

On November 13, 2019, Judge Joe Billy McDade approved a Consent Decree in NRDC, Sierra Club, and Respiratory Health Association's case against the owner of the E.D. Edwards coal-fired power plant, located in Bartonville, Illinois.

This document features an excerpt of Judge McDade's oral decision approving the settlement, which he delivered from the bench.

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF ILLINOIS
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5 NATURAL RESOURCES DEFENSE)
6 COUNCIL, et al.,)
7 Plaintiffs,)
8 vs.)
9 ILLINOIS POWER RESOURCES,)
10 LLC, et al.,)
11 Defendants.)

Civil No. 1:13-01181

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13 TRANSCRIPT OF PROCEEDINGS
14 BEFORE THE HONORABLE JOE B. McDADE
15 MOTION HEARING
16 NOVEMBER 13, 2019; 10:33 A.M.
17 PEORIA, ILLINOIS
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23 Jennifer E. Johnson, CSR, RMR, CRR
24 U.S. District Court Reporter
Central District of Illinois

25 Proceedings recorded by mechanical stenography;
transcript produced by computer

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1 THE COURT: All right.

2 MR. HYMAN: One comment I would make is that I
3 think the Plaintiffs agree that this consent decree
4 fairly balances the risks and potential rewards of
5 the litigation based on the evidence that was
6 obtained during the discovery process and fairly
7 and appropriately matches the goals of the Clean
8 Air Act and takes into consideration the welfare of
9 the Peoria community, both in terms of the
10 elimination of all emissions, which Defendants
11 contend are all legal by 2022, much sooner than it
12 would otherwise have happened and in terms of the
13 transition for employees funded by payments under
14 this consent decree to address issues that they may
15 have as the plant comes to the retirement date.

16 Thank you.

17 THE COURT: Well, the Court wishes to
18 acknowledge its understanding that this was a hotly
19 litigated case, and that either or both sides would
20 have the right to make some type of appeal which is
21 always uncertain as to the outcome, and the Court
22 appreciates the positive values of settling the
23 matter without further litigation, so I'm -- I
24 understand that, and I appreciate that.

25 MR. HYMAN: Thank you.

1 THE COURT: And I appreciate what I perceive
2 as the candor of the parties in answering the
3 Court's concerns. I think it has been helpful, and
4 it's -- I have not detected any instances where I
5 thought games were being played. I think it's been
6 done in good faith, and I appreciate that.

7 I do want to take five minutes just to review
8 my notes to see whether or not there's anything
9 else I want to address to you, so -- well, let me
10 say ten minutes. And then I'll be back in ten
11 minutes. If I have further questions, I will put
12 them to you or hopefully I'll be in a position to
13 make a decision.

14 MR. HYMAN: Thank you, Your Honor.

15 MR. KNICLEY: Thank you, Your Honor.

16 THE CLERK: Court is in recess.

17 (Recess at 11:30 to 11:46 a.m.)

18 THE COURT: It turns out the Court has no
19 further questions. I believe this is a good
20 settlement, and I'm going to approve it.

21 This lawsuit began six years ago when
22 environmental groups charged that the Edwards Power
23 Station was violating the Clean Air Act.
24 Plaintiffs alleged Edwards surpassed the permit
25 limits on the opacity of its smokestacks and,

1 therefore, was presumptively releasing more
2 particulate matter into the air than was lawful. I
3 found in favor of Plaintiffs as to liability.

4 The case has continued to allow for a
5 determination of the appropriate penalty. However,
6 the parties have reached an agreement -- the
7 consent decree currently before me -- and requested
8 it be approved rather than proceeding to trial for
9 the penalty phase.

10 The United States government, given an
11 opportunity to comment, pursuant to statute, has
12 not objected to the entry of the consent decree.
13 Therefore, all that remains is my determination of
14 whether it should be approved.

15 A federal consent decree must spring from and
16 serve to resolve a dispute within the Court's
17 subject matter jurisdiction. It must come within
18 the general scope of the case made by the pleadings
19 and must further the objectives of the law upon
20 which the complaint was based, that being the Clean
21 Air Act.

