

**ACADIA-EUNICE CITIZENS FOR A
HEALTHY FUTURE, INC., DARREL
TOPEFER, RALPH FREY, JULIUS
BISCHOFF, T.K. FREY, ERIC AND
CATHERINE FUSILIER BOLLICH,
BRANDI DOUCET AND BRENT
ARDOIN, M.D.**

NUMBER 475,123 DIV. "J"

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

VERSUS

STATE OF LOUISIANA

**THE LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

AND

**THE LOUISIANA ENVIRONMENTAL
ACTION NETWORK**

NUMBER 475,287, DIV. "M"

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

**THE LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

STATE OF LOUISIANA

SETTLEMENT AGREEMENT AND RELEASE

This Settlement and Release Agreement ("Settlement Agreement" or "Agreement") is entered into by and between Acadia-Eunice Citizens for a Healthy Future, Inc. ("Acadia-Eunice"), Darrel Topefer, Ralph Frey, Julius Bischoff, T.K. Frey, Eric and Catherine Fusilier Bollich, Brandi Doucet, and Brent Ardoin, M.D., putative intervenor Bayou Nezpiqué Gravity Drainage District ("Drainage District"), the Louisiana Environmental Action Network ("LEAN") (collectively "Petitioners"), and Acadia Power Partners, LLC ("Acadia Power"), (all collectively the "Parties");

WITNESSETH

The following Recitals are to be considered part of this Settlement Agreement.

WHEREAS, on October 15, 1999 and November 19, 1999 Acadia Power applied to the Louisiana Department of Environmental Quality ("LDEQ"), respectively, for PSD-LA-645, Part 70 Air Construction and Operating Permit No. 0040-00105-VO (the "air permit"), Acid Rain Permit No. 0040-00105-IVO, and Louisiana Pollutant Discharge Elimination System (LPDES) Permit LA0112836 (the "water permit") (referred to collectively as "the Permits") in connection with the development of a power generating facility (the "facility") to be located near Eunice, Louisiana, in Acadia Parish;

WHEREAS, on March 2, 2000 and April 18, 2000 LDEQ issued, respectively, draft air and water permits for the project;

WHEREAS, on May 22, 2000, a public hearing was held by LDEQ in Eunice, Louisiana;

WHEREAS, the public comment period associated with the draft permits was extended by LDEQ until June 9, 2000 and again until June 16, 2000.

WHEREAS, air and water permits were issued as of July 13, 2000;

WHEREAS, on August 8, 2000, Acadia-Eunice Citizens for a Healthy Future, Inc., and the other Petitioners filed a Petition for Judicial Review in the 19th Judicial District Court;

WHEREAS, on August 11, 2000, LEAN filed a Petition for Judicial Review in the 19th Judicial District Court;

WHEREAS, on October 5, 2000, the two matters described above were consolidated by this Court;

WHEREAS, on November 22, 2000, the Drainage District filed a Petition of Intervention (the two judicial review petitions and the petition of intervention are hereinafter referred to as the "Litigation");

WHEREAS, after briefing and argument, on January 30, 2001 Judge Curtis A. Calloway granted Acadia Power's Exception of No Cause of Action, and dismissed the Drainage District's Petition of Intervention;

WHEREAS, on March 28, 2001, the Drainage District filed a devolutive appeal with the First Circuit Court of Appeals;

WHEREAS, the 19th Judicial District Court received briefs and heard oral argument in the consolidated cases, and issued Written Reasons on February 23, 2001, pursuant to which the Court ordered the remand of the permits to the LDEQ;

WHEREAS, Petitioners claim that the air and water permits were improperly issued by the Louisiana Department of Environmental Quality;

WHEREAS, Acadia Power and LDEQ claim that the Permits were properly issued;

WHEREAS, the Parties have decided to resolve their differences and to settle the Litigation so as to avoid the uncertainty, expense and inconvenience of further litigation;

WHEREAS, the Parties by executing this Settlement Agreement, do not make any admissions on any legal or factual matter, nor do they waive any claim or defense;

WHEREAS, the Parties intend by this Agreement to confer a benefit upon LDEQ, and LDEQ has reviewed the terms of this Agreement, and has no objections hereto;

I. TERMS OF SETTLEMENT

A. Commitments of Acadia Power:

1.1 Air Emissions. Acadia Power shall prepare and file appropriate documentation with LDEQ and shall diligently and consistently seek to have the air permit revised to reduce the emissions limits of NO_x from the currently permitted levels of 9.0 ppm to 4.5 ppm, using SCR as control technology. Acadia Power will copy Acadia Eunice and LEAN on all air emissions data and reports that Acadia Power submits to LDEQ.

