SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 404-521-9900

THE CANDLER BUILDING
127 PEACHTREE STREET, SUITE 605
ATLANTA, GA 30303-1840

Facsimile 404-521-9909

May 17, 2012

Mr. James A. Capp
Chief, Air Protection Branch
Georgia Environmental Protection Division
4244 International Parkway, Atlanta Tradeport – Suite 120
Atlanta, Georgia 30354

Re: Draft Permit Amendment No. 4911-303-0051-P-01-2 – Plant Washington

Dear Mr. Capp:

The Southern Environmental Law Center ("SELC") and GreenLaw, on behalf of themselves and the Fall-Line Alliance for a Clean Environment, the Ogeechee Riverkeeper, Southern Alliance for Clean Energy and Sierra Club (collectively, "Commenters"), respectfully submit the following comments on draft Air Quality Permit Amendment No. 4911-303-0051-P-01-2 (the "Permit Amendment"), for the proposed Plant Washington coal-fired power plant. We appreciate the opportunity to submit these comments.

The Permit Amendment would modify Air Quality Permit No. 4911-303-0051-P-01-0 ("PSD Permit"), issued to Power4Georgians, LLC ("P4G") on April 8, 2010. P4G requests modification of its pre-construction permit to specify that Plant Washington is required upon startup to comply with the National Emissions Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units, which are set forth at 40 C.F.R. 63, Subpart UUUUU. Also known as the Mercury and Air Toxics Rule (or "MATS Rule"), these standards were promulgated on February 16, 2012, 77 Fed. Reg. 9,304 (Feb. 16, 2012), and became effective on April 16, 2012.

As a general matter, Commenters support P4G's request and the proposed Permit Amendment. Incorporation of the MATS Rule emission standards as applicable requirements is required as a matter of law. Because P4G had not commenced construction of Plant Washington prior to publication on May 3, 2012 of the proposed MATS Rule, Plant Washington is deemed a "new source" for purposes

of the Rule. *See* 40 C.F.R. § 63.9982(b). Further, because Plant Washington did not have a final and legally effective case-by-case Maximum Achievable Control Technology ("MACT") determination when the final MATS Rule was promulgated by EPA on February 16, 2012, Plant Washington is subject to the final MATS Rule immediately upon start up. *See* 40 C.F.R. § 63.44(a). Hence, the proposed Permit Amendment is necessary and appropriate.

Moreover, incorporation of the MATS Rule into the Permit will result in substantial reductions in the quantities of hazardous air pollutants emitted by the facility. Plant Washington will emit sharply lower levels of many hazardous air pollutants ("HAPs") than would be allowed under its case-by-case MACT determination. For example, the facility's emissions of mercury, a potent neurotoxin, will be reduced by more than ninety-seven percent. Thus, even though the facility would remain a significant source of air pollution (including hazardous air pollutants, criteria pollutants, and millions of pounds per year of carbon dioxide), its emissions of numerous toxic air pollutants will be substantially reduced as a result of the Permit Amendment.

While supportive of the end goal of requiring compliance with the MATS Rule upon startup, however, Commenters have identified a number of critical omissions in the application provided by Power4Georgians, LLC ("P4G") and serious flaws in the permitting process. The application for the Permit Amendment does not provide EPD with the information regarding the design, operation, and maintenance of Plant Washington that is necessary for EPD to evaluate and verify that the plant can and will comply with the MATS Rule. Commenters urge EPD not to allow P4G's desire for expediency to trump the required analysis, as doing so would undermine the legal requirements and protective purposes of both the proposed amendment and the Permit generally. In particular, Commenters identify the following issues:

I. <u>EPD Cannot Evaluate and Verify Plant Washington's Ability to Comply with the Permit Amendment Because P4G's Application Lacks Critical Design Elements</u>

The owner or operator of a new major source that is subject to national emission standards for HAPs must obtain written approval from the appropriate authority – in this case, EPD – before beginning construction. 40 C.F.R. § 63.5(b) (incorporated by reference at Ga. Comp. R. & Regs. 391-3-1-.02(9)(b)(15)); 391-3-1-.02(9)(a) (explaining that "Administrator" means the Director of EPD). To do so, the owner or operator must submit an application to EPD "as soon as practicable" and

"well in advance of the date actual construction." *Id.* § 63.5(d)(1)(i). The application must include:

> technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including an identification of each type of emission point for each type of hazardous air pollutant that is emitted (or could reasonably be anticipated to be emitted) and a description of the planned air pollution control system (equipment or method) for each emission point. The description of the equipment to be used for the control of emissions must include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device.

Id. § 63.5(d)(2). EPD cannot approve an application unless it determines, on the basis of the information submitted, that the facility "will not cause emissions in violation of the relevant standard(s) and any other federally enforceable requirements." *Id.* § 63.5(e)(1)(i). If the application is incomplete, EPD must notify the applicant, who must then submit the missing information within 30 days. *Id.* § 63.5(e)(2)(ii).

P4G's application properly requests that the MATS Rule standards be included in the Plant Washington permit. However, has not updated its application materials to identify the applicable MATS requirements or to demonstrate how Plant Washington's physical and operational design will meet those specific emission requirements. P4G's original application materials do not include the requisite design details and other technical information demonstrating that the facility can or will meet the new limits. For example, in its original application P4G stated that all of the following are "to be determined": the designs of all emission units other than the boiler (Form 2.00) (and even details of the boiler design were omitted, such as whether it will be a wall-fired or tangentially-fired design; as Dennis Johnson testified, the different designs can affect the amount of NOx created in the boiler); and the designs of all "pollution control devices," including the selective catalytic reduction ("SCR"), wet scrubber, and fabric-filter baghouse (Forms 3.00, 3.01, 3.02). Moreover, without knowing the design of these control devices, P4G did not and could not properly have estimated their specific control

efficiencies. Subsequent applications do not clarify any of these unknowns.[1] *See* Application for Permit No. 4911-303-0051-P-01-1; Application No. 21094. Therefore P4G's application does not meet the information requirements of 40 C.F.R. § 63.5(d)(2). Without this information, EPD cannot determine that Plant Washington, as designed, is capable of and will meet the emission standards in the MATS Rule, and thus EPD would err by approving the application without significant supplementation.

Below, are just a few examples taken from the Plant Washington revised PSD permit application that show the non-specific or unsupported nature of the current assumptions relating to air pollution controls:

"Prevention of Significant Deterioration Air Permit Application January 17, 2008 Plant Washington, Power4Georgians, LLC November 26, 2008 – Supplemental Data 070007.12 2-15

2.8 PROCESS DESCRIPTION FOR SO3 AND MERCURY SORBENTS
The air quality control system of the plant will include sorbent injection systems for capture of mercury and SO3 (for control of sulfuric acid mist emissions). Systems to handle these materials will incorporate self unloading of trucks and pneumatic conveying of the sorbents to their respective storage silos. The sorbent storage silos will be equipped with bin vent filters designed with sufficient bag filtering capacity to support sorbent unloading operations. Conveying air from the self unloading trucks is exhausted from the silo through the bin vent filters at the top of the silos to separate suspended particulates and return them to the silo. Emissions from these silos are expected to occur only during filling operation at a maximum of one hour per shift."

[1] While the first permit amendment lists some fabric filter design elements that would improve emissions reductions, P4G does not commit to using any of these elements. *See* Application for Permit No. 4911-303-0051-P-01-1 at 9-10.

