IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

COOSA BASIN RIVER INITIATIVE,

Petitioner,

v.

RICHARD DUNN, DIRECTOR, ENVIRONMENTAL PROTECTION DIVISION, GEORGIA DEPARTMENT OF NATURAL RESOURCES,

Respondent.

Docket No.: OSAH-BNR _____

PETITION FOR HEARING

Introduction

1.

Petitioner Coosa River Basin Initiative ("CRBI" or "Petitioner"), through its undersigned attorneys, files this Petition for Hearing challenging the issuance of a National Pollutant Discharge Elimination System ("NPDES") permit (the "Permit") to Georgia Power Company for Plant Hammond, a coal-fired power plant near Rome, Georgia by the Director of the Environmental Protection Division ("EPD"). A true and correct copy of the Permit, NPDES Permit No. GA0001457, is attached hereto as Exhibit A. The Permit authorizes Plant Hammond (hereinafter, the "plant" or "facility") to discharge its effluent directly into the Coosa River. Petitioner opposes issuance of the Permit because it violates provisions of and regulations issued pursuant to the federal Water Pollution Control Act ("Clean Water Act") and the Georgia Water Quality Control Act.

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. Petitioner hereby petitions for a hearing because it has been aggrieved and adversely affected by the Director's issuance of the Permit to Georgia Power.

3.

This Petition is filed within thirty days of EPD's issuance of the Permit on December 13, 2018, as required by O.C.G.A. § 12-2- 2(c)(2) and § 12-5-43.

4.

Pursuant to O.C.G.A. § 12-2-2(c)(2)(B), this Petition stays the effectiveness of the Permit.

PETITIONER'S INTEREST

Coosa Basin River Initiative ("CRBI")

5.

Petitioner CRBI is a 501(c)(3) nonprofit organization governed by a Board of Directors. CRBI is incorporated in the State of Georgia. CRBI has over 3,500 members, including members who regularly recreate in, and otherwise use and enjoy, the Coosa River near and downstream of the facility, its intake structure, and discharge outfalls.

6.

CRBI's mission is to protect the waters of the Coosa River watershed. CRBI is dedicated to the preservation, protection, and defense of the Coosa River watershed and actively supports effective implementation of environmental laws, including the Clean Water Act and the Georgia Water Quality Control Act.

7.

In furtherance of its mission to restore and protect the entire Coosa River watershed, CRBI has vigorously advocated for protection of the quality of its waters and closely monitored the quantity of the withdrawal from and the quantity and quality discharged into the rivers that make up the watershed. CRBI and its members participate in many regulatory permitting activities related to water quality, water quantity, and wetland impacts in the Coosa River watershed.

8.

CRBI and its members have been concerned about Plant Hammond's impact on the water quality of the Coosa River for decades. CRBI and its members have attended public hearings, and CRBI participated in the public comment process for Plant Hammond's NPDES Permit, including submitting oral comments at the public hearing held on or about April 12, 2017 in Rome, Georgia. CRBI tendered written comments to the Permit, a true and correct copy of which is attached hereto as Exhibit B. CRBI and its members are aggrieved and adversely affected by the issuance of the NPDES Permit. CRBI brings this action on behalf of itself and its members.

9.

The injuries caused to Petitioner by the Permit's issuance will not be redressed except by an order declaring the Permit unlawful and/or imposing the conditions and

limitations necessary to comply with the Clean Water Act, the Georgia Water Quality Control Act, and all applicable regulations consistent with the claims set forth herein.

10.

Attached to this Petition as Exhibit C through Exhibit E are the affidavits of Mark Collins, Joe Cook, and Zachary Williams, respectively, all of whom are members in good standing of CRBI and who support the filing of this Petition. Each affidavit establishes CRBI's standing to bring this action on behalf of itself and its members.

FACTUAL BACKGROUND

11.

