

Chronology of Activities

OGC Number District County

Style of Case

Program Area Mode

Lead Attorney Status

Forum Name Forum Case Number

Permit Appl Final Order Number

Date *	Code	Activity Description
11/07/2008	AA	ASSIGNED TO LEAD ATTORNEY JACK J CHISOLM
11/07/2008	ACO	ADMIN. CASE OPENED IN OGC
11/07/2008	REX1	RECEIVED FIRST REQUEST FOR EXTENSION OF TIME
11/14/2008		ORDER GRANTING REQUEST SENT OUT
11/18/2008	EXP1	FIRST EXTENSION EXPIRES TODAY
11/18/2008	REX2	RECEIVED SECOND REQUEST FOR EXTENSION OF TIME
11/20/2008		ORDER GRANTING SECOND REQUEST UNTIL 12/04/08
12/02/2008	AR	RE-ASSIGNED TO LEAD ATTORNEY RONNI L. MOORE
12/04/2008	EXP2	SECOND EXTENSION EXPIRES TODAY
12/04/2008	RPFH	PETITION FOR FORMAL HEARING RECEIVED

Best Available Copy

Big Bend Climate Action Team
email: bbcat@comcast.net web: www.bbcat.org

Mr. Scott Woolam
Bureau Chief
Division of State Lands
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, FL 32399



Dear Mr. Woolam:

This is to confirm that the Big Bend Climate Action Team is pleased that the City of Tallahassee is contracting for the provision of some electricity from biomass.

Earlier, we submitted a request to the City that its contract with any biomass provider should include certain guidelines as to what feedstocks are acceptable and how they should be gathered from public land. Provided that the description of feedstocks in the contract is consistent with the proposed guidelines, we are pleased to support the contract.

We do not endorse specific companies, but we are grateful for the opportunity we have been given to learn about and offer recommendations regarding the proposal now under consideration from Biomass Gas and Electric.

Truly yours,

Ellie Whitney
for the Big Bend Climate Action Team

9/2/2006

The Big Bend Climate Action Team is a group of citizens concerned about the disruption being caused by global warming and its increasingly severe impacts on Florida and, in particular, on Florida's Big Bend region. Team members have been studying how governments and private enterprise can best act to solve these problems. The Team asserts that it is necessary to address first three high-priority areas: energy production by utilities, energy demand by buildings, and fuel use by vehicles. The need is to shift from reliance on fossil fuels with their accompanying global-warming emissions to reliance on conservation, increased energy efficiency, and clean energy alternatives.

BBCAT's mission:

To help local governments, businesses, and citizens in Florida's Big Bend do their share to abate climate change by reducing fossil fuel use and promoting energy efficiency, conservation, and renewable fuels in power plants, buildings, and vehicles.

*Biomass*

Proposal to the City of Tallahassee Two 75MW Biomass Power Projects

Biomass Gas & Electric proposes to develop, design, build, own and operate, for the City of Tallahassee, a biomass fueled power project. The first project will be for 35 MW of base load electricity plus 60 decatherms of natural gas per hour. The City has the option to increase the size of the facility or for gas or thermal needs dependent upon the needs of the City. These project will be fueled using biomass, waste biomass and waste products of a biomass nature that are generated in the surrounding communities.

An outline of this proposal is as follows:

Single Source Responsibility - BG&E will provide all development activities, project permitting, financing, design, construction, ownership and operations of both biomass projects.

Location - The 35MW project will be located on a mutually agreed to site owned by Florida State University (FSU). The site will be offered under a long term lease (30-50 years, dependent upon the Board of Trustees of the Internal Improvement Trust Fund) to the City and subleased to the project by the City on substantially the same terms by and between FSU and the City.

Potential for a Hydrogen Research Center - This project will offer an excellent basis to locate a hydrogen research center in close proximity because the project will generate syn-gas from which hydrogen can be derived. BG&E desires and plans to participate with FSU in hydrogen research and in the establishment of the International Hydrogen Research Center similar to the National High Magnetic Lab

Power Purchase Agreement - The City of Tallahassee will purchase the power produced by the two new 35MW biomass projects under the terms proposed in the attached Term Sheet and provided to local customers or sell it on the open market.

Facility Design - Shall consist of multiple gasification units capable of handling and processing biomass materials to produce synthetic gas, which will be used to generate electric power on a 24/7 reliable basis consistent with Utility Industry Standards except for mutually agreed upon shut down periods for maintenance and/or any other required shut down times. The project will be constructed with appropriate contractor guarantees and warranties on a fixed priced basis. The contractors guarantees will extend to schedule, price, output of facility for both energy and emissions and contain liquidated damages for failure.

National High Magnetic Field Laboratory (NHMFL) – The high electrical demand placed on the electric grid by the NHMFL requires that the City of Tallahassee shall negotiate an agreement with FSU to accommodate all parties' needs in the best interest of the entities/customers.

Interconnection Study - The project sponsors will engage the City of Tallahassee to conduct an electrical interconnection study to determine the technical requirements for interconnecting the 35MW projects to the electrical grid. The project will interconnect at the nearest point to the City's transmission grid.

Ownership Transfer Option – The City of Tallahassee will have the option to purchase the projects at the fair "market price" after the 10th anniversary of Commercial Operation. Such "market value" price will be determined by an independent accounting firm assessing the value based upon the projects' useful life and future cash flows.

Renewable Energy Credits, Green Tags, Emission Allowances, and Other Environmental Attributes– Any renewable energy credits, green tags, emission allowances or emission credits generated by the project shall be split 50%/50% by and between the City and the project.

Societal Benefits – A number of societal benefits are generated by this type of a project:

- **Employment** – will provide for over 100 construction jobs over the construction cycle. Will also provide long term employment for plant staff of approximately 20 employees.
- **Biomass Feedstock** – will take waste biomass materials from local communities and relieve the need for additional landfill space. Will provide a beneficial use for biomass produced through active forest management.
- **Feedstock Costs** – rather than have fuel dollars sent to another state or overseas, all money spent on biomass fuels will be returned to the local economy creating a local flywheel of employment and economic growth.
- The expected emissions benefits would include that the plant is carbon neutral and has NOx and SOx savings versus fossil fired operations. Base upon the power portfolio mission the state of Florida a 35 MW facility would create emissions benefits by avoiding the production of 505 metric tons of NOx 1021 metric tons of SOx. Biomass renewable energy is considered "carbon" neutral (National Renewable Energy) and will result in the avoidance of 183,232 metric tons of carbon emissions a known greenhouse gas. According to the American Lung Association and the American Heart Association there are many potential benefits to renewable energy versus fossil fueled energy including but not limited to the lowering of child asthma rates in areas heavily powered by fossil fuels especially coal.
- Provide in excess of \$100,000,000 in development costs will be infused into the economy of the City of Tallahassee
- Provide for the establishment of an international research center would employ 10 or more world-class scientists and a budget in excess of \$600,000 per year with a construction budget of several millions of dollars.
- Provide the first energy plant of its type establishing a public/private partnership to serve the citizens of Tallahassee and promote research.

- Establish a state of the art research and energy center employing highly skilled individuals facilitating economic growth in the City of Tallahassee and Leon County.

Fuel Costs— Should the City wish to pursue expansion options there will need to be discussion about fuel cost increase due to increases in freight and additional competition for fuel resources from 2-3 75 MW equivalent projects as opposed to one project. In addition, each of these projects will take 500,000 gross tons of fuel out of the market and we will in effect be competing with ourselves should we not take certain steps to mitigate potential fuel increases. One approach would be as follows:

- To the extent fuel costs exceed \$13/ton the project will bear 20% of the increased fuel cost and the City 80% of the increased fuel cost up to \$20/ton. Costs in excess of \$20/ton will be fully transferred to the City through the fuel price component.
- We could increase the cost of power to the City by 5-7 cents per kWh to pay for the freight from southern Florida where BG&E could grow feedstock under long term agreements and therefore control the long term costs.
- We could build additional projects in south Florida and wheel the power into Tallahassee. Under this scenario we could possibly save money by having the plant near the feedstock and therefore lower our feedstock transportation costs.

Schedule and Milestones — The project execution is predicated on receipt of a financable Power Purchase Agreement from the City of Tallahassee. With that as the starting point, we expect to achieve the following schedule and milestones:

- Interconnection Study, Site Selection, Conceptual Design, Local Permitting — three-month period.
- Environmental Permitting Application and receipt of permits — six months.
- Financing Plan — will have funds available for construction when permits are received.
- EPC Contractor — will have construction efforts ready to commence when permits are received.
- Construction Period — twenty-four months.
- Plant In-Service Date — Thirty-three months from receipt of PPA.

From the desk of **Victoria Thompson**
Program Administrator
Bureau of Public Land Administration

Biomass

9/7/06

Tina + Joe:

Thanks for coming over
on Friday to discuss the Biomass
facility. We have sent the
attached note to Jerry Brooks (Water)
and Richard Judder (Waste) along
with the backup info.

We would appreciate your
input as soon as possible in order
to drop the agenda item.

Thanks

Dicki



Florida's Public Land Steward



**DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

**SCOTT E. WOOLAM
BUREAU CHIEF**

Phone: 850.245.2720
SunCom: 205.2720
Fax: 850.245.2761

Bureau of Public Land Administration
3800 Commonwealth Blvd., MS 130
Carr Building, Room 380
Tallahassee, Florida 32399-3000

E-mail address: Scott.Woolam@dep.state.fl.us

September 7, 2006

Thanks for speaking with me on the Biomass facility proposal. As you recall, a facility is proposed for state-owned property off Roberts Avenue in Tallahassee and we (Division of State Lands) must prepare an agenda item for the Board of Trustees seeking approval to sublease the property to the company.

Attached is info on the proposal that was provided by Virginia Wetherell and FSU. After you have a chance to review the documents, we would appreciate if you could provide us with specifics on the following for our Board of Trustees agenda item:

1. Any advantages vs disadvantages to a biomass facility in general and specifically in Tallahassee
2. Safety issues both pro and con
3. Any public benefits as they relate to your particular area of expertise in the Department (Air, Water or Waste)
4. Any concerns or questions you feel should be addressed prior to presenting the item to the Board of Trustees

I understand that some of your responses will be based on experience and general knowledge of the issue rather than specifics to this facility since there is no permit pending. Any Board action taken for use of the property would be subject to the facility receiving all applicable permits and approvals.

We anticipate having the agenda item before the Board on October 17. Can you or a member of your staff attend the pre-agenda staff meeting on Monday, October 2 in conference room A of the Douglas Building and the Cabinet Aides meeting at 9:00 on October 11 at the Capitol? (Staff meets at 8:00 in the Capitol cafeteria to discuss items before the 9:00 meeting.) Please let me (245-2806) or Vicki Thompson (245-2688) know who will be attending.

Thanks for your help and if you have any questions, please let me know.

A handwritten signature in black ink, appearing to read "Scott D. Johnson". The signature is written in a cursive style with a long horizontal line extending to the right.



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- Construction Period – twenty-four months.
- Plant In-Service Date – Thirty-three months from receipt of PPA.

From FSU

The Florida State University respectfully requests the following action by the Board of Trustees of the Internal Improvement Trust Fund:

Action requested: FSU requests the Board to grant to the FSU Board of Trustees the authority to sublease all or part of a 21.2 acre parcel currently under lease to FSU from the BTIITF. Said property to be subleased to a city, county, state, or federal agency for the purpose of constructing and/or operating an alternative energy facility and/or an alternative energy research facility.

Background of the parcel: The 21.2 acre parcel was originally part of approximately 700 acres acquired by the Florida State University and used as a dairy farm for the University (then, Florida State College for Women). The parcel is located on or near Roberts Road, in the vicinity of the FSU Alumni Village property. The 21.2 acres is bounded by two railroad lines, as shown by the attached map. The property has not been previously utilized by the University.

Proposed Use of the parcel: As more fully detailed in other documents, the City of Tallahassee seeks the property as a site for an alternative energy facility. In addition, the University may also develop an alternative energy research facility on the property.

Public Interest Aspects of the BG&E Project
[Rules 18-2.017 (49); 18-2.018 (1) (a), F.A.C.]

Demonstrable Criteria for Public Interest definition are: environmental, social, historical and economic benefits which would accrue to the public in general as a result of the proposed activity and which would clearly exceed all demonstrable environmental, social, historical and economic costs of the proposed activity.

Historically, this plot of land was part of a series of purchases executed by The Florida State College for Women, in the early 1930's. At that time, the property was part of the College's dairy farm. Its use as a farm was discontinued after World War II and was

subsequently dedicated to campus expansion in areas of academic programs (e.g., the College of Engineering), research (e.g., Innovation Park), graduate student housing (e.g., Alumni Village) and recreational (e.g., the golf course) purposes. This particular 21.2 acre tract, which was part of the dairy farm acquisition, has been left unused, due to its location between two rail tracks and its inaccessibility from the rest of the former farm property. The proposed project would allow this property to serve a useful purpose.

The project would contribute toward the region's environmental quality in a variety of ways. The re-use of locally generated biomass as fuel would necessitate a decreased need for land fills where the biomass might otherwise be deposited. Compared with fossil fuel plants, the emissions from this project would result in lower atmospheric loadings of nitric and sulfuric oxides yielding higher levels of air quality. The use of renewable biomass energy is carbon neutral, resulting in the avoidance of carbon dioxide gases, known greenhouse gases.

Economically, the project will provide jobs for a cadre of permanent employees of the plant and for employees of local firms called upon for maintenance and equipment supply functions. A larger number of jobs will be created for a limited time during the construction phase of the plant. An increased source of power near to our using community will mitigate future increases in costs for electric power.

From a societal standpoint, the lower levels of emissions from this project (versus other processes for producing energy) would provide benefits to the general public. Also, the establishment of a research center to continue to study improved technology of biomass generation will provide long term benefits in the form of further improved technologies for cleaner, less expensive energy sources. The local community will benefit as well through the increased economic activity that this project will bring.

