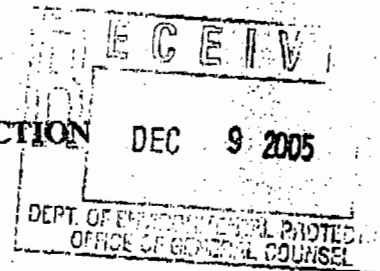


BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION



CSX TRANSPORTATION, INC.,

Petitioner,

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION
and CEDAR BAY GENERATING
COMPANY, L.P.,

DEP File No.: 0310337-009-AC,
0310337-010-AV, PA 88-24,
PSD-FL-137 and 0310377-007AV

Respondents.

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, CSX Transportation, Inc. ("CSXT"), pursuant to Sections 120.569 and 120.57, Florida Statutes, hereby petitions for a formal administrative hearing on the proposal by the Florida Department of Environmental Protection ("FDEP") to issue permit revisions to Air Construction and Title V Operating permits and the PSD permit for the Cedar Bay generating facility located at 9640 Eastport Road, Jacksonville, Florida. As grounds therefor, CSXT states as follows:

1. The name and address of the affected agency is the State of Florida Department of Environmental Protection, 2600 Blairstone Road, Tallahassee, Florida 32399-2400. The agency's file or identification numbers are DEP File No. 0310337-009-AC, 0310337-010-AV, PA 88-24, PSD-FL-137 and 0310337-007-AV.
2. The name and address of Petitioner is CSX Transportation, Inc., 500 Water Street, Jacksonville, Florida 32202. For purposes of this proceeding, the telephone number of CSXT will be that of undersigned counsel. For purposes of this proceeding, the name, address, and telephone number of Petitioner's representative is undersigned counsel.

3. Cedar Bay Generating Company, L.P. ("Cedar Bay") operates the Cedar Bay Cogeneration Facility ("Facility") at 9640 Eastport Road, Jacksonville, Florida.

4. The facility consists of three circulating fluidized bed ("CFB") steam generators designated as boilers A, B and C, a coal handling area, a limestone handling area, and an ash handling area. The facility is classified as a major source of air pollution pursuant to applicable rules.

5. On August 2, 2005, FDEP received an application from Cedar Bay to authorize the co-firing of 5 percent tire derived fuel ("TDF") in boilers A, B, and C at the facility.

6. Petitioner, CSXT is a Florida corporation.

7. CSXT received notice of the FDEP's proposed action based on publication of the "Public Notice of Intent to Issue Revised Air Construction Permit/Title V Air Operation Permit" in the Florida Times Union on November 10, 2005. CSXT timely requested an extension of time to file this petition. CSXT's substantial interests will be affected by the proposed FDEP action because CSXT owns a number of parcels of real estate in close proximity to the Cedar Bay facility which may be adversely affected by the emissions from the facility including particulate matter and other pollutants that will be deposited on that property as a direct result of the proposed action. Additionally, the utilization of trucks to transport the tire material will result in emissions, including fugitive emissions, that will adversely affect the property owned by CSXT. These environmental injuries are protected against by the federal Clean Air Act, Chapter 403, Florida Statutes, and their implementing rules.

8. Disputed issues of materials fact include the following:

a. Whether FDEP properly determined that PSD review is not required for this modification;

b. Whether the applicant has provided assurances that no significant net increase in emissions for any and all regulated pollutants will occur as a result of the proposed modification;

c. Whether the FDEP correctly applied the WEPCO rule to this facility in determining representative actual annual emissions and whether the modifications are subject to PSD review;

d. Whether this facility is an electric utility steam generating unit that is entitled to utilize the rules governing such units in determining the applicability of PSD review and the appropriate permit conditions to be applied to this modification;

e. Whether the conditions proposed by FDEP, particularly the post modification monitoring, are sufficient to ensure compliance with applicable requirements;

f. Whether the FDEP and the applicant properly analyzed and evaluated all impacts to air quality and associated values that are expected as a result of the modifications.

g. Whether the applicant has provided reasonable assurance that the proposed modifications will comply with all applicable requirements.

9. A concise statement of the ultimate facts alleged, including the specific fact CSXT contends warrants reversal or modification of the agency's proposed action is as follows:

a. FDEP did not properly determine that PSD is not required for the modifications;

b. The applicant has not provided assurances that no significant increase in emissions for any and all regulated pollutants will occur as a result of the proposed modifications;

c. DEP has not correctly applied the WEPCO rule to this facility in determining representative actual annual emissions and whether the modifications are subject to PSD review;

d. This facility is not an electric utility steam generating unit that is entitled to the rules governing such units in determining the applicability of PSD review and the appropriate permit conditions to be applied to this modification;

e. The conditions proposed by FDEP, particularly the post modification monitoring, are not sufficient to ensure compliance with applicable requirements;

f. The FDEP and the applicant did not properly analyze and evaluate all impacts to air quality and associated values that are expected as a result of the modification.

g. The applicant has not provided reasonable assurance that the proposed modifications will meet all applicable requirements.

