



January 21, 2016

Via Electronic Submission at Regulations.gov

EPA Docket Center

Attn: Docket ID Nos. EPA-HQ-OAR-2015-0199 and EPA-HQ-OAR-2015-0734

U.S. Environmental Protection Agency

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Washington, DC 20460

**Re: Seminole Electric Cooperative Comments on
EPA's Proposed CO₂ Rules for Existing Electric Generating Units;
Federal Plan, Model Trading Rules, and Framework Revisions
Docket ID Nos.: EPA-HQ-OAR-2015-0199 and EPA-HQ-OAR-2015-0734**

Dear Administrator:

Seminole Electric Cooperative, Inc. ("Seminole") submits the following comments on the U.S. Environmental Protection Agency's ("EPA") proposed Federal Plan, model trading rules, and framework revisions to implement its existing-source emission guidelines for greenhouse gas ("GHG") emissions from existing fossil fuel-fired electric generating units ("EGUs"). Seminole is very concerned about EPA's proposal, and the impact it would have on Seminole and its members. In sum, the proposal contains fundamental legal, technical, economic, and policy-based flaws, and EPA should withdraw it and correct these issues before proceeding.

Seminole is not alone in Florida, and around the country, in expressing serious concerns over EPA's approach to regulating CO₂ from existing EGUs. EPA's current proposal is another step in implementing this approach, and does little to rectify fundamental flaws of the 111(b)/111(d) rules that were instantly subject to intense litigation. Accordingly, Seminole stands in general support of the concerns expressed by industry groups such as the Florida Electric Power Coordinating Group, Inc.'s Environmental Committee ("FCG-EC"), the Utility Air Regulatory Group ("UARG"), and the National Rural Electric Cooperative Association ("NRECA").

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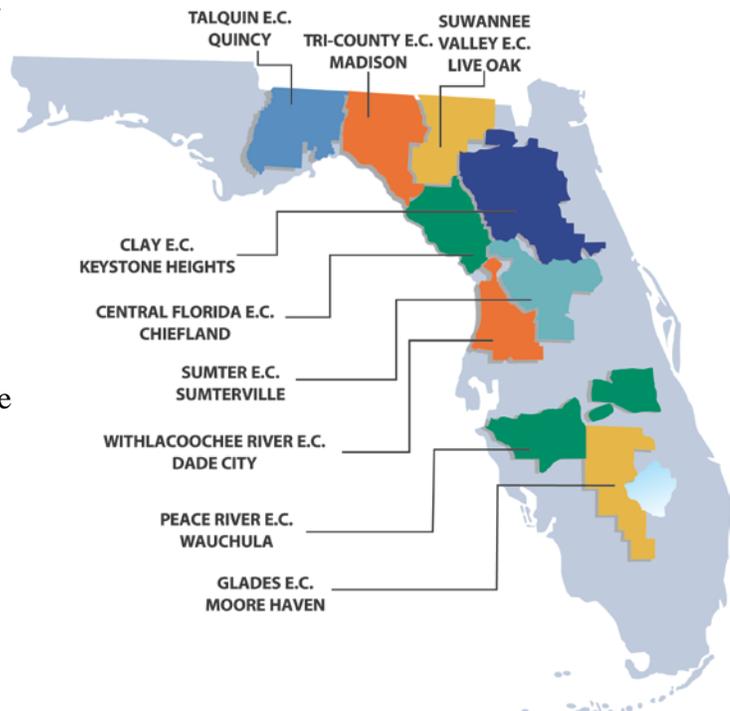
- B. Lisa D. Johnson Decl., Motion of Utility and Allied Petitioners for Stay of Rule, Utility Air Regulatory Group v. U.S. Environmental Protection Agency, No. 15-1370 (D.C. Cir. Oct. 23, 2015).

I. Executive Summary

On October 23, 2015, the United States Environmental Protection Agency (“EPA”) published a proposed Federal Plan and Model Trading Rules for implementation of EPA’s regulation of carbon dioxide (“CO₂”) emissions from existing electric utility generating units (“EGUs”) under Clean Air Act Section 111(d) (a.k.a., “EPA’s Clean Power Plan”).¹ Seminole Electric Cooperative, Inc. (“Seminole”) submits the following comments on EPA’s proposal.

Seminole is a not-for-profit, generation and transmission cooperative. Seminole was founded in 1948, under the Rural Electric Administration’s Electric Cooperative Corporation Act. Seminole strives to provide reliable, competitively priced, wholesale electric power to its nine Member distribution electric cooperatives (“Members”). In 2015, approximately 1.6 million people and businesses in 42 Florida counties relied on Seminole’s Members for electricity. Seminole’s Members include:

- Central Florida Electric Cooperative
- Clay Electric Cooperative
- Glades Electric Cooperative
- Peace River Electric Cooperative
- Sumter Electric Cooperative
- Suwannee Valley Electric Cooperative
- Talquin Electric Cooperative
- Tri-County Electric Cooperative
- Withlacoochee River Electric Cooperative



¹ Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations, 80 Fed. Reg. 64,965 (Oct. 23, 2015).

Seminole's primary business is fossil-fuel electric power generation, and we employ more than 500 individuals. The U.S. Small Business Administration ("SBA") classifies businesses in this industry with less than 750 employees as "small businesses." EPA is using the SBA classifications of "small business" to determine what are "small entities" for the purposes of this rulemaking. As such, Seminole is a small business and a small entity.

Our primary generation resources include the Seminole Generating Station ("SGS"), a coal-fired facility in northeast Florida, and the Richard J. Midulla Generating Station ("MGS"), a natural gas-fired facility in south central Florida. Neither SGS nor MGS can meet the emissions rates required by EPA's CO₂ Emissions Guidelines ("EGs") on a unit-by-unit basis. Seminole's Members have already spent hundreds of millions of dollars on state-of-the-art emissions control equipment, but no commercially viable technology exists for Seminole to lower its emissions at SGS to the levels established in the EGs. SGS has a commercially-rated useful life through 2045, and is financed through 2042. A Federal Plan would have the potential to shutter the plant, or seriously curtail its operations, as early as 2022. Seminole Members, and their consumer owners, would continue to pay the financing on a defunct, or seriously restricted, SGS while also needing to find and fund a replacement source of electricity. As discussed below, any Federal Plan should account for stranded assets, and it should allow small entities like Seminole special consideration, either in compliance timelines or otherwise. Small entities do not have the same resources or flexibility to adapt to a rapidly changing regulatory environment in comparison to large, multi-facility and/or multi-state investor owned utilities.

Seminole's comments also include a discussion of continuing legal and procedural defects in EPA's proposal. Many of the flaws identified in Seminole's December 2014 comments on EPA's proposed Clean Power Plan, incorporated in full herein,² remain.

EPA must address several procedural shortcomings. For example, EPA neither provides a clear opportunity for public notice and comment on any state-specific Federal Plans, nor proposes to issue a cost-benefit analysis for such plans. This approach deprives the public of an opportunity to provide meaningful input and, in turn, precludes EPA from incorporating stakeholder insight that would help design effective state-specific Federal Plans with the greatest chance of success. EPA's proposal also does not adequately address and protect reliability. These shortcomings are detrimental to both the existing proposal and implementation moving forward.

Any state-specific Federal Plan must provide maximum flexibility, and EPA should not foreclose any options at this point. For example, both mass- and rate-based plans should be considered, states should be allowed to substitute their own allocation methodology, plans should include unlimited banking and borrowing, special consideration should be provided for small entities like Seminole, and the Clean Energy Incentive Program should be broadened to include all reasonable projects.

II. EPA's Proposal Contains Fundamental Legal Flaws

EPA's proposal contains fundamental legal problems, addressed in detail by many other commenters. Further, because EPA's proposal is designed to implement its existing-source rule, the same legal problems that infect the existing-source rule are carried on in this proposal. In

² See Appendix A, "Seminole's Comments on the Proposed Clean Power Plan" (Dec. 1, 2014).

sum, there is serious doubt about whether EPA has the authority to issue ANY proposal regulating GHGs from existing EGUs. For example, arguments have already been presented in the D.C. Circuit regarding the plain language of CAA section 111(d), which precludes EPA from promulgating rules for existing EGUs under section 111(d) when EPA has already issued a regulation covering EGUs under section 112. Therefore, because EPA has already promulgated the Mercury and Air Toxics Standards (MATS) rule under section 112, it cannot issue its CO₂ rule under 111(d). Further, the CAA precludes EPA from issuing a rule for existing sources under 111(d) until it has issued a valid rule for new sources under 111(b), and this 111(b) rule is being challenged as well. EPA itself has said that 111(d) rules are only appropriate for specialized types of emission units that emit discrete types of pollutants; they are NOT appropriate for pollutants emitted from diverse and numerous sources, such as GHGs, and CO₂ specifically. (*See* 40 Fed. Reg. 53,340 (Nov. 17, 1975)). Seminole is challenging the legality of EPA's EGs in its own capacity and as part of the CO₂ Task Force of the FCG, and has submitted a declaration in support of the Utility Petitioners' Motion for Stay.³

Even assuming EPA has the authority to issue an existing-source rule, the proposed Federal Plan and Model Trading Rules contains numerous material legal flaws. For example, the proposed Federal Plan and Model Trading Rules:

- (1) Would unlawfully allow EPA to set national energy policy;
- (2) Would usurp state authority in violation of the 10th Amendment;

³ *See* Appendix C, Lisa D. Johnson Decl., Motion of Utility and Allied Petitioners for Stay of Rule, Utility Air Regulatory Group v. U.S. Environmental Protection Agency, No. 15-1370 (D.C. Cir. Oct. 23, 2015).

- (3) Rely on an unlawful conclusion regarding what constitutes the Best System of Emissions Reduction (BSER);
- (4) Cannot be used to set an enforceable standard on states;
- (5) Fail to provide needed flexibility in setting source-specific standards;
- (6) Fail to meaningfully consider the remaining useful life of a particular unit;
- (7) Fail to adequately address and protect reliability;
- (8) Would unlawfully regulate new sources under section 111(d);
- (9) Would impose substantially more stringent standards on an existing source than a new source, contradicting the CAA's structure;
- (10) Rely on technologies and measures that have not been adequately demonstrated as achievable;
- (11) Improperly consider the cost impacts of the proposal;
- (12) Overstate the benefits of the rule; and
- (13) Are inconsistent with prior 111(d) rules.

III. Comments on the Proposed Federal Plan and Model Trading Rules

A. EPA Must First Propose Any State-Specific Federal Plan

EPA is providing an opportunity to comment on the current proposal, which is very generic and, based on EPA's request for comment on more than 300 items, any final Federal Plan is likely to be very different than proposed. When EPA promulgates a final state plan, there will apparently be no opportunity to comment based on the schedule provided in the preamble. EPA states that "[i]t is the agency's intention to promulgate federal plans promptly for states who do not submit plans or initial submittals by September 6, 2016," and that it "is not providing

specific regulatory text” that would promulgate a Federal Plan for any individual state because it views such state-specific provisions as “ministerial.” EPA must provide an opportunity for public notice and comment before imposing a state-specific Federal Plan. Providing for public notice and comment is an essential requirement of administrative law, ensuring fairness to affected parties, and allowing affected parties to develop a record to support objections informing judicial review. *Int’l Union, UMW v. MSHA*, 407 F.3d 1250, 1259 (D.C. Cir. 2005).

Seminole’s concerns are heightened by EPA’s proposed revisions to the regulatory text regarding imposition of Federal Plans. The current version of the rule states: “The Administrator will, after consideration of any State hearing record, promptly prepare and publish *proposed* regulations setting forth a plan” if a State fails to submit an approvable plan that meets all regulatory requirements. 40 C.F.R. § 60.27(c) (emphasis added). EPA’s proposed revised version of section 60.27(c) states: “The Administrator shall promulgate a federal plan within 12 months after the date” a State fails to submit an approvable plan that meets all regulatory requirements. (80 Fed. Reg. at 65,059). The express language to propose such a plan is conspicuously absent from the proposed revision. If EPA is proposing to issue final Federal Plans for specific states without first proposing those plans, this would violate the CAA and the Administrative Procedures Act, and must be withdrawn. EPA should reinsert the express language directing it to publish a proposed plan, or at a minimum, must confirm that “promulgate” includes a proposal and opportunity for public comments before it finalizes a state-specific Federal Plan.

B. A State-Specific Federal Plan Must be Tailored to that State

EPA must tailor any state-specific Federal Plan to fit the facts and circumstances of that particular state. EPA's proposal is very generic and provides no indication of whether or how EPA will address the details of a state. A few key examples include the number and types of units affected, fuel diversity, reliability, pipeline and transmission infrastructure, the potential for additional renewable energy, and the economy of the state and local communities. EPA cannot impose a generic Federal Plan without addressing these issues. Also, providing notice and comment before finalizing state-specific Federal Plans would allow stakeholders to educate EPA on these and other issues. For example, knowledgeable stakeholders in Florida would be able to provide insight into the compliance challenges and reliability concerns specific to Florida's peninsular geography, Florida's limited power transfer opportunities with only two contiguous states, negligible natural gas production combined with gas pipeline import limitations, and Florida's capacity for renewable generation.

Assuming final Federal Plans may be either rate-based or mass-based, states should be able to decide which type of Federal Plan trading program will apply to them. States are best positioned to select the more suitable approach based on the state's knowledge of its own existing and potential energy mix, trading opportunities, and the anticipated compliance costs to consumers. As EPA recognized in the context of allowance distribution, states "can take into account a wide range of considerations and tailor decisions to the particular characteristics and preferences of their state." (80 Fed. Reg. at 65,015).

C. EPA Must Provide a Cost-Benefit Assessment for Each State-Specific Federal Plan

Similarly, EPA is required to properly assess the costs and benefits from promulgating such a significant regulatory action as a state-specific Federal Plan. Executive Order 12866: Regulatory Planning and Review; Executive Order 13563: Improving Regulation and Regulatory Review. A generic Federal Plan cannot accomplish this. Given the unique facts and circumstances of each state, as described above, EPA must include a detailed Regulatory Impact Analysis (RIA) for every state-specific Federal Plan. This RIA should be presented in the proposal to allow for public review and comment. Such an RIA would allow the public to raise and address specific concerns regarding cost burdens, particularly those relevant to small entities like Seminole.

D. EPA Should Provide for Mass-based and Rate-Based Plans, Including Allowing a Single-Rate Approach

As states are currently evaluating options for implementing EPA's Clean Power Plan, we believe EPA should finalize both the proposed rate-based and mass-based model trading rules as expeditiously as possible. Since some states may be best served by rate and some by mass plans, EPA must have both available. In addition, failure to finalize both types of Federal Plans could impose particular hardship on states that become subject to a Federal Plan after implementing a different type of state plan.

Regarding Federal Plans, EPA proposes to finalize either a rate-based or mass-based approach in all state-specific Federal Plans because, EPA posits, a single, broad trading program would achieve economies of scale. (80 Fed. Reg. at 64,970). In accord with the comment above regarding the model trading rules, EPA should also retain the option of imposing both rate-based

and/or mass-based Federal Plans. Moreover, EPA's rationale prematurely excludes the possibility of a mechanism allowing trading between rate- and mass-based states. Such a mechanism could operate as an exchange where equivalent values are set between ERCs in rate-based plans and allowances in mass-based plans. EPA should adopt a mechanism to allow trading between rate-based and mass-based plans, whether they are federal or state plans. States should be allowed to decide how to trade with other rate- or mass-based states.

If the EPA decides to finalize only one form of Federal Plan, Seminole requests that EPA finalize a mass-based plan. EPA has experience in implementing, and regulated entities have experience operating, under mass-based programs, such as the Acid Rain Program and the transport rules of the Cross-State Air Pollution Rule. Furthermore, a mass-based target provides operators greater certainty, as they can better control their performance toward a mass-based goal throughout a compliance period.

To the extent EPA uses a rate-based approach, EPA proposes to impose the subcategory-specific rates on each EGU. Similar to the comment above to maintain maximum flexibility, EPA should also preserve the option to utilize a single state-wide rate. EPA should provide the appropriate linkage so ERCs equivalent to one MWh of zero-carbon generation could be traded among single rate-based states with a common standard. In addition, verified ERCs generated under either the subcategory-rate approach or the single-rate approach would be equal to each other, so EPA should allow rate-based states to trade with all other rate-based states.

Further, demand-side energy efficiency programs for all customers should be considered for ERC production. EPA has already recognized the usefulness of demand-side energy efficiency projects in reducing CO₂ emissions under the Clean Energy Incentive Program

(“CEIP”), and energy efficiency is an integral part of reducing emissions of all kinds by reducing the need for additional production. In addition, under a rate-based plan, EPA has acknowledged that utilities would be incentivized to increase loading at gas plants in order to maximize ERC production. Without similar ERCs for energy efficiency, a utility would be dis-incentivized to continue programs that reduce the costs of energy efficiency improvements by their customers. (80 Fed. Reg. at 64,994).

E. EPA Should Provide Additional Compliance Time for Certain Units

Seminole supports granting certain affected EGUs, particularly those operated by small entities, additional time to achieve compliance. (80 Fed. Reg. at 64,981). EPA should also consider extending compliance deadlines for units located in low-income areas, units that provide a large percentage of a county’s property taxes, or units that provide a substantial number of jobs in areas with above average levels of unemployment. Communities already struggling with harsh economic realities should not bear the highest compliance costs of new regulations.

