



September 17, 2009

Via Federal Express


Ms. Erika Durr, Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
Colorado Building
1341 G Street N.W. Suite 600
Washington, D.C. 20005

Re: Seminole Electric Cooperative, Inc., PSD Permit Number PSD-FL-375, PSD Appeal
Number 08-09

Dear Ms. Durr:

Enclosed for filing is the original of Sierra Club's Notice of Dismissal of State Court Permit Appeal for the above-referenced PSD Appeal Case. If you have any questions about this filing or if I can be of any further assistance please call me at 415-977-5725.

Sincerely,



Joanne Spalding

Enclosures

cc. Sierra Club's Notice of Dismissal of State Court Permit Appeal

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the matter of:)	PSD Appeal No. 08-09
In Re Seminole Electric Cooperative Inc.)	
PSD Permit Number PSD-FL-375)	
)	

NOTICE OF DISMISSAL OF STATE COURT PERMIT APPEAL

The Florida Court of Appeal for the First District has granted Seminole Electric Cooperative Inc.'s motion to dismiss Sierra Club's appeal of the Seminole PSD permit, holding that "Sierra Club failed to secure party status in the agency action below and therefore lacks standing." *See Sierra Club v. State of Florida*, Case No. 1D08-4881 (Sept.9, 2008) (Ex. 1); *see also* Seminole Motion to Dismiss for Lack of Jurisdiction (Ex. 2). As grounds for dismissal, the order cites state procedural requirements that apply to PSD permits issued under the Florida SIP. *Id.* (citing Fla. Stat. § 120.52(13) (definition of "party"), § 403.815 (public notice and hearing requests); Fla. Admin. Code Ann. r. 62-110.106(12) (content of public notice)).

Sierra Club previously asked the Board to refrain from acting on its petition in this case until the Florida court decided whether it had jurisdiction over the PSD permit appeal. Now that the state court has determined it lacks jurisdiction, Sierra Club requests that the Board review this defective permit.

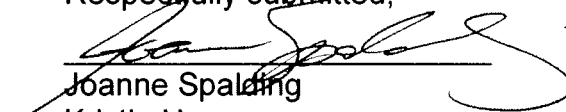
If the Board concludes that it cannot exercise jurisdiction, Sierra Club respectfully requests that it clarify the jurisdictional question raised in this case –

appealability when a permitting proceeding straddles a SIP approval – and the status of Seminole’s PSD permit. Clarifying this important issue would provide guidance to EPA, states, and permittees when this situation arises in the future. The permit status is critical because both Region 4 and Sierra Club believe an unreviewable permit is invalid. See Region 4 Br. at 28 (EAB Docket Item #34.3).

The Board unquestionably has authority to elucidate these issues in deciding this case. The Board has often explained its jurisdictional decisions by discussing the nature of the permits under review. It is free to do so here. See, e.g., *In re Amerada Hess Corp.*, 12 E.A.D. 1, 9-14 (EAB 2005) (explaining why portions of permit were unreviewable and characterizing permit’s nature under state and federal law); *In re Carlton, Inc. North Shore Power Plant*, 9 E.A.D. 690, 692-94 (EAB 2001) (explaining provenance of an unreviewable permit); *In re Knauf Fiberglass, GMBH*, 8 E.A.D. 121, 161-72 (EAB 1999) (discussing “non-PSD” issues on which the Board ultimately denied review). See also, e.g., *Bridgeport Guardians, Inc. v. Delmonte*, 537 F.3d 214, 220 (2d Cir. 2008) (applying “doctrine of jurisdiction to determine jurisdiction” to non-Article III tribunal); *ECEE, Inc. v. F. Energy Reg. Comm’n*, 611 F.2d 554, 555 (5th Cir. 1980) (examining merits directly linked to jurisdiction to determine jurisdiction).

September 17, 2009

Respectfully submitted,



Joanne Spalding

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Craig Holt Segall

Sierra Club

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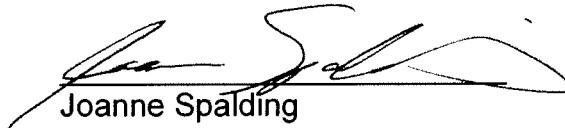
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Dismissal of State Court Permit Appeal were served by United States First Class Mail on the following persons this 17th of September, 2009:

Brian L. Doster Air and Radiation Law Office Office of General Counsel Environmental Protection Agency 1200 Pennsylvania Ave. N.W. Washington, DC 20460	Patricia E. Comer Florida Department of Environmental Protection 3900 Commonwealth Boulevard-MS 35 Tallahassee, FL 32399-3000
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