

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition to determine need for
Gainesville Renewable Energy Center in
Alachua County, by Gainesville Regional
Utilities and Gainesville Renewable Energy
Center, LLC.

DOCKET NO. 090451-EM
ORDER NO. PSC-09-0814-PHO-EM
ISSUED: December 10, 2009

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on November 30, 2009, in Tallahassee, Florida, before Commissioner Nathan A. Skop, as Prehearing Officer.

APPEARANCES:

ROY C. YOUNG and ROBERT SCHEFFEL WRIGHT, ESQUIRES, Young van Assenderp, P.A., 225 South Adams Street, Suite 200, Tallahassee, Florida 32301
On behalf of Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC. (GRU and GREC).

ERIK L. SAYLER and MARTHA CARTER BROWN, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

PREHEARING ORDER

I. CASE BACKGROUND

On September 18, 2009, Gainesville Regional Utilities (GRU) and Gainesville Renewable Energy Center, LLC., (GREC) filed a petition for a determination of need for the proposed Gainesville Renewable Energy Center electrical power plant in Alachua County pursuant to section 403.519, Florida Statutes (F.S.), and Rule 25-22.081, Florida Administrative Code (F.A.C.). The Commission issued a Notice of Commencement of Proceedings to the appropriate agencies, local governments, and interested persons on September 22, 2009. This matter has been scheduled for a formal administrative hearing on December 16, 2009.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter pursuant to Section 403.519, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential

classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

| <u>Witness</u> | <u>Proffered By</u> | <u>Issues #</u> |
|------------------------------|---------------------|--|
| <u>Direct</u> | | |
| Peegen Hanrahan ¹ | GRU/GREC LLC | Discussion of the City of Gainesville's decision to move forward with the Gainesville Renewable Energy Center (GREC) biomass facility. |

¹ Mayor Hanrahan's testimony will be adopted by Commissioner Scherwin Henry since Mayor Hanrahan will be out of the country during the hearing.

| <u>Witness</u> | <u>Proffered By</u> | <u>Issues #</u> |
|----------------------|---------------------|--|
| Edward J. Regan | GRU/GREC LLC | Discussion of GRU's need for the GREC biomass facility; overview of the GREC Need for Power Application; overview of PPA between GRU and GREC LLC; discussion of GRU's existing system, reliability criteria, need for capacity, economic parameters, resource planning process, DSM and supply-side efficiency activities, strategic considerations, consequences of delaying the GREC facility, and GRU's financial resources to commit to the GREC LLC PPA. |
| Todd Kamhoot | GRU/GREC LLC | GRU's forecast of electrical power demand and energy consumption. |
| Richard D. Bachmeier | GRU/GREC LLC | Discussion of the process used by GRU in selecting the GREC biomass facility and studies proving the facility will not negatively impact the electric transmission system in the Florida Reliability Coordinating Council, Inc. (FRCC) Region. |
| Joshua H. Levine | GRU/GREC LLC | Description of the GREC biomass project, overview of PPA between GRU and GREC LLC, project development, major components of the facility, fuel handling and supply for the facility, project schedule, and ability of GREC LLC to finance the GREC biomass facility. |

| <u>Witness</u> | <u>Proffered By</u> | <u>Issues #</u> |
|--------------------|---------------------|--|
| Bradley E. Kushner | GRU/GREC LLC | Fuel and carbon dioxide emissions allowance price forecasts, supply-side alternatives, economic evaluation methodology, and results of the economic evaluations. |

VII. BASIC POSITIONS

GRU/GREC: The commission should grant the petition for determination of need for the Gainesville Renewable Energy Center (GREC) because it is the most cost-effective option that allows GRU to meet future power requirements. There are no cost-effective renewable energy resources or conservation/ demand-side measures available to offset the need for the GREC. The GREC biomass facility will provide adequate electricity at a reasonable cost as well as contribute to the reliability and integrity of GRU's system. In addition, GRU will have utilized renewable energy sources and technologies as well as conservation measures to the extent reasonably available. (All GRU/GREC LLC Witnesses)

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: Are Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC proper applicants within the meaning of Section 403.519, F.S.?

POSITIONS

GRU/GREC: Yes. GRU is a municipal electric, natural gas, water, wastewater, and telecommunications utility serving retail customers that is owned and operated by the City of Gainesville in Alachua County, located in north-central Florida and is a valid applicant under the Florida Electrical Power Plant Siting Act (PPSA), Chapter 403, Part II, Florida Statutes.

GREC LLC is a private renewable power producer that will own, operate, and maintain the proposed GREC biomass facility and sell 100 percent of the facility's electric power output to GRU under a 30-year power purchase

agreement (PPA). GREC LLC is therefore an appropriate joint applicant pursuant to the Commission's decisions and the Florida Supreme Court's opinion in Nassau Power Corp. v. Deason, 641 So. 2nd 396 (Fla. 1994). (Regan, Levine)

STAFF: Yes. Gainesville Regional Utilities (GRU) is a municipal electric, natural gas, water, wastewater, and telecommunications utility serving retail customers; it is owned and operated by the City of Gainesville in Alachua County, located in north-central Florida; and it is a valid applicant under the Florida Electrical Power Plant Siting Act (PPSA), Chapter 403, Part II, Florida Statutes.