EPA established a longer than typical compliance schedule for this rule due to its unique focus on performance standards addressing long-term impacts of CO₂, which is long-lived in the atmosphere. (80 Fed. Reg. at 64,980). A compliance extension is necessary for small entities, and the communities that rely on them, because small entities are disproportionately impacted by the tremendous compliance burden imposed and typically have fewer affected EGUs for generation shifting.⁴ Compliance extensions would minimize the economic burden and provide

⁴ See Final Report of the Small Business Advocacy Review Panel on EPA’s Planned Proposed Rule, Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014 (July 28, 2015) at 8.

more opportunity to plan and develop reliable generation and transmission resources. At a minimum, allowing small entity generators to defer participation in Federal Plan trading markets until the second interim compliance period would allow for establishment of market pricing, and thereby provide reasonable planning and budgetary parameters from which to work.

For rural electric cooperatives, EPA's regulatory impact analysis defines small entities as those with fewer than the threshold level of employees or revenue specified by the SBA for each of the relevant North American Industry Classification System (NAICS) sectors.⁵ However, a "small entity" should be defined as "an entity with fewer than the threshold level of employees or revenue specified by the SBA for its primary NAICS sector."⁶ Seminole typifies such a "small entity" because with fewer than 750 employees, it employs fewer than the threshold number of employees under its primary NAICS code, 221112, "Fossil-Fuel Electric Power Generation,"⁷ and has limited generation assets to accomplish any generation shifting. Notably, however, Seminole is not represented among the small entities in EPA's *Initial Regulatory Flexibility Analysis (IRFA) for the Regulatory Impact Analysis for the Proposed Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed*

⁵ U.S. Environmental Protection Agency, *Regulatory Impact Analysis for the Proposed Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rule* [hereinafter EPA, *RIA on Proposed Federal Plan*], Section 2.3.3 "Description and Estimate of Affected Small Entities," p. 2-10.

⁶ Using a definition based on the lowest of any relevant NAICS sector would be arbitrary and capricious, as potentially relevant codes may have wildly different thresholds for the number of employees.

Compare, for example, NAICS code 221121, "Electric Bulk Power Transmission and Control (500 employees)" with NAICS code 221122, "Electric Power Distribution" (1000 employees).

⁷ See EPA *RIA on Proposed Federal Plan*, Table 2-1, "SBA Size Standards by NAICS Code," at 2-12.

*on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations.*⁸

This should be corrected, as Seminole is a small business and a small entity.

Moreover, SGS illustrates why compliance flexibility is necessary for units located in low-income areas, units that are the principal payers of a county's property taxes, or units that provide a substantial number of jobs in areas with above average levels of unemployment. SGS employs approximately 300 hard-working Floridians in rural Putnam County. There is a material risk that EPA's CO₂ regulations will force Seminole's coal-fired power plant to close – leaving those 300 skilled employees without a job. Additionally, SGS relies on hundreds of skilled contractors to assist during maintenance outages and capital project implementation. For example, in 2012 SGS had more than 650 contractor personnel onsite at one time to assist during a maintenance outage. For 2013, contractor personnel exceeded 550, and during the 2014 spring outage, SGS had more than 400 contractor personnel onsite. All of these contractor personnel jobs will no longer be needed should the plant close early.

Putnam County has been designated as both a State Rural Enterprise Zone and a Rural Area of Opportunity. Rural Areas of Opportunity are defined as rural communities, or a region composed of rural communities, that have been adversely affected by extraordinary economic events or natural disasters. Portions of Putnam County are within a Federal Historically Underutilized Business Zone. Putnam County was also identified by USA Today as the poorest county in the State of Florida in 2015. These state and federal designations reflect the tenuous economic status of the County and its residents.

⁸ Available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2015-0199-0039>.

As such, this is not an area in rural Florida that can afford to lose nearly 300 jobs directly, and hundreds more indirectly, as a result of EPA's regulation. To place even greater emphasis on this issue, Seminole is also the largest taxpayer in Putnam County. Seminole paid more than \$5 million in property taxes in both 2013 and 2014, the largest amount by any single entity. Putnam County cannot afford to lose Seminole's coal-fired power plant or any of the jobs associated with the facility. For the sake of Seminole, its Members, their consumer owners, and the people of Palatka and Putnam County, the Federal Plan should provide for special compliance timelines for affected EGU's like those at SGS.

F. EPA Must Adequately Address Issues Related to Stranded Assets

Clean Air Act ("CAA") section 111(d)(2) expressly states, "[i]n promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which the standard applies." EPA notes that "[t]he key consideration is whether the time period associated with amortizable costs of compliance will exceed the remaining useful lives of the source in question," and proposes that trading and other flexibility in the proposed Federal Plan satisfy this requirement. (80 Fed. Reg. at 64,983). Simply referring to trading as sufficient, however, is contrary to the CAA's plain language. As an initial matter, EPA and the states cannot meaningfully consider amortization of compliance costs in relation to trading markets that do not yet exist. At a minimum, EPA must account for such impacts, especially in relation to small entities. Small entities should be allowed to run their units until the debt associated with those units can be paid.

EPA's proposal dismisses, without seriously addressing, the potential cost and economic burden resulting from stranded assets. Under either the rate- or mass-based approach, EPA's EGs will require states to transition from coal to natural gas-fired electricity generation. In the process, coal-fired power plants, many with newly-installed pollution control equipment, will be forced into early retirement. Removing these large capital investments from service before expiration of their remaining useful life causes the asset to become "stranded," leaving small entities such as Seminole, its Members, and, ultimately, their consumer-owners to cover the cost of the stranded asset, while at the same time increasing rates to cover the costs of replacement power that is no longer available from the retired facility.

For example, Seminole has primarily relied on capital borrowed from the Federal Financing Bank and loan guarantees from the Rural Utilities Service for the construction of its generation fleet, and capital improvements to its facilities. Currently, loans related to SGS account for more than 75 percent of Seminole's total outstanding debt. If SGS were retired prior to the end of its useful life, the debt service related to these loans would significantly impact the electricity rates paid by our Members. Additionally, most of Seminole's loans also contain significant prepayment interest penalties, so a strategy to prepay the debt would only further increase the cost paid by our Members. Additionally, the remaining net book value (stranded asset) would be required to be written off and the expense would be borne by our Members; Members would continue to pay the fixed costs related to SGS without receiving any energy or capacity from its operation. Nevertheless, Seminole will still have to serve the full requirements of our Members, and the replacement capacity related to the early retirement of SGS will either

have to be constructed or purchased. This will cause our Members to pay for both the stranded asset (SGS) and the new replacement capacity.

EPA cannot reasonably promulgate a final state-specific Federal Plan, or Model Trading Rules, without fully assessing and addressing these impacts. As described above, Seminole has substantial investments in its facilities, which have significant remaining useful life. Any Florida-specific Federal Plan must assess and provide a remedy for these stranded assets.

G. A State-Specific Federal Plan Must Address and Protect Reliability

EPA's decision not to include a reliability safety valve in the Federal Plan is arbitrary and capricious and inconsistent with the reasoning presented in the final section 111(d) rule. The Federal Plan is proposed as a "one-size-fits-all" plan and only limited state-specific knowledge will be utilized by EPA. This is inadequate. To address reliability, EPA's plan for any state receiving a Federal Plan must follow the same requirements as required for State Plans and "include a demonstration that the reliability of the electrical grid has been considered." (*See* Final Clean Power Plan, 80 Fed. Reg. 64,661, 64,946 (regarding 40 C.F.R. 60.5745(a)(7)).

As recognized in the Clean Power Plan, an unanticipated emergency may cause a conflict between maintaining electric system reliability and achievement of inflexible CO₂ regulations. (80 Fed. Reg. at 64,981-82). EPA states that a reliability safety valve is not necessary for the Federal Plan because affected EGUs can obtain allowances or credits as needed. (80 Fed. Reg. at 64,982). EPA's position assumes ready availability of allowances or credits, and does not account for an emergency arising at the end of a compliance period when allowances or credits may be scarce. Furthermore, EPA's position oversimplifies the time, expense, and administrative burden required for obtaining such allowances or credits in a yet-to-be-proven

trading market. EPA discussed its idea of a set-aside of allowances or ERCs for an emergency (80 Fed. Reg. at 64,982), but this would not provide sufficient flexibility in the event of an emergency. Rather, EPA should establish a matching fund to cover operation in response to an emergency or other material risk to reliability, similar to the matching fund proposed for awarding ERCs or allowances to states participating in the CEIP.

Qualification for use of a reliability safety valve is also an issue EPA should address. An EGU should be entitled to the rebuttable presumption that the appropriate safety valve applies upon the EGU's demonstration of one or more qualifying events. An EGU's reliability coordinator or similarly trained personnel should determine whether there is an adequate demonstration of a reliability event. The reliability coordinator or similarly trained personnel, not EPA, has the relevant expertise to determine the extent of a reliability event.

H. EPA Should Allocate Allowances Based on Past Emissions; EPA Should Not Auction

EPA describes several options or formulas for allocating allowances. Seminole requests that any Florida-specific Federal Plan allocate allowances based on past emissions. EPA's proposed approach would allocate based on the amount of electricity a unit produced, regardless of its level of CO₂ emissions, or relative share of the state emissions. EPA's entire Climate Action Plan is focused on CO₂ emissions, and it is thus most reasonable to implement an allocation formula based on emissions; EPA's proposal would unfairly penalize those units most in need of allowances.

EPA's additional set-aside for gas units further compounds the bias introduced by its preferred allocation methodology. As noted above, EPA is proposing an "output-based

allocation” set-aside that provides allocations of allowances to existing NGCC units. Under this approach, beginning in the second compliance period, those EGUs will receive an even larger allowance allocation if the eligible EGUs generate more electricity. A historical generation allocation methodology coupled with an output-based allocation set-aside unfairly provides excess allowances to natural gas units.

Seminole opposes distributing allowances by auction. EPA’s allocation formula should consider impacts on both the regulated industry and the rate payers, including distributional effects and cost. Contrary to EPA’s assumptions, an auction system may increase costs to rate payers. Further, the primary benefit of an allowance auction is re-purposing incoming revenue for development projects, such as energy efficiency upgrades. As EPA notes, revenue from federally run auctions would likely have to be deposited in the U.S. Treasury. (80 Fed. Reg. at 65,018). Thus, a federal auction would consist of an unnecessary tax on EGUs. Seminole opposes adding such a tax to the rule’s already substantial costs of compliance.

I. EPA Should Establish a Renewable Energy Set-Aside that Benefits Low-Income Communities

For any mass-based Federal Plan and as part of the Model Trading Rule, EPA proposed a 5% set-aside of state allowances to encourage installation of renewable energy projects, primarily as a means of addressing leakage. (80 Fed. Reg. at 65,022). EPA asked for comment on whether a portion of the renewable energy set-aside should be designated for renewable energy projects that specifically benefit low-income communities by MWh provided to the low-income community, financial proceeds from the project primarily benefitting the low-income community, or the project lowering utility costs of low-income rate-payers. (80 Fed. Reg. at 65,024). If set-asides to address

leakage are included in any state-specific Federal Plan or Model Trading Rule, Seminole supports designating a percentage for renewable energy projects benefitting low-income communities. Furthermore, Seminole recommends defining low-income communities in this context consistent with the approach for defining low-income communities under the CEIP.

J. EPA Should Include the CEIP in All State-Specific Federal Plans

Though EPA has provided only limited details on the CEIP, Seminole supports EPA's proposal to include the CEIP in all state-specific Federal Plans. Whether final plans are mass-based or rate-based, the CEIP can be properly structured to recognize and incentivize early compliance, and may reduce the compliance burden suffered by low-income communities. EPA should consider the unique structure of Generation and Transmission electric cooperatives when considering how to dole out the allocations or credits that are generated by qualifying energy efficiency programs under the CEIP.

i. EPA Should Provide Broad Flexibility in the CEIP

From a pool of allowances equivalent to up to 300 million short tons of CO₂ emissions, EPA proposes to allot a number of matching credits held in a reserve for eligible wind and solar energy projects and a number of matching credits held in reserve for eligible demand-side energy efficiency projects in low-income communities. (80 Fed. Reg. at 65,001, 65,025). EPA requests comment on the size of these reserves, but provided no rationale for why two distinct reserves are needed. Rather, to provide flexibility, the total pool of matching credits should be useable for either method of emissions reduction.

With respect to project eligibility, EPA proposes that to be eligible for the CEIP, renewable energy projects must commence construction and demand-side energy efficiency projects must commence operations after September 6, 2018, and would receive incentives based on zero-emitting MWh generate or energy savings realized during 2020 and/or 2021. (80 Fed. Reg. at 65,000, 65,025). This artificial limit fails to recognize efforts recently completed or already underway. To better incentivize early action, the CEIP should cover projects already underway that are achieving the desired goals before 2020. The CEIP already contains a competitive incentive to begin qualifying renewable energy and demand-side energy efficiency projects as soon as possible because the total credits are capped at 300 million short tons.

ii. Projects Qualifying Under the CEIP

EPA proposes that projects qualifying for the CEIP would include renewable energy investments that generate metered MWh from wind or solar resources, and demand-side energy efficiency programs and measures implemented that result in quantified and verified electricity savings. (80 Fed. Reg. at 65,000-01, 65,025). The CEIP should include as eligible for allowances any energy efficiency program or conservation effort that can show actual results in reducing energy usage in low-income communities. For example, qualifying demand-side energy efficiency programs should include energy audits—whether carried out by a utility or affiliated third party—yielding demonstrable reductions in energy usage, distribution of weather stripping kits, loans for energy efficiency improvements, voltage control, system voltage conversion, conductor replacements, switching to outdoor LED lighting, behavioral programs, and implementation of energy usage smartphone applications. EPA recognizes that valuable energy efficiency programs and policies are likely to evolve (80 Fed. Reg. at 65,007); therefore,

the CEIP should provide a process through which new energy efficiency projects may qualify as eligible.

Typically, Generation and Transmission electric cooperatives operate under “all requirements” wholesale power contracts with their Distribution electric cooperative members. Seminole is no exception, and has an “all requirements” wholesale power contract with its nine members. While Seminole purchases and generates the power that our Members ultimately distribute to their member owners, our Members typically carry out the energy efficiency programs that would generate the allocations or credits envisioned by the CEIP. EPA should provide that the compliance allocations or credits generated by the members of a Generation and Transmission Electric Cooperative could be, at the option of the member, directed to the Generation and Transmission Cooperative itself, and not the distribution cooperative operating the program.

iii. Low-Income Communities Should be Broadly Defined

EPA must broadly define “low-income community” in a manner that can be consistently applied and that will not exclude otherwise eligible communities. For example, the definition should encompass counties where the average population is low income, such as those non-metro counties with high incidence of poverty and those counties with persistent poverty.⁹ The definition should also be crafted to include low-income community areas on the sub-county level, particularly in rural areas.

The CEIP should also broadly construe how demand-side energy efficiency projects benefit low-income communities, and therefore, what benefits render projects eligible under the

⁹ See <http://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx>.

CEIP. Eligible projects should not be limited to those directly impacting residences, but rather should include projects at the hospitals, schools, churches, and small commercial, industrial and agricultural businesses that serve low-income communities.

iv. EPA Should Provide Pro-rata Distribution of Unused Set-Aside Allowances or ERCs

Seminole supports EPA's proposal to distribute any unused allowances or ERCs on a pro-rata basis among participating states, rather than sweeping the unused allowances or ERCs into a pool for first-come, first-served projects. (80 Fed. Reg. 65,001, 65,025). However, Seminole recommends that unused allowances then be prioritized for small entities, in light of the disproportionate compliance burdens discussed previously.

K. EPA Should Provide for Unlimited Allowance or ERC Banking and Borrowing, and Limit Participation to EGUs

Seminole Electric supports EPA's proposal to allow unlimited banking of allowances or ERCs within and between the interim and final compliance periods, without ERCs expiring. (80 Fed. Reg. at 65,010, 65,014). As EPA notes, allowance banking would incentivize earlier emissions reductions. (80 Fed. Reg. at 65,012). Allowing banking within a compliance period is especially necessary given the potential unpredictability of force majeure on operations, such as a storm or emergency near the end of a compliance period.

Seminole supports the borrowing of allowances or ERCs from a future compliance period to maintain maximum flexibility. Allowing borrowing would also provide additional flexibility to protect reliability.

EPA expresses concern that allowing borrowing across compliance periods would increase the complexity of mass-based trading and that the use of allowances from the future

period would constitute emissions beyond the levels specified in the Clean Power Plan EGs. (80 Fed. Reg. 65,014). There are several options to address EPA's concerns. For example, borrowing could be allowed broadly for small entities, or as an additional remedy for stranded assets. Also, for other entities, borrowing could be limited to only those allowances needed for compliance, which would then be retired from use and therefore not undermine long-term emissions goals. Alternatively, a cap on the amount of allowances borrowed could be imposed, such as a cap based on a percentage of an affected unit's budgeted allowances.

EPA also raised concerns that borrowing would reduce states' ability to replace the Federal Plan with an approved state plan, as EPA proposed to allow a state to replace a mass-based trading Federal Plan (or allowance-distribution provisions) with a state plan (or allowance-distribution methodology) for a compliance period only if the agency had not yet recorded allowances in source accounts. (80 Fed. Reg. at 65,014). However, a state plan (or allowance distribution methodology) could take into account borrowing by deducting already borrowed allowances from the pool of allowances remaining for allocation.

A robust trading market is essential for affected units to be able to achieve compliance. Banking and borrowing add necessary flexibility and compliance assurance, but EPA should also consider limiting trading market participants to EGUs, or at a minimum, requiring non-regulated¹⁰ entities to commit to selling their allowances or ERCs into the market by a date certain. This would improve liquidity in trading markets and potentially reduce compliance costs.

¹⁰ "Non-regulated entities" here refers to those entities that are not EGUs subject to the EGs of the Clean Power Plan.

L. Federal Plans Should Provide Accommodations for New Source Review

Heat rate improvement (HRI) projects increase efficiency of the plant and may require upgrades to: soot blowers, boiler feed pumps, economizers, turbines, boilers, air heaters, feedwater heaters, condensers, forced draft and induced draft fans, pulverizers, condensate pumps, flue gas conditioning systems, selective catalytic reduction (“SCR”) systems, ash handling systems, neural network optimization systems, electrostatic precipitators, and system controls.

