

Marguerite McLean

090451-EM

From: paulastahmer@aol.com
Sent: Friday, May 21, 2010 4:13 PM
To: Filings@psc.state.fl.us
Cc: swright@yvlaw.net; diandv@bellsouth.net; Erik Sayler; Martha Brown; Theresa Walsh; rdulgar@yvlaw.net; jlavia@yvlaw.net
Subject: Intervener Stahmer's Opposition to Petitioners' Request for Confidential Classification
Attachments: 090451_Int_Stah_Oppo2Pet_Confi_Classi_5-21-10[1].pdf

a. Person responsible for this electronic filing:

Paula H. Stahmer
 Intervener
 4621 Clear Lake Drive
 Gainesville, FL 32607
 Phone: 352-373-3958
 Cell: 352-222-1063
 E-mail: 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. Documents being filed on behalf of Paula H. Stahmer, Intervener

d. There are a total of 19 pages.

e. The documents attached for electronic filing are:
 Intervener Stahmer's Opposition to Petitioners' request for Confidential Classification [re DN 04092]; 13 pages

Attachment of Emails between Dian Deevey and City Attorney (4 pages)
 Attachment of Letter to Deevey from City Attorney (2pages)

All the foregoing are contained in one pdf file.

Thank you for your attention and assistance in this matter.

Paula H. Stahmer
 352-222-1063

DOCUMENT NUMBER-DATE

04342 MAY 21 2010

FPSC-COMMISSION CLERK

5/21/2010

**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: May 21, 2010

**INTERVENER STAHMER'S OPPOSITION TO
PETITIONERS' REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Intervener Stahmer hereby moves the Florida Public Service Commission ("FPSC" or "Commission") to deny Petitioners' Request for Confidential Classification of certain information provided in response to Intervener Stahmer's First Request for Production of Documents, Request No. 1 ("SPOD No. 1"), and in support thereof states as follows:

1. Petitioners filed a Notice of Intent to Request Confidential Classification ("Request") of the documents, DN 04092-10, on April 26, 2010.
2. On April 29, 2010, Intervener Stahmer ("Intervener") filed a Notice of Intent to Oppose such a request and noted that one could not address substantive issues until Petitioners had filed their Request in which, presumably, Petitioners would state the grounds for the Request.
3. On May 14, 2010, Petitioners filed their Request regarding DN 04092-10.

DOCUMENT NUMBER-DATE

04342 MAY 21 09

FPSC-COMMISSION CLERK

4. Pursuant to Rule 28-106.204(1), Florida Administrative Code, Intervener timely submits her reasons for opposing Petitioners' Request.

5. As Petitioners stated in their Request, the documents at issue are three separate memoranda, which Petitioners described as follows:

- a) A report by Haddad Resource Management, LLC ("HRM") dated February 2009 and entitled "Aggregate Construction Cost Index Evaluation Performed for Gainesville Regional Utilities" ("HRM - Report A");
- b) an undated "Draft Report" prepared by HRM ("HRM Report B"); and
- c) a "Draft Report" by HRM dated April 2009 and entitled "Aggregate Construction Index Calculation" ("HRM Report C").

In keeping with Petitioners' style, the three documents will be collectively referenced herein as the "Haddad Reports", or otherwise as the "Reports".

6. Intervener Stahmer acknowledges that Petitioners have recently reduced the amount of redacted text of the Haddad Reports, and they are seeking confidential classification of the lesser redacted versions.

7. Petitioners maintain that the remaining redacted text should be protected because

“... the Haddad Reports include confidential, proprietary business information, the disclosure of which would impair GREC LLC's competitive interests in its negotiations with engineering, procurement, and construction ("EPC") contractors for contracts to build the Gainesville Renewable Energy Center Project (the "Project") by revealing to potential EPC contractors key pricing terms of the PPA, which such EPC contractors would likely then use as a "floor" in further negotiations, to the direct economic harm of GREC LLC. By Order dated March 29, 2010, the subject pricing terms in the PPA have already been granted confidential classification by the Commission.”

