Hopping Green & Sams

Attorneys and Counselors

November 3, 2008

Via Overnight Delivery

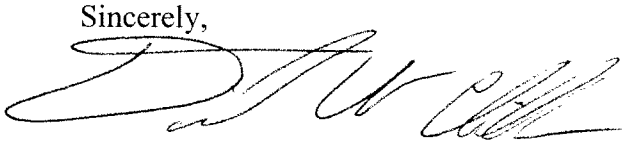
Ms. Erika Durr, Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1341 G Street N.W., Sixth Floor
Washington, DC 20005

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 the Motion for Leave to Intervene & Response to Sierra Club's Motion to Hold Proceedings in Abeyance for the above-referenced case. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,



David W. Childs

Enclosure

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.
_____/

MOTION FOR LEAVE TO INTERVENE & RESPONSE TO SIERRA CLUB'S MOTION TO HOLD PROCEEDINGS IN ABEYANCE

In accordance with Environmental Appeals Board Practice Manual III.D.4, Seminole Electric Cooperative, Inc. (Seminole), hereby moves for leave to intervene in PSD Appeal No. 08-09, initiated by the Petition for Review by the Sierra Club pursuant to 40 C.F.R. § 124.19, Seminole also files response to Sierra Club's Motion to Hold Proceedings in Abeyance, filed on October 24, 2008 and served on Seminole. The Petition for Review involves the decision by the Florida Department of Environmental Protection (DEP) to issue a PSD Permit to Seminole for a proposed third electric generating unit (Unit 3) at Seminole's existing electric power generating plant in Putnam County, Florida.

Seminole has a tangible interest in the subject matter of Appeal 08-09 as the permittee and a real party in interest. In addition, Seminole's Response to Sierra Club's Motion to Hold Proceedings in Abeyance will materially assist the Environmental Appeals Board (Board) by providing argument and evidence directly relevant to the Petition including consideration of whether the Board has jurisdiction and whether Sierra Club's Motion to Hold Proceedings in Abeyance should be granted or denied. Seminole's intervention will not delay resolution of the appeal or consideration of Sierra

Club's Motion to Hold Proceedings in Abeyance; rather, Seminole's intervention should expedite resolution of this appeal.

Notice of Seminole's Motion for Leave to Intervene and Response to Sierra Club's Motion to Hold Proceedings in Abeyance is being served on all parties identified in the accompanying Certificate of Service.

If the Board grants Seminole's Motion for Leave to Intervene, parties may serve all correspondence in this matter upon Seminole's undersigned counsel, James Alves.

RESPONSE TO SIERRA CLUB'S MOTION TO HOLD PROCEEDINGS IN ABEYANCE

Sierra Club's "Factual and Procedural Background" omits material facts essential to resolving this matter, notably including Sierra Club and Seminole's full settlement of all issues related to the PSD permit (including Sierra Club's agreement not to challenge the final PSD permit in any forum) and DEP's ongoing actions to incorporate the terms of the Sierra Club-Seminole settlement into a revised final PSD permit. In light of this and other omissions, a brief recitation of the factual and procedural history of this case is necessary. This response then explains that the Board lacks jurisdiction over this matter because the final PSD permit was issued under Florida's "approved" PSD program, and because Sierra Club and Seminole's joint Settlement Agreement resolved all issues associated with the PSD permit; no justiciable controversy exists. Finally, this response argues against granting Sierra Club's motion and thereby delaying resolution of this settled matter.

FACTUAL & PROCEDURAL BACKGROUND

On August 24, 2006, DEP issued a draft PSD permit for Seminole's Unit 3. In accordance with Florida administrative law, Seminole published DEP's Notice of Intent to issue the PSD permit in the Palatka Daily News on September 8, 2006. This public notice stated that interested persons would have the opportunity to file comments regarding the draft permit within 30 days (by October 9, 2006) and that substantially affected persons opposing permit issuance could file a petition for an administrative hearing within 14 days of the notice (by September 22, 2006). Mirroring the language of Rule 62-110.106(12), of the Florida Administrative Code, the public notice stated, "[t]he failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it." (Emphasis added). [See attached public notice, Exhibit A]. These state notice and procedural requirements for issuing PSD permits are the same ones that EPA approved on June 27, 2008. See, EPA, Approval & Promulgation of Implementation Plans Florida; Prevention of Significant Deterioration, 73 Fed. Reg. 36,435 (June 27, 2008).

On October 9, 2006, the Appellant, Sierra Club submitted timely comments regarding the draft PSD permit, and on October 16, 2006, Sierra Club filed an untimely "Motion of Enlargement of Time and Petition for Administrative Hearing" (petition). DEP responded to the untimely petition on October 31, 2006, issuing an order that dismissed Sierra Club's petition for an administrative hearing on grounds that it was "untimely filed." [See attached Order Dismissing Petition with Leave to Amend, Exhibit

B]. DEP's order stated that Sierra Club failed to demonstrate "any basis for excusable neglect" in untimely filing the petition; that Sierra Club had "105 members in Putnam County" and "520 members in St. John County;" that the Palatka Daily News, which published the public notice of the PSD permit, was circulated in these counties; and that Sierra Club received actual notice of DEP's intent to issue the permit on September 5, 2006 (in addition to the newspaper notice). [Exhibit B, page 2]. In short, Sierra Club's failure to timely submit a petition challenging the PSD permit constituted a waiver of its rights under Florida law.

DEP's October 31, 2006 order essentially left Sierra Club with two options: either amend its petition to demonstrate why it "should be considered timely," or within thirty days "seek judicial review" of the order finding its petition to be untimely by "the filing of a notice of appeal...with the appropriate district court of appeal." Sierra Club did not avail itself of either of these potential remedies; Sierra Club did not file an amended petition or appeal DEP's Order Dismissing Petition with Leave to Amend.

Although Sierra Club failed to timely file a petition (or amended petition) under Chapter 120, Florida Statutes, in opposition to Seminole's Unit 3 PSD permit, during that time (August – November, 2006) Sierra Club was a party in the distinctly separate Unit 3 certification proceeding under the Florida Electrical Power Plant Siting Act (PPSA). See §§ 403.501–.518, Fla. Stat. Seminole and Sierra Club subsequently entered into two Settlement Agreements that resolved Sierra Club's substantive air quality-related concerns and all potential legal claims related to both the certification of Unit 3 under the Florida Electric Power Plant Siting Act and the issuance of Unit 3's final PSD permit. [See attached January 7, 2007 and March 9, 2007 Settlement Agreements between the

Sierra Club and Seminole, Exhibits C & D, respectively]. (Section 403.509(4), of the PPSA confirms that DEP exercises separate authority to issue PSD permits in conjunction with federal requirements.) In the March 9, 2007 Settlement Agreement, Seminole agreed to ask DEP to incorporate numerous air emission reduction commitments into the final PSD permit, and Sierra Club agreed "not to contest FDEP's issuance of the final PSD permit in any administrative or judicial forum," so long as "the final PSD permit is issued in accordance with the terms and conditions of this Agreement." [Exhibit D, page 1, paragraph G].

On September 5, 2008, DEP issued the PSD permit for Seminole's Unit 3.[1] DEP issued the PSD permit without incorporating the changes that Seminole and Sierra Club had agreed to, yet committed to revise the permit to incorporate the Settlement Agreement conditions. [See attached DEP Final Determination, Exhibit E].

Soon after issuing the Unit 3 PSD permit, DEP characterized one of Seminole's written requests to incorporate the agreed-upon emission reductions as a request to modify the just-issued PSD permit. Consistent with its commitment in the Final Determination, DEP's official response to Seminole states that the Department "has opened a permit revision project to include the Settlement Agreement." [Exhibit F, page 1].

---

[1] The issuance of the PSD permit was delayed due to an appeal proceeding related to DEP's certification of Unit 3 under the Power Plant Siting Act. See Seminole Elec. Coop., Inc. v. Department of Envtl. Protection, 985 So. 2d 615 (Fla. 5th DCA 2008) (remanding with instructions that DEP enter a final order approving certification). This recent judicial decision briefly described both Seminole-Sierra Club Settlement Agreements and noted the distinction between Power Plant Siting Act and PSD permit proceedings. Id. at 619, fn.1. DEP's final order approving the certification of Unit 3 issued on August 18, 2008. In re: Seminole Elec. Coop. Seminole Generating Station Unit 3 Power Plant Siting Application No. PA 78-10A2., Fla. Admin. Order No. 06-0929 (Dept. of Envtl. Prot. Aug. 18, 2008).

ARGUMENT

I. The Board Lacks Jurisdiction Over a Permit Issued by a State with an Approved PSD Permitting Program

The Board lacks jurisdiction in this matter because the Florida DEP issued the final PSD permit pursuant to an "approved," not "delegated," PSD permitting program. A particular state has an "approved" PSD program if EPA has determined that its State Implementation Plan (SIP) meets the substantive and procedural PSD permitting requirements set forth in 40 C.F.R. Part 51. 40 C.F.R. § 124.41. For approved programs, the state issues the PSD permit in accordance with state regulations. If a program is delegated, however, the state implements federal PSD regulations, and the permits are essentially treated as if they were issued by EPA for the purposes of administrative and judicial review. See EPA, Permit Programs, Consolidated 45 Fed. Reg. 33,290, 33,413 (May 19, 1980) ("A permit issued by a delegated state is still an 'EPA-issued permit'; a permit issued by a transferee State is a 'state-issued permit.'").

The Board's authority to review permits issued by EPA lies in Part 124 of EPA's regulations (see, 40 C.F.R. § 124.19), and EPA regulations clearly state that "Part 124 does not apply to PSD permits issued by an approved State." 40 C.F.R. § 124.1 (emphasis added); see also Chipperfield v. Missouri Air Conservation Comm'n, 229 S.W.3d 226, 242 (Mo. S.D. 2007) (noting that pursuant to 40 C.F.R. § 124.19 and 42 U.S.C. § 7401, "the [Board] has no authority to review any decision of [Missouri environmental agencies] applying Missouri statutes or regulations under Missouri's approved PSD program under its SIP."); In re Michigan CAFO Gen. Permit, 2003 WL 1787940, NPDES Appeal No. 02-11, (EAB March 18, 2003) ("It therefore follows that

because the permit at issue is a state permit issued by [a state agency], which administers a federally approved state NPDES program, the Board lacks jurisdiction to review the permit decision . . . . Although the permit program is federally approved, the permit at issue here is nonetheless a state permit issued under state law."). Contrary to Sierra Club's assertion that a jurisdictional grey area exists, EPA regulations make clear that Board jurisdiction only applies to a "PSD final permit" issued pursuant to Part 124. 40 C.F.R. § 124.19(a); see also 40 C.F.R. § 124.2 (defining the term "permit" to "not include . . . any permit which has not yet been the subject of final agency action, such as a 'draft permit' or a 'proposed permit.'").

This regulatory distinction between final and preliminary permits for the purposes of Board jurisdiction reflects the longstanding EPA position that the rules applicable to a permit are those in place when the final permit is issued. See In the Matter of: Homestake Mining Company, 2 E.A.D. 195 fn.8 (EAB 1986) ("The standards and guidelines for the preparation of NPDES permits must be fixed at some point in time so permit terms can become final and pollution abatement can proceed[, and] . . . the proper point in time for fixing applicable NPDES standards and guidelines is when the Regional Administrator initially issues a final permit.") In re: Phelps Dodge Corp., Verde Valley Ranch Dev. 10 E.A.D. 460, 478 fn.10 (EAB 2002) ("[T]he Region's obligation, as the permit issuer, is to apply the CWA statute and implementing regulations in effect at the time the final permit decision is made. . . ."). In sum, pursuant to the plain language of EPA regulations and in accordance with principles regarding regulatory applicability, the Board lacks jurisdiction because Florida's PSD program unambiguously was "approved" at the time DEP issued the PSD permit applicable to Seminole Unit 3.

Sierra Club, in its Motion to Hold Proceedings in Abeyance, attempts to insert a caveat into this bright-lined jurisdictional rule. Sierra Club admits that it is "not aware of any Board opinion" that directly supports its argument that the Board somehow retains jurisdiction to review DEP's issuance of the final PSD permit for Unit 3. [Motion, page 11]. Lacking applicable case law, Sierra Club attempts to correlate the procedural posture of this case to four other Board cases: In re Russell City Energy Ctr., PSD Appeal No. 08-01 (EAB, July 29, 2008); In re Rockgen Energy Ctr, 8 E.A.D. 536 (EAB 1999); In re Amerada Hess Corp. Port Reading Refinery, Facility 12 EA.D.1 (EAB 2005); and In re West Suburban Recycling & Energy Ctr. L.P., 6 E.A.D. 692 (EAB 1996). In each of these cited cases, however, the Board was considering a final permit issued by a state with problems in the state's delegated permitting program, and none of the cited cases remotely stand for the proposition that the Board has jurisdiction to review a final PSD permit issued by a state with an approved program. Cf. In the Matter of Alcoa-Warrick Power Plant, PSD Appeal No. 02-14, n.2, (EAB Mar. 5, 2003) ("Permits issued under the state program are considered creatures of state law, not federal law, and are thus reviewable under the state system of review rather than by this Board.")

In contrast to Sierra Club's cited cases, EPA has approved Florida's SIP, and in so doing explicitly determined that Florida's public notice and participation procedures are "adequate and effective." 73 Fed. Reg. at 36,347. To the extent that Sierra Club is now attempting to argue that Florida's administrative procedures somehow provide inadequate administrative remedies or that EPA should not have approved the state's PSD permitting program, its arguments are misplaced. These state procedures have not changed since Sierra Club inexcusably failed to properly avail itself of them in October 2006. If Sierra

Club disagreed with EPA's determination that state procedures for public notice and participation comply with federal regulations, then it could have brought such claims to EPA's attention; however, Sierra Club failed to even submit any comments on EPA's April 4, 2008 notice of proposed rule approving of Florida's PSD program. See 73 Fed. Reg. at 36436 ("No comments were received on EPA's proposed action.").

Sierra Club also argues that 40 C.F.R. § 52.530(d)(2), which states that Board retains jurisdiction over "[p]ermits issued by EPA prior to approval of the Florida PSD rule," supplies a "textual basis" for Board jurisdiction in this appeal, because this regulation draws "no distinction between draft and final permits." [Motion, page 13]. This argument simply ignores that in defining the term "permit," Part 124 states that the term "does not include . . . any permit which has not yet been the subject of final agency action, such as a 'draft permit' or a 'proposed permit.'" 40 C.F.R. § 124.2. In other words, 40 C.F.R. § 52.530(d)(2) only refers to the issuance of final permits and supplies no textual basis whatsoever for Board jurisdiction over Seminole's PSD permit. This appeal should thus be dismissed on grounds that the Board lacks subject matter jurisdiction over the PSD permit issued by an approved state.

II. The Board Lacks Jurisdiction Over this Matter Because No Justiciable Controversy Exists

Sierra Club bases its motion in large part on equitable concerns, arguing that the "particular circumstances" of this case could allow Seminole's PSD permit to "escape review," unless the Board or the First District Court of Appeal in Florida accepts jurisdiction. For all of its concerns regarding potential inequities created by the procedural posture of this case, however, Sierra Club's motion fails to mention the March

9, 2007 Settlement Agreement between Sierra Club and Seminole that resolves all matters related to the issuance of the PSD permit for Unit 3.

In this Settlement Agreement, Seminole committed to significant emission reductions and environmentally beneficial project upgrades, and in exchange Sierra Club agreed not to contest the final PSD permit in "any judicial or administrative forum." [Exhibit D, page 1, paragraph G]. As DEP noted in its attached Final Determination regarding the PSD permit, the Settlement Agreement "resolves all timely-received comments submitted by the applicant and the Sierra Club related to the draft PSD permit." [Exhibit E, page 1]. DEP responded to the Settlement Agreement by issuing the final PSD permit as initially noticed and then opening a permit file to incorporate the terms of the Settlement Agreement. Accordingly, with all potential claims fully settled and DEP's implementation of the Settlement Agreement underway, no justiciable controversy exists regarding Unit 3's PSD permit, and this appeal should be dismissed. See Shelby v. Superformance Int'l., Inc., 435 F.3d 42, 45 (1st Cir. 2006) ("It is . . . clear beyond hope of contradiction that a global settlement moots an action between the settling parties arising out of the same subject matter.")

Sierra Club seems to be attempting to utilize DEP's approach to implementing the Settlement Agreement (i.e. first issuing a final PSD permit without the Settlement Agreement conditions and then amending the PSD permit to incorporate the agreed-upon conditions) as providing Sierra Club an excuse to wriggle out of its agreement with Seminole and oppose all aspects of the PSD permit. Such a myopic interpretation of the Settlement Agreement, however, ignores that the Sierra Club-Seminole Settlement Agreement contemplated that DEP would issue a "final PSD permit in accordance with

the term and conditions identified in this Agreement" [Exhibit D, page 3, paragraph 11] and did not preclude accomplishing this via permit revision. The essential facts are two-fold: (1) Sierra Club and Seminole mutually expected DEP to incorporate the reductions into the permit, and (2) that is exactly what DEP is doing. Sierra Club cannot simply assume, implicitly or otherwise, that the Settlement Agreement is void

It is noteworthy that DEP's approach to implementing the Settlement Agreement (i.e., to incorporate the agreed-upon air emission reductions in the PSD permit via permit revision) creates no risk that Seminole could avoid complying with the agreed-on air emissions reductions. Amongst other things, the Settlement Agreement precludes this possibility by confirming that Seminole "agrees to be bound by these [i.e. the Settlement Agreement's] limits and conditions." [Exhibit D, page 3, paragraph 11]. This language, included as a safeguard for the Sierra Club, means that the air emissions reductions are independently enforceable under the Settlement Agreement. Moreover, DEP's approach in implementing the Settlement Agreement conditions in no way voids the agreement. See Thomas v. Fusilier, 966 So.2d 1001, 1003 (Fla. 5th DCA 2007) ("Unless there is a determination that 'time was of the essence,' a brief delay by one party in the performance of a contract covenant does not discharge the other party's contractual obligations."). It is not as if Seminole could begin constructing Unit 3 or operating it in a manner contrary to its commitments in the Settlement Agreement; rather, Seminole is working with DEP to incorporate the Settlement Agreement into its final PSD permit.