These enhancements can raise NSR compliance concerns when either citizen plaintiffs or EPA bring suit claiming these projects require an NSR permit. This is a subjective process with inconsistent regulatory interpretations and aggressive activist litigation. Since the EGs are predicated on lower utilization of coal, EPA should streamline the NSR/PSD policy and provide appropriate regulatory certainty by including a provision in the final rule that allows states to determine that an affected source that complies with an applicable 111(d) standard would be treated as not increasing annual emissions, and therefore, not subject to NSR. Such a provision in a state plan also could serve to ameliorate any NSR disincentives to HRI projects.

Any final Federal Plan should avoid creating disincentives for states seeking to achieve reductions through actions to improve the efficiency of existing coal-based units by clarifying that these actions do not trigger NSR.

M. EPA Should Allocate Allowances for Retired Units

Under a mass-based approach, EPA proposes that if an affected unit does not operate for two consecutive calendar years, the unit only receives allocations for a limited number of years thereafter before those allocations go to the renewable energy (RE) set-aside for the state in

which the retired unit is located. This may have the unintended consequence of encouraging non-economic coal generation to remain in service in order to maintain their allowance allocations. This situation is exacerbated for units that EPA included in the 2012 baseline but are scheduled to retire prior to 2019. These units would not receive any allocation at all, nor would their allocation go to other affected units. Instead, those allowances would go to the RE set-aside. EPA should allocate allowances to utilities so that Federal Plan compliance is achieved in the most cost-effective way possible, thereby minimizing rate impacts on our customers. Seminole supports continued allocation of allowances to retiring units for the duration of the 111(d) program.

The proposed Model Trading Rules also note that units may retire before implementation of the 111(d) Rule begins. EPA does not propose a methodology for addressing allocation to those units and instead asks for comment on “the treatment of generation from and allocations to units that operated in the historical data set but retire before the start of the program.” Units that retire before the start of the program should be treated the same as units that retire during the program. Thus, retired EGUs that are affected EGUs, regardless of the timing of their retirement, should receive their allowance allocations throughout the duration of the 111(d) program.

If EPA fails to adopt such a policy, units that retire before the start of the 111(d) program should receive allowances under the same terms as units that retire during the implementation of the program. In all cases, upon retirement, units should continue to receive allowances for the following two compliance periods, whether interim (pre-2030) or regular (post-2030) periods. Furthermore, in the event that one unit at a multi-unit site shuts down and

other units remain in operation at the facility, then the allowances from the unit shut down should be preserved indefinitely for use by the remaining units.

N. EPA Should Provide Appropriate Credit for Retired Units

Under a rate-based approach, EPA does not propose to provide any ERCs or other credit for any period to affected EGUs that retire under a rate-based plan. EPA should provide an ERC representing each MWh of generation reduced to a unit that retires under a rate-based plan. The number of ERCs should reflect the number of MWh for the retiring unit's baseline, i.e., an average of generation calculated over 2010 to 2012 or such other timespan that the unit is able to demonstrate as a realistic baseline.

All units that retire during the implementation of the program should receive ERCs in perpetuity for the duration of the program. This approach would properly credit units that retire for emissions reductions in such a way that it would provide an incentive for old and inefficient units to retire. It would also provide parity between units that retire under a mass-based system and units that retire under a rate-based system.

O. EPA Should Incentivize Co-firing Gas at a Coal-fired EGU

EPA recognizes that co-firing is an option to reduce a unit's mass emissions and emissions rate, in lb/MW-net. EPA should provide incentives and clarification regarding this approach, as it could help remedy or delay problems with stranded assets. For example, in a rate-based plan, a co-firing EGU would remain subject to the steam-subcategory rate until the unit co-fires more than 50% gas (based on heat input), at which point it could be subject to a blended rate, proportional to the percentage of coal and gas it uses.

IV. Conclusion

Seminole has serious concerns regarding EPA's Existing-Unit Proposal for numerous legal, technical, economic, and policy reasons. Accordingly, Seminole requests that EPA withdraw this proposal, and meaningfully address the issues raised in this comment letter before proceeding.

Seminole appreciates the opportunity to comment on this important matter. If you have any questions or wish to discuss these comments, please do not hesitate to contact me at (813) 963-0994.

Sincerely,



James R. Frauen
Vice President of Technical Services and Development

Cc:

Honorable Bill Nelson

Honorable Ron DeSantis

Honorable Marco Rubio

Honorable John Mica

Honorable Jeff Miller

Honorable Bill Posey

Honorable Gwen Graham

Honorable Alan Grayson

Honorable Ted Yoho

Honorable Daniel Webster

Honorable Ander Crenshaw

Honorable Richard Nugent

Honorable Corrine Brown

Honorable Gus M. Bilirakis

Honorable David Jolly	Honorable Adam Putnam, Commissioner, Florida Department of Agriculture and Consumer Services
Honorable Kathy Castor	
Honorable Dennis Ross	Chair Julie Imanuel Brown, Florida Public Service Commission
Honorable Vern Buchanan	
Honorable Tom Rooney	Secretary Jon Steverson, Florida Department of Environmental Protection
Honorable Patrick Murphy	Lisa Johnson, Seminole Electric Cooperative
Honorable Curt Clawson	Mike Campbell, Central Florida Electric Cooperative
Honorable Alcee L. Hastings	
Honorable Ted Deutch	Ricky Davis, Clay Electric Cooperative
Honorable Lois Frankel	Jeff Brewington, Glades Electric Cooperative
Honorable Debbie Wasserman Schultz	
Honorable Frederica Wilson	Randy Shaw, Peace River Electric Cooperative
Honorable Mario Diaz-Balart	Jim Duncan, Sumter Electric Cooperative
Honorable Carlos Curbelo	Mike McWaters, Suwannee Valley Electric Cooperative
Honorable Ilena Ros-Lehtinen	
Honorable Rick Scott, Florida Governor	Tracy Bensley, Talquin Electric Cooperative
Honorable Pam Bondi, Florida Attorney General	Julius Hackett, Tri-County Electric Cooperative
Honorable Jeff Atwater, Florida Chief Financial Officer	Billy Brown, Withlacoochee River Electric Cooperative
	Robert Manning, Hopping Green & Sams

V. Appendices

- A. Seminole's Comments on the Proposed Clean Power Plan (Dec. 1, 2014).**
- B. Lisa D. Johnson Decl., Motion of Utility and Allied Petitioners for Stay of Rule, Utility Air Regulatory Group v. U.S. Environmental Protection Agency, No. 15-1370 (D.C. Cir. Oct. 23, 2015).**

**Seminole Electric Cooperative Comments on
EPA's Proposed CO₂ Rules for Existing Electric Generating Units;
Federal Plan, Model Trading Rules, and Framework Revisions
Docket ID Nos.: EPA-HQ-OAR-2015-0199 and EPA-HQ-OAR-2015-0734**

APPENDIX A

Seminole's Comments on the Proposed Clean Power Plan

(Dec. 1, 2014)



December 1, 2014

Via Electronic Submission at Regulations.gov

EPA Docket Center

Attn: Docket ID No. EPA-HQ-OAR-2013-0602

U.S. Environmental Protection Agency

Mail Code 2822T

1200 Pennsylvania Ave., NW

Washington, DC 20460

**Re: Seminole Electric Cooperative Comments on
EPA's CO₂ Proposal for Existing Electric Generating Units
Docket ID: EPA-HQ-OAR-2013-0602**

Dear Administrator:

Seminole Electric Cooperative, Inc. ("Seminole") submits the following comments on the U.S. Environmental Protection Agency's ("EPA") proposed existing-source emission guidelines ("Existing-Source Proposal") for greenhouse gases ("GHGs") establishing interim and final state goals for carbon dioxide ("CO₂") emission rates from existing fossil fuel-fired electric generating units ("EGUs"). Seminole is very concerned about the substantial harm that would result from EPA's Existing-Source Proposal, and thus strongly opposes its promulgation. In sum, there are fundamental legal, technical, economic, and policy-based flaws in the proposal, and EPA should withdraw it in its entirety.

Seminole is not alone in Florida, and around the country, in expressing serious concerns over EPA's Existing-Source Proposal, and joins in and supports the concerns expressed by numerous governmental and regulated interests, including the Florida Public Service Commission ("FPSC"), the Florida Department of Environmental Protection ("FDEP"), the

Florida Electric Power Coordinating Group Environmental Committee (“FCG-EC”), the Florida Electric Cooperative Association (“FECA”), the Florida Municipal Electric Association, the Utility Air Regulatory Group (“UARG”), the Fossil-Fired Cooperative Clean Power Plan Coordinating Group (“FFCCCG”), and the National Rural Electric Cooperative Association (“NRECA”).

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1. Executive Summary

Seminole is a not-for-profit generation and transmission cooperative, serving approximately 1.4 million people and businesses in Florida via nine Member distribution-cooperatives. Seminole and its Members provide essential electric service in primarily rural areas of Florida, through a combination of coal- and gas-fired generation assets and power purchase agreements. Seminole has significant concerns about the legal and technical validity of EPA's Existing-Source Proposal, and the proposal's substantial impacts on Seminole, its Members and their consumers, Florida's electric system, and the citizens of Florida.

EPA's own modeling projects that more than 90 percent of Florida's coal-fired generation would be forced to prematurely retire in order to achieve Florida's goals, including Seminole's 1,300 megawatt ("MW") coal-fired facility. Serious fuel diversity, reliability, and cost concerns would result if, as EPA projects, natural gas-fired combined-cycle ("NGCC") units are required to produce over 85 percent of Florida's electricity in 2025, and coal-fired units less than 2 percent. The truth is that Florida cannot comply with EPA's proposal using its existing utility investments, and the overall utility cost impacts would likely total in the billions - and perhaps tens of billions - of dollars. Moreover, Florida is disproportionately impacted – its goal is less than half that of several other states, 25 percent less than the national average, and it is penalized by its already-significant percentage of gas-fired generation.

Seminole, in particular, would suffer substantial harm as a result of EPA's proposal, a reality that EPA has failed to, but must, address. EPA projects that Seminole would lose at least 20 years of remaining useful life of its coal-fired units, and operate its gas-fired facility at a substantially reduced capacity; the cost of these losses, in addition to the cost of replacement

generation would be borne by its Members and their consumers. EPA also does not recognize Florida's unique characteristics, such as its peninsular geography and accompanying transmission constraints, reliability concerns from over-reliance on a single fuel, limited options for renewable power, and its existing statutory and regulatory framework. EPA must take these important factors into account, and correct the numerous legal and technical flaws in its proposal.

Regarding legal flaws, there is serious doubt whether EPA has the authority to issue ANY proposal regulating GHGs from existing EGUs. Even assuming such authority, EPA's proposal contains numerous other legal flaws, such as EPA's lack of authority to set national energy policy, its usurpation of state authority, its regulation of entities outside-the-fence, its arbitrary deadlines, and its failure to provide states with a meaningful opportunity to consider a unit's remaining useful life.

EPA's proposal also contains numerous technical flaws, such as the reliance on inaccurate data and false assumptions in its building blocks, goal calculations, and compliance modeling. For example, in Building Block 1, EPA's 6 percent heat-rate improvement assumption is clearly erroneous, especially for units like Seminole's, which have already maximized heat rate. In Building Block 2, EPA failed to address the feasibility of increasing NGCC capacity to 70 percent, including whether sufficient natural gas is available on a national, regional, state or local level, whether there is adequate gas-pipeline infrastructure, whether there is adequate transmission infrastructure, and what impacts such a shift will have on fuel diversity and reliability. In Building Block 3, EPA misinterpreted and inappropriately applied the renewable portfolio standard of a single state to the entire southeast region, including Florida.

And in Building Block 4, EPA failed to recognize that consumer behavior determines how demand-side energy efficiency programs will be implemented.

Accordingly, Seminole requests that EPA withdraw its proposal, revise its building blocks as legally and technically required, and correct its inaccurate data and false assumptions before it takes any further steps to promulgate this rule.

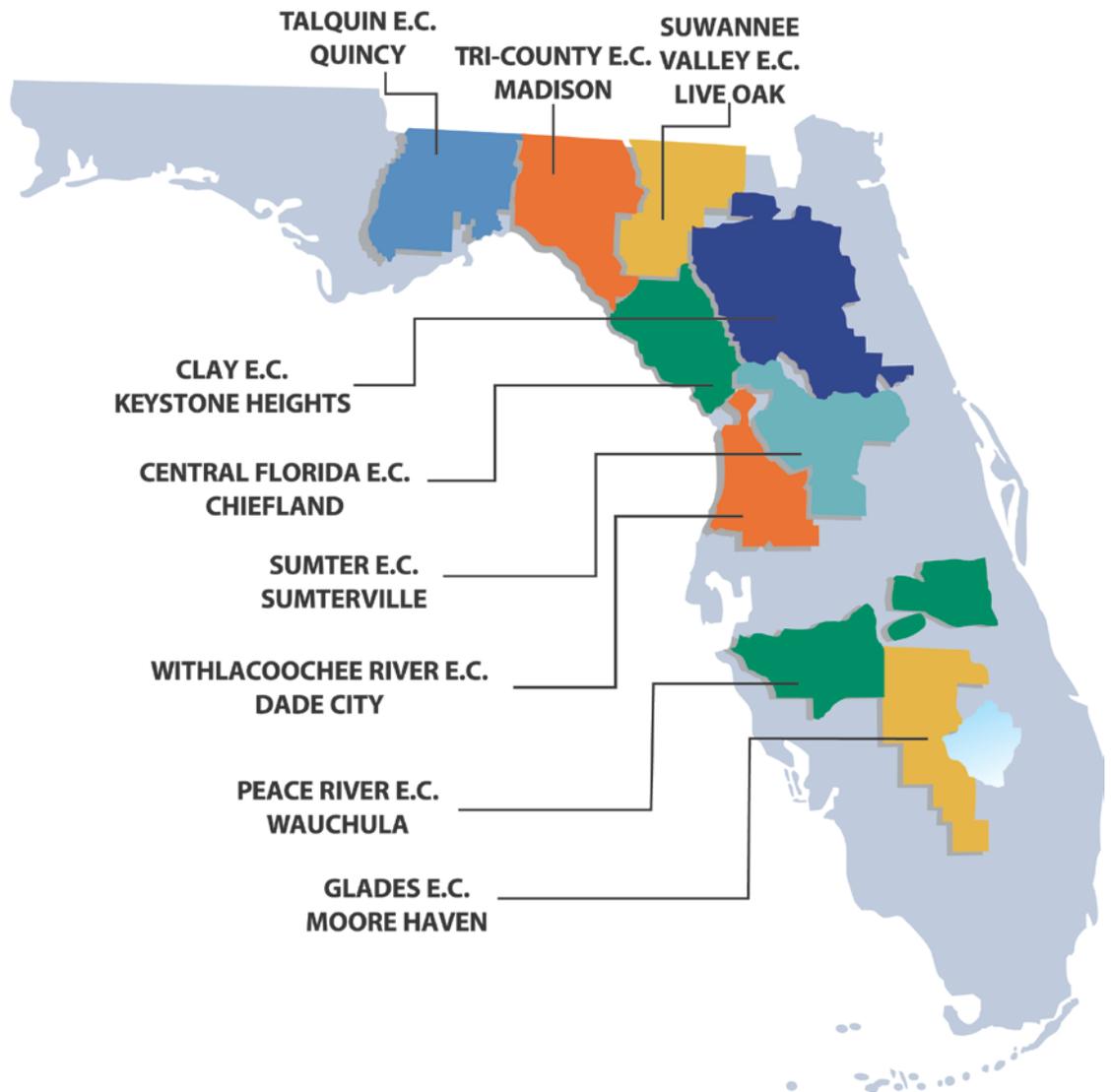
2. Seminole's Cooperative System

a. Introduction

Seminole is one of the largest, not-for-profit, generation and transmission cooperatives in the country. Seminole was founded in 1948, under the Rural Electric Administration's Electric Cooperative Corporation Act. Seminole strives to provide reliable, competitively priced, wholesale electric power to its nine Member distribution electric cooperatives ("Members"). In 2014, approximately 1.4 million people and businesses in parts of 42 Florida counties will rely on Seminole's Members for electricity. Seminole's Members include:

- Central Florida Electric Cooperative
- Clay Electric Cooperative
- Glades Electric Cooperative
- Peace River Electric Cooperative
- Sumter Electric Cooperative
- Suwannee Valley Electric Cooperative
- Talquin Electric Cooperative
- Tri-County Electric Cooperative
- Withlacoochee River Electric Cooperative

Seminole's Members



Collectively, Seminole's Members serve an average of 14 consumers per mile of line – although this number varies considerably across the state depending on growth and location. For comparison purposes, in Florida, investor-owned utilities typically serve an average of 57 consumers per mile. Nationally, the average is 34 consumers per mile for investor-owned utilities and 48 for municipalities. This is significant, as electric cooperatives must maintain the same utility infrastructure as investor-owned utilities and municipals with fewer consumers to share the associated costs, and in areas where for-profit utilities were unwilling or unable to extend service.

Seminole is also greatly concerned about the economic impact this rule will have on its Members' consumers, a factor that EPA must take into consideration. Based on a 2011 survey, the residential customers Seminole's Members serve are predominantly rural, approximately one-third of which have household incomes below the poverty level. More than 75 percent have household incomes less than \$75,000. Lower-income households spend a substantially higher percentage of their income on electricity usage. Accordingly, any change in rates as a result of EPA's CO₂ rule will impact them disproportionately.

