



northPOND
ENERGY PARK
A Constellation Power Source Company

111 Market Place, Suite 200
Baltimore, MD 21202
Phone: 410-230-4600
Fax: 410-230-4847

February 26, 2001

RECEIVED

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BUREAU OF AIR REGULATION

Scott Sheplak, P.E.
Administrator, Title V Section
Florida Department of Environmental Protection
Division of Air Resources Management
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Re: DEP File No. 0490046-001-AC (PSD-FL-306) – ^{South}North Pond Energy Park

and 0490045-001-AC PSD-307 North

Dear Mr. Sheplak:

This correspondence provides additional information requested in response to your letter of December 8, 2000, and the meeting on the proposed North Pond Energy Park that will be located in Hardee County, Florida. In your letter, you indicate that the North Pond Energy Park and the South Pond Energy Park appear to meet the Environmental Protection Agency (EPA) requirements for consideration as a single facility and you request that we provide a rationale for classifying these as two separate facilities. You also ask that we address the question of whether the plants are subject to the Electrical Power Plant Siting Act.

While you have not specified for us the EPA requirements that the facilities "appear to meet" for consideration as a single facility, we are not aware of any listing of specific criteria that would be used for this purpose. It is our understanding that EPA does not have specific guidance on this issue and that such questions are handled case-by-case. See, 45 Federal Register, at 52695 (August 7, 1980). The applicable regulations, preamble and various EPA decisions on this issue clearly suggest that these two facilities do not merit consideration as a single facility. EPA's rules define "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutants subject to regulation" 40 CFR § 52.21(b)(5). For regulatory purposes, a "building, structure, facility or installation" is defined in the rules as "all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual, 1972" 40 CFR § 52.21(b)(6).

Florida's rules are based on EPA rules and are almost identical in defining a stationary source. A "facility" is defined as "all of the emission 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)." Rule 62-210.200(125), Florida Administrative Code (FAC).

The two facilities are separate and distinct legal entities and are not operationally or functionally related. For purposes of evaluating whether the two facilities should be aggregated, the following facts are relevant:

1. Both of the facilities are separate legal entities by virtue of being established as stand-alone, independent companies.

2. Each of the plants has separate, stand-alone operating facilities. The two plants will not be connected in any way and will operate independently. There will be separate operating staffs and facilities for independent operation. Neither plant will be dependent upon the other for operational support.

3. The plants are configured differently. The configurations are unique to the location of each plant and will be defined by the constraints of each site's infrastructure.

4. The North Pond facility will electrically connect to Tampa Electric Company's system at the Hardee substation. This substation is adjacent to the site. The South Pond will electrically connect to the Florida Power & Light Company 230 KV transmission system by way of a new seven to eight mile transmission. The existing electrical transmission system will not allow a single 1,000/1,250 MW plant to connect into the system and, therefore, the plants are separate and located in such a way as to minimize electrical interconnection costs. Each of the companies and facilities will have separate interconnection studies and contracts for the interconnection.

5. The two sites are located six miles (about 10 kilometers) apart as a result of operational and functional differences. This separation is the result of two important features. The first is based on the ability to interconnect to the transmission systems as noted above. The second is based on the unique surface water bodies that the plants can use for cooling and water supply. The North Pond facility will use an existing pond that is no longer being used in the phosphate industry. The South Pond location coincides with an actively mined area. The pond is much larger in size which allows a larger power plant. Neither location is capable of handling the combined water needs of the two facilities.

We have reviewed a number of decisions on this issue made by EPA over a period of years, and we have been unable to uncover a single instance in which two facilities meeting the descriptions set forth above have been combined. Assuming, without conceding, that the two facilities would meet the test of being under common control, the sites are neither adjacent nor contiguous. The only instances in which physically separated sites have been combined by EPA are those where there is some feature, such as a railroad line or a transmission line, that also connects the sites or

where the sites are functionally or operationally related. This is not the case with the two plants in question here.

It is also important to note that both projects are required to undergo PSD review for regulated air pollutants including particulate matter, sulfur dioxide, and nitrogen oxides. As such, the projects will implement Best Available Control Technology (BACT) as individually required for each separate project. Clearly, the separate projects will not result in avoidance of any technical reviews required by DEP.

Both EPA and at least one court have indicated an intention to use a common sense approach in applying the definition of "stationary source." Alabama Power v. Costle, 606 F.2d 1068, 1077 (DC Cir. 1979), superceded in other aspects, Alabama Power v. Costle, 636 F.2d 323 (DC Cir. 1979); 45 Fed. Reg. at p. 52694. Applying common sense, it would seem appropriate to look at the commonly understood meaning of the words "contiguous" and "adjacent." "Adjacent" is defined in Webster's dictionary as nearby or having a common border. "Contiguous" is defined as being in actual contact or touching along a boundary or at a point. These definitions imply sites that are in very close proximity to one another, and certainly not separated by a distance of six miles.

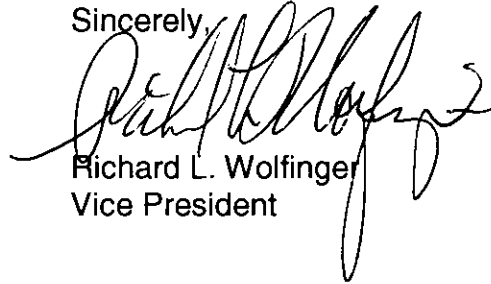
Your December 8, 2000, letter also raises the question of whether sufficient information has been provided to make the determination that the proposed power plant is not subject to the provisions of the Siting Act. As we understand it, the Siting Act applies to any electrical power plant, as defined in the statute, that has a steam generating capacity of 75 megawatts or greater. We further understand that DEP has consistently determined that plants that are not currently capable of generating 75 megawatts or greater of steam are not subject to the provisions of the Siting Act and are subject instead to the traditional permitting for stationary sources. This plant will be limited to an output of 74.9 megawatts of steam generation. This limitation will be placed on the equipment in a way that the 74.9 megawatts will not be exceeded at any time. The bid specifications for the plant will limit the steam capacity to 74.9 megawatts or less. Consistent with the past determinations of DEP, we believe that this configuration is not subject to the provisions of the Siting Act. As noted above, we see no basis on which to combine the sites for PSD or for other purposes, including the Siting Act.

Attached is a letter report dated February 6, 2001 from Golder Associates which combines the air impact of the North Pond Energy Park and South Pond Energy Park as requested by FDEP. The modeling that is summarized in the report has been submitted to the Department.

Scott Sheplak, P.E.
February 27, 2001
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We would be pleased to discuss this further with you should you have questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Wolfinger". The signature is fluid and cursive, with a large, stylized initial "R".

Richard L. Wolfinger
Vice President

cc: Larry Curtin, Holland & Knight
Ken Kosky, Golder Associates