CARLTON FIELDS

ATTORNEYS AT LAW

ATLANTA
MIAMI
ORLANDO
ST. PETERSBURG
TALLAHASSEE
TAMPA
WEST PALM BEACH

Nancy G. Linnan
850.513.3611 direct
nlinnan@carltonfields.com

215 S. Monroe Street, Suite 500
Tallahassee, Florida 32301-1866
P.O. Drawer 190
Tallahassee, Florida 32302-0190

850.224.1585
850.222.0398 fax
www.carltonfields.com

August 25, 2006

State of Florida Department of
Environmental Protection
Division of State Lands
Mail Station 130, Carr Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
ATTENTION: Diane Rogowski

VIA HAND-DELIVERY

Re: City of Tallahassee / Biomass Parcel on Roberts Avenue

Dear Diane:

This firm represents Tallahassee Biomass Gas and Electric in its efforts to place a biomass facility adjacent to Roberts Avenue on property currently leased by the Trustees to Florida State University. I understand Betty Steffens has been talking to Scott Woolan and there will be a proposal considered in the near future by the Trustees to allow this property to be subleased to the City of Tallahassee for use as a biomass electrical generating facility. I've been asked to provide you with information concerning the approved land use for the property and what information we have on the site.

The property is located in the City of Tallahassee and consists of two parcels that lie on opposite sides of Roberts Avenue. **Attachment 1** contains an aerial view and a map showing surrounding issues. For purposes of the biomass plant, the City is interested in the parcel on the north side of Roberts Avenue, directly across from Innovation Park. It is designated Mixed Use B on the Future Land Use Map and is zoned as an M-1 Light Industrial district. Uses include utilities and heavy infrastructure and we believe the biomass electric generating facility would be consistent with this use. The parcel is also located within the Lake Bradford Sector Plan but we have determined that use of this site for this specific purpose is not incompatible with any of the goals of the sector plan. If you would like our more detailed analysis of the land use we would be happy to provide it.

Additionally, what you might be more interested in is that the Tallahassee-Leon County Comprehensive Plan contains language dealing with the Southern Strategy Area providing:

Where environmentally, economically and geographically practical, heavy infrastructure uses such as wastewater treatment plants, airports, correctional facilities and power plants which serve larger than neighborhood areas, shall be located in areas outside of the Southern Strategy Area.

(Policy 11.4.1)

Pursuant to the requirement, we performed a search of possible alternative sites outside of the Southern Strategy Area. We sat down with our client and determined that there are really four requirements that must be met for the plant to be sited. It must be adjacent to a railroad track; it must be proximate to an existing electric substation; the site must be at least 15 acres in size; and it must have the correct zoning which would be M-1 Light Industrial. As you see from the attached matrix (**Attachment 2**), which displays all sites within the City of Tallahassee meeting two of the four requirements, there are only two viable sites.

We have discussed with the City use of the Hopkins Power Plant and there are problems that are not apparent from the matrix. First, as the matrix states, the site is constrained due to existing transmission lines and the need for future expansion of the plant. More importantly, were the biomass facility placed there, its emissions would be aggregated with the emissions of the plant and that could cause the City to be out of compliance with its permitted air emissions levels. That leaves only the Roberts Avenue site as being feasible.

In fact, as we look further at this site, the use of this site is even further limited in any circumstance which is probably why FSU has never used it over these years. The site is surrounded by railroad lines, has an electric substation on it and has a gas line on it. Use is limited to light industrial and the only current access is a residential road. Under City of Tallahassee policies, one cannot bring in industrial truck traffic over a road such as Lipona, the residential road. Use of this site will require negotiated access over a CSX rail line for any trucks to use the site. And, while rail is certainly the preferred delivery system for the wood pallets, there will be a need for trucks.

Finally, the ultimate purpose of the sublease is to build a biomass facility to assist the City Tallahassee by providing alternative energy sources to its utility which, in turn,

August 25, 2006

Page 3

provides power to State agencies located here and to assist FSU in its research on use of hydrogen as a separate energy source. Both of these issues are goals of the Governor's Energy Plan. I understand that the Trustees initially look even to governments for some commitment to pay for use of state lands for income generating facilities. However, on the other hand, I would ask that you consider the extraordinarily high level of public interest provided by this project, the fact that use of this site is also extraordinarily limited due to site configuration and access; the expense to access across an existing CSX line; and finally, that the sublease implements and furthers more than one of the State Energy Plan goals and policies.

If you have any questions, I can be reached at (850) 224-1585 or nlinnan@carltonfields.com.

Sincerely,

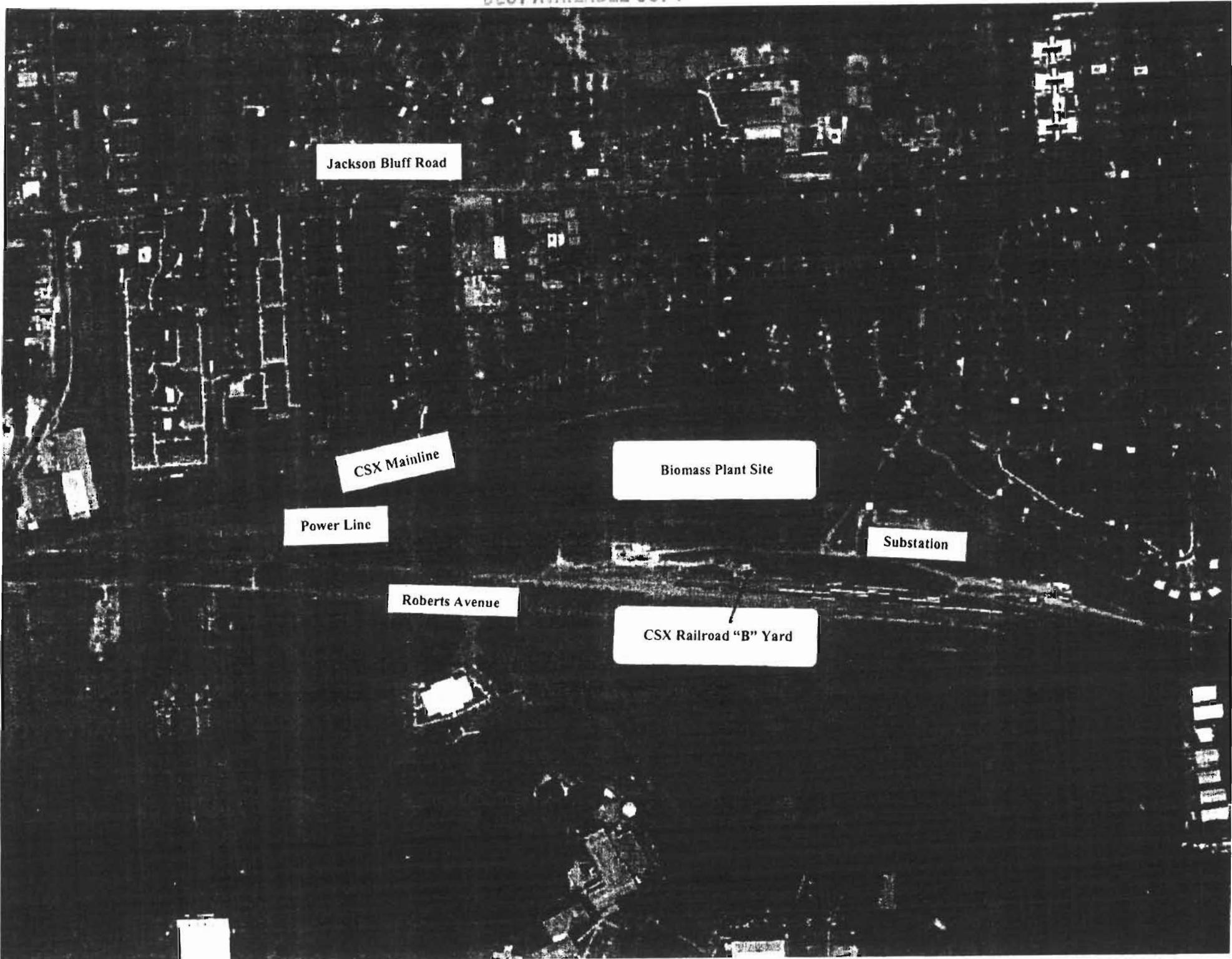

Nancy G. Linnan

NGL/bno

cc: Virginia Wetherall
Jim English

ATTACHMENT 1

AERIAL AND MAP OF
PARCEL NUMBER 4102209020000



Jackson Bluff Road

CSX Mainline

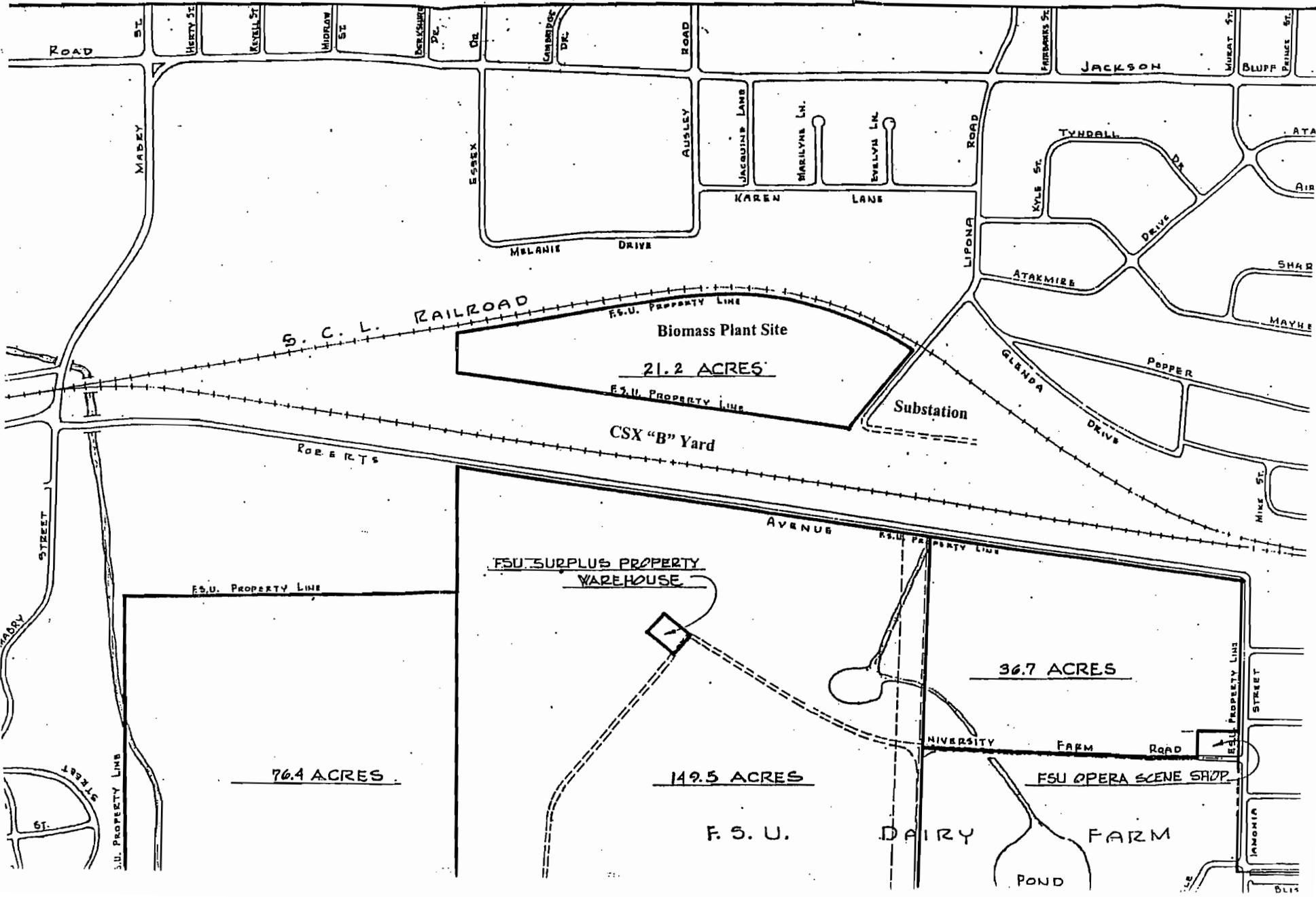
Power Line

Roberts Avenue

Biomass Plant Site

Substation

CSX Railroad "B" Yard

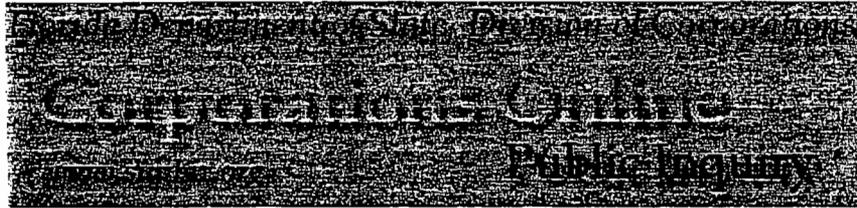


ATTACHMENT 2

MATRIX OF POTENTIAL SITES
PREPARED BY RICHARD WINTERS, AICP

CRITERIA CONSIDERED

		Adjacent to Railroad	Proximate to Existing Substation	15 Acres Minimum Site	Correct Zoning
SITES	Hopkins Power Plant	Yes. The site is adjacent to the CSX mainline. Two spurs lead into the site. The Biofuel plant could potentially be built adjacent to one of the spurs or require only a few hundred feet of track.	Yes. The plant could potentially be built almost adjacent to the substation. This would require building several hundred feet of track. Conversely, if the plant were to be built adjacent to an existing spur track, several hundred feet of power line would be required.	Maybe. There may not be 15 acres available due to the location of high-tension lines running across the site and the need for future expansion of the plant.	Yes. Property is zoned M-1 Light Industrial, which will accommodate the proposed power plant.
	"B" Yard (Roberts Avenue)	Yes. Adjacent to CSX mainline and CSX "B" yard. Best rail access from yard via several hundred feet of new track. Plant could be serviced by the yard crew or one of four local trains that work out of the yard.	Yes. Substation is located no more than 300 feet from this site.	Yes. Over 21 acres available.	Yes. Property is zoned M-1 Light Industrial, which will accommodate the proposed power plant.
	Substation at 1968 N. Mission Road South of I-10	Yes. Property directly adjacent to branch line to Bainbridge. Will require a few hundred feet of new track.	Yes. Directly adjacent, but site appears to be located within lineman training area on city property where the substation is.	No. Less than five acres available, if any.	No. Property zoned RM-1 (Multifamily)



