

Chronology of Activities

OGC Number **05 0322** **25 AC** District **SOUTHWEST** County **HARDEE**
 Style of Case **SEMINOLE ELECTRIC COOPERATIVE, INC. PAYNE CREEK GEN. STATION V DEP**
 Program Area **AIR CONSTRUCT** Mode **ADMINISTRATIVE**
 Lead Attorney **DOUG** **D** **BEASON** Status **CLOSED**
 Forum Name _____ Forum Case Number _____
 Permit Appl **0490340-003-AC** Final Order Number _____

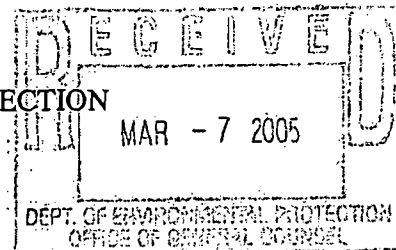
Date *	Code	Activity Description
04/04/2005		REQ. FOR ASSIGNMENT OF ADM. LAW JUDGE & NOT. OF PERSERVATION
04/05/2005	PI01	INITIAL ORDER ISSUED
04/13/2005	PRIO	RESPONSE TO INITIAL ORDER SERVED
04/13/2005		RESPONSE TO INITIAL ORDER
04/18/2005		MOTION TO SET HEARING DATES
04/19/2005		NOTICE OF HEARING
04/19/2005		ORDER OF PRE-HEARING INSTRUCTIONS
05/06/2005		SETTLEMENT AGREEMENT
05/10/2005		NOTICE OF VOLUNTARY DISMISSAL
05/13/2005	DOCF	DOAH ORDER CLOSING FILE

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Date *	Code	Activity Description
02/17/2005	AA	ASSIGNED TO LEAD ATTORNEY JACK J CHISOLM
02/17/2005	ACO	ADMIN. CASE OPENED IN OGC
02/17/2005	REX1	RECEIVED FIRST REQUEST FOR EXTENSION OF TIME
02/22/2005		ORDER GRANTING EXTENSION OF TIME UNTIL 3/7/05
02/23/2005	CC	CASE CLOSED IN OGC
03/07/2005	RPFH	PETITION FOR FORMAL HEARING RECEIVED
03/21/2005	AR	RE-ASSIGNED TO LEAD ATTORNEY DOUG D BEASON
03/23/2005		ORDER DISMISSING PETITION AS MOOT
03/24/2005	RPFH	PETITION FOR FORMAL HEARING RECEIVED
04/04/2005		REQ. FOR ASSIGNMENT OF ADM. LAW JUDGE & NOT. OF PERSERVATION

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Seminole Electric Cooperative, Inc.

Petitioner,

Vs.

DEP OGC Case No. _____

State of Florida, Department
of Environmental Protection

Respondent.

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, Seminole Electric Cooperative, Inc. ("Seminole"), through its undersigned attorneys, hereby petitions for a formal administrative hearing contesting certain conditions in the Intent to Issue Air Permit and Draft Permit issued by the Department of Environmental Protection ("Department" or "DEP") on February 4, 2005, in response to Seminole's application for an air permit to authorize the construction and initial operation of ten Pratt and Whitney aeroderivative simple-cycle combustion turbines (nominal 310 MW total) at its existing Payne Greek Generating Station in Hardee County, Florida. This Petition is filed pursuant to Sections 120.569 and 120.57(1), and Chapter 403, Florida Statutes, and Florida Administrative Code Rules 62-110.106 (3) and 28-106.201.

In support of this Petition, Seminole states:

Introduction

1. - Although Seminole is contesting numerous conditions in the Department's Intent to Issue and accompanying documents, the primary issue in this case is what constitutes the "Best Available Control Technology" (BACT) for Seminole's project. BACT is defined in Rule 62-210.200(38), Fla. Admin. Code, as:

An emission limitation, including a visible emissions 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 innovative combustion techniques) for the control of each such pollutant.

The Department's proposed BACT determination is fundamentally flawed and incorrect as a matter of fact and law because the Department: (1) disregarded its own cost-effectiveness conclusions; (2) failed to account for the overall environmental impact of its proposed determination; (3) failed to account for the adverse energy (i.e., electricity) supply impacts associated with its proposed determination; (4) is attempting to force Seminole to choose an alternative type of electrical generating system that does not meet Seminole's specific needs; (5) inappropriately categorized Seminole's proposed electrical generating system (ten Pratt & Whitney FT8-3 aeroderivatives), which has unique capabilities particularly suited to Seminole's specific needs, with a substantively different type of combustion turbine system that is materially different with regard to energy reliability, operational features, technical capabilities and emission control features; and (6) established a nitrogen oxide (NOx) emission limit contrary to recent precedents.

