Gibson, Victoria

From: Crandall, Lea
Sent: Monday, June 29, 2009 8:13 AM
To: Chisolm, Jack; Brown, Lisa L.; Gibson, Victoria; Koerner, Jeff
Subject: Petition for Hearing - Southern Alliance for Clean Energy vs. DEP & Seminole Electric - OGC 09-3089 (1070025-011-AC)
Attachments: Southern Alliance for Clean Energy vs. DEP & Seminole Electric - OGC 09-3089.pdf

Categories: Important

Attached is a Petition for Hearing filed June 26 re: Southern Alliance for Clean Energy vs. DEP & Seminole Electric - OGC 09-3089 (1070025-011-AC).

Thanks,
Lea

Lea Crandall
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STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SOUTHERN ALLIANCE FOR CLEAN ENERGY,

Petitioner,

v.

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

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

Respondents.
_____/

PETITION FOR ADMINISTRATIVE HEARING BY SOUTHERN ALLIANCE FOR CLEAN ENERGY

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

PARTIES

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

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

1842, Knoxville, TN 37901, telephone number (865) 637-6555. SACE is represented in this proceeding by Gary A. Davis, qualified representative, with the following contact information: 61 North Andrews Avenue, P.O. Box 649, Hot Springs, NC 28743, telephone number (828) 622-3673, (828) 622-7610 (fax).

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

SUBSTANTIAL INTERESTS OF PETITIONER

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

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

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

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

RECEIPT OF NOTICE

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

STATEMENT OF DISPUTED ISSUES OF MATERIAL FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31. Whether reasonable assurances have been provided that Seminole Electric accurately calculated and modeled all emissions from existing units 1 and 2.

32. Whether reasonable assurances have been provided that the Class I modeling impact analysis was prepared correctly.

33. Whether reasonable assurances have been provided that the Class I modeling impact analyses includes all potential emission sources.

34. Whether reasonable assurances have been provided that the Class I modeling impact analyses properly address all potential air quality related values, including but not limited to visibility, nitrogen and sulfur deposition.

35. Whether reasonable assurances have been provided that project and regional ozone impacts were properly assessed.

36. Whether reasonable assurances have been provided that regional PM2.5 impacts from the existing and proposed project have been assessed.

37. Whether reasonable assurances have been provided that the analysis supporting the draft permit included a correct assessment of how emissions from the new unit impair soils and vegetation.

38. Whether consideration of Integrated Gasification Combined Cycle technology as Best Available Control Technology must be included.

39. Whether reasonable assurances have been provided that the draft permit limits for volatile organic compounds, fluorides, coal soot (PM, PM10), sulfuric acid mist and ammonia are sufficiently enforceable limits.

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

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

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

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

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

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

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

ULTIMATE FACTS DEMONSTRATING THAT PROPOSED AGENCY ACTION SHOULD BE REVERSED

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

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

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

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

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

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

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

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

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

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

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

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

59. The emissions limits in the draft permit do not reflect Best Available Control Technology for carbon monoxide, volatile organic compounds, fluorides, coal soot (PM, PM2.5, PM10), sulfuric acid mist, opacity, and carbon dioxide. Fla. Admin. Code R. 62-212.400, 62-212.300; *see also* 40 C.F.R. § 52.21.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86. Reasonable assurances have not been provided that the draft permit would not allow the new unit to emit air pollution that would be harmful to public health and the environment and that exceeds levels allowed under the Clean Air Act and Florida law. 42 U.S.C. § 7479; Fla. Admin. Code R. 62-212.400; 42 U.S.C. § 7412; 40 C.F.R. Part 63; Fla. Admin. Code R. 62-204.800 (Florida rule that incorporates by reference 40 C.F.R. part 63); *see also* 40 C.F.R. Part 63.

APPLICABLE STATUTES AND RULES

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

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

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

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

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

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

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

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

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

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

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

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

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

100. The regulation defining Best Available Control Technology as:

An emission limitation, including a visible emissions standard, based on the maximum degree of reduction of each pollutant emitted which the Department, on a case by case basis, determines is achievable through application of production processes and available methods, systems and techniques (including fuel cleaning or treatment or innovative fuel combustion techniques) for control of each such pollutant, taking into account:

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

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

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

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

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

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

RELIEF SOUGHT

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

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

Respectfully submitted this 26th day of June 2009.

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

CERTIFICATE OF SERVICE

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

Mr. Timothy Woodbury
Registered Agent
Seminole Electric Cooperative, Inc.
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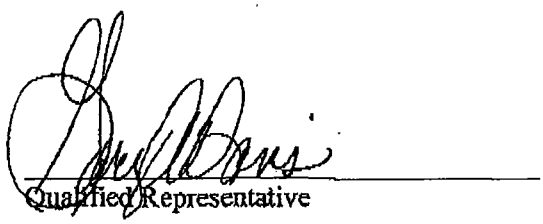

Qualified Representative