The Coosa River begins as tiny springs in the Cohutta Mountains of Northwest Georgia (headwaters of the Oostanaula River) and in the Blue Ridge Mountains of North Central Georgia (headwaters of the Coosawattee and Etowah rivers). The river is formed by the confluence of the Etowah and Oostanaula rivers in Rome, Georgia. From there the Coosa winds to Weiss Dam near Centre, Alabama. Below Weiss Dam the river merges with the Tallapoosa River, forming the Alabama River and then flowing hundreds of miles to the Mobile River and Mobile Bay on the Gulf of Mexico.

12.

Plant Hammond is situated in the Upper Coosa River Basin at an almost equal distance from Rome, Georgia to the east and the Alabama state line to the west.

13.

The Upper Coosa River is the historic home to 100 different fish species, including 12 endemic species. For a river basin in a temperate climate, the Coosa River basin has the greatest

number of endemic fish species in the world. This includes six species listed as federally endangered or threatened.

14.

The basin is also known for its tremendous diversity of mussels and snails. The basin is the historic home to 43 mussel species and 32 snail species. Of the mussels and snails remaining in the Upper Coosa River Basin, seven are listed as federally threatened or endangered.

15.

The Coosa River's fish population is unique in the variety of minnows and darters found in the water of the basin. These small fish represent over half of the Upper Coosa's 114 fish species and all of the endemic and federally listed species. These fish depend upon flowing, silt-free habitat and high water quality.

16.

Georgia Power owns and operates Plant Hammond. Georgia Power is a Georgia corporation and an electric utility with headquarters in Atlanta, Georgia.

17.

Plant Hammond is an 865 megawatt (MW) coal-burning electric generation facility located on the Coosa River approximately 10 miles west of Rome, Georgia. The facility includes the oldest remaining coal-fired generating units in Georgia Power's electric generating fleet. Its three smaller units, Units 1, 2 and 3 (110 MW net each), commenced service in the mid-1950s, making them more than 60 years old.

18.

Plant Hammond's operation depends on significant quantities of water drawn from the Coosa River. The facility is permitted to withdraw up to 655 million gallons per day from the

Coosa for its cooling needs. Most of that water is later returned to the river loaded with thermal pollution and other wastes.

19.

Georgia Power submitted an application to EPD for an NPDES Permit to discharge wastewater effluent into the Coosa River. The final Permit was issued on December 13, 2018 (*see* Exhibit A).

20.

The Permit would replace Plant Hammond's current wastewater discharge permit, which expired on June 30, 2012, more than a full five-year permit term ago.

21.

The Permit would authorize four wastewater outfalls on the Coosa River (nos. 01, 03, 04 and 05) and one (no. 10) on a tributary known as Smith Cabin Creek. Outfall number 01 conveys the final plant discharge. This is by far the largest discharge, with a maximum daily flow of 620 million gallons per day, the most significant component of which is once-through cooling water.

22.

The NPDES Permit does not include an adequate effluent limitation or conditions on the discharge of heat. Heat is defined as a pollutant under the Clean Water Act, 33 U.S.C. § 1362(6), and is considered one of the primary pollutants of concern with power plant discharges.

23.

Temperature is one of the most important and influential water quality characteristics to life in water. Aquatic organisms have upper tolerance limits for temperature, above

which fish mortality can result. Aquatic species also have optimum temperatures for growth, migration, spawning, and egg incubation.

24.

As state fish experts have documented, Plant Hammond's thermal discharges are so forceful, and their impact through their water column so total, that they act as a barrier to fish movement and at times a lethal trap.

25.

The River segment around and downstream of Plant Hammond is impaired for both temperature and dissolved oxygen. *See* EPD, 2014 Integrated 305(b)/303(d) List of Streams – Not Supporting Designated Uses at p. A-180, excerpted portion of List at Exhibit F hereto; Exhibit A, at Fact Sheet, p. 9 (Section 3.3, Georgia 305(b)/303(d) List Documents); Georgia EPD, "Georgia's List of Priority Waters", Exhibit G hereto. Plant Hammond's heated discharges are the cause of the River's temperature impairment and a contributing cause of its dissolved oxygen impairment.

