

Northeast Generating LLC (“NRG Northeast”), Northeast Generation Holding LLC, NRG Eastern LLC, and NRG Operating Services, Inc. (collectively, “Defendants”) based on Defendants’ construction and operation of modified major emitting facilities without the permits and pollution controls required by the Clean Air Act (“CAA” or “the Act”) and New York’s Environmental Conservation Law (“ECL”). In particular, Plaintiffs allege that Defendants have violated and are in violation of Part C of Title I of the Act, 42 U.S.C. §§ 7470-7479, and implementing regulations, 40 C.F.R. § 52.21 (collectively, the “Prevention of Significant Deterioration” or “PSD” law), and related state law provisions, 6 N.Y.C.R.R. §§ 200.10 and 201. The purpose of the PSD law is to ensure that air quality is not significantly degraded by the emissions from new or modified sources of pollution.

2. Defendant NRG, through its subsidiaries Northeast Generating LLC, NRG Eastern LLC, NRG Northeast, NRG Operating Services, Inc., Dunkirk Power LLC, and NRG Dunkirk, owns and operates the Dunkirk steam station, a power plant located in Dunkirk, Chautauqua County, New York (the “Dunkirk Plant”), and through its subsidiaries Northeast Generating LLC, NRG Eastern LLC, NRG Northeast, NRG Operating Services, Inc. Huntley Power LLC, and NRG Huntley, owns and operates the C.R. Huntley steam station, a power plant located in Tonawanda, Erie County, New York (the “Huntley Plant”). Niagara Mohawk owned and operated the Dunkirk and Huntley Plants (collectively, the “Facilities”) until June 11, 1999, when it transferred ownership of the Facilities to NRG. Defendants have undertaken major construction projects that have had the effect of increasing the Facilities’ generation of electricity and emissions. Defendants undertook many of these projects in order to extend the operational lives of the Facilities at a time when their electric generating units were nearing the end of their normal

operational lives.

3. With respect to these major projects, at no time did Defendants apply for or obtain the permits required under the PSD law. To date, Defendants have continued to operate the Facilities without implementing best available control technology (“BACT”), the pollution control technology triggered by these major projects. As a result, Defendants have illegally emitted large quantities of air pollutants, in turn causing harm to the residents and natural resources of New York.

4. Emissions of nitrogen oxides (NO_x) (including nitrogen dioxide (NO₂)) and sulfur dioxide (SO₂) from electric power plants contribute extensively to damages to public health and the environment. In 2000, the Facilities emitted a total of 17,271 tons of NO_x, representing more than 21 percent of the NO_x emitted by power plants in the state, and 107,010 tons of SO₂, representing 38 percent of SO₂ generated by New York power plants.

5. In the presence of sunlight, NO_x reacts with volatile organic compounds (“VOCs”) in a complicated reaction that leads to the creation of ozone, a major component of urban smog. Ozone contributes to many respiratory health problems, including chest pains, shortness of breath, coughing, nausea, throat irritation, and increased susceptibility to respiratory infections such as asthma. Elevated ozone levels jeopardize the health of residents of New York, especially children, those suffering from respiratory illnesses, and people who work or exercise outdoors.

6. Emissions of NO_x and SO₂ also lead to the creation of fine nitrate and sulfate particles. Inhalation of fine particulate matter causes respiratory distress, cardiovascular disease, and premature mortality.

7. The NO_x and SO₂ emissions contribute to the formation of acid deposition, which has

caused the acidification of hundreds of lakes and ponds in the New York. For example, the percentage of lakes in New York's Adirondack Park that are chronically acidic (*i.e.*, corresponding to a pH of 5.28 or lower, a level at which many species of fish can no longer survive) now approaches 20 percent. This percentage is expected to increase in years to come, unless upwind power plants significantly reduce their emissions of NO_x and SO₂. Many lakes, particularly those in the western Adirondacks, that were favored destinations of anglers just two generations ago, are now devoid of fish.

8. In light of the extensive environmental harm attributable to emissions from the Facilities, the Plaintiffs seek, *inter alia*, (a) an injunction prohibiting further operation of the Facilities unless Defendants implement BACT and otherwise comply with the Act and the laws and regulations promulgated thereunder; (b) civil penalties for Defendants' past and ongoing violations of the Act; (c) mitigation of the harm caused by the Defendants' illegal emissions; and (d) compensation for the damage to New York State, its people, and its resources attributable to Defendants' illegal emissions.

JURISDICTION AND VENUE

9. This Court has jurisdiction of the subject matter of this action pursuant to 42 U.S.C. §§ 7604(a) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1355, and 1367.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), and § 1395(a), because Defendants may be found in this District and a substantial part of the events or omissions giving rise to the claims asserted herein arose in this District.

ALLEGATIONS COMMON TO ALL CLAIMS

Plaintiffs

11. Plaintiff the State of New York is a body politic and sovereign entity which brings this action on behalf of itself and, as parens patriae, on behalf of all residents and citizens of the State.

12. Plaintiff Erin M. Crotty is Commissioner of the New York State Department of Environmental Conservation (“DEC”), the executive agency of the State of New York charged by law with administering and enforcing the provisions of the Environmental Conservation Law and the PSD law.

Defendants

13. Niagara Mohawk is a corporation organized under the laws of the State of New York, with a principal place of business located in Syracuse, New York. Until June 11, 1999, Niagara Mohawk owned and operated the Dunkirk and Huntley Plants.

14. NRG is a corporation organized under the laws of the State of Delaware, with a principal place of business located in Minneapolis, Minnesota. NRG is a subsidiary of Xcel Energy, Inc., a Minnesota corporation. NRG wholly owns Northeast Generation Holding LLC, NRG Eastern LLC, and NRG Operating Services, Inc.

15. Northeast Generation Holding LLC and NRG Eastern LLC each own 50 percent of NRG Northeast. NRG Northeast is a limited liability corporation incorporated in Delaware, with its principal headquarters in Richmond County, New York. NRG Northeast wholly owns Dunkirk Power LLC and Huntley Power LLC.

16. Dunkirk Power LLC is a limited liability corporation incorporated in the State of Delaware. Dunkirk Power LLC owns the Dunkirk Plant.

17. NRG Dunkirk is a corporation incorporated in the State of Delaware. Upon

information and belief, NRG Dunkirk operates the Dunkirk Plant, and its principal place of business is 106 Point Drive North, Dunkirk, New York. NRG Operating Services, Inc. owns NRG Dunkirk and oversees NRG Dunkirk's operations at the Dunkirk Plant.

18. Huntley Power LLC is a limited liability corporation incorporated in the State of Delaware. Huntley Power LLC owns the Huntley Plant.

19. NRG Huntley is a corporation incorporated in the State of Delaware. Upon information and belief, NRG Huntley operates the Huntley Plant, and its principal place of business is 3500 River Road, Tonawanda, New York. NRG Operating Services, Inc. owns NRG Huntley and oversees NRG Huntley's operations at the Huntley Plant.

20. Defendants are each a "person" within the meaning of 42 U.S.C. § 7602(e).

Statutory and Regulatory Background

21. The Clean Air Act established a regulatory program designed to protect and enhance the quality of the nation's air to promote the public health and welfare. 42 U.S.C. § 7401(b)(1).

22. Pursuant to 42 U.S.C. § 7409, the Administrator of the United States Environmental Protection Agency ("EPA") has promulgated regulations establishing primary and secondary national ambient air quality standards ("NAAQS") for certain criteria air pollutants, including ozone, SO₂, NO₂, and particulate matter ("PM"). The primary NAAQS must adequately protect the public health, and the secondary NAAQS are to be sufficiently protective to safeguard the public welfare, from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air.

23. Pursuant to 42 U.S.C. § 7410, each State must adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the attainment and maintenance of the

NAAQS.

24. Under 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an “attainment” area; one that does not is termed a “nonattainment” area.

25. In enacting the Clean Air Act Amendments of 1990, Congress determined that all of New York should be subject to the requirements applicable to moderate nonattainment areas for ozone by virtue of being located in the Ozone Transport Region (“OTR”) (with the exception of metropolitan New York City, which was designated as a serious nonattainment area for ozone). 42 U.S.C. § 7511c(a).

Prevention of Significant Deterioration

26. Part C of subchapter I of the Act, §§ 160 -169B, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as attaining the NAAQS. These PSD program requirements are designed to protect public health and welfare by maintaining continued compliance with the NAAQS, to promote economic growth that is consistent with the preservation of existing clean air resources, and to ensure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. The PSD program is also intended “to preserve, protect and enhance the air quality in national parks, national wilderness areas ... and other areas of special national or regional natural, recreational, scenic or historic value.” 42 U.S.C. § 7470(2).

27. Section 165(a) of the Act prohibits the “construction” of a “major emitting facility” in an area designated as attainment unless, *inter alia*, a PSD permit has been issued and the facility employs the best available control technology (BACT) to limit its emissions. 42 U.S.C. § 7475(a)(1), 7475(a)(4). Congress defined the term “construction” to include the “modification” of a facility, which encompasses “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” 42 U.S.C. §§ 7411(a)(4), 7479(2)(C). Congress defined “major emitting facility” as, *inter alia*, any fossil-fuel fired steam electric plant with a heat input of more than 250 million British thermal units per hour (“mm Btu/hr”) that emit or have the potential to emit 100 tons per year (“tpy”) or more of any air pollutant, or any other source with the potential to emit 250 tpy or more of any air pollutant. 42 U.S.C. § 7479(1).

28. EPA has promulgated regulations, codified at 40 C.F.R. § 52.21, to implement the PSD program. These regulations require that a person who wishes to construct or modify a major emitting facility must demonstrate before commencing construction that the modification will not contribute to air pollution in violation of any NAAQS. See 40 C.F.R. § 52.21(k).