10. A statement of the rules or statutes CSXT contends require reversal of modification of the agency's proposed action is as follows:

a. 42 USC 7401, et. seq.;

b. Chapter 403, Florida Statutes;

c. Chapters 62-4, 62-204, 62-210, 62-212, 62-213, 62-214, 62-256, 62-257, 62-281, 62-296 and 62-297, Florida Administrative Code;

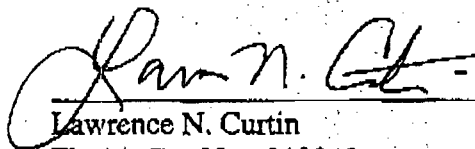
WHEREFORE, Petitioner, CSXT, respectfully requests

a. That this Petition be referred to the Division of Administrative Hearings to conduct a formal hearing pursuant to Sections 120.569 and 120.57, Florida Statutes;

- b. That the Administrative Law Judge, after the hearing, issue a Recommended Order reversing FDEP's Notice of Intent, denying the permit modifications and determining the modifications are subject to further permitting review;
- c. That FDEP thereafter issue a Final Order denying the application for permit modifications; and
- d. That such other relief as may be appropriate be granted to CSXT.

DATED this 9th day of December, 2005.

Respectfully submitted,



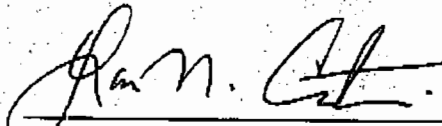
Lawrence N. Curtin
Florida Bar No.: 218049
HOLLAND & KNIGHT, LLP
Post Office Drawer 810
Tallahassee, FL 32302
Phone: (850) 224-7000
Fax: (850) 222-8185

Attorneys for CSX Transportation, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one copy of the foregoing has been hand delivered to the Agency Clerk, Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399, to the Office of the General Counsel of the Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399, and a copy has been sent by United States mail, postage

prepaid, to Mr. Martin Kraft, General Manager, Cedar Bay Generating Company, L.P., 9640
Eastport Road, Jacksonville, Florida 32218, this 9th day of December, 2005.



Lawrence N. Curtin

3441804_v1

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

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

FACSIMILE TRANSMITTAL

To: Vickie Gibson
Fax: 921-9533
From: Lea Crandall
Phone: 245-2212
Fax: 245-2301
Pages: 7 Pages Including Cover Date: December 12, 2005
RE: Cedar Bay Generating Company
Comments:

Original WILL follow VIA United States Postal Service
 Overnight Delivery
Original will NOT follow

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Gibson, Victoria

From: Crandall, Lea
Sent: Monday, December 12, 2005 9:08 AM
To: Chisolm, Jack; Light, Lisa; Gibson, Victoria; Halpin, Mike
Subject: FW: Petition for Hearing rec'd. - 0310337-007-AV & 0310337-009-AC - Cedar Bay Generating Company

This petition also included 0310337-010-AV which I didn't list on the previous e-mail.

Thanks,

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: Friday, December 09, 2005 4:31 PM
To: Chisolm, Jack; Light, Lisa; Gibson, Victoria; Halpin, Mike
Subject: Petition for Hearing rec'd. - 0310337-007-AV & 0310337-009-AC - Cedar Bay Generating Company

FYI, a Petition for Hearing was rec'd. today from CSX Transportation re: 0310337-007-AV & 0310337-009-AC - Cedar Bay Generating Company.

Thanks,

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: Thursday, December 08, 2005 4:52 PM
To: Halpin, Mike
Subject: Updated OGC List for this Week

Attachments: December OGC List.doc



December OGC
List.doc (57 KB)

Mike,

I closed the case in OGC on Cedar Bay 007 - AV and then deleted it from this current list.
Thank you very much for letting me know about this one.

009-AC and 010-AV both cases are still open in OGC.

Would you like to grant or deny on both of these open cases?

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

Gibson, Victoria

From: Gibson, Victoria
Sent: Thursday, December 08, 2005 4:57 PM
To: Light, Lisa
Subject: Case Closed Today

Hi,

I have closed the following case in LCT today:

Cedar Bay 0310337-007-AV OGC # 05-2691

This permit # had already gone final on 9/24/2004 and should not have been mentioned on their request.

Thank you.

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

Gibson, Victoria

From: Gibson, Victoria
Sent: Thursday, December 01, 2005 11:55 AM
To: Light, Lisa
Cc: Vielhauer, Trina; Halpin, Mike
Subject: RE: CSX v. Cedar Bay Generating & DEP

Importance: High

Yes, I did received from Lea the copies on 007 009 010

Was there a 011.....I didn't receive that

per "T" on 12/8 - close case on

Also, we have a question on the permit that is mentioned on the request....namely 0310337-007-AV.....this one has already gone Final on 9/24/2004.....