Because Seminole and Sierra Club fully settled this case, no justiciable controversy exists, and this appeal should be dismissed.

III. Sierra Club's Motion To Hold Proceedings In Abeyance, If Granted, Would Inequitably Delay The Unit 3 Project

Sierra Club reasons "that considerations of judicial efficiency in these unusual procedural circumstances, coupled with the Clean Air Act's mandate to protect public participation, warrant a stay of proceedings for the duration of the Sierra Club's Florida state court appeal." [Motion, pages 13-14]. Sierra Club's state court appeal could take a year or more to resolve, because Florida courts sometimes delay ruling on jurisdictional issues until after the merits of the case are presented and considered. See, e.g. Legal Envtl. Assistance Found., Inc., v. Clark, 668 So.2d 982 (Fla. 1996) (considering the standing of an environmental advocacy group). A stay in this Board matter would potentially result in affording Sierra Club five bites at the apple: (1) Sierra Club had notice of the opportunity to challenge the draft PSD permit in a state administrative hearing, but it inexcusably failed to timely do so; (2) in its denial of Sierra Club's untimely petition for administrative hearing, DEP gave Sierra Club the opportunity to provide an excuse for its late-filed petition or appeal DEP's denial and Sierra Club declined; (3) Sierra Club then entered into negotiations with Seminole that culminated in the March 2007 settlement agreement, in which Seminole committed to various emission reductions, and Sierra Club committed not to challenge the final PSD permit; (4) despite having agreed not to contest the final PSD permit, Sierra Club filed an appeal in state court, which may hear continued evaluation of the merits of the case (i.e., initial brief, response brief, answer brief, and oral argument) along with the state law jurisdictional issue; (5) at the close of the state appellate proceedings, Sierra Club requests the opportunity to challenge the final PSD permit before the Board, reasoning that "[o]nly if

the Florida court declines to consider the merits of [the] Seminole permit would the Board's involvement likely to [sic] be necessary to resolve this matter." [Motion, page 13] (emphasis added).

If Sierra Club was truly interested in equitably and efficiently resolving this matter, it would join Seminole and DEP in implementing the Settlement Agreement instead of seeking to tie up the Unit 3 project in serial litigation. Affording the Sierra Club an unjustified opportunity to participate sequentially in two appeals (and asking for one to be placed in abeyance while it argues the other) could result in unwarranted delay in the issuance of the PSD permit to such a degree that the passage of time would be prejudicial to the Unit 3 project. Sierra Club, having settled the PSD issues with Seminole and having sat on its potential rights under state law, should not be allowed to "run out the clock" on the Unit 3 project.

WHEREFORE, Seminole respectfully requests that the Board deny Sierra Club's Motion to Hold Proceeding in Abeyance and instead dismiss this appeal, because the Board lacks jurisdiction and no justiciable controversy exists in this fully settled matter.

Respectfully submitted this 3rd day of November, 2008.

James S. Alves, Florida Bar No. 443750
David W. Childs, Florida Bar No. 013354
Hopping Green & Sams
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Tallahassee, FL 32314
(850) 222-7500
(850) 224-8551 (facsimile)
jalves@hgslaw.com
dchilds@hgslaw.com

Attorneys for Seminole Electric Cooperative, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Leave to Intervene and Response to Sierra Club's Motion to Hold Proceedings in Abeyance, has bee furnished via U.S. Mail this 3rd day of November, 2008, to:

Joanne Spalding, Esq.
Kristen Henry, Esq.
Counsel for Sierra Club
85 Second Street
San Francisco, CA 94105-3441

David G. Guest, Esq.
Counsel for Sierra Club
P. O. Box 1329
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Tallahassee, FL 32399-3400

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 33614

Attorney

EXHIBIT A

STATE OF FLORIDA

County of Putnam

The undersigned personally appeared before me, a Notary Public for the State of Florida, and deposes that the Palatka Daily News is a daily newspaper of general circulation, printed in the English language and published in the City of Palatka in said County and State; and that the attached order, notice, publication and/or advertisement:

PUBLIC NOTICE OF INTENT TO IS

Was published in said newspaper 1 time(s) with said publication being made on the following dates:

09/08/2006

The Palatka Daily News has been continuously published as a daily newspaper, and has been entered as second class matter at the post office at the City of Palatka, Putnam County, Florida, each for a period of more than one year next preceding the date of the first publication of the above described order, notice and/or advertisement.

Allison Waters

Sworn to and subscribed to before me this 8th day of September, 200 by Allison Waters, Administrative Assistant, of the Palatka Daily News, a Florida corporation, on behalf of the corporation.

Mary Kaye Wells

Mary Kaye Wells, Notary Public
My commission expires July 22, 2007

Notary Seal
Seal of Office:

MARY KAYE WELLS
MY COMMISSION # DD 196
EXPIRES: July 22, 2007
Bonded Thru Notary Public Under

_____ Personally known to me, or
_____ Produced identification:
_____ Did take an oath

EXHIBIT A

PUBLIC NOTICE

PUBLIC NOTICE OF INTENT TO ISSUE AIR PERMIT

Florida Department of Environmental Protection, Project No. 1070026-008-AC/ Draft Air Permit No. PSD-FL-378
Seminole Electric Cooperative, Inc., Seminole Generating Station, Putnam County, Florida

Applicant. The applicant for this project is the Seminole Electric Cooperative, Inc. The applicant's authorized representative and mailing address is: Jestus E. Prasad, Director SGS-3; Seminole Electric Cooperative, 16313 North Dale Mabry, Tampa, Florida 33618.

Facility Location. Seminole Electric Cooperative, Inc. operates the existing Seminole Generating Station (SGS), north of Palatka at 890 North U.S. Highway 17, north of Palatka, in Putnam County, Florida.

Project. The applicant proposes to construct a new supercritical, coal-fired, steam generating unit referred to as SGS Unit 3. Seminole proposes to integrate SGS Unit 3 into the existing, certified SGS site located north of Palatka in Putnam County and will locate Unit 3 adjacent to the existing SGS Units 1 and 2. Seminole anticipates beginning commercial operation of Unit 3 in 2012. The addition of SGS Unit 3 will increase the total output capability of the SGS by almost 50 percent. The design of SGS Unit 3 will maximize the co-load of existing site facilities to the greatest extent possible, including fuel handling facilities (SGS Unit 3 proposes the same fuel slate as SGS Units 1 and 2.)

SGS Unit 3 will feature a supercritical pulverized coal boiler, notably with modern emission controls. The Unit 3 air pollution control equipment will include Wet Flue Gas Desulfurization (FGD) for SO2 removal, selective catalytic reduction (SCR) for control of nitrogen Oxides (NOx), electrostatic precipitator (ESP) for collection and removal of fine particles, a Wet ESP (WESP) for control of sulfuric acid mist (SAM), with fluoride (HF) and mercury (Hg) removal to be accomplished, through co-benefits of the above technologies. Fuel (coal and petroleum coke) for SGS Unit 3 will be delivered by an existing rail system. Continuous Emission Monitoring Systems (CEMS) will be installed for SO2, NOx, CO and Hg.

Net environmental impacts associated with Unit 3, in combination with the Units 1 and 2 pollution controls, upgrade Project No. 1070026-004-AC can be summarized as follows:

1) No increase in facility-wide SO2, NOx, SAM and mercury when compared to historical (baseline) air emissions. The applicant has accepted facility-wide caps for each above pollutant eliminating the requirement for a PSD review.

2) PSD-significant increases in facility-wide PM/PM10, CO, VOC, and fluoride air emissions.

3) reuse of FDG product, fly ash and bottom ash.

The maximum potential annual air emissions increases in tons per year, based on the draft permit, are enumerated below:

Pollutants
PM/PM10
HF

Preliminary BACT Determination, the application, and the information submitted by the applicant, exclusive of confidential records under Section 403.111, F.S. Interested persons may contact the Permitting Authority's project review engineer for additional information at the address and phone number listed above. A copy of the complete project file is also available at the Department's Northeast District Office located at 7825 Baymeadows Way, Suite 200B, Jacksonville, Florida 32256-7590. The District's telephone number is 904-807-3300.

Notice of Intent to Issue Air Permits. The Permitting Authority gives notice of its intent to issue an air permit to the applicant for the project described above. The applicant has provided reasonable assurance that operation of proposed equipment will not adversely impact air quality and that the project will comply with all applicable provisions of Chapters 62-4, 62-204, 62-210, 62-212, 62-296, and 62-297, F.A.C. The Permitting Authority will issue a Final Permit in accordance with the conditions of the proposed Draft Permit unless a timely petition for an administrative hearing is filed under Sections 120.569 and 120.57, F.S. or unless public comment received in accordance with this notice results in a different decision or a significant change of terms or conditions.

Comments. The Permitting Authority will accept written comments concerning the Draft Permit for a period of thirty (30) days from the date of publication of the Public Notice. Written comments must be received by the Permitting Authority at the above address before the close of business (5:00 p.m.) on or before the end of this 30-day period. As part of his or her comments, any person may also request that the Permitting Authority hold a public meeting on the permitting action. If the Permitting Authority determines there is sufficient interest for a public meeting, it will publish notice of the time, date, and location in the Florida Administrative Weekly and in a newspaper of general circulation in the area affected by the permitting action. For additional information, contact the Permitting Authority at the above address or phone number. If written comments or comments received at a public meeting result in a significant change to the Draft Permit, the Permitting Authority will issue a Revised Draft Permit and require, if applicable, another Public Notice. All comments filed will be made available for public inspection.

Petitions. A person whose substantial interests are affected by the proposed permitting decision may petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed with (received by) the Department's Agency Clerk in the Office of General Counsel of the Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000 (Telephone: 850/245-2241; Fax: 850/245-2303). Petitions filed by any person other than those entitled to written notice under Section 120.60(3), F.S., must be filed within fourteen (14) days of publication of the Public Notice or receipt of written notice, whichever occurs first. Under Section 120.60(3), F.S., however, any person who asked the

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mit. Person whose s
tial interests will be a
by any such final deci
the Permitting Autho
the application have th
to petition to become
to the proceeding. If a
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set forth above. If th
poses of judicial revie
Department may, when
ble, consolidate a requ
administrative hearing
draft permit within a
Plant Certification Hear

Mediation: Mediation
available in this proces

Legal No. 04621882
9/8/06

Column 1, cont'd

Column 2, cont'd

Maximum Potential Emissions (TPY)
429.3
7.8
73.2
4827.5

PSD Significant Emission Rate (TPY)
25/15
1
40
100

Based on the emissions increases shown above, the project is subject to preconstruction review for the Prevention of Significant Deterioration (PSD) for these pollutants (Rule 62-212.400, F.A.C.). The Draft Permit includes preliminary determinations of the Best Available Control Technology (BACT) for each PSD-significant pollutant. In addition, an air quality impact analysis was conducted. Maximum predicted impacts due to proposed emissions from this project are less than the applicable PSD Class I and Class II significant impact levels applicable to all PSD Class I and II areas and including the nearest PSD Class I area which is Okefenokee National Wildlife Area. Based on this modeling analysis, the Department has reasonable assurance that the proposed project will not cause or contribute to a violation of any state or federal ambient air quality standard.

Permitting Authority: Applications for air construction permits are subject to review in accordance with the provisions of Chapter 403, Florida Statutes (F.S.), and chapters 62-4, 62-210, and 62-212 of the Florida Administrative Code (F.A.C.). The proposed project is not exempt from air permitting requirements and an air permit is required to perform the proposed work. The Florida Department of Environmental Protection's Bureau of Air Regulation's physical address is 111 South Magnolia Drive, Suite 4, Tallahassee, Florida 32301 and the mailing address is 2600 Blair Stone Road, MS# 5505, Tallahassee, Florida 32399-2400. The Bureau of Air Regulation's phone number is 850/488-0114.

Project File: A complete project file is available for public inspection during the normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday (except legal holidays), at the address indicated above for the Permitting Authority. The complete project file includes the Draft Permit, the Technical Evaluation and a petition within fourteen (14) days of receipt of that notice, regardless of the date of publication. A petitioner shall mail a copy of the petition to the applicant at the address indicated above, at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the Permitting Authority's action is based must contain the following information: (a) The name and address of each agency affected and each agency's file or identification number, if known; (b) The name, address, and telephone number of the petitioner; the name, address and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination; (c) A statement of how and when each petitioner received notice of the agency action or proposed action; (d) A statement of all disputed issues of material fact. If there are none, the petitioner shall so indicate; (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and (g) A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the agency to take with respect to the agency's proposed action. A petition that does not dispute the material facts upon which the Permitting Authority's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designated to formulate final agency action, the filing of a petition means that the Permitting Authority's final action may be

EXHIBIT B

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SIERRA CLUB,

Petitioner,

vs.

SEMINOLE ELECTRIC COOPERATIVE, INC, and STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.
_____/

OGC Case No. 06-2157
Draft Air Permit No. PSD-FL-375
Project No. 1070025-005-AC

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

On October 16, 2006 the Department of Environmental Protection (Department) received the attached Motion For Enlargement of Time and Petition for Administrative Hearing (Petition) from the Sierra Club (Petitioner). The Petition requests an extension of time to file a petition for administrative hearing on the Department's decision to issue Permit No. 1070025-005-AC / PSD-FL-375 (permit) to Seminole Electric Cooperative, Inc., for its facility in Putnam County, Florida, and challenges the Department's decision to issue the permit.

Notice of the Department's action was published in the Palatka Daily News on September 8, 2006. Rule 62-110.106(3), Florida Administrative Code (F.A.C.), and the public notice require that persons whose substantial interests are affected by the agency's decision must file a petition for an administrative determination (hearing) in the Department's Office of General Counsel within 14 days of publication of notice or receipt of notice, whichever occurs first. Rule 62-110.106(3)(b), F.A.C., provides that the failure to file a petition within the applicable time period constitutes a waiver of any right to request an administrative proceeding under Chapter 120, Florida Statutes. The petitioner failed to timely file a petition for administrative proceeding. The Petitioner's failure to timely file the Petition in this proceeding

constitutes such a waiver of their right to request an administrative proceeding under Chapter 120. F.S.

The petitioner has not shown in the Petition any basis for excusable neglect. Furthermore, Petitioner admits in the Petition, in paragraph 21, that the Petitioner had spoken with a representative of the Department on September 5, 2006, on which date Petitioner was advised that the Department had sent a Notice of Intent to Issue Air Permit for Seminole Unit 3 to Seminole. Petitioner further states that it has 105 members in Putnam County, and 520 members in St. Johns County. The public notice was published in the Palatka Daily News, which is circulated in Putnam and St. Johns Counties, on September 8, 2006.

Therefore, the Petition must be dismissed as required by Section 120.569(2)(c), F.S.

IT IS THEREFORE ORDERED:

A. The Petition is DISMISSED as being untimely filed. This dismissal is without prejudice to the Petitioner filing an amended petition showing why the Petition dismissed in this order should be considered timely.

B. The Motion for Enlargement of time is DENIED for failure to show cause for excusable neglect.

C. Any amended petition must be filed (received) in the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, no later than the fifteenth day after the date of this order.

D. This order constitutes final agency action of the Department, unless a timely amended petition is filed in compliance with this order.

Any party to this proceeding has the right to seek judicial review of this order under Section 120.68, Florida Statutes, by the filing of a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida

32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED this 31st day of ~~November~~ October, 2006, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

GREGORY M. MUNSON
General Counsel
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000

FILED on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

CLERK 10/31/06
Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail this 31st day of October, 2006, to:

Kristin Henry
Joanne Spalding
Sierra Club
85 Second Street, 2nd Floor
San Francisco, CA 94115

David Guest
Monica Reimer
Earthjustice
111 South Martin Luther King Jr. Boulevard
Tallahassee, FL 32301

James R. Frauen
Project Director, SGS-3
Seminole Electric Cooperative, Inc.
16313 North Dale Mabry
Tampa, FL 33618

Jim Alves
Robert Manning
Hopping Green & Sams, P.A.
Post Office Box 6526
Tallahassee, FL 32314

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Patricia E. Comer

PATRICIA E. COMER, Assistant General Counsel
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STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SIERRA CLUB,

Petitioner,

v.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

And

SEMINOLE ELECTRIC COOPERATIVE, INC,

Respondents.
_____/

Case No.:
FDEP File No. 1070025-005-AC
(PSD-FL-375)

SIERRA CLUB'S MOTION FOR ENLARGMENT OF TIME AND PETITION FOR ADMINISTRATIVE HEARING

Petitioner, Sierra Club, a non-profit corporation, on behalf of its more than 33,000 Florida members, hereby files this Motion for Enlargement of Time and Petition for Administrative Hearing challenging the Florida Department of Environmental Protection's ("DEP") Intent to Issue Air Permit for Permit No. 1070025-005-AC (PSD-FL-375) ("Draft Permit") to Seminole Electric Cooperative, Inc. ("Seminole"). The Air Permit would allow the construction of a seven hundred fifty (750) megawatt pulverized coal-fired supercritical steam generating unit ("Seminole 3") at the existing Seminole Generating Station, 890 North U.S. Highway 17, approximately seven miles north of Palatka, in Putnam County, Florida. As grounds for this Enlargement of Time and Administrative Hearing, the Sierra Club states:

1. The Sierra Club is a non-profit corporation with over 750,000 members. The Sierra Club's Florida Chapter has over 33,000 members, with 105 and 520 members

in Putnam and St. Johns Counties, respectively. The Sierra Club's Florida offices are located at 111 Second Avenue N.E., St. Petersburg, Florida 33701. The Sierra Club has its national headquarters at 85 Second Street, Second Floor, San Francisco, California, 94105.

