

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**SEMINOLE ELECTRIC
COOPERATIVE, INC.,**

Petitioner,

vs.

DOAH CASE NO. 09-_____
OGC CASE NO. 09-3086

**STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Respondent.

**REQUEST FOR ASSIGNMENT OF ADMINISTRATIVE LAW JUDGE
AND NOTICE OF PRESERVATION OF RECORD**

YOU ARE HEREBY NOTIFIED that the Florida Department of Environmental Protection (Department) has received the attached Petition for Hearing in the above-styled case. Under Section 120.569(2)(a), Florida Statutes, the Secretary has decided not to act as administrative law judge and requests that the Division of Administrative Hearings assign this matter to an administrative law judge to conduct all necessary proceedings required by law and to submit a recommended order to the Department. The forwarding of this Petition is not a waiver of the Department's right to object to any material defects in the Petition or to Petitioner's standing to institute this proceeding.

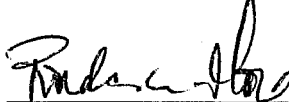
YOU ARE FURTHER NOTIFIED that the Department is responsible for preserving the record of any evidentiary hearings in this case in accordance with Section 120.57(1)(g), Florida Statutes. Unless otherwise notified by the Department prior to final hearing, such a record will be preserved by a court reporter. Any other party arranging for the presence of a court reporter at hearing should notify the administrative law judge and all parties prior to the hearing of the court reporter's name, mailing address, and telephone number.

Whenever a court reporter is used, Rule 28-106.214(2), Florida Administrative Code, provides that the court reporter's recordation becomes the official transcript.

If a party decides to file exceptions with the Department to any finding of fact made by the Administrative Law Judge, the party will need to submit an official transcript of the proceeding. A transcript may be prepared, at the expense of the requesting party, from a court reporter's notes.

RESPECTFULLY SUBMITTED this 13th day of July, 2008

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



RONDA L. MOORE
Assistant General Counsel
3900 Commonwealth Boulevard - MS 35
Tallahassee, Florida 32399-3000
Telephone 850/245-2193 Facsimile 850/245-2302
Florida Bar No. 0676411

Attachments: Written Notice of Intent to Issue a Revised Air Permit
Petition for Formal Administrative Hearing

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, Request for Assignment for Administrative Law Judge and Notice of Preservation of Record, was furnished via U.S. Mail on this 13th day of July, 2009, to:

James S. Alves
Paula L. Cobb
Hopping Green & Sams, P.A.
123 South Calhoun Street
Tallahassee, FL 32301

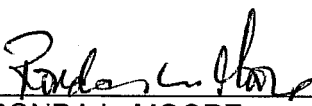
*Attorneys for Seminole Electric
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Tallahassee, FL 32301

Attorneys for Florida Wildlife Federation, Inc.



RONDA L. MOORE
Assistant General Counsel

WRITTEN NOTICE OF INTENT TO ISSUE A REVISED AIR PERMIT

*In the Matter of an
Application for Air Permit by:*

Seminole Electric Cooperative, Inc.
16313 North Dale Mabry Highway
Tampa, Florida 33618

Project No. 1070025-011-AC
(PSD-FL-375A)
Seminole Generating Station
Revisions for Proposed Unit 3 Project

Authorized Representative:

Mike Roddy, Manager of Environmental Affairs

Facility Location: Seminole Electric Cooperative, Inc. operates the existing Seminole Generating Station, which is located east of U.S. Highway 17, approximately seven miles north of Palatka, Putnam County.

Project: On September 5, 2008, the Department issued original Permit No. PSD-FL-375, which authorized the construction of a new nominal 750 megawatt, pulverized coal-fired supercritical steam generating unit at the existing Seminole Generating Station. On December 22, 2008, the Seminole Electric Cooperative, Inc. submitted an application to revise the original permit as follows: extend the expiration date; clarify references to the Clean Air Interstate Rule and Clean Air Mercury Rule; clarify that the maximum heat input rate is an enforceable restriction; correct the equivalent emissions rate for volatile organic compounds from 16.7 to 25.5 lb/hour; clarify that the particulate matter filterable limit of 0.013 pounds per million British thermal units applies to all fuel blends; add conditions 44 through 50 in Subsection IIIA of the permit as enforceable requirements for hazardous air pollutants; add Appendix CM identifying requirements for continuous emissions monitoring; add Appendix HP for calculating actual emissions of hazardous air pollutants; and add the Sierra Club Agreement dated March 19, 2007 as Appendix SC.

The project is a minor revision of the original air construction permit for Unit 3, which has not yet been constructed. There will be no emissions increases; therefore, the project is not subject to additional preconstruction review pursuant to Rule 62-212.400, F.A.C. for the Prevention of Significant Deterioration (PSD) of Air Quality, but will be a revision of the original air construction permit. Because PSD preconstruction review is not triggered, the Department did not conduct a new review for Best Available Control Technology (BACT) nor make any changes to the prior BACT determinations. The Department's original BACT determinations remain unchanged. For additional details, see the attached Technical Evaluation and Preliminary Determination and Draft Permit.