Identification of Agency Affected

2. The name and address of the affected agency is as follows:

Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
Attn: Mike Halpin

3. The agency file numbers for the project at issue are as follows:

Payne Creek Generating Station Peaking Project
ARMS Permit No. 0490340-003-AC
PSD Permit No. PSD-FL-344

Identification of Petitioner

4. The name, address, and telephone number of the Petitioner is as follows:

Seminole Electric Cooperative, Inc.
16313 N. Dale Mabry Highway
Tampa, Florida 33618
Attn: Mike Opaliniski, Vice President
of Technical Services
(813) 963-0994

5. The address where the project is located is as follows:

Payne Creek Generation Station
6697 County Road 663
Bowling Green, Florida 33834
Hardee County

6. For purposes of this proceeding, the Petitioner is represented by

James S. Alves
Robert A. Manning
Hopping Green & Sams, P.A.
123 South Calhoun Street
Tallahassee, Florida 32301
(850) 222-7500

Notice

7. Seminole received the Department's official written Intent to Issue and accompanying documents on February 10, 2005 by U.S. Mail (Attached as Exhibit A). Seminole filed a Request for Enlargement of Time to file this Petition until March 7, 2005, in an effort to resolve this dispute without resorting to administration litigation.

Substantial Interests Affected

8. Seminole's substantial interests are adversely affected by the proposed agency action, which, without legal or factual justification, contrary to DEP's own regulations, and without benefiting the environment, would require Seminole to install unnecessary and cost-prohibitive emission controls on the new units. This proposed agency action unreasonably impairs Seminole's effort to reliably supply electricity at reasonable rates to its member cooperatives and their customers, enhance fuel diversity, maximize unit efficiency, minimize overall environmental impacts, and efficiently and responsibly serve its members while continuing to be a responsible steward of the environment and meet all applicable air program requirements.

Statement of Material Facts Disputed by Petitioners

9. The disputed facts on which the Department's proposed action is based (as evidenced in the Intent to Issue and accompanying documents) are as follows:

- a. The Department failed to account for the energy and environmental impacts associated with its proposed action. The Department failed to

even acknowledge these substantial factors in its written rationale explaining the basis of the draft permit.

- b. The Department's statement (on page BD-10 of the Preliminary Determination) that the "weight of evidence" compels the establishment of a NOx limit at 15 ppm as BACT when firing natural gas is incorrect.
- c. The Department incorrectly concluded that a 15 ppm NOx limit can be met on Pratt & Whitney FT8 aeroderivative combustion turbines with dry low NOx burner and/or water injection emission control technology. In the "P.E. Certification Statement," DEP's permit engineer certified that Seminole's project could meet the limits DEP determined to be BACT.
- d. The Department inaccurately equated the Pratt & Whitney FT8 aeroderivative simple-cycle combustion turbines with "frame" combustion turbines that are materially different regarding reliability, operation, technical details, and emission controls.
- e. The Department failed to recognize or otherwise appropriately acknowledge recent BACT determinations regarding Pratt & Whitney FT8 aeroderivative simple-cycle combustion turbines that were permitted at 25 ppm NOx emissions using water injection (as requested by Seminole).
- f. The Department failed to recognize or otherwise appropriately acknowledge Seminole's particular power generation needs, and the

specific ability of the Pratt & Whitney FT8-3 machines to most efficiently and effectively meet these needs.

- g. The Department's BACT determination and corresponding emission limitations in the draft permit, as well as additional conditions in the draft permit relating to performance, emission controls, emission limits, excess emissions, testing, monitoring, and compliance are based on flawed technical analysis, mistakes, and misinformation or misapplication of applicable regulations, and are arbitrary, and capricious, and otherwise unsupported by facts or law.

**Statement of Facts That Warrant Reversal of the
Department's Proposed Action**

10. Material facts warranting reversal of the Department's proposed action include the following:

- a. The Department disregarded its own conclusion, on page BD-6 of its Preliminary Determination, that utilizing selective catalytic reduction (SCR) to reduce NOx emissions for Seminole's project would not be cost-effective. (Seminole and the U.S. Environmental Protection Agency, (in a letter dated February 1, 2005 EPA letter to Jim Pennington, attached as Exhibit B, agree with the Department's conclusion that SCR is not a cost-effective emission control technology for Seminole's project.)
- b. In Condition 11 of the draft permit, the Department would require the use of either dry low NOx burners and/or water injection to control

NOx emissions, yet also would impose a NOx emission limitation in Condition 17 of the draft permit that can only be met by utilizing SCR. The Department's awareness of this is evidenced in part by the numerous draft conditions referencing SCR installations and or ammonia (Seminole's project would only use ammonia in the operation of an SCR).

- c. The Department failed to consider and account for the energy and environmental impacts of its proposed determination, as required by its own regulations. The only regulatory factor the Department acknowledged considering is cost, and in that context actually agreed with Seminole and expressly dismissed SCR technology as not cost-effective. The Department acknowledged that SCR is too costly but then imposed permit conditions that have the effect of requiring SCR. Ultimately, then, the Department's decision fails to implement any of the three primary considerations required under its own regulations in a BACT determination.
- d. The Department's BACT determination apparently is based on ten different combustion turbines (six manufactured by General Electric and four by Siemens) that it supposedly believes can meet Seminole's electric generating needs and also the draft 15 ppm NO_x limit. (See DEP letter dated March 2, 2005, attached as Exhibit C). The Department's belief is factually incorrect for several reasons, including:

(i) All of the machines except one (GE LM6000PD) are “frame” machines rather than aeroderivatives, making them particularly ill-suited to meet Seminole’s specific needs.

