

(Jeff)

[illegible]

## Gibson, Victoria

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**From:** Vielhauer, Trina  
**Sent:** Monday, October 16, 2006 3:27 PM  
**To:** Halpin, Mike; Comer, Patricia  
**Cc:** Koerner, Jeff; Crandall, Lea; Gibson, Victoria; Chisolm, Jack; Kahn, Joseph  
**Subject:** RE: Request for Extension of Time & Petition for Admin. Hearing - 1070025-005-AC - Seminole Electric Coop.

Yes, it is not timely. Please deny this request.

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**From:** Halpin, Mike  
**Sent:** Monday, October 16, 2006 1:53 PM  
**To:** Comer, Patricia  
**Cc:** Vielhauer, Trina; Koerner, Jeff; Crandall, Lea; Gibson, Victoria; Chisolm, Jack  
**Subject:** RE: Request for Extension of Time & Petition for Admin. Hearing - 1070025-005-AC - Seminole Electric Coop.

Pat –

Can you assist with this (as we have discussed). It is not timely by a long shot (see attached) and I am fairly certain that we do not wish to accept it.

Mike

<< File: Proof of Pub.pdf >>

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**From:** Crandall, Lea  
**Sent:** Monday, October 16, 2006 1:47 PM  
**To:** Chisolm, Jack; Gingery, Betsy; Gibson, Victoria; Halpin, Mike  
**Subject:** Request for Extension of Time & Petition for Admin. Hearing - 1070025-005-AC - Seminole Electric Coop.

FYI, a Request for Extension of Time & Petition for Admin. Hearing was rec'd. from Sierra Club re: 1070025-005-AC - Seminole Electric Coop.

Thanks,  
Lea

### Lea Crandall

Agency Clerk  
Department of Environmental Protection  
3900 Commonwealth Boulevard, MS 35  
Tallahassee, FL 32399-3000  
Phone: (850) 245-2212 SC: 205-2212  
Fax: (850) 245-2303

## Gibson, Victoria

---

**From:** Gibson, Victoria  
**Sent:** Monday, October 16, 2006 2:13 PM  
**To:** Gingery, Betsy  
**Subject:** FW: Request for Extension of Time & Petition for Admin. Hearing - 1070025-005-AC - Seminole Electric Coop.

**Attachments:** Proof of Pub.pdf

FYI,

*Vickie*

Victoria Gibson, Administrative Secretary for  
Trina Vielhauer, Chief  
DEP/Bureau of Air Regulation  
victoria.gibson@dep.state.fl.us  
850-921-9504 fax 850-921-9533

---

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**Sent:** Monday, October 16, 2006 1:53 PM  
**To:** Comer, Patricia  
**Cc:** Vielhauer, Trina; Koerner, Jeff; Crandall, Lea; Gibson, Victoria; Chisolm, Jack  
**Subject:** RE: Request for Extension of Time & Petition for Admin. Hearing - 1070025-005-AC - Seminole Electric Coop.

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Can you assist with this (as we have discussed). It is not timely by a long shot (see attached) and I am fairly certain that we do not wish to accept it.

Mike



Proof of Pub.pdf  
(228 KB)

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**Sent:** Monday, October 16, 2006 1:47 PM  
**To:** Chisolm, Jack; Gingery, Betsy; Gibson, Victoria; Halpin, Mike  
**Subject:** Request for Extension of Time & Petition for Admin. Hearing - 1070025-005-AC - Seminole Electric Coop.

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Lea

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Fax: (850) 245-2303

# STATE OF FLORIDA

County of Putnam

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

## PUBLIC NOTICE OF INTENT TO IS

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

09/08/2006

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

*Allison Waters*

Sworn to and subscribed to before me this 8th day of September, 2006 by Allison Waters, Administrative Assistant, of the Palatka Daily News, a Florida corporation, on behalf of the corporation.

*Mary Kaye Wells*

Mary Kaye Wells, Notary Public

My commission expires July 22, 2007

Notary Seal  
Seal of Office:

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



## PUBLIC NOTICE

### PUBLIC NOTICE OF INTENT TO ISSUE AIR PERMIT

Florida Department of Environmental Protection  
Project No. 1070025-005-AC/  
Draft Air Permit No. PSD-FL-375  
Seminole Electric Cooperative, Inc. - Seminole Generating Station, Putnam County, Florida

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

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

**Project:** The applicant proposes to construct a new supercritical coal-fired steam generating unit referred to as SGS Unit 3. Seminole proposes to integrate SGS Unit 3 into the existing, certified SGS Site located north of Palatka in Putnam County and will locate Unit 3 adjacent to the existing SGS Units 1 and 2. Seminole anticipates beginning commercial operation of Unit 3 in 2012. The addition of SGS Unit 3 will increase the total output capability of the SGS by almost 60 percent. The design of SGS Unit 3 will maximize the co-use of existing site facilities to the greatest extent possible, including fuel handling facilities. SGS Unit 3 proposes the same fuel slate as SGS Units 1 and 2.)

SGS Unit 3 will feature supercritical pulverized coal technology with modern emission controls. The Unit 3 air pollution control equipment will include wet Flue Gas Desulfurization (FDG) for SO<sub>2</sub> removal, selective catalytic reduction (SCR) for control of nitrogen oxides (NO<sub>x</sub>), electrostatic precipitator (ESP) for collection and removal of fine particles, a Wet ESP (WESP) for control of sulfuric acid mist (SAM), with fluoride (HF) and mercury (Hg) removal to be accomplished through co-benefits of the above technologies. Fuel (coal and petroleum cokes) for SGS Unit 3 will be delivered by an existing rail system. Continuous Emission Monitoring Systems (CEMS) will be installed for SO<sub>2</sub>, NO<sub>x</sub>, CO and Hg.

Net environmental impacts associated with Unit 3, in combination with the Units 1 and 2 pollution controls upgrade Project No. 1070025-004-AC can be summarized as follows:

- 1) No increase in facility-wide SO<sub>2</sub>, NO<sub>x</sub>, SAM and mercury when compared to historical (baseline) air emissions. The applicant has accepted facility-wide caps for each above pollutant eliminating the requirement for a PSD review.
- 2) PSD-significant increases in facility-wide PM<sub>10</sub>, CO, VOC, and fluoride air emissions.
- 3) reuse of FDG product, fly ash and bottom ash.

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

Pollutants:  
PM<sub>10</sub>  
HF  
VOC

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

**Notice of Intent to Issue Air Permit:** The Permitting Authority gives notice of its intent to issue an air permit to the applicant for the project described above. The applicant has provided reasonable assurance that operation of proposed equipment will not adversely impact air quality and that the project will comply with all applicable provisions of Chapters 62-4, 62-204, 62-210, 62-212, 62-295, and 62-297, F.A.C. The Permitting Authority will issue a Final Permit in accordance with the conditions of the proposed Draft Permit unless a timely petition for an administrative hearing is filed under Sections 120.569 and 120.57, F.S. or unless public comment received in accordance with this notice results in a different decision or a significant change of terms or conditions.

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

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

different from the public taken by it in this Written Notice of Intent to Issue Air Permit. Person whose substantial interests will be affected by any such final decision, the Permitting Authority, the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above. For the purposes of judicial review, the Department may, when possible, consolidate a request for administrative hearing on the draft permit within a Power Plant Certification Hearing.