Permitting Authority: Applications for air construction permits are subject to review in accordance with the provisions of Chapter 403, Florida Statutes (F.S.) and Chapters 62-4, 62-210, and 62-212 of the Florida Administrative Code (F.A.C.). The proposed project is not exempt from air permitting requirements and an air permit is required to perform the proposed work. The Bureau of Air Regulation is the Permitting Authority responsible for making a permit determination for this project. The Permitting Authority's physical address is: 111 South Magnolia Drive, Suite #4, Tallahassee, Florida. The Permitting Authority's mailing address is: 2600 Blair Stone Road, MS #5505, Tallahassee, Florida 32399-2400. The Permitting Authority's telephone number is 850/488-0114.

Project File: A complete project file is available for public inspection during the normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday (except legal holidays), at address indicated above for the Permitting Authority. The complete project file includes the Draft Permit, the Technical Evaluation and Preliminary Determination, the application, and the information submitted by the applicant, exclusive of confidential records under Section 403.111, F.S. Interested persons may contact the Permitting Authority's project review engineer for additional information at the address or phone number listed above.

Notice of Intent to Issue Permit: The Permitting Authority gives notice of its intent to issue an air permit to the applicant for the project described above. The applicant has provided reasonable assurance that operation of the

WRITTEN NOTICE OF INTENT TO ISSUE A REVISED AIR PERMIT

proposed equipment will not adversely impact air quality and that the project will comply with all appropriate provisions of Chapters 62-4, 62-204, 62-210, 62-212, 62-296, and 62-297, F.A.C. The Permitting Authority will issue a Final Permit in accordance with the conditions of the proposed Draft Permit unless a timely petition for an administrative hearing is filed under Sections 120.569 and 120.57, F.S. or unless public comment received in accordance with this notice results in a different decision or a significant change of terms or conditions.

Public Notice: Pursuant to Section 403.815, F.S. and Rules 62-110.106 and 62-210.350, F.A.C., you (the applicant) are required to publish at your own expense the enclosed Public Notice of Intent to Issue Air Permit (Public Notice). The Public Notice shall be published one time only as soon as possible in the legal advertisement section of a newspaper of general circulation in the area affected by this project. The newspaper used must meet the requirements of Sections 50.011 and 50.031, F.S. in the county where the activity is to take place. If you are uncertain that a newspaper meets these requirements, please contact the Permitting Authority at the above address or phone number. Pursuant to Rule 62-110.106(5) and (9), F.A.C., the applicant shall provide proof of publication to the Permitting Authority at the above address within 7 days of publication. Failure to publish the notice and provide proof of publication may result in the denial of the permit pursuant to Rule 62-110.106(11), F.A.C.

Comments: The Permitting Authority will accept written comments concerning the proposed Draft Permit and requests for a public meeting for a period of 30 days from the date of publication of the Public Notice. Written comments must be received by the Permitting Authority by close of business (5:00 p.m.) on or before the end of this 30-day period. In addition, if a public meeting is requested within the 30-day comment period and conducted by the Permitting Authority, any oral and written comments received during the public meeting will also be considered by the Permitting Authority. If timely received comments result in a significant change to the Draft Permit, the Permitting Authority shall revise the Draft Permit and require, if applicable, another Public Notice. All comments filed will be made available for public inspection.

Petitions: A person whose substantial interests are affected by the proposed permitting decision may petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed with (received by) the Department's Agency Clerk in the Office of General Counsel of the Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000. Petitions filed by the applicant or any of the parties listed below must be filed within 14 days of receipt of this Written Notice of Intent to Issue Air Permit. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the attached Public Notice or within 14 days of receipt of this Written Notice of Intent to Issue Air Permit, whichever occurs first. Under Section 120.60(3), F.S., however, any person who asked the Permitting Authority for notice of agency action may file a petition within 14 days of receipt of that notice, regardless of the date of publication. A petitioner shall mail a copy of the petition to the applicant at the address indicated above, at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the Permitting Authority's action is based must contain the following information: (a) The name and address of each agency affected and each agency's file or identification number, if known; (b) The name, address, and telephone number of the petitioner; the name, address and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination; (c) A statement of when and how each petitioner received notice of the agency action or proposed decision; (d) A statement of all disputed issues of material fact. If there are none, the petition must so state; (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends

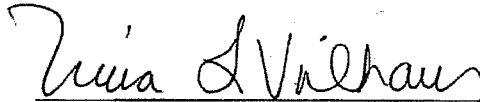
WRITTEN NOTICE OF INTENT TO ISSUE A REVISED AIR PERMIT

warrant reversal or modification of the agency's proposed action; (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action including an explanation of how the alleged facts relate to the specific rules or statutes; and, (g) A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the agency to take with respect to the agency's proposed action. A petition that does not dispute the material facts upon which the Permitting Authority's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Permitting Authority's final action may be different from the position taken by it in this Written Notice of Intent to Issue Air Permit. Persons whose substantial interests will be affected by any such final decision of the Permitting Authority on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation: Mediation is not available in this proceeding.

