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VIA E-MAIL DELIVER

Ms. Karen Hays
Branch Chief
Air Protection Branch
Georgia Environmental Protection Division
4244 International Parkway, Suite 120
Atlanta, Georgia 30354
Karen.Hays@dnr.ga.gov

Re: Power4Georgians' Request for Extension of Time to Commence Construction Under PSD Air Quality Permit No. 4911-303-0051

Dear Ms. Hays:

On behalf of Fall Line Alliance for a Clean Environment, Altamaha Riverkeeper, Ogeechee Riverkeeper, Sierra Club, and the Southern Alliance for Clean Energy, the Southern Environmental Law Center and GreenLaw submit this letter urging Georgia Environmental Protection Division (“EPD”) to reject Power4Georgian’s (“P4G”) second request for an extension of the time to commence construction under PSD Air Quality Permit No. 4911-303-0051. *See* P4G letter to EPD dated April 12, 2016. The permit has already been extended once, and P4G fails to provide sufficient justification for a second extension. The original air permit was issued more than *6 years* ago. Granting this second extension request would push the construction start-date out until October 2017 or later – more than *7.5 years* after EPD first issued the permit.

P4G cites regulatory uncertainty stemming from Environmental Protection Agency’s (“EPA”) Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units (“New Source Rule”) as purported justification for its second extension request. But P4G omits mention of the many other, more significant barriers to its quixotic proposal, including lack of available financing, lack of customers to buy the expensive power the plant would generate, lack of load growth, and growing competition from cheaper sources of supply, especially natural gas. Granting P4G more time will not remedy these issues.

Moreover, to the extent that regulatory uncertainty does exist, P4G has actively participated in perpetuating that uncertainty. EPA’s New Source Rule was first proposed in April 2012. EPA issued a re-proposal in January 2014, and a final version of that rule became publicly available on August 3, 2015. Therefore, since April 2012, P4G has been on notice that its status as either an existing or new source for purposes of the rule was in question. As a result, P4G has been on notice as to the mechanism available for resolving that uncertainty: an applicability determination from EPA or EPD. In fact, P4G formally requested an applicability determination from EPD in April 2013, but for unexplained reasons, withdrew that request in November 2013, before EPA’s issuance

of the re-proposal. Since that time, P4G has been free to re-initiate an applicability determination request to either EPD or EPA but has failed to do so. Indeed, the final rule issued in August of last year expressly urges P4G to seek an applicability determination to clear up the issue of its regulatory status. But rather than do that, P4G now burdens EPD with a second extension request. For these reasons, regulatory uncertainty is hardly a basis for granting the request; instead, P4G's unclean hands give EPD good cause to deny it.

In addition, P4G fails to meet the standard for securing a second extension request, is not in compliance with its current air and wastewater permits, and is not even a valid corporate entity with legal standing to make the request. As such, EPD has ample grounds for denying the second extension request, and should avoid devoting limited agency resources to anything other than a flat denial.

1. Power4Georgians' application does not satisfy the legal standard requiring a satisfactory showing that an extension is justified.

EPA and EPD regulations both require that a permittee provide a “satisfactory showing that an extension is justified.” 40 C.F.R. § 52.21(r)(2); Georgia Comp. R. and Regs. 391-3-1-.02(7)(b)(15). However, more stringent standards apply to a second extension request. EPA guidance provides that for a second request to extend the construction deadline under a PSD permit, the permittee should submit a “substantive re-analysis and update of PSD requirements.”¹ Further, “only in rare circumstances would a detailed justification of why a source cannot commence construction by the current deadline . . . be sufficient to support a second extension.”² Here, P4G provides no substantive re-analysis and update of PSD requirements, and there are no rare circumstances that justify another extension.

The above requirements are designed to prevent construction from proceeding under stale permits. According to EPA guidance, “[g]enerally, the benefits of conducting an updated substantive review of the PSD requirements after 36 months from the initial issuance of the PSD permit would outweigh the considerations . . . that favor an initial extension without such analysis.”³ Further, “EPA believes that it is more likely that technology and air quality considerations will become outdated when construction does not begin until 36 months or longer after EPA has taken final action to issue a PSD permit.”⁴ Here, more than 72 months have already elapsed since EPD’s initial issuance of the PSD permit. P4G now seeks another 18 months but fails to provide any substantive re-analyses and regulatory update.