Legal No. 04521582  
9/8/06

Maximum Potential Emissions (TPV)  
429.3  
7.6  
73.2  
4827.5

PSD Significant Emission Rate (TPV)  
25/15  
3  
40  
100

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

Permitting Authority: Applications for air construction permits are subject to review in accordance with the provisions of Chapter 403, Florida Statutes (F.S.) and chapters 62-4, 62-210, and 62-212 of the Florida Administrative Code (F.A.C.). The proposed project is not exempt from air permitting requirements and an air permit is required to perform the proposed work. The Florida Department of Environmental Protection's Bureau of Air Regulation's physical address is 111 South Magnolia Drive, Suite 4, Tallahassee, Florida 32301 and the mailing address is 2600 Blair Stone Road, MS# 5605, Tallahassee, Florida 32399-2400. The Bureau of Air Regulation's phone number is 850/488-0114.

Project File: A complete project file is available for public inspection during the normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday (except legal holidays), at the address indicated above for the Permitting Authority. The complete project file includes the Draft Permit, the Technical Evaluation and

a petition within fourteen (14) days of receipt of that notice, regardless of the date of publication. A petitioner shall mail a copy of the petition to the applicant at the address indicated above, at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.580 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

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

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

## Gibson, Victoria

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**Sent:** Monday, October 16, 2006 2:47 PM  
**To:** Gibson, Victoria  
**Subject:** FW: Request for Extension of Time & Petition for Admin. Hearing - 1070025-005-AC - Seminole Electric Coop.

**Attachments:** Sierra Club's Moiton for Ext. of Time & Petition.pdf

Okay, let's try this one more time!

Thanks!



Sierra Club's Moiton  
for Ext. ...

### Lea Crandall

Agency Clerk  
Department of Environmental Protection  
3900 Commonwealth Boulevard, MS 35  
Tallahassee, FL 32399-3000  
Phone: (850) 245-2212 SC: 205-2212  
Fax: (850) 245-2303

-----Original Message-----

**From:** Crandall, Lea  
**Sent:** Monday, October 16, 2006 2:15 PM  
**To:** Gibson, Victoria  
**Subject:** FW: Request for Extension of Time & Petition for Admin. Hearing - 1070025-005-AC - Seminole Electric Coop.

Here is the document!

Thanks,  
Lea

### Lea Crandall

Agency Clerk  
Department of Environmental Protection  
3900 Commonwealth Boulevard, MS 35  
Tallahassee, FL 32399-3000  
Phone: (850) 245-2212 SC: 205-2212  
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-----Original Message-----

**From:** Crandall, Lea  
**Sent:** Monday, October 16, 2006 1:47 PM  
**To:** Chisolm, Jack; Gingery, Betsy; Gibson, Victoria; Halpin, Mike  
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FYI, a Request for Extension of Time & Petition for Admin. Hearing was rec'd. from Sierra Club re: 1070025-005-AC - Seminole Electric Coop.

Thanks,  
Lea

**Lea Crandall**

Agency Clerk

Department of Environmental Protection

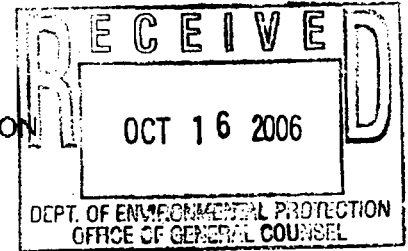
3900 Commonwealth Boulevard, MS 35

Tallahassee, FL 32399-3000

Phone: (850) 245-2212 SC: 205-2212

Fax: (850) 245-2303

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



SIERRA CLUB,

Petitioner,

v.

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

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

And

SEMINOLE ELECTRIC COOPERATIVE, INC.,

Respondents.

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

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

1. The Sierra Club is a non-profit corporation with over 750,000 members.

The Sierra Club's Florida Chapter has over 33,000 members, with 105 and 520 members



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

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

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

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

#### SUBSTANTIAL INTEREST

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

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

7. As acknowledged by the Public Notice of Intent to Issue Air Permit, the Permit would authorize the emissions of particulate matter (PM), carbon monoxide (CO), volatile organic compounds (VOCs), and fluorides (HF) in quantities that exceed the levels that the State of Florida has established as significant under its Prevention of Significant Deterioration (PSD) regulations. In addition, Seminole 3 will emit sulfur dioxide (SO<sub>2</sub>), sulfuric acid mist (SAM), nitrogen oxides (NO<sub>x</sub>) and mercury (Hg), all pollutants that are harmful to human health and the environment. Draft Permit, p. 8. The substantial interests of the Sierra Club's Florida members, particularly those in the vicinity of the Seminole Generating Station, will be affected by these harmful emissions from Seminole 3.

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

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

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

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

11. The emissions from the proposed unit will degrade regional air quality. The air in a region has limited carrying capacity, defined as the increment between current air quality and ambient air quality standards or significant impact levels. Each new facility that locates in a region and emits pollutants will consume part of this carrying capacity. The Draft Air Permit relies on a flawed and illegal analysis to demonstrate compliance with Class I increment requirements for SO<sub>2</sub>. Seminole's failure to comply with Class I increment requirements will adversely affect the ability of Sierra Club members to use and enjoy these Class I areas.

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

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

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

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

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

#### BACKGROUND

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

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

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

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

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

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

20. The Notice also misinforms the public with regard to emissions of SO<sub>2</sub>, NO<sub>x</sub>, SAM and mercury. It states:

No increase in facility-wide SO<sub>2</sub>, NO<sub>x</sub>, SAM and mercury when compared to historical (Baseline) air emissions. The applicant has accepted facility-wide caps for each above pollutant eliminating the requirement for a PSD review.

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

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

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

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

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

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

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

#### **ENLARGEMENT OF TIME**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

### III. THE PUBLIC NOTICE IS DEFICIENT.

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

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

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

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

#### DISPUTED ISSUES OF MATERIAL FACT

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

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

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

45. Whether the analysis supporting the Draft Permit included appropriate modeling of SO<sub>2</sub> emissions with regard to their impact on Class I areas.

46. Whether the analysis supporting the Draft Permit included an adequate assessment of how emissions from Seminole 3 may impair soils and vegetation.
47. Whether DEP must include consideration of Integrated Gasification Combined Cycle ("IGCC") technology as BACT.
48. Whether the Draft Permit limits for VOCs, fluorides, PM, SAM, NH3, and mercury are enforceable.
49. Whether the permit limits for Seminole Units 1 and 2 are enforceable such that they support emissions credits for Seminole Unit 3.
50. Whether the startup and shutdown exemption in the Draft Permit were appropriately modeled.
51. Whether the startup and shutdown exemption in the Draft Permit reflect BACT.
52. Whether Seminole conducted adequate pre-construction monitoring.
53. Whether DEP considered reasonable alternatives to Seminole 3.
54. Whether the Draft Permit limits will adequately protect public health.
55. Whether the construction of Seminole 3 will have a disproportionate impact on minority or economically disadvantaged communities.

#### ULTIMATE FACTS WARRANTING REVERSAL

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

#### STATUTES AND RULES VIOLATED BY THE PERMIT

The Draft Permit violates the following statutes and rules:

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

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

59. The regulation defining BACT as:

An emission limitation, including a visible emissions standard, based on the maximum degree of reduction of each pollutant emitted which the Department, on a case by case basis, taking into account:

1. Energy, environmental and economic impacts, and other costs;
2. All scientific, engineering, and technical material and other information available to the Department; and
3. The emission limiting standards or BACT determinations of Florida and any other state;

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determines is achievable through application of production processes and available methods, systems and techniques (including fuel cleaning or treatment or innovative fuel combustion techniques) for control of each such pollutant.

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

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

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


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

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

#### RELIEF SOUGHT

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

Respectfully submitted this 16th day of October, 2006.