Seminole's primary generation resources include the Seminole Generating Station ("SGS") in northeast Florida, and the Richard J. Midulla Generating Station ("MGS") in south central Florida. Seminole also maintains a suite of purchase power agreements to meet demand.

b. Seminole Generating Station

In 1978, Congress enacted the Powerplant and Industrial Fuel Use Act, which restricted new power plants from using oil or natural gas for power generation and encouraged the use of coal. This was the same time that Seminole was developing plans to build a generating facility to

meet its Members' demand. Seminole decided to build a coal-fired plant because it did not have another viable option. EPA issued Seminole a prevention of significant deterioration ("PSD") permit in 1979 to construct and operate SGS in Putnam County, near the St. John's River, south of Jacksonville, and it began commercial operation in 1984.

SGS consists of two, 650 MW coal-fired generating units. In 2014, Seminole will generate more than 50 percent of the energy its Members need from these coal-fired units. In past years, the portion of energy provided to the Members from SGS has been even higher. Throughout the past 17 years, SGS has had an average capacity factor of 80 percent. In short, this efficient, clean coal power plant has been and continues to be the primary work-horse in Seminole's system, and it is capable of continuing to serve in this capacity for many years to come.

SGS employs approximately 300 hard-working Floridians in rural Putnam County. By comparison, MGS employs approximately 30. Should the EPA's Existing-Source Proposal be finalized, Seminole's coal-fired power plant will be forced to close – leaving those 300 skilled employees without a job. Additionally, SGS relies on hundreds of skilled contractors to assist during maintenance outages and capital project implementation. For example, in 2012 SGS had more than 650 contractor personnel onsite at one time to assist during a maintenance outage. For 2013, contractor personnel exceeded 550, and during the 2014 spring outage, SGS had more than 400 contractor personnel onsite. All of these contractor personnel jobs will no longer be needed should the plant close early. SGS also has a long-standing working relationship with an adjacent wallboard facility, Continental Building Products ("Continental"), which converts the byproduct from an SGS environmental control system into wallboard. Continental employs approximately

100 employees and depends on the coal-based byproduct for wallboard production. Without coal and access to this byproduct, jobs at Continental will also be lost in this rural community.

Putnam County has been designated as both a State Rural Enterprise Zone and a Rural Area of Critical Economic Concern. Portions of Putnam County are within a Federal Historically Underutilized Business Zone. As such, this is not an area in rural Florida that can afford to lose nearly 400 jobs directly, and hundreds more indirectly, as a result of EPA's regulation. To place even greater emphasis on this issue, Seminole is also the largest taxpayer in Putnam County. Seminole paid more than \$5 million in property taxes in both 2013 and 2014. Putnam County cannot afford to lose Seminole's coal-fired power plant or any of the jobs associated with the facility.

i. Control Investments

When constructed and brought online in 1984, Seminole was outfitted with state-of-the-art environmental controls -- electrostatic precipitators and wet limestone flue gas desulfurization ("FGD"). Since that time, Seminole has invested more than \$530 million in state of the art environmental control technology at SGS. In 2005, as a result of EPA's Clean Air Interstate Rule ("CAIR"), Seminole began evaluating additional strategies to reduce emissions of sulfur dioxide ("SO₂") and nitrogen oxide ("NO_x") to the levels required under the new rule by 2009. Various system modifications and allowance purchasing strategies were evaluated for compliance. Beginning in 2006, Seminole spent \$177.2 million to install Selective Catalytic Reduction ("SCR") systems on both Units 1 and 2 at SGS. These additions included new structural steel, ductwork, catalyst reactors, new induced draft fans and motors, new auxiliary transformers, and the installation of steam coil air heaters. In 2011, Seminole spent an additional

\$4.6 million to install the third layer of its SCR catalyst. In 2014, Seminole continued to invest in the excellent performance of the SCR system by replacing the middle layer of catalyst in Unit 2 at a cost of \$2 million. A similar project with similar cost is planned for Unit 1 in the Spring of 2015.

In order to control a secondary reaction of the SCR system, Seminole also installed a \$9.9 million sulfur trioxide (“SO₃”) removal system. This system injects hydrated lime into the flue gas in order to prevent the formation of sulfuric acid. Seminole has plans to further invest in upgrading this system in 2015.

In order to further reduce SO₂ emissions, Seminole upgraded its FGD system at a cost of \$68.7 million. Seminole has also installed low-NO_x burners to minimize excess air firing. In total, Seminole has invested more than \$262.4 million since 2006 installing emissions control equipment to comply with EPA requirements (primarily CAIR), and more than \$530 million on emissions control equipment since SGS was placed in-service. In summary, Seminole has invested and continues to invest in maintaining excellent air quality control systems at SGS.

These investments, while necessary to comply with regulations, have caused electricity rates to rise. As stated above, Seminole is a not-for-profit cooperative, and its costs are directly reflected in its rates. Further, additional chemicals, interest on debt, greater maintenance expenses, and parasitic loads all contribute to higher costs to the Members’ consumers. If SGS were to be decommissioned prior to the end of its useful life, the net book value will have to be retired, written off, and collected from our Members, along with the interest expense on debt that was borrowed to match the expected useful life.

ii. Outstanding Loans

Seminole, as a rural generation and transmission cooperative, has primarily relied on capital borrowed from the Federal Financing Bank and loan guarantees from the Rural Utilities Service (“RUS”) for the construction of its generation fleet and capital improvements to its facilities, primarily involving environmental controls. Currently, loans related to SGS account for more than 75 percent of Seminole’s total outstanding debt. These loans are secured by Seminole’s Trust Indenture. If SGS were to be retired prior to the end of its useful life in order to comply with EPA’s Existing-Source Proposal, the debt service related to these loans would continue to impact the electricity rates paid by our Members. Most of Seminole’s loans also contain significant prepayment interest penalties, so a strategy to prepay the debt would only further increase the cost paid by our Members.

iii. Remaining Useful Life

EPA declares that states are free to consider the remaining useful life of a unit in establishing the state standards. Of course, the Clean Air Act (“CAA”) expressly allows for such consideration. But EPA’s approach of imposing very strict state goals negates a state’s ability to meaningfully consider the remaining useful life of a particular unit; EPA provides only faux flexibility. As noted below, EPA’s Integrated Planning Model (“IPM”) projects that 91 percent of Florida’s coal-fired capacity will retire by 2025, including SGS Units 1 and 2. This is far short of SGS’ remaining useful life. In 2004 and 2005, Seminole commissioned Burns and McDonnell to prepare life appraisal reports for SGS Unit 1, SGS Unit 2, and common facilities. In the reports, Burns and McDonnell indicated that based on their review and Seminole’s continued positive operational and maintenance practices, SGS should realize a remaining useful

life of 40 years, through 2045. This date corresponds to the end of the Seminole's Wholesale Power Contracts with its Members, and also covers the last loan related to emission control equipment at SGS, which matures in 2042.

If SGS were retired prior to the end of its useful life, the remaining net book value (stranded asset) would be required to be written off and the expense would be paid by our Members. The Members would continue to pay the fixed costs related to SGS without receiving any energy or capacity from its operation. Seminole will still have to serve the full requirements of our Members, and the replacement capacity related to the early retirement of SGS will either have to be constructed or purchased. This will cause our Members to pay for both the stranded asset and the replacement capacity at the same time.

c. Midulla Generating Station

MGS is an 810-MW facility located in Hardee County that uses natural gas as its primary fuel. The facility consists of a 500-MW combined-cycle unit, which began commercial operation in 2002, and 310 MW of peaking capacity, which Seminole added in 2006. The combined-cycle unit has historically operated at a capacity factor between 50-70 percent. The peaking units consist of five, Pratt & Whitney aeroderivative FT-8 Twin-Pacs, and have historically been utilized at a capacity factor of less than 11 percent. Each Twin-Pac, in fact, is limited to 2,500 hours of operation per year – 2,000 hours on natural gas and 500 on oil – by express condition of its Title V permit. Accordingly, these peaking units are not subject to EPA's proposal.

d. Power Purchase Agreements

Seminole works to maintain a balanced and diversified generation portfolio that includes SGS and MGS, as well as capacity and energy provided through short-, medium-, and long-term

purchased power agreements (“PPAs”) with other utilities, independent power producers, and government entities. These resources reflect a mix of technologies and fuel types, including one of the state’s largest renewable energy portfolios, although Seminole sells a portion of the renewable energy credits (“RECs”) associated with its renewable generation to third parties, which can use the RECs to meet mandatory or voluntary renewable requirements. The specific amount of generation Seminole purchases from PPAs varies year to year, but on average, PPAs account for around 40 percent of our total demand. The balance and diversity in Seminole’s generation and PPA mix reduces exposure to changing market conditions, helping keep rates competitive. Fuel diversity is also of paramount importance for Seminole and Florida due to its unique geographic location and already-heavy reliance on out-of-state natural gas supplies, as discussed in section 7 below.

Seminole has had a specific policy in place for years to acquire additional renewable resources, either through ownership or PPAs. Specifically, Seminole’s Board Policy No. 308 expresses its commitment to develop and utilize renewable energy resources, particularly where cost-effective. This has resulted in Seminole entering into numerous PPAs for renewable generation. Accordingly, the reasonably available and cost-effective renewable options in Florida are already being utilized, and EPA’s assumption that Florida can do substantially more is erroneous.

e. Seminole’s Transmission System

Seminole owns more than 350 circuit miles of transmission that interconnect Seminole’s electric generating plants with Florida’s transmission grid. Seminole also relies on third party transmission providers to reliably deliver electricity to our Members. Grid reliability, as a result

of re-dispatching existing NGCC facilities to maintain an average 70 percent capacity factor, as anticipated in EPA's Building Block 2, is of great concern to Seminole. Currently, 55 percent of Seminole's energy requirement is served via our owned coal-fired facilities and generator tie lines to the Florida grid. Seminole does not have sufficient owned or contracted NGCC facilities or transmission facilities to adequately serve load without our coal-fired units. Florida's transmission grid is congested, as described further below, and it is unlikely that Seminole would be able to obtain PPAs or construct new NGCC facilities without creating additional transmission constraints.

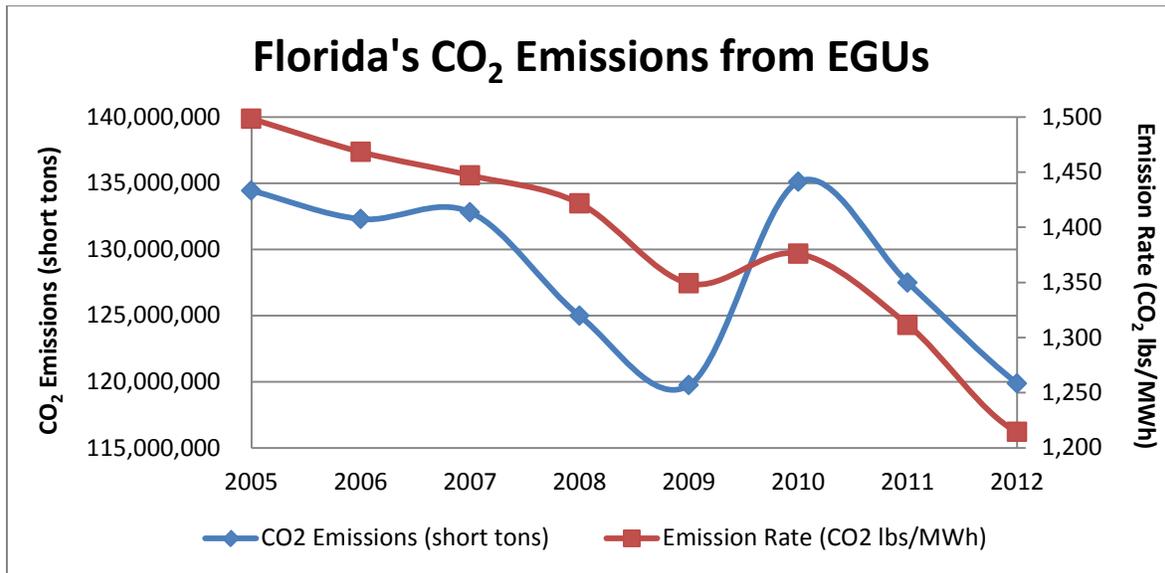
Regional studies performed to evaluate the dispatch of natural gas-fired plants versus coal in an uneconomic fashion resulted in severe transmission congestion throughout the Florida Region. The bulk transmission system was designed around baseload coal generation. Dispatching out of economics (such as making today's intermediate-class units run at baseload) would cause power swings to flow across transmission lines/corridors that were not designed to transport base-load generation. In addition, Seminole's experience in trying to contract with third parties via purchase power transactions from existing generating facilities has shown on multiple occasions that the existing transmission system interconnected to these respective facilities is congested and it is not economically feasible.

If the proposed rule were to take effect prior to sufficient generation or transmission infrastructure being constructed, significant reactive deficiencies may also occur throughout the state resulting in the possibility of depressed system voltages and voltage stability concerns during normal (steady-state) conditions and contingency events.

EPA has failed to assess transmission reliability impacts in Florida, including the total reactive power deficiency. Florida must have sufficient time to evaluate and model the reliability impacts due to the loss of generating capacity, which includes a review of the impact on complying with North American Electric Reliability Corporation (“NERC”) Reliability Standards.

3. Florida’s History of Substantial CO₂ Reductions

Florida utilities have made substantial progress over the last decade in reducing CO₂ emissions while increasing generation. Florida utilities increased electric generation by 10 percent between 2005 and 2012, growing from 179 million megawatt hours (“MWh”) to 197 million MWh. During that time, Florida utilities reduced their statewide CO₂ emission rate by 19 percent, from 1,498 lbs/MWh to 1,214 lbs/MWh, and their total CO₂ emissions by almost 11 percent, from 134 million tons to 120 million tons. These data are illustrated in the table below. Florida has also achieved similar reductions in CO₂ emissions from the transportation, industrial, residential, and commercial sectors. Given that EPA’s proposal seeks to cut CO₂ emissions by 30 percent of 2005 levels, the great progress Florida’s utilities have already made to reduce CO₂ emissions from 2005 levels should have been taken into account in calculating Florida’s interim and final goals.



4. EPA's Approach Contains Numerous Fundamental Legal Flaws

a. Overview of Legal Flaws

EPA's proposal contains fundamental legal problems. In sum, there is serious doubt whether EPA has the authority to issue ANY proposal regulating GHGs from existing EGUs. For example, briefing is already underway in the D.C. Circuit Court regarding the plain language of CAA Section 111(d), which precludes EPA from promulgating rules for existing EGUs under Section 111(d) when EPA has already issued a regulation covering EGUs under Section 112. Therefore, because EPA has already promulgated its Mercury and Air Toxics Standards ("MATS") under Section 112, it cannot issue its CO₂ rule under 111(d). If this is not a sufficient prohibition, the CAA further precludes EPA from issuing a rule for existing sources under 111(d) until it has issued a valid rule for new sources. As explained in detailed comments on EPA's new-source and modified/reconstructed-source proposals, there are serious legal questions regarding the validity of such rules, if EPA finalizes the rule in its current form. Furthermore, EPA itself has stated that 111(d) rules are only appropriate for specialized types of units that emit

discrete types of pollutants; they are NOT appropriate for pollutant emissions from diverse and numerous sources, such as GHGs, and CO₂ specifically. *See* 40 Fed. Reg. 53340 (Nov. 17, 1975).

Even assuming EPA has the authority to issue an existing-source rule, the specific proposal EPA issued contains numerous material legal flaws. For example, EPA does not have the authority to set national energy policy, its proposal violates the Federal Power Act, and the Atomic Energy Act, and usurps state authority in violation of the 10th Amendment. EPA's proposed Emission Guidelines, including its determination regarding what constitutes the Best System of Emission Reduction, is unlawful for many reasons. Specifically, they,

- (1) Cannot be used to set an enforceable standard on sources or states;
- (2) Are so stringent that they fail to provide states with needed flexibility to set source-specific standards;
- (3) Fail to allow states a meaningful opportunity to consider the remaining useful life of a particular unit;
- (4) Are based on and would require reductions from entities "outside-the-fence";
- (5) Cannot be used to regulate a fuel out of existence;
- (6) Impose obligations on state agencies that are beyond their current jurisdiction;
- (7) Would impose substantially more stringent standards on an existing source than a new source, which is contradictory to the philosophy of the CAA;
- (8) Rely on technologies and measures that have not been adequately demonstrated as achievable;

(9) Set arbitrary and capricious deadlines for EPA's finalization of its rule, state implementation plan ("SIP") development, and source compliance;

(10) Improperly consider the cost and reliability impacts of the proposal;

(11) Overstate the benefits of the rule;

(12) Contain material flaws in the state goal calculations; and

(13) Are inconsistent with prior 111(d) rules.

b. EPA has Not Followed Proper Rulemaking Procedures

EPA's rulemaking schedule is insufficient and contravenes the CAA's public comment requirements. Therefore, EPA must withdraw its current proposal, and if it intends to proceed with this effort, issue a new and complete proposal.

First, EPA has failed to provide significant supporting materials in the public docket. CAA section 307(d)(3) requires EPA to include in its rulemaking docket *on the date of publication* of a proposed rule "[a]ll data, information, and documents . . . on which the proposed rule relies." EPA's docket as of the date of the publication of the proposed rule in the *Federal Register* on June 18, 2014, and to this day, fails to include significant documents EPA acknowledges it has relied upon. For example, EPA conducted 25 primary modeling runs using the IPM, yet only four of those 25 runs were placed in the docket for public review. In preparing its proposed rule, EPA evaluated numerous compliance options and compliance years; however, it only made available in the docket the parsed files from IPM runs that evaluate the 2025 base case, 2025 State Option 1, 2025 Regional Option 2 and the 2020 Regional Option 1. EPA provided none of its modeling runs evaluating the states' ability to comply in 2030 and only one of five scenarios modeled for the initial 2020-compliance year. The one scenario provided for

2020 is a regional scenario, not a state-specific scenario. EPA's other building blocks were also developed based in part on IPM runs. The public thus needs EPA's additional parsed files to complete a meaningful analysis of EPA's proposal.