Petitioners' Request, Section 3 on pdf pages 2-3.

8. In opposition to Petitioners' statements, Intervener summarizes her position below with more discussion in the subsequent paragraphs:

- a) the Reports are the property of the City of Gainesville, Florida, d/b/a Gainesville Regional Utilities ("GRU") as they were commissioned by GRU and received by GRU, a publicly owned, municipal utility, and therefore such documents are subject to the constraints of the Florida Public Records Act (xxx);
- b) according to the text of the Reports, the Reports were written without reliance on confidential information; therefore, the Reports, even in their lesser redacted form, contain no confidential proprietary information;
- c) the Reports contain analysis of publicly known industry accepted methodologies for establishing cost escalators in a construction contract, along with publicly known and widely accepted critiques of the relative merits of certain industry indices; the "hybrid index" analyzed by the reports was subject to extensive qualification and is seemingly unrelated to the "EPC" concerns of Petitioners;
- d) the Reports are a theoretical discussion about the appropriate basis for calculating a price increase in the *contract between GRU and American Renewables* from the April 2008 binding bid proposal (received from the predecessor Nacogdoches) to the request for an increase prior to the signing of the PPA on April 29, 2009, as well as a possible escalator to be utilized at some time thereafter. Disclosure of the redacted information would not impair GREC's "competitive interests" because it does not contain "information from which the EPC contractors could determine confidential pricing information" as to contracts with such EPC contractors;
- e) "Competition" for the GREC contract has ceased long ago, an escalator has been written into the contract, and GRU can only withdraw from the

contract if the Commission denies Petitioners' application. Therefore, disclosure of information in the Reports cannot impair GREC's competitive status.

9. *The Reports are Public Documents Which Are the Property of the City of Gainesville.* The Reports were commissioned by the City via a contract signed by GRU; they were written for the City, addressed to and received by the City. As such they are public records subject to Florida's public records laws. See Ch. 119, Fla. Stat., and s. 119.011(2), Fla. Stat., which defines "Agency" for purposes of Ch. 119, Fla. Stat., to include: "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law...and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." While those laws do recognize some exemptions for confidential information, nothing in the Reports can be confidential or proprietary to GRU since the subject matter had nothing to do with GRU's own operations. GRU will not be building GREC, nor will GRU be responsible for overseeing or contracting for the building of GREC.

The information Petitioners seek to classify as confidential was supposedly not relied upon by GRU in any event, so it cannot now be given significance that circumstances have obviated.

Petitioners' assert that the information belongs to GREC, LLC:

- a. it is *owned or controlled by GREC LLC*;
- b. it is intended to be and is treated by GREC LLC as private, confidential, proprietary business information....

Request, at pdf page 5; emphasis added.

However, Petitioners' own statements contradict that assertion. The following interrogatories from Intervener were stipulated to by Petitioners and would seem to be self-explanatory:

b) What index or other documented cost information was consulted by GRU?

Response to Interrogatory No. Ib:

GRU retained an independent consultant to develop and compare various indexing schemes. The firm retained was Haddad Resource Management Inc.....

d) Did American Renewables or GREC provide the information relied upon by GRU?

Response to Interrogatory No. Id:

No, GRU did not rely on any information provided by GREC with regard to cost increases and indexing.

See 03969-10 Exh. 92, pdf pages 29-33, at 31 and 32, respectively; emphasis added.

10. (1) *No Confidential Information Provided to Haddad.* The Reports do not contain confidential proprietary information since none was provided to Haddad for writing the Reports. Please refer to the discussion in Section 9 above as showing that GRU did not rely upon information from GREC in providing Haddad with information for the Reports.

