

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**SOUTHERN ALLIANCE FOR CLEAN  
ENERGY, INC.**

Petitioner,

vs.

DOAH CASE NO. 09-\_\_\_\_\_  
OGC CASE NO. 09-3089

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

Respondents.

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**REQUEST FOR ASSIGNMENT OF ADMINISTRATIVE LAW JUDGE  
AND NOTICE OF PRESERVATION OF RECORD**

YOU ARE HEREBY NOTIFIED that the Florida Department of Environmental Protection (Department) has received the attached Petition for Hearing in the above-styled case. Under Section 120.569(2)(a), Florida Statutes, the Secretary has decided not to act as administrative law judge and requests that the Division of Administrative Hearings assign this matter to an administrative law judge to conduct all necessary proceedings required by law and to submit a recommended order to the Department. The forwarding of this Petition is not a waiver of the Department's right to object to any material defects in the Petition or to Petitioner's standing to institute this proceeding.

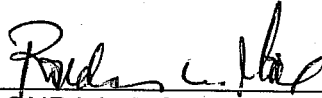
YOU ARE FURTHER NOTIFIED that the Department is responsible for preserving the record of any evidentiary hearings in this case in accordance with Section 120.57(1)(g), Florida Statutes. Unless otherwise notified by the Department prior to final hearing, such a record will be preserved by a court reporter. Any other party arranging for the presence of a court reporter at hearing should notify the administrative law judge and all parties prior to the hearing of the court reporter's name, mailing address, and telephone number.

Whenever a court reporter is used, Rule 28-106.214(2), Florida Administrative Code, provides that the court reporter's recordation becomes the official transcript.

If a party decides to file exceptions with the Department to any finding of fact made by the Administrative Law Judge, the party will need to submit an official transcript of the proceeding. A transcript may be prepared, at the expense of the requesting party, from a court reporter's notes.

RESPECTFULLY SUBMITTED this 13th day of July, 2008

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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RONDA L. MOORE

Assistant General Counsel

3900 Commonwealth Boulevard - MS 35

Tallahassee, Florida 32399-3000

Telephone 850/245-2193 Facsimile 850/245-2302

Florida Bar No. 0676411

Attachments: Written Notice of Intent to Issue a Revised Air Permit  
Petition for Formal Administrative Hearing

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing, Request for Assignment for Administrative Law Judge and Notice of Preservation of Record, was furnished via U.S. Mail on this 13th day of July, 2009, to:

James S. Alves  
Paula L. Cobb  
Hopping Green & Sams, P.A.  
123 South Calhoun Street  
Tallahassee, FL 32301

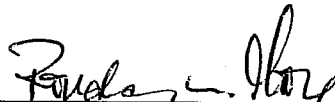
*Attorneys for Seminole Electric  
Cooperative, Inc.*

Gary A. Davis  
Gary A. Davis & Associates  
P.O. Box 649  
Hot Springs, NC 28743

*Representative for Southern  
Alliance for Clean Energy, Inc.*

David Guest  
Alisa Coe  
Earthjustice  
111 South Martin Luther King Jr. Boulevard  
Tallahassee, FL 32301

*Attorneys for Florida Wildlife Federation, Inc.*

  
\_\_\_\_\_  
RONDA L. MOORE  
Assistant General Counsel

## WRITTEN NOTICE OF INTENT TO ISSUE A REVISED AIR PERMIT

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*In the Matter of an*

*Application for Air Permit by:*

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

Project No. 1070025-011-AC  
(PSD-FL-375A)  
Seminole Generating Station  
Revisions for Proposed Unit 3 Project

*Authorized Representative:*

Mike Roddy, Manager of Environmental Affairs

**Facility Location:** Seminole Electric Cooperative, Inc. operates the existing Seminole Generating Station, which is located east of U.S. Highway 17, approximately seven miles north of Palatka, Putnam County.

**Project:** On September 5, 2008, the Department issued original Permit No. PSD-FL-375, which authorized the construction of a new nominal 750 megawatt, pulverized coal-fired supercritical steam generating unit at the existing Seminole Generating Station. On December 22, 2008, the Seminole Electric Cooperative, Inc. submitted an application to revise the original permit as follows: extend the expiration date; clarify references to the Clean Air Interstate Rule and Clean Air Mercury Rule; clarify that the maximum heat input rate is an enforceable restriction; correct the equivalent emissions rate for volatile organic compounds from 16.7 to 25.5 lb/hour; clarify that the particulate matter filterable limit of 0.013 pounds per million British thermal units applies to all fuel blends; add conditions 44 through 50 in Subsection IIIA of the permit as enforceable requirements for hazardous air pollutants; add Appendix CM identifying requirements for continuous emissions monitoring; add Appendix HP for calculating actual emissions of hazardous air pollutants; and add the Sierra Club Agreement dated March 19, 2007 as Appendix SC.

