

Marguerite McLean

090451-EM

From: paulastahmer@aol.com
Sent: Thursday, April 22, 2010 2:19 AM
To: Filings@psc.state.fl.us; swright@yvlaw.net; diandv@bellsouth.net
Cc: Erik Saylor; Martha Brown; Theresa Walsh
Subject: Intervener's Motion to Compel Production
Attachments: 090451_Intervener_Mot_Compel_Pet_POD[2].pdf

a. Person responsible for this electronic filing:

Paula H. Stahmer, Intervener, *pro se*
 4621 Clear Lake Drive
 Gainesville, Florida 32607
 (352) 373-3958/ 352-222-1063(c)
 Paulastahmer@aol.com

b. 090451-EM
 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.

c. Document being filed on behalf of Paula H. Stahmer, Intervener

d. There are a total of 59 pages, including exhibits..

e. The document attached for electronic filing is Intervener's Motion to Compel Production of Documents, with a List of Exhibits, and Exhibits A-I . All are in a pdf file format.

Thank you for your attention and assistance in this matter.

Paula H. Stahmer
 Phone: 352-373-3958/ 352-222-1063(c)

Paula H. Stahmer

DOCUMENT NUMBER-DATE
 03104 APR 22 2010
 FPSC-COMMISSION CLERK

4/22/2010

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of:

DOCKET NO. 090451-EM

JOINT PETITION TO DETERMINE NEED
FOR GAINESVILLE RENEWABLE ENERGY
CENTER IN ALACHUA COUNTY, BY
GAINESVILLE REGIONAL UTILITIES
AND GAINESVILLE RENEWABLE ENERGY
CENTER, LLC.

DATE: April 22, 2010

**INTERVENER'S MOTION TO COMPEL PETITIONERS' PRODUCTION OF
REDACTED DOCUMENTS RELATING TO THIS PROCEEDING**

Pursuant to the Florida Public Service Commission (hereinafter "FPSC") Procedural Rules of Practice, Rule 25-22.006 *et seq.*, F.A.C., Intervener Stahmer hereby respectfully moves the FPSC for an order compelling Petitioners to produce all redacted documents in unredacted form, including any documents not yet identified as exhibits or otherwise in the official record, that have been or will be submitted to the FPSC or to Interveners in the above-captioned proceeding. In support of Intervener's request, Intervener states as follows:

1. On or about March 5, 2010, Intervener was granted intervener status in this proceeding. As party to this action, Intervener has the right to seek discovery.
2. Petitioners have submitted, and FPSC Staff have requested and received, numerous documents, many of which, either in whole or in part, have been designated by the FPSC as containing proprietary information belonging to Petitioners and which information is therefore entitled to protection as confidential information.
3. Intervener does not now dispute the appropriateness of the confidentiality protection, nor does she seek to exempt herself from the duty of non-disclosure.
4. Since on or about March 22, 2010, Interveners and Petitioners' counsel, Robert Scheffel Wright (hereinafter "Counsel"), have been negotiating through written correspondence the terms of a Non-Disclosure Agreement (hereinafter "NDA") under which Interveners may be

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given access to the confidential information. (See Exhibit A, Email exchanges, dated March 24, 2010, between Intervener Deevey and Counsel.) Intervener acknowledges that Counsel has always been prompt in responding to Interveners' concerns about terms in the proposed NDA. Interveners also acknowledge that Counsel has made several significant changes to the proposed terms as an accommodation to Interveners' expressed concerns. (See Exhibit B, Counsel's Letter to Interveners, dated April 15, 2010, first full paragraph on page 2, containing a summary of some exchanges.)

5. Intervener asserts that Interveners and Petitioners have made a good faith effort to comply with Rule 25-22.006 (7) (b), F.A.C., in seeking "...mutual agreement regarding access prior to bringing the controversy to the Commission." Interveners have advised Counsel of the filing of this motion via Email on April 21, 2010.

6. The foregoing notwithstanding, Intervener asserts that some of the remaining proposed terms of the proposed NDA are unreasonably onerous and disproportionate to any risk that disclosure of confidential information by Interveners could pose to Petitioners.

7. Interveners are both private citizens and residents of Gainesville, Florida. They are ratepayers/customers of Gainesville Regional Utilities (hereinafter "GRU"), one of the Petitioners, and will be directly affected by the consequences of building the GREC facility. Neither Intervener has commercial or professional associations with persons who could be business competitors with GREC or who would have a commercial interest in GREC's proprietary information. To their knowledge, Interveners have no personal relationships with any such persons either.

8. The record in this matter contains copies of NDA's between GREC and four different municipal utility companies in Florida, each an enterprise engaging in annual business of plus one hundred million dollars, signed between May 2009 and September 2009, as part of Petitioners' efforts in "evaluating possible transactions regarding the development of the Project [GREC] or the purchase and sale of energy from the Project." (Exhibit C; the quoted language is on the first page of each NDA.) The acknowledged commercial interests of the utilities and the stated purpose of the NDA's establish clearly that these utilities could potentially have competitive interests or associations adverse to Petitioners. Nevertheless, the terms of the NDA's with these utilities are considerably more generous than the terms offered to Interveners. The

four utilities are Florida Municipal Power Agency, City of Lakeland, Florida, Orlando Utilities Commission, and Reedy Creek Improvement District. Copies of the referenced NDA's are also in 090451 Hearing Exhibit pages 000319 through 000333, copies attached, Exhibit C.

9. Petitioners initially demanded that Intervenors be constrained by a continuing obligation not to disclose confidential information for ten years.(See Exhibit D, page 8, section 9). Petitioners have now reduced the term to five years. Petitioners initially demanded that Intervenors post a One Hundred Thousand Dollar (\$100,000.00) bond for the privilege of having possession of copies of confidential information. Petitioners have stated a willingness to forego possession of confidential information, so this provision has been withdrawn. Petitioners originally required that Intervenors agree to a provision for liquidated damages of One Hundred Thousand Dollars (\$100,000.00) upon the showing of a *prima facie* case of disclosure by Intervenors (see Exhibit D, page 6, section 6), which provision has now been withdrawn. Petitioners originally required that Intervenors be "jointly and severally liable" (see Exhibit D, page 4, section 4) for any breach of the NDA, and then "individually and together liable" for any breach, but have now withdrawn such language. Petitioners have also agreed to Intervenors' request that they be allowed to carry away notes from viewing confidential information subject to review by an agent of Petitioner, as originally proposed by Intervenors (see Exhibit F, page 2, paragraph 3), to ensure the notes do not contain confidential information. Intervenors appreciate Petitioners' revisions to the proposed NDA in response to Intervenors' objections.

10. Intervenors have requested assurances from Petitioners in writing that, in the event that Petitioners bring an action against Intervenors for allegedly disclosing confidential information in breach of an NDA, that Intervenors shall have the right to 1) defend against such a claim of disclosure to show it is not true, and/ or 2) rebut any presumption of harm implicit in the designation of information as confidential should it be found that Intervenors did disclose confidential information. (See Exhibit E, page 1, paragraphs #1, 2,3, 5); Exhibit F, page 2, paragraphs 2-5). Petitioners have refused to make such a concession.(See Exhibit B, end of page 2 through first paragraph on page 3).

11. Petitioners argue that the designation of information means the information so designated by the FPSC has already been found to be of such significance that disclosure necessarily causes harm to Petitioners. Intervener argues that the designation of confidential

information by the FPSC in this proceeding should not carry an irrebuttable presumption since the purpose of the designation was limited to facilitating the narrow scope of these proceedings and the requests from Petitioners for designation of confidential information has not been subject to challenge by third parties.

12. Intervener asserts that disparity in resources between them and Petitioners warrants such protection as is described in Paragraph #10 above, and regard such protection as minimal due process. Refusal by Petitioners to grant such a request is an abuse of the right to seek protection of confidential information and is being used as a tactic to obstruct Interveners' rights as parties to this action.

13. By contrast, the utilities subject to the NDA's mentioned above in Paragraph # 8 are constrained by terms considerably less onerous than those imposed upon Interveners even though the utilities are far better positioned to use the confidential information to the detriment of Petitioners and have the financial resources to post appropriate security. The utilities have a continuing obligation of non-disclosure of only three years (Exhibit C, pages 1, 4, 7, & 10), as opposed to Interveners' five year obligation. Intervener was not previously aware of this term so raises it now for the first time. The utilities are authorized to share the confidential information with a host of employees and experts while Interveners are strictly prohibited from making any disclosures to "any other person in any form or format whatsoever." Interveners have asserted to Petitioners a right to send written communications to Gainesville City Commissioners about information Interveners believe should be brought to their attention inasmuch as the Commissioners constitute the Board of Trustees for GRU and presumably therefore are already privy to any confidential information regarding GREC. Petitioners have stated that such communications must be through GREC's attorneys, a condition Interveners do not oppose provided it is understood that GREC attorneys may not withhold or edit such communications. Thus far, Petitioners refuse to give such assurances. Each of the four utility NDA's provide explicit protection to the utilities that while the utility may be subject to injunctive action to prevent further violations of an NDA, "[i]n no event shall the Parties be liable for indirect or consequential damages, whether based on a claim arising under contract, tort (including negligence), strict liability or any other legal theory." (See 090451 Hearing Exhibit pages

000321, 000324, 000328, 000332, or Exhibit C, pages 3, 6, 9, & 12.) Such protection has not been accorded to Interveners. Interveners were not previously aware of this term and raise it for the first time here.

14. Interveners have demonstrated to Petitioners that some of the confidential redacted information can be readily inferred from unredacted material and that, therefore, Interveners should not be held liable for revealing to others Interveners' own estimations of confidential information when such estimations are not based upon information received in violation of an NDA. An example of the foregoing, a memorandum sent via Email, dated April 14, 2010, by Intervener Deevey to Counsel, is attached as Exhibit G, along with the response from Counsel, dated April 15, 2010, Exhibit B. Intervener Deevey sought to illustrate to Counsel how some of the redacted confidential contract cost information can be inferred from information that is public. Counsel's response was that Intervener Deevey was making an "apparent attempt...to procure our [GREC's] agreement to an interpretation that some sort of 'reverse discounting' methodology will not constitute a breach of the NDA...." Intervener asserts that the example was provided to Counsel to 1) protect Interveners, and 2) assist Counsel in understanding Interveners' concerns about being held liable for an ability to intelligently analyze data. Similarly, Intervener raises this example before the FPSC to illustrate Interveners' vulnerability to Petitioners' ill will even when Interveners are merely seeking to establish some common understanding.