2. The DEP is the permitting authority in this proceeding and has its offices located at 111 S. Magnolia Drive, Suite 4, Tallahassee, Florida 32301. (The mailing address for the DEP's Bureau of Air Regulation is 2600 Blair Stone Road, MS #5505, Tallahassee, Florida, 32399-2400.)

3. Petitioners are represented in this proceeding by David Guest, Earthjustice, 111 South Martin Luther King Jr. Boulevard, Tallahassee, Florida 32301, (850) 681-0031, (850) 681-0020 (facsimile).

4. Seminole Electric Cooperative, Inc., has its offices located at 16313 North Dale Mabry, Tampa, Florida, 33618.

SUBSTANTIAL INTEREST

5. The Florida Chapter of the Sierra Club has over 33,000 members, with 105 and 520 members in Putnam and St. Johns Counties, respectively. Many Sierra Club members are Florida citizens who live in the area that will be adversely affected by Seminole 3, and whose property, recreational, aesthetic, business and/or environmental interests will be harmed. The Sierra Club and its members therefore have a substantial interest in this proceeding.

6. A substantial number of Sierra Club members own property in the region that will be affected by air pollution from Seminole 3. Air pollution from Seminole 3 will adversely affect the rights of Sierra Club members to use and enjoy their property.

7. As acknowledged by the Public Notice of Intent to Issue Air Permit, the Permit would authorize the emissions of particulate matter (PM), carbon monoxide (CO), volatile organic compounds (VOCs), and fluorides (HF) in quantities that exceed the levels that the State of Florida has established as significant under its Prevention of Significant Deterioration (PSD) regulations. In addition, Seminole 3 will emit sulfur dioxide (SO_2), sulfuric acid mist (SAM), nitrogen oxides (NO_x) and mercury (Hg), all pollutants that are harmful to human health and the environment. Draft Permit, p. 8. The substantial interests of the Sierra Club's Florida members, particularly those in the vicinity of the Seminole Generating Station, will be affected by these harmful emissions from Seminole 3.

8. The emissions limits in the Draft Permit rely on erroneous and incomplete technical information, as well as incorrect legal analysis. These errors and omissions will allow Seminole to emit excess harmful air pollutants, adversely affecting the interests of Sierra Club members.

9. Sierra Club members use and enjoy the outdoors throughout the state of Florida, including areas that will be affected by pollution from Seminole 3, for outdoor recreation and scientific study of various kinds, including nature study, bird-watching, photography, backpacking, camping, solitude, and a variety of other activities.

10. As confirmed by Seminole's Air Permit Application, three Class I areas are located within 200 kilometers of Seminole 3: the Okefenokee, Wolf Island, and Chassahowitzka National Wilderness Areas ("NWA"). Seminole Application at 59. The nearest Class I area is the Okefenokee National Wildlife Area, which includes the Okefenokee Wildlife Refuge within its borders, located approximately 108 kilometers

north of the Seminole Generating Station. The Chassahowitzka National Wildlife Refuge is located 137 kilometers to the southeast of the Seminole Generating Station, and the Wolf Island National Wildlife Refuge is located 186 kilometers to the north. Sierra Club members use these Class I areas for outdoor recreation and scientific study of various kinds.

11. The emissions from the proposed unit will degrade regional air quality. The air in a region has limited carrying capacity, defined as the increment between current air quality and ambient air quality standards or significant impact levels. Each new facility that locates in a region and emits pollutants will consume part of this carrying capacity. The Draft Air Permit relies on a flawed and illegal analysis to demonstrate compliance with Class I increment requirements for SO_2. Seminole's failure to comply with Class I increment requirements will adversely affect the ability of Sierra Club members to use and enjoy these Class I areas.

12. The DEP, by failing to compel new power plants to comply with federal and state pollution control laws, unlawfully allows regional air quality to be degraded.

13. Florida Chapter members of the Sierra Club have a substantial interest in protecting the regional air quality. The interests of the Sierra Club members in the region affected by pollution from Seminole 3 are substantial enough to support standing for those members individually. The Sierra Club appears here as an association to represent the interests of these members.

14. The Sierra Club's purpose encompasses protecting the substantial interests of its members in clean and healthy air. The Sierra Club is dedicated to the protection and preservation of the natural and human environment, including protecting public

health. One of the Sierra Club's national priorities is the Smart Energy Solutions Conservation Initiative, which tackles the pressing problems of global warming, air pollution, and our national dependence on dirty, non-renewable energy sources such as nuclear power, oil and coal.

15. The organizational purposes of the Sierra Club and the substantial interests of Sierra Club's Florida Chapter members are within the zone of interest that the Clean Air Act and the Florida statutes and regulations implementing it, including the provisions allowing hearings on air permits, are designed to protect.

BACKGROUND

16. Seminole is proposing to construct, own and operate a seven hundred and fifty megawatt (750 MW) pulverized coal-fired supercritical steam generating unit located adjacent to the existing Units 1 and 2 at the Seminole Generating Station. The primary fuels will be eastern U.S. bituminous coals and petroleum coke with coals, and the unit will have a maximum capacity of approximately 2.8 million tons/year of fuel.

17. On March 9, 2006, Seminole submitted to the DEP its application to construct Seminole 3.

18. With a letter dated August 24, 2006, the DEP transmitted to Seminole its Public Notice of Intent to Issue Air Permit ("Notice").

19. The Notice fails to inform the public of violations of PSD Class I increment requirements. It states:

> Maximum predicted impacts due to proposed emissions from the project are less than the applicable PSD Class I and Class II significant impact levels applicable to all PSD Class I and II areas and including the nearest PSD Class I area which is the Okeefenokee National Wildlife Area. Based on the required analyses, the Department has reasonable assurance that the proposed project will not cause or contribute to a violation of any state or federal ambient air quality standard.

Contrary to this statement, the analysis of the plant's impact on Class I areas is flawed, and the modeling data shows that plant will exceed the allowable increment for sulfur dioxide in the Okefenokee and Chassahowitzka National Wildlife Refuges.

20. The Notice also misinforms the public with regard to emissions of SO_2, NO_x, SAM and mercury. It states:

> No increase in facility-wide SO_2, NO_x, SAM and mercury when compared to historical (Baseline) air emissions. The applicant has accepted facility-wide caps for each above pollutant eliminating the requirement for a PSD review.

The emissions caps to which the notice refers are not enforceable as a practical matter, so the Notice fails to provide adequate and correct information regarding the potential impact of the Seminole 3 permitting decision.

21. On or about September 5, 2006, counsel for the Sierra Club spoke with a DEP staff person by telephone and learned that DEP has sent to Seminole a Notice of Intent to Issue Air Permit for Seminole Unit 3. The staff person stated that he did not know whether Seminole had published the Notice or in what publication the Notice would appear. He stated that Seminole was required to provide proof of publication to the DEP, and that the DEP would post the publication date on its website when it received that information.

22. On information and belief, Seminole published the Notice in the Palatka Daily News on September 8, 2006. Neither counsel for the Sierra Club nor Sierra Club members working on other issues related to the Seminole Generating Station saw the Notice in the Palatka Daily News.

23. Over the next four weeks, counsel for the Sierra Club checked the DEP website frequently, but never saw any indication that Seminole had published the notice.

On information and belief, the website still does not include a proof of publication or any information regarding the publication of the Notice, including the date on which it was published.

24. On or about October 6, 2006, counsel for the Sierra Club spoke with DEP staff and was told that the Notice had been published in the Palatka Daily News on September 8, 2006, that the deadline for filing a petition for an administrative hearing was on September 22, 2006, and that the deadline for comments was on October 9, 2006.

25. The Sierra Club filed comments on the Draft Permit on October 9, 2006.

ENLARGEMENT OF TIME

26. The Sierra Club seeks an enlargement of time for filing a petition for hearing on the proposed Permit pursuant to 62 F.A.C. § 62-110.106(4), which states, in relevant part:

> For good cause shown, the Secretary of the Department (or the Secretary's designee) may grant an enlargement of time for the doing of any act required or allowed to be done . . . even if the period has expired, upon motion showing that the failure to act was the result of excusable neglect.

I. THE SIERRA CLUB'S DELAY IN FILING A PETITION FOR HEARING IS EXCUSABLE AND SEMINOLE WILL NOT BE PREJUDICED BY ALLOWING THE SIERRA CLUB TO FILE THIS PETITION.

27. The Sierra Club has been actively participating in the administrative hearing on Seminole's Unit 3 Power Plant Siting Application (Case No. 06-0929EPP). As a non-profit, public interest organization, the Sierra Club has limited resources to dedicate to even the most important environmental issues. Because the Florida Chapter has already committed a significant amount of resources to the hearing on the Siting Application, it did not have the additional resources available to evaluate the Draft Air Permit.

28. Neither Sierra Club's counsel in the Siting Application proceeding nor Sierra Club members active in challenging the Seminole expansion saw the Public Notice of Intent to Issue Air Permit that was apparently published on September 8, 2006, in the Palatka Daily News.

29. In early September, 2006, staff attorneys at the Sierra Club's San Francisco headquarters became involved in the Seminole permitting process. Because the Florida Chapter was focusing its resources on the Siting Application, Sierra Club staff attorneys offered to help the Chapter to review the Air Permit and submit comments if appropriate. While Sierra Club staff attorneys have substantial experience related to permits issued under the PSD provisions of the Clean Air Act, they have no prior experience working in Florida administrative proceedings, or in any other state where the administrative scheme requires a hearing petition on a PSD permit to be filed before the deadline for submitting comments on the draft permit.

30. Sierra Club attorneys diligently sought and eventually retained expert witnesses who could assist the attorneys in reviewing the Draft Permit and its supporting technical documents. Due to prior commitments, the Sierra Club's lead expert was not available to review the Draft Permit and supporting documents until October 5, 2006. At that time, she began her review and discovered serious deficiencies in the technical analysis that supported the Draft Permit.

31 On or about October 6, 2006, a Sierra Club staff attorney based in San Francisco had a telephone conversation with DEP staff, who stated that the Notice had been published on September 8, 2006, that the deadline for filing a petition for hearing on

Seminole 3 had passed, and that comments were due on October 9, 2006. The Sierra Club submitted timely comments on the Draft Permit. See Exhibit A.

32. Equitable tolling is a defense to the untimely filing of a petition for hearing on a decision that affects substantial interests. F.S.A. § 120.569(2)(c). In this case, the equities favor granting the Sierra Club's motion for enlargement of time. Sierra Club attorneys contacted DEP staff as soon as the Sierra Club's expert had the opportunity to review the Draft Permit and identify serious flaws. The Sierra Club submitted timely comments on the Draft Permit and is submitting this petition within fewer than 14 days after discovering the issues that warrant a hearing.

33. It seems unreasonable to expect Florida citizens and public interest, non-profit organizations with limited resources to be able to find and retain experts, review the air permit and supporting technical documents, ascertain the disputed issues of material fact, analyze potential legal claims, and draft and file a petition in a mere fourteen days after publication of the Notice, particularly in comparison with the many months that the project applicant and DEP have to develop and evaluate the permit information.

34. Granting the Sierra Club's request for an extension will not result in prejudice to Seminole. Because the Sierra Club is a party in the siting hearing for Seminole 3, Seminole is aware of the Sierra Club's opposition to the proposed project and will not suffer prejudice from a brief delay in filing a petition.

35. The public interest will be harmed if this request for an extension is denied. The Draft Permit suffers from serious flaws that render some of the limits it imposes inadequate and some unenforceable. The issuance of this flawed permit with no

opportunity for a hearing will mean that serious concerns regarding public health and the environment will be ignored.

II. REGULATIONS INDICATE THAT A REQUEST FOR HEARING IS TIMELY IF FILED WITHIN FOURTEEN DAYS AFTER NOTICE OF THE FINAL DETERMINATION TO APPROVE THE PERMIT.

36. Although the Notice states that a petition for an administrative hearing must be filed within fourteen days of publication of the Notice, the regulations are ambiguous and confusing regarding the timeframe for filing a petition. The ambiguity arises in the language used to describe the action being contested. The language in 62 F.A.C. § 62-110.106(2) indicates that a person with substantial interests can file a petition on either an "actual or proposed action of the Department." The rule creates a distinction between "intended agency action" (which seems to be synonymous with "proposed action") and "actual agency action," but states that "notice of agency action" includes notice of both. Id. The rule creates the impression that a person with substantial interests can choose whether to petition for a hearing on either the actual action or the intended action.

37. This impression is corroborated by the language and scheme in 62 F.A.C. § 62-210.350, dealing with public notice and comment on agency action. That regulation seems to use the phrases "final agency action" and "final determination" synonymously. Compare 62 F.A.C. § 62-210.350(a) with 62 F.A.C. § 62-210.350(f). It requires the Department to consider public comments submitted on the proposed agency action in making its "final determination." 62 F.A.C. § 62-210.350(f). Presumably, that "final determination" is the "actual agency action" referred to in 62 F.A.C. § 62-110.106(2). Until a person with substantial interests knows what the "final determination" will be,

and whether the Department will modify the proposed action in response to comments, it would seem premature to petition for a hearing.

III. THE PUBLIC NOTICE IS DEFICIENT.

38. Florida's Clean Air regulations require DEP to provide public notice of "the degree of PSD increment consumption expected" as a result of the proposed Seminole 3. 62 F.A.C. § 62-210.350(2)(a)(3). DEP violated this requirement because it failed to provide public notice of the actual impact of the Seminole 3's sulfur dioxide pollution on the Local Air Quality Standard in the nearby Okefenokee and Chassahowtzka NWA Class I Areas.

39. The analysis of the impact of the Seminole plant's emissions on the Air-Quality Standards suffers serious flaws. In demonstrating the impacts of Seminole Units 1 and 2 on the Local Air Quality Standard for sulfur dioxide at nearby Okefenokee and Chassahowitzka National Wildlife Refuges, Seminole arbitrarily excluded all sources except the power plant itself – despite the acknowledged absence of any technical or legal basis to so limit the analysis. Seminole Electric Cooperative Request for Modification for Seminole Units 1 and 2, Appendix C, Air Quality Modeling Analysis. Even without those additional sources of air pollution, the analysis indicated that the increment would almost be exceeded for the Units 1 and 2 modification. See Table 3-6 (the Class I increment for sulfur dioxide for the 24-hour concentration is 5.00 $\mu g/m^3$ and the Seminole plant will contribute 4.99 $\mu g/m^3$). This would leave only 0.01 $\mu g/m^3$ for all future development in the area, including the new Unit 3. The Class I increment analysis for Seminole 3 relied upon these erroneous calculations related to Seminole 1 and 2.

40. The Class I increment analysis for Seminole 3 also relied on an arbitrary and unenforceable emissions rate from Seminole 1 and 2. The modeling was based on an annual cap for sulfur dioxide that assumed an emissions rate of 0.38 lb/MMBtu for both Seminole 1 and 2. This annual cap, however, is not an enforceable emissions limit, and is dramatically lower than the rate allowed by the draft permit for Seminole 1 and 2 (0.67 lb/MMBtu). Thus, Seminole failed to demonstrate compliance with Class I increment requirements, because it based its modeling on a completely unenforceable emission limit, left to be implemented at the discretion of the permittee.

41. Because the DEP failed to provide adequate notice to the public regarding increment consumption, the Notice violates Florida regulations requiring disclosure of the "degree of PSD increment consumption expected." 62 F.A.C. § 62-210.350(2)(a)(3). The Notice is legally flawed and must be reissued. In the Matter of: Hudson Power 14 – Buena Vista, 4 E.A.D., 258, 271-72 (E.A.B. 1992).

DISPUTED ISSUES OF MATERIAL FACT

42. Whether DEP conducted an adequate analysis to determine the Best Available Control Technology ("BACT") for CO, VOCs, fluoride, particulate matter, and mercury.

43. Whether a BACT analysis is required for mercury and sulfuric acid mist.

44. Whether the emissions limits in the Draft Permit reflect BACT for CO, VOCs, fluoride, particulate matter, sulfuric acid mist, mercury, and opacity.

45. Whether the analysis supporting the Draft Permit included appropriate modeling of SO_2 emissions with regard to their impact on Class I areas.

46. Whether the analysis supporting the Draft Permit included an adequate assessment of how emissions from Seminole 3 may impair soils and vegetation.

47. Whether DEP must include consideration of Integrated Gasification Combined Cycle ("IGCC") technology as BACT.

48. Whether the Draft Permit limits for VOCs, fluorides, PM, SAM, NH3, and mercury are enforceable.

49. Whether the permit limits for Seminole Units 1 and 2 are enforceable such that they support emissions credits for Seminole Unit 3.

50. Whether the startup and shutdown exemption in the Draft Permit were appropriately modeled.

51. Whether the startup and shutdown exemption in the Draft Permit reflect BACT.

52. Whether Seminole conducted adequate pre-construction monitoring.

53. Whether DEP considered reasonable alternatives to Seminole 3.

54. Whether the Draft Permit limits will adequately protect public health.

55. Whether the construction of Seminole 3 will have a disproportionate impact on minority or economically disadvantaged communities.

ULTIMATE FACTS WARRANTING REVERSAL

56. The Draft Permit would allow Seminole 3 to emit air pollution that would be harmful to public health and the environment and that exceeds levels allowed under the Clean Air Act and Florida law.

