October 4, 2011

VIA FEDERAL EXPRESS

Honorable Lisa P. Jackson Administrator, U.S. EPA Ariel Rios Building 1200 Pennsylvania Ave. NW Washington, D.C. 20004

Dear Administrator Jackson,

Please find enclosed (1) the Natural Resources Defense Council and Sierra Club's Petition to Object to the Issuance of a State Title V Operating Permit issued by the Michigan Department of Environmental Quality for Consumers Energy's B.C. Cobb Electric Generating Station, Permit No. MI-ROP-B2836-2011, (2) a CD of Exhibits and (3) Proof of Service. Also enclosed is a copy of the Petition and a self addressed envelope that we request you use to send a file-stamped copy of the Petition back to us.

If you have any questions, do not hesitate to contact me at (312) 651-7904.

Sincerely,

Shannon Fisk Senior Attorney

Natural Resources Defense Council

cc: Susan Hedman, Regional Administrator, U.S. EPA Region V
Stephen Lachance, Michigan Department of Environmental Quality
Thomas Gesinski, B.C. Cobb Plant Manager, Consumers Energy

FAX 312 651-7919

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PETITION TO OBJECT
TO THE ISSUANCE OF
A STATE TITLE V OPERATING
PERMIT

Petition No.:

PETITION OF THE NATURAL RESOURCES DEFENSE COUNCIL AND SIERRA CLUB TO OBJECT TO ISSUANCE OF A STATE TITLE V OPERATING PERMIT

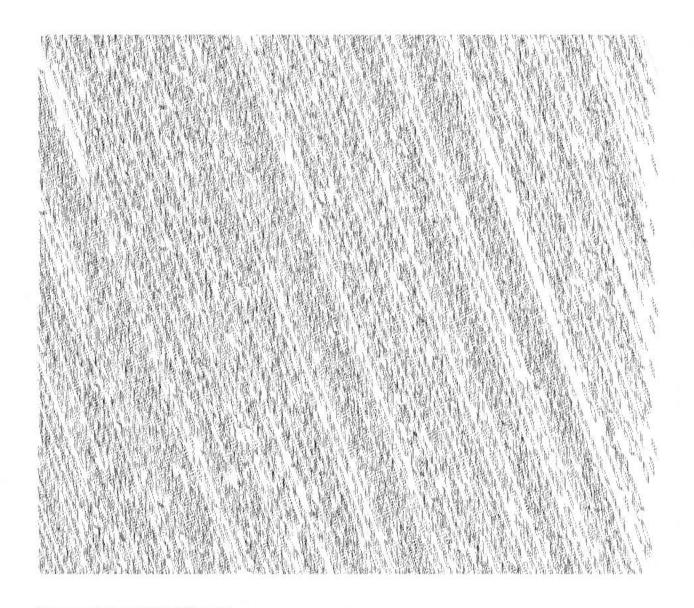
Pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7761d(b)(2), 40 C.F.R. §70.8(d) and 40 C.F.R. § 70.7(f) and (g), the Natural Resources Defense Council and Sierra Club (collectively, "Citizen Groups") hereby petition the Administrator of the U.S. Environmental Protection Agency ("Administrator" or "EPA") to object to the Title V Renewable Operating Permit No. MI-ROP-B2836-2011 ("Title V Permit") reissued on August 9, 2011, by the Michigan Department of Environmental Quality ("MDEQ" or "the Agency") for the B.C. Cobb Electric Generating Station ("Plant") operated by Consumers Energy ("Consumers").

The Administrator must object to the issuance of the Title V Permit due to: (1) MDEQ's failure to determine whether the Plant was in compliance with all applicable requirements at the time of issuance, (2) Consumers' failure to provide, and MDEQ's failure to require, a complete application before issuing the Title V Permit, and (3) apparent violations of applicable Prevention of Significant Deterioration ("PSD") requirements under the Clean Air Act ("CAA") that require a schedule of compliance to be included in the Title V Permit.

I. INTRODUCTION

The Plant is a fossil fuel-fired electric utility steam-generating station located in Muskegon, Michigan that has the potential to emit more than 100 tons per year each of Sulfur Dioxide ("SO2"), Nitrogen Oxides ("NOx") and Particulate Matter ("PM"). The Plant consists of five units, three of which (Units 1-3) are natural gas units that are currently in long-term cold storage status. Units 4 and 5 are coal-fired units that each operate as base load units with a heat

According to 2010 data reported to the EPA, the Plant emitted over 11,300 tons of SO2 and 2,800 tons of NOx in that year. 2008 data reported by Consumers to MDEQ indicates that the Plant emitted over 600 tons of PM that year.