The project is a minor revision of the original air construction permit for Unit 3, which has not yet been constructed. There will be no emissions increases; therefore, the project is not subject to additional preconstruction review pursuant to Rule 62-212.400, F.A.C. for the Prevention of Significant Deterioration (PSD) of Air Quality, but will be a revision of the original air construction permit. Because PSD preconstruction review is not triggered, the Department did not conduct a new review for Best Available Control Technology (BACT) nor make any changes to the prior BACT determinations. The Department's original BACT determinations remain unchanged. For additional details, see the attached Technical Evaluation and Preliminary Determination and Draft Permit.

**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 Bureau of Air Regulation is the Permitting Authority responsible for making a permit determination for this project. The Permitting Authority's physical address is: 111 South Magnolia Drive, Suite #4, Tallahassee, Florida. The Permitting Authority's mailing address is: 2600 Blair Stone Road, MS #5505, Tallahassee, Florida 32399-2400. The Permitting Authority's telephone 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 address indicated above for the Permitting Authority. The complete project file includes the Draft Permit, the Technical Evaluation and Preliminary 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 or phone number listed above.

**Notice of Intent to Issue Permit:** 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 the

## WRITTEN NOTICE OF INTENT TO ISSUE A REVISED AIR PERMIT

proposed equipment will not adversely impact air quality and that the project will comply with all appropriate 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.

**Public Notice:** Pursuant to Section 403.815, F.S. and Rules 62-110.106 and 62-210.350, F.A.C., you (the applicant) are required to publish at your own expense the enclosed Public Notice of Intent to Issue Air Permit (Public Notice). The Public Notice shall be published one time only as soon as possible in the legal advertisement section of a newspaper of general circulation in the area affected by this project. The newspaper used must meet the requirements of Sections 50.011 and 50.031, F.S. in the county where the activity is to take place. If you are uncertain that a newspaper meets these requirements, please contact the Permitting Authority at the above address or phone number. Pursuant to Rule 62-110.106(5) and (9), F.A.C., the applicant shall provide proof of publication to the Permitting Authority at the above address within 7 days of publication. Failure to publish the notice and provide proof of publication may result in the denial of the permit pursuant to Rule 62-110.106(11), F.A.C.

**Comments:** The Permitting Authority will accept written comments concerning the proposed Draft Permit and requests for a public meeting for a period of 30 days from the date of publication of the Public Notice. Written comments must be received by the Permitting Authority by close of business (5:00 p.m.) on or before the end of this 30-day period. In addition, if a public meeting is requested within the 30-day comment period and conducted by the Permitting Authority, any oral and written comments received during the public meeting will also be considered by the Permitting Authority. If timely received comments result in a significant change to the Draft Permit, the Permitting Authority shall revise the 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. Petitions filed by the applicant or any of the parties listed below must be filed within 14 days of receipt of this Written Notice of Intent to Issue Air Permit. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the attached Public Notice or within 14 days of receipt of this Written Notice of Intent to Issue Air Permit, whichever occurs first. Under Section 120.60(3), F.S., however, any person who asked the Permitting Authority for notice of agency action may file a petition within 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 (in a proceeding initiated by another party) 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 when and how each petitioner received notice of the agency action or proposed decision; (d) A statement of all disputed issues of material fact. If there are none, the petition must so state; (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends

**WRITTEN NOTICE OF INTENT TO ISSUE A REVISED AIR PERMIT**


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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 including an explanation of how the alleged facts relate to the specific rules or statutes; 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 designed to formulate final agency action, the filing of a petition means that the Permitting Authority's final action may be different from the position taken by it in this Written Notice of Intent to Issue Air Permit. Persons whose substantial interests will be affected by any such final decision of the Permitting Authority on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

**Mediation:** Mediation is not available in this proceeding.

Executed in Tallahassee, Florida.



Trina Vielhauer, Chief  
Bureau of Air Regulation

**WRITTEN NOTICE OF INTENT TO ISSUE A REVISED AIR PERMIT**

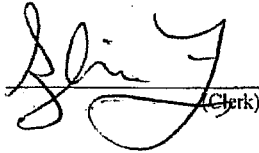
**CERTIFICATE OF SERVICE**

The undersigned duly designated deputy agency clerk hereby certifies that this Written Notice of Intent to Issue Air Permit package (including the Written Notice of Intent to Issue Air Permit, the Public Notice of Intent to Issue Air Permit, the Technical Evaluation and Preliminary Determination and the Draft Permit) was sent by electronic mail (or a link to these documents made available electronically on a publicly accessible server) with received receipt requested before the close of business on 6/12/09 to the persons listed below.

Mr. Mike Roddy, SECI (wmroddy@seminole-electric.com)  
Mr. James R. Frauen, SECI (jfrauen@seminole-electric.com)  
Mr. Scott Osbourn, Golder Associates (sosbourn@golder.com)  
Mr. Robert Manning, Hopping, Green & Sams (rmanning@hgslaw.com)  
Mr. Jim Alves, Hopping, Green & Sams (jalves@hgslaw.com)  
Mr. Mike Halpin, DEP Site Certification (mike.halpin@dep.state.fl.us)  
Mr. Chris Kirts, NED (christopher.kirts@dep.state.fl.us)  
Ms. Phyllis Fox, Ph.D. (phyllisfox@gmail.com)  
Ms. Kathleen Forney, EPA Region 4 (forney.kathleen@epa.gov)  
Ms. Heather Abrams, EPA Region 4 (abrams.heather@epamail.epa.gov)  
Ms. Kristin Henry, Sierra Club (kristin.henry@sierraclub.org)  
Ms. Joanne Spalding, Sierra Club (joanne.spalding@sierraclub.org)  
Ms. Catherine Collins, U.S. Fish and Wildlife Service (catherine\_collins@fws.gov)  
Mr. George Cavros, on behalf of Natural Resources Defense Council and Southern Alliance for Clean Energy (gcavros@att.net)  
Ms. Victoria Gibson, BAR Reading File (victoria.gibson@dep.state.fl.us)

