



**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL**

3900 Commonwealth Boulevard, M.S. 35
Marjory Stoneman Douglas Building
Tallahassee, Florida 32399-3000

FACSIMILE TRANSMITTAL

Date of Transmittal: 4/25/01

to: Al Lincio

phone: _____

fax: 292-732-6979

from: Freddy Lopez

phone: (850) 488-9314 cc 278-9736

fax: (850) 487-4938

sender: _____

pages: 8 including cover

RE: as you requested

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF COCONUT CREEK,

Petitioner,

v.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

OGC File No. 01-0489
FDEP File No. 00112515-001-AC
(PSD-FL-304)

And

POMPAÑO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA),

Respondents.

CITY OF COCONUT CREEK'S PETITION FOR
ADMINISTRATIVE HEARING

Petitioner, City of Coconut Creek, a Florida municipal corporation ("CITY"), hereby files this Petition for Administrative Hearing challenging the Department of Environmental Protection's ("DEP") Intent to Issue Air Construction Permit for Permit No. 0112515-001-AC(PSD-FL-304) ("Permit") to Pompano Beach Energy, L.L.C., an affiliate of ENRON North America ("ENRON"), which would allow the construction of a five hundred ten (510) megawatt "peaking" power plant at 3300 Northwest 27 Avenue in Pompano Beach, Broward County, Florida. As grounds for this Administrative Hearing, CITY states:

1. CITY is a Florida municipality comprising approximately 11.7 square miles in the central northern end of Broward County.

2. The DEP is the permitting authority in this proceeding and has its offices located at 400 North Congress Avenue, West Palm Beach, Florida 33416 and 111 S. Magnolia Drive, Suite 4, Tallahassee, Florida 32301.

3. Pompano Beach Energy, L.L.C. has its offices located at 1400 Smith Street, Houston, Texas 77002.

SUBSTANTIAL INTEREST

4. CITY is a Florida municipality with over 40,000 residents, located within the immediate adjacent area that will be affected by the building of a power plant. As a result, CITY has a substantial interest in this proceeding.

BACKGROUND

5. On or about March 10, 2001, the CITY received a copy of DEP's Public Notice of Intent to Issue Air Construction Permit for ENRON's proposed power plant facility.

6. On October 23, 2000, ENRON filed its Application with the Broward County Department of Planning and Environmental Protection. On December 15, 2000, ENRON filed a Revised Application with the Broward County Department of Planning and Environmental Protection.

7. On December 20, 2000, the Department of Planning and Environmental Protection found that the Application was complete.

8. On or about March 21, 2001, the CITY moved for an extension of time to file its Petition.

9. On April 9, 2001, the DEP granted CITY's Request for Extension of Time and gave the CITY until April 25, 2001 to file its Petition.

10. ENRON is proposing to construct three (3) one hundred seventy (170) megawatt dual-fuel combustion turbines with inlet chillers, three (3) mechanical draft cooling towers, three (3) eighty (80) foot stacks, a natural gas heater, a two and one half million gallon fuel oil storage tank, and a 0.6 million gallon fuel oil storage tank at the site.

11. If approved, fuel oil will be permitted at the power plant for up to three thousand (3000) hours per year or one hundred twenty-five (125) days per year.

12. The following regional producers of noxious emissions are located within the immediate vicinity of ENRON's proposed cogeneration power plant facility: (1) Broward County North Regional Wastewater Treatment Plant; (2) Florida Power and Light Electrical Substation; (3) Broward County Central Sanitary Landfill; (4) Wheelabrator Resource Recovery Facility; (5) Broward County Hazardous Materials Receiving Facility; and (6) Waste Management Trash Transfer Station. These large regional significant sources of noxious emissions, which are publicly or privately owned, are immediately adjacent to the eastern boundary of the CITY.

13. In addition, the proposed power plant is within thirteen (13) miles of the Arthur R. Marshall Loxahatchee National Wildlife Refuge, administered by the U.S. Department of the Interior, and within ten (10) miles of the Florida Everglades, specifically, Conservation Area No. 2, which is administered by the State of Florida Fish and Wildlife Conservation Commission.

14. CITY has received no indication that an Environmental Impact Statement/Evaluation has been undertaken for this proposed use.

15. Further, from a review of the available documentation, it appears that a quantitative cumulative air quality analysis has not been performed with regard to the facilities referenced in Paragraph 12 above. The issuance of a Federal Permit for the Prevention of Significant Deterioration (PSD) subjects the facility to the requirements of the National Environmental Policy Act (NEPA) (specifically regulations in 40 CFR Part 1508). Under NEPA, the cumulative environmental effects of a proposed project and other significant sources must be considered in an environmental assessment or an environmental impact statement.

16. CITY's experts believe that a quantitative cumulative air quality analysis should be performed in order to satisfactorily demonstrate that the combined emissions from the sources referenced in Paragraph 12 above do not cause a contravention of applicable air quality standards.

DISPUTED ISSUES OF FACT AND LAW

17. Whether an environmental impact statement/evaluation should have been conducted by ENRON prior to the Notice of Intent to Issue Air Construction Permit.

18. Whether the assessment of environmental impacts associated with industrial-related activities, including those on ambient air quality, must be performed prior to the issuance of a permit.

19. Whether the impact upon the CITY of the prevailing wind direction from the proposed facilities has been considered and factored into the decision to issue a Permit.

20. Whether it is necessary for a quantitative cumulative air quality analysis to be performed prior to the issuance of a Permit to ensure that the combined emissions

from the various sources in the area do not cause a contravention of applicable air quality standards:

- (i) The proposed facility is anticipated to emit approximately 572 tons per year (tpy) of NO₂, 171 tpy of CO, 55 tpy of PM/PM₁₀, 166 tpy of SO₂, 18 tpy of VOC, and 25 tpy of sulfuric acid mist. The facility will also emit trace quantities of total fluorides (0.09 tpy), mercury (0.003 tpy) and lead (0.003 tpy). Emissions of cumulative hazardous air pollutants (HAP₅) up to 5 tpy.
- (ii) The issuance of Federal Permits such as Prevention of Significant Deterioration subjects the proposed power plant facility to the requirements of the National Environmental Protection Act.
- (iii) Under the National Environmental Protection Act, the cumulative environmental effects of a proposed project must be considered in an environmental assessment.

21. Whether DEP's Intent to Issue Air Construction Permit was based on erroneous and misleading information concerning the proposed power plant's distance to environmentally sensitive lands and, therefore, should be reassessed:

- (i) The Technical Evaluation and Preliminary Determination provides in Paragraph 2 entitled "Facility Information" that the proposed power plant is located approximately 60 kilometers (37.2 miles) from the Everglades National Park; this statement may be accurate on its face as to the distance from the park entrance, but a map of the Conservation Areas potentially affected by the proposed power plant demonstrates that the affected

ecosystems are far closer than stated. Please See Exhibit "A", attached hereto and made a part hereof.

- (ii) The pristine, environmentally sensitive ecosystem of the Loxahatchee National Wildlife Refuge is within thirteen (13) miles of the proposed power plant, as it is located immediately adjacent to Everglades Conservation Area No. 2, to the north;
- (iii) While the public entranceway of Everglades National Park may be over thirty-seven (37) miles away from the proposed power plant, the environmentally sensitive ecosystem of the Florida Everglades, specifically Conservation Area No. 2 is within ten (10) miles of the proposed site; and
- (iv) The proximity of these ecosystems was not taken into account by the DEP in their review of the proposed location.

WHEREFORE, Petitioner CITY, respectfully requests a formal administrative evidentiary hearing, de novo, pursuant to Chapter 120, Florida Statutes, to resolve disputed issues of material fact and law set forth herein be held and that the DEP should not issue Permit No. 0112515-001-AC (PSD-FL-304) or, in the alternative, should prohibit diesel oil from being used at this facility. At a minimum, the DEP should, prior to issuing the Permit, require that ENRON provide a quantitative cumulative air quality analysis to ensure that the combined emissions from the various industries in the area do not cause a contradiction of applicable air quality standards.

Respectfully submitted this 24th day of April, 2001.



PAUL S. STUART
City Attorney

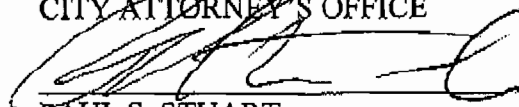


NANCY A. COUSINS
Assistant City Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original has been filed by Federal Express at: Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000 and a true and correct copy of the foregoing has been furnished by regular U.S. Mail to: Debbie Orshefsky, Attorney for Pompano Beach Energy, L.L.C., Greenberg, Traurig, 515 E. Las Olas Boulevard, Suite 1500, Fort Lauderdale, Florida 33301 this 24th day of April, 2001.

CITY OF COCONUT CREEK
CITY ATTORNEY'S OFFICE



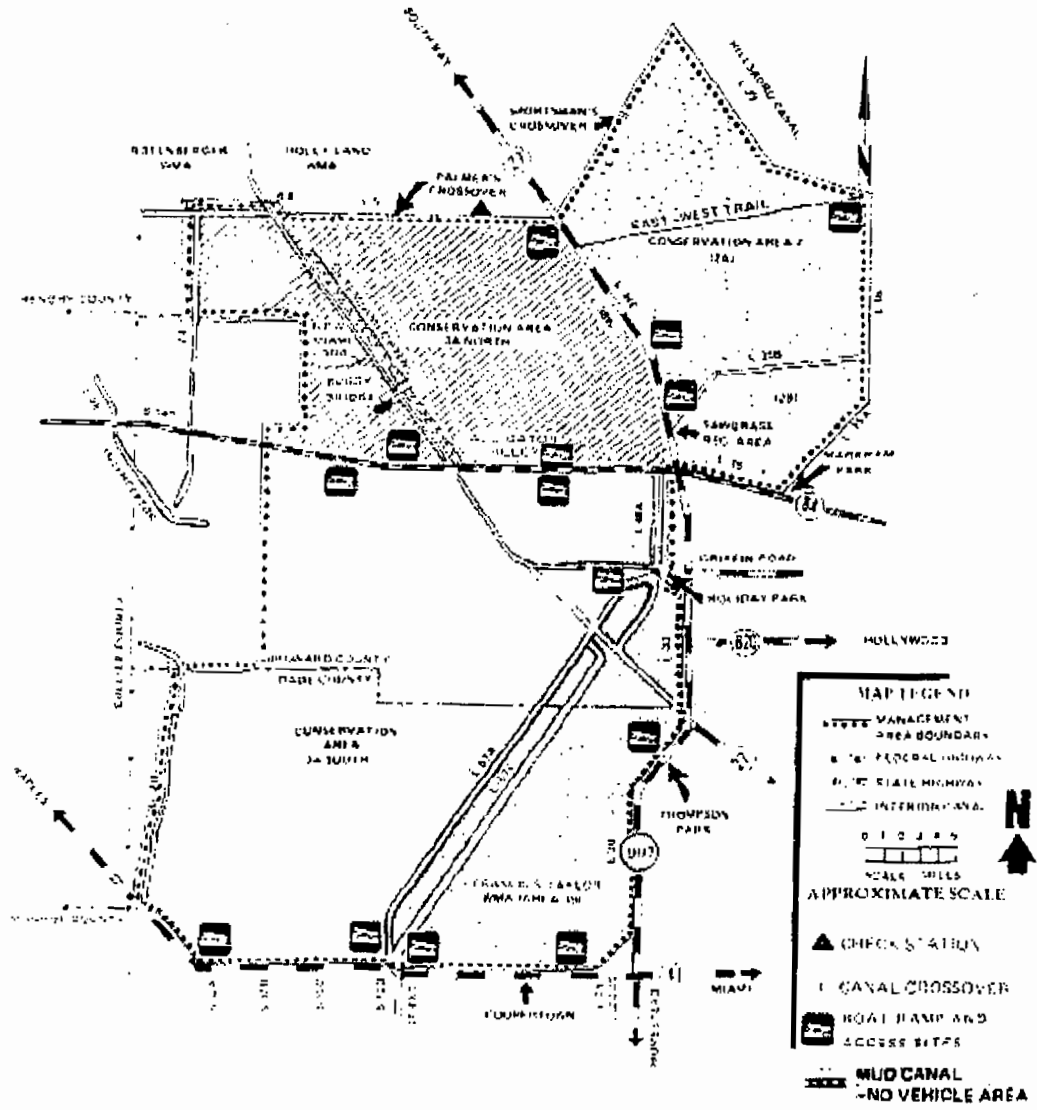
PAUL S. STUART
City Attorney
Florida Bar No. 109340
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063
(954) 973-6797
(954) 973-6790 (facsimile)

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EVERGLADES AND FRANCIS S. TAYLOR

WILDLIFE MANAGEMENT AREAS
(671,831 acres)

Colde. Broward and Palm Beach Counties



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JUN 18 2001

BUREAU OF AIR REGULATION

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF MARGATE,

Petitioner,

v.

Case No.:

FDEP File No. 00112515-001-AC

(PSD-FL-304)

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

And

POMPAÑO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA),

Respondents.

**CITY OF MARGATE'S AMENDED PETITION FOR
ADMINISTRATIVE HEARING**

Petitioner, City of Margate, a Florida municipal corporation ("CITY"), hereby files this Petition for Administrative Hearing challenging the Department of Environmental Protection's ("DEP") Intent to Issue Air Construction Permit for Permit No. 0112515-001-AC(PSD-FL-304) ("Permit") to Pompano Beach Energy, L.L.C., an affiliate of ENRON North America ("ENRON") which would allow the construction of a five hundred ten megawatt "peaking" power plant at 3300 Northwest 27 Avenue in Pompano Beach, Broward County, Florida. As grounds for this Administrative Hearing, CITY states:

1. CITY is a Florida municipality comprising approximately 8.98 square miles in the northern end of Broward County.

2. The DEP is the permitting authority in this proceeding and has its offices located at 400 North Congress Avenue, West Palm Beach, Florida 33416 and 111 S. Magnolia Drive, Suite 4, Tallahassee, Florida 32301.

3. Pompano Beach Energy, L.L.C. has its offices located at 1400 Smith Street, Houston, Texas 77002.

SUBSTANTIAL INTEREST

4. CITY is a Florida municipality with over 53,000 residents, located within the immediate area which will be affected by the building of a power plant. As a result, CITY has a substantial interest in this proceeding.

BACKGROUND

5. On or about March 9, 2001, the CITY received a copy of DEP's Public Notice of Intent to Issue Air Construction Permit for ENRON's proposed power plant facility.

6. On October 23, 2000, ENRON filed its Application with the Broward County Department of Planning and Environmental Protection. On December 15, 2000, ENRON filed a Revised Application with the Broward County Department of Planning and Environmental Protection.

7. On December 20, 2000, the Department of Planning and Environmental Protection found that the Application was complete.

8. On or about March 21, 2001, the CITY moved for an extension of time to file its Petition.

9. On April 9, 2001, the DEP denied CITY's Request for Extension of Time and gave the CITY ten (10) days to file its Petition.

10. On April 19, 2001 the City filed its Petition for Administrative Hearing.
11. On or about May 9, 2001, Pompano Beach Energy Center moved to dismiss City of Margate, Petition for Administrative Hearing.
12. On May 21, 2001 DEP granted the Motion to Dismiss with Leave to Amend.
13. ENRON is proposing to construct three one hundred seventy megawatt dual-fuel combustion turbines with inlet chillers, three mechanical draft cooling towers, three eighty foot stacks, a natural gas heater, a two and one half million gallon fuel oil storage tank, and a 0.6 million gallon fuel oil storage tank at the site.
14. If approved, fuel oil will be permitted at the power plant for up to three thousand hours per year.
15. The following uses are located within the immediate vicinity of ENRON's proposed cogeneration power plant facility: (1) Broward County North Regional Wastewater Treatment Plant; (2) Florida Power and Light Electrical Substation; (3) Broward County Central Sanitary Landfill; (4) Wheelabrator Resource Recovery Facility; (5) Hazardous Materials Receiving Facility; and (6) Waste Management Trash Transfer Station.
16. In addition, the proposed power plant is within 13 miles of the Arthur R. Marshall Loxahatchee National Wildlife Refuge and within 10 miles of the Florida Everglades.

- (ii) The issuance of Federal Permits such as Prevention of Significant Deterioration subjects the proposed power plant facility to the requirements of the National Environmental Protection Act.
- (iii) Under the National Environmental Protection Act, the cumulative environmental effects of a proposed project must be considered in an environmental assessment.

20. Whether DEP's Intent to Issue Air Construction Permit was based on erroneous information concerning the proposed power plant's distance to environmentally sensitive lands and, therefore, should be reassessed:

- (i) The Technical Evaluation and Preliminary Determination provides in Paragraph 2 entitled "Facility Information" that the proposed power plant is located approximately 60 kilometers (37.2 miles) from the Everglades National Park;
- (ii) The environmentally sensitive ecosystem of the National Wildlife Refuge is within 13 miles of the proposed power plant;
- (iii) While the entrance of Everglades National Park may be over 37 miles away from the proposed power plant, the environmentally sensitive ecosystem of the Florida Everglades is within 10 miles of the proposed site; and
- (iv) The proximity of these ecosystems were not taken into account by the DEP in their review of the proposed location.

WHEREFORE, Petitioner, CITY, respectfully requests a formal administrative evidentiary hearing, de novo, pursuant to Chapter 120, Florida Statutes, to resolve

disputed issues of material fact and law set forth herein be had and that the DEP should not issue Permit No. 0112515-001-AC (PSD-FL-304) or, in the alternative, should prohibit diesel oil from being used at this facility. At a minimum, the DEP should, prior to issuing the Permit, require that ENRON provide a quantitative cumulative air quality analysis to ensure that the combined emissions from the various industries in the area do not cause a contradiction of applicable air quality standards.

17. The proposed project is required to use best available control technology ("BACT") to limit the emissions of nitrogen oxide ("NO_x"), carbon monoxide ("CO"), volatile organic compounds ("VOCs"), sulfur dioxide ("SO₂"), sulfuric acid mist, and particulate matter with an aerodynamic diameter less than 10 microns ("PM₁₀"), pursuant to Rule 62-212.400(2)(f), F.A.C.

18. Rule 62-210.200(38), F.A.C. defines BACT as "an emission limitation...based on the *maximum* degree of reduction of each pollutant emitted which the Department, on a case by case basis, taking into account energy, environmental and economic impacts, and other costs, 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." (emphasis added)

19. In determining BACT, the Department shall give consideration to, among others, "all scientific, engineering, and technical material and other information available to the Department," "the emission limiting standards or BACT determination of any other

state," and "the social and economic impact of such technology." Rule 62-212.400(6), F.A.C.

DISPUTED ISSUES OF FACT AND LAW

The City believes and will demonstrate to the Department that the applicant's proposed BACT limits (or absence thereof) for the turbines, fuel oil heater, tanks, and cooling towers, accepted by the Department, are not consistent with the definition of BACT in Rule 62-210.200(38), F.A.C. and the requirements in Rule 62-212.400(6), F.A.C. as specifically set forth below. The DEP'S BACT determinations do not recognize the much lower limits currently being permitted in other states, nor do they address the social and economic impacts to the City for failing to appropriately limit emissions from the facility.

The draft permit establishes BACT for NO_x from the gas turbines as 9 ppmvd at 15% O₂ on gas, achieved with dry low NO_x combustors and 42 ppmvd at 15% O₂ on fuel oil, achieved with water injection. Continuous compliance would be demonstrated based on a 24-hour block average. (Permit, § III.13.) Other states have permitted a large number of simple cycle peaking power plants with NO_x limits of 2 to 5 ppmvd at 15% O₂ on gas using SCR, XONON, or SCONO_x and 5.9 to 13 ppmvd on oil, achieved with water injection and SCR. Continuous compliance is demonstrated based on 1-hour to 3-hour rolling averages. These lower limits have been achieved in practice. A much lower NO_x limit should be established for the turbines, consistent with the permitting history in other states and pursuant to Rule 62.212.400(2)(f), F.A.C.

The draft permit establishes BACT for CO for the gas turbines as 9 ppmvd @ 15% O₂ on gas and 20 ppmvd @ 15% O₂ on oil, achieved with good combustion. Compliance would be demonstrated based on a 3-hour source test. (Permit, § III.14.) Other states have permitted simple cycle peaking power plants with CO limits of 2 to 6 ppmvd at 15% O₂ on oil and gas, achieved using an oxidation catalyst. Much lower limits have been demonstrated in source tests and with continuous emission monitors. As a result, a much lower CO limit should be established for the turbines and that continuous compliance be demonstrated with a continuous emission monitor.

The draft permit establishes BACT for VOCs from the gas turbines as 2.8 ppmvd @ 15% O₂ on gas or oil, achieved with natural gas and good combustion. Compliance would be demonstrated based on a 3-hour source test. (Permit, § III.15.) Other states have permitted simple cycle peaking power plants with VOC limits of 2 ppmvd at 15% O₂ on oil and gas, achieved using an oxidation catalyst. Much lower limits have been demonstrated in source tests. A much lower VOC limit should be established for the turbines.

The draft permit indicates that the facility includes one 2.5 million gallon distillate storage tank, one 0.6 million gallon distillate storage tank, one 13 MMBtu/hr gas-fired fuel heater, and four wet mechanical draft cooling towers. (Permit, § III.2.) The draft permit contains no BACT determinations, emission limits, or monitoring requirements for these sources, even though they emit criteria and hazardous air pollutants. These sources, although individually minor, must use BACT and be regulated by permit, pursuant to Rule 62-210.200(112), F.A.C., which defines a facility as "all of

the emissions units which are located on one or more contiguous or adjacent properties, and which are under the control of the same person (or persons under common control)." As a result, the Department should conduct a formal BACT analysis for these minor sources and revise the permit to include appropriate emission limits and monitoring requirements.

The draft permit and files that we reviewed do not identify any other emission sources at the facility. However, power plants should additionally include an emergency firewater pump and emergency generator, run by diesel internal combustion engines. The diesel exhaust from any such engines are a great concern to the City. Thus, the City requests that the Department investigate whether emergency diesel engines would be used and if so, that these be subjected to a formal BACT analysis and permit limits, pursuant to Rule 62-210.200(112), F.A.C.

The project proposes to use distillate oil as a backup fuel for an average of 1,000 hours per installed unit. (Permit, § III.7.) The combustion of distillate in the turbines would produce "diesel exhaust," which is recognized by the U.S. Environmental Protection Agency and California as a potent human carcinogen and respiratory irritant. The City is deeply concerned about the impact of these emissions, as well as others, set out below, on the residents of Margate.

The definition of BACT in Rule 62-210.200(38) and implementing EPA guidance in the NSR Manual (EPA, New Source Review Workshop Manual, October 1990, Section IV.D.3) require taking into account the "environmental" impacts during the top-

down BACT process. The Department is further required to evaluate the social and economic impacts of its decisions, pursuant to Rule 62-212.400(6)(a)4, F.A.C. Based on the erroneous information concerning the proposed power plant distance to environmentally sensitive lands, and the DEP'S decision needs to reviewed.

Further, the draft permit establishes BACT for SO₂ and sulfuric acid mist as the use of pipeline natural gas and low sulfur (0.05%) fuel oil, without performing any analyses, evaluating alternatives, or considering the substantial health impacts that may result from this choice. The City maintains that the use of distillate fuel in a densely populated area is inappropriate, has far-reaching social and economic implications for its residents, and is not consistent with Rule 62-212.400(6)(a), F.A.C.

Notwithstanding the health issues, 0.05% sulfur distillate is not BACT for SO₂ and sulfuric acid mist when firing oil. A sulfur content of 0.05% is equivalent to 5,000 parts per million sulfur by weight ("ppmw"). Lower sulfur distillate, containing only 30 ppmw sulfur, is currently available on the east coast of the United States. Further, the EPA has adopted stringent fuel regulations that limit the sulfur content of diesel fuel to 15 ppmw. These regulations go into effect in June 2006 (Federal Register, v. 66, no. 12, January 18, 2001, p. 5002 *et seq*), at which point ultra low sulfur diesel will be widely available in the Florida market.

Thus, the City recommends the permit be modified to eliminate the use of distillate oil. In the short-term, a backup fuel such as LNG or propane or a

noninterruptible gas supply contract for curtailments should be required, until such time as the capacity constraints on the Florida Gas Transmission Pipeline are alleviated, but no later than January 2003. If distillate is retained, diesel exhaust emissions should be rigorously controlled and 30 ppmw diesel fuel be required on startup and 15 ppmw diesel when it becomes available, but no later than June 2006.

The permit contains no limits on the number of startups/shutdowns nor on the emissions during these periods. During startups and shutdowns, combustion temperatures and pressures change rapidly, resulting in inefficient combustion and much higher emissions of NO_x, CO, and VOCs (including aldehydes) than during steady state operation.

The City is concerned that virtually unlimited and uncontrolled startup and shutdown emissions will result in significant health impacts in downwind areas of Margate, particularly during combined operation of the Pompano and proposal Deerfield Beach Energy Centers. Emissions of formaldehyde, for example, can increase by over a factor of 500 during startups, compared to full load operation. If each turbine experienced as few as 100 startups per year, lasting only 10 minutes, the emissions of formaldehyde would exceed 10 ton/yr and require the use of maximum achievable control technology ("MACT"), pursuant to Rule 62-204.800, F.A.C.

Omitting limits on startup and shutdown emissions is not consistent with requirements of the Clean Air Act. The U.S. EPA has consistently defined startup and

shutdown to be part of the normal operation of a source.^{1, 2} The EPA has also consistently concluded that these emissions should be accounted for in the design and implementation or the operating procedure for the process and control equipment. EPA has concluded that "[w]ithout clear definition and limitations, these automatic exemption provisions [for startups and shutdowns] could effectively shield excess emissions arising from poor operation and maintenance or design, thus precluding attainment." (Bennett 9/28/82.) Accordingly, these emissions should have been considered in the BACT analysis and the related health impacts addressed in conjunction with the environmental review required pursuant to Rule 62-210.200(38), F.A.C. Permits issued by other states include limits on startup and shutdown emissions. Thus, the City recommends that a permit condition be included that specifically limits the number, duration, and emissions during startups and shutdowns, to comply with BACT and MACT.

Broward County Code Section 27-178 requires pollution prevention planning for hazardous air pollutants, among other considerations. The project is not in compliance with this local regulation because emissions of diesel exhaust, formaldehyde, and other hazardous air pollutants have not been assessed and mitigated. Therefore, the project is

¹ LETTER FROM KATHLEEN M. BENNETT, OFFICE OF AIR, NOISE AND RADIATION, TO ASSISTANT ADMINISTRATOR FOR AIR, NOISE AND RADIATION REGIONAL ADMINISTRATORS, REGIONS I-X, SUBJECT: POLICY ON EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, MAINTENANCE, AND MALFUNCTIONS, SEPTEMBER 28, 1982 (BENNETT 9/28/82).

² LETTER FROM KATHLEEN M. BENNETT, ASSISTANT ADMINISTRATOR FOR AIR, NOISE AND RADIATION, TO REGIONAL ADMINISTRATORS, REGIONS I-X, SUBJECT: POLICY ON EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, MAINTENANCE, AND MALFUNCTIONS, FEBRUARY 15, 1983 (BENNETT 2/15/83).

in violation of Rule 62-210.300(4)(d)15.a F.A.C, which requires compliance with the requirements of Broward County.

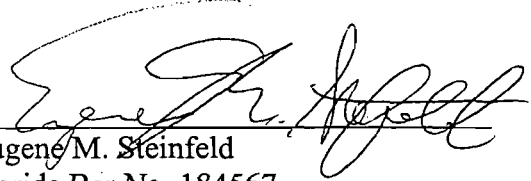
¹ Letter from Kathleen M. Bennett, Office of Air, Noise and Radiation, to Assistant Administrator for Air, Noise and Radiation Regional Administrators, Regions I-X, Subject: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions, September 28, 1982 (Bennett 9/28/82)

² Letter from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation, to Regional Administrators, Regions I-X, Subject: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions, February 15, 1983 (Bennett 2/15/83).

WHEREFORE, Petitioner CITY, respectfully requests a formal administrative evidence hearing, de nova, pursuant to Chapter 120, Florida Statutes, to resolve disputed issues of material Fact and Law and that the DEP should not issue Permit No. 0112515-001-AC) PSD-FL-304) or, in the alternative, should the petition to comply with BACT requirements and should prohibit diesel oil from being used at this Facility

Respectfully submitted this 5th day of June, 2001.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. Mail to: State of Florida Department of Environmental Protection, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 (850) 921-3000 (facsimile) and Debbie Orshefsky, Attorney for Pompano Beach Energy L.L.C., Greenberg, Traurig, 515 E. Las Olas Boulevard, Suite 1500, Fort Lauderdale, Florida 33301 (954) 765-1477, (facsimile) this 5th day of June, 2001.


Eugene M. Steinfeld
Florida Bar No. 184567
City Attorney
City of Margate
5790 Margate Blvd.
Margate, FL 33063
(954) 972-6454

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RECEIVED
OCT 30 2001

BUREAU OF AIR REGULATION

BROWARD COUNTY, CITY OF CORAL)
SPRINGS, and CITY OF COCONUT)
CREEK,)

Petitioners,)

vs.)

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION and DEERFIELD BEACH)
ENERGY CENTER, L.L.C.,)

Respondents.)

Case Nos. 01-2727
01-2728
01-2729

ENRON POMPANO
LEGAL FILE

(Please start one
if there is a home)
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NOTICE OF HEARING

A hearing will be held in this case at the Department of Planning and Environmental Protection, Cypress Room, 218 Southwest First Avenue, Fort Lauderdale, Florida, on Tuesday, January 29, 2002, at 9:00 a.m., or as soon thereafter as can be heard. January 30, 31, and February 1 are also reserved if necessary. Continuances will be granted only by order of the Administrative Law Judge for good cause shown.

ISSUE: Whether the application of Deerfield Beach Energy, LLC for an air construction permit to construct three 170-megawatt dual-fuel combustion turbine-electrical generators and ancillary equipment in Deerfield Beach, Florida, should be approved.

AUTHORITY: Chapter 120, Florida Statutes; and Chapter 28-106, Parts I and II, Florida Administrative Code.

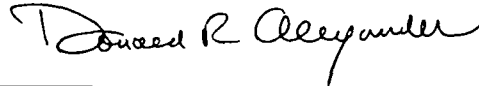
The parties shall arrange to have all witnesses and evidence present at the time and place of hearing. Subpoenas will be issued by the Administrative Law Judge upon request of the parties. All parties have the right to present oral argument and to cross-examine opposing witnesses. All parties have the right to be represented by counsel or other qualified representative, in accordance with Rule 28-106.106, Florida

mgn

Administrative Code. Failure to appear at this hearing may be grounds for entry of a recommended order of dismissal.

The agency shall be responsible for making the necessary arrangements for a court reporter.

October 17, 2001



DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
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John Hearn, Esquire
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065

Martha L. Nebelsiek, Esquire
Department of Environmental Protection
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Fort Lauderdale, Florida 33301
(954) 357-7243

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Judge's secretary no later than seven days prior to the hearing. The Judge's secretary may be contacted at the address or telephone numbers above, via 1-800-955-8771 (TDD), or 1-800-955-8770 (Voice) Florida Relay Service.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY, CITY OF CORAL)	
SPRINGS, and CITY OF COCONUT)	
CREEK,)	
)	
Petitioners,)	
)	
vs.)	Case Nos. 01-2727
)	01-2728
DEPARTMENT OF ENVIRONMENTAL)	01-2729
PROTECTION and DEERFIELD BEACH)	
ENERGY CENTER, L.L.C.,)	
)	
Respondents.)	
_____)	

ORDER OF PRE-HEARING INSTRUCTIONS

This cause having been scheduled for final hearing, it is, therefore,

ORDERED that:

1. Counsel for all parties shall meet no later than 20 days prior to the date for final hearing in this cause and shall:

- (a) Discuss the possibility of settlement;
- (b) Stipulate to as many facts and issues as possible;
- (c) Prepare the pre-hearing stipulation as required by this Order;
- (d) Examine all exhibits (except for impeachment exhibits) proposed to be offered into evidence at the hearing;
- (e) Furnish opposing counsel the names and addresses of all witnesses (except for impeachment witnesses); and

(f) Complete all other matters which may expedite the hearing in this case.

2. Counsel for Petitioners shall initiate arrangements for the attorneys' conferences. However, all attorneys in this cause are charged with the duty of meeting in such conferences and of complying with the schedule set forth in this Order.

3. The pre-hearing stipulation shall contain:

(a) A concise statement of the nature of the controversy;

(b) A brief, general statement of each party's position;

(c) A list of all exhibits (except for impeachment exhibits) to be offered at the hearing, noting any objections thereto, and the grounds for each objection;

(d) A list of the names and addresses of all witnesses (except for impeachment witnesses) to be called at the hearing by each party, with expert witnesses being so designated;

(e) A concise statement of those facts which are admitted and will require no proof at hearing, together with any reservations directed to such admission;

(f) A concise statement of those issues of law on which there is agreement;

(g) A concise statement of those issues of fact which remain to be litigated;

(h) A concise statement of those issues of law which remain for determination by the Administrative Law Judge;

(i) A concise statement of any disagreement as to the application of the rules of evidence;

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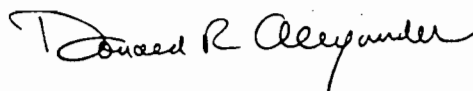
(j) A list of all pending motions or other matters which require action by the Administrative Law Judge;

(k) An estimate as to the length of time required for the hearing; and

(l) The signature of counsel for all parties.

4. The parties shall file their pre-hearing stipulation no later than Thursday, January 24, 2002. If for any reason the pre-hearing stipulation cannot be executed by all counsel, each attorney shall file and serve a separate proposed pre-hearing statement no later than Thursday, January 24, 2002, with a statement of reasons why no agreement was reached on the stipulation. Failure to comply with the requirements of this Order may result in the exclusion of witnesses or exhibits not previously disclosed.

DONE AND ORDERED this 17th day of October, 2001, in Tallahassee, Leon County, Florida.



DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of October, 2001.

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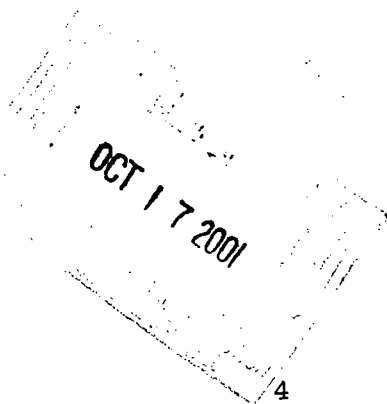
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OCT 30 2001

BUREAU OF AIR REGULATION

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS,)

Petitioner,)

vs.)

Case No. 01-2682

POMPANO BEACH ENERGY, L.L.C.)
(AN AFFILIATE OF ENRON NORTH)
AMERICA) and DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)

Respondents.)

_____))
CITY OF MARGATE,)

vs.)

Case No. 01-2683

POMPANO BEACH ENERGY, L.L.C.)
(AN AFFILIATE OF ENRON NORTH)
AMERICA) and DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)

Respondents.)

_____))
CITY OF COCONUT CREEK,)

vs.)

Case No. 01-2684

POMPANO BEACH ENERGY, L.L.C.)
(AN AFFILIATE OF ENRON NORTH)
AMERICA) and DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)

Respondents.)

_____))

NOTICE OF CHANGE OF AGENCY POSITION

COMES NOW, Respondent, Department of Environmental Protection (hereinafter "Department"), by and through the undersigned counsel, and hereby files this Notice of Change of Agency Position which will result in amendments to the Draft Air Construction Permit No. 0112515-001-AC; PSD-FL-304 (hereinafter "Permit").

1. The Department is the permitting authority in this proceeding.
2. On March 10, 2001, the Department distributed an Intent to Issue Air Construction Permit (hereinafter "Intent") to Respondent, Pompano Beach Energy, L.L.C., (an affiliate of ENRON North America), (hereinafter "ENRON").
3. The Department received comments regarding the proposed permitting action from the public, the United States Environmental Protection Agency (hereinafter "EPA"), and from ENRON during the comment period and the public meeting described in the Intent.
4. Since issuance of the Intent, the Department has issued a number of other Intent to Issue Air Construction Permits and Final Permits to applicants for similar projects in Southwest and Southeast Florida, including locations near the proposed site.
5. Since issuance of the Intent and in the course of reviewing other applications, the Department has gathered additional data from several of the new General Electric 7FA simple cycle, gas and oil-fired, intermittent duty units that started operation in the past year.
6. Since issuance of the Intent, the Department has gathered information regarding several recently approved or announced pipeline projects that have the potential to increase the future supply of natural gas in Southeast Florida.
7. The proposed changes to the draft Permit will result in decreased emissions.
8. The proposed changes concern matters that are well within the scope of the issues

raised in the petitions or comments and introduce no new issues.

9. In addition to the foregoing, the following issues have determined the Department's change of position:

Issue 1. Use of Backup Fuel Oil. The use of diesel fuel¹ is one of the issues raised by the public and EPA comments and by petitions filed by Petitioners against the proposed ENRON project. The draft Permit for the Pompano Beach project allows the use of diesel for 1000 hours per year per unit. The Department proposes to reduce this value in the Permit, if issued, to 500 hours per year per unit after 2004. This change is consistent with the Department's draft Permit for the nearby, planned ENRON Deerfield Beach Project, for which an Intent to Issue Air Construction Permit was issued in June 2000, and considers conditions in other recent Intents and Permits in Southeast and Southwest Florida.

Exhibit 1 details a listing of NO_x limits and fuel oil use at some of the simple cycle E and F-Class combustion turbine projects under review or recently approved in Florida.

Issue 2 – Nitrogen Oxides (NO_x) Emissions While Burning Fuel Oil. The draft Permit includes a NO_x limit of 42 parts per million by volume, dry, at 15 percent oxygen (ppmvd) while firing (backup) diesel. The issue of the NO_x limit during diesel use is one of the items in the petitions filed by the Petitioners against the ENRON Project. The Department plans to further limit the NO_x emissions in the Permit, if issued, while firing diesel to 36 ppmvd. This reflects consideration of data from tests conducted at new identical units during the time since issuance of the Intent and draft Permit. This will match the Department's draft Permit for the nearby, planned ENRON Deerfield Beach Project, for which an Intent was issued in the interim period,

¹ The terms fuel oil, distillate fuel oil, No. 2 fuel oil, and diesel fuel are used interchangeably. Therefore, the term "diesel" will be used to describe all of the aforementioned terms and recognizes that this fuel is a common, distilled, transportation-grade, refinery product with a sulfur content no greater than 0.05 percent. This is in contrast to *residual* fuel oil used at certain other power plants in South Florida and having a sulfur content on the

and considers conditions in recent Intents and Permits for projects in Southeast and Southwest Florida. Refer to Exhibit 1.

Issue 3 – Startup And Shutdown Conditions. The issue of startup and shutdown emissions is one of the items raised by EPA in its comments on the Pompano Beach project and by the Petitioners in their petitions. The Department proposes to include an “Operational Standard” for startup and shutdown in the permit, if issued. This proposed change reflects consideration of comments received and reflects the Department’s recent Intents to Issue Air Construction Permit and Final Permits for several projects in Southeast and Southwest Florida.

The Department will also require a continuous emission monitoring system (CEMS) at one of the units to gather information regarding actual carbon monoxide (CO) emissions during startup of simple cycle combustion turbines. This was one of the possibilities suggested by EPA in its comments on the project. The data collected will allow the Department to set firm CO limits during startup and shutdown if feasible.

Issue 4 – Emergency Equipment. The draft Permit did not include the firewater protection system that typically requires a small on-site emergency diesel-fueled pump. The issue of emergency equipment is one of the items raised in the petitions from the Petitioners. As part of a new major facility subject to permitting, the Department will include the equipment in the permit.

Issue 5 – Other “Minor Sources”. The draft Permit included diesel storage tanks, cooling towers that dissipate heat removed from warm ambient air prior to introduction into the unit compressors, and a small gas-fired fuel heater. An issue related to this equipment (described as “minor sources”) was raised in the petitions from the Petitioners. As part of a new major facility

order of 1 to 2.5 percent sulfur.

