



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN  
ATTORNEY GENERAL

Kevin M. St. John  
Deputy Attorney General

17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
www.doj.state.wi.us

Cynthia Hirsch  
Assistant Attorney General  
hirschcr@doj.state.wi.us  
608/266-3861  
FAX 608/266-2250

May 7, 2014

Ms. Rebecca Matoska-Mentink  
Clerk of Circuit Court  
Kenosha County Circuit Court  
Kenosha County Courthouse  
912 56<sup>th</sup> Street  
Kenosha, WI 53140

Re: *State of Wisconsin v Wisconsin Electric Power Company*

Dear Ms. Matoska-Mentink:

Enclosed are an original and two copies of a Summons and Complaint in the above-entitled case. Please file the original and authenticate the copies and return those copies of the Summons and Complaint to me in the self-addressed, stamped envelope enclosed.

Also enclosed are the original and two copies of a Stipulation and Order for Judgment and also an original and two copies of a Judgment. Please arrange to have a circuit court judge assigned to this case to consider this matter and to review the Stipulation and Order for Judgment and the Judgment. If the assigned judge finds that all is in order, I request that the judge sign the Order and that the Judgment be signed and entered as well. Please return conformed copies of the Stipulation and Order for Judgment and of the Judgment in the self-addressed, stamped envelope with the Summons and Complaint. I will then send a copy to opposing counsel.

This is a civil action for forfeitures using the classification code of Complex Forfeiture 30109, and no filing fee is required.

Thank you for your assistance in this matter.

Sincerely,

Cynthia R. Hirsch  
Assistant Attorney General

May 7, 2014  
Page 2

CRH:srb

Enclosures

c w/enc.: Kendra Fisher, DNR

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_

KENOSHA COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 14-CX-\_\_\_\_

Complex Forfeiture: 30109

WISCONSIN ELECTRIC  
POWER COMPANY  
231 W. Michigan Street  
Milwaukee, WI 53203,

Defendant.

THE AMOUNT CLAIMED IS  
GREATER THAN THE  
AMOUNT CLAIMED UNDER  
WIS. STAT. § 799.01(1)(d).

---

CIVIL SUMMONS

---

THE STATE OF WISCONSIN,

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Kenosha

---

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (262)653-6664 AND ASK FOR THE KENOSHA COUNTY CIRCUIT COURT ADA COORDINATOR.

---

plaintiff's attorney, whose address is Wisconsin Department of Justice, Environmental Protection Unit, 17 West Main Street, Post Office Box 7857, Madison, WI 53707-7857.

You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 7th day of May, 2014.

Respectfully submitted,

J.B. VAN HOLLEN  
Attorney General



CYNTHIA R. HIRSCH  
Assistant Attorney General  
State Bar #1012870

Attorneys for Plaintiff

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-3861  
(608) 266-2250 (fax)  
hirschcr@doj.state.wi.us

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_

KENOSHA COUNTY

---

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 14-CX-\_\_\_\_

Complex Forfeiture: 30109

WISCONSIN ELECTRIC  
POWER COMPANY

231 W. Michigan Street  
Milwaukee, WI 53203,

Defendant.

THE AMOUNT CLAIMED IS  
GREATER THAN THE  
AMOUNT CLAIMED UNDER  
WIS. STAT. § 799.01(1)(d).

---

COMPLAINT

---

The State of Wisconsin by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Cynthia R. Hirsch, brings this complaint against the above-named defendant at the request of the Wisconsin Department of Natural Resources, and alleges as follows:

1. The plaintiff is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Dane County, Wisconsin. It has enacted in Wis. Stat. ch. 285 and administered through the Department of Natural Resources (DNR), laws to prevent and minimize air pollution in the state.

2. Defendant Wisconsin Electric Power Company is a domestic corporation with its principal office at 231 W. Michigan Street, Milwaukee, Wisconsin. Its registered agent is Keith Ecke.

3. Defendant operates an electric generation peaking station (facility) located at 335N 172<sup>nd</sup> Avenue in the Town of Paris, Kenosha County, Wisconsin.

4. The facility consists of four gaseous fuel fired combustion turbines. Each turbine has an original design power output of 100 MWe.

5. The design blades on turbine units 1 and 4 were replaced with more efficient blades in June of 2002. Hourly emissions from the units decreased after this replacement.

6. The modifications to turbine units 1 and 4 at the facility constituted major modifications under Wis. Admin. Code § NR 405.02(21), which includes as a major modification any physical change in a major stationary source that would result in significant emissions increases of a regulated New Source Review (NSR) air contaminant.