15. With regard to other queries from Interveners about the import of language in the proposed NDA, Counsel has responded by stating Interveners were making "inappropriate attempts to solicit legal advice from us [GREC] as to the interpretation of the NDA's." Interveners assert that, since the NDA was written by Counsel specifically for Interveners (according to Counsel's own remarks and written communication, see Attachment), it is only reasonable for Interveners to ask Petitioners' intent with regard to their own language as is common between any contracting parties prior to signing an agreement.

WHEREFORE, for all the foregoing reasons and any other reasons that the FPSC may deem relevant, Intervener requests that the FPSC grant their request that Petitioners provide access to Interveners to the confidential information according to the most recently provided proposed NDA with the following amendments requested by Interveners:

- a. in any action brought by Petitioners against either or both Intervenors alleging a breach of the NDA, Petitioners shall have the burden to prove a breach occurred;
- b. in any action brought by Petitioners against either or both Intervenors alleging a breach of the NDA, Petitioners shall have the burden to prove any alleged disclosure contained bona fide confidential information;
- c. in any action brought by Petitioners against either or both Intervenors alleging a breach of the NDA, Petitioners shall have the burden to prove any disclosure of confidential information caused harm to Petitioners;
- d. Petitioners shall revise the proposed NDA with Intervenors to change the term of their continuing obligation not to disclose to a term of three years, the same term of continuing obligation imposed upon the utilities identified in Paragraph #7;
- e. Petitioners shall revise the proposed NDA with Intervenors to include the same insulation from suit for consequential or indirect damages as was provided to the Utilities;
- f. Petitioners shall revise the NDA to include a sharing clause allowing written communication between Intervenors and the City Commissioners of Gainesville, Florida, pertaining to confidential information; and
- g. any and all other remedies deemed just by the FPSC.

Respectfully submitted this 21st Day of April, 2010,

s/ Paula H. Stahmer, pro se

Paula H. Stahmer
4621 Clear Lake Drive
Gainesville, Florida 32607
Cell: 352-222-1063
Email: Paulastahmer@aol.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Intervener's Motion to Compel was served via Email and/or US Postal Service upon the following on April 22, 2010:

Roy C. Young/Schef Wright

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Phone: 850-222-7206
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Email: ryoung@yvlaw.net

Dian R. Deevey

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s/Paula H. Stahmer, pro se
Intervener

**LIST OF EXHIBITS FOR INTERVENERS' MOTION TO COMPEL
PETITIONERS' PRODUCTION OF CONFIDENTIAL INFORMATION**

<u>EXHIBITS</u>	<u>TITLE/ DECSRIPTION</u>
A.	Emails, dated March 24, 2010, between Intervener Deevey and Counsel regarding NDA.
B.	Counsel's Letter, dated April 15, 2010, to Interveners Transmitting last NDA proposal and commenting on Interveners Concerns.
C.	NDA's Between Petitioner GREC and Four Florida Utilities. These NDA's are already a part of the record: 090451 Hearing Exhibit 000319-000333.
D.	NDA Packet, dated March 24, 2010, from Petitioners to Interveners with First Proposed NDA and Transmittal Letter.
E.	Last NDA, dated April 14, 2010, from Petitioners to Interveners.
F.	Email, dated March 26, 2010, from Intervener Stahmer to Counsel in response to Proposed NDA and discussing issues of note taking and various objections to some terms.
G.	Email, dated April 14, 2010, from Intervener Deevey to Counsel describing a "reverse discounting" methodology for analyzing disclosed data in order to infer certain information from undisclosed data.
H.	Letter, dated April 15, 2010, from Interveners to Counsel responding to last NDA and Counsel's Letter of April 15, 2010.
I.	Memorandum, dated March 31, 2010, from Intervener Stahmer to Counsel discussing various objections and requests for an NDA.

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

From: Dian Deevey [<mailto:diandv@bellsouth.net>]
Sent: Wednesday, March 24, 2010 12:40 PM
To: 'Schef Wright'
Cc: Erik Sayler@psc.state.fl.us; paulastahmer@aol.com; Theresa Walsh (TFWALSH@PSC.STATE.FL.US)
Subject: RE: Confidentiality Agreement

Sorry, Schef, I didn't realize you stay at work so late. I actually drafted the email before 8 PM and just sent it off today without checking as carefully as I should have.

Please accept my apologies. I am copying this to everyone who received my earlier email to you, so they will see my error.

According to Jay, you have a standard confidentiality agreement, and I am a little surprised that you are drafting a very special one for me.

I hope that I will be able to examine the confidential filings in a manner that allows me to study them carefully. I understand that usually all parties are allowed to have copies of these documents in their possession at their place of work, which in my case is my home.

I have a good safe and could keep them very safe when I am not actually using them.

Thanks again,

Dian Deevey

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

From: Schef Wright [<mailto:swright@yvlaw.net>]
Sent: Wednesday, March 24, 2010 10:13 AM
To: Dian Deevey
Cc: Paulastahmer@aol.com; Erik Sayler@psc.state.fl.us; Theresa Walsh
Subject: Re: Confidentiality Agreement

Hi Dian - I sent you and Paula Stahmer an e-mail last night explaining that I've drafted a confidentiality agreement that is in our internal review process. I did not get a "returned e-mail" from either transmission, so you should have received it. I'm forwarding it to you again, separately. The bottom line is what I said - it's drafted and I'll get it to you and Paula as soon as our internal review process is completed. All the best, Schef

>>> "Dian Deevey" <diandv@bellsouth.net> 03/24/10 9:39 AM >>>

Dear Schef,

On Monday, I asked J LaVia about obtaining access to confidential documents in the hearing record and those that have been included in responses to interrogatories since 2.9/10.

He told me he would ask you

When I inquired about the status of my request Tuesday, Mr. LaVia told me that you intended to contact me on this topic.

I have received no communication from you about my obtaining access to confidential documents, and would like you to inform me today how I can do so.

Thank you,

Dian Deevey

YOUNG VAN ASSENDERP, P.A.

ATTORNEYS AT LAW

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Of Counsel Attorneys:

Daniel H. Cox
Joseph W. Landers, Jr.
Philip S. Parsons

April 15, 2010

BY ELECTRONIC MAIL

Paula H. Stahmer
4621 Clear Lake Drive
Gainesville, Florida 32607

Dian R. Deevey
1702 SW 35th Place
Gainesville, Florida 32608

Re: Confidential Information in the Hearing Record of PSC Docket
No. 090451-EM, Need Determination for the Gainesville
Renewable Energy Center

Dear Ms. Stahmer and Ms. Deevey:

This letter follows up on our correspondence regarding access to GREC LLC's Confidential Information in connection with the need determination proceeding for the Gainesville Renewable Energy Center, including correspondence that I and my law partner, Jay LaVia, have received from you since yesterday evening. In light of your correspondence from yesterday and today, I first summarize the history of our correspondence on the subject of the Non-Disclosure Agreement ("NDA") that we have negotiated. I conclude by advising you that the NDAs - individualized as per Ms. Deevey's request of April 9, 2010 - are what they are, that they speak for themselves, that GREC LLC is not agreeable to any of your proposed modifications requested in your latest correspondence, and that we will not advise you with respect to any aspect of the NDAs, or as to any aspect of your performance under the NDAs.

I further advise you that, if either of you wishes to review the Confidential Information tomorrow (Friday, April 16, 2010) as

per our previous arrangements, you must execute the NDA as it is.

Briefly, the history of our negotiations regarding the Non-Disclosure Agreement(s) by which we have agreed to provide you with access to Confidential Information in this docket is as follows. I first sent you a proposed NDA on March 24. In response to concerns that Ms. Stahmer raised on March 26, I sent you a revised NDA on March 28 that addressed those concerns and explained our positions on several others. In response to further concerns that you both raised on March 31, I sent you a further revised NDA on April 1. You replied by e-mail on April 2 and April 5, indicating that we were close to agreement and that we should discuss the matter at the prehearing conference on April 5, 2010. After the prehearing conference, we did indeed discuss the NDA issues, and you indicated that you would agree to our latest proposed NDA if we would agree to provide both for the taking of "private notes" that would be kept under seal and also for the taking of "non-confidential notes" - i.e., notes that would not contain Confidential Information or information from which Confidential Information could be derived - that you could remove from the review premises, subject to review by GREC LLC's counsel. I forwarded you such an amended NDA on April 8, 2010, and in my transmittal letter confirmed to you that I would be available to accommodate your review on your requested dates, April 14 and 15, 2010. Finally, per Ms. Deevey's request of April 9, we prepared individualized versions of the NDA, one for each of you, which we forwarded to you on April 14, following your request - and our agreement - to review confidential documents in our offices on Friday, April 16.

To summarize, following my original transmittal of an NDA on March 24, we have revised the NDA to accommodate your concerns and wishes on three separate occasions, March 28, April 1, and April 8, plus the final revisions to prepare individualized NDAs per Ms. Deevey's request of April 9.

Then, last night and this morning, we have received further correspondence from you regarding our interpretation of the NDA and requesting further modifications to the NDA, either in the form of further changes to the NDA documents themselves or in the form of "side letter" provisions. These include Ms. Deevey's apparent attempt (in an e-mail on April 14) to procure our agreement to an interpretation that some sort of "reverse discounting" methodology will not constitute a breach of the NDA, her further request (in an e-mail from the afternoon of April 15) that we change the NDA to allay her newly stated concerns, and Ms. Stahmer's request (in an e-mail on April 14) that we agree to certain understandings with respect to paragraphs 2 and 3 of the NDAs.

GREC LLC does not agree to any of your latest requested

changes or interpretations. The NDAs are what they are, and they speak for themselves. Your latest requests are inappropriate attempts to modify the agreements, after we have carefully and thoroughly negotiated them and changed them substantively 3 times to accommodate your earlier requests and concerns. As an aside, the provisions in the NDAs are standard provisions that are found in many confidentiality and non-disclosure agreements. Your latest requests are also, most probably, inappropriate attempts to solicit legal advice from us as to the interpretation of the NDAs. As we have included in the NDAs from the first version through the most recent, you have had the opportunity to obtain professional legal advice on all aspects of the NDAs, and we will not - indeed, we cannot - advise you with respect to either the interpretation of the NDAs or with respect to your performance thereunder. Your obligations are as stated in the NDAs, and you are required to govern yourselves accordingly, just as GREC LLC does.

Finally, if either of you wishes to review the Confidential Information tomorrow, as we had previously arranged, you must sign your respective NDA as it is.

As we committed to do, we have prepared for your review tomorrow, and so I ask that you please notify me immediately of your intentions as to whether you wish to proceed under the existing NDAs or to pursue some other course of action.

As I have stated on several occasions, communications on this subject must be in writing; e-mail is fine. I look forward to hearing from you.