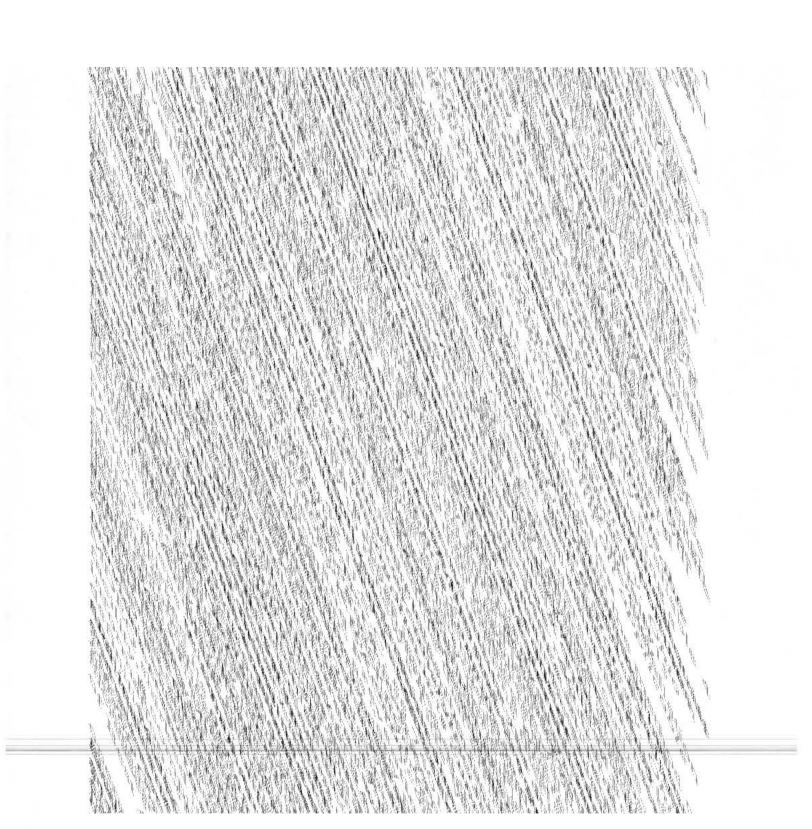
² In re Consumers Energy, Notice and Finding of Violation, EPA-5-08-MI-22 at 5, ¶ 33 [hereinafter "NOV"] attached as Ex. A.

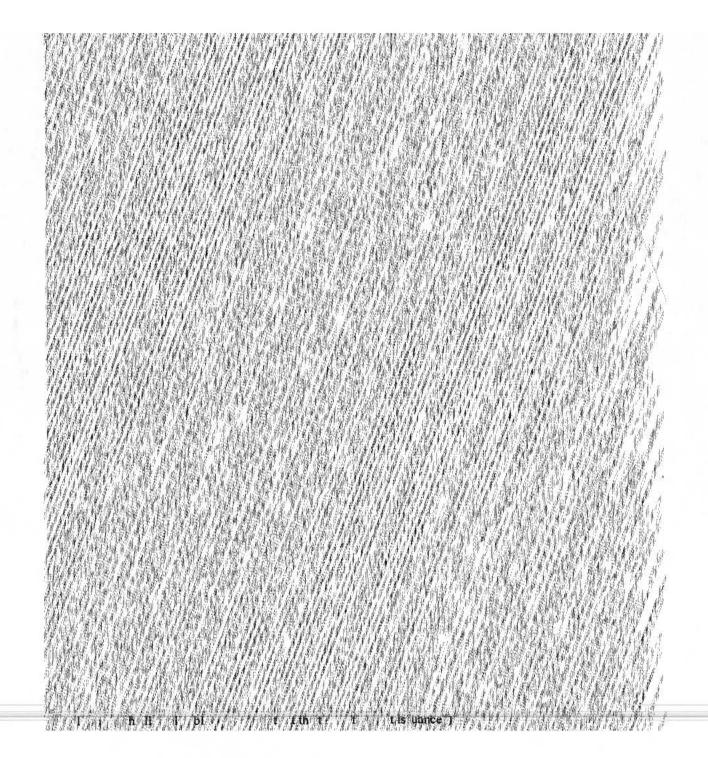
³ The Citizen Groups' comment letter [hereinafter "Comment Letter"] attached as Ex. B.