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LOCAL COUNSEL

**CERTIFICATE OF SERVICE**

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

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

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

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

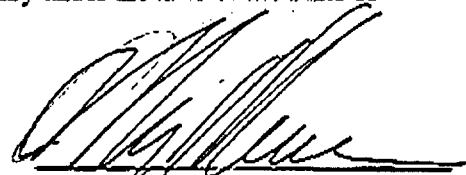
On October 16, 2006, I served a copy of the Sierra Club's Motion for Enlargement of Time and Petition for Administrative Hearing on the recipients listed below via regular U.S. mail.

*Authorized Representative:*  
James R. Frauen  
Project Director, SGS -3  
Seminole Electric Cooperative, Inc.  
16313 North Dale Mabry  
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Trina Vielhauer  
Florida Dept. of Environmental Protection  
Bureau of Air Regulation  
2600 Blair Stone Road  
MS #5505  
Tallahassee, FL 32399-2400

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

Executed on October 16, 2006.

  
Monica K. Reimer



## Gibson, Victoria

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**From:** Crandall, Lea  
**Sent:** Monday, October 16, 2006 2:15 PM  
**To:** Gibson, Victoria  
**Subject:** FW: Request for Extension of Time & Petition for Admin. Hearing - 1070025-005-AC - Seminole Electric Coop.

**Attachments:** Seminole's Responses to Sierra Club's Amended Exceptions.pdf

Here is the document!

Thanks,  
Lea



Seminole's  
Responses to Sierra.

### Lea Crandall

Agency Clerk  
Department of Environmental Protection  
3900 Commonwealth Boulevard, MS 35  
Tallahassee, FL 32399-3000  
Phone: (850) 245-2212 SC: 205-2212  
Fax: (850) 245-2303

-----Original Message-----

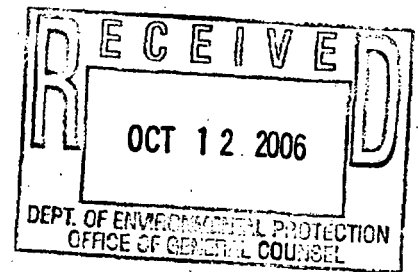
**From:** Crandall, Lea  
**Sent:** Monday, October 16, 2006 1:47 PM  
**To:** Chisolm, Jack; Gingery, Betsy; Gibson, Victoria; Halpin, Mike  
**Subject:** Request for Extension of Time & Petition for Admin. Hearing - 1070025-005-AC - Seminole Electric Coop.

FYI, a Request for Extension of Time & Petition for Admin. Hearing was rec'd. from Sierra Club re: 1070025-005-AC - Seminole Electric Coop.

Thanks,  
Lea

### Lea Crandall

Agency Clerk  
Department of Environmental Protection  
3900 Commonwealth Boulevard, MS 35  
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Phone: (850) 245-2212 SC: 205-2212  
Fax: (850) 245-2303

THE STATE OF FLORIDA  
THE SITING BOARD

In Re: Seminole Electric Cooperative )  
Seminole Generating Station Unit 3 )  
Power Plant Siting Application )  
No. PA 78-10A2. )

DOAH CASE NO. 06-0929EPP

**SEMINOLE ELECTRIC COOPERATIVE, INC.'S**  
**RESPONSES TO SIERRA CLUB, INC.'S**  
**AMENDED EXCEPTIONS TO RECOMMENDED ORDER**  
**ON LAND USE AND ZONING**

Seminole Electric Cooperative, Inc. (Seminole Electric), by and through its undersigned counsel submits the following Responses to the Amended Exceptions to Recommended Order on Land Use and Zoning filed by Sierra Club, Inc. (Sierra Club) on September 28, 2006.

**Background**

As recited in the Administrative Law Judge's (ALJ) Recommended Order on Land Use and Zoning (Recommended Order), Seminole Electric proposes to build a new, third unit at Seminole's existing power plant site located in the unincorporated area of Putnam County, Florida. That existing site contains Units 1 and 2, representing a 1300 megawatt (MW) coal-fired facility which began operation in 1984. Seminole proposes to add a new third unit of 750 megawatts at that site which will be much like the existing facilities. See Findings of Fact 3, 4, and 10.

The site for the existing and proposed unit is approximately 2000 acres in size. The site is comprised of a larger parcel, which contains the existing two units, and a smaller 4.5 acre parcel along the St. Johns River which contains an intake pump house. The smaller parcel is connected to the larger parcel by an existing privately-granted easement that contains underground water pipelines to supply water to the generating units and a duct bank containing electrical conduit. Facilities for the new Unit 3 will be located adjacent to and integrated with,

the existing facilities within the larger parcel and a new pipeline and a new duct bank will be added in the existing pipeline easement. Pumps within the existing pump house will be upgraded but no changes will be made to the pump house building itself. See Findings of Fact 4, 6, 10 and 12.

The site for the existing and proposed units was certified under the Florida Electrical Power Plant Siting Act (PPSA) in 1979. In its final Order Relating to Land Use and Zoning, dated March 21, 1979, the Siting Board determined that the site for the two now-existing units was "consistent and in compliance with the land use plans and zoning regulations [of Putnam County] in effect at that time." The Siting Board also ordered that the "responsible zoning and planning authorities [are] to refrain from hereafter changing such land use plans or zoning ordinances so as to affect the proposed site." See In Re: Seminole Electric Cooperative, Inc., Application for Power Plant Site Certification, Putnam County, DOAH Case No. 78-1388, 1979 Fla. ENV LEXIS 10 Siting Board, March 21, 1979, which is Seminole Exhibit 1. Sierra Club was a party to that 1979 site certification proceeding in which the site was determined to be consistent and in compliance with Putnam County's land use plans and zoning ordinances. See Findings of Fact 7, 8 and 9.

In 1978, Putnam County had adopted PUD zoning for the Seminole Electric plant site. Putnam County did not have an adopted comprehensive plan or future land use map (FLUM) when the site was first certified in 1979. See Finding of Fact 7.

Putnam County subsequently adopted a comprehensive plan and future land use map, which designated the larger parcel of the site where the existing units are located as "Industrial" and designated the parcel containing the pump house as part "Rural Residential" and part

"Agricultural II": The lands occupied by the pipeline easement were designated "Agricultural II". See Findings of Fact 18, 19 and 20.

On January 10, 2006, the Putnam County Board of County Commissioners adopted an ordinance that amended the PUD zoning for both parcels of the site to accommodate the construction of the proposed Unit 3. In making its decision to amend the PUD zoning, the County Commission determined the Unit 3 project and its proposed site are consistent with the County's Comprehensive Plan and met the requirements of the County's land development code. Sierra Club participated in the County's public hearing on January 10, 2006 and did not object to or appeal the County's decision to amend the PUD zoning for the proposed Unit 3. See Findings of Fact 22, 23, 24 and 25.

All of the Sierra Club's exceptions relate only to the portions of the Recommended Order that address the existing pump house and pipeline/duct bank easement. These are particularly benign features of the Unit 3 Project. The only changes will be upgraded pumps inside the pump house, and the additional installations, beneath the land surface of the existing easement, of pipes and conduit similar to that already located in that easement. Unrebutted testimony demonstrated that there would be no adverse impacts on adjacent land uses from these activities. (Zwolak, Tr. II, pp. 12-13) The record demonstrates that Putnam County explicitly considered these features of the Unit 3 Project to be consistent and in compliance with applicable land use plans and zoning laws when the County adopted its amended PUD ordinance for the Project site.