Cordially yours,


Robert Scheffel Wright

CONFIDENTIALITY AGREEMENT
between
FLORIDA MUNICIPAL POWER AGENCY
and
GAINESVILLE RENEWABLE ENERGY CENTER, LLC

This confidentiality agreement ("Agreement") dated as of Sept. 24, 2009 ("Effective Date") is between the Florida Municipal Power Agency, a wholesale power company owned by municipal electric utilities, whose purpose is to supply bulk power and related services to support community-owned electric utilities, and which has its offices at 8553 Commodity Circle, Orlando, Florida 32819-9002 ("FMPA"), and Gainesville Renewable Energy Center, LLC, a Delaware limited liability company with offices at 75 Arlington Street, 5th Floor, Boston, Massachusetts 02116 ("GREC"), each individually a "Party" and collectively the "Parties".

1. **PURPOSE AND INFORMATION COVERED:** The Parties intend to exchange information with respect to a proposed biomass fueled power generation project to be developed by GREC and located in Alachua County, Florida (the "Project") for the sole purpose of evaluating possible transactions regarding the development of the Project or the purchase and sale of energy from the Project. To accomplish this, it may be necessary for the Parties to exchange business and technical information; data; and know-how, including reports, contracts, pricing options, solutions, drawings, and other information related to the Project that is considered by the disclosing party as confidential or proprietary and (in the case of GREC) trade secrets. Such information which is disclosed hereunder shall be regarded as "Information" for purposes of this Agreement if it is (a) provided in writing (hard copy or electronic format) and marked as "confidential" or "trade secret" by the disclosing Party, or (b) if disclosed orally and indicated at the time of disclosure as being confidential or proprietary and the essence of such subject is summarized or described in writing (hard copy or electronic format) within thirty (30) days after such disclosure and designated as "confidential" or "trade secret."

2. **TERM OF THE AGREEMENT:** The receiving Party's obligation to maintain Information as confidential pursuant to the terms of this Agreement shall be from the Effective Date until the earlier of (a) the Parties' entering into a further superseding agreement regarding the subject matter contained herein or (b) three (3) years after the Effective Date.

3. **USE AND NON-DISCLOSURE:** The receiving Party, its officers, directors, members, employees, attorneys and consultants, and any third parties authorized through the prior written permission of the disclosing Party, may use Information only for the purposes described in Paragraph 1. The receiving Party may disclose Information to its attorneys and consultants without the permission of the disclosing Party. The receiving Party, its attorneys and consultants shall not disclose Information to any third party, including, but not limited to, its parent (if applicable), affiliates, subsidiaries, agents, or subcontractors, without the prior written permission of the disclosing Party during the term of this Agreement. In the event the disclosing Party approves in writing of such disclosure or transmittal to such third party, the receiving Party shall immediately obtain a written commitment from such third party making the terms of this Agreement applicable to such third party, then disclose and transmit such Information to such third party on a proprietary and confidential basis. The receiving Party further agrees to limit the availability of the Information to those officers, employees, attorneys, and consultants whom it deems to have a bona fide need to know in connection with the purposes described in Paragraph 1. The receiving Party shall maintain the Information so imparted secret and confidential.

4. **RETURN OF INFORMATION:** The Parties may not make copies of documents relating to the Information other than for the purposes indicated in Paragraph 1 above or as authorized by the disclosing Party in writing. Any such copies shall include the proprietary information notice of the disclosing Party. As directed by the disclosing Party, but only to the extent permitted by Florida Law (including, without limitation, the Florida Public Records Law, Chapter 119 Florida Statutes, as well as the related public records retention schedules), the receiving Party shall either return or certify destruction of all such documents, drawings, and other Information provided to it under this Agreement, and all copies thereof, within thirty (30) days after any request by the disclosing Party to do so.

5. **INFORMATION NOT COVERED BY THE AGREEMENT:** The duties of confidentiality of the receiving Party under this Agreement shall not apply to Information which the receiving Party can show is the same as information which:

- (i) is or becomes generally available to the public without breach of this Agreement;
- (ii) was in the possession of the receiving Party at the time it was initially furnished by the disclosing Party; or,
- (iii) is later received from an independent third party who is, as far as can reasonably be determined, under no limitation or restriction regarding disclosure of the Information.

6. **COMPELLED DISCLOSURE.** Notwithstanding any other provision of this Agreement, FMPA may disclose Confidential Information if necessary, in the sole opinion of FMPA legal counsel, to comply with applicable law (including, without limitation, the Florida Public Records Law, Chapter 119, Florida Statutes), order, regulatory ruling, subpoena, or order of a governmental authority or tribunal with competent jurisdiction. In such event, FMPA shall provide GREC with prompt notice so that GREC may seek a protective order or other

appropriate remedy, at the sole expense of GREC, and FMPA shall disclose only that portion of the Confidential Information which it is advised by opinion of its counsel that it is legally required to disclose and shall exercise reasonable efforts to obtain reliable assurance that the confidentiality of the Confidential Information will be maintained. GREC must provide written acknowledgement of its intent to intervene and seek protective measures for any such Confidential Information within 10 business days after notice from FMPA, including the general statutory basis of the exception claimed to the disclosure under Chapter 119.07, Florida Statutes.

7. EQUITABLE RELIEF: Any violation of this Agreement will cause irreparable harm to a disclosing Party. Accordingly, the disclosing Party shall be entitled to injunctive relief enjoining and restraining any violation in addition to any other rights or remedies at equity or law. In no event shall the Parties be liable for indirect or consequential damages, whether based on a claim arising under contract, tort (including negligence), strict liability or any other legal theory.

8. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, excluding its rules governing conflicts of law.

9. ENTIRE AGREEMENT: This Agreement contains the entire agreement and understanding between the Parties as to the subject matter herein. It merges and supersedes all prior discussions, writings, commitments and understandings between the Parties as to the subject matter herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Florida Municipal Power Agency

Gainesville Renewable Energy Center, LLC



Name: Nicholas P. Guarriello

Name: Albert Morde

Title: General Manager + CEO

Title: Chief Financial Officer

CONFIDENTIALITY AGREEMENT
between
THE CITY OF LAKELAND, FLORIDA
and
GAINESVILLE RENEWABLE ENERGY CENTER, LLC

This confidentiality agreement ("Agreement") dated as of June 26, 2009 ("Effective Date") is between the City of Lakeland, Florida, which through its Electric Department operates a municipal utility system providing electricity and other utility services, and which has its offices at 501 East Lemon Street, Lakeland, Florida 33801 ("LAKELAND"), and Gainesville Renewable Energy Center, LLC, a Delaware limited liability company with offices at 75 Arlington Street, 5th Floor, Boston, Massachusetts 02116 ("GREC"), each individually a "Party" and collectively the "Parties".

1. **PURPOSE AND INFORMATION COVERED:** The Parties intend to exchange information with respect to a proposed biomass fueled power generation project to be developed by GREC and located in Alachua County, Florida (the "Project") for the sole purpose of evaluating possible transactions regarding the development of the Project or the purchase and sale of energy from the Project. To accomplish this, it may be necessary for the Parties to exchange business and technical information; data; and know-how, including reports, contracts, pricing options, solutions, drawings, and other information related to the Project that is considered by the disclosing party as confidential or proprietary and (in the case of GREC) trade secrets. Such information which is disclosed hereunder shall be regarded as "Information" for purposes of this Agreement if it is (a) provided in writing (hard copy or electronic format) and marked as "confidential" or "trade secret" by the disclosing Party, or (b) if disclosed orally and indicated at the time of disclosure as being confidential or proprietary and the essence of such subject is summarized or described in writing (hard copy or electronic format) within thirty (30) days after such disclosure and designated as "confidential" or "trade secret."
2. **TERM OF THE AGREEMENT:** The receiving Party's obligation to maintain Information as confidential pursuant to the terms of this Agreement shall be from the Effective Date until the earlier of (a) the Parties' entering into a further superseding agreement regarding the subject matter contained herein or (b) three (3) years after the Effective Date.
3. **USE AND NON-DISCLOSURE:** The receiving Party, its officers, employees, attorneys and consultants, and any third parties authorized through the prior written permission of the disclosing Party, may use Information only for the purposes described in Paragraph 1. The receiving Party may disclose Information to its attorneys and consultants without the permission of the disclosing Party. The receiving Party, its attorneys and consultants shall not disclose Information to any third party, including, but not limited to, its parent (if applicable), affiliates, subsidiaries, agents, or subcontractors, without the prior written permission of the disclosing Party during the term of this Agreement. In the event the disclosing Party approves in writing of such disclosure or transmittal to such third party, the receiving Party shall immediately obtain a written commitment from such third party making the terms of this Agreement applicable to such

third party, then disclose and transmit such Information to such third party on a proprietary and confidential basis. The receiving Party further agrees to limit the availability of the Information to those officers, employees, attorneys, and consultants whom it deems to have a bona fide need to know in connection with the purposes described in Paragraph 1. Before receiving any Information covered by this Agreement, each attorney and consultant who receives Information shall have read this Agreement and executed a Non-Disclosure Acknowledgment in the form attached as Exhibit A hereto. The receiving Party shall maintain such Non-Disclosure Acknowledgments for as long as the receiving Party's non-disclosure obligations under this Agreement remain in effect, and in the event that a disclosing Party reasonably believes that its Information has been disclosed to any third party, the receiving Party shall furnish copies of the Non-Disclosure Acknowledgments to the Party whose Information is reasonably believed to have been disclosed. The receiving Party shall maintain the Information so imparted secret and confidential.

4. RETURN OF INFORMATION: The Parties may not make copies of documents relating to the Information other than for the purposes indicated in Paragraph 1 above or as authorized by the disclosing Party in writing. Any such copies shall include the proprietary information notice of the disclosing Party. As directed by the disclosing Party, the receiving Party shall either return or certify destruction of all such documents, drawings, and other Information provided to it under this Agreement, and all copies thereof, within thirty (30) days after any request by the disclosing Party to do so.

5. INFORMATION NOT COVERED BY THE AGREEMENT: The duties of confidentiality of the receiving Party under this Agreement shall not apply to Information which the receiving Party can show is the same as information which:

- (i) is or becomes generally available to the public without breach of this Agreement;
- (ii) is a public record pursuant to Chapter 119, Florida Statutes, provided that the receiving Party's duties of confidentiality with respect to information designated by the disclosing Party as confidential or as trade secrets shall remain in force until a final determination by a court of competent jurisdiction, if such jurisdiction is invoked by the disclosing Party, has been rendered holding that the subject information is a public record under Chapter 119;
- (iii) ;
- (iii) was in the possession of the receiving Party at the time it was initially furnished by the disclosing Party; or,
- (iv) is later received from an independent third party who is, as far as can reasonably be determined, under no limitation or restriction regarding disclosure of the Information.

