

**Dorothy Menasco**

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**From:** Rhonda Dulgar [rdulgar@yvlaw.net]  
**Sent:** Monday, April 26, 2010 1:54 PM  
**To:** paulastahmer@aol.com; diandv@bellsouth.net; Raymond "Skip" Manasco; Erik Sayler; Filings@psc.state.fl.us; Martha Brown; Theresa Walsh; Schef Wright  
**Subject:** Electronic Filing - Docket 090451-EM  
**Attachments:** 090451.PetRespOpposingMotion2Compel.4-26-10.pdf

a. Person responsible for this electronic filing:

Robert Scheffel Wright  
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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 Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC.

d. There are a total of 38 pages.

e. The document attached for electronic filing is Petitioners' Response in Opposition to Intervenor's Motion to Compel.

(see attached file: 090451.PetRespOpposingMotion2Compel.4-26-10.pdf )

Please note that the parties were served as indicated on the certificate of service. Thank you for your attention and assistance in this matter.

Rhonda Dulgar  
Secretary to Schef Wright  
Phone: 850-222-7206  
FAX: 850-561-6834

4/26/2010

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Joint Petition to Determine Need for the )  
Gainesville Renewable Energy Center in Alachua )  
County by Gainesville Regional Utilities and )  
Gainesville Renewable Energy Center, LLC )

DOCKET NO. 090451-EM  
FILED: APRIL 26, 2010

**PETITIONERS' RESPONSE IN OPPOSITION TO  
INTERVENOR'S MOTION TO COMPEL**

Pursuant to Rule 28-106.204(1), Florida Administrative Code, Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC, collectively "Petitioners," hereby respond to the Amended Motion to Compel Production of Documents filed by Intervenor Paula Stahmer on April 22, 2010.

As a preliminary matter, the Petitioners do not agree with or acquiesce to a number of the factual assertions made by Intervenor Stahmer, and in the limited time available to respond to the Motion to Compel, it is neither practical nor necessary for the Petitioners to attempt to address all such assertions. Rather, in this Response in Opposition to the Motion to Compel, Petitioners will address the relief requested by Intervenor Stahmer for herself and for Intervenor Dian Deevey (collectively the "Intervenors").

**BACKGROUND**

As an initial matter, GREC LLC has now tendered to the Intervenors four versions of a Non-Disclosure Agreement ("NDA") for the purpose of making GREC LLC's Confidential Information available to the Intervenors for their use in this need determination proceeding; each successive version has incorporated additional provisions requested by, or addressing issues raised by, the Intervenors. Of course, it is well settled law that, as intervenors, Ms. Stahmer and Ms. Deevey take the case as they find it, which includes their being bound by the Commission's orders granting confidential classification to information asserted by GREC LLC to be its

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confidential, proprietary business information. In this connection, the Intervenor's assertion that the Commission's orders have "not been subject to challenge by third parties" is facially untrue: any substantially affected person had the opportunity to intervene, and any intervenor would have had the opportunity to challenge the Commission's orders granting confidential classification. The Intervenor could have challenged these classifications, but did not.

The Intervenor's history of the parties' negotiations recited in the Motion to Compel is incomplete, in that it omits the above history and also omits that, at the Intervenor's requests for specific appointments to review the Confidential Information, GREC LLC has twice<sup>1</sup> made the documents physically available for review by the Intervenor, only to have the Intervenor decide not to do so at the last minute based on new claimed concerns regarding the NDA. The history is what it is, but the issue presented today is whether the Intervenor's proposed amendments to the NDA should be granted. For the following reasons, the Petitioner urge the Commission to deny the Motion to Compel.

### **SUMMARY**

First, the Commission must note that the Intervenor has agreed to the terms of access and to the restrictions on their use of the information in the need determination proceeding. The Commission must also note that not a single one of the 6 elements of relief requested by the

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<sup>1</sup> In response to Intervenor Deevey's request made on March 25, 2010, after GREC LLC's counsel sent the first version of the NDA to the Intervenor on March 24, the Confidential Information was made available for review in Gainesville at the law offices of Robert W. Bauer on Friday, March 26, 2010. At 10:28 A.M. on that date, Intervenor Deevey e-mailed GREC LLC's counsel that she would not review the documents on that date. Pursuant to discussions following the prehearing conference on April 5, GREC LLC believed that the parties had finally reached substantive agreement on all terms of the NDA, and accordingly tendered a further revised NDA to the Intervenor on April 8. In response to Intervenor's request made on April 8, GREC LLC arranged for physical review of the documents at its counsel's offices in Tallahassee on April 14 and 15, later changed to April 16 pursuant to the Intervenor's request. On April 15, after the Intervenor asked for further "understandings" regarding the interpretation of, and their rights under, the NDA, the Intervenor once again canceled their appointment.