Foreign Limited Liability
BIOMASS GAS & ELECTRIC, LLC

PRINCIPAL ADDRESS
3500 PARKWAY LANE, SUITE 440
NORCROSS GA 30092

MAILING ADDRESS
3500 PARKWAY LANE, SUITE 440
NORCROSS GA 30092

Document Number
M06000001756

FEI Number
582651391

Date Filed
03/27/2006

State
GA

Status
ACTIVE

Effective Date
NONE

Total Contribution
0.00

Registered Agent

Name & Address
ASHBURN, ROBERT C 1009 SAN LUIS RD. TALLAHASSEE FL 32304

Manager/Member Detail

Name & Address	Title
FARRIS, S. GLENN 3500 PARKWAY LANE, SUITE 440 NORCROSS GA 30092	MGR

Annual Reports

Report Year	Filed Date
-------------	------------

Vielhauer, Trina

From: Tedder, Richard
Sent: Monday, September 18, 2006 5:32 PM
To: Rogowski, Diane; Woolam, Scott
Cc: Thompson, Vicki; Brooks, Jerry; Vielhauer, Trina; Kahn, Joseph; McGuire, Chris; Goddard, Charles; Martin, Lee; Clark, Jan Rae; Guyet, Allan
Subject: RE: BioMass agenda item - scheduled for October 17 Cabinet meeting

Scott,

This is in response to your September 7 package about the biomass facility proposal for Tallahassee by Big Green Energy (BG&E). Since the proposed facility is to be located on state-owned land you are preparing an agenda item for the Board of Trustees seeking approval to sublease the property to BG&E. You have asked for comments on four items. I have listed them below with our comments following.

1. Any advantages vs. disadvantages to a biomass facility in general and specifically in Tallahassee.

A facility like this could be helpful in managing vegetative debris that is generated in the Tallahassee area (assuming that is one of the feedstocks they plan to use). With the hurricanes the last two years, we have had a considerable amount of vegetative debris that was managed by disposal. This process could allow the energy value to be recovered and use less landfill space.

As to disadvantages, the type of technology proposed for this facility is not clear. BG&E seems to offer two processes. One is a gasification process (FERCO Enterprises SilvaGas) and the other is a pyrolysis process (BCT Klepper Bioconversion). They say they plan to install gasification units so gasification may be their approach, but we really do not have enough information about what they are proposing for the technology. More details are needed on the type of feedstocks proposed, how the facility would be operated, what will they do with the waste materials generated by the process, etc. The proposed site has an area of 21.2 acres. Will this be sufficient area to manage the wastes they need for their process? If not, it could result in significant complaints and potential environmental problems with the staging of the wastes prior to processing.

2. Safety issues both pro and con.

We have been told that some pyrolysis facilities in the past have exploded. I'm not suggesting this would happen with the BG&E process (we don't even know if they plan to use this technology), but it does suggest that we need to be cautious. There are also risks from the increased traffic flow. There also may be a potential for uncontrolled spontaneous combustion of biomass in the storage areas before processing.

3. Any public benefits as they relate to your particular area of expertise in the Department (Air, Water or Waste).

I believe a successful biomass facility in the Tallahassee area would be helpful in the

management of the large amounts of vegetative wastes that are generated here.

4. Any concerns or questions you feel should be addressed prior to presenting the item to the Board of Trustees.

They need to identify or clarify the type of technology they want to use. They also need to identify how the facility will be operated, what will be the sources of the wastes, what flowrates and types of wastes will be feed into the process, what types of wastes will be generated and how those waste will be managed. More details are needed on the operation and transportation associated with: (1) biomass storage, processing, and handling; dust, noise, odors, fires, smoke, and additional traffic concerns (2) biomass gas collection, storage, processing, and handling; odors and fire concerns, and (3) biomass residuals storage, processing, and disposal; odors, noise, dust, runoff, and additional traffic concerns.

Is this a Comprehensive Plan issue that needs to be reviewed by the Department of Community Affairs? You may want to contact them if you have not.

I hope this helps some. Take care. :- RT

Richard B. Tedder, P.E.
Program Administrator
Solid Waste Section
Department of Environmental Protection
2600 Blair Stone Road, MS# 4565
Tallahassee, FL 32399-2400
Phone: 850/245-8735
FAX: 850/245-8811
Email: richard.tedder@dep.state.fl.us

From: Rogowski, Diane
Sent: Monday, September 18, 2006 10:40 AM
To: Brooks, Jerry; Tedder, Richard; Vielhauer, Trina; Kahn, Joseph
Cc: Woolam, Scott; Thompson, Vicki
Subject: BioMass agenda item - scheduled for October 17 Cabinet meeting

This email is a follow up to Scott Woolam's September 7, 2006, package he sent to you requesting comments regarding an upcoming agenda item we have on BioMass Energy's proposal to build an energy plant on state-owned property off Roberts Avenue in Tallahassee. We will be submitting our draft item this Wednesday (9/20) and would like to include any comments you may have. Please let us know your thoughts. Thank you.

d.

Diane C. Rogowski ("Rogo")
Senior Acquisition Review Agent
Division of State Lands
Suite 380M, Carr Building, MS#130
3800 Commonwealth Boulevard
Tallahassee, FL 32399-3000
(850) 245-2720

Gibson, Victoria

From: System Administrator
To: richardgraggiii@mac.com
Sent: Friday, October 24, 2008 10:41 AM
Subject: Undeliverable:BG & E Meeting of 10/23/08 -- Attendees List

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Subject: BG & E Meeting of 10/23/08 -- Attendees List
Sent: 10/24/2008 10:41 AM

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richardgraggiii@mac.com on 10/24/2008 10:42 AM

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BGE

Name	Affiliation	Contact info
Trina Vielbauer	DEP - Air	850/488-0114
Amy Graham	DEP	850/245-2112
VINCENT SALTERS	FSU	salters@magnet.fsu.edu
SCOTT HANNAGIS	Magnet Lab - FSU	sth@magnet.fsu.edu
RON SAMP	Self-employed	RONSMFF@AOL.COM
Heinz Luebkemann	FSU Retired	h.luebkemann@comcast.net
SHERETTE C. STOKES IV	FAMU - ENVIRONMENTAL BUSINESS INSTITUTE	shereitte@gmail.com shereitte.stokes@famuc.edu
RICHARD GRAGG	FAMU - EST - CENTER FOR ENV. EQUITY & JUSTICE	richard.gragg@famuc.edu richardgraggiii@mac.com
Julia Ferris	DEP - Air	521 5549
BOB FOLFORD	Citizen	bobfolford@metally.com
ANITA L. DAVIS	FCAN & JGNA	ANITALD@EMBARQMAIL.COM
Susie Caplowe 385-6160	Florida League of Conservation Voters	Susiecaplowe@comcast.net
Joy Towles Ezell	President	Hopeforcleanwater@yahoo.com
David Read	DEP - Air	850-414-7268

BGE

Big Bend Climate Action Team (BBCAT)
Tallahassee, Florida
Website: www.bbcatt.org ; Email: BigBendCat@comcast.net

June 19, 2008

Ms. Anita Favors-Johnson
City Manager
City Hall, 300 South Adams Street
Tallahassee, FL 32301

Dear Ms. Favors-Johnson:

We of the Big Bend Climate Action Team have been following with interest the City's negotiations with BG&E to buy electricity made from gasified biomass . It seems a promising venture in several ways: it adds cleaner energy to the City's portfolio, it helps to diversify the City's fuel mix, it will provide far more local jobs than electricity made from imported fossil fuels, and it enables evaluation of this technology for greater use in the future.

We endorse this plan, provided that the feedstocks used to fuel the plant are selected according to the guidelines we provided to David Byrne on July 21, 2005 (copy attached). The City's contract to purchase electricity from BG&E (contract no. 999195) contains similar provisions in Appendix A (pp. 33 and 34 of that contract), but does not exclude mixed municipal solid waste (MMSW)—a provision that we think important. We also think it desirable to spell out how the provisions in the contract will be monitored and enforced.

Can the City modify the contract to exclude MMSW? And does the City have a plan to make sure that the selection of feedstocks will be monitored and the contract's provisions will be enforced? Please be so kind as to address these concerns.

Thank you.

Truly yours,

Steve Urse and Elinor Elfner
For the Big Bend Climate Action Team

Copies to: Cynthia Barber, Director, Environmental Policy and Energy Resources Department
David Byrne, Director, Energy Services
Ben Cowart, Power Marketing Manager, Tallahassee Municipal Utilities
S. Glenn Ferris, President, BG&E

Steve Urse contact: 1118 Waverly Road, 32312; 385-2864
Elinor Elfner: 7 Gulf Breeze Court, Crawfordville, 32327; 926-1026 or 524-1026

Original Letter to City Energy Services about Biomass Feedstock Criteria (copy)

21 July 2005
Mr. David Byrne
City Energy Services
408 N. Duval Street
Gemini Building, 5th Floor
Tallahassee, FL 32301

Dear David:

The Big Bend Climate Action Team (BBCAT) supports adding electricity from clean biomass as part of a mix of clean energy resources that reduces the need for fossil fuels.

BBCAT understands you are negotiating a purchase power contract whereby BG&E would provide electricity from biomass gasification to the city. We ask that this contract include the following contractual provision.

CONTRACTUAL PROVISION:

The electricity BG&E provides under this contract must be from biomass feedstocks that fall into the following four categories and meet the standards stated for these categories.

Categories

- 1) Clean wood waste.
- 2) Wood obtained from forests
- 3) Post-consumer (used) paper products.
- 4) Plant material harvested from crops.

Standards

- 1) Feedstock from the "clean wood waste" category includes clean wood waste that is taken from yard landscaping trimmings, right-of-way-tree trimmings, sites being cleared for development, and storm deadfall. Treated lumber is excluded.
- 2) Feedstock from the "wood obtained from forests" category must meet the following standards:
 - a) The harvesting of woody biomass from publicly owned forests may not jeopardize ecologically sound forest management and must:
 - i) Be consistent with the management plans adopted by forest managers to restore and maintain all forests in sustainable condition.

ii) Facilitate, and not impede, the reintroduction of fire as the preferred agent of pine forest management.

iii) Continue only until natural fire regimes can be re-established. Long-term, repeated mechanical biomass removal may occur only along the wildland-urban interface where fire cannot practically be reintroduced.

iv) Be limited to small-diameter trees and mid-story vegetation. All pine trees greater than ten inches in diameter at breast height must be left in place unless sound forest management principles indicate that thinning of these trees is necessary for the health of the forest.

b) Persons harvesting woody biomass from publicly owned forests:

i) Must use existing roads. The need for biomass may not be used to justify the construction of any new forest roads.

ii) May use only mechanical equipment on each site which is specific for that site and which no more than minimally disturbs ecosystem elements such as the groundcover, the slope of the land, and the natural flow and purity of water. The parties agree that it is most often appropriate to use equipment with low-pressure tires, tracked tires, or other low-impact harvesting machinery, such as cut-to-length equipment.

3) Feedstock from the "post-consumer (used) paper products" category is acceptable, provided that no better use (such as recycling) can be made of it locally.

4) The "harvested from crops" category includes agricultural crops, byproducts or residues of agricultural crops except that:

a) Plant material may not be harvested from land that is part of a conservation program if such harvesting is inconsistent with the environmental purposes of that program.

b) No invasive plants may be grown to provide biomass feedstock for electricity provided under this contract. A plant that is invasive in central and south Florida, such as *Arundo donax*, may be grown locally only if it is first shown not to be invasive in north Florida. In determining whether a plant is invasive the parties shall seek and implement recommendations from the Florida Exotic Pest Plant Council (<http://www.fleppc.org/>).

BG&E has advised it does not intend to use mixed municipal solid waste as a feedstock. BBCAT asks that the contract also specify that mixed municipal solid waste (MMSW) is not an acceptable feedstock. The use of MMSW to generate electricity can produce discharges of dioxin, mercury, and other pollutants to the environment. If at a later time MMSW is considered for use in a biomass plant generating electricity for Tallahassee, the process should be reviewed and judged by a public interest group such as the Big Bend Climate Action Team with expertise in environmental quality and clean energy.

Thank you for your consideration of this request. If you have questions, please contact Elinor Elfner at 524-1026 or Ellie Whitney at 508-4288.

Sincerely,

Deb Swim
For the Big Bend Climate Action Team

Copies to:
Gary Brinkworth, City Electric
Paul Clark, City Electric
S. Glenn Farris, President and CEO, BG&E

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fusaro@mail.math.fsu.edu [+], edde@nettally.com [+],
brianlupiani@yahoo.com [+], rahamgdale.sandeep@mail.dc.state.fl.us
[+], kwendland@capmed.org [+], mpohl@fsu.edu [+],

To: mputland@comcast.net [+]

Date: Sun, 20 Jul 2008 09:54:19 -0400

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From: ronsaff@aol.com [+]

Subject: [Tss-copa] Letter to editor-biomass

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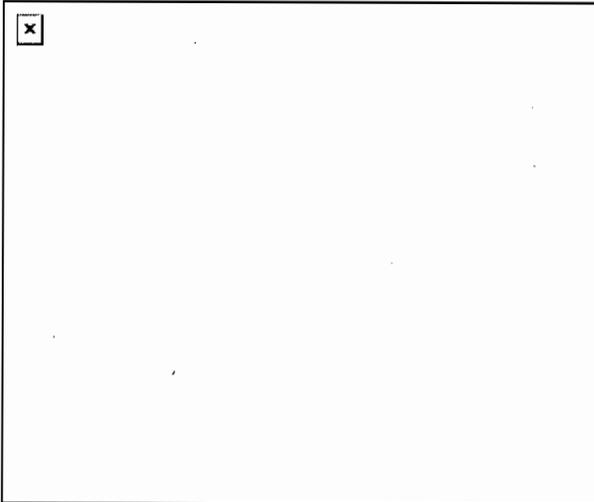
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15/72

Letters to the Editor

; æ July 20, 2008

- Read Comments(Biomass brings health issues)





If you thought the proposed Taylor County coal plant was a bad idea, you should be worried about the proposed BG&E biomass incinerator planned for Florida State University land in Innovation Park. The BG&E biomass incinerator would emit many of the same poisons as the proposed coal plant .