Facility Name: Plant Washington Date of Application: November 26, 2008 – Supplemental Data

FORM 2.00 – EMISSION UNIT LIST

Emission Unit ID	Name	Manufacturer and Model Number	Description
MAIN	SCPC Boiler	Babcock-Wilcox variable pressure, once through, supercritical boiler (or equivalent)	Babcock-Wilcox variable pressure, once through, supercritical boiler with LNB & OFA (or equivalent)
AUX	Auxiliary Boiler	TBD	Auxiliary Boiler for combustion of LS Diesel fuel.
COOL1-COOL34	Cooling Towers 1 - 34	TBD	Wet Cooling Towers With Ultra High Efficient Drift Eliminators.
CRUSH	Coal Crusher House	TBD	Coal Crusher House – enclosed with dust collection
LIMEPR	Limestone Preparation	TBD	Limestone Preparation House – enclosed with dust collection
ASHEXE	Ash Exhausters	TBD	Mechanical Fly Ash Exhausters (2)
FLYASH	Fly Ash Silo	TBD	Fly Ash Silo – equipped with bin vent filter
HGSILO	Hg Sorbent Silo	TBD	Hg Sorbent Silo – equipped with bin vent filter
SO3SILO	SO_3 Sorbent Silo	TBD	SO3 Sorbent Silo – equipped with bin vent filter
SODAASH	Soda Ash Silo	TBD	Soda Ash Silo – equipped with bin vent filter
LSILO	Lime Silo	TBD	Lime Silo – equipped with bin vent filter
PRBSO	Coal Insert #1	TBD	Insertable Filter at coal unloading drop point
ILBSO	Coal Insert #2	TBD	Insertable Filter at coal unloading drop point
LIMESO	Limestone Insert #1	TBD	Insertable Filter at limestone unloading drop point

Facility Name: Plant Washington Date of Application: November 26, 2008 – Supplemental Data

Form 3.00 - AIR POLLUTION CONTROL DEVICES - PART A: GENERAL EQUIPMENT INFORMATION

APCD Unit ID	Emission Unit ID	APCD Type (Baghouse, ESP, Scrubber etc)	Date Installed	Make & Model Number (Attach Mfg. Specifications & Literature)	Unit Modified from Mfg Specifications?	Gas Temp. °F		Inlet Gas Flow Rate (acfm)
						Inlet	Outlet	
C01	MAIN	Baghouse	2013	TBD	No	320	300	2,580,200
C02	MAIN	SCR	2013	TBD	No	300	300	2,580,200
C03	MAIN	Wet Scrubber	2013	TBD	No	300	140	2,580,200
C04	SO3SILO	Bin Vent Filter	2013	TBD	No	68	68	1500
C05	FLYASH	Bin Vent Filter	2013	TBD	No	68	68	1500
C06	HGSILO	Bin Vent Filter	2013	TBD	No	68	68	1500
C07	LSILO	Bin Vent Filter	2013	TBD	No	68	68	1500
C08	CRUSH	Baghouse	2013	TBD	No	68	68	24000
C09	TRIP	Baghouse	2013	TBD	No	68	68	18000
C10	LIMEPR	Baghouse	2013	TBD	No	68	68	5000
C11	ASHEXH	Baghouse	2013	TBD	No	258	258	4814
C12	SODAASH	Bin Vent Filter	2013	TBD	No	68	68	1500
C13	PRBSO	Insertable Filter	2013	TBD	No	68	68	1500
C14	ILBSO	Insertable Filter	2013	TBD	No	68	68	1500
C15	LIMESO	Insertable Filter	2013	TBD	No	68	68	1500

Facility Name: Plant Washington Date of Application: November 26, 2008 - Supplemental Data

FORM 3.02 – BAGHOUSES & OTHER FILTER COLLECTORS

APCD ID	Filter Surface Area (ft²)	No. of Bags	Inlet Gas Dew Point Temp. (°F)	Inlet Gas Temp. (°F)	Bag or Filter Material	Pressure Drop (inches of water)	Cleaning Method	Gas Cooling Method	Leak Detection System Type
C01	TBD	32,000	280	320	TBD	12	PJ	TBD	Pressure Drop

6 PM Drop Point Emission Factors for Material Handling

Emission Description	Source ID	Pollutant TSP	Pollutant PM_{10}	Pollutant $PM_{2.5}$	Units	Reference
Coal Rail Unloading (indoor)	A4	4.82E-05	2.54E-05	3.09E-06	lb/ton	AP-42, 13.2.4.3, Eqn (1)
Transfer Point for PRB Coal (outdoor)	A6, A8	7.29E-05	3.59E-05	5.44E-06	lb/ton	AP-42, 13.2.4.3, Eqn (1)
Transfer Point for Illinois Basin Coal (outdoor)	A7, A9	3.47E-04	1.64E-04	2.59E-05	lb/ton	AP-42, 13.2.4.3, Eqn (1)
Limestone Rail Unloading (indoor)	A5	4.82E-05	2.04E-05	3.09E-06	lb/ton	AP-42, 13.2.4.3, Eqn (1)
Limestone Transfer Point (outdoor)	A10	3.47E-04	1.64E-04	2.59E-05	lb/ton	AP-42, 13.2.4.3, Eqn (1)
Bottom Ash Transfer Point to Bottom Ash Bin (outdoor)	A1	1.57E-04	9.31E-05	1.41E-05	lb/ton	AP-42, 13.2.4.3, Eqn (1)
Bottom Ash Transfer Point from Bin to Truck (outdoor)	A1	1.57E-04	9.31E-05	1.41E-05	lb/ton	AP-42, 13.2.4.3, Eqn (1)

Parameter	Value		Reference
Coal Moisture Content PRB Coal	29.61	%	Typical for PRB from Project Specification
Coal Moisture Content Illinois Basin Coal	10	%	Typical for Illinois #6 from Project Specification
Limestone Moisture Content	10	%	Plant Washington Specification
Bottom Ash Moisture Content	15	%	Plant Washington Specification
Gypsum Moisture Content	20	%	Plant Washington Specification
Fly Ash Moisture Content	15	%	Plant Washington Specification
Mercury Sorbent Moisture	12	%	Plant Washington Specification
Hydrated Lime Moisture	1	%	Plant Washington Specification
Soda Ash Moisture	1	%	Plant Washington Specification
SO_3 Sorbent Moisture	10	%	Plant Washington Specification
Wind Speed, Outdoor	6.66 mph		Based on average wind speed of 2.98 m/s for Macon, GA (1987-1991)
Wind Speed, Indoor	3 mph		Lower bound for emission equation AP-42, 13.2.4(1)
Percent of the time wind is greater than 12 mph	6	%	Based on Macon/Centerville Weather Data 1987-1991

The omission of these design parameters is especially troubling for two reasons. First, it is unclear whether P4G will be able to meet the requirements in the MATS Rule. P4G has taken inconsistent positions on this issue: P4G's spokesman Dean Alford has been quoted in the press as stating that the facility can meet the standards. *See* Erica Martinson, *A Tale of Two Plants: EPA's Mercury Rule*, POLITICO Pro, Apr. 20, 2012, Attachment A. On the other hand, P4G recently filed a challenge to the MATS Rule and submitted an affidavit from Mr. Alford in which he questions whether the limits are "achievable" in practice. Declaration of Dean Alford ¶¶ 15-16, *Power4Georgians v. EPA*, No. 12-1184 (consolidated with No. 12-1100) (D.C. Cir. 2012), Attachment B.

Second, P4G apparently has no intention to construct or operate the facility. In the original permit application, P4G purported to represent ten participating electric membership cooperatives ("EMCs") who had "pooled their resources to

construct a baseload power generation facility." P4G stated that it would be "the legal entity that develops the power plant" and that it would "construct and operate" the proposed facility. On EPD's Application Form 1.00, P4G is listed as the "facility owner." Mr. Alford gave similar testimony in the administrative hearing concerning Commenters' challenge to the Permit, leaving no doubt that the participating EMCs, by and through P4G, intended to build and operate the plant. *See Fall-line Alliance v. EPD*, OSAH-BNR-AQ-1031707-98-Walker, Tr. at 980-90, Attachment C.