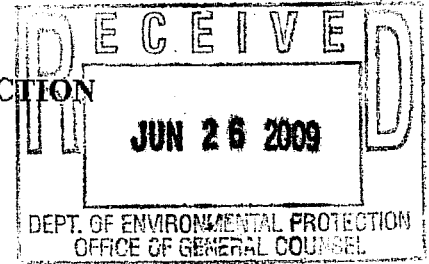
Clerk Stamp

**FILING AND ACKNOWLEDGMENT FILED**, on this date, pursuant to Section 120.52(7), Florida Statutes, with the designated agency clerk, receipt of which is hereby acknowledged.

  
(Clerk)

6/12/09  
(Date)

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



SOUTHERN ALLIANCE FOR CLEAN  
ENERGY,

Petitioner,

v.

Case No.: FDEP File No. 1070025-011-AC  
(PSD-FL-375)

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

Respondents.

PETITION FOR ADMINISTRATIVE HEARING BY SOUTHERN  
ALLIANCE FOR CLEAN ENERGY

Pursuant to §§ 120.569 and 120.57(1), Fla. Stat., Southern Alliance for Clean Energy ("SACE") petitions for a formal administrative hearing challenging the Florida Department of Environmental Protection's ("DEP") Intent to Issue Air Permit No. 1070025-011-AC (PSD-FL-375) to Seminole Electric Cooperative, Inc. ("Seminole Electric") and would show as follows:

**PARTIES**

1. The agency affected is the Florida Department of Environmental Protection ("FDEP"), and the address for purposes of this proceeding is Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000, (850)245-2241, Fax (850)245-2303. The FDEP File Number for this application is FDEP File No. 1070025-011-AC.

2. This Petition is filed on behalf of the Southern Alliance for Clean Energy, a Tennessee nonprofit corporation operating in Florida, with its principal address at P.O. Box



~~1842, Knoxville, TN 37901, telephone number (865) 657-6055. SACE is represented in this~~  
proceeding by Gary A. Davis, qualified representative, with the following contact information:  
61 North Andrews Avenue, P.O. Box 649, Hot Springs, NC 28743, telephone number (828) 622-  
3673, (828) 622-7610 (fax).

3. Seminole Electric Cooperative, Inc. is the applicant for the challenged air permit. It is an active Florida corporation with its registered agent as Timothy Woodbury, 16313 North Dale Mabry Highway, Tampa, Florida, 33618.

### **SUBSTANTIAL INTERESTS OF PETITIONER**

4. SACE is a regional organization with the mission to promote responsible energy choices that create global warming solutions and ensure clean, safe and healthy communities throughout the Southeast. To support this mission, SACE represents the interests of its members throughout the Southeast, including Florida, in public education, policy advocacy, and litigation in administrative and court proceedings. SACE has a substantial number of members in Putnam County, Florida, and surrounding counties, who would be directly and substantially affected by the challenged coal-fired electric power plant.

5. The challenged permit for a new Seminole 750 megawatt coal-fired electric power plant in Palatka, Florida, would authorize the emissions of significant quantities of new air pollutants, including particulate matter, nitrogen oxides, sulfur dioxide, sulfuric acid mist, carbon monoxide, volatile organic compounds, fluorides, beryllium, and mercury, all pollutants that are harmful to human health and the environment. In addition, nitrogen oxides react with volatile organic compounds in the atmosphere in the presence of sunlight to create harmful levels of ozone. Members of SACE residing in the Putnam County area would be directly impacted by the emissions and other impacts of the proposed Seminole Unit 3, including impacts to their health

from breathing unhealthy pollutants emitted by the plant and negative impacts on their property. Other members of the SACE, who recreate in the area where emissions from the plant would be carried by the prevailing winds, would be directly impacted by impacts to fish and wildlife as a result of emissions from the plant, including mercury, and by reduction in visibility caused by emissions from the plant. Members of SACE in Florida also own property at or near sea level that is prone to flooding with even a small sea level rise. The Glades power plant would release millions of tons of carbon dioxide into the atmosphere which would contribute to global warming and sea level rise and, therefore, directly impact these members. These impacts will substantially affect a substantial number of SACE members, and SACE meets the standing requirements of §§ 120.569 and 120.57, Fla. Stat.