6. COMPELLED DISCLOSURE. If LAKELAND becomes legally compelled to disclose any of the Confidential Information, or is requested or required to do so under Section 119.07, Florida Statutes, LAKELAND shall provide GREC with prompt notice so that GREC may seek a protective order or other appropriate remedy, and LAKELAND shall disclose only that portion of the Confidential Information which it is advised by written opinion of its counsel that it is legally

required to disclose and shall exercise reasonable efforts to obtain reliable assurance that the confidentiality of the Confidential Information will be maintained. GREC must provide written acknowledgement of its intent to intervene and seek protective measures for any such Confidential Information within 10 business days after notice from LAKELAND, including the general statutory basis of the exception claimed to the disclosure under Chapter 119.07, Florida Statutes.

7. EQUITABLE RELIEF. Any violation of this Agreement will cause irreparable harm to a disclosing Party. Accordingly, the disclosing Party shall be entitled to injunctive relief enjoining and restraining any violation in addition to any other rights or remedies at equity or law. In no event shall the Parties be liable for indirect or consequential damages, whether based on a claim arising under contract, tort (including negligence), strict liability or any other legal theory.

8. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, excluding its rules governing conflicts of law.

9. ENTIRE AGREEMENT: This Agreement contains the entire agreement and understanding between the Parties as to the subject matter herein. It merges and supersedes all prior discussions, writings, commitments and understandings between the Parties as to the subject matter herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date indicated above:

Lakeland Electric
The City of Lakeland, Florida

Gainesville Renewable Energy Center, LLC


(Authorized Representative)


(Authorized Representative)

Name: Ralph L. Fletcher
Title: Mayor

CITY OF LAKELAND
Name: Ari Mervis
Title: Vice President

Attest:


By: Kelly S. Koos
Kelly S. Koos, City Clerk

Attest:

By: Start Sohn
Start Sohn, Controller

Approved as Form & Correctness:

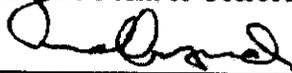

By: Timothy J. McCausland
Timothy J. McCausland, City Attorney

EXHIBIT A

NON-DISCLOSURE ACKNOWLEDGMENT

The undersigned hereby certifies that, prior to the disclosure to him or her of confidential information, as that term is defined in the Confidentiality Agreement between the City of Lakeland and Gainesville Renewable Energy Center, LLC (the "Agreement"), the undersigned has read the Agreement and agrees to be bound by its terms.

_____	_____
_____	_____
_____	_____

CONFIDENTIALITY AGREEMENT
between
ORLANDO UTILITIES COMMISSION
and
GAINESVILLE RENEWABLE ENERGY CENTER, LLC

This confidentiality agreement ("Agreement") dated as of May 1, 2009 ("Effective Date") is between the Orlando Utilities Commission, a Florida statutory utility with offices at 100 West Andersen Street, Orlando, Florida 32801 ("OUC") and Gainesville Renewable Energy Center, LLC, a Delaware limited liability company with offices at 75 Arlington Street, 5th Floor, Boston, Massachusetts 02116 ("GREC"), each individually a "Party" and collectively the "Parties".

1. **PURPOSE AND INFORMATION COVERED:** The Parties intend to exchange information with respect to a proposed biomass fueled power generation project to be developed by GREC and located in Alachua County, Florida (the "Project") for the sole purpose of evaluating possible transactions regarding the development of the Project or the purchase and sale of energy from the Project. To accomplish this, it may be necessary for the Parties to exchange business and technical information; data; and know-how, including reports, contracts, pricing options, solutions, drawings, and other information related to the Project that is considered by the disclosing party as confidential or proprietary and (in the case of GREC) trade secrets. Such information which is disclosed hereunder shall be regarded as "Information" for purposes of this Agreement if it is (a) provided in writing (hard copy or electronic format) and marked as "confidential" or "trade secret" by the disclosing Party, or (b) if disclosed orally and indicated at the time of disclosure as being confidential or proprietary and the essence of such subject is summarized or described in writing (hard copy or electronic format) within thirty (30) days after such disclosure and designated as "confidential" or "trade secret."

2. **TERM OF THE AGREEMENT:** The receiving Party's obligation to maintain Information as confidential pursuant to the terms of this Agreement shall be from the Effective Date until the earlier of (a) the Parties' entering into a further superseding agreement regarding the subject matter contained herein or (b) three (3) years after the Effective Date.

3. **USE AND NON-DISCLOSURE:** The receiving Party, its officers, employees, attorneys and consultants, and any third parties authorized through the prior written permission of the disclosing Party, may use Information only for the purposes described in Paragraph 1. The receiving Party may disclose Information to its attorneys and consultants without the permission of the disclosing Party. The receiving Party, its attorneys and consultants shall not disclose Information to any third party, including, but not limited to, its parent (if applicable), affiliates, subsidiaries, agents, or subcontractors, without the prior written permission of the disclosing Party during the term of this Agreement. In the event the disclosing Party approves in writing of such disclosure or transmittal to such third party, the receiving Party shall immediately obtain a written commitment from such third party making the terms of this Agreement applicable to such third party, then disclose and transmit such Information to such third party on a proprietary and confidential basis. The receiving Party further agrees to limit the availability of the Information to those officers, employees, attorneys, and consultants whom it deems to have a bona fide need to know in connection with the purposes described in Paragraph 1. Before receiving any Information covered by this Agreement, each attorney and consultant who receives Information shall have read this Agreement and executed a Non-Disclosure Acknowledgment in the form attached as Exhibit A hereto. The receiving Party shall maintain such Non-Disclosure Acknowledgments for as long as the receiving Party's non-disclosure obligations under this Agreement remain in effect, and in the event that a disclosing Party reasonably believes that its Information has been disclosed to any third party, the receiving Party shall furnish copies of the Non-Disclosure Acknowledgments to the Party whose Information is reasonably believed to have been disclosed. The receiving Party shall maintain the Information so imparted secret and confidential.

4. **RETURN OF INFORMATION:** The Parties may not make copies of documents relating to the Information other than for the purposes indicated in Paragraph 1 above or as authorized by the disclosing Party in writing. Any such copies shall include the proprietary information notice of the disclosing Party. As directed by the disclosing Party, the receiving Party shall either return or certify destruction of all such documents, drawings, and other Information provided to it under this Agreement, and all copies thereof, within thirty (30) days after any request by the disclosing Party to do so.

5. **INFORMATION NOT COVERED BY THE AGREEMENT:** The duties of confidentiality of the receiving Party under this Agreement shall not apply to Information which the receiving Party can show is the same as information which:

- (i) is or becomes generally available to the public without breach of this Agreement;
- (ii) was in the possession of the receiving Party at the time it was initially furnished by the disclosing Party; or,
- (iii) is later received from an independent third party who is, as far as can reasonably be determined, under no limitation or restriction regarding disclosure of the Information.

6. COMPELLED DISCLOSURE. If OUC becomes legally compelled to disclose any of the Confidential Information, or is requested or required to do so under Section 119.07, Florida Statutes, OUC shall provide GREC with prompt notice so that GREC may seek a protective order or other appropriate remedy, and OUC shall disclose only that portion of the Confidential Information which it is advised by written opinion of its counsel that it is legally required to disclose and shall exercise reasonable efforts to obtain reliable assurance that the confidentiality of the Confidential Information will be maintained. GREC must provide written acknowledgement of its intent to intervene and seek protective measures for any such Confidential Information within 10 business days after notice from OUC, including the general statutory basis of the exception claimed to the disclosure under Chapter 119.07, Florida Statutes.

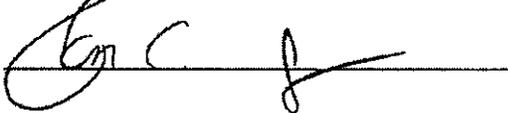
7. EQUITABLE RELIEF. Any violation of this Agreement will cause irreparable harm to a disclosing Party. Accordingly, the disclosing Party shall be entitled to injunctive relief enjoining and restraining any violation in addition to any other rights or remedies at equity or law. In no event shall the Parties be liable for indirect or consequential damages, whether based on a claim arising under contract, tort (including negligence), strict liability or any other legal theory.

8. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, excluding its rules governing conflicts of law.

9. ENTIRE AGREEMENT: This Agreement contains the entire agreement and understanding between the Parties as to the subject matter herein. It merges and supersedes all prior discussions, writings, commitments and understandings between the Parties as to the subject matter herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date:

Orlando Utilities Commission



Name: Jan C. Aspuru
Title: Vice President Power Resources

Gainesville Renewable Energy Center, LLC



Name: Ar. Mervis
Title: Vice President

EXHIBIT A

NON-DISCLOSURE ACKNOWLEDGMENT

The undersigned hereby certifies that, prior to the disclosure to him or her of confidential Information, as that term is defined in the Confidentiality Agreement between Orlando Utilities Commission and Gainesville Renewable Energy Center, LLC (the "Agreement"), the undersigned has read the Agreement and agrees to be bound by its terms.

CONFIDENTIALITY AGREEMENT
between
REEDY CREEK IMPROVEMENT DISTRICT,
and
GAINESVILLE RENEWABLE ENERGY CENTER, LLC

This confidentiality agreement ("Agreement") dated as of June 26, 2009 ("Effective Date") is between the Reedy Creek Improvement District, a Florida special district created by Chapter 67-764 of the Laws of Florida, and having its offices at P.O. Box 10000, Lake Buena Vista, Florida 32830-1000, Florida 32801 ("Reedy Creek") and Gainesville Renewable Energy Center, LLC, a Delaware limited liability company with offices at 75 Arlington Street, 5th Floor, Boston, Massachusetts 02116 ("GREC"), each individually a "Party" and collectively the "Parties".

1. **PURPOSE AND INFORMATION COVERED:** The Parties intend to exchange information with respect to a proposed biomass fueled power generation project to be developed by GREC and located in Alachua County, Florida (the "Project") for the sole purpose of evaluating possible transactions regarding the development of the Project or the purchase and sale of energy from the Project. To accomplish this, it may be necessary for the Parties to exchange business and technical information; data; and know-how, including reports, contracts, pricing options, solutions, drawings, and other information related to the Project that is considered by the disclosing party as confidential or proprietary and (in the case of GREC) trade secrets. Such information which is disclosed hereunder shall be regarded as "Information" for purposes of this Agreement if it is (a) provided in writing (hard copy or electronic format) and marked as "confidential" or "trade secret" by the disclosing Party, or (b) if disclosed orally and indicated at the time of disclosure as being confidential or proprietary and the essence of such subject is summarized or described in writing (hard copy or electronic format) within thirty (30) days after such disclosure and designated as "confidential" or "trade secret."