However, as of January 2012, six of the ten EMCs had withdrawn from the project. Mr. Alford was subsequently quoted as stating that "P4G never intended to build Plant Washington," and that P4G's goal "has always been to obtain the permits needed and then sell them to any interested party that could build the plant." Dean Alford, Cobb Electric Membership Corporation Board Minutes (Jan. 24, 2012), Attachment D. This position was recently reaffirmed by a member of the Board of Washington EMC, which is one of the four remaining EMCs: "P4G has never intended to own, finance or construct a coal plant. The purpose of P4G was to obtain the permits and lock down a low rate for our EMCs. I never understood that the EMCs would own or operate." E-mail from Billy Helton, Washington EMC Bd. of Dirs. to Katherine Helms Cummings, Exec. Dir., FACE (Apr. 30, 2012), Attachment E.

These revelations are significant because both EPD and the Administrative Law Judge have relied upon numerous assurances by P4G that it will be the entity that designs, builds and operates the facility. If that is in fact not the case, it hardly justifies approving a significantly incomplete application. To the contrary, the application should be rejected and the permit revoked because of the numerous and critical omissions of important design and operations and maintenance details from the application. This problem is made more, not less, serious in light of P4G's revelations that it will not build or operate the plant.

In sum, P4G submitted an incomplete application, and as a result EPD cannot determine whether Plant Washington would comply with the MATS Rule. Therefore, EPD does not have authority to approve the application.

II. P4G Must Also Obtain Approval from EPA

If the state permitting agency conducts the preconstruction review process, as is the case here, the applicant must also obtain approval from the Administrator of the U.S. EPA before beginning construction. *See* 40 C.F.R. § 63.5(f). To obtain EPA's approval, the applicant must (1) show that it has undergone a

preconstruction review process that is substantially similar to the process outlined in federal regulations, (2) provide evidence that EPD considered the required design information, and (3) show that EPD made a finding that the source will meet relevant emissions standards. *See id.* § 63.5(f)(1). Georgia has adopted the federal preconstruction review process, *see* Ga. Comp. R. & Regs. 391-3-1-.02(9)(b)(15); however, as noted above, P4G and EPD have not complied with the process in this case. Moreover, EPD could not have considered the informational requirements of the regulations or have found that P4G will comply with the MATS Rule because P4G failed to provide key information to EPD, as described above. Therefore, although P4G must request approval from EPA, EPA will not be able to grant approval because P4G and EPD have not complied with 40 C.F.R. § 63.5.

III. EPD Should Retain Any More Stringent Case-By-Case MACT Limits

As noted previously, Plant Washington is bound to comply with the MATS Rule upon startup because it did not have a final and legally effective case-by-case MACT Determination when the final MATS Rule was promulgated. *See* 40 C.F.R. § 63.44(a). Nevertheless, EPD is "not required to incorporate any less stringent terms of the promulgated standard in the title V operating permit applicable to such source(s) and may in its discretion consider any more stringent provisions of the prior MACT determination to be applicable legal requirements when issuing or revising such an operating permit." 40 C.F.R. § 63.44(c).

In a previous permit amendment, No. 4911-303-0051-P-01-1, EPD included Condition 8.3 to incorporate the requirements of 40 C.F.R. § 63.44. As EPD then noted, it is not required to incorporate "any less stringent terms of the EGU MACT in the permit and may in its discretion consider any more stringent provisions of the 112(g) case by case determination to be applicable legal requirements." Notice of MACT Approval at 19 (June 2011).

The Permit Amendment does not purport to delete any of the Permit's case-by-case MACT limits, which EPD has already determined that Plant Washington can meet. They include an emission limitation for total particulate matter ("PM_{total}"), as a surrogate for non-mercury metal HAPs, of 0.050 pounds per megawatt hour ("lb/MW-hr") on a 3-hr average. *See* Permit Amendment No. 4911-303-0051-P-01-1, Condition 2.13.s. They also include a provision requiring continuous monitoring of carbon monoxide ("CO") emissions as a means of ensuring good combustion and compliance with the Permit's existing CO best available control technology ("BACT") limit. *See* Permit Amendment No. 4911-303-0051-P-01-1, Condition 7.27 p. 11. The Permit Amendment should be revised to clarify that

those provisions, and any other more stringent requirements of the Permit's August 2009 or June 2011 Notice of MACT Approvals, remain applicable and supersede any less stringent requirements of the MATS Rule.

IV. EPD Must Reevaluate the Permit's BACT Limits

EPD must reconsider the BACT limits for Plant Washington in light of the revised MACT requirements for HAPs in the Permit Amendment. BACT is defined as the "maximum degree of reduction" of each regulated PSD pollutant which the Director

> on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 of this Act. . . .

42 U.S.C. § 7479(3); *see also* 40 C.F.R. § 52.21(b)(12) (incorporated by reference at Ga. Comp. R. & Regs. 391-3-1-.02(7)).

Under this definition, EPD must conduct MACT and BACT analyses concurrently for two reasons. First, the maximum degree of reduction "achievable" under a BACT analysis will vary depending on the control technologies required under the corresponding MACT determination. This is because both MACT and BACT are technology-based programs, and the technologies that control emissions of HAPs often have the co-benefit of decreasing PSD pollutant emissions. These technologies include add-on controls, process technology, raw material inputs, fuel quality, fuel mixes, operational parameters, work practices, etc. A control technology and level of emission control that may not be cost-effective for BACT purposes alone, may be cost-effective if it is already required under the MACT program. Therefore, it is impossible and improper for EPD to determine BACT limits without first, or simultaneously, determining MACT limits and associated controls.

Second, the definition states that application of BACT cannot result in emissions that will exceed applicable MACT standards established under section 112. *See Fall-line Alliance v. EPD*, 2010 Ga. ENV LEXIS 17, *58 (Dec. 16, 2010)

("[I]n the event of a conflict between MACT and BACT limits, MACT must govern."). To ensure that BACT limits do not cause a violation of MACT limits, EPD must know the relevant MACT limits at the time it conducts a BACT analysis. Therefore, EPD must reconsider its BACT evaluation if MACT limits change during the permitting process. The Permit Amendment imposes new MACT requirements on Plant Washington, and as a result EPD must reconsider the BACT limits for the facility.

In addition, EPD cannot approve an application that will govern a facility's HAP emissions unless it ensures that the facility "will not cause emissions in violation of the relevant standard(s) *and any other federally enforceable requirements.*" 40 C.F.R. § 63.5(e)(1)(i) (incorporated by reference at Ga. Comp. R. & Regs. 391-3-1-.02(9)(b)(15)) (emphasis added). Therefore, EPD must revisit its BACT determination to ensure that P4G's application for the Permit Amendment will not violate standards under the PSD program.

V. EPD Should Strengthen the BACT Limits Based on the MATS Requirements

Plant Washington can achieve more rigorous BACT emission controls based on the new MACT standards in the MATS Rule. Attachment F shows calculations comparing the final MATS Rule limits for new electric utility generating units for the pollutants mercury, hydrochloric acid (HCl) and sulfur dioxide (SO_2), with corresponding permit limits for the proposed Plant Washington unit. Either HCl or SO_2 can be used as a surrogate for showing compliance with the acid gas compounds. As Attachment F clearly shows, in all three cases the maximum BACT limits in the Plant Washington permit are more lenient than what would be required by the MATS Rule for new units. Thus, if constructed as assumed in the existing BACT analysis, Plant Washington would not meet the MATS Rule for at least mercury and acid gases.

Therefore, it is clear than the design of the pollution control system proposed for Plant Washington has to change in order for it to comply with the MATS Rule. As assessment of the necessary changes that need to occur is difficult to make, however, since the current control system specifications are not clear. The current permit indicates that Plant Washington will use selective catalytic reduction ("SCR") (for nitrous oxides ("NOx") control), fabric filters or baghouses (for particulate matter ("PM") control), a wet scrubber (for SO_2 control), and activated carbon and other unspecified sorbent injection (for mercury and sulfuric acid mist ("SAM") control). But the applications supporting the permit do not contain specific

design information on any of these controls, including important considerations such as process assumptions, sizing information, materials of construction, and plant layout.

