

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE: SEMINOLE ELECTRIC COOPERATIVE  
SEMINOLE GENERATING STATION UNIT 3  
POWER PLANT SITING APPLICATION  
No. PA 78-10A2.

---

DEP CASE NO. 06-0780

**NOTICE OF FILING  
DEP'S PROPOSED FINAL ORDER**

The Florida Department of Environmental Protection hereby files the attached proposed Final Order for the above-captioned site certification application.

Dated this 20<sup>th</sup> day of July, 2007.

/s/ *Jack Chisolm*

Jack Chisolm, Deputy General Counsel  
Florida Bar Number 273473  
DEPT. OF ENVIRONMENTAL PROTECTION  
3900 Commonwealth Blvd. – MS 35  
Tallahassee, FL 32399-3000  
850-245-2242 facsimile 850-245-2302

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the foregoing have been furnished by U.S. Mail this 20<sup>th</sup> day of June, 2007, to:

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

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

Sheauching Yu  
Department of Transportation  
605 Suwannee Street, MS 58  
Tallahassee, FL 32399-0450

Martha Carter Brown  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

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

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

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

Brian Teeple  
Northeast Florida Regional Planning Council  
6850 Belfort Oaks Place  
Jacksonville, FL 32216

Russell D. Castleberry  
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  
Sierra Club  
Post Office Box 62  
Interlachen, FL 32148-0092

James S. Alves, Esq.  
Douglas S. Roberts, Esq.  
Hopping Green & Sams  
Post Office Box 6526  
Tallahassee, FL 32314

/s/ Jack Chisolm

Jack Chisolm, Deputy General Counsel

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE: SEMINOLE ELECTRIC COOPERATIVE  
SEMINOLE GENERATING STATION UNIT 3  
POWER PLANT SITING APPLICATION  
No. PA 78-10A2.

---

DEP CASE NO. 06-0780

**FINAL ORDER**

This matter is before me for the purpose of entering a Final Order pursuant to Sections 403.508(6) and 403.509(1)(a), Florida Statutes (Fla. Stat.) (2006).

**HISTORY OF CASE**

On March 9, 2006, the Department of Environmental Protection received an application from Seminole Electric Cooperative, Inc. (Seminole), for certification of its proposed Seminole Generating Station Unit 3. The Department requested assignment of an Administrative Law Judge to conduct the proceedings required by the Florida Electrical Power Plant Siting Act (Siting Act), Section 403.501, et seq, Fla. Stat.

Prior to 2006, the Siting Act required two formal administrative hearings for every application filed pursuant to the Act — a land use hearing and a certification hearing. These formal administrative hearings resulted in recommended orders that were acted on by the Siting Board, which entered Final Orders based on the findings of fact in the recommended orders.

In 2006, the Legislature amended the Siting Act. One of the amendments provided that a land use hearing need not be held unless the government's land use determination was disputed and a hearing requested. §§403.50665(4) and 403.508(1), Fla. Stat. Another amendment, significant to this case, allowed for entry of a Final Order by the Secretary of the Department under specified circumstances. Pursuant to Section 403.508(6)(a), Fla. Stat. (2006), the parties may stipulate that there are no issues of fact or law, and request the

Administrative Law Judge to relinquish jurisdiction to the Department of Environmental Protection. If the Administrative Law Judge grants the parties' motion, I, as Secretary of the Department "shall act upon the application by written order in accordance with the terms of this act and the stipulation of the parties in requesting cancellation of the certification hearing" §403.509(1)(a), Fla. Stat.

On February 22, 2007 the parties in this proceeding entered into such a stipulation. This stipulation was filed with the Division of Administrative Hearings. The assigned ALJ treated the Stipulation as a motion to relinquish jurisdiction, although no such motion was actually filed, and relinquished jurisdiction to the Department.

I, as Secretary of the Department, entered an order remanding the case to the ALJ on April 6, 2007. In that order, I noted that although the stipulation entered into by the parties recited that there were no disputed issues of fact or law, the stipulation did not state what the agreed facts were. I requested that a factual record be developed either by stipulation or by further administrative hearings. The parties could not agree on a stipulation. The ALJ subsequently entered an order declining the remand. The matter is thus once again before me for entry of a final order. Once again, I am asked to enter a Final Order based on a record totally devoid of any findings of fact or any stipulated facts. Based on the record before me, I am therefore compelled to deny Seminole's application for certification of its proposed Seminole Generating Unit 3.

#### STATEMENT OF THE ISSUE

The issue to be decided in this proceeding is whether to approve certification in accordance with the Siting Act, Sections 403.501, et seq., Fla. Stat., authorizing Seminole to construct and operate a new electrical generating unit at Seminole's existing Seminole Generating Station site (consisting of existing Units 1 and 2) in an unincorporated area of Putnam County.

