

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
GEORGIA POWER COMPANY)
BOWEN STEAM-ELECTRIC GENERATING) ORDER RESPONDING TO PETITIONERS'
PLANT) REQUEST THAT THE ADMINISTRATOR
CARTERSVILLE, GEORGIA) OBJECT TO ISSUANCE OF STATE
ELECTRIC POWER GENERATION) OPERATING PERMIT AMENDMENTS
PERMIT No. 4911-015-0011-V-01-2)
ISSUED BY THE GEORGIA)
ENVIRONMENTAL PROTECTION)
DIVISION)
PETITION IV-2002-3)
)

IN THE MATTER OF:)
GEORGIA POWER COMPANY)
BOWEN STEAM-ELECTRIC GENERATING PLANT)
CARTERSVILLE, GEORGIA)
PERMIT No. 4911-015-0011-V-01-3)
)
BRANCH STEAM-ELECTRIC GENERATING PLANT)
MILLEDGEVILLE, GEORGIA)
PERMIT No. 4911-237-0008-V-01-3)
)
HAMMOND STEAM-ELECTRIC GENERATING)
PLANT)
COOSA, GEORGIA)
PERMIT No. 4911-115-003-V-01-3)
)
McDONOUGH/ATKINSON STEAM-ELECTRIC)
GENERATING PLANT)
SMYRNA, GEORGIA)
PERMIT No. 4911-067-0003-V-01-3)
)

SCHERER STEAM-ELECTRIC GENERATING PLANT)
JULIETTE, GEORGIA)
PERMIT NO. 4911-207-0008-V-01-3)
)
WANSLEY STEAM-ELECTRIC GENERATING PLANT)
ROOPVILLE, GEORGIA)
PERMIT NO. 4911-149-0001-V-01-6)
)
YATES STEAM-ELECTRIC GENERATING PLANT)
NEWNAN, GEORGIA)
PERMIT NO. 4911-077-0001-V-01-3)
)
ISSUED BY THE GEORGIA)
ENVIRONMENTAL PROTECTION)
DIVISION)
)
PETITION IV-2002-6)
)

ORDER DENYING PETITIONS FOR OBJECTION TO PERMIT AMENDMENTS

This order responds to two related petitions to object to title V permits brought pursuant to Section 505(b)(2) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7661d(b)(2). On July 9, 2002, the United States Environmental Protection Agency (“EPA”) received a petition (the “Bowen Petition”) from the Georgia Center for Law in the Public Interest (“GCLPI”), on behalf of the Sierra Club, Georgia Forest Watch and Colleen Kiernan (“Petitioners”), requesting that EPA object to the permit amendment (Permit No. 4911-015-0011-V-01-2) issued by the Georgia Environmental Protection Division (“EPD” or “Department”) to Georgia Power Company (“Georgia Power” or “Permittee”) for its facility, Bowen Steam-Electric Generating Plant (“Plant Bowen”), located in Cartersville (Bartow County), Georgia. The permit amendment is a state operating permit amendment, issued May 1, 2002 (the “Bowen Amendment”), pursuant to title V of the Act, 42 U.S.C. §§ 7661-7661f. The Bowen Amendment placed nitrogen oxides (“NOx”) emissions limits on certain units at Plant Bowen for the 2002 ozone season, and emissions reductions that ensued from those limits were used as New Source Review (“NSR”) offsets for another power plant, the Wansley Steam-Electric Generating Plant (“Plant Wansley”), located in Roopville, Georgia, during 2002.