Intervenors has anything to do with either access to the Confidential Information or with use of the Confidential Information in this proceeding. At least four of the Intervenors' six requests are effectively for "get out of jail free" cards<sup>2</sup> by which they wish to make it more difficult for GREC LLC to protect its Confidential Information, and all six elements of their requested relief would make it easier for the Intervenors to escape the consequences of disclosure if, or more likely when, the Intervenors use their claimed "estimations" of the Confidential Information in another venue, e.g., at a Gainesville City Commission meeting or otherwise in public meetings in Gainesville.

Although this should be obvious, GREC LLC wishes to make it abundantly clear that GREC LLC emphatically does not want to pursue legal action against the Intervenors; all GREC LLC wants is for its confidential, proprietary business information to be respected and not disclosed.

The Commission will also note that Intervenor Stahmer states clearly that she "does not now dispute the appropriateness of the confidentiality protection, nor does she seek to exempt herself from the duty of non-disclosure." (Motion to Compel at paragraph 3) This raises the obvious question of why there is any problem here at all: obviously, if the Intervenors never disclose the Confidential Information, there will never be a problem, and there will never be an occasion for GREC LLC to seek legal remedies for a breach of the NDA.

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<sup>2</sup> Alternately, the Intervenors' requested relief could be viewed as an attempt to obtain an unauthorized advisory opinion from the Commission interpreting the provisions of the NDA. Either way, the Commission should reject these requests.

However, from the Intervenor's requests, correspondence, and indeed from the requested relief – in the form of modifications to the latest NDA – in the Motion to Compel, it appears that what the Intervenor really wants is "cover" for their plans to use "Intervenor's own estimations of confidential information" (Motion to Compel at paragraph 14) outside the need determination proceeding. The Intervenor claims that they have demonstrated that confidential information can be accurately inferred from publicly available information, and they claim to have estimated key values that are within the Confidential Information; thus, they wish to be shielded from the possibility of legal action if they were to disclose their estimates after seeing the Confidential Information.

Petitioners do not agree that the Intervenor has demonstrated that they have estimated, or that they can estimate, any of the Confidential Information from publicly available information. The problem that the Intervenor's requests thus pose for GREC LLC is that the Intervenor has not told anyone what those estimations are, and they will be given access to the Confidential Information (as they have already had two specific, pre-arranged, physical opportunities to do) pursuant to either the existing NDA or, hypothetically, pursuant to a modified NDA, so that, after reviewing the Confidential Information, they will be able to either verify their estimates, or figure out that their estimates are inaccurate and then attempt to find other information in the public domain from which they might be able to "reverse engineer" values in the Confidential Information. The Commission, particularly in light of the four Commission orders granting confidential classification to GREC LLC's confidential, proprietary business information already issued in this docket, must not allow this to occur.

If the Intervenor believes that they have accurately estimated key values relating to the Project and the PPA, they could obviate much of the current exercise simply by declaring,

publicly and before seeing GREC LLC's Confidential Information, what their "estimations" are, for example, for the following key parameters:

1. Pricing of the renewable energy (i.e., the cost of the renewable energy to GRU) under the PPA, in whatever terms the Intervenors have estimated such pricing;
2. Any inferences they claim to have made regarding the structure of the pricing under the PPA;
3. Cost of the Gainesville Renewable Energy Center power plant ("Project");
4. Total costs to GRU under the PPA over its 30-year life;
5. Cost of biomass fuel paid to landowners; and
6. Delivered cost of biomass fuel to the GREC as reflected in payments to be made by GRU to GREC LLC pursuant to the PPA.

**THE COMMISSION SHOULD DENY THE RELIEF  
REQUESTED BY THE INTERVENORS.**

With regard to the 6 specific elements of relief requested at page 6 of the Motion to Compel, the Petitioners urge the Commission to deny all such requests, for the following reasons.

First, and perhaps foremost, none of the requested elements has anything to do with either the Intervenors' access to, or with the Intervenors' use of, the Confidential Information in this need determination proceeding. The Intervenors have already agreed to the terms of access and use offered by GREC LLC in the current version of the NDA (a copy of the individualized NDA for Intervenor Stahmer is attached as Exhibit A), and the requested modifications are simply efforts to insulate the Intervenors from the consequences of using either the Confidential Information, or their "estimations" of the Confidential Information, in other contexts. (Obviously, under the NDA, they would be able to fully communicate – by proper citation to confidential documents – anything and everything that they need to communicate to the

members and Staff of the Public Service Commission.)

Items "a" through "c". These are legal matters relating to burdens in a hypothetical future lawsuit, and the Commission should not involve itself in such matters. See generally In re: Application for Certificate to Provide Wastewater Service in Charlotte County by Island Environmental Utility, Inc., Order No. PSC-03-1415-PCO-SU (December 15, 2003) (stating that the party whose confidential information is sought by others is free to require such other parties to enter into non-disclosure agreements to maintain confidentiality of the information prior to providing the information to such parties, in accordance with customary practice). Florida's law of contracts is what it is, and any future actions will be governed thereby. The provisions that the Intervenor asks the Commission to incorporate into the NDA are not, to the knowledge of GREC LLC or its counsel, to be found in any other non-disclosure agreement in their experience. Significantly, while the Intervenor cites to four NDAs between GREC LLC and four Florida municipal utilities for other provisions that they want included in their NDA here, they fail to advise the Commission that none of those NDAs includes any language like that sought in items "a" through "c" of their requests for relief.