26.

Significant fish kills just downstream of Plant Hammond have occurred when river temperatures exceeded applicable Georgia water quality standards.

27.

Harm to aquatic life is further inflicted by Plant Hammond's cooling water intake structure. This structure draws in about 260 million gallons of water from the Coosa River each day, but when the facility is operating at full capacity, it may take in over 600 million gallons of water per day. These massive intakes impinge and entrain large numbers of fish, fish larvae, and other aquatic species. Impingement occurs when an organism larger than the openings of the

intake structure screen becomes impacted, or impinged, on the screen. Entrainment occurs when organisms that are smaller than the screen, especially eggs and larvae, are sucked through with the cooling water at the intake. Both result in injury or mortality to aquatic life.

28.

Further, the massive water withdrawals can at times claim nearly all of the river's flow. The design intake is 945 cubic feet per second (cfs). *See, e.g.,* May 27, 2016 NPDES Industrial Permit Application Addendum ("316(b) Addendum") and attachments thereto (316(b) Cooling Water Intake Structure Information). Flow measurements in Georgia Power's 2005-2006 Coosa River Survey range dramatically, but dropped below 1,000 cfs on several occasions. Thus, when Plant Hammond is operating near its capacity during low flow, much of the river's water can be drawn in, putting aquatic life further at risk.

29.

Plant Hammond's cooling water intake is in operation 24 hours per day, 365 days per year to provide cooling and process water to the facility's four generating units. While the generating units vary in load throughout the day, the circulating water pumps operate at a constant flow regardless of the load they serve.

30.

A 2006 study showed that Plant Hammond's cooling water intake structure impinged a total of thirty-two different fish species, significantly higher than noted for other coal plants on southeastern waterways.

31.

The Permit does not require best technology available (BTA) to be utilized at the plant to avoid entrainment and impingement of fish. As a result, many thousands of fish, fish eggs, and

larvae are unduly harmed or killed every year as a result of being impinged or entrained within the intake structure.

32.

A cooling tower, which is used at several other Georgia Power facilities, would both remedy the temperature problem in the river and minimize the impingement and entrainment issues by significantly reducing the amount of water that is drawn from the river and discharged back into the river.

33.

Georgia Power has for years been evaluating options for reducing the harmful environmental impacts of its thermal pollution and cooling water intake structure at Plant Hammond under the assumption that closed cycle cooling towers and associated modifications to the intake structure would be required.

LEGAL FRAMEWORK

34.

The Clean Water Act was enacted to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The Act provides that "[i]n order to achieve this objective it is hereby declared that … it is the national goal that the discharge of pollutants into the navigable waters be eliminated…." 33 U.S.C. §§ 1251(a), (a)(1).

35.

Section 301 of the Clean Water Act prohibits the discharge of any pollutant into waters of the United States except when authorized by a permit. 33 U.S.C. § 1311(a). The Clean Water Act gives the federal Environmental Protection Agency ("EPA") authority to issue

permits for point sources through the NPDES program, 33 U.S.C. § 1342, and EPA has delegated administration of the NPDES permit program in Georgia to EPD.

36.

The Clean Water Act defines the pollutants subject to the NPDES permit requirements broadly to include thermal pollution, or heat. Specifically, "[t]he term 'pollutant' means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, *heat*, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6) (emphasis added).

37.

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).

38.

Georgia law provides no exception to these thermal limits but does allow, upon a proper showing and after notice and comment, a discharger to utilize a "mixing zone" in which the effluent mixes with the water body in a defined physical space before the effluent is measured. Ga. Comp. R. & Regs. r. 391-3-6-.03(10). However, a mixing zone can only be utilized where limited, reasonable, and upon "receipt of satisfactory evidence that such a zone is necessary and that it will not create an objectionable or damaging pollution condition." *Id.* "Protection from acute toxicity shall be provided within any EPD designated mixing zone to ensure a zone of safe passage for aquatic organisms." *Id.*

39.

