GreenLaw
Giving Georgia's Environment Its Day In Court

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VIA EMAIL DELIVERY TO EPDComments@dnr.state.ga.us
Eric Cornwell
Program Manager
Stationary Source Permitting Program
4244 International Parkway
Suite 120
Atlanta, GA 30354

Re: Comments on EPD's draft permit amendment for Plant Washington, No. 4911-303-0051-P-01-3.

Dear Eric:

GreenLaw and the Southern Environmental Law Center respectfully submit the following comments on the Georgia Environmental Protection Division's ("EPD") draft permit amendment No. 4911-303-0051-P-01-3 related to Plant Washington (or the "Facility"). We appreciate the opportunity to submit these comments on behalf of the Fall Line Alliance for a Clean Environment[1], Ogeechee Riverkeeper[2], Sierra Club[3], and Southern Alliance for Clean Energy[4].

[1] Fall-line Alliance for a Clean Environment is an organization of 200 members and supporters that has been at the forefront of investigation, education, and advocacy for a safe and clean environment for the Middle Georgia area identified geographically as the Fall Line. FACE's primary work focuses on the threat posed by coal-generated power, and specifically the toxic pollutants emitted by coal-fired power plants and impacts from these pollutants on the quality and availability of water supplies. The organization has also been active on issues including landfills, tire incinerators, and land use.

[2] Ogeechee Riverkeeper is dedicated to protecting, preserving and improving the water quality of the Ogeechee River Basin. To accomplish this goal, Ogeechee Riverkeeper strives to amplify the voices of concerned citizens and strengthen their efforts to protect their rivers and their communities. www.ogeecheeriverkeeper.org

[3] The Sierra Club is a national nonprofit organization of approximately 600,000 members nationwide and more than 10,000 members and supporters in Georgia. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.

[4] Southern Alliance for Clean Energy ("SACE") has been a leading voice for energy policy to protect the quality of life and treasured places in the Southeast since 1985.

As further discussed below, we urge EPD to deny Power4Georgians' ("P4G") application for a permit extension to commence construction of Plant Washington. Alternatively, in the event EPD grants P4G's extension request, we support EPD's decision to require additional demonstrations that Plant Washington's pollution will not cause or contribute to violations of the National Ambient Air Quality Standards ("NAAQS"), and we are further requesting that EPD require the Facility to undertake specific modeling for these demonstrations. Finally, in light of the United States Supreme Court decision to uphold the Cross State Air Pollution Rule ("CSAPR"), EPD must revise the permit to incorporate the provisions of that rule.

I. Background

Plant Washington is proposed as an 850 MW coal-fired steam generating power plant that will emit large amounts of pollution in and around Washington County, Georgia. This pollution will include particulate matter, sulfur dioxide ("SO_2"), nitrogen oxides ("NO_X"), as well as hazardous air pollutants such as mercury.

As EPD is aware, this is the fourth amendment to P4G's permit to construct and operate Plant Washington. The first two versions of Plant Washington's permit were effective April 8, 2010 and November 18, 2011, respectively. These initial versions of the permit were revised to include more stringent requirements for maximum achievable control technology, and the last version was effective on May 31, 2012. All proceedings related to permit number 4911-303-0051-P-01-2 were concluded as of June 5, 2012, and the stay on the permit lifted as of June 15, 2012.[5] *See* Final Decision, Docket No. OSAH-BNR-AQ-1218695-60-WALKER (OSAH, June 5, 2012).

Consistent with its statutory directive, over the past few years EPA has issued more stringent NAAQS to protect human health and the environment. On December 14, 2012, EPA lowered the primary NAAQS for particulate matter less than 2.5 microns ("$PM_{2.5}$" or "fine particulate matter") to 12 micrograms per cubic meter. In addition, EPA also finalized 1-hour SO_2 NAAQS on June 22, 2010 and 1-hour NO_X NAAQS on February 9, 2010.