STATUTES AND RULES VIOLATED BY THE PERMIT

The Draft Permit violates the following statutes and rules:

57. The Clean Air Act's Prevention of Significant Deterioration ("PSD") provisions, which govern construction of new major sources of air pollution in regions that attain the national ambient air quality standards ("NAAQS"). 42 U.S.C. § 7475.

58. The PSD rules codified at 40 CFR Part 52 and incorporated as a Florida State Implementation Plan ("SIP") approved program into 62 F.A.C. § 62-212.400. See 62 F.A.C. § 62-204.800. These rules require that applicants reduce their emissions by employing the "best available control technology" ("BACT") for pollutants that would be emitted in levels that exceed the PSD significance thresholds, see 62 F.A.C. § 62-210.200(264), or that would cause or contribute to air pollution in violation of any applicable maximum allowable increase over the baseline concentration in any area, see 62 F.A.C. §§ 62-212.400, 62-204.200, 62-204.220, 62-204.260.

59. The regulation defining BACT as:

> An emission limitation, including a visible emissions standard, based on the maximum degree of reduction of each pollutant emitted which the Department, on a case by case basis, taking into account:
>
> 1. Energy, environmental and economic impacts, and other costs;
>
> 2. All scientific, engineering, and technical material and other information available to the Department; and
>
> 3. The emission limiting standards or BACT determinations of Florida and any other state;
>
> determines is achievable through application of production processes and available methods, systems and techniques (including fuel cleaning or treatment or innovative fuel combustion techniques) for control of each such pollutant.

60. F.A.C. § 62-210.200(39). See also 42 U.S.C. § 7479(3); 40 C.F.R. § 52.21(b)(12). Specifically, the Draft Air Permit violates Florida's Prevention of Significant Deterioration ("PSD") provisions, 62 F.A.C. § 62-212.400, by failing to

require Seminole to use the Best Available Control Technology ("BACT") for CO, VOCs, PM, SAM, Hg, and visible emissions. The technical analyses regarding the BACT decisions for these pollutants suffer from serious flaws. In some cases, DEP failed to require a BACT analysis even though pollution levels allowed by the permit exceed the PSD significance thresholds. In other cases, the technology selected as BACT is not in fact BACT-level technology.

61. The regulations requiring an assessment of the "impairment to * * * soils and vegetation that would occur as a result of the source" before issuing a PSD permit. 40 C.F.R. § 52.21(o); 62 F.A.C. § 62-212.720(8)(a).

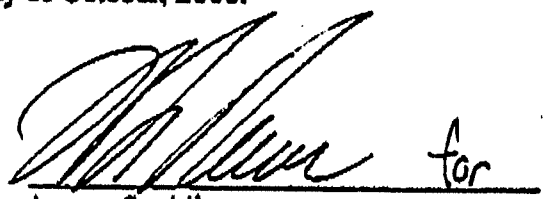
62. The Clean Air Act requirement that an emission limitation apply to emissions of air pollutants "on a continuous basis." 42 U.S.C. § 7602(k).

63. The Clean Air Act requirement that requires consideration of alternatives to a major new source of air pollution. 42 U.S.C. § 7475(a).

RELIEF SOUGHT

Petitioners respectfully request that the Motion for Enlargement of Time be granted and that this Petition be forwarded to the Division of Administrative Hearings to conduct a formal administrative hearing, and that DEP issue a final order denying Permit No. 1070025-005-AC (PSD-FL-375).

Respectfully submitted this 16th day of October, 2006.



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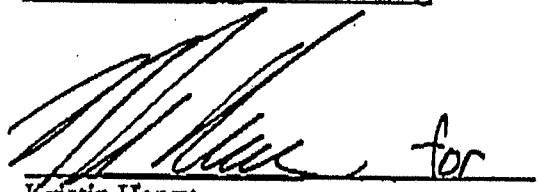

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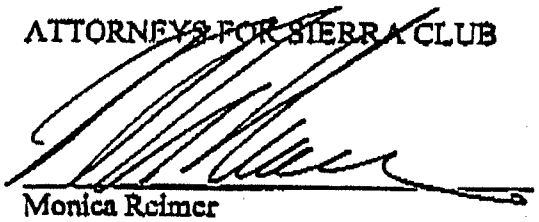
ATTORNEYS FOR SIERRA CLUB



Monica Reimer
Florida Bar No. 0090069
Earthjustice
111 South Martin Luther King Jr. Boulevard
Tallahassee, Florida 32301
(850) 681-0031
(850) 681-0020 (facsimile)

LOCAL COUNSEL

CERTIFICATE OF SERVICE

I, Monica K. Reimer, certify and declare as follows:

My business address is 111 South Martin Luther King Jr. Boulevard, Tallahassee, Florida 32301 which is located in the county where the mailing described below took place.

On October 16, 2006, I served a copy of the Sierra Club's Motion for Enlargement of Time and Petition for Administrative Hearing on the recipients listed below via regular U.S. mail and facsimile.

Department's Agency Clerk
Office of General Counsel
Department of Environmental Protection
3900 Commonwealth Boulevard
Mail Station #35
Tallahassee, FL 32399-3000
(850) 245-2241 (Telephone)
(850) 245-2303 (Facsimile)

On October 16, 2006, I served a copy of the Sierra Club's Motion for Enlargement of Time and Petition for Administrative Hearing on the recipients listed below via regular U.S. mail.

Authorized Representative:
James R. Frauen
Project Director, SGS -3
Seminole Electric Cooperative, Inc.
16313 North Dale Mabry
Tampa, Florida, 33618

Trina Vielhauer
Florida Dept. of Environmental Protection
Bureau of Air Regulation
2600 Blair Stone Road
MS #5505
Tallahassee, FL 32399-2400

I certify and declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

Executed on October 16, 2006.

Monica K. Reimer

EXHIBIT C

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Seminole Electric Cooperative, Inc, ("Seminole") and the Sierra Club ("Sierra Club"). Seminole and Sierra Club shall be referred to herein collectively as the "Parties" for the purposes of this Agreement.

RECITALS

A. Seminole operates two existing electrical generating units at the Seminole Generating Station site ("Site") in unincorporated Putnam County, Florida. Those existing Units 1 and 2 have been in operation since 1984.

B. On March 9, 2006, Seminole filed its site certification application ("SCA") under the Florida Electrical Power Plant Siting Act ("PPSA"), Chapter 403, Part II, Florida Statutes, with the Florida Department of Environmental Protection ("FDEP"). The SCA seeks approval for the construction and operation of the proposed Unit 3 Project, a nominal 750 megawatt ("MW") electrical generating unit. The new proposed Unit 3 will be located adjacent to the existing two units and will utilize some of the existing facilities and infrastructure at the Site. The SCA has been assigned FDEP number PA78-10A2; FDEP OGC Case No. 06-0780 and Florida Division of Administrative Hearings Case No. 06-0929EPP

C. The two existing units were previously certified under the PPSA.

D. The Sierra Club was a party to the original site certification proceeding for the existing two units at the Site. The Sierra Club is a party to the current site certification proceeding for the proposed Unit 3 Project.

E. On March 9, 2006, Seminole also filed with FDEP a separate application for a prevention of significant deterioration ("PSD") permit to authorize construction of Unit 3. The PSD permit is being processed by FDEP pursuant to its authority to issue such federally-required PSD permits in Florida. A draft PSD permit was issued by FDEP on August 24, 2006; the FDEP PSD permit number is PSD-FL-375.

F On October 9, 2006, the Sierra Club submitted written comments to the FDEP Bureau of Air Regulation concerning FDEP's proposed PSD permit for the Unit 3 Project. Sierra Club wishes to reserve all rights it has to continue to assert claims regarding the proposed PSD permit for the Unit 3 Project .

G. The final certification hearing is scheduled to be held beginning January 9, 2007 in Palatka, Florida. That hearing is to address the matters set forth in Section 403.502, Florida Statutes, of the PPSA.

H. The Parties to this Agreement desire to resolve all issues raised or which could be raised concerning Seminole's Unit 3 Project in the PPSA proceeding, while excluding the separate PSD permit proceeding, and also to set the framework for continued settlement negotiations concerning the PSD permit proceeding.

Exhibit C

I The Parties agree that this Agreement consists of full and fair consideration for the release of certain claims of the Sierra Club scheduled for trial before the Florida Division of Administrative Hearings on January 9, 2007. The Parties further agree that they contemplate the negotiation of a second settlement agreement, to resolve claims concerning the PSD permit proceeding.

TERMS AND CONDITIONS – The PPSA Proceeding

1. Seminole agrees to purchase and distribute $200,000 worth of compact fluorescent light bulbs to its member cooperatives for distribution to end users. Seminole agrees to work with the Sierra Club on the procurement and distribution of the compact fluorescent light bulbs, as well as the launching and public announcement of the compact fluorescent light bulb program. Such purchase shall take place within 180 days after the issuance of all approvals necessary to construct Unit 3 and the distribution of the light bulbs will take promptly thereafter.

2. Seminole commits to use best efforts for investigating additional renewable energy opportunities and incentives which can be implemented by Seminole or by its member electrical cooperatives that will further the use of renewable energy in Florida and reduce the reliance on fossil fuels for the production of electricity in the State. Seminole agrees to help fund and assign a project manager to a series of workshops and meetings with renewable energy experts and the public in Florida to investigate options and to analyze the economic and technical feasibility of renewable energy projects that Seminole can implement in the future. This commitment includes but is not limited to solar, wind, biomass co-firing at its power plants, and methane capture at the Putnam County Central Landfill. Seminole also commits to continue to develop and implement additional programs that will result in offsets of emissions of greenhouse gases.

3. Sierra Club agrees not to challenge, appeal, or initiate or assist in any challenge or appeal by others in an administrative or judicial proceeding, or in any other way impede or interfere either with the issuance of a final order granting site certification under the PPSA so long as such final order contains conditions that are consistent with or more restrictive than the Conditions of Certification proposed by FDEP in the Staff Agency Report dated November 9, 2006, provided, however, that Sierra Club retains all rights, and does not waive any rights, to challenge any final PSD permit under state or federal law.

4. Sierra Club agrees that it will not contest any issues or present any evidence or testimony in the final site certification hearing nor submit any post-hearing filings in the pending PPSA proceeding concerning the Unit 3 Project. Sierra Club also agrees that pursuant to this Settlement it will stipulate to any motion filed by Seminole under procedures to cancel the certification hearing in accordance with Section 403.508(6), Florida Statutes, as long as the content of such motion is consistent with this agreement.

5. Sierra Club also agrees not to seek judicial review of the final Land Use Order of the Siting Board, filed December 14, 2006, addressing land use and zoning issues for the Unit 3 Project under the PPSA.

PRELIMINARY TERMS AND CONDITIONS – The PSD Proceeding

6. Seminole offers the following as a settlement proposal to resolve issues related to the PSD permit:

Following the commencement of full-time commercial operation of Unit 3, that Seminole will be subject to the following system-wide emission rates for Units 1, 2, and 3, combined:

Sulfur Dioxide (SO2)	95 percent control efficiency across the scrubber based on 30-day rolling average and no more than 17,900 tons per year based on a 12-month rolling average
Nitrogen Oxides (NOx)	0.07 lb/MMBtu based on 30-day rolling average and no more than 5,950 tons per year based on a 12-month rolling average
Sulfuric Acid Mist (H2SO4)	1,750 Tons Per Year
Mercury (Hg)	(118 lb/yr)
PM	1,470 Tons Per Year
VOC	259 Tons Per Year
CO	17,493 Tons Per Year

Seminole agrees to ask FDEP to include these limits in the final PSD permit for Seminole Unit 3 and agrees to be bound to these emissions limitations, subject to any additional reductions, negotiated in the second phase of negotiations described below.

7. Seminole and the Sierra Club concur that they will continue to negotiate in good faith to resolve and settle any issues relating to the PSD proceeding that were raised in Sierra Club's comments on the draft permit, including but not limited to emissions limits for SO_2, NOx, H_2SO_4, Hg, PM, VOC and CO.

GENERAL PROVISIONS

8. This Settlement Agreement represents a complete settlement of Unit 3 PPSA issues, and a mutual commitment to ongoing good faith negotiations of Unit 3 PSD permit issues.

9. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

10. This Agreement shall never at any time or for any purpose be considered an admission of liability or responsibility on the part of any party herein released.

11. This Agreement is the product of negotiation and preparation by and among each party hereto and his or her respective attorneys. Accordingly, all Parties hereto acknowledge and agree that the Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for one party or another, and the Agreement shall be construed accordingly.

12. This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of Florida. Exclusive jurisdiction and venue for any litigation brought in relation to this Agreement shall be in the Circuit Court for Putnam County, Florida, and the Parties do hereby specifically waive any other jurisdiction and venue.

13. If any provision or any part of any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

14. No amendments or modifications of this Settlement Agreement shall be valid unless set forth in writing and signed by the duly authorized representatives of each Party.

15. This Agreement shall be deemed to be effective immediately upon its full execution by all Parties.

16. This Agreement contains the entire understanding among the Parties with regard to the matters herein set forth, and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the Parties hereto relating to this Agreement which are not fully expressed herein.

SEMINOLE ELECTRIC COOPERATIVE, INC.

Date: 1/7/07

By: [signature]

Its: Attorney

SIERRA CLUB

Date: 1/7/07

By: [signature]

Its: Legal Director

EXHIBIT D

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Seminole Electric Cooperative, Inc, ("Seminole") and the Sierra Club ("Sierra Club"). Seminole and Sierra Club shall be referred to herein collectively as the "Parties" for the purposes of this Agreement.

RECITALS

A. Seminole operates two existing electrical generating units at the Seminole Generating Station site ("Site") in unincorporated Putnam County, Florida. Those existing units, referred to as Units 1 and 2, originally were licensed pursuant to the Florida Power Plant Siting Act (PPSA) Certification Order PA-10 and PSD permit PSD-FL-018.

B. On March 9, 2006, Seminole filed a site certification application ("SCA") under the PPSA, with the Florida Department of Environmental Protection ("FDEP") seeking approval for the construction and operation of the proposed Unit 3 Project. The new proposed Unit 3 will be located adjacent to the existing two units and will utilize some of the existing facilities and infrastructure at the Site. The SCA was assigned FDEP number PA78-10A2; FDEP OGC Case No. 06-0780 and Florida Division of Administrative Hearings Case No. 06-0929EPP.

C. The Sierra Club was a party to the original PPSA site certification proceeding for the existing two units at the Site as well as the current site certification proceeding for the proposed Unit 3 Project.

D. On March 9, 2006, Seminole also filed with FDEP a separate application for a prevention of significant deterioration ("PSD") permit to authorize construction of Unit 3. The PSD permit is being processed by FDEP pursuant to its authority to issue such federally-required PSD permits in Florida. A draft PSD permit was issued by FDEP on August 24, 2006; the FDEP PSD permit number is PSD-FL-375.

E. On October 9, 2006, the Sierra Club submitted written comments to the FDEP Bureau of Air Regulation concerning FDEP's proposed PSD permit for the Unit 3 Project.

F. In a separate Settlement Agreement signed by both Parties on January 7, 2007, the Parties resolved all issues raised or which could be raised concerning Seminole's Unit 3 Project in the PPSA proceeding, except for issues related to the PSD permit. The Parties also set a framework for continued settlement negotiations concerning the PSD permit.

G. This Agreement reflects the Parties agreement to settle all remaining issues related to the PSD permit for Unit 3. The Parties concur that this Agreement consists of full and fair consideration for the release of all claims of the Sierra Club with respect to issuance of the PSD permit for Unit 3. 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.

Exhibit D

TERMS AND CONDITIONS

1. Following the commencement of commercial operation of Unit 3, it is agreed that Seminole will be subject to the following system-wide emission rates for Units 1, 2, and 3, combined:

(a) Sulfur Dioxide (SO2)	95 percent control efficiency across the scrubbers based on a 30-day rolling average, including periods of start-up and shut down, and annual emissions of no more than 17,900 tons per year based on a 12-month rolling average, including periods of start-up and shut down.
(b) Nitrogen Oxides (NOx)	0.07 lb/MMBtu based on 30-day rolling average, and annual emissions of no more than 5,450 tons per year based on a 12-month rolling average. The tons per year limit includes periods of startup and shutdown; the lb/MMBtu does not.
(c) Sulfuric Acid Mist (H2SO4)	1,665 Tons Per Year
(d) Mercury (Hg)	118 Pounds Per Year
(e) Particulate Matter (PM)	1,470 Tons Per Year
(f) Volatile Organic Compounds (VOC)	259 Tons Per Year
(g) Carbon Monoxide (CO)	17,493 Tons Per Year

2. Following the commencement of full-time commercial operation of Unit 3, the following emission rates shall apply specifically to Unit 3:

(a) Sulfur Dioxide (SO2)	98 percent control efficiency across the scrubber based on a 30-day rolling average, including periods of start-up and shut down.
(b) Nitrogen Oxides (NOx)	0.05 lb/MMBtu, based on a 30-day rolling average, excluding periods of start-up and shut down
(c) Total PM (filterable + condensable)	0.030 lb/MMBtu, based on a 3-hour performance test, based on modified Method 202 test

(d) Opacity 10 percent

3. The last sentence of Draft Permit Condition III.A.4. shall be amended to read as follows: "The steam generator ~~shall be designed for a maximum heat input of~~ maximum heat input rate shall not exceed 7,500 MMBtu per hour of coal, based on fuel sampling and analysis."

4. Draft Permit Condition III.A.5. shall be deleted.

5. Draft Permit Condition III.7.c. shall be revised as follows: "SAM removal shall be accomplished by the use of the FGD system and the wet ESP, which shall be operated at all times, including startup and shutdown, in accordance with good operating practices and manufacturer requirements."