7. The replacement of the design blades on units 1 and 4 by the defendant was a physical change to the turbine units, at a major stationary source as defined under Wis. Admin. Code § 405.02(22), and was not excluded from Wis. Admin. Code ch. NR 405 as routine maintenance, repair and

replacement. The replacement was not subject to any of the other exceptions under Wis. Admin. Code § NR 405.02(21)(b).

8. Using the “actual to potential” calculation test, the defendant calculated that the replacement of the blades resulted in significant net emission increases of carbon monoxide, nitrogen oxides, particulate matter, sulfur dioxide, volatile organic compounds, sulfuric acid mist and beryllium, all regulated NSR air contaminants, as defined in Wis. Admin. Code § NR 405.02(25i)(a).

9. The above referenced calculations were reviewed and confirmed by DNR.

10. The requirements of Wis. Admin. Code ch. NR 428, promulgated under Wis. Stat. 285, apply to emission units located in the county of Kenosha that were constructed or have undergone major modifications after February 1, 2001.

11. Because the blade replacements constituted major modifications, and those modifications were made after February 1, 2001, under Wis. Admin. Code ch. NR 428, units 1 and 4 became subject to stricter nitrogen oxide emission limits after the modifications were made.

12. Stack tests conducted in June 2012 indicate nitrogen oxide emissions from each of the two modified units were not in compliance with

the applicable nitrogen oxide emission limit in NR Wis. Admin. Code § NR 428.04(2) (g).

13. Wisconsin Admin. Code § NR 428.04(2)(g) states that no person may cause, allow or permit nitrogen oxides to be emitted from a gaseous fuel fired combustion turbine in amounts greater than those specified in the code.

14. Emission Inventory Reports were submitted by the defendant, and reviewed and confirmed by DNR.

15. According to these reports, since replacement of the blades in June 2002, defendant operated unit 1 for approximately 349 days and unit 4 for approximately 389 days.

16. Defendant has operated its facility in violation of Wis. Admin. Code ch. NR 428, on each day of operation, since June of 2002.

17. Wisconsin Stat § 285.87 states that violations of any rule promulgated under Wis. Stat. ch. 285 are subject to forfeitures of not less than \$10 and not more than \$25,000 for each daily violation.

WHEREFORE, the plaintiff asks for judgment as follows:

1. An injunction requiring defendant to comply with Wisconsin Law.
2. Forfeitures provided for in Wis. Stat. § 285.87, plus the 26% penalty surcharge under Wis. Stat. § 814.75(18), the 20% environmental surcharge under Wis. Stat. § 814.75(12), \$25.00 in court costs under Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement

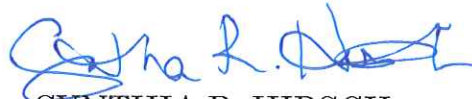


surcharge under Wis. Stat. § 814.75(3), the \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), the 1% jail surcharge under Wis. Stat. §814.75(14), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15).

3. Such other relief as the Court determines appropriate.

Dated this 7 day of, May 2014.

J.B. VAN HOLLEN  
Attorney General

  
CYNTHIA R. HIRSCH  
Assistant Attorney General  
State Bar #1012870

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-3861  
(608) 266-2250 (Fax)

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_

KENOSHA COUNTY

---

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 14-CX-\_\_\_\_

Complex Forfeiture: 30109

WISCONSIN ELECTRIC  
POWER COMPANY

Defendant.

---

#### STIPULATION AND ORDER FOR JUDGMENT

---

Plaintiff State of Wisconsin brought this civil action against Defendant Wisconsin Electric Power Company, the operator of an electric generation peaking station in the Town of Paris, Kenosha County, Wisconsin. The complaint alleges violations of Wisconsin's air pollution laws, specifically relating to air emissions after modification of stationary sources of air pollution.

The parties now wish to resolve this litigation and as such enter into this stipulation and order for judgment setting forth the terms and conditions of such settlement.

IT IS HEREBY STIPULATED AND AGREED THAT:

1. Judgment shall be entered in favor of the State of Wisconsin and against the Defendant Wisconsin Electric Power Company, in the amount of \$50,000. The sum is comprised of forfeitures, statutory surcharges, and costs as follows: forfeitures of \$33,926.87 under Wis. Stat. § 285.87, a 26% penalty surcharge of \$8,820.99 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$6,785.37 under Wis. Stat. § 814.75(12), \$25 in court costs under Wis. Stat. § 814.63(1), a \$13 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$339.27 under Wis. Stat. § 814.75(14), a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15).