2. **TERM OF THE AGREEMENT:** The receiving Party's obligation to maintain Information as confidential pursuant to the terms of this Agreement shall be from the Effective Date until the earlier of (a) the Parties' entering into a further superseding agreement regarding the subject matter contained herein or (b) three (3) years after the Effective Date.

3. **USE AND NON-DISCLOSURE:** The receiving Party, its officers, employees, attorneys, consultants and agents, and any third parties authorized through the prior written permission of the disclosing Party, may use Information only for the purposes described in Paragraph 1. The receiving Party may disclose Information to its attorneys, consultants and agents without the permission of the disclosing Party. The receiving Party, its attorneys, consultants and agents shall not disclose Information to any third party without the prior written permission of the disclosing Party during the term of this Agreement. In the event the disclosing Party approves in writing of such disclosure or transmittal to such third party, the receiving Party shall immediately obtain a written commitment from such third party making the terms of this Agreement applicable to such third party, then disclose and transmit such Information to such third party on a proprietary and confidential basis. The receiving Party further agrees to limit the availability of the Information to those officers, employees, attorneys, consultants and agents whom it deems to have a bona fide need to know in connection with the purposes described in Paragraph 1. Before receiving any Information covered by this Agreement, each attorney, consultant and agent (other than those attorneys, consultants or agents who are employed by Reedy Creek Energy Services, Inc. or Walt Disney Parks and Resorts U.S., Inc., or any affiliate thereof) who receives Information shall have read this Agreement and executed a Non-Disclosure Acknowledgment in the form attached as Exhibit A hereto. The receiving Party shall maintain such Non-Disclosure Acknowledgments for as long as the receiving Party's non-disclosure obligations under this Agreement remain in effect, and in the event that a disclosing Party reasonably believes that its Information has been disclosed to any third party, the receiving Party shall furnish copies of the Non-Disclosure Acknowledgments to the Party whose Information is reasonably believed to have been disclosed. The receiving Party shall maintain the Information so imparted secret and confidential.

4. **RETURN OF INFORMATION:** The Parties may not make copies of documents relating to the Information other than for the purposes indicated in Paragraph 1 above or as authorized by the disclosing Party in writing. Any such copies shall include the proprietary information notice of the disclosing Party if and to the extent that such notice was included in the original documents by the disclosing Party. As directed by the disclosing Party, the receiving Party shall either return or certify destruction of all such documents, drawings, and other Information provided to it under this Agreement, and all copies thereof, within thirty (30) days after any request by the disclosing Party to do so. Notwithstanding the foregoing, Reedy Creek shall be permitted to retain copies to the extent necessary to comply with Florida's Public Records Law (Chapter 119, Florida Statutes).

5. **INFORMATION NOT COVERED BY THE AGREEMENT:** The duties of confidentiality of the receiving Party under this Agreement shall not apply to Information which the receiving Party can show is the same as information which:

- (i) is or becomes generally available to the public without breach of this Agreement;
- (ii) was in the possession of the receiving Party at the time it was initially furnished by the disclosing Party; or,

(iii) is later received from an independent third party who is, as far as can reasonably be determined, under no limitation or restriction regarding disclosure of the Information.

6. **COMPELLED DISCLOSURE.** If Reedy Creek becomes legally compelled to disclose any of the Confidential Information, or is requested or required to do so under Section 119.07, Florida Statutes, Reedy Creek shall provide GREC with prompt notice so that GREC may seek a protective order or other appropriate remedy, and Reedy Creek shall disclose only that portion of the Confidential Information which it is advised by written opinion of its counsel that it is legally required to disclose and shall exercise reasonable efforts to obtain reliable assurance that the confidentiality of the Confidential Information will be maintained. GREC must provide written acknowledgement of its intent to intervene and seek protective measures for any such Confidential Information within 10 business days after notice from Reedy Creek, including the general statutory basis of the exception claimed to the disclosure under Chapter 119.07, Florida Statutes.

7. **EQUITABLE RELIEF.** Any violation of this Agreement will cause irreparable harm to a disclosing Party. Accordingly, the disclosing Party shall be entitled to injunctive relief enjoining and restraining any violation in addition to any other rights or remedies at equity or law. In no event shall the Parties be liable for indirect or consequential damages, whether based on a claim arising under contract, tort (including negligence), strict liability or any other legal theory.

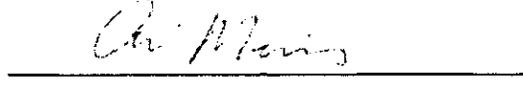
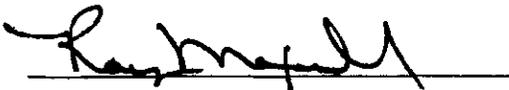
8. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, excluding its rules governing conflicts of law.

9. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement and understanding between the Parties as to the subject matter herein. It merges and supersedes all prior discussions, writings, commitments and understandings between the Parties as to the subject matter herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Reedy Creek Improvement District

Gainesville Renewable Energy Center, LLC



Name: Ray Maxwell
Title: District Administrator

Name: Ari Mervis
Title: Vice President

EXHIBIT A

NON-DISCLOSURE ACKNOWLEDGMENT

The undersigned hereby certifies that, prior to the disclosure to him or her of confidential Information, as that term is defined in the Confidentiality Agreement between Reedy Creek Improvement and Gainesville Renewable Energy Center, LLC (the "Agreement"), the undersigned has read the Agreement and agrees to be bound by its terms.

_____	_____
_____	_____
_____	_____

3. **Regarding the economic parameters in the application, please provide complete copies of all source documents, reports, etc. that support the selection of 2.5 percent as the assumed escalation rate, 4.2 percent as the assumed long-term tax-exempt municipal bond interest rate, and 4.2 percent as the present worth discount rate.**

Response to Request No. 3:

Please refer to Attachment POD-3a, which includes a table of macroeconomic indicators from the US Energy Information Administration's Annual Energy Outlook 2009 (Updated Reference Case). The data included in this table for indices related to all economic goods are consistent with the assumption of a 2.5 percent long-term average escalation rate.

Please refer to Attachment POD-3b, which presents GRU's current and future cost of debt including the most recent \$180,000,000 bond sale in September 2009. The table was prepared by GRU's financial advisor, PFM Inc. The assumed long-term tax-exempt municipal bond interest rate is consistent with the data included in Attachment POD-3b. The present worth discount rate has been assumed to be equal to the long-term tax-exempt municipal bond interest rate, which is consistent with other petitions for determination of need filed by municipal utilities that were ultimately approved by the Florida Public Service Commission.

4. **Please provide a complete copy of Gainesville Regional Utilities' (GRU's) most recent registration statement for the issuance of securities.**

Response to Request No. 4:

As a municipal entity, GRU is not required to obtain registration for the issuance of securities.

YOUNG VAN ASSENDERP, P.A.

ATTORNEYS AT LAW

Attorneys:

Tasha O. Buford
David S. Dee
Ronald A. Labasky
John T. LaVia, III
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Telccopier (850) 561-6834

Of Counsel Attorneys:

Daniel H. Cox
Joseph W. Landers, Jr.
Philip S. Parsons

March 24, 2010

BY ELECTRONIC MAIL & U.S. MAIL

Paula H. Stahmer
4621 Clear Lake Drive
Gainesville, Florida 32607

Dian R. Deevey
1702 SW 35th Place
Gainesville, Florida 32608

Re: Confidential Information in the Hearing Record of PSC Docket
No. 090451-EM, Need Determination for the Gainesville
Renewable Energy Center

Dear Ms. Stahmer and Ms. Deevey:

I am addressing this letter to both of you together because each of you has requested access to confidential, proprietary business information of my client, Gainesville Renewable Energy Center, LLC. Included with my e-mail transmission of this letter is a Non-Disclosure Agreement pursuant to which GREC LLC is willing to provide you with access to GREC LLC's Confidential Information that has been, or will be, filed in the evidentiary record of the PSC's need determination proceeding for the Gainesville Renewable Energy Center Project ("GREC Project").

While GREC LLC doubts that the Confidential Information is, in fact, relevant to the limited issues to be addressed in the supplemental hearing in this docket, we are willing to provide the Confidential Information in good faith so that you can inform yourselves regarding such Confidential Information.

I feel that I must impress upon you the facts that the Confidential Information is the exclusive property of GREC LLC and that GREC LLC treats this Confidential Information as its confidential, proprietary, trade secret information, and that the economic damages of any public disclosure of the Confidential Information would, although difficult to calculate, be tremendous. Because of the potential damages to GREC LLC of such disclosure, and because of the difficulty of calculating such damages, the Non-Disclosure Agreement includes a "liquidated damages" provision. To be clear, the liquidated damages are a small fraction of the potential damages to GREC LLC.

You will note that the Non-Disclosure Agreement provides you with two options, one in which you will have physical access to, but not physical possession of, a copy of the Confidential Information at GRU's offices. This option involves no direct cost to either of you other than your time to review the information. I can also tell you that in a similar PSC case (PSC Docket No. 060387-EQ), we used a very similar, office review-only, no-notes, no-copies non-disclosure agreement. (Since you have expressed to Jay a concern that you might be subject to different treatment than others, I'm attaching a copy of that non-disclosure agreement for your information; see Paragraph 8 of that agreement.)

The second option, driven by GREC LLC's profound concerns about the potential damages that would accrue in the event of a breach, would provide you a physical copy of the Confidential Information, but only upon your posting of security, such as a letter of credit, that would provide immediate access to the liquidated damages in the event of a breach.

If you have any questions, I would be happy to discuss them with you, but I would prefer that you frame them in writing. I look forward to hearing from you.

Cordially yours,


Robert Scheffel Wright

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: JOINT PETITION TO DETERMINE NEED)
FOR GAINESVILLE RENEWABLE ENERGY CENTER) DOCKET NO. 090451-EM
IN ALACHUA COUNTY, BY GAINESVILLE)
REGIONAL UTILITIES AND GAINESVILLE)
RENEWABLE ENERGY CENTER, LLC.)
_____)

NON-DISCLOSURE AGREEMENT BETWEEN GAINESVILLE RENEWABLE ENERGY
CENTER, LLC, AND PAULA H. STAHMER AND DIAN R. DEEVEY

THIS NON-DISCLOSURE AGREEMENT ("AGREEMENT") is entered into by and between Gainesville Renewable Energy Center, LLC ("GREC LLC"), Paula H. Stahmer, and Dian R. Deevey (all three entities collectively referred to herein as the "Parties") in connection with the above-styled need determination proceeding for the Gainesville Renewable Energy Center (the "Project").