29. The provisions of 40 C.F.R. § 52.21(i) prohibit the “major modification” of a “major stationary source” in any area that has attained the NAAQS unless a PSD permit has been issued that meets the requirements of 40 C.F.R. §§ 52.21(j)-(r). The term “major stationary source,” defined at 40 C.F.R. § 52.21(b)(1)(i), mirrors the Act’s definition of “major emitting facility” in that it includes any fossil-fuel fired steam electric plant of more than 250 mm Btu/hr that emits or has the potential to emit 100 tpy or more of any air pollutant subject to regulation under the Act,

or any stationary source that emits or has the potential to emit 250 tpy of any such pollutant. In addition, major stationary source includes “any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source, if the changes would constitute a major stationary source by itself.” 40 C.F.R. § 52.21(b)(1)(i)(c).

30. As set forth at 40 C.F.R. § 52.21(i), any major stationary source that intends to construct a “major modification” must first obtain a PSD permit. Tracking the definition of “modification” set forth in 42 U.S.C. § 7411(a)(4), “major modification” is defined at 40 C.F.R. § 52.21(b)(2) as meaning any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. “Significant” as defined at 40 C.F.R. § 52.21(b)(23)(i), includes a net emissions increase or the potential of a source to emit NO_x (including NO₂) or SO₂ at a rate of 40 tons per year or more.

31. A utility may avoid triggering the PSD law if its projection of “representative actual annual emissions” following the proposed modification is not significantly greater than its pre-modification emissions if the source “maintains and submits to the Administrator [or relevant state permitting authority] on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase.” 40 C.F.R. § 52.21(b)(21)(v).

32. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a source making a major modification shall implement BACT for each pollutant subject to regulation under the Act that it would have the potential to emit in significant quantities. BACT represents the maximum degree of emission reduction achievable for each pollutant regulated under the Act,

taking into consideration energy, environmental, and economic impacts of the emission reductions. 40 C.F.R. § 52.21(b)(12).

33. To ensure that the modification does not result in a violation of the NAAQS, the regulations require that the facility perform modeling and analysis of resulting emissions. Pursuant to 40 C.F.R. §§ 52.21(k) and 52.21(l), the owner or operator of the facility to be modified must demonstrate, through the use of air quality modeling, that the modified source would not contribute to a violation of (i) a NAAQS in any air quality control region (including regions located downwind of the source); or (ii) any allowable pollution increments. Under 40 C.F.R. § 52.21(m)(1)(b), the owner or operator of the facility to be modified must conduct an analysis for each pollutant “for which [the modification] would result in a significant air emission increase.” Subsequent to the modification, the owner or operator must “conduct such ambient monitoring as the Administrator determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.” 40 C.F.R. § 52.21(m)(2).

34. In accordance with § 161 of the Act, 42 U.S.C. § 7471, each SIP must contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas. A state may comply with § 161 either by obtaining from EPA delegated authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations, that must be at least as stringent as those set forth at 40 C.F.R. § 51.166, approved as part of its SIP by EPA.

35. Pursuant to Part C of the Act, New York’s SIP prohibits the construction or

operation of a major modification of a major stationary source in an attainment area without a permit under 40 C.F.R. § 52.21. EPA amended New York's SIP to include the provisions of § 52.21 on August 7, 1980. See 45 Fed. Reg. 52741 (Aug. 7, 1980). EPA formally delegated its authority to administer the PSD program in New York to DEC on July 21, 1982. See 47 Fed. Reg. 31613 (July 21, 1982).

36. DEC issues air permits, including PSD permits, pursuant to article 19 of the ECL and implementing regulations, codified at 6 N.Y.C.R.R. § 201 ("Part 201"). For the time period of the violations alleged in this complaint, Part 201 prohibited the operation of an air pollution source in violation of the PSD law, including, inter alia, undertaking construction or performing a major modification without a PSD permit and the implementation of BACT. From the year of the earliest violation alleged in this complaint (1982) until July 7, 1996, Part 201 mandated that any person who owned an air pollution source had to "operate and maintain such source or device in compliance with all applicable parts of this Chapter and existing laws." See 6 N.Y.C.R.R. § 201.5(d) (effective February 22, 1979 - April 4, 1993), § 201.5(e) (effective April 4, 1993 - September 22, 1994), and § 201.4(h) (effective September 23, 1994 - July 6, 1996). Since July 7, 1996, Part 201 has provided that if the owner and/or operator of an air pollution source fails to apply for a permit at the time of the construction or modification, (i) the owner and/or operator must apply for a permit and (ii) the source is subject to all regulations that were applicable to it at the time of construction or modification and any subsequent applicable requirements. See 6 N.Y.C.R.R. § 201-1.2.

37. Effective January 17, 1992, as codified at 6 N.Y.C.R.R. § 200.10(d), New York further incorporated into state law the prohibition against the construction or modification of an

air pollution source subject to 40 C.F.R. § 52.21 without obtaining a PSD permit from DEC.

Effective July 7, 1996, New York formally incorporated the federal PSD regulations by reference into state law. 6 N.Y.C.R.R. § 200.10(e).

Enforcement Provisions

38. Pursuant to 42 U.S.C. § 7604(a)(1), any person may commence, in the United States District Courts, a suit against any person alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of an emission standard or limitation under the Act. Under 42 U.S.C. § 7604(a)(3), any person may file suit in federal district court against any person who constructs a modified major emitting facility without a PSD permit.

39. The definition of “person” in 42 U.S.C. § 7602(e) includes, inter alia, an individual, a corporation, a State, and a political subdivision of a State. Therefore, each of the plaintiffs and defendants is a “person” within the meaning of 42 U.S.C. § 7602(e).

40. 42 U.S.C. § 7413(b) authorizes both injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, and \$27,500 per day for each violation occurring after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

41. Pursuant to 6 N.Y.C.R.R. §§ 200.10 and 201, a violation of the PSD law, including undertaking a major modification without obtaining a PSD permit and implementing BACT, also constitutes a violation of state law.

42. Pursuant to ECL § 71-2103, any person who violates any provision of ECL Article 19 or any code, rule or regulation promulgated pursuant thereto shall be liable, in the case of a first violation, for a penalty of not less than \$250 nor more than \$10,000 for said violation

and an additional penalty of not to exceed \$10,000 for each day during which such violation continues. In the case of a second or any further violation, the liability shall be for a penalty not to exceed \$15,000 for said violation and an additional penalty not to exceed \$15,000 for each day during which such violation occurs. The penalties are recoverable in an action brought by the Attorney General. ECL § 71-2103(2).

NOTICES

43. DEC issued a Notice of Violation, dated May 25, 2000 (“NOV”) to NRG Northeast Generation and Niagara Mohawk. The NOV set forth more than 100 violations of the Act and the ECL stemming from major modifications at the Facilities that had not undergone PSD review.

44. By letter dated May 14, 2001 (“Notice letter”), Attorney General Spitzer and Commissioner Crotty notified defendants Niagara Mohawk, NRG, NRG Northeast Generation, NRG Dunkirk, Dunkirk Power LLC, NRG Huntley, and Huntley Power LLC, of the State’s intent to file suit pursuant to 42 U.S.C. §§ 7604(a)(1) and 7604(a)(3), unless such violations were corrected.

45. Each notice was served by certified mail on the EPA Administrator and the EPA Regional Administrator for EPA Region II, in which the Facilities are located. Each notice provided sufficient information to permit the recipients to identify the activity alleged to be in violation, the persons or persons responsible for the alleged violation (*i.e.*, Niagara Mohawk and NRG and its subsidiaries), the location of the alleged violations and the approximate dates of the violations.

46. More than sixty days have elapsed since the State sent these notices, and Defendants

have failed to bring the Facilities into compliance.

DESCRIPTION OF FACILITIES AND VIOLATIONS

Dunkirk Plant

47. The Dunkirk Plant consists of four pulverized coal, dry-bottom, tangential-fired boiler units, numbered 1, 2, 3, and 4, respectively. Upon information and belief, the Dunkirk Plant has a dependable maximum net capacity (“DMNC”) of 600 megawatts (MW).

48. Units 1 and 2 each have individual stacks and each have maximum heat input of 922.2 million British thermal units per hour (mm Btu/hr). Units 1 and 2, which began operations in 1950, each have a DMNC of 100 MW. In 1989, Niagara Mohawk listed 1995 as the “normal retirement” dates for both of these units.

49. Boilers 3 and 4 share a common stack and each have a maximum heat input of 1,836 mm Btu/hr. Unit 3 began operations in 1959, while Unit 4 came on line in 1960. Each unit has a DMNC of 200 MW. In 1989, Niagara Mohawk listed 2003 as the “normal retirement” date for Unit 3, and 2004 as the “normal retirement” date for Unit 4.

50. In 2000, the Dunkirk Plant emitted 6,352 tons of NO_x and 54,708 tons of SO₂. These totals represented approximately 7 percent of NO_x and approximately 19 percent of the SO₂ emitted by power plants in New York.

51. The Dunkirk Plant is located in an area that has attained the NAAQS for ozone, NO₂, and SO₂ from 1980 until the present.

52. The Dunkirk Plant is a “major emitting facility” under 42 U.S.C. § 7479(1) and a “major stationary source” under 40 C.F.R. § 52.21(b)(1)(i).

53. The Dunkirk Plant is an “air contamination source” as defined in 6 N.Y.C.R.R.

§ 200.1(f).

Huntley Plant

54. The Huntley Plant consists of six boiler units, numbered 63, 64, 65, 66, 67, and 68, respectively. Upon information and belief, the Huntley Plant has a DMNC of 760 MW.

55. Units 63 through 66 consist of four pulverized coal, wet-bottom, arch-fired boilers. Units 63 through 66 exhaust through a common stack and have a combined maximum heat input of 3842.6 mm Btu/hr.