Additionally, language from the Reports supports the conclusion that Haddad was not given any confidential information for the purposes of writing the Reports. In Report A, page 1, under subtitle "Evaluation Methodology", a summary is given by Haddad:

The following activities were performed in the development of the observations and recommendations provided. The steps performed in the process were as follows;

Reviewed all data and correspondence provided with the task direction dated January 23, 2009 and subsequent follow up with GRU

Reviewed GRU's original RFP, **redacted** binding proposal received from American Renewables, and the **published** GRU evaluation and recommendations [emphasis added]

Reviewed both national and regional Bureau of Labor Statistics indices and associated databases applicable to this project

Reviewed market based data for critical commodities typically used in power plant construction

Utilizing experience gained from successfully negotiating and managing large scale full and partial requirement wholesale power contracts and merchant purchase power agreements, compiled and assessed the available information from both an academic and transactional perspective

See Request, pdf page 12. (NB: Report A does not have periods at the end of the above sections.) The language above explicitly identifies documents provided that were regarded as confidential and identified as such to Haddad. The confidential information was withheld from Haddad.

Finally, there is the reality that Petitioners have left unredacted most of Report A except for two small sections of text on pdf page 14. The information in those small sections reflect numbers that are considerably less than the amount by which the contract price was eventually increased (from \$300 million to \$500 million) shortly after the Reports were written, so it is difficult to see the confidential quality of that information, especially since both the old and the new contract prices were reported in the newspaper. (*See Exh 88*, pdf pages 1309-1312, in 03742-10_part5.pdf).

(2) *American Renewables Hybrid Index Not Confidential*. The Reports do discuss a “hybrid index” proposed by American Renewables, but disfavored by Haddad.

Although information was not available to determine the basis for indices chosen or their weighting, it is assumed that the *proposed methodology* is an attempt to approximate the true changes to the cost of construction rather than to capture new pricing opportunities. In this regard, general comments related to the proposed index are as follows...

The indices as recommended appear duplicative.

In the absence of a compelling argument for a more accurate alternative, the Handy-Whitman index could be used as the primary mechanism for any proposed price change.

In that regard, it is recommended that the American Renewables hybrid index be avoided as it is not an industry recognized method for cost adjustment and would have to be validated to be defensible to both regulatory bodies and the public.

Request, pdf pages 13 & 14, and 24; emphasis added.

Petitioners' own witness Regan implied that the hybrid index was not relied upon. In his presentation to the City Commission on May 7, 2009, explaining the new contract terms, Regan made a power point presentation in which he advised the City that steel and construction costs had risen very high between January and June 2008. This same presentation was submitted by Petitioners' at the December 16, 2009, PSC Hearing. (See 00473-10 Exhibits.pdf, pps 162-201, p163 & 168). Similarly, when pressed during the May 3, 2010, Supplemental Hearing, as to reasons for the increase in contract costs, Witness Regan stated: "If one were to examine the *U.S. Bureau of Labor Statistics, Producer Price Indexes, WPU114* series for general purpose machinery and equipment (major cost factors in power plants) the index will be seen to uniformly increase over the time in question." See Exh 92, pdf page 31-32; emphasis added.

In response to an earlier interrogatory from Intervener, Witness Regan maintained the same stance:

a) What was the data source of information about steel costs relied upon by GRU for the May 2009 presentation to the City?

Response to Interrogatory No. 1a

The information about steel costs was publicly available information from sources considered to be reliable.

See Exh 92, pdf pps 29-33, at page 31.

Therefore, it would seem that the hybrid index was of little consequence to the contract, and should not now be given more significance than it possessed over a year ago.

More significantly, with regard to any of the information Petitioners seek to withhold as confidential, there is no evidence that Petitioners sought to designate any information in the Reports as confidential within the necessary time frame as required by Florida law. The First District Court of Appeal in *Sevro Corporation v. Florida Department of Environmental Protection*, held that a trade secret owner who fails to label a trade secret as such, or otherwise to specify in writing upon delivery to a state agency that information which it contends is confidential and exempt under the public records law is not to be disclosed, has not taken measures or made efforts that are reasonable under the circumstances to maintain the information's secrecy as required by section 812.081, Florida Statutes (and section 688.002, Florida Statutes). *See* 839 So. 2d 781, 785-787 (Fla. 1st DCA 2003), *review denied sub nom.*, *Crist v. Florida Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005).