On November 20, 2002, the EPA received a petition (the “Seven Plants Petition”) from the GCLPI, on behalf of the Sierra Club and Georgia Public Interest Research Group (“Georgia PIRG”), requesting that EPA object to the permit amendments issued by EPD to Georgia Power for seven facilities: Plant Bowen (Permit No. 4911-015-0011-V-01-3); Branch Steam-Electric Generating Plant, located in Milledgeville, Georgia; Hammond Steam-Electric Generating Plant (“Plant Hammond”), located in Coosa, Georgia; McDonough/Atkinson Steam-Electric

Generating Plant, located in Smyrna, Georgia; Scherer Steam-Electric Generating Plant, located in Juliette, Georgia; Plant Wansley; and Yates Steam-Electric Generating Plant, located in Newnan, Georgia (collectively, the “Seven Power Plants”). The permit amendments are state operating permit amendments issued on September 25, 2002 (collectively, the “Seven Plants Amendments”; the Plant Hammond permit amendment is referred to as the “Hammond Permit Amendment”), pursuant to title V, and create emission reductions that were used as NSR offsets for Plant Wansley for 2003 and later.

Petitioners objected to both the Bowen Amendment and the Seven Plants Amendments, pursuant to CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2), on the basis that the emissions reductions required under the permit terms do not qualify as offsets. Because the Bowen Petition and the Seven Plants Petition (and the permit amendments at issue) are interrelated, I have considered them together. As explained in more detail below, I hereby deny the Petitioners’ requests because the emission limits in the permit amendments are not required to meet the requirements for offsets. Any such requirement would be found in a permit for Plant Wansley in which those reductions were, in fact, claimed as offsets.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), calls upon each state to develop and submit to EPA an operating permit program intended to meet the requirements of CAA title V. The State of Georgia originally submitted its title V program governing the issuance of operating permits on November 12, 1993. EPA granted interim approval to the program on November 22, 1993. See 60 Fed. Reg. 57836 (November 22, 1993). Full approval was granted by EPA on June 8, 2000. See 65 Fed. Reg. 36358 (June 8, 2000). The program is now incorporated into Georgia’s Air Quality Rule 391-3-1-03(10). All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the Act, including the applicable implementation plan. See CAA sections 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (referred to as “applicable requirements”) on sources. The program does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. See 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to “enable the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements.” Id. Thus, the title V operating permit program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document, therefore enhancing compliance with the requirements of the Act.

Permitting authorities must provide at least 30 days for public comment on draft title V permits and give notice of any public hearing at least 30 days in advance of the hearing. 40 CFR § 70.7(h). Following consideration of any comments received during this time,

Section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 CFR § 70.8(a) require that states submit each proposed permit to EPA for review. Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the permit if it is determined not to be in compliance with applicable requirements or the requirements of title V. 40 CFR § 70.8(c). If EPA does not object to a permit on its own initiative, CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 CFR § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. These sections also provide that petitions shall be based only on objections to the permit raised with reasonable specificity during the public comment period (unless the petitioner demonstrates that it was impracticable to raise such objections within that period or the grounds for such objections arose after that period).

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of 40 CFR Part 70 and the applicable implementation plan. If, in responding to a petition, EPA objects to a permit that has already been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 CFR § 70.7(g)(4) or (5)(I) and (ii) for reopening a permit for cause. A petition for review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period. See 42 U.S.C. §§ 7661d(b)(2)-(b)(3); 40 CFR § 70.8(d).

II. FACILITY BACKGROUND

The following are descriptions of the Seven Power Plants that are the subjects of this petition:

Plant Bowen consists of four (4) coal-fired electric utility steam generating units, two (2) simple cycle combustion turbines, two (2) start-up boilers, and coal and ash handling systems. Two of the steam turbines are rated at 700 megawatts (MW) of output and two are rated at 880 MW. The two combustion turbines are connected to a single generator with a rated output of 40 MW. The boilers are each rated at 349 million BTU per hour (mmBTU/hr) heat input. The primary air emissions from Plant Bowen include: NO_x, carbon monoxide (CO), sulfur dioxide (SO₂), total particulate matter (PM), particulate matter less than or equal to 10 micrometers in diameter (PM₁₀), volatile organic compounds (VOC), and hazardous air pollutants (HAP). Plant Bowen is subject to the following federal requirements: 40 CFR Parts 72, 73, and 75 (Acid Rain program). Plant Bowen is also subject to the following state implementation plan (SIP) requirements: Georgia Rules 391-3-1-02(2)(b), *Visible Emissions*; (d), *Fuel-burning Equipment*; (g), *Sulfur Dioxide*; (n), *Fugitive Dust*; (jj), *NO_x Emissions from Electric Utility Steam Generating Units*; and (nnn), *NO_x Emissions from Large Stationary Gas Turbines*. See Title V Significant Modification Application Review, Bowen Steam-Electric Generating Plant, Permit No. 4911-015-0011-V-01-3.

