

BEFORE THE FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

DEPT OF ENVIRONMENTAL
PROTECTION

DEC 02 2008

OFFICE OF
GENERAL COUNSEL

John Gibby
4887 Gum Road
Tallahassee, FL
32304

Petitioner

Case No.
FDEP File No. 0730109-0001-AC

v.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondent

AMENDED

**PETITION FOR ADMINISTRATIVE HEARING
PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES**

Petitioner, John Gibby, hereby petitions for an administrative hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, challenging Respondent, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S ("FDEP"), approval of Biomass Gas & Electric of Tallahassee, LLC's ("BG&E") application for an air pollution construction permit which authorizes the construction of a nominal 42 megawatts biomass-fed integrated gasification and combined cycle power plant called the Tallahassee Renewable Energy Center. In support thereof, CONCERNED CITIZEN states as follows:

The Parties and Notice of Agency Action

(a). The name and address of the affected agency is the FDEP, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. The telephone number of the Agency is (850) 245-2118.

(b). The name, address, and telephone number of the petitioner:

John Gibby
4887 Gum Road
Tallahassee, FL
32304
The telephone number is (850) 576-2062.

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The name, address, and telephone number of the petitioner's representative, if any:

None at this time.

The address for service purposes during the course of the proceeding:

John Gibby
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The petitioner's substantial interests are affected by the agency determination:

1. As acknowledged by BG&E, this plant will release pollutants including particle pollution, which can increase my risk as well as other residents of Tallahassee to developing heart disease, stroke, brain inflammation, lung disease and increase risk of developing cancer. The more air pollution, the more medications I may have to pay for and the sicker I and others could become. I have a right to breathe clean air and to drink clean water. Glenn Farris's previous involvement with the McNeil Generating system in Burlington, Vermont indicates a history of poisonous emissions.

By approval of the air construction permit, BG&E's permitted facility will emit air pollutants that will have an immediate and real impact on the Petitioner's substantial interest.

2. For a party to have standing to challenge proposed agency action pursuant to Sections 120.569 and 120.57(1), Florida Statutes, the party must demonstrate its substantial interest are determined or affected by the proposed agency action. This requirement is met when a party demonstrates that, as a result of the agency action, it will suffer an injury in fact, of sufficient immediacy to entitle it to an administrative proceeding on the action and the substantial injury that would result from the agency action is of the type or nature the administrative proceeding is designed to protect. [AgriCo Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d. DCA 1981).]

3. As a resident of Leon County and working in the vicinity of the proposed facility site, the Petitioner's substantial interest is being determined in this proceeding. Further, the substantial injury that will result by the presence in the outdoor atmosphere of the state of any one or more substances or pollutants in quantities which are or may be harmful or injurious to human health or welfare, animal or plant life, or property, or unreasonably interfere with the enjoyment of life or property, including outdoor recreation, §62.210.200(12), F.A.C., such injury that this administrative proceeding is designed to protect. Therefore, the Petitioner has standing to challenge FDEP's decision to approve BG&E's application for an air pollution construction permit.

(c) 4. FDEP issued a written notice of intent to issue draft air Construction Permit on October 27, 2008. The Petitioner received FDEP's written notice of intent to issue a Draft Air Construction Permit by electronic mail on or about October 28, 2008, pursuant to Florida Statute §120.60(3). By operation of law, this Petition is filed within a timely manner.

(d). A statement of all disputed issues of material fact

1. BG&E has not shown outside laboratory data, nor 3rd party independent verification of their emissions data nor any of test data which support their emission claims.

2. The Petitioner disputes the determination by FDEP that the applicant, BG&E, has shown that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules adopted by the department in accordance with Florida State Statute 403.087.

3. The applicant, BG&E failed to provide reasonable assurance that the operation of the proposed facility will not adversely impact air quality and failed to provide reasonable assurance that the project will not cause or contribute to a violation of a state or federal ambient air quality standard.

(e). A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action:

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1. The applicant, BG&E, has not adequately demonstrated or proven that the proposed project will not adversely impact or exceed air quality standards set forth in Florida Statutes 403.087

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2. BG&E has not demonstrated that they will not significantly pollute regional air quality as there is no successful biomass plant on which to model their claims

3. Reasonable assurance has not been demonstrated by the applicant, BG&E, in their Application and in the request for additional information.

4. Reasonable assurance has not been demonstrated by FDEP in the technical review due to technical errors.

5. The Proposed Draft Permit and Technical Evaluation and Preliminary Determination contain several provisions, information and data that warrant clarification.

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes:

The Petitioner contends that:

1. The 2008 Florida Statutes and
2. Current Air Rules

The Florida Administrative Code Chapters are: 62-4, 62-204, 62-210, 62-212, 62-213, 62-214, 62-242, 62-243, 62-252, 62-256, 62-257, 62-281, 62-296, and 62-297 may require reversal or modification of the agency's proposed action.

The alleged facts relate to the specific rules or statutes.

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The Petitioner requests the following action to be taken: by The Florida Department of Environmental Protection:

~~Rule 28-106.209, F.A.C. Pre-hearing Conferences~~

~~At any time after a matter has been filed with the agency, the presiding officer may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibilities of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a prehearing stipulation.~~

This request is filed as a protective measure to insure petitioner's substantial interests are NOT affected by the agency determination.

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It is the petitioner's desire to avoid the need for a formal administrative hearing.

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1. Petitioner requests that a formal hearing be scheduled to contest the evidence put forth by the applicant and The Florida Department of Environmental Protection, and that at the conclusion of that hearing the Air Construction Permit (FDEP File No. 0730109-001-AC) be denied.

Respectfully submitted this 40th 02th day of December 2008.

Concerned Citizen

John Gibby 12/02/2008

John Gibby
4887 Gum Road
Tallahassee, FL
32304

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the following by U.S. Mail on this 10th 02th day of December, 2008:

Mr. Glenn Farris, President and CEO
Biomass Gas and Electric of Tallahassee, LLC
3500 Parkway Lane, Suite 440
Atlanta, Georgia 30092

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