#### Standards Of Administrative Review

In reviewing a recommended order such as the one now before the Siting Board, the findings of fact entered by the administrative law judge may not be rejected or modified by a reviewing agency "unless the agency first determines from a review of the entire record, and

states with particularity in the order, that the findings of fact are not based on competent substantial evidence". Subsection 120.57(1)(b)(I), F.S.; Dunham v. Highlands County School Board, 652 So.2d 894 (Fla. 2d DCA 1995). An agency reviewing a recommended order from an administrative law judge may not reweigh the evidence, resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of the administrative law judge as the trier of fact. Belleau v. Dept. of Environmental Protection, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); Maynard v. Unemployment Appeals Commission, 609 So.2d 143, 145 (Fla. 4th DCA 1992). Furthermore, an agency reviewing a recommended order has no authority to make independent or supplemental findings of fact in its final order. North Port, Fla. v. Consolidated Minerals, Inc., 645 So.2d 485 (Fla. 2d DCA 1994).

The scope of agency review of a DOAH recommended order involves ascertaining whether the administrative law judge's findings of fact are supported by competent substantial evidence of record. North Port, 645 So.2d at 487. Competent substantial evidence is such evidence that it is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. Perdue v. T.J. Palm Associates, Ltd., 755 So. 2d 660 (Fla. 4<sup>th</sup> DCA 1999); De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

Interpretations of its own ordinances and regulations by an agency such as Putnam County are entitled to great deference and should not be overturned, unless "clearly erroneous." Falk v. Beard, 614 So.2d 1086, 1089 (Fla. 1993); State Contracting & Engineering Corp. v. Dept. of Transportation, 709 So.2d 607, 610 (Fla. 1st DCA 1998). An agency's interpretation of statutes, ordinances and rules within its regulatory jurisdiction does not have to be the only reasonable interpretation. It is enough if such agency interpretations are "permissible" ones. Falk

v. Beard, 614 So.2d 1086, 1089 (Fla. 1993); Suddath Van Lines, Inc. v. Dept. of Environmental Protection, 668 So.2d 209, 212 (Fla. 1st DCA 1996).

On administrative review, an agency is not bound by the labels affixed by an administrative law judge designating various portions of a recommended order as "findings of fact" or "conclusions of law." Battaglia Properties v. Land and Water Adjudicatory Commission, 629 So.2d 161, 168 (Fla. 5th DCA 1993). Thus, the labeling of a finding of fact as a conclusion of law in a recommended order will be treated either as harmless error or as a mixed finding of fact and conclusion of law.

#### Seminole Electric's Responses to Sierra Club's Exceptions

Addressing the substance of Sierra Club's four exceptions to the ALJ's Recommended Order on Land Use and Zoning, Seminole offers the following.<sup>1</sup>

##### Preliminary Considerations

As a preliminary matter, two issues should be addressed. The Siting Board's March 21, 1979 Order Relating to Land Use and Zoning is a significant legal precedent that bound and otherwise restricted the subsequent land use and zoning decisions of Putnam County as those decisions related to the certified site for the Seminole Electric power plant in Putnam County. The ALJ in this case found in the August 31, 2006, Recommended Order, that Putnam County "has assigned future land use categories to all of the properties occupied by SECI's facilities,

<sup>1</sup> Sierra Club did not number its individual exceptions but instead referenced individual numbered Findings of Fact or Conclusions of Law in its exceptions. In this response, Seminole will address the Sierra Club's exceptions in numerical order. The first response will be addressed to the exception to Finding of Fact 19; the second response addresses the Sierra Club's exception to Finding of Fact 32; Seminole's third response addresses Sierra Club's exception to Conclusion of Law 40 and 42, and; Seminole's fourth response addresses Sierra Club's exception to Conclusion of Law 43.

including the electrical generating Units 1 and 2, the pump house and the pipeline easement, that are consistent with the Siting Board's Order relating to land use and zoning and do not affect the use of those properties for such uses." The ALJ further found that "Putnam County has not taken any subsequent land use or zoning action which affect the continued use of the site for electrical generating facilities." See Conclusions of Law 37 and 38, (which constitute mixed Findings of Fact and Conclusions of Law.) The Sierra Club has not taken exception to those significant factual findings and legal conclusions concerning the effect of the March 21, 1979 Siting Board Order Relating to Land Use and Zoning. In its exceptions, Sierra Club does not acknowledge that prior 1979 Order of the Siting Board relating to the site for the existing and proposed units. The Sierra Club would apparently have the Siting Board ignore its own express directive to local officials to not affect the use of the site in the future in adopting land use plans or zoning. Based on this omission by Sierra Club, to take exception to these key factual findings regarding the effect of the Siting Board's 1979 Order and the County's land use and zoning decisions in accord with that Order, the Sierra Club's more limited exceptions would not change the outcome recommended by the ALJ.

Additionally, as the ALJ found in Finding of Fact 9, Sierra Club was a party to the original site certification proceeding and is bound by the Siting Board's determination of the consistency of the existing site with the County's land use plans and zoning ordinances. Further, in Finding of Fact 25, the ALJ found that Sierra Club also participated in the Putnam County Commission's public hearing on January 10, 2006 at which the existing PUD zoning for the site was amended to accommodate the placement of Unit 3 and its related facilities. At that hearing, the Putnam County Commission also determined that the Unit 3 project was consistent with the County's comprehensive plan and land development code. The ALJ found that the Sierra Club

did not object to the adoption of the amended PUD zoning ordinance and that no one appealed the County's amended PUD zoning ordinance. Therefore, the ALJ found in Finding of Fact 25, that "Sierra Club is now bound by the determinations of land use and zoning consistency in these prior proceedings, as well as in the original site certification proceeding." Sierra Club has not filed exceptions to Findings of Fact No. 9 and 25 that found Sierra Club is bound by these prior proceedings; Sierra Club has not attempted to explain why it should not be bound by the determinations from the prior proceedings in which it participated. State, Dept. of Revenue v. Bridger, 935 So.2d 536 (Fla., 3rd DCA 2006); Wendel v. Wendel, 852 So.2d 277 (Fla. 2<sup>nd</sup> DCA2003) ("Under the law of the case doctrine, questions of law that have actually been decided on appeal must govern the case in the same court and in the trial court through all subsequent stages of the proceedings); Advisory Opinion to Attorney General re Referenda Required For Adoption and Amendment of Local Government Comprehensive Land Use --- So.2d ----, 2006 WL 1699568 (Fla. 2006) ("Res judicata bars the litigation of issues that were raised or could have been raised in a prior proceeding between the same parties.") Sierra Club thus has no basis to take exception to issues that have been resolved in prior proceedings in which it participated. Again, the Sierra Club has filed exceptions to a small handful of limited issues, but has not taken issues with critical factual findings and conclusions that are outcome determinative in this matter related to its prior conduct.

Sierra Club provided no evidence in support of its allegations during the land use and zoning hearing. Seminole provided expert testimony, in addition to a number of exhibits, to support its position. Sierra Club made no effort to rebut the testimony of Seminole's experts and cannot do so now by questioning the propriety of the ALJ's findings of fact. So long as the



ALJ's Findings of Fact are supported by competent substantial evidence, and Sierra Club having provided no evidence to the contrary, the Siting Board must reject Sierra Club's exceptions.

Response to Exception No. 1

In its first exception, related to Finding of Fact 19, Sierra Club takes exception to the portion of the ALJ's finding that the "existing pump house and underground water pipes and electrical duct bank are allowed uses in both the Agricultural II and in the Rural Residential future land use districts as a Type 2 community facility." Sierra Club cites to provisions of the County's comprehensive plan in support of this contention, as well as arguing for supplemental evidentiary findings on the incompatibility of such facilities to support this exception. Sierra Club provided no evidence to the contrary at the hearing.