The Reports refer to Haddad receiving already redacted information, so previously redacted information could not be in the Reports. Additionally, the Reports state that “information was not available to determine the basis” for the hybrid index, so nothing then considered confidential was revealed by the Reports since it was unavailable to Haddad. It seems to be only as of Intervener’s request for production in April 2010 that Petitioners decided to make redactions in the Reports themselves. Inasmuch as the Reports were clearly public records from their inception, Petitioners were aware of their obligation to timely assert confidentiality as to any text in the Reports at least a year ago. It is not timely to now assert retroactively some claim of confidentiality.

11. *Reports Focused on Public Indices.* As noted above in Section 10(1), the Reports focused on analysis of publicly available information regarding established indices used in the construction industry. The Reports state the nature of the task undertaken:

Reviewed both national and regional Bureau of Labor Statistics indices and associated databases applicable to this project

Reviewed market based data for critical commodities typically used in power plant construction

Utilizing experience gained from successfully negotiating and managing large scale full and partial requirement wholesale power contracts and merchant purchase power agreements, compiled and assessed the available information from both an academic and transactional perspective

The Petitioners stipulated to admitting into the record the following responses from Witness

Regan to Interrogatories from Intervener:

b) What index or other documented cost information was consulted by GRU?

Response to Interrogatory No. 1b:

GRU retained an independent consultant to develop and compare various indexing schemes. The firm retained was Haddad Resource Management Inc. The principal of this firm has many years experience negotiating similar contracts on behalf of utilities and was hired to study a number of different alternatives. *These included Bureau of Labor Statistics indices, market data, a variety of Handy-Whitman Indices, such as the total steam production cost, Euro to Dollar exchange rates (substantial pieces of equipment will be sourced from overseas), a variety of consumer price indices and weighting schemes, and Engineering News Record construction indices.* The evaluation was performed under three separate task orders to reflect GRU's preferences and to further refine the final indices to be applied.

See 03969-10 Exh. 92, pdf pages 29-33, at 31-32; emphasis added.

Also noted in Section 10(2) above is the fact that the hybrid index proposed by American Renewables was apparently not utilized by GRU, so any discussion of that hybrid index by the Reports is of no consequence at this time and therefore does not justify redaction of public documents. Even within the context of Petitioners' argument, at this point in time, it is difficult to see how the information could be valuable to GREC since, as discussed by Haddad, the hybrid index seemed to be time sensitive to the period between 2008 and 2009.

12. *Reports Discuss Contract Between American Renewables and GRU, Not Between Third Party EPC Contractors.* The Reports do not discuss issues having to do with competitive pricing for purchase of EPC products from third parties in the construction of the GREC facility, nor for pricing of purchases of fuel once the facility is operating. The overriding issue is the contract between American Renewables and GRU, not subsequent third party contractors. The beginning of Report "C" states:

Under the Task 3 assignment to review the ***proposed purchase power agreement*** for this project, it was requested that a new Aggregate Construction Index definition be generated and incorporated into the draft PPA document. The following represents the evaluation of alternatives for the proposed index as well as recommended wording for GRU's consideration.

Request, at pdf page 25.

Report A states: "The purpose of this evaluation is to review work GRU has performed to date to develop a construction cost index that can be utilized for cost escalation purposes *in GRU's proposed contract with American Renewables*" (emphasis added). See Petitioners' Request, pdf page 12.

The focus of analysis is solely pricing between GRU and American Renewables relating to a cost escalator sought for (1) substantiating an increase of the firm bid included in the binding

proposal received from Nacogdoches and accepted by the City Commission in April 2008.

Additionally, (2) there was discussion of a built-in escalator within the contract for cost adjustment at a later date prior to commencement of building. From the Report B, there is the following language:

The purpose of this evaluation is to review the referenced indices and provide recommendations to GRU for indices that could be utilized for construction cost related price adjustments *to this contract*.

Request, pdf page 18, emphasis added.

Inasmuch as the difference between the proposed binding bid proposal and the ultimate agreed upon contract price is public knowledge, having been published in newspapers and by Petitioner GRU itself, the pricing latitude available to Petitioners for construction of the GREC facility is rather transparent to any would be third party contractor for EPC products. Redacting public documents will not retroactively erase information released to and published by the press and discussed at length during these public proceedings before the Commission.