56. Niagara Mohawk placed Units 63 and 64 into commercial operation in 1942 and 1948, respectively. Units 63 and 64 each have a DMNC of 90 MW. In 1989, Niagara Mohawk listed 1987 as the “normal retirement” date for Unit 63 and 1993 as the “normal retirement” date for Unit 64.

57. Units 65 and 66, which began operating in 1953, and 1954, respectively, each has a DMNC of 90 MW. In 1989, Niagara Mohawk listed 1998 as the “normal retirement” date for Unit 65, and 1999 as the “normal retirement” date for Unit 66.

58. Units 67 and 68 are tangential-fired units that burn pulverized coal. Units 67 and 68 exhaust through a common stack and have a combined maximum heat input of 3,672 mm Btu/hr. Unit 67 began operations in 1957, while Unit 68 commenced operations in 1958. Unit 67 and Unit 68 each has a DMNC of 200 MW. In 1989, Niagara Mohawk listed 2002 as the “normal retirement” date for Unit 67, and 2003 as the “normal retirement” date for Unit 68.

59. In 2000, the Huntley Plant emitted 10,919 tons of NO_x and 52,302 tons of SO₂. These totals represented approximately 11 percent of NO_x and approximately 18 percent of the SO₂ emitted in New York by power plants.

60. The Huntley Plant is located in an area that since 1980 has attained the NAAQS for NO₂ and SO₂. With respect to ozone, the area did not attain the NAAQS from 1980-84, attained the NAAQS from 1984-92, and was again designated as nonattainment for ozone in 1992. The 1992 nonattainment designation remained in effect until June 5, 1998, when EPA revoked the one-hour ozone NAAQS as applicable to the area in which the Huntley Plant is located. 63 Fed. Reg. 31014 (June 5, 1998). On July 20, 2000, EPA reinstated the one-hour NAAQS, and designated the area in which the Huntley Plant is located as a nonattainment area for ozone, effective January 16, 2001. 65 Fed. Reg. 45182 (July 20, 2000).

61. The Huntley Plant is a “major emitting facility” under 42 U.S.C. § 7479(1) and a “major stationary source” under 40 C.F.R. § 52.21(b)(1)(i).

62. The Huntley Plant is an “air contamination source” as defined in 6 N.Y.C.R.R. § 200.1(f).

Niagara Mohawk’s Life Extension Program

63. Beginning in the early 1980s, Niagara Mohawk embarked on an aggressive program to recapture lost generating capacity by extending the operational lives of units at the Dunkirk and Huntley Plants. Niagara Mohawk was aware that “forced outages” (*i.e.*, periods in which a unit must be shut down to effect immediate repair) were increasing at the Facilities due to the fact that many of the original components of the boiler and turbine were reaching the end of their design life (typically thirty to forty years). Niagara Mohawk was also aware that the forced outage rate would continue to increase at the Facilities unless it began replacing critical components of the boiler and turbine.

64. Niagara Mohawk first performed a life extension on Huntley 63, the oldest unit of the

Huntley and Dunkirk Plants. In 1982-83, during a sixteen-week outage, Niagara Mohawk spent approximately \$6.1 million to upgrade the unit's combustion controls, replace the main steam line, redesign the furnace floor, add new boiler feed pumps, install a new static exciter, perform a generator stator rewind, and upgrade the generator. Shortly thereafter, Niagara Mohawk spent approximately \$3 million on Unit 63 to install a new generator rotor and new boiler stop valves.

65. In 1983, Niagara Mohawk also formalized a program to extend the operating lives of the units at the Huntley and Dunkirk Plants. For example, Niagara Mohawk hired a consulting firm, Ebasco Services, Inc., to help develop a "cookbook" approach to plant life extension, and issued a "Fossil Life Extension Program Plan" in 1984. In developing the life extension plan, Niagara Mohawk's goal was "the continued operation of all fossil units at acceptable levels of availability and reliability as long as economically justified."

66. In 1985, the Electric Power Research Institute (EPRI) published a study evaluating life extension options at Unit 67 of the Huntley Plant. The study proposed a two phase life extension approach, Phase I consisting of upgrading and replacing boiler components, and Phase II consisting of upgrading and replacing parts in the balance of the unit. EPRI identified \$27.4 million of work required to extend the life of Unit 67 until 2018, twenty years beyond its normal design life of forty years. In January 1988, EPRI published a final report on the project, entitled "Strategy for Fossil Plant Life Extension at Niagara Mohawk's Huntley-67." The final report recommended, *inter alia*, a \$12 million upgrade to Unit 67's turbine to extend the life of the unit for an additional fifteen years from its "normal retirement" in 2002.

67. After the 1985 inspection performed on Unit 67, Niagara Mohawk developed a phased approach for examining the remaining units. Phase I consisted of inspecting high energy

components such as turbine generator, steam and mud drums, economizer inlet header, and piping subject to creeping. Phase II involved inspecting the boiler, major equipment and piping susceptible to corrosion, electrical, instrumentation and control items.

68. In its 1986 annual report, Niagara Mohawk reported on the progress of its “life-extension program,” of which “the long-term objective is to lengthen the useful life of existing generating units to defer the need for new generation capacity.” Niagara Mohawk also reported that “it can be far more cost-effective to refurbish and modernize existing plants than to install new units.”

69. In or about 1987, Niagara Mohawk organized a life extension project team to formally coordinate life extension of the units at the Huntley and Dunkirk Plants. Niagara Mohawk subsequently determined that extending the lives of its aging units at the Huntley and Dunkirk Plants (without emission controls) would cost roughly nine times less than making up for lost generation capacity by building three new coal-fired units.

70. Upon information and belief, Niagara Mohawk subsequently continued its life extension program at the Facilities by performing modifications that allowed individual units to recapture lost capacity and continue generating electricity beyond their “normal retirement” dates into the present.

FIRST CLAIM FOR RELIEF

(Failure to Obtain PSD Permit Pursuant to Clean Air Act – Dunkirk Plant Unit 1)

71. Niagara Mohawk modified Dunkirk Plant Unit 1 in or about 1983 when it upgraded the capacity of the Unit’s induced draft fans and replaced the coal mill.

72. Niagara Mohawk modified Unit 1 in or about 1985 when it replaced waterwall tubes

(including front and rear wall lower slopes, burner corners, and portion of deflector arch), economizer tubes, and thirty-year old condenser tubes.

73. Niagara Mohawk modified Unit 1 in or about 1991 when it modified the preheater and replaced high temperature superheater vertical spaced pendant assemblies, a section of the low temperature superheater, and turbine buckets.

74. Niagara Mohawk modified Unit 1 in or about 1998 when it upgraded the coal pulverizers.

75. Upon information and belief, subject to further investigation and discovery, Defendants may have made other major modifications to Unit 1 without complying with the PSD law and related state law.

76. Each of the modifications identified in paragraphs 71-74, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

77. Each of the modifications identified in paragraphs 71-74 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 1, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Section 165(a) of the Act required Niagara Mohawk to obtain a PSD permit prior to the commencement of construction.

78. Niagara Mohawk has not applied for a PSD permit for any of the modifications identified in this claim for relief.

79. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate

that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

80. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not sought PSD permits for the modifications identified in paragraphs 71-74.

81. Therefore, with respect to Unit 1, since 1983 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

82. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not obtained PSD permits for Unit 1 of the Dunkirk Plant, or complied with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

83. Unless restrained by an order of this Court, these violations of the Act will continue.

84. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to

January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF

(Failure to Implement BACT Pursuant to Clean Air Act – Dunkirk Plant Unit 1)

85. As described in detail in paragraphs 71-74 above, Niagara Mohawk modified Dunkirk Plant Unit 1 at least in or about 1983, 1985, 1991, and 1998. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

86. Each of the modifications identified in paragraphs 71-74 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 1, a major modification, within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Accordingly, § 165(a) required Niagara Mohawk to implement BACT for the control of SO₂ and NO_x emissions from Unit 1. 42 U.S.C. § 7475(a)(4).

87. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not implemented BACT for control of SO₂ and NO_x emissions from Unit 1.

88. Therefore, with respect to Unit 1, since 1983 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC,

and NRG Dunkirk have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

89. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not implemented BACT for control of SO₂ and NO_x emissions from Unit 1.

90. Unless restrained by an order of this Court, these violations of the Act will continue.

91. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

THIRD CLAIM FOR RELIEF

(State PSD Violations – Dunkirk Plant Unit 1)

92. As described in detail in paragraphs 71-74 above, Niagara Mohawk modified Dunkirk Plant Unit 1 at least in or about 1983, 1985, 1991, and 1998. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

93. Each of the modifications identified in paragraphs 71-74 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 1, a major modification, within the meaning of 40 C.F.R. § 52.21(b)(2) for NO_x and SO₂, and each

required that a PSD permit be obtained under Part 201 prior to the commencement of construction and that BACT be implemented to control NO_x and SO₂ emissions.

94. Niagara Mohawk has not applied for a PSD permit or implemented BACT at Unit 1 for NO_x and SO₂ emissions.

95. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r).

96. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have neither sought PSD permits for the modifications identified in paragraphs 71-74 nor have they implemented BACT for control of SO₂ and NO_x emissions from Unit 1.

97. Therefore, with respect to Unit 1, since 1983 or earlier, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 201, and since January 17, 1992, Niagara Mohawk has been in violation of § 200.10. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have been in violation of 6 N.Y.C.R.R. §§ 200.10(e) and 201.

98. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not obtained PSD permits for Unit 1 of the Dunkirk Plant, nor have they implemented BACT for

control of SO₂ and NO_x emissions from Unit 1, or complied with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r), and therefore have violated and continue to violate 6 N.Y.C.R.R. §§ 200.10 and 201.

99. Unless restrained by an order of this Court, these violations of the Act and state law will continue.

100. As provided in ECL § 71-2103, the violations set forth above subject Niagara Mohawk, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG, NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$10,000 for the first violation plus an additional penalty of up to \$10,000 for each day during which such violation continues, and up to \$15,000 for a second or any further violation plus an additional penalty up to \$15,000 for each day during which such violation occurs.