Section 316(b) of the Clean Water Act requires that standards established under Sections 301, addressing effluent limits, and 306, addressing national standards, "shall require that the location, design, construction, and capacity of cooling water intake structures reflect the *best technology available* for minimizing adverse environmental impact." 33 U.S.C. §1326(b) (emphasis added).

40.

In 2014, EPA finalized its rule implementing Section 316(b), titled Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities (hereinafter, "316(b) rule"). 79 Fed. Reg. 48300, 48424 (Aug. 15, 2014) (signed on May 19, 2014).

41.

The 316(b) rule requires facilities that withdraw more than 2 million gallons per day (mgd) of water from waters of the United States and use at least 25 percent of the water they withdraw exclusively for cooling purposes to implement best technology available (BTA) to reduce impingement mortality and entrainment. 79 Fed. Reg. 48300.

42.

Plant Hammond is a facility subject to the 316(b) rule.

COUNT I – THE PERMIT FAILS TO PROTECT THE COOSA RIVER FROM HARMFUL AND UNLAWFUL HEAT POLLUTION

43.

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

44.

High temperature effluent, also called thermal discharge, is a recognized and serious concern for the health of a body of water and its aquatic species. The natural layers of water stratification in the receiving waters can be upset by thermal discharge, which in turn can disrupt, harm and impose undue stress on 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. Water temperature is one of the most significant environmental factors mediating aquatic productivity. As a result, federal and state laws recognize heat as a pollutant. Power plants using once-through cooling are generally recognized as leading contributors to thermal pollution to the nation's waters.

45.

The River segment around and downstream of Plant Hammond is impaired for both temperature and dissolved oxygen as a result of the facility's heated discharges.

46.

Georgia's water quality standards dictate that any discharge from a point source not exceed a maximum of 90° F and no more than 5° F above the ambient water temperature. Ga. Comp. R. & Regs. r. 391 -3-6-.03(6)(a)(v). Georgia water quality standards for temperature have a firm basis in science. They reflect a determination that 90° F is the upper tolerance limit for a balanced benthic population structure, as well as that sudden temperature spikes can be lethal.

47.

Temperatures above the 90° F threshold have been documented to result in extensive loss in macroinvertebrate numbers, diversity, and biomass. Temperatures above 95° F can cause the almost complete elimination of vertebrate and invertebrate species.

48.

In the summer months, Plant Hammond's heated discharges can be in excess of 112° F.

49.

Significant fish kills have occurred downstream of Plant Hammond when river temperatures were documented as high as 100° F and more than 16° F hotter than ambient temperatures.

50.

While the Permit incorporates Georgia water quality standards for temperature, and thermal loading limits designed to meet those standards during various river flows, the sampling location for monitoring compliance with those standards is located more than 3,000 feet downstream at the edge of a "thermal mixing zone." (Permit, Exhibit A at 2-3 of 37, n. 4).

51.

Federal and state law require that an enforceable permit limit be set for any pollutant that will cause, or has the potential to cause, violations of state water quality standards. The Plant Hammond discharge has a reasonable potential to cause, and in fact does cause, the receiving water to exceed the state water quality standard for heat pollution. The Plant Hammond discharge has caused or contributed to relevant segments of the Coosa River to be impaired for dissolved oxygen, and its thermal discharges therefore have a reasonable potential to cause, and in fact does cause, the receiving waters to be impaired for dissolved oxygen.

52.

Federal and state law allow for limited exceedances of water quality standards within a limited and defined mixing zone subject to certain conditions.

53.