2. The Defendant will pay the \$50,000 by check payable to the Kenosha County Clerk of Circuit Court and delivered to the Clerk of Court, Kenosha County Courthouse, 912 56th St., Kenosha, WI 53140, along with a cover letter to the Court identifying the case by name and number. A copy of the check and cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Cynthia R. Hirsch at the Wisconsin Department of Justice, Post Office Box 7857, Madison, WI 53707-7857.

3. Except as between the parties to this action, nothing contained in this Stipulation and Order for Judgment shall be construed as an admission of liability by the Defendant in any proceeding now pending or hereafter commenced.

4. The parties acknowledge that this Stipulation and Order for Judgment sets forth the entire understanding of the parties with respect to the subject matter hereto.

5. The Order for Judgment accompanying this Stipulation will be a final and appealable order. The Order for Judgment and Judgment may be entered incorporating the terms of this Stipulation without further notice, and the Judgment may be docketed, pursuant to Wis. Stat. § 806.10(1).

Dated: Sam Duch

J.B. VAN HOLLEN  
Attorney General

CYNTHIA R. HIRSCH  
Assistant Attorney General  
State Bar #1012870

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-3861  
(608) 266-2250 (Fax)  
hirschcr@doj.state.wi.us

Dated: May 5, 2014

QUARLES & BRADY, LLP

PETER TOMASI  
State Bar #1038412

411 E Wisconsin Ave Ste 2350  
Milwaukee WI 53202-4426  
(414) 277-5677  
(414) 271-3552 (Fax)  
peter.tomasi@quarles.com

Dated: May 5, 2014

Allen L. Everett  
Wisconsin Electric Power Company  
By: Allen L. Everett

## ORDER FOR JUDGMENT

The Court approves the terms of the foregoing Stipulation in *State of Wisconsin v. Wisconsin Electric Power Company*, Kenosha County Case No. \_\_\_\_\_, pursuant to which the Defendant will pay \$50,000 in accordance with the schedule set forth in the Stipulation, directs the clerk to enter and docket the Judgment. This is a final Order for purposes of appeal under Wis. Stat. § 808.03(1).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

BY THE COURT:

---

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_

KENOSHA COUNTY

---

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 14-CX-\_\_\_\_

Complex Forfeiture: 30109

WISCONSIN ELECTRIC  
POWER COMPANY  
231 W. Michigan Street  
Milwaukee, WI 53203,

Defendant.

THE AMOUNT CLAIMED IS  
GREATER THAN THE  
AMOUNT CLAIMED UNDER  
WIS. STAT. § 799.01(1)(d).

---

JUDGMENT

---

The Plaintiff, State of Wisconsin, is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin.

The Defendant, Wisconsin Electric Power Company, operates an electric generation peaking station (facility) located at 335N 172<sup>nd</sup> Ave in the Town of Paris, Kenosha County, Wisconsin.

Based on the Stipulation between the Plaintiff and the Defendant, and upon the Court's order, the terms of which are to be incorporated into this judgment in their entirety, judgment is hereby granted in favor of the

plaintiff, State of Wisconsin, and against the Defendant, Judgment shall be entered in favor of the Plaintiff, State of Wisconsin, and against the Defendant, Wisconsin Electric Power Company, in the amount of \$50,000. This sum is comprised of forfeitures, statutory surcharges, and costs as follows: forfeitures of \$33,926.87 under Wis. Stat. §§ 285.87, a 26% penalty surcharge of \$8,820.99 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$6,785.37 under Wis. Stat. § 814.75(12), \$25 in court costs under Wis. Stat. § 814.63(1), a \$13 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$339.27 under Wis. Stat. § 814.75(14), and a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15).

The Defendant, Wisconsin Electric Power Company, will pay the \$50,000.00 by a check payable to the Kenosha County Circuit Court and delivered to the Clerk of Court, Kenosha County Courthouse, 912 56<sup>th</sup> Street, Kenosha, WI 53140, along with cover letters to the Court identifying the case by name and number. A copy of each check and cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Cynthia R. Hirsch at the Wisconsin Department of Justice, Post Office Box 7857, Madison, WI 53707-7857. The Defendant is liable for the payment of

this judgment within thirty (30) days following the date upon which the Court signs the Order for Judgment.

This is a final order that disposes of the entire matter in litigation between the State of Wisconsin and Wisconsin Electric Power Company and is intended by the Court to be an appealable order within the meaning of Wis. Stat. § 808.03(1).

The terms of the Stipulation and Order for Judgment are incorporated in their entirety.

This judgment is final for purposes of appeal.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2014.

BY THE COURT:

---