Under the Permit Amendment, the limit for mercury emissions at Plant Washington will be strengthened to 2.0 x 10^{-4} lb/GW-hr.[2] 40 C.F.R. § 63.9991(a)(1). To comply with this limit, Plant Washington can use a number of controls that also reduce PSD pollutant emissions, including SCR, a fabric filter baghouse, a wet scrubber, and sorbent injection. These technologies can be optimized through design choices, operational parameters, and maintenance schedules to produce greater mercury and PSD pollutant emission reductions. Since the facility is already required to use technologies to control mercury, it would therefore be "achievable" and cost effective to use the same technologies to control PSD pollutants. For example, a fabric filter that captures more PM will also capture more particulate mercury and non-mercury metal HAPs, and therefore decrease the emissions of all of these pollutants simultaneously. Thus, EPD must reconsider BACT for Plant Washington to determine if the limits and control technologies for these PSD pollutants should be modified.

In section I above, we have excerpted portions of the permit application that purports to discuss some of these controls. As can be seen, none are specific. And where they are specific (for example, assuming that there will be a single silo for the unspecified mercury sorbent (HGSILO), which will exhaust 1500 acfm of air at 68 F), this is not supported by any manufacturer data (i.e., make and model are "TBD"). Instead these assumptions are simply place-holders in order to complete the analysis, such as dispersion modeling. Clearly, if the BACT analysis assumption regarding the mercury limit that must be met is wrong (as it is in the present case, where the Final MATS limit is 34 to 38 times more stringent than the current permit limit – *see* Attachment F), then any assumptions, implicit or otherwise on the type, amount, rate of sorbent injection that will be necessary must also be wrong and will need to be revisited. In this case, since even the assumption underlying the permit is merely a place-holder, unsupported by any engineering analysis, the entire design for the mercury control system has to be developed from scratch.

---

[2] The previous limit was 7.64 x 10^{-6} lb/MW-hr (gross) on a 12-month rolling average (or a weighted average of that and 6 x 10^{-6} lb/MW-hr (gross)), which is the equivalent of 7.64 x 10^{-3} lb/GW-hr.

This has implications for the permit in at least two ways. First, depending on the type of sorbent to be used, the sorbent injection location and rates need to be established. Only then can the sorbent usage rate over time be established, which, in turn will dictate the extent and type of storage (incoming bins, day bins, etc.) of such sorbent. Thus, Plant Washington's assumption regarding a single storage bin may not hold. If multiple bins and other transfer points are required, then the list of emissions sources will also need to be expanded. Of course, the plant layout will also change. Second, the amount of sorbent added will also affect the loading to the downstream baghouse and its ability to collect this additional load and to be able to comply with its BACT limit. Presently, without any discernable engineering support, Plant Washington assumes that the baghouse will contain 32000 bags even though the bag material is unspecified or unknown. This does not make sense. And, it makes even less sense to assume that this unspecified baghouse will have sufficient capacity to handle a likely significant amount of additional loading via mercury sorbent injection. Thus, it is likely that the design and sizing of the baghouse, and its BACT limit will need to be modified.

In addition, the revised limit for hydrochloric acid ("HCl") will also be more stringent under the Permit Amendment.[3] To comply with the MATS Rule, Plant Washington can either limit its HCl emissions to 4.0×10^{-4} lb/MW-hr, or limit its SO_2 emissions to 4.0×10^{-1} lb/MW-hr. 40 C.F.R. § 63.9991(a)(1). It is likely that the simpler path will be to try and meet the SO_2 limit. However, as shown in Attachment F, the current BACT limit of 0.052 lb/MMBtu (on a 12-month rolling average) is insufficient to meet the MATS SO_2 limit of 0.40 lb/MWh. In addition, the permit currently limits average SO_2 emissions, whereas the limits in the MATS rule apply on a continuous basis. *See* 40 C.F.R. § 63.9991(a)(1). Converted to equivalent terms using Plant Washington-specific data, the MATS Rule limit appears to be around 15% or so lower. Thus, the current BACT limit for SO_2 needs to change to around 0.044 lb/MMBtu, if Plant Washington chooses to use SO_2 as the means of compliance with the acid gas MATS limit. Meeting this lower SO_2 limit will require a re-evaluation of the scrubber design, size, and process conditions. The removal efficiency of the wet scrubber can be improved by, for example, increasing the residence time of materials in the scrubber or increasing the surface area of the scrubber. Using the wet scrubber to reduce HCl and SO_2 emissions would also have the co-benefit of reducing SAM emissions, since SO_2 is a precursor to SAM. EPD should revisit Plant Washington's BACT determination to see whether the SO_2 and

[3] The previous limit for HCl was 3.22×10^{-4} lb/MMBtu (or a weighted average of this limit and 2.4×10^{-4} lb/MMBtu).

SAM BACT limit should be more stringent to reflect the reductions that will result from compliance with the MATS Rule.

If, on the other hand, Plant Washington opts to use HCl as the compliance method for the acid gas MATS, then it has to evaluate other options such as injection of sorbents for that purpose (so called "duct sorbent injection" or DSI), which several plants are doing presently. This is an option that is not contemplated for HCl control in the permit application. *See, e.g.,* "Prevention of Significant Deterioration Air Permit Application January 17, 2008 Plant Washington, Power4Georgians, LLC November 26, 2008 – Supplemental Data, Table 10-3, p. 10-13, and p. 10-51. If needed, this will require its own set of materials input to the plant, storage and handling, as well as transfer and injection at the appropriate location. It will also, like the mercury sorbent discussed above, increase the inlet dust loading to the baghouse. Thus, the baghouse design and sizing will need to be evaluated on this account as well. Even if the analysis demonstrates that the existing acid gas controls for HCl and SO_2 are sufficient to meet the acid gas MATS, then the SO_2 emissions would likely be reduced as well, since both pollutants are controlled by the wet scrubber and sorbent injection.

EPD should also determine whether the limits for PM should be modified based on the reductions required by the standards for non-mercury metal HAPs in the Permit Amendment. As one option for complying with the non-mercury metal HAPs standard in the MATS Rule, P4G may limit its filterable PM to 0.0070 lb/MW-hr. The current BACT limit for filterable PM in the Plant Washington permit equates to 0.0614 lb/MW-hr. EPD should determine whether this BACT limit should be revised to comport with the more stringent limit for filterable PM as a surrogate for HAPs.

Finally, compliance with the MATS Rule may result in increased deliveries, storage, transfers, and use of HAP pollution control materials and reagents, such as activated carbon and lime/limestone. This in turn will increase emissions from each delivery, transfer, and storage point, and may require equipment upgrades. EPD should consider these factors when it revises the BACT determination.

In sum, since Plant Washington, as currently envisaged, does not meet the new source MATS limits for mercury and acid gases, it will have to revise its air pollution controls to do so. EPD must therefore evaluate the sizing, locations, and other aspects of plant design and determine whether Plant Washington's BACT limits should be strengthened in light of the revised MACT requirements. In addition, P4G must provide EPD with the information necessary to make this determination.

VI. Conclusion

For the reasons set forth above, we ask EPD to revise its analysis of the Plant Washington Permit Amendment. If you have any questions about these comments, would like any of the source material referenced in these comments that has not otherwise been provided, or require any additional information, please do not hesitate to contact us at 404-521-9900.

Thank you for your consideration of this important matter.

Sincerely,

/s/ Kurt Ebersbach

Southern Environmental Law Center

Kurt Ebersbach
Staff Attorney

John Suttles
Senior Attorney

Brian Gist
Senior Attorney

Myra Blake
Associate Attorney

ATTACHMENT A

A tale of two plants: EPA's mercury rule

By Erica Martinson

4/20/12 1:00 PM EDT

The proprietors of two coal-fired power plant projects are publicly at odds on a key aspect of their case against the EPA's mercury and air toxics standards: whether the requirements they face are technically possible.