Gainesville Renewable Energy Center, LLC (GREC LLC) is a private renewable power producer that will own, operate, and maintain the proposed Gainesville Renewable Energy Center biomass facility and sell 100 percent of the facility's electric power output to GRU under a 30-year power purchase agreement (PPA). GREC LLC is an appropriate joint applicant pursuant to the Commission's decisions and the Florida Supreme Court's decision in Nassau Power Corp. v. Deason, 641 So. 2d 396 (Fla. 1994).

ISSUE 2: Is there a need for the Gainesville Renewable Energy Center, taking into account the need for electric system reliability and integrity, as this criterion is used in section 403.519, Florida Statutes?

POSITIONS

GRU/GREC: Yes. GREC's capacity is needed to improve and maintain the reliability of GRU's existing system. The capacity from GREC is needed to replace capacity from GRU's lowest cost existing fossil fueled unit, Deerhaven 2, during maintenance and forced outages. Deerhaven 2 serves approximately 50 percent of GRU's system peak demand and, as an aging facility that will be 32 years old when the GREC facility goes into service in late 2013. With increased age, the availability of Deerhaven 2 is expected to decrease. Most of the remainder of GRU's capacity is older than Deerhaven Unit 2 and will be retired during the term of the GREC LLC PPA. Thus, GRU needs the capacity from GREC to meet GRU's 15 percent reserve margin planning criterion. (Regan)

STAFF: No position at this time.

ISSUE 3: Is there a need for the Gainesville Renewable Energy Center, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in section 403.519, Florida Statutes?

POSITIONS

GRU/GREC: Yes. The GREC LLC PPA was evaluated on a levelized cost basis against comparable supply-side alternatives over the term of the GREC LLC PPA. The supply-side alternatives were evaluated considering seven different scenarios of fuel cost, capital cost, and carbon dioxide (CO₂) regulation. On a levelized cost basis, the GREC LLC PPA is lower in cost than any of the alternatives in 23 of the 28 cases that were evaluated. The GREC LLC PPA is lower in cost than any of the natural gas alternatives considered. Although it is uncertain whether any type of coal unit could be permitted in Florida at this time, the GREC LLC PPA is lower in cost than coal units when CO₂ regulation is considered.

STAFF: No position at this time.

ISSUE 4: Is there a need for the Gainesville Renewable Energy Center, taking into account the need for fuel diversity and supply reliability, as this criterion is used in Section 403.519, Florida Statutes?

POSITIONS

GRU/GREC: Yes. The GREC is needed to diversify GRU's existing fuel mix which is dominated by coal and natural gas. Coal is potentially at risk under future CO₂ emissions regulations. The price of natural gas has been highly volatile, and availability of natural gas may be considered a risk. Additionally, natural gas is also potentially at risk under future CO₂ emissions regulations. The GREC is needed to minimize the effects of these potentially costly and regulation-constrained fuels. (Regan)

STAFF: No position at this time.

ISSUE 5: Are there any renewable energy sources and technologies, as well as conservation measures, taken by or reasonably available to Gainesville Regional Utilities which might mitigate the need for the proposed Gainesville Renewable Energy Center?

POSITIONS

GRU/GREC: No. GRU has invested significant effort in developing the demand-side management (DSM) programs currently offered to its customers and is considered

one of the leading utilities in the State in this area. Since 1980, GRU has offered incentives and services for energy conservation and demand reduction. DSM programs are available for all of GRU's retail customers, including commercial and industrial customers. In addition, GRU continues to offer rebates for solar water heating and net metering and rebates for solar photovoltaics. In addition, GRU is successfully offering the first Feed-in-Tariff for solar photovoltaics in the United States designed to stimulate the photovoltaic industry in the Gainesville area and Florida in general. GRU also utilizes landfill gas, the only other renewable resource readily available to GRU, to the extent of its availability. GRU has several programs to improve the adequacy and reliability of the transmission and distribution systems, which also result in decreased energy losses. The combined successes of these programs and initiatives has helped to delay the need for additional capacity to beyond the proposed commercial operation date of the GREC biomass facility; however, the benefits associated with the GREC project, as well as economic incentives available to the proposed project that would not be realized if the commercial operation date is delayed beyond 2013, are significant enough to warrant GRU's petition for determination of need at this time. (Regan, Levine)

STAFF: No position at this time.

ISSUE 6: Is the Gainesville Renewable Energy Center the most cost-effective alternative available, as this criterion is used in section 403.519, Florida Statutes?

POSITIONS

GRU/GREC: Yes. The GREC is lower in cost than any of the natural gas alternatives considered. The facility is also lower in cost than coal units when CO₂ regulation is considered.