Also missing from the docket are data EPA relied on to support the heat rate improvement assumptions underlying EPA's first building block. According to EPA, 16 facilities have achieved heat rate improvements of three to eight percent on a year-to-year basis, allegedly supporting its assertion that a four to six percent heat rate improvement is reasonable and achievable across all coal-fired units in every state. However, despite requests for this information from states and affected entities, EPA has not made that year-to-year heat rate improvement data available in the public docket.

In September 2014, EPA posted additional materials to its rulemaking docket, but did not include the information referenced above. Regardless, EPA is still violating procedural requirements because these materials were not included in the rulemaking docket on the date of publication. Despite notice of the deficiencies, the passage of significant time, and EPA's publication of other materials to the docket in the middle of the public comment period, EPA has not remedied the deficiencies in the docket. EPA must correct these deficiencies and allow additional time for public review and comment based on the complete record that it has relied upon in developing its proposal.

Second, EPA only provided a 165-day period for the public to evaluate and submit comments and data on the proposed rules, which are the most complex and far-reaching environmental rules ever proposed by EPA. These rules significantly affect almost every electrical generating facility in all 50 states and contemplate significant changes to state

regulatory structures for the electric utilities that operate those facilities. Given the breadth, complexity, and impact of these rules, 165 days is insufficient to evaluate and understand the proposal and the regulatory and technical data and analyses that have been provided in support, much less to develop and submit meaningful comments and data in response.

EPA's proposal for existing sources covers more than 130 pages in the *Federal Register*, with references to numerous Technical Support Documents ("TSDs"), a Regulatory Impact Analysis, and complex modeling analysis. The material posted in the online rulemaking docket for existing sources, EPA-HQ-OAR-2013-0602, comprises over 1,300 voluminous documents that cover an untold number of pages. The 165-day period provided to review and comment on this sweeping rule and the voluminous supporting information is unreasonable and arbitrary. For this reason alone, EPA's 165-day deadline for comments is arbitrary and capricious. The agency should allow a longer public comment period to ensure meaningful public participation and a fully-developed record in support of the proposed rule.

Third, EPA's rulemaking schedule does not provide the agency sufficient time to consider and respond adequately to public comments. Section 307(d)(6)(C) of the CAA requires that when promulgating a final rule, EPA is to provide "a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period." EPA has proposed that it will adopt a final rule in this proceeding by June 1, 2015. This self-imposed deadline is arbitrary and capricious in light of the tremendous volume of comments currently being developed on this proposed rule. Accordingly, EPA should withdraw its June 18, 2014, proposal.

5. EPA Must Correct Numerous Errors in its Goal Setting for Florida

Seminole has reviewed the baseline data, methodology, and calculations that EPA used to determine the state-level interim and final CO₂ emission rate goals. In sum, EPA must correct numerous errors in its goal calculations, and recalculate Florida's interim and final goals.

Following is an overview of these issues, which are explained in further detail in later Seminole comments.

a. Errors Related to NGCC Facilities in Building Block 2

i. EPA Should Use Net Generating Capacity Instead of Nameplate

In the eGRID baseline data for 2012, EPA used the EIA860 nameplate capacity rating (in MW) by generator as the basis for any capacity factor or energy production computations. Nameplate capacity represents the design gross capacity of the generator before any internal plant usage (auxiliary power) is deducted, and may not correctly reflect a unit's true capacity due to various operational restrictions, whereas the net capacity represents the value after auxiliary power is deducted. There is also a seasonal component to net capacity, with summer net capacity being lower than winter net capacity.

In its calculation, EPA consistently mixes the nameplate capacity rating with the net generation capacity rating when calculating the baseline capacity factors for NGCC units. This capacity factor calculation is the basis for the Building Block 2 NGCC re-dispatch, and EPA's error results in an overstatement of potential net MWh generation that could be added to the electrical grid to achieve a 70 percent NGCC capacity factor (or 15 percent capacity factor for units under construction). Instead of using nameplate generator capacity, EPA should use the net Summer capacity rating of each generator, which will produce more realistic estimates of

generation NGCC units can supply to the electrical grid, and the differential amount of net generation to be deducted from coal-fired units.

ii. EPA Should Use Actual Emission Rates Instead of the Average

When computing the NGCC emissions for the Building Block 2 NGCC re-dispatch, EPA calculates the additional CO₂ emissions from baseline NGCC units using the increase in generation from baseline to 70 percent NGCC capacity factor, multiplied by the original baseline-year state average NGCC CO₂ emission rate. This again is inaccurate, inappropriate, and underestimates the additional NGCC CO₂ emissions due to the re-dispatch. Instead of erroneously using the state average baseline-year NGCC CO₂ emission rate, EPA should use the *incremental* NGCC CO₂ emission rate, on a state-average basis. That is because the most efficient, lowest-emitting units are already generating at or near the baseline 70 percent capacity factor, whereas the units that would actually be re-dispatched and contribute the greatest increase in net generation are the less efficient, higher-emitting units.

EPA can readily calculate the state average incremental NGCC CO₂ emission rates using the generator-level data that is included in eGRID. After appropriately determining the generator net capacity ratings as described above, EPA must calculate and review generator by generator the baseline capacity factor, CO₂ emission rate, and potential contribution of each to the re-dispatch. For Florida, the average incremental NGCC CO₂ emission rate is 996 lbs/net MWh, whereas the value EPA used is 864 lbs/net MWh.

iii. EPA Must Exclude CHP Units

EPA improperly included combined heat and power (“CHP”) units in its Building Block 2 goal calculation, mistakenly assuming that CHP units can redispatch to higher capacity factors

in the same manner that non-CHP NGCC units can. This is in error, as CHP dispatch largely depends on the needs of adjacent facilities, not the needs of the grid. EPA's assumption that CHP units can redispatch to 70 percent is unreasonable, and CHP units should not be included in Florida's goal calculation. Accordingly, EPA must recalculate Florida's goal excluding all CHP units from the calculation. If, however, EPA chooses to include CHP units in Florida's goal calculation, it must do so according to the same applicability criteria that EPA establishes under the new source rule. As is discussed below, EPA's new- and existing-source proposals provide different applicability criteria for CHP units.

iv. EPA Must Exclude Units that Would Not Qualify as a New Source

CAA § 111(d)(1)(A)(ii) requires EPA to promulgate regulations under which states must submit state plans regulating existing sources "to which a standard of performance under this section would apply if such existing source were a new source." EPA clearly acknowledged the connection between § 111(b) and § 111(d) of the CAA by stating in the preamble that "EPA recognizes that CAA section 111(d) applies to sources that, if they were new sources, would be covered under a CAA section 111(b) rule." 79 Fed. Reg. 34852. In violation of the CAA's plain language, however, EPA has proposed different applicability criteria in the existing-source guidelines than it proposed in the new source performance standards. Specifically, for boilers, the new-source standard defines an affected unit as one that *actually supplies* more than 1/3 of its power to the grid on an annual basis, whereas the existing-unit guideline defines an affected unit as one that is *constructed to supply* more than 1/3 of its power to the grid, whether it actually does so or not.

These differences in applicability criteria result in the inclusion of units in Florida’s goal calculation that, if new, would not be subject to the proposed new source performance standards, and thus cannot be regulated under section 111(d). EPA also included several units in Florida’s goal calculation that have federally enforceable operating limits restricting their operation to levels below the proposed applicability thresholds. Including such units in Florida’s goal calculation is clearly in error. Based on the 2010, 2011, and 2012 eGRID data EPA used to determine each state’s goals, the following Florida units were improperly included; EPA should remove them and re-calculate Florida’s goals:

Units Improperly Included in Florida’s Goal Calculations¹	
Facility Name	Units
Anclote	1, 2
Arvah B Hopkins	1, 2, CT2A
C D McIntosh Jr	ST1, ST2
Cane Island	2, 2A, 3, 3A, 4, 4A
Cape Canaveral	3A - 3C, 3ST
Cedar Bay Generating Company LP	GEN1
Central Energy Plant	GTG, STG
Crist	4, 6, 7
Crystal River	1, 2
Cutler	5, 6
Deerhaven Generating Station	1
Florida Power Development	GEN1
Hansel	21 - 23
Hardee Power Station	GEN1 – GEN3
Indian River	1 - 3
Indiantown Cogeneration LP	GEN1
John R Kelly	CT04, 7, 8
Lansing Smith	2
Larsen Memorial	5, 8
Manatee	1, 2
Martin	1, 2

¹ This determination is based on each unit’s capacity, “Electric Generation (MWh),” and capacity factor, as reported in or calculated from EPA’s 2010, 2011, and 2012 unit-level data included in the docket. See EPA-HQ-OAR-2013-0602-0254; EPA-HQ-OAR-2013-0602-21131; EPA-HQ-OAR-2013-0602-21132.

Northside Generating Station	ST3, 1, 2
Orange Cogeneration Facility	APC1 - APC3
Pasco Cogen Ltd	GT1, GT2, ST1
Port Everglades	ST1 - ST4
Putnam	1GT1, 1GT2, 1ST, 2GT1, 2GT2, 2ST
S O Purdom	7
Sanford	3
Santa Rosa Energy Center	CT01, ST01
Scholz	1, 2
Stanton Energy Center	1
Suwannee River	1, 2
Tom G Smith	S3
Turkey Point	ST1, ST2
Vero Beach Municipal Power Plant	2 - 5

b. EPA Must Correct its Errors, and Recalculate Florida’s Goals

As detailed above, EPA made numerous factual and technical errors in its calculation of Florida’s goals. When just correcting for the first two errors (changing the nameplate MW to net, and the average emission rate to the actual rate), Florida’s proposed goal in 2030 is well over 900 lb/MWh. EPA’s other mistakes are equally erroneous, and must be addressed as well. Accordingly, EPA must correct all of the errors related to Florida’s goals, recalculate the goals, and provide an opportunity for public review and comment.

6. EPA Must Reassess and Correct Flaws in its Proposed Building Blocks

No state has demonstrated an ability to achieve all four of EPA’s proposed Building Blocks. No state has achieved a 6 percent heat rate improvement. No state has achieved a 70 percent capacity factor for NGCC units. While very few states achieved either EPA’s renewable energy or energy efficiency targets in 2012, no states achieved this year after year. Accordingly, EPA’s approach of using its four proposed Building Blocks is deeply flawed, and far from adequately demonstrated. Flaws regarding the individual Building Blocks are discussed below.

a. Building Block 1 – Heat Rate Improvements

EPA erroneously assumes that all coal-fired units, including those at SGS, can implement efficiency projects that will yield a 6 percent improvement in the unit's heat rate. EPA fails to consider the substantial efforts that Seminole and other companies have undertaken to maximize heat rate; the most cost-effective projects have long-since been accomplished because every marginal improvement in the heat rate lowers fuel costs, which lowers rates.

Seminole has implemented more than 20 heat rate improvement activities over the last 20 years that have each contributed incremental heat rate improvements. EPA's reliance on the 2009 Sargent & Lundy report for this 6 percent reduction in heat rate potential is misguided and inappropriate. In fact, in October 2014, Sargent and Lundy issued a letter indicating that "most of the utilities are employing best operational and maintenance practices. In light of this observation, it appears that significant further reduction in heat rate, such as that assumed by the EPA, may not be feasible." Seminole has already performed the most beneficial heat rate improvement projects that the S&L report references, including low pressure turbine upgrades, fan improvements, and reducing air heater leakage. Given these past improvements, it is not technically feasible for Seminole to improve SGS's heat rate anywhere near an additional 6 percent. NERC has also concluded that improving heat rate by 6 percent may not be achievable.²

EPA also ignores the effect of implementing the other Building Blocks, as well as the degradation of heat rate over time. Regarding implementation of Building Blocks 2, 3 and 4,

² See North American Electric Reliability Corporation, Potential Reliability Impacts of EPA's Proposed Clean Power Plan 8 (November 2014).

EPA fails to account for the fact that these efforts would cause coal units such as those at SGS to be operated at lower capacity factors; heat rate increases (i.e., gets worse) when a unit operates at a lower capacity. Accordingly, this worsening of the heat rate negates any improvements resulting from heat rate improvement projects. Moreover, EPA projects that both SGS units will be retired as a result of the rule, and thus any heat rate improvement projects are moot. Moreover, many projects implemented to improve heat rate depend on clean and tight tolerance parts, which are subject to wear and corrosion. This equipment must be periodically taken out of service for maintenance to clean and restore tolerances. Even when this maintenance is performed, the “as-new” efficiencies or heat rate improvements cannot be maintained. Normal wear, fouling, and other efficiency degrading processes are effectively irreversible. EPA ignores this reality, and therefore its assumption that heat rate gains accumulate and last indefinitely is simply incorrect.

Furthermore, EPA fails to consider that some of the projects it envisions could involve New Source Review (“NSR”) issues. While Seminole agrees with EPA that most projects will not trigger NSR, EPA and third parties have brought numerous complaints against companies alleging NSR violations for the very projects that EPA envisions. If EPA wants to incentivize such projects at sources that have not yet undertaken them, it should cease its aggressive enforcement initiatives, and clarify that these projects do not trigger NSR.

b. Building Block 2 – Dispatch Gas to 70 Percent

As discussed previously, EPA must consider reliability impacts to Florida’s transmission grid caused by dispatching NGCC units across the state at a 70 percent capacity factor, the availability and reliability of gas and gas transmission infrastructure within the state, and the

effect on Florida's CO₂ goals caused by the use of nameplate vs. net summer capacity ratings for individual generators. While Seminole's NGCC plant at MGS has averaged a capacity factor of approximately 57 percent over the last five years, this facility is technically capable of running with a capacity factor of 70 percent. However, dispatching these units and others on the basis of CO₂ intensity and/or other factors not associated with the most economically advantageous dispatch will result in increased transmission congestion and higher energy costs across the state. These issues must be addressed by EPA, and the Building Block calculations for Florida must be adjusted accordingly.

c. Building Blocks 3 and 4 – Nuclear, Renewables, and Energy Efficiency

i. Seminole's Longstanding Commitment to Renewables

As stated earlier, Seminole has had a specific policy in place for years to acquire additional renewable resources, either through ownership or PPAs, and has several "must-take" 24x7 renewable PPAs from generating assets that utilize biomass. Seminole's Board Policy No. 308 expressly commits it to develop and utilize renewable energy resources, where cost-effective. This has resulted in Seminole issuing numerous requests for proposals for renewable PPAs, and entering into those that are cost effective. Accordingly, the reasonably available and cost-effective renewable options in Florida are already being utilized, and EPA's assumption that Florida can do substantially more is concerning.

In the Existing-Source Proposal, EPA references data from the U.S. Energy Information Administration ("EIA") in a footnote on 79 Fed. Reg. 34843 concerning new "renewable" power generation that has come online in recent years. The EIA includes biomass in the data for renewable power generation, yet the carbon neutrality of biomass has been called into question

and the Existing-Source Proposal does not address whether biomass may be treated as a zero-emission renewable resource. On November 19, 2014, EPA issued the second draft of its Framework for Assessing Biogenic Carbon Dioxide from Stationary Sources; however, the framework does not clearly define biomass as a zero-emission renewable resource. Accordingly, EPA should definitively determine that biomass fuels are carbon neutral and the use of such fuels for electricity generation is a zero-emission renewable resource.

Additionally, according to the EIA, Florida has generated zero (0) MWh from wind, geothermal, and hydroelectric generation over the past 12 months, and has only generated 153,000 MWh from solar power.³ EPA has not considered nor accounted for Florida's limited access to renewable resources in its Building Block proposal. EPA must account for this reality, and provide an opportunity for the public to comment on its analysis.

The Existing-Source Proposal also relies heavily on the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") for setting Florida's renewable energy goals under Building Block 3, which is flawed for numerous reasons. Pursuant to § 62-133.8,⁴ North Carolina's REPS requirements can be met with hydroelectric, biomass, and renewable power imported from other states. Additionally, up to 40 percent of the North Carolina renewable requirement can be achieved from energy efficiency. It is inappropriate for EPA to base Florida's renewable goal on North Carolina's goal for combined renewables and energy efficiency and to have another goal for Florida based on energy efficiency. To the extent the Existing-Source Proposal's renewable goal for Florida is based on North Carolina's law, the

³ EIA (2014, September 25). *Electric Power Monthly*. Retrieved from: <http://www.eia.gov/electricity/monthly/>

⁴ http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_62/GS_62-133.8.html

EPA must account for these discrepancies and must adjust Florida's goals accordingly. NERC has also expressed concern with EPA's flawed assumptions regarding renewable energy potential in the Southeast region.⁵

Lastly, EPA modeled compliance with its proposal on the projection that "at-risk" nuclear facilities will not shut down. Yet EPA does not say whether it considered the Department of Energy's permit for the Yucca Mountain nuclear Waste Repository facility as approved or denied. EPA must provide more information on the effect the Yucca Mountain permit may have on EPA's model. *See* 79 Fed. Reg. at 34871.

ii. DSM Measures Already Undertaken

Seminole and its Members are jointly committed to the active promotion of cost-effective conservation and energy efficiency by Member consumers. As reflected in a March 2014 filing to the FPSC, Seminole's Members have implemented a range of energy efficiency and energy conservation programs that have reduced Seminole's total demand for electric energy and capacity. However, EPA's assumption that Florida, and Seminole, can increase its energy efficiency measures to 1.5 percent per year, and achieve this increase year after year, is erroneous, arbitrary and capricious.

