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February 14, 2007

VIA CERTIFIED MAIL – 7099 3400 0011 8884 3984

James Palmer, Administrator
USEPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

RE: Petitions Pursuant to 42 U.S.C. § 7661d(b)(2) regarding Georgia Power Company's Wansley Steam – Electric Generating Plant, Title V Permit No. 4911-149-0001-V-02-0

Dear Administrator Palmer:

Please find enclosed the petition from Georgia Power Company objecting to the Title V permit (No. 4911-149-0001-V-02-0) issued by the Air Protection Branch of the Environmental Protection Division of the Georgia Department of Natural Resources ("EPD") for the Wansley Steam – Electric Generating Plant.

We have also sent copies of this Petition to EPA Headquarters and the Georgia EPD. If you have any questions about this petition, please do not hesitate to contact me.

Sincerely,

MCCampbell

Margaret Claiborne Campbell

MCC/sgs
Enclosures

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of Wansley Steam – Electric Generating Plant Title V Operating Permit 4911-149-0001-V-02-0	)	
	)	**Petition No: _____**
Issued by the Georgia Environmental Protection Division	)	

PETITION TO HAVE THE ADMINISTRATOR OBJECT TO WANSLEY STEAM-ELECTRIC GENERATING PLANT'S TITLE V PERMIT

I. INTRODUCTION AND SUMMARY OF ARGUMENT

On December 20, 2006, the Georgia Environmental Protection Division ("EPD") issued Title V Permit No. 4911-149-0001-V-02-0 to Georgia Power Company ("Georgia Power") for operation of the Wansley Steam-Electric Generating Plant (the "Permit"). The Permit has an effective date of January 1, 2007. As explained in more detail below, the Permit was issued for the operation of Plant Wansley's two coal-fired units (Units 1 and 2), combustion turbine unit CT5A, and two combined cycle blocks (Blocks 6 and 7).

In Section 1.1 of the Permit, regarding the Site Determination, EPD stated that Plant Wansley and two separate, independently owned, and operated combined cycle blocks "comprise the same Title V site because the plants are located on contiguous property, operate under common control, and have the same two digit SIC code." See Section 1.1 of Permit attached as Exhibit A. The two separate combined cycle blocks are owned by Oglethorpe Power Corporation ("OPC"), which owns and operates the "Chattahoochee Energy Facility," and the Municipal Electric Authority of Georgia ("MEAG"), which owns and operates "Wansley Unit 9."

EPD's statement in Section 1.1 of the Permit is misleading and contrary to the facts and law. As explained below in Sections II and III, there is no "common control" among the combined cycle blocks themselves (other than between Blocks 6 and 7). Based on the language of the Permit and EPD's narrative response to Georgia Power's

previously submitted comments on this issue, it is apparent that EPD has incorrectly concluded that there is "common control" among the combined cycle units.

The purpose of this Petition is to clarify the ownership and operation of the combined cycle units, address the issue of "common control" as to those particular units and to respectfully request that EPA object to and request that EPD amend Section 1.1 of the Permit. We also request that EPA instruct EPD to amend its response to comments on the issue of "common control" of those units. As currently drafted, the Permit and associated narrative response to comments is not only contrary to law but is misleading and potentially confusing to the general public. This confusion could unnecessarily complicate future permitting and other regulatory actions.

II. FACTS

The following is a detailed discussion of the owners and operators of the combined cycle units, the corporate relationships among those entities, and the contractual relationships between them. This discussion is centered around and designed to focus on the positions taken by EPD in its written response to the comments submitted by Georgia Power to EPD on this issue during the permitting process. See Exhibit B (the "Response to Comments"). The attached Response to Comments is an excerpt of the Addendum to EPD's "narrative" of the Plant Wansley Permit. The Addendum consists of EPD's response to each of the comments submitted on the draft permit. EPD also includes the comment itself in the Addendum prior to each corresponding response. Item 3 on pages 1 - 3 of Exhibit B sets forth Georgia Power's comment on the "common control" issue as well as EPD's response thereto.

The Wansley Permit

Section 1.1 of the Permit provides:

> The Wansley Steam-Electric Generating Plant (AFS No. 149-00001), Oglethorpe Power Corporation – Chattahoochee Energy Facility (AFS No. 149-00006), and the Municipal Electric Authority of Georgia – Wansley Unit 9 (AFS No. 149-00007) comprise the same Title V site because the plants are located on contiguous property, operate under common control, and have the same two digit SIC code.

See Exhibit A. Georgia Power agrees that all of the referenced units are located on contiguous property and have the same two digit SIC code. We disagree, however, with any assertion that all of the combined cycle blocks are under "common control." As explained in detail below, there is no *direct or indirect control* relationship, contractual or otherwise, between or among Wansley Blocks 6 and 7, the Chattahoochee Energy Facility and MEAG Wansley Unit 9.

Owners & Operators of the Generating Units and Their Corporate Relationships

It appears from EPD's Response to Comments that there may be some confusion at EPD regarding the identity of the owners and operators of each unit because EPD incorrectly states in the Response to Comments that Blocks 6 and 7 are jointly owned by Georgia Power, Oglethorpe, MEAG and the City of Dalton. The owners and operators of the units are as follows:

Permitted Facility	Operator	Owner
Wansley Steam-Electric Generating Plant (AFS No. 149-00001)	Georgia Power Company	Units 1, 2, and 5A: Georgia Power (53.5%) Oglethorpe Power (30%) MEAG Power (15.1%) City of Dalton (1.4%) Units 6 and 7: ("Blocks 6 & 7") Southern Power (100%)
Chattahoochee Energy Facility ("Block 8") (AFS No. 149-00006)	Oglethorpe Power Corporation	Oglethorpe Power (100%)
MEAG Unit 9 ("Block 9") (AFS No. 149-00007)	MEAG Power	MEAG Power (100%)

The only corporate relationships between the owners and operators at the site exist between Georgia Power and Southern Power, which are both subsidiaries of Southern Company. Oglethorpe and MEAG have no corporate relationship with each other and have no corporate relationship with Southern Company or any of its subsidiaries. Thus, the only way EPD could find "common control" among the owner / operators at the site would be through contractual arrangements.

Contractual Arrangements Between the Combined Cycle Owners

All of the combined cycle facilities at the site (Wansley 6/7, Chattahoochee Energy Facility, and MEAG Wansley Unit 9) are completely independent generating facilities. None of the combined cycle facilities relies on any other combined cycle for any services or infrastructure to operate or deliver power. The property is separately owned. They are independently dispatched by their respective owners. They provide their own station service. They have their own switchyards and other infrastructure.