Branch Steam-Electric Generating Plant (“Plant Branch”) consists of four (4) coal-fired electric utility steam generating units and coal and ash handling systems. The steam turbines are

rated at 260, 320, 480, and 510 MW of output. The primary air emissions from Plant Branch include: NO_x, CO, SO₂, PM, PM₁₀, VOC, and HAP. Plant Branch is subject to the following federal requirements: 40 CFR Parts 72, 73, and 75. Plant Branch is also subject to the following SIP requirements: Georgia Rules 391-3-1-.02(2)(b), (d), (g), (n), and (jjj). See Title V Significant Modification Application Review, Branch Steam-Electric Generating Plant, Permit No. 4911-237-0008-V-01-3.

Hammond Steam-Electric Generating Plant (“Plant Hammond”) consists of four (4) coal-fired electric utility generating units and coal and ash handling systems. The steam turbines are rated at 110, 112, 113, and 500 MW of output. The primary air emissions from Plant Hammond include: NO_x, CO, SO₂, PM, PM₁₀, VOC, and HAP. Plant Hammond is subject to the following federal requirements: 40 CFR Parts 72, 73, and 75. Plant Hammond is also subject to the following SIP requirements: Georgia Rules 391-3-1-.02(2)(b), (d), (g), (n), and (jjj). See Title V Significant Modification Application Review, Hammond Steam-Electric Generating Plant, Permit No. 4911-115-0003-V-01-3.

McDonough/Atkinson Steam-Electric Generating Plant (“Plant McDonough/Atkinson”) consists of two (2) coal-fired electric utility steam generating units, four (4) natural gas-fired electric utility steam generating units (one of which is inoperable), eight (8) natural gas-fired simple cycle combustion turbines, a used oil storage tank, and coal and ash handling systems. The steam turbines for the coal-fired units are each rated at 265 MW of output whereas those for the natural gas-fired units are only rated at 60 MW. The combustion turbines are paired to four (4) generators which are rated at 40 MW each. The primary air emissions from Plant McDonough/Atkinson include: NO_x, CO, SO₂, PM, PM₁₀, VOC, and HAP. Plant McDonough/Atkinson is subject to the following federal requirements: 40 CFR Part 60, Subpart Kb, *Standards of Performance for Volatile Organic Liquid Storage Vessels*; and 40 CFR Parts 72, 73, and 75. Plant McDonough/Atkinson is also subject to the following SIP requirements: Georgia Rules 391-3-1-.02(2)(b); (d); (g); (n); (yy), *Emissions of Nitrogen Oxides from Major Sources*; (jjj); and (nnn). See Title V Significant Modification Application Review, McDonough/Atkinson Steam-Electric Generating Plant, Permit No. 4911-067-0003-V-01-3.

Scherer Steam-Electric Generating Plant (“Plant Scherer”) consists of four (4) coal-fired electric steam generating units, two (2) start-up boilers, and coal and ash handling systems. The steam turbines are each rated at 880 MW of output and the boilers are each rated at 245 mmBTU/hr heat input. The primary air emissions from Plant Scherer include: NO_x, CO, SO₂, PM, PM₁₀, VOC, and HAP. Plant Scherer is subject to the following federal requirements: 40 CFR Parts 72, 73, and 75. Plant Scherer is also subject to the following SIP requirements: Georgia Rules 391-3-1-.02(2)(b), (d), (g), (n), and (jjj). See Title V Significant Modification Application Review, Scherer Steam-Electric Generating Plant, Permit No. 4911-207-0008-V-01-2.