1.2 The Components. Acadia Power shall diligently and consistently seek necessary permits for, and thereafter shall promptly construct and operate, using consistent good engineering practice and competent workmanship, a water intake structure on Bayou Mallet and a holding pond ("the Components"), designed and built to hold, under typical conditions, a minimum of an 80 million gallon supply of usable cooling water for the Facility (i.e., enough to provide a minimum of two million gallons per day for a minimum of 40 days.) Subject to paragraph I(A)1.5 below (if applicable), Acadia Power shall purchase or lease land and associated rights of way for the Components.

1.3 Use of Surface Water. Subject to paragraph I(A)1.5, below, (if applicable), Acadia Power shall use the Components to supply a minimum of twenty-five percent (25%) of the facility's annual total water usage. Acadia Power agrees to make a consistent, reasonable effort to maximize the use of surface water, but is not bound to any set choice between use of surface water and use of groundwater aside from its obligation to use

surface water from the Components as provided in the preceding sentence. Groundwater and surface water use shall be measured daily and averaged over one-year periods beginning on the date the Components are operational or 12 months following receipt of all permits necessary to construct and operate the Components, whichever is earlier.

1.4 Daily Groundwater Consumption. Subject to paragraph I(A)1.5, below (if applicable), Acadia Power shall limit the facility's daily average groundwater consumption, measured over one-year periods, to a maximum of 5.9 million gallons per day, beginning on the date the Components are operational or 12 months following the receipt of all permits necessary to construct and operate the Components, whichever is earlier.

1.5 Contingency. Acadia Power's agreements in paragraphs I(A)1.2, I(A)1.3, and I(A)1.4 are contingent upon Acadia Power's ability to purchase or lease necessary land and associated rights of way for not more than \$ 1.3 million. If and when Acadia Power purchases or leases such land and associated rights of way, Acadia Power shall provide Petitioners Acadia-Eunice and LEAN with a certification, signed by both an authorized agent of Acadia Power and Acadia Power's attorney, stating "the contingency of paragraph I(A)1.5 has been satisfied or waived." Upon Acadia Power's execution of that statement, the first sentence of this paragraph I(A)1.5 shall have no further effect and this Agreement shall be interpreted and enforced as if the first sentence of paragraph I(A)1.5 were absent from the Agreement.

1.6 Force Majeure Definition. For purposes of this Settlement Agreement the phrase "*force majeure* circumstances" is defined as circumstances that meet *each and every one* of the three following criteria. "*Force majeure* circumstances" are circumstances (a) that are beyond the reasonable control of Acadia Power and (b) which Acadia Power could not have prevented by taking reasonable steps in the light of reasonably foreseeable potential events, and (c) which render it impracticable for Acadia Power to timely and/or fully discharge an applicable part of this Agreement. Provided that all parts (a, b, and c) of this definition are met, *force majeure* circumstances may include but are not limited to floods, droughts or other circumstances causing an insufficient quantity of available surface water or an unacceptably low holding pond water level, levee collapses, mechanical failures, contamination of surface water feeding the Components rendering that water of insufficient quality for cooling, changes in the law, and permitting and regulatory denials or delays.

1.7 Force Majeure Exception. The Parties agree that Acadia Power's ability to comply with paragraphs I(A)1.2, I(A)1.3, and I(A)1.4 is subject to *force majeure* circumstances, as defined above. Acadia Power shall only be excused from performance under this paragraph I(A)1.7 to the extent that, and for the time period that, *force majeure* circumstances render such performance impracticable. If at any time Acadia Power learns or anticipates that force majeure circumstances will prevent Acadia Power from complying with any one or more of its obligations under

paragraphs I(A)1.2, I(A)1.3, or I(A)1.4, to the extent practicable, Acadia Power shall notify Petitioners Acadia-Eunice and LEAN in advance of failing to comply with such obligation(s). Such notification shall contain:

- (1) a statement of how, when, and for how long Acadia Power will not comply with any obligation of paragraphs I(A)1.2, I(A)1.3, or I(A)1.4; and
- (2) an explanation of the cause of Acadia Power's need to not comply with such obligation(s), and a summary of all steps being taken by Acadia Power to achieve compliance. If Acadia Power's period of not complying with an obligation of paragraphs I(A)1.2, I(A)1.3, or I(A)1.4 is projected to extend beyond the period originally projected in Acadia Power's notice, or if facts come to Acadia Power's attention that make any statement in a notice provided by Acadia Power inaccurate, Acadia Power shall correct the notice. If it comes to Acadia Power's attention that it failed to comply with any obligation of paragraphs I(A)1.2, I(A)1.3, or I(A)1.4 without providing prior notice, Acadia Power shall so notify Petitioners Acadia-Eunice and LEAN promptly, along with an appropriate explanation of the failure, regardless of whether or not Acadia Power's failure to comply was due to force majeure circumstances and regardless of whether or not prior notice was practicable.