Like cigarettes, air pollution causes cancer, disease and death. Thousands of Leon County residents' health already is jeopardized because of our poor air quality.

0A

The proposed BG&E plant will release deadly dioxins into the air. Studies show higher levels of cancer and elevated levels of dioxin in people living near incinerators when compared with the general population. Dioxin is believed to be the single most carcinogenic chemical known to science . It also is linked to endometriosis, immune system impairment, diabetes, neurotoxicity, birth defects, decreased fertility and testicular atrophy. U.S. infants receive 20 to 40 times more dioxin than the World Health Organization's recommended limits.

New research shows that air pollution can cause breast cancer (one in seven women will develop breast cancer over a lifetime).

And BG&E is unabashedly asking for pollution control waivers.

We all have the right to breathe clean air. Our elected officials, health advocacy groups, FSU faculty members and the Department of Environmental Protection should say no to the proposed BG&E plant.

RONALD SAFF, M.D.

Floridians Against Incinerators in Disguise

Ronald H. Saff, M.D.

Board Certified Allergy & Immunology

Board Certified Internal Medicine

Certified Clinical Research Investigator ACRP

Certified Physician Investigator AAPP

Allergy & Asthma Diagnostic Treatment Center
2300 Centerville Road

Tallahassee, FL 32308
(850) 386-6680
(850) 386-7902 Fax

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The Famous, the Infamous, the Lame - in your browser. [Get the TMZ Toolbar Now!](#)

Tss-copa mailing list
Tss-copa@lists.fsu.edu
<https://lists.fsu.edu/mailman/listinfo/tss-copa>

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To: tss-copa@lists.fsu.edu [+]

Date: Mon, 21 Jul 2008 00:09:43 +0000

Subject: [Tss-copa] format for educational meeting on Biomass electric project.

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Dear people:

We are hoping to set up an educational meeting for the public August 7th evening (6-8 pm?) at a place yet to be determined. We would be happy to hear your input on format and content. My tentative ideas are as follows:

1. Presentations

City representative with short summary as to why they want to buy power so produced (15 min?).

BG&E- summary of proposal by engineers with details as to how pollution would be minimized. (30 min)

DEP (& or EPA?) permitting requirements (15 min)

contributed papers about 15 minutes each discussing technical aspects. If you wish to present something, please submit an abstract so we can see how to arrange program.

2. Panel- BG&E engineers, DEP/EPA, technical people

If you feel technically qualified to serve on the panel please advise, or submit the names of those you think might be helpful.

This is intended as a scientifically based discussion to air the benefits, technical aspects and possible problems of this project. Although aimed at the public for their understanding it can include technical detail at as high a level as needed to understand the ramifications of the facility.

public questions and answers either from panel or from floor.

Tss-copa mailing list

Tss-copa@lists.fsu.edu

<https://lists.fsu.edu/mailman/listinfo/tss-copa>

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Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

March 19, 2008

The Honorable Bill Proctor
Leon County Commission
301 South Monroe Street
Tallahassee, Florida 32301

FILE COPY

Dear Commissioner Proctor:

I received a copy of your letter to Governor Charlie Crist regarding the proposed waste-to-energy facility, Biomass Gas and Electric (BG&E). At the request of Secretary Michael Sole, I would like to update you on our interactions with the facility.

To date, the Florida Department of Environmental Protection (DEP) has not received any permit applications associated with this facility. However, on January 17, 2008 and February 19, 2008, representatives from DEP met with BG&E representatives to discuss the proposed project and DEP's permitting process. The 45 megawatt facility is proposed to be located near Innovation Park in Tallahassee. The facility is proposing to use wood waste, yard clippings and fuel crops as fuel sources, and anticipates using 800,000 to 900,000 gallons of water per day in their process. To satisfy the water demand, BG&E is currently evaluating the possibility of using reclaimed water from the City of Tallahassee as their water source.

BG&E's facility will produce less than 75 megawatts of electricity, so it is not subject to the State's Power Plant Siting Act process. However, the proposed project does require air, stormwater management and domestic wastewater permits from DEP. DEP's permitting process includes public notification of DEP actions, as well as a process for citizens to challenge agency actions. In addition, DEP's Division of Air Resource Management also requires the applicant to publish a notice upon filing of the application in a newspaper of local circulation and will post such applications on its webpage at: <http://www.dep.state.fl.us/Air/permitting/construction.htm>.

Whether a facility goes through the power plant siting process or DEP's permitting process, the ability to regulate where a facility is located rests with the local government. DEP's environmental permitting standards do not contain provisions to evaluate compliance with local land use regulations.

"More Protection, Less Process"

www.dep.state.fl.us

The Honorable Bill Proctor

Page Two

March 19, 2008

I am very sensitive to your concerns, and would be happy to meet with you if you have additional questions. I can be reached at (850) 245-2037.

Sincerely,



Mimi A. Dwyer
Deputy Secretary, Regulatory Programs and Energy

cc: Dick Fancher, Director, Northwest District, DEP
Joseph Kahn, Director, Division of Air Resource Management, DEP

"More Protection, Less Process"

www.dep.state.fl.us

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Allergy & Asthma

DIAGNOSTIC TREATMENT CENTER

Ronald H. Saff, M.D.
Board Certified Allergy & Immunology
Board Certified Internal Medicine
Certified Clinical Research Investigator ACRP
Certified Physician Investigator AAPP

Christine Stabley, PA-C
Certified Physician Assistant

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DIVISION OF AIR
RESOURCES MANAGEMENT

August 26, 2008

Ms. Trina L. Vielhauer, Bureau Chief
Bureau of Air Regulation, Division of Air Resources Mgmt.
Florida Dept. of Environmental Protection
2600 Blirstone Road MS 5500
Tallahassee, FL 32399-2400

Dear Ms. Vielhauer,

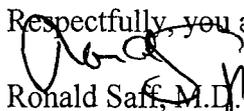
We oppose a permit for the BG & E plant on the following grounds:

1. The Florida Medical Association passed a resolution earlier this month noting "Even the most technologically advanced incinerators release hazardous byproducts including dioxins, mercury & heavy metals" ... and "urges state government to adopt policies to minimize the approval and construction of new incinerators including mass-burn, gasification, plasma, prolysis, *biomass*, refuse - derived fuel and other incinerator technologies..."
2. No large biomass plant has been built that reliably produces greater than 35 MW of electricity & doesn't pollute. Dr. Hannahs, a physicist at the Mag Lab, has looked at the plans and states this technology is "experimental state". He has called for an outside panel to review the merits of this plant.
3. This experimental stage technology can malfunction and, like Mr. Farris' previous operation at the McNeil Station in Burlington, VT, cause contamination of the air and groundwater, emit fugitive dust emissions, pungent odors, noise and vibration. The superintendent of McNeil Station was quoted, "Generally speaking, it is best to site a biomass plant ... far from residential neighborhoods." This plant will be two blocks from Sail High School, across the street from Innovation Park and is in the middle of a residential area. Have the parents of Sail students been informed?
4. BG & E has never built a successful plant previously. For this plant, where did they get their analysis? How do they know about their emissions? Where is their test data? Who made the gas analysis? What lab?

Page 2

5. At the Tallahassee Scientific Society forum, Mr. Farris stated that he could have done a better job of informing nearby residents of the proposed plant. Has this been done? What is the nature of the information he has provided? Has he explained that the technology is experimental and can possibly fail – emitting carcinogens into the groundwater and air?
6. It is visually impossible to distinguish CCA treated wood from non-CCA treated wood. What regulations are in place to ensure the plant does not combust CCA treated wood?
7. Will the plant allow 24 hour continuous monitoring of harmful pollutants - the only proven way to ensure compliance with emission standards?
8. Leon County already has the 2nd worst air quality of any county in Florida. Air pollution causes strokes, cancer, heart attacks, asthma attacks and shortens life. This biomass plant will likely worsen our air quality.
9. Combustion of wood releases dioxin, as well as other pollutants. Residents in communities with incinerators have higher levels of dioxin – thought to be the most carcinogenic compound known to science.
10. Liberty County residents didn't want the stench, air pollution and rail traffic, and refused to allow BG & E to build a biomass incinerator there.
11. The American Lung Association & American College of Cardiology have stated that people are getting heart attacks and asthma attacks at levels of pollution that are considered "safe". They state also that our air quality standards are too lax and need to be strengthened.
12. The American Lung Association's State of the Air report urges individuals to get involved and to send a message to decision makers.

Respectfully, you are the decision makers.


Ronald Saff, M.D.
Floridians Against Incinerators
In Disguise
Tallahassee, FL

Page 3

Lynn Ringenberg, M.D., FAAP
Professor of Pediatrics
Chief, General Academic Pediatrics
Co-Director Med-Peds Training Program
USF Department of Pediatrics
President, Physicians for Social Responsibility
Tampa, FL

Bob Fulford
Concerned Citizen
Tallahassee, FL

Joy Towles Ezell
Florida League of Conservation Voters
Perry, FL

Donald L. Mellman, M.D., MPH, MBA
Cofounder & Vice President
Physicians for Social Responsibility
Tampa, FL

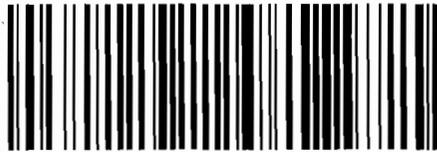
Neil Seldman
President
Institute for Local Self-Reliance
Washington, DC

David Ciplet
Global Alliance for Incinerator Alternatives
Berkeley, CA

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Ronald H. Saff, M.D.

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Tallahassee, FL 32399-6575

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CO

Tallahassee, FL 32399-6575

Allergy & Asthma

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Ronald H. Saff, M.D.
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Christine Stabley, PA-C
Certified Physician Assistant

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DIVISION OF AIR
RESOURCES MANAGEMENT

August 26, 2008

Ms. Trina L. Vielhauer, Bureau Chief
Bureau of Air Regulation, Division of Air Resources Mgmt.
Florida Dept. of Environmental Protection
2600 Blairstone Road MS 5500
Tallahassee, FL 32399-2400

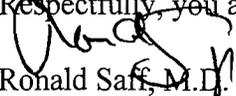
Dear Ms. Vielhauer,

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1. The Florida Medical Association passed a resolution earlier this month noting “Even the most technologically advanced incinerators release hazardous byproducts including dioxins, mercury & heavy metals” ... and “urges state government to adopt policies to minimize the approval and construction of new incinerators including mass-burn, gasification, plasma, prolysis, *biomass*, refuse – derived fuel and other incinerator technologies...”
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Respectfully, you are the decision makers.


Ronald Saft, M.D.
Floridians Against Incinerators
In Disguise
Tallahassee, FL

Page 3

Lynn Ringenberg, M.D., FAAP
Professor of Pediatrics
Chief, General Academic Pediatrics
Co-Director Med-Peds Training Program
USF Department of Pediatrics
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Tampa, FL

Bob Fulford
Concerned Citizen
Tallahassee, FL

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Donald L. Mellman, M.D., MPH, MBA
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Tampa, FL

Neil Seldman
President
Institute for Local Self-Reliance
Washington, DC

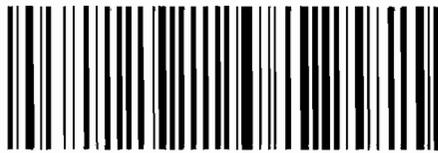
David Ciplet
Global Alliance for Incinerator Alternatives
Berkeley, CA

**Allergy
& Asthma**
DIAGNOSTIC TREATMENT CENTER

Ronald H. Saff, M.D.

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Tallahassee, FL

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Livingston, Sylvia

From: John Gibby [gibbyj@earthlink.net]
Sent: Tuesday, October 28, 2008 9:17 PM
To: McGuire, Chris; Tedder, Richard; Livingston, Sylvia
Cc: Joyal, Francine; Read, David; Linero, Alvaro
Subject: Solid Waste _Fw: BG&E Biomass Permit

October 28, 2008

To: Sylvia Livingston
Bureau of Air Regulation
Division of Air Resource Management (DARM)
850/921-0771
sylvia.livingston@dep.state.fl.us

Dear Ms Livingston:

Will you please forward this email to:

Trina Vielhauer, Chief Bureau of Air Regulation.(I do not have e-mail address)

Thanks.

John Gibby

October 28, 2008

To: Trina Vielhauer, Chief Bureau of Air Regulation

Dear Ms. Vielhauer,

This is my forth request for the below information from the Solid Waste section.

Can you help with obtaining the response from Mr. Tedder.

The response is important to the BG&E permit(Air).

The public has only DAYS to respond to the FDEP Draft Permit(BG&E).

Please help the public make an informed decision by helping to provide the answer(s) to my question(s) from the Solid Waste section.

As you know the public has only 14 (fourteen) days to respond.

