Energy Indiana, Inc.

The United States Environmental Protection Agency consents to the terms and conditions of this Modification of the Tolling Agreement by its duly authorized representative.

United States Environmental Protection Agency

By: 

Date: 7/29/2014

Printed: Nidhi K. O'Meara

Title: Attorney for United States Environmental  
Protection Agency

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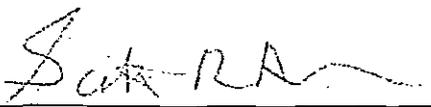
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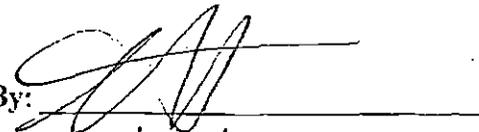
Date: 5/15/14

Printed: Scott R. Alexander

Title: Attorney for Duke Energy Indiana, Inc.

The United States Environmental Protection Agency consents to the terms and  
conditions of this Modification of the Tolling Agreement by its duly authorized  
representative.

United States Environmental Protection Agency

By: 

Date: 5/15/2014

Printed: Nidhi K. O'Meara

Title: Attorney for United States Environmental  
Protection Agency

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Duke Energy, Indiana, Inc.

By: Scott R. Alexander / KMJ

Date: 4/15/14

Printed: Scott R. Alexander

Title: Attorney for Duke Energy Indiana, Inc.

The United States Environmental Protection Agency consents to the terms and conditions of this Modification of the Tolling Agreement by its duly authorized representative.

United States Environmental Protection Agency

By: 

Date: 4/15/2014

Printed: Nidhi K. O'Meara

Title: Attorney for United States Environmental Protection Agency

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Duke Energy, Indiana, Inc.

By: Scott R. Alexander

Date: March 20, 2014

Printed: Scott R. Alexander

Title: Attorney for Duke Energy Indiana, Inc.

The United States Environmental Protection Agency consents to the terms and conditions of this Modification of the Tolling Agreement by its duly authorized representative.

United States Environmental Protection Agency

By: Nidhi K. O'Meara

Date: 3/20/2014

Printed: Nidhi K. O'Meara

Title: Attorney for United States Environmental  
Protection Agency

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Duke Energy, Indiana, Inc.

By: Scott R Alexander

Date: 2/27/14

Printed: Scott R. Alexander

Title: Attorney for Duke Energy Indiana, Inc.

The United States Environmental Protection Agency consents to the terms and conditions of this Modification of the Tolling Agreement by its duly authorized representative.

United States Environmental Protection Agency

By: Nidhi K O'Meara

Date: 2/27/2014

Printed: Nidhi K. O'Meara

Title: Attorney for United States Environmental Protection Agency

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**EXTENSION OF TOLLING PERIOD**

The Parties hereby stipulate and agree to modify the Tolling Agreement (See Attachment A) by extending the tolling period, as follows:

1. Subject to the provisions of Paragraph No. 7 of the July 17, 2013 Tolling Agreement, the period commencing on August 1, 2013, and ending on March 10, 2014, inclusive, shall not be included in computing the running of any statute of limitations potentially applicable to an action brought by the EPA regarding the Tolloed Claims as defined in the July 17, 2013 Tolling Agreement.
2. All other provisions of the July 17, 2013 Tolling Agreement, except Paragraph No. 1 which is hereby modified and extended, and the August 30, 2013, November 12, 2013 and January 14, 2014 Extensions of Tolling Period, are incorporated by reference into this Modification.
3. This Modification of the Tolling Agreement is effective upon execution by Duke Energy and without the requirement of filing with a Court and may be signed in counterparts.
4. The undersigned representative(s) of each of the Parties certifies that he or she is fully authorized to enter into this Modification of the Tolling Agreement and to legally bind such Party to all terms and conditions of this document. This Modification of the Tolling Agreement shall be binding upon the EPA and Duke Energy, its subsidiaries and successors.