Would it be fine to ignore this one and close the case number that it applies to -- OGC # 05-2691 -- ???

Vickie

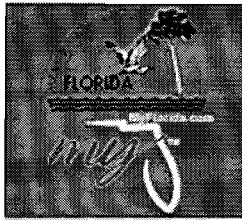
From: Light, Lisa
Sent: Thursday, December 01, 2005 11:50 AM
To: Gibson, Victoria
Subject: CSX v. Cedar Bay Generating & DEP

Did Lea fax these 3 extension requests to you already? Or do I need to.

0310337-009, -010, 011-AC

Lisa 😊

BEST AVAILABLE COPY



Florida
Department of Environmental Protection

"More Protection, Less Process"

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Search:
[Programs](#) [Conta](#)

Air Resource Management

Air Permit Documents Search

Zip files contain working copies of permits and supporting documents posted for review.

The Summary page will open in a new browser window.

Owner/Company Name		Site Name			City		
CEDAR BAY COGENERATION INC.		CEDAR BAY COGENERATION INC.			JACKSONVILLE DU		
Permit Number	Permit Activity	Issue Date	Expiration Date	Posting Date	Permit Status	CAM	Di
0310337-010-AV	PERMIT REVISION			10/25/2005	DRAFT	N	Zip
0310337-009-AC	CONSTRUCTION			10/25/2005	DRAFT		Zip
0310337-007-AV	PERMIT RENEWAL	11/24/2004	11/24/2009	9/24/2004	FINAL	Y	Zip
0310337-006-AC	CONSTRUCTION	3/12/2002		12/17/2003	FINAL		Zip
0310337-005-AC	CONSTRUCTION			7/18/2003	DRAFT		Zip
0310337-003-AV	PERMIT REVISION	1/14/2002	7/13/2004	1/14/2002	FINAL	N	Zip
0310337-002-AV	INITIAL ISSUANCE	7/22/1999	7/13/2004	7/27/1999	FINAL	N	Zip

Search Results: 1 Facilities returned with 7 Permits as of 12/1/2005 11:37:26 AM

Zip files contain working copies of permits and supporting documents posted for review.

Last Updated: 11/14/05

*Patty looked up the clerk date on this
it was 10/25/05*

Gibson, Victoria

From: Gibson, Victoria
Sent: Thursday, December 01, 2005 11:42 AM
To: Halpin, Mike; Adams, Patty
Cc: Koerner, Jeff; Vielhauer, Trina
Subject: RE: OGC Activity

0310337-007-AV is a permit renewal that was posted Final on 9/24/2004

I will inform OGC and have the case # closed for this particular permit with a memo of explanation.

Thank you.

Vickie

From: Gibson, Victoria
Sent: Thursday, December 01, 2005 10:51 AM
To: Halpin, Mike; Adams, Patty
Cc: Koerner, Jeff; Vielhauer, Trina
Subject: RE: OGC Activity

I will check on that for you.

Vickie

From: Halpin, Mike
Sent: Thursday, December 01, 2005 10:46 AM
To: Adams, Patty; Gibson, Victoria
Cc: Koerner, Jeff; Vielhauer, Trina
Subject: OGC Activity

Patty/Vickie -
Can you please help:

Yesterday when the "Recent OGC Activity" sheets were handed out at the BAR Staff meeting, I noticed that the first 3 listings were all for Cedar Bay. At the time, I knew that 2 of the 3 listings were proper and assumed that the other one was as well. However, upon further review, I am fairly certain that 0310337-007-AV does not belong on the list.

Can one of you check it out to either confirm that it doesn't belong on the list or explain why it does?

Thanks
Mike

12/5/2005

Gibson, Victoria

From: Gibson, Victoria
Sent: Tuesday, November 29, 2005 11:01 AM
To: Halpin, Mike
Subject: FW: Request for Extension of Time rec'd. - Cedar Bay Generating Company

Hi,

I am making you a copy of the extension request.....let me know if you wish to grant or deny.

Thanks.