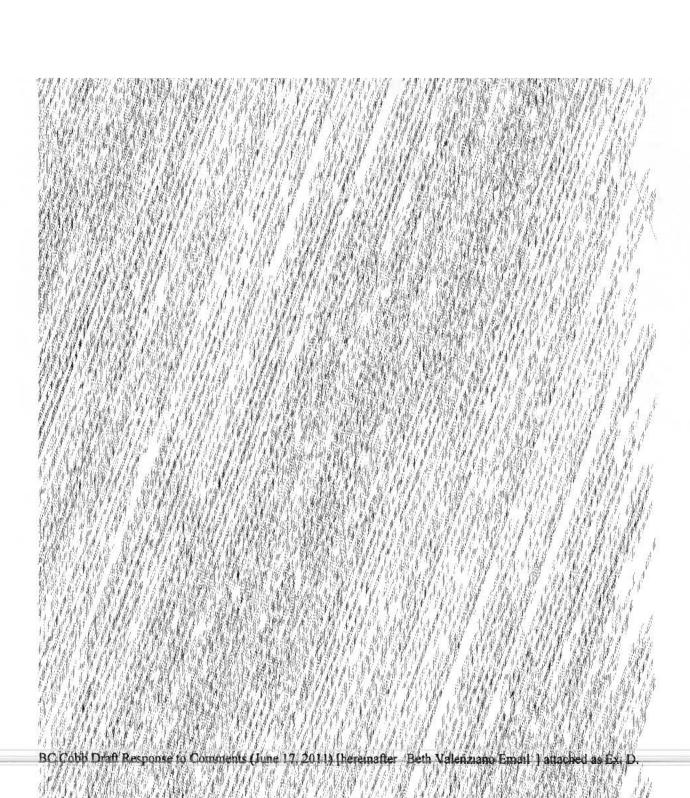
⁴ Citizen Groups could not know that MDEQ would not definitely determine the Plant's compliance status until after the final permit and staff report were issued, which was after the public comment period ended. Similarly, Citizen Groups could not know that Consumers would fail to submit, and MDEQ would fail to require, all of the necessary information-until after the permitting-process was complete. Under the applicable statute, these issues must be addressed on the merits because "it was impracticable to raise such objections" during the comments period as "the grounds for such objection[s] arose after such period." 42 U.S.C § 7661d(b)(2).

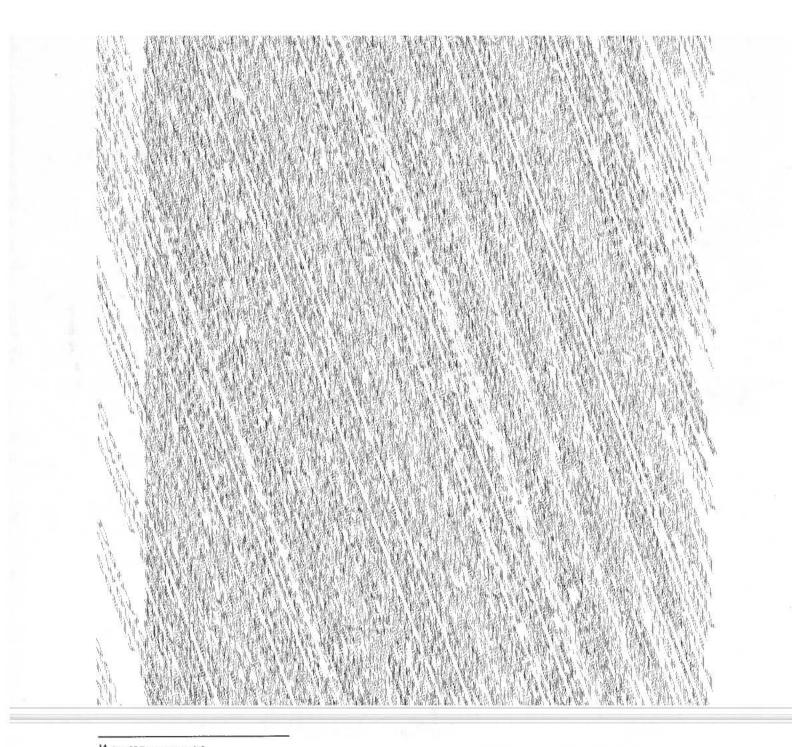


⁵ See also In re E. Ky. Power Coop., Inc., Hugh L. Spurlock Generating Station, Order in Response to Petition IV-2006-4, at 15 (E.P.A. Aug 30, 2007) [hereinafter "Spurlock Decision"], attached as Exhibit MM.

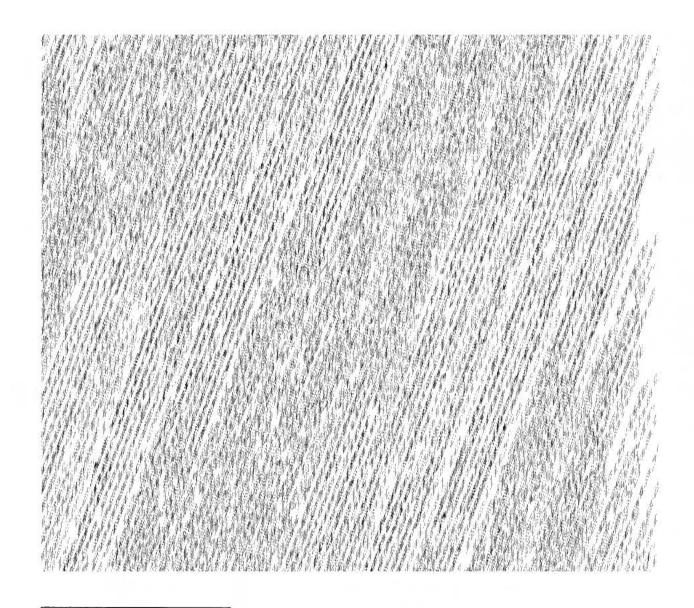








¹⁴ Staff Report at 16.



