

**IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

ALTAMAHA RIVERKEEPER, INC.; )  
FALL-LINE ALLIANCE FOR A )  
CLEAN ENVIRONMENT; and )  
SIERRA CLUB, )  
)  
Petitioners, )  
) Docket No. OSAH-BNR-WQC-  
v. ) 131706-WALKER  
)  
ALLEN BARNES, DIRECTOR, )  
ENVIRONMENTAL PROTECTION )  
DIVISION, GEORGIA )  
DEPARTMENT OF NATURAL )  
RESOURCES )  
)  
Respondent, )  
)  
and )  
)  
POWER4GEORGIANS, LLC )  
)  
Respondent-Intervenor )

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**SECOND AMENDED PETITION FOR HEARING**

**Introduction**

1.

Petitioners Altamaha Riverkeeper, Inc., Fall-Line Alliance for a Clean Environment, and Sierra Club (“Petitioners”), through their undersigned attorneys, file this Second Amended Petition for Hearing challenging the February 28, 2011

issuance of a National Pollutant Discharge Elimination System (“NPDES”) permit (the “NPDES Permit”) to Power4Georgians, LLC (“P4G”) for a coal-fired power plant in Washington County, Georgia (“Plant Washington”) by the Director of the Environmental Protection Division (“Director”). A true and correct copy of the contested NPDES Permit, NPDES Permit No. GA0039055, is attached hereto as Exhibit A. The NPDES Permit authorizes Plant Washington (hereinafter, “the plant” or “the facility”) to discharge its effluent directly into the Oconee River.

### **STATEMENT OF JURISDICTION**

2.

This action is brought pursuant to O.C.G.A. §§ 12-5-43, 12-2-2(c)(2), 50-13-13, 12-5-31 and Ga. Comp. R. & Regs. r. 391-1-2.-03, which authorize any person who is aggrieved or adversely affected by any order or action of the Director to obtain review of the Director’s order or action. Petitioners hereby petition for a hearing because they have been aggrieved and adversely affected by the Director’s issuance of the NPDES Permit to P4G.

3.

This Second Amended Petition amends a petition which was filed within thirty days of the initial issuance of the NPDES Permit by the Environmental Protection Division (“EPD”) on April 8, 2010, as required by O.C.G.A. § 12-2-

2(c)(2) and § 12-5-43. As a result of rulings by the Administrative Law Judge (“ALJ”) on claims made in that Petition and modifications made to the permit by EPD, Petitioners are herein dismissing all of their previously stated claims and are adding a single additional Count as noted below.

**PETITIONERS’ INTEREST**

**Altamaha Riverkeeper**

4.

Petitioners hereby incorporate by reference paragraphs 5 through 8 of their Original Petition and also incorporate by reference the standing affidavits attached to that original Petition.

**Fall-Line Alliance for a Clean Environment**

5.

Petitioners hereby incorporate by reference paragraphs 9 through 11 of their Original Petition and also incorporate by reference the standing affidavits attached to that original Petition.

**Sierra Club**

6.

Petitioners hereby incorporate by reference paragraphs 12 through 16 of

their Original Petition and also incorporate by reference the standing affidavits attached to that original Petition.

### **FACTUAL BACKGROUND**

7.

Petitioners incorporate by reference paragraphs 17 through 23 of their original Petition.

8.

According to modeling submitted by P4G in support of its permit application, Plant Washington will discharge heated effluent at numerous points in time that exceeds 5° Fahrenheit in temperature above the background water temperature and/or that exceeds 90° Fahrenheit.

9.

High temperature effluent, also called thermal discharge, is a recognized and serious concern for the health of a body of water. Water temperature is one of the most significant environmental factors mediating aquatic productivity. The natural layers of water stratification can be upset by thermal discharge which in turn can disrupt the aquatic life of organisms that have adapted to the ambient temperatures in the water body's natural state. High temperature water also carries less oxygen than cooler water. As a result, federal and state laws have recognized heat as a

pollutant. Power plants are generally recognized as leading contributors to thermal pollution.