FOURTH CLAIM FOR RELIEF

(Failure to Obtain PSD Permit Pursuant to Clean Air Act – Dunkirk Plant Unit 2)

101. Niagara Mohawk modified Dunkirk Plant Unit 2 in or about 1982 when it upgraded the capacity of the Unit's induced draft fans.

102. Niagara Mohawk modified Unit 2 in or about 1983 when it replaced sections of the economizer.

103. Niagara Mohawk modified Unit 2 in or about 1989 when it replaced steam drum connecting tubes and thirty-year old fluid drive couplings in the induced draft fans.

104. Niagara Mohawk modified Unit 2 in or about 1990 when it replaced reheater and superheater crossover tubes, replaced buckets on the turbine, and installed turbine water induction

prevention equipment.

105. Niagara Mohawk modified Unit 2 in or about 1993 when it replaced forty-two year old low temperature superheater tubes and replaced high temperature superheater tubes.

106. Niagara Mohawk modified Unit 2 in or about 1997 when it upgraded the air preheater.

107. Niagara Mohawk modified Unit 2 in or about 1998 when it upgraded the coal pulverizers.

108. Upon information and belief, subject to further investigation and discovery, Defendants may have made other major modifications to Unit 2 without complying with the PSD law and related state law.

109. Each of the modifications identified in paragraphs 101-107, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

110. Each of the modifications identified in paragraphs 101-107 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 2, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Section 165(a) of the Act required Niagara Mohawk to obtain a PSD permit prior to the commencement of construction.

111. Niagara Mohawk has not applied for a PSD permit for any of the modifications identified in this claim for relief.

112. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate

that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

113. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not sought PSD permits for the modifications identified in paragraphs 101-107.

114. Therefore, with respect to Unit 2, since 1982 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

115. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not obtained PSD permits for Unit 2 of the Dunkirk Plant, or complied with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

116. Unless restrained by an order of this Court, these violations of the Act will continue.

117. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30,

1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

FIFTH CLAIM FOR RELIEF

(Failure to Implement BACT Pursuant to Clean Air Act – Dunkirk Plant Unit 2)

118. As described in detail in paragraphs 101-107 above, Niagara Mohawk modified Dunkirk Plant Unit 2 at least in or about 1982, 1983, 1989, 1990, 1993, 1997, and 1998. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

119. Each of the modifications identified in paragraphs 101-107 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 2, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Accordingly, § 165(a) required Niagara Mohawk to implement BACT for the control of SO₂ and NO_x emissions from Unit 2. 42 U.S.C. § 7475(a)(4).

120. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not implemented BACT for control of SO₂ and NO_x emissions from Unit 2.

121. Therefore, with respect to Unit 2, since 1983 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC,

and NRG Dunkirk have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

122. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not implemented BACT for control of SO₂ and NO_x emissions from Unit 2.

123. Unless restrained by an order of this Court, these violations of the Act will continue.

124. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

SIXTH CLAIM FOR RELIEF

(State PSD Violations – Dunkirk Plant Unit 2)

125. As described in detail in paragraphs 101-107 above, Niagara Mohawk modified Dunkirk Plant Unit 2 at least in or about 1982, 1983, 1989, 1990, 1993, 1997, and 1998. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

126. Each of the modifications identified in paragraphs 101-107 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 2, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) for NO_x and SO₂, and each

required that a PSD permit be obtained under Part 201 prior to the commencement of construction and that BACT be implemented to control NO_x and SO₂ emissions.

127. Niagara Mohawk has not applied for a PSD permit or implemented BACT at Unit 2 for NO_x and SO₂ emissions.

128. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r).

129. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have neither sought PSD permits for the modifications identified in paragraphs 101-107 nor have they implemented BACT for control of SO₂ and NO_x emissions from Unit 2.

130. Therefore, with respect to Unit 2, since 1982 or earlier, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 201, and since January 17, 1992, Niagara Mohawk has been in violation of § 200.10. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have been in violation of 6 N.Y.C.R.R. §§ 200.10(e) and 201.

131. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not obtained PSD permits for Unit 2 of the Dunkirk Plant, nor have they installed BACT for control

of SO₂ and NO_x emissions from Unit 2, or complied with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r), and therefore have violated and continue to violate 6 N.Y.C.R.R. §§ 200.10 and 201.

132. Unless restrained by an order of this Court, these violations of the Act and state law will continue.

133. As provided in ECL § 71-2103, the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$10,000 for the first violation plus an additional penalty of up to \$10,000 for each day during which such violation continues, and up to \$15,000 for a second or any further violation plus an additional penalty up to \$15,000 for each day during which such violation occurs.

SEVENTH CLAIM FOR RELIEF

(Failure to Obtain PSD Permit Pursuant to Clean Air Act – Dunkirk Plant Unit 3)

134. Niagara Mohawk modified Dunkirk Plant Unit 3 in or about 1982 when it replaced the first stage buckets on the turbine.

135. Niagara Mohawk modified Unit 3 in or about 1985 when it replaced elements in the air preheaters.

136. Niagara Mohawk modified Unit 3 in or about 1986 when it time period when it upgraded the induced draft fans and coal nozzles, completely replaced the high temperature reheater crossover tubes, and replaced waterwall tubes, high temperature superheater tubes, and turbine buckets.

137. Niagara Mohawk modified Unit 3 in or about 1989 when it replaced reheater, superheater, and sidewall tubes.

138. Niagara Mohawk modified Unit 3 in or about 1992 when it replaced extended side wall boiler tubes and thirty-three-year old high temperature superheater crossover tubes.

139. Niagara Mohawk modified Unit 3 in or about 1994 when it replaced thirty-seven-year old high temperature superheater outlet pendant assemblies.

140. Niagara Mohawk modified Unit 3 in or about 1998 when it replaced reheater and superheater lower sidewall tubes and waterwall tubes.

141. Niagara Mohawk modified Unit 3 in or about 1999 when it upgraded the coal pulverizers.

142. Upon information and belief, subject to further investigation and discovery, Defendants may have made other major modifications to Unit 3 without complying with the PSD law and related state law.

143. Each of the modifications identified in paragraphs 134-141, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

144. Each of the modifications identified in paragraphs 134-141 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 3, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Section 165(a) of the Act required Niagara Mohawk to obtain a PSD permit prior to the commencement of construction.

145. Niagara Mohawk has not applied for a PSD permit for any of the modifications identified in this claim for relief.

146. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

147. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have neither sought PSD permits for the modifications identified in paragraphs 134-141.

148. Therefore, with respect to Unit 3, since 1982 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

149. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not obtained PSD permits for Unit 3 of the Dunkirk Plant, or complied with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

150. Unless restrained by an order of this Court, these violations of the Act will continue.

151. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above

subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

EIGHTH CLAIM FOR RELIEF

(Failure to Implement BACT Pursuant to Clean Air Act – Dunkirk Plant Unit 3)

152. As described in detail in paragraphs 134-141 above, Niagara Mohawk modified Dunkirk Plant Unit 3 at least in or about 1982, 1985, 1986, 1989, 1992, 1994, 1998, and 1999. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

153. Each of the modifications identified in paragraphs 134-141 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 3, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Accordingly, § 165(a) required Niagara Mohawk to implement BACT for the control of SO₂ and NO_x emissions from Unit 3. 42 U.S.C. § 7475(a)(4).

154. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not implemented BACT for control of SO₂ and NO_x emissions from Unit 3.

155. Therefore, with respect to Unit 3, since 1982 or earlier, Niagara Mohawk has been

in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

156. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not implemented BACT for control of SO₂ and NO_x emissions from Unit 3.

157. Unless restrained by an order of this Court, these violations of the Act will continue.

158. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

NINTH CLAIM FOR RELIEF

(State PSD Violations – Dunkirk Plant Unit 3)

159. As described in detail in paragraphs 134-141 above, Niagara Mohawk modified Dunkirk Plant Unit 3 at least in or about 1982, 1985, 1986, 1989, 1992, 1994, 1998, and 1999. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

160. Each of the modifications identified in paragraphs 134-141 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 3, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) for NO_x and SO₂, and each required that a PSD permit be obtained prior to the commencement of construction and that BACT be implemented to control NO_x and SO₂ emissions.

161. Niagara Mohawk has not applied for a PSD permit or implemented BACT at Unit 3 for NO_x and SO₂ emissions.

162. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r).

163. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have neither sought PSD permits for the modifications identified in paragraphs 134-141 nor have they implemented BACT for control of SO₂ and NO_x emissions from Unit 3.

164. Therefore, with respect to Unit 3, since 1982 or earlier, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 201, and since January 17, 1992, Niagara Mohawk has been in violation of § 200.10. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have been in violation of 6 N.Y.C.R.R. §§ 200.10(e) and 201.

165. Following the issuance of the NOV and the Notice letter and continuing to the

present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not obtained PSD permits for Unit 3 of the Dunkirk Plant, nor have they installed BACT for control of SO₂ and NO_x emissions from Unit 3, or complied with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r), and therefore have violated and continue to violate 6 N.Y.C.R.R. §§ 200.10 and 201.

166. Unless restrained by an order of this Court, these violations of the Act and state law will continue.

167. As provided in ECL § 71-2103, the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$10,000 for the first violation plus an additional penalty of up to \$10,000 for each day during which such violation continues, and up to \$15,000 for a second or any further violation plus an additional penalty up to \$15,000 for each day during which such violation occurs.

TENTH CLAIM FOR RELIEF

(Failure to Obtain PSD Permit Pursuant to Clean Air Act – Dunkirk Plant Unit 4)

168. Niagara Mohawk modified Unit 4 in or about 1984 when it replaced waterwall tubes.

169. Niagara Mohawk modified Unit 4 in or about 1985 when it replaced high temperature reheater crossover tubes and outlet pendant assemblies, high temperature superheater inlet pendant assemblies, and high temperature superheater outlet channel platen assemblies.