The only infrastructure common to all of the combined cycles is the pre-existing water intake, wastewater discharge and reservoir infrastructure (all of which serve the

coal-fired units), the roads which provide ingress and egress to the plant site, and the natural gas pipeline that serves the units. The pipeline includes separate branches that serve each block, and each block has its own gas meter. EPA has already rejected a similar argument by the Sierra Club that the shared water infrastructure at the site creates common control. Order Denying Petition for Objection to Permit, In the Matter of Oglethorpe Power Company Wansley Combined Cycle Energy Facility, Roopville, Georgia, Electric Power Generation Petition IV-2002-1, Nov. 15, 2002 (Notice published at 67 Fed. Reg. 79610 (Dec. 30, 2002)). That decision was upheld by the Eleventh Circuit Court of Appeals in Sierra Club v. Leavitt. 368 F.3d 1300, 1308 n.13 (11th Cir. 2004).

The only services shared by the combined cycle unit owners are security, general upkeep of the grounds (outside of the combined cycle blocks), maintenance of the shared roads, and maintenance of the water intake structure and reservoir. These services are shared as a matter of convenience, not necessity.

In its Response to Comments on the common control issue, EPD stated that the use of a "common transmission system, which is co-owned by Georgia Power, OPC, MEAG and City of Dalton" establishes "a contractual service relationship or support / dependency relationship" between the owners sufficient to establish "common control" under Title V. This statement and EPD's other statements about the transmission system reflect a fundamental misunderstanding of the Integrated Transmission System (ITS) in Georgia and its relationship to the generating units. That system does not establish "common control" over the generating units.

The transmission system in Georgia is not co-owned. The transmission lines are separately owned. The ITS, including the agreements that created it, is essentially a forerunner of open access, which is now required (in the form of a tariff requirement) by the Federal Energy Regulatory Commission (FERC). Prior to development of the federal open access policy, Georgia Power, MEAG, Dalton, and Oglethorpe Power Corporation agreed to provide access to power transmission facilities within the State of Georgia for competing utility systems. In the mid-1990s, the Georgia Transmission Corporation (GTC) replaced Oglethorpe in that agreement following a corporate restructuring that separated the transmission business from the generation business.[1] In fact, as a result of that transaction, OPC owns *no* part of the ITS.

The ITS is not a source of common control over the generating plants at Plant Wansley. Through three bilateral agreements between Georgia Power and, respectively, MEAG, Dalton, and GTC, the four participants in the ITS agree to maintain a parity of investment in ITS facilities (or make parity payments) within the area of the State of

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[1] In its Response to Comments, when discussing the ITS, EPD appears to conclude that GTC and OPC are under common control. Such is not the case. In fact, in the mid 1990's, GTC was spun out of the then-existing Oglethorpe Power Corporation, with the express purpose of separating the function to generate power from the function to transmit power. As part of that transaction, totally separate corporate boards, officers and employees now comprise the two corporations, and neither controls or is controlled by the other.

Georgia traditionally served by Georgia Power, the members of GTC, the participants of MEAG, and the City of Dalton, and each permits the others to use the separately-owned transmission facilities of the other which are included therein. The participants also engage in the joint planning of transmission additions to maintain reliability and avoid duplication of facilities. Because some of the participants in the ITS are tax exempt or have access to government guaranteed debt, the overall carrying costs on the transmission network in Georgia is lower than would be the case if the entire network were owned by a private utility.

Contrary to the statements in EPD's Response to Comments, the ITS is not a partnership. The ITS agreements provide no transmission services and confer absolutely no operational or other control over any power plants, confer no control over the production or disposition of power, and confer no control over sales of power by any of the participants or their affiliates, all of which remain competitors.

The ITS is part of the transmission network within the Southern sub-region of the Southeastern Electric Reliability Council and is interconnected to the rest of the Eastern Interconnection, which includes most of the United States. Most separately owned power plants within any region of the nation inject power into a transmission system with a designated area operator, and the generating units located at the Plant Wansley site are no exception. EPD's analysis in its Response to Comments would suggest that all of the generating plants in Georgia are under the "common control" of the participants in the ITS, which of course EPD has never asserted. Furthermore, we are aware of no decision by EPA that relies on this type of analysis to support a finding of common control under the Title V regulations or any other provision of the Clean Air Act.

In summary, the facts demonstrate that none of the owners of the combined cycle units are controlled by or under the common control of any of the other owners. The units share de minimis common facilities and services for convenience sake, but these relationships do not amount to "common control" under any interpretation of the phrase. Indeed, the owners of the combined cycle units are actually *competitors* with each other that oversee distinctly separate operations and maintain full control of their facilities. As explained below, the application of these facts to all relevant guidance and law on the subject confirms that it was improper for EPD to conclude that there is common control among the combined cycle units.

III. ARGUMENT

A. The Petition Is Timely

In accordance with 40 C.F.R. § 70.8(d), this Petition is timely because it has been submitted to EPA within 60 days of the expiration of the Administrator's 45-day review of the Permit. According to information provided by EPA at http://www.epa.gov/region4/air/permits/Georgia.htm, the 60-day deadline for the filing of a petition on the Permit is February 14, 2007.

B. Georgia Power Raised This Issue With Specificity During The Public Comment Period

As illustrated in EPD's Response to Documents attached hereto as Exhibit B, Georgia Power specifically raised the common control issue during EPD's public notice and comment period. Accordingly, this issue was appropriately raised with specificity during the comment period as required by 40 C.F.R. § 70.8(d).

C. EPD's Finding In Section 1.1 Of The Permit Is Contrary To Established Law And Guidance

EPD's statement that all of the combined cycle units located at the Plant Wansley property represent one Title V source is contrary to all available guidance and law on the issue. EPA has identified several key factors as relevant to this issue including whether there are common ownership interests, agreements that convey decision-making authority to another party, or agreements that create a service or support/dependency relationship. Examination of each of these factors demonstrates there is no common control among the units. Indeed, EPD's own guidance on this subject compels the same finding.

1. Source Aggregation Under The Clean Air Act

a. Source Aggregation under the Title V and Prevention of Significant Deterioration (PSD) Programs

The concept of common control as a means to aggregate sources is found in a number of federal regulatory programs, including the Title V, PSD and Toxic Release Inventory ("TRI") programs. Pursuant to EPD's regulations, under its Title V program, a "Major stationary source" is:

> *Any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping.*

GA Rule 391-3-1-.03(10)(a)4. Similarly, under its PSD New Source Review ("NSR") provisions, and referring to the definitions for "Stationary source" and "Building, structure, facility or installation,"[2] the same three-part test for determining whether a source should be aggregated with other sources applies.