First, these future land use categories for the parcel containing the pump house and for the pipeline and duct bank easement must be considered in light of the March 21, 1979 Siting Board Order Relating to Land Use and Zoning for the Seminole Electric site, which included this pump house parcel and the pipeline easement. To now find, as the Sierra Club's exception would require, that the existing pump house and water pipelines are not allowed uses in those future land use districts, would be inconsistent with the Siting Board's directive that the Seminole site not be affected by a change in land use plans or zoning ordinances subsequent to that 1979 Order. Sierra Club's interpretation would mean the existing pump house and pipelines are not consistent and in compliance with Putnam County's land use plans and zoning regulations. To find that the pump house and pipeline and duct bank are now not consistent with the County's land use plans would also mean that Putnam County has acted contrary to the Siting Board's 1979 order by affecting the use of these lands in an adverse way.

The ALJ correctly concluded that "Putnam County has assigned future land use categories to all of the properties occupied by SECI's facilities, including the electrical generating Units 1 and 2, the pump house and the pipeline easement, that are consistent with the Siting Board's Order Relating to Land Use and Zoning and do not affect the use of those properties for such uses." Sierra Club has taken no exception to these findings as to the County's actions which were taken in accordance with the Siting Board's 1979 directive. In the face of these findings to which it did not take exception, Sierra Club's exception to Finding of Fact 19 is untenable.

Further, Sierra Club's exception to Finding of Fact 19 involves re-argument of the evidence presented to the ALJ, and is an improper attempt to have the Siting Board make supplemental findings of fact. The County's comprehensive plan defines a Type 2 Community Facility as "light infrastructure facilities, including but not limited to, water wells, water tanks, sewage pump stations, electrical substations, and water and wastewater treatment plants with a capacity of less than 500,000 gallons per day." Type 2 Community Facilities are allowed in all eleven of Putnam County's Future Land Use categories. See Finding of Fact 30. The expert planning witness testified without any rebuttal testimony, that the pump house and water pipeline met this County definition for a Type 2 Community Facility. (Zwolak, Tr. II, p. 28) Thus, there is competent substantial evidence to support this Finding of Fact.

Contrary to the Sierra Club's argument on incompatibility, the ALJ found in Finding of Fact 17 (to which Sierra Club took no exception) that the addition of the proposed Unit 3, which includes the existing pump house and new water pipeline, "would be compatible with the existing land uses at and near the Site" and that the "new Unit 3 will be able to co-exist with existing land uses in that the new Unit 3 is not expected to have a significant adverse impact to

nearby residential development.” [Emphasis added] This finding was based on the expert planning testimony of Seminole Electric’s witness Richard Zwolak. (Zwolak, Tr. II, p. 12-13) Thus, the requirements of the cited comprehensive plan policy A.1.9.3.A.4.e are fulfilled, that Type 2 Community Facilities such as the pump house and pipeline be compatible with the overall character of the existing and future development of the area. Sierra Club provided no evidence to the contrary and cannot do so now through the filing of exceptions.

Sierra Club would also have the Siting Board engage in supplemental fact finding related to land use compatibility and interpretations of the County’s comprehensive plan in granting this exception. Sierra Club seeks to have the Siting Board make a finding of fact that those facilities are not compatible with surrounding land uses, when the ALJ’s Finding of Fact 17 finds that they are and will be compatible. The ALJ has made those factual findings contrary to Sierra Club’s assertions. The Siting Board may not engage in supplemental fact finding on this issue. North Port, Fla. v. Consolidated Minerals, 645 So.2d 485 (Fla. 2d DCA 1994

Sierra Club also cites to Putnam County Comprehensive Plan Policy A.1.9.3.A.10.c for the proposition that “a Type 2 community facility must ‘be directly related to Agricultural uses.’” However, a reading of that cited policy, found in Seminole Exhibit 10A at page AA-29, reveals that Sierra Club has misquoted the policy in a manner to incorrectly represent that Type 2 Community Facilities are not allowed in areas designated Agricultural II if those facilities are not “directly related to agricultural uses.” First, the comprehensive plan policy cited by Sierra Club relates to Industrial Uses and not to Type 2 Community Facilities. Second, Policy A.1.9.3.A.10.c, which Sierra Club cites to, instead provides that “Industrial Uses that are directly related to Agricultural uses shall be located on sites within the area that they are designed to serve and are accessible by one or more transportation facilities. . . .” That same cited policy

goes on to provide that "Other Industrial uses larger than 10 acres . . . may be permitted [in Agricultural II areas] through a PUD. . . ." Thus, there is simply no prohibition on either Type 2 Community Facilities or Industrial Uses including electrical power plants in Agricultural II areas when properly sited and zoned in accordance with the County's comprehensive plan and other regulations.

The correct comprehensive policy for Type 2 Community Facilities located in Agricultural II areas is found in Putnam County Comprehensive Plan Policy A.1.9.3.A.10.d , which immediately follows the policy to which Sierra Club cites. Policy A.1.9.3.A.10.d provides that

d. Community Facilities and Services Types 1, 2, and 3 are permitted subject to compliance with standards provided in the land development code. Community Facilities and Services shall be located on sites that are accessible to their intended service area and do not require significant non-residential vehicular traffic to pass through established neighborhoods. The location, scale and intensity of Community Facilities and Services Types 1, 2 and 3 shall be compatible with the overall character of the existing and future development of the area. Community Facilities and Services acreage in each distinct Agriculture II area shall not exceed 5 percent of its total land area without a comprehensive plan amendment to designate the area as Public Facilities future land use.

See Seminole Ex. 10A at page AA-29. There is simply no restriction or limitation in the relevant Putnam County comprehensive plan policy that requires that Type 2 community facilities in Agricultural II areas "must be directly related to Agricultural uses" as Sierra Club would now have the Siting Board find.

Sierra Club offers no citation to the Recommended Order or the record evidence to support its claim that "Industrial activities by their nature and classification are incompatible with residential uses. . . ." In fact, the Recommended Order in Finding of Fact 17 finds that the proposed Seminole Unit 3 is compatible with nearby residential development. That finding was

based on record evidence and the expert planning testimony of Mr. Zwolak. (Zwolak, Tr. II, pp. 12-13) There is no basis in the record evidence or the law to accept the Sierra Club's assertion that the proposed power plant at this location is incompatible with nearby residential development. Nor is there any basis for concluding that the pump house or pipeline/duct bank easement would be incompatible with nearby development. The record demonstrates that there will be no visible changes to the pump house or the easement. The Sierra Club has not linked any of its contentions to an ascertainable rationale related to land use policy.

Sierra Club in its exception fails to cite to any record evidence to support its proposition that the pumps in the existing pump house are not Type 2 Community Facilities and instead constitute heavy industrial activities. One need only consider that when it adopted its comprehensive plan, Putnam County did not designate the pump house and water pipeline easement as Industrial as would have been the case if Putnam County believed the pump house, and the pipelines are Industrial facilities. Putnam County did designate the portion of the site containing the two existing electrical generating units as Industrial when it adopted its comprehensive plan.

The Sierra Club's proffered factual finding that "pumps are not Type 2 Community Facilities as defined by the comprehensive plan's glossary because they are not 'light infrastructure facilities'" is expressly contrary to the ALJ's Finding of Fact 30 and contrary to the un rebutted evidence and expert testimony in the case as noted by the ALJ in Finding of Fact 30. Thus, even if it were legally permissible to do so, there is no evidentiary basis to make the Sierra Club's proffered supplemental factual finding that the pump is "part and parcel of the heavy industrial activities associated with electrical production" in a way that would make them ineligible to be a Type 2 Community Facility. North Port, 645 So.2d at 485.