170. Niagara Mohawk modified Unit 4 in or about 1987 when it upgraded the induced draft fans to increase generating capacity.

171. Niagara Mohawk modified Unit 4 in or about 1996 when replaced waterwall tubing in the superheater and reheater.

172. Niagara Mohawk modified Unit 4 in or about 1999 when it upgraded the coal pulverizers.

173. Upon information and belief, subject to further investigation and discovery, Defendants may have made other major modifications to Unit 4 without complying with the PSD law and related state law.

174. Each of the modifications identified in paragraphs 168-172, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

175. Each of the modifications identified in paragraphs 168-172 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 4, a major modification, within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Section 165(a) of the Act required Niagara Mohawk to obtain a PSD permit prior to the commencement of construction.

176. Niagara Mohawk has not applied for a PSD permit for any of the modifications identified in this claim for relief.

177. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to

nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

178. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have neither sought PSD permits for the modifications identified in paragraphs 168-172.

179. Therefore, with respect to Unit 4, since 1984 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

180. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not obtained PSD permits for Unit 4 of the Dunkirk Plant, or complied with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

181. Unless restrained by an order of this Court, these violations of the Act will continue.

182. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to

28 U.S.C. § 2461 and 31 U.S.C. § 3701.

ELEVENTH CLAIM FOR RELIEF

(Failure to Implement BACT Pursuant to Clean Air Act – Dunkirk Plant Unit 4)

183. As described in detail in paragraphs 168-172 above, Niagara Mohawk modified Dunkirk Plant Unit 4 at least in or about 1984, 1985, 1987, 1996, and 1999. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

184. Each of the modifications identified in paragraphs 168-172 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 4, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Accordingly, § 165(a) required Niagara Mohawk to implement BACT for the control of SO₂ and NO_x emissions from Unit 4. 42 U.S.C. § 7475(a)(4).

185. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not implemented BACT for control of SO₂ and NO_x emissions from Unit 4.

186. Therefore, with respect to Unit 4, since 1984 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New

York SIP.

187. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not implemented BACT for control of SO₂ and NO_x emissions from Unit 4.

188. Unless restrained by an order of this Court, these violations of the Act will continue.

189. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

TWELFTH CLAIM FOR RELIEF

(State PSD Violations – Dunkirk Plant Unit 4)

190. As described in detail in paragraphs 168-172 above, Niagara Mohawk modified Dunkirk Plant Unit 4 at least in or about 1984, 1985, 1987, 1996, and 1999. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

191. Each of the modifications identified in paragraphs 168-172 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 4, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) for NO_x and SO₂, and each required that a PSD permit be obtained prior to the commencement of construction and that

BACT be implemented to control NO_x and SO₂ emissions.

192. Niagara Mohawk has not applied for a PSD permit or implemented BACT at Unit 4 for NO_x and SO₂ emissions.

193. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r).

194. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have neither sought PSD permits for the modifications identified in paragraphs 168-172 nor have they implemented BACT for control of SO₂ and NO_x emissions from Unit 4.

195. Therefore, with respect to Unit 4, since 1984 or earlier, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 201, and since January 17, 1992, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. §§ 200.10 and 201. Since acquiring ownership and/or control of the Dunkirk Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have been in violation of 6 N.Y.C.R.R. §§ 200.10(e) and 201.

196. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, and NRG Dunkirk have not obtained PSD permits for Unit 4 of the Dunkirk Plant, nor have they installed BACT for control of SO₂ and NO_x emissions from Unit 4, or complied with any other substantive requirements of 40

C.F.R. § 52.21(j) through (r), and therefore have violated and continue to violate 6 N.Y.C.R.R. §§ 200.10 and 201.

197. Unless restrained by an order of this Court, these violations of the Act and state law will continue.

198. As provided in ECL § 71-2103, the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$10,000 for the first violation plus an additional penalty of up to \$10,000 for each day during which such violation continues, and up to \$15,000 for a second or any further violation plus an additional penalty up to \$15,000 for each day during which such violation occurs.

THIRTEENTH CLAIM FOR RELIEF

(Failure to Obtain PSD Permit Pursuant to Clean Air Act – Huntley Plant Unit 63)

199. Niagara Mohawk modified Huntley Plant Unit 63 during 1982-83 when it, inter alia, upgraded the Unit's combustion controls, replaced the main steam line, redesigned the furnace floor, and added new boiler feed pumps.

200. Niagara Mohawk modified Unit 63 in or about 1984 when it upgraded the pulverizers and installed new boiler stop valves.

201. Niagara Mohawk modified Unit 63 in or about 1985 when it replaced the high temperature superheater.

202. Niagara Mohawk modified Unit 63 in or about 1987 when it upgraded the turbine, and replaced the following forty-five-year old boiler tubes: low temperature superheater and

supports, secondary superheater and supports, superheater tube assemblies, sidewall tubes, and first and second division wall tubes.

203. Niagara Mohawk modified Unit 63 in or about 1989 when it replaced forty-seven year old condenser tubes.

204. Upon information and belief, subject to further investigation and discovery, Defendants may have made other major modifications to Unit 63 without complying with the PSD law and related state law.

205. Each of the modifications identified in paragraphs 199-203, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

206. Each of the modifications identified in paragraphs 199-203 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 63, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Section 165(a) of the Act required Niagara Mohawk to obtain a PSD permit prior to the commencement of construction.

207. Niagara Mohawk has not applied for a PSD permit for any of the modifications identified in this claim for relief.

208. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

209. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not sought PSD permits for the modifications identified in paragraphs 199-203.

210. Therefore, with respect to Unit 63, since 1982 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

211. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 63 of the Huntley Plant, or complied with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

212. Unless restrained by an order of this Court, these violations of the Act will continue.

213. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

FOURTEENTH CLAIM FOR RELIEF

(Failure to Implement BACT Pursuant to Clean Air Act – Huntley Plant Unit 63)

214. As described in detail in paragraphs 199-203 above, Niagara Mohawk modified Huntley Plant Unit 63 at least in or about 1982-83, 1984, 1985, 1987 and 1989. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

215. Each of the modifications identified in paragraphs 199-203 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 63, a major modification, within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Accordingly, § 165(a) required Niagara Mohawk to implement BACT for the control of SO₂ and NO_x emissions from Unit 63. 42 U.S.C. § 7475(a)(4).

216. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 63.

217. Therefore, with respect to Unit 63, since 1982 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

218. Following the issuance of the NOV and the Notice letter and continuing to the

present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 63.

219. Unless restrained by an order of this Court, these violations of the Act will continue.

220. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

FIFTEENTH CLAIM FOR RELIEF

(State PSD Violations – Huntley Plant Unit 63)

221. As described in detail in paragraphs 199-203 above, Niagara Mohawk modified Huntley Plant Unit 63 at least in or about 1982-83, 1984, 1985, 1987 and 1989. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

222. Each of the modifications identified in paragraphs 199-203 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 63, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) for NO_x and SO₂, and each required that a PSD permit be obtained prior to the commencement of construction and that BACT be implemented to control NO_x and SO₂ emissions.

223. Niagara Mohawk has not applied for a PSD permit or implemented BACT at

Unit 63 for NO_x and SO₂ emissions.

224. Niagara Mohawk has not applied for a PSD permit or otherwise complied with the PSD law for any of the modifications identified in this claim for relief.

225. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r).

226. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have neither sought PSD permits for the modifications identified in paragraphs 199-203 nor have they implemented BACT for control of SO₂ and NO_x emissions from Unit 63.

227. Therefore, with respect to Unit 63, since 1982 or earlier, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 201, and since January 17, 1992, Niagara Mohawk has been in violation of § 200.10. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 6 N.Y.C.R.R. §§ 200.10(e) and 201.

228. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 63 of the Huntley Plant, nor have they installed BACT for control of SO₂ and NO_x emissions from Unit 63, or complied with any other substantive requirements of

40 C.F.R. § 52.21(j) through (r), and therefore have violated and continue to violate 6 N.Y.C.R.R. §§ 200.10 and 201.

229. Unless restrained by an order of this Court, these violations of the Act and state law will continue.

230. As provided in ECL § 71-2103, the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$10,000 for the first violation plus an additional penalty of up to \$10,000 for each day during which such violation continues, and up to \$15,000 for a second or any further violation plus an additional penalty up to \$15,000 for each day during which such violation occurs.

SIXTEENTH CLAIM FOR RELIEF

(Failure to Obtain PSD Permit Pursuant to Clean Air Act – Huntley Plant Unit 64)

231. Niagara Mohawk modified Huntley Plant Unit 64 in or about 1983 when it upgraded the pulverizers.

232. Niagara Mohawk modified Unit 64 in or about 1985 when it redesigned the furnace floor (switching from intermittent to continuous slag removal), and replaced the primary furnace floor tubes (including sidewall tubes and slag screen tubes) and the ash hopper.

233. Niagara Mohawk modified Unit 64 in or about 1987 when it upgraded the coal feeders and installed turbine water induction prevention equipment.

234. Niagara Mohawk modified Unit 64 in or about 1989 when it replaced the economizer.

235. Niagara Mohawk modified Unit 64 in or about 1992 when it replaced forty-two year old primary furnace roof and front wall tubes.

236. Upon information and belief, subject to further investigation and discovery, Defendants may have made other major modifications to Unit 64 without complying with the PSD law and related state law.

237. Each of the modifications identified in paragraphs 231-235, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

238. Each of the modifications identified in paragraphs 231-235 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 64, a major modification, within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Section 165(a) of the Act required Niagara Mohawk to obtain a PSD permit prior to the commencement of construction.

239. Niagara Mohawk has not applied for a PSD permit for any of the modifications identified in this claim for relief.

240. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

241. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG

Huntley have not sought PSD permits for the modifications identified in paragraphs 231-235.