### EVIDENTIARY RECORD

The parties have stipulated that the evidentiary record (Record) consists solely of the following documents:

- a. Application for Site Certification;
- b. Seminole's Response to Sufficiency Request; and
- c. The Department's Staff Analysis Report, submitted on November 9, 2006, including the several agency reports and proposed conditions of certification.

### FINDINGS OF FACT

Based on the record presented to me, I can make no competent findings of fact. Each of the three documents constituting the entire evidentiary record is hearsay, as defined in Section 90.801(1)(c), Florida Statutes. Pursuant to the statute, "[h]earsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." §90.801(1)(c), Fla. Stat. Such a statement may be oral or written. §90.801(1)(a), Fla. Stat. In administrative proceedings, hearsay may be used for the purpose of explaining other evidence, "but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." §120.57(1)(c), Fla. Stat. There may be, and in fact probably are, exceptions to the hearsay rule that would apply to one or more of these documents. However, there is nothing in the record demonstrating that to be the case.

Although I believe the law constrains me from making competent findings of fact based on the record before me, I will nonetheless set forth findings based on the three documents identified by the parties as the evidentiary record to facilitate expeditious review if I should be determined to have erred on this issue in any subsequent appeal. However, all of the following findings are qualified by my initial conclusion that there is no non-hearsay evidence to evidence to support the finding.

## BACKGROUND

1. On March 9, 2006, Seminole filed a Site Certification Application (SCA) to construct and operate a new electrical power plant unit (Unit 3) at the existing Seminole Generating Station (SGS) site in Putnam County, Florida. The existing site, which presently includes Units 1 and 2 and directly associated facilities, is located approximately seven miles north of the city of Palatka. [Staff Analysis Report (SAR), p. 1, 6-7]

2. Seminole is a non-profit generation and transmission electric cooperative that generates and transmits electric power for ten member cooperatives that provide electricity in 46 of Florida's 67 counties. Seminole was created in 1948 under the federal Rural Electrification Act of 1936 to serve Florida's electric cooperatives. Seminole and the network of Florida electric cooperatives currently serve approximately 1.6 million individuals and businesses in two-thirds of the counties throughout Florida. [SCA, Exec. Summary, p. 1; 1-1]

3. Seminole Generating Station Units 1 and 2, in Putnam County, were originally approved under the Siting Act by the Governor and Cabinet, sitting as the Siting Board, in 1979. Both of these coal-fired units were in commercial operation by the end of 1984. There have been modifications to the initial conditions of certification. [SCA, Exec. Summary, p. 1-2]

4. The SGS site primarily is comprised of two parcels. Parcel 1 of the SGS Site is an approximately 1,917-acre tract of land. SGS Parcel 2 is approximately 4.5 acres in area, and it includes approximately 212 feet of frontage on the St. Johns River, which serves as the northernmost boundary of a sovereign submerged land lease from the State of Florida to Seminole. SGS Parcel 2 is located south of County Road 209, and is the site of a pump house that serves SGS. Underground pipelines that provide plant makeup water and discharge plant wastewater are located within an existing 100-foot wide privately granted easement that connects SGS Parcel 1 and SGS Parcel 2. SGS Unit 3 is proposed to be located within the southeastern portion of SGS Parcel 1. [SAR, p. 13; SCA, p. 2-1, p. 3-7]

5. The main entrance to the SGS site is located on U.S. Highway 17. Employees also use a secondary entrance on County Road 209 West. U.S. Highway 17 is a four-laned divided State highway under the jurisdiction of the Florida Department of Transportation. [SCA, Section 2.2.8.2]

6. The land surrounding the existing SGS site is predominantly undeveloped land. Adjoining land is used for agricultural purposes or forestry. The previously mentioned wallboard manufacturing plant is located immediately adjacent to the SGS site on the northwest boundary. Relatively low density residential housing occurs along the St. Johns River south of the SGS site. The existing rail line enters the SGS site on its western boundary parallel to U.S. Highway 17. [SCA, Section 2.1.3]

7. The pattern of undeveloped land in the vicinity of the SGS site has been projected to remain the same for the near future as evidenced by the County's future land use map. These maps depict the area as primarily agricultural except along the St. Johns River where scattered residential use is found. [SCA, Section 2.2.3]

8. Existing SGS Units 1 and 2 are nominal 650 megawatt (MW) coal-fired electrical generating units. These units burn bituminous coal or a blend of coal and petroleum coke up to a maximum of 30 percent petroleum coke. Currently, one train per day provides coal and petroleum coke for Units 1 and 2. Onsite coal and petroleum coke storage is provided for up to 45 to 60 days of fuel inventory. Coal and petroleum coke are unloaded from rail cars and transported to Units 1 and 2 on a covered conveyor system. [SAR, p 1; SCA, Section 2.1.2]