RECITALS

WHEREAS, GREC LLC and Gainesville Regional Utilities, the utility arm of the City of Gainesville, Florida, are the applicants for the Florida Public Service Commission's ("PSC" or "Commission") determination of need for the Project, and

WHEREAS, GREC LLC has filed with the PSC certain of GREC LLC's confidential, proprietary business information, including trade secret information, which information is the property of GREC LLC and which GREC LLC has not disclosed to any other person or entity except pursuant to confidentiality agreements or requests for confidential protection pursuant to applicable law, such information hereinafter referred to as the "Confidential Information," and the Confidential Information has

either been found, pursuant to Commission Order, to be the confidential, proprietary business information of GREC LLC, or is protected from public disclosure subject to a pending request for confidential protection by the Commission pursuant to applicable statutes and rules; provided, however, that Confidential Information does not include information that is now in the public domain or information approved for public disclosure or release by written authorization from GREC LLC, and

WHEREAS, Paula H. Stahmer ("Stahmer") and Dian R. Deevey ("Deevey"), collectively the "Intervenors," are parties who have been granted intervenor status in the above-styled proceeding, and

WHEREAS, each of the Intervenors desires access to the Confidential Information in connection with her participation in this proceeding, and

WHEREAS, this AGREEMENT is executed by and between GREC LLC and Stahmer, and also by and between GREC LLC and Deevey, it being expressly understood that Stahmer and Deevey are jointly and severally liable for their non-disclosure responsibilities under this AGREEMENT, in order to provide for the desired access while protecting the Confidential Information from disclosure to the public or to any person other than Stahmer and Deevey,

NOW, THEREFORE, in consideration of the above premises, and in consideration of the covenants and obligations provided for in this AGREEMENT, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of GREC LLC, Stahmer, and Deevey, and each of GREC LLC, Stahmer, and Deevey intending to be legally bound hereby, the Parties have executed this AGREEMENT and agree as follows.

AGREEMENT

1. GREC LLC agrees to provide access, in the manner set forth in paragraphs 5 and 6 of this AGREEMENT, to the Confidential Information that has been entered into evidence in the evidentiary record of the need determination proceeding for the Project, or that will be entered into the record evidence of the hearing. All Confidential Information is and shall remain the exclusive property of GREC LLC.

2. Stahmer and Deevey agree and acknowledge that disclosure of the Confidential Information, and any breach of the provisions of this AGREEMENT, would significantly damage the competitive business interests of GREC LLC.

3. Stahmer and Deevey agree and covenant, both individually and together, that neither of them shall disclose any part of the Confidential Information to any other person in

any form or format whatsoever. Stahmer and Deevey further agree and covenant, both individually and together, that neither of them shall cause or allow the Confidential Information, or any part of the Confidential Information, to be disseminated, distributed, disclosed, or otherwise made accessible to any person or to the public generally, it being understood that this means that no mention of the Confidential Information may be made publicly in any medium, or in any form or format whatsoever, in such a way that would enable any person to derive, calculate, interpolate, extrapolate, or otherwise know any part of the Confidential Information.

4. Liquidated Damages. The Parties acknowledge and agree that the improper disclosure or use of any Confidential Information would cause irreparable harm to GREC LLC, that the actual amount of economic damages to GREC LLC would be difficult to ascertain, and that money damages may be an inadequate remedy for breach of this AGREEMENT. Therefore, the Parties agree that any breach of this AGREEMENT by Stahmer or Deevey, shall result in their being liable, jointly and severally, to pay to GREC LLC the amount of One Hundred Thousand Dollars (\$100,000.00) as liquidated damages for breach of this AGREEMENT. The Parties further acknowledge and agree that GREC LLC shall be entitled to seek additional equitable remedies, including specifically, but

without limitation, injunctive relief to prevent further disclosure of Confidential Information or mandatory injunctive relief to require the recovery of any Confidential Information disclosed in violation of this AGREEMENT.

5. GREC LLC will provide one copy of the Confidential Information for review by Stahmer and Deevey, at a mutually agreed upon date and time, at the offices of Gainesville Regional Utilities, 301 4th Avenue, Gainesville, Florida 32601. If an additional visit is required by Stahmer and Deevey, the Parties will make every effort to accommodate this request. No notes may be taken or made of the Confidential Information, either during such review or at any other time, and no copies, photographs, or other images of any part of the Confidential Information may be made. Stahmer and Deevey will also be provided access to a copy of the Confidential Information at the final hearing in this proceeding on April 15, 2010, for use in cross-examination or testimony at such hearing. No notes, copies, photographs, or other images containing any part of the Confidential Information, or that could be used to derive any part of the Confidential Information, may be made at the hearing. The copy may not be removed from the hearing room for any reason, and the copy shall be returned to GREC LLC's counsel at the conclusion of the hearing (and, if applicable, during any

overnight recess of the hearing). No separate security or letter of credit is required for Stahmer or Deevey, or both, to review the Confidential Information as provided in this paragraph 5.

6. Alternately, if Stahmer or Deevey (or both) wishes to have a paper copy of the Confidential Information, GREC LLC will furnish one copy of the Confidential Information, on copy-protected paper, upon the requesting party's posting of an irrevocable letter of credit (or cash or other acceptable and immediately available security) in the amount of One Hundred Thousand Dollars (\$100,000.00), with GREC LLC as the named payee on such letter of credit, with a mutually agreeable law firm or escrow agent. The full amount (\$100,000.00) of the proceeds of such letter of credit shall be payable into the escrow account of the mutually agreeable law firm or escrow agent, immediately upon presentation of *prima facie* evidence of a breach of the agreement and shall be disbursed to GREC LLC upon its request. The Parties agree that the above-mentioned amount (\$100,000.00) represents liquidated damages for breach of this AGREEMENT, with the letter of credit posted to ensure that such amount is in fact available to GREC LLC in the event of a breach subsequent to Stahmer or Deevey having received a paper copy of the Confidential Information as provided above in this paragraph 6.

By way of example only, and without limitation, such *prima facie* evidence of a breach might include any public statement by Stahmer or Deevey revealing any Confidential Information, or revealing information that could enable someone to compute any of the Confidential Information, or a public statement by someone known to Stahmer or Deevey indicating that they know any part of the Confidential Information. Neither Stahmer nor Deevey may make any additional copies of the Confidential Information, whether electronic, paper, or in any other medium.

7. By entering into this AGREEMENT, neither GREC LLC, nor Stahmer, nor Deevey waives its/her right, with respect to any current or future discovery requests in this proceeding, to object to the request or to seek a protective order for reasons within the contemplation of Rule 1.280, Florida Rules of Civil Procedure, Section 366.093, Florida Statutes, Rule 25-22.006, Florida Administrative Code, or other applicable law.

8. This AGREEMENT shall be effective from the date upon which it is executed by the Parties until the conclusion of this need determination docket, subject to the continuing obligation provision below. At the end of the term of this AGREEMENT, if either Stahmer or Deevey has obtained a paper copy of the Confidential Information, any such recipient of such paper copy shall return said copy of the Confidential Information to GREC

LLC, together with any and all notes or other materials of any type and in any medium whatsoever (including any and all copies of such notes or materials) that reflect the Confidential Information or any information that could be used to derive, calculate, interpolate, extrapolate, or otherwise know all or any part of the Confidential Information, and Deevey and Stahmer shall certify in writing to GREC that all such materials have been returned and that all other obligations of Stahmer and Deevey have been complied with.

9. Continuing Obligation: Regardless whether they view the information pursuant to paragraph 5, or obtain a paper copy pursuant to paragraph 6, Stahmer and Deevey acknowledge and agree that they remain under a continuing obligation to comply with all of the above provisions and covenants of this AGREEMENT with respect to their obligation not to disclose Confidential Information, for a period of ten (10) years from the date of this AGREEMENT.

10. This AGREEMENT is understood and agreed by the Parties to be a binding contract enforceable through all applicable remedies at law and in equity. Stahmer and Deevey expressly acknowledge that they are jointly and severally liable for any breach of this AGREEMENT.

11. Stahmer and Deevey acknowledge that, although they are

participating in this docket on a *pro se* basis, they have had an adequate opportunity to discuss this AGREEMENT with counsel of their choosing, and that neither GREC LLC nor counsel for GREC LLC has in any way attempted to coerce their execution of this AGREEMENT.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this AGREEMENT by their signatures below.

For Gainesville Renewable Energy Center, LLC:

Robert Scheffel Wright
Young van Assenderp, P.A.
225 South Adams Street, Suite 200 (ZIP 32301)
P.O. Box 1833
Tallahassee, Florida 32302
Attorneys for GRU and GREC LLC

Date _____

For Paula H. Stahmer:

Paula H. Stahmer

Date _____

For Dian R. Deevey:

Dian R. Deevey

Date _____

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") is entered into as of the 4th day of October, 2006, by and between E. Leon Jacobs, Jr., Ben Fusaro, Karen Orr, Dick Stokes, Dan Hendrickson, Brian Scherf, Lee McSherry, and December McSherry (collectively "Petitioners"), Florida Biomass Energy Group, L.L.C., ("Florida Biomass"), and Florida Power Corporation dba Progress Energy Florida, Inc. ("PEF"). Each of the individual Petitioners, Florida Biomass, and PEF may be referred to as a "Party" or collectively as "Parties".

RECITALS

WHEREAS, the Parties may disclose to each other certain sensitive business information for the purpose of exploring the possible resolution of certain disputed issues involving (i) Florida Biomass, which intends to design and construct a renewable-energy electric generating facility of approximately 116.6 MW gross electric output in Florida, to be fueled principally by biomass derived from the cultivation and harvesting of the Arundo Donax plant, also known as "Giant Reed" and also known as E-GrassTM (the "Project"), and (ii) the planned purchase of the Project's electrical output by PEF; and

WHEREAS, the Parties wish to enter into this Agreement to protect and safeguard the confidentiality of the business information referenced in the preceding recital,

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. *Definitions.*

"Affiliate" of any Person shall mean a Person (other than a natural person) that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such Person.

"Confidential Information" shall consist only of the unredacted Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility, Dated the 28th day of April, 2006 by and between Florida Power Corporation d/b/a Progress Energy Florida, Inc. and Florida Biomass Energy Group, L.L.C. (the "Negotiated Contract"), and the petition for approval of the Negotiated Contract for cost recovery purposes filed by PEF with the Florida Public Service Commission on May 25, 2006 ("PEF's May 25 Petition"), together with any Confidential Information relating to the Negotiated Contract or to PEF's May 25 Petition that may be conveyed by technical personnel of Florida Biomass or PEF in responding to any questions posed by the Petitioners during the course of their review of the Negotiated Contract and PEF's May 25 Petition provided for under this Agreement.

"Disclosing Party" shall mean either of Florida Biomass or PEF, as the case may be, in the context of its disclosure of any Confidential Information to any Receiving Party under this Agreement.