6. Draft Permit Condition III.A.9.a. shall be amended to read as follows: "Coal-SGS Unit 3 may combust bituminous coal, up to 318.3 tons per hour based upon ~~11,300~~ 11,780 Btu/lb HHV."

7. In Draft Permit Condition III.A.10., the "lb/hr equivalent VOC emission limit" shall be changed from 16.7 to 25.5.

8. Draft Permit Condition III.A.13. shall be amended to read as follows: "Sulfur Dioxide (SO_2): Emissions of SO_2 from SGS Unit 3 shall not exceed 1.4 pounds per megawatt hour (lb/MW-hr) gross energy output or 98% reduction on a 30-day rolling average basis including periods of start-up and shut down, nor 0.165 lb/MMBtu, based upon a 24-hour rolling average as determined by CEMS. In addition, SO_2 emissions shall not exceed ~~29,074~~ 17,900 tons per 12-month rolling period (facility-wide), based upon CEMS. [62-210.200 (Net Emissions Increase), and 62-212.400(12) (Source Obligation), F.A.C.]

9. New Permit Condition III.A.20.c. shall be included as follows: "The permittee shall maintain monthly records describing actions taken to comply with this condition."

10. The parties agree that all other conditions in the Draft Permit shall be included in the Final Permit.

11. Seminole agrees to ask FDEP to include the foregoing limits and conditions in the Final PSD permit for Seminole Unit 3 and agrees to be bound to these limits and conditions. 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.

12. By September 1, 2007, Seminole agrees to publish a Request for Proposal (RFP) soliciting bids for up to 100 MW of renewable energy, which may include solar, wind, geothermal and/or biomass. Seminole is committed to pursuing renewable energy opportunities, and agrees to evaluate and implement, in good faith, viable bids. In accordance with Seminole's existing bid evaluation policy, a viable bid is one that is reasonable based on an analysis of

technical, commercial and economic issues, including reliability, fuel supply (as applicable), siting issues, transmission, and financial viability of vendor, and whether the project is in the best interest of Seminole and its members. If Seminole does not receive viable bids in response to this RFP, Seminole will publish another such RFP within eighteen months of the first. Seminole will continue to actively pursue renewable energy opportunities, and will evaluate and implement, in good faith, viable bids in the manner described above.

GENERAL PROVISIONS

13. This Settlement Agreement represents a complete settlement of all Unit 3 issues related to issuance of the PSD permit.

14. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

15. This Agreement shall never at any time or for any purpose be considered an admission of liability or responsibility on the part of any party herein released.

16. This Agreement is the product of negotiation and preparation by and among each party hereto and his or her respective attorneys. Accordingly, all Parties hereto acknowledge and agree that the Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for one party or another, and the Agreement shall be construed accordingly.

17. This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of Florida. Exclusive jurisdiction and venue for any litigation brought to enforce this Agreement shall be in the Circuit Court for Putnam County, Florida, and the Parties do hereby specifically waive any other jurisdiction and venue. In any such litigation, the parties shall seek only declaratory or injunctive relief or specific performance. Neither party shall file any lawsuit to enforce this Agreement unless it has first provided written notice of the alleged violation to the other party thirty days prior to filing suit and the other party has failed to cure the alleged violation.

18. If any provision or any part of any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

19. No amendments or modifications of this Settlement Agreement shall be valid unless set forth in writing and signed by the duly authorized representatives of each Party.

20. This Agreement shall be deemed to be effective immediately upon its full execution by all Parties.

21. This Agreement contains the entire understanding among the Parties with regard to the matters herein set forth, and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the Parties hereto relating to this Agreement which are not fully expressed herein.

SEMINOLE ELECTRIC COOPERATIVE, INC.

Date: 3/9/07

By: W.P. Quinn

Its: Vice President, Technical Services

SIERRA CLUB

Date: 3/9/07

By: Kristen A. Henry

Its: Staff attorney

EXHIBIT E

FINAL DETERMINATION

Seminole Electric Cooperative, Inc.
Seminole Generating Station
DEP File No. 1070025-005-AC

The Department distributed a public notice package on August 25, 2006 to allow the applicant, Seminole Electric Cooperative, Inc. (SECI) to construct a new supercritical coal-fired steam generating unit at the existing Seminole Generating Station (SGS), located at 890 US Highway 17, North of Palatka, Putnam County. The Public Notice of Intent to Issue concerning the draft permit was published in the Palatka Daily News on September 8, 2006. Since the Draft Permit was issued, the federal Clean Air Interstate and Clean Air Mercury Rules (CAMR) have been vacated by the federal courts. This litigation is not yet final but it appears a case-by-case determination of maximum achievable control technology (MACT) will be required for SECI Unit 3 due to the vacature of CAMR. The Department will require an application for case-by-case MACT and will issue its determination thereof in a separate agency action.

COMMENTS/CHANGES

Comments were received by the Department from Mitchell Williams, a local resident on September 12, 2006. Comments were received from EPA Region 4 by letter dated October 5, 2006. Comments were received from the applicant by letter dated September 27, 2006. Comments were also received from the Sierra Club by letter dated October 9, 2006. On March 9, 2007 the applicant and the Sierra Club entered into a Settlement Agreement, to which the permitting authority was not a party and which was outside of the Prevention of Significant Deterioration (PSD) process that resolves all timely-received comments submitted by the applicant and the Sierra Club related to the draft PSD permit. To the extent the applicant wants to incorporate those changes into an air construction permit for that facility, an application to revise the PSD permit may be submitted. Finally, comments were received from the Natural Resources Defense Council and Southern Alliance for Clean Energy by letter dated July 3, 2008 almost 2 years after the end of the public comment period. These comments were not timely but are in the Department's files. Other timely received comments are addressed below:

EPA Comment 1. Netting Analysis

a. Florida Department of Environmental Protection (FDEP) indicates on page 5 of the technical evaluation that the Unit 1 and Unit 2 baseline period for the nitrogen oxides netting analysis is calendar years 2001-2002. In accordance with FDEP's rules, the baseline period for EUSGUs must be "within the 5-year period immediately preceding the date a complete permit application is received by the Department." Since the Unit 3 PSD permit application was not deemed complete until July 3, 2006, not all of calendar year 2001 is available for baseline emissions calculations unless FDEP explicitly deems a different (earlier) period to be more representative of normal source operation. FDEP should explain why emissions during all of calendar year 2001 are available for baseline emissions calculations purposes.

b. Referencing FDEP's regulations, a decrease in emissions is creditable in a netting analysis only if "It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change." We do not find in the technical evaluation (which is a key part of the public record for this permitting action) any assessment of this qualitative significance requirement with regard to the creditable emissions decreases proposed for avoidance of PSD review for sulfur dioxide, nitrogen oxides, and sulfuric acid mist.

RESPONSE:

a. During a February 2006 meeting which was held with the applicant to discuss the processing of the SGS Unit 3 application, FDEP agreed to calendar year 2001 as the first

Exhibit E

available year available for calculating baseline emissions. The application was received approximately 2 weeks later, on March 9, 2006.

b. FDEP affirms that it has determined the increases from the SGS Unit 3 project have a lesser qualitative significance than do the decreases from the SGS Units 1 and 2 pollution control upgrade project.

EPA Comment 2: Clarification of Pound-per-Hour Emissions Limits

a. Condition III.A.10 in the draft permit consists of a table with emissions limits labeled as either "BACT Emission Limits" or "Non-BACT Established Emission Limits." (The acronym BACT means best available control technology.) The limits are listed in terms of pounds (lb)/ per million British thermal units (MMBtu) and in terms of lb/hour (hr) "equivalent." We are not sure what is meant by the word "equivalent." Specifically, we are not sure if the lb/hr "equivalent" values are enforceable permit limits. If not, they should be made enforceable unless the following statement in Condition III.A.4 represents an enforceable restriction: "The steam generator shall be designed for a maximum heat input of 7,500 MMBtu per hour of coal." Unless the permit contains an enforceable restriction on maximum heat input, the lb/MMBtu limits by themselves do not provide an enforceable limit on total mass emissions to the atmosphere.

b. The "equivalent" lb/hr rates for the most part are based on the limits in lb/MMBtu times 7,500 MMBtu/hr. There appears to be an error in the volatile organic compound (VOC) equivalent lb/hr rate of 16.7 lb/hr. The stated VOC limit is 0.0034 lb/MMBtu which yields a value of 25.5 lb/hr when multiplied by 7,500 MMBtu/hr.

RESPONSE:

a. The intent of the permit is to make the heat input an enforceable restriction. The lb/hr "equivalent" values are listed for informational purposes only.

b. Agreed that this was a calculation error. This error will be corrected when the Department issues a case-by-case MACT determination in the near future.

EPA Comment 3: Particulate Matter Emissions Limits

a. The particulate matter (PM)/PM less than 10 microns (PM_{10}) emissions limit specified in Condition III.A.15 of the draft permit is for filterables only. Condensables are to be measured and reported but are not restricted by an emissions limit. Most recent permits for EUSGU pulverized coal boilers have included an emissions limit for condensables in addition to (or in combination with) and emissions limit for filterables. We recommend that the final permit include place holder language that will allow setting an emissions limit for condensables after testing has demonstrated that condensables can be measured accurately.

b. In Condition III.A.15, FDEP specifies that the PM/PM_{10} emissions limit of 0.013 lb/MMBtu applies "while firing 100% coal." We recommend that this condition be rephrased to indicate the emissions limit that applies when firing a mixture of coal and petcoke as well as when firing coal only.

RESPONSE:

a. As EPA suggests, if testing demonstrates that condensables can be measured accurately, the Department may address this issue in the future.

b. The Department will delete the words "while firing 100% coal" from Condition III.A.15 when the Department issues its case-by-case MACT determination in the near future.

EPA Comment 4: PM Continuous Emissions Monitoring System (CEMS)

a. The draft permit does not require use of a PM CEMS to assess compliance with the filterable PM/PM_{10} emissions limit. Since a PM CEMS can be used with a wet plume, we recommend that a PM CEMS be required to demonstrate compliance with the filterables limit.

b. If a PM CEMS is not required, we recommend that FDEP require some other continuously monitored parameter to indicate acceptable performance of the dry electrostatic precipitator which is the primary PM control device. Please advise us if FDEP intends to wait until issuance of a title V permit before specifying such parameter monitoring requirements.

RESPONSE: The Department intends to wait until issuance of the Title V permit before specifying parameter monitoring requirements.

EPA Comment 5: Startup and Shutdown

a. Startup and shutdown are part of normal source operation for Unit 3. Any pollutants emitted from Unit 3 during startup and shutdown that are subject to PSD review are therefore subject to BACT requirements. If the numeric BACT emissions limits for regular operation can not be met during startup and shutdown, then numeric limits need to be established for startup and shutdown operations or work practice BACT requirements should be established. We understand that FDEP intends for best management practices (including the 60-hour-per-month restriction in Condition III.A.29.b) to be used for minimization of emissions during startup and shutdown. If it is FDEP's position that adherence to best management practices represents BACT for startup and shutdown, we request that this be stated in the final determination. Please note that numeric emissions limits for startup and shutdown have been addressed by the EPA Environmental Appeals Board (EAB) in two recent PSD permit appeals for coal-fired EUSGUs. (See the August 24, 2006, EAB order for the Prairie State Generating Station project in Illinois and the September 27, 2006, EAB order for the Indeck-Ellwood project in Illinois.)

b. The allowance of 60 hours per month (equivalent to 30 days per year) for startup, shutdown, and malfunction seems excessive for a 750-megawatt EUSGU. We would expect such a unit would not be in a condition of startup, shutdown, or malfunction this often throughout its lifetime.

c. Condition III.A.30 of the draft permit contains a parenthetical phrase indicating that emissions measured during startup, shutdown, and malfunction are to be included for demonstration of compliance with annual emissions limits. We recommend that the final permit contain a direct statement rather than just a parenthetical phrase making clear that startup, shutdown, and malfunction emissions must be included when demonstrating compliance with annual emissions limits.

RESPONSE:

a. The Department intends for the adherence to "best management practices" to represent BACT for the purpose of startup and shutdown.

b. The Department does not expect that this large steam generating unit will be in a startup or shutdown condition very often. However, the Department is aware that supercritical boilers have fairly complicated start-up systems due to ramping operation being required and difficulty in establishing metal matching conditions (see: http://www.hitachi.us/supportingdocs/forbus/powerindustrial/CG2004.pdf).

c. The permit requires startup, shutdown, and malfunction emissions be included when demonstrating compliance with annual emissions limits regardless of whether that phrase is in parenthesis or not. No change is required.

EPA Comment 6: Compliance Demonstration for Coal/Petcoke Blend

a. In Condition III.A.22 of the draft permit, FDEP requires an initial compliance demonstration "when firing 100% coal." Please consider whether an initial compliance test is also needed for a blend of 70 percent coal and 30 percent petcoke. In other words, please assess whether a coal/petcoke blend might be the worst case for some pollutants. This comment is prompted in part by the fact that the carbon monoxide emissions limits in Conditions III.A.10 and 11 are higher for the all-fuel case than for the 100-percent coal case.

b. Condition III.A.23 of the draft permit does not include a specification of the fuel blend to be evaluated during subsequent annual compliance testing. We recommend that FDEP indicate whether such testing is to be based on firing 100 percent coal only, a coal/petcoke blend only, or both.

RESPONSE: The Department expects only few differences in "worst-case" emissions depending upon the fuel-type being fired. For example, it is anticipated that the BACT established emission level of PM may be higher while firing 100% coal versus the coal/petcoke blend, as will the emissions of mercury. However, the elevated sulfur levels in petcoke make the removal of sulfur dioxide (SO_2) emissions more challenging for the co-firing operation, even though the SO_2 limit was not established by BACT. It is not anticipated that the emissions of carbon monoxide (CO) will be significantly different depending upon the fuel being fired. The higher CO emission level (0.15 lb/MMBtu) which is authorized in Condition III.A.11.b is intended to accommodate the wide variety of "non-steady-state" conditions which the unit will be subject to, such as load-changing, soot-blowing, etc. No change was made.

EPA Comment 7: Facility-wide Emissions Limits

In Condition III.A.2 of the draft permit, FDEP establishes facility-wide emissions limits for sulfur dioxide, sulfuric acid mist, mercury, and nitrogen oxides. FDEP further states that these limits apply to Units 1, 2, and 3, the zero liquid discharge spray dryers, and the cooling towers. Please check to make sure that FDEP meant to include cooling towers. Cooling towers do not typically emit the four pollutants with facility-wide emissions limits.

RESPONSE: It is correct that cooling towers do not typically emit these four pollutants; however, no change is made to the permit in response to this comment.

EPA Comment 8: Coal Preparation and Nonmetallic Mineral Processing

In the technical evaluation (page 9 and 10), FDEP states that the emissions units affected by the PSD permit have to comply with a list of regulations. The regulations in this list include the federal new source performance standards (NSPS) for coal preparation plants and nonmetallic mineral processing plants. However, the draft permit does not include permit conditions for coal preparation units or limestone (nonmetallic mineral) handling units. If any of the NSPS listed in the technical evaluation do not apply, please delete them.

RESPONSE: The coal preparation units and limestone handling units are existing units and the applicable requirements are already identified in the facility's other permits. There is no need to repeat these requirements in this permit. No change was required.

EPA Comment 9: Carbon Burnout Permit Provision

Condition III.A.43 of the draft permit (applicable to Unit 3), specifies daily recordkeeping requirements for the "operation and configuration" of a carbon burnout unit "such that the permittee can demonstrate compliance with the emission limitations of the affected emissions units." We recommend that FDEP specify exactly what records are required by this condition.

RESPONSE: The unit must comply with NSPS limits, recordkeeping and reporting. In addition, this unit will have a CEMS. These provisions will adequately address this issue and no change was made to the permit.

EPA Comment 10: Integrated Gasification Combined Cycle (IGCC)

FDEP's technical evaluation (pages 11-12) contains a brief discussion of reasons for not considering IGCC as part of a BACT analysis for the proposed PC boiler. We will point out that, pursuant to section 165(a)(2) of the Clean Air Act, it may be necessary for FDEP to address any substantive comments proposing IGCC as an alternative to the proposed project.

RESPONSE: The Department is satisfied that this issue has been adequately addressed.

EPA Comment 11: Unit 3 Nitrogen Oxides Emissions

Based on the netting analysis, PSD review (including a best available control technology determination) is not required for nitrogen oxides (NO_x) emissions. For the record, however, we wish to comment that the proposed NO_x emissions limit for Unit 3 of 0.07 lb/MMBtu is not representative of the lowest emission rate that could be expected for a newly designed supercritical pulverized coal boiler firing bituminous coal.

RESPONSE: No response required.

Mitchell Williams Comment:

"I suggest that you put an immediate hold on the construction of the third coal plant by Seminole Electric Co-op in Palatka at this time. This is 2006 not 1936. I assume that the design is a familiar one that any plant manager in 1936 would recognize (Babcock & Wilcox turbo-alternators with reheat etc). Only the computer control room would look new. Same old low efficiency antique stuff.

In its place they should be allowed to build a 21 Century plant and get Florida ahead of (not behind) California.

Here is what is needed. A coke-fired furnace (no scrubber needed) using 95% pure oxygen for combustion. To keep the gasifier cool enough to prevent melting, a heavy injection of superheated steam would be mixed with the stream of pure oxygen. At these temperatures (1800°F plus) steam reduces the carbon to carbon monoxide and the hydrogen is released to BURN AGAIN. Meaning that the plant runs partly on water. Possibly as much as 25% of the fuel could be water injected as superheated steam. This same trick can be used with a hot, air breathing furnace but the inert gases in the air prevent full efficiency of the process, and only 2 or 3% of the fuel can be water.