9. Flue gas, fly ash, and bottom ash are produced as a result of combustion. The existing units are equipped with electrostatic precipitators (ESPs) that remove fly ash from the flue gas. Also, a flue gas desulfurization (FGD) system contains "wet scrubbers" that remove sulfur dioxide (SO<sub>2</sub>) from the flue gas of Units 1 and 2. The FGD system produces a gypsum that is used in the production of wallboard at a wallboard production facility at a site located

directly adjacent to the existing Units 1 and 2. Two natural draft cooling towers provide offstream cooling for the existing units. Water for the existing units is supplied from the St. Johns River and the Floridan Aquifer. Existing wastewaters from operation of Units 1 and 2 are treated at the plant's wastewater treatment facility and then combined with cooling tower blowdown, treated sanitary wastewater, and other wastewaters for discharge to the St. Johns River. [SCA, Section 2.1.2]

10. The proposed SGS Unit 3 consists of a nominal 750 megawatt advanced supercritical pulverized coal unit utilizing state-of-the-art emission controls. The term "supercritical" refers to higher steam operating pressures than conventional boiler designs, achieving greater efficiency. Unit 3 will utilize modern burner technology to minimize generation of nitrogen oxides (NO<sub>x</sub>) in the boiler. Also, an SCR system will be used to remove approximately 90% of the NO<sub>x</sub> generated by Unit 3. [SCA, p. 3-2] Carbon Monoxide (CO) and volatile organic chemicals (VOCs) that are formed by incomplete combustion of fuel will be minimized by controlling combustion temperature, providing adequate excess air, and controlling combustion during operation. [SCA, p. 3-9] An electrostatic precipitator will collect and remove fine particles. A wet flue gas desulfurization system will remove approximately 98% of the sulfur dioxide while producing a commercial grade gypsum to be used in the manufacture of wallboard. A wet ESP will also be used for control of sulphuric acid mist and trace elements. [SCA, p. 3-2] A percentage of the mercury emissions to be generated by the proposed unit will be removed incidentally as a result of application of these control technologies. [SAR, Appendix III, p. 4.; SCA, p. 3-1]

11. The proposed SGS Unit 3 project will be located in Putnam County, which is designated as an attainment area for all air pollutants, except PM<sub>10</sub> and Lead. The entire State of Florida is unclassifiable for these two air pollutants. "Attainment" indicates that Putnam



County is in compliance with the federal and state ambient air quality standards for the specified pollutants. [SCA, p. 2-37]

12. The Applicant has filed a separate application for a construction permit for the proposed project. The Department's Division of Air Resource Management (DARM) conducted a separate Prevention of Significant Deterioration (PSD) review of that application. In its PSD review, DARM determined that the Unit 3 project will comply with all appropriate state and federal air pollution regulations. [SAR, p. 9]

13. The PSD regulations require that Best Available Control Technology (BACT) be applied to control air emissions from sources such as Unit 3. A decision on BACT is based on balancing environmental benefits with energy, economic and other impacts. [SCA, p. 5-15]

14. DARM made a preliminary BACT determination for the Unit 3 project for CO, particulate matter (PM/PM<sub>10</sub>), fluorides (HF) and VOCs. The Applicant has agreed to reduced emission limits for SO<sub>2</sub>, sulphuric acid mist, Mercury, and NO<sub>x</sub> emissions on Units 1 and 2 to avoid a BACT analysis on Unit 3 for these pollutants; there will be no net increase in these air pollutants as a result of the project. [SAR, Appendix A, p.6; SCA, p. 3.6]

15. Particulate matter emissions from material handling will be minimized through the use of best management practices, such as covered conveying systems, baghouses at transfer points and water sprays for dust suppression. [SCA, p. 3-12]

16. DARM reviewed Seminole's PSD air permit application and made a preliminary determination that the Unit 3 Project will comply with all applicable state and federal air pollution regulations. [SAR, p. 9, 14] DARM preliminarily determined that the maximum ground-level concentrations due to PM<sub>10</sub>, NO<sub>x</sub> and CO emissions as a result of the Unit 3 Project are less than the significant impact levels. DARM preliminarily determined that maximum ground-level concentrations of SO<sub>2</sub> predicted to occur as a result of the Unit 3 project will be below the associated ambient air quality standards. Seminole conducted an air quality related values

(AQRV) analysis for the nearest Class I air quality areas. This analysis indicated that no significant adverse impacts on these areas are projected. A regional haze analysis was also performed using a long range transport model to evaluate impacts on the PSD Class I areas. This analysis showed no significant impacts on visibility in the Class I areas. [SAR, p. 14; SCA Appendix 10.1.5; Sufficiency Response, Section 1] The conditions of the PSD permit for this project permit have been proposed to be incorporated into the Conditions of Certification. [SAR, Appendix I, p. 1]