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[2] *Stationary source* means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the . . . [CAA]. 40 CFR § 52.21(b)(5). *Building, structure, facility or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are operated on one or more contiguous or adjacent properties and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two-digit code) as described in the *Standard Industrial Classification ("SIC") Manual, 1972*, as amended by the 1977 supplement (U.S. Government Printing Office stock numbers 4101-0066

b. Source Aggregation under the TRI Program

The test is somewhat similar under TRI. Several years ago, the issue of whether a TRI report under the Emergency Planning and Community Right-to-Know Act ("EPCRA") § 313 and 40 C.F.R. Part 372 was required for OPC's Chattahoochee Energy Facility ("CEF") arose. The answer turned on whether the CEF should be aggregated with the other sources at the site for purposes of TRI reporting. Due to the case-specific nature of source aggregation, OPC decided to seek an applicability determination from EPA, which administers the TRI reporting system, as to whether TRI reporting was required for the CEF.

Section 372.22 of the TRI regulations requires that a facility satisfying the "covered facility" definition in §372.22 report pursuant to the provisions of §372.30.[3] Under §372.22, a facility that meets all of the following criteria for the calendar year is considered to be a covered facility:

- The facility has 10 or more full-time employees;
- The primary SIC Code for the facility, with the necessary qualifiers, is included in the list covered by EPCRA §313 reporting;
- The facility manufactures, processes or otherwise uses EPCRA §313 chemicals; and
- The facility exceeds any applicable reporting thresholds under EPCRA §313 for the applicable chemicals.

With respect to SIC Code 4911, which is just one of the SIC Codes listed in §372.22, application of the TRI reporting requirements is "limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce... ."[4]

The CEF does not combust coal or oil to generate electricity – the combustion turbines and duct burners are all fired only by natural gas. Therefore, §372.22 does not on its face encompass the CEF. Because the Electric Utility Guidance suggests that there are cases where non-coal or non-oil combustion operations may nevertheless be subject to TRI,[5] OPC sought an applicability determination. Included with that request was a discussion and analysis of existing law regarding the aggregation of establishments for purposes of applying TRI requirements.

Under TRI, the CEF and Plant Wansley must be part of the same covered facility for the thresholds in TRI to be exceeded by the CEF. Part 372 defines a "facility" as:

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and 003-005-00176-0, respectively). 40 CFR § 52.21(b)(6). Both provisions are incorporated by reference into EPD's regulations by virtue of GA Rule 391-3-1-.02(7)(a)2.

[3] Section 372.30 in turn requires that covered facilities report each chemical listed in §372.65 manufactured, processed or otherwise used above threshold quantities.

[4] 40 CFR §372.22, *see also* EPCRA Section 313 Industry Guidance for Electric Generating Facilities, EPA 745-B-00-004 (February 2000)(hereafter the "Electric Utility Guidance").

[5] *See* Electric Utility Guidance p. 2-6.

> *Facility* means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person).

40 CFR § 372.3. Based on this test, OPC demonstrated to EPA that the CEF is not part of the same "facility" that contains Plant Wansley, because the CEF and Wansley are not "owned" by the same person, are not "operated" by the same person, and are not "owned or operated by ... any person which controls, is controlled by, or [is] under common control with such person." EPA agreed with OPC's assessment and concluded that the CEF was not subject to TRI. Similarly, EPA has determined that MEAG's Wansley Unit 9 is not part of the same facility as other units at the site for TRI reporting purposes.

2. EPA's Tests For Determination Of "Common Control" Demonstrate That There Is No "Common Control" Among The Combined Cycle Units

The tests used to demonstrate common control in Title V, PSD and TRI are virtually identical. Those tests show that there is no common control between Wansley Units 6/7, OPC's CEF and MEAG Wansley Unit 9.

a. Prior EPA Determinations On This Issue Confirm There Is No Common Control Among The Combined Cycle Units

Various EPA determinations have examined the issue of common control in the context of source aggregation under the various Clean Air Act programs, such as PSD and Title V. In these determinations, EPA has established several mechanisms for use in determining common control. These mechanisms can be broken down into four general areas of focus:

- Ownership Interests. Common control can be established through (corporate or property) ownership (e.g., the same parent company or subsidiaries of the same parent company own the sources under examination or both facilities are to be located on land owned by the existing facility).
- Agreements Between Parties Related To "Decision-Making" Authority. Common control can be established if one entity has "decision-making" authority over the operations of a second entity, through either a contractual agreement or a voting interest.
- Contracts for Service Relationships. Common control can be established if a "contract for service" relationship exists between the two companies.

- Support/Dependency Relationships. Common control can be established where a sufficient support/dependency relationship exists between the facilities.[6]

Each of these approaches is examined in more detail below. Application of the current facts to each of these tests demonstrates that there is no common control among the owners and operators of the combined cycle units located at Plant Wansley.[7]

i. There Are No Common Ownership Interests Among The Owners Of The Combined Cycle Units

Except for the common ownership of Units 6 and 7 noted above, there are no common ownership interests among the combined cycle units at the Plant Wansley property. In a 1980 applicability determination, EPA provides clear guidance on this point. The 1980 determination involved two facilities: (1) an existing USS Novamont plant owned by U.S. Chemical, a wholly-owned subsidiary of U.S. Steel; and (2) a proposed TEX-USS polyethylene plant, to be owned by TEX-USS, a partnership of Texaco and U.S. Steel, in which each corporation would have an "equal say in the management of the partnership."[8] The proposed TEX-USS plant was to be located on property contiguous to the USS Novamont facility. In examining whether the proposed polyethylene plant should be considered a modification of the existing USS Novamont plant or a new source for purposes of PSD, EPA found very persuasive the fact that U.S. Steel (whose wholly-owned subsidiary owned the Novamont plant) had an equal say in the management of the partnership that would own the new facility. Using the SEC definition of control, EPA reasoned that since U.S. Steel had equal power with Texaco to decide how the project should be run, it had the power to "veto any proposal by Texaco." EPA concluded that U.S. Steel had the power to "cause the direction of the management" of the partnership owning the proposed source and, thus, control over such source. The new source was ruled to be a modification of the existing facility.

Unlike the US Steel case above, in this case, there are no corporate relationships between the combined cycle owner/operators (Southern Power / Georgia Power, OPC and MEAG), and none of the combined cycle blocks are jointly owned or operated. No mechanism exists for any combined cycle owner to "exercise restraining or directing

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[6] *See* Letter to Mr. Michael L. Rodburg, Lowenstein, Sandler, Kohl, Fisher & Boylan from Steven C. Riva, Chief, Permitting Section, Air Programs Branch, U.S. EPA Region 2 (November 25, 1997).