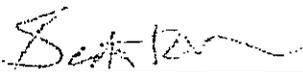
**MODIFICATION OF THE JULY 17, 2013 TOLLING AGREEMENT AND THE  
EXTENSIONS OF TOLLING PERIOD (DATED AUGUST 30, 2013,  
NOVEMBER 12, 2013 AND JANUARY 14, 2014) BETWEEN UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY AND DUKE ENERGY INDIANA,  
INC., REGARDING CERTAIN CLAIMS UNDER THE CLEAN AIR ACT AT ITS  
GIBSON GENERATING STATION**

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**SIGNATURES**

Duke Energy, Indiana, Inc. consents to the terms and conditions of this Modification of the Tolling Agreement by its duly authorized representative.

Duke Energy, Indiana, Inc.

By: 

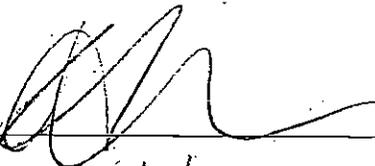
Date: 2/5/14

Printed: Scott R. Alexander

Title: Attorney for Duke Energy Indiana, Inc.

The United States Environmental Protection Agency consents to the terms and conditions of this Modification of the Tolling Agreement by its duly authorized representative.

United States Environmental Protection Agency

By: 

Date: 2/5/2014

Printed: Nidhi K. O'Meata

Title: Attorney for United States Environmental  
Protection Agency

**MODIFICATION OF THE JULY 17, 2013 TOLLING AGREEMENT AND THE  
EXTENSIONS OF TOLLING PERIOD (DATED AUGUST 30, 2013 AND  
NOVEMBER 12, 2013) BETWEEN UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY AND DUKE ENERGY INDIANA, INC., REGARDING  
CERTAIN CLAIMS UNDER THE CLEAN AIR ACT AT ITS GIBSON  
GENERATING STATION**

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On July 17, 2013, August 30, 2013 and November 12, 2013, Duke Energy Indiana, Inc. (Duke Energy) and the United States Environmental Protection Agency (EPA) entered into a Tolling Agreement and Extensions of Tolling Period (See Attachment A) (collectively referred to as "Tolling Agreement"). For purposes of this Modification of the Tolling Agreement, Duke Energy and the EPA shall be referred to individually as a "Party" and shall be referred to collectively as the "Parties."

Pursuant to Paragraph No. 6 of the July 17, 2013 Tolling Agreement, the Parties may modify the Tolling Agreement in writing.

**EXTENSION OF TOLLING PERIOD**

The Parties hereby stipulate and agree to modify the Tolling Agreement (See Attachment A) by extending the tolling period, as follows:

1. Subject to the provisions of Paragraph No. 7 of the July 17, 2013 Tolling Agreement, the period commencing on August 1, 2013, and ending on February 28, 2014, inclusive, shall not be included in computing the running of any statute of limitations potentially applicable to an action brought by the EPA regarding the Tolleed Claims as defined in the July 17, 2013 Tolling Agreement.
2. All other provisions of the July 17, 2013 Tolling Agreement, except Paragraph No. 1 which is hereby modified and extended, and the August 30, 2013 and November 12, 2013 Extensions of Tolling Period, are incorporated by reference into this Modification.
3. This Modification of the Tolling Agreement is effective upon execution by Duke Energy and without the requirement of filing with a Court and may be signed in counterparts.
4. The undersigned representative(s) of each of the Parties certifies that he or she is fully authorized to enter into this Modification of the Tolling Agreement and to legally bind such Party to all terms and conditions of this document. This Modification of the Tolling Agreement shall be binding upon the EPA and Duke Energy, its subsidiaries and successors.

MODIFICATION OF THE JULY 17, 2013 TOLLING AGREEMENT AND THE  
EXTENSIONS OF TOLLING PERIOD (DATED AUGUST 30, 2013 AND  
NOVEMBER 12, 2013) BETWEEN UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY AND DUKE ENERGY INDIANA, INC., REGARDING  
CERTAIN CLAIMS UNDER THE CLEAN AIR ACT AT ITS GIBSON  
GENERATING STATION

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SIGNATURES

Duke Energy, Indiana, Inc. consents to the terms and conditions of this  
Modification of the Tolling Agreement by its duly authorized representative.