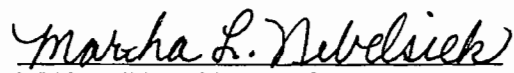
subject to permitting, the Department included this equipment in the permit and, where appropriate, referenced the applicable New Source Performance Standards. The Department will add some minor details, as appropriate, in the permit that further clarify the purpose and capabilities of the aforementioned units.

Issue 6 – Volatile Organic Compounds (VOC) Emission Limit. The draft Permit includes a VOC limit of 2.8 ppmvd. The issue of the VOC limit is one of the items in the petitions filed by the CITIES against the ENRON Project. The Department plans to limit the VOC emissions in the Permit, if issued, to 1.4 ppmvd. This reflects the emission limit proposed by ENRON in its original application. This will render consistent the Department's draft permit for the nearby, planned ENRON Deerfield Beach Project, for which an Intent to Issue an Air Construction Permit was issued in June 2001.

WHEREFORE, the Department by this Notice of Change of Agency Position advises the parties in the present proceedings of the proposed amendments to the Permit that the Department will advocate.

Respectfully submitted this 25th day of October, 2001.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION


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(850) 488-9314
(850) 921-3000 (facsimile)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. Mail to:

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Paul C. Savage, Esq.
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Margate, FL 33063
Facsimile: (954) 935-5304

on this 25th day of October, 2001

Martha L. Nebelsiek
MARTHA L. NEBELSIEK
Florida Bar No. 0831311
Senior Assistant General Counsel

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Exhibit 1

RECENT NO_x LIMITS AND FUEL OIL USE AT SIMPLE CYCLE UNITS IN FLORIDA

Project Location	Power Output (MW)	NO _x Limit ppmvd @ 15% O ₂ and Fuel	Technology	Comments
Pompano Beach, FL	510	9 - NG 42 <u>36</u> - No. 2 FO	DLN WI	3x170 MW GE PG7241FA CTs Draft 3/01. 1000 hrs on oil. <u>500 after 2004</u>
Enron Deerfield, FL	510	9 - NG 36 - No. 2 FO	DLN WI	3x170 MW GE 7FA CTs Draft 6/01. 1000 hrs on oil. <u>500 after 2004</u>
El Paso Deerfield, FL	775 (525 SC)	9 - NG	DLN	3x175 MW GE 7FA CTs Draft 8/01. Gas Only - No Oil
El Paso Belle Glade, FL	600 (525 SC)	9 - NG	DLN	3x175 MW GE 7FA CTs Draft 9/01. Gas Only - No Oil
El Paso Manatee, FL	600 (525 SC)	9 - NG	DLN	3x175 MW GE 7FA CTs Draft 9/01. Gas Only - No Oil
Duke Lake Co., FL	640	9 (new), 10.5 - NG	DLN	Eight 80 MW GE 7EA CTs Issued 7/01. 500 hrs of fuel oil
Duke Ft. Pierce, FL	640	9 (new), 12 - NG 42 - No. 2 FO	DLN	Eight 80 MW GE 7EA CTs Issued 6/01. Gas Only - No Fuel Oil
South Pond, Polk Co., FL	600 (525 SC)	9 - NG 36 - No. 2 FO	DLN	One 175 MW GE 7FA CTs Draft 10/01. 500 hrs of fuel oil
Midway St. Lucie, FL	510	9 - NG 42 - No. 2 FO	DLN WI	3x170 MW GE PG7241FA CTs Issued 2/2001. 1000 hrs on oil
Granite Hardee, FL (There are four options. Only one will be built)	510	10.5 - NG 42 - No. 2 FO	DLN WI	3x170 MW GE 7FA CTs (Option 1) Issued 8/2000, 500 hrs on oil
	510	15 - NG	DLN	3x170 MW WH 501F CTs (Option 2) Issued 8/2000, Gas Only - No Oil
	360	15 - NG	DLN	3x170 MW WH 501D5A CTs (Option 3) Issued 8/2000, Gas Only - No Oil
	540	5 - NG 10 or 42	HSCR WI or HSCR	3x180 MW ABB GT-24 CTs (Option 4) 500 hrs on oil, 1st 250 w/o HSCR
DeSoto County, FL	510	9 - NG 42 - No. 2 FO	DLN WI	3x170 MW GE PG7241FA CTs Issued 7/00. 1000 hrs on oil
Shady Hills Pasco, FL	510	9 - NG 42 - No. 2 FO	DLN WI	3x170 MW GE PG7241FA CTs Application 2/00. 1000 hrs on oil
Vandolah Hardee, FL	680	9 - NG 42 - No. 2 FO	DLN WI	4x170 MW GE PG7241FA CTs Issued 11/99. 1000 hrs on oil
Oleander Brevard, FL	850	9 - NG 42 - No. 2 FO	DLN WI	5x170 MW GE PG7241FA CTs Issued 11/99. 1000 hrs on oil
JEA Baldwin, FL	510	10.5 - NG 42 - No. 2 FO	DLN WI	3x170 MW GE MS7241FA CTs Issued 10/99. 750 hrs on oil
Reliant Osceola, FL	510	10.5 - NG 42 - No. 2 FO	DLN WI	3x170 MW GE MS7241FA CTs Issued. 750 hrs on oil
TEC Polk Power, FL	330	10.5 - NG 42 - No. 2 F.O.	DLN WI	2x165 MW GE MS7241FA CTs Issued 10/99. 750 hrs on oil
Dynegy, FL	510	15 - NG	DLN	3x170 MW WH 501F CTs Issued 2000. Gas only

CON = Continuous
SC = Simple Cycle
INT = Intermittent

DLN = Dry Low NO_x Combustion
SCR = Selective Catalytic Reduction
HSCR = Hot SCR

FO = Fuel Oil
NG = Natural Gas
WI = Water or Steam Injection

GE = General Electric
WH = Westinghouse
ABB = Asea Brown Boveri

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RECEIVED
OCT 30 2001
BUREAU OF AIR REGULATION

BROWARD COUNTY, CITY OF CORAL
SPRINGS, and CITY OF COCONUT CREEK,

Petitioners,

v.

DEPARTMENT OF ENVIRONMENTAL
PROTECTION and DEERFIELD BEACH
ENERGY CENTER, L.L.C.,

Respondents.

CONSOLIDATED

DOAH CASE NOS. 01-2727
01-2728
01-2729

**DEERFIELD BEACH ENERGY CENTER'S
OBJECTIONS AND RESPONSE
TO CITY OF CORAL SPRINGS'
REQUEST FOR PRODUCTION OF DOCUMENTS**

Respondent, Deerfield Beach Energy Center, L.L.C. ("Energy Center"), pursuant to Fla.R.Civ.P. 1.350 and F.A.C. 28-106.206, objects and responds as follows to the "Petitioner, City of Coral Springs, Request for Production of Documents Directed to Defendant, Deerfield Beach Energy Center, L.L.C.", dated September 21, 2001:

GENERAL OBJECTIONS

A. Energy Center objects to the request that documents be produced within thirty days at the office of petitioner's counsel. Energy Center will produce the documents described below for inspection and copying at a mutually convenient time. In addition, Energy Center will produce those documents in the varying locations where they are currently maintained unless an agreement can be reached with petitioner for the mutual exchange of documents subject to the parties' respective requests for production.

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MIAMI NEW YORK WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER CHICAGO BOSTON PHOENIX WILMINGTON LOS ANGELES DENVER
SAO PAULO FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE

mgn

B. Energy Center objects to the definition of “document” and “documentary materials” to the extent that they seek information and materials that are beyond the scope of the term “documents” as used in Fla.R.Civ.P. 1.350(a).

C. Energy Center objects to the Instructions in the request to the extent that they purport to impose obligations which are not set forth in the applicable rules governing this proceeding, including the applicable Florida Rules of Civil Procedure.

D. Energy Center further objects to the request as overbroad, and not reasonably calculated to lead to the discovery of relevant, admissible evidence, to the extent that the request does not contain any temporal restrictions whatsoever. Where a specific timeframe cannot be inferred from the context of a particular request (e.g., if the request is not logically limited to the period of Energy Center’s existence, nor to the facts and circumstances surrounding the project at issue), Energy Center will limit its search for responsive documents to a reasonable timeframe.

RESPONSES TO SPECIFIC REQUESTS

Without waiver of and subject to the foregoing general objections, Energy Center responds as follows to the numbered requests in the request for production.

Request No. 1. All correspondence between applicant or its agents and consultants (hereinafter “the applicant”) with Goal Line, Alstom Power or its predecessors (ABB) regarding SCONOX.

Response to Request No. 1. Energy Center objects to Request No. 1 as vague and ambiguous with respect to the phrase “its agents and consultants (hereinafter ‘the applicant’).” Energy Center further objects to the definition of “the applicant”, and to the request generally, to the extent it can be construed to seek documents not in the possession, custody, or control of Energy Center, as improperly seeking production of materials beyond the scope of Rule 1.350. Energy Center further objects to the request as overbroad. Subject to and without waiver of the

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foregoing objections and its general objections, Energy Center will produce (a) responsive documents within its possession, custody, and control, (b) to the extent that such documents relate to the project at issue, responsive documents within the possession, custody, or control of Enron North America, Inc., and (c) to the extent that such documents relate to the project at issue, responsive documents within the possession, custody, or control of ENSR International. Similarly, and based upon the same objections, Energy Center will construe the phrase “the applicant” in the remaining document requests as referring to (a) Energy Center; (b) to the extent that the requested information relates to the project at issue, to Enron North America, Inc.; and (c), to the extent that the requested information relates to the project at issue, to ENSR International.

Request No. 2. All correspondence between the applicant and Engelhard, Hitachi, Mitsubishi, Peerless, or any other vendor or supplier regarding SCR.

Response to Request No. 2. Energy Center objects to the term “applicant” in Request No. 2 for the reasons stated in its response to Request No. 1, and limits its response as stated in the response to Request No. 1. Energy Center further objects to the request as overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents.

Request No. 3. All correspondence between the applicant and GE, Catalytica, or any other vendor or supplier regarding XONON.

Response to Request No. 3. Energy Center objects to the term “applicant” in Request No. 3 for the reasons stated in its response to Request No. 1, and limits its response as stated in the response to Request No. 1. Energy Center further objects to the request as overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents.

Request No. 4. All correspondence between the applicant with Engelhard or any other vendor or supplier regarding oxidation catalysts.

Response to Request No. 4. Energy Center objects to the term “applicant” in Request No. 4 for the reasons stated in its response to Request No. 1, and limits its response as stated in the response to Request No. 1. Energy Center further objects to the request as overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents.

Request No. 5. Complete copy of vendor guarantees and budgetary quotes provided the applicant for the oxidation catalyst and SCR system costed in the Application.

Response to Request No. 5. Energy Center objects to the term “applicant” in Request No. 5 for the reasons stated in its response to Request No. 1, and limits its response as stated in the response to Request No. 1. Energy Center further objects to the request as overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents.

Request No. 6. All reports, engineering analyses, and correspondence that describes the use of water injection to control NOx during oil firing, including but not limited to the amount of injected water, the quality and source of injected water, reduction in combustion temperature caused by water injection, PM10 emissions resulting from the injected water, and the impact of water injection on turbine performance and emissions.

Response to Request No. 6 Energy Center objects to Request No. 6 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence, except for the portion of the request which seeks reports, engineering analyses and reports that describe “the impact of water injection on turbine performance and emissions.” Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce documents responsive to that portion of the request which seeks reports,

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SÃO PAULO FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE

engineering analyses and reports that describe the impact of water injection on turbine performance and emissions.

Request No. 7. The draft permit proposes NOx limits of 9.0 ppm achieved with dry low NOx combustors when firing gas and 36 ppm achieved with water injection when firing oil. Provide any and all engineering analyses and reports, correspondence or other documents that would support the conclusion that using high temperature SCR to meet an NOx limit of 2.0 ppm at 15% O₂ averaged over 1 hour when firing both oil and gas cannot be accomplished.

Response to Request No. 7 Subject to its general objections, Energy Center will produce responsive documents.

Request No. 8. The draft permit proposes CO limits of 9 ppm when firing gas and 20 ppm when firing oil, achieved using good combustion practices. Identify any engineering analyses and reports, correspondence and such other documentation demonstrating that ENRON is prevented from using an oxidation catalyst to meet a CO limit of 2 ppm averaged over 3 hours when firing both oil and gas.

Response to Request No. 8 Energy Center objects to Request No. 8 as not reasonably calculated to lead to the discovery of relevant, admissible evidence. Energy Center has acknowledged in its application that the use of an oxidation catalyst would be technically feasible.

Request No. 9. All documents that show the source of the distillate that would be used as a backup fuel and provide a chemical analysis that includes heat content, sulfur content, an ultimate analysis, and metal content, including but not limited to arsenic, vanadium, chromium, nickel, cadmium, mercury, beryllium, and lead.

Response to Request No. 9 Energy Center objects to Request No. 9 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Request No. 10. All documents that show the source of the natural gas that would be used and provide a chemical analysis that includes heat content, major constituents, and the concentration of total sulfur, mercury, and arsenic.

Response to Request No. 10 Energy Center objects to Request No. 10 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Request No. 11. Any documents including, but not limited to, a letter of intent or agreement, between applicant and vendors that show price, volume, fuel specifications, and terms and conditions of supplying oil and gas to the site.

Response to Request No. 11 Energy Center objects to Request No. 11 as vague, ambiguous, and overbroad. Energy Center further objects to the term "applicant" in Request No. 11 for the reasons stated in its response to Request No. 1, and limits its response as stated in the response to Request No. 1. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents, to the extent that they exist and can be located.

Request No. 12. All documents that support the claim that California BACT determinations represent LAER, as stated in the Deerfield Beach PSD Application at 5-8.

Response to Request No. 12 Energy Center objects to Request No. 12 as vague, ambiguous, and overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents, to the extent that they exist and can be located.

Request No. 13. All documents showing or indicating any and all sources of ultra low sulfur distillate (30 ppmw or less) within a 1,000 mile radius of the project site.

Response to Request No. 13 Energy Center objects to Request No. 13 as vague, ambiguous, overbroad, and not reasonably calculated to lead to the discovery of relevant, admissible evidence. Subject to and without waiver of the foregoing objections and its general

objections, Energy Center will produce responsive documents, to the extent that they exist and can be located.

Request No. 14. Copies of all documents containing information relating to the availability and price of lower sulfur (30 ppmw or less) distillate.

Response to Request No. 14 Energy Center objects to Request No. 14 as vague, ambiguous, overbroad, and not reasonably calculated to lead to the discovery of relevant, admissible evidence. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents, to the extent that they exist and can be located.

Request No. 15. All documents, analyses, or correspondence containing information in any way related to the availability, price, or feasibility of using lower sulfur (30 ppmw or less) distillate.

Response to Request No. 15 Energy Center objects to Request No. 15 as vague, ambiguous, overbroad, duplicative of Request No. 14, and not reasonably calculated to lead to the discovery of relevant, admissible evidence. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents, to the extent that they exist and can be located.

Request No. 16. All documents containing information in any way related to the availability, price, or feasibility of gas and oil supplies for the project.

Response to Request No. 16 Energy Center objects to Request No. 16 as vague, ambiguous, overbroad, duplicative of Requests Nos. 11, 13-15, and not reasonably calculated to lead to the discovery of relevant, admissible evidence. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce documents responsive to Requests Nos. 11 and 13-15, to the extent that they exist and can be located.

Request No. 17. All documents containing any calculation or modeling relating to visible plumes and water vapor emitted from turbine stacks and cooling towers.

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Response to Request No. 17 Energy Center objects to Request No. 17 as vague, ambiguous, overbroad, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Request No. 18. For all dispersion modeling described in the PSD Applications, provide electronic copies of the following: (a) model input and output files for both coarse and fine receptor grids and any other receptors in electronic format on a CD. Input data should include the meteorological data.

Response to Request No. 18 Energy Center objects to Request No. 18 as vague, ambiguous, and overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce all materials that were provided to DEP in support of the dispersion modeling described in Energy Center's PSD application.

Request No. 19. All calculations, correspondence and documents that support applicant's conclusion that the area around the proposed facility currently is and will continue to be for the life of the project "rural" for purposes of dispersion modeling.

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Request No. 20. Electronic and/or paper copies of heat balances for each project, created using Thermoflow software or equivalent.

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is unable to produce such information, even if it were somehow relevant, in the absence of an appropriate confidentiality order.

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Request No. 22. All documents showing the design-level, cost effectiveness analysis for both high temperature SCR and an oxidation catalyst that is consistent with the NSR Manual and includes the following critical information missing from the analysis in the PSD Application: (a) design parameters; (b) battery limits; (c) itemized capital and operating costs supported by vendor quotes and/or engineering analyses.

Response to Request No. 22 Energy Center objects to Request No. 22 as vague and ambiguous, as mischaracterizing the nature of the information supposedly “missing from the analysis”, as overbroad, and as not reasonably calculated to lead to the discovery of relevant, admissible evidence. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce such responsive documents, as it understands the request for production, as are in its possession, custody, or control.

Request No. 23. All documents that support the assumptions used in the BACT cost effectiveness analyses in the PSD Application.

Response to Request No. 23 Energy Center objects to Request No. 23 as vague and ambiguous, and, depending upon the intended construction of the request, as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible

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evidence. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce such responsive documents, as it understands the request for production, as are in its possession, custody, or control.

Request No. 24. All documents, calculations, and other information relating to the modification of AP-42 emission factors for toxic pollutants. See, for example, Deerfield PSD Application, Appendix B, HAP Emissions from Simple Cycle CTG, note h.

Response to Request No. 24 Energy Center objects to Request No. 24 as vague and ambiguous, and, depending upon the intended construction of the request, as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce documents supporting the referenced modification.

Request No. 25. Vendor-supplied performance specifications, exhaust parameters, uncontrolled emissions, controlled emissions, and exhaust composition for 50%, 75%, and 100% loads and the expected range of ambient conditions for both oil and gas firing.

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Request No. 28. All documents that estimate the number and duration of startups and shutdowns anticipated per turbine per year and emissions of criteria and toxic emissions that would occur during these periods.

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Request No. 29. All documents that demonstrate that CEMs for CO are not feasible for the projects.

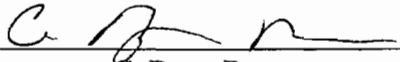
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Request No. 30. All documents relating to the project's water supply, including the average and maximum flow rates, quality of the water, treatment that would be require for the cooling tower makeup and water injection for Nox control, and disposal of any residuals.

Response to Request No. 30 Energy Center objects to Request No. 30 as vague, ambiguous, overbroad, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Respectfully submitted,

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By: 
C. Ryan Reetz

*Counsel for Deerfield Beach Energy Center,
L.L.C.*

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served by U.S. Mail on October 22, 2001 to:

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OCT 30 2001

BUREAU OF AIR REGULATION

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, CITY OF
MARGATE and CITY OF COCONUT
CREEK,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
POMPANO BEACH ENERGY CENTER,
L.L.C. (AN AFFILIATE OF ENRON NORTH
AMERICA),

Respondents,

and

BROWARD COUNTY,

Intervenor

CONSOLIDATED

DOAH CASE NOS. 01-2682
01-2683
01-2684

**POMPANO BEACH ENERGY CENTER'S
OBJECTIONS AND RESPONSE
TO CITY OF CORAL SPRINGS'
REQUEST FOR PRODUCTION OF DOCUMENTS**

Respondent, Pompano Beach Energy Center, L.L.C. ("Energy Center"), pursuant to Fla.R.Civ.P. 1.350 and F.A.C. 28-106.206, objects and responds as follows to the "Petitioner, City of Coral Springs, Request for Production of Documents Directed to Defendant, Pompano Beach Energy Center, L.L.C.", dated September 21, 2001:

GENERAL OBJECTIONS

A. Energy Center objects to the request that documents be produced within thirty days at the office of petitioner's counsel. Energy Center will produce the documents described below for inspection and copying at a mutually convenient time. In addition, Energy Center will

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mgm

produce those documents in the varying locations where they are currently maintained unless an agreement can be reached with petitioner for the mutual exchange of documents subject to the parties' respective requests for production.

B. Energy Center objects to the definition of "document" and "documentary materials" to the extent that they seek information and materials that are beyond the scope of the term "documents" as used in Fla.R.Civ.P. 1.350(a).

C. Energy Center objects to the Instructions in the request to the extent that they purport to impose obligations which are not set forth in the applicable rules governing this proceeding, including the applicable Florida Rules of Civil Procedure.

D. Energy Center further objects to the request as overbroad, and not reasonably calculated to lead to the discovery of relevant, admissible evidence, to the extent that the request does not contain any temporal restrictions whatsoever. Where a specific timeframe cannot be inferred from the context of a particular request (e.g., if the request is not logically limited to the period of Energy Center's existence, nor to the facts and circumstances surrounding the project at issue), Energy Center will limit its search for responsive documents to a reasonable timeframe.

RESPONSES TO SPECIFIC REQUESTS

Request No. 1. All correspondence between applicant or its agents and consultants (hereinafter "the applicant") with Goal Line, Alstom Power or its predecessors (ABB) regarding SCONOX.

Response to Request No. 1. Energy Center objects to Request No. 1 as vague and ambiguous with respect to the phrase "its agents and consultants (hereinafter 'the applicant')." Energy Center further objects to the definition of "the applicant", and to the request generally, to the extent it can be construed to seek documents not in the possession, custody, or control of Energy Center, as improperly seeking production of materials beyond the scope of Rule 1.350.

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Energy Center further objects to the request as overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce (a) responsive documents within its possession, custody, and control, (b) to the extent that such documents relate to the project at issue, responsive documents within the possession, custody, or control of Enron North America, Inc., and (c) to the extent that such documents relate to the project at issue, responsive documents within the possession, custody, or control of ENSR International. Similarly, and based upon the same objections, Energy Center will construe the phrase "the applicant" in the remaining document requests as referring to (a) Energy Center; (b) to the extent that the requested information relates to the project at issue, to Enron North America, Inc.; and (c), to the extent that the requested information relates to the project at issue, to ENSR International.

Request No. 2. All correspondence between the applicant and Engelhard, Hitachi, Mitsubishi, Peerless, or any other vendor or supplier regarding SCR.

Response to Request No. 2. Energy Center objects to the term "applicant" in Request No. 2 for the reasons stated in its response to Request No. 1, and limits its response as stated in the response to Request No. 1. Energy Center further objects to the request as overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents.

Request No. 3. All documents that support the claim that Engelhard is no longer offering high temperature SCR for oil-fired turbines made on page 5-11 of the Pompano Application.

Response to Request No. 3. Subject to its general objections, Energy Center will produce responsive documents, if any, within its possession, custody, or control.

Request No. 4. All correspondence between the applicant and GE, Catalytica, or any other vendor or supplier regarding XONON.

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Response to Request No. 4. Energy Center objects to the term “applicant” in Request No. 4 for the reasons stated in its response to Request No. 1, and limits its response as stated in the response to Request No. 1. Energy Center further objects to the request as overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents.

Request No. 5. All correspondence between the applicant with Engelhard or any other vendor or supplier regarding oxidation catalysts.

Response to Request No. 5. Energy Center objects to the term “applicant” in Request No. 5 for the reasons stated in its response to Request No. 1, and limits its response as stated in the response to Request No. 1. Energy Center further objects to the request as overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents.

Request No. 6. Complete copy of vendor guarantees and budgetary quotes provided the applicant for the oxidation catalyst and SCR system costed in the application.

Response to Request No. 6. Energy Center objects to the term “applicant” in Request No. 6 for the reasons stated in its response to Request No. 1, and limits its response as stated in the response to Request No. 1. Energy Center further objects to the request as overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents.

Request No. 7. All reports, engineering analyses, and correspondence that describes the use of water injection to control NOx during oil firing, including but not limited to the amount of injected water, the quality and source of injected water, reduction in combustion temperature caused by water injection, PM10 emissions resulting from the injected water, and the impact of water injection on turbine performance and emissions.

Response to Request No. 7. Energy Center objects to Request No. 7 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence, except for the portion of the request which seeks reports, engineering analyses and reports that describe “the impact of water injection on turbine performance and emissions.” Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce documents responsive to that portion of the request which seeks reports, engineering analyses and reports that describe the impact of water injection on turbine performance and emissions.

Request No. 8. The draft permit proposes NOx limits of 9.0 ppm achieved with dry low NOx combustors when firing gas and 36 ppm achieved with water injection when firing oil. Provide any and all engineering analyses and reports, correspondence or other documents that would support the conclusion that using high temperature SCR to meet a NOx limit of 2.0 ppm at 15% O₂ averaged over 1 hour when firing both oil and gas cannot be accomplished.

Response to Request No. 8. Subject to its general objections, Energy Center will produce responsive documents.

Request No. 9. The draft permit proposes CO limits of 8 ppm when firing gas and 20 ppm when firing oil, achieved using good combustion practices. Identify any engineering analyses and reports, correspondence and such other documentation demonstrating that ENRON is prevented from using an oxidation catalyst to meet a CO limit of 2 ppm averaged over 3 hours when firing both oil and gas.

Response to Request No. 9. Energy Center objects to Request No. 9 as not reasonably calculated to lead to the discovery of relevant, admissible evidence. Energy Center has acknowledged in its application that the use of an oxidation catalyst would be technically feasible.

Request No. 10. All documents that show the source of the distillate that would be used as backup fuel and provide a chemical analysis that includes heat content, sulfur content, an ultimate analysis, and metal content, including but not limited to arsenic, vanadium, chromium, nickel, cadmium, mercury, beryllium, and lead.

Response to Request No. 10. Energy Center objects to Request No. 10 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Request No. 11. All documents that show the source of the natural gas that would be used and provide a chemical analysis that includes heat content, major constituents, and the concentration of total sulfur, mercury, and arsenic.

Response to Request No. 11. Energy Center objects to Request No. 11 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.

Request No. 12. Any documents including, but not limited to, a letter of intent or agreement, between applicant and vendors that show price, volume, fuel specifications, and terms and conditions of supplying oil and gas to the site.

Response to Request No. 12. Energy Center objects to Request No. 12 as vague, ambiguous, and overbroad. Energy Center further objects to the term "applicant" in Request No. 12 for the reasons stated in its response to Request No. 1, and limits its response as stated in the response to Request No. 1. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents, to the extent that they exist and can be located.

Request No. 13. All documents that support the claim that California BACT determinations represent LAER, as stated in the Pompano Beach PSD Application at 5-8.

Response to Request No. 13 Energy Center objects to Request No. 13 as vague, ambiguous, and overbroad. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents, to the extent that they exist and can be located.

Request No. 14. All documents showing or indicating any and all sources of ultra low sulfur distillate (30 ppmw or less) with a 1,000 mile radius of the project site.

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Response to Request No. 14 Energy Center objects to Request No. 14 as vague, ambiguous, overbroad, and not reasonably calculated to lead to the discovery of relevant, admissible evidence. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents, to the extent that they exist and can be located.

Request No. 15. Copies of all documents containing information relating to the availability and price of lower sulfur (30 ppmw or less) distillate.

Response to Request No. 15 Energy Center objects to Request No. 15 as vague, ambiguous, overbroad, and not reasonably calculated to lead to the discovery of relevant, admissible evidence. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents, to the extent that they exist and can be located.

Request No. 16. All documents, analyses, or correspondence containing information in any related to the availability, price, or feasibility of using lower sulfur (30 ppmw or less) distillate.

Response to Request No. 16 Energy Center objects to Request No. 16 as vague, ambiguous, overbroad, duplicative of Request No. 15, and not reasonably calculated to lead to the discovery of relevant, admissible evidence. Subject to and without waiver of the foregoing objections and its general objections, Energy Center will produce responsive documents, to the extent that they exist and can be located.

Request No. 17. All documents containing information in any way related to the availability, price, or feasibility of gas and oil supplies for the project.

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foregoing objections and its general objections, Energy Center will produce documents responsive to Requests Nos. 12 and 14-16, to the extent that they exist and can be located.

Request No. 18. All documents containing any calculation or modeling relating to visible plumes and water vapor emitted from turbine stacks and cooling towers.

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served by U.S. Mail on October 22,

2001 to:

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Tallahassee, Florida 32399-3000

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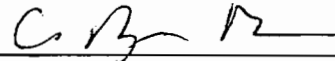
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Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

and

DEERFIELD BEACH ENERGY CENTER,
L.L.C. (AN AFFILIATE OF ENRON
NORTH AMERICA),

Respondents.

CONSOLIDATED

DOAH CASE NOS. 01-2727
01-2728
01-2729

**DEERFIELD BEACH ENERGY CENTER'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO CITY OF CORAL SPRINGS**

Respondent, Deerfield Beach Energy Center, L.L.C., pursuant to Fla.R.Civ.P. 1.350 and F.A.C. 28-106.206, requests that petitioner, City of Coral Springs ("Coral Springs") produce the following documents within the time provided by law:

DEFINITIONS AND INSTRUCTIONS

A. "Energy Center" shall refer to respondent Deerfield Beach Energy Center, L.L.C. and to Enron North America; and to their corporate parents, subsidiaries, affiliates,

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successors, officers, directors, shareholders, employees, attorneys, agents, and other representatives known to you.

B. "The City," "you" and "your" shall refer to petitioner City of Coral Springs; and to its officials, employees, attorneys, agents, and other representatives known to you.

C. The "Petition" shall mean your Petition for Administrative Hearing in this matter, and any amendments subsequently proposed or filed by you.

D. "DEP" shall refer to the State of Florida Department of Environmental Protection; and to its officials, employees, attorneys, agents, and other representatives known to you.

E. The "Permit" shall refer to the Permit identified in the Petition.

F. The term "document" shall refer to all information and materials within the scope of Fla.R.Civ.P. 1.350 and specifically includes (without limitation) all information kept on audiotape, videotape, computer storage devices, or other electronic storage media. A draft or non-identical copy is a separate document within the meaning of this term.

G. The terms "all" and "each" shall be construed as all and each.

H. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be outside its scope.

I. The term "concerning" means relating to, referring to, pertaining to, describing, evidencing, or constituting.

J. The use of the singular form of any word includes the plural and vice versa.

K. The term "person" means any natural person, individual, sole proprietorship, partnership, corporation, association, organization, joint venture, firm, other business enterprise, governmental body, or group of natural persons or other entities.

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L. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

REQUESTED DOCUMENTS

1. All documents identified or described in your responses to Energy Center's First Set of Interrogatories served upon you in this case.

2. All documents upon which you rely to support your contention that the DEP should not issue the Permit.

3. All documents upon which you rely to support your contention that, if the Permit is to be issued, then the DEP should amend the Permit.

4. All documents concerning whether, as you allege in paragraph 25 of your Petition, "DEP's Intent to Issue Air Construction Permit was based on erroneous information concerning the proposed power Plant's distance to environmentally sensitive lands."

5. All documents concerning whether, as you allege in subparagraph 25(iv) of your Petition, "The proximity of these ecosystems were not taken into account by the DEP in their review of the proposed location."

6. All documents on which you rely in "disput[ing] the DEP's BACT determinations contained in Appendix BD," as alleged in paragraph 26 of your Petition.

7. All documents concerning whether, as alleged in paragraph 26 of your petition, the DEP's BACT determinations contained in Appendix BD "do not comply with federal or state law adopted pursuant to the Federal Clean Air Act and its amendments."

8. All documents on which you rely to support your contention, as alleged in paragraph 27 of your petition, that "the DEP has not imposed BACT."

9. All documents on which you rely to support your contention, as alleged in paragraph 28 of your petition, that "the DEP has failed to identify the 'maximum degree of reduction' in violation of the Florida Administrative Code."

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10. All documents concerning whether, as you allege in page 7 of your Petition, the "proposed BACT limits (or absence thereof) for the turbines, fuel oil heater, tanks, and cooling towers, accepted by the DEP, are not consistent with the definition of BACT in Rule 62-210.200(38), F.A.C. and the requirements in Rule 62-212.400(6), F.A.C."

11. All documents concerning whether, as you allege in page 7 of your Petition, "the DEP's BACT determinations do not recognize the much lower limits currently being permitted in other states."

12. All documents concerning the "much lower limits currently being permitted in other states," as alleged in page 7 of your Petition.

13. All documents on which you rely in contending that DEP's BACT determinations for the proposed Plant identified in the Permit do not "address the social and environmental impacts to the City for failing to appropriately limit emissions from the facility," as alleged in page 7 of your Petition.

14. All documents concerning whether, as alleged in page 7 of your Petition,

Other states, including New York and California, have permitted a large number of simple cycle peaking power plants with NOx limits of 2 to 5 ppmvd at 15% O₂ on gas using SCR and 5.9 to 13 ppmvd on oil, achieved with water injection and SCR.

15. All documents on which you rely to support your contention, as alleged in page 7 of your Petition, that

These lower limits have been demonstrated and achieved in practice and must be included as the top technology in a formal top-down BACT analysis.

16. All documents on which you rely to support your contention, as alleged in pages 7-8 of your Petition, that

A much lower NOx limit should be established for the turbines, consistent with formal BACT determinations and permitting history in other states and pursuant to Rule 62.212.400(2)(f), F.A.C. and Florida's delegation agreement with the EPA.

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17. All documents on which you rely to support your contention, as alleged in page 8 of your Petition, that

the DEP's failure to require compliance to the above standards, violates Rule 62-212.400(2)(f), F.A.C.

18. All documents concerning whether, as alleged in page 8 of your Petition,

Other states, including California, have permitted simple cycle peaking power plants with CO limits of 2 to 6 ppmvd at 15% O₂ on oil and gas, achieved using an oxidation catalyst.

19. All documents on which you rely to support your contention, as alleged in page 8 of your Petition, that

Much lower limits have been demonstrated in source tests and with continuous emission monitors.

20. All documents on which you rely to support your contention, as alleged in page 8 of your Petition, that

As a result, a much lower CO limit should be established for the turbines and continuous compliance should be demonstrated with a continuous emission monitor.

21. All documents on which you rely to support your contention, as alleged in page 8 of your Petition, that the 2.5 million gallon distillate storage tank, the 0.6 million gallon distillate storage tank, the gas-fired fuel heater, and the wet mechanical draft cooling towers

must use BACT and be regulated by permit, pursuant to Rule 62-210.200(112), F.A.C.

22. All documents on which you rely to support your contention, as alleged in pages 8-9 of your Petition, that

the DEP should conduct a formal BACT analysis for these minor sources and revise the Permit to include appropriate emission limits and monitoring requirements.

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23. All documents concerning the City's great concern, as alleged on page 9 of the Petition, with respect to "the health risks of diesel exhaust from any such engines."

24. All documents concerning whether, as alleged in page 9 of your Petition, the combustion of distillate in the turbines would produce "diesel exhaust," which is recognized by the U.S. Environmental Protection Agency (EPA) and California as a potent human carcinogen and respiratory irritant.

25. All documents on which you rely to support your contention, as alleged in page 9 of your Petition, that

these emissions should have been considered as a collateral environmental impact in a BACT analysis pursuant to the definition of BACT at F.A.C. 62-210.200(38) and federal guidance.

26. All documents concerning whether, as alleged in page 9 of your Petition, the definition of BACT in Rule 62-210.200(38) and implementing EPA guidance in the NSR Manual (EPA, New Source Review Workshop Manual, October 1990, Section IV.D.3) require taking into account the "environmental" impacts during the top-down BACT process. The DEP is further required to evaluate the social and economic impacts of its decisions, pursuant to Rule 62-212.400(6)(a)4, F.A.C.

27. All documents concerning whether, as alleged in page 9 of your Petition, the DEP has not considered the impact of its BACT decisions on the City's economic and social impacts, nor the collateral environmental impacts of its BACT decisions.

28. All documents on which you rely to support your contention, as alleged in page 10 of your Petition, that

the use of distillate fuel in a densely populated area is inappropriate, has far-reaching environmental, social and economic implications for its residents, and is not consistent with Rule 62-212.400(6)(a), F.A.C.

29. All documents concerning whether, as alleged in page 10 of your Petition,

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0.05% sulfur distillate is not BACT for SO₂ and sulfuric acid mist when firing oil.

30. All documents on which you rely to support your contention, as alleged in page 10 of your Petition, that

lower sulfur distillate, containing only 30 ppmw sulfur, is currently available on the east coast of the United States. Further, the EPA has adopted stringent fuel regulations that limit the sulfur content of diesel fuel to 15 ppmw. These regulations go into effect in June 2006 (Federal Register, v. 66, no. 12, January 18, 2001, p. 5002 *et seq*), at which point ultra low sulfur diesel will be widely available in the Florida market.

31. All documents on which you rely to support your contention, as alleged in pages 10-11 of your Petition, that

the permit [should] be modified to eliminate the use of distillate oil. In the short-term, a backup fuel such as Liquefied Natural Gas or propane or a noninterruptible gas supply contract for curtailments should be required, until such time as the capacity constraints on the Florida Gas Transmission Pipeline are alleviated, but no later than January 2003. If distillate is retained, diesel exhaust emissions should be rigorously controlled and 30 ppmw diesel fuel be required on startup and 15 ppmw diesel when it becomes available, but no later than June 2006.

32. All documents concerning whether, as alleged in page 11 of your Petition, during startups and shutdowns, combustion temperatures and pressures change rapidly, resulting in inefficient combustion and much higher emissions of NOx, CO, and VOCs (including aldehydes) than during steady state operation.

33. All documents concerning whether, as alleged in page 11 of your Petition, the City is concerned that virtually unlimited and uncontrolled startup and shutdown emissions will result in significant health impacts in Coral Springs, particularly during combined operation of the Pompano and Deerfield Beach Energy Centers.

34. All documents concerning whether, as alleged in page 11 of your Petition, emissions of formaldehyde, for example, can increase by over a factor of 500 during startups, compared to full load operation.

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35. All documents concerning whether, as alleged in page 11 of your Petition, if each turbine experienced as few as 100 startups per year, lasting only 10 minutes, the emissions of formaldehyde would exceed 10 ton/yr and require the use of maximum achievable control technology ("MACT"), pursuant to Rule 62-204.800, F.A.C.

36. All documents concerning whether, as alleged in page 11 of your Petition, omitting limits on startup and shutdown emissions is not consistent with requirements of the Clean Air Act.

37. All documents concerning whether, as alleged in pages 11-12 of your Petition, The U.S. EPA has consistently defined startup and shutdown to be part of the normal operation of a source. The EPA has also consistently concluded that these emissions should be accounted for in the design and implementation or the operating procedure for the process and control equipment. EPA has concluded that "[w]ithout clear definition and limitations, these automatic exemption provisions [for startups and shutdowns] could effectively shield excess emissions arising from poor operation and maintenance or design, thus precluding attainment."

38. All documents on which you rely to support your contention, as alleged in page 12 of your Petition, that these emissions should have been considered in the BACT analysis and the related health impacts addressed in conjunction with the environmental review required pursuant to Rule 62-210.200(38), F.A.C.

39. All documents concerning whether, as alleged in page 12 of your Petition, Permits issued by other states include limits on startup and shutdown emissions.

40. All documents on which you rely to support your contention, as alleged in page 12 of your Petition, that a permit condition [should] be included that specifically limits the number, duration, and emissions during startups and shutdowns, to comply with BACT and MACT.

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41. All documents on which you rely to support your contention, as alleged in page 12 of your Petition, that

the PM/PM10 limits are not practically enforceable because the Permit contains inadequate monitoring requirements (PM/PM10).

42. All documents on which you rely to support your contention, as alleged in page 12 of your Petition, that the Permit's treatment of PM/PM10 limits

is inconsistent with federal case law, which requires each individual limit to be federally enforceable.

43. All documents on which you rely to support your contention, as alleged in pages 12-13 of your Petition, that

One source test is not adequate to assure continuous compliance because PM10 emissions are highly variable and emissions on initial testing represent "new and clean" conditions. Turbine performance degrades and emissions increase over time. Thus, the Permit should be revised to require annual PM10 source test.