Thank you

John Gibby

----- Original Message -----

From: John Gibby
To: McGuire, Chris ; Tedder, Richard
Cc: [Johnson, John S.](#) ; [Joyal, Francine](#) ; [Linero, Alvaro](#) ; [Read, David](#)

10/29/2008

Sent: Tuesday, October 28, 2008 1:41 PM
Subject: BG&E Biomass Permit

October 28, 2008

To: Florida Department of Environmental Protection

Division of Waste Management #850-245-8705 MS #4500
2600 Blair Stone Road, Tallahassee, Florida 32399-2400

Richard Tedder, Solid Waste Section
Chris McGuire, Office of General Counsel

Dear Mr Tedder:

Per 62-701.200 Definitions, is/are the following considered a Solid Waste?

BG&E WOODY BIOMASS FEEDSTOCK PROPERTIES:

Woody biomass is characterized by cellulose, hemicellulose, lignin and mineral content. The biomass for this project is limited to woody biomass meaning trees and woody plants, including limbs, tops, trunks, needles, leaves, stalks and other woody parts, grown in a forest, woodland, rangeland environment, tree farm or agricultural crop farm. The term includes such materials generated in conjunction with the safe transmission power line management practices of the City of Tallahassee. The term also includes the residues and rejects from the physical (non-chemical) processing of such woody biomass including sander dust, wood chips, saw dust and bark.

Your timely response is requested.

John Gibby
4887 Gum Road
Tallahassee, FL
32304

CC:
Alvaro Linero, Program Administrator (Air)
850-921-9523

DB - mmBtu



November 12th, 2008

Via E-Mail

Trina Vielhauer, Chief
Bureau of Air Regulation
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399

RE: Tallahassee Renewable Energy Center
Biomass Integrated Gasification and Combined Cycle Unit
DEP File No. 0730109-001-AC

Dear Ms. Vielhauer:

Biomass Gas & Electric of Tallahassee, LLC (BG&E), received the draft air construction permit for the Tallahassee Renewable Energy Center, referenced above, on October 27, 2008, along with the written notice of intent to issue and technical evaluation and preliminary determination. We appreciate the Department of Environmental Protection's careful review of the application BG&E submitted on April 3, 2008, and the efforts of the Department in developing the draft permit and associated documents. The draft permit included certain conditions, however, that warrant further discussion and perhaps revision prior to issuance of the final permit. We have outlined our questions and suggestions below and would like to meet with you and Al Linero at your earliest convenience to discuss this matter further.

1. **Financial Assurance** – Because the financial assurance bond referenced in General Condition 9 under Section 2 is already required as a condition of BG&E's sublease from Florida State University, BG&E requests that Condition 9 be revised as follows:

Permittee has subleased the project site from Florida State University, which has leased the site from the State of Florida. That sublease agreement between the permittee and Florida State University was entered into on February 2, 2007, and is on file with the Department of Environmental Protection. Under the terms of the sublease agreement, permittee is obligated to post a payment bond in favor of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the State of Florida Department of Environmental Protection prior to commencement of construction of the biomass energy production facility in the amount of two million dollars (\$2,000,000) to cover the cost of removal of all constructed facilities and equipment from the subleased premises as well as restoring the site to its original condition or conversion of the

They propose to us

biomass energy production facility to another type of alternative energy production facility.

2. **Biomass Handling and Storage** – The first paragraph under Section 3.A generally describing how biomass will be delivered to the site is accurate based on our current plans. Because it is possible that the biomass shipments may vary over time, BG&E would like to confirm that the general, descriptive language is not intended to establish limits or restrictions on fuel delivery. Also, the current plan is for biomass shipments to arrive every five to ten days, which should be corrected in this general description paragraph as well as in Section 4, Appendix E, second paragraph.

3. **Biomass Dryer** - Condition 3.A.1.e provides that the biomass dryer must use thermal heat transfer to dry biomass prior to gasification. It is possible that from time to time no drying would be needed based on the quality of a particular delivery of biomass. BG&E therefore requests that this condition be revised to clarify that drying is not always required: "The biomass dryer shall use thermal heat transfer (no additional combustion) to dry biomass, **if needed**, prior to gasification."

4. **Equipment Malfunctions** – Conditions 3.A.2 and 3.C.4 recite the Department's rule regarding circumvention of pollution control equipment. As we are sure the Department appreciates, BG&E expects that the baghouses may occasionally malfunction, and therefore would be nonoperational for brief periods during bag replacements and repairs. BG&E therefore requests confirmation from the Department that the biomass handling, storage, and drying operations can continue to operate during these periods when the baghouses may be nonoperational due to malfunctions or repairs without violation of this permit condition.

5. **Municipal Solid Waste** – Because the term "municipal solid waste" is not defined in the permit or in the Department's rules, and because there could be confusion in the future as to what is intended by this term, BG&E suggests that the permit cross-reference the definition of municipal solid waste found in the federal rules at 40 CFR 60.51b. This term is used in Conditions 3.A.6 and 3.B.6 and in Appendix E, paragraph 9.d.

6. **Capacities** – Based on the Department's use of the terms "approximately" and "nominal," BG&E assumes that the capacities identified in Conditions 3.A.3, 3.B.3, 3.B.4, 3.C.5, 3.C.6., 3.D.2, 3.F.1, 3.F.7, 3.H.1, and 3.H.3 (and associated emission unit descriptions) are not intended as not-to-exceed, restrictive limits. It may be helpful to clarify this in one or more permitting notes, indicating that if the capacities change over time or based on the final design, then updated information should be provided to the Department for its files or as part of the air operation permit application. As an example, the expected feed capacity to the gasifier is 735 tons per day of dry biomass feedstock, rather than 730 tons per day as identified in the permit condition. It may also be helpful to clarify that continuous compliance is not required, as might be indicated by the Department's reference to a 24-hour average in Condition 3.H.3.

7. **Compliance Tests on Materials Handling Units** – Because there are a number of fugitive and point sources of emissions associated with "Emission Unit 1," which includes all of the biomass handling, storage, and drying operations, BG&E requests that Conditions 3.A.8 and

OK

OK

Handwritten notes and arrows pointing to the Biomass Dryer section.

They can us info

not trucks though. OK as is - just approx

Thinking about

Eb

less cool restriction

Section H can

those are limits would need a permit

3.A.9 clarify that the initial and annual compliance tests are to be conducted on the three baghouses identified in Condition 3.A.1.h (and any other baghouses that may be added under the system's final design) and the filter described in Condition 3.A.1.i.

Yes - on baghouses

8. **Material Storage** – Condition 3.B.7 identifies operational procedures to minimize spontaneous combustion for storage of woody biomass materials. BG&E intends to implement a system to ensure that spontaneous combustion does not occur and that ensures a “first in, first out” system of biomass usage. Because BG&E’s methods vary from those identified in this condition, BG&E respectfully requests that the condition be revised to read as follows:

They give us more info.

- a. Incoming unprocessed materials shall be stored in piles in a manner to ensure a first in, first out system;
- b. Storage sites shall be level and on firm ground;
- c. BG&E shall develop a storage system for the unprocessed biomass that ensures spontaneous combustion does not occur; a complete description of the system must be provided to the Department prior to commencing operation.

need fine lanes

9. **Effective Date for Emission Limits** – Because emission limits should become applicable only after successful completion of initial compliance tests, BG&E requests clarification regarding the effective dates through permitting notes. In addition, Condition C.3.16 should be revised to clarify that only the opacity limit becomes applicable after the continuous opacity monitor has been certified. BG&E also requests that the Department revise this condition to be consistent with the testing requirements for other parameters by requiring the opacity monitor to be certified within 180 days after startup of the gasifier or within 60 days after achieving permitted capacity.

at that point idea COMS must certify first, others wait know the test

can A CIG to go open day

10. **“Other” Baghouses** - Condition 3.C.10 mentions “other” baghouses. To help clarify what is intended, it may be appropriate to refer to the two baghouses described in Condition 3.C.3.

OK - fix last sentence on C.16

11. **Absorption System** – Because the FSU research facility mentioned in Condition 3.E.1.c. has not been constructed and once constructed may not be operated at all times, BG&E requests that this condition clarify that this is an allowable activity but is not a requirement of the product gas cleanup system.

OK

but what happens in system

12. **Tars** – While it is not anticipated, it is possible that on a rare occasion it may be necessary to dispose of “tars” from the gas cleanup system offsite, and because disposal of the tars at an offsite location would not result in air emissions or air quality impacts, BG&E requests that Condition E.2. be revised to clarify that tars may be disposed of *offsite* if necessary.

They owe us details

13. **Mass Emission Limits** – BG&E recognizes that mass emission limits are appropriate to ensure that the total emissions from the CT/HRSG system are consistent with the information provided in the application (demonstrating minor source status), BG&E respectfully requests, however, that the short term pound-per-hour limits (referenced in Conditions 3.E.11 and 3.E.25.c) be replaced with annual ton-per-year limits for nitrogen oxides and carbon monoxide. Short-term emissions are limited through the concentration-based limits, and compliance with the annual limits will be demonstrated based on continuous emissions monitoring data to provide the Department with the necessary reasonable assurances.

masses

OK - we need clean up

99we
need
2000 of up

14. **Use of CEMS for Compliance** – Because continuous emissions monitors (CEMS) will be used to demonstrate compliance with 30-day rolling average limits for nitrogen oxides and carbon monoxide emissions from the combustion turbines, BG&E requests that the monitors be used in lieu of annual stack tests for compliance purposes. The CEMS will demonstrate continuous compliance and stack tests would measure emissions only during a three-hour period, which would be inconsistent with the 30-day rolling average limits. BG&E also requests that the footnotes under Condition 3.F.11 clarify that monitoring data during periods of startup, shutdown, and malfunction will be excluded from compliance determinations for the 30-day rolling average emission limits although included for purpose of compliance with the annual emission limits. Additionally, because emissions during startup and shutdown are included for purposes of Subpart KKKK excess emission reports although not for purposes of compliance, BG&E requests that the Department clarify in footnote c that continuous compliance with the Subpart KKKK limit for nitrogen oxides is not required.

We need to verify 30 day NOx - includes or excludes

OK

15. **Compliance with Sulfur Content Limit** – Footnote h of Condition 3.F.11 could be interpreted to imply Subpart KKKK imposes a continuous emissions monitoring requirement for sulfur dioxide. While Subpart KKKK does require regular monitoring of the sulfur content of the fuels used, it does not require continuous “emissions” monitoring. The citation provided in the footnote (40 CFR 60.4380) applies only to nitrogen oxides, not sulfur dioxide emissions. BG&E therefore requests that this footnote be revised to omit the reference to sulfur dioxide or clarify that “CEMS” are not required for sulfur dioxide.

16. **Cooling Tower Design** – The flow rates for the cooling towers that are constructed may vary from the design specification. BG&E requests that a permitting note be included under Condition G.1 to clarify that the flow rates may change and BG&E will provide the final flow rates to the Department as part of the initial air operation permit application.

17. **Feedstock Handling** – In Section 4, Appendix E, the draft permit provides in paragraph 3 on page E-1 that woody biomass feedstock shall be delivered to the site solely by train. While this is the plan for virtually all feedstock deliveries, it is possible that delivery by truck could occur on a temporary basis in emergency situations (e.g., lack of rail service). Please clarify in this condition that the feedstock shall be delivered by train or, in emergency situations on a temporary basis, by trucks. Similarly, paragraph 4 on that page should clarify that each railcar or truck of feedstock must be homogenous in nature.

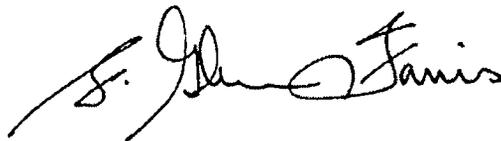
18. **Detailed Records of Reject Materials** – BG&E requests that Paragraph 8 of Section 4, Appendix E be revised to delete the last sentence. This paragraph provides that rejected material will be disposed of following the Department’s regulations. It is unclear why it would be necessary to maintain records of the amount of rejected materials and all of the reasons for rejections. This is a burdensome and time-consuming requirement and not clearly tied to limits established in the air permit.

19. **Annual Testing** – The draft permit includes several conditions that would require annual testing for particulate matter, nitrogen oxides, carbon monoxide, and other parameters. (See, e.g., Conditions 3.C.19 and 3.F.21.) The Department’s Rule 62-297.310(7) (a) 4, F.A.C.,

requires annual testing only when the unit has the potential to emit 100 tons per year or more. To the extent that annual testing is not prescribed in Rule 62-297.310(7)(a)4, F.A.C., then BG&E requests that the permit be revised to require annual testing for a period of perhaps three to five years, then renewal testing should provide the Department with sufficient assurances that the emission limits are being achieved.

BG&E appreciates the Department's consideration of these comments and we look forward to discussing them further with you and Al Linero. I will be contacting you within the next few days to schedule a meeting. If you have any questions in the meantime, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Farris". The signature is fluid and cursive, with a large initial "G" and a long, sweeping underline.

Glenn Farris
President & CEO

cc: Al Linero, FDEP
Ronni Moore, FDEP
Scott Osbourn, Golder Associates

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Triangle of Deception and Greed

“25 Questions CONA Will Never Ask!”

Erwin D. Jackson, Ph.D.
January 5, 2009

Introduction

The BG&E biomass utility deal being proposed for Leon County is unwholesome, unethical and scandalous. The smell of this utility deal should be offensive to the citizens of Tallahassee, Leon County and all Floridians. Most Offensive is the fact that some of the most political, powerful and economically blessed people in Leon County seek financial riches at the expense of the health, quality of life and meager resources of residents in the Jackson Bluff Neighborhood. This biomass utility deal can be best described as a Triangle of Deception and Greed.

T.K. Wetherell, President of FSU, is at the center of the Triangle of Deception and Greed. Virginia Wetherell, his wife, is the "go-between". She works for BG&E and lobbies both County and City commissioners to support her biomass plant. Her past position as Secretary of the Florida Department of Environmental Protection is extremely helpful in securing necessary state air construction permits.

T.K. Wetherell had to secure the assistance of his friend Jim Smith, past attorney general and current Chairman of the FSU Board of Trustees, to get approval from the Governor and Cabinet to allow a biomass plant to be built on FSU's campus.

