

THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Biomass Gas and Electric  
of Tallahassee, LLC,

Petitioner,

vs.

State of Florida,  
Department of Environmental Protection,

Respondent.

DEPT OF ENVIRONMENTAL  
PROTECTION

DEC 04 2008

OFFICE OF  
GENERAL COUNSEL

OGC No. 08-2673

DEP Permit No. 0730109-001-AC

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**Petition for Administrative Hearing**

Pursuant to Sections 120.569 and 120.57, Florida Statutes (F.S.), and Rule 28-106.201, Florida Administrative Code (F.A.C.), Petitioner, Biomass Gas and Electric of Tallahassee, LLC (BG&E), hereby submits its Petition for Administrative Hearing to address technical corrections that are necessary for Draft Air Construction Permit No. 0730109-001-AC (and associated documents) issued by the State of Florida, Department of Environmental Protection (Department), regarding the proposed new Tallahassee Renewable Energy Center. In support of its Petition, BG&E states as follows:

**Identification of Parties**

1. The agency affected and its file number are as follows:

State of Florida  
Department of Environmental Protection  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399

Office of General Counsel Case No. 08-2673

Department Draft Permit No. 0730109-001-AC

2. The Petitioner's name, address, and telephone number are as follows:

Biomass Gas and Electric of Tallahassee, LLC  
3500 Parkway Lane, Suite 440  
Norcross, GA 30092  
(770) 662-0256  
[glenn@biggreenenergy.com](mailto:glenn@biggreenenergy.com)

3. The name, address, and telephone number of Petitioner's representative (for purposes of service during the course of the proceeding) are as follows:

Angela Morrison Uhland  
Hopping Green & Sams, P.A.  
P.O. Box 6526  
Tallahassee, Florida 32314  
(850) 425-2258  
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#### **Receipt of Notice**

4. On or about October 27, 2008, the State of Florida, Department of Environmental Protection (Department) issued a Written Notice of Intent to Issue Air Permit, a Public Notice of Intent to Issue Air Permit, a Technical Evaluation and Preliminary Determination, and a Draft Air Construction Permit (Permit No. 0730109-001-AC ) pursuant to Rule 62-210.300, F.A.C., for BG&E's proposed Tallahassee Renewable Energy Center to be located in Leon County, Florida. For purposes of this Petition, these documents will collectively be referred to as the "Draft Permit."

5. The Department sent the Draft Permit to BG&E by electronic mail on October 27, 2008, and it was received by BG&E electronically on or about October 27, 2008.

6. On November 7, 2008, BG&E, by and through undersigned counsel, timely filed a Request for Extension of Time with the Department, requesting an extension of time to and including November 18, 2008, in which to file a Petition for Administrative Proceeding.

7. The Department granted BG&E's requested extension of time to file a petition by order dated November 14, 2008. The order provided that BG&E had until November 18, 2008, to file a petition. The Department sent a copy of the order via facsimile to BG&E's representative (undersigned counsel) on November 14, 2008.

8. On November 18, 2008, BG&E filed a request for a second extension of time, requesting an extension through November 25, 2008, within which to file a petition for administrative hearing. The Department granted an extension through December 4, 2008.

9. This petition is being timely filed with the Clerk of the Department of Environmental Protection, Lea Crandall.

#### **Petitioner's Substantial Interests Affected**

10. BG&E has proposed to construct and operate a biomass integrated gasification combined cycle electrical generating facility to be located in the City of Tallahassee, Leon County, Florida, to be known as the Tallahassee Renewable Energy Center. The facility includes a biomass gasification system, two combined cycle combustion turbines, a feedstock storage and handling system, a cooling tower, and an auxiliary boiler.

11. BG&E submitted an air construction permit application for the facility, as required by Rule 62-210.300, F.A.C., to the Department on or about April 2, 2008. BG&E provided supplemental information to the Department on July 28, 2008.

12. In response to the air permit application and supplemental information submitted to the Department, the Department issued a draft air construction permit for the facility, which is referred to herein as the Draft Permit and which is the subject of this request for administrative hearing.

13. BG&E generally accepts the Draft Permit, which imposes stringent conditions and requirements for construction and operation of the Tallahassee Renewable Energy Center. The Draft Permit includes a few requirements and conditions for the air emission units within the facility, however, that require clarification and correction. If these requirements and conditions were to become final and effective without clarification and correction, BG&E would incur unnecessary additional costs and potentially be restricted unnecessarily in its operation of the facility with no corresponding public benefit. Because BG&E understands that the Department may concur that some improvements are appropriate for the Draft Permit, this petition is being filed as a protective measure.

**Disputed Issues of Material Fact  
and Ultimate Facts Alleged**

14. Regarding Condition 3.B.7 on page 7 of 24, which identifies the operational procedures to ensure that spontaneous combustion does not occur within the woody biomass feedstock storage area, whether the Department adequately considered that there was a better, more efficient, automated first-in, first-out stacker reclaimer system that could be used in the feedstock storage area to ensure that older feedstock is always used before newer feedstock, that the feedstock storage area should be covered, and that the covering for the feedstock storage area should be equipped with fire suppression equipment. This more effective system should provide for greater assurances that spontaneous combustion does not occur and thus be authorized in the permit.

15. Regarding Condition 3.E.2 on page 13 of 24 of the Draft Permit which provides that tars may not be disposed of, whether the Department adequately considered that tars unsuitable for combustion should be removed for proper offsite disposal. Tars that are not suitable

for combustion should be removed and properly disposed of offsite, which should provide the Department with greater assurances that tars will not be improperly stored or disposed of onsite.