Moreover, with respect to item "b", the operative language in the NDA simply recites the language of Section 366.093(3), Florida Statutes, by which the Commission is to afford confidential protection to a party's information upon a finding that "disclosure of the information would cause harm to . . . the person's or company's business operations." (Emphasis supplied.)

Finally, the Intervenor's attempts to solicit interpretations from GREC LLC's counsel of various provisions in the NDAs are inappropriate. GREC LLC's counsel cannot advise the Intervenor, who are not represented by counsel, either as to the interpretation of the NDA or as to Florida law relating to the interpretation of contracts. For counsel to do so would be a

violation of the Rules of Professional Responsibility of The Florida Bar. See R. Regulating the Florida Bar 4-4.3 (stating that a lawyer "shall not give legal advice to an unrepresented person other than the advice to secure counsel.")

Items "d" and "e". These items, which the Intervenor never raised before asserting them in the Motion to Compel, address standard terms of non-disclosure agreements, including the term of any continuing obligation not to disclose confidential information obtained pursuant to such agreement, and the availability of remedies to a party asserting that its confidential information has been disclosed. As an initial matter, the Petitioners believe that the Intervenor's selective citation<sup>3</sup> to the NDAs between GREC LLC and four municipally owned utilities who have expressed interest in purchasing the output of the GREC Project is generally misplaced: those NDAs are between parties with common business interests, who hope to negotiate a mutually agreeable business transaction. The NDA in this need determination docket is, necessarily, designed to protect GREC LLC's confidential, proprietary business information from public disclosure by avowed opponents of the Project.

While agreements vary, the five-year continuing obligation term proposed by GREC LLC – noting that this is a unilaterally offered compromise from GREC LLC's original proposal of ten years – is not unreasonable. Some agreements have periods as short as 3 years, others have continuing obligation periods of ten years, or even indefinite periods. For example, in a confidentiality agreement executed in Docket No. 080677-EI, the 2009 FPL rate case, the continuing obligation provision was as follows:

Except for information for which the FPSC has issued a final order holding that the information is not granted confidential status, each Party's obligation not to

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<sup>3</sup> While the Intervenor refers to the 3-year continuing obligation term and the "no consequential damages" term in the NDAs with the municipal utilities, they omit the fact that the parties to those NDAs expressly agreed that disclosure of the confidential information "will cause irreparable harm" to GREC LLC's competitive business interests.



disclose Confidential Information or Designated Confidential Information continues unless or until the information is otherwise publicly disclosed in a manner not in violation of this Agreement.

In other words, the continuing obligation was indefinite. (A copy of the referenced confidentiality agreement is attached as Exhibit B; the above language is cited from page 6 of that agreement.)

With regard to the remedies provision cited by the Intervenor, the more standard language is that injunctive relief is specifically available, and that a party claiming breach is entitled to any relief at law or in equity, including injunctive relief, necessary to prevent or remedy such a breach. The limitation on consequential damages in the NDAs with the other municipal utilities is appropriate to those agreements because of the parties' common interests; no such limitation is appropriate in this instance where the Intervenor hope to prevent the GREC Project from going forward.

At worst, the provisions in the NDAs tendered to the Intervenor requiring a five-year continuing non-disclosure obligation and the fundamental absence of specific provisions regarding remedies are well within the range of "customary practice," which the Commission has recognized as the appropriate standard for non-disclosure agreements that parties may require when disclosing their confidential, proprietary business information. See, Island Environmental Utility, Order No. PSC-03-1415-PCO-SU at 6. Accordingly, the Commission should deny the modifications identified as "d" and "e" requested by the Intervenor.

Item "f". Item "f" of the Intervenor's requested relief is *prima facie* evidence that the Intervenor wish to use the Confidential Information outside of this proceeding – specifically to communicate the Confidential Information to the members of the Gainesville City Commission. In the first instance, this is clearly unnecessary to the Intervenor's needs for access to and use of

the Confidential Information in this docket, which GREC LLC has already offered to accommodate, and the terms for which the Intervenors have already agreed.

GREC LLC and GRU have no doubt that the Intervenors' request, in their Motion to Compel, that the Commission include in its order on the NDA a requirement that they be allowed to share Confidential Information with the City Commissioners (Request for Relief, subparagraph f) demonstrates their intent to use the Confidential Information outside the scope of this docket in order to foment local opposition to the Project. See, e.g., the March 22 e-mail from Intervenor Deevey to the Gainesville City Attorney inquiring about the possibility of canceling the PPA (attached as Exhibit C to the Petitioners' Response). Viewing Ms. Deevey's March 22 e-mail in light of the Intervenors' requested "sharing clause," it is clear that the Intervenors intend to use the Confidential Information outside this docket in their continuing collateral attempts to derail the Gainesville Renewable Energy Center Project.