Seminole provides firm wholesale electric service under a single wholesale rate structure. Seminole also provides non-firm service options to its Members under interruptible rate schedules. The rate signals contained in Seminole's rate schedules provide a cost-basis for our Members to gauge the cost effectiveness of demand-side management and energy efficiency programs. Seminole's Members assess the viability of these programs in their respective service

⁵ *See* Potential Reliability Impacts of EPA's Proposed Clean Power Plan at 12.

areas and Seminole's load forecast of power supply needs reflects the effect of its Members' demand-side management and energy efficiency programs.

Seminole promotes demand-side management through two programs made available to our nine Member systems. Under the Coordinated Load Management Program, Seminole's Members may install and operate direct control load management systems for the purpose of reducing coincident peak demand. The resulting reductions in Seminole's coincident peak demand lowers Seminole's requirements for system generating capacity (and associated reserves) and provides demand cost reductions to the participating Member systems. Under the Load Management Generator Program, Seminole's Member systems may install (or partner with their retail customers to install) distributed peaking generation. These generators serve a dual need: (1) to enhance reliability by providing back-up generation during transmission and/or distribution system outages, and (2) to offset and avoid a portion of Seminole's system generation requirements.

Seminole's Members have implemented a range of energy efficiency and energy conservation programs that have reduced Seminole's total requirements for electric energy and capacity. These reductions have not been specifically quantified or estimated but are included in Seminole's load history. As such, Seminole's load forecast effectively extrapolates the growth of past programs into the future.

Seminole works jointly with its Members to ensure that cost effective demand-side management and energy conservation/efficiency alternatives are considered as an alternative resource. Similarly, Seminole and its Members are expanding Member staff training, consumer education, energy efficiency, and conservation programs to mitigate growth in kWh usage per

consumer. The focus of Seminole's joint program with its Members is to facilitate information sharing, evaluate demand-side management/conservation programs, and expand consumer education programs and information related to energy efficiency and energy conservation.

7. EPA Must Account for the Severe Economic Impact on Seminole

a. EPA's IPM Results

EPA's IPM projects that EPA's proposal will retire or significantly reduce the operation of Seminole's facilities (both SGS and MGS), resulting in severe economic impacts on Seminole. The most dramatic impact is on SGS units 1 and 2, which IPM projects will both retire by 2025 in order for Florida to comply with its interim and final goals. For comparison, in 2012 SGS generated 7,593 gigawatt-hours ("GWh") of electricity at a capacity factor of 59 percent. Seminole has no plans to retire these units, and a forced retirement prior to the end of their useful life will result in substantial stranded debt, as well as additional costs associated with generation to replace these units. EPA's IPM *Base Case* further illustrates this point, which projects SGS's generation increasing in 2025 to 8,343 GWh, at a capacity factor of 65 percent. Going from 8,343 GWh to 0 as a result of this rule is indeed a severe impact to Seminole, which as stated above, provides approximately 50 percent of its energy supply with SGS. EPA has not considered, and must account for, these severe economic impacts.

EPA's IPM also projects that the proposal would have dramatic impacts on the NGCC and peaking units at MGS. In 2012, the MGS NGCC units generated 2,492 GWh at a capacity factor of 48 percent. To comply with the rule, EPA's IPM Policy Case projects that these units will only generate 831 GWh in 2025 at a capacity factor of just 16.1 percent, representing a two-thirds reduction in generation from 2012 to 2025. In 2012, the MGS peaking units generated 303

GWh at a capacity factor of 11percent. EPA's IPM Policy Case projects these units to only generate 58 GWh in 2025 at a capacity factor of just 2.1 percent, representing an 81 percent reduction in generation from 2012 to 2025. EPA's IPM projections are inconsistent with how Seminole anticipates utilizing the NGCC and peaking units at MGS in the future, and are also inconsistent with EPA's own anticipated 70 percent NGCC capacity utilization. EPA has not considered, and must account for, the severe economic impacts Seminole would face if the NGCC and peaking units at MGS are forced to reduce generation.

b. Seminole is Entitled to Recover SGS' Lost Remaining Value

EPA's IPM compliance model predicts that Seminole's coal-fired power plant, SGS, would be forced to shut down under EPA's proposal. These two coal units were constructed in the early 1980's in response to federal laws that prohibited the use of natural gas to generate electricity. The units were also constructed to fulfill the state-law obligation of Seminole and its Members to provide electricity to their Member consumers in Florida. Seminole has invested over \$530 million in SGS' associated environmental controls, equipment that was installed to meet requirements under the federal CAA. Electricity from that plant is used by Seminole's Members to fulfill their legal obligation to serve Member consumers within the distribution cooperative's established service territories. SGS is a significant asset that is relied upon by Seminole and its Members to fulfill that obligation, and SGS has significant economic value remaining. If, as predicted, EPA's proposal forces SGS to completely shut down before its useful life has run, Seminole's enormous, undepreciated investment in SGS will be rendered worthless. That result will leave Seminole and its Members with a "stranded asset", with significant remaining economic value and debt. Seminole and its Members arguably will be

legally entitled to recover the costs incurred under this proposed government regulation. Further, EPA's IPM modeling and its economic impact analysis fail to account for the real costs of "stranded assets" such as SGS that will directly result from EPA's proposal or to consider the impact of those "stranded assets" on the electricity generating industry in general, electrical transmission reliability, and on the future cost of electricity.

In addition to reliability issues, EPA's proposal would have a devastating economic impact on Seminole. Forcing SGS to completely shut down, as EPA predicts will happen under its analysis of its proposal, would eliminate all economically viable use of Seminole's assets at SGS. While the land upon which SGS was built may retain a nominal value, the hundreds of millions of dollars Seminole invested into SGS, and has not yet recovered, would be completely lost; a result that undoubtedly constitutes a severe economic impact to Seminole and its Members unless the remaining value of SGS can be recovered pursuant to a taking claim.

In addition to stripping Seminole of all economically-viable use of its SGS property, the proposal also appears to completely eliminate Seminole's distinct investment-backed expectations in SGS. Seminole built SGS in 1984, pursuant to the requirements of the federal Powerplant and Industrial Fuel Use Act of 1978, which restricted new power plants from using oil or natural gas and encouraged the use of coal. SGS was built as a coal-fired power plant because the federal regulatory environment of 1984 left Seminole with no other viable fuel options to meet its legal obligation to serve its customers. At a time when the government encouraged the use of coal, and prohibited the use of oil and natural gas, Seminole reasonably expected that its coal-fired power generation at SGS would not be regulated out of the market (by the very government that required it to build a coal-fired plant) during its useful life. Based

on the regulatory environment of 1984, EPA's 2014 Existing-Unit Proposal was completely unforeseeable. Seminole relied on the federal government's directive to construct coal units, and spent hundreds of millions of dollars since then complying with subsequent environmental rules.

In sum, if EPA finalizes the existing proposal as currently written, it effectively amounts to a regulatory taking, entitling Seminole to recover the hundreds of millions of dollars of remaining value of SGS from the total loss of the remaining economic value of these units. Yet, EPA's economic impact analysis fails to consider the real costs associated with the forced closure of existing, useful power plants resulting directly from its proposal and how these costs must be recovered following the adoption of any final rule. Pursuant to the regulatory takings provision in Article V of the United States Constitution, Seminole arguably will be entitled to recover the value of its investment-backed expectations. EPA should carefully consider this issue as it finalizes the proposal and its effects on the future cost and reliability to generate and transmit electricity.

c. EPA Must Consider the Cumulative Impact of its Proposal

EPA has failed to consider the cumulative impact of its proposal along with the other numerous and extremely costly rules that directly impact the utility industry. Despite numerous and repeated requests by Congress and industry representatives, EPA has not considered the cumulative impacts of all of its rules. Each of EPA's initiatives individually will have a significant impact on the cost of electricity and transmission; combined, EPA's initiatives could have a crippling and irreparable impact. EPA has also not assessed these rules' combined impact on our national economy, or the disproportionate impact on the elderly, minorities and low income citizens. Following is a list of the more prominent rules at issue:

- (a) 2010 National Ambient Air Quality Standard for NO₂;
- (b) 2010 National Ambient Air Quality Standard for SO₂;
- (c) 2014 National Ambient Air Quality Standard for ozone;
- (d) 2011 National Ambient Air Quality Standard for PM_{2.5};
- (e) 2011 Cross State Air Pollution Rule;
- (f) 2012 and 2013 Revisions to the Cross State Air Pollution Rule;
- (g) 2011 Industrial Boiler MACT;
- (h) Regional Haze Rule;
- (i) Greenhouse Gas PSD and Title V permitting;
- (j) Greenhouse Gas NSPS;
- (k) 2010 revisions to 40 CFR 63, Subpart ZZZZ;
- (l) 316(b) Cooling Water Intake structures;
- (m) Steam Electric Effluent Guidelines;
- (n) Numeric Nutrient Criteria;
- (o) Total Maximum Daily Load rules; and
- (p) Coal Combustion Residuals.

EPA's failure to consider the cumulative impacts of these rules is in direct contradiction to Executive Order 13563: "each agency must ... (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, . . . (2) tailor its regulations to impose the least burden on society, . . . taking into account . . . the costs of cumulative regulations."

Congress has also asked EPA specific questions in the past regarding its efforts (or lack thereof) to coordinate with the Department of Energy, the Federal Energy Regulatory Commission, the National Electric Reliability Council, Public Utility Commissions, and Regional Transmission Organizations. EPA must conduct this cumulative impact analysis, and provide the public with an opportunity for review and comment.

8. State Implementation Issues

a. EPA Failed to Consider Florida's Existing Statutory Framework

Historically, no agency in Florida has exercised the type of authority required to implement EPA's Building Blocks. In order to promulgate rules to develop and implement the

state plan, therefore, a Florida agency must either claim heretofore-unasserted authority under existing statutes, or seek specific legislative authority. Regardless, the agency must also obtain legislative ratification of any rules that have an adverse impact in excess of \$1,000,000, and the Environmental Regulation Commission must adopt any standards proposed by the FDEP.

i. Building Block 1 – 6 Percent Heat Rate Reduction

FDEP arguably has authority to establish standards to implement this building block. However, any such standard would have to be adopted as a rule and, as discussed above, EPA's assumed 6 percent heat rate reduction is not technically feasible. For that reason, any FDEP rule based upon that assumption likely would not survive an arbitrary and capricious challenge under the Florida APA. *See* §120.52(8)(e), Fla. Stat. (defining "invalid exercise of delegated legislative authority to include "arbitrary and capricious" rules). Moreover, any such rule would unquestionably cost more than \$1,000,000 to implement and, therefore, would require ratification by the Florida Legislature.

ii. Building Block 2 – Re-Dispatching Gas

Neither FDEP nor the FPSC have authority over the dispatch of EGUs in Florida. The FPSC only indirectly oversees the dispatch of investor owned (not municipal or cooperative) generating units through the "fuel and purchased power cost recovery clause" proceedings by which investor owned utilities obtain pass-through recovery of their fuel and purchased power costs. Thus, legislative action would be required before this building block could be implemented on a state-wide basis under Florida law.

iii. Building Block 3 – Renewable Generation

No Florida agency has authority to establish renewable portfolio standards (“RPS”). Unlike some state utility commissions, the FPSC does not directly oversee integrated utility resource planning, although it annually reviews “ten year site plans” submitted by all electric utilities, *see id.* § 186.801, and it reviews resource-planning decisions on an *ad hoc* basis when electric utilities petition for need determinations for new steam electric generating capacity. *See id.* § 403.519. Although the FPSC briefly had authority to propose RPS, the Legislature repealed that authority in 2012. *See* Ch. 2012-117, Laws of Fla. (repealing portions of § 366.92, F.S., relating to RPS). Thus, legislative action would be required before this building block could be implemented under Florida law.

iv. Building Block 4 – Demand-Side Energy Efficiency

Under the Florida Energy Efficiency and Conservation Act (“FEECA”), the FPSC periodically adopts DSM goals for electric utilities with annual sales over a certain threshold *See* §§ 366.80-366.85, F.S. Currently, this includes Florida’s five investor-owned utilities and two large municipal utilities, but no other municipal utilities and not Seminole. Thus, legislative action would be required before DSM goals can be established for all electric utilities in Florida.

Given this lack of existing authority under state law, the Florida Legislature would need to act before EPA’s building blocks could be enforced in Florida. In that regard, Florida’s Legislature meets for two months every year in March and April, and most bills have to be filed many months in advance. Assuming, optimistically, that EPA’s final guidelines have an effective date of June 30, 2015, Florida will have approximately six months to determine what legislative actions may be needed in the 2016 and 2017 Sessions. This can only occur after it

undertakes the enormous task of understanding what the final guidelines require, deciding which measures could achieve the state goal, determining the costs of each of these measures on the affected parties and Florida's economy, so as to minimize the economic impacts, and coordinating with the FPSC to ensure that there are no adverse impacts on the reliability of Florida's electric grid. EPA wholly failed to assess whether this can be done in time to develop a complete SIP by June 30, 2016.

Accordingly, EPA did not properly consider the status of existing Florida law in calculating Florida's goal, or the legislative and agency actions that would be required. If EPA's final guidelines require the Florida Legislature to enact or ratify laws, it is in violation of the 10th Amendment of the U.S. Constitution.

b. EPA's Proposal Only Provides States with Faux Flexibility

Regarding state implementation of the guidelines, the "flexibility" EPA touts is an illusion: EPA set each state's goal assuming that each state completely adopts all four building blocks. For Florida, we are concerned that each Building Block is unachievable, meaning that there is no margin to make-up under one Building Block the amount to which we fall short on another. Absent this ability, Florida cannot meet EPA's proposed goal. In addition, if EPA issues a federal plan to a state, since it lacks the legal authority to implement at least Building Blocks 2-4, EPA's proposed state goal would be unachievable under this scenario as well.

c. EPA Must Properly Consider Florida's Transmission and Natural Gas Supply Issues

EPA's existing-source proposal creates greater fuel supply challenges by eliminating over 90 percent of the existing coal facilities in Florida. Although EPA's proposal *assumes* adequate natural gas supply is available to all utilities in order to support the contemplated increase in gas-

fired electric generation, this assumption, specifically, does not account for fuel supply risks associated with the production, processing, storage and transportation of natural gas supply to power plants in peninsular Florida.

Unlike solid fuel (coal) and liquid fuel (oil), natural gas is not easily stored due to its physical characteristics that require significantly more volume per unit of energy stored. Natural gas storage facilities must also possess specific characteristics to safely and economically store a material amount of fuel for use during periods of supply disruption.

All of the natural gas consumed by EGUs in Florida is produced outside the state and imported via one of the interstate gas pipelines. Historically, the vast majority of the gas supply transported into Florida was produced along the gulf coast (Alabama, Mississippi, Louisiana, Texas) from shallow and deep-water offshore platforms. Offshore natural gas production has declined in recent years and onshore, unconventional gas production is making up an increasingly large percentage of the supply transported into Florida. This supply originates from production regions even further away from the state (Oklahoma, Arkansas, north Louisiana, and south Texas) and is dependent on multiple interstate pipelines in order to reach Florida. Florida's increased reliance on the 'upstream' pipeline network creates a new form of risk for the state that is not addressed by EPA's proposal and one that would be exacerbated with the removal of coal and oil-fired generation and the associated storable nature of their respective fuels within the state.

Currently, Seminole holds enough firm gas transportation capacity to dispatch its existing owned and tolled (purchased power) NGCC facilities at a 70 percent capacity factor but this will reduce Seminole's available gas transportation capacity for use in simple cycle gas facilities

during periods of peak demand. However, should Seminole be responsible for constructing NGCC generation capacity to replace its coal-fired facilities and operate those at a 70 percent capacity factor, Seminole will need a minimum of 150,000 decatherms per day (“Dths/day”) of incremental firm gas transportation capacity to meet this need.

To put that into perspective, the Gulfstream Natural Gas System pipeline is fully subscribed and the Florida Gas Transmission (“FGT”) pipeline has varying volumes of unsubscribed capacity posted on its website as of July 22, 2014. These range from 88,500 Dths/day in summer 2014 to 184,000 Dths/day during the 2017-2021 period. Beginning November 1, 2021, and beyond, FGT has 214,000 Dths/day of unsubscribed capacity. If other utilities are forced to take similar actions, there will be insufficient gas transportation capacity available into the state of Florida to support the required NGCC generation. If a third pipeline is constructed, which Seminole understands is required to meet Florida’s gas needs regardless of EPA’s existing-source proposal, that third pipeline will need to be expanded beyond its currently contemplated size to support this incremental gas demand from NGCC facilities. NERC has also expressed concern with EPA’s proposal and its lack of consideration of pipeline capacity restraints.⁶

EPA must provide ample time for EGUs to negotiate contracts for the requisite gas supply and transportation capacity and for the permitting and construction of the necessary pipeline infrastructure. Contracting decisions made with the urgency to comply with EPA’s proposed timelines may not be the optimal decisions for consumers in the long-term. Gas

⁶ See Potential Reliability Impacts of EPA’s Proposed Clean Power Plan at 9-10.

transportation commitments will likely have a 20-year minimum time horizon meaning that the next generation will continue to pay for the cost of hasty decisions.

i. Importance of Fuel Diversity in Florida

Fuel diversity in Florida and nationally cannot be stressed enough, and its importance is great enough to warrant prior regulation at the federal level (see discussion above regarding the Fuel Use Act). Fuel diversity has served the United States well through frequent periods of fuel supply limitations, many of them related to natural gas disruptions (e.g., hurricanes Katrina and Rita) resulting in little impact to electric grid reliability. The extreme cold of January and February 2014, particularly in the Mid-Atlantic and Northeast states provided a peek into the potential consequences of reducing fuel diversity and over-concentrating EGU demand into natural gas. With many EGUs eliminating their ability to utilize fuel oil in order to comply with environmental regulations, these units instead relied solely on natural gas whose spot prices reached record levels exceeding \$100/mmBtu. As EPA's proposal results in additional migration from coal to gas as a fuel choice, cost will become a secondary problem when EGUs are faced with gas supply shortages and reliability is jeopardized.