Executed in Tallahassee, Florida.



Trina Vielhauer, Chief
Bureau of Air Regulation

WRITTEN NOTICE OF INTENT TO ISSUE A REVISED AIR PERMIT

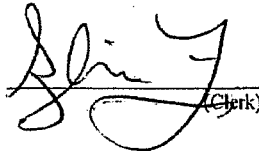
CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this Written Notice of Intent to Issue Air Permit package (including the Written Notice of Intent to Issue Air Permit, the Public Notice of Intent to Issue Air Permit, the Technical Evaluation and Preliminary Determination and the Draft Permit) was sent by electronic mail (or a link to these documents made available electronically on a publicly accessible server) with received receipt requested before the close of business on 6/12/09 to the persons listed below.

Mr. Mike Roddy, SECI (wmroddy@seminole-electric.com)
Mr. James R. Frauen, SECI (jfrauen@seminole-electric.com)
Mr. Scott Osbourn, Golder Associates (sosbourn@golder.com)
Mr. Robert Manning, Hopping, Green & Sams (rmanning@hgslaw.com)
Mr. Jim Alves, Hopping, Green & Sams (jalves@hgslaw.com)
Mr. Mike Halpin, DEP Site Certification (mike.halpin@dep.state.fl.us)
Mr. Chris Kirts, NED (christopher.kirts@dep.state.fl.us)
Ms. Phyllis Fox, Ph.D. (phyllisfox@gmail.com)
Ms. Kathleen Forney, EPA Region 4 (forney.kathleen@epa.gov)
Ms. Heather Abrams, EPA Region 4 (abrams.heather@epamail.epa.gov)
Ms. Kristin Henry, Sierra Club (kristin.henry@sierraclub.org)
Ms. Joanne Spalding, Sierra Club (joanne.spalding@sierraclub.org)
Ms. Catherine Collins, U.S. Fish and Wildlife Service (catherine_collins@fws.gov)
Mr. George Cavros, on behalf of Natural Resources Defense Council and Southern Alliance for Clean Energy (gcavros@att.net)
Ms. Victoria Gibson, BAR Reading File (victoria.gibson@dep.state.fl.us)

Clerk Stamp

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to Section 120.52(7), Florida Statutes, with the designated agency clerk, receipt of which is hereby acknowledged.


(Clerk)

6/12/09
(Date)

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SEMINOLE ELECTRIC
COOPERATIVE, INC.,**

Petitioner,

vs.

**STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Respondent.

OGC CASE NO. _____
Project No. 1070025-011-AC
Permit PSD-FL-375A
DEPT OF ENVIRONMENTAL
PROTECTION

JUN 26 2009

OFFICE OF
GENERAL COUNSEL

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Seminole Electric Cooperative, Inc. (Petitioner) hereby petitions, pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rules 28-106.201 and 62-110.106, Florida Administrative Code, for a formal administrative hearing regarding Condition 3 of Section II (Condition 3) in the Department of Environmental Protection's (Department) draft permit revisions to Permit No.: 1070025-011-AC, PSD-FL-375 (Draft Permit Revision) received by Petitioner on June 12, 2009.

Affected Agency

1. Name and address of agency affected and the agency's file number:

Department of Environmental Protection
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, FL 32399-3000

Permit number: PSD-FL-375A

Project number: 1070025-011-AC

Petitioner

2. Petitioner is a non-profit rural electric cooperative, created in accordance with Chapter 425, Florida Statutes, which generates and transmits electric power for ten member cooperatives that provide electricity to approximately 1.6 million individuals and businesses in 46 of Florida's 67 counties.

3. Contact information for Petitioner is:

Mike Roddy
Authorized Representative
Manager of Environmental Affairs
Seminole Electric Cooperative, Inc.
16313 North Dale Mabry Highway
Tampa, FL 33618
(813) 963-0994

However, for service purposes the following contact information for Petitioner's legal counsel should be used:

James S. Alves
Florida Bar No. 443750
Paula L. Cobb
Florida Bar No. 43561
123 South Calhoun Street
Tallahassee, FL 32301
Telephone: (850) 222-7500
Facsimile: (850) 224-8551

Notice

4. Petitioner received an electronic copy of the Draft Permit Revision on June 12, 2009. Pursuant to Rule 62-110.106(3)(a)1., Florida Administrative Code, Seminole has until June 26, 2009 to file a petition challenging the Draft Permit Revision. Therefore, this Petition is timely.

History

5. Petitioner owns and operates Seminole Generating Station which currently consists of two generating units. On March 9, 2006, Seminole filed an application to

construct a new nominal 750 MW pulverized coal-fired supercritical steam generating unit (SGS Unit 3) at the Seminole Generating Station. This filing included an application for certification pursuant to Florida's Power Plant Siting Act (PPSA) and an application for an air construction permit, called a Prevention of Significant Deterioration (PSD) permit. On August 24, 2006, the Department issued the draft PSD permit for SGS Unit 3.