These more stringent NAAQS are designed to reduce exposure to harmful pollution that causes a number of adverse health effects. For example, fine particulate matter has been linked to premature death, heart attacks, aggravated asthma and respiratory problems such as difficulty breathing. SO_2 and NO_2, as indicators of a wider array of SO_X and NO_X compounds, also have been linked to a number of respiratory illnesses and hospital visits.

P4G has yet to commence construction of the Facility, and it has not shown that its plant will not cause or contribute to violations of the applicable NAAQS. What P4G has done, however, is held on to a permit that it may never use, while wasting precious agency resources on a project

[5] We note that EPD laid out its rationale for calculating the deadlines to commence construction on page 3 of the Narrative, and we do not object to this method for calculating the deadlines to commence construction in the case of Plant Washington. However, for consistency, we are basing our comments on the date that we have used in other proceedings.

that appears to have little chance to move forward. By requesting this extension, P4G adds to its already disproportionate strain on EPD's limited resources.

II. EPD should not grant Plant Washington additional time to commence construction.

In this permit amendment, EPD is proposing to allow P4G until October 15, 2015 to commence construction under its prevention of significant deterioration ("PSD") permit. However, P4G has not provided sufficient justification to show why it needs such an extension. Further, EPD should not allow P4G almost 43 months to commence construction under its current PSD permit. Instead, EPD should use its discretion and refuse to grant the extension requested by P4G.

a. P4G's excuses are inadequate to justify an extension for Plant Washington.

EPA and EPD regulations both require that a permittee provide a "satisfactory showing that an extension is justified," when requesting an extension to commence construction under the PSD program. 40 CFR 52.21(r)(2); Georgia Comp R. and Regs. 391-3-1.02(2)(b)(15). EPA guidance further provides that, for a first permit extension, there must be a "detailed justification of why the source cannot commence construction within the initial 18-month deadline." EPA Memorandum re Guidance of Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2), January 31, 2014 ("EPA PSD Extension Guidance"), at 5, *available at* http://www.epa.gov/Region7/air/nsr/nsrmemos/extend14.pdf. Here, P4G's arguments as to why it has been "thwarted" from commencing construction are unpersuasive at best.

P4G first complains that it has not been able to commence construction because of litigation. Power4Georgians' letter to Judson Turner re Request for Extension of Time to Commence Construction Under Power4Georgians' PSD Air Quality Permit No. 4911-303-0051-P-01-0, September 12, 2013 ("P4G Permit Extension Request"), at 2. While EPA has stated that litigation over a PSD permit can provide justification for an extension to commence construction, that litigation must actually be *ongoing* while the clock is running. *See* EPA PSD Extension Guidance at 5. However, because Georgia law provides that a permit is stayed while litigation is pending, any actions while the permit was stayed cannot be sufficient rationale to allow for an extension. *See* O.C.G.A. § 12-2-2(c)(2)(B). Indeed, using June 15, 2012 as the date when the stay on the permit was lifted, P4G has had over 22 months since completion of the latest permit challenges to commence construction; using EPD's calculations, it has had over 25 months without legal challenge to commence construction.

P4G next complains that it could not have commenced construction due to legal challenges to the Mercury and Air Toxics Standard (MATS). P4G Permit Extension Request at 2-3. Despite recognizing that sources may encounter pending regulations while attempting to commence construction, EPA has never found pending regulations a sufficient justification for a construction extension; instead, EPA has stressed that sufficient justification is limited to pending litigation on the PSD permit itself. EPA PSD Extension Guidance at 5. Further, EPD should also not allow sources to evade statutorily proscribed deadlines through events completely within their control. Despite contending that its facility as designed could comply with MATS, P4G elected to pursue litigation challenging the standards. P4G's purely elective decision does not provide a basis for

extending its construction deadline. *See* P4G Permit Extension Request at 2-3. P4G's argument is all the more disingenuous and untenable as P4G entered into a settlement agreement to resolve state administrative litigation pursuant to which it voluntarily agreed to comply with the new source MATS standards years *sooner* than it might have otherwise had to. Settlement Agreement resolving claims in OSAH-BNR-AQ-1218695-60-WALKER and OSAH-BNR-AQ-1031707-98-WALKER (executed April 2012).