Plant Wansley consists of two (2) coal-fired steam electric generating units, two (2) start-up boilers, one (1) simple cycle combustion turbine, two (2) combined cycle power blocks (Nos. 6 and 7), and coal and ash handling systems. The steam turbines are each rated at 880 MW of output, the boilers are each rated at 352 mmBTU/hr heat input, the combustion turbine is

rated at 54 MW of output, and the power blocks are each rated at 570 MW of output. Also located at Plant Wansley are: one (1) combined cycle power block (No. 8) owned and operated by Chattahoochee Electric Membership Cooperative and one (1) combined cycle power block (No. 9) owned and operated by Municipal Electric Authority of Georgia. The primary air emissions from Plant Wansley include: NO_x, CO, SO₂, PM, PM₁₀, VOC, and HAP. Plant Wansley is subject to the following federal requirements: 40 CFR § 52.21, *Prevention of Significant Deterioration of Air Quality*; 40 CFR Part 60, Subpart Da, *Standards of Performance for Electric Utility Generating Units*; Subpart GG, *Standards of Performance for Stationary Gas Turbines*; and 40 CFR Parts 72, 73, and 75. Plant Wansley is also subject to the following SIP requirements: Georgia Rules 391-3-1-.02(2)(b), (d), (g), (n), and (jjj). See Title V Significant Modification Application Review, Wansley Steam-Electric Generating Plant, Permit No. 4911-149-0001-V-01-6.

Yates Steam-Electric Generating Plant (“Plant Yates”) consists of seven (7) coal-fired electric utility steam generating units and material, coal, and ash handling systems. The steam turbines are rated at 100, 100, 105, 129, 129, 350, and 350 MW of output. The primary air emissions from Plant Yates include: NO_x, CO, SO₂, PM, PM₁₀, VOC, and HAP. Plant Yates is subject to the following federal requirements: 40 CFR Parts 72, 73, and 75. Plant Yates is also subject to the following SIP requirements: Georgia Rules 391-3-1-.02(2)(b), (d), (g), (n), and (jjj). See Title V Significant Modification Application Review, Yates Steam-Electric Generating Plant, Permit No. 4911-077-0001-V-01-3.

The Seven Power Plants are located in the Atlanta ozone nonattainment area, or in nearby counties.¹

III. PROCEDURAL BACKGROUND

A. Permitting Chronology

On or about July 28, 2000, EPD approved a title V permit amendment for Plant Wansley (“Wansley 2000 Amendment”) to allow construction of four natural gas-fired combined cycle power blocks. The permit requires that Plant Wansley obtain 572.4 tons of NOx offsetting emissions reductions by the date that those power blocks commence operation. The petitions at issue do not concern the Wansley 2000 Amendment, and, therefore, this Order does not directly concern that Amendment.

With respect to the Plant Bowen amendment, EPD received a title V permit amendment application submitted by Georgia Power on July 17, 2001. On November 8, 2001, a public notice was published providing for a 30-day public comment period on the draft title V permit amendment. The public comment period for the draft permit amendment ended on

¹ Plants Bowen, McDonough/Atkinson and Yates are located in the area designated as nonattainment for the 8-hour ozone standard. Plants Branch, Hammond, Scherer and Wansley are located in the control area for the 1-hour ozone standard as determined by Georgia EPD.

December 10, 2001. The Petitioners submitted comments to EPD in a letter dated December 10, 2001, and during a public hearing that was held on January 28, 2002. These comments serve as the basis for their petition. EPD proposed the permit amendment to EPA on March 26, 2002, and subsequently issued the final permit amendment to Georgia Power for Plant Bowen on May 1, 2002.