6. On March 9, 2007, Petitioner entered into a Settlement Agreement with the Sierra Club that resolved all the parties' differences concerning SGS Unit 3's underlying PSD permit.

7. Litigation between Petitioner and the Department concerning the PPSA certification of SGS Unit 3 delayed the final issuance of the PSD permit. In this instance, DEP denied certification of SGS Unit 3 despite a stipulation by the Department to certify the project. On appeal, the Fifth District Court of Appeal reversed the Secretary of the Department's final order denying certification with directions that the unit be certified. Seminole Elec. Coop., Incl v. Dep't Env'tl. Prot., 985 So. 2d 615, 616 (Fla. 5th DCA 2008). On August 18, 2008, the Department issued a final order granting certification. In re: Seminole Elec. Coop., 09 ER F.A.L.R. 015 (DEP 2008).

8. On September 5, 2008, the Department issued Petitioner's PSD permit, No. PSD-FL-375 (Underlying Permit), to construct SGS Unit 3.

9. Shortly thereafter, as a result of the vacatur of the Clean Air Mercury Rule (CAMR) and EPA's delisting of electric utility steam generating units (EUSGUs) from the Clean Air Act (CAA) Section 112(c) list, the Department requested that Seminole submit a proposal for a case-by-case maximum achievable control technology (MACT) determination evaluating SGS Unit 3's emissions of Hazardous Air Pollutants (HAP).

Before a facility may commence construction of a new source such as SGS Unit 3, the facility must have all pre-construction approvals. One such approval is found in CAA Section 112(g), which states that no major source of air pollution may be constructed without a determination that it will meet maximum achievable control technology emission limitations. If no such limitations have been established, then a case-by-case determination is required. Emissions limitations for EUSGUs have not yet been established under CAA Section 112 and therefore, the Department requested that Petitioner submit a case-by-case MACT determination proposal. During the preparation of its MACT determination proposal, Petitioner realized that SGS Unit 3 would be a minor source of HAPs and therefore not subject to CAA Section 112(g).

10. On October 3, 2008, Sierra Club appealed the issuance of the Underlying Permit with the First District Court of Appeal. On October 6, 2008, the Sierra Club also appealed the Underlying Permit to the Environmental Protection Agency's (EPA) Environmental Appeals Board (EAB).

11. On October 6, 2008, the Southern Alliance for Clean Energy (Southern Alliance) appealed the issuance of the Underlying Permit with the First District Court of Appeal. The Court dismissed this appeal on June 25, 2009.

12. On December 22, 2008, Petitioner submitted, along with the HAP assessment requested by the Department, an application to revise the Underlying Permit.

13. On June 12, 2009, the Department issued a Draft Permit Revision which includes new language revising Condition 3's 18 month commence construction period so that it is triggered by the Underlying Permit's issuance date. The Draft Permit

Revision also revises the permit expiration date in Condition 3 to July 1, 2014 instead of December 31, 2016, as requested by Petitioner.

Petitioner's Substantial Interests Are Affected by Department Actions

14. Petitioner owns and operates the Seminole Generating Station, a steam electric generating facility in Putnam County, Florida, which currently consists of two coal-fired generating units operating since 1984. The Seminole Generating Station has been – and continues to be – extensively modernized and retrofitted with sophisticated pollution control technologies and recycling capabilities.

15. In December 2008, Petitioner submitted an application to revise the Underlying Permit to: (1) address new CAA Section 112 requirements for emissions of HAP; (2) incorporate comments by EPA Region 4; (3) incorporate the provisions of the Sierra Club Settlement Agreement; and (4) extend the permit expiration date based on new developments (described in more detail below).

16. In June 2009, the Department issued the Draft Permit Revision. In this Revision, the Department revises Condition 3 to link the 18 month commence construction deadline to the Underlying Permit's issuance date and extends the expiration date of the permit to July 1, 2014 instead of December 31, 2016. However, Petitioner lacks the authority to commence construction of SGS Unit 3 – the EAB appeal renders the Underlying Permit ineffective and the Department's HAP determination and related permit revisions are not yet final.

17. Petitioner is not authorized by the Underlying Permit (or any other permit) to commence construction and yet the Department requires in its revision that the Condition 3 commence construction deadline revert back to the Underlying Permit's

issuance date. As a result, this period is running while Petitioner may not commence construction. Furthermore, the Department bases its revised expiration date on the delay prior to the issuance of the Underlying Permit but does not take into account Petitioner's lack of authority to construct SGS Unit 3. Therefore, the resulting extension to July 2014 is insufficient. Such revisions are unjustified by the facts and circumstances of this matter, contrary to the requirements of law, and are prejudicial to Petitioner's SGS Unit 3 project. Therefore, these revisions adversely affect Petitioner's substantial interests.

