**Exhibit 4**

EPA Region 4's Brief Regarding Reviewability of Permit

**IN THE DISTRICT COURT OF APPEAL**
**FIRST DISTRICT OF FLORIDA**

| | | |
|---|---|---|
| SIERRA CLUB, INC.<br><br>Appellant,<br><br>vs.<br><br>STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, and SEMINOLE ELECTRIC COOPERATIVE, INC.,<br><br>Appellees. | ) | Case No.: 1D-08-4881<br>Final Permit No. PSD-FL-375<br>Project No. 1070025-005-AC |

---

ON APPEAL FROM A FINAL ORDER OF THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
GRANTING A CLEAN AIR ACT PERMIT

---

# CONSOLIDATED REPLY BRIEF OF APPELLANT SIERRA CLUB, INC.

---


David G. Guest
Fla. Bar No. 2672228
Alisa A. Coe
Fla. Bar No. 0010187
P. O. Box 1329
Tallahassee, Florida 32302
Telephone: (850) 681-0031
Facsimile: (850) 681-0020
Counsel for Petitioner/Appellant

Joanne Spalding (pro hac vice)
Kristin Henry (pro hac vice)
Craig Holt Segall (pro hac vice)
Sierra Club
85 Second Street, Second Floor
San Francisco, CA 94105
Telephone: (415) 977-5725
Facsimile: (415) 977-5793
Counsel for Petitioner/Appellant

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### STATE CASES

**ENVIRONMENTAL APPEALS BOARD CASES**



**FEDERAL STATUTES**



**STATE STATUTES**



**FEDERAL ADMINISTRATIVE RULES**



**STATE ADMINISTRATIVE RULES**

**FEDERAL REGISTER NOTICES**



**STATE ADMINISTRATIVE NOTICES**



## PRELIMINARY STATEMENT

This is a consolidated reply brief to both the Department of Environmental Protection's ("DEP") and Seminole Electric's ("Seminole") answer briefs. Citations to the record will be noted as R. Vol. #, p. ## denoting the volume number and page number. For ease of reference, appellant Sierra Club ("Sierra") has attached appendices with key law used throughout the brief. These will be referred to as App. _ and will follow the record or legal citation.

## ARGUMENT

### I. AIR POLLUTION HARMS PUBLIC HEALTH EVEN THOUGH FLORIDA MEETS AMBIENT AIR QUALITY STANDARDS.

Seminole contends that pollution from its proposed coal-fired plant would not harm public health because the region attains ambient air quality standards. Sem. Br. at 2. Florida counties do meet those standards, but the record shows the proposed plant would still pose a risk to public health, considering just one of the many pollutants it would emit, coal soot particle matter. Coal soot from power plants already causes the premature death of 1,416 Floridians, as well as 155,908 lost work days, 1,367 hospitalizations and 28,321 asthma attacks each year. R. Vol. 9, p. 1629. In the Jacksonville area alone, coal soot from power plants causes 94 premature deaths, 134 heart attacks, 13 lung cancer deaths, 2,332 asthma attacks, 82 hospital admissions, and 114 emergency room visits for asthma each year. *Id.* These deaths and health impacts occur despite Florida's attainment status. For this reason, the Clean Air Act requires all new air pollution sources to meet progressive pollution reductions through the Best Available Control Technology mandate.[1]

---

[1] Seminole's claim that this project would "*reduce* environmental impacts," Sem. Br. at 3, is also false. The supposed benefits arise from separately-permitted upgrades required by the Clean Air Act to Seminole's thirty-year-old boilers. *See* R. Vol. 1, pp. 9-10; R. Vol. 3, pp. 421-22. They will proceed whether or not Seminole builds a new boiler, which would defray their benefits. *See* R. Vol. 9, p. 1519 (showing emissions from new boiler offsetting pollutant reductions from upgrades). Even with the upgrades, DEP concluded that the new boiler would

## II. SIERRA IS A PROPER PARTY TO THIS APPEAL BECAUSE IT PERFECTED ITS APPELLATE RIGHTS UNDER THE THEN-APPLICABLE LAW.

Sierra perfected its appellate rights under the federal and state rules that applied during the pendency of Seminole's permit. After Sierra perfected those rights, DEP's electric power plant Clean Air Act program changed from a *delegated* program (meaning that once DEP issued the permit, EPA and then federal courts held review authority, with appeals first taken to the Environmental Appeals Board) to an *approved* program (allowing only state appellate review for permits processed and issued entirely under that program). DEP and Seminole argue that this rule change retroactively divests Sierra of its right to review. In this unique circumstance, where appellate rights have vested and the avenue for final review has been re-routed mid-stream, the statutory framework must be construed to retain Sierra's status as a party that had perfected its right to appeal.

