

SUPREME COURT STATE OF NEW YORK
COUNTY OF ALBANY

STATE OF NEW YORK,)	
and ERIN M. CROTTY, Commissioner of Environmental)	
Conservation of the State of New York)	
)	
Plaintiffs,)	
)	
v.)	Index No. 3581-03
)	
ORANGE and ROCKLAND UTILITIES, INC.)	CONSENT DECREE
)	
Defendant.)	
)	
)	

WHEREAS, Plaintiffs, the State of New York and Erin M. Crotty, Commissioner of Environmental Conservation of the State of New York (collectively the “State”), filed a Complaint on June 11, 2003, against Orange and Rockland Utilities, Inc. (“Orange and Rockland”), pursuant to Sections 71-2103 and 71-2107 of the New York State Environmental Conservation Law (“ECL”), seeking civil penalties and injunctive relief for alleged violations of, among other things, the federal Clean Air Act’s Prevention of Significant Deterioration (“PSD”) provisions, including 40 CFR § 52.21, incorporated into New York law in 6 N.Y.C.R.R. § 200.10, at Units 4 and 5 of the Lovett electricity generating station (the “Lovett Plant”), located in Tompkins Cove, New York;

WHEREAS, Orange and Rockland transferred ownership of the Lovett Plant to Mirant New York, Inc. and Mirant Lovett, L.L.C. (collectively, “Mirant”) on or about July 1, 1999;

WHEREAS, the New York State Department of Environmental Conservation (“DEC”)

issued a Notice of Violation (the “NOV”) to Orange and Rockland on or about May 25, 2000 regarding the alleged actions and/or omissions underlying the Complaint;

WHEREAS, Orange and Rockland denies each of the allegations set forth in the NOV and the Complaint, and maintains that: (i) the operation and maintenance activities at the Lovett Plant were conducted in compliance with the Lovett Plant’s air permits and all relevant laws and regulations during the period Orange and Rockland owned and operated the Lovett Plant; (ii) upon transferring ownership of the Lovett Plant to Mirant, Orange and Rockland’s statutory and regulatory obligations with respect to the operation and maintenance of the Lovett Plant ceased; (iii) to the extent any such obligations continued, Orange and Rockland has met the requirements of any such continuing obligations; and (iv) Orange and Rockland is not liable for civil penalties or injunctive relief;

WHEREAS, the State has reached an agreement with Mirant, embodied in a proposed consent decree (the “Mirant Consent Decree”) to be submitted for entry by the United States District Court for the Southern District of New York, pursuant to which Mirant will take specified action to reduce emissions of Units 4 and 5 of the Lovett Plant;

WHEREAS, the State and Orange and Rockland have agreed that, notwithstanding their respective positions on the issues herein, settlement of this action pursuant to the terms of this Consent Decree is in the best interest of the Parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

WHEREAS, the State and Orange and Rockland have consented to entry of this Consent Decree without trial of any issue;

WHEREAS, a copy of this proposed Consent Decree has been provided to the United States Environmental Protection Agency for its review and comment;

WHEREAS, the United States Environmental Protection Agency has provided written notice that it has no objections to the proposed terms and conditions of this Consent Decree; and

WHEREAS, the State will expeditiously publish notice of the parties' intent to enter into this Consent Decree in the Environmental Notice Bulletin;

NOW, THEREFORE, without any admission of fact or law, without any adjudication on the merits of the allegations set forth in the NOV and the Complaint and without any admission of the violations alleged in the NOV and the Complaint, it is hereby ORDERED AND ADJUDGED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction of this matter pursuant to ECL Sections 71-2103 and 71-2107. Solely for the purposes of this Consent Decree and the State's underlying Complaint, Orange and Rockland waives all objections that it may have to the jurisdiction of the Court, and to venue. Except as expressly provided for herein, this Consent Decree shall not create any rights in any Party other than the State and Orange and Rockland.

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the State and upon Orange and Rockland, its successors and assigns.

III. DEFINITIONS

The following definitions apply solely for purposes of this Consent Decree:

3. "Consent Decree" means this Consent Decree.

4. “Effective Date” means: in the event the Mirant Consent Decree is entered on or before December 31, 2003, the later of the date of entry of this Consent Decree or the date on which Orange and Rockland receives written notice from the State that the proposed Mirant Consent Decree has been entered; or January 10, 2004, in the event the Mirant Consent Decree is not entered on or before December 31, 2003, provided that neither the State nor Orange and Rockland has served upon the other party a notice of withdrawal of consent pursuant to Paragraph 11 of this Consent Decree.