[7] Note that as a general governing principle used in the determination of common control, EPA typically refers to the general definition of "control" used by the Securities and Exchange Commission ("SEC").[7] The SEC defines control as:

> The possession, direct or indirect, of the powers to direct or cause the direction of the management and policies of a person (or organization or association) whether through the ownership of voting shares, contract or otherwise.
> 45 Fed. Reg. 59878.

[8] EPA Memorandum from Director, Division of Stationary Source Enforcement to Allyn Davis, Director, Air and Hazardous Materials Division, U.S. EPA Region 6 (July 17, 1980).

influence," "guide or manage" or regulate the "economic activity" of the any other combined cycled owner.[9]

ii. No Agreements Provide Any "Decision Making" Authority Over Another

There are no agreements among the various owners of the combined cycle units that grant any decision-making authority over the other owners. In a 1979 PSD applicability determination, EPA provided guidance on this test of common control. In that determination, a paper mill owned by International Paper Company and Arizona chemical plant owned by Arizona Chemical Company were both located on property owned by International Paper and EPA had to determine whether the facilities constituted a single source or two separate sources for PSD applicability purposes.[10] EPA concluded that if International Paper had a 50% voting interest in the Arizona Chemical Company, it could be considered "in control" for PSD purposes.[11]

In a similar determination issued by EPA Region 4 in 1995, the Agency noted that the most important indicator of common control is the power of one company to make or veto decisions regarding the implementation of major emission control measures and to influence production levels at the co-located facility.[12]

There are no agreements between the combined cycle owners that provide any combined cycle owner with any control over any other combined cycle owner. Nor are

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[9] *See* Letter from Matt Haber, Chief Permits Office to Ms. Jennifer Schlosstein (November 27, 1996) (referring to the definition of control in a Title V source determination).

[10] U.S. EPA memorandum to Diana Dutton, Director, Enforcement Division, U.S. EPA Region 6 from Director, Division of Stationary Source Enforcement (March 16, 1979).

[11] *See also*; Letter to JamesA. Joy, Chief, Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control from Douglas Neeley, Chief, Air and Radiation Technology Branch, U.S. EPA Region 4 (February 20, 1998) (the "Westvaco Determination") (co-generation facility is under the common control of Westvaco, which owns an adjoining unbleached kraft pulp and paper mill, a chemical manufacturing facility and a research and development facility, since the contractual relationship forming the joint venture which owns the co-generation facility furnishes common control to Westvaco); Letter to Cathy Rhodes, Air Pollution Control Division, State of Colorado from Douglas Skie, Chief, Air Programs Branch, U.S. EPA Region 6 (August 22, 1991) (common control found where one entity owned at least 50% of both projects); Letter to Cathy Rhodes, Colorado Air Pollution Control Division from Douglas M. Skie, Chief Region VI Air Programs Branch (August 22, 1991) (amount of control or ownership is 50% or more in each project, clearly indicating common control of both projects); *see also*, EPA Memorandum re: PSD Applicability (July 17, 1980) (having equal power to decide how project should be run results in control over the plant).

[12] Letter to Ron Methier, Chief, Air Protection Branch of the Georgia Environmental Protection Division from Jewell Harper, Chief, Air Enforcement Branch of Air, Pesticides and Toxics Management Division, U.S. EPA Region 4 (July 20, 1995) (The fact that United Technologies can indirectly exercise 50% voting power in Precision Components through another company in which it has 100% control indicates that United Technologies and Precision Components should be considered under common control.)

there any agreements that would provide one owner with any authority over production levels or emission control decisions at any of the other combined cycle units. As discussed below, while the owners do share certain "resources" at the site, including security personnel, a water reservoir, and wastewater discharge, none of those services give any party the right or ability to control the operation of another.

iii. There Are No Service Relationships Or Support/Dependency Relationships Among The Owners To Support A Finding Of Common Control

The third and fourth factors typically evaluated are interrelated. When determining whether common control exists, EPA evaluates whether a contract-for-service relationship or support/dependency relationship exists that effectively gives one entity control over another at the same site. For example, if one facility has no purpose at the site other than to provide a service to the other facility at the site, then the contract for the service may be deemed to establish a control relationship.[13] Similarly, EPA considers whether there is a support/dependency relationship between the two entities, such that one facility supports the operations of the other, or would not exist, "but for" the other.[14] Again, the idea is that both sources are effectively controlled by the same entity, since the subservient source is integral to the other source's operations, or would not exist, "but-for" the presence of the other. Because these two factors are often closely related, we discuss them together.

Several EPA determinations provide guidance on these considerations. Each of them shows that there can be no finding of common control among the combined cycle units located at Plant Wansley. In EPA's 1999 KN Power Determination, the Agency addressed whether a proposed power generating facility constructed by Front Range Energy Associates ("Front Range") and an existing generating facility owned by Public Service Company of Colorado ("PSCo") constituted a single PSD source. The two

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[13] *See, e.g.* Letter to James Salvaggio, Director of Air Quality, Pennsylvania Department of Environmental Protection from Judith Katz, Director, Air Protection Division, U.S. EPA Region 3 (undated) (common control relationship exists between NE HUB and United Salt, where United Salt will be in close proximity to NE HUB, on land owned by NE HUB's parent company, with dedicated pipelines connecting the two facilities, where NE HUB will incur all costs associated with the permitting and construction of United Salt and where agreement between them will establish a relationship that will last for ten to twenty years and will require United Salt to reimburse NE HUB's construction investment, so as to ultimately become the landowner of the new facility); Letter to Margie Perkins, Director, Air Pollution Control Division, Colorado Department of Public Health and Environment from Kerrigan G. Clough, Assistant Regional Administrator, U.S. EPA Region 8 (September 13, 2000) (the "Coors/TriGen Determination").

[14] *See* Letter to Ms. Julie Wrend, Colorado Department of Public Health and Environment from Richard Long, Director, Air Program, EPA Region 8 (November 12, 1998); the Coors/TriGen Determination; the Westvaco Determination; Letter to Ms. Margie Perkins, Director of Air Pollution Control Division, Colorado Department of Public Health and Environment from Richard Long, Director of Air and Radiation Program, EPA Region 8 (October 1, 1999) (the "KN Power Determination").

facilities belonged to the same Standard Industrial Classification ("SIC") code and were located on adjacent properties. The issue then became whether the two plants were under the control of the same person. Front Range had a power supply agreement with PSCo to provide all net generation from its facility available at any time to PSCo; no other party was entitled to any of the generation from the Front Range facility. PSCo agreed to pay Front Range an amount for such generation sufficient to guarantee a profit, even if the facility "sits idle and is never used." Front Range Determination at 2. Further, PSCo had the "sole right" under the agreement to determine startup, shutdown and operational levels at the Front Range plant. PSCo was to supply fuel to the Front Range project, free of charge to Front Range. Front Range relied on PSCo's existing gas pipelines and electrical transmission lines, for fuel and to deliver power.