P4G also tries to blame pending greenhouse gas (GHG) regulations for its failure to commence construction. As stated above, EPA has specifically omitted pending regulations from its discussion of sufficient justifications for permit extensions. Further, EPD should not allow P4G to set what amounts to a dangerous precedent: under the Clean Air Act, it is always possible EPA could find that additional regulations are necessary to protect communities from dangerous pollution. Indeed, the Act requires EPA to make that evaluation on a periodic basis. Allowing sources to delay construction and build sources utilizing outdated best available control technology ("BACT") puts citizens' health at risk while undermining the very structure of the Clean Air Act.

In any event, P4G's objections ring hollow considering that it claims to have "commenced construction" for purpose of the pending GHG rule as of April 12, 2013, and therefore to qualify as an "existing source" exempt from the new standards. If P4G has commenced construction for purposes of the GHG rule, it should be prepared to proceed with physical on-site construction without the need for an extension. If P4G cannot proceed, it is for reasons entirely unrelated to the rule – namely the lack of financing necessary to proceed with construction and the lack of customers to purchase the power the plant would produce.

None of P4G's excuses provide adequate justification for extension of the PSD permit. EPD should deny P4G's request for failure to provide sufficient justification for an extension. At the very least, EPD should require the facility to detail the steps that it has taken to commence construction. This would include details as to the financing (if any) that the facility has available, a detailed timeline as to how it plans to commence construction, and construction milestones along the way. This would, among other things, help satisfy the requirements of 40 C.F.R. § 63.5, which require P4G to demonstrate as soon as practicable before commencing construction that the facility will comply with MATS, which was recently upheld by the Court of Appeals for the D.C. Circuit. *White Stallion Energy Center, LLC, v. EPA*, No. 12-1100 (D.C. Cir. April 15, 2014), *available at* http://www.cadc.uscourts.gov/internet/opinions.nsf/284AC47088C07D0985257CBB004F0795/$file/12-1100-1488346.pdf .

b. If EPD grants an extension, EPD should grant P4G a total of no more than 36 months to commence construction.

EPA's guidance states that extensions to commence construction under a PSD permit should generally be for 18 months, following the initial 18 months to commence construction under the initial PSD permit. EPA PSD Extension Guidance at 4. Moreover, this 36-month maximum should be based on adequate justification for the length of the permit extension. EPA PSD Extension Guidance at 4. EPA goes on to opine that technology and air quality considerations will

become outdated past 36 months. EPA PSD Extension Guidance at 6. As BACT analyses are designed to protect public health from the dangers of pollution emitted from major sources such as coal-fired power plants, it is important that facilities have the most stringent and up-to-date technology installed to control their pollution. *See* Georgia EPD PSD Permit Application Guidance Document (September 2012) at 4-1, *available at* http://www.georgiaair.org/airpermit/downloads/sspp/psdresources/psd_guidance_document/epd narrative09142912.pdf.

In this case, EPD is proposing to allow P4G much longer than 36 months to commence construction, which is contrary to EPA's guidelines. Using June 2012 as the starting date, P4G will have had almost 40 months to commence construction when the first permit extension ends in October 2015; using EPD's date calculations P4G will have had almost 43 months to commence construction. *See* Narrative at 3.

This time delay is especially problematic in the case of Plant Washington due to the long time period between the BACT analysis for Plant Washington and the proposed extension date. Since the Administrative Law Judge remanded only on the maximum achievable control technology standards, the BACT analyses were never revised in any of the resulting permit amendments. *See* generally Permit Amendments No. 4911-303-0051-P-01-1, No. 4911-303-0051-P-01-2. Thus, P4G's BACT analyses were done, at the latest, by April 8, 2010. Plant Washington PSD Permit No. 4911-303-0051-P-01-0. When the proposed October 15, 2015 extension has passed, the BACT analyses will be over 5 years and 6 months old. *See id.*, Narrative at 3.

