



July 17, 2009

Via hand-delivery

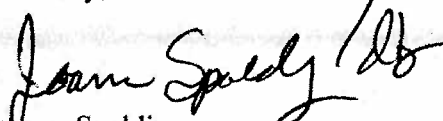
Ms. Erika Durr, Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
Colorado Building
1341 G Street N.W. Suite 600
Washington D.C. 20005

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

Dear Ms. Durr:

Enclosed for filing is one original of Sierra Club's Response to Seminole Electric Cooperative Inc.'s Motion to Dismiss Sierra Club's Appeal as Moot 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 Response to Seminole Electric Cooperative Inc.'s Motion to Dismiss Sierra Club's Appeal as Moot

**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)	

**SIERRA CLUB'S RESPONSE TO SEMINOLE ELECTRIC COOPERATIVE
INC.'S MOTION TO DISMISS SIERRA CLUB'S APPEAL AS MOOT**

Seminole's motion to dismiss this appeal as moot should be denied on the basis of the motion itself, *i.e.*, the truly bizarre theory that a *draft* PSD permit incorporating the terms of a settlement between Sierra Club and Seminole somehow satisfies that settlement's explicit requirement that these settlement terms be part of the *final* PSD permit.

The settlement between Seminole and Sierra Club states:

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.

Seminole Motion Ex. 2, Settlement Agreement, at ¶ G (emphases added).

Because the final PSD permit does not contain the settlement's terms, by definition the settlement is not in force.

Despite this express condition, Seminole claims that, "[t]he Draft PSD Permit Revision renders Sierra Club's appeal of the underlying unmodified PSD Permit moot." Seminole Motion at 3. For reasons utterly beyond comprehension, Seminole refers to this "Draft PSD Permit Revision" as a "modified PSD permit", and then apparently equates it with the required "final

PSD permit": "With the Settlement Agreement now expressly incorporated into a modified PSD permit, Seminole has completed compliance with its obligations, and Sierra Club has received the specific outcome it bargained for." *Id.*

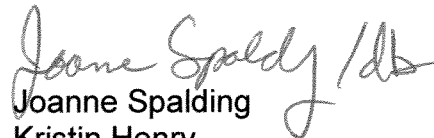
Not to put too fine a point on it, as the Florida Department of Environmental Protection states in its public notice of the Draft PSD Permit Revision, this is a draft permit just like any other draft permit:

[FDEP] will issue a Final Permit in accordance with the conditions of [the proposed revisions] *unless* a timely petition for an administrative hearing is filed . . . , or *unless* public comment received in accordance with this notice *results in a different decision or a significant change of terms or conditions.*

Seminole Motion Ex. 1, FDEP Public Notice of Intent, at 2 (emphases added).¹

In short, even if the Draft PSD Permit Revision properly incorporated the terms of the settlement (which it does not), it does not -- and cannot -- moot Sierra Club's appeal of Seminole's existing final PSD permit. *See, e.g., Selcke v. New England Ins. Co.*, 2 F.3d 790, 791 (7th Cir. 1993) ("Until the settlement becomes final, however, the case is not moot, since the settlement may never become final").

Respectfully submitted,



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¹ And, in fact, the Draft PSD Permit Revision is already being challenged by three such "timely petition[s] for an administrative hearing," including a petition filed by Seminole itself. *See* Exs. 1, 2, & 3, Petitions for Administrative Hearing.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Sierra Club's Response to Seminole Electric Cooperative Inc.'s Motion to Dismiss Sierra Club's Appeal as Moot were served by United States First Class Mail on the following persons this 17th of July, 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 Senior Assistant General Counsel Florida Bar No. 224146 Florida Department of Environmental Protection 3900 Commonwealth Boulevard-MS 35 Tallahassee, FL 32399-3000
Trina Vielhauer Florida Department of Environmental Protection Bureau of Air Regulation 2600 Blair Stone Road, MS #5505 Tallahassee, FL 32399-2400	Vera Kornylak Mary J. Wilkes U.S. EPA, Region 4 61 Forsyth St., S.W. Atlanta, GA 30303-8960
James R. Frauen, Project Director Seminole Electric Cooperative, Inc. 1613 North Dale Mabry Highway Tampa, FL 33618	David G. Guest P.O. Box 1329 Tallahassee, FL 32302
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