Vickie

From: Crandall, Lea
Sent: Monday, November 28, 2005 12:51 PM
To: Chisolm, Jack; Light, Lisa; Gibson, Victoria; Halpin, Mike
Subject: Request for Extension of Time rec'd. - Cedar Bay Generating Company

FYI, CSX Transportation filed a Request for Ext. of Time to file a petition for an administrative hearing for the following permit numbers:

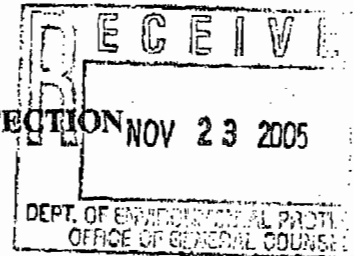
0310337-009-AC
0310337-010-AV
0310337-007-AV

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

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION



In Re:

CEDAR BAY GENERATING COMPANY, L.P.
DEP File No.: 0310337-009-AC, 0310337-010-AV and PA 88-24,
Modification of Permit No. PSD-FL-137 AND 0310337-007-AV
Cedar Bay Generating Plant/Duval County

REQUEST FOR EXTENSION OF TIME

CSX Transportation, Inc. ("CSXT"), by and through undersigned counsel, hereby requests that the Department of Environmental Protection ("Department") enter an order extending until December 9, 2005, the time in which to petition for an administrative hearing on the Intent to Issue Revised Construction Permit/Title V Operating Permit for the Cedar Bay Generating Plant, and as grounds therefor states:

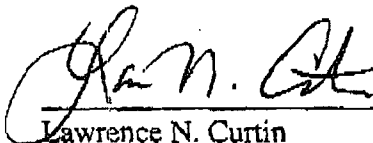
1. CSXT is located at 500 Water Street, Jacksonville, Florida 32202.
2. As a result of a Public Notice published on November 10, 2005, CSXT became aware that the Department is proposing to issue revisions to the referenced permits for the Cedar Bay Generating Facility that would permit the co-firing of five percent tire derived fuel in boilers A, B, and C of the Cedar Bay facility located in Duval County.
3. CSXT has concerns about the possible effects of the use of tire derived fuel at the Cedar Bay facility, but has not yet had adequate time to review the underlying permit documents and analyses.
4. In order to provide sufficient time to perform the analysis, CSXT requests that the Department issue an order extending until December 9, 2005, the time in which to petition for an administrative hearing on the Intent to Issue.

5. CSXT believes that this short extension will not prejudice in any way Cedar Bay Generating and will provide an opportunity for CSXT to make the appropriate reviews prior to deciding whether to challenge the Intent to Issue and the referenced modifications.

6. Counsel for CSXT does not know what counsel may be representing Cedar Bay Generating, LLP in this matter and has, therefore, not contacted counsel to determine its position on this request. Representatives of CSXT have contacted representatives of Cedar Bay Generating, but counsel has not been advised of any conversations on the request.

Based upon the foregoing, CSXT respectfully requests that the Department issue an order extending until December 9, 2005, the time in which to petition for an administrative hearing on the Intent to Issue.

Respectfully submitted,



Lawrence N. Curtin
Florida Bar No.: 218049
HOLLAND & KNIGHT, LLP
Post Office Drawer 810
Tallahassee, FL 32302
Phone: (850) 224-7000
Fax: (850) 222-8185

Attorneys for CSX Transportation, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original has been hand delivered to Ms. Lea Crandall, the Clerk of the Florida Department of Environmental Protection Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by United

States mail to Mr. Martin Kraft, General Manager, Cedar Bay Generating Company, L.P., 9640 Eastport Road, Jacksonville, Florida 32218 this ^{23rd} day of November, 2005.



Lawrence N. Curtin

3405612_v1

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL
3900 Commonwealth Boulevard, M.S. 35
Marjory Stoneman Douglas Building
Tallahassee, Florida 32399-3000**

FACSIMILE TRANSMITTAL

To: Vickie Gibson
Fax: 921-9533
From: Lea Crandall
Phone: 245-2212
Fax: 245-2301
Pages: 4 Pages Including Cover Date: November 28, 2005
RE: Cedar Bay Generating Company
Comments:

Original WILL follow VIA United States Postal Service
 Overnight Delivery
Original will NOT follow

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Gibson, Victoria

From: Crandall, Lea
Sent: Monday, November 28, 2005 12:51 PM
To: Chisolm, Jack; Light, Lisa; Gibson, Victoria; Halpin, Mike
Subject: Request for Extension of Time rec'd. - Cedar Bay Generating Company

FYI, CSX Transportation filed a Request for Ext. of Time to file a petition for an administrative hearing for the following permit numbers:

0310337-009-AC
0310337-010-AV
0310337-007-AV

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

Chronology of Activities

OGC Number District County

Style of Case

Program Area Mode

Lead Attorney Status

Forum Name Forum Case Number

Permit Appl Final Order Number

Date *	Code	Activity Description
11/23/2005	REX1	RECEIVED FIRST REQUEST FOR EXTENSION OF TIME
11/28/2005	AA	ASSIGNED TO LEAD ATTORNEY JACK J CHISOLM
11/28/2005	ACO	ADMIN. CASE OPENED IN OGC
12/08/2005		PERMIT HAS ALREADY GONE FINAL ON 9/24/2004
12/08/2005	CC	CASE CLOSED IN OGC