Duke Energy, Indiana, Inc.

By: SCA [Signature]

Date: 1/14/14

Printed: Scott R. Alexander

Title: Attorney for Duke Energy Indiana, Inc.

The United States Environmental Protection Agency consents to the terms and  
conditions of this Modification of the Tolling Agreement by its duly authorized  
representative.

United States Environmental Protection Agency

By: [Signature]

Date: 1/14/2014

Printed: Nidhi K. O'Meara

Title: Attorney for United States Environmental  
Protection Agency

**MODIFICATION OF THE JULY 17, 2013 TOLLING AGREEMENT AND THE  
AUGUST 30, 2013 EXTENSION OF TOLLING PERIOD BETWEEN UNITED  
STATES ENVIRONMENTAL PROTECTION AGENCY AND DUKE ENERGY  
INDIANA, INC., REGARDING CERTAIN CLAIMS UNDER THE CLEAN AIR  
ACT AT ITS GIBSON GENERATING STATION**

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On July 17, 2013 and August 30, 2013, Duke Energy Indiana, Inc. (Duke Energy) and the United States Environmental Protection Agency (EPA) entered into a Tolling Agreement and an Extension of Tolling Period, respectively (See Attachment A) (collectively referred to as "Tolling Agreement"). For purposes of this Modification of the Tolling Agreement, Duke Energy and the EPA shall be referred to individually as a "Party" and shall be referred to collectively as the "Parties."

Pursuant to Paragraph No. 6 of the July 17, 2013 Tolling Agreement, the Parties may modify the Tolling Agreement in writing.

**EXTENSION OF TOLLING PERIOD**

The Parties hereby stipulate and agree to modify the Tolling Agreement (See Attachment A) by extending the tolling period, as follows:

1. Subject to the provisions of Paragraph No. 7 of the July 17, 2013 Tolling Agreement, the period commencing on August 1, 2013, and ending on January 31, 2014, inclusive, shall not be included in computing the running of any statute of limitations potentially applicable to an action brought by the EPA regarding the Tolloed Claims as defined in the July 17, 2013 Tolling Agreement.
2. All other provisions of the July 17, 2013 Tolling Agreement, except Paragraph No. 1 which is hereby modified and extended, and the August 30, 2013 Extension of Tolling Period, are incorporated by reference into this Modification.
3. This Modification of the Tolling Agreement is effective upon execution by Duke Energy and without the requirement of filing with a Court and may be signed in counterparts.
4. The undersigned representative(s) of each of the Parties certifies that he or she is fully authorized to enter into this Modification of the Tolling Agreement and to legally bind such Party to all terms and conditions of this document. This Modification of the Tolling Agreement shall be binding upon the EPA and Duke Energy, its subsidiaries and successors.

MODIFICATION OF THE JULY 17, 2013 TOLLING AGREEMENT AND THE  
AUGUST 30, 2013 EXTENSION OF TOLLING PERIOD BETWEEN UNITED  
STATES ENVIRONMENTAL PROTECTION AGENCY AND DUKE ENERGY  
INDIANA, INC., REGARDING CERTAIN CLAIMS UNDER THE CLEAN AIR  
ACT AT ITS GIBSON GENERATING STATION

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SIGNATURES

Duke Energy, Indiana, Inc. consents to the terms and conditions of this  
Modification of the Tolling Agreement by its duly authorized representative.

Duke Energy, Indiana, Inc.

By: Scott R. Alexander

Date: 11/12/13

Printed: Scott R. Alexander

Title: Attorney for Duke Energy Indiana, Inc.

The United States Environmental Protection Agency consents to the terms and  
conditions of this Modification of the Tolling Agreement by its duly authorized  
representative.