The parent companies behind both the White Stallion Energy Center in Texas and Plant Washington in Georgia are suing the EPA over the mercury rule. But White Stallion's owners say the mercury rule's emissions limits for new plants are impossible to meet, while a spokesman for Plant Washington says his company is confident its engineers could comply if necessary.

Randy Bird, chief operating officer of White Stallion, was surprised to hear that.

"If they have found a way to meet those emission limits ... I would love for them to send me the information," Bird said. "We will easily meet the standard for existing plants," but not for new plants, he said.

White Stallion's attorney, Eric Groten, previously told POLITICO that the mercury rule sets limits "100 or even 1,000 times stricter than the limits in permits issued for the latest generation of coal-based power across the country."

"No plant has ever achieved these limits, and some limits are even below the ability to reliably measure," Groten said.

White Stallion, $15 million into the project, runs the "risk of irreparable harm," Bird said, adding that with such difficult emission limits it becomes impossible to finance a project.

Plant Washington's owner, the electric power consortium Power4Georgians, is more confident about being able to meet the rule's requirements. But it says the method EPA used to reach them is illegal — and will cost them a lot more than a more legitimate process would have.

Power4Georgians spokesman Dean Alford said the plant's engineers are updating the plant's design so that it can meet the emissions limits.

"We believe we can meet them," Alford said. But he added: "It's a matter of cost. We think a more accurate [rule] … puts us in a situation where we don't have to spend as much money."

He declined to explain the cost differences.

Both companies must begin construction in the next 12 months to be exempt from another major new EPA regulation, which limits greenhouse gas emissions from new power plants. But to do that, they must quickly resolve their disputes over the mercury rule.

"If [EPA] would have treated us in the mercury rule the way they treated us in the greenhouse gas rule ... we'd be in good shape," Bird said. You "can't change your project design on a dime," he said.

White Stallion and Plant Washington are on the same side of the lawsuit asking the U.S. Court of Appeals for the D.C. Circuit to review the mercury and air toxics standard. The case is named *White Stallion v. EPA* after the first of many parties to join the suit.

White Stallion plans to ask the court next week to sever its petition from the rest of the pack and expedite that case, as the company has only a year from EPA's April 13 proposing of the greenhouse gas rule to get moving on the plant, Bird said.

Plant Washington and several others are considering joining White Stallion, Bird said — a fact confirmed by a consultant with Power4Georgians.

Power4Georgians recently settled a lawsuit with the Sierra Club, agreeing to abandon another coal plant project in the state and move forward on Plant Washington.

Alford said Power4Georgians's suit against EPA has more to do with the agency's "process of setting these rules," arguing that the agency tailored the rule for an ideal plant that has never existed.

It's like choosing baseball's Most Valuable Player as someone who has the highest batting average, the most runs batted in and the most stolen bases, who also led the league in home runs and was the most game-winning pitcher. That player may sound ideal but doesn't exist, Alford said.

Had the agency done it differently, the emissions limits would be higher, he said.

White Stallion, meanwhile, has no plans to let anything stand in its way, Bird said.

"We're just too stubborn to quit, I guess. We're too stupid to quit. I'm not sure which one," he laughed. "We intend to build this [plant]. The only way we can really die is if we quit."

To read and comment online:
https://www.politicopro.com/go/?id=10896

ATTACHMENT B

JOINT MOTION BY DEVELOPERS OF NEW SOLID-FUELED ELECTRIC GENERATION UNITS TO SEVER AND EXPEDITE CONSIDERATION OF ISSUES GERMANE TO HAZARDOUS AIR POLLUTANT STANDARDS APPLICABLE TO NEW UNITS

EXHIBIT H

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

POWER4GEORGIANS, LLC, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	No. 12-1184 (consolidated with No. 12-1100)

DECLARATION OF C. DEAN ALFORD
PROJECT MANAGER FOR PLANT WASHINGTON AND
POWER4GEORGIANS, LLC

I, C. Dean Alford, do hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. My name is Dean Alford. I am over 21 years of age, under no legal disability, and competent and authorized to make this Declaration. The facts stated in this Declaration are true and correct based on my personal knowledge. I give this Declaration voluntarily in support of the Joint Motion by Developers of New Solid-Fueled Electric Generating Units to Sever and Expedite Consideration of Issues Germane to Hazardous Air Pollutant Standards Applicable to New Units in the above-styled case and for any other lawful purpose.

2. I am the President and Chief Executive Officer of Allied Energy Services, LLC. Allied Energy Services has been retained by Power4Georgians, LLC (P4G) to manage and oversee its development of Plant Washington, which is discussed below. In addition to my management and oversight of the Plant Washington project, I have developed energy generation projects in the U.S. and in Central and South America.

3. P4G is a limited liability company organized under the laws of the State of Georgia and consisting of four member-owned non-profit electric cooperatives. As is discussed in greater detail below, P4G is presently in the process of developing and constructing a nominal 850 megawatt (MW) coal-fired power plant located in Washington County, Georgia, known as "Plant Washington." When constructed, Plant Washington will provide base-load electricity to member-owned electric cooperatives in the State of Georgia, which collectively serve almost 2 million residential and commercial customers in Georgia. Plant Washington may also supply electricity to other electric utilities, and will provide badly needed diversification in the sources of electricity supply for residents and businesses in the State of Georgia.

4. P4G has expended more than $30 million over five years on the development of Plant Washington. The process of developing and constructing a new coal-fired power plant (electrical generating unit or EGU) at a cost of more

than $2 billion is an extraordinarily complex undertaking. For example, P4G has been working since 2008 to obtain the permits required under the Clean Air Act to commence construction on Plant Washington, and then litigating multiple challenges to the validity of those permits with groups opposed to the construction of all new coal-fired power plants. These required permits include a final Prevention of Significant Deterioration (PSD) permit required under Section 165(a) of the Clean Air Act, and a case-by-case Maximum Achievable Control Technology (MACT) determination required under Section 112(g) of the Clean Air Act. In addition, P4G has been required to obtain many other rights and approvals necessary to commence construction of Plant Washington, including:

- Authorization for a "Development of Regional Significance" from the Central Savannah River Area Regional Development Center;
- Surface Water Withdrawal Permit No. 150-0391-04 from the Georgia Environmental Protection Division (EPD), Watershed Protection Branch;
- Ground Water Use Permit No. 150-0026 from the Georgia EPD, Watershed Protection Branch;
- Wastewater Discharge Permit No. GA0039055 under the Clean Water Act's National Pollutant Discharge Elimination System from the Georgia EPD, Watershed Protection Branch;
- Solid Waste Management Determination of Site Suitability No. APL 1501 from the Georgia EPD, Land Protection Branch;
- Stream Buffer Variance allowing the construction of water intake structures from Georgia EPD, Watershed Protection Branch;

- Authorization Number SAS-2008-00134 under Clean Water Act Section 404, Nationwide Permits 7 & 12 from the U.S. Army Corps of Engineers; and
- Property, or options to purchase the necessary property, from landowners in the area.

5. As of April 9, 2012, P4G has a final PSD permit and all other required permits and approvals necessary to commence construction of Plant Washington. P4G is now in the critical stage of securing financing and entering into contracts to move forward to construct the facility. However, P4G's $30 million expenditure and years of work are directly jeopardized by two rules issued by the United States Environmental Protection Agency (EPA). As is explained below, the juxtaposition of these two parallel EPA rulemakings jeopardizes P4G's Plant Washington project by requiring P4G to commence construction of Plant Washington in less than 12 months to be exempt from one proposed rule, while at the same time requiring P4G to design and construct Plant Washington to meet MACT emission limits for hazardous air pollutants (HAPs) that I believe are inconsistent with the Clean Air Act.

