

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.

Permit No. PSD-FL-375
_____ /

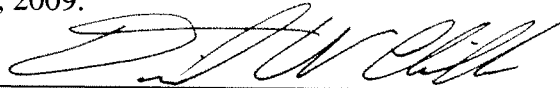
Seminole Electric Cooperative's Motion for Leave to File a Reply to Sierra Club's Reply to EPA Region 4's Brief Regarding Reviewability of Permit

By this motion Seminole Electric Cooperative (Seminole) requests leave to file a reply to Sierra Club's Reply to the Environmental Protection Agency (EPA) Region 4's Brief Regarding Reviewability of Permit. In support of this motion, Seminole states:

1. Sierra Club's reply contained novel arguments irrelevant to the question of whether this Board has jurisdiction to review Seminole's PSD Permit.
2. Seminole's short reply refocuses attention on the threshold jurisdictional question before the Board.

Therefore, Seminole moves the Board for leave to file the attached reply.

Respectfully submitted this 11th day of August, 2009.



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**Seminole Electric Cooperative's Reply to Sierra Club's Reply to EPA's Region 4's Brief
Regarding Reviewability of Permit**

Sierra Club's reply to Environmental Protection Agency (EPA) Region 4's brief fails to address the very fundamental issue before this Board: whether the Environmental Appeals Board has jurisdiction to review Seminole Electric Cooperative's (Seminole's) PSD Permit.

EPA Region 4, the Florida Department of Environmental Protection (FDEP), and Seminole are in agreement that this Board lacks jurisdiction to review Seminole's permit. As stated succinctly in EPA Region 4's brief, "[t]he EAB does not have the jurisdiction to consider this appeal of the PSD permit issued to Seminole because FDEP did not issue the permit under delegated federal authority." [EPA Region 4 Brief, page 11]. In response, Sierra Club ignores the threshold jurisdictional issue and instead focuses on perceived injustices that may result from potential future actions of the Florida First District Court of Appeal, FDEP, and/or EPA. Sierra Club then asks this Board "to recognize" that the process resulting in Seminole's PSD Permit resulted in an "invalid permit" and "to refuse to condone post-hoc rationalizations or half measures to save this defective permit." [Sierra Club, Reply to EPA Region 4's Brief, page 5].

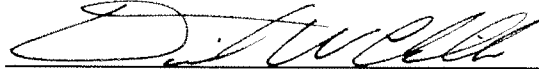
Sierra Club's fervent argument misses the mark. It is axiomatic that a tribunal cannot opine on any legal issues if it lacks jurisdiction.

Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. ... The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception.

Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998) (internal citations and quotation marks omitted). If the Board agrees with EPA, FDEP, and Seminole that it lacks jurisdiction, then all other issues raised by any of the parties are simply irrelevant, and it would be inappropriate for the Board “to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so,” because to take such action “is, by very definition...to act ultra vires.” Id. at 101-02.

WHEREFORE, Seminole respectfully requests that the Environmental Appeals Board dismiss this appeal.

Respectfully submitted this 11th day of August, 2009.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss Sierra Club Appeal as Moot, has been furnished via U.S. Mail this 11th day of August, 2009 to:

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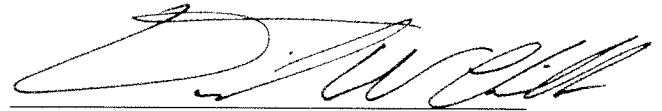
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