44. All documents on which you rely to support your contention, as alleged in page 13 of your Petition, that

the Deerfield Beach Energy Center does not comply with Broward County requirements.

45. All documents on which you rely to support your contention, as alleged in page 13 of your Petition, that

The applicant could implement reasonably available technically and economically feasible alternatives, consistent with BCC Section 27-178 that would significantly reduce emissions of regulated pollutants. These would include the use of ultra low sulfur diesel, the elimination of diesel, and the use of selective catalytic reduction to reduce NOx and an oxidation catalysts to reduce CO, VOCs and toxic organic compounds.

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46. All documents concerning any payments by you to any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

47. All documents concerning any agreements between you and any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

48. All documents provided by you to any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

49. All documents (including, without limitation, any reports) received from any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

50. All documents concerning any payments by you to any expert or consultant employed by you in connection with the Permit and/or Energy Center's application for the Permit.

51. All documents concerning any agreements between you and any expert or consultant employed by you in connection with the Permit and/or Energy Center's application for the Permit.

52. All documents provided by you to any expert or consultant employed by you in connection with the Permit and/or Energy Center's application for the Permit.

53. All documents (including, without limitation, any reports) received from any expert or consultant employed by you in connection with the Permit and/or Energy Center's application for the Permit.

54. All documents concerning any payments by you to any expert or consultant employed by you in connection with this case.

55. All documents concerning any agreements between you and any expert or consultant employed by you in connection with this case.

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56. All documents provided by you to any expert or consultant employed by you in connection with this case.

57. All documents (including, without limitation, any reports) received from any expert or consultant employed by you in connection with this case.

58. All documents concerning any communications between you and any person with respect to the Permit.

59. All documents concerning any communications between you and any person with respect to Energy Center's application for the Permit.

60. All documents concerning any communications between you and any person with respect to the proposed Plant identified in your Petition.

61. All documents concerning any communications between you and any person with respect to Energy Center's proposal to build a plant in Deerfield Beach.

62. All documents concerning any communications between you and any person with respect to these proceedings.

63. All documents concerning any public meetings at which the Permit was discussed.

64. All documents concerning any public meetings at which Energy Center's application for the Permit was discussed.

65. All documents concerning any public meetings at which the proposed Plant identified in your Petition was discussed.

66. All documents concerning any public meetings at which Energy Center's proposal to build a plant in Deerfield Beach was discussed.

67. All documents concerning any public meetings at which these proceedings were discussed.

68. Copies of all documents that are quoted, excerpted, or paraphrased in your Petition, regardless of whether the Petition identifies the documents by name.

69. All documents on which you intend to rely at trial.

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CASE NOS. 01-2727, 01-2728, 01-2729

Respectfully submitted,

Kerri L. Barsh, Esq.

Florida Bar No. 443840

C. Ryan Reetz

Florida Bar No. 934062

Paul C. Savage, Esq.

Florida Bar No. 088587

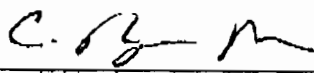
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By: 
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SAO PAULO FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE

CASE NOS. 01-2727, 01-2728, 01-2729

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served by facsimile and U.S. Mail on October 15, 2001 to:

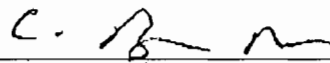
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STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

RECEIVED
OCT 30 2001
BUREAU OF AIR REGULATION

BROWARD COUNTY, CITY OF CORAL
SPRINGS, and CITY OF COCONUT
CREEK,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

and

DEERFIELD BEACH ENERGY CENTER,
L.L.C. (AN AFFILIATE OF ENRON
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Respondents.

CONSOLIDATED

DOAH CASE NOS. 01-2727
01-2728
01-2729

**DEERFIELD BEACH ENERGY CENTER'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO BROWARD COUNTY**

Respondent, Deerfield Beach Energy Center, L.L.C., pursuant to Fla.R.Civ.P. 1.350 and F.A.C. 28-106.206, requests that petitioner, Broward County ("Broward") produce the following documents within the time provided by law:

DEFINITIONS AND INSTRUCTIONS

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successors, officers, directors, shareholders, employees, attorneys, agents, and other representatives known to you.

B. "The County," "you" and "your" shall refer to petitioner Broward County; and to its officials, employees, attorneys, agents, and other representatives known to you.

C. The "Petition" shall mean your Petition for Administrative Hearing in this matter, and any amendments subsequently proposed or filed by you.

D. "DEP" shall refer to the State of Florida Department of Environmental Protection; and to its officials, employees, attorneys, agents, and other representatives known to you.

E. The "Permit" shall refer to the Permit identified in the Petition.

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H. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be outside its scope.

I. The term "concerning" means relating to, referring to, pertaining to, describing, evidencing, or constituting.

J. The use of the singular form of any word includes the plural and vice versa.

K. The term "person" means any natural person, individual, sole proprietorship, partnership, corporation, association, organization, joint venture, firm, other business enterprise, governmental body, or group of natural persons or other entities.

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L. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

REQUESTED DOCUMENTS

1. All documents identified or described in your responses to Energy Center's First Set of Interrogatories served upon you in this case.

2. All documents upon which you rely to support your contention that the DEP should not issue the Permit.

3. All documents upon which you rely to support your contention that, if the Permit is to be issued, then the DEP should amend the Permit.

4. All documents concerning whether, as you allege in paragraph 16 of your Petition, the "proposed BACT limits for the turbines, fuel oil heater, tanks, and cooling towers, accepted by DEP, are not consistent with the definition of BACT in Rule 62-210.200(38), F.A.C., and the requirements of Rule 62-212.400(6), F.A.C."

5. All documents concerning whether, as you allege in paragraph 16 of your Petition, "DEP's BACT determinations do not recognize the much lower limits currently being permitted in other states."

6. All documents concerning the "much lower limits currently being permitted in other states" as alleged in paragraph 16 of your Petition.

7. All documents on which you rely in contending that DEP's BACT determinations for the proposed plant identified in the Permit do not "address the social and economic impacts to neighboring properties by failing to appropriately limit emissions from the facility," as alleged in paragraph 16 of your Petition.

8. All documents concerning whether, as alleged in paragraph 16.a of your Petition,

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Other states have permitted a large number of simple cycle peaking power plants with No_x limits of 2 to 5 ppmvd at 15% O_2 on gas using SCR, XONON, or SCANOX and 5.9 to 13 ppmvd on oil, achieved with wet injection and SCR.

9. All documents concerning whether, as alleged in paragraph 16.a of your Petition,

Lower limits have been achieved in practice.

10. All documents on which you rely to support your contention, as alleged in paragraph 16.a of your Petition, that

A much lower No_x limit should be established for the turbines, consistent with the permitting history in other states and pursuant to Rule 62-12.400(2)(f), F.A.C.

11. All documents concerning whether, as alleged in paragraph 16.b of your Petition,

Other states have permitted simple cycle peaking powerplants with CO limits of 2 to 6 ppmvd at 15% O_2 on oil and gas, achieved using an oxidation catalyst.

12. All documents concerning whether, as alleged in paragraph 16.b of your Petition,

Much lower limits have been demonstrated in source tests and with continuous emission monitors.

13. All documents on which you rely to support your contention, as alleged in paragraph 16.b of your Petition, that

a much lower CO limit should be established for the turbines and that continuous compliance be demonstrated with a continuous emission monitor.

14. All documents on which you rely to support your contention, as alleged in paragraph 16.c of your Petition, that the 2.5 million gallon fuel oil storage tank, the 0.6

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million gallon fuel oil storage tank, the gas-fired fuel heater, and the wet mechanical draft cooling towers

must use BACT and be regulated by permit, pursuant to Rule 62-210.200(112), F.A.C.

15. All documents on which you rely to support your contention, as alleged in paragraph 16.c of your Petition, that

the Department should conduct a formal BACT analysis for these minor sources and revise the permit to include appropriate emission limits and monitoring requirements.

16. All documents concerning the County's great concern, as alleged in paragraph 17 of your Petition, with respect to "the diesel exhaust from any such engines."

17. All documents concerning whether, as alleged in paragraph 18 of your Petition,

The combustion of distillate in the turbines would produce "diesel exhaust", which is recognized by the U.S. Environmental Protection Agency ("EPA") and California as a potent human carcinogen and respiratory irritant.

18. All documents concerning the County's deep concern, as alleged in paragraph 18 of your Petition,

about the impact of these emissions, as well as others, set out below, on the residents of Broward County.

19. All documents concerning whether, as alleged in paragraph 19 of your petition,

The definition of BACT in Rule 62-201.200(38), F.A.C. and implementing EPA guidance in the NSR manual (EPA, New Source Review Workshop Manual, October 1990, Section IV.D.3) require taking into account the environmental impacts during the top-down BACT process. DEP is further required to evaluate the social and economic impacts of its decisions, pursuant to Rule 62-212.400(6)(a)4, F.A.C.

20. All documents concerning whether, as alleged in paragraph 19 of your petition,

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The COUNTY is deeply concerned about the impact of the power plant on the natural life at its Tradewinds Park, including Butterfly World. COUNTY is also concerned about the social and economic impact of placing this power plant as currently permitted in close proximity to residential areas and public recreation and natural areas and how it will affect their use and enjoyment by the public as well as the obvious health and contamination concerns raised herein.

21. All documents concerning whether, as alleged in paragraph 19 of your petition,

Additionally, fuel oil delivery via trucks will increase traffic and pollutants in the area of the subject facility.

22. All documents on which you rely to support your contention, as alleged in paragraph 19 of your petition, that

These factors have not been adequately considered in ENRON's application or DEP's evaluation thereof.

23. All documents on which you rely to support your contention, as alleged in paragraph 20 of your petition, that

the use of distillate oil fuel in a densely populated area, as is the area surrounding the proposed plant, is inappropriate, has far-reaching social and economic implications for its residents, and is not consistent with Rule 62-212.400(6)(a).

24. All documents concerning whether, as alleged in paragraph 21 of your petition,

0.05% sulfur distillate is not BACT for SO₂ and sulfuric acid mist when firing fuel oil.

25. All documents on which you rely to support your contentions, as alleged in paragraph 21 of your petition, that

Lower sulfur distillate containing only 30 ppmw sulfur, is currently available on the east coast of the United States. Further the EPA has adopted stringent fuel regulations that limit the sulfur content of diesel fuel to 15 ppmw. These regulations go into effect in June 2006 (federal Register, v. 66, no. 12, January 18, 2001, p. 5002, et seq.) At which point ultra low sulfur fuel diesel will be widely available in the Florida market.

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26. All documents on which you rely to support your contentions, as alleged in paragraph 21 of your petition, that

the permit [should] be modified to eliminate the use of distillate oil. In the short term, a back up fuel such a liquefied natural gas or propane or a noninterruptible gas supply contract for curtailments should be required, until such time as the capacity constraints on the Florida Gas Transmission Pipeline are alleviated, but no later than January 2003. If distillate oil is retained, its use should only be permitted when ENRON can demonstrate that natural gas cannot be delivered to the subject facility. Additionally, diesel exhaust emissions should be rigorously controlled and 30 ppmw S for diesel fuel be [required] on start up and 15 ppmw diesels when it becomes available, but no later than June 2006.

27. All documents concerning whether, as alleged in paragraph 22 of your petition,

During startups and shutdowns, combustion temperatures and pressure[s] change rapidly, resulting in inefficient combustion and much higher emissions of No_x, CO, and VOCs than during steady state operation.

28. All documents concerning whether, as alleged in paragraph 22 of your petition,

The COUNTY is concerned that virtually unlimited and uncontrolled startup and shutdown emissions will result in significant health impacts in the downwind areas.

29. All documents concerning whether, as alleged in paragraph 22 of your petition,

Emissions of formaldehyde, for example, can increase by over a factor of 500 during startups, compared to full load operation.

30. All documents concerning whether, as alleged in paragraph 22 of your petition,

If each turbine experience as few as 100 startups per year, lasting only ten minutes, the emissions of formaldehyde would exceed 10 tons per year and require the use of maximum achievable control technology ("MACT") pursuant to Rule 62-204.800, F.A.C.

31. All documents concerning whether, as alleged in paragraph 23 of your petition,

Omitting limits on startup and shutdown emissions is not consistent with requirements of the Clean Air Act.

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32. All documents concerning whether, as alleged in paragraph 23 of your petition,

The U.S. EPA has consistently defined startup and shutdown to be part of the normal operation of a source. The EPA has also consistently concluded that these emissions should be accounted for in the design and implementation or the operating procedure for the process and control equipment. EPA has concluded that without clear definition and limitation, these automatic exemption provisions for startups and shutdowns could effectively shield excess emissions arising from poor operation and maintenance or design, thus precluding attainment.

33. All documents on which you rely to support your contention, as alleged in paragraph 23 of your petition, that

these emissions should have been considered in the BACT analysis and the related health impact address in conjunction with the environmental review require[d] pursuant to Rule 62-210.200(38), F.A.C.

34. All documents concerning whether, as alleged in paragraph 23 of your petition, Permits issued by other states include limits on startup and shutdown emissions.

35. All documents on which you rely to support your contention, as alleged in paragraph 23 of your petition, that

a permit condition [should] be included that specifically limits the number, duration, and emissions during startups and shutdowns, to comply with BACT and MACT.

36. All documents concerning any payments by you to any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

37. All documents concerning any agreements between you and any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

38. All documents provided by you to any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

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39. All documents (including, without limitation, any reports) received from any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

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44. All documents concerning any payments by you to any expert or consultant employed by you in connection with this case.

45. All documents concerning any agreements between you and any expert or consultant employed by you in connection with this case.

46. All documents provided by you to any expert or consultant employed by you in connection with this case.

47. All documents (including, without limitation, any reports) received from any expert or consultant employed by you in connection with this case.

48. All documents concerning any communications between you and any person with respect to the Permit.

49. All documents concerning any communications between you and any person with respect to Energy Center's application for the Permit.

50. All documents concerning any communications between you and any person with respect to the proposed power plant identified in your Petition.

51. All documents concerning any communications between you and any person with respect to Energy Center's proposal to build a plant in Deerfield Beach.

52. All documents concerning any communications between you and any person with respect to these proceedings.

53. All documents concerning any public meetings at which the Permit was discussed.

54. All documents concerning any public meetings at which Energy Center's application for the Permit was discussed.

55. All documents concerning any public meetings at which the proposed power plant identified in your Petition was discussed.

56. All documents concerning any public meetings at which Energy Center's proposal to build a plant in Deerfield Beach was discussed.

57. All documents concerning any public meetings at which these proceedings were discussed.

58. Copies of all documents that are quoted, excerpted, or paraphrased in your Petition, regardless of whether the Petition identifies the documents by name.

59. All documents on which you intend to rely at trial.

CASE NOS. 01-2727, 01-2728, 01-2729

Respectfully submitted,

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C. Ryan Reetz

Counsel for Deerfield Beach Energy, L.L.C.

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served by facsimile and U.S. Mail on October 15, 2001 to:

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Tallahassee, Florida 32399-3000

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Coconut Creek, Florida 33063



C. Ryan Reetz

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

RECEIVED
OCT 30 2001
BUREAU OF AIR REGULATION

BROWARD COUNTY, CITY OF CORAL
SPRINGS, and CITY OF COCONUT
CREEK,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

and

DEERFIELD BEACH ENERGY CENTER,
L.L.C. (AN AFFILIATE OF ENRON
NORTH AMERICA),

Respondents.

CONSOLIDATED

DOAH CASE NOS. 01-2727
01-2728
01-2729

**DEERFIELD BEACH ENERGY CENTER'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO CITY OF COCONUT CREEK**

Respondent, Deerfield Beach Energy Center, L.L.C., pursuant to Fla.R.Civ.P. 1.350 and F.A.C. 28-106.206, requests that petitioner, City of Coconut Creek ("Coconut Creek") produce the following documents within the time provided by law:

DEFINITIONS AND INSTRUCTIONS

A. "Energy Center" shall refer to respondent Deerfield Beach Energy Center, L.L.C. and to Enron North America; and to their corporate parents, subsidiaries, affiliates,

successors, officers, directors, shareholders, employees, attorneys, agents, and other representatives known to you.

B. "The City," "you" and "your" shall refer to petitioner City of Coconut Creek; and to its officials, employees, attorneys, agents, and other representatives known to you.

C. The "Petition" shall mean your Petition for Administrative Hearing in this matter, and any amendments subsequently proposed or filed by you.

D. "DEP" shall refer to the State of Florida Department of Environmental Protection; and to its officials, employees, attorneys, agents, and other representatives known to you.

E. The "Permit" shall refer to the Permit identified in the Petition.

F. The term "document" shall refer to all information and materials within the scope of Fla.R.Civ.P. 1.350 and specifically includes (without limitation) all information kept on audiotape, videotape, computer storage devices, or other electronic storage media. A draft or non-identical copy is a separate document within the meaning of this term.

G. The terms "all" and "each" shall be construed as all and each.

H. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be outside its scope.

I. The term "concerning" means relating to, referring to, pertaining to, describing, evidencing, or constituting.

J. The use of the singular form of any word includes the plural and vice versa.

K. The term "person" means any natural person, individual, sole proprietorship, partnership, corporation, association, organization, joint venture, firm, other business enterprise, governmental body, or group of natural persons or other entities.

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L. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

REQUESTED DOCUMENTS

1. All documents identified or described in your responses to Energy Center's First Set of Interrogatories served upon you in this case.

2. All documents upon which you rely to support your contention that the DEP should not issue the Permit.

3. All documents upon which you rely to support your contention that, if the Permit is to be issued, then the DEP should amend the Permit.

4. All documents upon which you rely to support your contention in paragraph 14 of your Petition that "a quantitative cumulative air quality analysis should be performed."

5. All documents concerning "whether an Environmental Impact Statement/Evaluation should have been conducted by ENRON prior to the Notice of Intent to Issue Air Construction Permit," as alleged in paragraph 15 of your Petition.

6. All documents concerning "whether the assessment of environmental impacts associated with industrial-related activities, including those on ambient air quality, must be performed prior to the issuance of a permit," as alleged in paragraph 16 of your Petition.

7. All documents concerning "whether the DEP erroneously determined that the proposed location was remote from residential areas," as alleged in paragraph 17 of your Petition.

8. All documents concerning "whether the impact upon the CITY of the prevailing wind direction from the proposed facilities has been considered and factored into the decision to issue a Permit," as alleged in paragraph 18 of your Petition.

9. All documents concerning "whether it is necessary for a quantitative cumulative air quality analysis to be performed prior to the issuance of a Permit to ensure that the

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combined emissions from the various sources in the area do not cause a contravention of applicable air quality standards,” as alleged in paragraph 19 of your Petition.

10. All documents concerning “whether DEP’s Intent to Issue Air Construction Permit was based on erroneous and misleading information concerning the proposed power plant’s distance to environmentally sensitive lands and, therefore, should be reassessed,” as alleged in paragraph 20 of your Petition.

11. All documents concerning whether, as you allege in subparagraph 20(v) of your Petition, “The proximity of these ecosystems was not taken into account by the DEP in their review of the proposed location.”

12. All documents upon which you rely in support of your contention, as alleged in paragraph 24 of your Petition, that “the applicant’s proposed BACT limits (or absence thereof) for the turbines, fuel oil heater, tanks, and cooling towers, accepted by the DEP, are not consistent with the definition of BACT in Rule 62-210.200(38), F.A.C. and the requirements in Rule 62-212.400(6).”

13. All documents concerning whether, as you allege in paragraph 24 of your Petition, “the DEP’s BACT determinations do not recognize the much lower limits currently being permitted in other states.”

14. All documents concerning the “much lower limits currently being permitted in other states,” as alleged in paragraph 24 of your Petition.

15. All documents on which you rely in contending that DEP’s BACT determinations for the proposed Plant identified in the Permit do not “address the social and economic impacts to the CITY for failing to appropriately limit emissions from the facility,” as alleged in paragraph 24 of your Petition.

16. All documents concerning whether, as alleged in paragraph 25 of your Petition,

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Other states have permitted a large number of simple cycle peaking power plants with NO_x limits of 2 to 5 ppmvd at 15% O₂ on gas using SCR, XONON, or SCONO_x and 5.9 to 13 ppmvd on oil, achieved with water injection and SCR.

17. All documents on which you rely to support your contention, as alleged in paragraph 25 of your Petition, that

These lower limits have been achieved in practice.

18. All documents on which you rely to support your "recommendation", as alleged in paragraph 25 of your Petition, that

a much lower NO_x limit be established for the turbines, consistent with the permitting history in other states.

19. All documents concerning whether, as alleged in paragraph 26 of your Petition,

Other states have permitted simple cycle peaking power plants with CO limits of 2 to 6 ppmvd at 15% O₂ on oil and gas, achieved using an oxidation catalyst.

20. All documents on which you rely to support your contention, as alleged in paragraph 26 of your Petition, that

Much lower limits have been demonstrated in source tests and with continuous emission monitors.

21. All documents on which you rely to support your contention, as alleged in paragraph 26 of your Petition, that

a much lower CO limit should be established for the turbines and that continuous compliance [should] be demonstrated with a continuous emission monitor.

22. All documents concerning whether, as alleged in paragraph 27 of your Petition,

Other states have permitted simple cycle peaking power plants with VOC limits of two (2) ppmvd at 15% O₂ on oil and gas, achieved using an oxidation catalyst.

23. All documents on which you rely to support your contention, as alleged in paragraph 27 of your Petition, that

Much lower limits have been demonstrated in source tests.

24. All documents on which you rely to support your contention, as alleged in paragraph 27 of your Petition, that

a much lower VOC limit should be established for the turbines.

25. All documents on which you rely to support your contention, as alleged in paragraph 28 of your Petition, that the 2.5 million gallon distillate storage tank, the 0.6 million gallon distillate storage tank, the gas-fired fuel heater, and the wet mechanical draft cooling towers

must use BACT and be regulated by permit, pursuant to Rule 62-210.200(112), F.A.C.

26. All documents on which you rely to support your contention, as alleged in paragraph 28 of your Petition, that the DEP should

conduct a formal BACT analysis for these minor sources and revise the permit to include appropriate emission limits and monitoring requirements.

27. All documents concerning the City's great concern, as alleged in paragraph 29 of the Petition, with respect to "the diesel exhaust from any such engines."

28. All documents concerning whether, as alleged in paragraph 29 of your Petition, the combustion of distillate in the turbines would produce "diesel exhaust," which is recognized by the U.S. Environmental Protection Agency and California as a potent human carcinogen and respiratory irritant.

29. All documents concerning the City's deep concern, as alleged in paragraph 30 of your Petition,

about the impact of these emissions, as well as others, set out below, on the residents of Coconut Creek.

30. All documents concerning whether, as alleged in paragraph 31 of your Petition,

the definition of BACT in Rule 62-210.200(38) and implementing EPA guidance in the NSR Manual (EPA, New Source Review Workshop Manual, October 1990, Section IV.D.3) require taking into account the "environmental" impacts during the top-down BACT process. The DEP is further required to evaluate the social and economic impacts of its decisions, pursuant to Rule 62-212.400(6)(a)4, F.A.C.

31. All documents on which you rely to support your contention, as alleged in paragraph 32 of your Petition, that

the use of distillate fuel in a densely populated area is inappropriate, has far-reaching social and economic implications for its residents, and is not consistent with Rule 62-212.400(6)(a), F.A.C.

32. All documents concerning whether, as alleged in paragraph 33 of your Petition,

0.05% sulfur distillate is not BACT for SO₂ and sulfuric acid mist when firing oil.

33. All documents on which you rely to support your contention, as alleged in paragraph 33 of your Petition, that

lower sulfur distillate, containing only thirty (30) ppmw sulfur, is currently available on the east coast. Further, the EPA has adopted stringent fuel regulations that limit the sulfur content of diesel fuel to 15 ppmw. These regulations go into effect in June 2006 (Federal Register, v. 66, no. 12, January 18, 2001, p. 5002 *et seq*), at which point ultra low sulfur diesel will be widely available in the Florida market.

34. All documents on which you rely to support your contention, as alleged in paragraph 34 of your Petition, that

the permit [should] be modified to eliminate the use of distillate oil. In the short-term, a backup fuel such as LNG or propane or a noninterruptible gas supply contract for curtailments should be required, until such time as the capacity constraints on the Florida Gas Transmission Pipeline are alleviated, but

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no later than January 2003. If distillate is retained, diesel exhaust emissions should be rigorously controlled and 30 ppmw diesel fuel be required on startup and 15 ppmw diesel when it becomes available, but no later than June 2006.

35. All documents concerning whether, as alleged in paragraph 35 of your Petition, during startups and shutdowns, combustion temperatures and pressures change rapidly, resulting in inefficient combustion and much higher emissions of NOx, CO, and VOCs (including aldehydes) than during steady state operation.

36. All documents concerning whether, as alleged in paragraph 36 of your Petition, the CITY is concerned that virtually unlimited and uncontrolled startup and shutdown emissions will result in significant health impacts in downwind areas of Coconut Creek, particularly during combined operation of the Pompano and Deerfield Beach Energy Centers.

37. All documents concerning whether, as alleged in paragraph 36 of your Petition, emissions of formaldehyde, for example, can increase by over a factor of 500 during startups, compared to full load operation.

38. All documents concerning whether, as alleged in paragraph 36 of your Petition, if each turbine experienced as few as 100 startups per year, lasting only 10 minutes, the emissions of formaldehyde would exceed 10 ton/yr and require the use of maximum achievable control technology ("MACT") pursuant to Rule 62-204.800, F.A.C.

39. All documents concerning whether, as alleged in paragraph 37 of your Petition, omitting limits on startup and shutdown emissions is not consistent with requirements of the Clean Air Act.

40. All documents concerning whether, as alleged in paragraph 37 of your Petition, The U.S. EPA has consistently defined startup and shutdown to be part of the normal operation of a source. The EPA has also consistently concluded that these emissions should be accounted for in the design and implementation or the operating procedure for the process and control equipment. EPA has concluded that "[w]ithout clear definition and limitations, these automatic exemption provisions [for startups and shutdowns] could effectively shield excess emissions

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arising from poor operation and maintenance or design, thus precluding attainment.”

41. All documents on which you rely to support your contention, as alleged in paragraph 37 of your Petition, that

these emissions should have been considered in the BACT analysis and the related health impacts addressed in conjunction with the environmental review required pursuant to Rule 62-210.200(38), F.A.C.

42. All documents concerning whether, as alleged in paragraph 37 of your Petition, Permits issued by other states include limits on startup and shutdown emissions.

43. All documents on which you rely to support your contention, as alleged in paragraph 37 of your Petition, that

a permit condition [should] be included that specifically limits the number, duration, and emissions during startups and shutdowns, to comply with BACT and MACT.

44. All documents on which you rely to support your contention, as alleged in paragraph 38 of your Petition, that

The project is not in compliance with [Broward County Code Section 27-178] because emissions of diesel exhaust, formaldehyde, and other HAPs have not been assessed and mitigated. Therefore, the project is in violation of Rule 62-210.300(4)(d)15.a F.A.C., which requires compliance with the requirements of Broward County.

45. All documents concerning any payments by you to any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

46. All documents concerning any agreements between you and any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

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47. All documents provided by you to any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

48. All documents (including, without limitation, any reports) received from any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

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59. All documents concerning any communications between you and any person with respect to the proposed Plant identified in your Petition.

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61. All documents concerning any communications between you and any person with respect to these proceedings.

62. All documents concerning any public meetings at which the Permit was discussed.

63. All documents concerning any public meetings at which Energy Center's application for the Permit was discussed.

64. All documents concerning any public meetings at which the proposed Plant identified in your Petition was discussed.

65. All documents concerning any public meetings at which Energy Center's proposal to build a plant in Deerfield Beach was discussed.

66. All documents concerning any public meetings at which these proceedings were discussed.

67. Copies of all documents that are quoted, excerpted, or paraphrased in your Petition, regardless of whether the Petition identifies the documents by name.

68. All documents on which you intend to rely at trial.

CASE NOS. 01-2727, 01-2728, 01-2729

Respectfully submitted,

Kerri L. Barsh, Esq.

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SÃO PAULO FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served by facsimile and U.S. Mail on October 15, 2001 to:

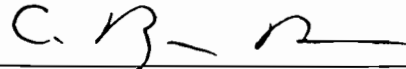
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OCT 15 2001

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OCT 30 2001

BUREAU OF AIR REGULATION

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY, CITY OF CORAL
SPRINGS, and CITY OF COCONUT
CREEK,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

and

DEERFIELD BEACH ENERGY CENTER,
L.L.C. (AN AFFILIATE OF ENRON
NORTH AMERICA),

Respondents.

CONSOLIDATED

DOAH CASE NOS. 01-2727
01-2728
01-2729

**DEERFIELD BEACH ENERGY CENTER'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO CITY OF CORAL SPRINGS**

Respondent, Deerfield Beach Energy Center, L.L.C., pursuant to Fla.R.Civ.P. 1.350 and F.A.C. 28-106.206, requests that petitioner, City of Coral Springs ("Coral Springs") produce the following documents within the time provided by law:

DEFINITIONS AND INSTRUCTIONS

A. "Energy Center" shall refer to respondent Deerfield Beach Energy Center, L.L.C. and to Enron North America; and to their corporate parents, subsidiaries, affiliates,

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successors, officers, directors, shareholders, employees, attorneys, agents, and other representatives known to you.

B. "The City," "you" and "your" shall refer to petitioner City of Coral Springs; and to its officials, employees, attorneys, agents, and other representatives known to you.

C. The "Petition" shall mean your Petition for Administrative Hearing in this matter, and any amendments subsequently proposed or filed by you.

D. "DEP" shall refer to the State of Florida Department of Environmental Protection; and to its officials, employees, attorneys, agents, and other representatives known to you.

E. The "Permit" shall refer to the Permit identified in the Petition.

F. The term "document" shall refer to all information and materials within the scope of Fla.R.Civ.P. 1.350 and specifically includes (without limitation) all information kept on audiotape, videotape, computer storage devices, or other electronic storage media. A draft or non-identical copy is a separate document within the meaning of this term.

G. The terms "all" and "each" shall be construed as all and each.

H. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be outside its scope.

I. The term "concerning" means relating to, referring to, pertaining to, describing, evidencing, or constituting.

J. The use of the singular form of any word includes the plural and vice versa.

K. The term "person" means any natural person, individual, sole proprietorship, partnership, corporation, association, organization, joint venture, firm, other business enterprise, governmental body, or group of natural persons or other entities.

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L. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

REQUESTED DOCUMENTS

1. All documents identified or described in your responses to Energy Center's First Set of Interrogatories served upon you in this case.

2. All documents upon which you rely to support your contention that the DEP should not issue the Permit.

3. All documents upon which you rely to support your contention that, if the Permit is to be issued, then the DEP should amend the Permit.

4. All documents concerning whether, as you allege in paragraph 25 of your Petition, "DEP's Intent to Issue Air Construction Permit was based on erroneous information concerning the proposed power Plant's distance to environmentally sensitive lands."

5. All documents concerning whether, as you allege in subparagraph 25(iv) of your Petition, "The proximity of these ecosystems were not taken into account by the DEP in their review of the proposed location."

6. All documents on which you rely in "disput[ing] the DEP's BACT determinations contained in Appendix BD," as alleged in paragraph 26 of your Petition.

7. All documents concerning whether, as alleged in paragraph 26 of your petition, the DEP's BACT determinations contained in Appendix BD "do not comply with federal or state law adopted pursuant to the Federal Clean Air Act and its amendments."

8. All documents on which you rely to support your contention, as alleged in paragraph 27 of your petition, that "the DEP has not imposed BACT."

9. All documents on which you rely to support your contention, as alleged in paragraph 28 of your petition, that "the DEP has failed to identify the 'maximum degree of reduction' in violation of the Florida Administrative Code."

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10. All documents concerning whether, as you allege in page 7 of your Petition, the “proposed BACT limits (or absence thereof) for the turbines, fuel oil heater, tanks, and cooling towers, accepted by the DEP, are not consistent with the definition of BACT in Rule 62-210.200(38), F.A.C. and the requirements in Rule 62-212.400(6), F.A.C.”

11. All documents concerning whether, as you allege in page 7 of your Petition, “the DEP’s BACT determinations do not recognize the much lower limits currently being permitted in other states.”

12. All documents concerning the “much lower limits currently being permitted in other states,” as alleged in page 7 of your Petition.

13. All documents on which you rely in contending that DEP’s BACT determinations for the proposed Plant identified in the Permit do not “address the social and environmental impacts to the City for failing to appropriately limit emissions from the facility,” as alleged in page 7 of your Petition.

14. All documents concerning whether, as alleged in page 7 of your Petition,

Other states, including New York and California, have permitted a large number of simple cycle peaking power plants with NO_x limits of 2 to 5 ppmvd at 15% O₂ on gas using SCR and 5.9 to 13 ppmvd on oil, achieved with water injection and SCR.

15. All documents on which you rely to support your contention, as alleged in page 7 of your Petition, that

These lower limits have been demonstrated and achieved in practice and must be included as the top technology in a formal top-down BACT analysis.

16. All documents on which you rely to support your contention, as alleged in pages 7-8 of your Petition, that

A much lower NO_x limit should be established for the turbines, consistent with formal BACT determinations and permitting history in other states and pursuant to Rule 62.212.400(2)(f), F.A.C. and Florida’s delegation agreement with the EPA.

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17. All documents on which you rely to support your contention, as alleged in page 8 of your Petition, that

the DEP's failure to require compliance to the above standards, violates Rule 62-212.400(2)(f), F.A.C.

18. All documents concerning whether, as alleged in page 8 of your Petition,

Other states, including California, have permitted simple cycle peaking power plants with CO limits of 2 to 6 ppmvd at 15% O₂ on oil and gas, achieved using an oxidation catalyst.

19. All documents on which you rely to support your contention, as alleged in page 8 of your Petition, that

Much lower limits have been demonstrated in source tests and with continuous emission monitors.

20. All documents on which you rely to support your contention, as alleged in page 8 of your Petition, that

As a result, a much lower CO limit should be established for the turbines and continuous compliance should be demonstrated with a continuous emission monitor.

21. All documents on which you rely to support your contention, as alleged in page 8 of your Petition, that the 2.5 million gallon distillate storage tank, the 0.6 million gallon distillate storage tank, the gas-fired fuel heater, and the wet mechanical draft cooling towers

must use BACT and be regulated by permit, pursuant to Rule 62-210.200(112), F.A.C.

22. All documents on which you rely to support your contention, as alleged in pages 8-9 of your Petition, that

the DEP should conduct a formal BACT analysis for these minor sources and revise the Permit to include appropriate emission limits and monitoring requirements.

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23. All documents concerning the City's great concern, as alleged on page 9 of the Petition, with respect to "the health risks of diesel exhaust from any such engines."

24. All documents concerning whether, as alleged in page 9 of your Petition, the combustion of distillate in the turbines would produce "diesel exhaust," which is recognized by the U.S. Environmental Protection Agency (EPA) and California as a potent human carcinogen and respiratory irritant.

25. All documents on which you rely to support your contention, as alleged in page 9 of your Petition, that

these emissions should have been considered as a collateral environmental impact in a BACT analysis pursuant to the definition of BACT at F.A.C. 62-210.200(38) and federal guidance.

26. All documents concerning whether, as alleged in page 9 of your Petition, the definition of BACT in Rule 62-210.200(38) and implementing EPA guidance in the NSR Manual (EPA, New Source Review Workshop Manual, October 1990, Section IV.D.3) require taking into account the "environmental" impacts during the top-down BACT process. The DEP is further required to evaluate the social and economic impacts of its decisions, pursuant to Rule 62-212.400(6)(a)4, F.A.C.

27. All documents concerning whether, as alleged in page 9 of your Petition, the DEP has not considered the impact of its BACT decisions on the City's economic and social impacts, nor the collateral environmental impacts of its BACT decisions.

28. All documents on which you rely to support your contention, as alleged in page 10 of your Petition, that

the use of distillate fuel in a densely populated area is inappropriate, has far-reaching environmental, social and economic implications for its residents, and is not consistent with Rule 62-212.400(6)(a), F.A.C.

29. All documents concerning whether, as alleged in page 10 of your Petition,

0.05% sulfur distillate is not BACT for SO₂ and sulfuric acid mist when firing oil.

30. All documents on which you rely to support your contention, as alleged in page 10 of your Petition, that

lower sulfur distillate, containing only 30 ppmw sulfur, is currently available on the east coast of the United States. Further, the EPA has adopted stringent fuel regulations that limit the sulfur content of diesel fuel to 15 ppmw. These regulations go into effect in June 2006 (Federal Register, v. 66, no. 12, January 18, 2001, p. 5002 *et seq*), at which point ultra low sulfur diesel will be widely available in the Florida market.

31. All documents on which you rely to support your contention, as alleged in pages 10-11 of your Petition, that

the permit [should] be modified to eliminate the use of distillate oil. In the short-term, a backup fuel such as Liquefied Natural Gas or propane or a noninterruptible gas supply contract for curtailments should be required, until such time as the capacity constraints on the Florida Gas Transmission Pipeline are alleviated, but no later than January 2003. If distillate is retained, diesel exhaust emissions should be rigorously controlled and 30 ppmw diesel fuel be required on startup and 15 ppmw diesel when it becomes available, but no later than June 2006.

32. All documents concerning whether, as alleged in page 11 of your Petition, during startups and shutdowns, combustion temperatures and pressures change rapidly, resulting in inefficient combustion and much higher emissions of NO_x, CO, and VOCs (including aldehydes) than during steady state operation.

33. All documents concerning whether, as alleged in page 11 of your Petition, the City is concerned that virtually unlimited and uncontrolled startup and shutdown emissions will result in significant health impacts in Coral Springs, particularly during combined operation of the Pompano and Deerfield Beach Energy Centers.

34. All documents concerning whether, as alleged in page 11 of your Petition, emissions of formaldehyde, for example, can increase by over a factor of 500 during startups, compared to full load operation.

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35. All documents concerning whether, as alleged in page 11 of your Petition, if each turbine experienced as few as 100 startups per year, lasting only 10 minutes, the emissions of formaldehyde would exceed 10 ton/yr and require the use of maximum achievable control technology ("MACT"), pursuant to Rule 62-204.800, F.A.C.

36. All documents concerning whether, as alleged in page 11 of your Petition, omitting limits on startup and shutdown emissions is not consistent with requirements of the Clean Air Act.

37. All documents concerning whether, as alleged in pages 11-12 of your Petition, The U.S. EPA has consistently defined startup and shutdown to be part of the normal operation of a source. The EPA has also consistently concluded that these emissions should be accounted for in the design and implementation or the operating procedure for the process and control equipment. EPA has concluded that "[w]ithout clear definition and limitations, these automatic exemption provisions [for startups and shutdowns] could effectively shield excess emissions arising from poor operation and maintenance or design, thus precluding attainment."

38. All documents on which you rely to support your contention, as alleged in page 12 of your Petition, that

these emissions should have been considered in the BACT analysis and the related health impacts addressed in conjunction with the environmental review required pursuant to Rule 62-210.200(38), F.A.C.

39. All documents concerning whether, as alleged in page 12 of your Petition, Permits issued by other states include limits on startup and shutdown emissions.

40. All documents on which you rely to support your contention, as alleged in page 12 of your Petition, that

a permit condition [should] be included that specifically limits the number, duration, and emissions during startups and shutdowns, to comply with BACT and MACT.

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41. All documents on which you rely to support your contention, as alleged in page 12 of your Petition, that

the PM/PM10 limits are not practically enforceable because the Permit contains inadequate monitoring requirements (PM/PM10).

42. All documents on which you rely to support your contention, as alleged in page 12 of your Petition, that the Permit's treatment of PM/PM10 limits

is inconsistent with federal case law, which requires each individual limit to be federally enforceable.