1.8 Monitoring and Reporting. Acadia Power shall verify surface and groundwater use through separate metering, and shall make daily totals of metering data available to the public at reasonable times and upon reasonable notice. Acadia Power shall perform metering continuously beginning on the first day of plant operations and continuing thereafter.

Acadia Power shall conduct such metering using an orifice differential pressure transmitter, with an accuracy of 1% or better at the desired flow range, or another meter of at least equivalent quality and technology. Acadia Power shall operate such meter in a manner that provides adequate data to confirm compliance with paragraphs I(A)1.2, I(A)1.3, and I(A)1.4, above. Acadia Power shall provide copies of daily metering data documenting separately total surface water and total groundwater use to Acadia-Eunice and LEAN on a monthly basis, unless Acadia-Eunice or LEAN requests the data more frequently, in which case Acadia Power shall provide copies of those data requested to Acadia-Eunice or LEAN.

1.8(a) Acadia Power shall monitor the following parameters on the following bases and provide the results to Acadia-Eunice and LEAN on a monthly basis, unless Acadia-Eunice or LEAN request results more frequently, in which case Acadia Power shall provide those results to Acadia-Eunice or LEAN.

- Total surface water withdrawal from Bayou Mallet on a daily basis;
- Flow and water level in Bayou Mallet before the range of influence of the intake structure, on a daily basis;
- Total volume of water in the holding pond, on a daily basis;
- Groundwater level in a production well or an on-site observation well screened at the same level as the production wells on a weekly basis.

1.8(b) Acadia Power shall maintain and calibrate, using good engineering practice, all metering and monitoring equipment used to provide the data required by this Agreement to be provided to Acadia-Eunice and LEAN. Acadia Power shall provide Acadia-Eunice and LEAN, on a monthly basis, with copies of all calibration data and reports on all such metering and monitoring equipment. After construction of the holding pond, Acadia Power shall survey the holding pond to calibrate its method of measuring surface water levels in the Components and shall promptly provide a copy of the survey report to Acadia-Eunice and LEAN.

1.9 Acadia Power and Intervenors Calpine Central, L.P. and Cleco Midstream Resources LLC (the intervenors appearing solely for purposes of this Paragraph 1.9) warrant that in the event of any sale, leaseback or other transfer of the Facility, the transferee of the Facility shall assume the rights and obligations of Acadia Power set forth in this Agreement.

1.10 Acadia Power shall promptly file this Agreement in the mortgage and conveyance records of Acadia Parish and provide certified copies of that filing to Acadia-Eunice and LEAN.

II. RELEASE, WAIVER, AND COVENANT NOT TO SUE

A. In consideration for the obligations of Acadia Power set forth in Part I above, Petitioners shall upon the effective date of this waiver:

1. Irrevocably and unconditionally release, remise, acquit, and forever discharge Acadia Power Partners, LLC, its present and former agents, employees, representatives, officers, directors, partners, members, attorneys, parents, subsidiaries, divisions, affiliates, insurers, successors

and assigns, lenders, and underwriters (collectively the "Released Parties") from all liability to the Petitioners, if any, arising from the Petitioners' claims in the Litigation;

2. Agree to dismiss the Litigation and any appeals from orders issued in the Litigation with prejudice in all forums, including the Nineteenth Judicial District Court and the First Circuit Court of Appeal.

3. The effective date of this waiver is the date that Petitioners LEAN and Acadia-Eunice receive a signed certification, executed by Acadia Power, stating "the contingency of paragraph I(A)1.5 has been satisfied or waived."

4. It is expressly understood that nothing in this agreement shall be deemed to release any past, present, or future claim of any Petitioner for personal injury, property damage, or economic injury.

B. Acadia-Eunice, Darrel Topefer, Ralph Frey, Julius Bischoff, T.K. Frey, Eric and Catherine Fusilier Bollich, Brandi Doucet, and Brent Ardoin, M.D., and the Drainage District waive their right to seek or participate in public comment or in any opposition to Acadia Power's efforts to permit or do (i) the intake structure and holding pond described in paragraph I(A)1.2 above; (ii) installation of larger duct burners/or addition of power augmentation at the combustion turbine (provided that such duct burners and/or power augmentation shall not result in (a) a net annual increase in air emissions, or (b) a breach of Acadia Power's groundwater reduction obligations set forth in paragraphs I(A)1.3 and I(A)1.4 herein), and achieving NOx emissions of 4.5 ppm through the use of SCR; and

(iii) changes in the facility's wastewater discharge permit to account for the use of surface water as an alternative water source.