5. “Lovett Plant” means the Lovett electricity generation station located in Tompkins Cove, Rockland County, New York, owned and operated by Mirant, consisting of three generating units known as Units 3, 4 and 5 and auxiliary equipment.

6. “Successor” means the corporate successor-in-interest, if any, to Orange and Rockland. Mirant or its affiliates are not a “successor” of Orange and Rockland as that term is used in this Consent Decree.

IV. CIVIL PENALTY

7. Within thirty days of the Effective Date, Orange and Rockland shall pay a civil penalty by sending a check in the amount of six hundred thousand dollars (\$600,000), payable to “State of New York”, addressed to: J. Jared Snyder, Assistant Attorney General, The Capitol, Albany, NY 12224.

8. With regard to any penalty due pursuant to this Order which is not paid by the specified due date, Respondent shall be liable for and shall pay interest from the due date at the rate specified by the New York Civil Practice Law and Rules for interest on a judgment. For any penalty due under this paragraph that Orange and Rockland fails to pay within ninety (90) days of

its due date, Orange and Rockland shall pay the State of New York an additional charge of 22% on the penalty amount due in accordance with State Finance Law § 18.

V. ENVIRONMENTAL MITIGATION PROJECTS

9. Within thirty days after the effective date of this Order, Orange and Rockland shall establish an interest-bearing escrow account, entitled the "Orange and Rockland Environmental Mitigation Project Account," and shall deposit therein no less than eight hundred thousand dollars (\$800,000). Monies included in that account, including any interest that may accrue, shall be used to carry out one or more projects authorized by the DEC and the Office of the Attorney General that pertain to energy efficiency and clean renewable energy projects (preferably, at educational, not-for-profit, or government facilities) within Orange and Rockland Counties. Within sixty days of the effective date of this consent decree, Orange and Rockland shall propose projects for consideration by DEC and the Office of the Attorney General; such recommendations shall include a proposed schedule for implementing each such project. Upon the approval of the projects, Orange and Rockland shall act diligently and in good faith to implement or fund the projects, using the Environmental Mitigation Escrow Monies, in accordance with any practicable schedule the State may reasonably establish. If no projects proposed by Orange and Rockland in the sixty day period are approved by DEC and the Office of the Attorney General, or if the approved projects will not use up the full sum in the Orange and Rockland Environmental Mitigation Project Account, DEC and the Office of the Attorney General may select for financing projects proposed by DEC, the Office of the Attorney General or other persons or entities. Any funds remaining in such account five years after the effective date of this Order shall be paid to the DEC, which shall deposit same in the General Fund of the

State of New York.

10. The sum referred to in paragraph 9 shall not be deducted for purposes of state or federal taxes or passed through to Orange and Rockland's ratepayers. Whenever Orange and Rockland may publicize the projects or their results, it will be acknowledged that the project was performed as part of the resolution of an enforcement action brought by the State.

VI. RELATIONSHIP WITH MIRANT CONSENT DECREE

11. The State shall diligently and in good faith seek entry of the Mirant Consent Decree, subject to consideration of any comments received in the public comment process. If the Mirant Consent Decree has not been entered as of December 31, 2003, either the State or Orange and Rockland may, by written notice mailed to the other party no later than January 10, 2004, withdraw its consent to this Consent Decree. Upon timely service of such notice of withdrawal, this Consent Decree shall be null and void and neither the State nor Orange and Rockland shall bear any liability or obligations under its terms. In the event a notice of withdrawal by neither the State nor Orange and Rockland is served by such date, this Consent Decree shall become fully effective and enforceable in accordance with its terms.

VII. RESOLUTION OF PAST CLAIMS

12. The State, including without limitation the DEC, releases, discharges and covenants not to sue Orange and Rockland, its directors, officers, employees, servants, agents, affiliates, successors and assigns (the "Released Parties") from any and all claims, actions, proceedings, suits, demands or liabilities that it may have as of the date of the State's execution of this Consent Decree with respect to or in any way relating to:

A. Any alleged violation at the Lovett Plant of the Prevention of Significant

Deterioration provisions of the Clean Air Act, 42 U.S.C. §§ 7470-7492; 40 C.F.R. § 52.21; the Non-Attainment New Source Review provisions of the Clean Air Act, 42 U.S.C. §§ 7501-7515; 40 C.F.R. §§ 51-52; Title V of the Clean Air Act, 42 U.S.C. § 7661; 40 C.F.R. § 70; the New Source Performance Standards of the Clean Air Act, 42 U.S.C. § 7411; 40 C.F.R. § 60; the New York State regulations incorporating federal Prevention of Significant Deterioration requirements, 6 N.Y.C.R.R. § 200.10; and the New York New Source Review in Nonattainment Areas regulations, 6 N.Y.C.R.R. Part 231-2;

- B. Emissions of the air pollutants nitrogen oxides (NO_x), sulfur dioxide (SO₂) and particulate matter (PM) from the Lovett Plant, including, but not limited to, claims alleging violation of the New York State Implementation Plan; 6 N.Y.C.R.R. Parts 200 and 201; State Executive Law § 63[12]; or any other claims at common law or equity, including, but not limited to public nuisance, restitution and damage to natural resources; and
- C. Air pollution resulting from or relating to any modification to the Lovett Plant by Orange & Rockland (other than the reconversion to coal in the 1980s), including, but not limited to, claims alleging violation of the New York State Implementation Plan; 6 N.Y.C.R.R. Parts 200 and 201; State Executive Law § 63[12]; or any other claims at common law or equity, including, but not limited to public nuisance, restitution and damage to natural resources; and
- D. The legality of the reconversion to coal of the Lovett plant in the 1980s.

VIII. RESERVATION OF RIGHTS

13. Nothing contained in this Consent Decree shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than the Released Parties;

B. The State's right, if and to the extent provided for by law, to enforce this Consent Decree against the Released Parties, or any of them, in the event that Orange and Rockland fails to fulfill any of the terms or provisions hereof;

C. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Orange and Rockland for any violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder not identified in Paragraph 12 of this Consent Decree.

IX. STIPULATED PENALTIES AND REMEDIES

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

A. For failure to pay the civil penalty required by Paragraph 7 hereof when due: \$1,000 for each day that it is late.

B. For failure to deposit the amount required by Paragraph 9 hereof when due: \$1,000 for each day that it is late.

15. Should Orange and Rockland dispute its obligation to pay part or all of a demanded stipulated penalty, it may avoid the imposition of a separate stipulated penalty for the failure to pay the disputed penalty by depositing the disputed amount in a commercial escrow account pending resolution of the matter and by invoking the Dispute Resolution provisions of this Consent Decree within the time provided in Section XI of this Consent Decree for payment of the disputed stipulated penalty. If the dispute is thereafter resolved in Orange and Rockland's favor, the escrowed amount plus accrued interest shall be returned to Orange and Rockland. If the dispute is resolved in favor of the State, then the State shall be entitled to the escrowed amount determined to be due by the Court, plus accrued interest. The balance in the escrow account, if any, shall be returned to Orange and Rockland.

16. Orange and Rockland shall not be required to remit any stipulated penalty that is disputed in compliance with Section XI of this Consent Decree until the dispute is resolved in favor of the State. However, nothing in this Paragraph 16 shall be construed to cease the accrual of the stipulated penalties until the dispute is resolved.

X. FORCE MAJEURE

17. Orange and Rockland shall not suffer any penalty under this Consent Decree or be deemed to be in violation hereof if it cannot comply with any requirement of this Consent Decree as a result of a natural event, war, strike, riot, terrorist act, or other catastrophe, obstruction or interference by a third party, failure to act or delay by a governmental agency, or any other fact or circumstance beyond Orange and Rockland's reasonable control (a "Force Majeure event"), provided, however, that negligence or misconduct on the part of Orange and Rockland was not the proximate cause of such fact or circumstance, and provided further that Orange and Rockland

shall make its best effort to comply nonetheless and shall, within four (4) business days, notify the State by telephone and in writing, pursuant to the communications provision of this Order, after it obtains knowledge of any such condition or event and request an appropriate extension or modification of this Order.

18. Orange and Rockland shall be entitled to an extension of any deadline for any requirements of this Consent Decree for a period equal to any delay caused by a Force Majeure event. Nothing in this Paragraph 18 of this Consent Decree shall preclude Orange and Rockland from seeking additional extensions subject to the State's consent.

XI. DISPUTE RESOLUTION

19. The dispute resolution procedure provided by this Section XI of this Consent Decree shall be available to resolve all disputes arising under this Consent Decree, provided that the party making such application has first made a good faith attempt to resolve the matter with the other party.