6. As provided in § 403.412(7), Fla. Stat., this matter pertains to a federally delegated or approved program, and SACE meets the standing requirements for judicial review of a case or controversy pursuant to Article III of the United States Constitution,

#### **RECEIPT OF NOTICE**

7. SACE received notice of this action on June 12, 2009, by copy of the Notice of Intent to Issue, which was forwarded by DEP in response to SACE's request for notice, as required by §120.60(3), Fla. Stat. This petition was filed within fourteen days of SACE's receipt of notice and thus is timely filed, pursuant to §§ 120.569 and 120.57, Fla. Stat., and Fla. Admin. Code R. 62-110.106(3).

#### **STATEMENT OF DISPUTED ISSUES OF MATERIAL FACT**

8. Whether reasonable assurances have been provided that there is no potential to emit 10 tons per year or more of any Hazardous Air Pollutant or 25 tons per year or more of any

combination of Hazardous Air Pollutants such that the draft permit should not be considered a "major source" of Hazardous Air Pollutants.

9. Whether reasonable assurances have been provided that the compliance methodology in Appendices CM and HP to the draft permit assures total Hazardous Air Pollutant emissions are less than 25 tons during any consecutive rolling 12-month period.

10. Whether reasonable assurances have been provided that the compliance methodology in Appendices CM and HP to the draft permit assures individual Hazardous Air Pollutant emissions shall be less than 10 tons during any consecutive rolling 12-month period.

11. Whether reasonable assurances have been provided that the detection limit and accuracy of the hydrochloric acid and hydrofluoric acid continuous emissions monitoring system assures that total acid gas emissions (hydrochloric acid plus hydrofluoric acid) do not exceed 9.75 tons during any consecutive rolling 12-month period.

12. Whether the draft permit must contain limits on chlorine, fluorine, and all Hazardous Air Pollutant metals in the coal in order for the new unit to avoid "major source" status for Hazardous Air Pollutants and thereby avoid case-by-case Maximum Achievable Control Technology review, which would otherwise be required by Fla. Admin. Code R. 62-204.800(11) and 40 C.F.R. Part 63.

13. Whether reasonable assurances have been provided that the monitoring provisions assure that total acid gas Hazardous Air Pollutants are controlled with an efficiency of at least 99.7%.

14. Whether continuous emissions monitoring systems for PM are required in order for the new unit to avoid "major source" status for Hazardous Air Pollutants and thereby avoid

case-by-case Maximum Achievable Control Technology review, which would otherwise be required by Fla. Admin. Code R. 62-204.800(11) and 40 C.F.R. Part 63.

15. Whether continuous emissions monitoring systems for volatile organic compounds are required in order for the new unit to avoid "major source" status for Hazardous Air Pollutants and thereby avoid case-by-case Maximum Achievable Control Technology review, which would otherwise be required by Fla. Admin. Code R. 62-204.800(11) and 40 C.F.R. Part 63.

16. Whether reasonable assurances have been provided that the conditions in Appendix SC to the draft permit are continuously enforceable.

17. Whether the revisions to the Seminole PSD construction permit affect other operations and emissions authorized by the original permit.

18. Whether a proper analysis was conducted to determine the Best Available Control Technology ("BACT") for carbon monoxide, volatile organic compounds, fluorides, opacity and particulate matter, including PM2.5 and PM10, emissions from the pulverized coal-fired boiler.

19. Whether a Best Available Control Technology analysis is required for nitrogen oxides, sulfur dioxide, sulfuric acid mist, fine particulate matter, and carbon dioxide emissions from the pulverized coal-fired boiler.

20. Whether the emissions limits in the draft permit reflect Best Available Control Technology for carbon monoxide, volatile organic compounds, fluorides, PM2.5, PM10, sulfuric acid mist, opacity, and carbon dioxide.

21. Whether reasonable assurances have been provided that accurate modeling was conducted of sulfur dioxide emissions with regard to the impact on Class I areas.

22. Whether reasonable assurances have been provided that sufficient pre-construction meteorological data gathering was conducted for use in the Prevention of Significant Deterioration application modeling.

23. Whether emission rate *de minimus* levels were incorrectly applied to exempt Seminole Electric from further air quality analyses.

24. Whether reasonable assurances have been provided that the use of Jacksonville meteorological data for modeling is representative of the project site.

25. Whether reasonable assurances have been provided that the use of Jacksonville meteorological data for modeling is of appropriate quality for modeling the project site.

26. Whether the use of National Ambient Air Quality Standards Significant Impact Levels, as specified in 40 C.F.R. § 51.165(b)(2), is allowable for Prevention of Significant Deterioration compliance purposes.

27. Whether the use of National Ambient Air Quality Standards Significant Impact Levels, as specified in 40 C.F.R. § 51.165(b)(2), improperly exempted Seminole units 1 and 2 from proper Prevention of Significant Deterioration and National Ambient Air Quality Standards compliance analysis.

28. Whether reasonable assurances have been provided that cumulative Class I and Class II Prevention of Significant Deterioration area impacts from units 1, 2, and 3 were properly assessed.

29. Whether reasonable assurances have been provided that cumulative National Ambient Air Quality Standards impacts from units 1, 2, and 3 were properly assessed.

30. Whether reasonable assurances have been provided that Seminole Electric accurately calculated and modeled all emissions from proposed unit 3.