¹⁵ Title V Renewable Operating Permit, Permit No. MI-ROP-B2836-2011, 51 [hereinafter "Title V Permit"] attached as Ex. E.

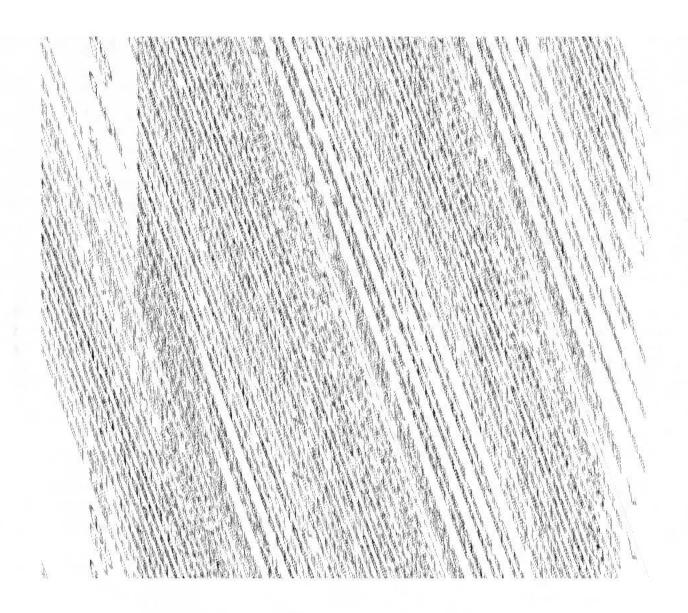
¹⁶ Staff Report at 15.

Email from Stephen Lachance, MDEQ, to Jeffrey Korniski, MDEQ, Re: Follow Up (March 30, 2011), [hereinafter "Lachance March 30 Email"], attached as Ex. F.

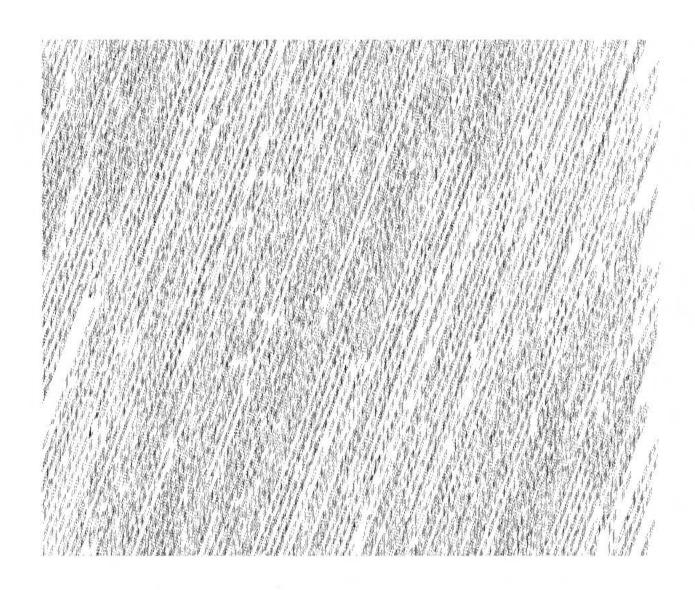
[18] Email from Wilhemina McLemore, MDEQ to Jeffrey Korniski, Teresa Seidel & Christopher Ethridge, MDEQ,

Re: April 12, 2011 DRAFT Response to Comments for BC Cobb ROP (April 28, 2011), attached as Ex. G.

¹⁹ BC Cobb MACES Activity Report, SRN B2836, Stephen Lachance, at 10 (Aug. 31, 2010 & July 7, 2011) [hereinaster "Activity Report"], attached as Ex. H.



At one point, MDEQ suggests that it feels it is "most prudent to defer to the federal case to resolve" issues regarding PSD and BACT compliance. Activity Report, at 9. There is simply no authority, however, that would allow the Agency to postpone its statutory and regulatory duties. The EPA investigation of the Plant, while relevant, cannot supplant the Agency's mandatory duty to independently assure compliance with all applicable requirements before issuing a state authorized renewable operating permit. The EPA investigation does not render an applicable requirement suddenly inapplicable. Irrespective of any EPA investigation, MDEQ can, and must, definitively determine the compliance status of the Plant.