Given this contractual relationship, EPA concluded that PSCo controlled the essential function of the Front Range facility via the agreement between the two – the generation of electrical power – and thus would be in a position to exercise the requisite SEC level of control over the Front Range plant needed to establish common control. EPA also reasoned that by virtue of its agreement bestowing control, PSCo had the power to control the very activities regulated by the CAA - Front Range's "pollutant emitting activities." Evidence of common corporate ownership was also found. EPA determined that the Front Range facility was a modification to the existing PSCo plant.

In the Coors/TriGen Determination issued in 2000, EPA considered whether the TriGen Power Plant located at the Coors brewery in Golden, Colorado should be considered part of the brewery, rather than a separate source. The TriGen Power Plant was located on the Coors site, on property owned by Coors, adjacent to the brewery. Originally, Coors owned and operated the power plant, but had recently sold the plant to TriGen. TriGen was to operate the plant under a thirty year contract that required it to supply 100% of the power needs of the brewery. Although agreements between the two companies allowed TriGen to sell any additional electricity generated to outside users, TriGen had no other customers at the time of the determination. Under a settlement agreement between Coors and the Colorado Air Pollution Control Division, VOC emissions from the brewery were ducted to the TriGen Power Plant and destroyed in its boilers. TriGen was not a subsidiary of Coors, so no common corporate ownership between the two companies was found. However, EPA reasoned that the contract between Coors and TriGen created a support/dependency relationship, since TriGen's power plant supported the Coors brewery by providing no less than 100% of the power needs of the brewery. With no other customers at present, EPA considered the TriGen Power Plant to be a "wholly dedicated support facility" for the brewery. Not only did the brewery depend on the TriGen facility for electrical power, but also for pollution control of VOC emissions from its brewery operations. In addition, because the power plant was located on property owned by Coors, a presumption of common control was created. Finally, even though the two facilities standing alone would have different SIC codes, EPA found that the contract between the two made the TriGen Power Plant a support facility for purposes of determining its major industrial grouping under the SIC code system. Therefore, EPA concluded that the power plant would be properly classified under the same SIC code as the brewery, which is the primary economic activity on the site. EPA found the power plant and brewery to constitute one PSD source.

Similarly, in the Oscar Mayer Determination, Madison Gas & Electric ("MGE") proposed to construct six back-up generators on Oscar Mayer-owned property. The generators were to serve two purposes: (1) to provide back-up electrical generating capacity to an Oscar Mayer foods facility; and (2) to provide surplus electricity to the MGE system. Since the generators proposed by MGE would be contiguous to the Oscar Mayer facility, EPA reasoned they would constitute one source if they belonged to the same industrial grouping and were under common control. To answer those two questions, EPA considered whether the MGE generators would be a separate facility to the Oscar Mayer plant. EPA stated that where more than 50% of the output of services provided by one facility is dedicated to another facility it supports, a "support facility relationship" is presumed to exist. Even where this 50% test it not met, however, other factors may indicate, according to EPA, the existence of a support facility. Those factors include, but are not limited to:

- the degree to which the supporting activity receives materials or services from the primary activity (which indicates a mutually beneficial arrangement between the primary and secondary activities);
- the degree to which the primary activity exerts control over the support activities operations;
- the nature of any contractual arrangements between the two facilities; and
- the reasons for the presence of the support facility on the same site as the primary activity (e.g., whether the support activity would exist at that site but-for the primary activity).

Where these criteria indicate a support relationship, EPA states that permitting authorities may conclude that a support activity contributing more or less than 50% of its output may be classified as a support facility and aggregated with the facility it supports to comprise part of a single source.

Applying these factors to the Oscar Mayer situation, EPA noted that at first blush it appeared that the generators at issue would clearly serve as a support facility to the Oscar Mayer plant. Although it was unlikely that 50% of the generators' output would go to Oscar Mayer, EPA observed that the generators would not be at this location, but for the presence of Oscar Mayer and its potential need for back-up power in the event of an electric outage. In addition, the contract between Oscar Mayer and MGE provided that when Oscar Mayer needed back-up power due to an outage, the generators would automatically send power to Oscar Mayer, regardless of whether MGE also needed the power from the generators for other purposes. However, *EPA also noted that a common control determination must focus on who has the power to manage the pollutant-emitting activities at the facility at issue, including the power to make or veto decisions to implement major emission control measures or to influence production levels or compliance with environmental regulations.* EPA noted that Oscar Mayer controlled the operation of the generators only to the extent that, in the event of an outage, Oscar Mayer would be entitled to 100% of the output from such generators until normal power distribution was restored. According to its contract with MGE, if an outage occurred and Oscar Meyer was receiving no electricity from the main power grid, the back-up

generating system would automatically come online to supply electricity to Oscar Mayer. However, Oscar Mayer had no ownership interest in the generators and there was nothing in its contract with the owner of the generators, MGE, that indicated that Oscar Meyer would have any power to manage the generators' pollutant-emitting activities or to make any decisions relating to emission control or compliance of the generators with environmental regulations.

EPA also noted that if the contract provides that less than 100% of the output of a potential support facility will go to the primary activity, the permitting authority should consider the following factors when addressing the aggregation question:

- How integral the contracted activity is to the primary entity's operations;
- The percentage of output that goes to the primary entity;
- Whether the activity must be onsite to perform its service or produce its product;
- Whether the activity would remain onsite if the primary entity no longer received the output; and
- The terms of the contract between the primary and secondary entities.

Although in the event of an outage, the back-up power from the generators would be crucial to Oscar Mayer's continued operations, it was unlikely that the power provided during such outages would exceed 10% of the total output of such generators. In addition, although the generators probably would not be on the Oscar Mayer facility property, but for the presence of Oscar Mayer, they did not need to be on the Oscar Mayer site in order to fulfill their intended dual purposes. They could be located elsewhere and serve the same purpose or purposes. Ultimately, EPA noted that although Wisconsin had to make its own determination, if EPA were making this determination, it would find that the Oscar Mayer facility and the six generators to be located on the Oscar Mayer property were not under common control and would not be considered one stationary source for purposes of PSD permitting.