With respect to the Seven Plants Amendments, EPD received title V permit amendment applications submitted by Georgia Power on December 28, 2001. On May 16, 2002, EPD published the public notices providing for a 30-day public comment period on the draft title V permit amendments. The public comment period for the draft permit amendments ended on June 17, 2002. On June 17, 2002, EPD received comments from the Petitioners via certified mail and e-mail, which serve as the basis for their petition. EPD proposed the permit amendment to EPA on August 5, 2002, and subsequently issued the final permit amendment to Georgia Power for the Seven Power Plants on September 25, 2002.

B. Timeliness of Petitions

With respect to the Bowen Amendment, EPA's 45-day review period ended on May 10, 2002. The sixtieth day following that date, which was the deadline for filing any petitions of this permit amendment, was July 9, 2002. EPA received the Petitioners' petition on July 9, 2002, and considers it to be timely.

With respect to the Seven Plants Amendments, EPA's 45-day review period ended on September 19, 2002. The sixtieth day following that date, which was the deadline for filing any petitions of this permit, was November 18, 2002. Petitioners' petition was postmarked November 18, 2002, and received by EPA on November 20, 2002. EPA considers this petition to be timely.

IV. PETITIONERS' CLAIMS AND RESPONSE

Petitioners have requested that I object to the Bowen Amendment and the Seven Plants Amendments on the grounds that the NOx emissions reductions that result from the permit limits do not meet the requirements for offsets.² Specifically, Petitioners assert that the reductions are required to meet the requirements to be real, enforceable, permanent, and surplus. Petitioners assert that each of the permit amendments fails one or more of those requirements. Bowen Petition at 8; Seven Plants Petition at 7.

² In the summary of argument section of their Bowen Petition, Petitioners also stated that "Georgia EPD did not make available to the public all relevant information during the public comment period." Bowen Petition at 8. The petition does not, however, otherwise address this issue. Therefore, I deny the petition with respect to that allegation as Petitioners failed to demonstrate that the permit was not in compliance with the Act.

I deny the request to object because the Bowen Amendment and the Seven Plants Amendments simply impose limits that reduce emissions, and do not, by themselves, qualify the reductions for use as offsets. Such qualification may occur through the permitting process for the Wansley Plant's modification, which is not at issue for today's action. Therefore, the emission limits in the permit amendments are not required to be valid offsets in order for these permit amendments to be consistent with the Act. Accordingly, Petitioners' objections that the reductions do not qualify as offsets are not relevant for the Bowen Amendment and the Seven Plants Amendments.

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of 40 CFR Part 70 and the applicable implementation plan. Section 173 (c)(1) of the Act requires new or modified major sources in nonattainment areas to offset any increased emissions by obtaining reductions of the same air pollutant from a source in the same nonattainment area, or from a source in another nonattainment area if (A) the other area has an equal or higher nonattainment classification than the area where the source is located and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the new or modified source is located. 42 U.S.C. § 7503(c)(1). Emissions reductions are creditable for NSR offsets only if they are surplus (CAA § 173(c)(2), 42 U.S.C. § 7503(c)(1)), permanent, quantifiable, and federally enforceable (40 C.F.R. § 51.165(a)(3)(I)(c)). Georgia's SIP also contains the requirement that offsets must be real, permanent, enforceable, and surplus. Georgia Rule 391-3-1-.03(8)(c).

Petitioners' challenge must fail because Petitioners have failed to demonstrate that the Bowen Amendment and the Seven Plants Amendments violate any applicable requirement of the Act. Specifically, the permit amendments establish lower NOx emission limits for the plants, and establish associated requirements, such as monitoring, recordkeeping, and reporting. None of Petitioners' objections indicates that those revised limits and the other requirements in the Bowen Amendment and the Seven Plants Amendments fail to comply with any requirements of the Act. Instead, Petitioners' arguments amount to nothing more than a contention that Plant Wansley impermissibly relied upon these limitations as offsets.