17. The design of Unit 3 will maximize the co-use of existing site facilities to the greatest extent possible. The existing plant systems that will also be used for Unit 3 include the coal unloading and storage facilities, the coal pile runoff pond system, the process wastewater treatment system, surface water intake and discharge structures, the plant switchyard, entrance road, the existing groundwater well system, the limestone storage system, the solid waste disposal area, and the associated transmission lines. No new offsite transmission lines are required for Unit 3. [SCA, Section 3.1]

18. Coal and petroleum coke will continue to be delivered by rail from the existing CSX railroad line. Unit 3 will increase fuel deliveries to approximately 1.6 trains per day. A new 200,000 gallon fuel oil storage tank will be provided to supply fuel for the new Unit 3. Fuel oil will be used for startup, flame stabilization, emergency reserve capacity and limited supplemental load. The existing fuel oil unloading system will be used to fill the new fuel oil tank. [SCA, Sections 3.1 - 3.3]

19. A new mechanical draft cooling tower will be used to dissipate heat from the Unit 3 closed-cycle condenser cooling and auxiliary cooling systems. Unit 3 will utilize water from the St. Johns River and the Floridan Aquifer as water supply sources for plant operations. Surface water will be withdrawn from the St. Johns River using the existing river water intake structure system with minor upgrades. This intake water will provide makeup water to the Unit 3

heat dissipation system to replace water lost to evaporation, drift and blowdown. River water will also be used for plant service water, including pump bearing cooling water, equipment maintenance, cleaning and flushing, and area and floor washing. [SCA, Section 3.5; 3.5; 4.5] St. Johns River Water Management District (SJRWMD) has concluded that impacts on the river flow will be insignificant. [SAR, p. 15; SAR, Appendix II-3; SCA, pp. 5-10 to 5-11;]

20. The Applicant proposes to replace the existing domestic wastewater system with a “like-kind” system. Although the Site Certification Application asserts that the system is adequate in size to support proposed Unit 3, [SCA, Section 3.5.2], there is no finding in the Staff Analysis to that effect. There is, however, a proposed Condition of Certification requiring the Applicant’s Sewage treatment plant to comply with the requirements of Chapters 62-302, 62-601, and 62-602, Florida Administrative Code (F.A.C.).

21. The existing onsite potable water system will be expanded to supply the additional 50 employees. [SCA, Section 3.5.3] Potable and process water is supplied to the existing units from two onsite production wells that withdraw groundwater from the Floridan Aquifer. Current annual average daily withdrawal is authorized at 0.55 mgd. The Seminole Generating Station with Unit 3 will continue to utilize water from the Floridan Aquifer. Significantly, Unit 3 will not require additional groundwater greater than the existing consumptive use limitations in the current SGS conditions of certification. Therefore, no new impacts to offsite users are anticipated beyond that already authorized for the site. [SCA, Section 5.3.2] The SJRWMD has determined that this withdrawal will have no adverse impact on groundwater resources. [SAR, p. 16]

22. Unit 3 process wastewaters such as low volume wastes, coal runoff, bottom ash collection systems, equipment cleaning, demineralization regeneration, pre-treatment backwash, and FGD wash water will be collected and treated in the plant’s wastewater treatment facility. Significantly, these treated waste streams will not be discharged to surface

water, as is currently done for Units 1 and 2. Instead, with the build-out of Unit 3, the treated wastewater from all three units will be routed to a new “zero liquid discharge” (ZLD) system. The ZLD system will remove dissolved solids from the Units 1, 2, and 3 wastewater, and condensate from the ZLD system will be reused as makeup for the steam cycle for all three units. The waste concentrate from the ZLD system will be evaporated in a spray dryer, and the residue will be disposed in the onsite landfill or off site in permitted landfills. With the addition of the ZLD system, the only wastewater proposed to be discharged to the St. Johns River will be cooling tower blowdown from Units 1, 2 and 3. The ZLD system will eliminate the existing discharges of several water pollutants, including nitrogen, to the St. Johns River. [SAR, p. 15; SCA, Sections 3.5.4; 5.2.1]

23. The proposed ZLD system will result in reductions in mass pollutant loadings to the St. Johns River. Based on initial analysis, the requested mixing zones for cooling tower blowdown discharges will meet applicable requirements. Final action on these water quality issues will be addressed in the Department’s final agency action in response to Seminole’s pending application for a revision to the SGS National Pollutant Discharge Elimination System (NPDES) permit. This is a separate permit to be issued by the Department pursuant to Section 403.0885, Florida Statutes, and Rule 62-620, F.A.C. The conditions of that permit revision, when issued, will be included in the Conditions of Certification for the Seminole Generating Station. [SAR, p. 15]