United States Environmental Protection Agency

By: Nidhi K. O'Meara

Date: 11/13/2013

Printed: Nidhi K. O'Meara

Title: Attorney for United States Environmental  
Protection Agency

**MODIFICATION OF THE JULY 17, 2013 TOLLING AGREEMENT BETWEEN  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND DUKE  
ENERGY INDIANA, INC., REGARDING CERTAIN CLAIMS UNDER THE  
CLEAN AIR ACT AT ITS GIBSON GENERATING STATION**

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On July 17, 2013, Duke Energy Indiana, Inc. (Duke Energy) and the United States Environmental Protection Agency (EPA) entered into a Tolling Agreement (See Attachment A). For purposes of this Modification of the July 17, 2013 Tolling Agreement, Duke Energy and the EPA shall be referred to individually as a "Party" and shall be referred to collectively as the "Parties."

Pursuant to Paragraph No. 6 of the July 17, 2013 Tolling Agreement, the Parties may modify the Tolling Agreement in writing.

**EXTENSION OF TOLLING PERIOD**

The Parties hereby stipulate and agree to modify the July 17, 2013 Tolling Agreement by extending the tolling period, as follows:

1. Subject to the provisions of Paragraph No. 7 of the July 17, 2013 Tolling Agreement, the period commencing on August 1, 2013, and ending on November 30, 2013, inclusive (Tolling Period), shall not be included in computing the running of any statute of limitations potentially applicable to an action brought by the EPA regarding the Tolloed Claims as defined in the July 17, 2013 Tolling Agreement.
2. All other provisions of the July 17, 2013 Tolling Agreement, except Paragraph No. 1 which is hereby modified and extended, are incorporated by reference into this Modification.
3. This Modification of the July 17, 2013 Tolling Agreement is effective upon execution by Duke Energy and without the requirement of filing with a Court and may be signed in counterparts.
4. The undersigned representative(s) of each of the Parties certifies that he or she is fully authorized to enter into this Modification of the July 17, 2013 Tolling Agreement and to legally bind such Party to all terms and conditions of this document. This Modification of the July 13, 2013 Tolling Agreement shall be binding upon the EPA and Duke Energy, its subsidiaries and successors.

**MODIFICATION OF THE JULY 17, 2013 TOLLING AGREEMENT BETWEEN  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND DUKE  
ENERGY INDIANA, INC., REGARDING CERTAIN CLAIMS UNDER THE  
CLEAN AIR ACT AT ITS GIBSON GENERATING STATION**

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**SIGNATURES**

Duke Energy, Indiana, Inc. consents to the terms and conditions of this Modification of the July 17, 2013 Tolling Agreement by its duly authorized representative.

Duke Energy, Indiana, Inc.

By: Scott R. Alexander

Date: 9/30/13.

Printed: Scott R. Alexander

Title: Attorney for Duke Energy Indiana, Inc.

The United States Environmental Protection Agency consents to the terms and conditions of this Modification of the July 17, 2013 Tolling Agreement by its duly authorized representative.

United States Environmental Protection Agency

By: Nidhi K. O'Meara

Date: 9/3/2013

Printed: Nidhi K. O'Meara

Title: Attorney for United States Environmental Protection Agency

TOLLING AGREEMENT BETWEEN THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY AND DUKE ENERGY INDIANA, INC. REGARDING  
CERTAIN CLAIMS UNDER THE CLEAN AIR ACT AND UNDER THE  
GENERATION SKIP ACT

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This Tolling Agreement (Agreement) is entered into by and between Duke Energy Indiana, Inc. (Duke Energy) and the United States Environmental Protection Agency (EPA). For purposes of this Agreement, Duke Energy and the EPA shall be referred to individually as a "Party" and shall be referred to collectively as the "Parties."

RECITALS

WHEREAS, the EPA contends that it has a cause of action under Section 113 of the Clean Air Act (CAA) against Duke Energy based on alleged opacity violations that occurred from January 2006 through March 31, 2013, at its Gibson Generating Station (Station) located in Owensville, Indiana (Tolled Claims);

WHEREAS, Duke Energy and the EPA enter into this Agreement to facilitate settlement negotiations between the Parties within the time period provided by this Agreement without thereby affecting the claims or defenses available to any Party hereto, except as specifically provided herein.