T.K. Wetherell threatened to purchase electricity from a source other than the City. The City Commission cowered to T.K.'s demands and bought him off with a cash payment to FSU of 2-5 million dollars per year.

Everyone gets rich and the south side gets dumped on again!

In the following pages I have provided 25 of the most important questions regarding this biomass deal. To ensure that the reader is provided accurate information I have also provided answers to each question and the source for each answer. Knowledge is power and with this knowledge we can defeat the Triangle of Deception and Greed.

NOTE: If you want to stop this Triangle of Deception and Greed and believe as I do that a biomass plant does not belong in any residential neighborhood, we welcome your support. Call Erwin at 850-566-0036 or email me at rosarioely@yahoo.com.

Triangle of Deception and Greed

**Florida State
University**

BG&E

**City of
Tallahassee**

History Questions

1. Ten years ago CONA sought to protect neighborhoods from pollution and loud noises caused by a fourth person living in a three bedroom house. A city ordinance was passed to protect our neighborhood. Why are we even here discussing whether a biomass plant that will operate 24 hours per day, 7 days a week, and spew toxins on our families, should be built within 60 feet of a residential neighborhood?

Answer: Political favors and greed.

2. Several Northeast Neighborhoods have fought to remove a billboard deemed to devalue their homes and quality of life. Why are we even discussing the possibility of building a biomass plant in the Jackson Bluff Neighborhood?

Answer: Our neighborhood has a high percentage of minority residents with lower income and less education than Leon County collectively. This neighborhood is easily victimized and without a voice or leader.

3. Why was Marjorie Turnbull asked to function as the independent moderator of the CONA biomass hall meeting? Also, why are audience questions submitted in writing and screened by CONA's staff to determine whether they should be answered? Ms. Turnbull has a 20 plus year personal and professional relationship with T.K. and Virginia Wetherell. They were state legislators together, T.K. hired her to direct the TCC Foundation and later served on the TCC Board of Trustees. Therefore, it's impossible for her to perform the role of an independent moderator.

Answer: As President of FSU, T.K. Wetherell is in a position to reward his friends and punish his enemies. It looks like the cover- up or cleaning of the Wetherell's questionable involvement in the proposed biomass plant continues.

Health Questions

1. BG&E estimates that this biomass plant will produce 114 tons of particulate matter per year and 204 tons of carbon monoxide per year. FDEP says this is “theoretical potential” emissions. It seems that FDEP doesn’t really know how bad the pollution will actually be for our neighborhood.

Answer: FDEP uses a model to project the anticipated pollution. No actual data is available on this type of plant. Our independent researchers state that the pollution will be significantly higher than the BG&E projections. Finally, FDEP does not model the increased negative impact of pollution on children!

Source: FDEP Draft Air Construction Permit.
FDEP Staff
Private Consultants

2. EPA experts state that the pollution from these plants has a salty taste and they warn “children, pets, and farm animals have become ill due to licking or eating the salty residue.” Is this true? What has BG&E done to ensure my child will not unknowingly consume this toxic pollution?

Answer: Yes. According to the American Medical Association particulate matter from this biomass plant will result in an increase of strokes, heart attacks, and inflammation of lung tissue. Dr. Andres Rodriguez says Tallahassee’s particulate pollution already exceeds the annual threshold recommended by the American Medical Association. As President of the Capitol Medical Society he cautioned that pollutants from the plant will adversely affect patients with respiratory and cardiac conditions and will increase the incidence of respiratory conditions in children. Finally, BG&E has not, will not and cannot protect your children from these pollutants.

Source: Tallahassee Scientific Society.
American Medical Association
Dr. Andres Rodriguez
Glenn Ferris, President of BG&E
Dr. Ron Saff

3. According to FDEP this plant will emit 114 tons of particle pollution. Particle pollution is a known carcinogen and can cause heart attacks, asthma attacks, strokes, stunt lung growth, and cut short life by years according to the American Lung Association. Florida Statute 827.03 defines child abuse as “An intentional act that could reasonably be expected to result in physical or mental injury to a child.” Could BG&E, FSU, City of Tallahassee and FDEP be charged legally for “child abuse” if they actively support building a biomass plant in a residential neighborhood where children live and attend school?

Answer: I am not an attorney but this certainly sounds like another legal challenge to be pursued in the appropriate court. Building a biomass plant is certainly “an intentional act”. The American Lung Association and the American Medical Association have clearly stated that particle pollution can cause numerous health problems and early death. As a non-attorney it seems those involved in intentionally building or facilitating the placement of this plant in a residential neighborhood, who were informed of the reasonable negative health consequences of their actions, could clearly be charged with child abuse. The Chairman of the Senate Environmental and Public Works Committee, Barbara Boxer, seems to agree with my conclusion. She pledged to “do what I have to do” to ensure monitoring of toxic pollution across the US. Boxer calls the lack of monitoring a “shocking story of child neglect.”

Source: Florida Statutes 827.03
USA Today “Toxic Air and American Schools”
December 20, 2008

Location Questions

1. Why are BG&E, FSU and the City choosing to build a biomass plant within a mile of five schools and numerous daycare centers?

Philip Landrigan MD who directs the Children and Environment Unit at Mount Sinai School of Medicine in New York stated scientists have long known that kids are particularly susceptible to the dangers of air pollution. The youngest students seem most vulnerable to toxic air. Children breathe more air in proportion to their weight than adults do, their bodies are still developing and children spend more time outdoors and are more susceptible to coming into contact with toxic pollutants.

A recent study by the USA Today found that EPA “has all but ignored whether the air is unsafe at the various locations where kids are required to gather. The problem here is, by and large there’s no cop on the beat. Nobody is paying attention”.

Their investigation also found that no one knows what level of toxic chemicals harm children. Most safety assessments are based on the effect chemicals have on adults in the work place, not on kids at school. **However, Dr. Landrigan concluded that kids are at least 10 times more susceptible than adults to most toxic pollution.**

Herbert Needleman, Professor of Pediatrics at the University of Pittsburg, concluded that the more we study, the more effects we find at lower and lower doses.

Melanie Marty, an EPA toxicologist summarized actions needed.” If it were me, I would be going to the School Board. I would be going to the legislators and raising Cain!”

Andres Rodriguez, President of the Capitol Medical Society, cautioned against building this biomass plant. We are concerned that pollutants from the plant will adversely affect our patients with respiratory and cardiac conditions and will increase the incidence of respiratory conditions in children. Acknowledging that even the most modern and technologically advanced incinerators release hazardous pollutants, the Florida Medical Associations urged state governments to not build any biomass plants.

Answer: There is no justification for siting a biomass plant this close to our children’s school except for the financial greed of a select few.

Source: USA Today “Health Risks Stack up for the Students near Industrial Plants” December 10, and 22, 2008
Dr. Ron Saff

2. On January 12, 2007, Mr. Farris said he was moving the biomass plant to Telogia. Why did the commissioners in Liberty County refuse to deal with Mr. Ferris?

Answer: David Stoutamire, County Commissioner, District 4, Hosford, Florida stated that during a public hearing BG&E officials said that the polluted and toxic waste water resulting from the biomass plant process would be discharged back into the Florida Aquifer untreated. After learning of the planned corporate rape of their fresh water supply, the Liberty County Commissioner voted 5-0 to NOT allow BG&E to operate in their county!

Source: David Stoutamire
Liberty County Commissioner

3. What financial benefits will BG&E and Virginia Wetherell receive now that her husband T.K. Wetherell, President of FSU, has approved the biomass plant to be built on the FSU campus? What financial benefit will T.K. Wetherell and FSU receive?

Answer: The Jackson Bluff location will save BG&E and its investors millions of dollars. (1). BG&E will not have to buy any land and will save millions of dollars that would be required to install rail storage and a switch yard. (2). BG&E anticipated saving time if it could avoid notifying the public (one of many miscalculations by Mr. Farris) and leasing a site that did not need to be rezoned. (3). The property taxes on a \$200,000,000 biomass plant are approximately \$3.2 million dollars per year. FSU property is exempt from property taxes and therefore BG&E may not have to pay anything! The property appraiser has been advised of the shenanigans being planned by the Triangle of Deception and Greed and has his attorney looking into this matter. (4). T.K. Wetherell negotiated a \$2 to 5 million dollar annual payment from the City for FSU helping in developing this biomass deal.

T.K. and Virginia are also going to profit handsomely from their involvement in this biomass-mess! Virginia and T.K. will receive an ownership interest of 5-10% of a \$200 million dollar biomass plant (\$10-20 million dollars). The profitability of BG&E is certainly helped if the city agrees to buy all of its utilities and if a \$3.2 million dollar annual property tax bill is avoided. If you're going to sell your honesty and integrity I guess you should sell it for a lot and it seems that they have!

Source: S Glen Farris
Debbie Lightsey, City Commissioner
Tallahassee Democrat

4. Should families be concerned if a biomass plant is built adjacent to their residential neighborhood?

Answer: Yes, you should be concerned. A study of the McNeil Generation Station in December 2000 found noise and vibrations from the railcars could be felt by residents 750 feet away. A 10 year legal battle ended when the plant owners purchased several properties and Riverside Apartments. The properties were located on five separate streets including Oak St, St Marys, Luck St., Manhattan Dr. and International Ave. Toxic pollutants and wood dust from the fuel source resulted in fine distinct layers of dust on unmoved cars and other surfaces. Over the life of McNeil Station the residents' primary concerns were with disturbing noise and vibrations, pungent odors, fugitive dust emissions and nauseating stack emissions according to Carla Barns, Marie Farnsworth, Joyce McEntee and others including residents of the Riverside Apartments.

A 2007 study of a biomass plant located in Portsmouth, New Hampshire also had serious noise problems. The noise was so loud that residents across the river in Eliot, Maine had an acoustical study done. They found that the biomass plant violated both Portsmouth's and Eliot's sound ordinances. This is especially concerning because the Schiller plant in Portsmouth had already built a 700 foot noise reduction wall before it went into operation in 2007. One Eliot resident said that the biomass plant **"sounds like a jet engine running all the time."**

A proposed 7 megawatt biomass plant in Ellicottville, New York (Tallahassee plant is a 42 megawatt) produces 111 tons of nitrogen oxide, 111 tons of carbon monoxide and 19 tons of other pollutants including benzene, formaldehyde, and hydrogen chloride.

Dr. Carlos S. Boveres received his degree in physics and worked for FDEP for 18 years in quality assurance of environmental measurement. He also worked at FSU between 1979 and 1982 in the Atmospheric Research Group. Hence he is not only aware of the potential of biomass as an alternative fuel as well as the potential atmospheric impacts of its burning. Dr. Boveres' assessment is quite clear **"A power plant is obviously a unique situation, where process controls and monitoring of emissions can minimize the risks posed by its operation. But, let us not fool ourselves; power plants, regardless of their type, are not harmless and free of risks. It is no surprise then that the long standing practices and policy of the power industry is to locate their generating stations away from urban environments."** Since the Tallahassee plant is smaller than 75 megawatts its not subject to Public Service Commission approval and its siting would be governed by the Power Plant Siting Act (Chapter 62-17, FAC).

After many years of operating the McNeil biomass plant, the plant manager John Irwin said the main lesson learned is that "It is best to site a biomass plant...far from residential neighborhoods."

Source: McNeil Station Report, December 2007
Schiller Plant. New Hampshire 2007
Biomass Proposal Ellicottville, NY
Florida Statutes 403
Chapter 62-17, FAC

Ethics Questions

1. The FSU motto is “Leading for the Greater Good.” The third torch stands for “mores” or character! FSU expects its students to “serve others in the community, state, nation or world and to develop into a socially responsible, global citizen.” Is it for the greater good that Virginia and T.K. Wetherell will be given “for free” a 5-10% interest in a \$200,000,000 dollar biomass plant? Is T.K. serving others in the community when he approved building a biomass plant on FSU’s campus? Is T.K. being socially responsible when dumping particle pollution and other carcinogens on primarily minority families with lower incomes and less education?

Answer: No, No, and No! T.K. needs to take a few more classes at FSU.

Sources: FSU Handbook

2. Why did BG&E, FSU and the City of Tallahassee fail to individually notify property owners within close proximity to the proposed building site in the beginning of this process?

Answer: BG&E, FSU and the City of Tallahassee have formed a Triangle of Deception and Greed. The only problem which might derail this plant is if the public becomes informed. Placing the plant on FSU property would ensure that immediate neighbors would not be notified and city/county planners would have limited input.

The Sierra Club has spoken out against “behind the scenes” or “insider deal making.” Specifically, Any “done deal” for any energy facility which excludes the public from information, participation and a means of evaluation is unacceptable.”

Source: Florida Statute
Joy Towles Ezell (Sierra Club Guidance in Biomass)

3. The land lease signed between BG&E and Jim Smith, Chairman of Board of Trustees for FSU, includes a single "Exhibit A" which misrepresented the proximity of single family homes to the proposed biomass site. Specifically, a couple hundred homes and several city streets were eliminated from Exhibit A. This raises several questions. (1). Who eliminated these Jackson Bluff Neighborhood houses? (2). Why would someone not want the Board of Trustees to know the proximity of these family homes to the proposed biomass plant? (3). Since inaccurate information is at the heart of this lease agreement- is the agreement loyal? (4). Is falsifying a legal document an ethical violation or criminal matter?

Answer: T.K. Wetherell asked Jim Smith to negotiate and prepare a lease with BG&E. Betty Steffens, University General Counsel was asked to assist him in this project. Mr. Smith would not comment on why these family homes and numerous city streets were omitted from the map in Exhibit A. Since he refuses to discuss his role in this matter we can only speculate. It seems that Jim Smith (our past attorney general) and Betty Steffens (FSU General Counsel) are part of the Triangle of Deception and Greed. The elimination of these homes could mislead the Board of Trustees to believe that the proposed site is not near any residential community. **Knowingly altering a legal document to facilitate the financial gain of a personal friend would seem to be unethical and possibly illegal.**

My role in this biomass-mess is simply to ask questions and seek the truth. It will be the responsibility of other local and state agencies to determine if ethical or criminal acts have been committed.