### A. UNTIL JUNE 27, 2008, DEP'S POWER PLANT CLEAN AIR ACT PROGRAM WAS A DELEGATED PROGRAM.

DEP implies that Sierra never had appeal rights under federal rules because it administered a fully approved program throughout the permit proceedings. DEP Br. at 15. Sierra has filed herewith a Request for Judicial Notice of DEP's Motion for Summary Disposition of Sierra's appeal of the Seminole permit before the

---

significantly increase coal soot, carbon monoxide, volatile organic compound, and fluoride emissions. R. Vol. 9, p. 1517.

federal Environmental Appeals Board. Paragraph 3 of DEP's motion reads: "FDEP admits that at the time the draft permit was issued the Florida PSD ["Clean Air Act permit"] program was considered delegated by EPA and that the full approval of the program occurred between issuance of the draft permit and issuance of the final permit." That admission is correct.

Prior to this, Florida's power plant permitting program was not an approved program. Florida law "required permits for electric power plants to be issued solely by the Power Plant Site Certification Board under the [Power Plant Siting Act], rather than by DEP under Florida's PSD regulations," preventing Florida from submitting the power plant program for approval. *See* 73 Fed. Reg. 18,466, 18,471 (Apr. 4, 2008). Instead, as EPA explained in its 1993 letter[2] *delegating* Clean Air Act permitting for power plants to DEP, it authorized Florida to act as EPA's agent in implementing a delegated federal program for power plants. App. 1. Only after Florida amended the Power Plant Siting Act to allow DEP to separately implement the air permitting program for power plants did EPA conditionally approve DEP's request to "make the State's PSD permitting program applicable to electric power plants." 73 Fed. Reg. 36,435, 36,435 (June 27, 2008). EPA explained that electric power plants in Florida "have historically been permitted by FDEP (through a federal delegation of authority from EPA) under the

[2] The delegation letter was attached as Exhibit 1 to Sierra's response to Seminole's motion to dismiss in this Court, which response was filed on November 4, 2008.

federal PSD program rather than the Florida SIP-approved[3] PSD permitting program." *Id.* at 36,437. At the same time, EPA amended 40 C.F.R. § 52.530(a) to read "EPA approves the Florida Prevention of Significant Deterioration program, as incorporated into this chapter for power plants subject to the Florida Power Plant Siting Act." 73 Fed. Reg. 36,435, 36,439 (June 27, 2008).

Sierra perfected its appeal rights when it filed its comments because DEP was at that time administering a *delegated* rather than an *approved* federal Clean Air Act program for electric power plants.

### B. SIERRA APPEARED AS A PARTY BELOW AND IS ENTITLED TO APPELLATE REVIEW IN THIS COURT.

Seminole and DEP argue that this Court has no jurisdiction because (1) Sierra was not a party to the proceedings below; (2) Sierra does not meet the statutory definition of a "party;" and (3) Sierra waived its party status by not appealing DEP's denial of its petition for administrative hearing. These arguments must fail. When a participant in the administrative proceeding has complied with the only mandatory procedural requirements for participation existing at the time and perfected its right as a party with the right to appeal, a subsequent change of forum and procedures for appeal should not result in a forfeiture of appeal rights. Sierra sufficiently appeared and participated in the administrative proceedings to

[3] "SIP-approved" refers to approval of a "State Implementation Plan," meaning that Florida became a fully approved state so that it could issue Clean Air Act permits for power plants using its own procedural rules. *See* 42 U.S.C. § 7410.

qualify as a party for sections 120.52 and 120.68, Florida Statutes.

Section 120.52, Florida Statutes, defines a "party," as the term is used in section 120.68, to include anyone entitled to participate in the proceeding and who appears as a party. Under DEP rules, Sierra was entitled to participate in the proceeding and seek appellate review. In 2006, when DEP issued Seminole's draft permit, its own rules required compliance with federal participation rules. Fla. Admin. Code R. 62-212.400(11) (2006) (no permit to be issued until DEP met both federal and state requirements); App. 2. Review of permits issued by DEP was to be conducted by the Environmental Appeals Board, then federal courts. 40 C.F.R. § 52.21(q) (requiring use of EPA participation rules and *adopted by reference* at Fla. Admin. Code R. 62-204.800); 40 C.F.R. § 124.19 (outlining process to appeal PSD permits to EPA's Appeals Board). To seek review, a participant was required to file technical and legal objections, denominated "comments." 40 C.F.R. § 124.10(b); 40 C.F.R. § 124.19. It is undisputed that Sierra timely complied with these mandatory participation requirements; that made it a party with a right of appeal, perfecting its appeal rights.[4]