43. All documents on which you rely to support your contention, as alleged in pages 12-13 of your Petition, that

One source test is not adequate to assure continuous compliance because PM10 emissions are highly variable and emissions on initial testing represent "new and clean" conditions. Turbine performance degrades and emissions increase over time. Thus, the Permit should be revised to require annual PM10 source test.

44. All documents on which you rely to support your contention, as alleged in page 13 of your Petition, that

the Deerfield Beach Energy Center does not comply with Broward County requirements.

45. All documents on which you rely to support your contention, as alleged in page 13 of your Petition, that

The applicant could implement reasonably available technically and economically feasible alternatives, consistent with BCC Section 27-178 that would significantly reduce emissions of regulated pollutants. These would include the use of ultra low sulfur diesel, the elimination of diesel, and the use of selective catalytic reduction to reduce NOx and an oxidation catalysts to reduce CO, VOCs and toxic organic compounds.

46. All documents concerning any payments by you to any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

47. All documents concerning any agreements between you and any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

48. All documents provided by you to any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

49. All documents (including, without limitation, any reports) received from any expert or consultant employed by you in connection with Energy Center's proposal to build a plant in Deerfield Beach.

50. All documents concerning any payments by you to any expert or consultant employed by you in connection with the Permit and/or Energy Center's application for the Permit.

51. All documents concerning any agreements between you and any expert or consultant employed by you in connection with the Permit and/or Energy Center's application for the Permit.

52. All documents provided by you to any expert or consultant employed by you in connection with the Permit and/or Energy Center's application for the Permit.

53. All documents (including, without limitation, any reports) received from any expert or consultant employed by you in connection with the Permit and/or Energy Center's application for the Permit.

54. All documents concerning any payments by you to any expert or consultant employed by you in connection with this case.

55. All documents concerning any agreements between you and any expert or consultant employed by you in connection with this case.

56. All documents provided by you to any expert or consultant employed by you in connection with this case.

57. All documents (including, without limitation, any reports) received from any expert or consultant employed by you in connection with this case.

58. All documents concerning any communications between you and any person with respect to the Permit.

59. All documents concerning any communications between you and any person with respect to Energy Center's application for the Permit.

60. All documents concerning any communications between you and any person with respect to the proposed Plant identified in your Petition.

61. All documents concerning any communications between you and any person with respect to Energy Center's proposal to build a plant in Deerfield Beach.

62. All documents concerning any communications between you and any person with respect to these proceedings.

63. All documents concerning any public meetings at which the Permit was discussed.

64. All documents concerning any public meetings at which Energy Center's application for the Permit was discussed.

65. All documents concerning any public meetings at which the proposed Plant identified in your Petition was discussed.

66. All documents concerning any public meetings at which Energy Center's proposal to build a plant in Deerfield Beach was discussed.

67. All documents concerning any public meetings at which these proceedings were discussed.

68. Copies of all documents that are quoted, excerpted, or paraphrased in your Petition, regardless of whether the Petition identifies the documents by name.

69. All documents on which you intend to rely at trial.

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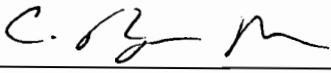
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CASE NOS. 01-2727, 01-2728, 01-2729

Respectfully submitted,

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MIAMI NEW YORK WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER CHICAGO BOSTON PHOENIX WILMINGTON LOS ANGELES DENVER
SÃO PAULO FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served by facsimile and U.S. Mail on October 15, 2001 to:

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C. Ryan Reetz

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF CORAL SPRINGS,

Petitioner,

v.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Case No.:

FDEP File No. 00112515-001-AC
(PSD-FL-304)

And

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA),

Respondents.

**CITY OF CORAL SPRINGS' AMENDED PETITION FOR
ADMINISTRATIVE HEARING**

Petitioner, City of Coral Springs, a Florida municipal corporation ("CITY"), hereby files this Amended Petition for Administrative Hearing challenging the Department of Environmental Protection's ("DEP") Intent to Issue Air Construction Permit for Permit No. 0112515-001-AC(PSD-FL-304) ("Permit") to Pompano Beach Energy, L.L.C., an affiliate of ENRON North America ("ENRON") which would allow the construction of a five hundred ten megawatt "peaking" power plant at 3300 Northwest 27 Avenue in Pompano Beach, Broward County, Florida. As grounds for this Administrative Hearing, CITY states:

1. CITY is a Florida municipality comprising approximately 22.7 square miles in the northern end of Broward County.

2. The DEP is the permitting authority in this proceeding and has its offices located at 400 North Congress Avenue, West Palm Beach, Florida 33416 and 111 S. Magnolia Drive, Suite 4, Tallahassee, Florida 32301.

3. Pompano Beach Energy, L.L.C. has its offices located at 1400 Smith Street, Houston, Texas 77002.

SUBSTANTIAL INTEREST

4. CITY is a Florida municipality with over 117,000 residents, located within the immediate area which will be affected by the building of a power plant. As a result, CITY has a substantial interest in this proceeding.

BACKGROUND

5. On or about March 10, 2001, the CITY received a copy of DEP's Public Notice of Intent to Issue Air Construction Permit for ENRON's proposed power plant facility.

6. On October 23, 2000, ENRON filed its Application with the Broward County Department of Planning and Environmental Protection. On December 15, 2000, ENRON filed a Revised Application with the Broward County Department of Planning and Environmental Protection.

7. On December 20, 2000, the Department of Planning and Environmental Protection found that the Application was complete.

8. On or about March 21, 2001, the CITY moved for an extension of time to file its Petition.

9. On April 9, 2001, the DEP denied CITY's Request for Extension of Time and gave the CITY ten (10) days to file its Petition.

10. On April 19, 2001, the City filed its Petition for Administrative Hearing.
11. On or about May 9, 2001, Pompano Beach Energy Center moved to dismiss City of Coral Springs, Petition for Administrative Hearing.
12. On May 21, 2001, DEP granted the Motion to Dismiss with Leave to Amend.
13. ENRON is proposing to construct three one hundred seventy megawatt dual-fuel combustion turbines with inlet chillers, three mechanical draft cooling towers, three eighty foot stacks, a natural gas heater, a two and one half million gallon fuel oil storage tank, and a 0.6 million gallon fuel oil storage tank at the site.
14. If approved, fuel oil will be permitted at the power plant for up to three thousand hours per year.
15. The following uses are located within the immediate vicinity of ENRON's proposed cogeneration power plant facility: (1) Broward County North Regional Wastewater Treatment Plant; (2) Florida Power and Light Electrical Substation; (3) Broward County Central Sanitary Landfill; (4) Wheelabrator Resource Recovery Facility; (5) Hazardous Materials Receiving Facility; and (6) Waste Management Trash Transfer Station.
16. In addition, the proposed power plant is within 13 miles of the Arthur R. Marshall Loxahatchee National Wildlife Refuge and within 10 miles of the Florida Everglades.
17. The proposed project is required to use best available control technology ("BACT") to limit the emissions of nitrogen oxide ("NOx"), carbon monoxide ("CO"), volatile organic compounds ("VOCs"), sulfur dioxide ("SO₂"), sulfuric acid mist, and

particulate matter with an aerodynamic diameter less than 10 microns ("PM10"), pursuant to Rule 62-212.400(2)(f), F.A.C.

18. DEP's Intent to Issue Air Construction Permit was based on erroneous information concerning the proposed power plant's distance to environmentally sensitive lands and, therefore, should be reassessed:

- (i) The Technical Evaluation and Preliminary Determination provides in Paragraph 2 entitled "Facility Information" that the proposed power plant is located approximately 60 kilometers (37.2 miles) from the Everglades National Park;
- (ii) The environmentally sensitive ecosystem of the National Wildlife Refuge is within 13 miles of the proposed power plant;
- (iii) While the entrance of Everglades National Park may be over 37 miles away from the proposed power plant, the environmentally sensitive ecosystem of the Florida Everglades is within 10 miles of the proposed site; and
- (iv) The proximity of these ecosystems were not taken into account by the DEP in their review of the proposed location.¹⁸ Rule 62-210.200(38),

F.A.C. defines BACT as "an emission limitation...based on the *maximum* degree of reduction of each pollutant emitted which the Department, on a case by case basis, taking into account energy, environmental and economic impacts, and other costs, 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." (emphasis added)

19. In determining BACT, the Department shall give consideration to, among others, "all scientific, engineering, and technical material and other information available to the Department," "the emission limiting standards or BACT determination of any other state," and "the social and economic impact of such technology." Rule 62-212.400(6), F.A.C.

DISPUTED ISSUES OF FACT AND LAW

The City will demonstrate to the DEP that the applicant's proposed BACT limits (or absence thereof) for the turbines, fuel oil heater, tanks, and cooling towers, accepted by the DEP, are not consistent with the definition of BACT in Rule 62-210.200(38), F.A.C. and the requirements in Rule 62-212.400(6), F.A.C. as specifically set forth below. The DEP's BACT determinations do not recognize the much lower limits currently being permitted in other states, nor do they address the social and economic impacts to the City for failing to appropriately limit emissions from the facility.

The draft permit establishes BACT for NO_x from the gas turbines as 9 ppmvd at 15% O₂ on gas, achieved with dry low NO_x combustors and 42 ppmvd at 15% O₂ on fuel oil, achieved with water injection. Continuous compliance would be demonstrated based on a 24-hour block average. (Permit, § III.13.) Other states have permitted a large number of simple cycle peaking power plants with NO_x limits of 2 to 5 ppmvd at 15% O₂ on gas using SCR, XONON, or SCONOX and 5.9 to 13 ppmvd on oil, achieved with water injection and SCR. Continuous compliance is demonstrated based on 1-hour to 3-hour rolling averages. These lower limits have been achieved in practice. A much lower

NO_x limit should be established for the turbines, consistent with the permitting history in other states and pursuant to Rule 62.212.400(2)(f), F.A.C.

The draft permit establishes BACT for CO for the gas turbines as 9 ppmvd @ 15% O₂ on gas and 20 ppmvd @ 15% O₂ on oil, achieved with good combustion. Compliance would be demonstrated based on a 3-hour source test. (Permit, § III.14.) Other states have permitted simple cycle peaking power plants with CO limits of 2 to 6 ppmvd at 15% O₂ on oil and gas, achieved using an oxidation catalyst. Much lower limits have been demonstrated in source tests and with continuous emission monitors. As a result, a much lower CO limit should be established for the turbines and that continuous compliance be demonstrated with a continuous emission monitor.

The draft permit establishes BACT for VOCs from the gas turbines as 2.8 ppmvd @ 15% O₂ on gas or oil, achieved with natural gas and good combustion. Compliance would be demonstrated based on a 3-hour source test. (Permit, § III.15.) Other states have permitted simple cycle peaking power plants with VOC limits of 2 ppmvd at 15% O₂ on oil and gas, achieved using an oxidation catalyst. Much lower limits have been demonstrated in source tests. A much lower VOC limit should be established for the turbines.

The draft permit indicates that the facility includes one 2.5 million gallon distillate storage tank, one 0.6 million gallon distillate storage tank, one 13 MMBtu/hr gas-fired fuel heater, and four wet mechanical draft cooling towers. (Permit, § III.2.)

The draft permit contains no BACT determinations, emission limits, or monitoring requirements for these sources, even though they emit criteria and hazardous air pollutants. These sources, although individually minor, must use BACT and be regulated by permit, pursuant to Rule 62-210.200(112), F.A.C., which defines a facility as "all of the emissions units which are located on one or more contiguous or adjacent properties, and which are under the control of the same person (or persons under common control)." As a result, the Department should conduct a formal BACT analysis for these minor sources and revise the permit to include appropriate emission limits and monitoring requirements.

The draft permit and files that we reviewed do not identify any other emission sources at the facility. However, power plants should additionally include an emergency firewater pump and emergency generator, run by diesel internal combustion engines. The diesel exhaust from any such engines are a great concern to the City. Thus, the City requests that the DEP investigate whether emergency diesel engines would be used and if so, that these be subjected to a formal BACT analysis and permit limits, pursuant to Rule 62-210.200(112), F.A.C.

The project proposes to use distillate oil as a backup fuel for an average of 1,000 hours per installed unit. (Permit, § III.7.) The combustion of distillate in the turbines would produce "diesel exhaust," which is recognized by the U.S. Environmental Protection Agency (EPA) and California as a potent human carcinogen and respiratory

irritant. The City is deeply concerned about the impact of these emissions, as well as others, set out below, on the residents of Coral Springs.

The definition of BACT in Rule 62-210.200(38) and implementing EPA guidance in the NSR Manual (EPA, New Source Review Workshop Manual, October 1990, Section IV.D.3) require taking into account the "environmental" impacts during the top-down BACT process. The DEP is further required to evaluate the social and economic impacts of its decisions, pursuant to Rule 62-212.400(6)(a)4, F.A.C. Based on the erroneous information concerning the proposed power plant distance to environmentally sensitive lands as discussed in more detail in paragraphs 16 and 17 above, and the DEP's decision needs to reviewed.

Further, the draft permit establishes BACT for SO₂ and sulfuric acid mist as the use of pipeline natural gas and low sulfur (0.05%) fuel oil, without performing any analyses, evaluating alternatives, or considering the substantial health impacts that may result from this choice. The City maintains that the use of distillate fuel in a densely populated area is inappropriate, has far-reaching social and economic implications for its residents, and is not consistent with Rule 62-212.400(6)(a), F.A.C.

Notwithstanding the health issues, 0.05% sulfur distillate is not BACT for SO₂ and sulfuric acid mist when firing oil. A sulfur content of 0.05% is equivalent to 5,000 parts per million sulfur by weight ("ppmw"). Lower sulfur distillate, containing only 30 ppmw sulfur, is currently available on the east coast of the United States. Further, the

EPA has adopted stringent fuel regulations that limit the sulfur content of diesel fuel to 15 ppmw. These regulations go into effect in June 2006 (Federal Register, v. 66, no. 12, January 18, 2001, p. 5002 *et seq*), at which point ultra low sulfur diesel will be widely available in the Florida market.

Thus, the City recommends the permit be modified to eliminate the use of distillate oil. In the short-term, a backup fuel such as Liquefied Natural Gas or propane or a noninterruptible gas supply contract for curtailments should be required, until such time as the capacity constraints on the Florida Gas Transmission Pipeline are alleviated, but no later than January 2003. If distillate is retained, diesel exhaust emissions should be rigorously controlled and 30 ppmw diesel fuel be required on startup and 15 ppmw diesel when it becomes available, but no later than June 2006.

The permit contains no limits on the number of startups/shutdowns nor on the emissions during these periods. During startups and shutdowns, combustion temperatures and pressures change rapidly, resulting in inefficient combustion and much higher emissions of NOx, CO, and VOCs (including aldehydes) than during steady state operation.

The City is concerned that virtually unlimited and uncontrolled startup and shutdown emissions will result in significant health impacts in downwind areas of Coral Springs, particularly during combined operation of the Pompano and proposal Deerfield Beach Energy Centers. Emissions of formaldehyde, for example, can increase by over a

factor of 500 during startups, compared to full load operation. If each turbine experienced as few as 100 startups per year, lasting only 10 minutes, the emissions of formaldehyde would exceed 10 ton/yr and require the use of maximum achievable control technology ("MACT"), pursuant to Rule 62-204.800, F.A.C.

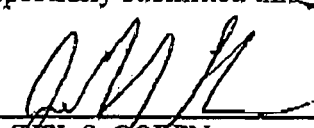
Omitting limits on startup and shutdown emissions is not consistent with requirements of the Clean Air Act. The U.S. EPA has consistently defined startup and shutdown to be part of the normal operation of a source. See Letter from Kathleen m. Bennett attached hereto as composite Exhibit "A." The EPA has also consistently concluded that these emissions should be accounted for in the design and implementation or the operating procedure for the process and control equipment. EPA has concluded that "[w]ithout clear definition and limitations, these automatic exemption provisions [for startups and shutdowns] could effectively shield excess emissions arising from poor operation and maintenance or design, thus precluding attainment." (Bennett 9/28/82.) Accordingly, these emissions should have been considered in the BACT analysis and the related health impacts addressed in conjunction with the environmental review required pursuant to Rule 62-210.200(38), F.A.C. Permits issued by other states include limits on startup and shutdown emissions. Thus, the City recommends that a permit condition be included that specifically limits the number, duration, and emissions during startups and shutdowns, to comply with BACT and MACT.

Finally, the draft permit is inconsistent with Broward County Code ("BCC") Section 27-178, which requires a pollution prevention plan ("PPP"). The PPP must address a reduction in the generation of regulated air pollutants. The emission of all

criteria pollutants -- PM, PM10, SO₂, NO_x, VOC and CO -- as well as HAPs, exceed the criteria established in this code section. The PPP requires the implementation of "reasonably available technically and economically feasible alternatives" to the proposed levels of emissions. BCC Sec. 27-178(2) and (3)(c). As discussed above in the paragraphs above, the draft permit and the PPP submitted by the applicant does little to assure a reduction in the generation of regulated air pollutants. The applicant could implement reasonably available technically and economically feasible alternatives, consistent with BCC Section 27-178, that would significantly reduce emissions of regulated pollutants. Therefore, the project is in violation of Rule 62-210.300(4)(d)15.a F.A.C, which requires compliance with the requirements of Broward County.

WHEREFORE, Petitioner CITY, respectfully requests a formal administrative evidence hearing, de novo, pursuant to Chapter 120, Florida Statutes, to resolve disputed issues of material fact and law and that the DEP should not issue Permit No. 0112515-001-AC) PSD-FL-304) or, in the alternative, should the amended petition to comply with BACT requirements and should prohibit diesel oil from being used at this Facility

Respectfully submitted this 5th day of June, 2001.



SAMUEL S. GOREN
City Attorney

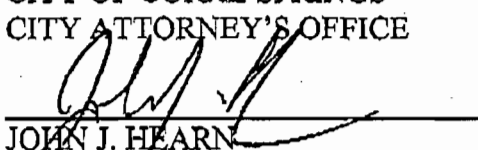
JOHN J. HEARN
Assistant City Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. Mail to: the State of Florida Department of Environmental Protection, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 and via U.S. mail to Debbie Orshefsky,

Attorney for Pompano Beach Energy L.L.C., Greenberg, Traurig, 515 E. Las Olas Boulevard, Suite 1500, Fort Lauderdale, Florida 33301 this 5th day of June, 2001.

CITY OF CORAL SPRINGS
CITY ATTORNEY'S OFFICE



JOHN J. HEARN
Assistant City Attorney
Florida Bar No. 825832
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065
(954) 344-1011
(954) 344-5930 (facsimile)

doc. #57538

EXHIBIT "A"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 10460

SEP 28 1982

OFFICE OF
AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions

FROM: Kathleen M. Bennett

TO: Assistant Administrator for Air, Noise and Radiation
Regional Administrators, Regions I-X

This memorandum is in response to a request for a clarification of EPA's policy relating to excess emissions during Startup, shutdown, maintenance, and malfunctions.

Excess emission provisions for startup, shutdown, maintenance, and malfunctions were often included as part of the original SIPS approved in 1971 and 1972. Because the Agency was inundated with proposed SIPS and had limited experience in processing them, not enough attention was given to the adequacy, enforceability, and consistency of these provisions. Consequently, many SIPS were approved with broad and loosely-defined provisions to control excess emissions.

In 1978, EPA adopted an excess emissions policy after many, less effective attempts to rectify problems that existed with these provisions. This policy disallowed automatic exemptions by defining all periods of excess emissions as violations of the applicable standard. States can, of course, consider any demonstration by no source that excess emissions were due to an unavoidable occurrence in determining whether any enforcement action is required.

The rationale for establishing these emissions as violations, as opposed to granting automatic exemptions, is that SIPS are ambient-based standards and any emissions above the allowable may cause or contribute to violations of the national ambient air quality standards. Without clear definition and limitations, these automatic exemption provisions could effectively shield excess emissions arising from poor operation and maintenance or design, thus precluding attainment. Additionally, by establishing an enforcement discretion approach and by requiring the source to demonstrate the existence of an unavoidable malfunction on the source, good maintenance procedures are indirectly encouraged.

-2-

Attached is a document stating EPA's present policy on excess emissions. This document basically reiterates the earlier policy, with some refinement of the policy regarding excess emissions during periods of scheduled maintenance.

A question has also been raised as to what extent operating permits can be used to address excess emissions in cases where the SIP is silent on this issue or where the SIP is deficient. Where the SIP is silent on excess emissions, the operating permit may contain excess emission provisions which should be consistent with the attached policy. Where the SIP is deficient, the SIP should be made to conform to the present policy. Approval of the operating permit as part of the SIP would accomplish that result.

If you have any questions concerning this policy, please contact Ed Reich at (382-2807).

Attachment



Policy on Excess Emissions During Startup, Shutdown, Maintenance and Malfunctions

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON D.C. 20460

February 15, 1983

OFFICE OF AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT:

Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions

FROM:

Kathleen M. Bennett, Assistant Administrator
for Air, Noise and Radiation

TO:

Regional Administrators, Regions I-X

I have been asked to clarify my memorandum of September 28, 1982, concerning policy on excess emissions during startup and shutdown.

Specifically, I stated that "startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedure for the process and control equipment. Accordingly, it is reasonable to expect that careful planning will eliminate violations of emission limitations during such periods." I further stated that "[i]f excess emissions occur during routine startup and shutdown of such equipment, they will be considered as having resulted from a malfunction only if the source can demonstrate that such emissions were actually caused by a sudden and unforeseeable breakdown in the equipment.

A question has been posed as to whether there can be situations in which it is unreasonable to expect that careful planning can eliminate violations of emissions limitation during startup and shutdown. I believe that there can be such situations. One such situation, which was already mentioned in the policy, is a malfunction occurring during these periods. A malfunction during startup or shutdown is to be handled as any other malfunction in accordance with the policy as presently written.

Another situation is one in which careful and prudent planning and design will not totally eliminate infrequent short periods of excesses during startup and shutdown. An example of this situation would be a source that starts up or shuts down once or twice a year and during that period there are a few hours when the temperature of the effluent gas is too low to prevent harmful information of chemicals which would cause severe damage to control equipment if the effluent were allowed to pass through the control equipment.

Therefore, during this latter situation, if effluent gases are bypassed which cause an emission limitation to be exceeded, this excess need not be treated as a violation if the source can show that the

Policy on Excess Emissions During Startup, Sh...

Page 2 of 6

excesses could not have been prevented through careful and prudent planning and design and that bypassing was unavoidable to prevent loss life, personal injury, or sever property damage.

I have clarified the policy concerning this issue. A copy is attached.

Attachment

Attachment

**POLICY ON EXCESS EMISSIONS DURING STARTUP, SHUTDOWN
MAINTENANCE ND MALFUNCTIONS****Introduction**

Several of the existing State implementation plan (SIPs) provide for an automatic emission limitation exemption during periods of excess emission due to startup, shutdown, maintenance, or malfunction.* Generally, EPA agrees that the imposition of a penalty for sudden avoidable malfunctions caused by circumstances entirely beyond the control of the owner and/or operator is not appropriate. However, any actively which can be foreseen and avoided, or planned, is not within the definition of a sudden and unavoidable breakdown. Since the SIPs must provide for attainment and maintenance of the national ambient air quality standards, SIP provisions on malfunctions must be narrowly drawn. SIPs may, of course, omit any provision on malfunctions. [For more specific guidance on malfunction provisions for RACT SIPs, see the April 1978 workshop manual for preparing nonattainment plans].

I.EXCESS EMISSION FROM MALFUNCTIONS**A.AUTOMATIC EXEMPTION APPROACH**

If a SIP contains a malfunction provision, it cannot be the type provides for automatic exemption where a malfunction is alleged by a source. Automatic exemptions might aggravate air quality so as not to provide for attainment of the ambient air quality standards. Additional grounds for disapproving a SIP that includes the automatic exemption approach are discussed in more detail at 42 FR 58171 (November 8, 1977) and 42 FR 21372 (April 27, 1977). As a result, EPA cannot approve any SIP revisions that provides automatic exemptions for malfunctions.

Term "excess emission" means an air emission rate which exceeds any applicable emission limitation, and "malfunction" means a sudden and unavoidable breakdown of process or control equipment.

B.ENFORCEMENT DISCRETION APPROACH--SIP EMISSION**LIMITATION ADEQUATE TO ATTAIN AMBIENT STANDARDS**

EPA can approve SIP revisions which incorporate the enforcement discretion approach. Such an approach can require the source to demonstrate to the appropriate State agency that the excess emissions, though constituting a violation, were due to an avoidable malfunction. Any malfunction provision must provide for the commencement of a proceeding to notify the source of its violation and to determine whether enforcement action should be undertaken for may period of excess emissions. In determining whether an enforcement action is appropriate, satisfaction of the following criteria should be considered.

1. To the maximum extent practicable the air pollution control equipment, process equipment, or processes were maintained and operated in manner consistent with good practice for minimizing emissions;

Policy on Excess Emissions During Startup, Sh...

2.Repairs were made in an expeditious fashion when the operator knew or should know that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;

3.The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

4.All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and

5.The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

II.EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, AND MAINTENANCE

Any activity or event which can be foreseen and avoided, or planned, falls outside of the definition of sudden and avoidable breakdown of equipment. For example, a sudden breakdown which could not have avoided by better operation and maintenance practice is not a malfunction. In such cases, the control agency must enforce for violations of the emission limitation. Other such common events are startup and shutdown of equipment, and scheduled maintenance.

Startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning and design will eliminate violations of emission limitations during such periods. However, for a few sources there may exist infrequent short periods of excess emissions during startup and shutdown which can be avoided. Excess emissions during these infrequent short periods need not be treated as violations providing that the source adequately shows that the excess could not have been prevented through careful planning and design and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage.

If excess emissions occur during routine startup and shutdown due to a malfunction, then those instances will be treated as other malfunctions which can, therefore, be made to coincide with maintenance on production equipment, or other source shutdowns. Consequently, excess emissions during periods of scheduled maintenance should be treated as a violation unless a source can demonstrate that such emissions could have been avoided through better scheduling for maintenance or through better operation and maintenance practices.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460**

MEMORANDUM

SUBJECT:

Policy on Excess Emissions During Startup, Shutdown
Maintenance, and Malfunctions

FROM:

Kathleen M. Bennett
Assistant Administrator for Air, Noise and Radiation

TO:

Policy on Excess Emissions During Startup, Sh...

Page 4 of 6

Regional Administrators, Regions I-X

This memorandum is in response to a request for a clarification of EPA's policy relating to excess emissions during startup, shutdown, maintenance, and malfunctions.

Excess emission provisions for startup, shutdown, maintenance, and malfunctions were often included as part of the original SIPs approved in 1971 and 1972. Because the Agency was inundated with proposed SIPs and had limited experience in processing them, not enough attention was given to the adequacy, enforceability, and consistency of these provisions. Consequently, many SIPs were approved with broad and loosely-defined provisions to control excess emissions.

In 1978, EPA adopted an excess emissions policy after many less effective attempts to rectify problems that existed with these provisions. This policy disallowed automatic exemptions by defining all periods of excess emissions as violations of the applicable standard. States, can of course, consider any demonstration by the source that the excess emissions were due to an unavoidable occurrence in determining whether any enforcement action is required.

The rationale for establishing these emissions as violations, as opposed to granting automatic exemptions, is that SIPs are ambient-based standards and any emissions above the allowable may cause or contribute to violations of the national ambient air quality standards. Without clear definition and limitations, these automatic exemption provisions could effectively shield excess emissions arising from poor operation and maintenance or design, thus precluding attainment. Additionally, by establishing an enforcement discretion approach and by requiring the source to demonstrate the existence of an unavoidable malfunction on the source, good maintenance procedures are indirectly encouraged.

Attached is a document stating EPA's present policy on excess emissions. This document basically reiterates the earlier policy, with some refinement of the policy regarding excess emissions during periods of scheduled maintenance.

A question has also been raised as to what extent operating permits can be used to address excess emissions in cases where the SIP is silent on this issue or where the SIP is deficient. Where the SIP is silent on excess emissions, the operating permit may contain excess emission provisions which should be consistent with the attached policy. Where the SIP is deficient, the SIP should be made to conform to the present policy. Approval of the operating permit as part of the SIP would accomplish that result.

If you have any questions concerning this policy, please contact Ed Reich at (382-2807).

Attachment

Attachment

POLICY ON EXCESS EMISSIONS DURING START-UP, SHUTDOWN, MAINTENANCE, AND MALFUNCTIONS.

Several of the existing State implementation plans (SIPs) provide for an automatic emission limitation exemption during periods of excess emission due to start-up, shutdown, maintenance, or malfunction.* Generally, EPA agrees that the imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner and/or operator is not appropriate. However, any activity which can be foreseen and avoided, or planned is not within the definition of a sudden and unavoidable breakdown.

I. AUTOMATIC EXEMPTION APPROACH

If a SIP contains a malfunction provision, it cannot be the type that provides for automatic exemption where a malfunction is alleged by a source. Automatic exemptions might aggravate air quality so as

Policy on Excess Emissions During Startup, Sh...

Page 5 of 6

not to provide for attainment of the ambient air quality standards. Additional grounds for disapproving a SIP that includes the automatic exemption approach are discussed in more detail at 42 FR 58171 (November 8, 1977) and 42 FR 21372 (April 27, 1977). As a result, EPA cannot approve any SIP revision that provides automatic exemptions for malfunctions.

ENFORCEMENT DISCRETION APPROACH--SIP EMISSION LIMITATION ADEQUATE TO ATTAIN AMBIENT STANDARDS

EPA can approve SIP revisions which incorporate the "enforcement discretion approach". Such an approach can require the source to demonstrate to the appropriate State agency that the excess emissions, though constituting a violation, were due to an avoidable malfunction. Any malfunction provision must provide for the commencement of a proceeding to notify the source of its violation and to determine whether enforcement action should be undertaken for any period of excess emissions. In determining whether an enforcement action is appropriate, satisfaction of the following criteria should be considered:

*The term "excess emission" means an air emission rate which exceeds any applicable emission limitation, and "malfunction" means a sudden and unavoidable breakdown of process or control equipment.

1. To the maximum extent practicable the air pollution control equipment, process equipment, or processes were maintained operated in a manner consistent with good practice for minimizing emissions;
2. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;
3. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; 4. All possible steps were taken to minimize and the impact of the excess emissions on ambient air quality; and
5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

III. EXCESS EMISSIONS DURING START-UP, SHUTDOWN, AND MAINTENANCE

Any activity or event which can be foreseen and avoided, or planned, falls outside of the definition of sudden and unavoidable breakdown of equipment. For example, a sudden breakdown which could have been avoided by better operation and maintenance practices is not a malfunction. In such cases, the control agency must enforce for violations of the emission limitation. Other such common events are start-up and shutdown of equipment, and scheduled maintenance.

Start-up and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedure for the process and control equipment. Accordingly, it is reasonable to expect that careful planning will eliminate violations of emission limitations during such periods.

If excess emissions occur during routine start-up and shutdown of such equipment, they will be considered as having resulted from a malfunction only if the source can demonstrate that such emissions were actually caused by a sudden and unforeseeable breakdown in the equipment.

Similarly, scheduled maintenance is a predictable event which can be scheduled at the discretion of the operator, and which can therefore be made to coincide with maintenance on production equipment, or other source shutdowns. Consequently, excess emissions during periods of scheduled

Policy on Excess Emissions During Startup, Sh...

Page 6 of 6

maintenance should be treated as a violation unless a source can demonstrate that such emissions could not have been avoided through better scheduling for maintenance or through better operation and maintenance practices.

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Last Updated: April 17, 1997

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

RECEIVED
MAY 24 2001

CITY OF CORAL SPRINGS,

Petitioner,

BUREAU OF AIR REGULATION

vs.

OGC File No. 01-0490
FDEP File No. 00112515-001-AC
(PSD-FL-304)

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

And

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA),

Respondent.

**ORDER DENYING REQUEST FOR EXTENSION
OF TIME TO FILE PETITION FOR HEARING**

This cause has come before the Florida Department of Environmental Protection (Department) on receipt of a request made by Petitioner CITY OF CORAL SPRINGS to grant an extension of time to file a petition for administrative proceeding regarding application number 00112515-001-AC. See Exhibit 1. Because the request fails to show good cause for the extension of time,

IT IS ORDERED:

The request for an extension of time to file a petition for administrative proceeding is DENIED. Petitioner shall have ten (10) days from the date set forth in the certificate of service on the last page of this order to file a petition in this matter. The petition must be filed (received) in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF CORAL SPRINGS,

Petitioner,

v.

Case No.:
FDEP File No. 00112515-001-AC
(PSD-FL-304)

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

And

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA),

Respondents.

**CITY OF CORAL SPRINGS' REQUEST FOR EXTENSION OF TIME TO
FILE A PETITION FOR FORMAL ADMINISTRATIVE HEARING**

Petitioner, City of Coral Springs ("City"), by and through its undersigned counsel and pursuant to Section 120.569, Florida Statutes, and Rule 28-106.111, Florida Administrative Code, hereby moves for an extension of time to file a petition for formal administrative hearing and in support thereof, states:

1. City is a municipal corporation that is vested with the authority and duty to protect the public health, safety and welfare of the citizens of Coral Springs, which is in the immediate area that will be affected by an electrical generating plant proposed by Pompano Beach Energy, L.L.C.

2. City is a substantially affected party with standing to challenge the proposed issuance of the Draft Air Construction Permit, DEP File No. 0112515-001-AC (PSD-FL-304), particularly on account of the capacity of the subject installation to

discharge such types and quantities of pollutants as to jeopardize or compromise the health, safety and welfare of City's citizens.

3. City received a copy of the Intent to Issue the draft permit by publication on March 10, 2001, and needs additional time to review the proposed permit and to review the detailed analysis contained in same.

4. Therefore, City respectfully requests a thirty (30) day extension of time, up to and including April 25, 2001, for which to file a petition for formal administrative hearing.

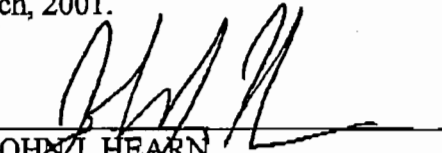
5. City is also awaiting a detailed analysis from its environmental engineer to fully understand and articulate the negative environmental affect which will be caused by the power plant operating in such a nearby location to the City of Coral Springs.

6. The undersigned attorney for City has consulted with the attorney for the State of Florida Department of Environmental Protection, who has no objection to the extension. The undersigned attorney was not able to contact the attorney for Pompano Beach Energy, L.L.C. prior to filing this request, and does not know if she would consent to the granting of this extension request.

WHEREFORE, Petitioner, City of Coral Springs, pursuant to Rule 28-106.111, Florida Administrative Code, requests an extension of time up to and including April 25,

2001, to file a petition for formal administrative hearing with respect to the Notice of Intent to Issue Air Construction Permit.

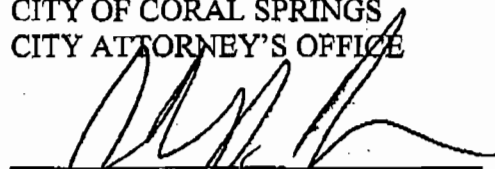
Respectfully submitted this 21st day of March, 2001.



JOHN J. HEARN
Assistant City Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. Mail to: State of Florida Department of Environmental Protection, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 (850) 921-3000 (facsimile) and Debbie Orshefsky, Attorney for Pompano Beach Energy L.L.C., Greenberg, Traurig, 515 E. Las Olas Boulevard, Suite 1500, Fort Lauderdale, Florida 33301 (954) 765-1477 (facsimile) this ____ day of March, 2001.

CITY OF CORAL SPRINGS
CITY ATTORNEY'S OFFICE


JOHN J. HEARN
Assistant City Attorney
Florida Bar No. 825832
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065
(954) 344-1011
(954) 344-5930 (facsimile)



OFFICE OF THE CITY ATTORNEY

CITY OF **CORAL SPRINGS** FLORIDA

9551 WEST SAMPLE ROAD
CORAL SPRINGS, FLORIDA 33065
TELEPHONE (954) 344-1011
FAX (954) 344-5930

FACSIMILE COVER SHEET

TO:

DEP

TOTAL NUMBER OF PAGES

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(Including Cover Sheet)

FAX NO.:

(850) 921-3000

FROM:

John Hearn

RE:

Request for Extension

DATE:

3-21-01

MESSAGE:

**** CONFIDENTIAL NOTE ****

The documents accompanying this facsimile transmission contain information belonging to the Coral Springs City Attorney's Office. This information may be confidential and/or legally privileged and is intended only for the use of the addressee designated above. If you are not the intended recipient, you are hereby notified that disclosures, copying, distribution or the taking of any action in reliance on the contents of this tele-copied information is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone to arrange for the return of this original documents to us.

PLEASE CALL THIS OFFICE AT (954) 344-1011 IF ALL PAGES ARE NOT RECEIVED. THANK YOU.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

CITY OF CORAL SPRINGS,

Petitioner,

vs.

OGC CASE NO. 01-0490

**POMPANO BEACH ENERGY, L.L.C. (AN
AFFILIATE OF ENRON NORTH AMERICA)
and STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Respondents.

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

On April 19, 2001, the Department of Environmental Protection (Department) received from Petitioner, CITY OF CORAL SPRINGS, a request for administrative hearing (Petition). See Exhibit 1. The Petition challenged the Department's decision to issue Permit No.0112515-001-AC, to Pompano Beach Energy, L.L.C. to construct a five hundred ten megawatt power plant in Pompano Beach, Broward County.

Section 120.54(5)(b)4, Florida Statutes, Rule 28-106.201(2), Florida Administrative Code, and the notice provided to Petitioner explain what must be included in a petition for a formal administrative proceeding. The Petition considered in this order does not comply with the cited statute or rule or with the notice provided to Petitioner. Therefore, the Petition does not contain sufficient information to enable the Department to determine whether a formal administrative proceeding should be held. Specifically, the Petition does not include the following:

(a) A concise statement of the ultimate facts alleged, including a statement of the specific facts that the Petitioner contends warrant reversal or modification of the Department's proposed decision, pursuant to Rule 28.106.201(2)(e), F.A.C.; and

(b) A statement of the specific rules or statutes that the Petitioner contends require reversal or modification of the Department's proposed decision, pursuant to Rule 28.106.201(2)(f), F.A.C.

In view of the above, the Petition must be dismissed as required by Rule 28-106.201(4),

Florida Administrative Code.

IT IS THEREFORE ORDERED:

A. The Petition is **DISMISSED**, without prejudice. The Petitioner is granted leave to file an amended petition providing the additional information listed above.

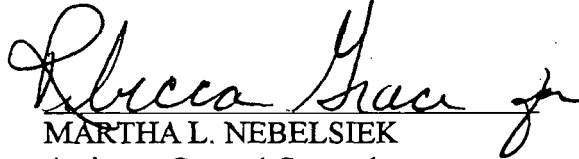
B. Any amended petition must be filed (received) in the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within fifteen (15) days after the date set forth in the certificate of service on the last page of this order.

C. 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.

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was mailed by United States Postal Service to John J. Hearn, City Attorney, City of Coral Springs, 9551 West Sample Road, Coral Springs, Florida 33605 and to Debbie Orshesky, Greenberg, Traurig, 515 East Las Olas Boulevard, Suite 1500, Ft. Lauderdale, Florida 3330 on this 21st day of May, 2001.



MARTHA L. NEBELSIEK
Assistant General Counsel
Florida Bar No. 0831311
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000
Telephone: (850) 488-9314

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

received
4/19/01

CITY OF CORAL SPRINGS,

Petitioner,

v.

Case No.:
FDEP File No. 00112515-001-AC
(PSD-FL-304)

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

And

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA),

Respondents.