Source: Board of Trustee Minutes, June 6, 2006
Board of Trustee Minutes, January 26, 2007
BG&E and FSU Lease Agreement

4. Why would S. Glenn Farris, CEO of BG&E, give T.K. and Virginia Wetherell a 5-10% ownership interest (\$10-20 million dollars) in his proposed \$200,000,000 dollar biomass plant? Is he just a nice guy or does he want something in return? Is this \$10-\$20 million dollars a gift or a bribe?

Answer: No, Mr. Farris is not a “nice guy.” He has been found guilty of forgery, establishing false accounts and stealing approximately \$90,000 dollars from clients while working for a stock brokerage firm. Specifically he “engaged in conduct inconsistent with just and equitable principles of trade.” Mr. Farris was also involved in an experimental biomass plant called Future Energy Resource Corp (Ferro). Investors lost millions of dollars and the corporation filed for bankruptcy. These investors included Ted Turner, Atlanta media mogul, and Arthur Blank, founder of The Home Depot Inc.

Nothing is for free! Mr. Farris will only give the equity position in his company to T.K. and Virginia Wetherell if:

1. Virginia, past Secretary of the Department of Environmental Protection, is able to secure necessary state permits and construct this biomass plant.
2. T.K. Wetherell has to allow this plant to be built on FSU property. Locating the plant on FSU’s campus could save BG&E \$3.2 million dollars annually in property taxes. This tax saving would increase the Wetherells profit!
3. T.K. Wetherell would be required to “encourage” the city to purchase all power created by BG&E.
4. Virginia Wetherell would also be required to use her position on the Board of Directors of the Buckeye Pulp Mill in Perry to secure a contract to deliver “mill waste” to the Tallahassee biomass plant. The mill waste includes knots and shins, sludge and other toxic pulp. Virginia will probably be paid by Buckeye to get rid of their waste and have “free fuel” to feed her biomass plant.
5. T.K. Wetherell Represents Tallahassee/ Leon County on the greater Northwest Florida Economic Development Council, which is actively seeking tax payer funding for “energy parks.” Will Virginia’s biomass plant be in line for some government money. Is it me or does anyone else see a pattern of deception and self dealing?
6. Finally, T.K. and Virginia Wetherell would have to ignore the clear health threats that would occur to TCC students, FSU students and the Jackson Bluff Neighborhood if the biomass plant is built in the Jackson Bluff Neighborhood.

Source: S. Glenn Farris

New York Stock Exchange

Atlantic Business Chronicle, January 10, 2003

Hearing Panel Decision 83-83, July 26 1983

Joy Towles Ezell

5. Has Mayor John Marks and our City Commissioners worked to ensure the public's right to be involved in the biomass debate?

Answer: Several decisions made by these elected officials have made it difficult for citizens to express their opposition to this biomass plant. Our elected officials should have insisted that those property owners in close proximity to this proposed site be personally notified and they were not! BG&E, FSU and the Wetherells also felt it was in their best interest to not notify the public.

At a December 10, 2008 public hearing the Mayor was gracious in thanking the citizens for providing valuable information on the proposed biomass plant. Unfortunately this public hearing took place approximately two years after city officials signed legal documents committing themself to FSU and BG&E. Furthermore, at the December 10 public hearing Mayor Marks failed to tell the 200 plus citizens that he had sold them out at a 4 o' clock meeting. Mayor Marks directed city staff to go forward with extending the purchase agreement with BG&E. A review of the December 10, 2008 City Commission agenda revealed that extending the purchase agreement with BG&E was not advertised. According to a Florida 4th DCA, 1996 ruling the Sunshine Law does not require boards to consider only those matters on a published agenda. However, the Attorney General's Office has advised boards to postpone formal action on any added items that are controversial. Specifically AGO 03-53 states, **"In the spirit of the Sunshine Law, the city commission should be sensitive to the community's concerns that it be allowed advance notice and therefore meaningful participation on controversial issues coming before the commission."**

Even though Mayor Marks had decided to enter into a business relationship with BG&E two years earlier, he felt obliged to give its president an uninterrupted 50 minute platform to spew his biomass propaganda. However, when a citizen asked for two extra minutes to discuss the involvement of T.K. and Virginia Wetherell he was gavelled down and the microphone was turned off.

Mayor Marks seems to be playing the deception game when as recently as December 17, 2008 stated that he wasn't for sure if Virginia Wetherell owned and interest in the BG&E plant. The Mayor's comments are just not believable. One of the "public meetings" where biomass was discussed occurred in the City Chambers on January 10, 2007. The topic was a utility agreement between FSU and the City. According to the City minutes only 3 people appeared to speak before the city commission: T.K. Wetherell, President of FSU, Glenn Farris and Virginia Wetherell, representing BG&E. Sadly it seems the Triangle of Deception and Greed continues.

It is also concerning that Glenn Farris would hire a City Commissioner to assist him in the legal affairs of the company who sought to sell power to the city. Commissioner Allan Katz represented BG&E in the financing of the biomass plant. Commissioner Katz said, "We billed them a total of probably three to four hours." It is hard to believe that any law firm could arrange a \$200,000,000 dollar loan on a biomass plant in three to four hours.

As a tax payer I am concerned when any elected official takes money directly or indirectly from a business that has issues to present before that same governing board of commission. How can Commissioner Katz take money from BG&E and still accept public money for representing the community. The interests of BG&E and the public are at odds. It seems another ethical issue has arisen.

Commissioner Katz accepted BG&E money and voted every opportunity to support the proposed biomass plant. He also spoke publicly in support of this plant and its benefits to the community. I don't remember him ever addressing the health concerns of our neighborhood. Once the public started asking questions about his involvement in the biomass deal he decided he might need to recuse himself from the BG&E issues. "I thought we were through with all the approvals, but as soon as all the controversy came along I decided, in the interest of people thinking that I was saying what I was saying because I was a client, that I should disengage," Katz said.

Jim English, City Attorney, reviewed Commissioner Katz's involvement with BG&E and sent a memo to Katz which advised him to abstain from any votes on the project. Unfortunately all of the permits and agreements had already been voted on by Commissioner Katz. He simply should not have accepted money from a company who will need city approval on numerous issues.

Source: City Commission Meeting Records, December 10, 2008
AGO 03-53
Tallahassee Democrat, December 21, 2008
Copies of tapes from WFLA.

Legal and Financial Risks Questions

1. Did BG&E, FSU, and the City of Tallahassee take into consideration the seventeen principles of Environmental Justice prior to selecting the Jackson Bluff site? Specifically:
 - a. Environmental Justice affirms that all people are to be free from ecological destruction and supports the development of environmentally safe neighborhoods.
 - b. Environmental Justice demands public policy be based on justice for all people, free from any form of discrimination.
 - c. Environmental Justice demands the right to participate as equal partners at every level of decision-making.
 - d. Environmental Justice demands the right of victims of environmental injustice to receive full compensation and reparations for damages done as well as quality health care.
 - e. Environmental Justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities.

Answer: No. The Jackson Bluff Neighborhood has a significantly higher percentage of minorities than the city in total. Our neighborhood is already the recipient of most utility/transportation facilities. Building another utility plant in the Jackson Bluff Neighborhood seems to be contrary to the principles of Environmental Justice. Finally, I have filed an administrative challenge to the proposed FDEP air construction permit. FDEP has been formally notified that if an air permit is issued we will seek a ruling from the Federal Environmental Protection Agency that a discrimination has occurred in the siting of this plant. If FDEP is found guilty of discrimination it could lose over \$100,000,000 it receives from the Federal Department of Environmental Protections.

Sources: Principles of Environmental Justice
Washington D.C.
Tallahassee Democrat, December 6, 2008
Attorney David Ludder

2. Wasn't the goal of the Southern Strategy Plan designed to protect the south side of Tallahassee from becoming the dumping grounds for all unwanted development (including water treatment facilities, airport, etc.)? How can placing a biomass plant in a south west neighborhood be consistent with the Tallahassee-Leon County Comprehensive Plan (Comp Plan)?

Answer: Placing a biomass plant in residential neighborhoods is wrong. Placing it in a south side neighborhood is in violation of the Tallahassee-Leon County Comprehensive Plan. This is a legal issue which must be brought to the attention of our city and county commissioners and state officials with the Department. of Community Affairs.

The Tallahassee-Leon County Comprehensive Plan (Comp Plan) Goal 11 states "**The goal of the Southern Strategy Area is to encourage quality land development** and redevelopment which results in increased population growth toward the southern part of the Tallahassee urban area, to retain and increase employment opportunities, and to attain an income mix in the Southern Strategy Area that is comparable to the remainder of the urbanized County." It seems to me that a biomass plant in a residential south side neighborhood is not the "quality land development" anticipated by the Southern Strategy. More specifically, policy 11.4.1 of the comprehensive plan states, "Where environmentally, economically and geographically practical, heavy infrastructure uses such as wastewater treatment plants, airports, correctional facilities and power plants which serve larger than neighborhood areas, shall be located in areas outside of the Southern Strategy Area. This policy does not apply to public facilities such as schools, parks, greenways, trails, and other recreational uses that would enhance the desirability of residing in the Southern Strategy Area." This proposed plant would have to meet this criteria of the Tallahassee-Leon County Comprehensive Plan.

BG&E has asked to be exempt from the comprehensive plan because they claim alternative locations are not available. The planning department to date has been unable to provide this writer any studies, searches or analysis conducted independently which proves other sites are not available. The cost factor to BG&E should not be a factor in the analysis. There are several property locations which are large enough and have rail access. Most important these locations are not located in an urban neighborhood, but rather closer to the fuel source.

Why are these alternative locations unacceptable to BG&E? These alternative locations would require BG&E to purchase the needed land, spend several millions to build the needed rail yard, go through an open public hearing and reasoning request, and would be required to pay property taxes like every other business in Tallahassee. The simple answer is MONEY. If you can get these things for free or a reduced cost then all other locations look unacceptable to BG&E's bottom line and the bottom line for its owners T.K. and Virginia Wetherell.

3. Are the City, BG&E and FSU responsible if my home value drops because of this unwanted neighbor?

Answer: Yes. We don't need an expert to answer this question. Ask yourself if there were two identical houses and one was next to a biomass plant, which one would you select to raise your family? In the McNeil Station report discussed earlier, the owners were forced (by legal challenges) to purchase several homes and an apartment complex due to the noise and vibration and other pollutants.

According to the Property Appraiser's Office 3,148 property parcels are within one mile of the BG&E smokestack. The value of these properties (85% assessment) is \$743,604,574. True value in a poor real estate market would put the values of these properties over 1 billion dollars. The value lost if a biomass plant comes to our neighborhood will be at least 25-50% devaluation, a loss of \$250,000,000-\$500,000,000 dollars. The loss in property tax income to the City, County and School Board will be significant.

I plan to hold the FSU, BG&E and the City legally responsible for lost value (just like the McNeil Station) if the biomass plant is built. My attorneys will be submitting a formal notice to all parties in the next few days. I have also agreed to personally pay for the legal fees of the other 3,147 individuals who will also be financially damaged by the actions of BG&E, FSU and the City of Tallahassee.

City Commissioner Gillum expressed an interest in having BG&E establish a mitigation fund to address "unforeseen impacts that the plant may have on the community." Personally, I don't think BG&E, FSU and the City have enough money collectively to pay for the damage to our neighborhood.

The mitigation fund would have to pay for lost value of our residential property. A 25-50% loss in value would mean a \$250-\$500 million dollar mitigation fund. However, the larger expense will be the long term medical cost resulting from damages to the health of our family and friends.

A third cost will be passed on to the Leon County School Board. Several of the families in the Jackson Bluff Neighborhood will demand their children be bused to Northeast Leon County School because of health concerns. These costs will be significant and long term as well.

In short, Mr. Gillum we don't want money, we want to protect our neighborhoods and the health of our children.

4. If the city gives FSU a special utility rate resulting in a \$2-\$5 million dollar cash rebate won't Florida A&M University, Tallahassee Community College and State of Florida seek similar cash payments?

Answer: It would certainly seem that in these difficult financial times these other government purchasers of electricity would expect to be treated equally. I do know that T.K. Wetherell was not negotiating for anyone other than himself and FSU. This would be a great question for attorneys at these other agencies to pursue.

Source: Debbie Lightsey
Tallahassee Democrat
City-FSU Utility Agreement

5. In the past, the City Attorney would use the public nuisance abatement ordinance to close down or condemn houses that violated the nuisance law including noise and litter. How can a biomass plant operating 24 hours a day, 7 days a week, spewing pollution not be a nuisance?

Answer: I don't believe this plant can operate in a residential neighborhood without being a nuisance. The biomass plant would be forced to stop operation or be confiscated (as the City does with residential homes) if it continued to operate.

Source: City Code
Jim English, City Attorney

6. I was glad to hear that the research facility that was part of the FSU-BG&E land lease has been moved to Central Florida. I'm anxiously waiting for the biomass plant to follow shortly. Is the lease between FSU and BG&E still valid? Also, since Jim Smith "sold" this concept to the Governor and cabinet because of the research factor- is their earlier decision binding?

Answer: This is clearly a legal issue that needs to be examined. However, when a party to a lease violates the lease usually that cancels the lease.

NOISE, WATER & WASTE QUESTIONS

1- The campus development plan says the noise level will be 65 decibels during the day (7am-10pm) and 55 decibels at night (10pm-7am) That sounds awfully high?

Answer: The noise levels are extremely high and will make living in the Jackson Bluff Neighborhood impossible.

Biomass plants have consistently caused problems for residents due to the noise that is created during their operation. The biomass plant located in Portsmouth, New Hampshire is so loud that residents of Eliot, Maine, (across the river from the plant) paid to have an acoustical study done. The study showed that the biomass plant violated both Portsmouth's and Eliot's sound ordinances. One Eliot resident said that the biomass plant "sounds like a jet engine running all the time." The sound study found that between 3 and 4:00 a.m. in Eliot, the sound ranges from 54 to 61 decibels. Typically, a residential area would experience sounds between 25 and 35 decibel for the same time period. This is specially concerning because the Schiller plant had already built a 700 foot noise reduction wall before it went into operation in 2007.