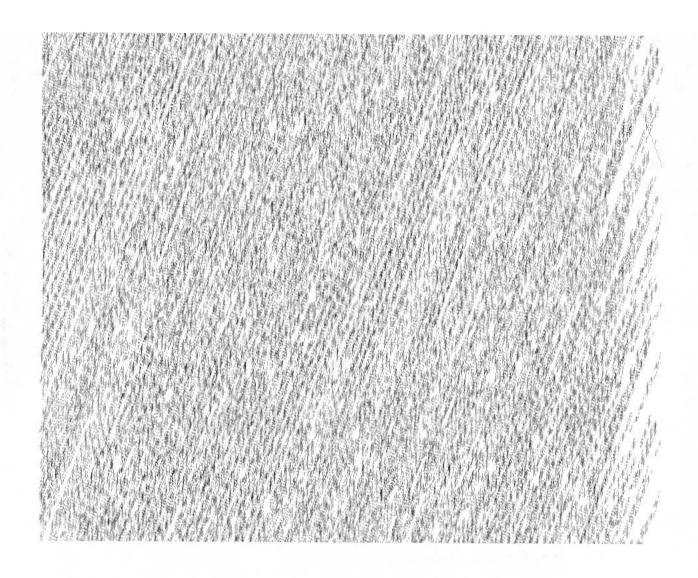
²¹ Letter from Robert A. Kaplan, U.S. EPA, to David L. Reiser, Dominion Energy, Re: Final Determination Concerning Confidentiality of Information Responsive to Freedom of Information Act Request 05-RIN-0050509-A, at 10 (Aug. 31, 2010) (citing cases) [hereinafter "Dominion Decision"], attached as Ex. I.

at 10 (Aug. 31, 2010) (citing cases) [hereinafter "Dominion Decision"], attached as Ex. I.

22 In re Murphy Oil USA, Inc., Meraux Refinery, St. Bernard Parish, La., Order Granting in Part and Denying in Part

Petition for Objection to Permit, Pet. No. VI-2011-02, at 6 (E.P.A. Sept. 21, 2011) [hereinafter "Murphy Oil

Decision"], attached as Ex. J.



²³ Id.
²⁴ Staff Report, at 15.
²⁵ Lachance March 30 Email.
²⁶ Email from Lynn Fiedler, MDEQ, to Vince Hellwig, Teresa Seidel & Carrie Barr, MDEQ, Re: April 12, 2011
DRAFT Repose to Comments for BC Cobb ROP, (April 27, 2011) [hereinafter "Fiedler Email"], attached as Ex. K.
²⁷ Id (ellipses in the original)
²⁸ Activity Report, at 9.
²⁹ Beth Valenziano Email.
³⁰ Id.



C. The publicly available evidence indicates that there is good reason to believe that Consumers is violating PSD, NSR and Title V requirements at the B.C. Cobb Power Plant.

The third basis upon which EPA should object to the issuance of the Title V Permit is that the available evidence indicates that the Plant is out of compliance with the CAA's NSR provisions. As noted above, both MDEQ and the Citizen Groups were unlawfully prevented from reviewing all of the relevant information during the permitting process. Nevertheless, the information that is available strongly suggests that Consumers undertook major modifications at the Plant that led to a significant emissions increase and a significant net emissions increase such that PSD requirements should have been triggered. 40 C.F.R. § 52.21(b)(2)(i); 40 C.F.R. Part 51, Appendix S.

The Citizen Groups describe these projects and their emissions impacts in the following section to the best of their ability using the limited information available. This analysis makes clear that even while failing to come to a final conclusion regarding the compliance status of the Plant, MDEQ did not apply the correct PSD standards to evaluate the nature of the modifications that Consumers undertook at the Plant and the emissions increases that such modifications led to. The Administrator previously has objected to similarly flawed permits so that the permitting agency can "reevaluate the physical change in light the correct PSD standards," "do a proper applicability determination based on the correct post-project emission standard and clearly explain its analysis in the permit record."

1. EPA has already found that Consumers is violating PSD, NSR and Title V requirements at the Plant.

On October 17, 2008, EPA issued a Notice of Violation ("NOV") to Consumers for violations of the PSD regulations at a number of the company's coal-fired power plant units in Michigan, including the Plant. In the NOV, the EPA found that projects which constituted major modifications had been undertaken at B.C. Cobb Units 4 & 5 and had caused significant net emissions increases of NOx and/or SO2.³⁷ The EPA further found that these modifications did