CITY OF CORAL SPRINGS' PETITION FOR
ADMINISTRATIVE HEARING

Petitioner, City of Coral Springs, a Florida municipal corporation ("CITY"), hereby files this Petition for Administrative Hearing challenging the Department of Environmental Protection's ("DEP") Intent to Issue Air Construction Permit for Permit No. 0112515-001-AC(PSD-FL-304) ("Permit") to Pompano Beach Energy, L.L.C., an affiliate of ENRON North America ("ENRON") which would allow the construction of a five hundred ten megawatt "peaking" power plant at 3300 Northwest 27 Avenue in Pompano Beach, Broward County, Florida. As grounds for this Administrative Hearing, CITY states:

1. CITY is a Florida municipality comprising approximately 22.7 square miles in the northern end of Broward County.

2. The DEP is the permitting authority in this proceeding and has its offices located at 400 North Congress Avenue, West Palm Beach, Florida 33416 and 111 S. Magnolia Drive, Suite 4, Tallahassee, Florida 32301.

3. Pompano Beach Energy, L.L.C. has its offices located at 1400 Smith Street, Houston, Texas 77002.

SUBSTANTIAL INTEREST

4. CITY is a Florida municipality with over 117,000 residents, located within the immediate area which will be affected by the building of a power plant. As a result, CITY has a substantial interest in this proceeding.

BACKGROUND

5. On or about March 10, 2001, the CITY received a copy of DEP's Public Notice of Intent to Issue Air Construction Permit for ENRON's proposed power plant facility.

6. On October 23, 2000, ENRON filed its Application with the Broward County Department of Planning and Environmental Protection. On December 15, 2000, ENRON filed a Revised Application with the Broward County Department of Planning and Environmental Protection.

7. On December 20, 2000, the Department of Planning and Environmental Protection found that the Application was complete.

8. On or about March 21, 2001, the CITY moved for an extension of time to file its Petition.

9. On April 9, 2001, the DEP denied CITY's Request for Extension of Time and gave the CITY ten (10) days to file its Petition.

10. ENRON is proposing to construct three one hundred seventy megawatt dual-fuel combustion turbines with inlet chillers, three mechanical draft cooling towers, three eighty foot stacks, a natural gas heater, a two and one half million gallon fuel oil storage tank, and a 0.6 million gallon fuel oil storage tank at the site.

11. If approved, fuel oil will be permitted at the power plant for up to three thousand hours per year.

12. The following uses are located within the immediate vicinity of ENRON's proposed cogeneration power plant facility: (1) Broward County North Regional Wastewater Treatment Plant; (2) Florida Power and Light Electrical Substation; (3) Broward County Central Sanitary Landfill; (4) Wheelabrator Resource Recovery Facility; (5) Hazardous Materials Receiving Facility; and (6) Waste Management Trash Transfer Station.

13. In addition, the proposed power plant is within 13 miles of the Arthur R. Marshall Loxahatchee National Wildlife Refuge and within 10 miles of the Florida Everglades.

14. CITY has received no indication that an Environmental Impact Statement/Evaluation has been done for this proposed use.

15. Further, from a review of the available documentation, it appears that a cumulative air quality analysis has not been performed. The issuance of a Federal Permit for the Prevention of Significant Deterioration (PSD) subjects the facility to the requirements of the National Environmental Policy Act (NEPA) (specifically regulations in 40 CFR Part 1508). Under NEPA, the cumulative environmental effects of a proposed

project and other significant sources must be considered in an environmental assessment or an environmental impact statement.

16. CITY's experts believe that a quantitative cumulative air quality analysis should be performed in order to satisfactorily demonstrate that the combined emissions from the sources referenced in Paragraph 15 above does not cause a contravention of applicable air quality standards.

DISPUTED ISSUES OF FACT AND LAW

17. Whether an environmental impact statement/evaluation should have been conducted by ENRON prior to the Notice of Intent to Issue Air Construction Permit.

18. Whether the assessment of environmental impacts associated with industrial-related activities, including those on ambient air quality, must be performed prior to the issuance of a permit.

19. Whether it is necessary for a quantitative cumulative air quality analysis to be performed prior to the issuance of a Permit to ensure that the combined emissions from the various sources in the area do not cause a contravention of applicable air quality standards:

- (i) The proposed facility is anticipated to emit approximately 572 tons per year (tpy) of NO₂, 171 tpy of CO, 55 tpy of PM/PM₁₀, 166 tpy of SO₂, 18 tpy of VOC, and 25 tpy of sulfuric acid mist. The facility will also emit trace quantities of total fluorides (0.09 tpy), mercury (0.003 tpy) and lead (0.003 tpy). Emissions of cumulative hazardous air pollutants (HAP₅) up to 5 tpy;

- (ii) The issuance of Federal Permits such as Prevention of Significant Deterioration subjects the proposed power plant facility to the requirements of the National Environmental Protection Act.
- (iii) Under the National Environmental Protection Act, the cumulative environmental effects of a proposed project must be considered in an environmental assessment.

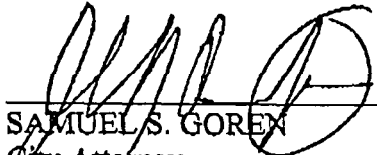
20. Whether DEP's Intent to Issue Air Construction Permit was based on erroneous information concerning the proposed power plant's distance to environmentally sensitive lands and, therefore, should be reassessed:

- (i) The Technical Evaluation and Preliminary Determination provides in Paragraph 2 entitled "Facility Information" that the proposed power plant is located approximately 60 kilometers (37.2 miles) from the Everglades National Park;
- (ii) The environmentally sensitive ecosystem of the National Wildlife Refuge is within 13 miles of the proposed power plant;
- (iii) While the entrance of Everglades National Park may be over 37 miles away from the proposed power plant, the environmentally sensitive ecosystem of the Florida Everglades is within 10 miles of the proposed site; and
- (iv) The proximity of these ecosystems were not taken into account by the DEP in their review of the proposed location.

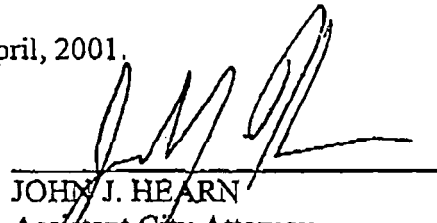
WHEREFORE, Petitioner, CITY, respectfully requests a formal administrative evidentiary hearing, de novo, pursuant to Chapter 120, Florida Statutes, to resolve

disputed issues of material fact and law set forth herein be had and that the DEP should not issue Permit No. 0112515-001-AC(PSD-FL-304) or, in the alternative, should prohibit diesel oil from being used at this facility. At a minimum, the DEP should, prior to issuing the Permit, require that ENRON provide a quantitative cumulative air quality analysis to ensure that the combined emissions from the various industries in the area do not cause a contradiction of applicable air quality standards.

Respectfully submitted this 19 day of April, 2001.



SAMUEL S. GOREN
City Attorney

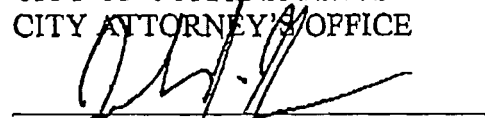


JOHN J. HEARN
Assistant City Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. Mail to: the State of Florida Department of Environmental Protection, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 and via U.S. mail to Debbie Orshefsky, Attorney for Pompano Beach Energy L.L.C., Greenberg, Traurig, 515 E. Las Olas Boulevard, Suite 1500, Fort Lauderdale, Florida 33301 this 19th day of April, 2001.

CITY OF CORAL SPRINGS
CITY ATTORNEY'S OFFICE



JOHN J. HEARN
Assistant City Attorney
Florida Bar No. 825832
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065
(954) 344-1011
(954) 344-5930 (facsimile)

doc. #57538

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

RECEIVED

MAY 24 2001

BUREAU OF AIR REGULATION

CITY OF COCONUT CREEK,

Petitioner,

vs.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

OGC File No. 01-0489
FDEP File No. 00112515-001-AC
(PSD-FL-304)

and

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA),

Respondent.

_____ /

**ORDER GRANTING REQUEST FOR EXTENSION
OF TIME TO FILE PETITION FOR HEARING**

This cause has come before the Florida Department of Environmental Protection (Department) on receipt of a request made by Petitioner CITY OF COCONUT CREEK to grant an extension of time to file a petition for an administrative hearing on Application No. 00112515-001-AC. See Exhibit 1. Because the request shows good cause for the extension of time,

IT IS ORDERED:

The request for an extension of time to file a petition for administrative proceeding is granted. Petitioner shall have until Wednesday, April 25, 2001, to file a petition in this matter. Filing shall be complete on receipt by the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

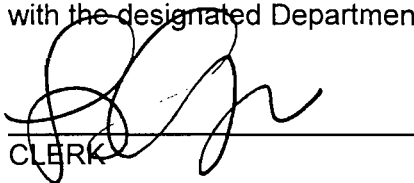
DONE and ORDERED this 9th day of April, 2001, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



TERI L. DONALDSON, General Counsel
3900 Commonwealth Boulevard, M.S. 35
Tallahassee, Florida 32399-3000

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


CLERK

4/9/01
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via
 U. S. Mail facsimile Federal Express hand delivery, this 9th day of April, 2001, to:

Nancy A. Cousins facsimile: 954-973-6790
Assistant City Attorney
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063

Debbie Orshefsky, Esq. facsimile: 954-765-1477
Greenberg, Traurig
515 E. Las Olas Blvd., Suite 1500
Ft. Lauderdale, FL 33301



Martha L. Nebelsiek, Assistant General Counsel
Florida Bar No. 831311
DEPT. OF ENVIRONMENTAL PROTECTION
3900 Commonwealth Boulevard, MS #35
Tallahassee, Florida 32399-3000
Telephone (850) 488-9314
Facsimile (850) 921-3000

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF COCONUT CREEK

Petitioner,

v.

Case No.:
FDEP File No. 00112515-001-AC
(PSD-FL-304)

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

and

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA)

Respondents.

**CITY OF COCONUT CREEK'S REQUEST FOR EXTENSION OF TIME TO
FILE A PETITION FOR FORMAL ADMINISTRATIVE HEARING**

Petitioner, City of Coconut Creek, ("City"), hereby requests an extension of time to file a petition for formal administrative hearing, pursuant to Section 120.569, Florida Statutes, and Rule 28-106.111, Florida Administrative Code, and states the following:

1. Petitioner is a municipal corporation that is vested with the authority and duty to protect the public health, safety, and welfare of the citizens of Coconut Creek, which is immediately adjacent to the electrical generating plant proposed by Pompano Beach Energy, L.L.C.

2. The City is a substantially affected party with standing to challenge the proposed issuance of the Draft Air Construction Permit, DEP File No. 0112515-001-AC (PSD-FL-304), particularly on account of the capacity of the subject installation to discharge such types and quantities of pollutants as to jeopardize or compromise the health, safety, and welfare of the City's citizens.

3. The City received a copy of the Intent to Issue the draft permit by publication on March 10, 2001, and needs additional time to review the draft permit, which is quite lengthy and detailed.

4. Municipal elections were held in the City pursuant to Laws of Florida on March 13, 2001, and resulted in the seating of two (2) new City Commissioners, who were never members of the City Commission prior to their election.


5. Furthermore, the City's City Commission next regularly scheduled meeting is March 22, 2001, which is insufficient time prior to the City's deadline for filing a petition for formal administrative hearing for the City Commission to make an informed decision. Additional time is needed so that the City Commissioners have the benefit of a thorough presentation of objective facts and analysis by its staff before making a thoughtful decision of whether to contest, defend, submit comments, or take no action with respect to the draft permit.

6. Therefore, the City requests a thirty (30) day extension of time, up to and including April 25, 2001, for which to file a petition for formal administrative hearing.

7. The undersigned attorney for the City has consulted with the attorney for the State of Florida Department of Environmental Protection, who has no objection to the extension. The undersigned attorney was not able to contact the attorney for Pompano Beach Energy, L.L.C., prior to filing this request, and does not know if she would consent to the granting of this extension request.

WHEREFORE, Petitioner, City of Coconut Creek, pursuant to Rule 28-106.111, Florida Administrative Code, requests an extension of time up through April 25, 2001, to file a petition for formal administrative hearing with respect to the Notice of Intent to Issue Air Construction Permit.

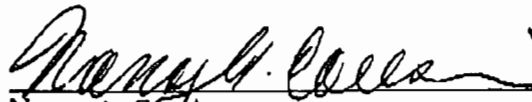
Respectfully submitted this 21 day of March, 2001.


Nancy A. Cousins
Assistant City Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. Mail to: State of Florida Department of Environmental Protection, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 (850) 921-3000 (facsimile) and Debbie Orshesky, Attorney for Pompano Beach Energy L.L.C., Greenberg, Traurig, 515 E. Las Olas Boulevard, Suite 1500, Fort Lauderdale, Florida 33301 (954) 765-1477, (facsimile) this 21 day of March, 2001.

CITY OF COCONUT CREEK
CITY ATTORNEY'S OFFICE



Nancy A. Cousins
Assistant City Attorney
Florida Bar No. 224154
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063
(954) 973-6797
(954) 973-6790 - Facsimile
Ncousins@ci.coconut-creek.fl.us

Post-It* Fax Note	7671	Date	3/21/01	# of pages	3
To	MARTHA NEBELSIEK	From	NANCY A. COUSINS, ESQ.		
Co./Dept.	DEP	Co.	CITY OF COCONUT CREEK		
Phone #		Phone #			
Fax #	850-921-3000	Fax #			

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

CITY OF COCONUT CREEK,

Petitioner,

vs.

OGC CASE NO. 01-0489

**POMPANO BEACH ENERGY, L.L.C (AN
AFFILIATE OF ENRON NORTH AMERICA)
and DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Respondents.

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

On April 25, 2001, the Department of Environmental Protection (Department) received from Petitioner, CITY OF COCONUT CREEK, a request for administrative hearing (Petition). See Exhibit 1. The Petition challenged the Department's decision to issue Permit No. 0112115-001-AC, to Pompano Beach Energy, L.L.C. to construct a five hundred ten megawatt power plant in Pompano Beach in Broward County.

Section 120.54(5)(b)4, Florida Statutes, Rule 28-106.201(2), Florida Administrative Code, and the notice provided to Petitioner explain what must be included in a petition for a formal administrative proceeding. The Petition considered in this order does not comply with the cited statute or rule or with the notice provided to Petitioner. Therefore, the Petition does not contain sufficient information to enable the Department to determine whether a formal administrative proceeding should be held. Specifically, the Petition does not include the following:

(a) A concise statement of the ultimate facts alleged, including a statement of the specific facts that the Petitioner contends warrant reversal or modification of the Department's proposed decision, pursuant to Rule 28-106.201(2)(e), F.A.C.; and

(b) A statement of the specific rules or statutes that the Petitioner contends require reversal or modification of the Department's proposed decision, pursuant to Rule 28-106.201(2)(f), F.A.C.

In view of the above, the Petition must be dismissed as required by Rule 28-106.201(4), Florida Administrative Code.

IT IS THEREFORE ORDERED:

A. The Petition is **DISMISSED**, without prejudice. The Petitioner is granted leave to file an amended petition providing the additional information listed above.

B. 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, within fifteen (15) days after the date set forth in the certificate of service on the last page of this order.

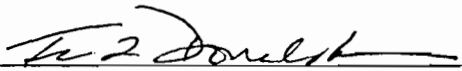
C. This order constitutes final agency action of the Department, unless a timely amended petition is filed in compliance with this order.

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.

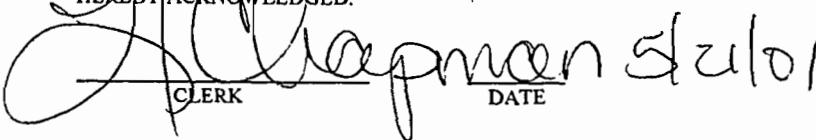
The notice of appeal must be filed within thirty days after the date this order is filed with the clerk of the Department.

DONE AND ORDERED this 21 day of May, 2001, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

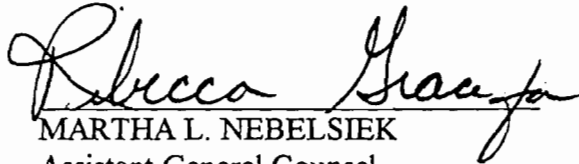

TERI L. DONALDSON
General Counsel
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.


CLERK DATE

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was mailed by United States Postal Service to Paul S. Stuart and Nancy A. Cousin, City of Coconut Creek, 4800 West Copans Road, Coconut Creek, Florida 33063 and to Debbie Orshefsky, Greenberg, Traurig, 515 East Las Olas Boulevard, Suite 1500, Ft. Lauderdale, Florida 33301 on this 21st day of May, 2001.



MARTHA L. NEBELSIEK
Assistant General Counsel
Florida Bar No. 0831311
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000
Telephone: (850) 488-9314

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF COCONUT CREEK,

Petitioner,

v.

OGC File No. 01-0489
FDEP File No. 00112515-001-AC
(PSD-FL-304)

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

And

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA),

Respondents.

CITY OF COCONUT CREEK'S PETITION FOR
ADMINISTRATIVE HEARING

Petitioner, City of Coconut Creek, a Florida municipal corporation ("CITY"), hereby files this Petition for Administrative Hearing challenging the Department of Environmental Protection's ("DEP") Intent to Issue Air Construction Permit for Permit No. 0112515-001-AC(PSD-FL-304) ("Permit") to Pompano Beach Energy, L.L.C., an affiliate of ENRON North America ("ENRON"), which would allow the construction of a five hundred ten (510) megawatt "peaking" power plant at 3300 Northwest 27 Avenue in Pompano Beach, Broward County, Florida. As grounds for this Administrative Hearing, CITY states:

1. CITY is a Florida municipality comprising approximately 11.7 square miles in the central northern end of Broward County.



2. The DEP is the permitting authority in this proceeding and has its offices located at 400 North Congress Avenue, West Palm Beach, Florida 33416 and 111 S. Magnolia Drive, Suite 4, Tallahassee, Florida 32301.

3. Pompano Beach Energy, L.L.C. has its offices located at 1400 Smith Street, Houston, Texas 77002.

SUBSTANTIAL INTEREST

4. CITY is a Florida municipality with over 40,000 residents, located within the immediate adjacent area that will be affected by the building of a power plant. As a result, CITY has a substantial interest in this proceeding.

BACKGROUND

5. On or about March 10, 2001, the CITY received a copy of DEP's Public Notice of Intent to Issue Air Construction Permit for ENRON's proposed power plant facility.

6. On October 23, 2000, ENRON filed its Application with the Broward County Department of Planning and Environmental Protection. On December 15, 2000, ENRON filed a Revised Application with the Broward County Department of Planning and Environmental Protection.

7. On December 20, 2000, the Department of Planning and Environmental Protection found that the Application was complete.

8. On or about March 21, 2001, the CITY moved for an extension of time to file its Petition.

9. On April 9, 2001, the DEP granted CITY's Request for Extension of Time and gave the CITY until April 25, 2001 to file its Petition.

10. ENRON is proposing to construct three (3) one hundred seventy (170) megawatt dual-fuel combustion turbines with inlet chillers, three (3) mechanical draft cooling towers, three (3) eighty (80) foot stacks, a natural gas heater, a two and one half million gallon fuel oil storage tank, and a 0.6 million gallon fuel oil storage tank at the site.

11. If approved, fuel oil will be permitted at the power plant for up to three thousand (3000) hours per year or one hundred twenty-five (125) days per year.

12. The following regional producers of noxious emissions are located within the immediate vicinity of ENRON's proposed cogeneration power plant facility: (1) Broward County North Regional Wastewater Treatment Plant; (2) Florida Power and Light Electrical Substation; (3) Broward County Central Sanitary Landfill; (4) Wheelabrator Resource Recovery Facility; (5) Broward County Hazardous Materials Receiving Facility; and (6) Waste Management Trash Transfer Station. These large regional significant sources of noxious emissions, which are publicly or privately owned, are immediately adjacent to the eastern boundary of the CITY.

13. In addition, the proposed power plant is within thirteen (13) miles of the Arthur R. Marshall Loxahatchee National Wildlife Refuge, administered by the U.S. Department of the Interior, and within ten (10) miles of the Florida Everglades, specifically, Conservation Area No. 2, which is administered by the State of Florida Fish and Wildlife Conservation Commission.

14. CITY has received no indication that an Environmental Impact Statement/Evaluation has been undertaken for this proposed use.

15. Further, from a review of the available documentation, it appears that a quantitative cumulative air quality analysis has not been performed with regard to the facilities referenced in Paragraph 12 above. The issuance of a Federal Permit for the Prevention of Significant Deterioration (PSD) subjects the facility to the requirements of the National Environmental Policy Act (NEPA) (specifically regulations in 40 CFR Part 1508). Under NEPA, the cumulative environmental effects of a proposed project and other significant sources must be considered in an environmental assessment or an environmental impact statement.

16. CITY's experts believe that a quantitative cumulative air quality analysis should be performed in order to satisfactorily demonstrate that the combined emissions from the sources referenced in Paragraph 12 above do not cause a contravention of applicable air quality standards.

DISPUTED ISSUES OF FACT AND LAW

17. Whether an environmental impact statement/evaluation should have been conducted by ENRON prior to the Notice of Intent to Issue Air Construction Permit.

18. Whether the assessment of environmental impacts associated with industrial-related activities, including those on ambient air quality, must be performed prior to the issuance of a permit.

19. Whether the impact upon the CITY of the prevailing wind direction from the proposed facilities has been considered and factored into the decision to issue a Permit.

20. Whether it is necessary for a quantitative cumulative air quality analysis to be performed prior to the issuance of a Permit to ensure that the combined emissions

from the various sources in the area do not cause a contravention of applicable air quality standards:

- (i) The proposed facility is anticipated to emit approximately 572 tons per year (tpy) of NO₂, 171 tpy of CO, 55 tpy of PM/PM₁₀, 166 tpy of SO₂, 18 tpy of VOC, and 25 tpy of sulfuric acid mist. The facility will also emit trace quantities of total fluorides (0.09 tpy), mercury (0.003 tpy) and lead (0.003 tpy). Emissions of cumulative hazardous air pollutants (HAP_s) up to 5 tpy.
- (ii) The issuance of Federal Permits such as Prevention of Significant Deterioration subjects the proposed power plant facility to the requirements of the National Environmental Protection Act.
- (iii) Under the National Environmental Protection Act, the cumulative environmental effects of a proposed project must be considered in an environmental assessment.

21. Whether DEP's Intent to Issue Air Construction Permit was based on erroneous and misleading information concerning the proposed power plant's distance to environmentally sensitive lands and, therefore, should be reassessed:


- (i) The Technical Evaluation and Preliminary Determination provides in Paragraph 2 entitled "Facility Information" that the proposed power plant is located approximately 60 kilometers (37.2 miles) from the Everglades National Park; this statement may be accurate on its face as to the distance from the park entrance, but a map of the Conservation Areas potentially affected by the proposed power plant demonstrates that the affected

ecosystems are far closer than stated. Please See Exhibit "A", attached hereto and made a part hereof.

- (ii) The pristine, environmentally sensitive ecosystem of the Loxahatchee National Wildlife Refuge is within thirteen (13) miles of the proposed power plant, as it is located immediately adjacent to Everglades Conservation Area No. 2, to the north;
- (iii) While the public entranceway of Everglades National Park may be over thirty-seven (37) miles away from the proposed power plant, the environmentally sensitive ecosystem of the Florida Everglades, specifically Conservation Area No. 2 is within ten (10) miles of the proposed site; and
- (iv) The proximity of these ecosystems was not taken into account by the DEP in their review of the proposed location.

WHEREFORE, Petitioner CITY, respectfully requests a formal administrative evidentiary hearing, de novo, pursuant to Chapter 120, Florida Statutes, to resolve disputed issues of material fact and law set forth herein be held and that the DEP should not issue Permit No. 0112515-001-AC (PSD-FL-304) or, in the alternative, should prohibit diesel oil from being used at this facility. At a minimum, the DEP should, prior to issuing the Permit, require that ENRON provide a quantitative cumulative air quality analysis to ensure that the combined emissions from the various industries in the area do not cause a contradiction of applicable air quality standards.

Respectfully submitted this 24th day of April, 2001.

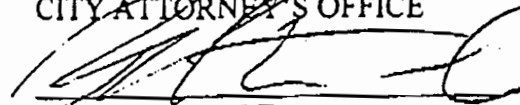

PAUL S. STUART
City Attorney


NANCY A. COUSINS
Assistant City Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original has been filed by Federal Express at: Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000 and a true and correct copy of the foregoing has been furnished by regular U.S. Mail to: Debbie Orshefsky, Attorney for Pompano Beach Energy, L.L.C., Greenberg, Traurig, 515 E. Las Olas Boulevard, Suite 1500, Fort Lauderdale, Florida 33301 this 24th day of April, 2001.

CITY OF COCONUT CREEK
CITY ATTORNEY'S OFFICE


PAUL S. STUART
City Attorney
Florida Bar No. 109340
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063
(954) 973-6797
(954) 973-6790 (facsimile)

RECEIVED

MAY 24 2001

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF AIR REGULATION

CITY OF MARGATE,

Petitioner,

vs.

OGC File No. 01-0491
FDEP File No. 00112515-001-AC
(PSD-FL-304)

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

And

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA),

Respondent.

_____ /

**ORDER DENYING REQUEST FOR EXTENSION
OF TIME TO FILE PETITION FOR HEARING**

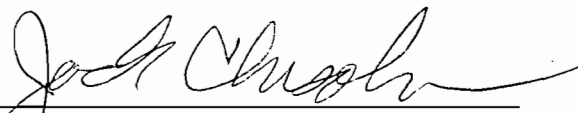
This cause has come before the Florida Department of Environmental Protection (Department) on receipt of a request made by Petitioner CITY OF MARGATE to grant an extension of time to file a petition for administrative proceeding regarding application number 00112515-001-AC. See Exhibit 1. Because the request fails to show good cause for the extension of time,

IT IS ORDERED:

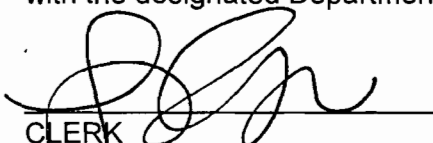
The request for an extension of time to file a petition for administrative proceeding is DENIED. Petitioner shall have ten (10) days from the date set forth in the certificate of service on the last page of this order to file a petition in this matter. The petition must be filed (received) in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

DONE and ORDERED this 9th day of April, 2001, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


TERI L. DONALDSON, General Counsel
3900 Commonwealth Boulevard, M.S. 35
Tallahassee, Florida 32399-3000

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


CLERK

4/9/01
DATE

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via
 U. S. Mail facsimile Federal Express hand delivery, this ____ day of April, 2001, to:

Eugene M. Steinfeld
City Attorney
City of Margate
5700 Margate Blvd.
Margate, FL 33063

facsimile: 954-935-5304

Debbie Orshefsky, Esq.
Greenberg, Traurig
515 E. Las Olas Blvd., Suite 1500
Ft. Lauderdale, FL 33301

facsimile: 954-765-1477


Martha L. Nebelsiek, Assistant General Counsel
Florida Bar No. 831311
DEPT. OF ENVIRONMENTAL PROTECTION
3900 Commonwealth Boulevard, MS #35
Tallahassee, Florida 32399-3000
Telephone (850) 488-9314
Facsimile (850) 921-3000

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF MARGATE

Petitioner,

v.

Case No.:
FDEP File No. 00112515-001-AC
(PSD-FL-304)

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

and

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA)

Respondents.

**CITY OF MARGATE'S REQUEST FOR EXTENSION OF TIME TO FILE A
PETITION FOR FORMAL ADMINISTRATIVE HEARING**

Petitioner, City of Margate, ("City"), hereby moves for an extension of time to file a petition for formal administrative hearing, pursuant to Section 120.569, Florida Statutes, and Rule 28-106.111, Florida Administrative Code, and states the following:

1. Petitioner is a municipal corporation that is vested with the authority and duty to protect the public health, safety, and welfare of the citizens of Margate, which is immediately adjacent to the electrical generating plant proposed by Pompano Beach Energy, L.L.C.

2. The City is a substantially affected party with standing to challenge the proposed issuance of the Draft Air Construction Permit, DEP File No. 0112515-001-AC (PSD-FL-304), particularly on account of the capacity of the subject installation to discharge such types and quantities of pollutants as to jeopardize or compromise the health, safety, and welfare of the City's citizens.

3. The City received a copy of the Intent to Issue the draft permit by publication on March 10, 2001, and needs additional time to review the draft permit, which is quite lengthy and detailed.

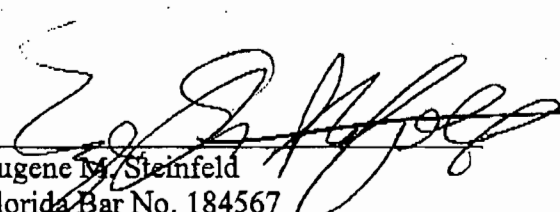
4. Additional time is needed so that the City Commissioners have the benefit of a thorough presentation of objective facts and analysis by its staff before making a thoughtful decision of whether to contest, defend, submit comments, or take no action with respect to the draft permit.

5. Therefore, the City requests a thirty (30) day extension of time, up to and including April 25, 2001, for which to file a petition for formal administrative hearing

6. The undersigned attorney for the City of Margate has consulted with the attorney for the State of Florida Department of Environmental Protection who has no objection to the extension. The undersigned attorney was not able to contact the attorney for Pompano Beach Energy, L.L.C., prior to filing this request, and does not know if she would consent to the granting of this extension request.

WHEREFORE, Petitioner, City of Margate, pursuant to Rule 28-106.111, Florida Administrative Code, requests an extension of time up through April 25, 2001, to file a petition for formal administrative hearing with respect to the Notice of Intent to Issue Air Construction Permit.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. Mail to: State of Florida Department of Environmental Protection, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 (850) 921-3000 (facsimile) and Debbie Orshefsky, Attorney for Pompano Beach Energy L.L.C., Greenberg, Traurig, 515 E. Las Olas Boulevard, Suite 1500, Fort Lauderdale, Florida 33301 (954) 765-1477, (facsimile) this 21st day of March, 2001.



Eugene M. Steinfeld
Florida Bar No. 184567
City Attorney
City of Margate
5790 Margate Blvd.
Margate, FL 33063
(954) 972-6454

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

CITY OF MARGATE,

Petitioner,

vs.

OGC CASE NO. 01-0491

**POMPANO BEACH ENERGY, L.L.C. (AN
AFFILIATE OF ENRON NORTH AMERICA)
and STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Respondents.

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

On April 19, 2001, the Department of Environmental Protection (Department) received from Petitioner, CITY OF MARGATE, a request for administrative hearing (Petition). See Exhibit 1. The Petition challenged the Department's decision to issue Permit No.0112515-001-AC, to Pompano Beach Energy, L.L.C. to construct a five hundred ten megawatt power plant in Pompano Beach, Broward County.

Section 120.54(5)(b)4, Florida Statutes, Rule 28-106.201(2), Florida Administrative Code, and the notice provided to Petitioner explain what must be included in a petition for a formal administrative proceeding. The Petition considered in this order does not comply with the cited statute or rule or with the notice provided to Petitioner. Therefore, the Petition does not contain sufficient information to enable the Department to determine whether a formal administrative proceeding should be held. Specifically, the Petition does not include the following:

(a) A concise statement of the ultimate facts alleged, including a statement of the specific facts that the Petitioner contends warrant reversal or modification of the Department's proposed decision, pursuant to Rule 28.106.201(2)(e), F.A.C.; and

(b) A statement of the specific rules or statutes that the Petitioner contends require reversal or modification of the Department's proposed decision, pursuant to Rule 28.106.201(2)(f), F.A.C.

In view of the above, the Petition must be dismissed as required by Rule 28-106.201(4), Florida Administrative Code.

IT IS THEREFORE ORDERED:

A. The Petition is DISMISSED, without prejudice. The Petitioner is granted leave to file an amended petition providing the additional information listed above.

B. 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, within fifteen (15) days after the date set forth in the certificate of service on the last page of this order.

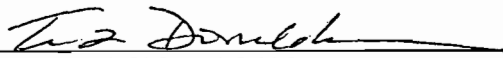
C. This order constitutes final agency action of the Department, unless a timely amended petition is filed in compliance with this order.

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.

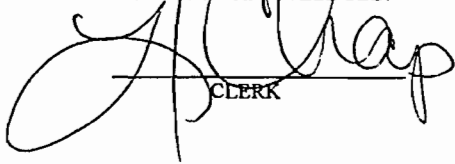
The notice of appeal must be filed within thirty days after the date this order is filed with the clerk of the Department.

DONE AND ORDERED this 21 day of May, 2001, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


TERI L. DONALDSON
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 DATE 5/21/01

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was mailed by United States Postal Service to Eugene M. Steinfeld, City Attorney, City of Margate, 5790 Margate Boulevard, Margate, Florida 33063 and to Debbie Orshefsky, Greenberg, Traurig, 515 East Las Olas Boulevard, Suite 1500, Ft. Lauderdale, Florida 3330 on this 21st day of May, 2001.



MARTHA L. NEBELSIEK

Assistant General Counsel

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Mail Station 35

Tallahassee, Florida 32399-3000

Telephone: (850) 488-9314

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF MARGATE,

Petitioner,

v.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Case No.:
FDEP File No. 00112515-001-AC
(PSD-FL-304)

received
4/19/08

And

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA),

Respondents.

CITY OF MARGATE'S PETITION FOR
ADMINISTRATIVE HEARING

Petitioner, City of Margate, a Florida municipal corporation ("CITY"), hereby files this Petition for Administrative Hearing challenging the Department of Environmental Protection's ("DEP") Intent to Issue Air Construction Permit for Permit No. 0112515-001-AC(PSD-FL-304) ("Permit") to Pompano Beach Energy, L.L.C., an affiliate of ENRON North America ("ENRON") which would allow the construction of a five hundred ten megawatt "peaking" power plant at 3300 Northwest 27 Avenue in Pompano Beach, Broward County, Florida. As grounds for this Administrative Hearing, CITY states:

1. CITY is a Florida municipality comprising approximately 8.98 square miles in the northern end of Broward County.

2. The DEP is the permitting authority in this proceeding and has its offices located at 400 North Congress Avenue, West Palm Beach, Florida 33416 and 111 S. Magnolia Drive, Suite 4, Tallahassee, Florida 32301.

3. Pompano Beach Energy, L.L.C. has its offices located at 1400 Smith Street, Houston, Texas 77002.

SUBSTANTIAL INTEREST

4. CITY is a Florida municipality with over 53,000 residents, located within the immediate area which will be affected by the building of a power plant. As a result, CITY has a substantial interest in this proceeding.

BACKGROUND

5. On or about March 9, 2001, the CITY received a copy of DEP's Public Notice of Intent to Issue Air Construction Permit for ENRON's proposed power plant facility.

6. On October 23, 2000, ENRON filed its Application with the Broward County Department of Planning and Environmental Protection. On December 15, 2000, ENRON filed a Revised Application with the Broward County Department of Planning and Environmental Protection.

7. On December 20, 2000, the Department of Planning and Environmental Protection found that the Application was complete.

8. On or about March 21, 2001, the CITY moved for an extension of time to file its Petition.

9. On April 9, 2001, the DEP denied CITY's Request for Extension of Time and gave the CITY ten (10) days to file its Petition.

10. ENRON is proposing to construct three one hundred seventy megawatt dual-fuel combustion turbines with inlet chillers, three mechanical draft cooling towers, three eighty foot stacks, a natural gas heater, a two and one half million gallon fuel oil storage tank, and a 0.6 million gallon fuel oil storage tank at the site.

11. If approved, fuel oil will be permitted at the power plant for up to three thousand hours per year.

12. The following uses are located within the immediate vicinity of ENRON's proposed cogeneration power plant facility: (1) Broward County North Regional Wastewater Treatment Plant; (2) Florida Power and Light Electrical Substation; (3) Broward County Central Sanitary Landfill; (4) Wheelabrator Resource Recovery Facility; (5) Hazardous Materials Receiving Facility; and (6) Waste Management Trash Transfer Station.

13. In addition, the proposed power plant is within 13 miles of the Arthur R. Marshall Loxahatchee National Wildlife Refuge and within 10 miles of the Florida Everglades.

14. CITY has received no indication that an Environmental Impact Statement/Evaluation has been done for this proposed use.

15. Further, from a review of the available documentation, it appears that a cumulative air quality analysis has not been performed. The issuance of a Federal Permit for the Prevention of Significant Deterioration (PSD) subjects the facility to the requirements of the National Environmental Policy Act (NEPA) (specifically regulations in 40 CFR Part 1508). Under NEPA, the cumulative environmental effects of a proposed project and other significant sources must be considered in an environmental assessment or an environmental impact statement.

16. CITY's experts believe that a quantitative cumulative air quality analysis should be performed in order to satisfactorily demonstrate that the combined emissions from the sources referenced in Paragraph 15 above does not cause a contravention of applicable air quality standards.

DISPUTED ISSUES OF FACT AND LAW

17. Whether an environmental impact statement/evaluation should have been conducted by ENRON prior to the Notice of Intent to Issue Air Construction Permit.

18. Whether the assessment of environmental impacts associated with industrial-related activities, including those on ambient air quality, must be performed prior to the issuance of a permit.

19. Whether it is necessary for a quantitative cumulative air quality analysis to be performed prior to the issuance of a Permit to ensure that the combined emissions from the various sources in the area do not cause a contravention of applicable air quality standards:

- (i) The proposed facility is anticipated to emit approximately 572 tons per year (tpy) of NO₂, 171 tpy of CO, 55 tpy of PM/PM₁₀, 166 tpy of SO₂, 18 tpy of VOC, and 25 tpy of sulfuric acid mist. The facility will also emit trace quantities of total fluorides (0.09 tpy), mercury (0.003 tpy) and lead (0.003 tpy). Emissions of cumulative hazardous air pollutants (HAP₅) up to 5 tpy;
- (ii) The issuance of Federal Permits such as Prevention of Significant Deterioration subjects the proposed power plant facility to the requirements of the National Environmental Protection Act.
- (iii) Under the National Environmental Protection Act, the cumulative environmental effects of a proposed project must be considered in an environmental assessment.

20. Whether DEP's Intent to Issue Air Construction Permit was based on erroneous information concerning the proposed power plant's distance to environmentally sensitive lands and, therefore, should be reassessed:

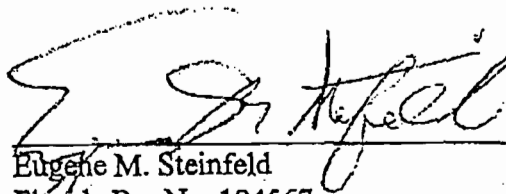
- (i) The Technical Evaluation and Preliminary Determination provides in Paragraph 2 entitled "Facility Information" that the proposed power plant is located approximately 60 kilometers (37.2 miles) from the Everglades National Park;
- (ii) The environmentally sensitive ecosystem of the National Wildlife Refuge is within 18 miles of the proposed power plant;
- (iii) While the entrance of Everglades National Park may be over 37 miles away from the proposed power plant, the environmentally sensitive

ecosystem of the Florida Everglades is within 10 miles of the proposed site; and

- (iv) The proximity of these ecosystems were not taken into account by the DEP in their review of the proposed location.

WHEREFORE, Petitioner, CITY, respectfully requests a formal administrative evidentiary hearing, de novo, pursuant to Chapter 120, Florida Statutes, to resolve disputed issues of material fact and law set forth herein be had and that the DEP should not issue Permit No. 0112515-001-AC(PSD-FL-304) or, in the alternative, should prohibit diesel oil from being used at this facility. At a minimum, the DEP should, prior to issuing the Permit, require that ENRON provide a quantitative cumulative air quality analysis to ensure that the combined emissions from the various industries in the area do not cause a contradiction of applicable air quality standards.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. Mail to: State of Florida Department of Environmental Protection, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 (850) 921-3000 (facsimile) and Debbie Orshefsky, Attorney for Pompano Beach Energy L.L.C., Greenberg, Traurig, 515 E. Las Olas Boulevard, Suite 1500, Fort Lauderdale, Florida 33301 (954) 765-1477, (facsimile) this 19TH Day of April, 2001.