IF EPD does grant a permit extension to Plant Washington, EPD's first priority should be to protect public health by requiring Plant Washington to have the most up-to-date technology. Based on EPA's opinion that control technology becomes stale after 36 months, EPD should require the facility to engage in a substantive re-analysis and update of PSD requirements in order to receive the requested extension. At the very least, EPD should restrict the extension to 18 months from the expiration of the initial permit, allowing P4G at total of 36 months to start construction.[6]

III. EPD should require specific modeling to assure that Plant Washington will not impact attainment status in Washington County.

We appreciate EPD's recognition that emissions from Plant Washington, if constructed, may cause violations of the updated NAAQS issued in recent years. We support EPD's decision to require Plant Washington to show that its emissions will not cause or contribute to nonattainment and to protect the health of those living in the impact zone of the Plant's emissions.

However, we note that the permit does not specify the type of evidence that Plant Washington must provide in order to prove that it will not cause or contribute to a violation of the NAAQS. As EPA has established the NAAQS to protect human and environmental health, we feel strongly that EPD should require Plant Washington to provide PSD level modeling. This is

[6] Using EPD's date calculations, P4G would have until March 19, 2015 to commence construction.

especially true in the case of fine particulate matter, where recent court decisions and EPA actions have rejected the assumptions that EPD relied on in its initial permitting of Plant Washington.

a. EPD must require comprehensive PSD modeling for fine particulate matter.

As discussed above, fine particulate matter has been shown to have debilitating health effects. In order to protect the public from the disastrous effects of $PM_{2.5}$, EPD must require comprehensive PSD modeling for fine particulate matter, such as refined photochemical modeling with cumulative impacts analyses and based on 12 months of on-site data collection.

When Power4Georgians submitted its revised Application for Plant Washington, it did not include refined modeling in its analysis. November 26, 2008 Revised Permit Application at 5-15. Rather, it only included an analysis that, based on $PM_{2.5}$ model runs from 1987-1991, the plant's anticipated emissions did not exceed significant impact levels that EPA designated under the 1997 $PM_{2.5}$ NAAQS. November 26, 2008 Revised Permit Application at 5-15.

Recent events, discussed below, underscore why preconstruction monitoring and refined photochemical modeling is essential to protect the public from the health impacts of $PM_{2.5}$.

i. The EPA has lowered the $PM_{2.5}$ standard.

On January 15, 2013, EPA finalized a new, lower standard for fine particulate matter of 12 $\mu g/m^3$, with nonattainment designations based on the annual mean averaged over three years. EPA lowered the standard to "provide increased protection against health effects associated with long- and short-term exposures (including premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease)." National Ambient Air Quality Standards for Particulate Matter; Final Rule, 78 Fed. Reg. 3086 (January 15, 2013) ("2013 $PM_{2.5}$ NAAQS").

In order to fully ensure that Plant Washington is not causing or contributing to a violation of the 2013 $PM_{2.5}$ NAAQS, EPD should require the facility to do preconstruction monitoring for onsite values of $PM_{2.5}$. This would ensure that EPD has the proper baseline for total valuation of $PM_{2.5}$ at the "ground zero" for $PM_{2.5}$ once Plant Washington is built.

Data collected from the Sandersville $PM_{2.5}$ monitor[7] show that additional $PM_{2.5}$ from Plant Washington may cause or contribute to violations of the 2013 $PM_{2.5}$ NAAQS. In fact, based on recent EPD reports, the $PM_{2.5}$ levels in Sandersville have been hovering just below this standard without Plant Washington. As the chart below shows, the readings from 2008-2011 at the Sandersville $PM_{2.5}$ monitor show that the area is within $1 \mu g/m^3$ of reaching levels considered dangerous by EPA.