---

[4] Moreover, DEP's action will affect Sierra and its members' substantial interests. The record shows that Sierra members own property, recreate, and conduct scientific study in areas where the proposed coal unit will diminish air quality. R. Vol. 10, 1876-79; Vol. 9, 1573. Despite this clear record evidence, DEP suggests that Sierra has not shown it will be adversely affected as required by section 120.68, Florida Statutes. Sierra's allegations are sufficient for standing purposes without proof of the underlying merits. *See Peace River/Manasota Regional*

Seminole and DEP advance a narrow reading of sections 120.52 and 120.68, Florida Statutes, to limit party status to participants in a state administrative hearing. Sierra contends that in this unusual context where final appeals went to the federal system when Sierra filed its comments – regardless of whether a 120.57 hearing was conducted, so that a section 120.57 hearing was simply an option that could be exercised in addition to the federal appeal – the term "proceeding" in section 120.52 should be interpreted to include participation in the then-required federal review proceeding that is now subsumed by state procedures. That interpretation would recognize that Sierra was "entitled to participate . . . in the proceeding" by "provision of agency regulation" and so is now a proper party for appellate review. § 120.52, Fla. Stat.

This interpretation comports with case law that disfavors applying legislative changes retroactively in pending cases to parties with vested rights. *Environmental Confederation of Southwest Florida v. Fla. Dept. of Environmental Protection*, 886 So. 2d 1013, 1017(Fla. 1st DCA 2004)(absent legislative intent to make statute retroactive, it should not apply to pending cases, especially if a party would lose its substantive right to adjudication); *Department of Transportation v. Knowles,* 402 So. 2d 1155, 1158 (Fla. 1981) (retroactively abrogating vested rights is generally

---

*Water Auth. v. IMC Phosphates,* 2009 WL 331660, *3 (Fla. 2d DCA 2009) (*not yet released for publication*).

impermissible); *City of Winter Haven v. Allen,* 541 So. 2d 128, 135 (Fla. 2d DCA 1989)(applying *Knowles* and finding that retrospective application of statute would harm plaintiff's vested right to full recovery under the law at the time).

The argument that this established principle should be ignored because the text of Florida procedural rules has not changed is both irrelevant and wrong. The issue is not the *text* of a rule, but its applicability. The Florida participation rules simply did not control before EPA approved Florida's program. Moreover, the rules *have* changed. The rule that sets out public participation requirements for PSD permits, Fla. Admin. Code R. 62-212.400(11), mandated compliance with federal procedures when Seminole's draft permit issued. App. 2. DEP has amended it twice to move toward state procedures: first to provide that state procedures would henceforth apply "in lieu" of federal procedures, *see* 33 Fla. Admin. Weekly 2119-20 (May 11, 2007); then, after EPA approved its program, to remove all references to federal rules, *see* 34 Fla. Admin. Weekly 3224-25 (June 20, 2008). As in *Environmental Confederation*, changes in Florida rules, if applied retroactively, would "limit [Sierra's] right to initiate an action and the scope of the available remedy," rendering such application inappropriate. *See* 886 So.2d at 1018.

Similarly, Seminole and DEP cannot legitimately argue that Sierra was on notice and waived its right to review by not complying with DEP regulations or the

Notice of Intent indicating that failure to file a petition would waive the right to become a party. No agency rule existing at the time, or notice issued by the applicant, indicated that by not becoming a "party" to the optional state administrative hearing, Sierra would forfeit its right to become a participant in the proceedings by filing comments and thereby perfecting its rights to appeal as a party. In fact, the agency regulations indicated the opposite: a party could *only* obtain final review by complying with the mandatory procedures Sierra followed. *See* Fla. Admin. Code R. 62-212.400(11) (2006), App. 2; 40 C.F.R. § 52.21(q); 40 C.F.R. § 124.19. Sierra should not forfeit its vested right of appeal because it did not divine that the applicable procedure would subsequently change.[5]