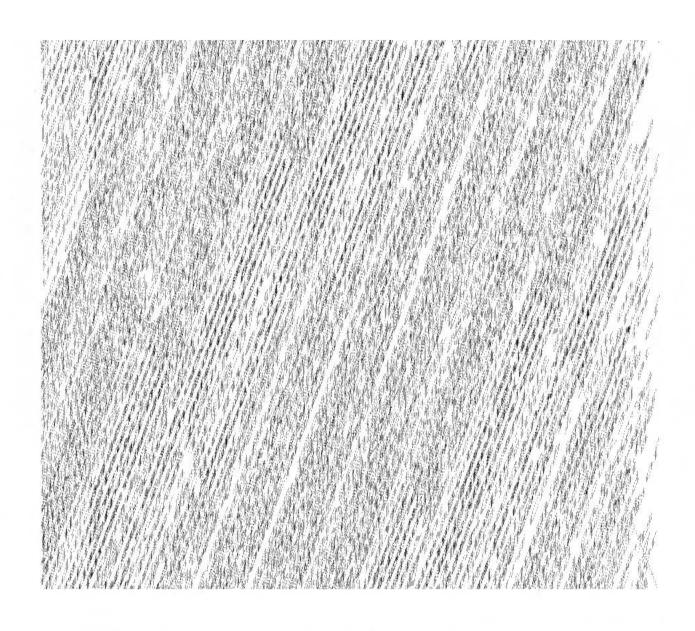
³³ Letter from Stephen Lachance, MDEQ, to Thomas J. Gesinski, Consumers, Re: Public Comments on Draft Renewable Operating Permit No. MI-ROP-B2836-2010, at 1 (May 20, 2010), attached as Ex. M.

³⁴ Letter from Thomas J. Gesinski, Consumers, to Stephen Lachance, MDEQ, Re: Public Comments on Draft Renewable Operating Permit No. MI-ROP-B2836-2010, at 3 (June 16, 2010), attached as Ex. N.

³⁵ Dominion Decision, at 10-11.

³⁶ In re Wisconsin Power and Light Columbia Generating Station, Order Granting in Part and Denying in Part Petition for Objection to Permit, Pet. No. V=2008-1, at 10 (E.P.A. Oct. 8, 2009) [hereinafter: "WPL Decision"] attached as Ex. O.

³⁷ NOV, at 5-6.



³⁸ NOV, at 7.
39 Id.
40 Id.
41 Comment Letter, at 2-4.
42 BC Cobb ROP Renewal, Lachance Followup, at 1 (Oct. 15, 2010), [hereinafter "Lachance Followup"], attached

as Ex. P.

Staff Report, at 9.

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occurred.

⁵⁵ Id.

⁵⁶ Id.

³⁷ Id.

⁵⁸ Thermal Engineering International, Thermal Engineering awarded Multi-Unit Contract from Consumers Energy (April 17, 2006), attached as Ex. II

⁽April 17, 2006), attached as Ex. U.

59 In re Application of Consumers Energy Co. for the Reconciliation of Power Supply Cost Recovery (PSCR) Costs and Revenues for the Calendar Year of 2010, Mich. PSC Case No. U-16045-R, Exhibit A-10 (DBK-3) at 55 (March 31, 2011), attached as Ex. V.

⁶⁰ Id.

⁶¹ *Id*.

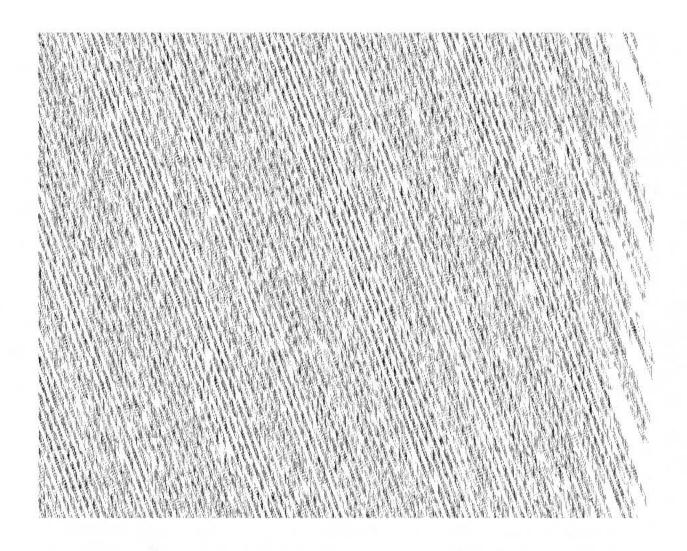
⁶² In re Application of Consumers Energy Co for Authority to Increase its Rates for the Generation and Distribution of Electricity and for Other Relief, Mich. PSC Case No U-15245, Testimony of David B. Kehoe at 14-15 (Mar. 2007) [hereinafter "Kehoe March 2007 Testimony"], attached as Ex. W.

⁶³ Kehoe March 2007 Testimony at 14-15; In re Application of Consumers Energy Co for Authority to Increase its Rates for the Generation and Distribution of Electricity and for Other Relief, Mich. PSC Case No U-15245, Exhibits, Ex. A-21 (DBK-3) at 1, attached as Ex. X.