C. This Settlement Agreement is binding upon the Parties, their agents, assigns, and successors in interest, and shall inure to the benefit of the Petitioners and the Released Parties, their assigns, and successors in interest.

III. NO ADMISSIONS

The Petitioners understand, acknowledge and agree that neither this Settlement Agreement nor anything contained herein constitutes an admission of any liability on the part of the Released Parties or of the violation of any federal, state, or local law, decision, rule, regulation, or ordinance, nor does this Settlement Agreement or anything contained herein constitute an acknowledgment or admission of the validity of any allegations or claims asserted by the Petitioners in the Litigation, it being expressly understood, acknowledged, and agreed by the Petitioners that all such allegations and claims are, in all respects, denied by the Released Parties. Similarly, the Released Parties acknowledge and agree that neither this Settlement Agreement nor anything contained herein constitutes admissions of law or fact on the part of the Petitioners. By way of example only, and not limitation, it is expressly understood that nothing in this Agreement constitutes an admission by the Petitioners about what control technology is sufficient to comply with the Clean Air Act.

IV. INTERVENTION

Calpine Central, L.P. and Cleco Midstream Resources LLC hereby intervene in this Agreement for the sole purpose of the representations and covenants contained in section I(A)(1.9) of this Agreement, intending to be fully bound thereby.

V. OTHER PROVISIONS

A. **Governing Law.** The validity, effect, and construction of this Settlement Agreement and any obligations undertaken pursuant hereto, and any dispute relating to or arising from the negotiation and execution of this Settlement Agreement and/or compliance with this Settlement Agreement, shall be governed by the laws of the State of Louisiana, without regard to conflicts of laws provisions. Any litigation regarding the terms or conditions of the Settlement Agreement or regarding compliance with the terms or conditions must be brought in the Louisiana 19th Judicial District Court for the Parish of East Baton Rouge, Louisiana. With respect to all parties hereto except LEAN, in any such claim or litigation, the prevailing parties shall be entitled to reimbursement of reasonable attorney fees and expenses. With respect to any such claim or litigation as between LEAN and Acadia Power, each party shall bear its own costs and fees.

B. **No Legal Advice Provided.** The Petitioners understand, acknowledge and agree that the Released Parties are providing no legal advice to them. Likewise, the Released Parties understand, acknowledge and agree that the Petitioners are providing no legal advice to them. Except as set forth in this document, the Parties agree that they have made and are making no representations of any kind regarding the legal obligations or consequences of this Settlement Agreement to one another.

C. **Representations and Warranties.** In regards to the Litigation, the Petitioners represent and warrant that they have not sold, given, assigned or otherwise transferred to any other person or entity the claims, rights, demands and causes of action that they are relinquishing by executing this Agreement. The

Parties warrant that the individuals executing this Settlement Agreement are authorized and have the capacity to do so.

D. Attorneys' Fees, Costs, and Expenses. Each Party shall bear all of his own attorneys' fees, costs and expenses, including, but not limited to, those incurred in prosecuting or defending the Litigation and in the negotiation and execution of this Settlement Agreement, including court costs.

E. Additional Documents. The Parties shall execute all such further and additional documents that shall be reasonable, convenient, and necessary to carry out the provisions and intent of this Settlement Agreement.

F. Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

G. Titles. The titles of the paragraphs of this Settlement Agreement are inserted for convenience only and shall not affect the meaning or construction of any of the terms of this Settlement Agreement.

H. Use of Pronouns. The pronoun "he" or "his" in this Settlement Agreement shall represent both the masculine and the feminine, both the singular and the plural, as well as any juridical persons or entities.

I. Severability. If any provision, covenant, term or condition of this Agreement is held to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not affect the validity, legality, or enforceability of any other provisions, covenants, terms, or conditions of this Agreement, and the Parties shall negotiate in good faith an alternative provision designed to give effect to the agreement by the Parties expressed herein.

J. Entire Agreement; Amendment. The Parties understand, acknowledge, and agree that this Settlement Agreement contains and constitutes the entire agreement and understanding among the Parties, that no other representation, promise, or covenant of any kind has been made to induce or cause any Party to execute this Settlement Agreement, and that all the understandings and agreements of the Parties relating to the subject matter of this Settlement Agreement are embodied and expressed herein. The Parties also agree that this Settlement Agreement may not be amended, except in a writing signed by each and every Party to this Settlement Agreement.