## III. DEP FAILED TO ADHERE TO THE BEST AVAILABLE CONTROL TECHNOLOGY REQUIREMENT IN SETTING EMISSION LIMITS.

The record demonstrates that Seminole proposed lax emissions standards and DEP countered with limits in the middle or low range of prior permits. R. Vol. 12, p. 2250; R. Vol. 9, pp. 1525-28; R. Vol. 3, pp. 469, 471, 472. DEP set the limits higher than recently-permitted facilities without explaining whether Seminole could achieve these more stringent limits. Sem. Br. at 40. Seminole and

[5] Nor does recognizing Sierra's rights impermissibly expand the APA's 'party' definition. The case Seminole cites for that proposition, *St. Joe Paper Co. v. Dep't of Community Affairs*, 657 So.2d 27 (Fla. 1st DCA 1995), addresses not the APA definition, but the definition of an "affected person" under the Growth Policy Act. *See id.* at 28. The court's caution against going beyond a "statutory catalog of affected persons," *id.*, has no bearing here because the APA's statutory text grants standing to those entitled to participate in a proceeding by controlling regulations.

DEP now offer new justifications why the permit nonetheless meets the Best Available Control Technology requirement. They contend that this Court should ignore the facts in the record because no contested administrative hearing was held wherein a fact finder could consider additional evidence. Sem. Br. at 37; DEP Br. at 22-23, 24, 25. This is a record review case, however, and the only evidence in the record shows that DEP violated the law.

Seminole repeats arguments in the record about what technology is practical, but admits that Best Available Control Technology limits in other permits are more stringent without explaining why Seminole cannot achieve them. Sem. Br. at 39-41. Seminole thus admits that DEP simply selected limits in the middle or lower range of prior permits, R. Vol. 12, p. 2250, R. Vol. 9, pp. 1525-28, not the Best Available Control Technology required by Rule 62-210.200(40).

Seminole and DEP attempt to avoid this clear record by seeking refuge in the principle of agency deference, but that does not nullify the agency's duty to comply with the plain meaning of its own rules. *See, e.g., Woodley v. Dep't of Heath & Rehab. Serv.*, 505 So.2d 676, 678 (Fla. 1st DCA 1987) (no agency deference if alleged policy inconsistent with agency rule). Rule 62-210.200(40) requires DEP to set the Best Available Control Technology "emission limitation" based on "the maximum degree of reduction of each pollutant" that "is achievable." As Seminole admitted in its application, DEP's policy is to use a "top

down" analysis, requiring the most protective emission limit in use or in other permits *unless and until* technical or economic analysis shows that imposing that limit is not feasible. Fla. Admin. Code R. 62-210.200(40); R. Vol. 3, p. 456. In the face of this rule, DEP cannot simply haggle with the applicant and settle on limits that are in the lower range of previous permits. The agency must show that the best is not feasible.

Rule 62-210.200(40) is virtually identical to the federal statute and EPA rule governing the Best Available Control Technology requirement in Clean Air Act permits. *Compare* 42 U.S.C. § 7479(3) and 40 C.F.R. § 52.21(b)(12) with Rule 62-210.200(40), App. 3(side-by-side comparison). When a state statute or rule is patterned after a federal statute or rule, Florida courts apply federal interpretations of the parallel state rule. *See City of Jacksonville v. Rodriguez,* 851 So.2d 280, 283 n.3 (Fla. 1st DCA 2003) (federal decisions construing federal rule persuasive when state rule was modeled on federal rule); *Florida Dept. of Community Affairs v. Bryant*, 586 So.2d 1205, 1209 (Fla. 1st DCA 1991) (federal decisions apply because Florida civil rights act patterned on federal act).[6]

Decisions of the federal Environmental Appeals Board hold that when a

---

[6] Sierra does not abandon any other arguments addressed in its initial brief but not in this reply brief, including Sierra's argument that Seminole's permit must include a $CO_2$ emission limit.

permit issuer rejects a more stringent emissions limit in another permit it "is obliged to adequately explain its rationale for selecting a less stringent emissions limit." *In re Newmont Nevada Energy Investments*, 12 E.A.D. 429, 440, 2005 WL 3626598 (E.A.B. 2005); *see also In re Prairie State Generating Co.*, PSD Appeal No. 05-05, 2006 WL 2847225, slip op. at 69 (E.A.B. 2006).[7] The Environmental Appeals Board just reaffirmed this principle, remanding a PSD permit because the permitting agency rejected stringent emission limits in other permits without justification. The Board held that the agency's decision did not "meet[] the requirements of rationality," observing that the agency passed over "compelling BACT data" without explanation. *In re: N. Mich. Univ. Ripley Heating Plant,* PSD Appeal No. 08-02, 2009 WL 443976, slip. op. at 20-21 (E.A.B. 2009).