6. P4G and other new sources have filed Petitions for Review asking this Court to review and vacate the new emission limits for HAPs. Unless the Court rules expeditiously, however, P4G must attempt to design, contract and finance the project in order to commence construction by April 13, 2013, without knowing whether this Court will provide relief from the overly stringent and incorrectly

established emission limits for HAPs. This is creating great uncertainty in the financial markets and is directly and negatively affecting P4G's ability to secure the financing and to perform the detailed engineering work necessary to commence construction of Plant Washington within the time required. Thus, unless this Court grants expedited review of the challenges to EPA's rule establishing MACT emission limits for HAPs, P4G may well be unable to construct Plant Washington, and its prior significant investments and on-going expenditures may be lost.

EPA's Proposed GHG NSPS and Its Requirement that P4G Commence Construction of Plant Washington Within One Year

7. On April 13, 2012, EPA published a proposed rule entitled "Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units," 77 Fed. Reg. 22,392 (Apr. 13, 2012). This rule is referred to as the "Proposed GHG NSPS."

8. The Proposed GHG NSPS establishes "New Source Performance Standards" under Section 111 of the Clean Air Act that limit the amount of carbon dioxide (CO_2) that can be emitted from new coal-fired power plants. EPA's Proposed GHG NSPS would constrain emissions from new coal-fired power plants greater than 25 megawatts to 1,000 pounds of CO_2 per megawatt-hour (MWh), which is the amount of CO_2 emitted from highly efficient natural gas-fired, combined cycle combustion turbines. To meet this limit, the Proposed GHG NSPS would require new coal-fired power plants to use the technology of "carbon

capture and storage" (CCS), a process by which CO_2 is separated from the flue gas stream, compressed, and transported to a suitable location for long term storage and monitoring. EPA correctly and candidly acknowledges in the Proposed GHG NSPS that CCS is cost-prohibitive and that it can be deployed at this time only with the help of significant subsidies from the federal government. I believe that the Proposed GHG NSPS, if finalized, will effectively prohibit the construction of any new coal-fired EGUs in the United States.

9. By its terms, the Proposed GHG NSPS will apply to new coal-fired power plants that commence construction on or after April 13, 2012, the date the Proposed GHG NSPS was published in the Federal Register. However, the Proposed GHG NSPS expressly exempts certain "transitional sources" if they meet two specific requirements. First, the source must have "received approval for its complete PSD preconstruction permit" prior to publication of the Proposed GHG NSPS in the Federal Register. Second, the source must commence construction of the facility within 12 months of the proposed rule's publication. The Proposed GHG NSPS states that the 12-month period for commencement of construction "would not be extended for any reason."

10. The Proposed GHG NSPS identifies Plant Washington as one of 15 "potential transitional sources" that would be exempt from the Proposed GHG NSPS emission limits and its requirement to install CCS technology. Plant

Washington satisfies the first prong of the definition of a "transitional source," as it has a PSD preconstruction permit that was affirmed by a Final Decision of the Office of State Administrative Hearings on April 9, 2012, prior to publication of the Proposed GHG NSPS. To maintain this exemption, however, the Proposed GHG NSPS expressly requires Plant Washington to commence construction by April 13, 2013, which is 12 months after publication of the Proposed GHG NSPS in the Federal Register.

EPA's Deadline to Commence Construction Within 18 Months of the Issuance of the PSD Permit

11. Additional urgency is imposed upon Plant Washington by another deadline imposed by EPA. Under the regulations implementing the PSD program, Plant Washington must "commence construction" of the facility within 18 months of issuance of the PSD permit. 40 C.F.R. § 52.21(b)(9). This deadline will come due no later than October 2013.

EPA's MATS Rule: The Subject of This Litigation

12. On February 16, 2012, EPA promulgated a final rule entitled "National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units," 77 Fed. Reg. 9,304

(Feb. 16, 2012).[1] EPA refers to this rule as the "Mercury and Air Toxics Rule," or "MATS Rule."

13. Because P4G had not commenced construction of Plant Washington prior to EPA's publication on May 3, 2012 of the proposed MATS Rule, Plant Washington is deemed a "new source" for purposes of that Rule. New sources are treated differently from "existing sources" under the MATS Rule. First, new sources like Plant Washington are generally required to comply with the MATS Rule immediately upon start-up of the plant. Existing sources, in contrast, are provided three years (and possibly longer) to come into compliance with the MATS Rule. Second, the emission limits for new sources are determined on a different and more stringent basis than those applied to existing sources. This is because the Clean Air Act requires EPA to set MACT emission limits for existing sources based on the average emissions achieved in practice by the best performing 12 percent of existing sources in the category, while the emission limits for new sources can be no higher than "the emission control that is achieved in practice by the best controlled similar source."

[1] This rule was initially proposed by EPA on May 3, 2011. P4G, both individually and as part of a coalition of independent power producers, filed extensive comments with EPA explaining that the proposed rule was seriously flawed and that the emission limits EPA proposed were not achievable in practice under the entire range of foreseeable operating conditions as the Clean Air Act requires. Although EPA's MATS Rule revised the emission limits in the proposed rule somewhat, EPA maintained the basic structure of the rule and the methodology it used to calculate the various emission limits. Thus, EPA's revisions failed to remedy the many flaws present in its initial proposal.

14. I believe that the emission limits in the MATS Rule applicable to new units like Plant Washington are fundamentally flawed and unreasonably stringent. The extraordinary nature of the emission limits in EPA's MATS Rule can be seen by comparing the emission limits in the MATS Rule with those in P4G's Permit issued less than two years previously and based on a careful analysis of the data then available:

a. Mercury. P4G's Permit imposes a case-by-case MACT limit for mercury of 7.64×10^{-6} pounds per megawatt hour on a 12-month rolling average basis when firing sub-bituminous coal, which is equivalent to a mercury emission limit of 7.64×10^{-3} pounds per gigawatt-hour (GWh). At the time P4G's Permit was issued, this was far and away the lowest mercury emission limit in any permit issued to any EGU in the United States. Yet EPA's MATS Rule would require Plant Washington to emit no more than 2.0×10^{-4} pounds per GWh. This is more than thirty-eight times lower than P4G's Permit limit based on its case-by-case MACT determination. Moreover, experts question whether the test data upon which the standard is based was even accurately measured.

b. Hydrochloric Acid (HCl). P4G's Permit imposes a case-by-case MACT limit for HCl of 3.22×10^{-4} pounds per million British thermal units (lb/MMBtu). Again, I understand that at the time P4G's Permit was issued this was the lowest HCl emission limit in any permit issued to any EGU in the United

States. This limit even caused some experts to question whether that limit could be achieved in practice. In contrast, EPA's MATS Rule imposes an emission limit of 4.2×10^{-5} pounds per MMBtu. This is more than seven times lower than the HCl emission limit in P4G's Permit and is not based upon test data but on extrapolations from data reported as "non-detect."

15. Leading technical experts have explained to EPA, both prior to and after its promulgation of the MATS Rule, that these and other emission limits are so stringent that the makers of the necessary pollution control technologies cannot guarantee the MACT limits will be achieved in practice. *See, e.g.*, Testimony of Ralph E. Roberson, Subcommittee on Energy and Power, Committee on Energy and Commerce, U.S. House of Representatives (Feb. 8, 2012).