Under Georgia's water quality regulations a mixing zone must be *reasonable* and *limited*. Ga. Comp. R. & Regs. 391-3-6-.03(10). It must be both substantiated and suitably protective. There must be "satisfactory evidence that such a zone is necessary and that it will not create an objectionable or damaging pollution condition." *Id.* The permittee must, among other things, ensure a "zone of passage" for aquatic organisms. *Id.*

54.

The current mixing zone authorized by the Permit is neither reasonable nor limited. It is defined as the entire width and depth of the river from the discharge point to a location more than 3,000 feet downstream. Thus, it claims more than a half mile stretch of river as a dilution system for Plant Hammond's heat pollution.

55.

The unreasonable size and extent of Plant Hammond's mixing zone, which remains in the Permit, has resulted in significant fish kills over the years. The mixing zone has acted, and continues to act, as a barrier to the free movement of aquatic species through the river ecosystem. It fails to provide a zone of safe passage for aquatic organisms because elevated water temperatures caused by the facility's thermal discharges routinely occupy the entire depth and width of the receiving waterway.

56.

Plant Hammond's mixing zone was established in 1974 based on river flow volume assumptions that no longer pertain, and EPD has not properly reexamined it since that time.

57.

Under a draft version of the Permit, EPD would have required Georgia Power to use a recognized mixing zone modeling software (CORMIX) to establish a designated mixing zone for temperature and to conduct daily effluent and instream temperature monitoring to validate the model. Upon approval of the CORMIX model and temperature study, EPD would have had the ability to modify the Permit to include the designated mixing zone (and a zone of safe passage) and associated temperature effluent limitations for Plant Hammond's final outfall.

58.

EPD ultimately failed to use this approach. Instead EPD used a modeling software and/or employed a methodology that is not widely accepted, and not suitable for determining mixing zones for these receiving waters to derive thermal loading limits now included in the Permit. Rather than determine a reasonable and limited mixing zone and use it to derive appropriate thermal loadings limits, EPD instead impermissibly treated the existing, outdated and unreasonably large mixing zone (without a zone of safe passage) as a given. EPD's actions and inactions in this regard are arbitrary and capricious, an abuse of discretion, and violate both the Clean Water Act and Georgia Water Quality Control Act.

59.

Plant Hammond's thermal mixing zone is among the largest, if not the largest, such zones still in use in the United States. The mixing zone has now been in place for nearly as

long as the Clean Water Act itself, and is in direct conflict with the Act's express purpose of "restor[ing] and maintain[ing] the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. § 125l(a).

60.

"The use of any river, lake, stream or ocean as a waste treatment system is unacceptable." S. Rep. No. 92-414 at *8 (1971) (Legislative History accompanying the 1972 amendments to the Clean Water Act).

61.

The Permit violates the Clean Water Act by allowing Plant Hammond to use more than a half mile of the Coosa River as its waste treatment system for thermal water pollution discharges.

62.

The NPDES Permit should be invalidated and remanded to EPD with instructions to include an effluent temperature limit of 90° F and no more than 5° F above ambient water temperature at the point of discharge.

63.

In the alternative, if a mixing zone is allowed following remand to EPD, it must be reasonable and limited, and otherwise comply fully with Ga. Comp. R. & Regs. 391-3-6-.03(10). Specifically, the mixing zone should set the sample location for temperature and delta temperature to a point no more than 266 feet downstream of the discharge. Furthermore, the Permit must include relevant effluent limits and conditions to enable a

zone of safe passage for aquatic organisms, as there is no exception to this requirement under applicable law.[1] *See id.*

64.

In the alternative, the NPDES Permit should be invalidated and remanded to EPD with instructions to develop effluent limits and other conditions based on the best practicable control technology currently available, best conventional pollutant control technology, and/or best available technology consistent with the Act for controlling thermal discharges. *E.g.,* 33 U.S.C. § 1311(b), 40 C.F.R. § 125.3.