24. Seminole has asserted that the onsite stormwater management system to handle site drainage for Unit 3 will be designed and operated to meet all applicable local, regional, state and federal requirements. [SCA, Appendix 10.9; Sufficiency Responses, Section 4.0] The Staff Analysis makes no findings with respect to this assertion. Condition of Certification , however, addresses stormwater controls. [SAR, Condition IV.A., p. 9]

25. Coal combustion products from Unit 3 will be reused to the maximum extent feasible. Bottom ash will continue to be sold to concrete and concrete block manufacturers. Fly ash will be sold for reuse to the maximum extent feasible. Gypsum will be sold to the adjacent wallboard manufacturing facility. The new ZLD system will produce a dry solid reject which will be disposed in the onsite landfill or in an off site permitted landfill. Any coal combustion products not reused and miscellaneous plant waste will be managed onsite within the existing landfill area or disposed off site in a permitted landfill. All new onsite landfill areas that receive solid waste from Unit 3 will feature a double liner and leachate collection and removal system installed to serve the Unit 3 waste. Any hazardous waste generated, such as spent solvents, cleaning materials and other wastes, will be collected and managed in a permitted hazardous waste storage facility in accordance with applicable regulations. No impacts are anticipated from hazardous waste generated from the operation of Unit 3. [SAR, p. 11; SCA Sections 3.7; 5.4.2; Sufficiency Response, Section 4]

26. Construction of the Unit 3 Project will affect a total of 228 acres within the 1917 acre parcel 1 area of the SGS site. During construction, heavily travelled areas will be stabilized with limerock and other more lightly travelled areas will be seeded with grass to prevent erosion. The primary access to Highway 17 at the plant entrance will be modified from two lanes to four lanes at the beginning of the construction process to minimize traffic impacts onsite and on U.S. Highway 17. [SCA, Sections 3.2; 3.9.2; 4.1] No explosives for blasting will be used during construction of Unit 3. Foundations required to support heavy loads, such as the boiler and air pollution control equipment are expected to use mat foundations although pilings may be used to support these facilities. [SCA, Section 4.1.1]

27. Temporary dewatering activities may be required during construction of Unit 3. This will be accomplished using standard construction dewatering techniques in which well points will be installed around the areas to be excavated, or excavations will be directly

dewatered by pumping. Discharges from dewatering will be routed to the onsite stormwater detention ponds. Lowering the water table through dewatering allows for safe and efficient excavation, construction and back filling of foundations, and other below grade facilities. Dewatering is expected to last a total of 16 months. Limited impacts to groundwater will occur and no offsite impacts to groundwater are anticipated from construction dewatering. [SAR, p.16; SCA, Section 4.1.1; Sufficiency Response 4.5]

28. Solid waste generated during construction will be disposed of in accordance with applicable rules and regulations. Construction and demolition wastes, such as scrap wood and metal, will be transferred to a storage area on the site where it will be separated for salvage and recycling. Typical municipal solid waste will be collected in appropriate waste collection containers for disposal in an offsite approved location. All hazardous waste generated during construction will be properly stored, transported and disposed of in accordance with applicable regulations and the site hazardous waste management plan. Used oil from construction vehicles and equipment will be collected by contractors in appropriate containers and transported off site. [SAR, p.11; SCA, Section 4.1.1]

29. The entire area within which construction at SGS Unit 3 will occur is located above the 100-year flood plain. Project construction will not adversely impact site flood elevations on adjacent areas and will not cause flooding on off site property. [SCA, Section 4.1.3]

30. Construction activities will alter onsite runoff in several parts of the project area. However, no adverse effects are anticipated from this alteration. Surface water runoff from active construction areas will be directed to properly sized and designed stormwater swales and ponds that meet applicable agency standards. Due to the existing nature of the SGS site and the proposed stormwater controls, impacts to surrounding surface waters will not occur during

site preparation and construction. [SCA, Sections 4.1.4; 4.2.1; Appendix 10.9; Sufficiency Response Section 4.0]

31. Construction of the Unit 3 project will require the temporary impact to 0.04 acres of the river bank and river bottom for the construction of a new 325 foot-long, 36-inch diameter intake pipe. This new pipe will be adjacent to the existing intake pipeline, extending from the existing river water pump house into the St. Johns River within the existing submerged land easement issued by the Board of Trustees of the Internal Improvement Trust Fund. At the shoreline, to minimize turbidity, sheet piling will be installed around the excavation trench for the pipeline in an area of approximately 10 feet by 30 feet. The trench will be backfilled and the shoreline restored after construction. No adverse impacts to the St. Johns River are anticipated as the result of the new intake pipe. [SCA, Section 4.2.1.1]