By using oxygen, coke, and steam you might reduce the total coke consumption by nearly half for the same power output. Meaning the exhaust from the plant would have half as much C02 (reduced greenhouse gases) and no nitrous oxides at all.

Since you then would have a really hot fire at your fingertips you might as well go whole hog in optimizing the design.

Throw out all the steam pipes except the ones to supply the steam to the gasifier. In their place substitute a closed cycle gas turbine with helium or C02 as the working fluid. All this shrinks down the entire plant to a fraction of its original size.

It also might be built much faster with modified jet, rocket, and refrigeration parts.

Making all this oxygen at the plant will mean they will have rivers of surplus liquid nitrogen and hot water to sell for cooling and heating purposes. This could help reduce the waste of electricity for these purposes.

And the fuel efficiency of the plant should be VERY HIGH. This same trick can be done with any fuel burning plant that has a high carbon content in the fuel (wood, oil, sewage, sludge, goat manure etc). It will be less effective with natural gas as there is less carbon in it, so only a reduced amount of water can be burned with it. However, pure oxygen can also greatly increase the efficiency of any fuel burning plant by eliminating the inert gases from the system. Convection heat is greatly reduced and radiant heat is greatly increased making even steam plants much smaller for a given output.

If you should have any doubts concerning what is presented here you can ask any of the rocket people at the Cape. They are always quick to tell you how the turbo-pumps on the Space Shuttle Main Engines (about the size of outboard motors) produce 100,000 horsepower each, and could easily light a small city."

RESPONSE: {Note: The following was excerpted from the July 6, 2006 Public Service Commission Staff Analysis for Seminole Unit 3 Need Determination}

"As part of the evaluation process, Seminole hired Burns & McDonnell to assist them in selecting the appropriate technology and provide a detailed, screening level evaluation of the cost of building and operating the preferred alternative. This request initially led to the August 2004 Feasibility Study. This study contains the results of the economic analyses of three alternative self-build projects: A new Brownfield 600 MW sub-critical solid fuel generating unit; a new Brownfield 600 MW supercritical solid fuel generating unit; and a new Greenfield 500 MW gas fired combined cycle unit. Other generating technologies were assessed, but were not considered for new generation at this time due to insufficient operational experience and information on cost and reliability of technology. The study found that the 20 year levelized bus bar cost for the three viable alternatives showed that the supercritical unit was the lowest at $52.77/MWh; sub-critical unit at $52.97/MWh; and combined cycle unit at $75.48/MWh. Seminole's interest in increasing the output of SGS Unit 3 from 600 MW to 750 MW led to the February 2005 Feasibility Study. This study, which is an update of Seminole's August 2004 Feasibility Study, concluded that both the supercritical and sub-critical solid fuel generating units were feasible and would be substantially more economically sized at 750 MW than at 600 MW (the 20 year levelized bus bar cost declined to $48.85/MWh for the supercritical coal unit, and to

$49.15/MWh for the sub-critical coal unit). Both remained far less expensive than a conventional gas fired combined cycle unit. Therefore, Seminole decided that 750 MW of base load capacity should be added in the 2012 time frame. The estimated capital cost for the 750 MW supercritical SGS Unit 3 project is approximately $1.4 billion in 2012 dollars. SGS Unit 3 will be located at Seminole's Generating Station (SGS) on a 1922 acre site in northeast Putnam County, approximately five miles from the City of Palatka. SGS Unit 3 will be a pulverized coal, balanced draft unit employing supercritical steam pressure and temperature with a mechanical draft cooling tower for condenser cooling water. The primary advantages of supercritical steam cycles over sub-critical steam cycles are improved plant efficiency due to elevated operating pressure and temperature, lower emissions and lower fuel consumption. SGS Unit 3 will also employ state-of-the-art emission control equipment to further reduce emissions."

CONCLUSION

The final action of the Department is to issue the permit with no changes from the draft permit.

PERMITTEE:

Seminole Electric Cooperative, Inc.
16313 North Dale Mabry Highway
Tampa, Florida 33618

Authorized Representative:
James R. Frauen, Project Director SGS Unit 3

Seminole Generating Station
SGS Unit 3
Permit No. PSD-FL-375
Project No. 1070025-005-AC
Siting No. PA 78-10A2
Expires: December 31, 2012

PROJECT AND LOCATION

This permit authorizes the construction of a nominal 750 MW pulverized coal-fired supercritical steam generating unit at the existing Seminole Generating Station. The facility is located east of U.S. Highway 17, approximately seven miles north of Palatka, Putnam County.

STATEMENT OF BASIS

This construction permit is issued under the provisions of Chapter 403 of the Florida Statutes (F.S.), Chapters 62-4, 62-204, 62-210, 62-212, 62-296, and 62-297 of the Florida Administrative Code (F.A.C.). The project was processed in accordance with the requirements of Rule 62-212.400, F.A.C., the preconstruction review program for the Prevention of Significant Deterioration (PSD) of Air Quality. Pursuant to Chapter 62-17, F.A.C. and Chapter 403 Part II, F.S., the project is also subject to Electrical Power Plant Siting. The permittee is authorized to install the proposed equipment in accordance with the conditions of this permit and as described in the application, approved drawings, plans, and other documents on file with the Department of Environmental Protection (Department).

Joseph Kahn, P.E., Director
Division of Air Resource Management

Date: 9/3/08

SECTION I - GENERAL INFORMATION

FACILITY DESCRIPTION

The existing Seminole Generating Station (SGS) consists of: two 714.6 megawatt, electric, coal fired steam electric generators (SGS Units 1 and 2); a coal handling and storage system; a limestone unloading, handling and storage system; and a flue gas desulfurization (FGD) sludge stabilization system. The existing units are currently undergoing pollution control upgrades, including burner replacements, the addition of SCRs, an alkali injection system, a carbon burnout (CBO) unit, as well as improvements to the existing FGD system and steam turbines.

PROJECT DESCRIPTION

Seminole proposes to integrate SGS Unit 3 into the existing, certified SGS Site located north of Palatka in Putnam County. SGS Unit 3 will be a nominal 750 MW (net) pulverized coal-fired supercritical steam generating unit located adjacent to the existing SGS Units 1 and 2. Seminole anticipates beginning commercial operation of Unit 3 in 2012. The addition of SGS Unit 3 will increase the total output capability of the SGS by almost 60 percent. The design of SGS Unit 3 will maximize the co-use of existing site facilities to the greatest extent possible, including fuel handling facilities (SGS Unit 3 proposes the same fuel slate as SGS Units 1 and 2). The project also includes a new Zero Liquid Discharge (ZLD) Spray Dryer System, a new emergency generator, and a new 26-cell mechanical draft cooling tower.

SGS Unit 3 will feature supercritical pulverized coal technology with modern emission controls. The Unit 3 air pollution control equipment will include wet Flue Gas Desulfurization (FGD) for SO_2 removal, selective catalytic reduction (SCR) for control of nitrogen oxides (NO_X), electrostatic precipitator (ESP) for collection and removal of fine particles, a Wet ESP (WESP) for control of sulfuric acid mist (SAM), with fluoride (HF) and mercury (Hg) removal to be accomplished through co-benefits of the above technologies. Fuel (coal and petroleum coke) for SGS Unit 3 will be delivered by an existing rail system. No. 2 diesel fuel will be used for startup, shutdown and for firing the Zero Liquid Discharge (ZLD) Spray Dryers as well as an Emergency Generator (unregulated emissions unit).

EMISSIONS UNITS

This permit authorizes construction and installation of the following new emissions units:

EU ID NO.	EMISSION UNIT DESCRIPTION
014	SGS Unit 3, 750 MW Supercritical Pulverized Coal
015	Mechanical Draft Cooling Tower, 26-cell
016	Diesel-Fired Zero Liquid Discharge (ZLD) Spray Dryers (bank of 3)

REGULATORY CLASSIFICATION

Title III: The facility is a "Major Source" of hazardous air pollutants (HAPs).

Title IV: The facility operates units subject to the Acid Rain provisions of the Clean Air Act.

Title V: The facility is a Title V or "Major Source" of air pollution in accordance with Chapter 62-213, F.A.C. because the potential emissions of at least one regulated pollutant exceed 100 tons per year. Regulated pollutants include pollutants such as carbon monoxide (CO), nitrogen oxides (NO_X), particulate matter (PM/PM_{10}), sulfur dioxide (SO_2), sulfuric acid mist (SAM), and volatile organic compounds (VOC).

PSD: The facility is located in an area that is designated as "attainment", "maintenance", or "unclassifiable" for, each pollutant subject to a National Ambient Air Quality Standard. It is classified as a "fossil fuel-fired steam electric plant of more than 250 million BTU per hour of heat input", which is one of the facility

categories listed at 62-210.200(Definitions, Major Stationary Source) with the lower PSD applicability threshold of 100 tons per year. Potential emissions of at least one regulated pollutant exceed 100 tons per year, therefore the facility is classified as a "Major Stationary Source" with respect to Rule 62-212.400 F.A.C., Prevention of Significant Deterioration (PSD).

NSPS: The following New Source Performance Standards of 40 CFR 60 are applicable to the SGS Unit 3 as described in Section III, Subsection A, Federal Requirements of this permit.

- Subpart Da (Standards of Performance for Electric Utility Steam Generating Units For Which Construction is Commenced After September 18, 1978).

NESHAP: The facility is a "Major Source" of HAPs. The Emergency Generator is subject to the notification requirements of 40 CFR 63, Subpart ZZZZ; there are no applicable NESHAP requirements for the steam generating unit.

CAIR: As an electric generating unit, SGS Unit 3 may be subject to the Clean Air Interstate Rule pending the finalization of DEP rules.

CAMR: SGS Unit 3 is a new coal-fired power plant and will be subject to the Clean Air Mercury Rule pending finalization of DEP rules.

Siting: The facility is a steam electrical generating plant and is subject to the power plant siting provisions of Chapter 62-17, F.A.C.

PERMITTING AUTHORITY

All documents related to applications for permits to construct, operate or modify an emissions unit shall be submitted to the Bureau of Air Regulation of the Florida Department of Environmental Protection (DEP) at 2600 Blair Stone Road (MS #5505), Tallahassee, Florida 32399-2400. Copies of all such documents shall also be submitted to the Compliance Authority.

COMPLIANCE AUTHORITY

All documents related to compliance activities such as reports, tests, and notifications shall be submitted to the Department's Northeast District Office at 7825 Baymeadows Way, Suite B200, Jacksonville, Florida 32256-7577.

APPENDICES

The following Appendices are attached as part of this permit.

Appendix TEBD	Final BACT Determinations and Emissions Standards
Appendix GC	General Conditions

RELEVANT DOCUMENTS:

The documents listed below are not a part of this permit, however they are specifically related to this permitting action and are on file with the Department.

- March 9, 2006: Received Site Certification Application (SCA) including PSD application.
- May 15, 2006: SCA determined to be insufficient by SCO.
- July 3, 2006: Received all responses from applicant.
- August 21, 2006: Intent to Issue PSD Permit distributed.
- December XX, 2006: Final Certification by the Power Plant Siting Board

SECTION II. ADMINISTRATIVE REQUIREMENTS

1. General Conditions: The permittee shall operate under the attached General Conditions listed in Appendix GC of this permit. General Conditions are binding and enforceable pursuant to Chapter 403 of the Florida Statutes. [Rule 62-4.160, F.A.C.]

2. Applicable Regulations, Forms and Application Procedures: Unless otherwise indicated in this permit, the construction and operation of the subject emissions unit shall be in accordance with the capacities and specifications stated in the application. The facility is subject to all applicable provisions of: Chapter 403 of the Florida Statutes (F.S.); Chapters 62-4, 62-204, 62-210, 62-212, 62-213, 62-296, and 62-297 of the Florida Administrative Code (F.A.C.); and the Title 40, Parts 51, 52, 60, 63, 72, 73, and 75 of the Code of Federal Regulations (CFR), adopted by reference in Rule 62-204.800, F.A.C. The terms used in this permit have specific meanings as defined in the applicable chapters of the Florida Administrative Code. The permittee shall use the applicable forms listed in Rule 62-210.900, F.A.C. and follow the application procedures in Chapter 62-4, F.A.C. Issuance of this permit does not relieve the permittee from compliance with any applicable federal, state, or local permitting or regulations.
[Rules 62-204.800, 62-210.300 and 62-210.900, F.A.C.]

3. Construction and Expiration: Authorization to construct shall expire if construction is not commenced within 18 months after receipt of the permit, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. This provision does not apply to the time period between construction of the approved phases of a phased construction project except that each phase must commence construction within 18 months of the commencement date established by the Department in the permit. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. In conjunction with an extension of the 18-month period to commence or continue construction (or to construct the project in phases), the Department may require the permittee to demonstrate the adequacy of any previous determination of Best Available Control Technology (BACT) for emissions units regulated by the project. For good cause, the permittee may request that this PSD air construction permit be extended. Such a request shall be submitted to the Department's Bureau of Air Regulation at least sixty (60) days prior to the expiration of this permit. [Rules 62-4.070(4), 62-4.080, 62-210.300(1), and 62-212.400(12)(a), F.A.C.]

4. New or Additional Conditions: For good cause shown and after notice and an administrative hearing, if requested, the Department may require the permittee to conform to new or additional conditions. The Department shall allow the permittee a reasonable time to conform to the new or additional conditions, and on application of the permittee, the Department may grant additional time. [Rule 62-4.080, F.A.C.]

5. Source Obligation.

   a. At such time that a particular source or modification becomes a major stationary source or major modification (as these terms were defined at the time the source obtained the enforceable limitation) solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of subsections 62-212.400(4) through (12), F.A.C., shall apply to the source or modification as though construction had not yet commenced on the source or modification.

   b. At such time that a particular source or modification becomes a major stationary source or major modification (as these terms were defined at the time the source obtained the enforceable limitation) solely by exceeding its projected actual emissions, then the requirements of subsections 62-212.400(4) through (12), F.A.C., shall apply to the source or modification as though construction had not yet commenced on the source or modification.

   [Rule 62-212.400(12), F.A.C.]

6. Modifications: No emissions unit or facility subject to this permit shall be constructed or modified without obtaining an air construction permit from the Department. Such permit shall be obtained prior to beginning construction or modification. [Chapters 62-210 and 62-212, F.A.C.]

7. Application for Title IV Permit: At least 24 months before the date on which the new unit begins serving an electrical generator greater than 25 MW, the permittee shall submit an application for a Title IV Acid Rain Permit to the Department's Bureau of Air Regulation in Tallahassee and a copy to the Region 4 Office of the U.S. Environmental Protection Agency in Atlanta, Georgia. [40 CFR 72]

8. Title V Permit: This permit authorizes construction of the permitted emissions unit and initial operation to determine compliance with Department rules. A Title V operation permit is required for regular operation of the permitted emission units. The permittee shall apply for and obtain a Title V operation permit in accordance with Rule 62-213.420, F.A.C. To apply for a Title V operation permit, the applicant shall submit the appropriate application form, compliance test results, and such additional information as the Department may by law require. The application shall be submitted to the Department's Bureau of Air Regulation and a copy to the Compliance Authority.
[Rules 62-4.030, 62-4.050, 62-4.220, and Chapter 62-213, F.A.C.]

9. Annual Operating Report: The permittee shall submit an annual report that summarizes the actual operating hours and emissions from this facility in accordance with 62-210.370. Annual operating reports shall be submitted to the Compliance Authority by March 1st of each year.
[Rule 62-210.370(2), F.A.C.]

SECTION III - EMISSIONS UNITS SPECIFIC CONDITIONS

A. SGS Unit 3 - Pulverized Coal-Fired Supercritical Steam Generating Unit (EU 014)

The specific conditions of this subsection apply to the following emissions unit after construction is complete.

E.U. ID	Emission Unit Description
014	SGS Unit 3 – Nominal 750 MW (net) Supercritical Pulverized Coal Fired Boiler

APPLICABLE STANDARDS AND REGULATIONS

1. BACT Determinations: A determination of the Best Available Control Technology (BACT) was made for carbon monoxide (CO), particulate matter (PM/PM_{10}), fluorides (HF) and volatile organic compounds (VOCs). [Rule 62-210.200 (BACT), F.A.C.]

2. PSD Netting: Emissions caps were accepted on Units 1 and 2, in part for the purpose of ensuring that this project "nets out" with respect to SO_2, SAM, Mercury and NO_X emissions, thus avoiding BACT determinations for those pollutants. The facility-wide annual emission limits are:

Pollutant	Annual Emission Limit[a] (TPY)
SO_2	29,074
SAM	2,129
Hg	0.059
NO_X	23,289

Note [a]: The facility-wide limit includes SGS Units 1, 2, 3, Cooling Towers and the ZLD Spray Dryers.