Eugene M. Steinfeld
 Florida Bar No. 184567
 City Attorney
 City of Margate
 5790 Margate Blvd.
 Margate, FL 33063
 (954) 972-6454

RECEIVED

OCT 26 2001

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
BUREAU OF AIR REGULATION

CITY OF CORAL SPRINGS,)

Petitioner,)

vs.)

Case No. 01-2682

POMPANO BEACH ENERGY, L.L.C.)
(AN AFFILIATE OF ENRON NORTH)
AMERICA) and DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)

Respondents.)

CITY OF MARGATE,)

vs.)

Case No. 01-2683

POMPANO BEACH ENERGY, L.L.C.)
(AN AFFILIATE OF ENRON NORTH)
AMERICA) and DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)

Respondents.)

CITY OF COCONUT CREEK,)

vs.)

Case No. 01-2684

POMPANO BEACH ENERGY, L.L.C.)
(AN AFFILIATE OF ENRON NORTH)
AMERICA) and DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)

Respondents.)

_____)

NOTICE OF CHANGE OF AGENCY POSITION

COMES NOW, Respondent, Department of Environmental Protection (hereinafter "Department"), by and through the undersigned counsel, and hereby files this Notice of Change of Agency Position which will result in amendments to the Draft Air Construction Permit No. 0112515-001-AC; PSD-FL-304 (hereinafter "Permit").

1. The Department is the permitting authority in this proceeding.
2. On March 10, 2001, the Department distributed an Intent to Issue Air Construction Permit (hereinafter "Intent") to Respondent, Pompano Beach Energy, L.L.C., (an affiliate of ENRON North America), (hereinafter "ENRON").
3. The Department received comments regarding the proposed permitting action from the public, the United States Environmental Protection Agency (hereinafter "EPA"), and from ENRON during the comment period and the public meeting described in the Intent.
4. Since issuance of the Intent, the Department has issued a number of other Intent to Issue Air Construction Permits and Final Permits to applicants for similar projects in Southwest and Southeast Florida, including locations near the proposed site.
5. Since issuance of the Intent and in the course of reviewing other applications, the Department has gathered additional data from several of the new General Electric 7FA simple cycle, gas and oil-fired, intermittent duty units that started operation in the past year.
6. Since issuance of the Intent, the Department has gathered information regarding several recently approved or announced pipeline projects that have the potential to increase the future supply of natural gas in Southeast Florida.
7. The proposed changes to the draft Permit will result in decreased emissions.
8. The proposed changes concern matters that are well within the scope of the issues

raised in the petitions or comments and introduce no new issues.

9. In addition to the foregoing, the following issues have determined the Department's change of position:

Issue 1. Use of Backup Fuel Oil. The use of diesel fuel¹ is one of the issues raised by the public and EPA comments and by petitions filed by Petitioners against the proposed ENRON project. The draft Permit for the Pompano Beach project allows the use of diesel for 1000 hours per year per unit. The Department proposes to reduce this value in the Permit, if issued, to 500 hours per year per unit after 2004. This change is consistent with the Department's draft Permit for the nearby, planned ENRON Deerfield Beach Project, for which an Intent to Issue Air Construction Permit was issued in June 2000, and considers conditions in other recent Intents and Permits in Southeast and Southwest Florida.

Exhibit 1 details a listing of NO_x limits and fuel oil use at some of the simple cycle E and F-Class combustion turbine projects under review or recently approved in Florida.

Issue 2 – Nitrogen Oxides (NO_x) Emissions While Burning Fuel Oil. The draft Permit includes a NO_x limit of 42 parts per million by volume, dry, at 15 percent oxygen (ppmvd) while firing (backup) diesel. The issue of the NO_x limit during diesel use is one of the items in the petitions filed by the Petitioners against the ENRON Project. The Department plans to further limit the NO_x emissions in the Permit, if issued, while firing diesel to 36 ppmvd. This reflects consideration of data from tests conducted at new identical units during the time since issuance of the Intent and draft Permit. This will match the Department's draft Permit for the nearby, planned ENRON Deerfield Beach Project, for which an Intent was issued in the interim period,

¹ The terms fuel oil, distillate fuel oil, No. 2 fuel oil, and diesel fuel are used interchangeably. Therefore, the term "diesel" will be used to describe all of the aforementioned terms and recognizes that this fuel is a common, distilled, transportation-grade, refinery product with a sulfur content no greater than 0.05 percent. This is in contrast to *residual* fuel oil used at certain other power plants in South Florida and having a sulfur content on the

and considers conditions in recent Intents and Permits for projects in Southeast and Southwest Florida. Refer to Exhibit 1.

Issue 3 – Startup And Shutdown Conditions. The issue of startup and shutdown emissions is one of the items raised by EPA in its comments on the Pompano Beach project and by the Petitioners in their petitions. The Department proposes to include an “Operational Standard” for startup and shutdown in the permit, if issued. This proposed change reflects consideration of comments received and reflects the Department’s recent Intents to Issue Air Construction Permit and Final Permits for several projects in Southeast and Southwest Florida.

The Department will also require a continuous emission monitoring system (CEMS) at one of the units to gather information regarding actual carbon monoxide (CO) emissions during startup of simple cycle combustion turbines. This was one of the possibilities suggested by EPA in its comments on the project. The data collected will allow the Department to set firm CO limits during startup and shutdown if feasible.

Issue 4 – Emergency Equipment. The draft Permit did not include the firewater protection system that typically requires a small on-site emergency diesel-fueled pump. The issue of emergency equipment is one of the items raised in the petitions from the Petitioners. As part of a new major facility subject to permitting, the Department will include the equipment in the permit.

Issue 5 – Other “Minor Sources”. The draft Permit included diesel storage tanks, cooling towers that dissipate heat removed from warm ambient air prior to introduction into the unit compressors, and a small gas-fired fuel heater. An issue related to this equipment (described as “minor sources”) was raised in the petitions from the Petitioners. As part of a new major facility

order of 1 to 2.5 percent sulfur.


subject to permitting, the Department included this equipment in the permit and, where appropriate, referenced the applicable New Source Performance Standards. The Department will add some minor details, as appropriate, in the permit that further clarify the purpose and capabilities of the aforementioned units.

Issue 6 – Volatile Organic Compounds (VOC) Emission Limit. The draft Permit includes a VOC limit of 2.8 ppmvd. The issue of the VOC limit is one of the items in the petitions filed by the CITIES against the ENRON Project. The Department plans to limit the VOC emissions in the Permit, if issued, to 1.4 ppmvd. This reflects the emission limit proposed by ENRON in its original application. This will render consistent the Department's draft permit for the nearby, planned ENRON Deerfield Beach Project, for which an Intent to Issue an Air Construction Permit was issued in June 2001.

WHEREFORE, the Department by this Notice of Change of Agency Position advises the parties in the present proceedings of the proposed amendments to the Permit that the Department will advocate.

Respectfully submitted this 25th day of October, 2001.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION


MARTHA L. NEBELSIEK
Florida Bar No. 0831311
Assistant General Counsel

3900 Commonwealth Blvd., MS - 35
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(850) 488-9314
(850) 921-3000 (facsimile)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. Mail to:

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Jose Raul Gonzalez, Esq.
Maite Azcoita, Esq.
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John J. Hearn, Esq.
City of Coral Springs
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Nancy A. Cousins, Esq.
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Facsimile: (954) 973-6790

Eugene Steinfeld, Esq.
City of Margate
5790 Margate Blvd.
Margate, FL 33063
Facsimile: (954) 935-5304

on this 25th day of October, 2001

Martha L. Nebelsiek
MARTHA L. NEBELSIEK
Florida Bar No. 0831311
Senior Assistant General Counsel

(3900 Commonwealth Blvd., MS - 35
Tallahassee, Florida 32399-3000
(850) 488-9314
(850) 921-3000 (facsimile)

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, CITY OF
MARGATE and CITY OF COCONUT
CREEK,

RECEIVED

OCT 25 2001

Petitioner,

BUREAU OF AIR REGULATION

v.

POMPANO BEACH ENERGY CENTER,
LLC (AN AFFILIATE OF ENRON NORTH
AMERICA) and DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

CASE NO. 01-2682
01-2683
01-2684

Respondents

Judge Charles A. Stampelos

and

BROWARD COUNTY,

AL Lino

Intervenor.

BROWARD COUNTY'S
RESPONSE TO POMPANO BEACH ENERGY CENTER'S MOTION TO DISMISS
BROWARD COUNTY'S PETITION AND/OR MOTION FOR RECONSIDERATION OF
BROWARD COUNTY'S INTERVENTION

Intervenor, BROWARD COUNTY, a political subdivision of the State of Florida ("COUNTY"), hereby files this Response to Pompano Beach Energy Center's ("ENRON") Motion to Dismiss Broward County's Petition and/or Motion for Reconsideration of Broward County's Intervention as follows:

Standing and Substantial Interest

ENRON asserts in its Motion to Dismiss that COUNTY has failed to establish it possesses the requisite standing to intervene in the instant proceeding. Specifically,

msn

ENRON asserts that COUNTY's substantial interest recitations are insufficient to confer standing. Additionally, ENRON argues that COUNTY's disputed issues of law and fact recitations fail to establish standing or state a claim upon which relief may be granted.

As set out in the Administrative Law Judge's Order of August 27, 2001, "[i]n order to establish standing in this administrative proceeding, Broward [COUNTY] must demonstrate that it will suffer an injury in fact which is of sufficient immediacy to entitle it to participate in this proceeding and that the injury in fact is within the zone of interest which the proceeding is designed to protect. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981)." The first prong of the test deals with the degree of injury while the second prong deals with the nature of the injury. *Id.* at 482.

1. Injury in Fact

COUNTY has alleged facts that it will suffer an injury of sufficient immediacy to participate in this proceeding. As ENRON's Motion points out, paragraph 22 of COUNTY's Amended Petition to Intervene "may satisfy the first prong of the *Agrico* standing test by claiming that the use of Broward County property will be adversely affected." The following paragraphs buttress and expand on the COUNTY's injuries:

18. Tradewinds Park, one of the largest COUNTY parks at 599 acres, is within 2 miles to the west of ENRON's proposed facility. The park contains a 31.2 acre wilderness area with plant species characteristic of both an upland community and a wetland basin swamp habitat. This wilderness area provides an urban refuge for many native animals including osprey, gopher tortoise and bobcat.

19. Tradewinds Park also contains Butterfly World, an attraction which contains the largest single butterfly habitat in the United States, a

hummingbird aviary, and gardens. Research on rare butterflies and hummingbirds is conducted at Butterfly World.

20. The prevailing wind at the location of the proposed power plant is predominantly from the east. Tradewinds Park is located directly to the west of the proposed location to the plant.

21. Quiet Waters Park, a 430 acre COUNTY park is also within four miles to the north of the proposed facility. Quiet Waters Park has facilities for swimming, water skiing, fishing, camping and an interactive children's water playground.

22. Due to the location of the COUNTY parks, their wilderness area, plant and animal species, and the residents' ability to enjoy the parks' recreation activities will be directly affected by the degradation of the environment associated with known carcinogens and irritants that would be released from the proposed plant.

* * *

25. . . . For example, the proposed power plant and a power plant proposed in Deerfield Beach, together with existing sources, consume eighty percent (80%) of the 24 hour sulfur dioxide significant impact level, severely limiting future potential growth in a region and greatly increasing the possibility that the carrying capacity will be exceeded.

26. In order to protect its parks and its residents in the area, COUNTY has a direct interest in assuring that all pollution-emitting facilities that locate in the region which affect air quality use best available control technology to reduce pollution to the maximum extent required by law.

27. DEP, by failing to compel industry to comply with federal and state pollution control laws, unlawfully allows regional air quality to be degraded, including air quality within that area of Broward County, thereby degrading the environment, including COUNTY's parks and their plant and animal species.

* * *

42. The project proposes to use distillate oil as a backup fuel for an average of 1,000 hours per installed unit. (Permit, § III.7.) The combustion of distillate in the turbines would produce "diesel exhaust," which is recognized by the U.S. Environmental Protection Agency (EPA) and

California as a potent human carcinogen and respiratory irritant. COUNTY is concerned about the impact of these emissions, as well those set forth below, on the residents of COUNTY.

* * *

44. The draft permit establishes BACT for SO₂ and sulfuric acid mist as the use of pipeline natural gas and low sulfur (0.05%) fuel oil, without performing any analyses, evaluating alternatives or considering the substantial health impacts that may result from this choice. COUNTY maintains that the use of distillate fuel in a densely populated area is inappropriate, has far-reaching social and economic implications for its residents, and is not consistent with Rule 62-212.400(6)(a), F.A.C.

* * *

47. The permit contains no limits on the number of startups/shutdowns nor on the emissions during these periods. During startups and shutdowns, combustion temperatures and pressures change rapidly, resulting in inefficient combustion and much higher emissions of NO_x, CO, VOCs (including aldehydes) than during steady state operation.

48. COUNTY is concerned that virtually unlimited and uncontrolled startup and shutdown emissions will result in significant health impacts in downwind areas of COUNTY, particularly during combined operation of the Pompano and proposal Deerfield Beach Energy Centers. Emissions of formaldehyde, for example, can increase by over a factor of 500 during startups, compared to full load operation. If each turbine experienced as few as 100 startups per year, lasting only 10 minutes, the emissions of formaldehyde would exceed 10 ton/yr and require the use of maximum achievable control technology ("MACT"), pursuant to Rule 62-204.800, F.A.C.¹

These paragraphs point out the alleged effects to COUNTY's parks and the ability

¹The fact that a party labels their substantial interests as "concerns" is a semantic distinction insufficient to divest the party of standing to maintain an action. *Hamilton County Board of County Commissioners and City of Jasper v. TSI Southeast, Inc. and State of Florida, Department of Environmental Regulation*, DOAH Case No. 89-6824, 1990 WL 282353, at *8 (DER Sept. 7, 1990), *aff'd* 587 So.2d 1378 (Fla. 1st DCA 1991).

of residents to enjoy the recreational facilities located therein due to the degradation of air quality caused by the proposed power plant. Whether the COUNTY will actually suffer the alleged injury cannot be resolved without a fact-finding proceeding. *Sullivan v. Northwest Florida Water Management District*, 490 So.2d 140, 142 (Fla. 1st DCA 1986).

2. Nature of Substantial Injury

The second prong of the *Agrico* test requires that the injury in fact be of a type or nature which the proceeding is designed to protect. *Agrico Chemical Co.*, 406 So.2d at 482. "In determining how to apply this second prong of the *Agrico* test, we must analyze the appropriate purpose and scope of the proceeding, the type and nature of the injury, as well as the reasons for the *Agrico* test." *Gregory v. Indian River County*, 610 So.2d 547, 554 (Fla. 1st DCA 1992). "The obvious intent of *Agrico* was to preclude parties from intervening in a proceeding where those parties' substantial interests are totally unrelated to the issues which are to be resolved in the administrative proceedings. In *Agrico*, the only real interest of the proposed intervenor was to preclude competition. That interest was totally unrelated to the environmental issues to be decided in the permitting proceedings." *Id.*

In the instant case, the environmental issues to be decided in these permitting proceedings - issues raised in the City of Coral Springs, City of Margate and City of Coconut Creek's ("Cities") petitions - are directly related to COUNTY's interests in its parks. COUNTY has a direct interest in how its property will be affected by the degradation of air quality caused by the proposed power plant. These interests are the same interests raised by the Petitioner Cities in this proceeding and set out in the Disputed Issues of Law

and Fact section below, except that the particular property affected is different.²

In support of its motion, ENRON cites *Florida Chapter of the Sierra Club and Save Our Suwannee, Inc. v. Suwannee American Cement Company, Inc. and Department of Environmental Protection*, DOAH Case No. 99-3096, 1999 WL 1610399 (DOAH October 21, 1999). ENRON asserts that it is a "similar case" to the instant case. COUNTY submits that *Florida Chapter of the Sierra Club and Save Our Suwannee, Inc.* is factually and legally distinguishable from the instant case. *Florida Chapter of the Sierra Club and Save Our Suwannee, Inc.* involved an application for an air construction permit by Suwannee American Cement Company, Inc. which was denied by the Department of Environmental Protection ("DEP"). The Florida Chapter of the Sierra Club and Save Our Suwannee, Inc. ("Sierra Club") filed a petition for administrative hearing seeking to modify the notice of permit denial to include a finding that construction of the cement plant would result in significant degradation of the Santa Fe River through the atmospheric deposition of mercury, in contravention to Rule 62-302.700, Florida Administrative Code. *Florida Chapter of the Sierra Club and Save Our Suwannee, Inc.*, 1999 WL 1610399, at *1. (Rule 62-302.700, F.A.C. deals with water quality degradation.). The only factual allegation made by the petitioner was that the applicant, Suwannee American Cement Company, Inc., failed to provide reasonable assurances that it would not significantly degrade the Santa Fe River

²ENRON asserts in its motion that COUNTY should not be permitted to intervene because it has identified no unique interests and would be well represented by the Cities. While the issues raised are similar, only the COUNTY can assert those rights as to its property. Since the location and attributes of the Cities and COUNTY's properties are different, the issues related thereto can only be asserted by the owner of the particular property.

through the atmospheric deposition of mercury. *Id.* at *8. The DEP did not consider any water quality rules in making its decisions. *Id.* at *14.

Since the Sierra Club's petition improperly raised only water quality issues in a matter involving an air construction permit, the administrative law judge determined that the petition failed to assert a "substantial injury . . . of a type or nature which the proceeding is designed to protect." *Id.* at *16. Significantly, the Sierra Club declined to amend their petition to allege that the cement plant would violate rules relating to air quality permit issues, standards and rules. Thus, *Florida Chapter of the Sierra Club and Save Our Suwannee, Inc.* is distinguishable from the instant case where the COUNTY has alleged violation of rules relating to air quality permit issues, standards and rules.

Disputed Issues of Law and Fact³

ENRON's Motion to Dismiss argues that COUNTY's disputed issues of law and fact recitations fail to establish standing or state a claim upon which relief may be granted. COUNTY asserts that it has articulated the following disputed issues of fact in its Amended Petition to Intervene which establish standing:

(1) In Issuing a Notice of Intent to Issue Air Construction Permit for the Pompano site, the DEP relied on inaccurate representations by ENRON of the distances between the proposed Plant and environmentally sensitive lands such as Loxahatchee National Wildlife Refuge and Conservation Area and the Florida Everglades. DEP's reliance on the

³The arguments in this section of the Response are taken from the Cities' responses to ENRON's motions to dismiss the Cities Petitions. COUNTY otherwise adopts the arguments raised in the Cities' responses in that they are equally applicable to the COUNTY's petition although they are applicable to separate property interests.

fact that sensitive lands were farther away from the Plant resulted in an erroneous Notice of Intent to Issue Permit.

(2) The COUNTY disputes that the DEP's best available control technology (BACT) determinations comply with federal and/or state law adopted pursuant to the Federal Clean Air Act in violation of the Florida Administrative Code, Rule 62-212.400(6)(a).

(3) The COUNTY's position is that the DEP failed to consider whether the use of BACT would create economic and social impacts on the COUNTY in violation of the Florida Administrative Code, Rule 62-212.400(6)(a)4.

(4) The COUNTY disputes that the proposed Permit contains adequate monitoring requirements making it not practically enforceable as required under the law.

(5) The COUNTY disputes that DEP has properly considered the impacts of the use of diesel engines consistently with the Florida Administrative Code, Rules 62-210.200(112) and 62-210(38).

(6) The COUNTY disputes that DEP has properly considered and limited startups and shutdowns to comply with BACT and MACT as required by the Florida Administrative Code, Rule 62-210.200(38).

In its Amended Petition to Intervene, the COUNTY has articulated Rules which the DEP has failed to comply with and which require reversal or modification of the DEP's proposed action. The COUNTY has clearly alleged that the DEP has not enforced Rules 62-210.200-62.212.400 as they relate to BACT. The COUNTY has alleged that the DEP has not enforced BACT as required by those Rules and that the DEP has failed to identify the maximum degree of reduction in violation of Rule 62-212.400(6), F.A.C. The COUNTY

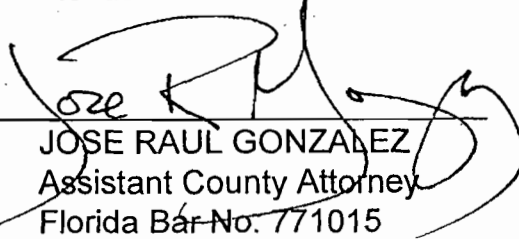
has alleged that the DEP's BACT determinations require reversal or modification as they do not recognize the much lower limits currently being permitted throughout numerous areas of the country. The COUNTY further maintains that the emissions of distillate oil as a backup fuel are required to be considered as a collateral environmental impact in a BACT analysis. This analysis never occurred, in violation of Rule 62-210.200(38) F.A.C. and federal guidance documents.

As a result, and based on the above, it is clear that the COUNTY has complied with Rule 28-106.201 F.A.C. and stated specific Rules or Statutes which the COUNTY contends require reversal or modification of the Agency's proposed Permit. Therefore, ENRON's Motion to Dismiss on this basis should be denied.

Respectfully submitted,

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By: 
MAITE AZCOITIA
Assistant County Attorney
Florida Bar No. 897868

By: 
JOSE RAUL GONZALEZ
Assistant County Attorney
Florida Bar No. 771015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to: Martha L. Nebelsiek, Esq., State of Florida, Dept. Of Environmental Protection, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, FL 32399-3000, Eugene M. Steinfeld, Esq., City of Margate, 5790 Margate Boulevard, Margate, FL 33063, John J. Hearn, Esq., City of Coral Springs, 9551 West Sample Road, Coral Springs, FL 33065, Nancy A. Cousins, Esq., City of Coconut Creek, City Attorney's Office, 4800 West Copans Road, Coconut Creek, FL 33063, Paul S. Stuart, Esq., P.O. Box 14004, Fort Lauderdale, FL 33302, and Kerri L. Barsh, Esq., C. Ryan Reetz, Esq. and Paul C. Savage, Esq., Greenberg, Traurig, 1221 Brickell Avenue, Miami, FL 33131, FL 33301 this 15th day of October, 2001.

EDWARD A. DION
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By: 

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, CITY OF
MARGATE and CITY OF COCONUT
CREEK,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
POMPANO BEACH ENERGY CENTER,
L.L.C. (AN AFFILIATE OF ENRON NORTH
AMERICA),

Respondents,

and

BROWARD COUNTY,

Intervenor.

CONSOLIDATED

DOAH CASE Nos. 01-2682
01-2683
01-2684

**POMPANO BEACH ENERGY CENTER'S
MEMORANDUM IN PARTIAL OPPOSITION
TO CITY OF COCONUT CREEK'S
MOTIONS FOR EXTENSION OF TIME**

Respondent, Pompano Beach Energy Center, L.L.C. ("Energy Center"), respectfully submits this response to (a) the City of Coconut Creek's Motion for Extension of Time in Which to File Answers to Pompano Beach Energy Center's First Set of Interrogatories and (b) the City of Coconut Creek's Motion for Extension of Time in Which to Respond to Pompano Beach Energy Center's First Request For Production (the "Motions"). As set forth below, Energy Center believes that only a limited extension of Coconut Creek's discovery response date *until October 26, 2001* would be appropriate.

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CASE NOS. 01-2682, 01-2683, 01-2684

**Coconut Creek's Claimed Grounds
Do Not Justify the Extensions**

Although counsel for Coconut Creek claims that she called Energy Center's counsel to request an extension of time, neither the undersigned nor the other three lawyers who have appeared for Energy Center in this matter received any message from her with respect to such an extension. Accordingly, Energy Center was extremely surprised to receive, six days after the supposed mailing date, copies of Coconut Creek's Motions.¹

In any case, the grounds asserted by counsel for Coconut Creek – the vaguely-described hospitalization and illness of one lawyer which took place long before the interrogatory response date and barely two days after the request for production was even *served*² – does not justify a thirty-day enlargement of time. Coconut Creek is represented by *two* lawyers in this proceeding. Although Ms. Cousins was ill during September, she offers absolutely *no* explanation why Mr. Stuart was unable to respond to the discovery requests on a timely basis.

Similarly, the fact that the petitioners' expert "was out of the country during September" does not justify delaying Coconut Creek's responses until late in November. Coral Springs – which is using the same expert – needed only a reasonable extension of time until October 19, 2001 (today's date) to respond to substantially similar requests.

Although Coconut Creek has not presented any legitimate basis for an enlargement of time, and Energy Center is unable to discern any indication that such an enlargement was ever requested of counsel, in the interests of courtesy and civility Energy Center is willing to agree to

¹ Energy Center notes that Coconut Creek has again filed its motion with the Clerk by facsimile, while serving Energy Center by mail (which apparently took six days to arrive). Energy Center requests that, with respect to any future papers seeking action by the Administrative Law Judge, Coconut Creek extend the courtesy of serving Energy Center by a means reasonably calculated to provide contemporaneous notice to Energy Center of Coconut Creek's communication to the Administrative Law Judge.

² Energy Center's First Set of Interrogatories were served by mail on all parties on September 6, 2001, and its First Set of Requests for Production were served by mail on all parties on September 20, 2001.

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CASE NOS. 01-2682, 01-2683, 01-2684

an extension until **October 26, 2001** – provided that Energy Center serves its responses by hand delivery or overnight delivery service and provided that the responsive documents are also produced at that time. As is explained below, Energy Center would be unfairly prejudiced by an extension past that date.

**The Requested Thirty-Day Extension
Would Unfairly Prejudice Energy Center**

This matter is scheduled to be tried from December 11-14, 2001³ – barely five weeks after the October 26 response date proposed by Energy Center, and with an intervening Thanksgiving holiday. If Coconut Creek were permitted to further delay its responses beyond October 26, Energy Center would be prejudiced in its ability to prepare for trial.

The pending discovery requests are Energy Center's *initial* discovery requests, and Energy Center needs timely responses so that it can prepare for depositions and trial. Moreover, as Energy Center is better able to understand Coconut Creek's contentions (which are imprecisely and conclusorily stated in the petition) through the initial discovery responses, Energy Center is likely to need follow-up discovery to prepare for trial. By seeking to delay its discovery responses until late November (based upon an unspecified illness last month of *one* of its lawyers), Coconut Creek is in effect attempting to deny Energy Center the opportunity to prepare for trial in this case.

Moreover, the thirty-day extension requested by Coconut Creek would leave no time for the resolution of discovery disputes. If Coconut Creek serves incomplete or improper responses,

³

The case was originally scheduled to be tried later this month, but the trial date was postponed due to the surgery and recovery period of DEP's counsel. Obviously, any further delay in the trial date is prejudicial to Energy Center, and improperly serves the petitioners' interests, because petitioners are seeking to delay the issuance of an air construction permit for Energy Center's facility, notwithstanding DEP's careful review of Energy Center's application and DEP's determination of intent to issue the permit.

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CASE NOS. 01-2682, 01-2683, 01-2684

or asserts objections to the discovery requests propounded by Energy Center, additional time will be required for Energy Center to (a) confer with Coconut Creek in an attempt to resolve the objection(s) by agreement, (b) prepare a motion to compel compliance with the discovery request(s), and (c) await Coconut Creek's response and the administrative law judge's ruling – all before receiving the discovery necessary to Energy Center's preparation. October 26 is the *latest* date for Coconut Creek's response that will reasonably permit Energy Center to prepare for trial.

Conclusion

Although Coconut Creek has not identified any valid reason for the requested *thirty day* extensions, Energy Center is willing, in the interest of courtesy and civility, to permit extensions of the response date until October 26, 2001 (provided that Coconut Creek serves the responses and responsive documents by hand delivery or overnight delivery service). Extending Coconut Creek's response time beyond October 26 would not only be wholly unnecessary, but would also unfairly prejudice Energy Center in its trial preparations.

As a petitioner, Coconut Creek is obliged to prosecute these proceedings with reasonable diligence, and not to seek unnecessary or improper delays. Accordingly, Coconut Creek's Motions should be *granted in part* to permit it to serve its discovery responses, and produce its responsive documents, by hand delivery or overnight delivery service, on October 26, 2001.

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CASE NOS. 01-2682, 01-2683, 01-2684

Respectfully submitted,

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By: _____


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SÃO PAULO FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE

CASE NOS. 01-2682, 01-2683, 01-2684

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served by facsimile and U.S. Mail on
October 19, 2001 to:

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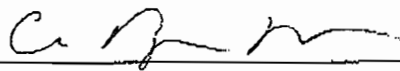
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Transmittal Cover Sheet

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Phone No.:

FROM C. Ryan Reetz

File Number 42292.0113

Comments

Date October 19, 2001

Time

No. Pages Including this cover sheet seven

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS,)
)
Petitioner,)
)
and)
)
BROWARD COUNTY,)
)
Intervenor,)
)
vs.)
)
POMPANO BEACH ENERGY, L.L.C.)
(AN AFFILIATE OF ENRON NORTH)
AMERICA) and DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)
)
Respondents.)

Case No. 01-2682

CITY OF MARGATE,)
)
Petitioner,)
)
and)
)
BROWARD COUNTY,)
)
Intervenor,)
)
vs.)
)
POMPANO BEACH ENERGY, L.L.C.)
(AN AFFILIATE OF ENRON NORTH)
AMERICA) and DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)
)
Respondents.)

Case No. 01-2683

msn

CITY OF COCONUT CREEK,)	
)	
Petitioner,)	
)	
and)	
)	
BROWARD COUNTY,)	
)	
Intervenor,)	
)	
vs.)	Case No. 01-2684
)	
POMPANO BEACH ENERGY, L.L.C.)	
(AN AFFILIATE OF ENRON NORTH)	
AMERICA) and DEPARTMENT OF)	
ENVIRONMENTAL PROTECTION,)	
)	
Respondents.)	
_____)	


ORDER

This cause came before the undersigned for consideration of Respondent's, Pompano Beach Energy, L.L.C.'s (Pompano), Motion to Dismiss Broward County's Amended Petition and/or Motion for Reconsideration of Broward County's Intervention. Broward County filed a Response and the Department of Environmental Protection's position is unknown.

The City of Coconut Creek (City) also filed Motions to extend the time for responding to the First Set of Interrogatories and the First Request for Production, requesting an additional 30 days in which to respond to both discovery requests.

Having considered the Motions and the Response, Pompano's Motion to Dismiss and/or Motion for Reconsideration are denied without prejudice. The City's Motions for extension of time to respond to Pompano's discovery are granted and the City shall serve responses to the discovery on or before November 9, 2001.

DONE AND ORDERED this 18th day of October, 2001, in Tallahassee, Leon County, Florida.



CHARLES A. STAMPELOS
Administrative Law Judge
Division of Administrative Hearings
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1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of October, 2001.

COPIES FURNISHED:

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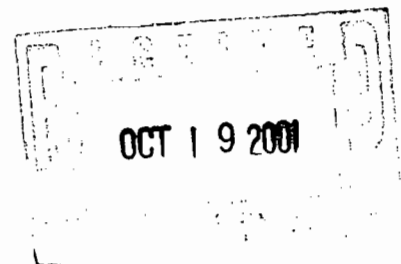
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STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, CITY OF
MARGATE, and CITY OF COCONUT
CREEK,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

and

POMPANO BEACH ENERGY CENTER,
L.L.C. (AN AFFILIATE OF ENRON NORTH
AMERICA),

Respondents,

and

BROWARD COUNTY,

Intervenor.

CONSOLIDATED

DOAH CASE NOS. 01-2682
01-2683
01-2684

**POMPANO BEACH ENERGY CENTER'S
MEMORANDUM IN PARTIAL OPPOSITION
TO CITY OF MARGATE'S
MOTIONS FOR EXTENSION OF TIME**

Respondent, Pompano Beach Energy Center, L.L.C. ("Energy Center"), respectfully submits this response to (a) the City of Margate's Motion for Extension of Time in Which to File Answers to Pompano Beach Energy Center's First Set of Interrogatories and (b) the City of Margate's Motion for Extension of Time in Which to Respond to Pompano Beach Energy Center's First Request For Production (the "Motions"). As set forth below, Energy Center believes that a limited extension of Margate's discovery response date *until November 5, 2001*

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SÃO PAULO FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE

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would be appropriate, with the understanding that future discovery from Margate may need to be expedited, and other pretrial deadlines may need to be adjusted to account for the delay in providing this initial discovery, which was sought by Energy Center in September.

Margate's Newly Asserted Grounds for the Extensions

As detailed in Energy Center's Notice of Intention to Respond to Margate's Motions, Margate's telephonic request to Energy Center's counsel for an enlargement of time sought an extension until October 19, 2001 (when Coral Springs' responses are due), because Margate was using the same expert as Coral Springs and its answers would be largely the same as Coral Springs' answers, and because the expert used by Coral Springs and Margate had been unexpectedly delayed in returning to the United States. However, Margate's formal Motions, filed one day later, sought an extension of *thirty days*, and raised new and entirely different grounds for the extensions: a previous illness of counsel and a surgery scheduled for October 18, 2001 (the day before the extended due date initially sought by Margate).

Because Margate had not disclosed its desire for a thirty-day extension, nor the newly asserted grounds, in its telephone request to Energy Center's counsel the day before Margate filed its Motions, Energy Center sought clarification from Margate's counsel as to the specific facts underlying the newly-asserted grounds for the Motions. Margate's counsel responded, *inter alia*, that

- he was scheduled for surgery on October 18, 2001 (today's date);
- he was expected to be able to return to work some time during the week of October 22;

and

- he should not drive for approximately one week following his return to work.

A Limited Extension Is Appropriate

Based on the information provided by Margate's counsel, Energy Center agrees that a reasonable enlargement of time would be appropriate. Given that (1) Energy Center's requests were propounded in September 2001;¹ (2) Margate is using the same expert as Coral Springs, and Margate's responses are likely to be "largely the same" as Coral Springs' responses, which are due on October 19, 2001; and (3) Margate's counsel will be returning to work, though subject to some medical restrictions, during the week of October 22, 2001; Energy Center believes that an enlargement of time until November 5, 2001 for Margate's responses will be more than adequate. In addition, if the due date for Margate's responses is extended to November 5, 2001, then Margate should be required to serve its responses, including all responsive documents, by hand delivery or overnight delivery service on that date.

Energy Center Would Be Unfairly Prejudiced By Further Delay

This matter is scheduled to be tried from December 11-14, 2001² -- barely one month after the November 5 response date proposed by Energy Center, and with an intervening Thanksgiving holiday. If Margate were permitted to further delay its responses beyond November 5, Energy Center would be prejudiced in its ability to prepare for trial.

The pending discovery requests are Energy Center's *initial* discovery requests. Energy Center needs Margate's responses in order to prepare for depositions and propound follow-up discovery requests. Moreover, to the extent that Margate asserts one or more objections to the

¹ Energy Center's First Set of Interrogatories were served by mail on all parties on September 6, 2001, and its First Set of Requests for Production were served by mail on all parties on September 20, 2001.

² The case was originally scheduled to be tried later this month, but the trial date was postponed due to the surgery and recovery period of DEP's counsel. Obviously, any further delay in the trial date is prejudicial to Energy Center, and improperly serves the petitioners' interests, because petitioners are seeking to delay the issuance of an air construction permit for Energy Center's facility, notwithstanding
(continued . . .)

discovery requests, Energy Center will need time to (a) confer with Margate in an attempt to resolve the objection(s) by agreement, (b) prepare a motion to compel compliance with the discovery request(s), and (c) await Margate's response and the administrative law judge's ruling – all before receiving the discovery to which Margate has objected and which is necessary to Energy Center's preparation. November 5 is the *latest* date for Margate's response that will reasonably permit Energy Center to prepare for trial.

Future Adjustments of Discovery and Pretrial Deadlines May Become Necessary

Moreover, if Margate is allowed until November 5 to serve its discovery responses, adjustments in other pretrial deadlines for this matter are likely to become necessary. For example, counsel's meeting to prepare the pretrial stipulation is scheduled to take place by November 26 -- only three weeks after Margate's responses would be due. The pretrial stipulation is due by Friday, November 30. Depending upon the content of Margate's responses, these deadlines may need to be amended. Similarly, to the extent that Energy Center propounds follow-up discovery requests to Margate, the time for Margate's responses to those requests should be shortened so that Energy Center receives the responses in sufficient time to use them for trial preparation.

The question of adjusting future deadlines, of course, is not yet ripe for disposition. However, Energy Center should not be prejudiced in connection with future discovery or pretrial deadlines as a result of its having consented to extend Margate's response deadline until November 5.

(. . . continued)

DEP's careful review of Energy Center's application and DEP's determination of intent to issue the permit.

GREENBERG TRAURIG, P.A.

1221 BRICKELL AVENUE MIAMI, FLORIDA 33131
305-579-0500 FAX 305-579-0717 www.gtlaw.com

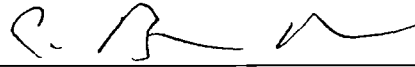
Conclusion

In light of the medical circumstances identified by Margate's counsel after Margate filed its Motions, an enlargement of Margate's response date until November 5, 2001 is appropriate – provided that Margate serves its responses, including all responsive documents, by hand delivery or overnight delivery service. Extending Margate's response time beyond November 5 would be unnecessary and would unfairly prejudice Energy Center in its trial preparations. In addition, if Margate is given until November 5 to respond to Energy Center's discovery requests, then future discovery and pretrial deadlines should be adjusted as necessary to prevent prejudice to Energy Center due to the resulting delay in Margate's response.

Respectfully submitted,

Kerri L. Barsh, Esq.
Florida Bar No. 443840
C. Ryan Reetz
Florida Bar No. 934062
Paul C. Savage, Esq.
Florida Bar No. 088587
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0717

By: _____



C. Ryan Reetz

Counsel for Pompano Beach Energy, L.L.C.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served by facsimile and U.S. Mail on
October 18, 2001 to:

Martha L. Nebelsiek, Esq.
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

John Hearn, Esq.
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065

Eugene M. Steinfield, Esq.
City of Margate
5790 Margate Boulevard
Margate, Florida 33063

Paul S. Stuart, Esq.
City of Coconut Creek
4900 W. Copans Rd.
Coconut Creek, FL 33062

Nancy A. Cousins, Esq.
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063

Maite Azoitia, Esq.
Jose Raul Gonzalez, Esq.
Broward County Attorney's office
Governmental Center, Suite 423
115 S. Andrews Avenue
Fort Lauderdale, Florida 33301


C. Ryan Reetz

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS,)
)
Petitioner,)
)
and)
)
BROWARD COUNTY,)
)
Intervenor,)
)
vs.)
)
POMPANO BEACH ENERGY, L.L.C.)
(AN AFFILIATE OF ENRON NORTH)
AMERICA) and DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)
)
Respondents.)

Case No. 01-2682

CITY OF MARGATE,)
)
Petitioner,)
)
and)
)
BROWARD COUNTY,)
)
Intervenor,)
)
vs.)
)
POMPANO BEACH ENERGY, L.L.C.)
(AN AFFILIATE OF ENRON NORTH)
AMERICA) and DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)
)
Respondents.)

Case No. 01-2683

mgn


CITY OF COCONUT CREEK,)	
)	
Petitioner,)	
)	
and)	
)	
BROWARD COUNTY,)	
)	
Intervenor,)	
)	
vs.)	Case No. 01-2684
)	
POMPANO BEACH ENERGY, L.L.C.)	
(AN AFFILIATE OF ENRON NORTH)	
AMERICA) and DEPARTMENT OF)	
ENVIRONMENTAL PROTECTION,)	
)	
Respondents.)	
_____)	

ORDER

This cause came before the undersigned for consideration of the City of Margate's Motion to extend the time for responding to the First Set of Interrogatories directed to the City of Margate, requesting an additional 30 days in which to respond to the discovery request. (A similar motion was filed on behalf of the City of Coconut Creek which has been granted.)

The City's Motion for extension of time to respond to Pompano's Interrogatories is granted and the City shall serve responses to the Interrogatories on or before November 9, 2001.

DONE AND ORDERED this 19th day of October, 2001, in
Tallahassee, Leon County, Florida.