COUNT II – THE DRAFT PERMIT UNLAWFULLY DELAYS GEORGIA POWER'S OBLIGATION TO COMPLY WITH THE 316(B) RULE.

65.

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

66.

Federal law requires EPD to reduce the harm from Hammond's cooling water intake system to aquatic life down to levels commensurate with the performance of the best technology available ("BTA"). *See* 33 U.S.C. § 1326(b) (requiring that "the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.").

[1] CRBI reserves the right to modify the mixing zone sample location for temperature identified herein, upon the receipt of additional or corrected information from Georgia EPD that Petitioner has requested under the Georgia Open Records Act.

67.

As the owner and operator of a facility subject to the 316(b) rule, Georgia Power is required to submit various items of information detailing the environmental impacts of its cooling water intake structures at Plant Hammond and proposed strategies for minimizing those impacts. 40 C.F.R. § 125.95(a) (requiring submission of information required in 40 C.F.R. § 122.21(r)).

68.

The required information includes, but is not limited to, a detailed characterization of the biological community in the vicinity of Plant Hammond's cooling water intake structures, with identification of the species and life stages most susceptible to impingement and entrainment. *See generally* 40 C.F.R. § 122.21(r).

69.

The required information also includes Georgia Power's chosen method of complying with the 316(b) rule's impingement mortality standard as well as two years of data relating to entrainment impacts. 40 C.F.R. § 122.21(r)(6) & (9).

70.

On the basis of those submissions, EPD is then required to determine the requirements and conditions to include in the facility's NPDES permit to ensure compliance with the 316(b) rule's BTA standards for impingement and entrainment. 40 C.F.R. § 125.98(b).

71.

Because Plant Hammond's current NPDES permit expired prior to July 14, 2018, Georgia Power requested that EPD establish an alternate schedule for submission of the required information.

72.

Georgia Power requested an alternate schedule even though its permit renewal application was filed almost two years after the effective date of the 316(b) rule, and even though Georgia Power completed an impingement study in 2006 and has been conducting a 316(b) compliance evaluation for Plant Hammond since that time.

73.

Georgia Power submitted with its application a 316(b) schedule showing that it will have completed the required studies by October 21, 2018. The schedule also shows that Georgia Power completed the required baseline biological characterization study in early November 2016.

74.

EPD's proposed alternate schedule, as incorporated into the Final Permit, would allow Georgia Power to defer submitting the required information until the next NPDES permit renewal cycle, five or more years from now, despite the 316(b) rule's requirement that compliance with impingement and entrainment standards occur as soon as practicable. NPDES Permit at 31 (*see* Exhibit A).

75.

Because the Permit fails to incorporate a reasonable and practicable alternate schedule, it is illegal and should be remanded.

76.

Upon remand, the Permit should be revised to (1) incorporate Georgia Power's 316(b) Schedule as an enforceable provision; and (2) provide for the reopening of the Permit upon submission of the required information so that EPD may fulfill, in a timely manner, its duty to

set long-overdue requirements and conditions for addressing impingement mortality and entrainment at Plant Hammond's cooling water intakes.

COUNT III – THE DRAFT PERMIT FAILS TO REQUIRE GEORGIA POWER TO IMPLEMENT INTERIM BEST TECHNOLOGY AVAILABLE FOR ITS INTAKE STRUCTURE

77.

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

78.

EPD's grant to Georgia Power of an alternate schedule to submit the information required under the 316(b) rule carried with it an obligation to establish interim BTA standards in the Permit based on EPD's best professional judgment. 40 C.F.R. § 125.98(b)(5).

79.

EPD failed to determine interim BTA standards with the result that the Permit contains no provisions whatsoever for avoiding and reducing impingement mortality and entrainment resulting from the operation of Plant Hammond's cooling water intakes during the five-year permit term.

80.