20. The dispute resolution procedure required in this Section XI of this Consent Decree shall be invoked by one party to this Consent Decree giving written notice to the other advising of a dispute sought to be resolved pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing party's position with regard to such dispute. The parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice.

21. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal good faith negotiations between the parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first

meeting among the parties' representatives unless they agree in writing to shorten or extend this period.

22. If the parties are unable to reach agreement during the informal negotiation period, the State shall provide Orange and Rockland with a written summary of its position regarding the dispute. The written position provided by the State shall be considered binding unless, within thirty (30) calendar days thereafter, Orange and Rockland files with this Court a petition that describes the nature of the dispute and seeks resolution. The State may respond to the petition within forty-five (45) calendar days of filing.

23. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon motion of one of the parties to the dispute.

24. As part of the resolution of any dispute under this Section, in appropriate circumstances the parties may agree to, or this Court may order, an extension or modification of the schedule for completion of work under this Consent Decree to account for the delay that occurred as a result of dispute resolution.

XII. GENERAL PROVISIONS

25. Third Parties. This Consent Decree does not limit, enlarge or affect the rights of any Party to this Consent Decree as against any third parties.

26. Indemnification. Orange and Rockland shall indemnify and hold DEC, the State, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description (except for claims that may be raised in a citizen suit which seeks to challenge, modify, or add to the penalties or remedies in this Consent Decree)

arising out of or resulting from the fulfillment or attempted fulfillment of this Consent Decree by Orange and Rockland, its directors, officers, employees, servants, agents, successors or assigns; provided, however, that Orange and Rockland shall not be liable for any costs related to the defense of any such claims, suits, or actions including attorneys fees and other such costs.

27. Costs. Each party to this action shall bear its own costs and attorneys fees.

28. Notice. Unless otherwise provided in this Consent Decree, notifications to or communications with the State or Orange and Rockland shall be deemed submitted on the date they are postmarked and sent either by overnight mail, return receipt requested, or by certified or registered mail, return receipt requested. Notifications shall be sent to the following representatives for each mail by electronic mail and overnight, certified or registered mail at the addresses set forth below:

A. State:

1. J. Jared Snyder
State of New York Office of the Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12211
2. Michelle A. Crew
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-5500

B. Orange and Rockland:

1. Jim Tarpey
Vice President, Operations
Orange and Rockland Utilities, Inc.
390 W. Route 59
Spring Valley, New York 10977; and

2. Peter Garam, Esq.
Associate General Counsel
Consolidated Edison Company of New York, Inc., Room 1815-S
4 Irving Place
New York, New York 10003

C. The State and Orange and Rockland respectively reserve the right to designate other or different addressees on written notice to the other.

29. Modification. This Consent Decree may be modified by Court Order upon the prior agreement of the parties.

30. Continuing Jurisdiction. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or modification. During the term of this Consent Decree, any party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

31. Complete Agreement. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the parties with respect to the settlement embodied in this Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XIII. TERMINATION

32. This Consent Decree shall be subject to termination upon motion by the parties after Orange and Rockland pays the civil penalty and makes the payment for environmental mitigation projects. The termination of this Consent Decree shall not affect the State's obligations under Paragraphs 9 (pertaining to mitigation projects) and 12 (pertaining to the

State's release and covenant not to sue), which shall remain in effect after the Consent Decree has been terminated.

Dated: June 10, 2003

FOR PLAINTIFFS



ELIOT SPITZER

Attorney General of the State of New York



ERIN M. CROTTY, Commissioner
New York State Department of

Environmental Conservation

625 Broadway

Albany, New York 12233-5500

J. Jared Snyder

Assistant Attorney General

Environmental Protection Bureau

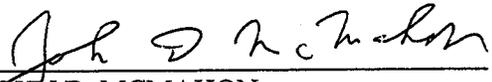
The Capitol

Albany, NY 12224

(518) 474-8010

Of counsel

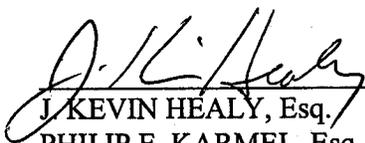
FOR ORANGE and ROCKLAND
UTILITIES, INC.



JOHN D. MCMAHON
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By:



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Attorneys for Defendant

SO ORDERED, THIS ____ DAY OF _____, 2003.