(ii) There are no GE LM6000PD machines in commercial operation for electrical generation in the United States. Also, this equipment was not offered by GE during Seminole’s bid process in 2003, and GE’s guaranteed NOx level when firing oil is significantly higher than the FT8-3 (65 ppm v. 42 ppm).

(iii) The GE LM6000s operating at the Orange Cogeneration facility, apparently relied on substantially by the Department, are not the new “PD” version with the recently developed but still unproven DLE technology; these units rather are substantially adjusted older models that incorporate water injection and are not commercially available in that form.

e. Seminole provided detailed information/justification regarding its decision that Pratt & Whitney FT8-3 aeroderivative combustion turbines using water injection NOx-control technology are the best equipment to meet its unique power generation needs, including: (i) they allow for firing both natural gas and oil, furthering the important goal of fuel diversity, (ii) the use of Pratt & Whitney’s dry low NOx technology prohibits oil firing, and also results in reduced electricity generation, which would require the installation of an additional unit to meet the necessary 310 megawatt demand, thereby increasing

emissions, (iii) the use of SCR technology is cost-prohibitive, and also results in reduced electricity generation, which would require the installation of an additional unit to meet demand, (iv) with the FT8-3 aeroderivatives, power generation can be brought online in less than 10 minutes and utilized in increments of 12.5 megawatts, which minimizes elevated air emissions typically associated with periods of start-up and shutdown, and running larger units at very low loads, and (v) they allow multiple startups and shutdowns each day (daily cycling) to meet Seminole's relatively unique, predominantly residential load demands without accelerating maintenance needs, which reduces air emissions and enhances reliability. See Seminole's Air Construction Permit Application. See also Seminole's letters to the Department, dated November 10, 2004, and January 11, 2005, responding to Requests for Additional Information. (Attached as Exhibits D and E).

- f. Seminole requested a NOx limit of 25 ppm when firing natural gas and 42 ppm when firing oil. This request is appropriate based on the reasons stated above, as well as the following: (i) water injection is an effective and acceptable NOx emission reduction technology, allowing the FT8-3 units to achieve 25/42 ppm when firing gas/oil, (ii) EPA and other states have recently approved a NOx limit of 25/42 ppm for an FT8-3 when firing gas/oil, (iii) there is not another commercially available aeroderivative, single-cycle combustion turbine in operation

that guarantees NOx emissions less than 25/42 ppm without SCR (iv) use of an SCR to meet a lower limit is not cost-effective, (v) use of an SCR decreases the electricity (MW) produced, thereby requiring an additional unit and its corresponding emissions, and (vi) Seminole's specific power needs can be met most efficiently by the Pratt & Whitney FT8-3.

g. The Department's BACT determination and corresponding emission limitations in the draft permit, as well as additional conditions in the draft permit relating to performance, emission controls, emission limits, excess emissions, testing, monitoring, and compliance are based on flawed technical analysis, mistakes, and misinformation or misapplication of applicable regulations, and are arbitrary, and capricious, and otherwise unsupported by facts or law. Examples of additional draft permit conditions contested herein include:

- (i) Condition 12, which imposes a carbon monoxide (CO) limit of 7.0 ppm when firing gas and oil, states that the authority for this requirement is the Prevention of Significant Deterioration (PSD) rules. But Seminole's project is not subject to BACT review for CO because its potential emissions are less than the PSD applicability threshold for CO. Seminole volunteered to install an oxidation catalyst to reduce CO emissions and requested a limit of 7 ppm when firing oil and 20 ppm when firing gas.

- (ii) Condition 33, which requires a continuous emission monitor (CEM) for NO_x, when the Acid Rain rules (40 CFR Part 75) allow for alternative monitoring because these units qualify as “low mass emissions” units.

**Statutes and Rules Requiring Reversal
of the Department’s Action**

11. The statutes and rules requiring reversal of the Department’s action include, at a minimum, Chapters 120 and 403, Florida Statutes, and Chapters 62-210 and 62-212, Florida Administrative Code.

Request for Relief

12. Seminole requests that the Department:
- a. Refer this matter to the Division of Administrative Hearings for a formal hearing pursuant to Section 120.57(1), Florida Statutes;
 - b. Revise the Intent to Issue consistent with the proposed/requested conditions in the application filed by Seminole;
 - c. Provide such other relief as may be appropriate.

Respectfully submitted,
HOPPING GREEN & SAMS

By: Robert A. Manning

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Attorneys for Seminole Electric
Cooperative, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand-delivery to Douglas Beason, General Counsel, Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, this 7 day of March, 2005.

Robert A. Manning
Attorney