Plant Hammond already includes some technology for minimizing impingement. Specifically, based on a 2006 report, the intake structure includes six standard 3/8-inch mesh vertical traveling screens designed to exclude debris and impinged organisms from the plant cooling system. The 2006 report states Georgia Power periodically washes the screens to remove debris and impinged organisms, which are returned to the river. Remarkably, the Permit

contains no reference to this existing technology, nor does it impose any conditions or limitations requiring its operation and maintenance, or any monitoring to ensure its effectiveness.

81.

In the 316(b) rule, EPA determined that modified traveling screens with fish returns and an accompanying performance standard was BTA for the impingement mortality standard.

78.

Georgia Power could feasibly and cost-effectively modify its existing traveling screens, to the extent they are nominally functional, as an interim measure while it continues to study more effective options like a cooling tower for minimizing impingement and entrainment, and for resolving the facility's thermal burden on the River.

79.

Because the Permit fails to require interim best technology available to avoid and reduce impingement and entrainment, it is illegal and should be remanded

80.

On remand, the Permit should be revised to include interim, site-specific BTA requirements as required by law.

81.

The 2006 study showed that Plant Hammond's cooling water intake flow velocity exceeded the generally accepted maximum of 0.5 feet per second.

82.

According to the 316(b) Schedule submitted with its permit renewal application, Georgia Power completed the required baseline biological characterization study in November 2016.

This presumably would have included updating the 2006 study to reflect more current data on river, ecological, and operating conditions.

83.

With the apparent completion of the required baseline biological characterization study for Plant Hammond, there is, or should be, ample information for EPD to perform its duty to determine an appropriate interim BTA.

84.

To remedy the Permit's unlawful omission of an interim BTA, the Permit should be revised to include the following requirements:

(1) The installation and use of modified Ristroph screens with a fish handling and return system, along with verifiable and enforceable conditions that ensure the technology will perform as demonstrated. The modified screens should have the following features:

   a. Non-metallic baskets, which are lighter, corrosion resistant and easier to maintain;

   b. A basket design that reduces turbulence;

   c. Flat wire mesh screens to prevent descaling;

   d. Automated low and high pressure wash features that allow for gentle removal of fish species and more forceful debris removal.

(2) The subsequent submission of two years of biological data measuring the reduction in impingement mortality achieved by the system.

(3) The installation and use of nets prior to the modified Ristroph screens to prevent impingement and harm to mussels, snails and other forms of mollusks.

(4) A maximum cooling water intake velocity at the intake structure of no more than 0.5 feet per second.

PRAYER FOR RELIEF

85.

WHEREFORE, Petitioner requests:

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

Respectfully submitted, this 12th day of January, 2018.

Kurt Ebersbach
Ga. Bar No. 238213
Christopher J. Bowers
Ga. Bar No. 071507
Stacy Shelton
Ga. Bar No. 623453
Southern Environmental Law Center
Ten 10th ST NW
Suite 1050

Atlanta, Georgia 30309
Tel. 404521.9900
Fax. 404.521.9909
kebersbach@selcga.org
cbowers@selcga.org
sshelton@selcga.org

Counsel for Coosa River Basin Initiative, Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served an original and three copies of the Petition for Hearing to Challenge NPDES Permit No. GA0001457 for Georgia Power's Plant Hammond near Rome, Ga. Together with Exhibits A through G thereto submitted by Petitioner, by causing the same to be hand delivered upon:

Richard E. Dunn
Director, Georgia Environmental Protection Division
c/o Commissioner of Natural Resources
2 Martin Luther King, Jr. Drive, S.E.
Suite 1252 East
Atlanta, GA 30334-9000

Chris Carr
Attorney General
Office of the Attorney General
40 Capitol Square, SW
Atlanta, GA 30334

And by serving a copy of the same by certified mail to the following:

Kevin Pearson
Registered Agent
Georgia Power Company
241 Ralph McGill Boulevard, NE
Bin #10090
Atlanta, GA 30308-3374

This 12th day of January, 2017.

Stacy Shelton