10.

The revised Permit, issued on February 28, 2011, provides for temperature limits at the edge of a defined mixing zone.

11.

Although allowed by law, mixing zones are, by definition, areas of the water body in which a discharger is allowed to exceed the otherwise applicable limits that are imposed by a permit. As such, a permit that provides for a mixing zone should be narrowly drawn and provide for adequate monitoring to ensure compliance with the permit limits and state water quality standards at the edge of the mixing zone.

12.

The ability of the river to assimilate the heated discharge within the mixing zone depends on a number of variables including the temperature of the river, the rate of flow of the river, the temperature of the discharge, and rate of flow of the discharge.

13.

The flow and temperature of the Oconee River fluctuate from day to day, and even within the same day.

14.

The revised Permit calls for monitoring for temperature at the edge of the mixing zone only on a monthly basis with the exception of January and August, when weekly monitoring is required.

15.

In response to comments submitted by Petitioners, P4G's engineering consultant, MACTEC, submitted a letter to EPD in which it suggested that the revised Permit include additional monitoring, beyond that outlined above, any time the intake temperature of the River was below 44.5 degrees Fahrenheit or above 84 degrees Fahrenheit. Although increased monitoring would improve the ability of EPD to ensure compliance with the Permit, EPD did not require increased monitoring in the revised Permit.

### **DISMISSAL OF PREVIOUS CLAIMS**

16.

Petitioners hereby dismiss without prejudice all claims previously asserted in their original Petition and their First Amended Petition.

**COUNT I - THE NPDES PERMIT FAILS TO CONTAIN THE NECESSARY MONITORING REQUIREMENTS TO ENSURE COMPLIANCE WITH THE TEMPERATURE LIMITS AT ALL TIMES**

17.

All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

18.

An NPDES permit cannot be issued to a new discharger if it “will cause or contribute to the violation of water quality standards.” 40 C.F.R. § 122.4(i); Ga. Comp. R. & Regs. r. 391-3-6-.06(8)(b)(6).

19.

With regard to heat pollution, Georgia’s water quality standards place a specific limit on thermal discharges. The standards allow only for a discharge that does not exceed a maximum of 90° Fahrenheit and no more than 5° Fahrenheit above the ambient river temperature. Ga. Comp. R. & Regs. r. 391-3-6-.03(6)(a)(v).

20.

The thermal limits in Georgia’s water quality standards must be complied with at all times. Id.

21.

The revised Permit contains a requirement that the discharge not exceed a maximum of 90° F and no more than 5° F above the ambient water temperature at the edge of a defined mixing zone.

22.

Federal law requires that all permits require monitoring with “frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring.” See 40 C.F.R. § 122.48.

23.

The revised Permit fails to require adequate monitoring because the required monitoring is insufficient to demonstrate that the facility is in compliance with the temperature limits in the Permit at all times. As such, it is possible that the subject plant will violate the applicable temperature limits but such violations will not be reported to EPD because of inadequate monitoring.

24.

The revised Permit should include a permit condition requiring continuous monitoring of water temperature at the edge of the mixing zone to ensure compliance with state water quality standards for heat at all times.

## **PRAYER FOR RELIEF**

WHEREFORE, Petitioners request:

1. A hearing before an administrative law judge on the issues set forth in this Second Amended Petition for Hearing;
2. A declaration that the NPDES Permit is unlawful for the reasons set forth herein;
3. An order invalidating the NPDES Permit;
4. Instructions to guide EPD's consideration of the NPDES permit on remand; and/or
5. Any other relief to which Petitioners are entitled.

Respectfully submitted, this 30th day of March, 2011.

/s/ Brian L. Gist

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of Second Amended Petition for Hearing upon the following:

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This 30th day of March, 2011.

/s/ Hutton Brown  
Hutton Brown