18. In October 2008, the Sierra Club appealed Petitioner's Underlying Permit to the EAB, which is still evaluating whether it has jurisdiction in that matter. Accordingly, the EAB has provisional jurisdiction over the Underlying Permit. EAB regulations provide that a final permit decision does not become effective if review of the permit is requested. Petitioner's position is that the EAB does not have jurisdiction to review the issuance of the Underlying Permit but that EAB Part 124 regulations and procedures necessarily apply on a provisional basis while the EAB decides whether it has jurisdiction to review the Underlying Permit. Accordingly, that permit is not yet effective and therefore Petitioner has been and continues to be unauthorized to commence construction of SGS Unit 3 under the Underlying Permit.

19. In addition, Petitioner has been and continues to be unauthorized to commence construction of SGS Unit 3 until the minor source determination and related HAP permit limits and conditions set forth in the Draft Permit Revision are final. A case-by-case MACT determination is a preconstruction requirement for a major source of HAP if emission limits for that source category have not been established under CAA Section 112. Even though SGS Unit 3 is a minor source of HAP and therefore was not

required to perform a case-by-case determination, Petitioner cannot commence construction until the Department makes a final determination that SGS Unit 3 is a minor source, that case-by-case MACT is not a preconstruction requirement for Petitioner to commence construction of SGS Unit 3, and the related HAP emission limits and conditions are final. Further, the Department's Technical Evaluation and Preliminary Determination clearly expresses the Department's position that the HAP permit conditions (emissions limitations and monitoring requirements) in the Draft Permit Revision are necessary to ensure Unit 3's "minor source" HAP status. This means that the Department characterizes SGS Unit 3 as a "synthetic" minor source under CAA Section 112 – a source that is only minor because of permit conditions and limits. Again, this means that construction cannot commence until the Draft Permit Revision is final.

20. The revisions to Condition 3 essentially impose a back-dated commence construction trigger for SGS Unit 3. By the time the Draft Permit Revision becomes final, the 18 month period will have been running for nearly a year, but Petitioner will have been unauthorized to commence construction during that entire period. If Petitioner cannot commence construction within the timeframe permitted by the Department (due to the EAB appeal and ongoing permit revisions), authorization to construct SGS Unit 3 expires, and Petitioner would be forced to begin the permitting process anew – at substantial expense and delay. The Department's revision to Condition 3 imperils Petitioner's ability to provide its customers affordable and reliable electricity, contrary to Petitioner's duty as a rural electric cooperative. Accordingly, the Department's revision to Condition 3 substantially prejudices Petitioner's SGS Unit 3 project and adversely affects Petitioner's substantial interests.

21. The Department's failure to extend the permit expiration date to December 31, 2016 as requested by Petitioner further prejudices Petitioner's SGS Unit 3 project. The construction permit must be issued for a period that allows sufficient time not only to construct SGS Unit 3 but also to operate Unit 3 while Petitioner conducts tests and demonstrates initial compliance with the conditions of its PSD permit. The inability to commence construction naturally affects the construction end date as well as initial compliance testing. Petitioner may not construct SGS Unit 3 if the PSD permit expires, and any future permit extension request will require yet another modification of the permit. For these reasons, and others, the Department's failure to extend the permit expiration date to December 2016 prejudices the SGS Unit 3 project and adversely affects Seminole's substantial interests.

Statement of Ultimate Facts

22. On March 9, 2006, Seminole filed an application to construct and operate SGS Unit 3 at the Seminole Generating Station.

23. On August 24, 2006, the Department issued a draft PSD permit for SGS Unit 3.

24. On March 9, 2007, Petitioner entered into a Settlement Agreement with the Sierra Club that resolved all the parties' differences concerning SGS Unit 3's Underlying PSD Permit. Prior to the issuance of the Underlying Permit, Petitioner requested that the Department incorporate the terms of this Agreement, but the Department declined to do so. See Attachment 1, Sierra Club Settlement Agreement.

25. On September 5, 2008, the Department issued to Petitioner the Underlying Permit to construct SGS Unit 3. In this action, the Department noted that Petitioner could

request a revision to the very permit just-issued in order to incorporate the Sierra Club Settlement Agreement. The Department also noted that it would require a case-by-case MACT application and would issue a MACT determination in a separate agency action.

26. On September 19, 2008, the Department requested that Seminole submit a proposal for a case-by-case MACT determination for SGS Unit 3's HAP emissions.

27. During the preparation of its MACT determination, Petitioner realized that SGS Unit 3's state of the art pollution control equipment would reduce its HAP emissions to such a degree that it would be a minor source for HAPs and therefore not subject to CAA Section 112(g). Accordingly, Petitioner prepared an application for a permit revision that would confirm SGS Unit 3's status as a minor source.

28. On October 3, 2008, Sierra Club appealed the issuance of the Underlying Permit with the First District Court of Appeal. On October 6, 2008, the Sierra Club also appealed Petitioner's Underlying Permit to the EAB.