This case presents the same situation: DEP rejected more stringent emissions limits for coal soot, carbon monoxide, volatile organic compounds, and fluoride in other permits without explanation. R. Vol. 9, pp. 1525-1528. Instead of providing a rationale for not choosing the lower limits, DEP unlawfully set limits for these pollutants in the middle or lower range of recent BACT determinations. *Id.* "If reviewing authorities ...ease[] from the 'maximum degree of reduction' available to something less or more convenient, the result may be somewhat

[7] As discussed in Sierra's Opening Brief, p. 19 n. 16, courts accord significant deference to Environmental Appeals Board opinions.

protective,...but it will not be BACT." *N. Mich. Univ.*, slip op. at 16.

Finally, DEP violated Best Available Control Technology start-up, shut-down, and malfunction requirements. DEP may regulate such periods through work practices, rather than enforceable emission limits, only if it "determines that technological or economic limitations ...make the imposition of an emission standard infeasible." Fla. Admin. Code R. 62-210.200(40). Seminole tries to cobble together an infeasibility finding by citing three unconnected sentences from assorted documents that generally discuss start-up systems, none of which describe the feasibility of using actual emission limits. Sem. Br. at 43-44. DEP does not cite to any infeasibility finding, instead offering generic statements that the permit would control emissions during these periods through work practices. DEP Br. at 24. Neither explanation comports with the Best Available Control Technology rule, which requires the agency to set forth both an explicit infeasibility finding and "the emissions reductions achievable by implementation of such ... work practice," Fla. Admin. Code R. 62-210.200(40), which DEP also failed to do.

## IV. TOXIC AIR POLLUTANT PERMIT IS INEXTRICABLY LINKED TO PREVENTION OF SIGNIFICANT DETERIORATION PERMIT.

DEP and Seminole contend that DEP can issue a hazardous air pollutant permit later because the "processes are completely different" and involve separate pollutants and distinct evaluation criteria. DEP Br. at 30; Sem. Br. at 30-31. The analyses are not "completely different"; they are intertwined. Seminole's new

application shows that in lieu of direct limits for hazardous air pollutants, it plans to rely on emissions limits for "surrogate" pollutants, which are the very same pollutants that already have Best Available Control Technology emission limits. Sem. Rev. App. at 35. That new application does not render Sierra's claim moot. Sem. Br. at 30. DEP must perform the analyses together and issue the Best Available Control Technology and hazardous air pollutant permits concurrently.

## VI. DEP ACTED ARBITRARILY AND CAPRICIOUSLY IN FAILING TO CONSIDER SIERRA'S OBJECTIONS.

DEP acknowledges that Rule 62-210.350 requires it to "consider" all public comments to Clean Air Act permits. DEP claims that two handwritten notations referencing "comments" on the settlement agreement in the record show that it considered Sierra's objections. However, the fact that someone at sometime looked at some "comments" is insufficient. DEP was obliged to examine all of Sierra's objections thoughtfully and factor them into the final decision if relevant. *See Adam Smith Enterprises v. Dept. of Envt'l Reg.*, 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989)(arbitrary and capricious standard requires agency to give actual good faith consideration to all relevant factors, and use reason rather than whim in factoring them into final decision). The Best Available Control Technology analysis DEP performed before and after Sierra submitted its comments considered the exact same permits, even though Sierra's objections identified additional relevant permits with lower emission limits. *Compare* R. Vol. 9, pp. 1514-1536

with Vol. 13, pp. 2292.1 - 2292.23. DEP's decision was arbitrary and capricious.

## VI. THE SETTLEMENT NEVER TOOK EFFECT BECAUSE ITS CONDITION PRECEDENT THAT THE FINAL PERMIT INCLUDE THE SETTLEMENT LIMITS NEVER OCCURRED.

DEP and Seminole contend that this case is moot because of a settlement agreement between Seminole and Sierra. That settlement never came into being because it included a condition precedent in Provision G that was not satisfied. The condition reads: "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." R. Vol. 12, p. 2165. DEP did not include the terms of the settlement in the final permit. R. Vol. 13, p. 2290.