The 55 decibels proposed during the "day" will sound like a jet engine. The day noise level will continue until 10pm at night. The noise level will be worse in Tallahassee because BG&E doesn't plan on building a noise reduction wall. Also the rail operation noise will be excluded from the noise study and BG&E is only required to test noise level a single time. Finally, keep in mind the people complaining lived across the river in Eliot, Maine. If this plant is built the City and FSU need to get their checkbooks handy.

Source: Campus Development Plan
Schiller Plant, Portsmouth, New Hampshire

2. Where is BG&E going to dump 30 tons of discharge sand and ash per day?

Answer: I don't know and I don't think BG&E has an answer yet. A recent letter from Norm Thomas, Leon County solid waste coordinator suggests that the county policy at this time would not accept ash from the Tallahassee biomass plant. He voiced concerns for neighborhood on the east side of town when fine particulate matter spills during transportation. How will this waste be cleaned? How will it be stored so it will not damage our water supply?

Source: Glenn Farris
Norm Thomas (Solid Waste Coordinator)

3- How much water will be used by this plant? Can we clean this water after it is used to process electricity?

Answer: The water needs are significant. I've heard estimates of 1,000,000 gallons per day. Regardless of the number of gallons the question is how will this water be cleaned? Also, is special treatment required and who pays for it? Finally, what impact will this have on Wakulla Springs?

The Sierra Club cautions of pending battles between water for human use vs. industry consumption. Adequate controls are not in place domestically or internationally to prevent the water requirements of fuel farms from taking precedence over use of water for subsistence farming, food and fiber crop farming, fisheries, recreation, drinking and household use.

Source: Sierra Club
Joy Towles Ezell

Question #25: Why are we even discussing placement of a biomass plant in a residential neighborhood?

Answer: The Triangle of Deception and Greed



VIA Email and US Mail

December 1, 2008

The Honorable John Marks
Mayor City of Tallahassee
City Hall
300 South Adams Street
Tallahassee, FL 32301

Dear Mayor Marks,

It is the distinct pleasure of Biomass Gas & Electric to partner with the City of Tallahassee with the goal of bringing clean, renewable energy to the community. Tallahassee is one of the most progressive cities in the nation providing leadership and moving forward with its dedication to clean and sustainable energy. BG&E will continue to contribute to that goal in order for this positive partnership to continue.

The Tallahassee Renewable Energy Center offers exceptional benefits to Florida's capital city in the form of clean, renewable energy. The positive impact is far reaching and multi-dimensional. TREC will reduce Tallahassee's carbon footprint; provide a lower cost energy source offering long-term price stability; create a significant economic stimulus providing jobs and a new source of tax revenue; diversify the City's energy portfolio; and offer important, cutting-edge educational opportunities for Florida State University and Florida A&M University.

However, the emotional controversy surrounding the planned Roberts Ave. siting of this project leaves no choice but to look at alternatives. Unfortunately this includes moving the project and all of its socio-economic benefits out of Leon County. I am writing to inform you of the steps we will take and options we will explore.

We intend to explore the possibility of asking FSU to remove this project from the FSU master plan. While inclusion in the FSU master plan grew out of early conversations with the City planning staff, we never thought it necessary to accomplish our goals. We always expected to

3500 PARKWAY LANE • SUITE 440 • NORCROSS, GA 30092 • 770.662.0256

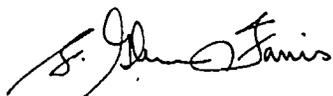
meet every City standard whether permitting under the Master Plan or under the City's review process.

We recognize the Roberts Ave. site offers unique benefits. These include its close proximity to FSU (the City of Tallahassee's largest utility customer), the closeness to CSX Railroad (completely alleviating the need for fossil fuel burning transportation trucks), the nearby availability of reclaimed water (allowing TREC to serve another City purpose by evaporating this coolant) and the neighboring power lines and substation that will deliver inexpensive electricity to the citizens of Tallahassee. Nevertheless, after hearing the concerns of nearby residents, we intend to explore with the City the possibility of locating the project elsewhere. I hope this will include another look at the Hopkins power plant site. I also wish to extend a sincere apology for any public misunderstanding created last week when a representative of BG&E misspoke by stating that the City selected the Roberts Ave. site. As you have rightly pointed out, we selected the site after ruling out the other sites as not meeting all the necessary criteria. Still, if you agree that the Hopkins site could be viable, we are open to further exploring the use of that site. It should be pointed out, however, that this site has limitations and would affect the city's ability to permit expansion of their operations and hinder their efforts to add capacity there, when needed.

In addition, permitting a minor source at an existing major source site poses significant timing issues for BG&E; therefore, we will look for alternative sites outside of Leon County. Under that scenario, we could still be a source of clean, renewable energy for the City but the other benefits – the economic stimulus, jobs, educational opportunities and taxes – would shift elsewhere. These benefits have been recognized by more than one county and their residents and these counties have contacted BG&E and we will begin the site evaluation process immediately.

I have the greatest regard for the City of Tallahassee and its leadership. We look forward to working through the issues before us and making clean, renewable energy available to diversify your portfolio and meet your citizens' energy needs.

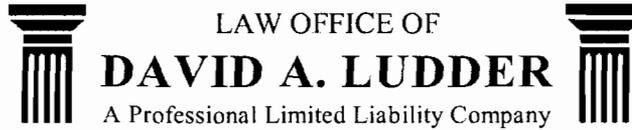
Sincerely,



S. Glenn Farris
CEO and President
Biomass Gas & Electric, LLC

Cc: Mayor Pro-Tem Allan Katz
Commissioner Andrew Gillum
Commissioner Debbie Lightsey
Commissioner Mark Mustian
City Manager Anita Favors Thompson
Director of Energy Services David Byrne

BSE



December 3, 2008

Michael W. Sole, Secretary
Florida Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 49
Tallahassee, Florida 32399

Re: **DEP File No. 0730109-001-AC**
Tallahassee Renewable Energy Center
Biomass Integrated Gasification and Combined Cycle Unit

Dear Secretary Sole:

I represent several associations and individuals, including the National Association for the Advancement of Colored People (NAACP), Rainey Gibson, Willie Dupree, Bob Fulford, and Irwin Jackson, who have interests that will be affected by the permitting of the above-referenced proposed biomass facility at Roberts Avenue in Tallahassee, Florida. Like many others in the area, my clients are frustrated that, despite its beginnings in 2006 or earlier, this project has proceeded to permitting with little or no community awareness of the project. If the facility is permitted by the Florida Department of Environmental Protection, my clients intend to initiate legal actions against you and the Department as described below.

Racial Discrimination Claim

Title VI of the Civil Rights Act of 1964, 42 U.S.C § 2000d, provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

“Title VI itself prohibits intentional discrimination. The Supreme Court has ruled, however, that Title VI authorizes Federal agencies, including EPA, to adopt implementing regulations that prohibit discriminatory effects.” *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (EPA, Feb. 5, 1998) at 2, <http://www.epa.gov/ocrpage1/docs/interim.pdf> (footnote omitted). The U.S. Environmental Protection Agency (EPA) has adopted such regulations.

A recipient [of EPA financial assistance] shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.

40 C.F.R. § 7.35(b).

EPA awards grants on an annual basis to many state and local agencies that administer continuing environmental programs under EPA's statutes. The Florida Department of Environmental Protection receives millions of dollars from EPA each year. As a condition of receiving funding under EPA's continuing environmental program grants, recipient agencies must comply with EPA's Title VI regulations, which are incorporated by reference into the grants. EPA's Title VI regulations define a "[r]ecipient" as "any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient" Title VI creates for recipients a nondiscrimination obligation that is contractual in nature in exchange for accepting Federal funding. *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (EPA, Feb. 5, 1998) at 2, <http://www.epa.gov/ocrpage1/docs/interim.pdf> (footnotes omitted).

As part of each application for grant assistance from EPA, the Department has made the following certification:

[The Department] [w]ill comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88- 352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 795), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101- 6107), which prohibits discrimination on the basis of age; U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Standard Form 424B (7-97), <http://www.whitehouse.gov/omb/grants/sf424b.pdf>.

Acceptance of EPA funding creates an obligation on the recipient to comply with the regulations for as long as any EPA funding is extended.

Under amendments made to Title VI by the Civil Rights Restoration Act of 1987, a "program" or "activity" means all of the operations of a department, agency, special purpose district, or other instrumentality of a state or of a local government, any part of which is extended Federal financial assistance. Therefore, unless expressly exempted from Title VI by Federal statute, all programs and activities of a department or agency that receives EPA funds are subject to Title VI, including those programs and activities that are not EPA-funded. For example, the issuance of permits by EPA recipients under solid waste programs administered pursuant to Subtitle D of the

Resource Conservation and Recovery Act (which historically have not been grant-funded by EPA), or the actions they take under programs that do not derive their authority from EPA statutes (e.g., state environmental assessment requirements), are part of a program or activity covered by EPA's Title VI regulations if the recipient receives any funding from EPA.

Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits (EPA, Feb. 5, 1998) at 2-3, <http://www.epa.gov/ocrpage1/docs/interim.pdf> (footnotes omitted).

“Frequently, discrimination results from policies and practices that are neutral on their face, but have the *effect* of discriminating. Facially-neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative.” *Id.* at 2 (footnote omitted). “[M]erely demonstrating that the permit complies with applicable environmental regulations will not ordinarily be considered a substantial, legitimate justification.” *Id.* at 11. And, “[i]f a less discriminatory alternative is practicable, then the recipient must implement it to avoid a finding of noncompliance with the regulations.” *Id.* “In the event that EPA finds discrimination in a recipient's permitting program, and the recipient is not able to come into compliance voluntarily, EPA is required by its Title VI regulations to initiate procedures to deny, annul, suspend, or terminate EPA funding.” *Id.* at 3 (footnotes omitted) (citing 40 C.F.R. §§ 7.115(e), 7.130(b), 7.110(c)). “EPA also may use any other means authorized by law to obtain compliance, including referring the matter to the Department of Justice (DOJ) for litigation. In appropriate cases, DOJ may file suit seeking injunctive relief.” *Id.*

According to data derived from the U.S. Census (2000), approximately 11,548 persons reside within a one-mile radius of the proposed biomass facility. Forty-three percent (43%) are African-American; fifty-one percent (51%) are non-White. This compares to twenty-nine percent (29%) African-American and thirty-four percent (34%) non-White in all of Leon County. The proposed biomass facility will have a disparate impact on nearby African-American and non-White residents.

Accordingly, if a permit is issued for this facility, my clients intend to file an administrative complaint with the EPA asking it to deny, annul, suspend, or terminate all EPA funding to the Florida Department of Environmental Protection.

Due Process Claim

The Fourteenth Amendment to United States Constitution requires that a state provide persons with “due process” before a property right is deprived by the state. Persons substantially affected by the granting of a permit for the proposed biomass facility have a right to an administrative hearing on the permit upon the filing of a proper petition therefor with the Florida Department of Environmental Protection. That right is recognized by State law and is considered a constitutionally-protected property right. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). The right to an administrative hearing cannot be deprived by the State without due process.

Due process requires that a meaningful hearing be provided at a meaningful time before a person may be deprived of a property right. *E.g., Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Section 403.815, Fla. Stat., and Rule 62-110.106(3), F.A.C., provide that the right to an administrative hearing is waived if a petition containing a statement of all disputed issues of material fact, 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, 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, and 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, is not filed with fourteen (14) days after notice of an intent to issue a permit is received or published.

In the present case, the complexity of the proposed permit, permit application and applicable rules realistically require that substantially affected persons consult with experts and lawyers prior to drafting a petition for administrative hearing. In addition, the liability for attorney fees imposed by Section 57.105, Fla. Stat., for filing a petition making claims that are not supported by material facts or not supported by the application of then-existing law to those material facts, makes the employment of a lawyer a practical necessity. Securing the assistance of such professionals and performing the analyses required to fulfill the petition requirements described above sufficiently to avoid liability for attorney fees cannot be accomplished within fourteen (14) days. This time is manifestly so insufficient that it is a denial of justice. Thus, the Florida Department of Environmental Protection has effectively deprived my clients and other substantially affected persons of their constitutionally-protected right to an administrative hearing without providing due process.

Accordingly, if a permit is issued for this facility, my clients intend to file a civil action against you under 42 U.S.C. § 1983 seeking to declare the grant of the permit void.

Sincerely,

David A. Ludder

cc: S. Glenn Farris
CEO and President
Biomass Gas & Electric, LLC
3900 Parkway Lane
Suite 440
Norcross, Georgia 30092

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

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

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
Fax (850) 521-2758
auhland@hgslaw.com

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.

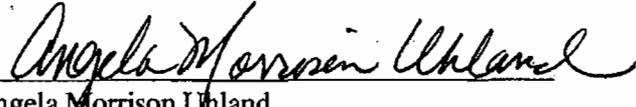
Relief Sought

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 4th day of December, 2008.

HOPPING GREEN & SAMS, P.A.


Angela Morrison Uhland
Fla. Bar No. 0855766
auhland@hgslaw.com
Douglas S. Roberts
Fla. Bar No. 855766
droberts@hgslaw.com
Gary P. Sams
Florida Bar No. 134594
gsams@hgslaw.com

P.O. Box 6526
Tallahassee, FL 32314
(850) 222-7500

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 4th day of December, 2008:

Jack Chisolm
Deputy General Counsel
3900 Commonwealth Blvd., MS 35
Tallahassee, FL 32399-3000

Ronni Moore
Office of General Counsel
Department of Environmental Protection
3900 Commonwealth Blvd., MS 35
Tallahassee, FL 32399-2600



Attorney

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