NOW THEREFORE, the Parties hereby stipulate and agree as follows:

AGREEMENT

1. Subject to the provisions of Paragraph No. 7, the period commencing on August 1, 2013, and ending on September 30, 2013, inclusive (Tolling Period), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA regarding the Tolled Claims.
2. The Tolling Period shall only be applicable to the Tolled Claims - i.e., the claims based on the alleged opacity violations identified in this Agreement.
3. Any defenses by Duke Energy of laches, estoppel, waiver, or other similar equitable defenses based on the running or expiration of any time period shall not include the Tolling Period in any action brought by EPA for the Tolled Claims.
4. Duke Energy shall not assert, plead, or raise against the EPA in any fashion, whether by answer, motion, or otherwise, any defense of statute of limitations, laches, estoppel, waiver, or other similar equitable defense based on the passage or end of the Tolling Period, in any action brought by the EPA for the Tolled Claims.
5. This Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by Duke Energy. Nor does this Agreement constitute any admission or acknowledgment by the EPA that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims. The EPA reserves the right to assert and to argue any statute of limitations

**TOLLING AGREEMENT BETWEEN UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY AND DUKE ENERGY INDIANA, INC., REGARDING  
CERTAIN CLAIMS UNDER THE CLEAN AIR ACT AT ITS GIBSON  
GENERATING STATION**

applies to any of the Tolloed Claims and that no other defense based upon the timeliness of commencing a civil action is applicable.

6. This Agreement may not be modified except in writing signed by the Parties. The Parties acknowledge that this Agreement may be extended for such period of time as the Parties agree to in writing.

7. The EPA may terminate settlement negotiations and commence with litigation against Duke Energy at its Gibson Station for the Tolloed Claims at any time. In the event that EPA elects to commence with litigation for the Tolloed Claims, EPA shall notify Duke Energy's legal counsel, Julie Ezell via email at [Julie.Ezell@duke-energy.com](mailto:Julie.Ezell@duke-energy.com) and Scott Alexander via email at [Scott.Alexander@shulllaw.com](mailto:Scott.Alexander@shulllaw.com), 15 days prior to commencement of such litigation. In the event that EPA elects to commence with litigation, the Tolling Period will terminate 15 days after such notice by the EPA, regardless of any prior termination date set forth in Paragraph No. 1 above, provided that the Tolling Period shall not be extended beyond September 30, 2013 unless mutually agreed upon by the Parties pursuant to Paragraph 6.

8. This Agreement does not limit in any way the nature or scope of any claims that could be brought by the EPA in a complaint against Duke Energy or the date on which the EPA may file such a complaint.

9. This Agreement is not intended to affect any potential or actual claims by or against third parties.

10. This Agreement is effective upon execution by Duke Energy and without the requirement of filing with a Court and may be signed by counterparts.

11. This Agreement contains the entire agreement between the Parties and no statement, promise, or inducement made by any Party to this Agreement that is not set forth in this Agreement shall be valid or binding; nor shall it be used in construing the terms of this Tolling Agreement as set forth herein.

12. The undersigned representative(s) of each of the Parties certifies that he or she is fully authorized to enter into this Agreement and to legally bind such Party to all terms and conditions in this document. The Agreement shall be binding upon the EIA and Duke Energy, its subsidiaries and successors.

THE AGREEMENT BETWEEN THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY AND DUKE ENERGY INDIANA, INC., REGARDING  
CERTAIN CLUSTERS UNDER THE CLEAN AIR ACT AT THE GIBSON  
ADMINISTRATIVE STATION

SIGNATURES

Duke Energy, Indiana, Inc. consents to the terms and conditions of this Agreement by its duly authorized representative.

Duke Energy, Indiana, Inc.

By: Scott R. Alexander

Date: July 17, 2013

Printed: Scott R. Alexander

Title: Attorney for Duke Energy Indiana, Inc.

The United States Environmental Protection Agency consents to the terms and conditions of this Agreement by its duly authorized representative.

United States Environmental Protection Agency

By: Nikki K. O'Meara

Date: 7/23/2013

Printed: Nikki K. O'Meara

Title: Attorney for United States Environmental Protection Agency

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