3. NSPS Requirements: This unit is subject to 40 CFR 60 NSPS Subpart Da, which is applicable to new affected facilities that commence construction after February 28, 2005. The NSPS provisions establish emission limits for PM, SO_2 and NO_X. The PM emission limit is 0.015 lb/MMBtu or 0.03 lb/MMBtu and 99.9 percent reduction. The SO_2 and NO_X emission limits are production-based and are 1.4 and 1.0 pounds per megawatt hour (lb/MW-hr) gross energy output, respectively. In addition, the SO_2 standard allows for either meeting the above production-based limit or a 95 percent reduction. Visible emissions are limited to 20 percent opacity (6-minute average) except up to 27 percent opacity is allowed for one 6-minute period per hour. The NSPS mercury (Hg) emission limit for new sources (40 CFR 60.45a; 71 FR 33388; June 6, 2006) is 20×10^{-6} lb/MW-hr for bituminous coal. [40 CFR 60, Subpart A and Da]

EQUIPMENT DESCRIPTION

4. Steam Generator: The permittee is authorized to construct and operate a pulverized coal, balanced draft type unit employing supercritical steam and equipped with low NO_X burners. The boiler will be fired by either coal or a blend of coal and petroleum coke (up to 30% by weight), with No. 1 or 2 diesel oil for auxiliary purposes. The steam generator shall be designed for a maximum heat input of 7,500 MMBtu per hour of coal. [Application; Design]

5. Electrical Generating Capacity: SGS Unit 3 will have a nominal electrical generating capacity of 750 MW net and 820 MW gross. [Application; Design]

CONTROL TECHNOLOGY

6. Post-Combustion: The emission unit flue shall be equipped with a wet FGD System, a Selective Catalytic Reduction System, an Electrostatic Precipitator and a Wet Electrostatic Precipitator.

   a. *Electrostatic Precipitators (ESP)*: The permittee shall install, operate, and maintain an Electrostatic Precipitator and a Wet Electrostatic Precipitator (WESP) to reduce PM/PM_{10} emissions from SGS Unit 3.

b. *Selective Catalytic Reduction (SCR) System*: The permittee shall install, tune, operate, and maintain an SCR system to control NO_X emissions. The SCR system consists of an ammonia (NH_3) injection grid, catalyst, a urea unloading system, a urea storage area, facilities to convert the urea to ammonia, a monitoring and control system, electrical, piping and other ancillary equipment. The SCR system shall be designed, constructed and operated to meet the permitted levels of NO_X emissions on a continuous basis.

c. *Flue Gas Desulfurization (FGD) System*: The permittee shall install, operate, and maintain a flue gas desulfurization system for the reduction of SO_2 and SAM emissions from SGS Unit 3. The FGD System shall be designed to meet the permitted emission levels of SO_2 on a continuous basis.

Prior to the initial emissions performance tests, the emissions control systems shall be tuned to achieve permitted emissions levels. Thereafter, the systems shall be maintained and tuned in accordance with the manufacturer's recommendations so as to ensure the permitted levels are consistently achieved.

d. The emissions from the CBO™ Process Fluidized Bed Combustor (EU-013) may be routed back to SGS Unit 3 flue gas ductwork, upstream of the ESP, SCR and FGD System, so as to ensure that emissions are minimized. However, the combined emissions from SGS Unit 3 with the CBO™ Unit (when operating) shall comply with the permit standards for SGS Unit 3 as well as the applicable standards in NSPS Subpart Db.

[Design; Rules 62-210.200(PTE and BACT), 62-210.650, 62-212.400(PSD), F.A.C.]

7. Technology Co-benefits: The following technologies shall be installed and operated as described herein.

a. *Mercury Removal System*: Mercury removal is enhanced when PM controls are used with NO_X and SO_2 controls (ESP, WESP, SCR and FGD). Accordingly, these control technologies shall be designed and tuned to achieve the permitted levels of mercury emissions from SGS Unit 3.

b. *Fluoride Removal System*: Fluoride removal has recognized co-benefits from an ESP, Wet FGD and WESP. Accordingly, these technologies shall be designed, operated and tuned to achieve the permitted level of fluorides from SGS Unit 3.

c. *SAM Removal System*: SAM removal shall be accomplished by the use of the FGD system and the Wet ESP. The permittee shall design, install, operate, and maintain these systems in order to achieve the permitted emission level of SAM.

[Design; Rule 62-212.400(PSD), F.A.C.]

PERFORMANCE REQUIREMENTS

8. Hours of Operation: The coal-fired boiler may operate throughout the year (8,760 hours per year). Restrictions on individual methods of operation are specified in separate conditions.
[Rules 62-210.200(PTE, and BACT) and 62-212.400 (PSD), F.A.C.]

9. Authorized Fuels:

a. *Coal* – SGS Unit 3 may combust bituminous coal up to 318.3 tons per hour based upon 11,300 BTU/lb HHV.

b. *Coal/Pet-coke blend* –SGS Unit 3 may combust coal and pet-coke blend. The pet-coke shall not exceed 30% of the hourly heat input, or 95.5 tons per hour based upon a 12,900 BTU/lb HHV.

c. *No. 1 or 2 Diesel Oil* – SGS Unit 3 may combust up to 3,320 gallons per hour of 0.05% No. 2 diesel fuel based upon 136 MMBtu/1000 gallons heat value. The combustion of this fuel shall be for the purposes of startups, flame stabilization, limited supplemental load and emergency reserve during statewide capacity shortages.

A. SGS Unit 3 - Pulverized Coal-Fired Supercritical Steam Generating Unit (EU 014)

[Rules 62-210.200(PTE, and BACT) and 62-212.400 (PSD), F.A.C.]

EMISSIONS STANDARDS

10. Emission Standards: Emissions from the pulverized-coal fired boiler shall not exceed the following standards.

Best Available Control Technology (BACT) – Rule 62-210.400, F.A.C.		
Pollutant	**BACT Emission Limits**	**Compliance Method**
PM/PM_{10}	0.013 lb/MMBtu filterable PM; 98 lb/hr equivalent	Annual Stack Test
Opacity	20% with up to 27% for 6-minutes per hour	COMS
CO	0.13 lb/MMBtu (coal only); 975 lb/hr equivalent 0.15 lb/MMBtu 30-day rolling average (all fuels); 1,125 lb/hr equivalent	Initial Stack Test (100% coal) CEMS (all fuels)
VOC	0.0034 lb/MMBtu; 16.7 lb/hr equivalent	Initial Test
HF	0.00023 lb/MMBtu; 1.72 lb/hr equivalent	Initial & T-5 Renewal Test
Pollutant	**Non-BACT Established Emission Limits**	**Compliance Method**
SO_2	0.165 lb/MMBtu 24-hour rolling; 1,238 lb/hr equivalent	CEMS
SAM	0.005 lb/MMBtu; 37.5 lb/hr equivalent	Annual Test
NO_X	0.07 lb/MMBtu; 525 lb/hr equivalent	CEMS
Hg	7.05 E-6 lb/MWh; 0.005 lb/hr equivalent	CEMS or sorbent traps
NH_3	5 ppmvd corrected to 6% O_2	Annual Stack Test

[Rules 62-4.070(3), 62-210.200 (BACT), and 62-212.400(PSD), F.A.C]

11. Carbon Monoxide (CO): Emissions of CO from SGS Unit 3 shall not exceed the following BACT limits:

    a. Stack test: CO emissions shall not exceed 0.13 lb/MMBtu while firing 100% coal as determined by an initial stack test (average of 3 test runs) in accordance with EPA Method 25, 25A or 25B.

    b. CEMS: CO emissions shall not exceed 0.15 lb/MMBtu as determined by CEMS on a 30-day rolling average, regardless of fuel type. Testing shall be according to EPA Method 10.

    [Rules 62-4.070(3), 62-210.200 (BACT), and 62-212.400(PSD), F.A.C]

12. Volatile Organic Compounds (VOCs): Emissions of VOC from SGS Unit 3 shall not exceed 0.0034 lb/MMBtu as determined by an initial stack test in accordance with EPA Method 25A and (optionally) EPA Method 18 (to deduct non-VOC methane emissions). Thereafter, compliance with the CO limits herein shall serve as a surrogate for the emissions of VOCs. [Rules 62-4.070(3), 62-210.200 (BACT), and 62-212.400(PSD), F.A.C]

13. Sulfur Dioxide (SO_2): Emissions of SO_2 from SGS Unit 3 shall not exceed 1.4 pounds per megawatt hour (lb/MW-hr) gross energy output nor 0.165 lb/MMBtu, based upon a 24-hour rolling average as determined by CEMS. In addition, SO_2 emissions shall not exceed 29074 tons per 12-month rolling period (facility-wide), based upon CEMS. [62-210.200 (Net Emissions Increase), and 62-212.400(12) (Source Obligation), F.A.C.]

14. Sulfuric Acid Mist (SAM): Emissions of Sulfuric Acid Mist from SGS Unit 3 shall not exceed 0.005 lb/MMBtu as determined by EPA Method 8A. In addition, SAM emissions shall not exceed 2129 tons per 12-month rolling period (facility-wide), based upon tack testing. The combined total shall be computed by measuring the lb/MMBtu emission rate on each unit, multiplying each unit's emission rate by its annual heat input (MMBtu) and adding the total lbs emitted, divided by 2000. [62-210.200 (Net Emissions Increase), and 62-212.400(12) (Source Obligation), F.A.C.]

15. Particulate Matter (PM/PM_{10}): Emissions of filterable Particulate Matter (PM and PM_{10}) from SGS Unit 3 shall not exceed 0.013 lb/MMBtu while firing 100% coal as determined by EPA Method 5. Condensables shall be captured (from the impingers) and reported (only) in accordance with EPA Method 202. Additionally, opacity shall be limited to 20% except that one 6-minute period per hour may be up to 27%. For opacity, the method of compliance shall be COMS or EPA Method 9 when the COMS data is unavailable. [Rules 62-4.070(3), 62-210.200 (BACT), and 62-212.400(PSD]

16. Ammonia: Ammonia slip shall not exceed 5 ppmvd @ 6% O_2 as determined by EPA Conditional Test Method CTM–027.

17. Mercury (Hg): Emissions of mercury from SGS unit 3 shall not exceed 7.05×10^{-6} lb/MWh based on a 12-month rolling average as determined by the methods and requirements specified in the NSPS Subpart Da provisions of 40 CFR 60.45(b) and 60.50(g). In addition, mercury emissions shall not exceed 0.059 tons per 12-month rolling period (combined for SGS Units 1, 2 and Unit 3), based upon a CEMS or sorbent trap monitoring system (when operational and certified). Testing of mercury emissions shall be required if installation/certification of the CEMS or sorbent trap monitoring system is delayed. [Rules 62-4.070(3), and 62-212.400(12)(PSD Avoidance), F.A.C, and 40 CFR 60.45Da (b) and 60.50Da(g)]

18. Nitrogen Oxides (NO_X): Emissions of NO_X from SGS Unit 3 shall not exceed 1.0 pounds per megawatt hour (lb/MW-hr) gross energy output nor 0.07 lb/MMBtu, based upon a 30-day rolling average as determined by CEMS. In addition, NOx emissions shall not exceed 23,289 tons per 12-month rolling period (facility- wide), based upon CEMS. [Rules 62-4.070(3), and 62-212.400(12)(PSD Avoidance), F.A.C, Applicant Request]

    {Permitting Note: This project did not trigger PSD for SO_2, SAM, Hg and NO_X due to emissions caps taken on existing coal fired boiler steam electric generating Units 1 and Unit 2. The conditions herein establish the requirements for meeting the specified emission limitations for purposes of avoiding PSD preconstruction review. These requirements in no way supersede any federal requirement of applicable NSPS provisions.}

19. Fluorides (HF): Emissions of fluorides from SGS Unit 3 shall not exceed 0.00023 lb/MMBtu as determined by an initial (and Title V renewal) stack test and in accordance with EPA Method 13A or 13B. [Rules 62-4.070(3), 62-210.200 (BACT), and 62-212.400(PSD), F.A.C]

20. Unconfined Particulate Emissions: The following requirements shall be met to minimize fugitive dust emissions from the storage and handling facilities, including haul roads:

    a. All conveyors and conveyor transfer points will be enclosed to the extent practical, so as to preclude PM emissions.
    b. Water sprays or chemical wetting agents and stabilizers will be applied to storage piles, handling equipment, roadways, etc. as necessary to minimize opacity.

    [Rule 62-296.320(4)(c), F.A.C.]

21. Testing Requirements: Initial tests shall be conducted between 90% and 100% of permitted capacity; otherwise, this permit shall be modified to reflect the true maximum capacity as constructed. Subsequent annual tests shall be conducted between 90% and 100% of permitted capacity in accordance with the requirements of Rule 62-297.310(2), F.A.C. For each run during tests for visible emissions and ammonia slip, emissions of CO and NO_X recorded by the CEMS shall also be reported. [Rule 62-297.310(7)(a), F.A.C.; 40 CFR 60.8]

22. Initial Compliance Demonstration: Initial tests when firing 100% coal shall be conducted to demonstrate compliance with the emissions standards for CO, PM, opacity, VOC, HF, SAM, Hg, and ammonia slip. Initial compliance stack tests shall be conducted within 60 days after achieving the maximum production

rate at which SGS Unit 3 will be operated, but not later than 180 days after the initial startup. The initial CO emissions test when firing 100% coal is a one-time validation test. The permittee shall provide the Compliance Authority with any other emissions performance tests conducted to satisfy vendor guarantees. [Rules 62-4.070, 62-297.310(7)(a), F.A.C. and 40 CFR 60.8]

23. Subsequent Compliance Testing: During each federal fiscal year (October 1st, to September 30th), annual tests shall be conducted to demonstrate compliance with the emissions standards for PM, opacity, VOC, SAM, Hg, and ammonia slip. During the year prior to renewal of the Title V Air operation permit, tests shall be conducted to demonstrate compliance with the HF emissions standard. The Department may require additional testing for ammonia slip following catalyst replacement. [Rules 62-4.070, 62-210.200(BACT), and 62-297.310(7)(a)4, F.A.C., and 40 CFR 60.50]

24. Continuous Compliance: Continuous compliance with the permit standards for emissions of CO, Hg, NO_X, and SO_2 shall be demonstrated with data collected from the required continuous monitoring systems. [Rules 62-4.070, and 62-210.200(BACT), F.A.C., 40 CFR 60.50Da]

25. Special Compliance Tests: When the Department, after investigation, has good reason (such as complaints, increased visible emissions or questionable maintenance of control equipment) to believe that any applicable emission standard contained in a Department rule or in a permit issued pursuant to those rules is being violated, it shall require the owner or operator of the emissions unit to conduct compliance tests which identify the nature and quantity of pollutant emissions from the emissions unit and to provide a report on the results of said tests to the Department. [Rule 62-297.310(7)(b), F.A.C.]

EXCESS EMISSIONS

26. Operating Procedures: The Best Available Control Technology (BACT) determinations established by this permit rely on "good operating practices" to reduce emissions. Therefore, all operators and supervisors shall be properly trained to operate and ensure maintenance of the SGS unit 3 pollution control systems in accordance with the guidelines and procedures established by each manufacturer. The training shall include good operating practices as well as methods for minimizing excess emissions. [Rules 62-4.070(3) and 62-210.200(BACT), F.A.C.]

27. Definitions:

    a. *Startup* is defined as the commencement of operation of any emissions unit which has shut down or ceased operation for a period of time sufficient to cause temperature, pressure, chemical or pollution control device imbalances, which result in excess emissions.

    b. *Shutdown* is the cessation of the operation of an emissions unit for any purpose.

    c. *Malfunction* is defined as any unavoidable mechanical and/or electrical failure of air pollution control equipment or process equipment or of a process resulting in operation in an abnormal or unusual manner.

    [Rule 62-210.200(164, 241, and 257), F.A.C.]

28. Excess Emissions Prohibited: Excess emissions caused entirely or in part by poor maintenance, poor operation or any other equipment or process failure that may reasonably be prevented during startup, shutdown or malfunction shall be prohibited. All such preventable emissions shall be included in any compliance determinations based on CEMS data. [Rule 62-210.700(4), F.A.C.]

29. Excess Emissions Allowed: Excess emissions resulting from startup, shutdown and malfunction of SGS Unit 3 shall be permitted providing:

    a. Best operational practices to minimize emissions are adhered to, and

b. The duration of excess emissions from startup, shutdown and malfunction of SGA Unit 3 shall be minimized, but in no case exceed 60 hours during any calendar month.

{Permitting Note: Due to of the large size of this boiler and steam turbine, and the design necessity to minimize thermal stresses, unit start-ups are expected to be long in duration. As a result, this condition provides authorization of 2 hours per 24 hour period of excess emissions related to startup, shutdown, and malfunction to be averaged over a calendar month rather than fixed on a daily basis.} [Rule 62-210.700(5), F.A.C.]

30. Data Exclusion Procedures: Limited amounts of CEMS emissions data collected during startup, shutdown, and malfunction may be excluded from compliance demonstrations (not including annual emissions caps) as approved by the Compliance Authority, provided that best operational practices to minimize emissions are adhered to, they are authorized by this permit and the duration of data excluded is minimized. The startup and shutdown of Unit 3 will follow an established startup and shutdown procedure, which shall be submitted prior to the initial unit start-up, for the Department's review and acceptance. [Design; Rules 62-210.200(BACT), 62-212.400(PSD), and 62-210.700, F.A.C.]

31. Ammonia Injection: Ammonia injection shall begin as soon as the SCR achieves the operating parameters specified by the manufacturer. Such information shall be provided within the startup and shutdown protocol identified above. [Design; Rules 62-210.200(BACT), 62-212.400(PSD), and 62-210.700, F.A.C.]

32. Notification Requirements: The owner or operator shall notify the Compliance Authority within one working day of discovering any emissions that demonstrate non-compliance for a given averaging period. Within one working day of occurrence, the owner or operator shall notify the Compliance Authority of any malfunction resulting in the exclusion of CEMS data. [Rule 62-4.070, F.A.C.]