K. Notice. Notice and information to LEAN under this Agreement shall be provided to:

Louisiana Environmental Action Network
ATTN: Litigation Coordinator
P.O. Box 66323
Baton Rouge La. 70896
Telephone: 225-928-1315

and Notice under paragraph I(A)1.7 only shall be copied to:

Tulane Environmental Law Clinic
ATTN: Supervising Attorney, No. 101-022
6329 Freret Street
New Orleans, LA 70118
Telephone: 504-865-5789

Notice and information to Acadia-Eunice under this Agreement shall be provided to:

Acadia-Eunice Citizens for a
Healthy Future, Inc.
251 North Second St.
Eunice, La. 70535

Notice and information to Acadia Power under this Agreement shall be provided to:

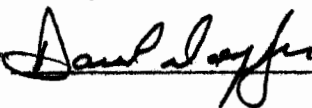
Acadia Power Partners, LLC
Attn: Diana Naylor
700 Milam Street
Suite 800
Houston, Texas 77002

L. **Representation by and Consultation with Counsel.** Each Party to this Settlement Agreement acknowledges that he has been represented by counsel of his own choosing in connection with the Litigation and the negotiation and execution of this Settlement Agreement and that he has had a reasonable and sufficient opportunity to consult with counsel to the extent he desires before executing this Settlement Agreement.

M. **Acknowledgment.** Each of the Parties acknowledges that he or she has read this Settlement Agreement and makes the settlement and release provided for herein voluntarily and of his or her own free will, and signifies his or her assent to and willingness to be bound by its terms.

AGREED TO:

ACADIA-EUNICE CITIZENS FOR A
HEALTHY
FUTURE, INC.

By  _____
Darrel Toepfer
Printed Name
President
Title

DARREL TOPEFER

RALPH FREY

JULIUS BISCHOFF

T.K. FREY

ERIC FUSILIER BOLLICH

CATHERINE FUSILIER BOLLICH

BRANDI DOUCET

BRENT ARDOIN, M.D.

LOUISIANA ENVIRONMENTAL
ACTION NETWORK

By: _____

Printed Name

Title

BAYOU NEZPIQUÉ GRAVITY
DRAINAGE DISTRICT

By: 

Clint D. Bischoff

Printed Name

Attorney for Bayou Nezpique Gravity
Title Drainage District

**RESOLUTION OF BAYOU DES CANNES-NEZPIQUE DRAINAGE DISTRICT
BOARD OF DIRECTORS**

The Board of Directors for the BAYOU DES CANNES-NEZPIQUE
DRAINAGE DISTRICT (District) met at its regular scheduled meeting on
October 10, 2001 with the following members being present:

Earl Garber

Troy Fruge

Barley Cant

Upon motion of EARL GARBER, duly seconded by Barley Cant, and with
3 votes in favor of said motion and 0 votes against said motion, the following
Resolution was adopted:

WHEREAS, the Board of Directors has considered the proposed settlement of the
suit against L.D.E.Q. bearing caption Nos. 475,123-Division "J" and 475,287-Division
"M", 19th Judicial District Court, Parish of East Baton Rouge, Louisiana.

WHEREAS, this Board deems said settlement to be in the best interests of the
constituents of the District.

BE IT RESOLVED that by a majority vote of the Board of Directors of the
District, Clint D. Bischoff be authorized to execute all necessary documents to complete
a settlement of said suit dismissing all claims filed by this District.

The following members abstained from voting on said Motion:

NONE

BE IT ORDAINED, the above Resolution was adopted this 10 day of
October, 2001.

ATTEST:

Troy Fruge
Mr. Troy Fruge, President

RESOLUTION

The Board of Directors of Acadia-Eunice Citizens for a Healthy Future, Inc. met in a special meeting on August 22, 2001. A quorum was present.

NOW THEREFORE BE IT RESOLVED:

On motion of Ralph Frey, seconded by Clint Bischoff, that the Board of Directors of Acadia-Eunice Citizens for a Healthy Future, Inc. do hereby approve a Settlement Agreement and Release attached hereto as Exhibit A and hereby authorize its President, Darrel Toepfer, to execute the Settlement Agreement and Release on behalf of the corporation. Resolution carried.

Darrel Toepfer
Darrel Toepfer, President

Lois A. Tyson
Lois A. Tyson - Secretary-Treasurer