31. Whether reasonable assurances have been provided that Seminole Electric accurately calculated and modeled all emissions from existing units 1 and 2.
32. Whether reasonable assurances have been provided that the Class I modeling impact analysis was prepared correctly.
33. Whether reasonable assurances have been provided that the Class I modeling impact analyses includes all potential emission sources.
34. Whether reasonable assurances have been provided that the Class I modeling impact analyses properly address all potential air quality related values, including but not limited to visibility, nitrogen and sulfur deposition.
35. Whether reasonable assurances have been provided that project and regional ozone impacts were properly assessed.
36. Whether reasonable assurances have been provided that regional PM<sub>2.5</sub> impacts from the existing and proposed project have been assessed.
37. Whether reasonable assurances have been provided that the analysis supporting the draft permit included a correct assessment of how emissions from the new unit impair soils and vegetation.
38. Whether consideration of Integrated Gasification Combined Cycle technology as Best Available Control Technology must be included.
39. Whether reasonable assurances have been provided that the draft permit limits for volatile organic compounds, fluorides, coal soot (PM, PM<sub>10</sub>), sulfuric acid mist and ammonia are sufficiently enforceable limits.

40. Whether reasonable assurances have been provided that the permit limits for Seminole Units 1 and 2 are sufficiently enforceable limits, such that they support emissions credits for Seminole Unit 3.

41. Whether reasonable assurances have been provided that the startup and shutdown exemption in the draft permit for Prevention of Significant Deterioration pollutants was properly modeled.

42. Whether the startup and shutdown exemption for Prevention of Significant Deterioration pollutants in the draft permit reflects Best Available Control Technology.

43. Whether reasonable assurances have been provided that the new unit will not cause or lead to a violation of the Prevention of Significant Deterioration increments.

44. Whether reasonable alternatives to the new unit were considered.

45. Whether reasonable assurances have been provided that the draft permit limits will protect public health.

46. Whether reasonable assurances have been provided that the construction of the new unit will not have a disproportionate impact on minority or economically disadvantaged communities.

**ULTIMATE FACTS DEMONSTRATING THAT PROPOSED  
AGENCY ACTION SHOULD BE REVERSED**

47. Reasonable assurances have not been provided that there is no potential to emit 10 tons per year or more of any Hazardous Air Pollutant or 25 tons per year or more of any combination of Hazardous Air Pollutants. Accordingly, the draft permit should be considered a "major source" of Hazardous Air Pollutants. 42 U.S.C. § 7412; 40 C.F.R. § 63.41; Fla. Admin. Code R. 62-204.800(11); *see also* 40 C.F.R. Part 63.

48. Reasonable assurances have not been provided that the compliance methodology in Appendices CM and HP to the draft permit assures total Hazardous Air Pollutant emissions are less than 25.00 tons during any consecutive rolling 12-month period. 42 U.S.C. § 7412; 40 C.F.R. § 63.41; Fla. Admin. Code R. 62-204.800 (Florida rule that incorporates by reference 40 C.F.R. part 63); *see also* 40 C.F.R. Part 63.

49. Reasonable assurances have not been provided that the compliance methodology in Appendices CM and HP to the draft permit assures individual Hazardous Air Pollutant emissions shall be less than 10.00 tons during any consecutive rolling 12-month period. 42 U.S.C. § 7412; 40 C.F.R. § 63.41; Fla. Admin. Code R. 62-204.800 (Florida rule that incorporates by reference 40 C.F.R. part 63); *see also* 40 C.F.R. Part 63.

50. Reasonable assurances have not been provided that the detection limit and accuracy of the hydrochloric acid and hydrofluoric acid continuous emissions monitoring system assure that total acid gas emissions (hydrochloric acid plus hydrofluoric acid) will not exceed 9.75 tons during any consecutive rolling 12-month period. 42 U.S.C. § 7412; 40 C.F.R. § 63.41; Fla. Admin. Code R. 62-204.800 (Florida rule that incorporates by reference 40 C.F.R. part 63); *see also* 40 C.F.R. Part 63.

51. The draft permit does not contain limits on chlorine, fluorine, and all Hazardous Air Pollutant metals in the coal that would be required in order for the new unit to avoid "major source" status for Hazardous Air Pollutants and thereby avoid case-by-case Maximum Achievable Control Technology review under 40 C.F.R. §§ 63.40-63.44. 42 U.S.C. § 7412; 40 C.F.R. § 63.41; Fla. Admin. Code R. 62-204.800 (Florida rule that incorporates by reference 40 C.F.R. part 63); *see also* 40 C.F.R. Part 63.



52. Reasonable assurances have not been provided that the monitoring provisions assure that total acid gas Hazardous Air Pollutants are controlled with an efficiency of at least 99.7%. 42 U.S.C. § 7412; 40 C.F.R. § 63.41; Fla. Admin. Code R. 62-204.800 (Florida rule that incorporates by reference 40 C.F.R. part 63); *see also* 40 C.F.R. Part 63.