"Government Agency" means the United States of America, or any state or any other political subdivision thereof, including without limitation, any municipality, township or county, and any

domestic entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing.

"Information" shall mean the Confidential Information as defined above.

"Person" shall be broadly interpreted to include, without limitation, any individual, partnership, corporation, company, association, joint stock company, trust, joint venture, unincorporated organization, or Government Agency (including any department, agency, or political subdivision thereof), or any other entity or individual.

"Receiving Party" shall mean any of the Petitioners and, to the extent that they are not Petitioners, any of the individuals referenced on Schedule I hereto, to whom Information is disclosed under this Agreement.

"Representative" shall mean, with respect to any Party hereto, any of such Party's Affiliates and the officers, directors, employees, agents and advisors (including, without limitation, financial advisors, legal counsel and accountants) of such Party and any of its affiliates.

2. Exclusions to Definition of Confidential Information. Notwithstanding any provisions contained in Section 1, Confidential Information does not include:

- (i) information which is now in the public domain, or which enters the public domain after the date hereof through no action by a Party, or by any Representative of any such Party, in violation of this Agreement;
- (ii) information which a Receiving Party can demonstrate was already in its possession at the time of its disclosure by a Disclosing Party hereunder, and which was not acquired, directly or indirectly, from such Disclosing Party on a confidential basis;
- (iii) information which is independently developed by the Receiving Party without reference to, or the use of, any Confidential Information;
- (iv) information which is lawfully received from a source other than a Disclosing Party under circumstances not involving, to the Receiving Party's knowledge, any breach of any confidentiality obligation by which such source is bound; or
- (v) information approved for disclosure or release by a Receiving Party by written authorization from a Disclosing Party.

3. Term. This Agreement shall be in effect for the period from October 4, 2006, through October 12, 2006, inclusive. Notwithstanding the termination of discussions concerning the Negotiated Contract, the Receiving Party and its Representatives who are given access to review the Confidential Information shall continue to be bound by their obligations of confidentiality and other obligations hereunder for a period of three (3) years, i.e., through October 12, 2009, on the terms and conditions set forth herein. This Agreement shall not merge with, or be terminated or superseded by, any future agreement between the Parties unless such agreement specifically so provides. This Agreement may, pursuant to a written amendment or amendments, be extended as

to its term and also may be expanded to provide for the exchange of other Confidential Information.

4. *Non-Disclosure.* Subject to Section 9 of this Agreement, each Receiving Party shall keep all Confidential Information confidential and, without the prior written consent of the Disclosing Party, shall not disclose or reveal it to any Person other than the individuals referenced on Schedule I hereto; provided that, in the event that any individual referenced on Schedule I hereto is not also a Petitioner, then any such individual shall execute a separate Acknowledgment and Agreement to be Bound by the terms of this Confidentiality Agreement. No Receiving Party shall disclose or reveal the Information to any Person, in any way or in any manner whatsoever, without the express written consent of Florida Biomass and PEF.

5. *Limitations on Use.* The individuals referenced on Schedule I hereto who receive the Information shall use the Information solely for the purpose of evaluating the Petitioners' asserted concerns regarding the Negotiated Contract and for no other purpose. No Receiving Party shall disclose or reveal the Information to any Person, in any way or in any manner whatsoever, without the express written consent of Florida Biomass and PEF.

6. *Responsibility for Breach.* The Petitioners shall be jointly and severally responsible for any breach of the terms of this Agreement by any Petitioner or by any individual referenced on Schedule I hereto.

7. *Ownership.* Any Party who is a Receiving Party agrees that any Party who is a Disclosing Party (or an Affiliate of a Disclosing Party, as the case may be) is and shall remain the exclusive owner of any Confidential Information disclosed in accordance with the terms of this Agreement. No Disclosing Party shall be deemed to have transferred any part of its ownership interest in any Confidential Information, or to have licensed the use of any such Confidential Information to any Receiving Party by virtue of such disclosure.

8. *Access to the Confidential Information.* Upon execution of this Agreement by all Parties, Florida Biomass and PEF shall make available for review by any or all of the individuals referenced on Schedule I hereto one (1) copy of (i) the unredacted Negotiated Contract and (ii) PEF's May 25 Petition. Such review may be made either at the offices of counsel for Florida Biomass, Young van Assenderp, P.A., which offices are located at 225 South Adams Street, Suite 200, Tallahassee, Florida 32301, or at the Tallahassee offices of PEF, located at 106 East College Avenue, Tallahassee, Florida 32301. No copies may be made of any Confidential Information, nor may any of the individuals referenced on Schedule I hereto take any notes or make any recording or copy of any part of the Confidential Information using any method or medium whatsoever. The review may be made during normal business hours on any one (1) calendar day of the Petitioners' choosing between October 5, 2006, and October 12, 2006, inclusive.

9. *Required Disclosures.* In the event that a Receiving Party learns that it may or will be legally compelled to disclose Confidential Information (whether by interrogatories, subpoenas, civil investigative demands or otherwise) or is requested to disclose Confidential Information by a Government Agency (including, without limitation, the Federal Energy Regulatory Commission, Securities and Exchange Commission, and any local public service commission), such Receiving Party shall, within 24 hours of becoming aware of such request, notify the

Disclosing Party from whom it received such Confidential Information and keep the Disclosing Party well informed of any developments with respect to such actual or potential compulsion or request. When time is of the essence, the Receiving Party may provide notice or updates orally, but must follow these communications with written summaries. The Receiving Party will cooperate with the relevant Disclosing Party to enable such Disclosing Party to obtain a protective order or other similar relief or to narrow the scope of such legal compulsion or request.

If, in the opinion of its legal counsel and in the absence of a protective order or waiver, a Receiving Party is legally compelled to disclose Confidential Information, then such Receiving Party will disclose only so much of the Confidential Information as, in the opinion of its legal counsel, is legally required. In any such event, such Receiving Party agrees to use good faith efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.

10. Compliance with Securities Laws. Each Receiving Party acknowledges that it is (i) aware that the United States securities laws would prohibit any person who has material non-public information about a company from purchasing or selling securities of such company, or from communicating such information to any other Person under circumstances in which it is reasonably foreseeable that such Person is likely to purchase or sell such securities and (ii) familiar with the Securities Exchange Act of 1934, as amended ("Exchange Act") and the rules and regulations promulgated thereunder to the extent they relate to the matters referred to in this paragraph. Each Receiving Party agrees that it will not use any Confidential Information in contravention of the United States securities laws, including the Exchange Act or any rules and regulations promulgated thereunder.

11. Remedies. The Petitioners acknowledge and agree that the improper disclosure or use of any Confidential Information could cause irreparable harm to a Disclosing Party and that money damages may be an inadequate remedy for breach of this Agreement. In the event of any breach or threatened breach hereof, any Disclosing Party shall be entitled to injunctive and other equitable relief, without proof of actual damages, to prevent the unauthorized disclosure or use of Confidential Information. No Receiving Party shall plead in defense thereto that there would be an adequate remedy at law, and each Receiving Party hereby waives any applicable right or requirement that a bond be posted by any Disclosing Party. Each Party agrees to indemnify and hold the other Party harmless from any damages, losses, costs or liabilities (including reasonable legal fees and the reasonable cost of enforcing this indemnity) arising out of or resulting from a breach by it or its Representatives of any of the provisions of this Agreement.

12. Entire Agreement. This Agreement contains the entire agreement between the Parties concerning the subject matter hereof and supersedes any previous agreements, whether written or oral, pertaining to such subject matter.

13. Amendment. This Agreement may only be amended by a written document signed by all Parties hereto.

14. No Waiver. No waiver of any provision of this Agreement, or of a breach hereof, shall be effective unless it is in writing and signed by the Party waiving the provision or the breach hereof. No waiver of a breach of this Agreement (whether express or implied) shall constitute a waiver of a subsequent breach hereof. It is further agreed that no failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any

single or partial exercise thereof preclude any other or further exercise thereof.

15. *Severability.* All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

16. *Binding.* This Agreement shall be binding upon the Parties and upon their respective successors and permitted assigns.

17. *Governing Law.* This Agreement is governed by the laws of the State of New York, without giving effect to its conflicts of law rules or any principles that would trigger the application of any other law.

18. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which will constitute a single instrument. Facsimile signatures shall be deemed original and binding signatures.

IN WITNESS WHEREOF, each of the Parties, intending to be legally bound by the provisions of this Agreement, has caused its duly authorized representative to execute this Agreement.

Petitioners

Florida Biomass Energy Group, L.L.C.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Florida Power Corporation dba
Progress Energy Florida, Inc.
By: _____
Name: _____
Title: _____
Date: _____

SCHEDULE I

PERSONS WHO MAY REVIEW CONFIDENTIAL INFORMATION PURSUANT TO THAT CERTAIN CONFIDENTIALITY AGREEMENT DATED OCTOBER 4, 2006, BY AND BETWEEN FLORIDA BIOMASS ENERGY GROUP, L.L.C., PROGRESS ENERGY FLORIDA, INC., AND THE PETITIONERS AS IDENTIFIED IN SUCH AGREEMENT

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

Dear Scheff,

Thank you for sending the agreement to Dian and me, and for trying to arrange a viewing today, Friday, for Dian.

While we still would like to see the redacted text of the contract as well as other material that has been deemed confidential, neither of us can agree to the terms you require.

We have no problem promising no disclosure to other persons, but the agreement contains extremely onerous terms and exposes us to risks for contingencies that may not even be within our control.

.1. We do not acknowledge and agree that the disclosure of anything presumptively would be an injury to GREC. Comparing the GREC redactions with the PSC redactions shows that GREC has a rather arbitrary and loose standard about what could cause it injury, including boilerplate language.

2. We cannot agree to stipulated liquidated damages, especially in the amount of \$100,000.00. Refer to the paragraph above. GREC is the heavy in this action, not us. GREC has the resources to pursue a legitimate civil action against us if it should consider itself injured by an indiscretion on our part. But it should have to prove its claims in court, in a public forum. We cannot subject ourselves to what is essentially a potential for a SLAP suit under the guise of breach of confidentiality.

As Interveners, we are entitled to the same respect you have accorded other persons with whom GREC has shared the unredacted text. Our ability to participate fully in these proceedings should not be circumscribed under the threat of liability for someone else's disclosures. (How many persons have seen the full contract? How many of those persons would love to put us in hot water?).

3. We are told that any member of the public can view the redacted contract by going to GRU and promising confidentiality. Are they also required to agree to such extreme terms? I assume not, since you have stated that this confidentiality agreement was drafted specifically for Dian and me.

5. Dian and I have discovered by reading the PSC redacted version that there are many terms redacted by GREC the meaning of which we had already inferred. The same could also be true of some material that remains redacted. Ed Regan has already described many of the obligations and benefits assigned to the respective parties by this contract in public, including a great many details that appear to have been redacted in the contract text. Dian and I freely discuss those matters with others. Does that make us liable under this agreement?