Unlike any of those cases, in this case none of the combined cycle units provides any products or services to any other unit or owner at the site. No goods or services are sold between the combined cycle units. Thus, there is no contractual mechanism for any unit to "control the relevant aspects" of another, *e.g.* the level of its electricity production, the requirement to implement and maintain applicable emission control measures or the duty to comply with all applicable environmental regulations.[15] In addition, it cannot be said that any unit would not exist, "but for" the presence of any other unit at the site. The combined cycle units were located at the plant site solely as a matter of convenience; there were numerous sites where they could have been placed. Although OPC and MEAG have a right to use the water in the Plant's reservoir when operating their units, that right is subordinate to the rights of the Plant Wansley coal-fired unit co-owners and

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[15] *See* Seitz Guidance, pp. 11 & 12 (elements relevant to the determination of whether contract for service relationship exists between sources includes whether one contracting party can control the performance of the other, by controlling such things as the level of production, the requirement to implement and maintain emission control measures and the obligation to comply with all applicable environmental regulations).

is not a mechanism by which Georgia Power or any other entity can control the operations of OPC's CEF or MEAG's Block 9. Other avenues could have been taken to secure a source of water for the CEF and Block 9 units; resorting to the reservoir was a matter of convenience.[16] Indeed, as noted above, EPA has already rejected a similar argument by the Sierra Club that the shared water infrastructure at the site creates common control. Order Denying Petition for Objection to Permit, In the Matter of Oglethorpe Power Company Wansley Combined Cycle Energy Facility, Roopville, Georgia, Electric Power Generation Petition IV-2002-1, Nov. 15, 2002 (Notice published at 67 Fed. Reg. 79610 (Dec. 30, 2002)). That decision was upheld by the Eleventh Circuit Court of Appeals in Sierra Club v. Leavitt. 368 F.3d 1300, 1308 n.13 (11th Cir. 2004).

b. The Common Location Of The Combined Cycle Units At Plant Wansley Is Insufficient To Create "Common Control" Among The Facilities

When one facility is located on the property of another facility, EPA typically presumes that the facility locating on the land of another establishes the requisite control relationship sufficient for a finding of control, leading to source aggregation. To overcome this presumption and disaggregate such sources, EPA requires the companion facilities, on a case-by-case basis, to explain how they interact with each other. Some of the questions asked in that analysis include:

- Do the facilities share common work forces, plant managers, security forces, corporate executive officers or boards of executives?
- Do the facilities share equipment, other property or pollution control equipment? What does the contract specify with regard to pollution control responsibilities of the contractee? Can the managing entity of one facility makes decisions that affect pollution control at the other facility?
- Do the facilities share common payroll activities, employee benefits, health plans, retirement funds, insurance coverage, or other administrative functions?
- Do the facilities share intermediates, products, byproducts or other manufacturing equipment? Can a new source purchase raw materials from and sell or buy products to other customers? What are the contractual arrangements for providing goods and services?
- Who accepts the responsibility for compliance with environmental control requirements? Who would be liable for violations of such requirements?
- What is the dependency of one facility on the other? If one shuts down, what are the limitations on the other to pursue "outside business interests?"
- Does one operation support the operation of the other? What are the financial arrangements between the two entities?

Letter from William A. Spratlin, Director, Air, RCRA and Toxic Division, Region VII to Peter R. Hamlin, Chief, Air Quality Bureau, Iowa Department of Natural Resources

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[16] Westvaco Determination (facility not under common control with another facility, where operations not dependent except by convenience).

(September 18, 1995). In discussing this list of questions, EPA notes that the list is to serve as a screening tool that helps EPA (and often the state agency) determine the extent of ties the new source has to the existing source and, ultimately, whether the new source is a separate, independently controlled entity.

In this case, the presumption does not apply because, as noted above, OPC and MEAG own the property at their respective combined cycle units. The other factors identified by EPA in this 1995 guidance further confirm the absence of common control.

The combined cycle facilities have separate work forces and do not share payroll services, employee benefits, health plans, retirement funds or insurance coverage. OPC's CEF is operated by Siemens under contract with OPC. MEAG's Wansley Unit 9 is operated by GE International under contract with MEAG, and Blocks 6 and 7 are operated by Georgia Power pursuant to an agreement with Southern Power. The only shared service is security, which controls access to the Wansley site. Security services are shared as a matter of convenience because all of the power blocks are located within the same fence line. Of course, common security does not provide any owner with any authority to dictate or veto operational decisions such as production levels or emission control strategies.

Each combined cycle unit is an independent generating facility and does not depend on any other combined cycle unit to operate or deliver its product. The only equipment shared by the combined cycle units are the common water intake structure, reservoir and wastewaster discharge system,[17] which also serve Units 1 and 2. As noted above, EPA and the Eleventh Circuit have already determined that the shared water-related infrastructure does not give one combined cycle any authority or power over any other combined cycle owner or their operations.

Finally, the combined cycle units do not share any products, by products or intermediates with any other facility at the site. OPC's CEF and MEAG's Wansley Unit 9 also each have their own Title V operating permits and each retain exclusive responsibility for compliance with all applicable CAA requirements.

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[17] Georgia Power holds the National Pollutant Discharge Elimination System ("NPDES") permit, including a general stormwater permit, for the entire Wansley site, so that all wastewater discharged by the combined cycle units is permitted through Plant Wansley's NPDES permit. This, however, is also done primarily as a matter of convenience. Creating a separate discharge system for the combined cycle units would have been inconvenient and unnecessary, especially as compared to simply allowing Georgia Power, which holds the NPDES permits for Plant Wansley, to continue acting in that role. The NPDES permit provides no mechanism for any entity to control another.

3. EPD's Own Guidance On This Issue And The Realities Of Site Operations Demonstrate There Is No Common Control Among The Combined Cycle Units

EPD's statement regarding "common control" in the Permit is also inconsistent with EPD's internal "Site Determination Guidance" document. As noted in Georgia Power's comments to EPD during the permitting process, see Exhibit B, application of the facts at Plant Wansley to EPD's major source applicability determination guidance results in a score of less than 200 which indicates that there is no common control among the combined cycle units.

Indeed, this finding is consistent with the realities of operations at the site. From a practical perspective, the combined cycle facilities do not communicate with each other in a way that is indicative of a common source. For instance, if the owner of Blocks 6/7 were planning to do a modification of its units, it would have no way of knowing if any other modifications or emission increases or decreases had taken place, or were going to take place, at the CEF or Wansley Block 9. The respective owners of the combined cycle units simply do not share operational information with each other. In fact, they are competitors with each other and intentionally do not share information with each other. Thus, the very purpose of the source aggregation policies, i.e., to require the owner/operator of a source to account for and be responsible for all units under its control, cannot be fulfilled among the owners of the combined cycle units because there simply is no common control among them. They are each wholly independent operating facilities.