13. *No Competitive Interests Are at Risk.* Inasmuch as the subject matter of the Reports was always the contract between American Renewables and GRU and not any third party contracts with GREC, and given that the contract was finalized long ago, no competitive interests could be put at risk by revealing information in the Reports. Petitioners have entered into a binding agreement without any “back door provision”¹ available to GRU despite the

¹ At the City Commission meeting of May 12, 2008, when voting to accept the Nacogdoches binding proposal, the commission unanimously voted to direct GRU to include a “contractual binding back door provision” that would permit the commission to withdraw from the contract at any time prior to site certification by the PSC. See Commission Meeting Minutes, Exh. 92, pdf. page 556. However, when GRU presented the signed PPA to the commission on May 7, 2009, GRU did not inform the commission or the public that the PPA did not include the provision. Inquiry by Intervener Deevey, dated March 25, 2010, yielded a response from city attorney Radson, dated April 1, 2010, (copy attached) in which it was explained that: “The General Manager [of GRU], in the exercise of his authority, concluded that the concessions, which the City would have been required to make in order to include such a provision, were deemed not to be in the best economic interest of the City.”

unanimous request by the city commission. Therefore, there can be no potential competitive injury to GREC by disclosure of the information as there is no risk of losing the contract.

Wherefore, for all the foregoing reasons, Intervener respectfully requests that the Commission deny Petitioners' Request for Confidential Classification of any information in the Reports.

Respectfully submitted this 21st day of May, 2010.

s/ Paula H. Stahmer, pro se
Intervener
4621 Clear Lake Drive
Gainesville, FL 32607 Phone: 352-373-3958
E-mail: Paulastahmer@aol.com

CERTIFICATE OF SERVICE

I, Paula H. Stahmer, hereby certify that a true and complete copy of the foregoing has been served on the following via electronic mail, United States Mail, on May 21st, 2010:

Roy C. Young/Schef Wright
225 South Adams Street, Suite 200
Tallahassee, FL 32301
Phone: 850-222-7206
FAX: 561-6834
Email: ryoung@yvlaw.net

Dian R. Deevey, Intervener
1702 SW 35 Place
Gainesville, FL 32608
Phone: 352-373-0181
E-mail: diandv@bellsouth.net

Martha Brown

Senior Attorney, MBrown@PSC.STATE.FL.US
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Erik Saylor

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Tallahassee, FL 32399-0850

s/Paula H. Stahmer

From: Dian Deevey [diandv@bellsouth.net]
Sent: Monday, March 22, 2010 9:02 AM
To: 'legal@cityofgainesville.org'; CityComm@cityofgainesville.org
Cc: Paula Stahmer <Paulastahmer@aol.com>
Subject: Cancellation of Contract with American Renewables
Attachments: Cancellation of Contract with American Renewables.docx

Marion Radson, Esq.
Gainesville City Attorney
P.O. Box 490, Sta. 46
Gainesville, Florida 32601

March 21, 2010

Dear Mr. Radson,

Some details of the City's contract with American Renewables that became available to the public only after the publication of the transcript of PSC Commissioners consideration of the need application for the biomass plant have alarmed members of the public and some City Commissioners.

It is appropriate therefore to consider whether there is any way in which the City Commission can cancel or otherwise get out of that contract. I believe the following facts are relevant to this question:

1. On April 28 at the first of two discussions of the contract held by the City Commission, GRU Assistant Manager Ed Regan described the methods used by GRU to evaluate the bids submitted to the City by Nacogdoches, Sterling Planet, and Covanta. Some parts of the bids were not disclosed to the public because they contain confidential information, although the Mayor and all Commissioners had copies of the complete bids and were in possession of this confidential information.