32. The power block and related facilities have been located to avoid wetland habitats on the SGS site, with the exception of a 0.46-acre isolated shrub marsh wetland of low ecological value adjacent to the existing coal yard. Also, construction of a new pipeline between the pump house and Unit 3, within the existing pipeline easement, will temporarily impact a total of 0.47 acres of wetlands. The construction in these areas will comply with applicable state and local regulations. No significant adverse impacts to aquatic systems are anticipated as a result of this construction. Disturbed wetland areas will be returned to their prior condition after construction of the pipeline. [SCA, Sections 4.2.1.1; 4.2.1.2]

33. Construction of the SGS Unit 3 power block and pollution control systems will be located on cleared grassland and is not projected to result in any adverse ecological impacts. [SCA, Section 4.3.1.1] No changes of wildlife populations on adjacent properties are expected including listed species. Noise and lightning impacts are minimal and are not anticipated to deter the continued use of undeveloped forest areas within the vicinity by listed species of wildlife. [SCA, Section 5.8.1]

34. The areas to be impacted by the Project do not support any threatened or endangered flora. No federally listed animal species occur in the areas to be impacted by Unit 3. The state-listed gopher tortoise does occur within upland pine flatwoods proposed for construction activities. The Florida Fish and Wildlife Conservation Commission (FWCC) lists the gopher tortoise as a species of special concern. Impacts to the gopher tortoise will be avoided or minimized through burrow avoidance, tortoise relocation or mitigation through purchase of suitable gopher tortoise habitat offsite, in consultation with the FWCC. The presence or absence of other protected species, including the Eastern Indigo snake will be verified during preclearing surveys of the area and standard protection measures. [SCA, Section 4.3.1.3]

35. The Unit 3 project's construction is expected to have a small demographic impact on the community surrounding the site. The Unit 3 construction work force is expected to average approximately 600 employees over the four year construction period. It is anticipated that onsite construction activities will begin no later than the third quarter of 2008. Construction is expected to be completed no later than the third quarter of 2012. Peak construction is expected to occur in mid-2010 with approximately 1500 workers on site. The majority of the construction workers are expected to commute to the site from within a commuting distance of up to sixty miles. Contractors will be responsible for hiring the construction work force. Construction of Unit 3 is expected to have direct economic benefits, including employment opportunities created by the construction. Direct benefits of plant construction will also result from the purchase of materials and equipment from local suppliers and from equipment purchased or leased within the state. A significant portion of these purchases will be made in Putnam County and nearby counties. It is expected that a majority of the construction wages paid during construction will be spent within Putnam County and the surrounding areas. These wages will create additional demands for goods and services. As this money is spent, it will



create a multiplier effect within the area, thereby generating economic activity, including additional jobs and earnings. [SCA, Sections 4.5.1; 7.1.1 and 7.1.2]

36. Operation of the new Unit 3 is expected to have significant beneficial socioeconomic benefits to Putnam County and the surrounding area. Operation of the new Unit 3 is expected to add 50 new employees to supplement the existing work force of approximately 280 employees. In addition, property tax revenues from the Seminole facility, including the Unit 3 project, paid to Putnam County and other governmental entities is estimated to be over \$130 million for the first ten years of the life of the plant following construction. Because the Seminole plant is largely self-sufficient, it will not require many public utilities or services that residential and commercial development typically requires. The sum total of operating and capital revenues and costs from the project to local government agencies is projected to be a substantial net surplus to Putnam County. In addition to the local government fiscal benefits, sales and other tax benefits will accrue to the state of Florida. In addition to the direct benefit of the increased employment payroll, these direct earnings from plant operations will also generate indirect earnings benefits in the local economy due to the increase in the demand for goods and services. [SCA, Section 7.1]

37. Construction traffic will affect area roadways on a temporary basis during the construction period. The worst-case impact for construction traffic will occur during maximum employment during the year 2010. A traffic impact analysis was conducted to determine impacts during the period of the peak construction work force. This included calculations of the future turning movements at intersections in the traffic study area. The intersection of U.S. Highway 17 and the plant entrance road requires signalization and widening to two approach lanes to maintain acceptable levels of traffic service during construction of Unit 3. In addition, the site entrance drive will be widened to provide two exit lanes, one for right turns and the other for left turns onto U.S. Highway 17. [SCA, Section 4.5.2] Project traffic impacts during

operation of Unit 3 were also evaluated based on an increase of employment of 50 employees. Total future traffic beginning in 2013, the first full year of Unit 3 operation, was evaluated. The evaluation identified the need for a signal at the U.S. Highway 17 and project entrance to insure acceptable levels of service with projected total traffic. The improvements proposed for Unit 3 construction would maintain an acceptable level of construction traffic during plant operation. [SCA, Section 5.9]