Year	Annual Arithmetic Mean ($\mu g/m^3$)

[7] The Sandersville monitor may not be representative of the full concentrations of $PM_{2.5}$ at "ground zero" on the plant's proposed site. Further the Sandersville monitor may underestimate total impacts of $PM_{2.5}$ by only recording every three days. However, even though the Sandersville monitor may not be fully representative for those reasons, it still indicates readings close to the new, lower $PM_{2.5}$ NAAQS.

2012	9.8
2011	11.31
2010	11.36
2009	11.27
2008	11.79

Georgia EPD Annual Ambient Air Monitoring Reports, Available at http://www.georgiaair.org/amp/report.php. Adding the average SIL value of .15 μg/m^3 from Plant Washington's 2008 application,[8] in 2008 Washington County would have been just .06 μg/m^3 from hitting levels of $PM_{2.5}$ concentration that EPA has determined are detrimental to human health.

In fact, the modeled results for Plant Washington that were presented in the 2008 application are likely very low estimates of its total impacts on $PM_{2.5}$ concentrations. A 2009 study completed by Georgia EPD finds that CAMX modeling results show much higher concentrations (2-3x higher) of primary $PM_{2.5}$ emissions than AERMOD, the model used by P4G. PSD Permit Modeling with AERMOD and CAMx Presentation, available at http://www.epa.gov/region4/air/modeling/2009%20Workshop/March-18-09/KimCAMx_PSD_Modeling18_1.ByeongKim18_1.ppt; Supplemental Data for Plant Washington, *available at* http://www.georgiaair.org/airpermit/downloads/permits/psd/dockets/plantwashington/facilitydocs/supplementaldata120308.pdf. In addition, EPD's study also showed that 50 percent of the impacts from Plant Washington would come from secondary $PM_{2.5}$ formation, which is shown only through models that address such formation, unlike the version of AERMOD used by P4G. *Id.*

These data underscore the need for EPD to require the facility to complete cumulative refined photochemical modeling with baselines calculated from onsite preconstruction monitoring. In addition to the health impacts of increasing amounts of $PM_{2.5}$, if the amount of particulate matter emitted by Plant Washington pushes the limits at these monitors above the nonattainment level, Washington County will face severe restrictions related to a nonattainment designation, with resulting adverse impacts to the local economy.

ii. EPD cannot rely on SILs to replace cumulative modeling.

On January 22, 2013, the District Court of Columbia issued an order vacating and remanding SILS and SMCs for $PM_{2.5}$. *Sierra Club v. EPA*, 705 F.3d 458, 460, 465-466 (D.C. Cir. 2013) (vacating SILs and SMCs, except with respect to 40 CFR 51.165(b)(2), "which simply states that a source may be deemed to violate the NAAQS if it exceeds the SILs in certain situations."). The Court vacated these rules at EPA's request, which acknowledged that SILs and SMCs were flawed. *Sierra Club v. EPA*, 705 F.3d 458, 463 (D.C. Cir. 2013).

[8] To be clear, we are not conceding that SILs are an appropriate screening tool to determine whether a source will cause or contribute to nonattainment. However, as the only numbers that P4G has yet provided to show the impacts of Plant Washington's $PM_{2.5}$ concentration, we are using them here for the sake of argument.

The legal effect of the court's vacating and remanding SILs and SMC is that it is as if they never existed. *See Air Transp. Ass'n of Can. v. FAA*, 254 F.3d 271, 277 (D.C. Cir. 2001). EPA has recognized this by removing SILs and SMCs from the CFRs. 78 Fed. Reg. 73,698 (Dec. 9, 2013). EPD's recent regulatory amendments even acknowledge this by removing SILs from Georgia regulations. Synopsis of Proposed Amendments to the Rules of the Department of Natural Resources Environmental Protection Division Relating to Air Quality, Chapter 391-3-1 (April 3, 2014) at 2, *available at* http://environet.dnr.state.ga.us/1/synopsis_rationale-MiscUpdates.rev1%5B1%5D.pdf ("Main Features: . . . change to remove the Significant Impact Levels and Significant Monitoring Concentration for $PM_{2.5}$ that were vacated by the United States Court of Appeals for the District of Columbia Circuit.")