Sierra Club's reference to the "definition of electrical power plant" in section 403.503(12), Florida Statutes (F.S.) is not explicated or understandable in the context of this exception. To the extent necessary, this issue is addressed in the response to Sierra Club's second exception. For the foregoing reasons, Sierra Club's first exception should be denied.

Response to Exception No. 2

In its second exception, Sierra Club challenges Finding of Fact 32, in which the ALJ found that Sierra Club offered no contradictory evidence of the County's interpretation of its plan, offered no evidence as to how the community could be adversely affected by the continued use of the pump house, and offered no evidence that these facilities constituted industrial uses under the Putnam County land use plans and zoning regulations.

Sierra Club erroneously argues that this finding "misplaces the burden of proof and creates evidentiary requirements that do not exist." However, Sierra Club's argument on this issue is contrary to the holding in Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1<sup>st</sup> DCA 1981). Under the burden shifting nature of an administrative hearing, J.W.C. stands for the proposition that Seminole Electric, as the applicant, had the initial burden to demonstrate that in this circumstance that the site for its proposed Unit 3 project was consistent and in compliance with the adopted land use plans and zoning ordinances of Putnam County, in accordance with section 403.508(2), F.S. (2005). Seminole made that showing through evidence including the expert testimony of Mr. Richard Zwolak, a land use planner, to support that conclusion. Under J.W.C., the burden then shifted to the Sierra Club, as the opponent on land use issues, to offer "contrary evidence of equivalent quality" to contradict Putnam County's interpretation of its comprehensive plan, and to counter Seminole Electric's competent substantial evidence that the community would not be adversely affected by the continued use of

the pump house and that the pump house and pipeline are not an industrial use under the County's comprehensive plan. The ALJ did not misplace the burden of proof and did not create new evidentiary requirements for Sierra Club.

In this exception, Sierra Club also asserts that "Seminole's contention that the pump house is not an industrial facility contradicts the statutory definition of electrical power plant, which makes no such distinction and instead, specifically includes 'associated facilities which directly support the operation of the plant,'" citing to section 403.503(12), F.S. Sierra Club offers no additional analysis beyond this simple assertion to explain its notion that the PPSA's definition of "electrical power plant" compels the conclusion that a pump house must be regulated as an industrial facility under local government land use plans and zoning regulations. Nothing in the Power Plant Siting Act or the cited PPSA definition of "electrical power plant" stands for the proposition that all parts of a power plant must be considered to be "industrial" and therefore designated industrial or zoned industrial in a county's future land use plans or zoning laws, respectively. Nothing in the Power Plant Siting Act says that Seminole had to demonstrate that all of the associated facilities of the Unit 3 project, including the pump house and pipeline, were placed in an industrial future land use designation or an industrial zoning category.

Further, under Sierra Club's logic that all components of a power plant must be designated or zoned "industrial" if they are related to the operation of the plant, is impractical. That analysis would suggest that every potable water line, sewer line, roadway, and transmission line that supports a power plant as an associated facility would have to be designated or zoned "industrial" on that basis. This would be an outcome that lacks a rationale and would usurp the authority of local governments on land use and zoning issues. Further, there is no precedent in 30 years of cases under the PPSA in Florida to support such a conclusion.

Response to Exception No. 3

In its third exception, Sierra Club challenges the ALJ's Conclusions of Law 40 and 42 that Putnam County's definition of "development" in its adopted land development code exempts from that definition "work by any utility or other persons engaged in the distribution or transmission of gas or water for the purpose of inspecting, repairing, renewing or construction on established rights-of-way, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks or the like." This exception involves the issue of whether the installation of a new pipeline within the existing pipeline easement established by Seminole Electric in 1979 is exempt from the definition of "development" which is subject to the County's comprehensive plan. The record evidence at this hearing clearly demonstrates that the installation of a pipeline and a duct bank in that long-established pipeline easement is exempt from the County's definition of "development."<sup>2</sup>

This exception by Sierra Club also reflects a fundamental misunderstanding of the Power Plant Siting Act and the manner in which local comprehensive plans are considered. Under the Power Plant Siting Act, a local comprehensive plan is addressed at two stages of the proceeding. First, the future land use element and future land use map are considered at the land use hearing to determine if the proposed site for an electrical power plant is consistent and in compliance with the land use plans and zoning ordinances of the jurisdictional local government. See Section 403.508(2), F.S. (2005). At the land use hearing stage of the proceeding, only a limited portion of the County's comprehensive plan is at issue, specifically the future land use element

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<sup>2</sup> Sierra Club cites a similar exemption for agricultural activities from the State's definition of "development" found in Section 380.04(3)(e), F.S. Sierra then cites to agricultural-related policies in the County's comprehensive plan. However, the Florida Department of Community Affairs has concluded that "agricultural activities are exempt from the definition of "development" which applies to comprehensive plan [sic]. Sections 163.3164(6) and 380.04(4), Florida Statutes." McSherry v. Alachua County and Department of Community Affairs, 27 FALR 2686, (Fla. Dept. of Community Affairs 2004) (See page 27 FALR 2774, at paragraph 237.)



and future land use map as they relate to a determination of whether the proposed site is an allowed use under the County's comprehensive plan and zoning regulations. See Conclusion of Law 35, in which the ALJ concluded that the "applicable land use plan" is the Future Land Use Element of the Putnam County Comprehensive Plan and the accompanying FLUM" or Future Land Use Map.

The balance of the County's comprehensive plan beyond the land use element and the balance of the land development code beyond zoning regulations are addressed at the later site certification hearing stage of the proceeding. Under Section 403.507(2)(a)4., F.S. (2005), the jurisdictional local government, in this case Putnam County, may address issues related to the "adopted local comprehensive plans and land development regulations" in its agency report submitted under that provision of the PPSA. Thus, any other policies that may be contained in the Putnam County comprehensive plan beyond consistency and compliance with the future land use map and zoning regulations of the County can be addressed at this second phase of the site certification hearing. Any policies of the County's comprehensive plan that were not at issue in the land use hearing can be considered at this later stage of the proceeding.

In this third exception, Sierra Club also excepts to Conclusion of Law 42 in which the ALJ concludes, if the new water pipeline within the existing easement is not exempt from the County's definition of "development", then the pipeline and duct bank would be Type 2 Community Facilities under the County's comprehensive plan. Sierra Club then recites to its earlier exception to the Finding of Fact 19, as to whether the pipeline constitutes a Type 2 Community Facility. In a similar fashion, Seminole Electric adopts its response to that first exception by Sierra Club to Finding of Fact 19. For the foregoing reasons, Sierra Club's third exception should be denied.

Response to Exception No. 4

In its fourth exception, Sierra Club takes exceptions to the ultimate Conclusion of Law in paragraph 43 that "competent, substantial evidence received at the hearing demonstrates that the site and the Unit 3 project, including the pump house and additional underground water pipe and electrical duct banks, are consistent and in compliance with Putnam County's land use plans."

Sierra Club makes no effort to show that this conclusion is not supported by competent substantial evidence. Instead, in this exception, Sierra Club seeks to induce the Siting Board to engage in supplemental fact finding concerning whether the pumping of water to and from the River are "industrial activities conducted on land designated for residential or agricultural uses." To the contrary, the expert testimony established that the pump house and pipeline are not industrial activities under the County's comprehensive plan. (Zwolak, Tr. II, pp. 27-28, 41-42) Significantly, Putnam County specifically acknowledged and approved these activities within these land use categories and zoning districts when the County amended the PUD zoning for the Project site in January, 2006. In this proceeding, the County's unchallenged interpretation of its Comprehensive Plan is entitled to deference unless shown to be "clearly erroneous." Falk v. Beard, 614 So.2d 1086, 1089 (Fla. 1993); Suddath Van Lines, Inc. v. Dept. of Environmental Protection, 668 So.2d 209 (Fla. 1st DCA 1996).