38. A noise impact evaluation for the construction period was conducted to predict maximum noise levels produced by a combination of likely construction-related noise sources. The predicted noise levels for construction are not expected to adversely impact sensitive receptors in the vicinity of the site. The actual or measured noise levels are expected to be lower than those predicted due to the conservative nature of the analysis. When steam blows to clean piping are conducted, which result in elevated noise levels for short durations, notification will be made to areas expected to experience elevated noise levels. [SCA, Section 4.5.5]

39. A noise impact assessment was also conducted for noise generated during operation of the Unit 3 project. Noise impact modeling was performed using an environmental noise propagation computer program, to predict maximum noise levels produced during operation with background noise levels. While there are no applicable federal or state noise standards, the Unit 3 project will comply with the sound level limits contained in the Putnam County noise ordinance. [SCA, Section 5.7]

40. On August 7, 2006, the Florida Public Service Commission (PSC) issued its affirmative determination of need for the Seminole Unit 3 Project. The PSC addressed the criteria set forth in Section 403.519, F.S. The PSC determined that there is a need for the proposed Unit 3 taking into account the need for electric system reliability and integrity. [SAR, Appendix II-1; PSC Need Determination Order No. PSC-06-0674-FOF-EC]

## AGENCY POSITIONS

41. On November 3, 2006, DEP issued its Staff Analysis Report on the Seminole Generating Station Unit 3 Project. The DEP Staff recommended that “if the Seminole Electric Cooperative, Inc., as the applicant, agrees to abide by the conditions of certification, attached and incorporated herein, the Department would recommend certification of the Seminole Generating Station Unit 3.” [SAR, page 19]

42. The PSC issued its order determining the need for the Project. [SAR, Appendix II-1] That determination of need served as the PSC’s report to the Department for the certification of the Project.

43. The FWCC submitted a letter on September 1, 2006, indicating that the Commission “does not object to certification of the Project under the condition that if protected species...are impacted..., then the FWC shall be contacted prior to taking any action related to those species.” [SAR, Appendix II-2]

44. The SRJWMD submitted their agency report on October 11, 2006. The SJRWMD recommended approval of the Site Certification Application for the Unit 3 with a number of conditions of certification. That report concluded the Project met the SJRWMD’s permitting requirements. [SAR, Appendix II-3]

45. On October 30, 2006, the Florida Department of Transportation submitted a revised report recommending approval, subject to that Agency’s recommended conditions. [SAR, Appendix II-4]

46. The Florida Department of State, Division of Historical Resources submitted a letter on September 29, 2006 indicating that the Division had reviewed additional archaeological and historical survey of the site and concluded that no additional historic cultural resources existed on the site for the Project. [SAR, Appendix II-5]

47. The Record contains no plant or unit specific analysis of greenhouse gas emissions.
48. The Record contains no indication of whether or how greenhouse gases will be collected and stored.
49. The Record contains no equipment review and/or cost analysis for the collection of greenhouse gases.
50. The Record contains no review of how or whether the capture and sequestration of greenhouse gases might affect the technology selected, i. e., SuperCritical Pulverized Coal vs. Other technologies.
51. The Record contains no geological investigation of storage potential for greenhouse gases on the site.
52. The Record contains no review of the potential opportunities for multi pollutant emissions reductions associated with CO<sub>2</sub> controls

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction to enter a final order in this matter pursuant to Section 403.509(1)(a), Fla. Stat.
2. In determining whether an application should be approved, approved with modifications, or denied, I am required pursuant to Section 403.509(3), Fla. Stat., to consider whether, and the extent to which, the location of the electrical power plant and directly associated facilities and their construction and operation will:
- (a) Provide reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection;
  - (b) Comply with applicable nonprocedural requirements of agencies;
  - (c) Be consistent with applicable local government comprehensive plans and land development regulations;
  - (d) Meet the energy needs of the state in an orderly and timely fashion;

(e) Effect a reasonable balance between the need for the facility as established pursuant to s. 403.519 and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation of the facility;

(f) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life; and,

(g) Serve and protect the broad interests of the public.

3. The Applicant, Seminole Electric Cooperative, has the burden of demonstrating that it is entitled to issuance of a Site Certification pursuant to the statute. It has not met this burden.

4. An agency generally may not reject an ALJ's findings of fact, nor make supplemental findings. Florida Power & Light Company v. State, 693 So. 2d 1025 (Fla. 1<sup>st</sup> DCA 1997). However, in this case, there are no underlying findings of fact. Neither the ALJ, after hearing, nor the parties, through a stipulation have identified specific facts upon which I must base my conclusions.

5. As noted above, the parties have limited the evidentiary record to three documents, each of which is hearsay. There has been no demonstration that these documents are subject to any of the exceptions to the hearsay rule. Because I am prohibited from basing findings of fact solely on such unsupported hearsay, I cannot make any competent factual findings on the record before me. However, were I able to properly make findings of fact on this record I could conclude, based thereon, that Seminole has not met its burden of proof as discussed below.