In addition to being an improper attempt to circumvent the normal requirement that parties in adversarial litigation may not contact persons who are represented by counsel without counsel's permission, this is clearly an attempt by the Intervenors to use the Confidential Information outside the scope of this need determination proceeding, and it would therefore be inappropriate for the Commission to order such a modification to the NDA. Indeed, in this regard, the Commission must note that the relevant statute, Section 366.093(2), Florida Statutes, provides that "the commission shall issue appropriate protective orders designating the manner for handling such information during the course of the proceeding and for protecting such information from disclosure outside the proceeding." (Emphasis supplied.)<sup>4</sup>

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<sup>4</sup> Further, this requested modification is of significant concern to GRU, because it introduces additional risks of public disclosure of confidential, proprietary, trade secret information by virtue of its being contained – in the scenario desired by the Intervenors – in correspondence with Gainesville City Commissioners, which the City ordinarily makes public.

In light of this statutory provision, the argument advanced in the Motion to Compel 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" is facially irrelevant: the Commission's orders granting confidential classification are necessarily, under the statute, limited to this proceeding and direct the Commission to issue protective orders to protect confidential information from being disclosed outside the proceeding. The Intervenors' argument underscores their intent to use GREC LLC's Confidential Information outside the scope of this docket.

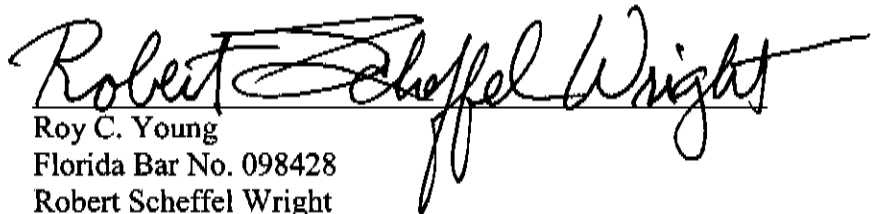
### CONCLUSION

The Commission should deny the Intervenors' Motion to Compel. The requested relief in the form of modifications to the NDA relating to burdens in a hypothetical future lawsuit are governed by Florida contract law, they have nothing whatever to do with the Intervenors' access to and use of the Confidential Information in this docket, and the Commission should accordingly deny these requests. The continuing obligation term and the remedies terms of the proposed NDA are reasonable, especially so in light of the fact that the Intervenors are avowed opponents of the Project, and well within the range of customary practice. Accordingly, the Commission should deny Intervenors' requests regarding those two items – "d" and "e" – as well. Finally, Intervenors' request for relief "f" is, on its face, a request that the Commission permit them to use Confidential Information outside this proceeding; this is facially inappropriate under relevant statute, and well beyond the scope of the Commission's charge to protect confidential information from public disclosure in – and outside – its proceedings, and accordingly, the Commission should deny this request as well.

**WHEREFORE**, for the foregoing reasons, Petitioners Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC urge the Commission, through the Prehearing Officer assigned to this docket, to enter its order denying the Motion to Compel and finding that GREC LLC's offer to produce the confidential documents pursuant to the amended Non-Disclosure Agreement appended hereto as Exhibit A provides for the Intervenor to have reasonable access to, and use of, GREC LLC's Confidential Information in this proceeding, while protecting GREC LLC's confidential information, consistent with applicable Florida law.

Respectfully filed this 26th day of April, 2010.

Young van Assenderp, P.A.

A handwritten signature in black ink that reads "Robert Scheffel Wright". The signature is written in a cursive style with a long horizontal line extending to the right.

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Attorneys for GRU and GREC LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail to the following parties on this 24th day of April, 2010.

Erik Sayler/Martha Carter Brown  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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Attorney

**EXHIBIT A**

**TO**

**PETITIONERS' RESPONSE TO MOTION TO COMPEL**

**NON-DISCLOSURE AGREEMENT TENDERED TO INTERVENOR  
STAHMER ON APRIL 14, 2010**

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. STAHRER

THIS NON-DISCLOSURE AGREEMENT ("AGREEMENT") is entered into by and between Gainesville Renewable Energy Center, LLC ("GREC LLC") and Paula H. Stahmer (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 In PSC Docket No. 090451-EM (the "Docket" or the "GREC Need Determination Docket"), 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: (a) is now in the public domain; (b) that enters the public domain after the date hereof through no action by a Party in violation of this AGREEMENT; (c) that a Party can demonstrate was already in its possession before the time of its disclosure to the Party pursuant to this AGREEMENT, and that the information had come into the Party's possession without violation of this AGREEMENT; or (d) information approved for public disclosure or release by written authorization from GREC LLC, and

WHEREAS, Paula H. Stahmer ("Stahmer") is a party who has been granted intervenor status in the above-styled proceeding, and

WHEREAS, Stahmer 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 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.

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 GREC LLC and Stahmer, and of GREC LLC and Stahmer 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 paragraph 4 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 agrees and acknowledges that disclosure of the Confidential Information, and any breach of the provisions of this AGREEMENT, would cause harm to the competitive business

interests of GREC LLC.