The record is devoid of any evidence to support the Sierra Club's proposition that the activity of pumping water is "industrial" under the County's comprehensive plan, while the record evidence supports the ALJ's conclusions. Sierra Club offered no evidence to support this position and is unable to cite to any record evidence to support this proposition or to show that the County's interpretation of its own adopted comprehensive plan is "clearly erroneous." Falk v. Beard, 614 So.2d at 1086.

Similarly in this exception, Sierra Club seeks to have the Siting Board render a factual finding that the pump house is "not compatible with surrounding residential uses." But the Sierra Club produced no evidence whatsoever to support such a finding. Seminole, on the other hand, produced substantial competent evidence supporting the ALJ's finding of fact that the pump house was compatible with surrounding residential uses. See Finding of Fact 17 and Seminole Electric's response to Sierra Club's first exception above. Based on the foregoing, Sierra Club's fourth exception should be denied.

For the foregoing reasons, each of the four exceptions filed by Sierra Club should be rejected and the Siting Board should enter a final order adopting the ALJ's Recommended Order.

Respectfully submitted this 12<sup>th</sup> day of October, 2006.

HOPPING GREEN & SAMS, P.A.

By: 

James S. Alves

Fla. Bar No. 0443750

Douglas S. Roberts

Fla. Bar No. 0559466

P.O. Box 6526

Tallahassee, FL 32314

(850) 222-7500

Attorneys for SEMINOLE ELECTRIC COOPERATIVE,  
INC.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the foregoing have been furnished to the following by U.S. Mail on this 12<sup>th</sup> day of October, 2006:

Scott A. Goorland, Esq.  
Senior Assistant General Counsel  
Department of Environmental Protection  
3900 Commonwealth Blvd., MS 35  
Tallahassee, FL 32399-3000

James V. Antista, Esq.  
Fish and Wildlife Conservation Commission  
620 South Meridian Street  
Tallahassee, FL 32399-1600

Kelly A. Martinson, Esq.  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100

Sheauching Yu, Esq.  
Department of Transportation  
Haydon Burns Building  
605 Suwannee Street, MS 58  
Tallahassee, FL 32399-0450

Martha Carter Brown, Esq.  
~~Florida Public Service Commission~~  
Gerald Gunter Building  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Gordon B. Johnston, Esq.  
County Attorney  
601 Southeast 25<sup>th</sup> Avenue  
Ocala, FL 34471

Mark Scruby, Esq.  
Clay County Attorney  
Post Office Box 1366  
Green Cove Springs, FL 32043

  
Attorney

Vance W. Kidder, Esq.  
St. Johns River Water Management District  
4049 Reid Street  
Palatka, FL 32177

Charles Justice  
North Central Florida Regional Planning  
Council  
2009 Northwest 67<sup>th</sup> Place, Suite A  
Gainesville, FL 32653

Hamilton S. Oven, P.E.  
Office of Siting Coordination  
Department of Environmental Protection  
2600 Blair Stone Road  
Tallahassee, FL 32399

Russell D. Castleberry, Esq.  
Post Office Box 758  
Palatka, FL 32178

Patrick Gilligan  
Attorney for City of Ocala  
1531 SE 36 Avenue  
Ocala, FL 34471

Wayne Smith  
Union County Board of County Comm.  
15 Northeast First Street  
Lake Butler, FL 32054

Ronald Williams  
Columbia County Board of County Comm.  
Post Office Drawer 1529  
Lake City, FL 32058

Timothy Keyser, Esq.  
Sierra Club  
Post Office Box 62  
Interlachen, FL 32148-0092

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SEMINOLE ELECTRIC COOPERATIVE, INC.,

Petitioner,

v.

OGC No. 06-1976  
DEP Permit No. 1070025-005-AC

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,

Respondent.

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

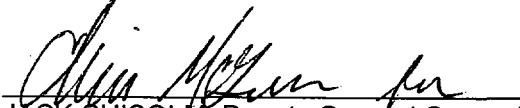
This cause has come before the Florida Department of Environmental Protection (FDEP) upon receipt of a request made by Petitioner, Seminole Electric Cooperative, Inc., to grant an extension of time to file a petition for administrative hearing challenging the Intent to Issue DEP Permit No. 1070025-005-AC. If granted this extension will allow time to discuss with FDEP several specific permit conditions for its facility in Putnam County, Florida. 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 **October 23, 2006**, to file a petition in this matter. Filing shall be complete upon receipt by the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

DONE AND ORDERED on this 10<sup>th</sup> day of September, 2006, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

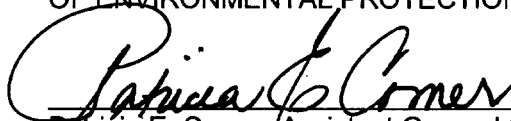
  
\_\_\_\_\_  
JACK CHISOLM, Deputy General Counsel  
3900 Commonwealth Boulevard - MS 35  
Tallahassee, Florida 32399-3000  
850-245-2242 facsimile 850-245-2302

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via  
U. S. Mail this 18<sup>th</sup> day of September, 2006, to:

Robert A. Manning  
HOPPING GREEN & SAMS, P.A.  
Post Office Box 6526  
Tallahassee, FL 32314

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



Patricia E. Comer, Assistant General Counsel  
FL Bar 0224146

Department of Environmental Protection  
3900 Commonwealth Boulevard - MS 35  
Tallahassee, Florida 32399-3000  
Telephone: (850) 245-2288  
Facsimile: (850) 245-2302

with courtesy copies via electronic mail to:

Jeff Koerner, FDEP – BAR, Air Permitting North

## Gibson, Victoria

---

**From:** Miskelley, Valerie  
**Sent:** Monday, September 18, 2006 10:23 AM  
**To:** Koerner, Jeff; Gibson, Victoria  
**Subject:** Seminole 1070025-005-AC

**Attachments:** Ord to Grant on Seminole Electric 06-1976.PDF

Here is the Order Granting on Seminole Electric (OGC Case No. 06-1976).



Ord to Grant on  
Seminole Elect...

Thanks,  
Valerie Miskelley  
Administrative Secretary  
FDEP Office of General Counsel  
3900 Commonwealth Blvd. MS 35  
Tallahassee, FL 32399-3000  
(850) 245-2260 SC 205-2260  
Fax: (850) 245-2302  
Valerie.Miskelley@dep.state.fl.us

## Gibson, Victoria

---

**From:** Koerner, Jeff  
**Sent:** Thursday, September 14, 2006 12:24 PM  
**To:** Gibson, Victoria  
**Subject:** FW: Seminole Unit 3 - Extension Request

Sorry ... forgot to copy you on this.

Jeff

---

**From:** Koerner, Jeff  
**Sent:** Thursday, September 14, 2006 11:12 AM  
**To:** Miskelley, Valerie  
**Cc:** Halpin, Mike  
**Subject:** FW: Seminole Unit 3 - Extension Request

Valerie,

I spoke with Trina yesterday and we have no problem with a 30-day extension.

Thanks!