242. Therefore, with respect to Unit 64, since 1983 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley Operations Inc. have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

243. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 64 of the Huntley Plant, or complied with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

244. Unless restrained by an order of this Court, these violations of the Act will continue.

245. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

SEVENTEENTH CLAIM FOR RELIEF

(Failure to Implement BACT Pursuant to Clean Air Act – Huntley Plant Unit 64)

246. As described in detail in paragraphs 231-235 above, Niagara Mohawk modified Huntley Plant Unit 64 at least in or about 1983, 1985, 1987, 1989, and 1992. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

247. Each of the modifications identified in paragraphs 231-235 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 64, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Accordingly, § 165(a) required Niagara Mohawk to implement BACT for the control of SO₂ and NO_x emissions from Unit 64. 42 U.S.C. § 7475(a)(4).

248. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 64.

249. Therefore, with respect to Unit 64, since 1983 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

250. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG

Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 64.

251. Unless restrained by an order of this Court, these violations of the Act will continue.

252. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

EIGHTEENTH CLAIM FOR RELIEF

(State PSD Violations – Huntley Plant Unit 64)

253. As described in detail in paragraphs 231-235 above, Niagara Mohawk modified Huntley Plant Unit 64 at least in or about 1983, 1985, 1987, 1989, and 1992. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

254. Each of the modifications identified in paragraphs 231-235 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 64, a major modification, within the meaning of 40 C.F.R. § 52.21(b)(2) for NO_x and SO₂, and each required that a PSD permit be obtained prior to the commencement of construction and that BACT be implemented to control NO_x and SO₂ emissions.

255. Niagara Mohawk has not applied for a PSD permit or implemented BACT at Unit 64 for NO_x and SO₂ emissions.

256. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r).

257. Defendants Niagara Mohawk, NRG, Huntley Power LLC, and NRG Huntley Operations Inc. have neither sought PSD permits for the modifications identified in paragraphs 226-230 nor have they implemented BACT for control of SO₂ and NO_x emissions from Unit 64.

258. Therefore, with respect to Unit 64, since 1983 or earlier, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 201, and since January 17, 1992, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 200.10. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 6 N.Y.C.R.R. §§ 200.10(e) and 201.

259. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 64 of the Huntley Plant, nor have they installed BACT for control of SO₂ and NO_x emissions from Unit 64, or complied with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r), and therefore have violated and continue to violate 6 N.Y.C.R.R. §§ 200.10 and 201.

260. Unless restrained by an order of this Court, these violations of the Act and state law will continue.

261. As provided in ECL § 71-2103, the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$10,000 for the first violation plus an additional penalty of up to \$10,000 for each day during which such violation continues, and up to \$15,000 for a second or any further violation plus an additional penalty up to \$15,000 for each day during which such violation occurs.

NINETEENTH CLAIM FOR RELIEF

(Failure to Obtain PSD Permit Pursuant to Clean Air Act – Huntley Plant Unit 65)

262. Niagara Mohawk modified Huntley Plant Unit 65 in or about the 1983 when it upgraded the pulverizers.

263. Niagara Mohawk modified Unit 65 in or about 1988 when it completely replaced the high temperature reheater inlet and outlet pendant sections and slag screen tubes.

264. Niagara Mohawk modified Unit 65 in or about 1989 when it upgraded the air fans.

265. Niagara Mohawk modified Unit 65 in or about 1990 when it upgraded the coal feeders and burners and replaced primary furnace rear wall and roof tubes.

266. Upon information and belief, subject to further investigation and discovery, Defendants may have made other major modifications to Unit 65 without complying with the PSD law and related state law.

267. Each of the modifications identified in paragraphs 262-265, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

268. Each of the modifications identified in paragraphs 262-265 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 65, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Section 165(a) of the Act required Niagara Mohawk to obtain a PSD prior to the commencement of construction.

269. Niagara Mohawk has not applied for a PSD permit for any of the modifications identified in this claim for relief.

270. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

271. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not sought PSD permits for the modifications identified in paragraphs 262-265.

272. Therefore, with respect to Unit 65, since 1983 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

273. Following the issuance of the NOV and the Notice letter and continuing to the

present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 65 of the Huntley Plant, or complied with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

274. Unless restrained by an order of this Court, these violations of the Act will continue.

275. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

TWENTIETH CLAIM FOR RELIEF

(Failure to Implement BACT Pursuant to Clean Air Act – Huntley Plant Unit 65)

276. As described in detail in paragraphs 262-265 above, Niagara Mohawk modified Huntley Plant Unit 65 at least in or about 1983, 1988, 1989, and 1990. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

277. Each of the modifications identified in paragraphs 262-265 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 65, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Accordingly, § 165(a) required Niagara Mohawk to

implement BACT for the control of SO₂ and NO_x emissions from Unit 65. 42 U.S.C. § 7475(a)(4).

278. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 65.

279. Therefore, with respect to Unit 65, since 1983 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

280. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 65.

281. Unless restrained by an order of this Court, these violations of the Act will continue.

282. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

TWENTY-FIRST CLAIM FOR RELIEF

(State PSD Violations – Huntley Plant Unit 65)

283. As described in detail in paragraphs 262-265 above, Niagara Mohawk modified Huntley Plant Unit 65 at least in or about 1983, 1988, 1989, and 1990. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

284. Each of the modifications identified in paragraphs 262-265 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 65, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) for NO_x and SO₂, and each required that a PSD permit be obtained prior to the commencement of construction and that BACT be implemented to control NO_x and SO₂ emissions.

285. Niagara Mohawk has not applied for a PSD permit or implemented BACT at Unit 65 for NO_x and SO₂ emissions.

286. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r).

287. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have neither sought PSD permits for the modifications identified in paragraphs 262-265 nor have they implemented BACT for control of SO₂ and NO_x emissions from Unit 65.

288. Therefore, with respect to Unit 65, since 1983 or earlier, Niagara Mohawk has been

in violation of 6 N.Y.C.R.R. § 201, and since January 17, 1992, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 200.10. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 6 N.Y.C.R.R. §§ 200.10(e) and 201.

289. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 65 of the Huntley Plant, nor have they installed BACT for control of SO₂ and NO_x emissions from Unit 65, or complied with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r), and therefore have violated and continue to violate 6 N.Y.C.R.R. §§ 200.10 and 201.

290. Unless restrained by an order of this Court, these violations of the Act and state law will continue.

291. As provided in ECL § 71-2103, the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power, LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$10,000 for the first violation plus an additional penalty of up to \$10,000 for each day during which such violation continues, and up to \$15,000 for a second or any further violation plus an additional penalty up to \$15,000 for each day during which such violation occurs.

TWENTY-SECOND CLAIM FOR RELIEF

(Failure to Obtain PSD Permit Pursuant to Clean Air Act – Huntley Plant Unit 66)

292. Niagara Mohawk modified Huntley Plant Unit 66 in or about 1983 when it upgraded the pulverizers.

293. Niagara Mohawk modified Unit 66 in or about 1986 when it completely replaced the high temperature superheater inlet and outlet pendant sections.

294. Niagara Mohawk modified Unit 66 in or about 1988 when it upgraded the coal feeders.

295. Upon information and belief, subject to further investigation and discovery, Defendants may have made other major modifications to Unit 66 without complying with the PSD law and related state law.

296. Each of the modifications identified in paragraphs 292-294, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

297. Each of the modifications identified in paragraphs 292-294 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 66, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Section 165(a) of the Act required Niagara Mohawk to obtain a PSD permit prior to the commencement of construction.

298. Niagara Mohawk has not applied for a PSD permit for any of the modifications identified in this claim for relief.

299. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate

that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

300. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have neither sought PSD permits for the modifications identified in paragraphs 292-294.

301. Therefore, with respect to Unit 66, since 1983 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

302. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 66 of the Huntley Plant, or complied with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

303. Unless restrained by an order of this Court, these violations of the Act will continue.

304. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to

28 U.S.C. § 2461 and 31 U.S.C. § 3701.

TWENTY-THIRD CLAIM FOR RELIEF

(Failure to Implement BACT Pursuant to Clean Air Act – Huntley Plant Unit 66)

305. As described in detail in paragraphs 292-294 above, Niagara Mohawk modified Huntley Plant Unit 66 at least in or about 1983, 1986, and 1988. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

306. Each of the modifications identified in paragraphs 292-294 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 66, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Accordingly, § 165(a) required Niagara Mohawk to implement BACT for the control of SO₂ and NO_x emissions from Unit 66. 42 U.S.C. § 7475(a)(4).

307. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 66.

308. Therefore, with respect to Unit 66, since 1983 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New

York SIP.

309. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 66.

310. Unless restrained by an order of this Court, these violations of the Act will continue.

311. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

TWENTY-FOURTH CLAIM FOR RELIEF

(State PSD Violations – Huntley Plant Unit 66)

312. As described in detail in paragraphs 292-294 above, Niagara Mohawk modified Huntley Plant Unit 66 in or about 1983, 1986, and 1988. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

313. Each of the modifications identified in paragraphs 292-294 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 66, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) for NO_x and SO₂, and each required that a PSD permit be obtained prior to the commencement of construction and that

BACT be implemented to control NO_x and SO₂ emissions.

314. Niagara Mohawk has not applied for a PSD permit or implemented BACT at Unit 66 for NO_x and SO₂ emissions.

315. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r).

316. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have neither sought PSD permits for the modifications identified in paragraphs 292-294 nor have they implemented BACT for control of SO₂ and NO_x emissions from Unit 66.

317. Therefore, with respect to Unit 66, since 1983 or earlier, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 201, and since January 17, 1992, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 200.10. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 6 N.Y.C.R.R. §§ 200.10(e) and 201.

318. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 66 of the Huntley Plant, nor have they installed BACT for control of SO₂ and NO_x emissions from Unit 66, or complied with any other substantive requirements of

40 C.F.R. § 52.21(j) through (r), and therefore have violated and continue to violate 6 N.Y.C.R.R. §§ 200.10 and 201.

319. Unless restrained by an order of this Court, these violations of the Act and state law will continue.

320. As provided in ECL § 71-2103, the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$10,000 for the first violation plus an additional penalty of up to \$10,000 for each day during which such violation continues, and up to \$15,000 for a second or any further violation plus an additional penalty up to \$15,000 for each day during which such violation occurs.

TWENTY-FIFTH CLAIM FOR RELIEF

(Failure to Obtain PSD Permit Pursuant to Clean Air Act – Huntley Plant Unit 67)

321. Niagara Mohawk modified Huntley Plant Unit 67 in or about 1982 when it replaced low temperature superheater tubes, high temperature reheater tubes, the bottom ash system, and air heater baskets.

322. Niagara Mohawk modified Unit 67 in or about 1988 when it completely replaced the high temperature superheater rear pendant assemblies.

323. Niagara Mohawk modified Unit 67 in or about 1991 when it replaced the turbine (HP-IP outer and inner shells, HP-IP rotor including all the buckets and diaphragms, combined thrust and two journal bearings, all three sections of steam packings, packing boxes and rings, oil deflectors, all control valves, and all instrumentation and electrical hardware).

324. Niagara Mohawk modified Unit 67 in or about 1994 when it made replaced thirty-seven year old superheater and reheater waterwall tubes, assemblies in the low temperature inlet and outlet channel reheaters, reheater furnace outlet header, high temperature reheat outlets, and condenser tubes.

325. Niagara Mohawk modified Unit 67 in or about 1999 when it replaced high pressure feedwater heaters.

326. Upon information and belief, subject to further investigation and discovery, Defendants may have made other major modifications to Unit 67 without complying with the PSD law and related state law.

327. Each of the modifications identified in paragraphs 321-325, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

328. Each of the modifications identified in paragraphs 321-325 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 67, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Section 165(a) of the Act required Niagara Mohawk to obtain a PSD permit prior to the commencement of construction.

329. Niagara Mohawk has not applied for a PSD permit for any of the modifications identified in this claim for relief.

330. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to

nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

331. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not sought PSD permits for the modifications identified in paragraphs 321-325.

332. Therefore, with respect to Unit 67, since 1982 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

333. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 67 of the Huntley Plant, or complied with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

334. Unless restrained by an order of this Court, these violations of the Act will continue.

335. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to

28 U.S.C. § 2461 and 31 U.S.C. § 3701.

TWENTY-SIXTH CLAIM FOR RELIEF

(Failure to Implement BACT Pursuant to Clean Air Act – Huntley Plant Unit 67)

336. As described in detail in paragraphs 321-325 above, Niagara Mohawk modified Huntley Plant Unit 67 at least in or about 1982, 1988, 1991, 1994, and 1999. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

337. Each of the modifications identified in paragraphs 321-325 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 67, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Accordingly, § 165(a) required Niagara Mohawk to implement BACT for the control of SO₂ and NO_x emissions from Unit 67. 42 U.S.C. § 7475(a)(4).

338. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 67.

339. Therefore, with respect to Unit 67, since 1982 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New

York SIP.

340. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 67.

341. Unless restrained by an order of this Court, these violations of the Act will continue.

342. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

TWENTY-SEVENTH CLAIM FOR RELIEF

(State PSD Violations – Huntley Plant Unit 67)

343. As described in detail in paragraphs 321-325 above, Niagara Mohawk modified Huntley Plant Unit 67 at least in or about 1982, 1988, 1991, 1994, and 1999. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

344. Each of the modifications identified in paragraphs 321-325 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 67, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) for NO_x and SO₂, and each required that a PSD permit be obtained prior to the commencement of construction and that

BACT be implemented to control NO_x and SO₂ emissions.

345. Niagara Mohawk has not applied for a PSD permit or implemented BACT at Unit 67 for NO_x and SO₂ emissions.

346. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r).

347. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have neither sought PSD permits for the modifications identified in paragraphs 321-325 nor have they implemented BACT for control of SO₂ and NO_x emissions from Unit 67.

348. Therefore, with respect to Unit 67, since 1982 or earlier, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 201, and since January 17, 1992, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 200.10. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 6 N.Y.C.R.R. §§ 200.10(e) and 201.

349. Following the issuance of the NOV and Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 67 of the Huntley Plant, nor have they installed BACT for control of SO₂ and NO_x emissions from Unit 67, or complied with any other substantive requirements of

40 C.F.R. § 52.21(j) through (r), and therefore have violated and continue to violate 6 N.Y.C.R.R. §§ 200.10 and 201.

350. Unless restrained by an order of this Court, these violations of the Act and state law will continue.

351. As provided in ECL § 71-2103, the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$10,000 for the first violation plus an additional penalty of up to \$10,000 for each day during which such violation continues, and up to \$15,000 for a second or any further violation plus an additional penalty up to \$15,000 for each day during which such violation occurs.

TWENTY-EIGHTH CLAIM FOR RELIEF

(Failure to Obtain PSD Permit Pursuant to Clean Air Act – Huntley Plant Unit 68)

352. Niagara Mohawk modified Huntley Plant Unit 68 in or about 1982 when it replaced waterwall, superheater and reheater tubes, the high pressure turbine nozzle block and high pressure rotor bearing, feedwater heaters, the boiler burner corner, and the bottom ash system.

353. Niagara Mohawk modified Unit 68 in or about 1984 when it replaced waterwall tubes, padwelds, and high temperature outlet superheater channel platen assemblies.

354. Niagara Mohawk modified Unit 68 in or about 1986 when it upgraded the coal feed system, completely replaced the high temperature superheater inlet pendant section, and replaced low temperature superheater pendant tubes and waterwall tubes in superheater and in the reheater.

355. Niagara Mohawk modified Unit 68 in or about 1987 when it completely replaced the extended sidewall tubes in both the superheater and the reheater.

356. Niagara Mohawk modified Unit 68 in or about 1989 when it upgraded the induced draft fans and replaced the igniter.

357. Niagara Mohawk modified Unit 68 in or about 1993 when it rehabilitated the Unit 67 turbine and installed it in Unit 68, and replaced condenser tubes, roof tubes, and waterwall tubes.

358. Niagara Mohawk modified Unit 68 in or about 1995 when it replaced high temperature reheater outlet pendants, thirty-eight year old superheater and reheater waterwall tubes, thirty-eight year old reheater furnace outlet header (including crossover tubes), thirty-seven year old high temperature reheater inlet pendant assemblies, and thirty-seven year old low temperature reheater assemblies.

359. Niagara Mohawk modified Unit 68 in or about 1997 when it replaced the high pressure feed water heater.

360. Niagara Mohawk modified Unit 68 in or about 1999 when it replaced low temperature superheater assemblies.

361. Upon information and belief, subject to further investigation and discovery, Defendants may have made other major modifications to Unit 68 without complying with the PSD law and related state law.

362. Each of the modifications identified in paragraphs 352-360, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

363. Each of the modifications identified in paragraphs 352-360 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 68, a major modification, within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Section 165(a) of the Act required that Niagara Mohawk to obtain a PSD permit prior to the commencement of construction.

364. Niagara Mohawk has not applied for a PSD permit for any of the modifications identified in this claim for relief.

365. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

366. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not sought PSD permits for the modifications identified in paragraphs 352-360.

367. Therefore, with respect to Unit 68, since 1982 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

368. Following the issuance of the NOV and the Notice letter and continuing to the

present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 68 of the Huntley Plant, or complied with any other substantive requirements of 42 U.S.C. § 7475 and 40 C.F.R. § 52.21(j) through (r).

369. Unless restrained by an order of this Court, these violations of the Act will continue.

370. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

TWENTY-NINTH CLAIM FOR RELIEF

(Failure to Implement BACT Pursuant to Clean Air Act – Huntley Plant Unit 68)

371. As described in detail in paragraphs 352-360 above, Niagara Mohawk modified Huntley Plant Unit 68 at least in or about 1982, 1984, 1986, 1987, 1989, 1993, 1995, 1997, and 1999. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

372. Each of the modifications identified in paragraphs 352-360 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 68, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) and construction of a major emitting facility within the meaning of sections 165 and 169(2)(C) of the Act, 42 U.S.C. §§ 7475 and 7479(2)(C), for NO_x and SO₂. Accordingly, § 165(a) required Niagara Mohawk to

implement BACT for the control of SO₂ and NO_x emissions from Unit 66. 42 U.S.C. § 7475(a)(4).

373. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 68.

374. Therefore, with respect to Unit 68, since 1982 or earlier, Niagara Mohawk has been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP. Since acquiring ownership of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and the New York SIP.

375. Following the issuance of the NOV and the Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not implemented BACT for control of SO₂ and NO_x emissions from Unit 68.

376. Unless restrained by an order of this Court, these violations of the Act will continue.

377. As provided in 42 U.S.C. §§ 7413(b) and 7604(a), the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Act prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701.

THIRTIETH CLAIM FOR RELIEF

(State PSD Violations – Huntley Plant Unit 68)

378. As described in detail in paragraphs 352-360 above, Niagara Mohawk modified Huntley Plant Unit 68 at least in or about 1982, 1984, 1986, 1987, 1989, 1993, 1995, 1997, and 1999. Each of the aforesaid modifications, individually and/or collectively, resulted or would result in a net increase of more than 40 tpy in emissions of NO_x and SO₂.

379. Each of the modifications identified in paragraphs 352-360 is, individually and/or collectively, as part of Niagara Mohawk's project to upgrade, and/or extend the life of, Unit 68, a major modification within the meaning of 40 C.F.R. § 52.21(b)(2) for NO_x and SO₂, and each required that a PSD permit be obtained prior to the commencement of construction and that BACT be implemented to control NO_x and SO₂ emissions.