29. On October 6, 2008, Southern Alliance appealed the issuance of the Underlying Permit with the First District Court of Appeal. The Court dismissed this appeal on June 25, 2009.

30. On December 22, 2008, Petitioner submitted an application to revise the Underlying Permit, requesting the Department to:

- a. include specific conditions to verify SGS Unit 3's "minor source" status;
- b. incorporate the March 9, 2007 Sierra Club Agreement;
- c. extend the permit expiration date to December 31, 2016; and

- d. revise certain permit conditions in response to EPA Region 4 comments on the Underlying Permit.

31. On June 12, 2009, the Department issued the Draft Permit Revision. This revision includes new language that ties the commence construction period with the Underlying Permit's issuance date and extends the permit expiration date to July 2014 rather than December 2016, despite Petitioner's lack of authority to commence construction of SGS Unit 3. In the Draft Permit Revision the Department:

- a. extends the permit expiration date by 18 months, from December 31, 2012 to June 1, 2014, instead of December 31, 2016;
- b. states that the 18 month commence construction period began running upon Petitioner's receipt of the Underlying Permit on September 5, 2008;
- c. incorporates the "Terms and Conditions" of the Sierra Club Agreement as enforceable conditions of the permit;
- d. revises certain permit conditions to address EPA Region 4 comments; and
- e. determines that SGS Unit 3 is minor for HAPs and requires additional emissions limits and stringent monitoring provisions to ensure SGS Unit 3's minor source status.

32. Notwithstanding Petitioner's position that the EAB does not have jurisdiction over the issuance of the Underlying Permit, EAB Part 124 regulations and procedures provisionally apply while the EAB determines whether it has jurisdiction to review the Underlying Permit.

33. Petitioner has been and continues to be unauthorized to commence construction of SGS Unit 3 under the Underlying Permit.

34. The Department's revisions to Condition 3 (finding that the commence construction period began with the September 2008 issuance of the Underlying Permit) is arbitrary and capricious. Such a revision is unjustified in light of the circumstances and applicable regulations, because it would cause the "commence construction" deadline to run during a period in which Petitioner could not possibly commence construction.

35. The Department's revision extending the permit expiration date in Condition 3 to July 2014 instead of December 2016 is arbitrary and capricious and unjustified in light of the circumstances and applicable regulations. The 2014 expiration date is premised on the notion that Petitioner is authorized to commence construction under the Underlying Permit, even though it is not.

Disputed Issues of Material Fact

36. Whether the Underlying Permit authorizes construction of SGS Unit 3 prior to resolution of the EAB appeal and final issuance of the HAP-related permit revisions.

37. Whether EAB regulations and procedures provisionally apply while the EAB evaluates whether it has jurisdiction to review the Underlying Permit.

38. Whether the Department's revision to Condition 3 of the Draft Permit Revision back-dating the commence construction period to the Underlying Permit's issuance date is arbitrary and capricious and unjustified in light of the circumstances and applicable regulations.

39. Whether the Department's failure to extend the permit expiration date in Condition 3 of the Draft Permit Revision to December 2016 is arbitrary and capricious and unjustified in light of the circumstances and applicable regulations.

Statutes and Regulations Warranting Relief

40. The following rules and statutes entitle Seminole to relief:
- a. Chapter 120, Florida Statutes, including but not limited to: Sections 120.569 and 120.57;
 - b. Chapter 403, Florida Statutes, including but not limited to: Sections 403.021, 403.031, 403.061, 403.087, and 403.088;
 - c. Chapter 62-4, Florida Administrative Code, including but not limited to: Rules 62-4.070(4) and 62-4.080;
 - d. Chapter 62-204, Florida Administrative Code, including but not limited to: Rule 62-204.800;
 - e. Chapter 62-210, Florida Administrative Code, including but not limited to: Rule 62-210.300(1);
 - f. Chapter 62-212, Florida Administrative Code, including but not limited to: Rule 62-212.400(12)(a);
 - g. Title 42 Chapter 85, United States Code, including but not limited to: Section 7412; and
 - h. Title 40 Part 124, Code of Federal Regulations, including but not limited to: Sections 124.15 and 124.19.

Request for Relief

Based on the foregoing, Seminole respectfully requests that the Department grant the following relief:

A. Refer this matter to the Division of Administrative Hearings for a formal administrative hearing;

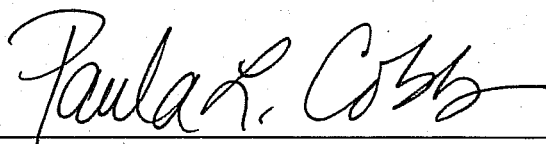
B. Extend the commence construction deadline in accordance with the conclusion of this matter and issuance of the final permit revisions and resolution of the EAB proceeding, whichever occurs later;

C. Extend the permit expiration date in accordance with the conclusion of this matter and issuance of the final permit revisions and resolution of the EAB proceeding, whichever occurs later; and

D. Grant such other relief as is lawful and serves legitimate environmental policy objectives.

Respectfully submitted this 26th day of June, 2009.