Jeff Koerner, BAR - Air Permitting North  
Florida Department of Environmental Protection  
850/921-9536

---

**From:** Koerner, Jeff  
**Sent:** Tuesday, September 12, 2006 1:49 PM  
**To:** Miskelley, Valerie  
**Cc:** Halpin, Mike  
**Subject:** Seminole Unit 3 - Extension Request

Valerie,

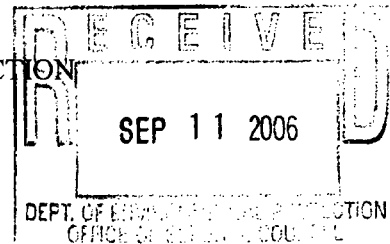
I would like to discuss this with Trina Vielhauer before we agree to the extension. She's out today, but will be back tomorrow. We'll give you call then.

Thanks!

Jeff Koerner, BAR - Air Permitting North  
Florida Department of Environmental Protection  
850/921-9536



THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



In the Matter of an  
Application for Permit by:

FDEP Draft Permit No.: PSD-FL-375  
Project No.: 1070025-005-AC  
Siting No. PA78-10A2

Seminole Electric Cooperative, Inc.  
Seminole Power Plant  
Putnam County, Florida

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**REQUEST FOR ENLARGEMENT OF TIME**

By and through undersigned counsel, Seminole Electric Cooperative, Inc., (Seminole Electric) hereby requests, pursuant to Florida Administrative Code Rule 62-110.106(4), an enlargement of time, to and including October 23, 2006, in which to file a Petition for Administrative Proceedings in the above-styled matter. As good cause for granting this request, Seminole Electric states the following:

1. On or about August 28, 2006, Seminole Electric Cooperative, Inc. (Seminole) received from the Department of Environmental Protection ("Department") an "Intent to Issue Air Permit" and accompanying "Draft Permit," (Draft Permit No. 1070025-005-AC), to add a new Unit 3 at the Seminole Generating Station, located in Putnam County, Florida.
2. Based on Seminole's initial review, the Draft Permit and associated documents contain several provisions that warrant clarification or corrections. Seminole will be filing comments shortly and meeting with the Department to work towards a resolution.

3. This request is filed simply as a protective measure to avoid waiver of Seminole's right to challenge certain conditions contained in the Draft Air Permit. Grant of this request will not prejudice either party, but will further their mutual interest and hopefully avoid the need to file a Petition and proceed to a formal administrative hearing. Seminole will promptly withdraw this request after its comments are resolved, and the 30-day public comment period is passed.

WHEREFORE, Seminole Electric Cooperative, Inc. respectfully requests that the time for filing of a Petition for Administrative Proceedings in regard to the Department's Intent to Issue Air Permit No.1070025-005-AC be formally extended to and including October 23, 2006.

RESPECTFULLY SUBMITTED this 11 day of September, 2006.

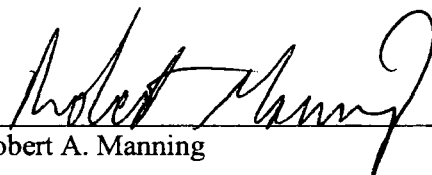
By: 

Robert A. Manning  
Florida Bar ID No. 0035173  
Hopping Green & Sams, P.A.  
123 South Calhoun Street  
Post Office Box 6526  
Tallahassee, Florida 32314  
(850) 222-7500  
(850) 224-8551 Facsimile

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 Leigh Crandell, Agency Clerk, and Doug Beason, General Counsel, Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Room 659, Tallahassee, Florida 32399-3000; and Mike Halpin, Florida Department of Environmental Protection, Program Administrator, 2600 Blair Stone Road, Room 625, Tallahassee, Florida 32399, this 11 day of September, 2006.

  
Robert A. Manning

## Gibson, Victoria

---

**From:** Gibson, Victoria  
**Sent:** Tuesday, September 12, 2006 9:31 AM  
**To:** Halpin, Mike; Koerner, Jeff  
**Subject:** FW: Request for Extension of Time rec'd. - 1070025-005-AC - Seminole Electric Cooperative, Inc.

**Attachments:** Di4700609110343.PDF

FYI,

Let me know if Pat Comer will be granting or denying this request for you.

Thanks.

Vickie

---

**From:** Crandall, Lea  
**Sent:** Tuesday, September 12, 2006 8:32 AM  
**To:** Gibson, Victoria  
**Subject:** FW: Request for Extension of Time rec'd. - 1070025-005-AC - Seminole Electric Cooperative, Inc.

Good Morning,

Attached is a copy of the Request.

Thanks,  
Lea



Di4700609110343.  
PDF (486 KB)

### Lea Crandall

Agency Clerk  
Department of Environmental Protection  
3900 Commonwealth Boulevard, MS 35  
Tallahassee, FL 32399-3000  
Phone: (850) 245-2212 SC: 205-2212  
Fax: (850) 245-2303

-----Original Message-----

**From:** Crandall, Lea  
**Sent:** Monday, September 11, 2006 4:28 PM  
**To:** Chisolm, Jack; Brown, Lisa L.; Gibson, Victoria; Halpin, Mike  
**Subject:** Request for Extension of Time rec'd. - 1070025-005-AC - Seminole Electric Cooperative, Inc.

FYI, a Request for Extension of Time was rec'd. today re: 1070025-005-AC - Seminole Electric Cooperative, Inc.

Thanks,  
Lea

**Lea Crandall**  
Agency Clerk

Department of Environmental Protection  
3900 Commonwealth Boulevard, MS 35  
Tallahassee, FL 32399-3000  
Phone: (850) 245-2212 SC: 205-2212  
Fax: (850) 245-2303

## **Gibson, Victoria**

---

**From:** Gibson, Victoria  
**Sent:** Monday, September 11, 2006 4:32 PM  
**To:** Koerner, Jeff; Vielhauer, Trina  
**Subject:** FW: Request for Extension of Time rec'd. - 1070025-005-AC - Seminole Electric Cooperative, Inc.

FYI,

Vickie

---

**From:** Crandall, Lea  
**Sent:** Monday, September 11, 2006 4:28 PM  
**To:** Chisolm, Jack; Brown, Lisa L.; Gibson, Victoria; Halpin, Mike  
**Subject:** Request for Extension of Time rec'd. - 1070025-005-AC - Seminole Electric Cooperative, Inc.

FYI, a Request for Extension of Time was rec'd. today re: 1070025-005-AC - Seminole Electric Cooperative, Inc.

Thanks,  
Lea

### **Lea Crandall**

Agency Clerk  
Department of Environmental Protection  
3900 Commonwealth Boulevard, MS 35  
Tallahassee, FL 32399-3000  
Phone: (850) 245-2212 SC: 205-2212  
Fax: (850) 245-2303

10/31/2006 12:36:40

## Chronology of Activities

OGC Number  06  1976  54  AC District  NORTHEAST County  PUTNAM  
Style of Case  SEMINOLE ELECTRIC COOPERATIVE, INC. VS. DEP  
Program Area  AIR CONSTRUCT Mode  ADMINISTRATIVE  
Lead Attorney  PATRICIA  E  COMER Status  CLOSED  
Forum Name  Forum Case Number   
Permit Appl  1070025-005-AC Final Order Number

Date	Code	Activity Description
09/11/2006	AA	ASSIGNED TO LEAD ATTORNEY JACK J CHISOLM
09/11/2006	ACO	ADMIN. CASE OPENED IN OGC
09/11/2006	REX1	RECEIVED FIRST REQUEST FOR EXTENSION OF TIME
09/12/2006	AR	RE-ASSIGNED TO LEAD ATTORNEY PATRICIA E COMER
09/18/2006		ORD GRANTING REQ FOR EXT OF TIME - UNTIL 10/23/06
10/30/2006		NO ADDITIONAL REQ FOR EXT OF TIME OR PET REC'D
10/30/2006	CC	CASE CLOSED IN OGC