CHARLES A. STAMPELOS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of October, 2001.

COPIES FURNISHED:

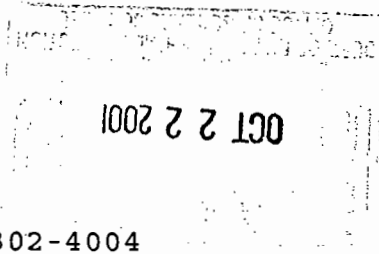
John Hearn, Esquire
City of Coral Springs
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Coral Springs, Florida 33065

Martha L. Nebelsiek, Esquire
Department of Environmental Protection
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Mail Station 35
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Nancy A. Cousins, Esquire
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, et al.,

Petitioners,

CONSOLIDATED

v.

DOAH CASE Nos. 01-2682
01-2683
01-2684

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
POMPANO BEACH ENERGY CENTER,
L.L.C., etc.,

Respondents.

**CITY OF CORAL SPRINGS'
RESPONSE TO RESPONDENT'S FIRST
REQUEST FOR PRODUCTION**

Petitioner, City of Coral Springs, through undersigned counsel, hereby responds to Respondent, Pompano Beach Energy Center, L.L.C.'s, First Request for Production as follows:

I. GENERAL OBJECTIONS

The following are general objections to each and every request ("request"):

1. Petitioner objects to each request to the extent, if at all, it seeks documents representing communications between Petitioner's counsel and Petitioner. Petitioner will not produce any documents which are privileged from disclosure based on the attorney-client privilege.

2. Petitioner objects to each request to the extent, if at all, it seeks documents representing attorney work product. Petitioner will not produce any documents which are privileged from disclosure based on the work product privilege.

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3. Petitioner objects to producing any document to the extent that it requires the Petitioner to gather or obtain information or documents already in the possession of or equally available to Respondent.

4. By producing documents pursuant to any request, Petitioner does not: (a) admit that such documents (or related documents) are properly discoverable, (b) waive any objection which might otherwise be made to such documents, or (c) admit that any such documents are admissible at trial.

5. Petitioner reserves the right to supplement, amend or correct all or any part of these responses provided herein.

II. SPECIFIC OBJECTIONS AND RESPONSES TO EACH REQUEST

Subject to and without waiving any of the foregoing general objections, Petitioner responds to each request as follows:

1. **RESPONSE.** Subject to the foregoing general objections, Petitioner has produced and/or will make available for inspection, at a date and time mutually agreed to by counsel, documents, if any, responsive to this request.

2. **RESPONSE.** Subject to the foregoing general objections, Petitioner has produced and/or will make available for inspection, at a date and time mutually agreed to by counsel, documents, if any, responsive to this request.

3. **RESPONSE.** Subject to the foregoing general objections, Petitioner has produced and/or will make available for inspection, at a date and time mutually agreed to by counsel, documents, if any, responsive to this request.

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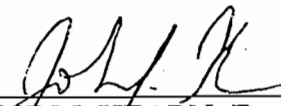
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 19th day of October, 2001 to Kerri L. Barsh, Esquire, C. Ryan Reetz, Esquire and Paul C. Savage, Esquire, Greenberg, Traurig, P.A., 1221 Brickell Avenue, Miami, Florida 33131; Martha L. Nebelsiek, Esquire, Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; Eugene M. Steinfeld, Esquire, City of Margate, 5790 Margate Boulevard, Margate, Florida 33063; Paul S. Stuart, Esquire, Post Office Box 14004, Fort Lauderdale, Florida 33302; and, Nancy A. Cousins, Esquire, City of Coconut Creek, 4800 West Copans Road, Coconut Creek, Florida 33063.

JOHN J. HEARN, ESQUIRE
Fla. Bar No. 825832
Assistant City Attorney
City of Coral Springs
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Facsimile: (954) 344-5930

and

KERRY EZROL, ESQUIRE
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By: 
JOHN J. HEARN, Esquire
Fla. Bar #825832

Doc. #59955

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, et al.,

Petitioners,

CONSOLIDATED

v.

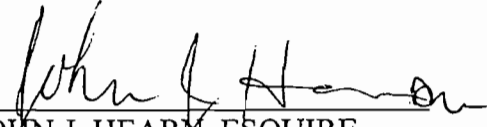
DOAH CASE Nos. 01-2682
01-2683
01-2684

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
POMPANO BEACH ENERGY CENTER,
L.L.C., etc.,

Respondents.

**CITY OF CORAL SPRINGS'
NOTICE OF SERVICE OF ANSWERS TO POMPANO BEACH
ENERGY CENTER'S FIRST SET OF INTERROGATORIES**

Petitioner, City of Coral Springs, hereby gives notice that it has served its answers to Respondent, Pompano Beach Energy Center, L.L.C.'s First Set of Interrogatories via U.S. mail this 19th day of October, 2001 to Kerri L. Barsh, Esquire, C. Ryan Reetz, Esquire and Paul C. Savage, Esquire, Greenberg, Traurig, P.A., 1221 Brickell Avenue, Miami, Florida 33131; Martha L. Nebelsiek, Esquire, Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; Eugene M. Steinfeld, Esquire, City of Margate, 5790 Margate Boulevard, Margate, Florida 33063; Paul S. Stuart, Esquire, Post Office Box 14004, Fort Lauderdale, Florida 33302; and, Nancy A. Cousins, Esquire, City of Coconut Creek, 4800 West Copans Road, Coconut Creek, Florida 33063.


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STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, et al.,

Petitioners,

CONSOLIDATED

v.

DOAH CASE Nos. 01-2682

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
POMPANO BEACH ENERGY CENTER,
L.L.C., etc.,

01-2683
01-2684

Respondents.

**CITY OF CORAL SPRINGS'
ANSWERS TO POMPANO BEACH
ENERGY CENTER'S FIRST SET OF INTERROGATORIES**

Petitioner, City of Coral Springs, through undersigned counsel, hereby responds to Respondent, Pompano Beach Energy Center, L.L.C.'s, First Set of Interrogatories as follows:

I. GENERAL OBJECTIONS

The following are general objections to each and every interrogatory ("interrogatory"):

1. Petitioner objects to each interrogatory to the extent, if at all, it seeks documents representing communications between Petitioner's counsel and Petitioner. Petitioner will not produce any documents which are privileged from disclosure based on the attorney-client privilege.
2. Petitioner objects to each interrogatory to the extent, if at all, it seeks documents representing attorney work product. Petitioner will not produce any documents which are privileged from disclosure based on the work product privilege.
3. Petitioner objects to producing any document to the extent that it requires the Petitioner to gather or obtain information or documents already in the possession of or equally available to Respondent.

4. By producing documents pursuant to any interrogatory, Petitioner does not: (a) admit that such documents (or related documents) are properly discoverable, (b) waive any objection which might otherwise be made to such documents, or (c) admit that any such documents are admissible at trial.

5. Petitioner reserves the right to supplement, amend or correct all or any part of these responses provided herein.

II. SPECIFIC RESPONSES TO EACH INTERROGATORY

1. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any of the facts alleged in the Petition and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Petitioner objects to this request as the request is overly broad and unduly burdensome. Subject to the foregoing objections, those persons currently known to City are:

GAI Consultants, Inc. - general environmental assessment of PBEC

O'Brien & Gere Engineers, Inc. - general cumulative impact analysis of PBEC

Environmental Management - Emission estimates; BACT limits; air pollution control technology cost and design; health risk assessments; permitting; air monitoring; source testing; compliance determinations; BACT and MACT analyses; cost-effectiveness analyses; assessment, measurement, estimation, modeling, and control of diesel fumes; water conservation systems including dry cooling and zero discharge systems.

Egan Environmental Inc. - dispersion modeling; emission estimates; permitting, air quality regulations; Clean Air Act compliance strategies; air toxics; hazard assessment; health risk assessments.

Engelhard - cost, design, and performance of SCR and oxidation catalysts on simple cycle gas turbines and other combustion sources.

Peerless - cost, design, and performance of SCR on simple cycle gas turbines and other combustion sources.

Mitsubishi - cost, design, and performance of SCR and oxidation catalysts on simple cycle gas turbines and other combustion sources.

Hitachi - cost, design, and performance of SCR and oxidation catalysts on simple cycle gas turbines and other combustion sources.

Cormetech - cost, design, and performance of SCR and oxidation catalysts on simple cycle gas turbines and other combustion sources.

HUG/Miratech - cost, design, and performance of SCR and oxidation catalysts on simple cycle gas turbines and other combustion sources.

Steuler - cost, design, and performance of SCR and oxidation catalysts on simple cycle gas turbines and other combustion sources.

Alstom power - cost, design, and performance of SCONOX, SCR, and oxidation catalysts on simple cycle gas turbines and other combustion sources.

Goal Line Environmental Technologies - cost, design, and performance of SCONOX and oxidation catalysts on simple cycle gas turbines and other combustion sources.

Arnold Silverman - Emission estimates; BACT limits; air pollution control technology cost and design; health risk assessments; permitting; air monitoring; source testing; compliance determinations; BACT and MACT analyses; cost-effectiveness analyses; assessment, measurement, estimation, modeling, and control of diesel fumes; water conservation systems including dry cooling and zero discharge systems.

Catalytica - cost, design, and performance of XONON on simple cycle gas turbines and other combustion sources.

California Air Resources Board - Emissions and BACT levels for gas turbines and other combustion sources; assessment, measurement, estimation, modeling, and control of diesel fumes.

Air pollution control districts and agencies in California, Washington, Oregon, Arizona, Connecticut, Massachusetts, New York, and New Jersey, among others - Emissions and BACT levels for gas turbines and other combustion sources.

United States Environmental Protection Agency – limits on diesel fuel; emissions during start-up and shut-down; BACT; hours restriction.

Sheila N. Rose, Development Services Director, City of Coconut Creek – geographical locations of power plant in relation to Everglades National Park, Loxahatchee National Wildlife Refuge and other environmentally sensitive lands

Susan Hess, Director of Community Development, City of Coral Springs - geographical locations of power plant in relation to Everglades National Park, Loxahatchee National Wildlife Refuge and other environmentally sensitive lands

Various individuals at the Department of Environmental Protection and the Environmental Protection Agency – aware of all issues concerning this matter.

2. Please describe, by category and custodian, all documents, data compilations, and tangible things in your possession, custody or control that are relevant to any of the allegations contained in the Petition.

Objection. Interrogatory requests work product information.

3. Please identify each person known to you, your agents, or your attorneys, who has knowledge about, or possession, custody or control of, any model, plat, map, drawing, motion picture, videotape, or photograph pertaining to any fact or issue involved in this controversy; and describe as to each, what item such person has, the name and address of the person who took or prepared it, and the date it was taken or prepared.

This interrogatory is overly broad and burdensome. However, without waiving any of City's objections, City's response to interrogatory number (1) identifies those persons currently known to City to have knowledge about, or possession of subject items.

4. Please identify with particularity each and every fact upon which you rely in support of your contention that the DEP should not issue the Permit or should amend the Permit.

Without waiving any of City's objections, the facts currently known to City were alleged in City's First and Second Amended Petition and are contained in the documents provided in response to PBEC's First Request for Production of Documents. City further relies on innumerable public documents which are at the Florida Department of Environmental Protection, the Environmental Protection Agency and other public agencies.

5. For each fact identified in response to the preceding interrogatory, please identify each person known to you, your agents, or your attorneys, who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to the fact and, as to each such persons, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, this interrogatory is answered in City's response to interrogatory number (1) and (3) above.

6. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to your contention, as alleged in paragraph 12 of your Petition, that "the proposed Plant has failed to use best available control technology" and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, this interrogatory is answered in interrogatory number (1) and (3) above.

7. Please identify with particularity each and every fact on which you rely in support of your contention, as alleged in paragraph 12 of your Petition, that "the proposed Plant has failed to use best available control technology."

Subject to the foregoing objections, the facts currently known to City are provided in the First and Second Amended Petitions and other information provided in City's responses to PBEC's First Request for Production of Documents.

8. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to your claim, as alleged in paragraph 31 of your Petition, that "DEP's Intent to Issue Air Construction Permit was based on erroneous information concerning the proposed power plant's distance to environmentally sensitive lands" and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Sheila N. Rose, Development Services Director, City of Coconut Creek. Based on review of maps and computer related documents. Also various personnel at Everglades National Park and Loxahatchee National Wildlife Refuge.

Susan Hess, Director of Community Development, City of Coral Springs

9. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in "disput[ing] the DEP's best available control technology determinations contained in Appendix BD," as alleged in pages 6-13 of your Petition, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3) above.

10. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The distance between the proposed Plant and environmentally sensitive lands including Loxahatchee National Wildlife Refuge and Conservation No. 2 of the Florida Everglades as represented by ENRON is inaccurate and disputable by City. As discussed above, these areas are much closer to the Plant as [sic] represented by ENRON and relied upon by DEP.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Sheila N. Rose, Development Services Director, City of Coconut Creek

Susan Hess, Director of Community Development, City of Coral Springs

11. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The DEP's BACT determinations do not comply with federal or state law adopted pursuant to the Federal Clean Air Act and its amendments.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

12. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The DEP has failed to enforce BACT as mandated by Rule 62-210, F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

13. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The DEP has failed to give due consideration to the emissions limiting standards or BACT determination of other states as required under Rule 62-212, F.A.C. In addition, the DEP has failed to identify the maximum degree of reduction in violation of the Florida Administrative Code.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

14. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The draft permit is deficient as it contains no BACT determinations, emission limits, or monitoring requirements for the 0.6 million distillate storage tank, gas-fired fuel heater and four wet mechanical draft cooling towers even though they emit criteria and hazardous air pollutants. These sources fall under BACT and must be regulated by permit pursuant to Rule 62-210.200(112), F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

15. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The Draft Permit is deficient in that it does not identify and provide BACT analysis for other emission sources at the facility such as emergency fire water pumps, emergency generators, which should be subject to a formal BACT analysis pursuant to 62-210.200(112), F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

16. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The effects of diesel exhaust as a result of the combustion of distillate in the turbines was not considered as a collateral environmental impact in a BACT analysis contrary to Rule 62-210, F.A.C. and federal guidance.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

17. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The DEP has failed to consider the impact of its BACT decisions on the City's economic and social impacts and has failed to consider the collateral environmental impacts of its BACT decisions pursuant to 62-212.400(6)(a)4, F.A.C., and consistent with EPA guidance.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

18. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The use of distillate fuel without the DEP's performance of analyses, evaluating alternatives or considering the substantial health impacts that may result from this choice in a densely populated area is inappropriate and not consistent with Rule 62-212.400(6)(a), F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

19. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

Sulfur Distillate is not BACT for SO₂ and Sulfuric Acid Mist when firing oil. At the very least, if distillate is retained, diesel exhaust emissions should be controlled and 30 ppmw diesel fuel should immediately be required and 15 ppmw diesel should be required when available, but no later than June, 2006.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

20. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The DEP's failure to limit start-up and shut-down is inconsistent with the Clean Air Act and does not comply with BACT and MACT.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

21. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 17 of your Petition, that

The proposed Permit contains inadequate monitoring requirements and, therefore, is not practically enforceable. Because they are not practically enforceable, the monitoring requirements do not qualify as legitimate restrictions on emissions.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

22. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 17 of your Petition, that

The Permit is inconsistent with federal case law as it does not require continuous compliance with the PM10 emission limits.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

23. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 17 of your Petition, that

The proposed air Permit does not comply with the Pollution Prevention Plan of Broward County as required pursuant to Rule 62-210.300(4)(d), F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

Subject to the foregoing objections, the persons currently known to City are identified in City's response to interrogatory number (1) and (3).

24. Have you relied on the opinions of any expert consultants or witnesses in asserting any of the allegations in your Petition? If so, then please state as to each such consultant or witness that person's name and business address, the person's qualifications as an expert, the allegations of the Petition with respect to which you relied on the person's opinions, the opinions asserted by the person on which you relied in asserting the Petition, and a summary of the grounds for each opinion.

Yes. City relied on the expert opinions of the persons identified in City's response to interrogatory number (1) and (3) in asserting the allegations in paragraphs 9 through 13, 30, 31 and such facts as are alleged on pages 6 through 18.

25. Do you intend to call any expert witnesses at the trial of this case? If so, please state as to each such witness the name and business address of the witness, the witness's qualifications as an expert, the subject matter on which the witness is expected to testify, the substance of the facts and opinions to which the witness is expected to testify, and a summary of the grounds for each opinion.

Subject to the foregoing objections, the City currently expects to call some or all of the persons City identified in City's response to interrogatory number (1) as witnesses to discuss the subject matter articulated in interrogatory (1) and in the allegations of the Second Amended Petition.

Ola G. Poiret
OLA G. POIRET, Risk Coordinator

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

THE FOREGOING INSTRUMENT was acknowledged before me this 19th day of October, 2001, by OLA G. POIRET, who is known to me and who did take an oath, deposes and says that she has read the foregoing answers to interrogatories, and that they are true and correct to the best of her knowledge, information and belief.

Diana L. McClain
NOTARY PUBLIC

My Commission Expires:

OFFICIAL NOTARY SEAL
DIANA L. MCLAIN
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC991800
MY COMMISSION EXP. JAN. 3, 2005

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, et al.,

Petitioners,

CONSOLIDATED

v.

DOAH CASE Nos. 01-2682
01-2683
01-2684

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
POMPANO BEACH ENERGY CENTER,
L.L.C., etc.,

Respondents.

**CITY OF CORAL SPRINGS'
NOTICE OF SERVICE OF FIRST SET OF INTERROGATORIES
TO POMPANO BEACH ENERGY CENTER**

Petitioner, City of Coral Springs, respectfully gives notice that on October 17, 2001 it propounded its First Set of Interrogatories, numbered 1 through 24, to Respondent, Pompano Beach Energy Center, L.L.C., pursuant to Rule 1.340, Florida Rules of Civil Procedure and F.A.C. 28-106.206.

Respectfully submitted,

JOHN J. HEARN, ESQUIRE
ASSISTANT CITY ATTORNEY
CITY OF CORAL SPRINGS
9551 West Sample Road
Coral Springs, FL 33065

BY: 

JOHN J. HEARN, Esquire
Florida Bar No. 825832

mgm

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served by facsimile and U.S. Mail on October 17, 2001 to Kerri L. Barsh, Esquire, C. Ryan Reetz, Esquire and Paul C. Savage, Esquire, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, Florida 33131 (facsimile: (305) 961-5772) and by U.S. Mail to the following:

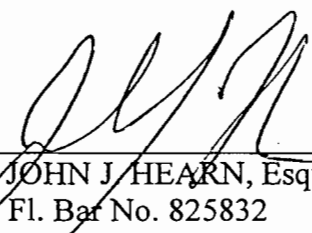
Martha L. Nebelsiek, Esquire
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Eugene M. Steinfield, Esquire
City of Margate
5790 Margate Boulevard
Margate, Florida 33063

Paul S. Stuart, Esquire
P.O. Box 14004
Fort Lauderdale, Florida 33302

Nancy A. Cousins, Esquire
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063

BY:



JOHN J. HEARN, Esquire
Fl. Bar No. 825832

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, et al.,

Petitioners,

CONSOLIDATED

vs.

DOAH CASE Nos. 01-2682

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
POMPANO BEACH ENERGY CENTER,
L.L.C., etc.,

01-2683
01-2684

Respondents.

**CITY OF CORAL SPRINGS'
FIRST SET OF INTERROGATORIES
DIRECTED TO POMPANO BEACH ENERGY CENTER, L.L.C.**

Petitioner, CITY OF CORAL SPRINGS, pursuant to Fla.R.Civ.P. 1.340 and F.A.C. 28-106.206, requests that Respondent, Pompano Beach Energy Center, L.L.C. answer the following interrogatories within the time provided by law:

Respectfully Submitted,

JOHN J. HEARN, ESQUIRE
ASSISTANT CITY ATTORNEY
CITY OF CORAL SPRINGS
9551 West Sample Road
Coral Springs, FL 33065

BY: 

JOHN J. HEARN, Esquire
Florida Bar No. 825832

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served by facsimile and U.S. Mail on October 17, 2001 to Kerri L. Barsh, Esquire, C. Ryan Reetz, Esquire and Paul C. Savage, Esquire, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, Florida 33131 (facsimile: (305) 961-5772) and by U.S. Mail to the following:

Martha L. Nebelsiek, Esquire
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Eugene M. Steinfield, Esquire
City of Margate
5790 Margate Boulevard
Margate, Florida 33063

Paul S. Stuart, Esquire
P.O. Box 14004
Fort Lauderdale, Florida 33302

Nancy A. Cousins, Esquire
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063

BY:



JOHN J. HEARN, Esquire
Florida Bar No. 825832

DEFINITIONS AND INSTRUCTIONS

A. "Energy Center" shall refer to respondent Pompano Beach Energy Center, L.L.C. and to Enron North America; and to their corporate parents, subsidiaries, affiliates, successors, officers, directors, shareholders, employees, attorneys, agents, and other representatives known to you.

B. "The City," shall refer to petitioner City of Coral Springs; and to its officials, employees, attorneys, agents, and other representatives known to you.

C. The "Petition" shall mean the Second Amended Petition for Administrative Hearing.

D. "DEP" shall refer to the State of Florida Department of Environmental Protection; and to its officials, employees, attorneys, agents, and other representatives known to you.

E. The "Permit" shall refer to the Permit identified in the Petition.

F. The term "document" shall refer to all information and materials within the scope of Fla.R.Civ.P. 1.350. A draft or non-identical copy is a separate document within the meaning of this term.

G. The terms "all" and "each" shall be construed as all and each.

H. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be outside its scope.

I. The term "concerning" means relating to, referring to, pertaining to, describing, evidencing, or constituting.

J. The use of the singular form of any word includes the plural and vice versa.

K. The term "person" means any natural person, individual, sole proprietorship, partnership, corporation, association, organization, joint venture, firm, other business enterprise, governmental body, or group of natural persons or other entities.

L. When referring to a person, to "identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

M. When referring to a document, to "identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

N. "Date" shall mean the exact day, month, and year, if ascertainable, or if not, the best available approximation of the date (based, if necessary, upon relationship with other events). Requests for identification of a "time period" shall mean the beginning and ending dates of the time period, if ascertainable, or if not, the best available approximation of those dates (based, if necessary, upon relationship with other events).

O. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

INTERROGATORIES

1. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any of the facts alleged in the Petition and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

2. Please identify each person known to you, your agents, or your attorneys, who has knowledge about, or possession, custody or control of, any model, plat, map, drawing, motion picture, videotape, or photograph pertaining to any fact or issue involved in this controversy; and describe as to each, what item such person has, the name and address of the person who took or prepared it, and the date it was taken or prepared.

CASE NOS. 01-2682, 01-2683, 01-2684

3. Please identify with particularity each and every fact upon which you rely in support of your contention that the DEP should issue the Permit.

4. For each fact identified in response to the preceding interrogatory, please identify each person known to you, your agents, or your attorneys, who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to that fact and, as to each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

5. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to your contention that the proposed Plant has or will use best available control technology and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

6. Please identify with particularity each and every fact on which you rely in support of your contention that the proposed Plant has or will use best available control technology.

7. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to the claim, as articulated on page TE-2 of the Technical Evaluation and Preliminary Determination that the proposed power plant's distance to Everglades National Park is approximately 60 kilometers north-northeast of the Everglades National Park and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

8. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in supporting the DEP's best available control technology determinations contained in Appendix BD and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

9. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending that the DEP's BACT determinations do comply with federal or state law adopted pursuant to the Federal Clean Air Act and its amendments, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

10. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending that the DEP enforced BACT as mandated by Rule 62-210, F.A.C. and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

11. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending that the DEP has given due consideration to the emissions limiting standards or BACT determination of other states as required under Rule 62-212, F.A.C. In addition, the DEP has identified the maximum degree of reduction in accordance with Florida Administrative Code, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

12. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending that the Permit is not deficient as it contains BACT determinations, emission limits, or monitoring requirements for the 0.6 million distillate storage tank, gas-fired fuel heater and four wet mechanical draft cooling towers, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

13. Please identify each person who has, claims to have or whom you believe may knowledge or discoverable information pertaining to any fact on which you rely contending that the Permit is not deficient in that it does identify and provide BACT analysis for other emission sources at the facility such as emergency fire water pumps, emergency generators, which should be subject to a formal BACT analysis pursuant to 62-210.200(112), F.A.C., and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

14. Please identify each person who has, claims to have or whom you, believe may have knowledge or discoverable information pertaining to any fact on which you rely contending that the effects of diesel exhaust as a result of the combustion of distillate in the turbines was considered as a collateral environmental impact in a BACT analysis pursuant to Rule 62-210, F.A.C. and federal guidance, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

15. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending that the DEP has considered the impact of its BACT decisions, considered the collateral environmental impacts of its BACT decisions pursuant to 62-212.400(6)(a)4, F.A.C., and consistent with EPA guidance, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

16. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending that the use of distillate fuel without the DEP's performance of analyses, evaluating alternatives or considering the substantial health impacts that may result from this choice in a densely populated area is appropriate and consistent with Rule 62-212.400(6)(a), F.A.C., and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

17. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending that Sulfur Distillate is BACT for SO_2 and Sulfuric Acid Mist when firing oil, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

18. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending that the DEP's failure to limit start-up and shut-down is consistent with the Clean Air Act and does comply with BACT and MACT, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

19. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information as to the Air Quality Monitoring studies and tests done on the proposed power plant site and, for each person, please state the specific nature and substance of the knowledge that you believe the person may have.

20. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending that the proposed Permit contains adequate monitoring requirements and, therefore, is practically enforceable, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

21. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending that the Permit is consistent with federal case law as to compliance with the PM10 emission limits, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

22. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending that the proposed air Permit does comply with the Pollution Prevention Plan of Broward County as required pursuant to Rule G2-210.300(4)(d), F.A.C., and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

23. Have you relied on the opinions of any expert consultants or witnesses in connection with the allegations of the Petition. If so, then please state as to each such consultant or witness that person's name and business address, the person's qualifications as an expert, the allegations of the Petition with respect to which you relied on the person's opinions, the opinions asserted by the person on which you relied, and a summary of the grounds for the each opinion.

24. Do you intend to call any expert witnesses at the trial of this case? If so, please state as to each such witness the name and business address of the witness, the witness's qualifications as an expert, the subject matter on which the witness is expected to testify, the substance of the facts and opinions to which the witness is expected to testify, and a summary of the grounds for each opinion.

CERTIFICATION

I have read the foregoing answers to interrogatories, and they are true and correct.

Signature: _____

Print Name: _____

Title: _____

Date: _____

STATE OF FLORIDA)

ss.:

COUNTY OF)

Sworn to and subscribed before me this ____ day of _____, 2001, by _____ as _____ of POMPANO BEACH ENERGY CENTER, L.L.C., on behalf of the POMPANO BEACH ENERGY CENTER, L.L.C. He/she personally appeared before me, is personally known to me or produced _____ as identification, and did take an oath.

Notary: _____

[NOTARIAL SEAL]

Print Name: _____

Notary Public, State of _____

My commission expires: _____

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS,

Petitioner,

v.

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH
AMERICA) and DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Case No. 01-2682
Judge Charles A. Stampelos

Respondents.

CITY OF MARGATE,

Petitioner,

v.

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH
AMERICA) and DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Case No. 01-2683

Respondents.

CITY OF COCONUT CREEK,

Petitioner,

v.

POMPANO BEACH ENERGY, L.L.C.
(AN AFFILIATE OF ENRON NORTH
AMERICA) and DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Case No. 01-2684

Respondents.

BROWARD COUNTY'S AMENDED PETITION TO INTERVENE¹

BROWARD COUNTY, a political subdivision of the State of Florida ("COUNTY"), hereby files this Amended Petition to Intervene pursuant to Rule 28-106.205, Florida Administrative Code, and as grounds therefor alleges as follows:

PROCEDURAL HISTORY

1. On or about March 10, 2001, COUNTY received a copy of Florida Department of Environmental Protection's ("DEP") Public Notice of Intent to Issue Air Construction Permit for ENRON's proposed power plant facility.

2. On or about May 11, 2001, COUNTY filed three Motions to Intervene with respect to CITY OF CORAL SPRINGS, CITY OF COCONUT CREEK, and CITY OF MARGATE's ("CITIES") Petitions before the Florida Department of Environmental Protection ("DEP"), OGC Case Nos. 01-0489, 01-0490 and 01-0491.

3. On May 21, 2001, DEP issued orders dismissing each of the CITIES' Petitions with leave to Amend. On June 28, 2001, DEP issued an order denying COUNTY's Motion to Intervene without prejudice to Broward County refiling in response to the CITIES' Amended Petitions.

4. On or about June 29, 2001, the CITIES filed Amended Petitions for Administrative Hearings with DEP.

5. On or about July 13, 2001, an Administrative Law Judge under the Division

¹ Broward County's previous intervention pleading, titled Broward County's Motion to Intervene, was filed with the Division of Administrative Hearings on August 2, 2001.

of Administrative Hearings ("DOAH") was assigned to the CITIES' Petitions.

6. On August 2, 2001, COUNTY filed its Motion to Intervene in the instant DOAH proceeding.

7. On August 14, 2001, POMPANO BEACH ENERGY CENTER, L.L.C. ("ENRON") filed a Response to COUNTY's Motion to Intervene with DOAH.²

8. On August 27, 2001, the Administrative Law Judge issued an order denying COUNTY's Motion to Intervene with leave to amend.

9. COUNTY, through its Board of County Commissioners, represents all the residents of Broward County, Florida. COUNTY's offices are located at the Broward County Governmental Center, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301.

10. DEP is the permitting authority in this proceeding and has its offices at 500 North Congress Avenue, West Palm Beach, Florida 33416 and 111 S. Magnolia Drive, Suite 4, Tallahassee, Florida 32301.

11. Pompano Beach Energy, L.L.C., an affiliate of ENRON North America, has its offices at 1400 Smith Street, Houston, Texas 77002.

12. ENRON has submitted an application to DEP for the construction of a five hundred ten (510) megawatt "peaking" power plant at 3300 Northwest 27th Avenue in Pompano Beach, Broward County, Florida.

² COUNTY was not served with a copy of the Response. Since COUNTY was not listed in the Response's Certificate of Service it appears that a copy was never mailed to COUNTY.

SUBSTANTIAL INTEREST

13. COUNTY is a political subdivision of the state of Florida, pursuant to Article 8 of the Constitution of the State of Florida.

14. As a charter County, COUNTY enjoys the powers expressly granted to it by Article 8; specifically, Section 1(g) provides that counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.

15. Article 8 of the Florida Constitution, and Section 125.01, Florida Statutes, provide counties with police power to regulate and provide for the public health, safety, and welfare of its residents, including air pollution control, parks, preserves, playgrounds, and recreation areas.

16. COUNTY, through its Board of County Commissioners, represents all of the approximately 1.5 million residents of Broward County, including those within the City of Deerfield Beach, Pompano Beach, Coconut Creek, Coral Springs, Margate, and all other residents in the vicinity of the proposed power plant.

17. Broward County is comprised of approximately 1196.9 square miles, of which 787.1 square miles are designated as conservation areas.

18. Tradewinds Park, one of the largest COUNTY parks at 599 acres, is within 2 miles to the west of ENRON's proposed facility. The park contains a 31.2 acre wilderness area with plant species characteristic of both an upland community and a wetland basin swamp habitat. This wilderness area provides an urban refuge for many native animals including osprey, gopher tortoise and bobcat.

19. Tradewinds Park also contains Butterfly World, an attraction which contains the largest single butterfly habitat in the United States, a hummingbird aviary, and gardens. Research on rare butterflies and hummingbirds is conducted at Butterfly World.

20. The prevailing wind at the location of the proposed power plant is predominantly from the east. Tradewinds Park is located directly to the west of the proposed location of the plant.

21. Quiet Waters Park, a 430 acre COUNTY park is also within four miles to the north of the proposed facility. Quiet Waters Park has facilities for swimming, water skiing, fishing, camping and an interactive children's water playground.

22. Due to the location of the COUNTY parks, their wilderness area, plant and animal species, and the residents' ability to enjoy the parks' recreation activities will be directly affected by the degradation of the environment associated with known carcinogens and irritants that would be released from the proposed plant.

23. Currently, there are at least forty (40) facilities within five (5) miles of ENRON's proposed facility that are subject to federal, state or local air pollution regulations and are known air pollution sources.

24. The emissions from the proposed power plant 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.

25. Each new facility that locates in a region and emits pollutants will consume part of this carrying capacity. For example, the proposed power plant and a power plant proposed in Deerfield Beach, together with existing sources, consume eighty percent

(80%) of the 24 hour sulfur dioxide significant impact level, severely limiting future potential growth in a region and greatly increasing the possibility that the carrying capacity will be exceeded.

26. In order to protect its parks and its residents in the area, COUNTY has a direct interest in assuring that all pollution-emitting facilities that locate in the region which affect air quality use best available control technology to reduce pollution to the maximum extent required by law.

27. DEP, by failing to compel industry to comply with federal and state pollution control laws, unlawfully allows regional air quality to be degraded, including air quality within that area of Broward County, thereby degrading the environment, including COUNTY's parks and their plant and animal species.

28. COUNTY has a substantial interest in protecting the health, safety, and welfare of its residents, its parks, including their native plants and animals, and the air quality within the boundaries of Broward County.

29. The nature of the injury is one which this type of proceeding is designed to protect.

BACKGROUND

30. ENRON is proposing to construct and operate a merchant 510 megawatt electric generating facility.

31. This facility will be known as the Pompano Beach Energy Center and will consist of three 170 megawatt dual fuel combustion turbines, a two and one half million gallon fuel oil storage tank, a 0.6 million gallon fuel oil storage tank, three mechanical draft

cooling towers, and a natural gas fuel heater. Each combustion turbine will burn natural gas as the primary fuel and distillate oil as a back-up fuel and will have 80 foot exhaust stacks.

32. If approved, fuel oil will be permitted at the power plant for up to three thousand (3,000) hours per year or one hundred twenty five (125) days per year.

33. In addition to the above-referenced parks, the proposed power plant is within thirteen (13) miles of the Arthur R. Marshall Loxahatchee National Wildlife Refuge, administered by the U.S. Department of the Interior, and within ten (10) miles of the Florida Everglades, specifically, Conservation Area No. 2, which is administered by the State of Florida Fish and Wildlife Conservation Commission.

DISPUTED ISSUES OF LAW AND FACT

34. Whether the impact upon the COUNTY's residents and its park facilities, within Pompano Beach, Coconut Creek, Coral Springs, Margate and within the vicinity of the proposed power plant has been considered, based on the prevailing wind direction.

35. Whether DEP's Intent to Issue Air Construction Permit was based on erroneous and misleading information concerning the proposed power plant's distance to environmentally sensitive lands and, therefore, should be reassessed:

- (a) The Technical Evaluation and Preliminary Determination provides in paragraph 2 entitled "Facility Information" that the proposed power plant is located approximately 60 kilometers (37.2 miles) from the Everglades National Park. This statement may be accurate on its face as to the distance

from the park entrance, but a map of the conservation areas potentially affected by the proposed power plant demonstrates that the affected ecosystems closer than stated.

- (b) The pristine, environmentally sensitive ecosystem of the Loxahatchee National Wildlife Refuge is within thirteen (13) miles of the proposed power plant; and
- (c) While the public entranceway to Everglades National Park may be over thirty seven (37) miles away from the proposed power plant, the environmentally sensitive ecosystem of the Florida Everglades, specifically Conservation Area No. 2 is within ten (10) miles of the proposed site;
- (d) COUNTY's Tradewinds Park and its 31.2 acre wilderness area is within 2 miles of the proposed facility and Quiet Waters Park is within 4 miles.
- (e) The proximity of these ecosystems was not taken into account by DEP in its review of the proposed location.

36. The proposed power plant must use best available control technology ("BACT") to limit the emissions of nitrogen oxide ("NO_x"), carbon monoxide ("CO"), volatile organic compounds ("VOCs"), sulfur dioxide ("SO₂"), sulfuric acid mist, and particulate matter with an aerodynamic diameter less than 10 microns ("PM10"), pursuant to Rule 62-212.400(2)(f), F.A.C.

37. Rule 62-210.200(38), F.A.C. defines BACT as "an emission limitation...based on the maximum degree of reduction of each pollutant emitted which the Department, on a case by case basis, taking into account energy, environmental and economic impacts,

and other costs, 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."

38. In determining BACT, the Department shall give consideration to, among others, "all scientific, engineering, and technical material and other information available to the Department," "the emission limiting standards or BACT determination of any other state," and "the social and economic impact of such technology." Rule 62-212.400(6), F.A.C.

39. COUNTY will demonstrate that ENRON's proposed BACT limits (or absence thereof) for the turbines, fuel oil heater, tanks, and cooling towers, accepted by DEP, are not consistent with the definition of BACT in Rule 62-210.200(38), F.A.C. and the requirements in Rule 62-212.400(6), F.A.C. DEP's BACT determinations do not recognize the much lower limits currently being permitted in other states, nor do they address the social and economic impacts to the COUNTY for failing to appropriately limit emissions from the facility.

40. The draft permit indicates that the facility includes one 2.5 million gallon distillate storage tank, one 0.6 million gallon distillate storage tank, one 13 MMBtu/hr gas-fired fuel heater, and three wet mechanical cooling towers. The draft permit contains no BACT determinations, emission limits or monitoring requirements for these sources, even though they emit criteria and hazardous air pollutants. These sources, although individually minor, must use BACT and be regulated by permit, pursuant to Rule 62-210.200(112), F.A.C., which defines a facility as "all of the emissions units which are

located on one or more contiguous or adjacent properties, and which are under the control of the same person (or persons under common control). COUNTY requests that DEP conduct a formal BACT analysis for these minor sources and revise the permit to include appropriate emission limits and monitoring requirements.

41. The draft permit and files that were reviewed do not identify any other emission sources at the facility. However, power plants additionally include an emergency firewater pump and emergency generator, run by diesel internal combustion engines. The diesel exhaust from any such engines are a great concern to COUNTY. Thus, COUNTY requests that DEP investigate whether emergency diesel engines would be used and, if so, that these be subject to a formal BACT analysis and permit limits, pursuant to Rule 62-210.200(112), F.A.C.

42. The project proposes to use distillate oil as a backup fuel for an average of 1,000 hours per installed unit. (Permit, § III.7.) The combustion of distillate in the turbines would produce "diesel exhaust," which is recognized by the U.S. Environmental Protection Agency (EPA) and California as a potent human carcinogen and respiratory irritant. COUNTY is concerned about the impact of these emissions, as well those set forth below, on the residents of COUNTY.

43. The definition of BACT in Rule 62-210.200(38), F.A.C., and implementing EPA guidance in the NSR Manual (EPA, New Source Review Workshop Manual, October 1990, Section IV.D.3) require taking into account the "environmental" impacts during the top-down BACT process. DEP is further required to evaluate the social and economic impacts of its decisions, pursuant to Rule 62-212.400(6)(a)4, F.A.C.

44. The draft permit establishes BACT for SO₂ and sulfuric acid mist as the use of pipeline natural gas and low sulfur (0.05%) fuel oil, without performing any analyses, evaluating alternatives or considering the substantial health impacts that may result from this choice. COUNTY maintains that the use of distillate fuel in a densely populated area is inappropriate, has far-reaching social and economic implications for its residents, and is not consistent with Rule 62-212.400(6)(a), F.A.C.

45. Notwithstanding the health issues, 0.05% sulfur distillate is not BACT for SO₂ and sulfuric acid mist when firing oil. A sulfur content of 0.05% is equivalent to 5,000 parts per million sulfur by weight ("ppmw"). Lower sulfur distillate, containing only 30 ppmw sulfur, is currently available on the east coast. Further, the EPA has adopted stringent fuel regulations that limit the sulfur content of diesel fuel to 15 ppmw. These regulations go into effect in June 2006 (Federal Register, v.66, no. 12, January 18, 2001, p. 5002, *et seq.*), at which point ultra low sulfur diesel will be widely available in the Florida market.