6. On April 2, 2007, the United States Supreme Court issued an opinion in Massachusetts v. Environmental Protection Agency, 127 S. Ct., 167 L. Ed. 2d 248, (2007) stating that carbon dioxide and other "greenhouse gases" were "air pollutants" as that term is used in the Clean Air Act. Although the case dealt specifically with emissions of air pollutants

from mobile sources, emissions from stationary sources are analogous. The case detailed evidence documenting that global temperatures are connected with increases in anthropogenic carbon dioxide in the atmosphere. Evidence that case resulted in findings that a failure to curb greenhouse gases would result in rises in sea level, threatening coastal properties and other environmental changes that have inflicted significant harms, and that further harm, including; *inter alia*, reductions in available fresh water, sever and irreversible changes in natural ecosystems, increases in the spread of disease, and increased ferocity of hurricanes.

7. The public policy of this state, as set forth in Executive Orders 07-126, 07-127, and 07-128, of which I have official recognition, is to reduce the levels of greenhouse gases in the atmosphere and avoid these impacts.

8. The Florida Public Service Commission has issued its affirmative determination that a need exists for the Unit 3 electrical generating facility and the electricity it will produce, in accord with Section 403.519, Fla. Stat.

9. Because Seminole has failed to address the minimization, or capture and sequestration of carbon dioxide, it has not provided reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection.

10. All participating agencies have reviewed the Site certification Application, and have reported that the project will meet those agencies substantive requirements if certification is conditioned as proposed in the Staff Analysis Report, Appendix I. Seminole has therefore demonstrated that it will comply with all nonprocedural requirements of agencies.

11. A separate Final Order has been entered finding that the proposed project is consistent with applicable local government comprehensive plans and land development regulations.

12. The Florida Public Service Commission has issued its affirmative determination that a need exists for the Unit 3 electrical generating facility and the electricity it will produce, in accord with Section 403.519, F.S.

13. Because Seminole has failed to address the minimization, or capture and sequestration of carbon dioxide, the proposed project does not effect a reasonable balance between the need for the facility as established by § 403.519 and the impacts on air and water quality, fish and wildlife, water resources, and other natural resources resulting from the operation of the facility.

14. Because Seminole has failed to address the minimization, or capture and sequestration of carbon dioxide, it has failed to demonstrate that the project minimizes, through the use of reasonable and available methods, the adverse, effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life.

### **CONCLUSION**

Having reviewed the matters of record and being otherwise duly advised, the Department of Environmental Protection concludes that, if constructed and operated in accordance with the evidence presented in the record and the Conditions of Certification, the Project will not serve and protect the broad interest of the public and should therefore be denied.

### **IT IS THEREFORE ORDERED:**

Site certification of Seminole Electric Cooperative, Inc., Seminole Generating Station Unit 3, as described in the Site Certification Application and the record as a whole, is hereby **DENIED**. In order to secure approval of the proposed project, the Applicant must quantify the volume of greenhouse gases to be emitted by the project, and demonstrate that the emissions of these gases cannot be eliminated or further reduced.

Any party adversely affected by this Final Order has the right to seek judicial review of it under Section 120.68, Fla. Stat. Judicial review must be sought by filing a notice of appeal under Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days after this Final Order is filed with the Clerk of the Department.

**DONE AND ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2007, in Tallahassee, Leon County, Florida.

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

---

MICHAEL SOLE, Secretary

3900 Commonwealth Blvd.  
Tallahassee, FL 3239903000

FILED on this date pursuant to §120.52  
Florida Statutes, with the designated  
Department clerk, receipt of which is  
hereby acknowledged.

---

Clerk

---

Date



## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the foregoing have been furnished to the following by hand delivery or overnight delivery on this \_\_\_\_\_ day of \_\_\_\_\_, 2007:

Jack Chisolm, Deputy General Counsel  
Department of Environmental Protection  
3900 Commonwealth Blvd., MS 35  
Tallahassee, FL 32399-3000

Brian Teeple  
Northeast Florida Regional Planning Council  
6850 Belfort Oaks Place  
Jacksonville, FL 32216

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

Michael P. Halpin  
Office of Siting Coordination  
Department of Environmental Protection  
2600 Blair Stone Road  
Tallahassee, FL 32399

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

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

Sheauching Yu  
Department of Transportation  
605 Suwannee Street, MS 58  
Tallahassee, FL 32399-0450

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

Martha Carter Brown  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

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

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

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

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

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

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

James S. Alves, Esq.  
Douglas S. Roberts, Esq.  
Hopping Green & Sams  
Post Office Box 6526  
Tallahassee, FL 32314

---

Francine Ffolkes,  
Sr. Assistant General Counsel