380. Niagara Mohawk has not applied for a PSD permit or implemented BACT at Unit 68 for NO_x and SO₂ emissions.

381. Prior to making the aforesaid modifications, Niagara Mohawk did not demonstrate that the emission increases resulting from the modifications would not contribute to nonattainment in any air quality control regions, or comply with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r).

382. Defendants Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have neither sought PSD permits for the modifications identified in paragraphs 352-360 nor have they implemented BACT for control of SO₂ and NO_x emissions from Unit 68.

383. Therefore, with respect to Unit 68, since 1982 or earlier, Niagara Mohawk has been in violation of 6 N.Y.C.R.R. § 201, and since January 17, 1992, Niagara Mohawk has been in

violation of 6 N.Y.C.R.R. § 200.10. Since acquiring ownership and/or control of the Huntley Plant in 1999, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have been in violation of 6 N.Y.C.R.R. §§ 200.10(e) and 201.

384. Following the issuance of the NOV and Notice letter and continuing to the present, Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Huntley Power LLC, and NRG Huntley have not obtained PSD permits for Unit 68 of the Huntley Plant, nor have they installed BACT for control of SO₂ and NO_x emissions from Unit 68, or complied with any other substantive requirements of 40 C.F.R. § 52.21(j) through (r), and therefore have violated and continue to violate 6 N.Y.C.R.R. §§ 200.10 and 201.

385. Unless restrained by an order of this Court, these violations of the Act and state law will continue.

386. As provided in ECL § 71-2103, the violations set forth above subject Niagara Mohawk, NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power, LLC, and NRG Dunkirk to injunctive relief and civil penalties of up to \$10,000 for the first violation plus an additional penalty of up to \$10,000 for each day during which such violation continues, and up to \$15,000 for a second or any further violation plus an additional penalty up to \$15,000 for each day during which such violation occurs.

THIRTY-FIRST CLAIM FOR RELIEF

(State Common Law Public Nuisance -- Dunkirk and Huntley Plants)

387. Emissions of SO₂ and NO_x from the Facilities contribute extensively to damages to human health and the environment, including natural resources in New York. As set forth below, by virtue of the adverse impacts emissions from the Facilities on human health and the environment, Defendants are liable for the creation and maintenance of a public nuisance.

388. NO_x generated from coal-fired power plant emissions in New York contributes to the formation of ground level ozone, which causes state residents to experience adverse health impacts, including chest pains, shortness of breath, coughing, nausea, throat irritation, and increased susceptibility to respiratory infections such as asthma, bronchitis, and emphysema. Many locations in upstate New York, including the Buffalo metropolitan area, record levels of ozone in excess of the health-based ozone NAAQS set by EPA.

389. Emissions of NO_x and SO₂ from New York coal-fired power plants contribute to fine particulate matter that causes premature mortality as well as other adverse human health impacts in the State. These additional effects include aggravation of cardiovascular and respiratory disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), decreased lung function and increased respiratory symptoms, and changes to lung tissue and structure. In western New York, including the Buffalo metropolitan area, elevated levels of fine particulate matter attributable to power plant emissions lead to increased mortality.

390. The NO_x and SO₂ emissions from coal-fired power plants in New York contribute to the formation of acid deposition, which has caused the acidification of hundreds of lakes and ponds in the Adirondack and Catskill Mountains and elsewhere in the state. As acid rain flows

through soils in a watershed, aluminum is released from soils into the lakes and streams. As pH in a lake or stream decreases, aluminum levels increase. Low pH and increased aluminum levels may be directly toxic to fish or may cause chronic stress that may not kill individual fish, but leads to lower body weight and smaller size and makes fish less able to compete for food and habitat. As a result, many of New York's waters, particularly those in the western Adirondacks, are now devoid of fish and otherwise are far less inhabited by fish. Acid deposition also creates soil conditions that are inhospitable to wildlife, forests, and other plant species. The State holds these resources in trust for use and enjoyment by members of the public, and has been adversely impacted by such damage.

391. The Facilities currently generate more than one-fifth of the NO_x emissions and more than one-third of SO₂ emissions produced by power plants in the state. Plaintiffs estimate that, beginning with the year alleged above as the first year in which a modification subject to PSD occurred until 2000, the Facilities have emitted approximately 300,000 tons of NO_x and approximately two million tons of SO₂. Most of these emissions would not have been generated if Defendants had complied with federal and state PSD laws. The Facilities bear responsibility for a significant portion of adverse human health impacts in the state attributable to these pollutants and are liable for substantial damages to natural resources in New York attributable to acid deposition. The impact of the Facilities upon the aquatic resources most threatened by acid deposition is increased by their locations directly upwind of these resources.

392. By failing to utilize legally required pollution control technology or otherwise controlling emissions from the Facilities, Defendants have and continue to operate the Facilities in a manner that offends, interferes with, and causes damage to the public in the exercise of rights

common to all and that injures the property, comfort, health, safety, and environment of a substantial number of persons, creating a public nuisance. The illegal modifications of the Facilities, as described above in the thirty claims for relief, have allowed Defendants to continue to operate the Facilities without proper pollution controls, thereby maintaining the public nuisance attributable to their emissions.

393. As trustee, under the common law, of the resources of New York, the State is entitled to restoration of the resources damaged by Defendants' emissions, mitigation of the damage caused by Defendants, and recovery of damages to New York's resources.

394. By failing to abate the public nuisance to human health and the environment attributable to their emissions, Defendants have created and contributed to, and continue to cause and contribute to, the maintenance of a public nuisance, and are strictly, jointly and severally liable to the State for abatement of said nuisance, and for damages to New York and its resources.

THIRTY-SECOND CLAIM FOR RELIEF

(State Common Law Restitution and Damages – Dunkirk and Huntley Plants)

395. Defendants' illegal acts set forth in the State's thirty-one claims for relief above have caused and continue to cause harm to human health and the environment in New York.

396. At all times relevant hereto, Defendants had and continue to have a duty and obligation to the public to abate the harm and threatened harm resulting from their illegal acts. Such duties and obligations include, inter alia, determining the nature and extent of the harm and threat to human, animal, and plant life and to natural resources caused by the emission of air pollutants, and to implement the measures needed to abate such harm and threat of harm.

397. Defendants have failed and refused to perform their duties and obligations set forth

in the preceding paragraph.

398. Because of Defendants' failure to perform some or all of those duties and obligations, the State has had to and continue to incur costs to pay for services needed to protect the public health and the environment. The State has expended large sums of money to pay for the treatment of the harm caused by Defendants' illegal acts, including increased health care costs for treatment of additional residents suffering from cardiovascular disease and respiratory problems.

399. The actions taken and expenses incurred by the State were necessary to ensure the health, safety, and well-being of the public and the environment.

400. Defendants have been unjustly enriched by the State's performance of these duties and obligations.

401. The State is entitled to restitution from Defendants for the expenses incurred and to be incurred by it in performing Defendants' duties and obligations.

THIRTY-THIRD CLAIM FOR RELIEF

(Violation of State Executive Law § 63(12) – Dunkirk and Huntley Plants)

402. Whenever any person engages in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business, the Attorney General may apply, in the name of the people of the state of New York, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, canceling any certificate filed under section 130 of the General Business Law, and the court may award the relief applied for or so much thereof as it may deem proper.

403. As set forth in the State's thirty-two claims for relief above, defendant Niagara Mohawk has engaged in a pattern of repeated illegal conduct by failing to comply with federal and state PSD requirements. These illegal acts have caused and continue to cause harm to human health and the environment in New York.

404. As set forth in the State's thirty-two claims for relief above, defendants NRG, Northeast Generation Holding LLC, NRG Eastern LLC, NRG Operating Services, Inc., NRG Northeast, Dunkirk Power LLC, NRG Dunkirk, Huntley Power LLC, and NRG Huntley have engaged in a pattern of repeated illegal conduct by failing to comply with federal and state PSD requirements. These illegal acts have caused and continue to cause harm to human health and the environment in New York.

405. As a result of the harm to human health and the environment caused by Defendants' illegal acts, the State has incurred costs, including, but not limited to, health care expenses required to treat residents suffering adverse health impacts attributable, in whole or in part, to Defendants' emissions, and the State has sustained damages to the natural resources of New York.

406. Pursuant to Executive Law § 63(12), the State is entitled to an order enjoining Defendants' legal acts, restitution from Defendants for expenses incurred, and damages for injuries suffered as a result of Defendants' emissions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Honorable Court:

1. Permanently enjoin Defendants from operating the Facilities except in accordance with the federal Clean Air Act and the state Environmental Conservation Law, and require Defendants

to implement BACT at each unit;

2. Permanently enjoin Defendants from operating the Facilities in a manner that causes or contributes to a public nuisance;

3. Order Defendants to take other appropriate actions to remedy, mitigate, or offset the harm to public health and the environment caused by the violations of the Act, the ECL, and creation of the public nuisance alleged above;

4. Order Defendants to remedy their past violations, including restoration of, or compensation for, the damages to New York's natural resources; and restitution for increased expenses incurred by the State in treating adverse human health impacts;

5. Assess civil penalties against Defendants of \$25,000 per day for each violation of the Act, the PSD regulations, and New York's SIP prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to 28 U.S.C. § 2461 and 31 U.S.C. § 3701;

6. Assess civil penalties against Defendants of \$10,000 for the first violation of the ECL at each Plant unit plus \$10,000 for each successive day of violation, and \$15,000 for the second violation of the ECL at each Plant unit plus \$15,000 for each successive day of violation.

7. Award the Plaintiffs their costs of this action and attorneys fees; and

8. Grant such other relief as the Court deems just and proper.

Dated: January __, 2002

Respectfully Submitted,

ELIOT SPITZER
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OF THE STATE OF NEW YORK

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