At that April 28 meeting you advised City Commissioners that because they were privy to confidential information, they could not discuss the bids or any details of a future contract with any members of the public. You also advised them that they could not hold a closed meeting in which they could discuss the bids, the evaluation procedure, or any future contract with one another, as this would violate state Public Meetings laws.[1]

2. At their next meeting on May 12, City Commissioners considered a Staff recommendation to accept GRU's ranking of bidders, and to authorize the GRU General Manager Bob Hunzinger to negotiate and sign a contract with the top bidder Nacogdoches and, failing that, to negotiate and sign a contract with the second-ranked bidder and so forth.

They amended the staff recommendations and added a requirement that the negotiated contract contain a legal "backdoor" that would allow the City to walk away from the contract at the time of "site certification" (interpreted by Mr. Regan as the period during which the

PSC certifies need and the DEP approves an applicant's air permit and plans for the site of the generator). According to Mr. Regan's statements in this meeting, such "backdoors" are a common business practice and entirely appropriate in this case.[2]

3. GRU proceeded to negotiate a contract with American Renewables (formerly called Nacogdoches) and the General Manager signed that on April 29, 2009. However, the negotiated contract differed in fundamental ways from the contract that had been considered during the 2008 April 28, and May 12 Commission meetings. GRU wanted the City Commission to approve or "ratify" the new contract containing the new terms. At this public meeting Mr. Regan described two ways in which the signed contract differed from the one considered in May of 2008: (a) the duration of the contract was extended from 20 years to 30 years, a condition he deemed appropriate given the increases in the costs of essential building materials (including steel) since May of 2008 and (b) the cost would be higher than originally envisions.

After some discussion and comments from members of the public Commissioners voted unanimously to approve the contract that had been signed by Mr. Huzinger on April 29, 2009.

Mr. Regan did not inform the City Commissioners during this public meeting that the new contract did NOT include the "backdoor" that their May 12, 2008 motion required.

At the citizen comment time of the 12/17/2009 City Commission meeting, I reminded commissioners of the "backdoor" amendment and inquired as to the City's obligations under new contract. I asked what would happen if the PSC were to deny the application for need certification. A little later in the meeting, Commissioner Donovan inquired about this "backdoor" provision and our obligations and this amendment. Mr. Hunzinger's reply was ambiguous. He said that if the PSC rejected the application no contract would be in effect, but he did not say whether the City could cancel the contract now—as this is the period of need and site certification and air permit application. Mr. Hunzinger did not say whether the negotiated contract has the backdoor.

I would like you to give me answers to the following questions if you can:

1. Does the contract approved by the City Commission in May, 2009 contain the "back door" required by the amended motion passed in the preceding year?
2. If yes, then I believe that the City Commission does presently have the unquestioned right to cancel the contract, and could do so up until the time the need certification approval is approved by the Governor's cabinet. If I am correct, then please confirm this fact.
3. If the "backdoor" was not included in the negotiated contract approved May 2009, why not?

Did you or anyone on your staff inform City Commissioners that GRU had not in fact complied with their requirement? Did GRU so inform Commissioners? I know that there was no mention of this "backdoor" in the presentations made by staff in May, 2009, but I understand that Staff had the opportunity to lobby commissioners about the negotiations or the final contract at any time during the last 12 months, and may have communicated this critical fact during one-on-one meetings.

Given these facts can the City Commission cancel the contract?

I appreciate that these are complicated issues, but I would like a written (email or hard copy) reply from you as soon as you can provide one. I am currently an intervener in the action before the PSC and am very pressed for time.

This file will be attached to an email to you.

Thank you,

Dian Deevey
1702 SW 35th Place
Gainesville FL 32608

[1] I believe that there are exceptions to the Sunshine Laws that would have allowed Commissioners to hold such a meeting, but your call on that was that they cannot.

