

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**JOHN GIBBY,**

**Petitioner,**

vs.

**OGC CASE NO. 08-2680**

**BIOMASS GAS AND ELECTRIC OF  
TALLAHASSEE, LLC, and  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,**

**Respondents.**

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**ORDER DISMISSING PETITION WITH LEAVE TO AMEND**

On November 10, 2008, the Department of Environmental Protection (Department) received from the Petitioner, John Gibby (Petitioner), a petition for administrative hearing (Petition). The Petition challenges the Department's decision to issue an air permit, permit number 0730109-001-AC, to Biomass Gas and Electric of Tallahassee, LLC, to construct an integrated gasification and combined cycle unit alternative energy facility in Leon County, Florida.

Rule 28-106.201(2), Florida Administrative Code, and the notice provided to the Petitioner explain what must be included in a petition for a formal administrative proceeding. The Petition considered in this order does not comply with the cited rule or with the notice provided to the Petitioner. Therefore, the Petition does not contain sufficient information to enable the Department to determine whether a formal administrative proceeding should be held. Specifically, the Petition does not include the following:

(a) A statement of the relief sought by the Petitioner, stating precisely the action that the Petitioner wants the Department to take with respect to its proposed decision.

The relief that the Petitioner seeks – a prehearing conference pursuant to Rule 28-106.209, F.A.C. – is not relief directed to the Department’s proposed decision. This rule simply describes a procedural device a presiding officer may employ during an administrative process challenging a decision. It is also unclear whether the Petitioner is actually requesting a hearing in view of the statement on page five (5) of the Petition.

In view of the above, the Petition must be dismissed as required by Section 120.569(2)(c), Florida Statutes.

IT IS THEREFORE ORDERED:

A. The Petition is DISMISSED, without prejudice. The Petitioner is granted leave to file an amended petition providing the additional information listed above. Any amended petition must comply with all the requirements of Rule 28-106.201(2), Florida Administrative Code.

B. Any amended petition must be filed (received) in the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, by the close of business (5pm) on December 4, 2008.


C. This order constitutes final agency action of the Department, unless a timely amended petition is filed in compliance with this order.

Any party to this proceeding has the right to seek judicial review of this order under Section 120.68, Florida Statutes, by the filing of a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the

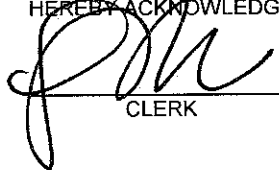
appropriate district court of appeal. The notice of appeal must be filed within thirty days after the date this order is filed with the clerk of the Department.

DONE AND ORDERED this 20<sup>th</sup> day of November, 2008, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
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THOMAS M. BEASON  
General Counsel  
3900 Commonwealth Boulevard  
Mail Station 35  
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,  
FLORIDA STATUTES, WITH THE DESIGNATED  
DEPARTMENT CLERK, RECEIPT OF WHICH IS  
HEREBY ACKNOWLEDGED.

  
\_\_\_\_\_  
CLERK

11/20/08  
DATE

**CERTIFICATE OF SERVICE**

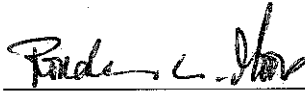
I CERTIFY that a true copy of the foregoing, Order Dismissing Petition with Leave to Amend, was sent via United States Postal Service to the following on this 20<sup>th</sup> day of November, 2008:

John Gibby  
4887 Gum Road  
Tallahassee, FL 32304

and via electronic mail to:

Angela Morrison Uhland  
123 South Calhoun Street  
Post Office Box 6526  
Tallahassee, FL 32314  
[AUhland@hgslaw.com](mailto:AUhland@hgslaw.com)

*Attorney for Biomass Gas and  
Electric of Tallahassee, LLC*



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cc via electronic mail:  
Trina Vielhauer – DEP  
Al Linero – DEP