53. Continuous emissions monitoring systems for coal soot are required. Without these, the new unit is a "major source" for Hazardous Air Pollutants and thereby subject to case-by-case Maximum Achievable Control Technology review, required by 40 C.F.R. §§ 63.40-63.44. 42 U.S.C. § 7412; 40 C.F.R. § 63.41; Fla. Admin. Code R. 62-204.800 (Florida rule that incorporates by reference 40 C.F.R. part 63); *see also* 40 C.F.R. Part 63.

54. Continuous emissions monitoring systems for volatile organic compounds are required in order for the new unit to avoid "major source" status for Hazardous Air Pollutants and thereby avoid case-by-case Maximum Achievable Control Technology review under 40 C.F.R. §§ 63.40-63.44. 42 U.S.C. § 7412; 40 C.F.R. § 63.41, Fla. Admin. Code R. 62-204.800 (Florida rule that incorporates by reference 40 C.F.R. part 63); *see also* 40 C.F.R. Part 63.

55. Reasonable assurances have not been provided that the conditions in Appendix SC to the draft permit are continuously enforceable. 42 U.S.C. § 7479(3), App. E; 42 U.S.C. § 7602(k), App. F; 65 Fed. Reg. 70,792, 70,793 (Nov. 28, 2000).

56. The revisions to the Seminole PSD construction permit affect other operations and emissions authorized by the original permit.

57. A proper analysis was not conducted to determine the Best Available Control Technology for carbon monoxide, volatile organic compounds, fluorides, opacity and coal soot (particulate matter including PM, PM2.5 and PM10) emissions from the pulverized coal-fired boiler. Fla. Admin. Code R. 62-212.400, 62-212.300; *see also* 40 C.F.R. § 52.21.

58. A Best Available Control Technology analysis is required for nitrogen oxides, sulfur dioxide, sulfuric acid mist, fine particulate matter and carbon dioxide emissions from the pulverized coal-fired boiler. Fla. Admin. Code R. 62-212.400, 62-212.300; *see also* 40 C.F.R. § 52.21.

59. The emissions limits in the draft permit do not reflect Best Available Control Technology for carbon monoxide, volatile organic compounds, fluorides, coal soot (PM, PM<sub>2.5</sub>, PM<sub>10</sub>), sulfuric acid mist, opacity, and carbon dioxide. Fla. Admin. Code R. 62-212.400, 62-212.300; *see also* 40 C.F.R. § 52.21.

60. Reasonable assurances have not been provided that accurate modeling of sulfur dioxide emissions was conducted with regard to the impact on Class I areas. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.260; 42 U.S.C. §§ 7473, 7475, 7491.

61. Reasonable assurances have not been provided that sufficient pre-construction meteorological data gathering was conducted for use in the Prevention of Significant Deterioration application modeling. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.260, 62-212.300, 62-212.400; 40 C.F.R. § 52.21; 42 U.S.C. §§ 7473, 7475, 7491.

62. Emission rate de minimus levels were incorrectly applied to exempt Seminole Electric from further air quality analyses. Fla. Admin. Code R. 62-212.300, 62-212.400; *see also* 40 C.F.R. § 52.21.

63. Reasonable assurances have not been provided that the use of Jacksonville meteorological data for modeling is representative of the project site. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.260.

64. Reasonable assurances have not been provided that the use of Jacksonville meteorological data for modeling is of appropriate quality for modeling the project site. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.260; 40 C.F.R. § 52.21.

65. The use of National Ambient Air Quality Standards Significant Impact Levels, as specified in 40 C.F.R. § 51.165(b)(2), is not allowable for Prevention of Significant Deterioration compliance purposes. Fla. Admin. Code R. 62-204.240, 62-204.260, 62-212.300, 62-212.400; 40 C.F.R. § 52.21; 42 U.S.C. § 7475.

66. The use of National Ambient Air Quality Standards Significant Impact Levels, as specified in 40 C.F.R. § 51.165(b)(2), improperly exempted Seminole units 1 and 2 from proper Prevention of Significant Deterioration and National Ambient Air Quality Standards compliance analysis. Fla. Admin. Code R. 62-204.240, 62-204.260, 62-212.300, 62-212.400; 40 C.F.R. § 52.21; 42 U.S.C. § 7475.

67. Reasonable assurances have not been provided that cumulative Class I and Class II Prevention of Significant Deterioration area impacts from units 1, 2, and 3 were properly assessed. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.260, 62-212.300, 62-212.400; 40 C.F.R. § 52.21; 42 U.S.C. §§ 7473, 7475.

68. Reasonable assurances have not been provided that cumulative National Ambient Air Quality Standards impacts from units 1, 2, and 3 were properly assessed. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.240, 62-204.260, 62-212.300, 62-212.400; 40 C.F.R. § 52.21; 42 U.S.C. §§ 7473, 7475.

69. Reasonable assurances have not been provided that Seminole Electric accurately calculated and modeled all emissions from proposed unit 3. Fla. Admin. Code R. 62-204.200,

62-204.220, 62-204.240, 62-204.260, 62-212.300, 62-212.400; 40 C.F.R. § 52.21; 42 U.S.C. §§ 7473, 7475, 7491.

