

TUESDAY, FEBRUARY 19, 2008

# DAILY REPORT

ALM A SMART READ FOR SMART READERS

## Power plant fight moves to Fulton



ZACHARY D. PORTER/DAILY REPORT

GreenLaw's Justine Thompson, left, and Ela Orenstein are concerned with the coal-fired plant's CO2 emissions.

**ENVIRONMENTALISTS** appeal coal-fired plant's permit, saying ALJ out of bounds

**GREG LAND** | gland@alm.com

OPPONENTS OF A NEW coal-fired power plant proposed for the banks of the Chattahoochee River in southwest Georgia's Early County last week asked a Fulton County judge to review the permit approved by state environmental regulators last year. The permit for the Longleaf power plant was approved by an administrative law judge in a series of rulings, culminating with a final OK in January.

The permit for the first coal-fired plant to be built in Georgia in more than 20 years was challenged by the Friends of the Chattahoochee

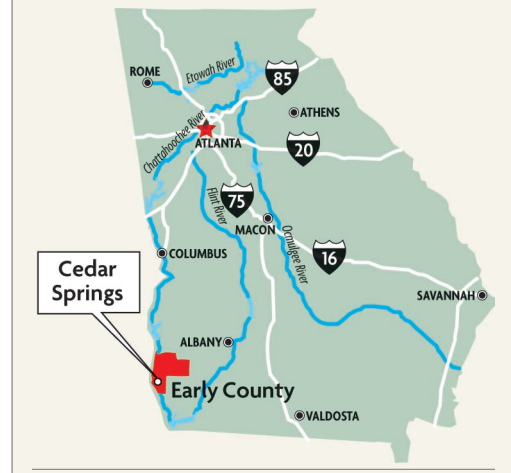
and the Sierra Club, whose multi-count petition opposing the plant's construction cited concerns with carbon-dioxide (CO2), toxic metals and pollutants, and extremely fine particulate matter emanating from the plant.

The groups had also expressed concerns that the 1,200-megawatt plant, whose permit allow it to withdraw up to 20 million gallons of water from the river each day, was not the most technologically advanced and clean-burning type of facility that could be built, and asserted that state regulators had been remiss in not

### BEHIND THE OPPOSITION

Environmental organizations contesting a new coal-fired power plant in Early County say it would:

- Produce 9 million tons of carbon dioxide annually — equal to adding 1.4 million to 1.6 million cars on Georgia's roads every year.
- Emit 4,700 tons of sulfur dioxide annually, harmful to agricultural crops like peanuts and pine trees.
- Allow a net of up to 20 million gallons per day to be taken from the Chattahoochee River.



Source: GreenLaw

## Environmentalists appeal coal-fired plant's permit, saying ALJ out of bounds

requiring the plants' owners, Houston-based Dynegy, to consider a plant that uses a chemical process to create gas from the coal that fuels turbines, rather than the pulverized-coal design it selected.

But in her final decision issued Jan. 11, Administrative Law Judge Stephanie M. Howells said that state Environmental Protection Division Director Carol Couch had properly granted the permit.

"As would be the case with any very complicated and technical matter," wrote Howells, the plant's opponents "have been able to identify multiple points on which they disagree with EPD. Petitioners' expert was thorough and credible."

Nonetheless, she wrote, "[s]o long as the Director's decision was consistent with law and within the reasonable bounds of her discretion, the permit should be upheld."

But on Feb. 11, attorneys with GreenLaw—formerly known as the Georgia Center for Law in the Public Interest—filed a petition asking Fulton County Superior Court Judge Thelma Wyatt Cummings Moore to review Howells' rulings, arguing that the ALJ had erred. They said Howells overstepped her authority in some instances, such as an earlier ruling demanding that the plant's opponents must provide their own language to "remedy" any deficiencies in the permit, and she had improperly allowed testimony by engineers who were not certified in Georgia.

"There are several rulings we're appealing, but the CO2 issue is really one of the biggest," said GreenLaw Executive Director Justine Thompson, who filed the Feb. 11 petition along with staff attorneys George Hays and Ela Orenstein.

Concern over the greenhouse gas "is one of the cutting-edge issues around

the country, and it's one of the top issues being litigated," Thompson said.

According to their filing, the Longleaf plant will emit as much as 9 million tons of CO2 annually, a figure equivalent to the emissions of 1.4 million to 1.6 million cars traveling 12,000 miles a year.

The U.S. Supreme Court last year ruled that the Environmental Protection Agency has the authority to regulate CO2 as a greenhouse gas but, Howells wrote in a December ruling, state rules do not presently define or regulate CO2 as a pollutant, and the state EPD would have no authority to deny a permit based on considerations of the gas.

Inquiries to the state attorney general's office, which will handle the case for Couch and the EPD, were referred to the agency, which did not respond by press time.

But an attorney for Longleaf Energy Associates, King & Spalding Environmental Practice head Patricia T. Barmeyer, said that the CO2 issue—like the majority of objections raised by the plant's opponents—are matters of law over which the ALJ had little control.

"On the CO2 issue," said Barmeyer, "the U.S. Supreme Court said EPA has the *authority* to regulate it; the agency must decide whether to do that. ... Someday, the rules may apply to CO2 from power plants, but they don't now."

The GreenLaw filing also faults Howells for not taking into consideration the environmental groups' concerns that no standards were included in the permit for measuring the emissions of ultra-fine particles.

"We showed that the natural ambient air standards will be impacted by the particulates," said Thompson. "These are health-based standards to control particles that can get lodged in the lungs and do a great deal of damage. ... [Howells] didn't take that into consideration."

As to the opponents' charge that the permit should have required its operators to consider a gasification system instead of a coal-burning model, she said, the EPD did ask whether such

a technology might be implemented.

"It was discussed, but dismissed," she said. The plant was designed for powdered coal, and the Longleaf permit is not required to embrace facilities that effectively constitute a different technology.

"This was a very complex process," said Barmeyer. "[GreenLaw's clients] filed a very extensive petition raising a number of different reasons they objected, and the ALJ did a remarkably thorough and careful job in hearing this case, and issued a very comprehensive opinion."

Perhaps so, countered Thompson; nonetheless, she and her colleagues think there is enough error in Howells' decisions to, if not halt the plant, at least render it more environmentally friendly.

"Coal is on the way out," she said, pointing to an announcement earlier this month by investment banking powerhouses Citigroup, JPMorgan Chase and Morgan Stanley that they were implanting tough new environmental standards for coal-fired power projects.

Even so, she noted, a permit application had recently been filed for yet another coal-fired plant, this one in Washington County.

"They filed within days of the ALJ's decision," she said.

The case is *Friends of the Chattahoochee v. Couch*, No. 2008CV146398. 