This fuel diversity need is especially critical for Florida given its geographic location, lack of native energy production capacity and limited electric transmission import capability. With the exception of a limited amount of electricity that can be transported into the state, Florida is essentially an island that relies on generating units within the state and the necessary fuel supply for those units. Florida's current electric reliability is dependent on EGUs' ability to import fuel supply for either immediate consumption, or to store it for consumption later. Coal is a storable fuel source in Florida while natural gas is not. Florida does not have the geological

formations to economically store a material amount of natural gas underground. EPA's proposal must allow for a substantial amount of coal-fired electric generation to remain in Florida to ensure some level of fuel diversity and the resulting reliability benefits. To remove more than 90 percent of coal capacity from Florida as proposed by EPA would obligate Florida to rely solely on 'just in time' inventory for nearly all of its fuel supply, with reliability consequences for any disruptions in the supply chain.

d. States Need More time to Develop State Implementation Plans ("SIPs")

EPA proposes to finalize the rule by June 1, 2015, and require states to submit implementation plans by June 30, 2016. While EPA has acknowledged that the complexity of the proposal warrants greater time for SIP development than the nine months typically provided under the section 111(d) rules (79 Fed. Reg. at 34915), SIP development will take significantly longer than an additional four months EPA proposes to provide. EPA's proposed goals would require most states to fundamentally reconfigure their electric generation industries and power supply markets. Doing so will likely require passing state legislation, developing and modifying agency implementing regulations, and agency planning and modeling of necessary infrastructure improvements, such as new natural gas pipelines, transmission lines, and EGUs. *See* State Plan TSD at 28-31 (discussing considerable efforts that must be undertaken to develop a state plan, such as utility-scale capacity expansion and dispatch planning models). States cannot accomplish all of this in 13 months, and it is patently unreasonable, arbitrary, and capricious for EPA to require states to do so.

The Florida Legislature will almost certainly have to take some action in relation to Florida's state plan, either in passing specific statutory directives or authority, or ratifying rules

promulgated by FDEP. As stated previously, Florida's Legislature meets for two months every year in March and April, and most bills have to be filed many months in advance. Assuming, optimistically, that EPA's final guidelines have an effective date of June 30, 2015, Florida will have approximately 6 months to determine what legislative actions may be needed in the 2016 and 2017 Sessions. This can only occur after it undertakes the enormous task of understanding what the final guidelines require, interacting with stakeholders, identifying measures that it can implement without legislative action, deciding which measures could achieve the state goal, determining the costs of each of these measures on the affected parties and Florida's economy, so as to minimize the impacts, and coordinating with the FPSC on measures that it may be able to implement or must oversee (while ensuring that there are no adverse impacts on reliability). The promulgation of any new rules to implement these measures, which will almost certainly require legislative ratification pursuant to Florida law, must also be timed to fit the Legislature's schedule. Any legal gaps in existing state agency authority to implement the final rule will require the Florida Legislature to enact new laws, a process that may not be completed, if at all, by EPA's compliance deadlines. Accordingly, Florida would not have time to develop a complete state plan by June 30, 2016.

Additional coordination and time will also be required if a multi-state plan is to be considered. For example, in 2003, nine northeastern states began to develop a regional cap-and-trade program for CO₂ emissions from power plants. In December 2005, seven of those states agreed to implement the Regional Greenhouse Gas Initiative ("RGGI"), and by August 2006, published a model rule. It was not until the end of 2008, however, that each of the states completed their individual rulemaking processes and began participating in RGGI, nearly six

years after the process began. The history of RGGI illustrates the time required for states to negotiate and develop a multi-state plan. EPA proposes to provide states only two years, which is clearly insufficient.

EPA proposes allowing states to seek an additional year for state plan development for single-state plans, or an additional two years for multi-state plans. Even if granted by EPA, these extensions provide minimal relief due to their burdensome requirements and the conflicts they create with regard to EPA's proposed compliance timeframe. An extension request by a state must be submitted by June 30, 2016, and must contain very detailed information, such as a description of the intended approach and progress made on each element of the plan, as well as "a comprehensive roadmap for completing the plan." 79 Fed. Reg. at 34916. Essentially, even if seeking an extension, each state still must decide by June 30, 2016, what its state plan will be. Even if an extension is granted, each state's interim compliance period would still begin in 2020, so any extension would leave a state with less time to actually implement its plan.

Accordingly, the SIP-development schedule in EPA's proposal is arbitrary and capricious, and EPA must provide states more time to develop SIPs for such a complex and impactful rule.

e. Sources Need More Time to Comply

EPA has grossly overestimated the ability of new units to come online quickly. EPA proposes creating final state-specific goals, which must be met by 2030, and interim goals that must be met on a 10-year average from 2020 to 2029. *Id.* at 34904. As EPA has acknowledged, that leaves states with only 1.5 to 3.5 years between the state plan submittal deadline and the start of the interim compliance period. *Id.* at 34905. That compliance timeframe is further

reduced, as states must begin taking action to reduce emissions before 2020 in order to achieve their interim emission rate goals. Such actions include implementing end-use energy efficiency programs as early as 2017, and increasing utilization of NGCC units prior to 2020. *See id.* at 34867; Research Adequacy and Reliability TSD at 3. EPA rationalizes such a short compliance timeframe by pointing out that affected sources “will have knowledge of state requirements as they are adopted” and thus will have more time to act. 79 Fed. Reg. 34905. It is unreasonable, however, for EPA to expect affected sources to undertake expensive compliance measures before states finalize their plans and before EPA has approved the plans; and, given the amount of time it takes to site, permit and construct new pipelines, transmission lines, and EGUs, it is impossible for states to begin implementing their plans as early as would be necessary to comply with EPA’s proposed goals. For example, once EPA approves a state’s plan, it will take about two years for generation and transmission entities to analyze the potential requirements of their systems. Plans for additional electric generation and transmission must then be developed and analyzed in an open regional planning process, which usually takes at least another two years. Additional time is required to permit and construct new units and transmission lines. The result is a six- to seven-year timeframe before necessary new facilities and transmission lines can be built. This timeframe is optimistic as it does not account for any significant delays in permitting, design, or construction, and yet would be inadequate for a state to meet EPA’s proposed goals. NERC has also expressed concern with the timing constraints EPA’s proposal ignores; pointing out that siting, permitting, and governmental approvals for new transmission lines “often take

much longer than five years,” in addition to the time required to design, engineer, and construct them.⁷ EPA’s timeframe for compliance is thus arbitrary and unworkable.

9. EPA Should Use a Multi-Year Baseline Period for Setting State Goals

In its Goal Computation TSD,⁸ EPA states that it “carefully considered using a historic year data set, a projected year data set, or a hybrid of the two as a starting point...for calculating the state’s emission rate goals” but “chose the year 2012 as it represented the most recent year for which complete data were available at the time of the analysis.” EPA goes on to state that it “also considered the possibility of using average fossil generation and emission rate values over a baseline period (e.g., 2009 – 2012), but determined that there would be little variation in results compared to a 2012 base year data set due to the rate-based nature of the goal.” EPA also issued a Notice of Data Availability on October 30, 2014, requesting comment on EPA’s approach to a specific baseline.

Seminole agrees with EPA that a historic baseline is preferable to a projected year or a combination of historic and projected, but we do not agree with EPA’s decision to use a single year (2012) as the starting point for calculating the state’s emission rate goals. EPA has offered no data or analysis to support its finding that there would be little variation in results using a 2009 – 2012 baseline period compared to a 2012 base year. Sources and amounts of electricity generation can and do vary from year to year, due to many factors, including economic conditions, weather variability, fluctuations in fuel prices, and significant unplanned and planned unit outages. With regard to fuel prices, natural gas prices in 2012 were at their lowest level since before 2000 (the 2012 annual average Henry Hub price was \$2.75 per mmBtu), which is

⁷ See Potential Reliability Impacts of EPA’s Proposed Clean Power Plan at 20.

⁸ EPA-HQ-OAR-2013-0602-0460

lower than today's price and lower than any natural gas price the EIA projects into the future.

This fact alone disqualifies 2012 as a representative single baseline year applicable to the electric power sector.

Seminole requests that EPA use a multi-year baseline, which is far more representative than a single year.

10. EPA Should Clarify How States Should Perform Rate-to-Mass Translations

EPA has proposed that each state may convert its rate-based CO₂ emission performance goal to a mass-based emission performance goal.⁹ EPA should preserve this option in the final rule, and should also allow states to switch between rate-based and mass-based emission performance goals as desired. EPA provides two TSDs¹⁰ regarding how such translations could be made. While the TSDs are less than clear, in one TSD EPA appears to be contemplating that states wishing to make a rate-to-mass translation would employ IPM or a similar type of model to project a state's compliance with its rate-based limits and pull from the model output for each year from 2020 to 2029 the total projected CO₂ emissions for the universe of affected sources. These projected CO₂ emissions would be the state's equivalent mass-based cap. In the other TSD, EPA simply appears to use historic generation for existing sources and also offers an alternate method that includes a single average annual growth rate if new fossil fuel-fired sources are included. That generation is multiplied by the state's rate-based goal to determine the equivalent mass-based goal.

The conversion from a rate-based emission performance goal to a mass-based emission performance goal is a desirable option that should be retained for the states, and each state

⁹ 79 Fed. Reg. at 34953.

¹⁰ EPA-HQ-OAR-2013-0602-0462; EPA-HQ-OAR-2013-0602-22187.

should be permitted to determine exactly how such a conversion is made. However, EPA should also provide clearer guidance on the criteria for acceptable conversion options. A helpful step would be for EPA to provide examples of the necessary modeling analysis for each state and provide detailed guidance for public review and comment.

11. EPA Should Utilize Gross Generation Rather than Net

Seminole is concerned with EPA's use of net rather than gross electricity generation as a basis for the emission rate goals in the proposal. Use of net generation penalizes utilities for the electricity that is used to power emission control systems that are, in fact, mandated by other federal environmental regulations. In addition, EPA's proposed new source CO₂ standards under section 111(b) are based on gross generation. For consistency, gross generation should also be used for the section 111(d) standards.

12. Conclusion

Seminole has serious concerns regarding EPA's Existing-Unit Proposal for numerous legal, technical, economic, and policy reasons. Accordingly, Seminole requests that EPA withdraw this proposal, and meaningfully address the issues raised in this comment letter.

Seminole appreciates the opportunity to comment on this important matter. If you have any questions or wish to discuss these comments, please do not hesitate to contact me at (813) 963-0994.

Sincerely,



James R. Frauen
Vice President of Technical Services and Development

Cc: Honorable Bill Nelson	Honorable Lois Frankel
Honorable Marco Rubio	Honorable Debbie Wasserman Schultz
Honorable Jeff Miller	Honorable Frederica Wilson
Honorable Steve Southerland	Honorable Mario Diaz-Balart
Honorable Ted Yoho	Honorable Joe Garcia
Honorable Ander Crenshaw	Honorable Ilena Ros-Lehtinen
Honorable Corrine Brown	Honorable Rick Scott, Florida Governor
Honorable Ron DeSantis	Honorable Pam Bondi, Florida Attorney General
Honorable John Mica	Honorable Jeff Atwater, Florida Chief Financial Officer
Honorable Bill Posey	Honorable Adam Putnam, Commissioner, Florida Department of Agriculture and Consumer Services
Honorable Alan Grayson	Patrick Sheehan, Florida Office of Energy
Honorable Daniel Webster	Interim Secretary Clifford Wilson III, Florida DEP
Honorable Richard Nugent	Chairman Art Graham, Florida PSC
Honorable Gus M. Bilirakis	Mark Wilson, Florida Chamber of Commerce
Honorable David Jolly	National Rural Electric Cooperative Association
Honorable Kathy Castor	Florida Electric Cooperative Association
Honorable Dennis Ross	Lisa Johnson, Seminole Electric Cooperative
Honorable Vern Buchanan	
Honorable Tom Rooney	
Honorable Patrick Murphy	
Honorable Curt Clawson	
Honorable Alcee L. Hastings	
Honorable Ted Deutch	

Mike Campbell, Central Florida Electric
Cooperative

Ricky Davis, Clay Electric Cooperative

Jeff Brewington, Glades Electric
Cooperative

Randy Shaw, Peace River Electric
Cooperative

Jim Duncan, Sumter Electric Cooperative

Mike McWaters, Suwannee Valley Electric
Cooperative

Tracy Bensley, Talquin Electric Cooperative

Julius Hackett, Tri-County Electric
Cooperative

Billy Brown, Withlacoochee River Electric
Cooperative

FCG Environmental Committee

Robert Manning, Hopping Green & Sams

390030

**Seminole Electric Cooperative Comments on
EPA's Proposed CO₂ Rules for Existing Electric Generating Units;
Federal Plan, Model Trading Rules, and Framework Revisions
Docket ID Nos.: EPA-HQ-OAR-2015-0199 and EPA-HQ-OAR-2015-0734**

APPENDIX B

**Lisa D. Johnson Decl., Motion of Utility and Allied Petitioners for Stay of Rule,
Utility Air Regulatory Group v. U.S. Environmental Protection Agency,
No. 15-1370 (D.C. Cir. Oct. 23, 2015)**

**IN THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION, *et al.*

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. _____

**DECLARATION OF LISA D. JOHNSON OF SEMINOLE ELECTRIC
COOPERATIVE, INC. IN SUPPORT OF MOTION TO STAY**

I, Lisa D. Johnson, declare:

1. I am the CEO & General Manager of Seminole Electric Cooperative, Inc. (“Seminole”). In that capacity, I supervise more than 500 employees at three principal locations in Florida. I am directly responsible to Seminole’s Board of Trustees for overall Seminole operations.

2. I have worked for Seminole for two years, starting in July of 2013. Before joining Seminole, I was senior Vice President and Chief Operating Officer at Old Dominion Electric Cooperative in Glen Allen, Virginia. I hold a Bachelor of Science Degree in Mechanical Engineering and Materials Science from Duke University, and I have worked in the electric utility sector for over twenty years. I serve as a Director on the Florida Reliability Coordinating Council, as the

Secretary/Treasurer of the Florida Electric Power Coordinating Group, as a Trustee on the Board of Averett University, as a Director and as a member of the Executive Committee on the Board of the Florida Electric Cooperatives Association, as a director on the Board of the Electric Power Research Institute, and as Second Vice-President of the National G&T Managers Association. I was named one of Virginia's most "Influential Women" in 2012.

3. Seminole is one of the largest not-for-profit rural generation and transmission ("G&T") cooperatives in the country. Seminole has been in operation since 1948 and became fully operational as a G&T cooperative in 1976. Seminole and its nine Member-distribution cooperatives (collectively, "Seminole") serve approximately 1.4 million people and businesses in rural areas of Florida across 42 counties.

4. On August 3, 2015, the United States Environmental Protection Agency ("EPA") signed the final Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units ("111(d) Rule" or the "Rule").

5. The 111(d) Rule requires a drastic reduction in carbon dioxide ("CO₂") emissions from fossil fuel-fired generation, with a 32-percent reduction from 2005 levels required by 2030. The 111(d) Rule achieves those reductions through uniform CO₂ emission performance rates EPA has imposed on two

subcategories of existing power plants (coal- and natural gas-fired units), and statewide rate- or mass-based emissions goals that are formulated from the subcategory performance rates. States are required to formulate state plans for compliance and submit those plans to EPA for approval.

6. Although states must plan for compliance, affected units like those owned and operated by Seminole are responsible for compliance with the interim and final goals established in the Rule. Seminole cannot meet the new performance rates through any technological or operational changes at its existing units without curtailing generation or shuttering the plants, shifting generation to lower-emitting sources, and/or purchasing credits or allowances under a potential future trading program.

7. The 111(d) Rule could force Seminole to commit to curtailing coal and/or gas-fired generation or even shuttering all of its owned baseload and intermediate load electricity generating facilities, including both coal-fired units at Seminole Generating Station (“SGS”) and the natural gas-fired combined-cycle unit at Midulla Generating Station (“MGS”) by 2022 to comply with the Rule. Seminole will need to make planning and resource allocation decisions long before any final state plans implementing the 111(d) Rule are submitted to EPA for approval, before EPA’s proposed Federal Plan and model state trading rules are finalized, and before this litigation is resolved. Because Seminole must make these

business decisions almost immediately to prepare to comply with the 111(d) Rule, Seminole and the communities it serves will incur imminent and irreparable consequences if the Rule is not enjoined until this Court has had a full opportunity for review.

Introduction to Seminole and its Generating Units

8. Like most electric cooperatives, Seminole serves rural areas that would not be profitable or feasible for other utilities to serve, and that such utilities historically declined to serve. As explained more fully in the Declaration of Kirk Johnson, filed on behalf of the National Rural Electric Cooperative Association, the principal purpose of rural electric cooperatives like Seminole is to provide affordable electricity to underserved rural and largely lower-income populations. To that end, Seminole provides essential electric service in primarily rural and low-income areas of Florida stretching from west of Tallahassee to south of Lake Okeechobee. Approximately one-third of Seminole's residential customers have household incomes below the poverty level. Seminole serves an average of less than 10 customers per mile of electric line, whereas nationally, investor-owned utilities average 34 customers per mile and publicly-owned utilities average 48 customers per mile. Some of Seminole's Member cooperatives ("Members") serve as few as 4.6 customers per mile of electric line.

9. The rural nature of Seminole's business means that fewer customers exist to share the costs of Seminole's energy infrastructure. Because Seminole is a not-for-profit cooperative, its costs are reflected directly in its rates for electricity.