70. Reasonable assurances have not been provided that Seminole Electric accurately calculated and modeled all emissions from existing units 1 and 2. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.240, 62-204.260, 62-212.300, 62-212.400; 40 C.F.R. § 52.21; 42 U.S.C. §§ 7473, 7475, 7491.

71. Reasonable assurances have not been provided that the Class I modeling impact analysis was prepared correctly. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.260, 40 C.F.R. § 52.21; 42 U.S.C. §§ 7473, 7475, 7491.

72. Reasonable assurances have not been provided that the Class I modeling impact analyses includes all potential emission sources. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.260, 62-212.400; 40 C.F.R. § 52.21; 42 U.S.C. §§ 7473, 7475, 7491.

73. Reasonable assurances have not been provided that the Class I modeling impact analyses properly address all potential air quality related values, including but not limited to visibility, nitrogen and sulfur deposition. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.260, 62-212.400; 40 C.F.R. §§ 52.21, 52.27; 42 U.S.C. §§ 7473, 7475, 7491.

74. Reasonable assurances have not been provided that project and regional ozone impacts were properly assessed. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.240, 62-204.260, 62-212.300, 62-212.400; 40 C.F.R. § 52.21; 42 U.S.C. §§ 7473, 7475, 7491.

75. Reasonable assurances have not been provided that regional PM2.5 impacts from the existing and proposed project have been assessed. Fla. Admin. Code R. 62-204.200, 62-204.220, 62-204.240, 62-204.260, 62-212.300, 62-212.400; 40 C.F.R. § 52.21; 42 U.S.C. §§ 7473, 7475, 7491.

76. Reasonable assurances have not been provided that the analysis supporting the draft permit included a correct assessment of how emissions from the new unit impair soils and vegetation. 40 C.F.R. § 52.21(o); Fla. Admin. Code R. 62-212.400 (8)(a).

77. Consideration of Integrated Gasification Combined Cycle technology as Best Available Control Technology was required to be included. 42 U.S.C. §7479(3); Fla. Admin. Code R. 62-212.400; EPA New Source Review Workshop Manual at B.5 – B.7.

78. Reasonable assurances have not been provided that the draft permit limits for volatile organic compounds, fluorides, coal soot (PM, PM2.5, PM10), sulfuric acid mist, and ammonia are sufficiently enforceable limits. 40 C.F.R. § 52.21; Fla. Admin. Code R. 62-212.400.

79. Reasonable assurances have not been provided that the permit limits for Seminole units 1 and 2 are sufficiently enforceable limits such that they support emissions credits for Seminole unit 3. 40 C.F.R. § 52.21; Fla. Admin. Code R. 62-212.400.

80. Reasonable assurances have not been provided that the startup and shutdown exemption in the draft permit for Prevention of Significant Deterioration pollutants was properly modeled. Fla. Admin. Code R. 62-212.710; 40 C.F.R. Part 51, Appendix W; Fla. Admin. Code R. 62-204.800 (incorporating by reference 40 C.F.R. Part 51).

81. The startup and shutdown exemption for Prevention of Significant Deterioration pollutants in the draft permit does not reflect Best Available Control Technology. Fla. Admin. Code R. 62-210.200(40)(b); 42 U.S.C. § 7479(3), App. E; 42 U.S.C. § 7602(k), App. F; 65 Fed. Reg. 70,792, 70,793 (Nov. 28, 2000).

82. Reasonable assurances have not been provided that the draft permit ensures that the new unit will not cause or lead to a violation of the Prevention of Significant Deterioration

increments. Fla. Admin. Code R. 62-212.400, 62-204.200, 62-204.220, 62-204.260, 62-212.300; 40 C.F.R. § 52.21; 42 U.S.C. §§ 7473, 7475.

83. Reasonable alternatives to the new unit were not considered. 42 U.S.C. § 7475(a).

84. Reasonable assurances have not been provided that the draft permit limits will protect public health. § 403.021 Fla. Stat.; Fla. Admin. Code R. 62-204.100; 15 U.S.C. § 793(c)(1) (Congress exempted New Source Review permitting and other Clean Air Act actions from the requirements of the National Environmental Policy Act ("NEPA") on the basis that the Clean Air Act provides a "functional equivalent" of the analysis that would otherwise be required under NEPA).

85. Reasonable assurances have not been provided that the construction of the new unit will not have a disproportionate impact on minority or economically disadvantaged communities. 42 U.S.C. §§ 2000d, *et seq.*

86. Reasonable assurances have not been provided that the draft permit would not allow the new unit 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. 42 U.S.C. § 7479; Fla. Admin. Code R. 62-212.400; 42 U.S.C. § 7412; 40 C.F.R. Part 63; Fla. Admin. Code R. 62-204.800 (Florida rule that incorporates by reference 40 C.F.R. part 63); *see also* 40 C.F.R. Part 63.

#### **APPLICABLE STATUTES AND RULES**

87. Chapters 120 and 403, Florida Statutes; Fla. Admin. Code R. 62-4.070.

88. Sections 120.569, 120.57, 403.412, 403.021, Florida Statutes.

89. Chapters 62-204, 62-210, 62-212, Florida Admin. Code,

90. Rules 62-110.106; 62-204.100, 62-204.200, 62-204.220, 62-204.240, 62-204.260, 62-204.800, 62-210.200, 62-212.300, 62-212.400, 62-212.710.