3. Stahmer agrees and covenants that she shall not disclose any part of the Confidential Information to any other person in any form or format whatsoever. Stahmer further agrees and covenants that she shall not 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 disclosure 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. a. Supervised Review and Use of Confidential Information. GREC LLC will provide one copy of the Confidential Information for review by Stahmer as provided in this paragraph 4 of this AGREEMENT. GREC LLC will make the Confidential Information available to Stahmer at a mutually agreed upon date and time, at the Law Offices of Robert W. Bauer, 2815 N.W. 13th Street, Suite 200-E, Gainesville, FL 32609, telephone (352) 375-5960, or the law offices of Young van Assenderp, P.A. If an additional visit is requested by Stahmer, GREC LLC will make

every reasonable effort to accommodate this request within the time constraints of the schedule for the GREC Need Determination Docket. Stahmer's review of the Confidential Information shall be continuously supervised by representatives of GREC LLC.

b. Taking of Notes Before Hearing. Before the hearing in the Docket, Stahmer may make or take notes of the Confidential Information as follows. Subsections (i) through (iii) prescribe a document review process that may, because of its specific procedures regarding note-taking, be undertaken at the law offices of Robert W. Bauer in Gainesville, Florida. Subsection (iv) provides for an alternative review process that includes the opportunity for Stahmer to take notes that may be removed from the review premises, but only subject to review by one of GREC LLC's attorneys knowledgeable of the subject matter in this proceeding. Review pursuant to subsection (iv) shall be conducted at the offices of Young van Assenderp, P.A., 225 South Adams Street, Suite 200, Tallahassee, Florida 32301.

- (i) GREC LLC will provide Stahmer with the following: a redacted copy of the Confidential Information, an unredacted (highlighted) copy of the Confidential Information, and writing paper upon which Stahmer may take notes. Stahmer shall be permitted to make notations on the redacted copy of the Confidential

Information as well as on the writing paper provided. Stahmer may bring to the review session pens, pencils, and a calculator of her choosing, but no other materials other than personal items. By way of example, and without limitation, Stahmer may not bring a computer or her own paper into the premises of the document review. Stahmer may use the calculator to make whatever calculations Stahmer may wish, and she may take notes of her calculations on the writing paper provided by GREC LLC; provided that such calculator may not be used to make notes or images of the Confidential Information in any way. (By way of example, and without limitation, an I-Phone or similar device that includes a calculator in addition to photographic or communications capability, is not acceptable, and no such devices will be allowed in the presence of the Confidential Information.) No notes may be removed from the premises of the review.

- (ii) At the conclusion of the review session, Stahmer shall place all materials, specifically including the redacted copy of the Confidential Information, the unredacted copy of the Confidential Information, and Stahmer's notes and calculations, if any, in a sealed

envelope, which Stahmer may seal with any reasonable protective technology of her choosing. GREC LLC will keep that sealed envelope in a secure manner, using the same care that GREC LLC uses to protect its own Confidential Information. Alternatively, if Stahmer does not wish to have her notes kept in a sealed envelope as set forth above, GREC LLC's representatives shall destroy all notes taken or made by Stahmer, and GREC LLC shall retain the unredacted copy and the redacted copy of the Confidential Information.

- (iii) GREC LLC will provide the sealed envelope and its contents to Stahmer at any subsequent review session, which shall be conducted in the same manner as set forth above, at the conclusion of which all materials shall be again placed into a sealed envelope and sealed for protection as desired by Stahmer, and GREC LLC will continue to protect the envelope and its contents as described above.
- (iv) As an alternative to the procedures set forth in the foregoing sections (i) through (iii), GREC LLC will make the Confidential Information available for review by Stahmer at the offices of Young van Assenderp,

P.A., at the address provided above, and Stahmer may take notes which, upon review by one of GREC LLC's attorneys to ensure that the notes do not contain Confidential Information, or information from which Confidential Information could be derived, she may remove such notes from the premises. If Stahmer so desires, she may make notes to be left behind pursuant to subsections (i) through (iii) and notes that may be removed, subject to review, pursuant to this subsection (iv), provided that any and all notetaking pursuant to this subsection (iv) must be done at the offices of Young van Assenderp, P.A.

c. Use of Confidential Information and Taking of Notes at Hearing. GREC LLC will also provide the sealed envelope, if applicable, and all of its contents to Stahmer at the final hearing in the Docket on May 3, 2010, and on any additional dates upon which hearings in the Docket are held. Stahmer shall be permitted to take notes reflecting the Confidential Information during the hearing, but none of the Confidential Information, and none of Stahmer's notes reflecting or containing Confidential Information (or information that could be used to derive Confidential Information) may be removed from the hearing room by Stahmer at any time or for any purpose. At

the conclusion of the hearing, and during any overnight recess of the hearing, if applicable, the unredacted copy of the Confidential Information and any and all of Stahmer's notes, which specifically includes any notes made by Stahmer on a redacted copy of the Confidential Information, shall again be placed into a sealed envelope and sealed in accordance with Stahmer's desired method. Alternatively, if Stahmer does not wish to have her notes kept in a sealed envelope as set forth above, GREC LLC's representatives shall destroy all such notes when Stahmer concludes her use of the Confidential Information at the hearing.