For all the reasons set forth above, it was improper for EPD to conclude that there is "common control" among the combined cycle units located at Plant Wansley. Thus, we request that EPA object to the Permit and direct EPD to amend Permit Condition 1.1 and correct the Response to Comments as suggested below.

D. The Permit Should Be Amended To Eliminate The Finding of Common Control Between the Combined Cycle Facilities

Georgia Power requests that EPA object to the Permit as currently drafted and direct EPD to amend the Permit pursuant to its authority under 40 C.F.R. § 70.8(d). Because the Permit already defines the "Wansley Steam-Electric Generating Plant" to include Units 1 and 2, CT5A and Blocks 6 and 7, we request an amendment to Section 1.1 of the Permit to omit the following language:

> The Wansley Steam-Electric Generating Plant (AFS No. 149-00001), Oglethorpe Power Corporation – Chattahoochee Energy Facility (AFS No. 149-00006), and the Municipal Electric Authority of Georgia – Wansley Unit 9 (AFS No. 149-00007) comprise the same Title V site because the plants are located on contiguous property, operate under common control, and have the same two digit SIC code.

In its place, the Permit should state the following:

> In addition to Wansley Block 6 and 7, there are two other combined cycle blocks located at this site – the Chattahoochee Energy Facility owned by Oglethorpe Power Corporation and Wansley Unit 9 owned by the Municipal Electric Authority of Georgia – both of which are regulated under separate Title V permits. Although they are located on contiguous property and have the same SIC code, the Chattahoochee Energy Facility and MEAG Wansley Unit 9 are separate sources from Wansley Blocks 6 and 7 because there is no common control between the owner/operator of Blocks 6 and 7 and the owner/operators of the other combined cycle blocks.

Georgia Power also requests that EPA instruct EPD to withdraw the Permit narrative and amend its Response to Comments to be consistent with the proposed Permit modification discussed above.

IV. CONCLUSION

For the reasons set forth herein, pursuant to 40 C.F.R. § 70.8(d) the EPA should object to the Permit and modify it as explained above. EPA should also instruct EPD to amend and revise the Permit Narrative accordingly.

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February 14, 2007

PART 1.0 FACILITY DESCRIPTION

1.1 Site Determination

Plant Wansley is currently contracting with an ash processing facility located on site to process and sell some of the coal ash produced from the electric generating process at Plant Wansley. Even though the ash processing facility and Plant Wansley are located on contiguous property, they are deemed to be separate sources for purposes of Title V permitting due to the fact that there is no common control between Georgia Power Company and the ash processing facility. Therefore, the Title V permit for Plant Wansley covers only those operations controlled solely by Georgia Power. The ash processing facility, which is itself a minor source under 40 CFR Part 70, will continue to operate under its minor source SIP permit.

The Wansley Steam-Electric Generating Plant (AFS No. 149-00001), Oglethorpe Power Corporation – Chattahoochee Energy Facility (AFS No. 149-00006), and the Municipal Electric Authority of Georgia – Wansley Unit 9 (AFS No. 149-00007) comprise the same Title V site because the plants are located on contiguous property, operate under common control, and have the same two digit SIC code.

1.2 Previous and/or Other Names

This facility is commonly known and referred to as Plant Wansley. No other names were identified.

1.3 Overall Facility Process Description

Plant Wansley burns fossil fuel to generate electricity. This facility includes two steam electric generating units which primarily burn coal and one simple cycle combustion turbine which burns No. 2 fuel oil. Each steam generating unit exhausts through its own stack liner in the 1000-ft stack. The combustion turbine has its own exhaust which is 32- ft tall.

Plant Wansley also includes two combustion turbine combined-cycle blocks. Each combined-cycle block includes two combustion turbines each with a supplementally fired (duct burner) heat recovery steam generator (HRSG). The combined-cycle blocks fire only natural gas.

Addendum to Narrative

EPD issued draft Title V Permit No. 4911-149-0001-V-02-0 to the applicant on September 19, 2005. The public notice was published in *The News and Banner* on Wednesday, September 28, 2005. The public comment period expired October 28, 2005. Comments were received from Georgia Power on October 28, 2005, and from the Georgia Center for Law in the Public Interest on October 28, 2005. Each comment is printed below, followed by a discussion of the comment and any changes made to the permit as a result.

REVIEW OF GEORGIA POWER COMMENTS:

1. Permit Cover Page: The facility address should read "Liberty Church Road" instead of "Georgia Highway 5."

Response: EPD agrees and has revised the cover page accordingly.

2. Permit Cover Page: If the permit is not issued in time to meet the effective date of January 1, 2006. Georgia Power would prefer an effective date that is the first day of the next quarter following the permit issuance (April 1, July 1, or October 1). It is also preferred that Georgia Power have at least 30 days to review and implement any changes prior to the permit's effective date.

Response: EPD agrees and will make the revisions to the cover page based on the proposed effective date accordingly.

3. Section 1.1 of the draft permit and paragraphs B. and E. of the Facility Description section of the narrative should be amended to delete the statements that the plants owned and operated by Oglethorpe Power Corporation (Chattahoochee Energy Facility), the Municipal Electric Authority of Georgia (MEAG) (Wansley Unit 9) and Georgia Power's Plant Wansley constitute the same Title V source[1], because the plants are located on contiguous property, operate under common control and have the same two-digit SIC code. These plants are not one Title V major source, because they are not operated under common control.[2] The real property and associated plants are separately owned, by four totally distinct and independent utilities – Oglethorpe Power owns the Chattahoochee Energy Facility, MEAG owns Unit 9, and Plant Wansley is co-owned, pursuant to agreement, by Georgia Power, Oglethorpe Power, MEAG and the City of Dalton, with Georgia Power holding more than 50% (and serving as operating agent) of Plant Wansley. The three facilities are permitted under separate Title V permits. Moreover, they share no workforces, have no contract-for-service or support/dependency relationship and share no pollution control equipment. Each facility operates separately and independently from the other. Therefore, the sources are not under the "common control of the same person." See 40 CFR § 70.2. The facilities are also not under "common control of the same person (or persons under common control) ..." since none of the involved utilities is

[1] Actually, the narrative and permit use the term Title V "site", instead of Title V "major source." The term Title V "site" is not a defined term in the Clean Air Act, the Georgia Air Quality Act and implementing regulations, and therefore has no legal consequence, unlike Title V "major source," which is a defined term. In responding to this comment, Georgia Power assumes that EPD is referring to a Title V "major source" and not a Title V "site."