91. The Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, and its implementing regulations 40 C.F.R. 50, *et seq.*

92. 42 U.S.C. §§ 7412, 7473, 7475, 7479, 7491, 7602, including all appendices.

93. 42 U.S.C. §§ 2000d, *et seq.*; 15 U.S.C. § 793.

94. 40 C.F.R. §§ 51.165, 52.21, 52.27, 63.40, 63.41, 63.42, 63.43, 63.44.

95. 40 C.F.R. Part 51, Part 52, and Part 63, including all appendices.

96. EPA, New Source Review Workshop Manual (Oct. 1990), available at <http://www.epa.gov/ttn/nsr/gen/wkshpman.pdf>.

97. 65 Fed. Reg. 70,792 (Nov. 28, 2000).

98. The Clean Air Act's Prevention of Significant Deterioration provisions, which govern construction of new major sources of air pollution in regions that attain the national ambient air quality standards. 42 U.S.C. §§ 7470 – 7479, including all appendices.

99. The Prevention of Significant Deterioration rules codified at 40 CFR Part 52 and incorporated as a Florida State Implementation Plan approved program. *See Fla. Admin. Code R. 62-204.800.* These rules require that applicants reduce their emissions by employing the "best available control technology" for pollutants that would be emitted in levels that exceed the significance thresholds, *see Fla. Admin. Code R. 62-210.200(40)*, 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 Fla. Admin. Code R. 62-212.300; 62-212.400, 62-204.200, 62-204.220, 62-204.260.*

100. The regulation defining Best Available Control Technology 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, 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, 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 Best Available Control Technology determinations of Florida and any other state.

Fla. Admin. Code R. 62-210.200(40). *See also* 42 U.S.C. § 7479(3); 40 C.F.R. § 52.21(b)(12).

101. Section 112 of the Clean Air Act prohibiting the construction of a new or modified "major source" of hazardous air pollutants until the permitting agency issues an appropriate maximum achievable control technology determination. 42 U.S.C. § 7412(g)(2)(b). A new unit is considered a "major source" if it will emit either: (a) 10 tons per year of any one hazardous air pollutant, or (b) 25 tons per year of combined hazardous air pollutants. 40 C.F.R. § 63.41; Fla. Admin. Code R. 62-204.800(11) (Florida rule that incorporates by reference 40 C.F.R. Part 63); *see also* 40 C.F.R. Part 63.

102. The regulations requiring an assessment of the impairment to soils and vegetation that would occur as a result of the source before issuing a Prevention of Significant Deterioration permit. 40 C.F.R. § 52.21(o); Fla. Admin. Code R. 62-212.400 (8)(a).



103. The Clean Air Act requirement that an emission limitation apply to emissions of air pollutants "on a continuous basis." Fla. Admin. Code R. 62-210.200(40)(b); 42 U.S.C. § 7479(3), App. E; 42 U.S.C. § 7602(k), App. F; 65 Fed. Reg. 70,792, 70,793 (Nov. 28, 2000).

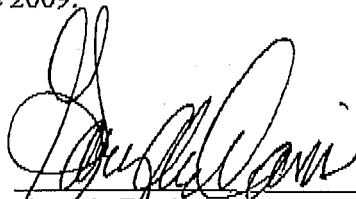
104. The Clean Air Act requirement that requires consideration of alternatives to a major new source of air pollution. 42 U.S.C. § 7475(a).

### RELIEF SOUGHT

105. Based on the foregoing, Petitioner SACE respectfully requests that this Petition be forwarded to the Division of Administrative Hearings to conduct a formal administrative hearing, and that the Administrative Law Judge enter a Recommended Order recommending denial of Permit No. 1070025-011-AC (PSD-FL-375).

106. SACE requests that the Administrative Law Judge and the Department grant such other relief as is necessary and appropriate.

Respectfully submitted this 26<sup>th</sup> day of June 2009.



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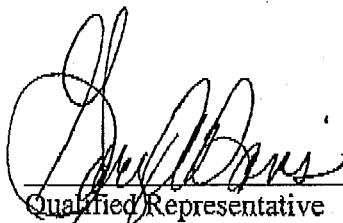
Gary A. Davis  
Gary A. Davis & Associates  
P.O. Box 649  
Hot Springs, NC 28743  
Telephone: (828) 622-0044  
Facsimile: (828) 622-7610  
gadavis@enviroattorney.com  
Qualified Representative for Southern  
Alliance for Clean Energy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing petition was served on the applicant, Seminole Electric Cooperative, Inc., via U.S. Mail at the following address on this 26<sup>th</sup> day of June 2009:

Mr. Timothy Woodbury  
Registered Agent  
Seminole Electric Cooperative, Inc.  
16313 North Dale Mabry Highway  
Tampa, FL 33618

James Alves, Esq  
Robert Manning, Esq.  
David W. Childs, Esq.  
Counsel for Seminole Electric  
Hopping, Green & Sams, P.A.  
PO Box 6526  
Tallahassee, Florida 32314-6526



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Qualified Representative