Contracts are not effective when a condition precedent is not met and this rule applies to settlement agreements. *Guilliams v. First National Bank of Leesburg*, 229 So.2d 633, 634-36 (Fla. 2d DCA 1969)(holding devise failed for failure to meet condition precedent that stated "provided that" divisee maintains land during life estate of another, and noting that inability to perform a condition precedent is irrelevant); *Southern Internet Systems, Inc. v. Pritula*, 856 So. 2d 1125, 1128 (Fla. 4th DCA 2003)(settlement ineffective because condition precedent was not met). The words "provided that," as in Provision G, signal a condition precedent. *In re Estate of Boyer*, 592 So.2d 341, 343 (Fla. 4th DCA 1992)(absence of terms of condition such as "provided that" indicated condition

precedent was not intended).

In this case, the failure of the condition went to the essence of the settlement. Sierra bargained for avoidance of litigation expenses in exchange for a compromise on pollution limits. R. Vol. 12, 2165-69. When the condition failed, Sierra had to incur those litigation expenses by appealing the final permit. Under these circumstances, the settlement is nothing more than a failed contract.

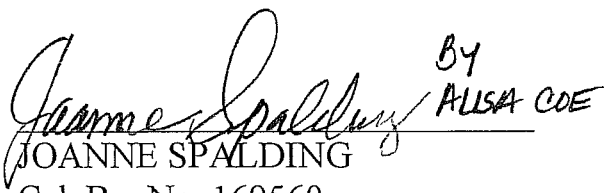
Seminole relies upon *Thomas v. Fusilier*, 966 So. 2d 1001 (Fla. 5th DCA 2007), for the proposition that the absence of a "time is of the essence" clause means that the final permit could omit the settlement requirements and DEP could add them at some unknown future date. However, the *Fusilier* court also held that the failure to timely comply with the contract term was not a condition precedent to payment under the contract because it was not accompanied by the phrase "provided that." *Id.* at 1004. *Fusilier* confirms that the "Provided that" language in the settlement indicates a condition precedent.

Failed settlements are not relevant to later adjudications. § 90.408, Fla. Stat. The failed settlement does not moot this case.

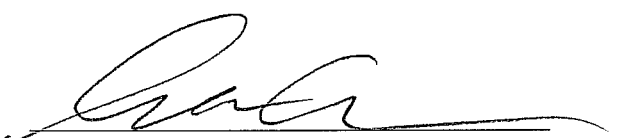
## CONCLUSION

For the foregoing reasons, Sierra respectfully requests that this Court vacate the final PSD permit for the Seminole coal-burning electric generator and remand it to DEP with directions to properly conduct the permitting process.

Respectfully Submitted,



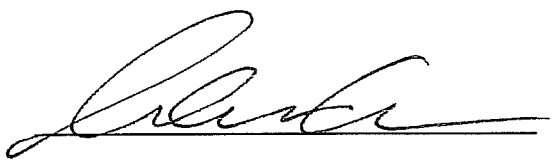
JOANNE SPALDING
Cal. Bar No. 169560
KRISTIN A. HENRY
Cal. Bar No. 220908
CRAIG HOLT SEGALL
Cal. Bar No. 260551
Sierra Club
85 Second Street, 2nd Floor
San Francisco, CA 94105
Telephone: (415) 977-5725
Facsimile: (415) 977-5793
(admitted pro hac vice)



DAVID GUEST
Florida Bar No. 0267228
ALISA A. COE
Florida Bar No. 0010187
P.O. Box 1329
Tallahassee, Florida 32302
Telephone: (850) 681-0031
Facsimile: (850) 681-0020

## CERTIFICATE OF COMPLIANCE

**I HEREBY CERTIFY** that this Initial Brief was prepared using Times New Roman 14 point font as required by Rule 9.120, Florida Rule of Appellant Procedure.



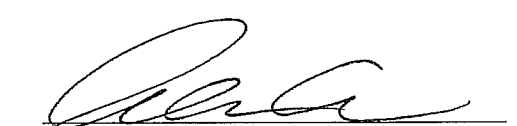
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been provided by U.S. Mail and electronic service this 27th day of April 2009 to the persons listed below:

James Alves, Esq
Robert Manning, Esq.
David W. Childs, Esq.
Counsel for Seminole Electric
Hopping, Green & Sams, P.A.
PO Box 6526
Tallahassee, Florida 32314-6526

George Cavros, Esq.
On behalf of NRDC and SACE
120 East Oakland Park
Oakland Park, FL 33334-1100

Pat Comer, Esq.
Jack Chisolm, Esq.
Deputy General Counsel
Florida Department of Environmental Protection
3900 Commonwealth Blvd MS 35
Tallahassee, FL 32399-3000



Attorney