[2] The amendment is clearly spelled out in the "meeting details" or "action" items on GRU's web site in the minutes for that date. The URL is:
<http://gainesville.legistar.com/LegislationDetail.aspx?ID=296881&GUID=9DC9E5A4-BDF3-4BFD-BE7C-FEDE924FD563&Options=&Search>

From: Dian Deevey [diandv@bellsouth.net]
Sent: Thursday, March 25, 2010 2:03 PM
To: 'legal@cityofgainesville.org'
Subject: Email sent to legal on 3/22

Dear Mr. Radson

Late last Sunday night I emailed a list of inquiries regarding the options for cancelling the contract with American Renewables.
I have received no communication from your office regarding these inquiries. Did you receive the email?
Can I expect a response from you? If so, when to you think you can respond?
Thank you,
Dian Deevey
352-373-0181

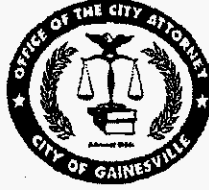
From: Murnahan, Alice F. [murnahanaf@cityofgainesville.org]
Sent: Thursday, April 01, 2010 9:25 AM
To: 'diandv@bellsouth.net'
Cc: citycomm; Hunzinger, Robert E; Manasco, Skip; Regan, Edward J
Subject: Response of Marion Radson to Dian Deevey dated April 1, 2010.
Attachments: 04-01-10 Response to Deevey re GRU Renewable Energy.pdf
Please see attached response from Marion Radson to e-mail of Dian Deevey received on March 22, 2010.
Alice F. Murnahan
Sr. Legal Assistant for
Marion J. Radson, City Attorney
(352)334-5011

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City of Gainesville Office of the City Attorney

Marion J. Radson ♦
City Attorney



Ronald D. Combs
Raymond O. Manasco, Jr.*
Stephanie M. Marchman
Daniel M. Nee
Nicole M. Shalley
Elizabeth A. Waratuke ♦

♦ Board Certified City, County
& Local Government Law

April 1, 2010

VIA E-MAIL

Dear Ms. Deevey,

My letter is in response to your letter of March 21, 2010.

You are correct that the General Manager had City Commission authorization (May 12, 2008 meeting [Item No. 071159]) to negotiate and execute a contract with the highest ranked bidder, Nacogdoches Power, LLC (Nacogdoches). At its meeting of May 7, 2009, the City Commission took up the ratification of the resulting, executed Power Purchase Agreement (PPA) between the City and Gainesville Renewable Energy Center, LLC, successor to Nacogdoches. Following a presentation by the General Manager and his staff the City Commission unanimously ratified the executed PPA. The ratified PPA does not contain the so-called "back door out" provision.

I note that the minutes to the May 12, 2008 Commission Meeting (copy attached) include the following:

"AMENDMENT TO MAIN MOTION: 1). Include in the negotiations a contractual binding back door out at the site certification point; and 2) have legal staff include an enforcement mechanism for forest stewardship in the contractual process."

Upon information and belief, the "back door out" provision referenced in paragraph 1 above, was discussed at length in the negotiations between the City and the bidder. The General Manager, in the exercise of his authority, concluded that the concessions, which the City would have been required to make in order to include such a provision, were deemed not to be in the best economic interest of the City. Thereafter, the City Commission approved the agreement at the May 7, 2009 Commission Meeting without the "back door out" provision.

P.O. Box 1110 (32602)
200 E. University Ave.
Room 425
Gainesville, Florida 32601

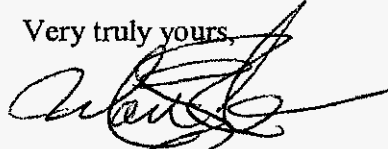
PHONE (352) 334-5011
FAX (352) 334-2229
City Hall and the City Attorney's Office
are closed on Fridays
Hours: M-Th, 7-6

*Utilities Legal Services
P.O. Box 147117, Sta. A-138
Gainesville, Florida 32614
PHONE: (352) 393-1010
FAX: (352) 334-2277
Hours: M-F, 8-5

It is my further understanding that you have raised this issue in interrogatories filed in the Determination of Need proceeding pending before the Florida Public Service Commission, Docket No. 090451-EM. The City's position on issues related to the Project should be made in that proceeding and any further inquiry on this and related matters should be made in that proceeding and the applicable rules of discovery.

Thank you.

Very truly yours,



Marion J. Radson
City Attorney

cc: Mayor and City Commissioners
Robert E. Hunzinger, General Manager for Utilities
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