d. Use of Notes and Confidential Information After Hearing. GREC LLC will also make the Confidential Information and Stahmer's notes available to her, on the same terms and using the same procedures set forth above, on any one day between May 4 through May 12, 2010, inclusive, which is the period during which Parties will be preparing their post-hearing briefs in the Docket. Alternatively, if Stahmer does not wish to have her notes kept in a sealed envelope as set forth above, GREC LLC's representatives shall destroy such notes reflecting calculations when Stahmer concludes her review of the Confidential Information.

e. Except for the taking of notes as provided in the

preceding section, no copies, photographs, or other images of any part of the Confidential Information may be made.

f. No Copying of Stahmer's Notes by GREC LLC. Neither GREC LLC, nor its attorneys, nor any of its representatives, shall make copies of Stahmer's notes, if any. GREC LLC shall keep the sealed envelopes referred to above, including Stahmer's notes, in a secure fashion using the same care that GREC LLC uses with respect to its own Confidential Information.

g. Final Disposition of Notes. Upon the entry of a final order by the Commission in this proceeding, any and all notes taken by Stahmer that contain or reflect Confidential Information (or information that could be used to derive Confidential Information) shall be destroyed by GREC LLC. Stahmer shall be notified and shall have an opportunity to be present at the destruction of such notes.

h. No security or letter of credit is required for Stahmer to review the Confidential Information as provided in this paragraph 4.

5. By entering into this AGREEMENT, neither GREC LLC, nor Stahmer, 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.

6. 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.

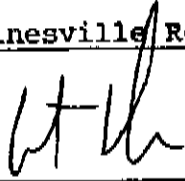
7. Continuing Obligation: Stahmer acknowledges and agrees that she remains under a continuing obligation to comply with all of the above provisions and covenants of this AGREEMENT with respect to her obligation not to disclose Confidential Information, for a period of five (5) years from the date of this AGREEMENT.

8. This AGREEMENT is understood and agreed by the Parties to be a binding contract enforceable through all applicable remedies at law and in equity.

9. Stahmer acknowledges that, although she is participating in this docket on a pro se basis, she has had an adequate opportunity to discuss this AGREEMENT with counsel of her choosing, and that neither GREC LLC nor counsel for GREC LLC has in any way attempted to coerce her 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:



Date 4/13/10

Albert Morales, Chief Financial Officer  
American Renewable, LLC  
75 Arlington Street, 5<sup>th</sup> Floor  
Boston, Massachusetts 02116

For Paula H. Stahmer:

\_\_\_\_\_  
Paula H. Stahmer

Date \_\_\_\_\_

**EXHIBIT B**

**TO**

**PETITIONERS' RESPONSE TO MOTION TO COMPEL**

**EXAMPLE CONFIDENTIALITY AGREEMENT  
(FROM FPSC DOCKET NO. 080677-EI, 2009 FPL RATE CASE)**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for rate increase by )  
Florida Power & Light Company )

Docket No: 080677-EI

In re: 2009 depreciation and dismantlement )  
study by Florida Power & Light Company )

Docket No. 090130-EI

**CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (the "Agreement") is entered into by and between Florida Power & Light Company ("FPL") and the Florida Retail Federation ("FRF") (individually a "Party," and collectively the "Parties") to induce each Party to make available or provide to the other Party confidential information, and to preserve the confidentiality of documents and information so designated, in Florida Public Service Commission ("FPSC" or the "Commission") Docket No. 080677-EI and Docket No. 090130-EI .

1. Applicability

The terms of this Agreement shall apply to:

- (a) all information found to be confidential by the FPSC pursuant to Rule 25-22.006, Florida Administrative Code (the "Confidentiality Rule"), and Section 366.093(3), Florida Statutes ("Confidential Information"); and
- (b) all other information, regardless of format, that a Party designates confidential ("Designated Confidential Information"). This Agreement applies to the Confidential Information and Designated Confidential Information made available or provided by FRF or FPL or filed with the FPSC in Docket No. 080677-EI or Docket No. 090130-EI.

## 2. Obligation to Act in Good Faith

- (a) The intent of this Agreement is to preserve the confidential nature of all Confidential Information and Designated Confidential Information without invoking the provisions and procedures of Florida Administrative Code Rule 25-22.006. The Parties understand that invocation of Rule 25-22.006 would entail expenditures of time and resources and they will attempt to resolve any disputes on an informal basis without resort to the provisions of such rule. The Parties agree to act reasonably and in good faith in claiming or questioning a claim of confidentiality of information provided pursuant to this Agreement.
- (b) By signing this Agreement, no Party accepts the validity of, or waives the right to contest a claim of confidentiality on any grounds. However, in the event of a dispute over a claim of confidentiality, Parties shall safeguard the confidentiality of the subject material pending final resolution of the matter by the Commission.