[2] A "major source" under Title V is defined as any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of they same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (1), (2), or (3) of this definition. 40 CFR §70.2 (2004), *incorporated by reference into EPD's rules at* GA Rule 391-3-1-.03(10)(a)4.

related to the others and none has the capability to "control" any of the others.[3] Finally, the statement regarding "common control" is inconsistent with EPD's 2001 Memorandum regarding "common control" determinations. In applying that guidance to the present situation, a score of less than 200 was derived, indicating that common control between Plant Wansley, the Chattahoochee Energy Facility and Wansley Unit 9 does not exist. For all these reasons, therefore, this finding of common control should be deleted. See Memorandum from EPD's Site Determination Work Group to Jack Taylor (August 7, 2001).

Response: Initially in 2000, all four power blocks, Power Blocks 6, 7, 8, and 9, at the physical Wansley location were owned and operated by Georgia Power. On January 15, 2002, a permit was issued to The Oglethorpe Power Corporation – Chattahoochee Energy Facility for the ownership and operation of Power Block 8. The Oglethorpe Power Corporation – Chattahoochee Energy Facility, Franklin was formerly known as Oglethorpe Power Corporation – Wansley. The name change was indicated in an administrative amendment issued June 17, 2003. The owner of Power Block 8 did not change with the name change in 2003; therefore, the owner of Power Block 8 is OPC. Power Block 9 is currently owned and operated by the Municipal Electric Authority of Georgia as of the issuance of an administrative amendment for a name and ownership change on February 4, 2002 40 CFR 51.166(b)(1) and 70.2, offer three test to determine common control: 1.) the stationary sources must be located on contiguous or adjacent property 2.) the stationary sources must be under common control, and 3.) the sources must share the same two-digit SIC code.

The equipment owned by OPC certainly satisfies the first criteria since it was never moved from the Georgia Power Plant Wansley site. The question remains as to whether Power Blocks 6 and 7 are under common control between OPC, MEAG, City of Dalton, and GA Power Plant Wansley. EPA offers several criteria to establish common control (See memorandum originally dated November 12, 1998 from US EPA Region 8 to Julie Wrend of the Colorado Department of Public Health and Environment). This memorandum indicates that when common control cannot be established either via a common parent company, via one entity being a subsidiary of a common parent company, or by one entity having the power to direct the management and policies of the second entity that the Administrator may determine common control based on a contract for service relation or a support/dependency relationship between the entities in question.

The commenter admits that Georgia Power Plant Wansley which is mostly comprised of Power Blocks 6 and 7 (including Stem Generating Units 1 and 2) are co-owned by OPC, MEAG, City of Dalton, and GA Power with GA Power holding "more than 50% ownership". However unequal, there exist a partnership between OPC, MEAG, City of Dalton, and GA Power regarding ownership of Power Blocks 6 and 7. Georgia Power is a retail power subsidiary under the parent company of the Southern Company. During the early 70's OPC, MEAG and the City of Dalton purchased generating capacity from Georgia Power Company. These companies also purchased ownership interest in the transmission system, the Georgia Integrated Transmission System. From the collective ownership of Units 1 and 2 by MEAG, OPC, and City of Dalton, it appears that Georgia Power owns just over 50% of the emission units at Plant Wansley. Moreover, the Georgia Transmission Corporation primarily transports power for its member distribution cooperatives and their electricity supplier, Oglethorpe Power. The Georgia Transmission Corporation is one of three companies collectively owned by the same EMCs, but having different decision-making board members. The Georgia Transmission Corporation jointly owns and plans the state's transmission lines through the Integrated Transmission System (ITS), in collaboration with Georgia Power, MEAG Power,

[3] See, e.g., Letter from William A. Spratlin, Director , EPA Region VII Air, RCRA and Toxics Division to Peter R. Hamlin, Chief, Air Quality Bureau, Iwoan Department of Natural Resources (September 18, 1995).

OPC, and City of Dalton. The ITS is structured from a Joint Committee and three subcommittees so that each owner has two members on the decision-making Joint Committee. Purchasing ownership interest in the transmission system made it possible to receive energy from the generating plants in which OPC, MEAG, and Dalton had purchased an ownership interest. With a jointly-owned integrated facility, Georgia utilities control the transmission lines. Since the emission units at Wansley generate electricity which is received through a common transmission system which is co-owned by Georgia Power, OPC, MEAG, and City of Dalton, it is the determination of GA EPD that the emission units meet the second criteria of "major stationary source" of Title I and Title V because there is a contractual service relationship or support/dependency relationship established through the joint ownership of the ITS. Moreover, with their interest in Stem Generating Units 1 and 2 and their wholly-owned facilities at Wansley, the output capacity physically located at Wansley makes up the majority of the generating capacity for MEAG and for OPC. The City of Dalton does not solely own any generating facilities. Electricity provided by the City of Dalton comes from three sources: partial interest in Plant Wansley; hydroelectric contracts through the Southeastern Power Administration, and power blocks purchased though Southern Wholesale Energy. In addition, the City of Dalton purchases electricity through Southern Wholesale Energy, the marketing and trading arm representing Southern Company, during peak season4.

Last, the operations owned by OPC, MEAG, Georgia Power, and City of Dalton at the Wansley site all fall under the two-digit SIC code of "4911".

It is GA EPD's determination that the OPC Chattahoochee Energy facility, Georgia Power Wansley, MEAG, and City of Dalton comprise one major stationary source under Title I and Title V of the Clean Air Act. If Georgia Power wishes to pursue this matter further, a written request for determination can be made through GA EPD to the US EPA Region IV.

4. Section 1.3 should be amended to correct the typographical error in the stack height for CT 5A which is 32 feet high.

Response: EPD agrees and has revised this condition accordingly.

5. Table 3.1 should be amended to include 391-3-1-.02(2)(nnn)(7) to the list of applicable requirements for CT 5A.

Response: EPD agrees and has revised Table 3.1 accordingly.

6. Condition 3.3.1 should be amended to list all units subject to 40 CFR 60 Subpart GG.

> The Permittee shall comply with all applicable provisions of the New Source Performance Standards (NSPS) as found in 40 CFR Part 60, in particular Subpart A "General Provisions" and Subpart GG - "Standards of Performance for Stationary Gas Turbines," for the operation of the combustion turbine (Emission Unit ID CT5A, CT6A, CT6B, CT7A, CT7B).

Response: EPD agrees and has revised this condition accordingly.

4 http://www.psc.ga.us/electricindust/structure.htm#7 accessed on 12/27/05 and 09/28/06