16. The new source emission limits in EPA's MATS Rule, which I believe are improperly derived and established, cause great uncertainty in the financial markets and thereby materially and adversely affect P4G's ability to secure financing for the project in order to commence construction of Plant Washington within the one-year window provided by the Proposed GHG NSPS:

a. First, it costs billions of dollars to design and construct an EGU like Plant Washington, and pollution control guarantees from equipment suppliers are required by lenders as an express condition of financing. Thus, P4G may be unable to secure the financing necessary to commence construction of Plant

Washington if it cannot obtain guarantees from vendors of pollution control technologies that their equipment will actually achieve the emission limits EPA has established.

b. Second, even if the emission limits in the MATS Rule were achievable in practice and could be guaranteed and even if financing can be secured, the process of designing, installing and operating the pollution control equipment required to meet these flawed and extraordinarily stringent limits would require P4G to incur enormous additional costs. I am unable to provide a more precise estimate of the possible increased costs because no vendor has ever designed or built pollution control equipment to meet the limits in the MATS Rule and no operator has ever been asked to meet such standards on a continuous basis and under the entire range of operating conditions. As a result, to my knowledge no vendor has ever provided a quotation of the additional costs that would be required to meet such standards, if indeed compliance is possible. Because P4G is required to commence construction within 12 months under EPA's Proposed GHG NSPS, however, it would be forced to undertake these expenditures before this litigation can be resolved under a normal schedule.

17. In sum, based on my experience, both with the Plant Washington project and in the energy development sector generally, EPA's decision to issue the Proposed GHG NSPS and the MATS Rule concurrently has placed P4G in an

untenable regulatory position, which jeopardizes P4G's more than $30 million investment in and the very viability of the Plant Washington project. Accordingly, to avoid the risks to P4G that EPA has alone created, P4G asks this Court to expedite the briefing and consideration of its Petition for Review.

C. Dean Alford

Dated: April 26th, 2012

ATTACHMENT C

approximately 40 co-ops -- electrical co-ops?

A Forty-two.

Q Forty-two electrical co-ops. So of the 42 in the state 6 have elected to participate in this; is that correct?

A That's correct.

Q When you were describing your background, you said you were the project manager for Power4Georgians; is that correct?

A Project manager playing the role of the developer.

Q Okay. And when did Power4Georgians retain you in that role?

A Summer of 2007.

Q Summer of 2007. Okay. Did you sign a contract?

A Yes, we did.

Q And that contract was with Power4Georgians?

A That's correct.

Q Okay. What --

A Let me correct you just for a second, if I may. Power4Georgians did not organize until probably after that. At that time we signed the contract with the largest three of the co-ops that's part of that project, which was Jackson -- let's see -- Jackson, Greystone and Cobb.

Q And to follow up on your point, in fact, Power4Georgians didn't organize as a legal entity until the

week they submitted their permit applications.

A That's correct.

Q Is that correct?

A That's exactly correct.

Q And so before they organized, who had you signed a contract with?

A With those three -- basically those three agencies.

Q Okay.

A Those three companies.

Q I'm sorry, could you repeat --

A Those three co-ops.

Q -- those three co-op again?

A If I remember right, -- and I can go back -- I believe it's Cobb, Jackson and Greystone, I believe is what we signed.

Q Now, is it correct that of those three who you originally signed a contract with two of them are no longer participating in this project?

A That's correct.

Q Is that correct?

A That's correct. That contract was assigned to Power4Georgians.

Q Okay. And when you -- I assume in your work you invoice your time, expenses, costs to Power4Georgians under

that contract.

A That's right.

Q Is that correct?

A That's what we do.

Q Okay. And you continue to be employed by Allied Energy Services; is that correct?

A That's correct.

Q Is Allied Energy Services a subsidiary of Cobb EMC?

MS. BARMEYER: Objection, Your Honor. I don't see how this is relevant to anything in this case.

MR. GILES: Your Honor, I'm trying to understand the multiple hats that he wears. He said he's the project developer for the project. He's also, you know, employed by Allied Energy Services. I'm just trying to understand the relationship between the two.

JUDGE WALKER: Okay. You can answer that.

THE WITNESS: I'm sorry, what was your question again? Would you repeat it?

BY MR. GILES:

Q Allied Energy Services is a subsidiary of Cobb EMC; is that correct?

A It is a subsidiary today of Cobb Energy Management Acquisition. That is the official name.

Q Cobb Energy -- Let me write this down. Cobb

Energy Management Acquisition?

A That's correct.

Q And is Cobb Energy Management Acquisition owned by Cobb EMC?

A Yes, it is.

Q Is that a for-profit subsidiary of Cobb EMC?

A No, it is not.

Q Okay. What's the nature of Cobb --

A Well, what happens is that there was a settlement, and basically Cobb Energy had agreed to basically divest itself of certain businesses, and Allied is one of those entities it is divesting itself of.

Q And that was a part of court settlement; correct?

A That's correct. That's correct.

Q Do you know if Jackson, Greystone and Cobb EMC interviewed any other project developers?

A I do not know.

Q Did they request that you submit a bid for this project?

A No, they did not.

Q Okay. Did you propose this project to them?

A No, I did not.

Q So they approached you and said, would you develop this project for us?

A That's correct. They had hired some consultants

to be working on the project beforehand. An energy consulting group had been working on this project for quite some time with Texas Utilities. I think they basically had approached me because of my background and experience.

Q Okay. You mentioned your background and experience. You've never developed a coal plant project before, have you?

A No. I spoke to that earlier.

Q Okay. Thank you. You mentioned that Power4Georgians is an LLC. Do they have any other employees, to your knowledge?

A They have no employees.

Q Okay. So all their -- everyone who works for Power4Georgians is a subcontractor.

A That's correct.

Q Is that correct?

A That's correct.

Q As an LLC, do you know who owns the shares of Power4Georgians?

A First of all, they're not shares, as you well know, because it's an LLC.

Q Let me rephrase the question so you're more comfortable with it. Do you know who owns the ownership interest in the LLC?

A I know that each has an equal voting right.

That's what I know.

Q The six co-ops.

A The six co-ops have an equal voting right.

Q To your knowledge does anyone else have a voting right in Power4Georgians, LLC?

A No.

Q Okay. Now, to turn back to the decision to build this plant, you said that it was made in the summer of 2007; is that correct?

A No, sir, that's not what I said. What I said was the decision to make this -- the co-ops made this decision back as late as the end of 2006.

Q And for my clarification, the co-ops you're referring to there, would that be the three co-ops or the ten co-ops?

A The ten.

Q Okay.

A If I may, can I back you up, just for clarity to you and to the Court?

Q Please.

A Your Honor, one of the things that happens in the co-op world, there's some big ones and some little ones. And when they broke up, they broke up into what is known as scheduling groups because that way they can go out as a larger entity and buy power. Seven of the -- Excuse me.

Eight of the co-ops were in a group called CEI, Cooperative Energy, Inc. And basically Cobb was the lead of those. Jackson and Greystone were the other two bigs that came together as a part of this consortium. So originally the thoughts were the governing board would be those three entities -- CEI, Jackson and Greystone.

Now, as time went on basically, as Mr. Gist has indicated, some of those co-ops left. When Power4Georgians was formed, it basically changed that structure. Not to just keep going, but you need to understand that it was an entity that basically they had ownership, but because of the CEI structure and the others for scheduling purposes is the reason that structure came together.

Q So for my clarification, CEI, do they own power plants?

A No, they do not.

Q And they don't have customers either, do they? They don't -- Let me clarify. They don't have consumer and customers such as a private residence.

A Let me tell you what CEI is, if you don't mind. What CEI is is a scheduling group. They basically go out together and basically can purchase power in the market because they have more customers collectively, and basically that's what they do. And all the co-ops are part of some scheduling group. Every co-op in the state is part of a

scheduling group.

Q So the Power4Georgians members go out and try to obtain power as part of a scheduling group. Other co-ops may be part of a different scheduling group, and they be looking --

A Absolutely.

Q -- somewhere else. Okay. And do you work with other -- Right now are you representing other scheduling groups other than this one, the Power4Georgians scheduling group, I'll call it for lack of a better term?

A I am working with some other cooperatives on some other projects.

Q But you're not working on other scheduling groups; is that correct?

A No.

Q Okay. Now, when this facility is built, will Power4Georgians actually own the physical -- the real property? Will they actually own the power plant?

A That is the plan at this time.

Q Have they signed a contract to that effect?

A No.