⁶⁴ In re Application of Consumers Energy for Approval of a Balanced Energy Initiative and Other Relief, Mich. PSC Case No U-15290, Exhibits, Ex. A-28 (DFR-8) (May 1, 2007), attached as Ex Y.



⁶⁵ Staff Report, at 10.
66 Staff Report, at 9.
67 In re Tenn. Valley-Auth., Paradise Fossil Fuel Plant, Drakesboro, Ky., Order Responding-Petition to Object to—Title V Permit, Pet. No. IV-2010-1, at 13 (E.P.A. May 2, 2011) [hereinafter "Paradise Fossil Fuel Decision"], attached as Ex. Z.



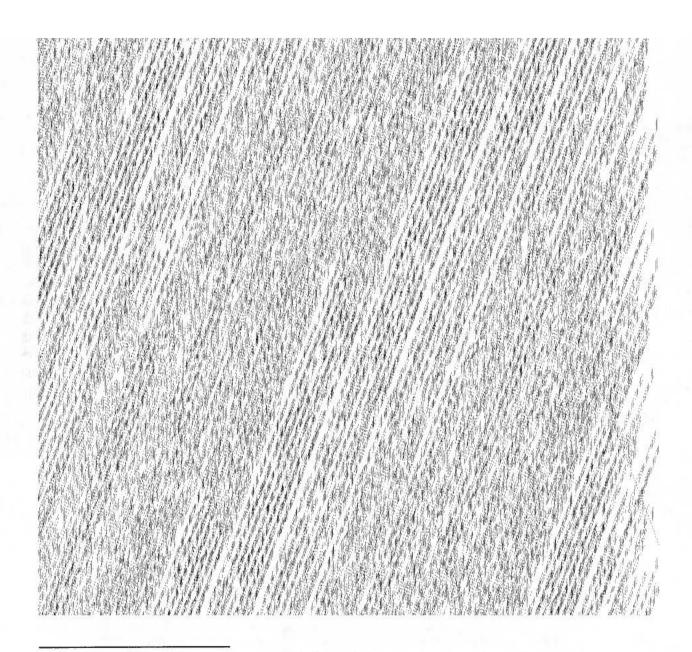
68 Id. (citing federal cases).

⁶⁹ Id. at 10; See also Letter from Doug Cole, EPA, to Alan Newman, Washington Dept. of Ecology, Re: Response to Inquiry Regarding Routine maintenance, Repair and Replacement Analysis for Recovery Furnace Modifications at Longview Fiber Longview Mill and Boise Cascade Corporation, Wallula Mill at 1(Nov. 5, 2001) (noting that EPA's long standing interpretation of the RMRR exemption "is to construe 'physical change' very broadly, to cover virtually any significant alteration to an existing plant and to interpret the exclusion related to routine maintenance, repair and replacement narrowly"), attached as Ex. AA.

⁷⁰ See also Paradise Fossil Fuel Decision at 10-11 (citing Memorandum from Don R. Clay, Acting Assistant Administrator for Air and Radiation to David A. Kee, Air and Radiation Division, Region V, Re: Applicability of PSD and NSPS Requirements to the WEPCO Port Washington Life Extension Project (September 9, 1988), attached as Ex. BB).

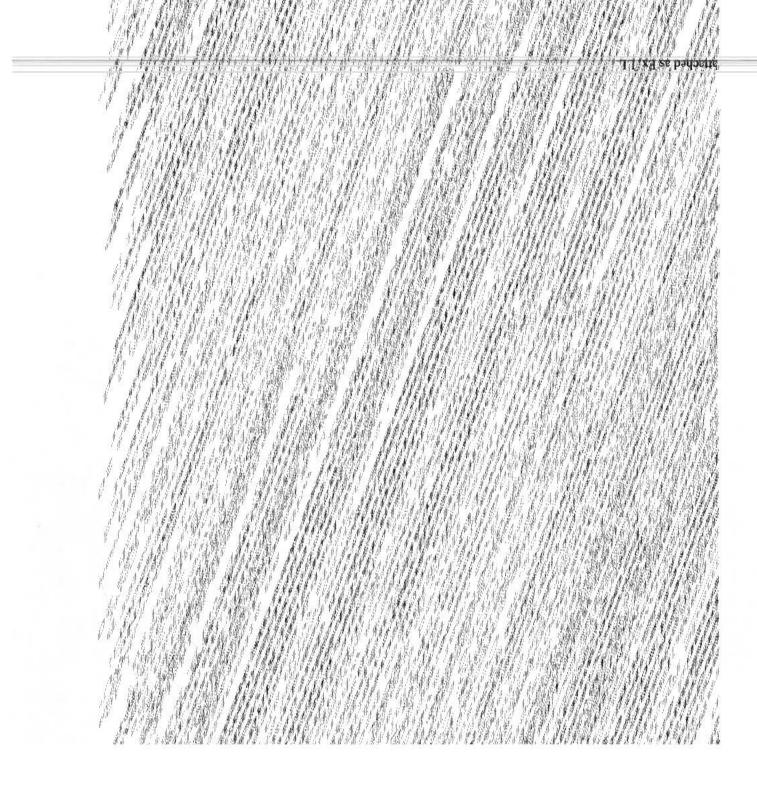
as Ex. BB).