6. We have been told that as interveners we cannot speak directly to City Commissioners, and Commissioners have been told they cannot discuss confidential material with members of the public. Would we be constrained from commenting on

our conclusions, based upon viewing the *unredacted text*, to City Commissioners by means of confidential method (perhaps by letter delivered to City Attorney Marion Radson)?

We appreciate your efforts to protect your client. We believe that the interests of the ratepayers and taxpayers must also be protected. The posture adopted in the proposed agreement may have come from force of habit. You are practiced in defending clients against rapacious competitors. Nevertheless, it has to be acknowledged that neither Dian nor I fall into that category and are deserving of more faith than suggested in the proposed agreement.

Surely there is some middle ground? We could accept an agreement that includes the right to make notations on a redacted copy of the contract to identify the subject treated in the corresponding place in the non-redacted contract. This would make it possible for us to address the material intelligently before the PSC. We would have no objection to such notations being reviewed by whoever monitors our reading of the contract to ensure that we not removing verbatim copies of redacted text. We also want to be able to make notes for doing any calculations while viewing the material, and perhaps to use a calculator for this purpose. Such notes can be destroyed by your agent/monitor when we leave the viewing room.

.Thank you for your assistance. Please call me if you think we can advance this matter more quickly by speaking directly.

(my cell); 352-222-1063; or Dian's home phone: 352-373-0181.

Paula H. Stahmer
Dian Deevey

Dear Scheff,

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.Thank you for your assistance. Please call me if you think we can advance this matter more quickly by speaking directly.

(my cell); 352-222-1063; or Dian's home phone: 352-373-0181.

Paula H. Stahmer
Dian Deevey

Reverse discounting

Dian Deevey to you (cc), 'Schef Wright', 'Erik Saylor', jlavie - [Reverse discounting.docx](#)

Dear Schef and Jay,

It is possible to obtain quite a bit of information from tables containing present worth values, as I am sure you both recall from high school math classes.

The attached is a description of how approximate original costs can be obtained from discounted present value representations of them.

Application of this method allows one to obtain a pretty good idea of the original costs, and it is a method that I have used and will continue to use in exploring costs associated with GREC operations. I describe this approach to you in some detail to make sure that you understand that my use of the resulting approximate costs does not constitute a violation of any confidentiality agreement with American Renewables.

Thanks

Dian Deevey

Dear Schef,

You have agreed that confidential information does not include information that is in the public domain or can easily be inferred from information in the public domain.

It is very easy to infer the approximate value of anything listed as a present worth value if you know the base year and the discount rate.

Here is how one does it.

GREC replies to staff interrogatories consist of tables of the present value in year n of actual costs from some preceding year. For example, GREC's response to interrogatory 57 includes a table that lists the present value in 2014 of the capital cost plus fixed O&M as \$130,821,000. According to instructions given by staff, this figure represents the discounted value of the capital cost provided in 2009, where the discount rate is 4.2%.

You will recall that to calculate a present value, at a future point n years from the present, one multiplies it by $(1 - \text{discount rate})$ raised to the power n , or:

$(1-i)^n$, where i is the discount rate.

Clearly, to reverse this discounting, one need only multiply the present value figure by the value $(1 + \text{discount rate})$ raised to the power of n , or:

$$(1+i)^n$$

In applying this “reverse discounting” methodology to the values in the first (2014) line of the response to Interrogatory 57, one must decide how many years to use for the value n . The instructions say that the present value is the value relative to the non-discounted value for 2009, which suggests that one should use 5 as the value for n , but one may alternatively wish to obtain a somewhat more conservative figure by using 4 as n . If one uses both values—as I do-- one could infer that the 2009 value that was discounted was probably between \$154 million and \$160 million. Note that the approximation will include errors that increase with n and approximations based on very large n could depart significantly from the undiscounted value.

I applied this method to all the values in the response to Interrogatory 57 and discovered that the undiscounted capital cost figures I calculated increased quite rapidly with time, from which I conclude that either that whoever calculated them did not follow instructions, or these “fixed” capital costs are not in fact fixed.

Paula Huessy Stahmer

Member of the Bar
District of Columbia

4621 Clear Lake Drive
Gainesville, Florida 32607-2238
Tel/Fax: (352) 373- 3958
E-mail: Paulastahmer@aol.com

April 15, 2010

Robert Scheffel Wright
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301
Phone: 850-222-7206
FAX: 561-6834
Sent Via Electronic Mail to: swright@yvlaw.net

Re: FPSC Docket No. 090451-EM
Permit Application, GREC and GRU Petitioners
Confidentiality Issues/ Intervenors Right of Access

Dear Mr. Wright,

Thank you for your letter, dated April 15, 2010, in response to recent email communications from Mrs. Deevey and me regarding the conditions under which we may have access to confidential materials in the above-captioned case.

With regard to your chronology of negotiations in this matter, I do not dispute that you have always responded promptly and substantively to our communications and you have indeed made several significant changes to the terms of the proposed NDA in order to accommodate our requests.

I fully understand that many of the terms in the various versions of the NDA have incorporated language of common usage for such agreements. Neither one of us is trying to engineer some sort of legal advice from your firm in this matter. It would be silly for us to do so since your professional obligations clearly lie elsewhere. However, it is not inappropriate for us to ask how the authors of the NDA interpret their own language since there must be a meeting of

Letter from Stahmer/Deevey, Interveners
PSC Docket No. 090451-EM
Re: Access to GREC's Confidential Redacted Materials
April 15, 2010

the minds to any agreement. A refusal to discuss some of the details we have raised strikes me as a preference for obscurity which can create an unfair advantage for your client. Admittedly, we are all operating under time constraints that can provoke impatience over delay for matters one had thought were already resolved.

It is a little unrealistic to approach this discourse as though each side carried equal weight to protect its respective interests. American Renewables, GREC, and GRU, jointly or severally, have the resources to bury either or both of us with the mere assertion of harm that would inevitably be followed by a tsunami of documents. I like to believe that truth will out, but innocents have been destroyed by the sheer magnitude of the opposition. Our main "sticking point" is that we should have the right to defend against any charge of improper disclosure of confidential information and the alleged consequent harm. That is commonly called due process, and should hardly be a burden to your client. This is especially true since we are not a scheming competitor, financed by jealous investors, trying to usurp your clients' business relationship with the City of Gainesville.

We fully understand that, by having access to confidential material, we have a grave responsibility to abide by an NDA, and we assume the risk of charges possibly being leveled at us. But it does not follow that, in order to protect your clients' interests, we must waive any rights of defense on the matter. Your client could easily make claims against us in the utmost good faith, but still be in error. We see no reason why your client should automatically be entitled to a presumption of harm when the confidential material, as best we can tell, contains many details and explicit assumptions that may be rendered of no consequence with a change in circumstances in applicable science, law or the economy.

With reference to the foregoing, your criticism of Mrs. Deevey's letter, dated April 14, 2010, to you about "reverse accounting" only dramatizes our own peril if we agree to language creating a presumption of harm when, as Mrs. Deevey explains, one can deduce a great deal from the redacted material without access to the confidential material. Your letter seems very dismissive on this point even though one of the purposes of her letter was to demonstrate for your benefit, and that of your client, how much "confidential" information may actually have been disclosed by your client, however inadvertently. Secondly, Mrs. Deevey sought to protect herself and me by giving an example that, prior to any access to any confidential material, we have been able to discover quite a lot.

Just for the record, neither Mrs. Deevey nor I need your agreement that our analysis of redacted information does not constitute a breach of the NDA. We are not yet signatories to any NDA, and we have not been given access to any confidential information. But your apparent umbrage on this point again dramatizes the reasonableness of our concerns that we might

Letter from Stahmer/Deevey, Interveners
PSC Docket No. 090451-EM
Re: Access to GREC's Confidential Redacted Materials
April 15, 2010

arbitrarily be subject to presumptive liability for disclosing information that is actually the product of our intelligent reading of redacted material and not a disclosure of confidential material in breach of an NDA.

In light of the foregoing, it may be that we cannot achieve any mutually agreeable *modus operandi*. It would be impossible for us to list now all the details that your client assumes are confidential but that we have managed to infer, if not precisely, then at least to some close approximation of the actual detail.

It is regrettable that you think we are merely conniving. Perhaps you are, as I once previously suggested, jaded by over exposure to hard-knuckled, well-heeled opposition that delights in (and can afford) stalling tactics. Neither Mrs. Deevey nor I have anything to gain by being willfully obstinate and we are well aware that such conduct could readily be exposed and discredit us in the eyes of the very people, including you, upon whose good will and patience we must rely.

Sincerely,

Paula H. Stahmer

Paula Huessy Stahmer

Member of the Bar
District of Columbia

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April 15, 2010

Robert Scheffel Wright
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301
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FAX: 561-6834
Sent Via Electronic Mail to: swright@yvlaw.net

Re: FPSC Docket No. 090451-EM
Permit Application, GREC and GRU Petitioners
Confidentiality Issues/ Intervenors Right of Access

Dear Mr. Wright,

Thank you for your letter, dated April 15, 2010, in response to recent email communications from Mrs. Deevey and me regarding the conditions under which we may have access to confidential materials in the above-captioned case.

With regard to your chronology of negotiations in this matter, I do not dispute that you have always responded promptly and substantively to our communications and you have indeed made several significant changes to the terms of the proposed NDA in order to accommodate our requests.

I fully understand that many of the terms in the various versions of the NDA have incorporated language of common usage for such agreements. Neither one of us is trying to engineer some sort of legal advice from your firm in this matter. It would be silly for us to do so since your professional obligations clearly lie elsewhere. However, it is not inappropriate for us to ask how the authors of the NDA interpret their own language since there must be a meeting of

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the minds to any agreement. A refusal to discuss some of the details we have raised strikes me as a preference for obscurity which can create an unfair advantage for your client. Admittedly, we are all operating under time constraints that can provoke impatience over delay for matters one had thought were already resolved.

It is a little unrealistic to approach this discourse as though each side carried equal weight to protect its respective interests. American Renewables, GREC, and GRU, jointly or severally, have the resources to bury either or both of us with the mere assertion of harm that would inevitably be followed by a tsunami of documents. I like to believe that truth will out, but innocents have been destroyed by the sheer magnitude of the opposition. Our main "sticking point" is that we should have the right to defend against any charge of improper disclosure of confidential information and the alleged consequent harm. That is commonly called due process, and should hardly be a burden to your client. This is especially true since we are not a scheming competitor, financed by jealous investors, trying to usurp your clients' business relationship with the City of Gainesville.

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