HOPPING GREEN & SAMS

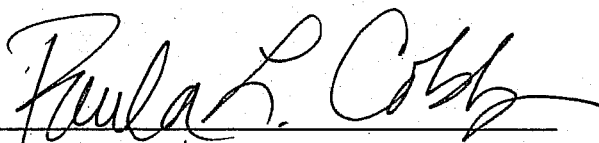


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Attorneys for
SEMINOLE ELECTRIC COOPERATIVE, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Petition for Administrative Hearing has been filed by hand delivery with the Clerk of the Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; and that a true and correct copy has been sent by electronic mail and U.S. Mail to Ronni Moore, Ronni.Moore@dep.state.fl.us, Office of General Counsel, Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; all on this 26th day of June, 2009.



Attorney

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Seminole Electric Cooperative, Inc. ("Seminole") and the Sierra Club ("Sierra Club"). Seminole and Sierra Club shall be referred to herein collectively as the "Parties" for the purposes of this Agreement.

RECITALS

A. Seminole operates two existing electrical generating units at the Seminole Generating Station site ("Site") in unincorporated Putnam County, Florida. Those existing units, referred to as Units 1 and 2, originally were licensed pursuant to the Florida Power Plant Siting Act (PPSA) Certification Order PA-10 and PSD permit PSD-FL-018.

~~B. On March 9, 2006, Seminole filed a site certification application ("SCA") under the PPSA, with the Florida Department of Environmental Protection ("FDEP") seeking approval for the construction and operation of the proposed Unit 3 Project. The new proposed Unit 3 will be located adjacent to the existing two units and will utilize some of the existing facilities and infrastructure at the Site. The SCA was assigned FDEP number PA78-10A2; FDEP OGC Case No. 06-0780 and Florida Division of Administrative Hearings Case No. 06-0929EPP.~~

C. The Sierra Club was a party to the original PPSA site certification proceeding for the existing two units at the Site as well as the current site certification proceeding for the proposed Unit 3 Project.

D. On March 9, 2006, Seminole also filed with FDEP a separate application for a prevention of significant deterioration ("PSD") permit to authorize construction of Unit 3. The PSD permit is being processed by FDEP pursuant to its authority to issue such federally-required PSD permits in Florida. A draft PSD permit was issued by FDEP on August 24, 2006; the FDEP PSD permit number is PSD-FL-375.

E. On October 9, 2006, the Sierra Club submitted written comments to the FDEP Bureau of Air Regulation concerning FDEP's proposed PSD permit for the Unit 3 Project.

F. In a separate Settlement Agreement signed by both Parties on January 7, 2007, the Parties resolved all issues raised or which could be raised concerning Seminole's Unit 3 Project in the PPSA proceeding, except for issues related to the PSD permit. The Parties also set a framework for continued settlement negotiations concerning the PSD permit.

G. This Agreement reflects the Parties agreement to settle all remaining issues related to the PSD permit for Unit 3. The Parties concur that this Agreement consists of full and fair consideration for the release of all claims of the Sierra Club with respect to issuance of the PSD permit for Unit 3. Provided that the final PSD permit is issued in accordance with the terms and conditions of this Agreement, Sierra Club agrees not to contest FDEP's issuance of the final PSD permit in any administrative or judicial forum. Seminole agrees not to contest any conditions in the final PSD permit if it is issued in accordance with the terms and conditions of this Agreement.

TERMS AND CONDITIONS

1. Following the commencement of commercial operation of Unit 3, it is agreed that Seminole will be subject to the following system-wide emission rates for Units 1, 2, and 3, combined:

- (a) Sulfur Dioxide (SO₂) 95 percent control efficiency across the scrubbers based on a 30-day rolling average, including periods of start-up and shut down, and annual emissions of no more than 17,900 tons per year based on a 12-month rolling average, including periods of start-up and shut down.
- ~~(b) Nitrogen Oxides (NO_x) 0.07 lb/MMBtu based on 30-day rolling average, and annual emissions of no more than 5,450 tons per year based on a 12-month rolling average. The tons per year limit includes periods of startup and shutdown; the lb/MMBtu does not.~~
- (c) Sulfuric Acid Mist (H₂SO₄) 1,665 Tons Per Year
- (d) Mercury (Hg) 118 Pounds Per Year
- (e) Particulate Matter (PM) 1,470 Tons Per Year
- (f) Volatile Organic Compounds (VOC) 259 Tons Per Year
- (g) Carbon Monoxide (CO) 17,493 Tons Per Year

2. Following the commencement of full-time commercial operation of Unit 3, the following emission rates shall apply specifically to Unit 3:

- (a) Sulfur Dioxide (SO₂) 98 percent control efficiency across the scrubber based on a 30-day rolling average, including periods of start-up and shut down.
- (b) Nitrogen Oxides (NO_x) 0.05 lb/MMBtu, based on a 30-day rolling average, excluding periods of start-up and shut down
- (c) Total PM (filterable + condensable) 0.030 lb/MMBtu, based on a 3-hour performance test, based on modified Method 202 test

(d) Opacity

10 percent

3. The last sentence of Draft Permit Condition III.A.4. shall be amended to read as follows: "The steam generator ~~shall be designed for a maximum heat input of~~ maximum heat input rate shall not exceed 7,500 MMBtu per hour of coal, based on fuel sampling and analysis."