22 I am satisfied of my jurisdiction, and it is
23 clear to me that the resolution proposed in the
24 consent decree fits the pleadings in this case by
25 addressing the issues of air pollution at Edwards.

1 What remained at this hearing was whether the
2 objectives of the Clean Air Act would be furthered
3 by the consent decree. The Clean Air Act's purpose
4 is to protect and enhance the quality of the
5 nation's air resources so as to promote the public
6 health and welfare and the productive capacity of
7 its population.

8 The consent decree furthers that purpose,
9 primarily in requiring the closure of Edwards.
10 Doing so will completely eliminate the emission of
11 particulate matter from Edwards allowed by law or
12 otherwise. This will have a positive impact on
13 human health by subjecting Edwards to additional
14 payments for opacity events prior to the
15 retirement. The consent decree incentivizes lower
16 emissions of particulate matter in the interim.

17 In addition, Defendants' payment of nearly
18 \$7 million to be used in beneficial projects will
19 help reduce harm to health from particulate matter
20 in our air from sources beyond Edwards. These
21 projects may include providing electric vehicles
22 for school or public transit, improving energy
23 efficiency in Peoria area homes, providing access
24 to and education about medical help for lung
25 health, and helping bring solar energy to the

1 region.

2 Finally, it is important to my determination
3 that Defendant has warranted this closure was not
4 required by the multi-pollutant standards of the
5 Illinois Pollution Control Board. Defendant, thus,
6 is not avoiding potential penalties by merely
7 complying with legal obligations. I therefore find
8 the purposes of the Clean Air Act are furthered by
9 this consent decree.

10 I am appreciative of the lawyers taking the
11 time and using their experience to give the Court
12 and answer the Court's questions to the Court's
13 satisfaction which gives the Court confidence that
14 it understands the issues and persuades him that
15 this compromise of the litigation is a good
16 compromise and in the best interests of the public.

17 In considering the consent decree, I am
18 appreciative of the efforts to mitigate the harm
19 the closure of Edwards could cause to those who are
20 employed there and those who rely on it for
21 electricity. It is my hope that the \$1,720,000
22 provided in economic transition funds and the
23 three-year period before Edwards closes will allow
24 all of Defendants' employees who might otherwise be
25 hurt to instead transition smoothly into other,

1 more lasting employment.

2 Additionally, allowing MISO to proceed with
3 its usual procedures relating to plant retirement
4 should ensure that Peoria area residents will not
5 face an unreliable electrical grid as a result of
6 the closure.

7 I have been satisfied by the presentations at
8 this hearing that MISO can be relied upon to fairly
9 determine whether Edwards must remain open beyond
10 the current plant closure date with only the best
11 interests of the grid at heart.

12 The consent decree is approved, and this case
13 is ended, subject to my jurisdiction to enforce the
14 consent decree.

15 Furthermore, all outstanding motions in this
16 case are denied as moot, and judgment to be
17 entered.

18 And, again, the Court wishes to thank counsel
19 for your expertise and your seemed to be agreed
20 efforts to do what's best for the grid and for the
21 people of this area.

22 Thank you very much.

23 MR. HYMAN: Thank you, Your Honor.

24 MR. KNICLEY: Thank you, Your Honor.

25 THE COURT: And you will receive a copy of

1 this -- well, they can access it or they will
2 receive --

3 THE CLERK: They'll receive it by the
4 electronic filing system, Judge.

5 THE COURT: Okay.

6 THE CLERK: Court's adjourned.

7 (Proceedings concluded at 11:55 a.m.)

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CERTIFICATE OF OFFICIAL REPORTER

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13 I, Jennifer E. Johnson, CSR, RMR, CBC, CRR,
14 in and for the United States District Court for the
15 Central District of Illinois, do hereby certify
16 that pursuant to Section 753, Title 28, United
17 States Code that the foregoing is a true and
18 correct transcript of the stenographically reported
19 proceedings held in the above-entitled matter and
20 that the transcript page format is in conformance
21 with the regulations of the Judicial Conference of
22 the United States.

18

Dated this 17th day of November, 2019.

19

20

/s/ Jennifer E. Johnson
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