## 3. Procedure for Review of Confidential Information

- (a) All individuals and entities to whom a Party discloses the Confidential Information or Designated Confidential Information will be made aware of the confidential nature of the information. Each person who will have access to Confidential Information or Designated Confidential Information shall, before such access is granted, sign a written Non-Disclosure Acknowledgement, in the form attached as Exhibit A, confirming that he or she has read this Agreement and agrees to abide by its terms. Neither party shall disclose any of the Confidential Information or Designated Confidential Information to any person unless the person has first signed a copy of Exhibit A, Non-Disclosure Acknowledgement. Each Party shall promptly forward to to the other Party all such

executed Non-Disclosure Acknowledgements. Each Party will inform each person to whom disclosure of the Confidential Information or Designated Confidential Information is to be made that by executing this Agreement he or she is agreeing to be bound by all of the terms and conditions hereof. The Confidential Information or Designated Confidential Information may be disclosed only to a Party to this Agreement and that Party's attorneys and consultants/expert witnesses who are engaged in Docket No. 080677-EI and Docket No. 090130-EI and who have responsibility associated with formulating and/or presenting the Party's litigation positions in Docket No. 080677-EI and Docket No. 090130-EI. The total number of persons who may have access to the Confidential Information or Designated Confidential Information shall not exceed ten (10) without the express written permission of the other Party.

- (b) Each person who has signed the Acknowledgment on behalf of a Party may have access to Confidential Information or Designated Confidential Information for the sole purpose of that Party's participation in Docket No. 080677-EI and Docket No. 090130-EI. Each person who has been given access to the Confidential Information or Designated Confidential Information made available or provided pursuant to this Agreement shall not disclose any Confidential Information or Designated Confidential Information to anyone other than a person who has been given access under the terms of this Agreement.
- (c) A Party may reproduce Confidential Information or Designated Confidential Information only to the extent necessary to provide a copy to persons who have executed the Acknowledgement appended to this Agreement as Exhibit A. Each Party will maintain a copy control log which identifies each document that is copied, the

number of copies, the date on which the document is copied, and the person(s) to whom each copy is provided.

- (d) While any Confidential Information or Designated Confidential Information belonging to one Party is in the possession of the other Party, each person who has access to the information shall individually and collectively implement procedures that are adequate to ensure that Confidential Information or Designated Confidential Information shall not be disclosed to anyone other than those persons who have executed the Non-Disclosure Acknowledgement appended to this Agreement as Exhibit A. Each Party agrees to use all reasonable means to preserve confidentiality, including, but not limited to, measures customarily undertaken to prevent disclosure of its own confidential information. Each Party shall ensure that all persons who have access to Confidential Information or Designated Confidential Information maintain the confidentiality of such information in accordance with this Agreement.
- (e) The Confidential Information or Designated Confidential Information made available by FPL pursuant to this Agreement shall remain the property of FPL. The Confidential Information or Designated Confidential Information made available by FRF pursuant to this Agreement shall remain the property of FRF. Confidential Information or Designated Confidential Information shall not be used for any purposes unrelated to Docket No. 080677-EI and Docket No. 090130-EI.
- (f) When including Confidential Information or Designated Confidential Information supplied pursuant to this Agreement in prefiled testimony or exhibits or any other information or documents submitted to the Commission, the Parties agree to follow the procedure for use of such information prescribed by order of the prehearing officer and

Rule 25-22.006, and shall provide notice to the other Party seven (7) days prior to submitting the information. The purpose of this requirement is to afford each Party an adequate opportunity to invoke the provisions of Rule 25-22.006, to protect the confidentiality of the information.

4. Electronic Copies and Electronic Distribution

FPL and the FRF are concerned with the distribution and duplication of confidential documents by electronic means. Accordingly, this section is intended to make clear the manner in which subsection 3(c) applies to such activities to avoid the inadvertent or unintentional disclosure or duplication of Confidential Information or Designated Confidential Information.

- (a) Each instance whereby a hard copy document containing Confidential Information or Designated Confidential Information is converted to electronic format (e.g., by scanning into a pdf file) is the creation of a “copy” that shall be recorded on the copy control log, consistent with subsection 3(c).
- (b) Each instance whereby an electronic document containing Confidential Information or Designated Confidential Information is saved in a personal computer file or on some other electronic storage device is the creation of a “copy” that shall be recorded on the copy control log, consistent with subsection 3(c). Information sufficient for a third party to locate the electronic document shall be recorded on the copy control log. This includes, but is not limited to, the identity of the owner of the computer or other electronic storage device, the location of the computer or other electronic storage device, and the drive or file where the document is located.



- (c) Each e-mail sent containing FPL's or the FRF's Confidential Information or Designated Confidential Information is the creation of an electronic "copy" that shall be recorded on the copy control log, consistent with subsection 3(c). The date, identity of the sender, and identity of the recipient shall also be identified on the copy control log.