4. Draft Permit Condition III.A.5. shall be deleted.

5. Draft Permit Condition III.7.c. shall be revised as follows: "SAM removal shall be accomplished by the use of the FGD system and the wet ESP, which shall be operated at all times, including startup and shutdown, in accordance with good operating practices and manufacturer requirements."

6. Draft Permit Condition III.A.9.a. shall be amended to read as follows: "Coal-SGS Unit 3 may combust bituminous coal, up to 318.3 tons per hour based upon ~~41,300~~ 11,780 Btu/lb HHV."

7. In Draft Permit Condition III.A.10., the "lb/hr equivalent VOC emission limit" shall be changed from 16.7 to 25.5.

8. Draft Permit Condition III.A.13. shall be amended to read as follows: "Sulfur Dioxide (SO₂): Emissions of SO₂ from SGS Unit 3 shall not exceed 1.4 pounds per megawatt hour (lb/MW-hr) gross energy output or 98% reduction on a 30-day rolling average basis including periods of start-up and shut down, nor 0.165 lb/MMBtu, based upon a 24-hour rolling average as determined by CEMS. In addition, SO₂ emissions shall not exceed ~~29,074~~ 17,900 tons per 12-month rolling period (facility-wide), based upon CEMS. [62-210.200 (Net Emissions Increase), and 62-212.400(12) (Source Obligation), F.A.C.]

9. New Permit Condition III.A.20.c. shall be included as follows: "The permittee shall maintain monthly records describing actions taken to comply with this condition."

10. The parties agree that all other conditions in the Draft Permit shall be included in the Final Permit.

11. Seminole agrees to ask FDEP to include the foregoing limits and conditions in the Final PSD permit for Seminole Unit 3 and agrees to be bound to these limits and conditions. Sierra Club agrees to not object, challenge, appeal, or initiate or assist in any challenge or appeal by others, or in any other way impede or interfere with the issuance of a final PSD permit in accordance with the terms and conditions identified in this Agreement.

12. By September 1, 2007, Seminole agrees to publish a Request for Proposal (RFP) soliciting bids for up to 100 MW of renewable energy, which may include solar, wind, geothermal and/or biomass. Seminole is committed to pursuing renewable energy opportunities, and agrees to evaluate and implement, in good faith, viable bids. In accordance with Seminole's existing bid evaluation policy, a viable bid is one that is reasonable based on an analysis of

technical, commercial and economic issues, including reliability, fuel supply (as applicable), siting issues, transmission, and financial viability of vendor, and whether the project is in the best interest of Seminole and its members. If Seminole does not receive viable bids in response to this RFP, Seminole will publish another such RFP within eighteen months of the first. Seminole will continue to actively pursue renewable energy opportunities, and will evaluate and implement, in good faith, viable bids in the manner described above.

GENERAL PROVISIONS

13. This Settlement Agreement represents a complete settlement of all Unit 3 issues related to issuance of the PSD permit.

14. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

15. This Agreement shall never at any time or for any purpose be considered an admission of liability or responsibility on the part of any party herein released.

16. This Agreement is the product of negotiation and preparation by and among each party hereto and his or her respective attorneys. Accordingly, all Parties hereto acknowledge and agree that the Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for one party or another, and the Agreement shall be construed accordingly.

17. This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of Florida. Exclusive jurisdiction and venue for any litigation brought to enforce this Agreement shall be in the Circuit Court for Putnam County, Florida, and the Parties do hereby specifically waive any other jurisdiction and venue. In any such litigation, the parties shall seek only declaratory or injunctive relief or specific performance. Neither party shall file any lawsuit to enforce this Agreement unless it has first provided written notice of the alleged violation to the other party thirty days prior to filing suit and the other party has failed to cure the alleged violation.

18. If any provision or any part of any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

19. No amendments or modifications of this Settlement Agreement shall be valid unless set forth in writing and signed by the duly authorized representatives of each Party.

20. This Agreement shall be deemed to be effective immediately upon its full execution by all Parties.

21. This Agreement contains the entire understanding among the Parties with regard to the matters herein set forth, and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the Parties hereto relating to this Agreement which are not fully expressed herein.

SEMINOLE ELECTRIC COOPERATIVE, INC.

Date: 3/28/07

By: W.P. Opel

Its: VP, Technical Services

SIERRA CLUB

Date: 3/9/07

By: Kristin A. Henry

Its: Staff attorney