Q Does Power4Georgians own any other plants?

A No, they do not.

Q Okay. And I think there was some reference to this earlier. You referenced a group called what I'll call

TXU. I think you --

A Texas Utilities.

Q Texas Utilities. And they had previously proposed a series of power plants in Georgia; is that correct?

A That's correct. They had proposed three 1,700 megawatt units throughout the state of Georgia.

Q When did they propose those?

A 2005 and 2006, somewhere in that neighborhood.

JUDGE WALKER: Coal plants.

THE WITNESS: Yes, ma'am. And they actually proposed 11 throughout the southeastern part of the United States.

BY MR. GILES:

Q And, Mr. Alford, TXU, Texas Utilities, they abandoned those three coal plant projects; isn't that correct?

A What they did -- of course their ownership changed. And when their ownership changed, they basically decided to only build facilities in Texas.

Q As a point of clarification, did they decide not to pursue those projects before or after -- To your knowledge did they decide not to pursue those projects before or after the ownership changed?

A I'm under the impression they decided not to pursue those after the ownership changed.

Q Do you know the sequence of events specifically or is that your understanding?

A That is my understanding.

Q And the plans for these plants, they were purchased from Texas Utilities. Would that be correct?

A No. Let me tell you what actually happened on that because that's a little bit misleading to say they purchased the plans. Okay.

Q Let me clarify. Whatever materials were taken from the prior Texas Utilities proposals, those were converted to the plans for -- those were the seed for the plans for Plant Washington; is that correct?

A Well, what was done is some of the intellectual property -- some cites and things of that nature, some information.

Q Perhaps a better way to phrase it.

A Okay. Some of the intellectual property that was done. Some of the previous work.

Q So that intellectual property, that was purchased from TXU; is that correct?

A As I understand it. That was before I got involved.

Q Do you know who purchased those?

A No, I do not.

Q As we stand here today have the six co-ops who are

participating in Power4Georgians -- have they agreed to pay for the construction of this project?

A The six cooperatives involved in this project have basically said that they're going to build this project, and they basically need the power. And of course --

Q Let me clarify it perhaps. Have they signed a contract agreeing to pay the construction costs for this project?

A No, they have not.

Q Okay. Have they signed a contract agreeing to purchase the power that this project would generate?

A No, they have not. And the reason for that --

Q Okay. That's sufficient. Thank you.

JUDGE WALKER: He gets to explain his answer. Go ahead.

THE WITNESS: The reason for that, that would be totally inappropriate at this time. Before you can go get that financing you basically would then have time to do all that kind of legal work. Before that, that would not be necessary or important because the owner is the user, and so that would not be necessary nor would you do it -- that would be the way you would do it. No more so than Georgia Power, if they were building a plant, would sign a PPA that they would buy the power. It doesn't make any sense.

BY MR. GILES:

ATTACHMENT D
(Attached in a separate document)

ATTACHMENT E

From: billy helton
Date: Monday, April 30, 2012
Subject: Cobb minutes
To: billy@heltonelectric.com, khc83@alumni.guilford.edu

Thank you for getting me the minutes. This does clear up my understanding from our conversation. The minutes report he said that P4G never intended to build the plant. I may have misunderstood you but I thought that you told me they said P4G never intended to get the permits. Since I have been on the board it has been my understanding that P4g has never intended to own, finance or construct a coal plant. The purpose of P4G was to obtain the permits and lock down a low rate for our EMC's. I never understood that the EMC's would own or operate. I defiantly don't think that would be a good idea or financial move. I am not sure what the out come will be with the permits or if a plant will be constructed. WEMC for what I can see is trying to look ahead for there members and lock down power cost for the future. I was not involved in the original decisions but with this very close to the end one way or not I really don't think we should throw the towel in and lose a million of the EMC money. If the permit phases where further away and the cost was higher to get to the end I would have a different opinion. It is a shame that we don't have a lot of choices for power that are affordable "gas, coal "and there are problems with both of them. Most of the other sources are twice the price. When I got on the board I was pleased to see that WEMC had blend of coal, hydro, gas, and some green sources. I will say that if there is a plant and the cost are higher for the power just because our EMC was involved to get the plant does not mean we would have to take the power at what ever cost. Any long term power purchase would be heavily reviewed before agreements made. Katherine I am not sure if explained my understanding or not. I would be glad to meet with you or talk to you further on this matter. I am not sure about next Tuesday let's talk about that later this week. Please call me when you get a minute.

ATTACHMENT F

Plant Washington - Comparison of Mercury, HCl, and SO2 Emissions Based on Permit and Final EGU MATS Rule Limits			
Description	**Units**	**Value or Result**	**Source**
Number of Units		1	
Unit Rating	MW (Gross)	930	
Unit Maximum Heat Input	MMBtu/hr	8300	Condition 2.15
Type		SCPC Wall-Fired Dry Bottom	Application, Section 2.1, 1/17/08
Coal Characteristics			Table A-2, 11/26/08 Suppl. Data
Sub-Bituminous (PRB)			
Heating Value (Average)	Btu/lb	8500	
Carbon Content	%	49.16	
50/50 Blend			
Heating Value (Average)	Btu/lb	9950	
Carbon Content	%	55.24	
Annual Maximum Coal Use			
Sub-Bituminous	tons/yr	4276941	
50/50 Blend	tons/yr	3653668	
Maximum Annual Mercury Emissions			
(a) Based on Permit Limits			
Limit - Sub-Bituminous	lb/MWh-gross	7.64E-06	Condition 2.13(m)
Limit - 50:50 Blend	lb/MWh-gross	6.82E-06	Condition 2.13(m)
Emissions - Sub-Bituminous	lb/yr	**62.2**	Calculation
Emissions - 50:50 Blend	lb/yr	**55.6**	Calculation
(b) Based on Final EGU MATS Rule			
(New unit, coal-fired not low rank virgin coal)			
Limit	lb/GWh	0.0002	Table 1, 77 FR 9487 (February 16, 2012)
	lb/MWh	2.0E-07	Calculation/Conversion
Emissions	lb/yr	**1.63**	Calculation
Permit Limit Emissions/Final Rule Emissions Ratios			
- Sub-Bituminous		38	Calculation
- 50:50 Blend		34	Calculation

Conclusion: Emissions of mercury based on permit limits are significantly greater than those based on Final EGU MATS Rules			
Maximum Annual HCl Emissions			
(a) Based on Permit Limits			
Limit - Sub-Bituminous	lb/MMBtu	3.22E-04	Condition 2.13(n)
Limit - 50:50 Blend	lb/MMBtu	1.36E-03	Condition 2.13(n)
Emissions - Sub-Bituminous	lb/yr	**23412**	Calculation
Emissions - 50:50 Blend	lb/yr	**98883**	Calculation
(b) Based on Final EGU MATS Rule			
(New unit, coal-fired not low rank virgin coal)			
Limit	lb/MWh	0.0004	Table 1, 77 FR 9487 (February 16, 2012)
Emissions	lb/yr	**3259**	Calculation
Permit Limit Emissions/Final Rule Emissions			
- Sub-Bituminous		7	Calculation
- 50:50 Blend		30	Calculation
Conclusion: Emissions of HCl based on permit limits are significantly greater than those based on Final EGU MATS Rules			
Maximum Annual SO2 Emissions			
(a) Based on Permit Limits			
Limit	lb/MMBtu	0.052	Condition 2.13(f)
Emissions	tons/yr	**1890**	Calculation
(b) Based on Final EGU MATS Rule			
(New unit, coal-fired not low rank virgin coal)			
Limit	lb/MWh	0.4	Table 1, 77 FR 9487 (February 16, 2012)
Emissions	lb/yr	**1629**	Calculation
Permit Limit Emissions/Final Rule Emissions		1.16	
Conclusion: Emissions of SO2 based on			

permit limits **are greater** than those **based on Final EGU MATS Rules**			