5. Terms and Termination

The Agreement shall be effective from the date it is executed by the Parties until all Confidential Information or Designated Confidential Information has been destroyed or returned, or as to any information for which a determination of confidential status has been sought, until the FPSC has made a final adjudication as to the confidential status of the information. Except for information for which the FPSC has issued a final order holding that the information is not granted confidential status, each Party's obligation not to disclose Confidential Information or Designated Confidential Information continues unless or until the information is otherwise publicly disclosed in a manner not in violation of this Agreement. The continuing obligation not to disclose of each Party and each person who has been granted access to Confidential Information or Designated Confidential Information under the terms of this Agreement, shall survive the expiration of this Agreement. If any decision of the FPSC in Docket No. 080677-EI or Docket No. 090130-EI is appealed, the Agreement shall continue until all appellate review is completed. All Confidential Information or Designated Confidential Information belonging to FPL shall be returned to FPL or it shall be certified that it has been destroyed, and all Confidential Information or Designated Confidential Information belonging to FRF shall be returned to FRF or it shall be certified that it has been destroyed. In the event that any electronic copies are created consistent with subsections 4(a)-(c), each e-mail and/or electronic file shall be certified

deleted. The return of Confidential Information or Designated Confidential Information, or the certification of its destruction or deletion, shall occur no later than 45 days after the date the FPSC issues its final decision or order in the final phase of this proceeding, the time for an appeal has expired, or a final order is issued upon appeal if an appeal is filed. In the event that a receiving party uses Confidential Information or Designated Confidential Information in the preparation or creation of new documents, and Confidential Information or Designated Confidential Information is readily identifiable within it, such documents shall be returned or certified destroyed consistent with the requirements of this section.

6. Remedies

FRF and FPL agree that: (i) divulgence or unauthorized use of Confidential Information or Designated Confidential Information could damage the owner of the information; (ii) the amount of resulting damages could be difficult to ascertain; (iii) the owner of the information may not reasonably or adequately be compensated for the loss of such information in damages alone; and (iv) each Party shall be entitled to any remedy at law, injunctive, or other equitable relief to prevent or remedy a breach of this Agreement or any part of it. In any action to enforce the provisions of this Agreement, the prevailing Party shall be entitled to any and all costs and attorneys' fees incurred in that action. Each Party agrees to defend, indemnify, and hold the other Party harmless, for any claim or liability, civil or criminal, brought or imposed on a Party by any person caused by or resulting from breach of this Agreement by the other Party, including any person to whom a Party has granted access to Confidential Information or Designated Confidential Information under the terms of this Agreement. Furthermore, nothing herein is intended to restrict any remedies available to a Party for the unauthorized disclosure, dissemination or release of proprietary information by

the other Party. This Agreement shall be interpreted, governed, and construed under the laws of the State of Florida.

7. Authority

The undersigned acknowledge and represent that they have actual authority to enter into this Agreement.

8. Modifications

This Agreement may be modified only in writing and only upon the mutual consent of the Parties to the modification.

FLORIDA RETAIL FEDERATION

By: Robert Scheffez Wright JUNE 11, 2009  
Date

Printed Name: ROBERT SCHEFFEZ WRIGHT

Title: ATTORNEY

FLORIDA POWER & LIGHT COMPANY

By: [Signature] 6/11/09  
Date

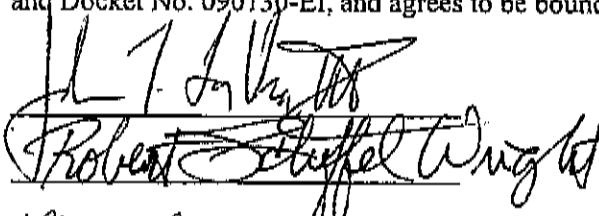
Printed Name: John T. Butler

Title: Managing Attorney

**EXHIBIT "A"**

**NON-DISCLOSURE ACKNOWLEDGEMENT**

The undersigned hereby certifies that prior to the disclosure to him or her of information and/or documents belonging to, or in the possession of, or made available by Florida Power & Light Company or the Florida Retail Federation, which are Confidential Information or Designated Confidential Information as those terms are defined in the Agreement, the undersigned has read the Non-Disclosure Agreement for the purposes of Docket No. 080677-EI and Docket No. 090130-EI, and agrees to be bound by its terms.

  
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**EXHIBIT C**

**TO**

**PETITIONERS' RESPONSE TO MOTION TO COMPEL**

**E-MAIL DATED MARCH 22, 2010  
FROM INTERVENOR DIAN R. DEEVEY TO  
GAINESVILLE CITY ATTORNEY MARION RADSON**

From: Dian Deevey <mailto:diandv@hollis.com.th.net>  
Sent: Monday, March 22, 2010 9:02 AM  
To: Legal; citycomm  
Cc: [Paulastahmer@aol.com](mailto:Paulastahmer@aol.com)  
Subject: Cancellation of Contract with American Renewables

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

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[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=296681&GUID=9DC9E5A4-BDF3-4BFD-BE7C-FE924FD563&Options=&Search>