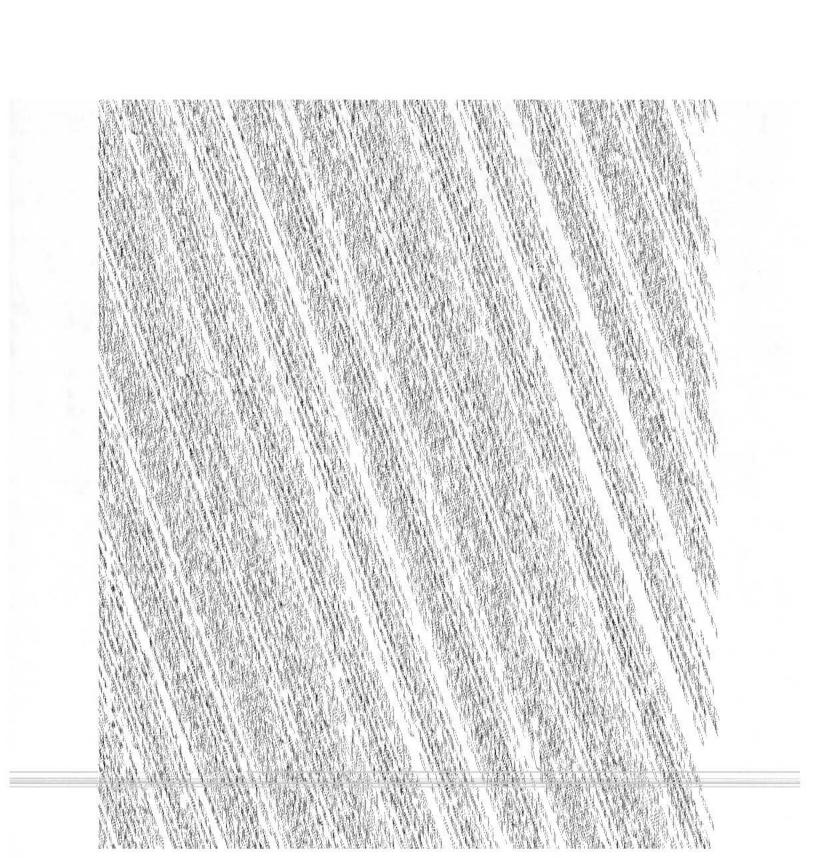
71 Babcock & Wilcox, Steam (40th ed.) at Ch. 46, attached as Ex. CC.

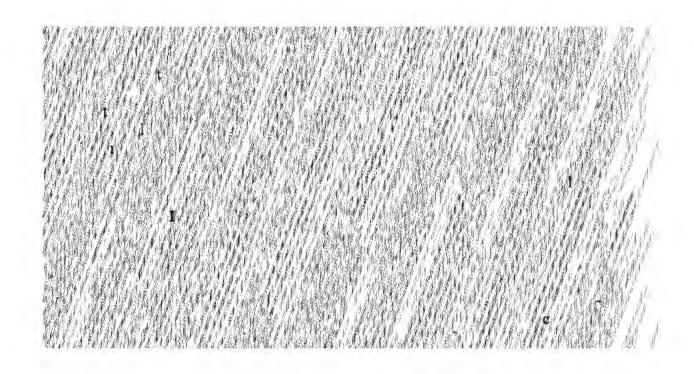


Paradise Fossil Fuel Decision, at 14 (citing federal cases).
 Emission Variability Write Up, Authored by Jason Prentice, Sent by Kathryn Ross, Consumers Energy, to Stephen Lachance, MDEQ, in October 15, 2010 email, at 6 (emphasis added)[hereinafter "Emission Variability Write Up"], attached as Ex. DD.

In re Application of Consumers Energy Co. for Approval of a Power Supply Cost Recovery Plan and for Authorization of Monthly Power Supply Cost Recovery Factors for the Year 2010, Mich. PSC Case No. U-16045, Testimony of David B Kehoe at 7 (Sept. 2009) [hereinafter "Kehoe 9.09 Testimony"], attached as Ex. EE.







Respectfully submitted,

Shannon Fisk

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⁸⁹ Staff Report, at 13.