46. COUNTY requests that the permit be modified to eliminate the use of distillate oil. In the short-term, a backup fuel such as liquefied natural gas or propane or a noninterruptible gas supply contract for curtailments should be required, until such time as the capacity constraints on the Florida Gas Transmission Pipeline are alleviated, but to no later than January 2003. If distillate is retained, diesel exhaust emissions should be rigorously controlled and 30 ppmw diesel fuel be required on start up and 15 ppmw diesel when it become available but no later than June 2006.

47. The permit contains no limits on the number of startups/shutdowns nor on the emissions during these periods. During startups and shutdowns, combustion temperatures

and pressures change rapidly, resulting in inefficient combustion and much higher emissions of NO_x, CO, VOCs (including aldehydes) than during steady state operation.

48. COUNTY is concerned that virtually unlimited and uncontrolled startup and shutdown emissions will result in significant health impacts in downwind areas of COUNTY, particularly during combined operation of the Pompano and proposed Deerfield Beach Energy Centers. Emissions of formaldehyde, for example, can increase by over a factor of 500 during startups, compared to full load operation. If each turbine experienced as few as 100 startups per year, lasting only 10 minutes, the emissions of formaldehyde would exceed 10 ton/yr and require the use of maximum achievable control technology ("MACT"), pursuant to Rule 62-204.800, F.A.C.

49. Omitting limits on startup and shutdown emissions is not consistent with requirements of the Clean Air Act. The U.S. EPA has consistently defined startup and shutdown to be part of the normal operation of a source. The EPA has also consistently concluded that these emissions should be accounted for in the design and implementation or the operating procedure for the process and control equipment.

50. Accordingly, these emissions should have been considered in the BACT analysis and the related health impacts addressed in conjunction with the environmental review required pursuant to Rule 62-210.200(38), F.A.C. Permits issued by other states include limits on startup and shutdown emissions. COUNTY requests that a permit condition be included that specifically limits the number, duration, and emissions during startups and shutdowns, to comply with BACT and MACT.

WHEREFORE, COUNTY respectfully requests that its Amended Petition to Intervene be granted.

Respectfully submitted,

EDWARD A. DION
County Attorney for Broward County
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, FL 33301
Telephone: (954)357-7600
Telecopier: (954)357-6968

By: 
MAITE AZCOITIA
Assistant County Attorney
Florida Bar No. 897868

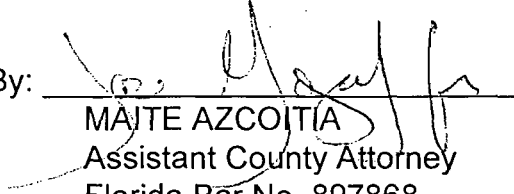
By: 
JOSE RAUL GONZALEZ
Assistant County Attorney
Florida Bar No. 771015

CERTIFICATE OF SERVICE

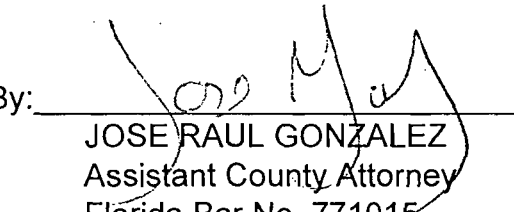
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to: Martha L. Nebelsiek, Esq., State of Florida, Dept. Of Environmental Protection, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, FL 32399-3000, Eugene M. Steinfeld, Esq., City of Margate, 5790 Margate Boulevard, Margate, FL 33063, John J. Hearn, Esq., City of Coral Springs, 9551 West Sample Road , Coral Springs, FL 33065, Nancy A. Cousins, Esq., City of Coconut Creek, City Attorney's Office, 4800 West Copans Road, Coconut Creek, FL 33063, Paul S. Stuart, Esq., P.O. Box 14004, Fort Lauderdale, FL 33302, and Debbie Orshefsky, Esq., Greenberg, Traurig, 1221 Brickell Avenue, Miami, FL 33131, FL 33301 this 6th day of September, 2001.

EDWARD A. DION
County Attorney for Broward County
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, FL 33301

By: _____


MAITE AZCOITIA
Assistant County Attorney
Florida Bar No. 897868

By: _____


JOSE RAUL GONZALEZ
Assistant County Attorney
Florida Bar No. 771015

2001 9 6

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF CORAL SPRINGS,

Petitioner,

v.

Case No.: 01-2682
FDEP File No. 00112515-001-AC
(PSD-FL-304)

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

And

POMPANO BEACH ENERGY CENTER, L.L.C.
(AN AFFILIATE OF ENRON NORTH AMERICA),

Respondents.

PETITIONER, CITY OF CORAL SPRINGS, MOTION FOR CONTINUANCE

Petitioner, CITY OF CORAL SPRINGS ("CITY") by and through its undersigned counsel and pursuant to Rule 28-106.210, Florida Administrative Code, hereby requests that the hearing currently scheduled for October 29 through November 1, 2001 in the above referenced matter be continued for good cause, and in support thereof, states:

1. Counsel for the CITY, John J. Hearn, Assistant City Attorney, is scheduled to attend the 108th IACP Annual Conference in Toronto, Canada from Sunday, October 28, 2001 through Thursday, November 1, 2001. As Police Legal Advisor, I have been requested to attend with the Chief of Police on behalf of the CITY.

2. In addition, Ms. Martha Nebelsiek, Assistant General Counsel for the Department of Environmental Protection ("DEP"), informed undersigned that she was scheduled to undergo a bone transplant on her knee today and would be unable to walk for a minimum of four (4) weeks. She informed me that she could not attend depositions and fully prepare for the Hearing during that time period. Because she was leaving for the hospital, she asked and authorized the undersigned to request an extension on the DEP's behalf.

3. Pursuant to the Joint Response to Initial Order, the parties had tentatively agreed to pursue mediation pending final confirmation by Respondent, Pompano Beach Energy. Undersigned learned from the Assistant General Counsel for the DEP yesterday morning, for the first time, that Pompano Beach Energy was no longer interested in mediation.

4. Based on undersigned's prior conversations with the DEP, it was CITY's understanding that a hearing date would not occur until after the completion of mediation. As a result, CITY had withheld discovery until mediation had narrowed the issues remaining in this proceeding. In order to avoid duplicative discovery, CITY also was awaiting a decision on whether Broward County would be allowed to intervene in this matter. Presently, the County has filed an Amended Motion to Intervene. If the County's Motion is granted, as anticipated, it is improbable that the County would have sufficient time to conduct discovery.

5. This continuance is not being sought for purposes of delay. No party will be injured by the delay in light of the fact that Broward County has imposed a moratorium through May 1, 2002, prohibiting the issuance of air quality licenses for new electrical power plant construction in Broward County. A true and correct copy of Broward County Ordinance No. 2001-40 imposing the moratorium is attached hereto as Exhibit "A."

6. The CITY is seeking a minimum of thirty (30) days continuance of the hearing. The CITY has conferred with DEP's counsel, Martha Nebelsiek, and with the cities of Coconut Creek and Margate who have no objection to a thirty (30) day continuance of this matter. In fact, all the above mentioned parties support Petitioner's Motion.

7. CITY has also conferred with Respondent's counsel, Kerri Barsh, concerning same. Ms. Barsh informed undersigned that Pompano Beach Energy Center objects to the requested extension.

8. The CITY makes this Motion in good faith based on the facts that: (1) Counsel for the CITY will be out of the country at a CITY required function during the week of the

scheduled hearing and, due to failure to schedule mediation as anticipated, CITY needs more time to conduct discovery. If this Motion is denied, CITY will be severely prejudiced.

WHEREFORE, Petitioner, CITY OF CORAL SPRINGS, respectfully requests that the Administrative Law Judge grant a continuance for at least thirty (30) days so that the CITY may properly and fully prepare its case and for any other relief which the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via facsimile to Administrative Law Judge, Charles A. Stampelos at (850) 921-6847 and via regular U.S. mail to Kerri Barsh, Esquire, 1221 Brickell Avenue, Miami, Florida 33131-3224; Martha L. Nebelsiek, Esquire, Dept. of Environmental Protection, 3900 Commonwealth Blvd., MS 35, Tallahassee, FL 32399-3000; Nancy Cousins, Assistant City Attorney, City Attorney's Office, 4800 West Copans Road, Coconut Creek, Florida 33063; and Eugene M. Steinfeld, City Attorney, 5790 Margate Boulevard, Margate, Florida 33063 this 14th day of September, 2001.

JOHN J. HEARN, ESQUIRE
Assistant City Attorney
Florida Bar No. 825832
CITY OF CORAL SPRINGS
9551 West Sample Road
Coral Springs, Florida 33065
Telephone: (954) 344-1011

BY: _____

JOHN J. HEARN, Esquire

doc. #59454

01-427

ORDINANCE NO. 2001-40

2 AN ORDINANCE OF THE BOARD OF COUNTY
3 COMMISSIONERS OF BROWARD COUNTY, FLORIDA,
4 ESTABLISHING A MORATORIUM TO PROHIBIT THE
5 ISSUANCE OF AIR QUALITY LICENSES BY THE BROWARD
6 COUNTY DEPARTMENT OF PLANNING AND
7 ENVIRONMENTAL PROTECTION FOR NEW ELECTRICAL
8 POWER PLANTS REGULATED BY CHAPTER 27, BROWARD
9 COUNTY CODE OF ORDINANCES; PROVIDING FOR
10 SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE
11 DATE.

12 (Sponsored by the Board of County Commissioners)

13 WHEREAS, the Charter of Broward County, Florida, provides that the County has
14 countywide authority to set minimum standards protecting the environment by prohibiting
15 or regulating air or water pollution, or the destruction of the resources of the County
16 belonging to the general public; and

17 WHEREAS, Broward County through its Department of Planning and Environmental
18 Protection, Air Quality Division, issues air quality licenses pursuant to Section 27-176 of the
19 Broward County Code of Ordinances; and

20 WHEREAS, it is anticipated the Florida Energy 2020 Study Commission will be
21 addressing the environmental impact of electrical supply production, generation, and
22 transmission in the state; and

23 WHEREAS, it is also anticipated that the recommendations of the Study Commission
24 will include energy conservation strategies and alternative fuel technologies; and

WHEREAS, it is expected that the Florida Energy 2020 Study Commission will issue
its final report in December 2001; and

WHEREAS, once the Florida Energy 2020 Study Commission's final report is issued,
the County must review the report to determine whether the County's requirements for the

BEST AVAILABLE COPY

1 issuance of air quality licenses should be revised in light of the report's recommendations;
2 and

3 WHEREAS, the Board finds and declares that in order to promote the health, safety,
4 and general welfare of the County, it is necessary to implement a moratorium prohibiting the
5 issuance of air quality licenses for new electrical power plants regulated by Chapter 27 of
6 the Broward County Code of Ordinances until the County reviews the report to determine
7 whether the County's requirements for the issuance of air quality licenses should be revised
8 in light of the report's recommendations, however, the moratorium shall not continue after
9 May 1, 2002, unless this ordinance is amended to extend the time of the moratorium; NOW,
10 THEREFORE,

11 BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD
12 COUNTY, FLORIDA:

13 Section 1. The above recitals are true and correct and incorporated herein by
14 reference.

15 Section 2. The County declares, by the enactment of this Ordinance, that no air
16 quality licenses for new electrical power plants regulated by Chapter 27 of the Broward
17 County Code of Ordinances will be issued by the Department of Planning and
18 Environmental Protection, Air Quality Division, until the County reviews the Florida Energy
19 2020 Study Commission final report to determine whether the County's requirements for the
20 issuance of such permits should be revised in light of the report's recommendations.
21 However, the moratorium shall not continue after May 1, 2002, unless this ordinance is
22 amended to extend the time of the moratorium by the Board of County Commissioners.

23
24

11 **Section 3. SEVERABILITY.**

12 If any section, sentence, clause or phrase of this Ordinance is held to be invalid or
13 unconstitutional by any court of competent jurisdiction, then said holding shall in no way
14 affect the validity of the remaining portions of this Ordinance.

15 **Section 4. EFFECTIVE DATE.**

16 This Ordinance shall become effective as provided by law.

17 ENACTED June 26, 2001

18 FILED WITH STATE July 5, 2001

19 EFFECTIVE July 5, 2001

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STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, et al.,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
POMPANO BEACH ENERGY CENTER,
L.L.C., etc.,

Respondents.

CONSOLIDATED

DOAH CASE NOS. 01-2682
01-2683
01-2684

**POMPANO BEACH ENERGY CENTER'S
NOTICE OF SERVICE OF FIRST SET OF INTERROGATORIES
TO CITY OF COCONUT CREEK**

Respondent, Pompano Beach Energy Center, L.L.C., respectfully gives notice that on September 6, 2001, it propounded its First Set of Interrogatories, numbered 1 through 25, to petitioner, City of Coral Springs, pursuant to Rule 1.340 of the Florida Rules of Civil Procedure and F.A.C. 28-106.206.

Respectfully submitted,

Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0723

By: _____



Kerri L. Barsh
Florida Bar No. 443840
C. Ryan Reetz
Florida Bar No. 934062
Paul C. Savage
Florida Bar No. 088587

Counsel for Pompano Beach Energy, L.L.C.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served by U.S. Mail on September

6, 2001 to:

Martha L. Nebelsiek, Esq.
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

John Hearn, Esq.
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065

Eugene M. Steinfield, Esq.
City of Margate
5790 Margate Boulevard
Margate, Florida 33063

Paul S. Stuart, Esq.
P.O. Box 14004
Fort Lauderdale, Florida 33302

Nancy A. Cousins, Esq.
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063



for Kerri L. Barsh

GREENBERG TRAUIG, P.A.

1221 BRICKELL AVENUE MIAMI, FLORIDA 33131

305-579-0500 FAX 305-579-0717 www.gtlaw.com

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, et al.,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
POMPANO BEACH ENERGY CENTER,
L.L.C., etc.,

Respondents:

CONSOLIDATED

DOAH CASE NOS. 01-2682
01-2683
01-2684

**POMPANO BEACH ENERGY CENTER'S
FIRST SET OF INTERROGATORIES
DIRECTED TO CITY OF COCONUT CREEK**

Respondent, Pompano Beach Energy Center, L.L.C., pursuant to Fla.R.Civ.P. 1.340 and F.A.C. 28-106.206, requests that petitioner, City of Coconut Creek ("Coconut Creek") answer the following interrogatories within the time provided by law:

Respectfully submitted,

Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0723

By: 

Kerri L. Barsh
Florida Bar No. 443840
C. Ryan Reetz
Florida Bar No. 934062
Paul C. Savage
Florida Bar No. 088587

Counsel for Pompano Beach Energy, L.L.C.

GREENBERG TRAURIG, P.A.
1221 BRICKELL AVENUE MIAMI, FLORIDA 33131
305-579-0500 FAX 305-579-0717 www.gtlaw.com

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document and of the referenced interrogatories were served by U.S. Mail on September 6, 2001 to:

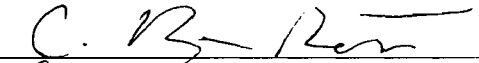
Martha L. Nebelsiek, Esq.
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

John Hearn, Esq.
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065

Eugene M. Steinfield, Esq.
City of Margate
5790 Margate Boulevard
Margate, Florida 33063

Paul S. Stuart, Esq.
P.O. Box 14004
Fort Lauderdale, Florida 33302

Nancy A. Cousins, Esq.
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063


for Kerri L. Barsh

DEFINITIONS AND INSTRUCTIONS

A. "Energy Center" shall refer to respondent Pompano Beach Energy Center, L.L.C. and to Enron North America; and to their corporate parents, subsidiaries, affiliates, successors, officers, directors, shareholders, employees, attorneys, agents, and other representatives known to you.

B. "The City," "you" and "your" shall refer to petitioner City of Coconut Creek; and to its officials, employees, attorneys, agents, and other representatives known to you.

C. The "Petition" shall mean your Second Amended Petition for Administrative Hearing in this matter, and any amendments subsequently proposed or filed by you.

D. "DEP" shall refer to the State of Florida Department of Environmental Protection; and to its officials, employees, attorneys, agents, and other representatives known to you.

E. The "Permit" shall refer to the Permit identified in the Petition.

F. The term "document" shall refer to all information and materials within the scope of Fla.R.Civ.P. 1.350. A draft or non-identical copy is a separate document within the meaning of this term.

G. The terms "all" and "each" shall be construed as all and each.

H. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be outside its scope.

I. The term "concerning" means relating to, referring to, pertaining to, describing, evidencing, or constituting.

J. The use of the singular form of any word includes the plural and vice versa.

K. The term “person” means any natural person, individual, sole proprietorship, partnership, corporation, association, organization, joint venture, firm, other business enterprise, governmental body, or group of natural persons or other entities.

L. When referring to a person, to “identify” means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

M. When referring to a document, to “identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

N. “Date” shall mean the exact day, month, and year, if ascertainable, or if not, the best available approximation of the date (based, if necessary, upon relationship with other events). Requests for identification of a “time period” shall mean the beginning and ending dates of the time period, if ascertainable, or if not, the best available approximation of those dates (based, if necessary, upon relationship with other events).

O. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

INTERROGATORIES

1. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any of the facts alleged in the Petition and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

2. Please describe, by category and custodian, all documents, data compilations, and tangible things in your possession, custody or control that are relevant to any of the allegations contained in the Petition.

3. Please identify each person known to you, your agents, or your attorneys, who has knowledge about, or possession, custody or control of, any model, plat, map, drawing, motion picture, videotape, or photograph pertaining to any fact or issue involved in this controversy; and describe as to each, what item such person has, the name and address of the person who took or prepared it, and the date it was taken or prepared.

4. Please identify with particularity each and every fact upon which you rely in support of your contention that the DEP should not issue the Permit or should impose the limitations described on page 16 of your Petition.

5. For each fact within the scope of the preceding interrogatory, please identify each person known to you, your agents, or your attorneys, who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to that fact and, as to each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

6. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information that tends to support or contradict your contentions with respect to each of the "Disputed Issues of Fact and Law" identified in paragraphs 28 through 32 of your Petition, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

7. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to your contention, as outlined in paragraphs 33-51 of your Petition, that the draft permit does not comply with applicable legal requirements and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

8. Please identify with particularity each and every fact on which you rely in support of your contention, as outlined in paragraphs 33-51 of your Petition, that the draft permit does not comply with applicable legal requirements.

9. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to your claim, as alleged in paragraph 36 of your Petition, that “the applicant’s proposed BACT limits (or absence thereof) for the turbines, fuel oil heater, tanks, and cooling towers, accepted by the Department, are not consistent with the definition of BACT in Rule 62-210.200(38), F.A.C. and the requirements in Rule 62-212.400(6), F.A.C.”, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

10. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 14 of your Petition, that

The distance between the proposed Plant and environmentally sensitive lands including Loxahatchee National Wildlife Refuge and Conservation No. 2 of the Florida Everglades as represented by ENRON is inaccurate and disputed by City. As discussed above, these areas are much closer to the Plant as [sic] represented by ENRON and relied upon by DEP.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

11. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 14 of your Petition, that

The DEP's BACT determinations do not comply with federal or state law adopted pursuant to the Federal Clean Air Act and its amendments.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

12. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 14 of your Petition, that

The DEP has failed to enforce BACT as mandated by Rule 62-210, F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

13. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 14 of your Petition, that

The DEP has failed to give due consideration to the emissions limiting standards or BACT determination of other states as required under Rule 62-212, F.A.C. In addition, the DEP has failed to identify the maximum degree of reduction in violation of the Florida Administrative Code.

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14. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on pages 14-15 of your Petition, that

The draft permit is deficient as it contains no BACT determinations, emission limits, or monitoring requirements for the 0.6 million distillate storage tank, gas-fired fuel heater and four wet mechanical draft cooling towers even though they emit criteria and hazardous air pollutants. These sources fall under BACT and must be regulated by permit pursuant to Rule 62-210.200(112), F.A.C.

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15. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The Draft Permit is deficient in that it does not identify and provide BACT analysis for other emission sources at the facility such as emergency fire water pumps, emergency generators, which should be subject to a formal BACT analysis pursuant to 62-210.200(112), F.A.C.

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16. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The effects of diesel exhaust as a result of the combustion of distillate in the turbines was not considered as a collateral environmental impact in a BACT analysis contrary to Rule 62-210, F.A.C. and federal guidance.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

17. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The DEP has failed to consider the impact of its BACT decisions on the City's economic and social impacts and has failed to consider the collateral environmental impacts of its BACT decisions pursuant to 62-212.400(6)(a)4, F.A.C. and consistent with EPA guidance.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

18. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The use of distillate fuel without the DEP's performance of analyses, evaluating alternatives or considering the substantial health impacts that may result from this choice in a densely populated area is inappropriate and not consistent with Rule 62-212.400(6)(a), F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

19. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on pages 15-16 of your Petition, that

Sulfur Distillate is not BACT for SO₂ and Sulfuric Acid Mist when firing oil. At the very least, if distillate is retained, diesel exhaust emissions should be controlled and 30 ppmw diesel fuel should immediately by [sic] required and 15 ppmw diesel should be required when available, but no later than June, 2006.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

20. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The DEP's failure to limit start-up and shut-down is inconsistent with the Clean Air Act and dies [sic] not comply with BACT and MACT.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

21. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The proposed Permit contains inadequate monitoring requirements and, therefore, is not practically enforceable. Because they are not practically enforceable, the monitoring requirements do not qualify as legitimate restrictions on emissions.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

22. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The Permit in [sic] inconsistent with federal case laws as it does not require continuous compliance with the PM10 emission limits.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

23. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 17 of your Petition, that

The proposed air Permit does not comply with the Pollution Prevention Plan of Broward County as required pursuant to Rule 62-210.300(4)(d).

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

24. Have you relied on the opinions of any expert consultants or witnesses in asserting any of the allegations in your Petition? If so, then please state as to each such consultant or witness that person's name and business address, the person's qualifications as an expert, the allegations of the Petition with respect to which you relied on the person's opinions, the opinions asserted by the person on which you relied in asserting the Petition, and a summary of the grounds for the each opinion.

25. Do you intend to call any expert witnesses at the trial of this case? If so, please state as to each such witness the name and business address of the witness, the witness's qualifications as an expert, the subject matter on which the witness is expected to testify, the substance of the facts and opinions to which the witness is expected to testify, and a summary of the grounds for each opinion.

CERTIFICATION

I have read the foregoing answers to interrogatories, and they are true and correct.

Signature: _____

Print Name: _____

Title: _____

Date: _____

STATE OF FLORIDA)
) ss.:
COUNTY OF)

Sworn to and subscribed before me this ____ day of September, 2001, by _____
_____ as _____
_____ of THE CITY OF COCONUT CREEK, on behalf of the City. He/she personally
appeared before me, is personally known to me or produced
_____ as identification, and did take an oath.

[NOTARIAL SEAL]

Notary: _____

Print Name: _____

Notary Public, State of _____

My commission expires: _____

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, et al.,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
POMPANO BEACH ENERGY CENTER,
L.L.C., etc.,

Respondents.

CONSOLIDATED

DOAH CASE NOS. 01-2682
01-2683
01-2684

**POMPANO BEACH ENERGY CENTER'S
NOTICE OF SERVICE OF FIRST SET OF INTERROGATORIES
TO CITY OF CORAL SPRINGS**

Respondent, Pompano Beach Energy Center, L.L.C., respectfully gives notice that on September 6, 2001, it propounded its First Set of Interrogatories, numbered 1 through 25, to petitioner, City of Coral Springs, pursuant to Rule 1.340 of the Florida Rules of Civil Procedure and F.A.C. 28-106.206.

Respectfully submitted,

Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0723

By: 

Kerri L. Barsh
Florida Bar No. 443840
C. Ryan Reetz
Florida Bar No. 934062
Paul C. Savage
Florida Bar No. 088587

Counsel for Pompano Beach Energy, L.L.C.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served by U.S. Mail on September 6th, 2001 to:

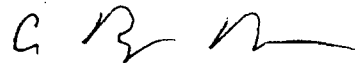
Martha L. Nebelsiek, Esq.
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

John Hearn, Esq.
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065

Eugene M. Steinfield, Esq.
City of Margate
5790 Margate Boulevard
Margate, Florida 33063

Paul S. Stuart, Esq.
P.O. Box 14004
Fort Lauderdale, Florida 33302

Nancy A. Cousins, Esq.
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063


for Kerri L. Barsh

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, et al.,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
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Respondents.

CONSOLIDATED


DOAH CASE NOS. 01-2682
01-2683
01-2684

**POMPANO BEACH ENERGY CENTER'S
FIRST SET OF INTERROGATORIES
DIRECTED TO CITY OF CORAL SPRINGS**

Respondent, Pompano Beach Energy Center, L.L.C., pursuant to Fla.R.Civ.P. 1.340 and F.A.C. 28-106.206, requests that petitioner, City of Coral Springs ("Coral Springs") answer the following interrogatories within the time provided by law:

Respectfully submitted,

Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0723

By: 

Kerri L. Barsh
Florida Bar No. 443840
C. Ryan Reetz
Florida Bar No. 934062
Paul C. Savage
Florida Bar No. 088587

Counsel for Pompano Beach Energy, L.L.C.

GREENBERG TRAUIG, P.A.
1221 BRICKELL AVENUE MIAMI, FLORIDA 33131
305-579-0500 FAX 305-579-0717 www.gtlaw.com

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document and of the referenced interrogatories were served by U.S. Mail on September 9, 2001 to:

Martha L. Nebelsiek, Esq.
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

John Hearn, Esq.
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065

Eugene M. Steinfield, Esq.
City of Margate
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Margate, Florida 33063

Paul S. Stuart, Esq.
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Fort Lauderdale, Florida 33302

Nancy A. Cousins, Esq.
City of Coconut Creek
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for Kerri L. Barsh

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C. The "Petition" shall mean your Second Amended Petition for Administrative Hearing in this matter, and any amendments subsequently proposed or filed by you.

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G. The terms "all" and "each" shall be construed as all and each.

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J. The use of the singular form of any word includes the plural and vice versa.

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O. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

INTERROGATORIES

1. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any of the facts alleged in the Petition and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

2. Please describe, by category and custodian, all documents, data compilations, and tangible things in your possession, custody or control that are relevant to any of the allegations contained in the Petition.

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4. Please identify with particularity each and every fact upon which you rely in support of your contention that the DEP should not issue the Permit or should amend the Permit.

5. For each fact identified in response to the preceding interrogatory, please identify each person known to you, your agents, or your attorneys, who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to that fact and, as to each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

6. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to your contention, as alleged in paragraph 12 of your Petition, that “the proposed Plant has failed to use best available control technology” and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

7. Please identify with particularity each and every fact on which you rely in support of your contention, as alleged in paragraph 12 of your Petition, that “the proposed Plant has failed to use best available control technology.”

8. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to your claim, as alleged in paragraph 31 of your Petition, that "DEP's Intent to Issue Air Construction Permit was based on erroneous information concerning the proposed power plant's distance to environmentally sensitive lands" and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

9. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in "disput[ing] the DEP's best available control technology determinations contained in Appendix BD", as alleged in pages 6-13 of your Petition, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

10. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The distance between the proposed Plant and environmentally sensitive lands including Loxahatchee National Wildlife Refuge and Conservation No. 2 of the Florida Everglades as represented by ENRON is inaccurate and disputed by City. As discussed above, these areas are much closer to the Plant as [sic] represented by ENRON and relied upon by DEP.

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The DEP has failed to enforce BACT as mandated by Rule 62-210, F.A.C.

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The DEP has failed to give due consideration to the emissions limiting standards or BACT determination of other states as required under Rule 62-212, F.A.C. In addition, the DEP has failed to identify the maximum degree of reduction in violation of the Florida Administrative Code.

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The effects of diesel exhaust as a result of the combustion of distillate in the turbines was not considered as a collateral environmental impact in a BACT analysis contrary to Rule 62-210, F.A.C. and federal guidance.

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Sulfur Distillate is not BACT for SO₂ and Sulfuric Acid Mist when firing oil. At the very least, if distillate is retained, diesel exhaust emissions should be controlled and 30 ppmw diesel fuel should immediately be required and 15 ppmw diesel should be required when available, but no later than June, 2006.

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The proposed Permit contains inadequate monitoring requirements and, therefore, is not practically enforceable. Because they are not practically enforceable, the monitoring requirements do not qualify as legitimate restrictions on emissions.

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The Permit is inconsistent with federal case law as it does not require continuous compliance with the PM10 emission limits.

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CERTIFICATION

I have read the foregoing answers to interrogatories, and they are true and correct.

Signature: _____

Print Name: _____

Title: _____

Date: _____

STATE OF FLORIDA)
) ss.:
COUNTY OF)

Sworn to and subscribed before me this _____ day of September, 2001, by _____
as _____
_____ of THE CITY OF CORAL SPRINGS, on behalf of the City. He/she personally appeared
before me, is personally known to me or produced _____
as identification, and did take an oath.

[NOTARIAL SEAL]

Notary: _____

Print Name: _____

Notary Public, State of _____

My commission expires: _____

STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

CITY OF CORAL SPRINGS, et al.,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
POMPANO BEACH ENERGY CENTER,
L.L.C., etc.,

Respondents.

CONSOLIDATED

DOAH CASE NOS. 01-2682
01-2683
01-2684

**POMPANO BEACH ENERGY CENTER'S
NOTICE OF SERVICE OF FIRST SET OF INTERROGATORIES
TO CITY OF MARGATE**

Respondent, Pompano Beach Energy Center, L.L.C., respectfully gives notice that on September 6, 2001, it propounded its First Set of Interrogatories, numbered 1 through 25, to petitioner, City of Margate, pursuant to Rule 1.340 of the Florida Rules of Civil Procedure and F.A.C. 28-106.206.

Respectfully submitted,

Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0723

By: 

Kerri L. Barsh
Florida Bar No. 443840
C. Ryan Reetz
Florida Bar No. 934062
Paul C. Savage
Florida Bar No. 088587

Counsel for Pompano Beach Energy, L.L.C.

GREENBERG TRAUIG, P.A.

1221 BRICKELL AVENUE MIAMI, FLORIDA 33131

305-579-0500 FAX 305-579-0717 www.gtlaw.com

MIAMI NEW YORK WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER CHICAGO BOSTON PHOENIX WILMINGTON LOS ANGELES DENVER
SÃO PAULO FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served by U.S. Mail on September

6, 2001 to:

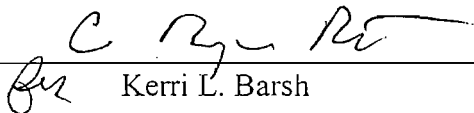
Martha L. Nebelsiek, Esq.
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

John Hearn, Esq.
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065

Eugene M. Steinfield, Esq.
City of Margate
5790 Margate Boulevard
Margate, Florida 33063

Paul S. Stuart, Esq.
P.O. Box 14004
Fort Lauderdale, Florida 33302

Nancy A. Cousins, Esq.
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063



Kerri L. Barsh

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STATE OF FLORIDA
DEPARTMENT OF ADMINISTRATIVE HEARINGS

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CONSOLIDATED

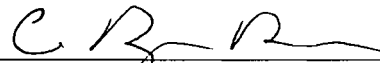
DOAH CASE NOS. 01-2682
01-2683
01-2684

**POMPANO BEACH ENERGY CENTER'S
FIRST SET OF INTERROGATORIES
DIRECTED TO CITY OF MARGATE**

Respondent, Pompano Beach Energy Center, L.L.C., pursuant to Fla.R.Civ.P. 1.340 and F.A.C. 28-106.206, requests that petitioner, City of Margate ("Margate") answer the following interrogatories within the time provided by law:

Respectfully submitted,

Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0723

By: 

Kerri L. Barsh
Florida Bar No. 443840
C. Ryan Reetz
Florida Bar No. 934062
Paul C. Savage
Florida Bar No. 088587

Counsel for Pompano Beach Energy, L.L.C.

GREENBERG TRAUIG, P.A.
1221 BRICKELL AVENUE MIAMI, FLORIDA 33131
305-579-0500 FAX 305-579-0717 www.gtlaw.com

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document and of the referenced interrogatories were served by U.S. Mail on September 6, 2001 to:

Martha L. Nebelsiek, Esq.
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

John Hearn, Esq.
City of Coral Springs
9551 West Sample Road
Coral Springs, Florida 33065

Eugene M. Steinfield, Esq.
City of Margate
5790 Margate Boulevard
Margate, Florida 33063

Paul S. Stuart, Esq.
P.O. Box 14004
Fort Lauderdale, Florida 33302

Nancy A. Cousins, Esq.
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063


for Kerri L. Barsh

DEFINITIONS AND INSTRUCTIONS

A. "Energy Center" shall refer to respondent Pompano Beach Energy Center, L.L.C. and to Enron North America; and to their corporate parents, subsidiaries, affiliates, successors, officers, directors, shareholders, employees, attorneys, agents, and other representatives known to you.

B. "The City," "you" and "your" shall refer to petitioner City of Margate; and to its officials, employees, attorneys, agents, and other representatives known to you.

C. The "Petition" shall mean your Third Amended Petition for Administrative Hearing in this matter, and any amendments subsequently proposed or filed by you.

D. "DEP" shall refer to the State of Florida Department of Environmental Protection; and to its officials, employees, attorneys, agents, and other representatives known to you.

E. The "Permit" shall refer to the Permit identified in the Petition.

F. The term "document" shall refer to all information and materials within the scope of Fla.R.Civ.P. 1.350. A draft or non-identical copy is a separate document within the meaning of this term.

G. The terms "all" and "each" shall be construed as all and each.

H. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be outside its scope.

I. The term "concerning" means relating to, referring to, pertaining to, describing, evidencing, or constituting.

J. The use of the singular form of any word includes the plural and vice versa.

K. The term “person” means any natural person, individual, sole proprietorship, partnership, corporation, association, organization, joint venture, firm, other business enterprise, governmental body, or group of natural persons or other entities.

L. When referring to a person, to “identify” means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

M. When referring to a document, to “identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

N. “Date” shall mean the exact day, month, and year, if ascertainable, or if not, the best available approximation of the date (based, if necessary, upon relationship with other events). Requests for identification of a “time period” shall mean the beginning and ending dates of the time period, if ascertainable, or if not, the best available approximation of those dates (based, if necessary, upon relationship with other events).

O. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

INTERROGATORIES

1. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any of the facts alleged in the Petition and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

2. Please describe, by category and custodian, all documents, data compilations, and tangible things in your possession, custody or control that are relevant to any of the allegations contained in the Petition.

3. Please identify each person known to you, your agents, or your attorneys, who has knowledge about, or possession, custody or control of, any model, plat, map, drawing, motion picture, videotape, or photograph pertaining to any fact or issue involved in this controversy; and describe as to each, what item such person has, the name and address of the person who took or prepared it, and the date it was taken or prepared.

4. Please identify with particularity each and every fact upon which you rely in support of your contention that the DEP should not issue the Permit or should amend the Permit.

5. For each fact identified in response to the preceding interrogatory, please identify each person known to you, your agents, or your attorneys, who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to that fact and, as to each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

6. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to your contention, as alleged in paragraph 12 of your Petition, that “the proposed Plant has failed to use best available control technology” and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

CASE NOS. 01-2682, 01-2683, 01-2684

7. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to your claim, as alleged in paragraph 29 of your Petition, that “DEP’s Intent to Issue Air Construction Permit was based on erroneous information concerning the proposed power plant’s distance to environmentally sensitive lands” and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

8. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in “disput[ing] the DEP’s best available control technology determinations contained in Appendix BD”, as alleged in paragraphs 30-32 and pages 7-15 of your Petition, and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

9. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The distance between the proposed Plant and environmentally sensitive lands including Loxahatchee National Wildlife Refuge and Conservation No. 2 of the Florida Everglades as represented by ENRON is wrong and disputed by City. As discussed above, these areas are much closer to the Plant as [sic] represented by ENRON and relied upon by DEP.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

10. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The DEP's BACT determinations do not comply with federal or state law adopted pursuant to the Federal Clean Air Act and its amendments.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

11. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 15 of your Petition, that

The DEP has failed to require BACT as mandated by Rule 62-210, et al., F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

12. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The DEP has failed to give due consideration to the emissions limiting standards or BACT determination of other states as required under Rule 62-212, F.A.C. In addition, the DEP has failed to identify the maximum degree of reduction in violation of the Florida Administrative Code.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

13. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The draft permit is deficient as it contains no BACT determinations, emission limits, or monitoring requirements for the 0.6 million distillate storage tank, gas-fired fuel heater and four wet mechanical draft cooling towers even though they emit criteria and hazardous air pollutants. These sources fall under BACT and must be regulated by permit pursuant to Rule 62-210.200(112), F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

14. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The Draft Permit is deficient in that it does not identify and provide BACT analysis for other emission sources at the facility such as emergency fire water pumps, emergency generators, which should be subject to a formal BACT analysis pursuant to 62-210.200(112), F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

15. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The effects of diesel exhaust as a result of the combustion of distillate in the turbines was not considered as a collateral environmental impact in a BACT analysis pursuant to Rule 62-210, F.A.C. and federal guidance.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

16. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 16 of your Petition, that

The DEP has failed to consider the impact of its BACT decisions on the City's economic and social impacts and has failed to consider the collateral environmental impacts of its BACT decisions pursuant to 62-212.400(6)(a)4, F.A.C., and consistent with EPA guidance.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

17. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on pages 16-17 of your Petition, that

The use of distillate fuel without the DEP's performance of analyses, evaluating alternatives or considering the substantial health impacts that may result from this choice in a densely populated area is inappropriate and not consistent with Rule 62-212.400(6)(a), F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

18. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 17 of your Petition, that

Sulfur Distillate is not BACT for SO₂ and Sulfuric Acid Mist when firing oil. At the very least, if distillate is retained, diesel exhaust emissions should be controlled and 30 ppmw diesel fuel should immediately be required and 15 ppmw diesel should be required when available, but no later than June, 2006.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

19. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 17 of your Petition, that

The DEP's failure to limit start-up and shut-down is inconsistent with the Clean Air Act and does not comply with BACT and MACT.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

20. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 17 of your Petition, that

The proposed Permit contains inadequate monitoring requirements and, therefore, is not practically enforceable.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

21. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 17 of your Petition, that

The Permit is inconsistent with federal case law as it does not require continuous compliance with the PM10 emission limits.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

22. Please identify each person who has, claims to have or whom you believe may have knowledge or discoverable information pertaining to any fact on which you rely in contending, as alleged on page 17 of your Petition, that

The proposed air Permit does not comply with the Pollution Prevention Plan of Broward County as required pursuant to Rule 62-210.300(4)(d), F.A.C.

and, for each such person, please state the specific nature and substance of the knowledge that you believe the person may have.

23. Have you relied on the opinions of any expert consultants or witnesses in asserting any of the allegations in your Petition? If so, then please state as to each such consultant or witness that person's name and business address, the person's qualifications as an expert, the allegations of the Petition with respect to which you relied on the person's opinions, the opinions asserted by the person on which you relied in asserting the Petition, and a summary of the grounds for the each opinion.

24. Do you intend to call any expert witnesses at the trial of this case? If so, please state as to each such witness the name and business address of the witness, the witness's qualifications as an expert, the subject matter on which the witness is expected to testify, the substance of the facts and opinions to which the witness is expected to testify, and a summary of the grounds for each opinion.

CERTIFICATION

I have read the foregoing answers to interrogatories, and they are true and correct.

Signature: _____

Print Name: _____

Title: _____

Date: _____

STATE OF FLORIDA)
) ss.:
COUNTY OF)

Sworn to and subscribed before me this ____ day of September, 2001, by _____
_____ as _____
_____ of THE CITY OF CORAL SPRINGS, on behalf of the City. He/she personally appeared
before me, is personally known to me or produced _____
as identification, and did take an oath.

[NOTARIAL SEAL]

Notary: _____

Print Name: _____

Notary Public, State of _____

My commission expires: _____