The economics of GRU's PPA with GREC LLC were compared to the cost of the supply-side alternatives using a levelized cost of energy (LCOE) approach. The LCOE combines capital, operating, maintenance and fuel costs. There were a total of 28 different supply-side alternative scenarios evaluated. The GREC LCOE was lowest in cost in 23 of the 28 scenarios with only scenarios with coal units without any consideration of CO₂ being lower in cost. It is uncertain as to whether coal units of any type can be permitted in Florida at this time, and the Gainesville City Commission and community have thoroughly considered and clearly adopted a long-range energy policy that does not include new coal-fired generation. (Hanrahan, Regan, Kushner)

STAFF: No position at this time.

ISSUE 7: Based on the resolution of the foregoing issues, should the Commission grant the petition to determine the need for the proposed Gainesville Renewable Energy Center?

POSITIONS

GRU/GREC: Yes. The Commission should grant the petition for determination of need for the Gainesville Renewable Energy Center (GREC) because it is the most cost effective option that allows GRU to meet future power requirements. There are no cost-effective renewable energy resources or conservation/ demand-side measures available to offset the need for the GREC. The GREC biomass facility will provide adequate electricity at a reasonable cost as well as contribute to the reliability and integrity of GRU's system. In addition, GRU will have utilized renewable energy sources and technologies as well as conservation measures to the extent reasonably available. (All GRU/GREC LLC Witnesses)

STAFF: No position at this time.

ISSUE 8: Should this docket be closed?

POSITIONS

GRU/GREC: Yes. This docket should be closed after expiration of the time for filing an appeal of the Commission's final order addressing the petition for determination of need.

STAFF: Yes, this docket should be closed when the time for appeal of the Commission's final order has run.

IX. **EXHIBIT LIST**

| <u>Witness</u> | <u>Proffered By</u> | <u>Description</u> |
|-----------------|---------------------|--|
| <u>Direct</u> | | |
| Edward J. Regan | GRU/GREC LLC | EJR-1 Resumé of Edward J. Regan |
| Edward J. Regan | GRU/GREC LLC | EJR-2 Summary of GRU's existing residential and non-residential DSM programs |
| Edward J. Regan | GRU/GREC LLC | EJR-3 Summary of GRU's recent base rate and fuel adjustments |

| <u>Witness</u> | <u>Proffered By</u> | | <u>Description</u> |
|----------------------|---------------------|-------|--|
| Todd Kamhoot | GRU/GREC LLC | TK-1 | Resumé of Todd Kamhoot |
| Todd Kamhoot | GRU/GREC LLC | TK-2 | Summary of GRU's current load forecasts |
| Richard D. Bachmeier | GRU/GREC LLC | RDB-1 | Resumé of Richard D. Bachmeier |
| Richard D. Bachmeier | GRU/GREC LLC | RDB-2 | Initial recommendations made to the Gainesville City Commission (City Commission) by GRU evaluation staff and the final approved factor weights for use in evaluating biomass proposals |
| Richard D. Bachmeier | GRU/GREC LLC | RDB-3 | FRCC's letter approving interconnection of the GREC |
| Joshua H. Levine | GRU/GREC LLC | JHL-1 | Resumé of Joshua H. Levine |
| Bradley E. Kushner | GRU/GREC LLC | BEK-1 | Resumé of Bradley E. Kushner |
| Bradley E. Kushner | GRU/GREC LLC | BEK-2 | Confidential Exhibit summarizing the economics of the GRU power purchase agreement (PPA) with GREC LLC compared to supply-side alternatives |
| Bradley E. Kushner | GRU/GREC LLC | BEK-3 | Confidential Exhibit summarizing the economics of the GRU PPA with GREC LLC compared to supply-side alternatives at higher capacity factors than represented in Confidential Exhibit No. __ [BEK-2] |

| <u>Witness</u> | <u>Proffered By</u> | | <u>Description</u> |
|--------------------|---------------------|-------|--|
| Bradley E. Kushner | GRU/GREC LLC | BEK-4 | Confidential Exhibit summarizing the economics of the GRU PPA with GREC LLC to supply-side alternatives across a range of capacity factors |
| Bradley E. Kushner | GRU/GREC LLC | BEK-5 | Confidential Exhibit summarizing the economics of the GRU PPA with GREC LLC to supply-side alternatives over a shorter evaluation period than represented in Confidential Exhibit No. __ [BEK-2] |
| Bradley E. Kushner | GRU/GREC LLC | BEK-6 | Confidential Exhibit presenting the results of all of the economic evaluations represented in Confidential Exhibit No. __ [BEK-2] through Confidential Exhibit No. __ [BEK-5]. |

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There is a proposed stipulation for Issue 1.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are three Requests for Confidential Classification dated October 1, 2009, October 28, 2009, and November 13, 2009. These will each be addressed by separate order.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed 10 minutes per party.

It is therefore,

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 10th day of December, 2009.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

ELS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.