With enough delay, regulatory uncertainty will always be an excuse for more time. The PSD regulations are designed specifically to avoid that outcome. Because more than 6 years have passed since the air permit was issued, P4G does not merit a second extension absent a substantive re-analysis and update of PSD requirements, which its application does not provide. Hence, the request should be denied.

¹ EPA Memorandum from Office of Air Quality Planning and Standards to Regional Air Division Directors, Regions 1-10 re Guidance on Extension of Prevention of Significant Deterioration (PSD) permits under 40 CFR 52.21(r)(2) at 5 (Jan. 31, 2014), available at <https://www.epa.gov/sites/production/files/2015-07/documents/extend14.pdf>.

² *Id.*

³ *Id.* at 5-6.

⁴ *Id.* at 6.

2. Power4Georgians has failed to clarify any remaining regulatory uncertainty.

EPA published its final rule governing new, modified and reconstructed sources of greenhouse gases on October 23, 2015 (although the final rule was publicly available August 2, 2015).⁵ In the final rule EPA directed P4G to seek an applicability determination as to its status as a claimed existing source. P4G's application provides no evidence that it has requested such a determination from EPA. As noted above, P4G sought an applicability determination from EPD several years ago but withdrew the request before EPD could act. If P4G had allowed the determination to be made, there would be no regulatory uncertainty today. P4G now seeks more time to commence construction but fails to show that it has or is taking any action to resolve the alleged regulatory uncertainty. P4G should not be permitted to burden EPD with a second extension request when P4G is itself responsible for the uncertainty it cites as the purported basis for the extension. At a minimum, the alleged regulatory uncertainty is not good cause for granting the extension.

3. Power4Georgians is not compliant with Georgia's regulations governing corporate entities and thus has no legal standing to make the second extension request.

P4G has not submitted an annual registration since 2014.⁶ Annual registration and fees must be submitted each year by April 1st. P4G was not compliant in 2015 and remains non-compliant in 2016. Therefore, it does not appear that P4G has the legal standing necessary to make the instant request.

4. Power4Georgians is not in compliance with its current permits.

EPD issued NPDES Permit No. GA0039055 to P4G on February 28, 2011. The NPDES permit expired March 31, 2015. P4G failed to submit the required permit renewal application 180 days before the expiration of its permit, as required by governing regulations. As a result, EPD issued a consent order on March 30, 2015 that required P4G to submit a renewal application within 30 days (i.e. by April 29, 2015). P4G failed to do so. As of April 2016, according to EPD, P4G still has not submitted a wastewater permit renewal application. Because P4G does not have all its necessary permits, it cannot satisfy the definition of "commence construction" under 40 C.F.R. § 52.21(b)(9).

Furthermore, the current air permit, as issued in October 2014, requires P4G to submit an analysis demonstrating that the plant will not cause or contribute to any violation of NO₂, SO₂ and PM_{2.5} NAAQS (*see* Permit Condition 8.4). To commenters' knowledge, P4G has not submitted these analyses. Having failed to meet this express condition of its first grant of extension, P4G does not merit a second extension.

Conclusion

With each passing year, Plant Washington makes less and less sense. The world has shifted since the facility was first proposed more than 6 years ago. Coal-fired power plants are being phased out across the nation in favor of cheaper and cleaner technologies, and with natural gas prices at or near historic lows, no new coal plants are being built. As EPA states in the preamble to the New

⁵ EPA's Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, Final Rule (Oct. 23, 2015), available at <https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf>.

⁶ Business information available at <https://ecorp.sos.ga.gov/BusinessSearch/BusinessInformation>.

Source Rule, “all indications suggest that very few new coal-fired power plants will be constructed in the foreseeable future.” 80 Fed. Reg. 64,510, 64,571 (Oct. 23, 2015). In fact, to commenters’ knowledge, Plant Washington is now the only proposed new coal plant in the country still purporting to move forward. Yet the instant request serves only to highlight how undeserving and unready P4G is to make use of the additional time it seeks. P4G’s unsupported second extension request is an abuse of limited agency resources and should be denied.

The project has languished long enough. EPD should use this opportunity to put an end to a project that no one in Georgia—save one lapsed corporate entity—wants or needs.

Respectfully submitted,



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