

**IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

SIERRA CLUB

Plaintiff,

v.

Case No.: 08-_____ -CA

SEMINOLE ELECTRIC
COOPERATIVE, INC.

Defendant.

COMPLAINT FOR DECLARATORY RELIEF

COMES NOW Plaintiff, Sierra Club, by and through its undersigned attorney, and brings this action against Seminole Electric Cooperative, Inc. ("Seminole"), pursuant to §§ 86.011 and 86.021, Florida Statutes, and alleges:

1. This is an action for declaratory relief.
2. This Court has jurisdiction pursuant to §§ 26.012(2) and 86.011, Florida Statutes.
3. Venue is proper pursuant to §§ 47.011, Florida Statutes, because the cause of action accrued in Leon County.
4. Sierra Club is a non-profit corporation with over 750,000 members. The Sierra Club's Florida Chapter has over 33,000 members.
5. Seminole is an electric cooperative and wholesale energy supplier.
6. Sierra Club and Seminole entered into a Settlement Agreement on March 9, 2007 ("Agreement"), which is attached as Exhibit 1.
7. Sierra Club has an immediate interest in determining the status of the Agreement because Seminole has threatened legal action against Sierra Club to enforce the Agreement.
8. The Agreement concerns Seminole's application to the Florida Department of

Environmental Protection (“FDEP”) for a prevention of significant deterioration (“PSD”) permit under the Clean Air Act to authorize construction of a new 750-megawatt electrical generating unit, known as “Unit 3”, at the Seminole Generating Station site.

9. The parties entered into the Agreement subsequent to FDEP’s issuance of a draft PSD permit for Unit 3. The Agreement included specific limits and conditions on the operation of Unit 3 and set forth agreed-upon emission rates for several pollutants.

10. The Agreement stated: “*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 form.*” Ex. 1, ¶ G (emphasis added). The Agreement further stated, “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.*” Ex. 1, ¶ 11 (emphasis added).

11. Sierra Club’s performance under the Agreement was thus conditioned upon the final PSD permit being issued in accordance with the limits and conditions on the operation of Unit 3 that the Parties set forth in the Agreement.

12. On September 5, 2008, in Tallahassee, FDEP issued the Final Permit (PSD-FL-375) for Seminole Unit 3. *See* Ex. 2, Notice of Permit and Final Permit.

13. The Final Permit was not issued in accordance with the terms and conditions identified in the Agreement. Specifically, the emissions rates were unchanged from the Draft Permit. *See* Ex. 3, Final Determination, at 7 (“The final action of the Department is to issue the permit with no changes from the draft permit.”).

14. Sierra Club appealed the Final Permit in the First District Court of Appeal,

Tallahassee, on October 3, 2008. Due to procedural complications not relevant to this action, Sierra Club also submitted a petition for review of the Final Permit to the federal Environmental Appeals Board on October 6, 2008.

15. By letter dated October 22, 2008, Seminole's counsel stated that Seminole's position is that the Agreement remains in effect even though the final PSD permit was not issued in accordance with the agreed-upon terms. *See* Ex. 4.

16. The October 22 letter also stated that Sierra Club's appeals of the Final Permit were "thwarting" the Agreement, and that it served as a "notice letter to the Sierra Club pursuant to paragraph 17 on page 4 of the Settlement Agreement." Ex. 4, at 2. Paragraph 17 of the Agreement sets forth the notice requirements should any party seek to "file any lawsuit to enforce this Agreement." Ex. 1, ¶ 17.

**COUNT I
DECLARATORY STATEMENT**

17. Paragraphs 1 – 16 are incorporated by reference.

18. Under Florida contract law, a contract that is conditioned upon the happening of a particular event is rendered unenforceable if that event fails to occur.

19. The Agreement was conditioned upon issuance of the Final PSD Permit for Seminole Unit 3 in accordance with the terms and conditions set forth in the Agreement.

20. Upon FDEP's issuance of the Final PSD Permit that did not include the terms and conditions set forth in the Agreement, and the condition failed upon which the Agreement is based.

21. Therefore, the FDEP's action in issuing the Final PSD Permit rendered the Agreement unenforceable and released Sierra Club from any and all obligations under the

Agreement.

REQUEST FOR RELIEF

22. Based on the foregoing facts, Sierra Club respectfully requests:

- a) a declaration that the conditions of the Agreement were not met, and that Sierra Club is therefore released from its obligations under the Agreement;
- b) a declaration that the Agreement was rendered null and void upon FDEP's issuance of the final PSD permit for Seminole Unit 3 that is not in accordance with the terms and conditions of the Agreement; and
- c) Any additional relief this court deems proper.

Respectfully filed with this court on this 28th day of October, 2008.



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