16. Regarding Condition 3.F.11 on pages 15 and 16 of 24 of the Draft Permit which proposes emission limits for carbon monoxide and nitrogen oxides, whether the Department adequately considered that it would be appropriate to establish annual limits in units of tons per year rather than in units of pounds per hour, that it would be appropriate to require continuous compliance demonstrations with concentration-based limits based only on continuous emissions monitoring data rather than determining compliance periodically through stack testing, and that only data reflective of steady-state operations are appropriate for determining compliance with the short-term limits. The proposed short-term (30-day rolling average) concentration-based limits and annual ton-per-year limits are consistent with the information provided in BG&E's application, are consistent with how the unit's potential emissions were calculated, and provide sufficient reasonable assurances that the facility is appropriately characterized as a minor source for air emissions. As proposed by the applicant, the combustion turbines and duct burners have the potential to emit 187.6 tons per year of carbon monoxide and 167.4 tons per year of nitrogen oxides. To ensure that the annual emissions are appropriately limited, annual limits established in units of tons per year would provide the appropriate reasonable assurances. Similarly, BG&E's application proposed 30-day rolling average limits for carbon monoxide and nitrogen oxides, at 50 ppmvd and 32.5 ppmvd respectively, based on continuous emissions monitoring data during steady state operations. These limits are more stringent than required by federal and state rules, and demonstrations of continuous compliance with the short-term limits is more appropriate than periodic stack tests, and periodic stack tests are ineffective for determining compliance with 30-day rolling average limits. Further, while compliance with the annual limits should include all

emissions, including authorized emissions that occur during periods of startup, shutdown, and malfunctions, compliance with the short term limits should be based only on emissions occurring during steady state operations.

### **Statutes and Rules Warranting Relief**

17. The proposed permit conflicts with Rules 62-210.700, 62-296.320, 62-297.310, 62-4.070, F.A.C. The Florida Statutes and other Department rules cited by the Department as authority for issuance of the Draft Permit, or that could warrant reversal, include Chapters 120 and 403, F.S.; and Chapters 62-4, 62-110, 62-210, 62-212, 62-296, and 62-297, F.A.C.

a. Proposed Condition 3.B.7 identifying the operational procedures to ensure that spontaneous combustion does not occur within the woody biomass feedstock storage area is based on the reasonable assurances provisions of Rule 62-4.070(3), F.A.C. This rule does not justify the use of the particular storage system described because there is a superior system which would better ensure that spontaneous combustion does not occur.

b. The Department does not cite authority for proposed Condition 3.E.2, although the Department presumably considered this condition necessary for reasonable assurances under Rule 62-4.070(3), F.A.C. To ensure that tars unsuitable for combustion are properly disposed of offsite, additional language should be added to the proposed condition for further, more appropriate reasonable assurances, consistent with Rule 62-4.070(3), F.A.C.

c. The Department cites as authority for the emission limits proposed under Condition 3.F.11: (1) BG&E's application, (2) Rule 62-4.070(3), F.A.C., for reasonable assurances, and (3) the definition of "potential to emit" under Rule 62-210.200, F.A.C. These rules support annual limits in units of tons per year and short-term concentration based limits as proposed by BG&E. Further, these rules support the use of continuous emissions

monitoring data for compliance purposes with all data used to determine annual emission rates and data from steady state operations to determine compliance with short-term emission rates.

### **Relief Sought**

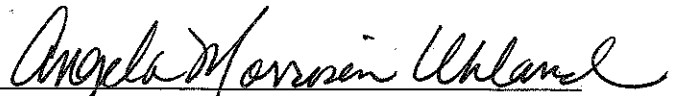
18. For the foregoing reasons, Petitioner prays that
  - a. the Draft Permit be revised as follows:
    - (i) Proposed Condition 3.B.7 should be revised to read as follows:
      - a. Incoming unprocessed materials shall be stored in piles in a manner to ensure a first-in, first-out system, generally described as follows: An automated stacker reclaimer system will be used. The system will be mounted on a drive shaft running through the length of the storage building. The system will begin developing a feedstock pile at one end of the storage area. When that first portion of the pile reaches a certain height, the stacker will continue to build the pile horizontally until the full length of the pile is established. The system will then move back to the starting point and reverse itself to de-construct the pile on a first-in first-out basis. When new feedstock arrives, it will be added to the storage pile, starting with the last built area. The system will continue to rebuild the pile in this manner, so that management of the feedstock is always managed as first-in first-out.
      - b. The feedstock storage area must be covered and include a fire suppression system.
      - c. The storage sites shall be level and on firm ground.

- (ii) Proposed Condition 3.E.2 should be revised to include the following at the end of the condition: “onsite. Tars unsuitable for combustion may be stored in the gasifier/combustor vessel until removed for proper offsite disposal.”
- (iii) Proposed Condition 3.F.11 should be revised to establish 50 ppmvd (30-day rolling average) and 187.6 ton-per-year limits for carbon monoxide emissions and 32.5 ppmvd (30-day rolling average) and 167.4 ton-per-year limits for nitrogen oxides emissions, with compliance to be determined using only continuous emissions monitoring data. No limits should be established in units of pounds per hour. Continuous monitoring data obtained during periods of authorized startup, shutdown, and malfunction operations shall be used only for determining compliance with annual emissions limits. Compliance with short-term limits shall be determined based on steady state operations.

- b. the Division of Administrative Hearings conduct a formal administrative hearing; and
- c. such other relief be granted as may be proper.

Respectfully submitted this 4<sup>th</sup> day of December, 2008.

HOPPING GREEN & SAMS, P.A.



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Attorneys for BIOMASS GAS AND ELECTRIC  
OF TALLAHASSEE, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the following by  
U.S. Mail on this 4<sup>th</sup> day of December, 2008:

Jack Chisolm  
Deputy General Counsel  
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Attorney

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