CONTINUOUS MONITORING REQUIREMENTS

33. CEM Systems: The permittee shall install, calibrate, operate, and maintain continuous emission monitoring systems (CEMS) to measure and record the emissions of CO, NO_X, SO_2, and Hg. Each monitoring system shall be installed, and functioning within the required performance specifications by the time of the initial compliance demonstration.

    a. *CO Monitor:* The CO monitor shall be installed pursuant to 40 CFR 60, Appendix B, Performance Specification 4 or 4A. Quality assurance procedures shall conform to the requirements of 40 CFR 60, Appendix F. The RATA tests required for the CO monitor shall be performed using EPA Method 10 in Appendix A of 40 CFR 60 and shall be based on a continuous sampling train. The CO monitor span values shall be set appropriately, considering the allowable methods of operation and corresponding emission standards.

    b. *NO_X Monitor:* A NO_X monitor installed to meet the requirements of 40 CFR 75, and that is continuing to meet the ongoing requirements of Part 75, may be used to meet the requirements of this permit and 40 CFR 60.49(c), Subpart Da, except that the owner or operator shall also meet the requirements of 40 CFR 60.51 and the specific conditions of this permit. Data reported to meet the requirements of 40 CFR 60.51 and the limits of this permit shall not include data substituted using the missing data procedures in Subpart D of Part 75, nor shall the data have been bias adjusted according to Part 75. The RATA tests required for the NOx monitor shall be performed using EPA Method 7 or 7E in Appendix A of 40 CFR 60 or as allowed by Part 75.

    c. *SO_2 Monitor:* The SO_2 monitor shall be installed pursuant to 40 CFR 60, Appendix B, Performance Specification 2. Quality assurance procedures shall conform to the requirements of 40 CFR 60, Appendix F. The RATA tests required for the SO_2 monitor shall be performed using EPA Method 6 or 6C in Appendix A of 40 CFR 60. The SO_2 monitor span value shall be set according to 40 CFR 60.49(i).

d. *Mercury Monitor:* Either a mercury CEMS shall be installed to measure mercury emissions pursuant to 40 CFR 60, Performance Specification 12A and to meet the requirements of 40 CFR 60.49(p); or a sorbent trap monitoring system shall be installed pursuant to 40 CFR Part 75, Appendix K.

e. *Diluent Monitor:* The oxygen (O_2) or carbon dioxide (CO_2) content of the flue gas shall be continuously monitored at the location where CO, NO_X, and SO_2 are monitored. Each monitor shall comply with the performance and quality assurance requirements of 40 CFR 75.

[Rules 62-4.070(3), 62-210.200(BACT), F.A.C., and 40 CFR 60.49 and Part 75]

34. Continuous Flow Monitor: A continuous flow monitor shall be installed to determine stack exhaust flow rate to be used in determining mass emission rates. The flow monitor shall be certified and operated according to the requirements of 40 CFR 75. As an alternative to the stack flow monitor, a fuel flow monitoring system certified and operated according to the requirements of Appendix D of 40 CFR Part 75 may be installed. [Rules 62-4.070(3), 62-210.200(BACT), F.A.C., and 40 CFR 60.49 and Part 75]

35. Wattmeter: A wattmeter (or meters) to continuously measure the gross electrical output of the unit in megawatt-hours must be installed, calibrated, maintained, and operated in accordance with the manufacturer's specifications. [40 CFR 60.49]

36. Moisture Correction: If necessary, the owner or operator shall install a system to determine the moisture content of the exhaust gas and develop an algorithm to enable correction of the monitoring results to a dry basis (0% moisture). [Rules 62-4.070(3), 62-210.200(BACT), F.A.C]

37. Ammonia Monitoring Requirements: In accordance with the manufacturer's specifications, the permittee shall install, calibrate, operate and maintain an ammonia flow meter to measure and record the ammonia injection rate to the SCR system prior to the initial compliance tests. The permittee shall document and periodically update the general range of ammonia flow rates required to meet permitted emissions levels over the range of load conditions allowed by this permit by comparing NO_X emissions recorded by the CEM system with ammonia flow rates recorded using the ammonia flow meter. During NO_X monitor downtimes or malfunctions, the permittee shall operate at the ammonia flow rate that is consistent with the documented flow rate for the load condition. [Rules 62-4.070(3) and 62-210.200(BACT), F.A.C.]

38. CEMS Data Requirements:

a. *Data Collection*: Except for continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions shall be monitored and recorded during all operation including startup, shutdown, and malfunction.

b. *Operating Hours and Operating Days*: An hour is the 60-minute period beginning at the top of each hour. Any hour during which an emissions unit is in operation for more than 15 minutes is an operating hour for that emission unit. A day is the 24-hour period from midnight to midnight. Any day with at least one operating hour for an emissions unit is an operating day for that emission unit.

c. *Valid Hour*: Each CEMS shall be designed and operated to sample, analyze, and record data evenly spaced over the hour at a minimum of one measurement per minute. All valid measurements collected during an hour shall be used to calculate a 1-hour block average that begins at the top of each hour.

1) Hours that are not operating hours are not valid hours.

2) For each operating hour, the 1-hor block average shall be computed from at least two data points separated by a minimum of 15 minutes. If less than two such data points are available, there is insufficient data and the 1-hour block average is not valid.

d. *Rolling 24-Hour Average:* Compliance shall be determined after each valid hourly average is obtained by calculating the arithmetic average of that valid hourly average and the previous 23 valid hourly

averages.

e. *Rolling 30-day Average*: Compliance shall be determined after each operating day by calculating the arithmetic average of all the valid hourly averages from that operating day and the prior 29 operating days.

f. *Rolling 12-month Period*: Compliance shall be determined after each calendar month by calculating the total emissions from that calendar month and the last 11 calendar months.

g. *Missing Data/Bias Adjustments:* If the owner or operator has installed a CEMS to meet the requirements of Part 75, data reported to show compliance with any SIP-based limit shall not include data substituted using the missing data procedures in Subpart D of Part 75, nor shall the data have been bias adjusted according to the procedures of Part 75.

h. *Data Exclusion:* Each CEMS shall monitor and record emissions during all operations including episodes of startup, shutdown and malfunction. Limited amounts of CEMS emissions data recorded during these events may be excluded from the corresponding compliance demonstration subject to the provisions of Condition 29 in this section. When authorized, excess emissions data shall be excluded as a continuous block attributable to the startup, shutdown and malfunction event. Valid data shall not be excluded from any annual emissions caps or other annual averages (i.e., mercury).

i. *Availability*: Monitor availability for the Hg CEMS shall be 75% or greater, and for all other CEMS shall be 95% or greater in any calendar quarter. The quarterly excess emissions report shall be used to demonstrate monitor availability. In the event the applicable availability is not achieved, the permittee shall provide the Department with a report identifying the problems in achieving the required availability and a plan of corrective actions that will be taken to achieve 95% or 75% availability. The permittee shall implement the reported corrective actions within the next calendar quarter. Failure to take corrective actions or continued failure to achieve the minimum monitor availability shall be violations of this permit, except as otherwise authorized by the Department's Compliance Authority.

[Rules 62-4.070(3) and 62-210.200(BACT), F.A.C.]

REPORTING AND RECORD KEEPING REQUIREMENTS

39. Monthly Operations Summary: By the fifth calendar day of each month, the permittee shall record the following for each fuel in a written or electronic log for the previous month of operation: fuel consumption (tons or gallons as applicable), heat content of each fuel, hours of operation, and the updated 12-month rolling totals for each. Information recorded and stored as an electronic file shall be available for inspection and printing within at least three days of a request by the Department. The fuel consumption shall be monitored in accordance with the provisions of 40 CFR 75 Appendix D. [Rules 62-4.070(3) and 62-210.200(BACT), F.A.C.]

40. Emissions Performance Test Reports: A report indicating the results of any required emissions performance test shall be submitted to the Compliance Authority no later than 45 days after completion of the last test run. The test report shall provide sufficient detail on the tested emission unit and the procedures used to allow the Department to determine if the test was properly conducted and if the test results were properly computed. At a minimum, the test report shall provide the applicable information listed in Rule 62-297.310(8)(c), F.A.C. [Rule 62-297.310(8), F.A.C.]

41. CEMS Data Assessment Report: The Data Assessment Report required by 40 CFR 60, Appendix F shall be submitted to the Compliance Authority on a quarterly basis for each CEMS required. Separate reporting may be required for CEMS installed for purposes of compliance with an NSPS limit, or Acid Rain.

42. Excess Emissions Reporting:

    a. *Malfunction Notification:* If emissions in excess of a standard (subject to the specified averaging period) occur due to malfunction, the permittee shall notify the Compliance Authority within (1) working day of: the nature, extent, and duration of the excess emissions; the cause of the excess emissions; and the actions taken to correct the problem. In addition, the Department may request a written summary report of the incident.

    b. *Quarterly Report*: Within 30 days following the end of each calendar-quarter, the permittee shall submit a report to the Compliance Authority summarizing periods of any emissions in excess of the permit standards following the NSPS format in 40 CFR 60.7(c), Subpart A. The report shall include a summary of emissions data excluded from compliance calculations due to startup, shutdown, and malfunctions as well as the duration of each event. In addition, the report shall summarize the CO, NO_X, SO_2, and Hg CEMS systems monitor availability for the previous quarter.

    [Rules 62-4.130, 62-204.800, 62-210.700(6), F.A.C., and 40 CFR 60.7, 60.51, and 60.4375]

43. CBO Configuration: Daily records shall be daily kept of the CBO operation and configuration, such that the permittee can demonstrate compliance with the emission limitations of the affected emissions units.

B. ZLD Spray Dryers (EU 016)

ID	Emission Unit Description
016	Diesel-Fired Zero Liquid Discharge (ZLD) Spray Dryers (bank of 3)

APPLICABLE STANDARDS AND REGULATIONS

1. BACT Determinations: The emission unit addressed in this section is subject to a Best Available Control Technology (BACT) determination for carbon monoxide (CO), volatile organic compounds (VOC) and particulate matter (PM/PM_{10}). [Rule 62-210.200 (BACT), F.A.C.]

EQUIPMENT SPECIFICATIONS

2. Equipment: The permittee is authorized to install, operate, and maintain one liquid spray dryer system consisting of a bank of three, diesel-fired liquid spray dryers. This system will be designed to remove the moisture from the wastewater treatment effluent, via a process which involves the atomization of concentrated wastewater into a spray of droplets and contacting the droplets with hot air in a drying chamber. The dryers will be fired by diesel fuel oil. [Applicant Request; Rule 62-210.200(PTE), F.A.C.]

PERFORMANCE REQUIREMENTS

3. Hours of Operation: The hours of operation are not restricted (8760 hours per year). [Applicant Request; Rule 62-210.200(PTE), F.A.C.]

4. Authorized Fuels: Only No.1 or No. 2 diesel fuel containing no more than 0.05% sulfur by weight shall be fired in the spray dryers. The maximum design heat input for the bank of spray dryers shall be limited to 50 MMBtu per hour. [Applicant Request; Rule 62-210.200(PTE), F.A.C.]

5. Control Equipment: A baghouse will be used to limit PM/PM_{10} emissions, having an efficiency of greater than 99.5 percent. The baghouse must be designed, operated, and maintained to achieve 0.3 lb/hr/dryer. As a work practice standard, an opacity limit of 5% is established. [Application; Rules 62-210.200 (PTE, and BACT) and 62-212.400 (PSD), F.A.C

6. Work Practice: Good combustion practices will be utilized at all times to ensure that CO (and VOC) emissions from the dryer system are minimized. The Best Available Control Technology (BACT) determinations established by this permit rely on "good operating practices" to reduce emissions. Therefore, all operators and supervisors shall be properly trained to operate and ensure maintenance of the ZLD Spray Dryers in accordance with the guidelines and procedures established by the manufacturer. The training shall include good operating practices as well as methods for minimizing excess emissions. [Rules 62-4.070(3) and 62-210.200(BACT), F.A.C.]

NOTIFICATION, REPORTING, AND RECORDS

7. Control Device Records: The permittee shall keep readily accessible records which demonstrate that the ZLD Spray Dyer baghouse is operating properly. Such records shall include documentation of daily observations by operators as well as maintenance records on the baghouse and bag replacements. [Rule 62-4.030, F.A.C.]

8. Fuel Records: The permittee shall keep records sufficient to determine the daily throughput of diesel fuel oil for use in ensuring compliance with the heat input limitation. [Rule 62-204.800(7)(b)16, F.A.C]

C. SGS Unit 3 Cooling Tower (EU 015)

This section of the permit addresses the following emissions unit.

ID	Emission Unit Description
015	SGS Unit 3 Mechanical Draft Cooling Tower – twenty six cells with a 200 HP cooling fan

APPLICABLE STANDARDS AND REGULATIONS

1. BACT Determinations: The emission unit addressed in this section is subject to a Best Available Control Technology (BACT) determination for particulate matter (PM/PM_{10}). [Rule 62-210.200 (BACT), F.A.C.]

EQUIPMENT

2. Cooling Tower: The permittee is authorized to install one induced draft, counter-flow, rectangular in-line design mechanical draft cooling tower with the following nominal design characteristics: a circulating water flow rate of 360,352 gpm; a design air flow rate of 1,259,541 acfm per cell; drift eliminators; and a drift rate of no more than 0.0005 percent of the circulating water flow. [Application; Design]

EMISSIONS AND PERFORMANCE REQUIREMENTS

3. Drift Rate: Within 60 days of commencing commercial operation, the permittee shall certify that the cooling tower was constructed to achieve the specified drift rate of no more than 0.0005 percent of the circulating water flow rate. [Rule 62-210.200(BACT), F.A.C.]

{Permitting Note: This work practice standard is established as BACT for PM/PM_{10} emissions from the cooling tower. Based on these design criteria, potential emissions are estimated to be less than 10 tons of PM per year and less than 6 tons of PM_{10} per year. Actual emissions are expected to be lower than these rates.}

APPENDIX GC
GENERAL PERMIT CONDITIONS [F.A.C. 62-4.160]

G.1 The terms, conditions, requirements, limitations, and restrictions set forth in this permit are "Permit Conditions" and are binding and enforceable pursuant to Sections 403.161, 403.727, or 403.859 through 403.861, Florida Statutes. The permittee is placed on notice that the Department will review this permit periodically and may initiate enforcement action for any violation of these conditions.

G.2 This permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings or exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action by the Department.

G.3 As provided in Subsections 403.087(6) and 403.722(5), Florida Statutes, the issuance of this permit does not convey and vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations. This permit is not a waiver or approval of any other Department permit that may be required for other aspects of the total project which are not addressed in the permit.

G.4 This permit conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.

G.5 This permit does not relieve the permittee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction or operation of this permitted source, or from penalties therefore; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.

G.6 The permittee shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit, as required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.

G.7 The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at a reasonable time, access to the premises, where the permitted activity is located or conducted to:

a) Have access to and copy and records that must be kept under the conditions of the permit;
b) Inspect the facility, equipment, practices, or operations regulated or required under this permit, and,
c) Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.

Reasonable time may depend on the nature of the concern being investigated.

G.8 If, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department with the following information:

a) A description of and cause of non-compliance; and
b) The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the non-compliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the non-compliance.

The permittee shall be responsible for any and all damages, which may result and may be subject to enforcement action by the Department for penalties or for revocation of this permit.

G.9 In accepting this permit, the permittee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this permitted source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the permitted source arising under the Florida Statutes or Department rules, except where such use is prescribed by Sections 403.73 and 403.111, Florida Statutes. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

G.10 The permittee agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance, provided, however, the permittee does not waive any other rights granted by Florida Statutes or Department rules.

G.11 This permit is transferable only upon Department approval in accordance with Florida Administrative Code Rules 62-4.120 and 62-730.300, F.A.C., as applicable. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.

G.12 This permit or a copy thereof shall be kept at the work site of the permitted activity.

G.13 This permit also constitutes:

a) Determination of Best Available Control Technology ( )
b) Determination of the applicability of Prevention of Significant Deterioration (X); and
c) Compliance with New Source Performance Standards (X).

G.14 The permittee shall comply with the following:

a) Upon request, the permittee shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically unless otherwise stipulated by the Department.

b) The permittee shall hold at the facility or other location designated by this permit records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) required by the permit, copies of all reports required by this permit, and records of all data used to complete the application or this permit. These materials shall be retained at least three years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule.

c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The person responsible for performing the sampling or measurements;
3. The dates analyses were performed;
4. The person responsible for performing the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

G.15 When requested by the Department, the permittee shall within a reasonable time furnish any information required by law, which is needed to determine compliance with the permit. If the permittee becomes aware that relevant facts were not submitted or were incorrect in the permit application or in any report to the Department, such facts or information shall be corrected promptly.

EXHIBIT F

Florida Department of Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael A. Sole
Secretary

September 19, 2008

Mr. Michael Opalinski
VP Technical Services
Seminole Electric Cooperative, Inc.
16313 North Dale Mabry Highway
Tampa, FL 33688-2000

RE: Seminole Electric Cooperative, Inc.
Unit 3, Seminole Generating Station

Dear Mr. Opalinski:

I am in receipt of a letter from Mr. James Alves, Esquire, written on behalf of Seminole Electric Cooperative, Inc. to Mr. Jack Chisolm, Esquire, dated September 2, 2008, requesting that the Department of Environmental Protection (the Department) add the settlement agreement between Sierra Club and Seminole to the construction permit. Based upon this letter, the Department has opened a permit revision project to include the settlement agreement.

In addition, because the U.S. Court of Appeals for the District Court of Columbia has vacated the Clean Air Mercury Rule, the Department is required to establish a case-by-case determination of maximum achievable control technology for unit 3 and it will do so as part of this same permit revision project. The Department requests that you submit a proposal for a case-by-case determination in accordance with the requirements of 40 CFR 63.53 as soon as possible so your proposal can be considered in the Department's determination.

If you have any questions, please contact Ms. Trina Vielhauer of my staff at 850/488-0114.

Sincerely,

Joseph Kahn, Director
Division of Air Resource Management

JK/tvf

Exhibit F