10. Seminole's primary generation resources include the coal-fired SGS plant and the natural gas combined cycle ("NGCC") unit at MGS. Most of Seminole's generation occurs at SGS in Putnam County in northern Florida. SGS was constructed in the era of the "Powerplant and Industrial Fuel Use Act." The Act, which restricted new power plants from using oil or natural gas and encouraged the use of coal, was enacted in 1978, and was not repealed until 1987. SGS came online in 1984 and consists of two, 650-megawatt ("MW") coal-fired generating units. SGS has operated at an average capacity factor of 80 percent throughout the last 18 years. In other words, SGS is very heavily utilized. In fact, in 2014, SGS generated approximately 58 percent of the total energy Seminole provided to its Members. Seminole engineering and consultant analyses estimate that SGS has a remaining useful life of at least another 30 years.

11. Putnam County, Florida, in which SGS is situated, was identified by *USA Today* as the poorest county in the State of Florida in 2015.¹ Putnam County

¹ The Poorest County in Each State, *USA TODAY* (Jan. 10, 2015), available at <http://www.usatoday.com/story/money/personalfinance/2015/01/10/247-wall-st-poorest-county-each-state/21388095/> (last visited Aug. 26, 2015).

has limited financial resources and is striving to improve its business and tax base. Putnam County has been designated as a “Florida Rural Enterprise Zone,” which provides for economic revitalization through tax incentives. The Governor also has designated Putnam County as a “Rural Area of Opportunity” because it is struggling to maintain, support, or enhance job activity, and to generate needed revenues for education, infrastructure, transportation, and safety. Portions of Putnam County also are within a U.S. Small Business Administration “Historically Underutilized Business Zone,” which allows small businesses to gain preferential access to federal procurement opportunities to promote economic development and growth in distressed areas. These state and federal designations reflect the tenuous economic status of the County and its residents.

12. SGS is one of the few major employers in Putnam County. SGS directly employs more than 300 people, and it requires hundreds of additional skilled contractors that work at the plant during maintenance outages and capital project implementation. Between 400 and 650 contractors worked at SGS during maintenance outages from 2012 to 2014. SGS is the largest taxpayer in Putnam County, paying more than \$5 million in property taxes in both 2013 and 2014. If SGS is forced to close prematurely, or curtail its operations to comply with the 111(d) Rule, it will result in substantial layoffs. Putnam County will also suffer

substantial economic consequences due to those layoffs and due to the reductions in critical tax revenue.

13. Seminole also owns and operates MGS, an 810-MW (nominal) generating facility that burns natural gas as its primary fuel, with ultra-low sulfur fuel oil used as a back-up fuel. MGS began commercial operation in 2002 with a 500-MW NGCC unit, which consists of two natural gas-fired combustion turbines, two heat-recovery steam generators, and one steam turbine. In 2006, Seminole added 310-MW(nominal) of gas-fired peaking capacity, which can be operational in as few as eight minutes to meet state operating reserve requirements. In 2014, MGS' NGCC unit provided approximately 17 percent of Seminole's total energy needs. Like SGS, MGS has a remaining useful life of at least another 30 years.

14. MGS is located on the county line between Hardee and Polk counties in south central Florida, and employs 36 workers. Similar to Putnam County where SGS is located, Hardee County has been designated as a "Florida Rural Enterprise Zone" and as a "Rural Area of Opportunity." Portions of Hardee County also are within a U.S. Small Business Administration "Historically Underutilized Business Zone." Seminole paid more than \$3 million annually in property taxes to Hardee County in both 2013 and 2014.

Summary of the 111(d) Rule

15. The 111(d) Rule establishes stringent CO₂ emission guidelines that states must follow to reduce CO₂ emissions from existing fossil fuel-fired power plants. Specifically, the Rule establishes: (a) unachievable CO₂ emission performance rates for two subcategories of existing power plants – steam generating units (including coal-fired boilers) and stationary combustion turbines (including natural gas-fired combined cycle units) – that EPA has nonetheless determined represent the best system of emission reduction for existing fossil fuel-fired power plants; (b) state-specific rate-based and mass-based CO₂ emission goals based on the unachievable subcategory rates and the state's 2012 generation mix; and (c) standards and requirements for the development, submittal, implementation, and enforcement of state compliance plans that establish emission standards or adopt other measures at least as stringent as the subcategory-specific performance rates or state goals. While the Rule's compliance period begins in 2022, and final standards must be achieved by 2030, regulated entities must begin taking steps well in advance of those deadlines – many immediately – if they are to comply by the specified deadlines.

16. As stated above, the Rule assigns a uniform performance rate for each existing coal-fired and natural gas-fired electric generating unit (except excluded combustion turbines) to reduce CO₂ from existing power plants, measured in terms

of pounds of CO₂ emitted for every net megawatt hour, or lbs CO₂/MWh-net. For existing steam generating coal-fired units like SGS, the performance rate is 1,305 lbs CO₂/MWh-net. For natural gas combined-cycle units like those at MGS, the performance rate is 771 lbs CO₂/MWh-net.

17. The Rule also sets forth statewide rate- and mass-based emission goals for each state calculated from the weighted aggregate of emission performance rates applicable to the state's existing coal-, gas- and oil-fired power plants. Florida's final rate-based CO₂ emission performance goal for 2030 is 919 lbs CO₂/MWh-net, and its mass-based goal for existing affected units is 105,094,704 short tons of CO₂.

18. Although the *final* state goals are not effective until 2030, the 111(d) Rule also establishes a "glide path" with increasingly stringent interim emission reduction requirements and average interim performance rates and goals for the 2022 to 2029 compliance period. Individual units must comply with both the interim and final requirements.

19. States may directly impose source-specific emission standards or requirements, or they may adopt other measures that achieve equivalent CO₂ emission reductions from the same group of existing electric generating units. Specifically, states may adopt an "emissions standards" plan that applies the source subcategory-specific performance rates to affected units or applies other rate or

mass-based standards to affected units that individually, or in the aggregate, achieve EPA's subcategory-specific performance rates, or state rate- or mass-based goals upon implementation. Affected units could pursue compliance measures such as heat rate improvements, investing in or transitioning generation to existing natural gas combined cycle, renewable, or nuclear electricity generation, or use of an emissions credit/allowance trading system. States also may adopt a "state measures" plan that includes, at least in part, measures imposed on entities other than existing electric generating units covered under the Rule, as well as a backstop of federally enforceable standards for individual power plants that are triggered if the state measures do not achieve the required emission reductions. States also may band together to adopt a multi-state plan applying either an "emissions standards" or "state measures" approach.

20. Regardless of which compliance approach states choose, emission reductions from affected electric generating units like those at SGS and MGS – individually, in the aggregate, or in combination with other measures taken by the state – must achieve the equivalent of the EPA-specified CO₂ emission performance rates by 2030, expressed via the state-specific rate- or mass-based goals. States must abide by the goals set by EPA; they are not free to adopt less stringent goals.

21. The apparent flexibility of the EPA process for crafting a state implementation plan creates the kind of uncertainty that is impracticable to plan for. Seminole is forced to make imminent planning decisions based on the most stringent, inflexible outcome possible, causing irreparable harm if other more flexible options become available at a later date under yet-to-be-determined rulemakings. States must submit at least an initial state plan to EPA by September 6, 2016. The 111(d) Rule allows states to seek an extension to September 6, 2018, to submit a final plan. EPA has pledged to review and approve state plans within a year of their submission. The State of Florida thus has until September 6, 2018, to submit a final plan so long as it submits an initial plan for compliance by September 6, 2016, and seeks an extension from EPA. It will not be clear what compliance methods will be ultimately adopted by the State – including whether a trading program will be established, the terms of any such program, or whether that program will be acceptable to EPA – until the plan is finalized and approved sometime in late 2018 or 2019. The State also has the discretion to choose not to adopt a trading program in favor of other methods of compliance. In short, there is likely to be no certainty about the shape of Florida’s plan, whether trading will be available under it and, if so, on what terms trading will be available, for at least another four years.

The Rule's Effect on Seminole

22. Neither of Seminole's primary generating resources can meet the final 111(d) Rule's performance rate for existing steam generating coal-fired and natural gas combined cycle plants, nor can they meet the interim rate. As noted above, the performance rates are among the few key metrics finalized by EPA as of the August 3 signature. Accordingly, when dealing with forced current realities (i.e., required generation planning) as opposed to future possibilities under whatever type of plan Florida ultimately adopts, SGS would be permitted to emit no more than 1,305 lbs CO₂/MWh-net annually, and the MGS NGCC unit would be permitted to emit no more than 771 lbs CO₂/MWh-net annually, by 2030. The interim rates, which must be met by 2022, would permit SGS to emit no more than 1,534 lbs CO₂/MWh-net annually, and the MGS NGCC unit would be permitted to emit no more than 832 lbs CO₂/MWh-net annually. Over the past 5 years, SGS has emitted CO₂ at an average annual rate of 2,006 lbs CO₂/MWh-net, more than 700 lbs more per MWh-net than permitted by the 111(d) Rule when fully implemented. MGS has emitted CO₂ at an average annual rate of 905 lbs CO₂/MWh-net, more than 130 lbs more per MWh-net than permitted by the 111(d) Rule when fully implemented.

23. Because SGS and MGS cannot meet the uniform performance rates, the 111(d) Rule's strict requirements are placing all of Seminole's owned base-

load and intermediate generating facilities at SGS and MGS in jeopardy of being curtailed, shuttered, and/or replaced. In 2014, these assets provided 76 percent of Seminole's total energy needs. They are outfitted with state-of-the-art emission control systems and, having reached approximately half of their expected useful lives, are relatively new facilities, yet they cannot even come close to meeting the EPA's stringent 111(d) emission limits. Seminole has invested more than \$530 million on state-of-the-art environmental control equipment at SGS since the plant came online in 1984 and more than \$262.4 million has been invested since 2006 alone. Should the plant be shuttered and/or replaced, these investments will be lost.

24. There is no viable, adequately demonstrated environmental control system that Seminole can install at SGS or MGS to meet the new performance rates. The only means for SGS and the MGS NGCC unit to achieve the Rule's emission rates are: (i) curtailment of operations and replacement of the lost generation with lower-emitting generation (e.g., natural gas-fired units and renewable generation) obtained elsewhere; (ii) closure of the facilities entirely and replacement of the units with new natural gas-fired units and renewable generation; or (iii) purchase of emission reduction credits or allowances through a trading system that *might* be established pursuant to the 111(d) Rule.

25. The first two options explained in the previous paragraph (curtailment and replacement, or closure and replacement) will require the premature closure

and/or curtailment of SGS, and possibly the NGCC unit at MGS, at extraordinary cost to Seminole and its Members. More specifically, Seminole does not currently have sufficient owned or contracted lower-emitting generation capacity to replace all or part of the generation provided by SGS and the NGCC unit at MGS. Even if the NGCC unit at MGS could meet EPA's emission limits, it does not have sufficient capacity to replace lost generation from coal-fired SGS. The MGS NGCC unit has operated at an average capacity factor of 62 percent since 2012; this capacity factor leaves little room for Seminole to ramp up output at MGS to offset curtailed generation from the SGS coal-fired facility, as contemplated by EPA with their imposition of a 75 percent capacity factor requirement for gas-fired facilities. Seminole could also construct additional renewable generation, but it is not feasible to replace the baseload and intermediate generation provided by SGS and MGS wholly with intermittent renewable generation resources given their unpredictability and low capacity factor.

26. To comply with the final 111(d) Rule, then, Seminole must choose to construct new generation facilities or to contract for purchased power supply from third parties. In addition, Seminole must contract for natural gas to be used to fuel its own generation and potentially must contract for natural gas to be used at its purchased power resource facilities. Under any option, Seminole must make these irrevocable decisions *soon* as explained in the next paragraph. In addition,

Seminole must decide by early 2016 if it will build replacement generation resources or enter into one or more purchased power agreements. Considering the uncertainty created by the 111(d) Rule throughout the electric generation industry, it is questionable whether Seminole will be able to obtain any purchased power resources. If Seminole must construct its own gas-fired power plants by 2022, it must decide in 2016 whether to replace all generation at SGS and MGS or some portion of these resources, which is prior to any final regulatory direction provided by EPA or the State of Florida. These investments must be funded by consumers, resulting in extraordinary rate increases. Seminole's Members and their end-use consumers cannot withstand this added financial burden. If the Court invalidates the Clean Power Plan, these new investments will not be needed but consumers will have already suffered from the unnecessary and irreparable rate-increases.

27. To replace SGS alone, Seminole would have to choose and evaluate potential sites and apply for the requisite environmental and local permits, at a cost of approximately \$2 million. As explained above, this irreparable effort and expense would need to begin by mid-2016. By the middle of 2018, Seminole also would have to contract to purchase generation equipment for the new plant at a cost of approximately \$375 million. If the decision is made to replace the MGS NGCC unit by constructing an equivalently-sized new gas-fired combined cycle facility, Seminole would be required to spend an additional \$150 million in the

same time frame.² Alternatively, if Seminole chooses to contract for the purchase of power and/or natural gas generating capacity, Seminole would have to negotiate and enter into the necessary contract(s) by mid-2018.

28. The total cost to Seminole of replacing 1,800 MW of capacity generated by SGS and the MGS NGCC unit is expected to be at least \$1.8 billion. Replacing SGS's output would cost Seminole approximately \$1.3 billion, and the cost of replacing the MGS NGCC unit's output would be approximately \$500 million. These figures could be even higher if the gas-fired equipment and construction markets surge in response to the 111(d) Rule. Seminole would have to obtain financing, starting with powertrain payments of \$525 million (\$375 million to replace SGS and \$150 million to replace the MGS NGCC unit) that would be made in mid-2018. Because Seminole will be carrying approximately \$836 million in outstanding debt (as of December 2021) associated with the prematurely-retired SGS and MGS units when it obtains that additional financing, its credit rating also may be negatively affected. Credit rating downgrades extend across all aspects of a utility, negatively affecting contracts, financing, and rates. Seminole would have to accelerate the depreciation schedule for SGS from a 30-year remaining life to a significantly shorter useful life. Seminole's rates would be forced to increase to

² These costs represent only the initial power train equipment purchases that must be made by mid-2018, not the cost to replace SGS and MGS entirely.

cover the costs of new gas and/or renewable generation while continuing to pay for the sunk costs and outstanding debt associated with SGS and MGS.

29. Seminole also must decide before the end of 2016 whether to forgo planned investments in SGS, which are intended to maintain its efficient and environmentally-responsible operations. The uncertainty created by the 111(d) Rule thus creates another “roll of the dice” decision that must be made by Seminole. Seminole must choose now whether to spend additional money on improvements and risk losing the investments if the facility is prematurely retired, or choose not to spend the money and forgo the environmental benefits and efficiency gains that could be achieved.

30. Regardless of whether Seminole constructs new generation or enters into purchased power contracts with others to achieve compliance, Seminole would need to contract to increase its gas transportation capacity (via pipeline) before the end of 2016. The cost of constructing a gas pipeline to serve new gas-fired units is estimated to cost more than \$80 million, \$8 million of which may need to be paid before the end of 2016 to initiate the construction process. The enormous cost of the required investments – completely unnecessary and imprudently made if the Rule is eventually overturned – would be unrecoverable from the United States even if the 111(d) Rule is vacated. It is important to note that all of the additional

costs described above are on top of and in addition to the costs required to meet expected future demand for our Members.

31. The third option for compliance described above – purchase of emission reduction credits or allowances under a 111(d) Rule-compliant trading program – will not even be available to Seminole *unless* Florida adopts such a system. Seminole will not know with any certainty whether such trading will be available until late 2018 or in 2019, because the state plan requires development and EPA approval, both of which are time consuming. As noted above, Seminole will need to make decisions and commit to significant expenditures starting in 2016 regarding the generation resources that will be online in 2022 and beyond. It does not have the luxury of waiting to see if Florida adopts a trading program or if that program will provide sufficient credits or allowances, at economic prices, to allow the continued operation of SGS and the NGCC unit at MGS.

32. Seminole is a not-for-profit cooperative that cannot absorb the enormous costs of constructing a lower-emitting generating facility or contracting for lower-emitting generating capacity without passing along those costs to its Members. Premature closure of SGS, and potentially the NGCC unit at MGS, and the inability of Seminole to replace that generating capacity at a cost that would be affordable to Seminole's Members will have significant detrimental impacts on Seminole and its Members' consumers: (1) SGS's approximately 300 employees

will lose their jobs (and hundreds of contract-work opportunities will also be lost); (2) Seminole will no longer operate in its current form, having lost its principal generating unit(s); (3) Seminole will lose an annual multi-million dollar revenue stream from a contract with Continental Building Products (“Continental”), under which Continental purchases synthetic gypsum (a byproduct of combustion, produced by SGS’s environmental control systems) and recycles that product to make wallboard; (4) Seminole’s rates will increase and may no longer be competitive with other utilities in the state, driving much needed economic development out of Florida’s rural areas; and (5) the entire objective of the federally-crafted rural cooperative structure will be undermined.³

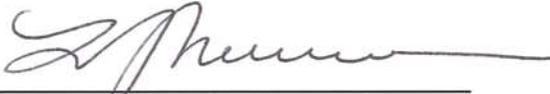
33. Unless the 111(d) Rule is stayed pending judicial review, Seminole must take the immediate and irreversible steps described above causing Seminole and its Members’ consumers to suffer immediate and irreparable harm. If the 111(d) Rule is later invalidated, without a stay, Seminole will have already committed to a combination of the following irreparable actions: premature closings and/or significant curtailment of its operating power generation facilities, significant expenditures on natural gas and/or renewable generation facilities, and

³ See Kirk Johnson Decl., ¶¶ 6-9, 11 (discussing the purpose and formation of rural electric cooperatives).

new gas pipeline construction and/or purchase contracts.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: October 12th, 2015

By: 

Lisa D. Johnson