I recognize that the Bowen Amendment and the Seven Plants Amendments indicate that Georgia Power intended to use the credits from the limitations to satisfy the offsets required at Plant Wansley. EPD provides a Narrative accompanying each permit amendment that explains the permit requirements and provides other information. The Narratives do include information and arithmetic calculations demonstrating that the emissions reductions in the permit amendments result in specified amount of emission reduction credits that may be available as offsets. See, e.g., Bowen Permit Amendment, May 1, 2002, Narrative, at 3-5; Hammond Permit Amendment, May 1, 2002, Narrative at 6-7. Moreover, the Narratives include Addendums that respond to comments, including comments by Petitioners that the reductions do not meet the requirements for offsets. In that context, the Addendums discuss the requirements concerning

surplus, real, permanent, and enforceable. See, e.g., Bowen Permit Amendment, May 1, 2002, Addendum to Narrative; Hammond Permit Amendment, May 1, 2002, Addendum to Narrative.

The fact that the Narratives include this information, however, does not mean that the permit amendments themselves establish that the emissions reductions constitute offsets – or that the amendments in question are required by the Act to do so. Although the Narratives establish the basis for the permit amendments, they may also include background or other information that, as a legal matter, is extraneous to the permit amendments. Any information in the Narratives concerning whether the reductions qualify as offsets is extraneous to the permit amendments.

Indeed, in the Addendum to the Narrative for the Bowen Permit Amendment, in responding to Petitioners' comments that the emissions reductions generated by the permit amendments' limits do not qualify as offsets, EPD stated, "The purpose of this amendment is to impose a NOx emissions cap on said equipment as requested by Georgia Power. This amendment does not serve as a means for classifying any reduction of NOx emissions as NOx offsetting emissions." Bowen Permit Amendment, May 1, 2002, Addendum to Narrative, p. 1.

The permit amendments at issue today - the Bowen Amendment and the Seven Plants Amendments - simply establish stricter NOx emission limits and associated requirements. The Bowen Amendment and the Seven Plants Amendments at issue today are not required to meet the offset requirements, notwithstanding the fact that another Georgia Power facility – Plant Wansley – relies on those reductions as offset credits.

Rather than challenging the creditability of the reductions as offsets in the context of these permit amendments, Petitioners' opportunity for such a challenge may come in the context of the separate permit process for Plant Wansley, in which Plant Wansley claimed those reductions as the source of offsets. Indeed, Petitioner Sierra Club and others did bring a citizen suit against Georgia Power, arguing that Plant Wansley was in violation of its title V permit because the offsets it claimed to have relied upon are invalid. *Sierra Club v. Georgia Power Company*, 367 F. Supp. 2d. 1287 (N.D. Ga. 2004). In this case, the district court for the Northern District of Georgia reviewed those arguments and found that they lacked merit. The court held that the offsets met the requirements to be real, enforceable, permanent, and surplus. *Id.* at 1293–97. This decision is currently on appeal in the U.S. Court of Appeals for the Eleventh Circuit.

For these reasons, I conclude that Petitioners' two petitions challenging the Bowen Amendment and the Seven Plants Amendments do not state a valid basis for me to object to these permit amendments. Therefore, the petitions are denied.

V. CONCLUSION

For the reasons discussed above and pursuant to sections 505(b) and (e) of the CAA, 42 U.S.C. §§ 7661d(b) and (e), 40 C.F.R. §§ 70.7(g)(4) and (5), and 70.8(d), I hereby deny the petitions of GCLPI on behalf of the Sierra Club, Georgia Forest Watch, Colleen Kiernan and Georgia PIRG concerning the Georgia Power title V operating permit amendments listed herein.

So ordered.

March 15, 2006

Date

Stephen L. Johnson
Administrator