Since it is now as if vacated regulations never existed, EPD cannot rely on determinations that exclude sources from modeling based on SILs, as it did during the first round of modeling. *See Air Transp. Ass'n of Can. v. FAA*, 254 F.3d 271, 277 (D.C. Cir. 2001); *Sierra Club v. EPA*, 705 F.3d 458, 460, 465-466 (D.C. Cir. 2013); EPD's Final Determination on Plant Washington Permit No. , *available at* http://www.georgiaair.org/airpermit/downloads/permits/psd/dockets/plantwashington/permitdocs/3030051fd.pdf. Instead, EPD must require the source to provide full, refined modeling that shows that it will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS. *See Sierra Club v. EPA*, 705 F.3d 458, 460, 465-466 (D.C. Cir. 2013)

This modeling must include cumulative impacts analyses, including ambient monitoring data in the area of concern over the previous 12 month period. *See* Draft EPA Guidance on Modeling for $PM_{2.5}$ at n10, http://www.epa.gov/ttn/scram/guidance/guide/Draft_Guidance_for_PM25_Permit_Modeling.pdf. As discussed above, based on EPD's own finding that AERMOD underestimates the impacts from $PM_{2.5}$, EPD should require full photochemical grid modeling to prove that Plant Washington will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS.

b. EPD must require complete modeling for SO_2 and NO_X.

In addition to requiring adequate modeling for $PM_{2.5}$, EPD must ensure that Plant Washington will not cause or contribute to a violation of the NAAQS for the 1-hour SO_2 and NO_X NAAQS. EPA has already issued guidance as to how a source can show that it will not cause or contribute to a violation of the NAAQS, or consume all of an increment, which is found at 40 CFR Part 51, Appendix W. EPD should require P4G to use the modeling protocols that are most protective of the health of the public that lives near the plant.

Within Appendix W, EPA states that site-specific measured data collected over one year is the best way to achieve spacial and geographical representativeness during modeling. 40 CFR Part 51, Appendix W, 8.3.3.1. In order for the modeling performed by P4G to show the impacts of its pollution as accurately as possible, EPD must require P4G to gather this essential data prior to performing modeling at the source. *Id.*

IV. EPD must revise the permit to incorporate CSAPR provisions.

In August 2011, EPA finalized CSAPR, which set federal implementation plans in place for sources to address pollution that affects downwind nonattainment areas. 76 Fed. Reg. 48208 (2011). After several years of litigation, the United States Supreme Court recently reversed a lower court ruling that vacated CSAPR, and upheld the rule. *EPA v. EME Homer City Generation, L. P.*, No. 12–1182 (Sup. Ct. April 29, 2014).

Under CSAPR, the EPA identified Georgia as contributing to nonattainment issues in downwind states and accordingly set budgets for SO_2, NO_X, and $PM_{2.5}$. 76 Fed. Reg. 48208 at 48213; 77 Fed. Reg. 34830. Not only must new units ensure that they do not consume more than the budgets set by EPA, but they also must comply with the procedural and monitoring requirements of CSAPR, such as installing and certifying monitoring systems within 180 days of commencement of commercial operation. 75 Fed. Reg. at 45312.

EPD has issued a permit to construct and to operate Plant Washington, which governs operation for at least the first year of operation. Permit No. 4911-303-0051-P-01-0, provision 2.3 (requiring the permittee to submit a Title V application within 12 months of operation). However, there are no provisions related to CSAPR. *See generally* Permit Nos. No. 4911-303-0051-P-01-0, No. 4911-303-0051-P-01-1, No. 4911-303-0051-P-01-2. The permit must be revised to include all applicable requirements for the operation of the facility within the first 12 months of operation, including those required to comply with CSAPR.

We thank EPD for the opportunity to submit these comments. We look forward to EPD's responses, and respectfully request that EPD send any responses to these comments via email to abailey@greenlaw.org and kebersbach@selcga.org.

Respectfully submitted,

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